Inquest into the death of Kumanjayi Walker
[2025] NTLC 8
Findings of Territory Coroner Elisabeth Armitage

IN THE CORONERS COURT
of the Northern Territory

7 July 2025

CITATION: *Inquest into the death of Kumanjayi Walker* [2025] NTLC 8

TITLE OF COURT:	Coroners Court
JURISDICTION:	Alice Springs
FILE NO:	A51 of 2019
DELIVERED ON:	10 June 2025
DELIVERED AT:	Yuendumu
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FINDING OF:	Judge Elisabeth Armitage
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development and behaviour; need for relationship of mutual trust and respect between community and police

Coroners Act 1993 (NT) ss 26, 34, 35
Criminal Code s 119
Oaths, Affirmations and Declarations Act 2010 s 27
Ombudsman Act 2009 (NT) s66, 83
Police Administration Act 1978 (NT) Part IV, ss 126, 126A
Work Health and Safety (National Uniform Legislation) Act 2011 (NT), ss 3, 4, 5, 10, 19

Adamczak v Alsco Pty Ltd (No 4) [2019] FCCA 7
Annetts v McCann (1990) 170 CLR 596
Briginshaw v Briginshaw (1938) 60 CLR 336
Chief Commissioner of Police v Hallenstein (1996) 2 VR 1
Domaszewicz v State Coroner (2004) 11 VR 237
Doomadgee v Clements [2006] 2 Qd R 352
DPP v Carr (2001) 127 A Crim R 151
Harmsworth v The State Coroner [1989] VR 989
Hurley v Clements & Ors [2009] QCA 167
Inquest into the death of Eduardo Concepcion [2001] NTMC 25
Inquest into the Death of Jaidyn Raymond Leskie (Coroners Court, Victoria, Coroner Johnstone, Case No 007/98, 31 July 2006)
Inquest into the death of Kumanjayi Walker (Ruling No 1) [2022] NTLC 016
Inquest into the death of Kumanjayi Walker (Ruling No 2) [2022] NTLC 017
Inquest into the death of Kumanjayi Walker (Ruling No 3) [2022] NTLC 019
Inquest into the Death of Matthew Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Bryant and Bhavita Patel, Coroners Court of Victoria, 19 November 2020
Inquests into the deaths of Miss Yunupingu, Ngeygo Ragurrk, Kumarn Rubuntja and Kumanjayi Haywood [2024] NTLC 14
Inquest into the death of Tanya Louise Day [2020] Coroners Court of Victoria (COR 2017/6424), 9 April 2020
Inquest into the passing of Veronica Nelson [2023] VicCorC 28309
Perre v Chivell (2000) 77 SASR 282
Prior v Mole [2015] NTSC 65
R v Doogan [2005] ACTSC 74
R v South London Coroner; ex parte Thompson, Unreported, Lord Lane CJ, Watkins L, and Robert Goff J, Queen's Bench Division, 9 July 1982

Refjek v McElory (1965) 112 CLR 517
Re Day (2017) 91 ALJR 262
Roy v O'Neill (2020) 272 CLR 291
Thales Australia Ltd v Coroners Court [2011] VSC 133
The Queen v Rolfe (No 7) [2022] NTSC 1
The Secretary to the Department of Health and Community Services v Gurvich [1995] 2 VR 69
Tu'uta Katoa v Minister or Immigration, Citizenship, Migrant Services and Multicultural Affairs (2022) 276 CLR 579
Walker v Hamm [2008] VSC 596
Woodley v Boyd [2001] NSWCA 35
Wotton v State of Queensland [2016] FCA 1457
WRB Transport v Chivell (1998) 201 LSJS 103

Inquiry Into The Matters Arising From The Death of Stephen Lawrence (United Kingdom) Report dated 15 February 1999
Royal Commission into Aboriginal Deaths in Custody – Report presented 27 February 1991
Royal Commission into the Protection and Detention of Children in the Northern Territory (2016)

REPRESENTATION:

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For Sergeant Lee Bauwens:	Ms KM McNally
For Sergeant Paul Kirkby:	Mr B Fernandez
Sergeant Ian Nankivell and Constable James Kirstenfeldt:	Mr C Gnech
For Senior Constable Anthony Hawkings and Senior Constable Adam Eberl:	Mr I Read SC

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Judgment ID number:	[2025] NTLC 8
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I acknowledge the invaluable cultural knowledge, preserved and passed on for thousands of years, from which we all continue to learn and grow for the betterment of each generation.

The cover image of these Findings is Door One of the “Yuendumu School Doors”, which were painted in the early 1980s by a group of five Yuendumu Elders, who were concerned about Warlpiri children failing to engage with Western education in the local school. As a way of incorporating their tradition and Law into Western schooling, the group painted Warlpiri ancestral (or “Dreaming”) stories on thirty of the Yuendumu School’s doors. The painted doors remained in place for thirteen years until, in recognition of their significant cultural value, they were replaced with replicas and moved to the Museum of South Australia.

Door One was painted by Larry Jungarrayi Spencer and the image is used with permission of the Warlukurlangu Artists Aboriginal Corporation.

The Dreaming story for Door One, and some further information about the Yuendumu School Doors, is found in **Annexure A** to these Findings. That Annexure contains excerpts from the 1987 Aboriginal Studies Press book “Warlukurlangu Artists - Yuendumu School Doors – Kuruwarri”. These excerpts are reproduced with permission of the publisher.

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IN THE CORONERS COURT
AT YUENDUMU IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. A51 of 2019

In the matter of an Inquest into the death of
KUMANJAYI WALKER
ON: 9 November 2019
AT: Yuendumu Community

FINDINGS

JUDGE ELISABETH ARMITAGE

ACKNOWLEDGEMENT

1. On 9 November 2019 in Yuendumu, Kumanjayi Walker,[1] a 19 year old Warlpiri/Luritja teenager, was shot and killed by former Constable Zachary Rolfe (**Mr Rolfe**), aged 28 years, who was in his fourth year of policing in the Northern Territory.

2. Kumanjayi's passing, particularly in the circumstances in which it occurred, is a tragedy for him and for those who knew and loved him. Kumanjayi was their son, grandson, brother, cousin, nephew and partner and I recognise their pain and sorrow and pay my respects to them. I am very sorry for their loss.

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1 At birth, Kumanjayi Walker was given the name that appears in the formal Findings. Throughout the course of this Inquest, the Court has referred to him as Kumanjayi, out of respect for the cultural practice of not naming persons who have passed away, at least for a specified period of mourning, which may last months or years. Aboriginal communities throughout the Northern Territory have different terms that are used to refer to the person who has passed away, depending on their language and place. In the Warlpiri language, the term "Kumanjayi" is used, which is sometimes spelt Kumunjayi or Kumuntjayi. In Arrernte the spelling is "Kwementyaye". In Luritja the terms "Kumanarra" and "Kumarn" are used.

Acknowledgement

3. Evidence[2] in this Inquest has been distressing to hear, particularly for those who loved Kumanjayi. I have been told that, despite a desire to participate fully in these proceedings, that participation and the proceedings themselves came with an emotional toll, and I accept and acknowledge that. I respect the gracious way in which the family have given evidence, listened, borne witness, and patiently awaited these findings.[3]

4. My task has been to find the truth as best I can, about the circumstances of Kumanjayi's passing. It would be a disservice to all who have played a part in these proceedings if I were to shy away now from speaking truthfully about the evidence I have heard.

5. Today, I sit in Yuendumu to deliver these Findings in the community where Kumanjayi passed away. The Coroner's Court of the Northern Territory recognises the importance of Inquests being held, where possible, where the critical events happened.[4] Due to the scale of this Inquest, it was not possible for it to be conducted in Yuendumu; but, along with parties to the Inquest, I accepted an invitation from the community to visit Yuendumu for two days during the Inquest and again today to deliver these Findings.

6. I acknowledge the Traditional owners of the lands of Kumanjayi's family – the Warlpiri and Luritja people who live throughout the Central desert in communities that we now call Yuendumu, Nyirripi, Papunya and Haasts Bluff, and whose ancestors have occupied those lands for tens of thousands of years.

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2 These Findings contain references to oral evidence in the Inquest (referred to by witness, date and transcript page number) as well as to evidence contained in the brief of evidence (the identifying brief item number for each piece of evidence is contained within square brackets, for example [1-1A], which is then followed by a page or [paragraph] reference).

3 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [10].

4 On many occasions the Northern Territory Coroner's Court has convened in remote communities to conduct part or whole hearings, for example, in the *Inquest into the death of George Bukulatpjpi* [2005] NTMC 011, the *Inquest into the death of Tracey Karadji* [2007] NTMC 010 and the *Inquest into the death of Danmirriwuy Yunupingu* [2010] NTMC 035. Additionally, the Local Court of the Northern Territory routinely sits in Yuendumu, in sittings known as "Bush Court". The room ordinarily used for Bush Court in this community is attached to the Yuendumu Police Station and therefore is not considered an appropriate venue for the delivery of Findings in this matter, because that is where Kumanjayi passed away. Having canvassed a number of venues in the community to determine what suitable space was available to convene to deliver these Findings, the grounds of P.A.W. Media were offered, and the Court is grateful for the use of their facilities.

I also acknowledge the Arrente people of Mbantua (Alice Springs), the Traditional owners of the land where this Court sat for the hearing of this Inquest.

7. Not only has the death of Kumanjayi caused immeasurable pain to his family, partner and friends, but it has also had a profound impact on many people who were directly or indirectly connected to the events of that day. That includes: police witnesses who knew Kumanjayi as a member of their community, or who made decisions on the day; Mr Rolfe and his family, who have been through lengthy court proceedings and have been the subject of significant publicity; and police and other service providers in Yuendumu who dealt with the fear, confusion, anger and profound grief felt by the community after Kumanjayi's passing. I acknowledge the efforts of skilled case workers and counsellors who genuinely cared about Kumanjayi and worked hard to assist him during his life. I have heard evidence that his death has impacted them personally and professionally.[5]

8. Additionally, Kumanjayi's death and the subsequent investigations into it have caused distress and division amongst members of NT Police, many of whom have dedicated their professional lives to the service of the Northern Territory and who show great respect and care for their Aboriginal colleagues, friends and community members. NT Police officers carry the enormous weight of our collective expectation that they will unfailingly perform in a demanding and at times complex role. The work that they undertake on our behalf often comes with a significant personal toll.

9. The fatal shooting of a member of the public by a police officer is traumatic for all of those involved. When the individual who dies is an Aboriginal person there is an added layer to the anguish, given the history of Australia post colonisation. As Coroner McGregor said in the recent Victorian *Inquest into the death of Veronica Nelson*:[6]

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5 I note particularly the evidence of Kerri-Anne Chilvers.

6 *Inquest into the passing of Veronica Nelson* [2023] VicCorC 28309 at [47].

> "When the passing of an Aboriginal person occurs in custody, it occurs on the continuum of the problematic relationship between the Australian criminal justice system and First Nations peoples."

10. Over the past fifty years of policing in the Northern Territory, it has been very rare for a police officer to shoot a member of the public,[7] and in modern policing there are clear rules in place designed to protect the rights and freedoms of all citizens equally.

11. Yet the history of the Northern Territory, and many parts of our country, includes state sanctioned murder of Aboriginal people who occupied fertile lands that were forcibly taken for pastoralists or new settler inhabitants. Many Aboriginal and Torres Strait Islander people feel the pain of that history; they may have heard the stories of their ancestors killed in frontier conflicts and they are living with the consequences of their families having been displaced from traditional lands.[8]

12. Warlpiri and Luritja ancestors lived on their country for millennia, practicing their law and customs, and many are now living on far less habitable land, separated from traditional country and culture.[9] In addition, the memory of the 1928 Coniston massacre, the last recorded state sanctioned massacre of Aboriginal people, which occurred not far from Yuendumu, remains enormously significant today. "To Warlpiri people, the Coniston Massacres

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7 In 1980, First Class Constable Lawrence Jack Clifford was charged with (and later acquitted of) murder after shooting dead Jabanardi, an Anmatyerre man who had been pulled over in a car by the officer: Report of the Inquiry into the death of Jabanardi, 29 July 1980 – Royal Commission into Aboriginal Deaths in Custody – Report presented 27 February 1991 [13-1].

On 29 October 1999 an NT Police officer shot and killed Eduard Concepcion, but Police were cleared of any wrongdoing: *Inquest into the death of Eduardo Concepcion* [2001] NTMC 25 [13-2].

In 2004, Senior Constable Robert Whittington was charged with the murder of Robert Jongmin at Wadeye after firing shots into a community riot. The charges were later dropped before trial: Correspondence between Attorney-General Burns and Commissioner White dated 8 May 2008 [13-4].

8 *Inquest into the passing of Veronica Nelson* [2023] VicCorC 28309 at [47].

9 I have annexed to these Findings a condensed outline of the history of Yuendumu, which I expect to be of interest to those reading these Findings, to help put in context some of challenges and deprivations in this community and others in the Central Desert. The history was not contested and was drawn from the submissions of Counsel Assisting and various interested parties, as well as the expert evidence of anthropologists Dr Melinda Hinkson and Dr Yasmine Musharbash.

are not simply an event in history or of the distant past; quite to the contrary, their significance is ongoing and relevant to the present."[10] Many Elders of the 1980s and 1990s survived the massacre but lost relatives, and stories are still told of who hid where and who was killed. For example, Warren Williams, who was born 28 years after the massacre, and is a grandfather to Kumanjayi, said that during the ordeal his "old uncle" had "put himself into a hollow and he got burnt out like a rabbit and he took off to Mount Theo, as others had done".[11]

13. Further, almost 30 years after the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**), Aboriginal people are still heavily overrepresented in police and prison custody in the Northern Territory[12] (and throughout Australia), and in the numbers who die in custody.

14. Given our Nation's history and the impact of intergenerational trauma, it is not surprising that the death of an Aboriginal person in custody is felt throughout the Territory and the country and causes pain, and sometimes resentment.

15. Aside from the goal of preventing another family from experiencing the type of grief that Kumanjayi's family has endured, the broader injury to the wider community caused by a death in these circumstances is an important reason for a thorough inquest, with clear findings and recommendations. It is my sincere hope that the completion of this process and the handing down of these Findings will help to prevent a similar tragedy.

16. Nothing in these Findings should be taken to mean that I think that police are not entitled to lawfully defend themselves against serious attacks. Of course they can, and they should. In fact, an important aim of these Findings is to

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10 Expert Witness Report of Dr Yasmine Musharbash dated 23 August 2022 [10-32] at 9.

11 Inquest evidence of Warren Williams on 8 September 2022 at 263.

12 At the time of closing submissions, recent data documented that 88.3 per cent of adults in prisons in the Northern Territory are Aboriginal people and almost all the children in Alice Springs and Darwin youth detention centres are Aboriginal children: Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [18], citing the Australian Bureau of Statistics and the Northern Territory Government Youth Detention Census.

make recommendations to reduce the risk of serious attacks – or any attacks – upon Police, who perform a vital role in our community.

INTRODUCTION

9 November 2019

17. Kumanjayi's death in Yuendumu on 9 November 2019 was avoidable. I share the view expressed by experienced senior police officers who said that this was a case of "officer induced jeopardy", an expression that describes situations where officers "needlessly put themselves in danger"; making themselves and others vulnerable and creating a situation that justifies the use of deadly force.[13]

18. The former police constable who shot Kumanjayi Walker, Mr Rolfe, had skills that were no doubt useful in many tactical situations, but on 9 November 2019 he behaved in a way that did not prioritise safety in the arrest of a vulnerable teenager like Kumanjayi. Kumanjayi had a history of trauma and poor impulse control and had, just three days earlier, wielded a small axe and run in the direction of two Yuendumu community police officers (Senior Constable First Class Chris Hand and Senior Constable Lanyon Smith[14]) to avoid being arrested. That event alone put NT Police, including Mr Rolfe and his fellow officers, on notice that there needed to be a carefully planned arrest to avoid repeating that situation.

19. By the late afternoon of 9 November, an arrest plan (the **arrest plan** or **Operations Order** or **Ops Order**) had been prepared by Sergeant Julie Frost, the officer in charge of Yuendumu Police Station, with the assistance of Acting Sergeant Shane McCormack, who was based at Alice Springs Police Station.[15] It provided, *inter alia*, for four members of the Alice Springs based

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13 This is discussed further below, but see, for example, the Inquest evidence of Detective Superintendent Scott Pollock on 22 November 2022 at 3698, and his Coronial Memorandum – Draft Jan 2021 [1-6A] at 35 (fn 45). He offers a definition of "officer induced jeopardy" 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".

14 For consistency, in referring to serving police officers throughout these Findings, I have used their rank at the time of Kumanjayi's death. No disrespect is intended to those who are now of higher rank, or who have left NT Police.

15 Exhibit 14: "Email from Sgt Julie Frost to IRT, Watch Commanders and Alice Springs Supervisors 9 November 2019 at 16:59 (annexure E to affidavit of Superintendent Nobbs 29.11.19) ("**the arrest plan**") (tendered 20 October 2022).

Immediate Response Team (**IRT**), to travel to Yuendumu and commence duty at 11pm to "conduct high visibility patrols and respond to call outs" throughout the night and early hours of the morning. According to that plan, at 5am the IRT members[16] were to meet with an officer from the Dog Operations Unit (**DOU**), Senior Constable First Class Adam Donaldson, and local community police officer Constable Felix Alefaio, who was familiar with Kumanjayi and his family. The team were then to travel to the house(s) Kumanjayi stayed at and would attempt an arrest when it was likely he would be sleeping. Mr Rolfe was aware of the written arrest plan, since he and his IRT colleague, Constable James Kirstenfeldt, were provided a copy when they arrived at Yuendumu. They were briefed on the arrest plan by Sgt Frost but were not aware that it had also been approved by Superintendent Jody Nobbs. While the 5am arrest plan was not guaranteed to work, it was designed to minimise risk.

20. Rather than follow the plan, Mr Rolfe deliberately ignored it. Having assumed the role of de facto team leader of the IRT deployment, when all of the team had arrived Mr Rolfe briefed them: they were to head out of the station and move straight to the houses Kumanjayi was known to reside at. This was not "intelligence" or "intel gathering". Rather, it subverted the arrest plan devised by his superior officers, and substituted it with a hasty venture into the community to (in his words) "grab up" Kumanjayi.

21. Mr Rolfe believed himself to be a direct, decisive and effective police officer. The evidence satisfied me that his uses of force were linked to his self-esteem and his self-image (or his ego). He also thought he was a superior, yet under-appreciated, police officer. These aspects of his personality and beliefs intrinsically affected his behaviour on 9 November 2019 and contributed to the disastrous arrest of Kumanjayi, and the tragic events that followed. Simply stated, Mr Rolfe thought he knew better than Sgt Frost, a female "bush cop". He thought he was fitter and faster than bush cops like SC1C Hand and SC

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[16] Constable First Class Adam Eberl, Constable First Class Anthony Hawkings, Mr Rolfe and Constable James Kirstenfeldt.

Smith,[17] and he thought that his superiority and decisiveness would be demonstrated when he led the IRT to "grab up Kumanjayi" straight away, rather than wait until 5am the next day.

22. At around 7pm, in fading daylight, the IRT members and the dog handler SC1C Donaldson drove directly to House 577, the home of Eddie Robertson where Kumanjayi usually stayed with his girlfriend. A community member was sitting in the yard of House 577 and Mr Rolfe told him "we're here to grab [Kumanjayi] up". The community member told the IRT members that Kumanjayi was not there. A child who was present at the house told Cst Kirstenfeldt that Kumanjayi was staying there at House 577 that night with his girlfriend, but had left a few minutes ago. He pointed in the direction he said Kumanjayi had gone. Cst Kirstenfeldt told the child that Kumanjayi "needs to sort that business out quickly. Before he ends up in too much trouble…So it would be best if we, if we can find him tonight before he ends up in a lot of trouble...If he can come to the Police Station it would be the best thing for him."[18] Cst Kirstenfeldt believed the child, who he later described as "pretty genuine", was telling the truth.[19]

23. Although they had been told that Kumanjayi was not at House 577, Mr Rolfe and Cst Kirstenfeldt decided to search the house anyway. Contrary to NT Police training,[20] Mr Rolfe unclipped the holster of his Glock pistol before proceeding through the house checking each room. The only persons he encountered were two small children sitting in front of a TV in one of the rooms.

24. Body Worn Video (**BWV**) footage shows that the community member told Mr Rolfe that Kumanjayi was with his girlfriend, "probably" at the house that Kumanjayi's mother was staying at. He pointed in the direction of the red

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17 Inquest evidence of Zachary Rolfe on 18 May 2024 at 5752.
18 Body worn video of Constable James Kirstenfeldt [4-1].
19 Body worn video of Constable James Kirstenfeldt [4-1].
20 Statement of Detective Senior Sergeant Andrew Barram, 13 March 2020 [10-4] at [72].

House,[21] which he identified as House 511 or 518 on a map on Mr Rolfe's phone.

25. As a result, the IRT members had some good information that Kumanjayi would stay in House 577 that night with his girlfriend, even though he was not there at the moment, and they had the option to leave and return later to execute the 5am arrest plan. Instead, the five police members continued with Mr Rolfe's plan to "grab up" Kumanjayi and proceeded to House 511, which Mr Rolfe thought the more likely of Houses 511 and 518 for them to find Kumanjayi. As he approached the house, C1C Eberl spotted a male entering the house, and quickly walked over to Mr Rolfe to report what he had seen. Mr Rolfe and C1C Eberl then walked around to the front of the house and Mr Rolfe briefly spoke to Leanne Oldfield, who was outside. He requested permission from her to enter the house. I have listened carefully to the BWV and agree with Detective Superintendent Pollock, the original Officer in Charge of the Police coronial investigation, that the words spoken by Ms Oldfield in response to Mr Rolfe's request to enter were "go…go…ask Margaret".[22] Mr Rolfe disregarded this response; perhaps he did not hear it or misunderstood it. He radioed the other IRT members and the dog handler, SC1C Donaldson, and said, "Me and Adam are just going to clear this red house". C1C Eberl, followed by Mr Rolfe, then entered the house.

26. Inside, the two officers immediately located Kumanjayi in the small and dark main living area. As they had never previously met him, they could not be sure of his identity, so C1C Eberl and Mr Rolfe both approached Kumanjayi and asked his name. What happened next is set out in more detail in Chapter Eight of these findings and is briefly summarised below.

27. When the officers asked Kumanjayi his name, he lied and said his name was Vernon Dixon. Mr Rolfe told him to: "Just come over here for a sec" and held

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21 Recorded statutory declaration of Ethan Robertson dated 11 December 2019 [8-53] at 10.

22 Margaret Brown is Kumanjayi's grandmother, who lived at House 511.

Kumanjayi's arm while he guided him to the side of the room, against the wall.[23]

28. Mr Rolfe, ignoring his training on minimising risk and seemingly with no regard for the alerts on Kumanjayi's history or the events of 6 November,[24] placed himself close to the front of Kumanjayi, in a position where he could not clearly see Kumanjayi's hands. He used one hand to hold his phone close to Kumanjayi's head, so as to compare a photo of Kumanjayi with the man in front of him. In doing so, he left part of his body exposed while he was trying to make a positive identification. When he believed he had made the identification, Mr Rolfe told Kumanjayi to place his hands behind his back. Kumanjayi reacted immediately and began to struggle; he took a small pair of scissors from his pocket and moved in a downwards stabbing motion towards Mr Rolfe. It appears that Mr Rolfe blocked the strike with his left arm, and the blow landed on his left shoulder, which caused a minor penetrating injury of the collarbone area.

29. In response to Kumanjayi beginning to struggle, Constable First Class Eberl said: "Stop it mate",[25] and used a distraction strike to the side of Kumanjayi's face so that he would stop fighting and so Constable First Class Eberl could grab his arm.[26]

30. Mr Rolfe stepped back, removed his Glock 40 Calibre pistol from his holster and, without warning, fired one round into Kumanjayi's back. At the same

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23 Body worn video of Zachary Rolfe, 2 of 4 [4-1]; Body worn video of Constable First Class Adam Eberl, 2 of 4 [4-1]; Recorded statutory declaration of Constable First Class Adam Eberl dated 10 November 2019 [7-31] at 4; Recorded statutory declaration of Constable First Class Adam Eberl dated 11 February 2020 [7-33] at 14.

24 When Kumanjayi shocked police by running towards them with a tomahawk to avoid being arrested (which had been captured on the body worn video of Officers Hand and Smith and repeatedly watched by Mr Rolfe: see Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1114-1115).

25 Body worn video of Zachary Rolfe, 2 of 4 [4-1]; Body worn video of Constable First Class Adam Eberl, 2 of 4 [4-1].

26 Recorded statutory declaration of Constable First Class Adam Eberl dated 10 November 2019 [7-31] at 5; Recorded statutory declaration of Constable First Class Adam Eberl dated 11 February 2020 [7-33] at 15; Committal evidence of Constable First Class Adam Eberl on 2 September 2020 [7-33A] at 156; Trial evidence of Constable First Class Adam Eberl on 23 February 2022 [7-33B] at 699; Inquest evidence of Constable First Class Adam Eberl on 17 October 2022 at 1787.

time, Kumanjayi was wrestling with C1C Eberl and it was fortunate that C1C Eberl was not accidentally shot. After the first shot, both Kumanjayi and C1C Eberl fell to the ground and C1C Eberl was on top of Kumanjayi holding him down. Mr Rolfe then moved forward and fired two more rounds into the side of Kumanjayi's torso, which entered his chest at close range, while Kumanjayi lay beneath C1C Eberl. Kumanjayi continued to struggle for a brief period, and was then handcuffed before the scissors were removed from his right hand.

31. The entire incident was captured on the BWV of the involved officers. The first shot was fired at 7.22.01pm; the second at 7.22.03pm and the third at 7.22.04pm. At no time did Mr Rolfe issue a standard warning prior to discharging his Glock pistol. Two of the three gun shots passed through major organs and a little over an hour later, Kumanjayi passed away from his wounds.

32. In the months before Kumanjayi's death, there were multiple occasions when Mr Rolfe had filmed his own official BWV of forceful arrests and replayed it to colleagues, or forwarded it to family and friends. He did so to boast about his dynamic arrests and to engage in banter about his superior physicality and tactical skill.

33. Later in these Findings, I explain why, by the middle of 2019, NT Police was on notice that Mr Rolfe needed closer supervision, as multiple complaints had been made on behalf of Aboriginal arrest targets that he had used excessive force, sometimes causing head injuries, and these complaints were (or ought to have been) under investigation. In addition, on a number of occasions he had been given remedial advice for failing to activate his BWV during some arrests. It should have been obvious that action was required to minimise the potential risk to the public posed by what appeared to be (at best) Mr Rolfe's "overexuberance", his tendency to rush in and his reluctance to follow rules. In the absence of appropriate oversight, Mr Rolfe's tactics were tacitly (and sometimes expressly) approved. Further, two sergeants who were supposed to be mentoring and supervising him joined in his use of racist language and praised Mr Rolfe's superiority over "bush cops" or other officers they derided. That too contributed to Mr Rolfe's sense of superiority and their behaviour

provides important context for understanding why Mr Rolfe ignored Sgt Frost and substituted his own ill-conceived and hasty approach for Kumanjayi's arrest.

The Inquest process

34. In the Northern Territory, as in other jurisdictions around Australia, there is a growing awareness of the need to do more to make the Inquest process accessible and more accommodating of Aboriginal families who have lost a loved one.[27] That is not easy in the Northern Territory where the proceedings are very different to any traditional system of Aboriginal law, are conducted in English, often in a location far from the family's home and country, and in a court room usually used for criminal proceedings. The court process and physical environment are strange and can be intimidating.

35. Regrettably, this was the case for Kumanjayi's family, many of whom travelled the hundreds of kilometres from their homes in Yuendumu, Lajamanu, Willowra and Papunya, to attend the lengthy Inquest in Alice Springs, which initially proceeded over three months. Family members alternated between sitting in court and sitting on the lawn outside, where a temporary marquis was set up to offer shelter.

36. The gathering of community on the "Local Court Lawns" was facilitated by committed volunteers and designed by Warlpiri as a culturally appropriate solution for families to access the proceedings. It was complemented by the Court facilitating a livestream of the Inquest so that the Inquest could be followed by people outside of the Courtroom. I am told that the lawns were

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[27] In NSW, for example, the State Coroner has issued a First Nations Protocol with the aim of ensuring that "[a]ll coronial investigations and mandatory inquests into deaths of First Nations Peoples are conducted in a culturally sensitive and appropriate manner which is respectful of the needs of First Nations Peoples", and which requires, for example, a coroner to adhere to any cultural considerations raised by the family of the deceased (so far as is practicable), such as a smoking ceremony: NSW State Coroner's Protocol "Supplementary arrangements applicable to Section 23 deaths involving First Nations People", issued 9 March 2022.

well attended and were "supervised by both Warlpiri and Luritja Elders whose primary role was to mitigate risks of triggering trauma by creating a safe and supportive environment to those deeply affected by the death of Kumanjayi".[28] On a daily basis, legal updates were provided by the families' and communities' legal teams. The Parumpurru Committee reminded me of the significance of family on the court lawns when they submitted:[29]

> "…for every single day of the inquest over months and indeed years…until the last witness left the witness box…our clients sat out there on the lawns and they did so to remind us all, all of us, that it is our collective responsibility to the truth."

37. I understand that Kumanjayi's family recognises the efforts the Court and the Counsel and Solicitor assisting team made to assist them to participate in, follow and engage with the Inquest. These efforts included broadcasting the Inquest by livestream, recording language translations of important information into Warlpiri and posting them online, video recording the inquest proceedings for later access, using interpreters and cultural experts and visiting Yuendumu on 14 and 15 November 2022.[30]

38. Even so, I accept that the modern coronial system, inherited from the British system of laws, cannot be perfectly integrated into the Warlpiri and Luritja traditional systems of justice.[31]

39. The Court was grateful for the assistance provided by highly skilled interpreters and cultural experts. I particularly record my thanks to Warlpiri interpreters, Valda Napurrula Shannon and Mr Martin, and to Luritja

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28 As explained in the closing written submissions of the Walker, Lane, Robertson Families dated 29 October 2024 at fn 3.

29 Closing oral submissions of the Parumpurru Committee on 27 November 2024 at 5865.

30 Closing written submissions of the Walker, Lane, Robertson Families dated 29 October 2024 at [8].

31 On behalf of the Walker, Lane, Robertson Families, it was submitted that:

"In this country there are two different and unreconciled systems of law and concepts of justice. The gap between the process undertaken under *kardiya* law – i.e., the criminal trial, the coronial investigation and this Inquest – and those comprising the *yapa* sense of what has happened, why it happened and what should now happen, exposes an incongruence that lies at the heart of identifying all the circumstances surrounding Kumanjayi's death and accountability for his death": closing written submissions of the Walker, Lane, Robertson Families dated 29 October 2024 [18].

interpreter, Donella Clarke. I was deeply saddened to learn of the loss of Mr Martin, a much loved Yuendumu Elder, who passed away before the completion of the Inquest. His assistance during the hearing was invaluable.

40. I note that the Court's efforts to be more culturally attuned are often dependent on the availability of Aboriginal interpreters. At times, our two Warlpiri interpreters needed to attend to other commitments, and no other interpreters were available. Families were left to rely on community members with some bilingual skill. In a recent series of inquests,[32] I commented on the lack of available interpreters and made a formal recommendation about the need for investment in the Aboriginal Interpreter Service to address the chronic shortage of interpreters across services, including courts. It will not be possible to provide a culturally inclusive and respectful coronial system unless there is significant investment in the training, recruitment and support for the Aboriginal Interpreter Service.

My role under the Act

41. Section 34 of the *Coroners Act 1993* (**the Act**), sets out my basic function to make 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;

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[32] See *Inquests into the deaths of Miss Yunupingu, Ngeygo Ragurrk, Kumarn Rubuntja and Kumanjayi Haywood* [2024] NTLC 14. Recommendation 4 reads: The NT Government should increase investment in the AIS (funding, training and support) and devise a short, medium and long term plan to attract, train, and retain interpreters.

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

(v) any relevant circumstances concerning the death;

…

(2) 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.

(3) A coroner must not, in an investigation, include in a finding or comment a statement that a person is or may be guilty of an offence.

(4) A coroner must ensure that the particulars mentioned in subsection (1)(a)(iv) are provided to the Registrar as defined in section 4 of Births, Deaths and Marriages Registration Act 1996.

42. In addition to the findings I must make under the Act, it is a fundamental part of my role to make recommendations aimed at preventing another death in similar circumstances.

43. Section 35 of the Act provides that:

"(1) A coroner may report to the Attorney-General on a death or disaster investigated by the coroner.

(2) A coroner may make recommendations to the Attorney-General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the coroner.

…

44. Since Kumanjayi died in custody, s 26 of the Act imposes additional obligations on the Court:

(1) Where a coroner holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody, the coroner:

(a) **must** investigate and report on the care, supervision and treatment of the person while being held in custody or caused or contributed to by injuries sustained while being held in custody; and

(b) **may** investigate and report on a matter connected with public health or safety or the administration of justice that is relevant to the death.

(2) A coroner who holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody **must** make such recommendations with respect to the prevention of future deaths in similar circumstances **as the coroner considers to be relevant** (emphasis added)."

45. The wording of s 26 of the Act is significant and was deliberately included in response to recommendations of the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**).[33]

46. A coroner's independent review of the circumstances of a death in custody is an important safeguard against the potential misuse of police powers or the continuation of poor practices and policies that make deaths in custody more likely. Conversely, it may be an opportunity to restore confidence in members of our police force and the institution, when police can explain their actions and the circumstances surrounding a death, particularly when the institution engages fully in the inquest process and demonstrates a willingness to learn from any issues that arise, as NT Police has done during the course of this Inquest.

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[33] Northern Territory, Parliamentary Debates, 3 March 1993, 7897 (Mr Stone, Attorney General). In his second reading speech for the Coroners Bill, the Attorney General said that the Bill was to "reform the jurisdiction and powers of the Coroner for two purposes, first to implement various recommendations of the RCIADIC and second, to generally improve and modernise the coronial process". See further discussion in the closing written submissions of North Australian Aboriginal Justice Agency dated 28 October 2024 at [94]-[98].

Scope of the Inquest

47. The scope of this Inquest has been the subject of submissions by interested parties.

48. In an earlier interlocutory ruling, *Ruling No 2*, I dealt with an application by Mr Rolfe to exclude certain evidence sought to be tendered, including a download of data from his mobile phone and evidence given by his ex-partner, Claudia Campagnaro. Mr Rolfe had earlier sought a ruling that thirteen "issues" or "questions" that had been identified by Counsel Assisting as anticipated to arise on the evidence were beyond "the scope of the inquest". I reminded parties that a detailed draft issues list which had been distributed by Counsel Assisting was "designed to encourage discussion among the Coronial team and the parties and in that way to give some structure to the inquest". It contained "indicative questions" that were anticipated by Counsel Assisting to arise on the evidence and had never purported to be determinative of scope because an issues list can neither enlarge, nor constrain, the jurisdiction of a coroner.[34] I declined to rule in any abstract way on the disputed list of issues and no party argued to the contrary.[35] I also concluded that I was not prohibited from receiving the evidence that was subject to Mr Rolfe's objection, and saw fit to receive it.

49. Shortly after that Ruling, I received a further application on behalf of Mr Rolfe to exclude eight discrete categories of evidence categorised as evidence concerning:

    (a) the honesty of Mr Rolfe's application to join NT Police;

    (b) the nature and adequacy of NT Police recruitment policies;

    (c) the alleged discrimination by NT Police against indigenous persons or community police (participating in text messages that revealed racist

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34 *Inquest into the death of Kumanjayi Walker (Ruling No 2)* [2022] NTLC 017 at [10].

35 *Inquest into the death of Kumanjayi Walker (Ruling No 2)* [2022] NTLC 017 at [11].

attitudes towards Aboriginal people and text exchanges that evidence derogatory attitudes to community police);

(d) Mr Rolfe's use of force history;

(e) Mr Rolfe's disciplinary background/history;

(f) the possibility of Mr Rolfe's prior recreational (illicit) drug use;

(g) the procedures of NT Police in relation to drug and alcohol testing; and

(h) evidence in the criminal trial of Mr Rolfe.

50. For reasons I explained in *Ruling No 3*, I refused the application and accepted evidence in each of those categories.[36]

51. In final closing submissions after all evidence had been received, several interested parties expressed divergent views as to the approach I ought to take to the scope of this Inquest.

52. On the one hand, in their written and oral closing submissions, the legal representatives for Mr Rolfe urge on me a very narrow scope of inquiry. It is submitted on his behalf that "examination of the cause or circumstances of Kumanjayi Walker's death, insofar as it related to Mr Rolfe, requires only an understanding of, and inquiry into the events from 6 November 2019 to 9 November 2019. They are the only dates between which Mr Rolfe had any involvement with Kumanjayi Walker". Their submissions cavil with my previous rulings on the admissibility of evidence,[37] and urge me (again) to ignore the evidence revealed by the text messages on Mr Rolfe's phone.

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36 *Inquest into the death of Kumanjayi Walker (Ruling No 3)* [2022] NTLC 019.

37 Although those rulings were not the subject of an appeal, the final written submissions of Mr Rolfe continue to assert that evidence of his text messages was not "properly received" under s39 of the Act. For reasons I have set out in previous Rulings, I do not accept that assertion. Rather, as submitted by NT Police, it was an "orthodox and legitimate investigative process for the coroner to identify aspects of potential nexus between issues and evidence, and the causes and circumstances of Kumanjayi's death": closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [19]. I reject

53. On behalf of Sergeant Lee Bauwens, I am reminded that I do not have powers to conduct a "roving royal commission" and am not empowered to make findings and recommendations that are not connected with the death.[38] In reference to ss26, 34 and 35[39] of the Act, his lawyers describe the ambit of an inquest as "very broad" but "not infinite".[40]

54. By contrast to the submissions of Mr Rolfe, the Parumpurru Committee of Yuendumu[41] submits that "[u]nlike most coronial inquiries, the Court in this matter must cast its gaze well beyond the events of the day or the week, because merely reviewing those House 511 and House 577 events, in isolation, fails to reveal what actually happened".[42]

55. NAAJA[43] also urges on me a broad scope of inquiry, and submits, *inter alia*, that the Court should identify what it terms "structural and institutional aspects of racism" within organisations whose staff made decisions affecting

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the assertion made by Mr Rolfe that the Inquest "became a Royal Commission into Zachary Rolfe": closing written submissions on behalf of Zachary Rolfe dated 11 November 2024 at [2]-[3]. I do not accept the criticism of the Court in [1]; the criticism of my Counsel Assisting in [2] and elsewhere or the assertion that the Court fell into error in the ways asserted in [3] of those submissions.

38 Closing written submissions of Sergeant Lee Bauwens dated 11 November 2024 at [11].

39 Relevantly, the closing written submissions of Sergeant Lee Bauwens dated 11 November 2024 at [18] refer to "s. 26, 34 and 36". However, given the respective terms of ss 35 and 36 and the context in which the reference is made, I take it to have been an unintended error to refer to s36 in the submissions, and proceed on the basis that this was intended to be a reference to s 35.

40 Closing written submissions of Sergeant Lee Bauwens dated 11 November 2024 at [19]. I reject the submission made on behalf of Sgt Bauwens that Counsel Assisting has encouraged me to err by referring to context and history that is not in contention. By way of example, they cite a reference in Counsel Assisting's closing written submissions to the history of Yuendumu, including the fact of the Midnight Oil tour of the community with the Warumpi band in the mid 1980s: closing written submissions of Sergeant Bauwens dated 11 November 2024 at [21]. Counsel Assisting included that reference in the context of a short historical overview and I am not invited by Counsel Assisting to make any finding in relation to it.

41 The Parumpurru Committee of Yuendumu sought and was granted leave to appear in this Inquest, particularly to assist the Court in relation to issues of importance to the Yuendumu community, and their concerns to prevent any future deaths in these circumstances: Inquest transcript – directions hearing on 29 March 2022 at 5-6.

42 Closing written submissions of the Parumpurru Committee of Yuendumu dated 28 October 2024 at [26].

43 The North Australian Aboriginal Justice Agency (NAAJA) provides criminal and civil law services to Aboriginal people and their families across the Northern Territory and regularly engages in advocacy for the rights of Aboriginal people. On 29 March 2022 I granted leave to NAAJA to appear in this Inquest: Inquest transcript – directions hearing on 29 March 2022 at 5-6. NAAJA was assisted by the Human Rights Law Centre during the Inquest.

the outcome on 9 November.[44] In its written submissions, NAAJA traces legislative amendments to the Act made in response to the RCIADIC and defends the "necessarily broad and solutions-focused recommendations" NAAJA has advanced.[45]

56. As with other interested parties, NAAJA referred me to relevant authorities interpreting cognate legislation in different jurisdictions in Australia to understand the breadth of the words "connected with" in the Act.[46] In Victoria, Courts have confirmed that a wide range of matters may be "connected with" a particular death, including relevant "standards, protocols and practices" in place at the time.[47]

57. Interpreting similar legislation in Queensland, Muir J stated:[48]

> "Any matter on which comment is made…must be connected with the death under investigation. But…there is no warrant for reading 'connected with' as meaning only 'directly connected with'. Something connected with a death may be as diverse as the breakdown of a video surveillance system, the reporting of the death, a police investigation into the circumstances surrounding the death, and the practice at the police station or watch house concerned".

58. I am reminded by NAAJA that s26(2) of the Act (set out in full above) directs me in mandatory terms when I am inquiring into a death in custody, so that I *must* make such recommendations with respect to the prevention of deaths in similar circumstances *as the coroner considers to be relevant*. Thus, the breadth of the matters on which I must make recommendations is partly

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44 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [77].

45 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [82] and see further argument on scope at [82]-[118].

46 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [103] and following.

47 *Thales Australia Ltd v Coroners Court* [2011] VSC 133 [75], per Beach J; Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at fn 89. At fn 88 NAAJA points out that the Northern Territory Act was modelled on the Victorian equivalent: see Northern Territory Legislative Assembly Parliamentary Debates, 3 March 1993, 7898.

48 *Doomadgee v Clements* [2006] 2 Qd R 352, [23]; closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at fn 87.

determined by my own assessment of what is relevant, providing me, as Coroner, with a broad discretion as to the matters to be considered.[49]

59. In its helpful submissions on this topic, NT Police set out the relevant legislative provisions and summarise the key principles. An inquest is not an investigation that encompasses "a virtually infinite chain of causation" and it is not "a wide ranging inquiry akin to a Royal Commission" undertaken to explore tenuous links to a death.[50] Clearly, there must be a connection between the subject of the findings by a coroner and the cause and circumstances of death. However, "the connection need not be by way of 'direct cause', 'direct or natural cause', or 'proximate cause'; nor need the connection be on the basis of a matter or form of conduct being a 'real or effective cause'".[51]

60. Both NAAJA and the NT Police remind me that a purposive interpretation of sections 26 and 34 of the Act is appropriate and consistent with the preventative purposes of a coroner's inquest.[52]

61. NT Police submit that a coroner's power to make comments and recommendations is connected with the power to enquire into the death and make findings; there are not separate powers enabling a coroner to enquire for the sole or dominant reason of making comments or recommendations.[53]

62. In drafting these findings, I have carefully considered the submissions of all parties on scope, and have again reviewed the legislative framework and case law and I warn myself against turning an inquest into an inquiry akin to a

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49 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [107]-[108], and fn 91, citing *Tu'uta Katoa v Minister or Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2022) 276 CLR 579 at [10]-[12] (per Kiefel, Gageler, Keane and Gleeson JJ).

50 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [25], citing *R v Doogan* [2005] ACTSC 74 at [27]-[28].

51 Citing *WRB Transport v Chivell* (1998) 201 LSJS 103 at 106; [1998] SASC 7002 (Lander and Lullighan JJ agreeing).

52 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [27] and closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [99]-[110].

53 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [42], citing *Harmsworth v The State Coroner* [1989] VR 989 at 996; *Inquest into the passing of Veronica Nelson* [2023] VicCorC 28309 at [111].

Royal Commission. But it is well recognised that, in discharging my statutory functions under the Act, I have considerable discretion to decide the appropriate areas for inquiry in connection to Kumanjayi's death and to draft relevant recommendations. In doing so, I am guided by the legislation and case law, and by a common sense approach as to what is most relevant and achievable within a reasonable period of court time.

63. Ultimately, I have divided my findings into twelve broad chapter headings that reflect the scope of the Inquest:

(a) Chapter One: Policing in the NT, including the evolution of the Alice Springs' Immediate Response Team (**IRT**) and consideration of whether there has been a paramilitarisation of NT Police;

(b) Chapter Two: The background of Kumanjayi Walker, highlighting the developmental trauma and poor impulse control that provide context for his reactions to the attempts of police to arrest him on both 6 and 9 November 2019;

(c) Chapter Three: The background of Zachary Rolfe, including: his dishonesty during his recruitment to NT Police and how that is relevant to an assessment of his credibility; evidence of Mr Rolfe's declining mental health; his joining and participation in the IRT; previous incidents of use of force that reveal a tendency to rush in; and a history of him focussing on and deriving satisfaction from his use of force. Further, I have set out relevant text exchanges that reveal: sexist and/or contemptuous attitudes towards some of his fellow officers, specifically "bush police" and female officers; and a contempt for the system of police accountability, which includes BWV and oversight mechanisms. I have also set out text message exchanges that reveal attitudes held by Mr Rolfe, several junior colleagues, and two sergeants, that are plainly racist. His racist attitude is relevant in a number of ways, including that: first, because it may increase the risk that he would use force when arresting Aboriginal males and; second, because it demonstrates his awareness that some supervising officers shared those racist attitudes

(and in one case, a preparedness to manipulate BWV) heightening his understanding that his use of force against Aboriginal men would likely be overlooked or excused by superiors.

(d) Chapter Four: The failure of systems designed to safeguard the public from inappropriate use of force, including: a breakdown of mentoring by two key sergeants; a failure to properly scrutinise use of force reports; and the failure of senior management to act on multiple complaints alleging excessive force causing head injuries, and a finding made by a judge of the Local Court that Mr Rolfe had assaulted an Aboriginal male and then lied about it in court;

(e) Chapter Five: The lead up to the events 9 November 2019, including: Mr Rolfe's attitude to the police response on 6 November; and the strain on police and health services at Yuendumu and the way in which that contributed to the decision to call out the IRT;

(f) Chapter Six: Deployment of the IRT on 9 November 2019, including: deficiencies in IRT policies and procedures; and lessons to be learnt from a breakdown in communicating parts of the plan;

(g) Chapter Seven: The plan to arrest Kumanjayi at 5am on 10 November 2019, including the briefing of Mr Rolfe and members of the IRT;

(h) Chapter Eight: The flawed arrest and the killing of Kumanjayi;

(i) Chapter Nine: The immediate aftermath of the shooting, including the first aid for Kumanjayi and Mr Rolfe's evacuation from the community;

(j) Chapter Ten: The Coronial Investigation, including potential contamination of key witness accounts, the absence of a formal debriefing process, the absence of drug testing for an involved officer and the confusion caused by concurrent criminal and coronial investigations;

(k) Chapter Eleven: The closure of the Yuendumu clinic and decision to remove kardiya (non-Aboriginal) staff before the IRT was deployed; and

(l) Chapter Twelve: Death prevention: A summary of changes introduced since Kumanjayi's death and coronial recommendations.

64. Many of the issues were first identified in the original coronial Memoranda drafted by the highly experienced Officers in Charge of the coronial investigation: Detective Superintendent Scott Pollock and his successor Commander David Proctor APM. The purpose of such overview reports is, as explained by Det Supt Pollock, "to give the Coroner an appreciation of the facts, circumstances that led to the event involving a death in custody and [it] also examines the issues pertaining in and around the investigation into those facts and compliance or non-compliance with policies".[54]

65. Det Supt Pollock's final draft report was dated January 2021 and preceded my involvement as Coroner. In it, he identified numerous issues of relevance to the Inquest including Mr Rolfe's apparent lack of honestly during his recruitment to NT Police;[55] gaps in the training and procedures of the IRT; Mr Rolfe's use of force history; the failure of some supervisors to properly review use of force entries such that bad behaviour was effectively condoned,[56] and the lack of an appropriate managerial response to the multiple complaints about Mr Rolfe's use of force by mid-2019.[57] Further, he raised the question of paramilitarisation of the NT Police Force,[58] and the appropriateness of

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54 Inquest evidence of Detective Superintendent Scott Pollock on 22 November 2022 at 3668.

55 Coronial memorandum of Detective Superintendent Scott Pollock – Draft Jan 2021 [1-6A] at 49.

56 Coronial memorandum of Detective Superintendent Scott Pollock – Draft Jan 2021 [1-6A] at 43.

57 Coronial memorandum of Detective Superintendent Scott Pollock – Draft Jan 2021 [1-6A] at 45.

58 Coronial memorandum of Detective Superintendent Scott Pollock – Draft Jan 2021 [1-6A] at 59.

decisions made by police on the ground in Yuendumu in the immediate aftermath of Kumanjayi's death.[59]

66. Those issues were largely endorsed and developed by Cmdr Proctor, who produced a 170-page overview report.

67. However, neither Det Supt Pollock nor Cmdr Proctor reviewed the content of Mr Rolfe's text messages.[60] Those text messages provided some significant evidence for the Inquest, particularly with respect to: his prior use of force; his derisive attitude to female colleagues and some superiors; his racist attitudes towards Aboriginal people; and the way in which some of those problematic attitudes were endorsed and exhibited by a small, but important number of Mr Rolfe's mentors. Det Supt Pollock passed the phone download on to the criminal investigators and he had just started to go through it, but did not have sufficient time for any analysis, before he handed over his role. In evidence at the Inquest, he expressed his disappointment that officers in the role of Sergeant, crucial for the mentoring of younger officers, had engaged in exchanges with Mr Rolfe using racist language. In his view, that was a lack of leadership and a "serious question of discipline".[61]

68. It will be evident that to understand the actions of Mr Rolfe on 9 November 2019, and to draft meaningful recommendations to prevent another death in similar circumstances, it was necessary to consider issues relating to Mr Rolfe's background and the context of the events, and not merely conduct a narrow and truncated appraisal of the three days leading up to Kumanjayi's death.

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59 Coronial memorandum of Detective Superintendent Scott Pollock – Draft Jan 2021 [1-6A] at 83.

60 Detective Superintendent Pollock explained that he had left the role "within a week or two" of the download becoming available and the volume of information was massive. His team passed it on to criminal investigators but he had not had time to review it: Inquest evidence of Detective Superintendent Scott Pollock on 22 November 2022 at 3681. After taking carriage of the matter, Commander Proctor referred the contents of the phone download to Professional Standards Command rather than conduct his own analysis: Inquest evidence of Commander David Proctor APM on 25 November 2022 at 3715.

61 Inquest evidence of Detective Superintendent Scott Pollock on 22 November 2022 at 3697.

69. I am also satisfied that it was necessary to receive evidence about certain of Mr Rolfe's attitudes that may have influenced why he made the decision to enter House 511 and conduct the flawed arrest on Kumanjayi in the manner that he did, contrary to the 5am arrest plan. I received evidence about this from several sources including: the text messages referred to above; and the oral testimony of Mr Rolfe and fellow officers, including from an ex-girlfriend who was in a relationship with him over a relevant period leading up to the death when they were both constables. As the NT Police conceded, it was appropriate for me to receive the evidence of the text messages and to receive other evidence that revealed Mr Rolfe's racism "so as to explore whether there was a connection between such racism and the death of Kumanjayi Walker".[62]

70. It was plain that at the time of Kumanjayi's death, Mr Rolfe was a 28 year old man who expressed, and therefore held, attitudes that were racist, sexist, and contemptuous of "bush cops" and certain persons in authority, who had not earned his respect and who he considered had inferior skills, regardless of their rank. In my Findings, I have considered the extent to which those views and attitudes (either consciously or unconsciously) may have impacted the decisions Mr Rolfe made on 9 November 2019.

71. Similarly, I have accepted evidence to help me understand why Kumanjayi responded in the way he did on 9 November 2019 and whether that type of behaviour can be better anticipated and avoided by police. To properly and fairly inquire into those issues, it has been necessary to consider background material and context, leading me to accept evidence on, for example, the history and structure of Yuendumu and Kumanjayi's childhood experiences.

72. To assist me to develop meaningful recommendations it has been necessary to receive contextual evidence, such as what services are available in Yuendumu to assist youth with complex developmental trauma and behavioural issues, and the current police training in trauma and cultural competency. I am

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[62] Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at 1048.

mindful of not exceeding the scope of my inquiry and have made recommendations that are intended to be significant, but also practical, achievable and clear.

The statutory prohibition against including a statement that a person is or may be guilty of an offence

73. The fact that this Inquest follows a criminal trial has been a source of confusion for some and anxiety for others.

74. As outlined above, s 34(3) of the Act states that:

> "A coroner must not, in an investigation, include in a finding or comment a statement that a person is or may be guilty of an offence."

75. On 10 March 2022, following a five week jury trial, Mr Rolfe was found not guilty of all three criminal offences he had been charged with as a result of shooting Kumanjayi on 9 November 2019. Mr Rolfe had been charged with murder, with alternative (backup or lesser) charges of manslaughter and "violent act causing death" on the basis that the second and third shots he fired into Kumanjayi from his police pistol were not legally justified and amounted to an excessive use of force. Mr Rolfe maintained that his actions with respect to all three shots were legally justified to defend himself and his IRT partner in House 511, and were consistent with his training.

76. I am not permitted to make any finding that suggests Mr Rolfe (or any other person) is guilty of a criminal offence.[63] Further, I must not make any comment or finding that undermines the jury's verdict that Mr Rolfe was not guilty in relation to discharging the second and third shots which resulted in the death of Kumanjayi in House 511.[64] In their submissions the NT Police

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63 Section 34(3) of the Act.

64 See closing written submissions of Zachary Rolfe dated 11 November 2024 at [4.3], [90]-[131]; closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [895]-[896].

and Mr Rolfe strongly reminded me not to go behind the not guilty finding.[65] I note the submission made on behalf of Mr Rolfe that "it is of course permissible for a Coroner to make findings of fact as to the sequence of events that lead to the death" as long as "there has been no application by the Coroner of the facts found to the relevant law to determine or find guilt, nor any characterisation by the Coroner of those facts in terms of legal concepts or conclusions."[66] Mr Rolfe also referred me to the *Coroners Court Book of Victoria* noting that coroners must focus on finding the relevant facts without addressing or analysing the legal effect of those facts and can also comply with the prohibition by avoiding making statements about the state of mind of the person who contributed to the death.[67]

77. NAAJA reminded me that my findings and comments should be as fully informed as possible and if findings on the second or third shots were precluded because they were the subject of criminal charges that should not impinge my inquiry into what happened before and after those moments.[68] The Parumpurru Committee accepted that I should not impugn the jury's verdict, but submitted that, "the Coroner is entitled to make findings with respect to poor policing, aggression, disrespect shown at House 511, together with Mr Rolfe's lies about what occurred prior to the first shot. The Coroner is also entitled to make factual findings covering the moments of the fatal shot, together with what occurred after the third shot".[69] The Brown Family submitted that "the limit placed by s34(3) *Coroners Act* merely prohibits conclusionary statements of criminal or civil liability".[70]

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65 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [18]; closing written submissions of Zachary Rolfe dated 11 November 2024 at [91].

66 Closing written submissions of Zachary Rolfe dated 11 November 2024 at [113], citing *Perre v Chivell* (2000) 77 SASR 282 at [55].

67 See closing written submissions of Zachary Rolfe dated 11 November 2024 at [118].

68 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [117].

69 Closing written submissions in reply of the Parumpurru Committee dated 25 November 2024 at [7]-[8].

70 Closing written submissions in reply of the Brown Family dated 25 November 2024 at [6].

78. As I said in *Ruling No 2*, considering the differing purpose, standard of proof and evidence available at a coronial inquest, it is not inappropriate for inquests to be held following the acquittal of a person of a criminal offence. There are numerous examples of inquests throughout Australia where this has occurred.[71]

79. I accept the submission made by Mr Rolfe that it is not part of my role to critique the conduct of prosecutors at Mr Rolfe's trial,[72] and while I appreciate the families' concerns that there were no Aboriginal people on the jury panel,[73] it would be outside the scope of my function to make recommendations directed to reforming the process for empanelling juries.

80. The constraints placed on me by s 34(3) of the Act and the sanctity of the trial verdict do not limit my investigation into what took place in House 511 leading up to the moment Kumanjayi was shot, including Mr Rolfe discharging the first shot. Nor do they prevent my scrutiny over, and comment about, matters that occurred after the first shot, provided I do not undermine the jury verdict. Although I am precluded from making findings that suggest criminal conduct, I am entitled to make comment and findings in respect of the actions of police and the sequence of events that led to the death, again provided those comments do not undermine the jury verdict.

81. In *R v Doogan*,[74] the Court held that:

> "There will, of course, be many cases in which the issue of causation will necessarily involve an examination of a person's conduct. A coroner conducting an inquest into the death of a person may be obliged to consider whether the death was attributable to accident or homicide. If reasonable grounds emerge for a belief

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71 See, for example, *Inquest into the Death of Jaidyn Raymond Leskie* (Coroners Court, Victoria, Coroner Johnstone, Case No 007/98, 31 July 2006) at 2; *Domaszewicz v State Coroner* (2004) 11 VR 237. A helpful discussion is found in Aberdeen, J, "Blown off by a side wind"? Coronial Inquests following criminal acquittals (2016) 23 *JLM* 595.

72 See closing written submissions of Zachary Rolfe dated 11 November 2024 at [92]; compare to the closing written submissions of the Walker, Lane, Robertson Families dated 29 October 2024 at [152], [156.4] and Appendix 1 at [25], [29].

73 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [191].

74 *R v Doogan* [2005] ACTSC 74 at [31], cited in the closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [39] and fn 56.

> that a person has committed murder, manslaughter or some other indictable offence the coroner will be required...to inform the Director of Public Prosecutions by written notice and the inquest will be adjourned. If that situation does not arise, the coroner will be obliged to make findings as to the nature of the acts and/or omissions that caused the death, even if they reflect adversely on the reputation of one or more people involved in the relevant incident."

82. I note that s 35(3) of the Act empowers me to report to the Commissioner of Police and the Director of Public Prosecutions if I believe that an offence may have been committed in connection with the death, but not in relation to offences more generally.

Standard of proof

83. Unlike civil or criminal cases, no party bears the burden of proof in coronial cases.[75]

84. An inquest is a fact finding exercise and not a method of apportioning guilt. As the Court stated in *Hurley v Clements & Ors*:[76]

> "In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish the facts. It is an inquisitorial process, a process of investigation quite unlike a trial where the prosecutor accuses and the accused defends, the judge holding the balance in the ring, which ever metaphor one chooses to use."

85. All parties accepted that the standard of proof applicable for findings in the coroners' jurisdiction is the balance of probabilities, "in conformity with the

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[75] I reject the submission made on behalf of Mr Rolfe that Counsel Assisting (or other parties) should have called certain expert evidence that may have been favourable to Mr Rolfe. As stated again in Chapter Three, Mr Rolfe had every opportunity to request the tender or call any evidence that he considered to be of assistance.

[76] Citing Lord Lane CJ in *R v South London Coroner; ex parte Thompson*, Unreported, Lord Lane CJ, Watkins L, and Robert Goff J, Queen's Bench Division, 9 July 1982, in a passage referred to with approval by Toohey J in *Annetts v McCann* (1990) 170 CLR 596 at 616.

sliding scale of satisfaction explained in *Briginshaw v Briginshaw*".[77] In *Briginshaw*, the High Court explained:[78]

> "The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issues proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences."

86. The common law in *Briginshaw* does not create a third standard of proof between the civil and the criminal, and the standard remains proof on the balance of probabilities.[79] The application of the sliding scale of satisfaction test explained in *Briginshaw* does not require a tribunal of fact to treat hypotheses that are reasonably available on the evidence as precluding it from reaching the conclusion that a particular fact is more probable than not.[80]

87. A coroner ought to exercise caution when considering whether to make an adverse finding against an individual or an entity; the evidence required to prove facts supporting any such finding ought be commensurate with the gravity of those facts.[81] I accept that "it is a serious thing for a coroner to determine that a person, particularly in their professional capacity, has caused or contributed to a death; it is effectively a finding of negligence".[82] It is a

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77 (1938) 60 CLR 336, cited in *Hurley v Clements & Ors* [2009] QCA 167.

78 *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362-363. See also the helpful discussion of this in *Inquest into the death of Tanya Louise Day* [2020] Coroners Court of Victoria (COR 2017/6424), 9 April 2020, per DSC English.

79 See *Wotton v State of Queensland* [2016] FCA 1457 at [114-115], per Mortimer J.

80 *Hurley v Clements & Ors* [2009] QCA 167 at [27].

81 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [38] and fn 53, citing *Inquest into the Death of Matthew Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Bryant and Bhavita Patel*, Coroners Court of Victoria, 19 November 2020 at [1.38-1.39].

82 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [38] and fn 54, citing *The Secretary to the Department of Health and Community Services v Gurvich* [1995] 2 VR 69 at 73-74, *Finding into the death of Veronica Nelson* [2023] VicCorC 28309 at [120]; *Chief Commissioner of Police v Hallenstein* (1996) 2 VR 1 at 19.

serious thing for a coroner to determine that a person or an institution or policy is racist.[83]

88. I am acutely conscious of the impact of these findings on persons about whom I will be required to make comment, findings and recommendations. I am aware of the gravamen of the findings for the police officers involved, particularly Mr Rolfe, and for NT Police and NT Health as institutions.

Avoiding hindsight bias

89. In reaching my Findings, I must be cautious to avoid "hindsight bias", or what has been referred to as the "distorting prism of hindsight".[84]

90. This was articulated by Coroner Hawkins in her Honour's findings in the Inquest into the deaths caused by a man who drove his car into pedestrians in the Melbourne CBD:[85]

> "By its very nature, a coronial inquiry is wholly retrospective. This carries with it an implicit danger for the court in prospectively evaluating events through the potentially distorting prism of hindsight. That is, it can be easy or seductive to conclude that what did occur was always going to occur and, from that conclusion, to view the actions or inactions of those involved more critically and as if the outcome was obvious and should have been foreseen. In writing this finding, I have remained cognisant of the potential intrusion of hindsight bias."

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83 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [38].

84 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [40] and fn 57, citing *Adamczak v Alsco Pty Ltd* (No 4) [2019] FCCA 7 at [80], *Inquest into the Death of Matthew Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Bryant and Bhavita Patel,* Coroners Court of Victoria, 19 November 2020 at [1.42]. See also *Walker v Hamm* [2008] VSC 596 at [55], *Woodley v Boyd* [2001] NSWCA 35 at [37], cited at fn 58. See also the closing written submissions of Zachary Rolfe dated 11 November 2024 at [52]-[59].

85 Closing written submissions of Zachary Rolfe dated 11 November 2024 at [54] and fn 35, citing *Inquest into the Death of Matthew Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Bryant and Bhavita Patel,* Coroners Court of Victoria, 19 November 2020 at [1:42].

91. In inquiring into the circumstances of Kumanjayi's death, I am called on to evaluate the decision making of front-line police and health clinic staff, working in challenging circumstances. It is important that I take into consideration those circumstances and the pressures of those moments.[86]

92. With respect to the police, this was a point made by Connor J in the case of *McIntosh v Webster*,[87] when his Honour stated:

> "Arrests are frequently made in circumstances of excitement, turmoil and panic [and it is] altogether unfair to the police force as a whole to sit back in the comparatively calm and leisurely atmosphere of the courtroom and there make minute retrospective criticisms of what an arresting constable might or might not have done or believed in the circumstances."

93. I am also called on to evaluate the decision of managers and senior managers, within NT Police and NT Health, who were juggling multiple commitments and who were sometimes remote from the circumstances on the ground but responsible for coordinating scarce resources efficiently and under pressure. I recognise the demands of their jobs, and the weight of the decisions they were called on to make.

A note on the length of the Inquest and closing submissions

94. The Inquest into Kumanjayi's death commenced on 5 September 2022 and was held in tranches, punctuated by breaks that were unforeseen at the beginning, primarily to allow for interlocutory applications and any potential appellate challenges. The last witnesses gave evidence on 29 May 2024 and after the exchange of written submissions, oral submissions (accommodated at the request of parties) were heard on 27 and 28 November 2024, just over two years from the time the Inquest commenced.

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86 In respect of police, see closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [40]. There are similar considerations when evaluating the decision making by NT Health staff.

87 (1980) 43 FLR 112 at 123.

95. I have already acknowledged the strain on those who participated in this Inquest, particularly Kumanjayi's family, but also witnesses who have lived and re-lived the circumstances of Kumanjayi's death over many years, including all the police officers involved on 9 November 2019 and in the leadup to those events. The protracted nature of these proceedings was not desirable, but could not be avoided in the unique circumstances of this case.[88]

96. At the completion of witness testimony, I received extensive written submissions from Counsel Assisting and most of the interested parties, totalling some 2000 pages. Those submissions contain detailed, and often opposing arguments, on areas of fact and law and I have carefully read them. Written submissions were followed by oral submissions over two days, and I have reminded myself of what was said by re-reading the transcript of those days. It is not practical or necessary to address every comment made by each party and I have confined myself in these Findings to a focus on fulfilling my statutory functions and addressing the major issues. Any failure to address a specific argument or comment made should not be taken as a failure to read it or take it into account in assessing the circumstances more broadly.

97. It is my sincere hope that with the publication and delivery of these Findings, there will be a period of reflection and healing, where all parties involved are interested in moving forward. With the commitment of those who have power to act on the recommendations, the circumstances of Kumanjayi's death could be a catalyst for change that avoids a similar tragedy.

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[88] I reject the complaints articulated in the written submissions of Zachary Rolfe and Sergeant Bauwens that the Inquest consumed too many days of court time or wasted resources. The issues raised in the Inquest were complex and justified a thorough inquiry, which allowed for the participation of some sixteen interested parties. Further, I make no complaint about any party exercising their right to make application or objections, but a substantial amount of court time, and the primary explanation for the extended time required to reach the stage of Findings, was the need to deal with applications made on behalf of Mr Rolfe and Sgt Bauwens.

An inadequate thank you

98. I express my profound and sincere thanks to the all the Counsel and instructing teams who appeared for the numerous interested parties. The expertise, care and time taken to grapple with an extensive brief of evidence, the confronting and complex factual issues, cross-cultural issues and the emerging legal issues was exceptional. Your submissions were comprehensive and concisely distilled and addressed the issues. I recognise that all of you took considerable time away from family, friends and busy practices to generously devote yourselves to the work of this Inquest and I am grateful. Your contribution has been invaluable.

99. To the Counsel Assisting team, Dr Peggy Dwyer SC, Mr Patrick Coleridge and Ms Maria Walz, it is not possible to quantify the personal effort each of you has expended to identify and investigate relevant issues and ensure that this Inquest received comprehensive, thorough and considered evidence across those issues. I recognise and commend the care you took to ensure, as best as could be accommodated, that the proceedings were culturally respectful and inclusive of Kumanjayi's family and wider community. I acknowledge a debt of gratitude for your tenacious and tireless efforts and expert contributions. I thank each of you. I could not have been better assisted.

CHAPTER ONE POLICING IN CENTRAL AUSTRALIA

Introduction

100. While this is not the opportunity for a treatise on policing in the Northern Territory, some background on the geography and cultural mix of Central Australia, and the demands of contemporary policing, is necessary to understand the circumstances of Kumanjayi's death.[89]

101. In order provide some of that context, this chapter outlines:

(a) The landscape of policing in Central Australia;

(b) Fatal clashes are rare;

(c) The role of remote police officers ("bush cops");

(d) Policing in Yuendumu;

(e) The set up of the Alice Springs station ("upstairs/downstairs");

(f) The role of the Tactical Response Group (**TRG**), based in Darwin, in policing Central Australia;

(g) The formation of the "Cordon and Control" Group and the evolution of the Immediate Response Team (**IRT**);

(h) The IRT and "Mission Creep" and failures to apply the Standard Operating Procedure (**SOP**);

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89 While I have reviewed all of the submissions I received, I am particularly grateful for the assistance of NT Police for providing an overview of the work of police in the NT and to the Northern Territory Police Association (**NTPA**) in outlining the unique challenges for police in the NT and where it is non-controversial, I have relied on substantial parts of their submissions.

The NTPA is the peak representative body for all members of the Northern Territory Police Force and is interested in the conditions, welfare and working environment of its members. I granted leave for the NTPA to appear in this Inquest for the reasons set out in *Inquest into the death of Kumanjayi Walker (Ruling No 1)* [2022] NTLC 016.

(i) Future of the IRT or similar team;

(j) Has there been a "paramilitarisation" of NT Police?

(k) Racism and its relevance to the Inquest.

The landscape of policing in Central Australia

102. The work of police throughout the Northern Territory offers an opportunity for unique, interesting and rewarding work, with the option to travel to different communities, and to experience different areas of specialisation. Police are offered a rare opportunity to access remote areas, and to learn about the language and culture of the Aboriginal people in that area, an opportunity that most Australians do not have. Each community, language and culture is different,[90] and throughout the Territory there are more than one hundred Aboriginal languages and dialects, with English sometimes being a third or fourth language for the local community.[91]

103. There is no denying that some of the work that police in the Northern Territory do is extremely difficult, and there are specific challenges to working in Central Australia. Many of these were identified in the submissions of NT Police and the Northern Territory Police Association (**NTPA**), and in the evidence of the police officers and former police officers assisting the Inquest, including Mr Rolfe.

104. As was eloquently expressed by Senior Constable Bradley Wallace, an Arrernte man who returned to the NT Police force in 2020 after a distinguished policing career, including at the AFP, NT Police members are often required to wear multiple hats: those of a psychologist, social worker, first aider and parent, "so there's a lot more that goes into wearing this uniform day to day

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90 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 1005.

91 Inquest evidence of Senior Constable Bradley Wallace on 3 November 2022 at 3222-3223.

than what a lot of people realise, and a lot more stress and a lot more commitment".[92]

105. A particular challenge for police in the NT is the horrific rate of domestic family and sexual violence (**DFSV**), the ferocity of the attacks (mostly on female victims) and the aftermath of trauma and social distress inflicted on families. As I have now said in a number of findings since my appointment as Coroner, this jurisdiction experiences the highest rate of DFSV in the whole of Australia; and the rate of DFV-related homicide in the Northern Territory is around seven times the national average.[93] About 65% (and a much higher percentage in some areas) of the interactions that NT Police members have with the public are in relation to domestic family violence matters and officers can be severely impacted by repeated exposure to that trauma throughout their careers.[94]

106. The motto of NT Police is "To Serve and Protect"[95] and I have no doubt that most recruits are attracted to the work of NT Police by a desire to contribute to a service that protects others in the community who are vulnerable. In doing so, they are often required to interact with members of the public who are heightened, upset, alcohol and/or drug affected, and angry and/or dangerous. In carrying out their duties, police unfortunately experience abuse and are at risk of physical assault, and in some instances their lives are put in danger.[96]

107. Not only is the nature of the workload challenging, but police are often required to work long hours in extreme conditions. Members serving in remote

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92 Inquest evidence of Senior Constable Bradley Wallace on 17 November 2022 at 3349; closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [13].

93 See *Inquests into the deaths of Miss Yunupiŋu, Ngeygo Ragurrk, Kumarn Rubuntja and Kumanjayi Haywood* [2024] NTLC 14 at [89].

94 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [83]; the closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [14] discusses one example of the police response to DV.

95 https://pfes.nt.gov.au/corporate/our-history/nt-police-force#:~:text=The%20motto%20of%20the%20Northern,"To%20Serve%20and%20Protect".

96 See for example, the statutory declaration of Sergeant Lee Bauwens dated 26 April 2024 [7-7B] at 9.

communities face additional challenges due to isolation and fatigue,[97] as demonstrated by the experience of Sergeant Julie Frost and Senior Constable First Class Christopher Hand in the lead up to 9 November 2019.

108. A report commissioned by NT Police titled "An Assessment of Resource Requirements of the Northern Territory Police: Final Report" (**the Galliott Report**) highlighted "systemic human resource challenges across the police force, high attrition rates and widespread dissatisfaction among police personnel, who cited concerns over workload, support, and resource availability".[98] Addressing all the issues identified in the Galliott Report is beyond the scope of this Inquest and is a matter for Government and NT Police, but it is certainly helpful background and is part of the evidence I received that highlights ongoing challenges for NT Police, including limited resources, and an increasingly complex workplace. In addition, specific aspects of the Galliott Report, such as its examination of police discipline, are discussed later in these Findings.

109. I accept the force of the submissions made by the NT Police and NTPA that seek to highlight the unique and demanding nature of policing and the importance of taking into account the context in which they operate when viewing the incident on 9 November 2019, and the conduct of police in Central Australia more generally. Specific issues raised in the submissions of NT Police were:[99]

    (a) First, "members are required at times to engage with and prevent criminal behaviour and use force or other tactics which are confronting to those not accustomed to the environment and dynamics of policing and which in any other circumstance may be classified as inappropriate";

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97 Inquest evidence of Senior Constable Bradley Wallace on 3 November 2022 at 3222; Inquest evidence of fmr Commissioner Michael Murphy on 29 May 2024 at 5802.

98 Cited and discussed in the closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [26].

99 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [91]-[93].

(b) Second, not every member has the same level of experience, skills or capacity to identify and respond in a nuanced way to threats;

(c) Third, there are different policing styles and there are often multiple options for policing responses that are in accordance with General Orders, meaning there is not just one policing response that must apply in all situations; and

(d) Fourth, "flexibility and alertness to risk, utilising the least force that is feasible in any given scenario, as well as restraint, cultural sensitivity, good communication and respect, need to be the hallmarks of policing, including in face of crises, threats and unpleasantness". However, "of its very nature, NT policing is highly challenging a good deal of the time".

110. In those circumstances, "care should be taken to avoid not only the dangers of excessive judgmentalism and hindsight bias in assessing policing decisions and tactics, but also to avoid examining a situation and assessing police behaviour through an overly sanitised, unrealistic lens".[100]

111. Further, it is important not to lose sight of the fact that day and night, there are officers in the NT who provide an excellent service to the community, with skill and sensitivity, and their work will continue. My hope is that recommendations from this Inquest will be embraced in a way that assist NT Police and the community members they serve, many of whom are Aboriginal people living remotely, who must adapt to the different styles, skills, training levels and experiences of the police officers who come to live alongside them.

Fatal clashes are rare

112. In modern policing in the Northern Territory, fatal clashes between police and community members are extremely rare, despite numerous dangerous

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[100] Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [93].

confrontations between police and community members, including where weapons are involved. Available research suggests that in the 46 years since Territory self-Government in 1978, four Aboriginal people have been shot and killed by police - two in the Top End and two (including Kumanjayi) in Central Australia. In two of those four instances, the police officer responsible for the death was charged with murder, and both of those cases arise from instances of lethal force being used in Central Australia: the first in 1980 (First Class Constable Lawrence "Jack" Clifford was charged with the murder of an Anmatyerre man named Jabanardi at Ti Tree)[101] and the second in 2019, when Mr Rolfe was charged with the murder of Kumanjayi.[102] In both of those instances the officer was acquitted of the charges they faced.

The role of remote police officers ("bush cops")

113. I received evidence about the important work done by NT Police Aboriginal Community Police Officers (**ACPOs**), Aboriginal Liaison Officers (**ALOs**) and local community (or "bush") Police in remote communities like Yuendumu where around 90% of the residents are Aboriginal people. For each

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101 Report of the Inquiry into the death of Jabanardi, 29 July 1980 – Royal Commission into Aboriginal Deaths in Custody – Report presented 27 February 1991 [13-1].

102 The other two cases from the Top End of the NT are first, the case of an Aboriginal man who was suffering schizophrenia and was shot dead by a police office in a lethal confrontation on Elcho Island in 1990. The man had speared two community members, and when he was located by police and community, he tried to run behind police to get his spears. After ignoring a verbal command to stop, and warning shots fired by police, he ran towards a police officer with a knife drawn. The police shouted at him to drop the knife but he continued to run and was shot once. The Coroner found that the versions given by police and Yolgnu witnesses were largely consistent, and there was no basis to criticise police. Second, 18 year old Robert Jongmin was shot dead by A/Sgt Whittington in Wadeye in 2002, when Jongmin was trying to wrestle a shotgun from another teenager, during an organised fight with police present. The Coroner found that A/Sgt Whittington had acted in a blind panic when he fired the shot into the air from a distance, and although the officer had not intended to kill or wound the deceased, he had clearly breached fundamental safety principles for the discharge of weapons. The Coroner referred the case to the Director of Public Prosecutions (DPP) to consider whether an offence had been committed. Sgt Whittington was originally charged with "committing a dangerous act causing death", but the charge was dismissed because it had not been brought within the 2 month period, as required by the statute when charging police.

of those roles, there are rewards and challenges that are unique to the experience of working for NT Police.

114. Contrary to the dismissive way that Mr Rolfe and his superior Sergeant Paul Kirkby described "bush cops" in their text exchanges (discussed later in these Findings), the work done by community police is highly valuable, and can be extremely demanding. Skilled community police officers will attempt to mediate disputes between individuals and families in a way that prevents offending or avoids an escalation.[103] It may be difficult for police to fully understand the tensions between family groups and those tensions can and do break out unpredictably into larger scale conflict that may be very challenging for a small remotely based team to manage.[104]

115. ACPOs and ALOs perform an essential role, and one that requires them to balance (sometimes competing) obligations between family and police. The work of Senior ACPO Derek Williams, both before 9 November 2019, and on that evening and the days following, exemplifies how important it is. SACPO Williams was successful in arresting Kumanjayi on five separate prior occasions without the need to use force.[105] He gave evidence that treating people with respect and speaking to people on their level has assisted him in heightened circumstances, including when there have been riots.[106] Other techniques that he has used included speaking to family members to assist in arrests (and having the cultural knowledge to know when that would not be

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103 Inquest evidence of Sergeant Anne Jolley on 15 September 2022 at 514-515; recorded statutory declaration of Sergeant Julie Frost dated 14 November 2019 [7-36] at 37-39; Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 959.

104 There are many examples of flare ups in community, but most notably in Yuendumu after 2010, when the death of one young man led to many years of fighting and threats of reprisal attacks: see Annexure B at [63]. See, for example, the discussion in the closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [88].

105 A point well made by NAAJA in its closing written submissions dated 28 October 2024 at [446].

106 Inquest evidence of Senior Aboriginal Community Police Officer Derek Williams on 7 September 2022 at 169.

appropriate), speaking to Elders[107] and transporting anxious young people (including Kumanjayi) in the cabin of a police car, rather than the cage.[108]

116. For non-Aboriginal police stationed in remote communities, there are particular skills required in order to provide the most effective policing. Good communication, patience, listening and knowing how to show respect for the local culture are as important as "hands on" tactical skills, and building good trusting relationships with community members is vital for gathering intelligence and resolving conflict.

117. Those skills were encapsulated by some police officers who gave evidence at the Inquest and who had experience working out bush. Superintendent Jody Nobbs, who has worked in various places around the NT and was stationed at Nhulunbuy at the time of the Inquest, encourages officers working under his command to bring "the conversation to the people" rather than scheduling meetings which no one attends and simply saying "well it's now five past three, no one's here, so let's wrap up and go home".[109] He acknowledged the importance of community interaction and engagement and building relationships with local people, and gave evidence that he would often say to his police:[110]

> "I don't care if you come to work tomorrow in your PT gear and you kick the footy all day, if opportunity presents, go do it."

118. I received evidence from Community members about the value they place on community policing. Francis Jupurrurla Kelly explained that as follows:[111]

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107 Inquest evidence of Senior Aboriginal Community Police Officer Derek Williams on 7 September 2022 at 170.

108 Inquest evidence of Senior Aboriginal Community Police Officer Derek Williams on 7 September 2022 at 171.

109 Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1084.

110 Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1088; though the NTPA submitted this sort of opportunity was rare to non-existent given the workload and resourcing at Yuendumu: closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [16].

111 Statement of Francis Jupurrurla Kelly dated 27 May 2022 [8-38A] at [33]-[38].

> "Aboriginal community policing is the best way of managing law and order in Yuendumu because it's built on a relationship of trust between people in the community and police.
>
> In the past, we sat down with the police to talk about the differences between local and outside laws. They would teach us their laws and we would teach them ours.
>
> The best Kardiya police have been the ones who have lived in Yuendumu for a number of years, so have come to know and understand our community.
>
> These police officers used their voices to calm situations down which meant conflict was handled in a way that respected Warlpiri culture. The community would respect and listen to these police because they involved themselves in the community by talking to people and developing strong connections."

119. In her statement Warlpiri Elder Alice Napurrula Walker-Nelson, the mother of SACPO Derek Williams, said:[112]

> "We knew the police that are working here in the community. We knew them very well. They are good people. Most of the community respect police, if the police show them respect as well. A lot of the young fellas have respect for the police, because that is the example that Elders show."

120. During the Inquest I heard from Sergeant Anne Jolley, a police officer who had been based in Yuendumu during different periods and returned to take up the position as sergeant after Kumanjayi's passing, because she had such strong and positive relationships with the community. That was reflected in the evidence of Cherylyn Napangardi Granites, who wrote:[113]

> "The police officer who has been good has been Annie. She used to be the sergeant at Yuendumu. She knew everyone and was always friendly.
>
> I got along well with Annie. She lived in Yuendumu for a long time so everyone knew her well. She would talk to people before she

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112 Statutory declaration of Alice Napurrula Walker-Nelson dated 9 August 2022 [8-64A] at [23].

113 Statement of Cherylyn Napangardi Granites (undated) [8-29A] at [28]-[32].

> arrested them and would give them a second chance. She would come around and give people a warning before arresting them.
>
> Annie would say to me, "I know you Cherylyn, you are a good lady."...
>
> The police officers who have gotten our respect in the community have been the ones who have made an effort to get to know our people."

121. The Court heard concurrent evidence from a panel of policing experts consisting of Baru Pascoe, a former ACPO from Maningrida; former Western Australian Police Force Aboriginal Police Liaison Officer (**APLO**) Lindsay Greatorex, and current NT Police officer, Detective Acting Superintendent Michael Schumacher. Each of these witnesses gave compelling evidence as to how effective and important community policing is.[114]

122. Det A/Supt Michael Schumacher has been a police officer in the NT since 1988 and has worked in a variety of locations and sections of police, including Yuendumu in the 1990s.[115] Det A/Supt Schumacher returned to live in Yuendumu for lengthy periods over different times throughout the 1990s and developed excellent relationships with Elders, and the broader Warlpiri community, which were continued long after he left. He spoke with great respect about the two Aboriginal police employees who he worked beside at that time – ACPOs Mr Tasman and Mr Curtis. Such was the strength of his relationships with community that in 2010, when a group of nearly 100 residents left Yuendumu to live in Adelaide due to ongoing conflict, Det A/Supt Schumacher was tasked to travel to Adelaide, to engage with the families and encourage them back to Yuendumu. It is impossible to quantify the value of an officer who has the expertise and relationships to engage in

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[114] Inquest evidence of former Aboriginal Community Police Officer Baru Pascoe, former WA Aboriginal Police Liaison Officer Lindsay Greatorex and Detective A/Superintendent Michael Schumacher on 10 March 2023 at 4857.

[115] Statutory declaration of Detective A/Superintendent Michael Schumacher dated 25 October 2022 [7-116A].

that task. It is an excellent example of the type of work that some NT Police officers do, usually without broader recognition.

123. The significance of that relationship became abundantly clear as soon as Kumanjayi had passed away, and an understanding of the type of work that Det A/Supt Schumacher did on the night of 9 November 2019 and in the days that followed the shooting is a snapshot of excellent policing; not that he expected to be singled out or praised for it. On that Saturday, 9 November 2019, Det A/Supt Schumacher was one of the officers tasked to attend a tourist bus crash involving several critically injured people on the Ernest Giles Road, about 140kms south of Alice Springs. At 11.20pm, as he drove back into mobile phone reception (about 40kms south of Alice Springs), he received information relating to the shooting incident at Yuendumu from Acting Assistant Commissioner Travis Wurst, whom he had worked with at Yuendumu in the late 1990s, and subsequently throughout the Central Desert.

124. Det A/Supt Schumacher finished duty at 3am on Sunday morning, 10 November, and recommenced duty that same day at 9am. At the request of A/AC Wurst (who travelled from Darwin to Yuendumu to assist in the NT Police response to the shooting), Det A/Supt Schumacher drove to Yuendumu on the Monday to assist with the community liaison role. On Tuesday 11 November, he attended Sorry Camp and having learnt the strict cultural protocols that applied, he was able to show proper respect to Kumanjayi's family. He met with family members like Warren Williams and was taken around the Sorry Camp by the family of Mr Curtis, his friend and colleague, who was family for Kumanjayi (and has since passed away). He knew most of the senior Warlpiri Elders present and a few of the Luritja Elders. When he left the Sorry Camp, he reconnected with other Elders throughout Yuendumu and engaged with several Kardiya (non-Aboriginal) residents who had been there long term. He attended the meeting that had been arranged by Chief Minister Michael Gunner and Police Commissioner Jamie Chalker. Later that day he was present at the Yuendumu Police Station when, as part of their grief and healing, a group of Elders conducted a "cleansing ceremony" throughout the police station, at the end of which several children and adults painted the

outside of the station with red hand prints. After that ceremony, he took over the community engagement role from A/AC Wurst and stayed on to speak with Elders.

125. Over the weeks and years that followed, including throughout the committal and trial of Mr Rolfe, Det A/Supt Schumacher has maintained regular contact with Warlpiri Elders and their nominated support persons. When, in November 2022, the Court and all lawyers involved in the Inquest were invited to visit Yuendumu to pay their respect to family and community, Det A/Supt Schumacher attended, quietly, to assist Yapa and Kardiya alike, and the demonstration of his knowledge and skill over the years since this tragedy have been invaluable.

126. It is clear that other members of the NT police force were able to draw on their good relationships with Elders and their knowledge of respectful cultural engagement to assist police to communicate and engage with community after Kumanjayi's death, including A/AC Wurst, Supt Jody Nobbs, Sgt Annie Jolley, and Detective Superintendent Lee Morgan, the senior police officer in charge of this Inquest (who has lived and worked in bush stations including the remote community of Papunya). The challenge of assisting the community dealing with their grief, anger and fears in the years that have followed is an example of the value of police officers who have experience working out bush, and who make the most of it by learning to respect culture and community leaders.

Policing in Yuendumu

127. The Yuendumu Police Station (**YPS**) services a large geographical area which includes the communities of Yuendumu (approx. 800-1200 people), Yuelamu (approx. 200 people), Nyirripi (approx. 100 people) and Willowra (approx. 300 people), as well as the cattle stations at Mt Dennison, Mt Doreen,

Newhaven Reserve and Tanami Downs, and the Granites Goldmine.[116] The patrol area covers 120,000 square kilometres and extends to the Western Australian border.

128. The "policing requirement" for the district is said to be "high", and the geography alone makes it extremely challenging to meet the needs of all residents.[117] Yuelamu is located approximately 70km by road from Yuendumu. During daylight hours, and in good conditions, it is a 45 minute drive.[118] Nyirripi is located approximately 160km by road from Yuendumu and depending on conditions, is generally around a two hour drive from Yuendumu.

129. The Nyirripi police station is a THEMIS station—a demountable police station constructed of shipping containers during the Northern Territory Intervention to meet the needs of increased police and other government presence in remote communities that had not been serviced by permanent police stations. By 2019, it was being used on an ad hoc basis by officers at the YPS, but it was very basic, with makeshift accommodation for police officers and a watchhouse that was not fit to hold any person in custody for a significant period.[119]

130. Because of that, if an arrest was made and the offender was not bailed immediately, police would be required to transport the offender back to Yuendumu (or, alternatively, directly into Alice Springs, some 400km away).[120] This meant that when only two officers were on duty at Yuendumu, the entire local police presence could be called out for four hours or more to

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116 Yuendumu Police Induction Manual, annexure MS-06 to Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB]; Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 552. The Granites goldmine is also known as Newmont: closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [178].

117 Recorded statutory declaration of Sergeant Julie Frost dated 14 November 2019 [7-36] at 28.

118 Inquest evidence of Vanessa Watts on 10 October 2022 at 1297.

119 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 552.

120 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 553.

collect an offender from a neighbouring community.[121] These kinds of prisoner transport jobs significantly diminished the resources available to police in the Yuendumu policing district.[122]

131. In November 2019, the Yuendumu Police Station and District was theoretically staffed by about six commissioned officers and one ACPO, but given the realities of staff leave, and the huge workload, they were sometimes left to operate with far fewer staff and they could be stretched thin.

132. Evidence at the Inquest established that in the period leading up to 9 November 2019, Yuendumu Police Station was operating with restricted resources. Gazetted officers were on leave and absent from the community and although additional members had been sent to Yuendumu from the relief pool, officers were then required to visit nearby neighbouring communities.[123] In that same period, there was an increase in property crime in Yuendumu, with several properties and houses occupied by nursing staff the target of break-ins (discussed in greater detail in Chapter Eleven: the Closure of the Clinic). Police members had already reported high levels of fatigue in the period leading up to the "axe incident" with Kumanjayi on 6 November 2019.

133. There are modern challenges being felt in Yuendumu and around the NT that appear to make policing remote communities today a much harder proposition than in previous decades, in part because of the breakdown in the authority of Elders.[124]

134. Commander (now Acting Commissioner) Martin Dole served as a police officer at Yuendumu between approximately late 1999 and late 2001. He recalled spending a lot of time in community and said that police officers would regularly attend football games played on the oval which at that time

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121 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 553.

122 Recorded statutory declaration of Sergeant Julie Frost dated 14 November 2019 [7-36] at 28.

123 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [27], citing the Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 565.

124 For more context, see the discussion in Annexure B in relation to this.

was grassed.[125] He took Yuendumu community members hunting and was invited into Business Camp. At that time, the Yuendumu Police Station was bounded by open chain mesh fences (as opposed to today's solid Colorbond fences), and community members regularly attended the police station for barbeques, or to speak to police members about various matters.

135. Cmdr Dole gave evidence of a strong sense of community spirit in Yuendumu at that time. Police regularly consulted Yuendumu Elders, for example, when the shop was broken into or in Law and Justice Committee meetings, which were held on the front lawns of the police station.[126]

136. While there may be a tendency to look back on the past too fondly, and it is important not to overlook the positive aspects of community engagement now, during the period of the Inquest, the community of Yuendumu continued to experience significant social discord: conflict (including break-ins), low school attendance, anger towards local police, and in 2022, defunding of the primary Youth Service (Warlpiri Youth Development Aboriginal Corporation or **WYDAC**) following years of instability and problems with governance. The disintegration of WYDAC is particularly dispiriting, given the important role that the organisation has played in the past to assist young people in crisis, including Kumanjayi. Those issues make policing in Yuendumu more challenging, particularly the type of policing which relies on community engagement.

137. There are a multitude of reasons why policing has changed from the 1990s to now, which are likely to include complex social factors like the death of several strong Elders, the roll out of iPhones and social media, and the 2007

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125 Inquest evidence of Commander Martin Dole on 21 November 2022 at 3574-3588, outlined in the closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [180]-[182].

126 Inquest evidence of Commander Martin Dole on 21 November 2022 at 3587-3588.

National Emergency Response (known as **the Intervention**) which is now understood to have weakened the authority of Elders in community.[127]

138. Cherylyn Napangardi Granites gave evidence that the Intervention "changed everything, especially for the Yapa communities".[128] Bruno Jupurrurla Wilson, a member of the Parumpurru Committee, gave evidence that as a result of the Intervention, the community lost confidence in government and "felt as though we had no rights and no control over our community any longer".[129]

139. Leanne Liddle, who was the Director of the Aboriginal Justice Unit at the time of giving evidence to the Inquest and is now a senior employee of NT Police, gave evidence that, during the consultation process for the Aboriginal Justice Agreement, one of the key issues raised by communities was being disempowered by the Intervention.[130] Her statement includes the following thoughtful analysis:[131]

> "Other critical issues discussed included the impact of the intervention and the transfer of power from Aboriginal communities to the non-Aboriginal led Shires. The Intervention and the rise of the Shires, the liquidation of ATSIC and the defunding of Aboriginal community organisations had effectively decapitated what little Aboriginal leadership in the NT and diminished the status and standing of Aboriginal men (through the messaging that they were all paedophiles), which together seriously reduced the ability for Aboriginal people to make decisions that impacted on their ability to control behaviours and restore core values that they wanted to be supported in their community to maintain a safe cohesive community."

140. To limit criminal behaviour and reduce the risk of violent confrontation between police and young people like Kumanjayi, it is essential that more is done to strengthen the role of Elders and to build mutual respect and trust.

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127 See expert statement of Dr Melinda Hinkson (undated) [10-30] at [56], cited in closing written submissions of the Parumpurru Committee of Yuendumu dated 28 October 2024 at [224].

128 Statement of Cherylyn Napangardi Granites (undated) [8-29A] at [47].

129 Statement of Bruno Jupurrurla Wilson dated 28 November 2022 [8-72B] at [17].

130 Statement of Leanne Liddle (undated) [10-10C] at [90] and [134]. This is discussed further in Annexure B.

131 Statement of Leanne Liddle (undated) [10-10C] at [95].

141. The evidence I received, along with the submissions of interested parties, and an analysis of the circumstances surrounding the arrest of Kumanjayi, (including the callout of the IRT and the closure of the clinic) convince me that recommendations should be made that a) support local decision making and b) strengthen local culturally appropriate mediation services. Those measures should be taken as steps that aim to limit the risk of fatal conflict between police and community members.

The set up of the Alice Springs station ("upstairs/downstairs")

142. Alice Springs is a busy 24-hour police station, with approximately 300 police members.[132] General duties members work across five patrol groups.[133] There is a crime team, as well as specialist task forces, such as Strike Force Viper, which deals with high-volume property crime.

143. It became important in the Inquest to understand the set-up of the Alice Springs station, which involves the general duties police officers working downstairs (including Probationary Constables, Constables, Senior Constables, Sergeants and Senior Sergeants), whereas the detectives and the Executive level sit upstairs on another floor. While on the one hand that makes sense because of their distinctive roles, on another it seems a shame that junior police are separated from detectives and management, and that management may not always have a line of sight on the conduct of junior members (for example, the racist language Mr Rolfe said was used at the station or the showing of BWV to colleagues to make a joke about the use of force against community members, as Mr Rolfe acknowledged he did).[134]

144. The physical layout of the Alice Springs station shows the important role played by sergeants and senior sergeants, who were based downstairs with

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132 Inquest evidence of Sergeant Lee Bauwens on 27 May 2024 at 5635, 5643.

133 Inquest evidence of Sergeant Lee Bauwens on 27 May 2024 at 5643.

134 Inquest MFI XX: "Video IMG_0157 from Cst Rolfe's phone – film of BWV of incident at Araluen Park 18.02.19".

junior staff and served as their immediate supervisors, with eyes and ears on their conduct during shift, both out on patrol and in the police station. Those serving in the ranks of sergeant and senior sergeant are expected to model the standards of behaviour that are expected of members of the NT Police. Given that expectation, as discussed in later in these Findings, it was extremely concerning to learn of some of the very poor mentoring and supervision provided to Mr Rolfe during the relatively short time he was in Alice Springs.

The role of the Tactical Response Group (TRG), based in Darwin, in policing Central Australia

145. Specialist police tactical groups (**PTGs**) were established across Australia following the bombing of the Hilton Hotel in Sydney in 1978,[135] and the introduction of a National Anti-Terrorism Plan. In the NT, the PTG is referred to as the Territory Response Group (**TRG**). The primary purpose for a PTG is to have a squad that is trained and equipped to respond to high risk and counter-terrorism operations, including large-scale civic unrest, active shooter situations and sieges.[136] In the NT, however, those incidents are mercifully rare and the TRG performs multiple other roles, including "general frontline policing support, dignitary protection, counter-disaster operations, bomb response, public order, search and rescue, and arresting serious offenders".[137] TRG members can also be tasked to provide specialist support to remote police stations.

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135 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [97], citing the affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [208].

136 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2504-2505; closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [97].

137 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [97], citing affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [208]; affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at annexure MS-17; Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2504-2506.

146. Sergeant Meacham King, who has performed various roles in the TRG and other areas of NT Policing over several decades, explained this as follows:[138]

> "We could be tasked to go down and support an operation such as a large football carnival where they want extra police to come down and help with that. There could be operations for traffic or drug-related matters where they want to go down and do an operation there with roadblocks and general support also includes search and rescue, where we've got a missing person, we'll go down and help do the search and rescue operation, support local front line and managing that - that resource.
>
> ...so when we send people general support they're normally accompanied by a team leader and they're used to working in environments, a lot of them are bush police officers who understand how to work in remote communities. So...with search and rescue obviously, they are the experts in [being] search and rescue mission controller so they'll go forward and coordinate the search because...they undertake a significant amount of training to get...those skills up as opposed to front line and normal settings don't receive those training."

147. The TRG may be tasked to assist in the arrest of serious offenders. Whether a deployment is classified as general or high risk depends on a risk assessment. Sgt King explained the procedure the TRG would go through if tasked to do a job like arresting Kumanjayi.[139] The TRG would conduct a detailed risk assessment of the arrest target. They would consider all his/her involvements with police and any history of violence. They would discuss the matter with the local Officer in Charge and consider any risk mitigation strategies. The TRG would then determine whether it was a high risk or general support deployment.

148. To join the TRG, qualified police have to pass a selection course, be selected, and then complete several months of specific training. After that training, a junior member is considered to be a basic operator who can be deployed on

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138 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2505.

139 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2506.

high-risk operations and from there they can move into further training on specialist skills.[140]

149. The TRG is a fully operational and full-time unit.[141] NT Police submits that (as would be expected for an elite unit) the members of the TRG are "highly disciplined and highly competent in their roles".[142] They undergo extensive regular training which amounts to approximately 90% of their workload.[143] They have access to specialist weapons, and undertake leadership and tactical courses.[144] Efforts are made to develop and mentor them within the unit.[145] Many TRG members have significant remote policing experience,[146] and that experience was highly valued by the TRG around 2019. Indeed, it was a reason given to Mr Rolfe for his several applications for the TRG being rejected, as candidates with bush experience were preferred, and Mr Rolfe had no interest in being stationed remotely for any length of time.[147]

150. It was not within the scope of this Inquest to conduct a review of the TRG, whose members were not present when Kumanjayi Walker passed away, and were not involved in any of the planning arrangements for his arrest. I note that in their years of operation, the TRG has not caused the death or serious injury of any member of the community. The only role performed by the TRG in relation to Kumanjayi's death was to respond to a request to attend Yuendumu after he had been killed, to ensure the security of the community and to assist with evidence collection if required. There was an issue as to

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140 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2506.

141 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [210].

142 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [208]; inquest evidence of Sergeant Meacham King on 26 October 2022 at 2511-2512.

143 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [208]; Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2506-2508.

144 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2506-2507.

145 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2507-2508.

146 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [208].

147 See further discussion in Chapter Three.

whether some members of the TRG appropriately carried out their duties after Kumanjayi's death, and I return to that later in these Findings.

The formation of the "Cordon and Containment" Group and the evolution of the Immediate Response Team (IRT)

151. In 1996, after a number of local high risk incidents, the Alice Springs Cordon and Containment Unit was established.[148] For that purpose, the TRG trained a small group of members based in Alice Springs who were equipped with weapons and had the capacity to "cordon and contain" high risk or armed offender situations pending the arrival of the TRG.[149] Those members were general duties police trained specifically in incident management and command and control.[150]

152. The unit existed under different names within the southern region of NT Police between 1996 and 2022.[151] When Sergeant Lee Bauwens arrived in Alice Springs around 2014, he bought with him a decade of experience in the Darwin based TRG and he demonstrated initiative in wanting to improve the capability of the unit and reinvigorate the Cordon and Containment Team into a viable unit with greater capacity.[152]

153. As NT Police explained in its submissions, in 2017, Senior Sergeant Mike Williams made various recommendations with a view to enhancing the unit, and to that end:[153]

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148 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [129].

149 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [129] and also annexure MS-12: IRT Review dated 30 March 2022; Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2592, cited in the closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [101].

150 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [131] and annexure MS-12: IRT Review dated 30 March 2022.

151 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [128].

152 Inquest evidence of Sergeant Lee Bauwens on 22 February 2024 at 4968-4969, 4998-4999.

153 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [132], also annexure MS-12: IRT Review dated 30 March 2022.

(a) the Cordon and Containment Team was renamed the Immediate Response Team,[154] and

(b) a Standard Operating Procedure (**SOP**) was developed.[155]

154. The SOP confirmed that the IRT was a part-time capability comprised of members provided with enhanced skills training. Members fulfilled their IRT responsibilities in addition to their primary policing role and their participation in the IRT was voluntary and part-time.[156]

155. It was expected that IRT members would be reasonably available to respond to callouts as required and would be paid overtime if deployed on their days off.[157]

156. IRT members were not provided with a copy of the SOP, but the content of the SOP was discussed during the two-week induction training course.[158]

157. Responsibility for the overall management of the IRT rested with the Officer in Charge (**OIC**) of the IRT. As at 9 November 2019, the OIC of the IRT was Sergeant Lee Bauwens, who became the Team Leader around 2014.[159] Sergeant Bauwens was a general duties Sergeant at Alice Springs and he managed the IRT in a part-time capacity. He was obviously passionate about the Unit and the need for it to flourish and he would often undertake IRT work on his own time, staying back after a shift or coming in on his own time to do some extra work.[160] Unfortunately (given that he would inevitably need to have time off

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154 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [132], also annexure MS-12: IRT Review dated 30 March 2022.

155 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [132], also annexure MS-12: IRT Review dated 30 March 2022; Alice Springs Immediate Response Team Standard Operating Procedures [17-23].

156 Alice Springs Immediate Response Team Standard Operating Procedures [17-23] at 6.

157 Inquest evidence of Constable James Kirstenfeldt on 19 October 2022 at 2032.

158 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [106].

159 Recorded statutory declaration of Sergeant Lee Bauwens dated 3 December 2020 [7-7], at annexure 8: Memo dated 28 December 2016 at 2, 4.

160 Inquest evidence of Sergeant Lee Bauwens on 23 February 2024 at 5031.

or go on leave) there was no second in command (**2IC**) formally appointed or trained.[161]

158. As the OIC, Sgt Bauwens had discretion as to which members would be deployed to various IRT jobs, although this was restricted by members' availability and rostering requirements. As discussed later in these Findings, Sgt Bauwens was away from work on 9 November and it fell to another member of the IRT who was on duty at the time to go down the list of IRT members and pick the first persons available to make up the team.

159. It seems clear that Sgt Bauwens was highly respected by his troops in the IRT and Mr Rolfe described him as a mentor or someone he looked up to and held in high regard.[162] That is not surprising given the dynamic work of the IRT and the enthusiasm Sgt Bauwens had for it. It underscores the important role he played in modelling standards of behaviour.

160. As set out in the SOP, IRT members could be deployed in two capacities: either in high risk situations, or in a general support capacity. That is relevant when analysing the callout of the IRT on 9 November 2019. The difference in procedure, depending on whether the job was labelled a "high risk deployment" or "general support" deployment, was set out carefully in the submissions of NT Police as follows:[163]

> "High risk deployments included 'unplanned' events such as sieges and active shooter situations, and 'planned' operations such as the targeted arrest of offenders, rural surveillance and the execution of high risk search warrants. 'Unplanned' high risk deployments of the IRT required the approval of an Assistant Commissioner. All 'unplanned' plans and actions were required to be developed in consultation with the TRG Tactical Commander, who would provide advice and determine whether a TRG response was required. However, a Watch Commander could deploy the IRT immediately in response to an active armed offender incident, in which case the Commander Southern, Assistant Commissioner

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161 Inquest evidence of Sergeant Lee Bauwens on 22 February 2024 at 5001.

162 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5160.

163 See the closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [108]-[111]. I have removed the references for ease of reading, but the outline of facts is carefully referenced in the NT Police submissions.

> Southern Operations and TRG Tactical Commander were required to be notified as soon as possible In 'planned' high risk operations, the Officer in Charge of the TRG was required to assess the task, risks and determine whether the IRT was required.
>
> In high risk situations such as sieges, the IRT would be deployed to cordon and contain the situation until such time as the TRG could arrive. However, if the situation developed such that immediate police action was required, IRT members were trained to perform 'immediate emergency actions' and respond straightaway instead of waiting for the TRG. This required them to use advanced skills for which they received additional training.
>
> General support deployments included assisting other units with search warrant entries, the arrest of violent or armed offenders, the arrest of escapee offenders or those evading police custody, responding to community disorder or unrest, targeted operations, and search and rescue operations. General support deployments required the approval of the Commander Southern and Territory Duty Superintendent. The Officer in Charge of the IRT was required to discuss with the relevant Superintendent or Watch Commander."

161. Having set out those functions, in their closing submissions to the Inquest, NT Police explain:[164]

> "The work of the IRT included restoring and maintaining peace in remote communities.[165] It also included assisting the TRG with its operations, when necessary.[166] The IRT was not intended to function as an aggressive tactical section or to be 'door kickers;' when performing arrests its members were to use either covert tactics, or for the offender to run and tire out."[167]

162. I am informed by NT Police that between 2017 and 9 November 2019, the IRT had been deployed on 44 occasions, 25 of which (57%) were to provide

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164 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [111].

165 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [111], citing the Inquest evidence of Constable First Class Adam Eberl on 18 October 2022 at 1880; Inquest evidence of Constable First Class Anthony Hawkings on 19 October 2022 at 1986.

166 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [111], citing the Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2520.

167 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [111], citing the Inquest evidence of Sergeant Lee Bauwens on 22 February 2024 at 4944, 5002.

assistance to remote communities. The IRT had conducted several successful arrests, including in Barrow Creek and Docker River.[168]

163. In spite of the IRT SOP contemplating the high risk deployment of the IRT, the IRT had in fact never been deployed on this basis.[169] Sgt Bauwens explained at the Inquest that the vast majority of their work was not tactical, but that they still had to train for this "one per cent".[170]

164. NT Police submits that the IRT was "not functioning as a paramilitary unit or in a way that was akin to the TRG, but was supplementing local resources, and was therefore not inconsistent with Recommendation 61 of the Report of the Royal Commission into Aboriginal Deaths in Custody" (see discussion below).[171]

The IRT, "Mission Creep" and failures to apply the SOP

165. According to the original officer in charge (**OIC**) of the Coronial investigation, Commander David Proctor APM, the type of operations to which the IRT have been deployed appears to have expanded considerably from the original role detailed in the SOP and this has led to what he described as "mission creep".[172]

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168 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [112].

169 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [113].

170 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [113], citing Inquest evidence of Sergeant Lee Bauwens on 22 February 2024 at 4944.

171 Recommendation 61, https://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol5/5.html, see closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [314], discussed in the closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [118].

172 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 85.

166. Cmdr Proctor attributed the mission creep to a number of reasons related to personalities and systemic failures, finding that:[173]

> "Since its inception in 2017, the primary role for which the IRT was established has become blurred. Unfortunately, there is no single systemic failure that can be attributed to this situation. Staffing changes, management changes, differing perspectives on operational priority and deployment and communication breakdown have all contributed to a situation where the primary role of the IRT has expanded and the governance requirements under the SOP have lapsed."

167. Cmdr Proctor concluded that "once the IRT SOP was ratified in 2017 it is apparent that strict adherence to the SOP was not maintained in several critical areas". He concluded that:[174]

> "The deployment of the IRT had a critical role in the death of Kumanjayi Walker. On examining the response to this incident and more broadly the policies, procedures, management, deployment, and operational practices of the IRT, the coronial investigation team has identified several critical system failures."

168. Specifically, this included training. The IRT SOP required that the OIC of the IRT was responsible for ensuring training standards and records are maintained as required. A review of the training records for IRT members as recorded in the SPECTR system indicates that training records had been poorly recorded and maintained; the annual training and validation requirement of the SOP was conducted once in April 2018 and not at all in 2019. The consequence being that no Alice Springs members were qualified as required by the SOP, and under the SOP none were eligible to conduct IRT duties in November 2019.[175]

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173 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 88.

174 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 88.

175 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 87.

169. Second, and most significantly in relation to Kumanjayi's death, the IRT SOP contained several stipulations with regard to behaviour and performance. As described by Cmdr Proctor, it stated:[176]

> "'It is expected that IRT members display a high standard of professionalism and behaviour fitting their role.
>
> Members who are subject of a performance improvement plan in their primary role will be stood down from IRT for the duration of the plan, until they have demonstrated they can perform to an acceptable standard.
>
> Members who are the subject of disciplinary action will be stood down during the investigation or subsequent penalty period at the discretion of the Commander Southern Command, and in consultation with the OIC IRT and Alice Springs Divisional Superintendent.'
>
> At the time of being called out and deployed to Yuendumu on 9 November 2019, Constable Zachary Mr Rolfe had several internal matters (complaints against police) under investigation."

170. In its submissions, NAAJA noted that by 9 November 2019 Mr Rolfe was the subject of serious adverse comment and findings by Judge Borchers in the Malcolm Ryder case and was the subject of twelve use of force complaints,[177] although he was not the subject of disciplinary action within Part IV of the *Police Administration Act 1978*. In spite of those circumstances, the discretion to stand a police officer down from the IRT was neither considered nor exercised by either Sgt Bauwens, because he claimed (variously) not to have been aware of the extent and number of allegations which had been made against Mr Rolfe and that any such allegations would not be "performance related",[178] nor Superintendent Vicary because "we didn't have outcomes from PSC investigations".[179] There was a failure to properly consider whether Mr

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176 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 87.

177 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [132].

178 Inquest evidence of Superintendent Pauline Vicary on 2 November 2022 at 3071; Inquest evidence of Sergeant Lee Bauwens on 22 February 2024 at 4953, 4956, 4972-4973.

179 Inquest evidence of Superintendent Pauline Vicary on 2 November 2022 at 3072-3073.

Rolfe should be stood down from the IRT while he was under investigation or the subject of unresolved complaints.

171. A member experiencing personal or stress related issues who should not be put in a tactical environment could also be stood down.[180] Mr Rolfe did not disclose to the OIC of the IRT that he had sought medical assistance for mood and sleep issues, nor that he had scored 27 on the Kessler Psychological Distress Scale (which is interpreted as likely to be suffering moderate psychological distress), nor that he had been prescribed medication for a diagnosed psychiatric disorder.[181] Mr Rolfe conceded he should have disclosed those matters.[182] Without that information, neither the OIC of the IRT nor SSgt McCormack (who selected Mr Rolfe for deployment to Yuendumu) were provided an opportunity to consider whether he should be stood down in the circumstances or whether he remained suitable for deployment.

Future of the IRT or similar team?

172. On 27 November 2019, in the immediate aftermath of the death of Kumanjayi, NT Police suspended the use of the IRT unit and reviewed its functions. Assistant Commissioner Dr Narelle Beer was the author of a highly critical report on the IRT SOP. In a memorandum dated 27 November 2019 addressed to then Deputy Commissioner Michael Murphy, she wrote:[183]

> "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 SOPs."

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180 Alice Springs Immediate Response Team Standard Operating Procedures [17-23] at 11.

181 Expert report of Professor Alexander McFarlane dated 15 July 2020 at [10-11].

182 Inquest evidence of Zachary Rolfe on 2 February 2024 at 5472; see also Inquest evidence of Sergeant Lee Bauwens on 22 February 2024 at 4952-4953, 4959.

183 Cited in the Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 88.

173. The IRT was reviewed by Superintendent Shaun Gill and on 31 May 2022, the NT Police Executive determined that the IRT should be disbanded.[184] The NT Police Executive has stated repeatedly since that there is no plan for the IRT, or any similar tactical group, to be reinstated in Alice Springs.

174. I received submissions from the NTPA[185] and Sgt Bauwens[186] as to why an IRT is justified. In particular, the NTPA noted that the IRT was established to bridge the gap in response times for critical incidents in remote areas in circumstances where the police response required skills beyond that of general duties officers. Sgt Bauwens pointed to the successful deployments of the IRT and the need for a tactical response unit to deal with emergencies in Central Australia without the kind of delay that would accompany the deployment of the TRG. Both the NTPA and Sgt Bauwens lamented that the IRT's effectiveness was limited due to a lack of full time members, insufficient recourses and training deficits, despite Sgt Bauwens persistent advocacy for the unit.[187] The NTPA submitted that, continuing issues with equipment and resource availability undermined operational effectiveness and officer safety and requests for resources were delayed, unmet or unanswered.

175. Further, the NTPA submitted that:[188]

    (a) where specialised units are established they must be properly equipped to perform their functions and to meet the expectations placed upon them,

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184 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [185].

185 Closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [31]-[32].

186 Closing written submissions of Sergeant Lee Bauwens dated 11 November 2024 at [59]-[66].

187 Recorded statutory declaration of Sergeant Lee Bauwens dated 3 December 2020 and attachments [7-7]; Inquest evidence of Sergeant Lee Bauwens on 22 February 2024 at 4934, 4939, 4945, 4983, 5003, and on 23 February 2024 at 5051.

188 Closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [32i., ii., iii].

(b) officers nominated for specialist roles should be provided with adequate safety equipment, remuneration and respite to ensure member safety and welfare, and

(c) roles should not be part-time but should be specific and full-time and receive adequate and appropriate training.

176. It is not my role to conduct a review of Police resources in Central Australia and I am not in a position to determine whether any tactical squad, or a squad with specialist cordon and contain skills, is required currently or will be in the future. However it is clear that if there is to be a similar squad, it must be a professional one, and that must include adequate policy guidance, leadership, structure, training, discipline, ongoing assessments as to suitability of members for inclusion and deployment, and adequate resourcing to enable it to fulfil its stated role.

Has there been a "paramilitarisation" of NT Police?

177. A number of interested parties draw from the circumstances of the ill-fated arrest of Kumanjayi on 9 November 2019 and the behaviour of the IRT on that day to argue that there has been a "militarisation" of the Police force in the NT that is likely to increase the risk of a community member being killed.[189] The two officers at Yuendumu on 9 November 2019 who disregarded the arrest plan drafted by Sgt Frost were Mr Rolfe and Cst Kirstenfeldt, both of whom had served in the armed forces and had a particular interest in paramilitary policing.[190]

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189 Closing written submissions of the Parumpurru Committee of Yuendumu dated 28 October 2024 at [82]-[133]; NAAJA adopts their argument.

190 Mr 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. Cst Kirstenfeldt is a former ADF member who, like Mr Rolfe, conducted paramilitary type close protection training with Ronin International in the United Kingdom in 2010 (see summary in the Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 61).

178. The Coronial Investigation Report's analysis of recruitment data from the Northern Territory Police indicates that:[191]

> "Between January 2010 and May 2020, the Northern Territory Police recruited 718 members. Of the 718 recruits, 192 (26.74%) had previously served with the Australian Defence Force or foreign military forces. This is a significant representation of persons who have prior military service recruited to police the Northern Territory."

179. As Counsel Assisting pointed out, ex-military recruits are sought after by police services in many countries,[192] a fact that recognises their transferable skills. There are, however, some commentators that raise concerns that increased recruiting of police with a military background may lead to greater emphasis on use of force, and less on community policing.

180. The evidence before the Inquest about the "militarisation" of the police force is based primarily on a report by Emeritus Professor Dr Jude McCulloch, a Victorian criminologist. She described militarisation as the integration of military philosophy and military-style operations into policing, and explains that it has a number of dimensions, including routine carriage of guns, the recruitment of former members of the military, military style training or training or operations with the military, the integration of military style uniforms, language, equipment and weapons into policing, the establishment of military special forces-type units in police organisations, the adoption by police of a "warrior mindset" and an "us v them" approach.[193]

181. Professor McCulloch concludes her report by stating that police militarisation in Australia has had a profound impact on police use of force, including deadly force.[194] This is in part because police militarisation involves an ideology that stresses the use of force as the appropriate and efficacious means to solve

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191 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 136.

192 Expert statement of Professor Chris Cunneen (undated) [10-10AA] at [20].

193 Expert statement of Emeritus Professor Dr Jude McCulloch date 5 August 2022 [10-31A].

194 See discussion in the closing written submissions of the Parumpurru Committee of Yuendumu dated 28 October 2024 at [100]-[101].

problems, as opposed to traditional policing ideology where use of force is a last resort. She states:[195]

> "The separation between police and the military 'is morally grounded in the notion that it prevents police from adopting a mindset in which they believe they are "fighting a war" against the same people they are supposed to protect' The military, unlike the police, are not obliged to gain or maintain the support of the people they are acting against, as they do not purport to act with consent. Paramilitary policing, then, is the antithesis of community policing which strives to work with and be inclusive of the communities served."

182. In a similar vein, Professor Chris Cunneen of the Jumbunna Indigenous Institute of Education and Research, asserts that it has been recognised that military training, experience and mindset can lead to significant issues in relation to the use of force, especially when combined with greater access to military grade weapons.[196] He points to an analysis of NT Police use of force incidents which show a significantly greater presentation/use of OC spray, tasers and firearms by ex-defence officers, as compared to other police.[197]

183. Research in the United States shows that former military personnel are significantly more likely than other police to have fired their weapons while on duty, are over-represented among police who have had use of force complaints filed against them and (although the evidence is more limited) would appear to be over-represented in fatal police shootings.[198]

184. The Royal Commission into Aboriginal Deaths in Custody recommended that all police services review their use of paramilitary 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.[199]

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195 Expert statement of Emeritus Professor Dr Jude McCulloch date 5 August 2022 [10-31A] at 8.

196 Expert statement of Professor Chris Cunneen (undated) [10-10AA] at [21].

197 Expert statement of Professor Chris Cunneen (undated) [10-10AA] at [21].

198 Expert statement of Professor Chris Cunneen (undated) [10-10AA] at [22].

199 Royal Commission into Aboriginal Deaths in Custody, recommendation 61.

185. Professor McCulloch observes that where specialist paramilitary groups operate within police organisations, there is a risk of paramilitary tactics spreading into general policing practice through mission creep when: Police Tactical Group members are deployed for general duties policing, training of general duties police officers is conducted by current or former members of the Police Tactical Unit, and members of the Police Tactical Unit are held up as role models for other police.[200]

186. On behalf of the Parumpurru Committee, it is submitted that the evidence in this Inquest demonstrates that this risk had materialised in the NT Police, and particularly in Alice Springs, given:[201]

    (a) the TRG provided training to the IRT, and conducted yearly training assessment of IRT members,

    (b) the IRT comprises 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 the TRG,

    (c) the IRT was expected to respond to both high risk deployments and general support operations,

    (d) similarly, TRG members also engage in "general support tasks" including youth concerts, or attending a football carnival (which greatly increases the risk of "mission creep"),

    (e) text messages from Mr Rolfe putting the IRT on a pedestal, including one that states:

> "We have this small team in Alice, IRT, immediate response team. We're not full time, just get called up from Gd's for

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200 Expert statement of Emeritus Professor Dr Jude McCulloch date 5 August 2022 [10-31A] at 4, cited in the closing written submissions of the Parumpurru Committee of Yuendumu dated 28 October 2024 at [105].

201 Closing written submissions of the Parumpurru Committee of Yuendumu dated 28 October 2024 at [105].

> high risk jobs, it's a sweet gig, just get to do cowboy stuff with no rules..."

187. NT Police reject any suggestion that there has been a paramilitarisation of its force, or that the IRT was formed for any paramilitary purpose. It argues that there are significant problems with applying the analysis of Professor McCulloch to policing in the Northern Territory, including that her position was not based on any particular knowledge of policing in the Northern Territory, or any specific understanding of the experiences of police in remote communities.[202]

188. As noted above, the NT Police argue that the IRT was not functioning as a paramilitary unit or in a way that was akin to the TRG, but rather it was supplementing local resources.[203]

189. NT Police submitted:[204]

(a) that NT Police does not train or work with military save in relation to specialist counter-terrorism or disaster operations,

(b) there is no reliable data to support the proposition that former ADF members use more or disproportionate levels of force compared to police members without an ADF background,

(c) police do not teach a "warrior mindset", and rather the use of force policy focusses on de-escalation, communication and minimising the use of force,

(d) the focus of police in the NT is on collaborative, community policing and not an "us and them" approach,

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202 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1085], [1087].

203 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1089].

204 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1095] – [1105].

(e) the mere fact that the IRT undertook some training with the TRG should not be overstated and they were two distinct groups with their own distinct policies and procedures,

(f) the use of terminology reminiscent of the military does not mean the IRT was militarised,

(g) although the IRT sometimes carried additional weapons, this was normally reasonable and appropriate to the circumstances, given the remote locations and potential for unforeseen eventualities, but NT Police and C1C Hawkings have conceded that carrying the AR-15 on 9 November was unnecessary and an error,

(h) updating weapons and technology is about maintaining currency and not indicative of paramilitarisation, and

(i) camouflage is rarely worn, with most tasks being undertaken in standard "blues".

190. On behalf of NT Police, it is said that "while the conversation about militarisation is worthwhile, in the context of the facts being addressed by this inquest, there is no proper evidentiary basis to conclude that the notion, to the extent that it has any relevance to NT Police, contributed to the death of Kumanjayi Walker."[205]

191. In his oral evidence, Cmdr Proctor accepted that the risk of adopting a paramilitary mindset in policing is that police might move away from the Peelian principles of policing by consent.[206] There is no dispute that community policing is, and must remain, a key pillar of policing throughout the Northern Territory, but particularly in remote communities.[207] I agree with

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205 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1106].

206 Inquest evidence of Commander David Proctor APM on 25 November 2022 at 3743.

207 The importance of community policing was expressed by Senior Constable Brad Wallace, whose evidence was compelling, cited below. That should be read alongside the impressive evidence of the community policing panel of former NT ACPO Baru Pascoe, former WA APLO Lindsay Greatorex and Acting Superintendent Michael Schumacher.

Counsel Assisting that "not only is it of benefit to the community involved, but police too are likely to have greater job satisfaction, and be more able to prevent and solve crime, when they have the trust of community members".[208]

192. In the vast majority of cases, a paramilitary mindset in a remote Aboriginal community would be the opposite of the type of community policing that is required. Nevertheless, I am not naive to the fact that there are occasions when there are riots in remote communities, and local police may be assisted by members of the TRG to restore the peace. It is my hope that the recommendations I make with regard to bolstering local decision making authority and peacekeeping will minimise the need to call in any tactical squad.

193. Ultimately, NT Police made this submission with which I agree:[209]

> "Professor McCulloch observed that Constable Rolfe appeared to have a 'warrior mindset', a 'cowboy aspect', to be 'reckless', to be 'revelling in the risk of the job' and having 'an inappropriate mindset for a police officer'. On the basis of what is now known about Constable Rolfe, the NTPF does not take issue with most of these characterisations. However, these cannot be said, and there is no proper evidentiary basis for this court to find, that these matters are (a) are based in Constable Rolfe's military experience, (b) are qualities particular to the military or, (c) show that the NTPF has become militarised."

194. While I accept that there are risks and there is evidence that Mr Rolfe behaved in a way that was similar to a military style "clearing of the house", and that long arms were openly carried, I am not able to conclude from that limited evidence that there has been a "militarisation of the force as a whole". I agree with NT Police that the conversation about militarisation is worthwhile, particularly given the increasing number of recruits who come from the military, and it is encouraging to hear that a new training session has been implemented for police recruits, prompted by a consideration of the matters in this Inquest. I am told that the short training session is entitled "Policing

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208 Closing written submissions of Counsel Assisting dated 22 October 2024 at [762].

209 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1098].

Mindset" and is delivered to recruits immediately before their use of force training. It emphasises the differences between use of force in occupations such as the military as compared to policing. It encourages new recruits to consider how past professional skills and experiences might consciously or sub-consciously affect their policing decisions.[210] I have made a recommendation in support of this or similar training.

Racism and its relevance to the Inquest

Sources of evidence about racism, and its relevance

195. Despite the focus on issues of race and racism in media reporting of the Inquest, the Inquest did not conduct a wide-ranging inquiry into racism. Instead, it received a modest amount of evidence about racism while investigating the potential causes, and relevant circumstances, of Kumanjayi's death. Before turning to my Findings on this issue, it is convenient to say something briefly about what that evidence was, and why it was relevant.

196. First, there was direct evidence of the making of racist comments by Mr Rolfe, and between Mr Rolfe and his superiors, in the lead up to Kumanjayi's death. This evidence was comprised of telephone messages located on Mr Rolfe's telephone, and oral evidence from former police officers, including Claudia Campagnaro and Mr Rolfe himself, of the normalisation of racism within the ASPS.

197. I reject Mr Rolfe's submission[211] that the purpose of receiving this evidence was solely to make recommendations.[212] The purpose of receiving this evidence was to investigate whether Mr Rolfe held racist attitudes towards Aboriginal people and, if he did, whether his conduct on 9 November 2019 in

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210 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1175]-[1177].

211 Transcript of Proceedings on 27 November 2024 (Mr Officer, for Mr Rolfe) at 5900.

212 I do not need to express a view about the legal premise of this argument, which was that a coroner is prohibited from receiving evidence for the sole purpose of making recommendations to prevent similar deaths in the future.

an Aboriginal community, and towards the young Aboriginal man he shot and killed, was influenced by that racism in a way that increased the likelihood of death. In investigating this potential relationship between racism and the conduct that led to Kumanjayi's death, I was investigating the potential causes of Kumanjayi's death (s 36(1)(iii)), the relevant circumstances concerning the death (s 36(1)(iii)), matters connected with public safety or the administration of justice that are relevant to the death (s 26(1)(b)) and (albeit not solely) matters relevant to the recommendations I 'must' make to prevent future deaths in similar circumstances (s 26(2)).

198. Ultimately, I have found that Mr Rolfe *was* racist, and that there is a risk that this racism affected his interactions with the community of Yuendumu on 9 November 2019, including his entry into their houses and his perception of, and possibly his response to, the young Aboriginal man he shot and killed, in a way that increased the likelihood of a fatal outcome. I am not making a finding that Mr Rolfe shot Kumanjayi because he was motivated by racism. Rather, that his racist attitudes may have influenced (consciously or unconsciously) his failure to take adequate steps to minimise the risk of a fatal interaction, and his perception of the risk posed. Although that is not a positive finding as to the "cause" of death, the existence of this risk is undoubtedly a relevant circumstance connected with the death.

199. Second, there was a modest amount of evidence regarding racism within Mr Rolfe's work environment at the ASPS. Again, the source of this evidence was, principally, Mr Rolfe's telephone download and evidence from current and former NT Police officers. Importantly, each of these officers was called to give evidence because they had other evidence to give, unrelated to racism, that was relevant to the cause and circumstances of Kumanjayi's death.

200. But the evidence they gave about racist comments at the ASPS was relevant to whether, as a matter of fact, Mr Rolfe might have expressed or held racist views. That recognises that racism is interpersonal, and the likelihood that someone will make racist comments, or hold racist views, increases in a context where racism is condoned or, at least, not actively discouraged. In turn, the evidence was relevant to the steps NT Police might take to prevent

the formation of racist views in officers like Mr Rolfe in the future (for example, by rooting out workplace cultures that are tolerant of racism).

201. Third, there was a very small amount of evidence from NT Police officers and experts regarding factors that may increase the likelihood that an officer in a station like Alice Springs might begin to make negative race-based generalisations about Aboriginal people (that is, causes of racism). This evidence also highlighted the potential links between the formation of racial biases and an officer's conduct when policing persons of a particular race, including their threat perception when using force or their perceptions of the credibility of complainants of a particular race (that is, consequences of racism). Finally, this evidence identified less overt, but still pernicious, ways in which racism might be present in, and be reinforced by, the institution of the NT Police itself (that is, institutional racism).

202. Again, this evidence was relevant to whether Mr Rolfe held racist views, why he might have held those views, what the consequence of those views might have been for his conduct on 9 November 2019, and how they might be prevented in the future.

203. Fourth, and finally, in February 2024, after objecting to the Inquest receiving much of the above evidence regarding racism for the previous two years, Mr Rolfe himself introduced evidence of the widespread use of racist language, not only in the Alice Springs Police Station but of its "normalisation" in the NT Police Force more broadly.[213] He gave evidence, and produced documents, regarding a racist award ceremony within the TRG known as the "Coon of the Year Award".[214] Neither Counsel Assisting, nor the Court, was on notice that Mr Rolfe would give that evidence at that late stage in the Inquest.

204. It is not my function to conduct an inquiry, of any breadth or intensity, into racism within the TRG or NT Police that is unconnected with Kumanjayi's death. Nevertheless, I accept that Mr Rolfe's evidence on this topic was

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213 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5136.

214 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5134.

relevant to the cause and relevant circumstances of Kumanjayi's death in some limited respects. For instance, it corroborated Claudia Campagnaro's evidence that Mr Rolfe's racism was, in part, a product of a work environment that tolerated or normalised racism. In addition, insofar as certain NT Police witnesses made statements regarding racism within the TRG that were then contradicted by documentary and photographic evidence, I have taken that contradiction into account when assessing the witness's credibility.

205. Before leaving this topic, I note that despite Mr Rolfe's vehement opposition to any examination of racism by *him*, it appeared in moments like these as though he, and some other officers, like Sgt Bauwens,[215] were inviting me to inquire broadly into the issue of racism in parts of the NT Police far removed from Alice Springs or Yuendumu in the lead up to the death of Kumanjayi on 9 November 2019. Indeed, it was submitted on behalf of Mr Rolfe that that "racism could've been explored in this inquest in a myriad of other ways"[216] and "[w]e don't shy away from the fact that racism might a relevant topic"[217], although they objected to the receipt of evidence of racism in Mr Rolfe's text exchanges. Mr Rolfe's concession that racism *was* relevant to the Inquest is hard to reconcile with the notion that the court did not have jurisdiction to examine evidence of racism by him, the man who killed Kumanjayi.

Some definitions – 'Interpersonal' and 'institutional' racism

206. It is helpful to start with some definitions. During the Inquest, evidence and submissions touched upon two closely related, but conceptually distinct, forms of racism. The first of these was 'interpersonal' racism—that is, the kind of "overt" or "everyday" racist language, behaviour or views by people or groups of people that most Australians would recognise as "ordinary"

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215 At one point, Sgt Bauwens suggested that I should seek an apparently random "sample of cell phones and records to make the evidence more representative of the NTPF" broadly, rather than just the ASPS or IRT: see *Ruling No 3*, [60], [64].

216 Closing oral submissions of Mr Officer on behalf of Mr Rolfe on 27 November 2024 at 5901.

217 Closing oral submissions of Mr Officer on behalf of Mr Rolfe on 27 November 2024 at 5901.

racism. The second was "institutional" racism—that is, the processes, systems or cultures of institutions that may systematically disadvantage people of a particular race, often through "unwitting prejudice, ignorance [or] thoughtlessness".[218]

207. As to "interpersonal" racism, in 2022 the NT Police commissioned an external review of its complaints and discipline systems which was, as noted earlier, undertaken by Commander Mark Galliott of Victoria Police. His final report is referred to as the Galliott Report.[219] It is worthwhile setting out Cmdr Galliott's observations concerning the nature of "Interpersonal Racism" and its relevance to NT Police, noting that this portion of the Galliott Report was accepted by the former Commissioner of Police, Michael Murphy as true:[220]

> "Interpersonal racism and bias
>
> The Review acknowledges other forums will conduct an in depth analysis on alleged organisational and systemic racism in the Northern Territory Police Force, however for the purpose of the Review, this observation is touched on as part of the policing culture and its linkage to police complaints.
>
> The Review heard from a broad range of varied stakeholders as part of the evaluation process. Some stakeholders provided many examples of alleged racist policing, whereas others suggested it was 'quite rare' or not evident based on their experience. It is reasonable for the latter group to reach this conclusion as such attitudes may not have been overtly raised in their presence during their career. Alternatively, and as tested by the Review during conversations with some stakeholders, their conclusion may be seemingly based on their personal definition of what may constitute racism and has therefore been overlooked in their assessment of situations and behaviours.
>
> It is therefore worthwhile, in this context, to establish a clear platform of what may constitute racism. The Review is drawn to

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218 *Inquiry Into The Matters Arising From The Death of Stephen Lawrence* (United Kingdom) Report dated 15 February 1999 [16-001] at [6.34].

219 Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at annexure BP16.

220 Inquest evidence of former Commissioner Michael Murphy on 29 May 2024 at 5790.

the Interpersonal Racism definition produced by the Australian Human Rights Commission which states:

> Interpersonal racism is racism that occurs in interactions between individuals or groups of people, often in everyday settings. Interpersonal racism can come in the form of abuse, harassment, humiliation or exclusion. It can also be expressed through off-hand jokes or comments. Sometimes referred to as 'everyday racism', interpersonal racism is considered by some to be the way in which systemic racial inequity plays out between people. Interpersonal racism does not always target a specific person and may not even be intended to cause any offence or harm. However, a lack of intent does not reduce the negative impacts of racism.

In this context and supported by independent observations from non-indigenous or culturally diverse police members speaking to the Review, it is apparent a person's skin colour can sometimes play a part in the policing response to an issue, the alleged credibility of complainants and the attitudinal behaviour of some police members. Again, this is not a blanket observation of the Northern Territory Police Force, as the Review observed excellent work in remote and other communities by police members in challenging conditions, who were culturally respectful and supportive towards every community member.

It is, however, apparent from these discussions that in some cases the veracity of a complaint or issue may be measured by who made it, rather than assessing the issue itself. It is also apparent in some cases the use of derogatory terms as part of everyday language or labelling sections of the Aboriginal policing workforce in a particular way is unprofessional, culturally detrimental, and quite simply interpersonal racism.

There is also a potential causal link between interpersonal racism and bias. Every person has a range of biases influenced by their past or present circumstances and learning and, on their own, these biases may not amount to interpersonal racism. Once more, the Australian Human Rights Commission provides useful guidance in defining this concept:

> Bias can be a favourable attitude, where we form positive impressions based on someone's skin colour, surname or ancestry. Or it can be unfavourable, with negative impressions. Bias can lead to unfair outcomes for some people, particularly when it appears in organisations like … workplaces, or within … the criminal justice system. Bias does not necessarily amount to racism. However, it can when

> coupled with the power to discriminate against or limit the rights of others.
>
> In the operational policing context, the Review heard of examples from stakeholders where police members had targeted individuals initially based on their own bias. When these unwarranted interactions occur, they tend to result in an unfavourable outcome for all involved.
>
> The impact of bias can also play a part in assessing complaints made against police. This bias during the assessment and investigation phase can be equally applied by complaint assessors or investigators in favour of the complainant or police. It is therefore imperative that systems are in place to independently assess matters based solely on the facts and evidence before an assessment or determination is made. The Review notes previous online training for unconscious bias has been conducted within the Northern Territory Police Force and further considers this a vital component for ongoing and regular education (including interpersonal and anti-racism topics) for every level of the workforce."

208. As to "institutional" and "structural" racism, the Inquest received a joint expert report authored by Professor Chelsea Watego, Dr David Singh, Dr Elizabeth Strakosch and Anna Cerrto – of the Institute for Collaborative Race Research – and Dr Amanda Porter, commissioned by NAAJA and titled "Expert report for the coronial inquest of Kumanjayi Walker: 'in normal circumstances' understanding the structural nature of racial violence in the Northern Territory" (**the ICRR Porter Report**),[221] Pt III of which was admitted into evidence.

209. The ICRR Porter Report helpfully sets out and explains "institutional racism" by reference to the definition of Sir William McPherson in the UK's *Stephen Lawrence Inquiry* (1999) as follows:[222]

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221 Professor Chelsea Watego, Dr Amanda Porter, Dr David Singh, Dr Elizabeth Strakosh and Anna Cerreto, "Expert report for the coronial inquest of Kumanjayi Walker: 'in normal circumstances' understanding the structural nature of racial violence in the Northern Territory" dated 16 September 2022 [10-22B] Part III.

222 *Inquiry Into The Matters Arising From The Death of Stephen Lawrence* (United Kingdom) Report dated 15 February 1999 [16-001] at [6.34].

> "The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people."

210. The ICCR Porter Expert Report explains that "structural racism" seeks to capture a "deeper political structure underpinning or generating social relations, institutions and ideas" and that it identifies that "peoples' lives and health may be profoundly structured through and around race even when overt expressions of racism are discouraged by law or policy". The expert authors report that structural racism produces racist practices at all levels including at the interpersonal and institutional level.[223]

Mr Rolfe was racist and his racist views increased the likelihood of a fatal confrontation with Kumanjayi

211. In later chapters, I set out my reasons for finding that Mr Rolfe held and expressed racist views about Aboriginal people and that his use of force history, and telephone messages, demonstrated that he had dehumanised the Aboriginal population he was policing. I find that he engaged in "everyday" or "interpersonal" racism and that he worked in, and was the beneficiary of, an organisation with significant hallmarks of institutional racism.

212. In Chapters 3, 4 and 8, I set out my reasons for finding that there is a significant risk that, on 9 November 2019, those racist views affected his interactions with the remote Aboriginal community of Yuendumu, his entry into their houses and his perception of, and response to, the young Aboriginal man he shot and killed, in ways that increased the likelihood of a fatal outcome. That is, at least, a relevant circumstance connected with

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223 Professor Chelsea Watego, Dr Amanda Porter, Dr David Singh, Dr Elizabeth Strakosh and Anna Cerreto, "Expert report for the coronial inquest of Kumanjayi Walker: 'in normal circumstances' understanding the structural nature of racial violence in the Northern Territory" dated 16 September 2022 [10-22B] Part III at [3.1.1].

Kumanjayi's death. As I stated above I am not making a finding that Mr Rolfe shot Kumanjayi because he was motivated by racism. Rather, that his racist attitudes may have influenced (consciously or unconsciously) his failure to take adequate steps to minimise the risk of a fatal interaction, and his perception of the risk posed.

213. This evidence, and those findings, represent my central findings regarding racism and its connection to Kumanjayi's death. I do not propose to repeat them here.

214. Instead, I will say something briefly about some of the other evidence the Inquest received about racism, including evidence that may explain why Mr Rolfe's racism might have developed, its likely consequences, and how it might be prevented.

A work environment that tolerated, or normalised, racism

215. Many of the police officers who gave evidence to the Inquest, and especially those working in remote areas of the Northern Territory, impressed me as curious and culturally sensitive officers who had dedicated their working lives to serving the largely Aboriginal communities they were tasked to police. Even so, as NAAJA submitted, racist language and actions were not confined to Mr Rolfe, and this was not a case of one "bad apple". Instead, the evidence at Inquest suggested that racist behaviour or language, although not uniform, was normalised within the ASPS during Mr Rolfe's time there as a junior police officer.

216. One source of evidence of this normalisation was the overtly racist messages Mr Rolfe sent to, or received from, other officers in the ASPS. When Mr Rolfe and other junior officers enquired about recent shifts, or their work in remote communities, they spoke about the "grubby fucks" and "coons" they were policing;[224] they denigrated local police for having "fucked this town" by

[224] MFI MMM messages 209, 210.

"letting the niggas drink wherever they want";[225] Aboriginality was equated with alcoholism or other anti-social behaviour and when non-indigenous people exhibited those behaviours they were described as a "white bitch who thinks she aboriginal" or as doing "a fucking good impression" of an Aboriginal person.[226] These messages were not just between junior officers but included at least one sergeant whose responsibility it was to act as Mr Rolfe's direct supervisor in the field and when reviewing his use of force incidents.

217. Another source of evidence of this normalisation was the direct evidence of Claudia Campagnaro. Ms Campagnaro joined NT Police in 2017 and after training she was posted to general duties at Alice Springs Police Station in December 2017 as a probationary constable. She met Mr Rolfe when she arrived at the station and was in a romantic relationship with him from about January 2018 until about the end of 2018. Not long after the relationship ended she also resigned from the police and left the NT. She explained that the job was not for her and her goal was to become a nurse, which she went on to achieve.

218. While working at the Alice Springs Police Station, Ms Campagnaro said she heard derogatory terms about Aboriginal people including, "coons, kunga, nigger, just terms like that". Initially she was shocked but when "everyone around you was using the terms", and though it was "incredibly dehumanising", she became desensitised to that language. Her evidence was that "everyone" including Mr Rolfe, Cst Kirstenfeldt, Cst Hansen and Sergeants Kirkby and Bauwens used racist language and she did not raise it as a problem with her "seniors" because "when the seniors are doing it, you have no one to turn to".[227] Ms Campagnaro explained that when "superiors are using those words" it became normalised and it "had an impact on the whole culture of the workplace".[228] It was evident that the "superiors" she was

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225 MFI MMM message 356.

226 MFI MMM messages 296, 297.

227 Inquest evidence of Claudia Campagnaro on 28 October 2022 at 2758-2759.

228 Inquest evidence of Claudia Campagnaro on 28 October 2022 at 2758-2759, 2791.

referring to were sergeants, and perhaps some senior sergeants whose offices were located near the muster room and would have heard the language from time to time.[229] She said that the language was not used when superintendents (whose offices were upstairs) were on the floor of the station.[230]

219. Although Mr Rolfe challenged Ms Campagnaro's credibility in cross-examination,[231] when he gave evidence two years later his own evidence was consistent with her evidence that racist language *was* normalised within his workplace. In February 2024, he gave evidence that, in fact, he had been exposed to the widespread use of racist language when he was a police officer for three years in Central Australia[232] and, further, that racism exhibited by members of the TRG at their Christmas function each year was effectively sanctioned in the NT Police.[233] He said words like "coon" and "nigger" or "sand nigger" were used by the TRG, and officers in the ASPS muster room, alike.[234]

220. In the face of the documentary evidence, Ms Campagnaro's evidence and Mr Rolfe's evidence, I am comfortably satisfied that racist language was normalised within the ASPS during Mr Rolfe's time as a police officer. That this was the context in which he was working demonstrates that his racist messages were not aberrations, but were reflective of a work culture that tolerated, and, indeed, tacitly endorsed, racism. That context supports the inference (if support were necessary), that Mr Rolfe himself held and expressed racist attitudes towards Aboriginal people.

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229 Inquest evidence of Claudia Campagnaro on 28 October 2022 at 2788.

230 Inquest evidence of Claudia Campagnaro on 28 October 2022 at 2789.

231 Although the cross-examination of Ms Campagnaro began appeared to involve a challenge to a credibility of her account regarding racism within the ASPS, I accept that Mr Edwardson KC did not put to her in terms that this account was false. The majority of the credibility attack was focussed on her account of Mr Rolfe's attitudes to the use of force.

232 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5133-5136.

233 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5134.

234 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5137.

The TRG Awards Ceremonies

221. As I have noted, it was Mr Rolfe who introduced, and pressed for the receipt of, evidence regarding racism within the TRG. In February 2024, he gave evidence that when he joined the IRT he started having interactions with the TRG and in that context heard racist language. He gave evidence that he learned of an annual awards ceremony where, he claimed, the TRG presented the "Coon of the Year Award": [235]

> "Up until recently, the Territory Response Group had an annual party, where they would issue awards to some of the members. Generally, they have about 35 members and they have an annual party, maybe other police go and they - amongst the police force, we had heard of this award and we knew it to be called the "Coon of the year award". But the actual award, as I'm made aware, is called the Goonarda award for the - for exhibiting the most coon-like behaviour of the year, and the staff would make the recipient dress up in a toga, and they would give him a wooden club with some nails in the end of end, which would often live above the TRG cave door. And this is accepted and this is known about by multiple people who have given evidence here, and multiple people have lied about it. And the people who have taken part of it have their way up into the executive. And as you said, culture starts at the head. And then a small place like the NT Police, we're going to hear about this kind of stuff, and this does become normalised."

222. As NAAJA submitted, although the existence of the awards and their racist origins were initially denied by senior NT Police members,[236] subsequent evidence from Mr Rolfe and others (including the production of copies of the awards) confirmed their racist origin and meaning.[237] Although I do not wish to reproduce the awards here, in my view they were among the most grotesque examples of racism uncovered during the Inquest.

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235 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5134.

236 Statutory declaration of Senior Sergeant Mark Clemmens dated 29 February 2024 [7-21A] at [21]; Statutory declaration of Senior Sergeant Meacham King dated 29 February 2024 [7-77D] at [8].

237 2007 TRS Sooty awards [18-35]; 2015 SECTION AWARDS [18-36]; SECTION AWARDS 2019 [18-38]; Photos of Nooguda award [18-45]; Email from Neil Mellon [18-49].

The Commissioner of Police accepted there was racism in the NT Police

223. The former Commissioner of Police, Michael Murphy, gave evidence that he became aware of the "disgraceful racism" exhibited in the TRG so-called "Coon of the Year" awards in August 2023. He accepted that all members of the TRG who were present over the years when they were given out would have been aware of the awards, so they were not a secret, and a significant number of the TRG had moved "on and up" over the years within the police ranks.[238] Mr Murphy conceded that having heard about those blatantly racist awards, he had taken no steps to investigate the matter. Although he was busy at the time with other pressing issues he agreed that he "should have actioned it. And I should have reported it to the Professional Standards Command. And regrettably I did not".[239]

224. Mr Murphy agreed that the Police Code of Conduct, which was in force throughout the period the racist TRG "awards" were given, prohibited discrimination, harassment and specifically the displaying of racist or derogatory material such as posters or cartoons. He acknowledged that the TRG awards, in existence for over a decade, were a serious breach of the Code of Conduct and yet no complaint had ever been made about them until they came to light as part of these Inquest proceedings. He agreed that was a catastrophic failure of the Code of Conduct.[240] That no police member, including no senior police, who knew of these awards reported them is clear evidence of entrenched systemic and structural racism within NT Police.

225. Mr Murphy was also asked about an incident from March 2022 in which an Alice Springs based acting senior sergeant circulated on a police chat group a photo of a half-naked vulnerable Aboriginal woman for derision and amusement. The image was commented on or liked by some other members of that group. Mr Murphy acknowledged the recency of that racist exchange between members. The matter was investigated by the Professional Standards

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238 Inquest evidence of fmr Commissioner Michael Murphy on 29 May 2024 at 5764, 5776.

239 Inquest evidence of fmr Commissioner Michael Murphy on 29 May 2024 at 5768.

240 Inquest evidence of fmr Commissioner Michael Murphy on 29 May 2024 at 5794-5796.

Command (**PSC**) and Assistant Commissioner Bruce Porter APM imposed a demotion and transfer on the responsible officer. The NTPA applied for the penalty imposed to be reviewed and then Commissioner Michael Murphy rescinded the original determination and imposed the lesser penalty of a good behaviour bond. Having reflected on the matter further, Mr Murphy agreed that in reducing the penalty he did not give sufficient weight to the circumstances of the victim and said "I can't allow a level of acceptance that I tolerate any type of racist behaviour, even in this one in isolation, as an organisation we need to take a firm stance on racism". He admitted that there was a "body of work ahead of us to reform some of our culture within the police force and suppress and eliminate this type of conduct or texting or racist behaviours".[241]

226. Mr Murphy was asked about another incident in 2018 where there was a text exchange among members and demeaning comments were made about an Indigenous female police officer. He recalled the incident but not the details.[242]

227. Mr Murphy was asked about a press conference that he gave in February 2024. In that press conference, despite his knowledge of the matters considered above, Mr Rolfe's text messages and Mr Rolfe's evidence that he heard racist language daily in the Alice Springs Police Station, Mr Murphy said "I do not see those behaviours, I do not hear those comments". He later agreed that his comment effectively denied racism in the NT Police and gaslit members of the Aboriginal community who had experienced and complained of racism. He ultimately conceded on the record that racism in the NT Police was not merely historic, "It's recent your Honour".[243]

228. Mr Murphy gave this evidence which accords with other evidence I received and also commonsense:[244]

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241 Inquest evidence of fmr Commissioner Michael Murphy on 29 May 2024 at 5773-5774.
242 Inquest evidence of fmr Commissioner Michael Murphy on 29 May 2024 at 5778.
243 Inquest evidence of fmr Commissioner Michael Murphy on 29 May 2024 at 5779, 5781.
244 Inquest evidence of fmr Commissioner Michael Murphy on 29 May 2024 at 5781-5782.

DR DWYER SC: Do you accept that racist words amount to racism even if expressed in private?

CMR MURPHY: Yes I do.

DR DWYER SC: And you accept that a willingness to use racist terminology about a community can affect attitudes toward that community?

CMR MURPHY: Absolutely

DR DWYER SC: And attitudes do affect behaviours?

CMR MURPHY: Yes. I've got a saying about that very issue that I broadcast to the work force, your Honour. It's about your thoughts become your words, and your words become your actions, and your actions become your character, and your character becomes your destiny…

The influence of "institutional" or "structural" racism

229. As to the relevance of concepts of systemic and structural racism to this Inquest, NAAJA submits that structural racism resulted in "state agents over-attributing risk and threat to Aboriginal people and communities, justifying excessive use of force, and withholding support in ways which directly contributed to Kumanjayi's death".[245] The WLR families submit that "while many police have shown they have no racist intent, this should not be accepted as evidence that there is no systemic racism or cultural bias in the NTPF".[246] The Brown family pointed to the "unravelling nature of the concessions about racism in the NTPF" and submit "that it is likely that racism is more prevalent than police witnesses accepted".[247] In light of evidence of broader racism

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245 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [200].

246 Closing written submissions of the Walker, Lane, Robertson Families dated 29 October 2024 at [212].

247 Closing written submissions in reply of the Brown family dated 25 November 2024 at [33].

within NT Police exposed by this Inquest, NAAJA urges me to "craft recommendations to address it"[248] and in addition to recommendations, the WLR and Brown families call for a Commission of Inquiry to fully investigate racism with the NT Police Force.[249]

230. I note that the Galliott Report made two recommendations related to racism and, in an affidavit of then Assistant Commissioner Bruce Porter APM, I was informed that the then Commissioner of Police Michael Murphy "agreed in principle to all 83 recommendations [of that report] and is committed to their implementation as a matter of priority".[250] It was recognised, though, that it would take "significant time to consider, review and implement each recommendation in a structured and orderly fashion".[251]

231. For my part, I find that structural and institutional racism permitted a work environment to exist which not only tolerated Mr Rolfe's racism but allowed it to go unchecked and permitted others to actively engage in it with him. To be clear:

(a) Mr Rolfe's use of racist language and therefore his racist attitudes were shared with some colleagues, including supervisors, and instead of being challenged or corrected they were tacitly or overtly endorsed;

(b) when Mr Rolfe openly shared his BWV of forceful interactions with Aboriginal persons as a source of amusement, this conduct was tacitly or overtly endorsed by some of his colleagues who found the content amusing and never challenged or corrected it;

(c) in the Alice Springs Police Station racist language was freely used, was tolerated and went unchecked. The participation of "superiors" not only

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248 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [60].

249 Closing written submissions of Walker, Lane, Robertson Families dated 29 October 2024 at [219]; closing written submissions of the Brown family dated 29 October 2024 at [365].

250 Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at [107].

251 Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at [108].

represented a failure of the institution to intervene, but created a culture that discouraged intervention, because more junior officers who might have been troubled by overtly racist language (like Ms Campagnaro) felt like they had no one to turn to;

(d) although Mr Rolfe was not in the TRG, it is clear that he, and other like-minded officers, lionised the NT Police's elite tactical unit. The example the TRG set would, I find, have been influential to the culture of the NT Police more broadly. The fact that its members were so senior, and participated in this racism unchecked, would have conveyed to more junior officers elsewhere that NT Police tolerated that conduct (which they did); and

(e) when complaints were made about his use of force against Aboriginal persons Mr Rolfe's account was preferred and the accounts of Aboriginal persons were rejected without proper interrogation (see below in Chapter Four). This would have created in Mr Rolfe a sense of impunity in the context of complaints regarding his use of force. It gives rise to a justifiable concern that these accounts or complaints were dismissed, because generalisations based on race were being made about the credibility of the Aboriginal complainants, as previously identified in the Galliott Report.

Why might racist attitudes develop in an officer like Mr Rolfe?

232. A single coroner, in a single inquest, is not well equipped to definitively explain why racism might develop in a young police officer like Mr Rolfe, or in a complex work environment like the ASPS. Nevertheless, the evidence I have heard allows me to offer five plausible explanations as to why Mr Rolfe might have developed those attitudes, and how they might be prevented.

233. First, some individual officers may come to the NT Police with pre-existing racist attitudes, or develop those attitudes independently of their work as a police officer. As Supt Nobbs pointed out, in what I consider to have been

some of the most thoughtful evidence in the Inquest, the police are "a microcosm of society" and it would be "naïve to say that there's not some people that hold inappropriate and racist views", or who don't come to NT Police holding those views.[252]

234. As a theory of why racism might develop in a station like the ASPS, the so called "bad apples" theory is clearly incomplete.[253] Nevertheless, preventing racism requires a police force to reckon with the fact that, from time to time, it may recruit or retain officers who are racist (the bad apples). In those circumstances, I accept NAAJA's submission that there is a need to "build anti-racism considerations into [NT Police's] recruitment processes, with a view to identifying and screening out applicants…who pose an inappropriate risk of holding racist attitudes".[254]

235. Second, the evidence received by the Inquest confirms that the open use of racist or dehumanising language by groups of police officers, without disciplinary or other consequence, normalised racist attitudes. As one officer noted, hearing, participating in, and being on the receiving end of racist remarks so frequently meant that he no longer had an emotional response to it, and "allowed myself to use that kind of language without holding myself accountable".[255] In addition, and although I do not accept that there is such a thing as an "innocuous" or "harmless" racist remark, Ms Campagnaro's evidence demonstrates that even casual participation in these exchange by more senior officers created an environment in which more junior officers felt unable to report racist behaviour. And, as former Commissioner Murphy conceded, leniency in the face of racist messages between police officers was likely to communicate to police officers a tolerance for racism. Hence, whether "sincere" or an attempt at "black humour", and whether in "public"

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252 Inquest evidence of Superintendent Jody Nobbs on 31 October 2022 at 2863.

253 See, for example, the reference to that terminology by Mr Boulten SC, on behalf of NAAJA, Inquest transcript on 15 September 2022 at 480, and in his examination of Commissioner Michael Murphy on 29 May 2024 at 5785; also by Superintendent Jody Nobbs on 27 September at 1136.

254 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [214].

255 Inquest evidence of Constable Mitchell Hansen on 27 October 2022 at 2723.

or in "private", a zero-tolerance policy is necessary in the case of racist language and behaviour.

236. Third, institutional racism is likely to foster, or compound, more overt forms of interpersonal racism. To take just one example, in Chapter Four I found, following a review of Mr Rolfe's prior use of force matters, that NT Police had consistently failed to adequately investigate complaints alleging inappropriate or excessive use of force by Aboriginal complainants. A feature of these inadequate investigations included a consistent, and uncritical, preference for the versions of NT Police officers over Aboriginal complainants. As I found in Chapter Four, whether or not that preference was the result of a conscious or unconscious racial bias, its product was very likely to have been to create in an officer like Mr Rolfe a sense of impunity when using force against Aboriginal men (the very men about whom I have found Mr Rolfe to hold racist views).

237. Fourth, a theme that emerged from the evidence of Mr Rolfe, and other officers from the ASPS, was of an "us and them" mentality to policing, that emphasised hostility to, and conflict with, the population they were policing. Although not part of official NT Police policy, this mentality appears to have been fostered by the institution itself. As Mr Rolfe explained:[256]

> "…the normalisation of language against offenders would start in police school. For example, the first time I heard the word, "scrote" was a word described by recruit trainers in police school to describe an offender or a particularly dirty offender, scrote, i.e. scrotum. So I guess it starts there, and why that we start kind of separating offenders from everyone else.
>
> …
>
> But I'm talking about how, like…you take this one [step] down the path to normalisation. So I guess it would start with that, like you utilise words to describe an offender. For example,…if nine out of ten jobs we went to were plumbers, we would probably start talking a lot of shit about plumbers; just 'cause it's natural.

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[256] Inquest evidence of Zachary Rolfe on 26 February 2024 at 5136.

> But this is steps. Like, it would start there. It wasn't until we'd moved down to - or when I moved down to the station where, I guess, racist language would become more and more normalised."

238. As Mr Rolfe's evidence makes clear, that "us and them" mentality was clearly not limited to persons of a particular race. But in a policing context where over 90% of a police officer's interactions were with Aboriginal people, the reality is that this "us and them" approach to policing *was* overwhelmingly directed towards Aboriginal people and often expressed in overtly racial terms. I received evidence of officers expressed their frustration, or irritation, with "aboriginals" who were "losers".[257] Entire communities of Aboriginal people were identified as drunken "niggas",[258] or "bush coons",[259] to be "smashed" into compliance.[260] The term "Aboriginal" was used to describe non-Aboriginal people who demonstrated negative traits, often of drunkenness or lack of hygiene.[261] In other words, when these NT Police officers spoke in a way that "othered" the population they were policing, the point of difference they emphasised was not criminality, or lack of hygiene or drunkenness – it was Aboriginality itself.

239. This evidence, and the wealth of evidence I heard from urban and remote officers, persuades me that policing cultures that emphasise conflict with, or opposition to, a community that is being policed are likely to foster racism. Although it will not solve the problem, overtly racist attitudes are less likely to develop where the dominant policing philosophy is a community-based policing model that emphasises positive and co-operative relationships with the community that is being policed. Experienced officers gave evidence of the shift in perspective that moving from the urban to the remote environment brought.[262]

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257 MFI MMM messages 172-274.

258 MFI MMM message 356.

259 MFI MMM message 337.

260 MFI MMM messages 93, 94 and 95.

261 MFI MMM messages 293-297.

262 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 540-545.

240. In part, this shift in perspective was the result of a need to develop new skills that leveraged local knowledge and relationships.[263] But in equal part, the shift in perspective appears to have resulted from the exposure of the officer to life in Aboriginal communities that had nothing to do with policing or offending. These positive interactions with Aboriginal people, whether as a part of, or outside, their official duties as a police officer, appear to have challenged generalisations that had been permitted to form in the urban context, where an officer might have had no interactions with Aboriginal people beyond their official duties (where interactions were overwhelmingly negative).[264] The language used by officers who had served for significant periods in remote contexts was telling: whether victims or offenders or arrest targets, the people these officers were policing were their "clients".[265]

241. Fifth, and finally, an account of racism within a station like the ASPS must also reckon with vicarious trauma. As I have already noted, in a station like the ASPS a very junior frontline police force was overwhelmingly interacting with Aboriginal people and the overwhelming majority of these policing interactions were "negative" (arrests, investigations, processing people into custody, responses to reports of domestic violence, and so on). Lay and expert evidence at the Inquest emphasised that these interactions were not just "negative", but likely to be highly traumatising.

242. Mr Bruce Van Haeften, a psychologist who had worked within the NT Police, Fire and Emergency Services (**NTPFES**), other State and Commonwealth departments and Charles Darwin University as a clinician, and manager, of wellness and support services for over 20 years, identified as particularly problematic for front-line police officers in a context like the ASPS "high frequency of exposure, not necessarily to trauma but to stressful and other distressing events with reduced timeframes between those events for recovery". This high frequency exposure was likely to give rise to a number

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263 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 540-545.

264 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 538-539.

265 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 538.

of "maladaptive responses to the ongoing trauma exposure", including sensitisation and desensitisation.[266]

243. In the case of sensitisation, a potential consequence was that a police officer who was exposed to traumatising behaviours by a person who was a member of a particular cohort (whether defined by race or otherwise) might develop a psychological bias that causes the officer to perceive situations involving members of that cohort "as more stressful or distressing or more threatening".[267] Accordingly, consistent, negative, interactions between law enforcement officers and a "particular cultural or racial group" were liable to increase the likelihood that officers will "anticipate a negative interaction" when dealing with that group.[268]

244. In the case of desensitisation, Mr Van Haeften noted that repeat exposure to trauma—for instance, the aftermath of domestic violence—combined with a sense of helplessness experienced by an officer who was powerless to address the underlying causes of that violence, was likely to create a tension between "how [the officer] think[s] they can uphold their own values with the tasks or the situations that have been placed in".[269]

245. This expert evidence may help to explain text messages in which officers expressed frustration, in racist terms, with Aboriginal complainants who chose not to give statements against violent partners, or who chose not to leave them. It also appeared to be consistent with lay evidence received from officers themselves. For instance, one officer, without excusing his behaviour, drew a connection between his repeat exposure to domestic violence and his own racist behaviour. He said that "desensitivity is a very real thing" and "had a part to play in" diminishing his "moral code".[270]

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266 Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3132-3133.
267 Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3133.
268 Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3136-3137.
269 Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3135.
270 Inquest evidence of Constable Mitchell Hansen on 27 October 2022 at 2724.

246. Ultimately, when asked how an institution like NT Police might address these issues, Mr Van Haeften stated:[271]

> "I think some pragmatic strategies might be about helping personnel to be aware of the potential for those sorts of biases to be developed over time through exposure and repeat behaviour. I think another component of it if it was in relation to working with a particular cohort of people would be some level of training in relation to that social cohort or cultural cohort which might be around an improved positive perspective, so around cultural (inaudible) training might be appropriate, incorporating as well what might be some elements of information and experience of why that particular cohort becomes overrepresented in a law enforcement context."

[271] Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3137.

CHAPTER TWO KUMANJAYI'S STORY: UNDERSTANDING HIS RESPONSE ON 9 NOVEMBER 2019

Introduction

247. Kumanjayi Walker was a Warlpiri/Luritja man. His paternal side (Walker) is Warlpiri and includes the communities of Yuendumu, Lajamanu, Willowra and Nyirripi. His maternal side (Lane) is Luritja and comes from the communities of Papunya, Haasts Bluff, Mt Liebig and Kintore.[272] As an infant, he was customarily adopted by Leanne Nakamarra Oldfield Brown. The male Elders of the Brown family took him through ceremony near Yuendumu, and he was given Warlpiri skin names of Japanangka and Jungarrayi.[273]

248. Although much time during the Inquest was devoted to reviewing the actions of others, and to formal documents and policies, I never lost sight of the fact that I was inquiring into the death of a person who lived, was loved and is missed. While Kumanjayi's family members accept his "frailties and vulnerabilities", they urge me to remember him for his humanity and to acknowledge the whole person they have lost.[274]

249. Reflecting on her loss, Kumanjayi's kinship mother, Leanne Oldfield, said:[275]

> "I go to Yuendumu just to visit and clean the grave, put new flowers in. I buy stuff here in Alice Springs. I take it to graveyard. Sometimes when I go for one night, I sleep at memory house. Then in the morning I go visit to graveyard, clean all the grasses, clean the yard. I take Kumanjayi's dog, Red, with me when I go. Having Red, gives me a little bit of happy. But sometimes, I get lonely. Kumanjayi was my only son.

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272 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at fn35. There are helpful family trees in the brief relating each branch of Kumanjayi's family: paternal (Walker) at [2-4A]; maternal (Lane) at [2-1] at 5 and his adopting family (Brown) at [2-1] at 6.

273 Closing written submissions of the Brown Family dated 29 October 2024 at [3]-[4].

274 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [12].

275 Statement of Leanne Nakamarra Oldfield dated 18 July 2022 [8-48B] at [33]-[35].

> It hasn't gotten any easier. It's still just as bad as the day it happened. I'm still hurt inside. I can't stop thinking about him. I picture him, think about him, all the time."

250. The events of Kumanjayi's childhood and his teenage years,[276] including his interactions with strangers and with police, help us to understand why he reacted the way he did on 6 November 2019 during the attempted arrest by Officers Hand and Smith, and on 9 November 2019, when confronted by Mr Rolfe.

251. I was particularly assisted by the evidence of Kerri-Anne Chilvers, a Counsellor, psychologist and former youth worker, who met Kumanjayi when he was around twelve years old and continued to have a professional relationship with him, last seeing him eight days before his death. Ms Chilvers reflected that:[277]

> "It is important for me to say here that [Kumanjayi's] life and death has impacted my own life and career in significant ways. It was because of [Kumanjayi] that I began studying trauma and the effects of trauma on the brain and behaviour…He taught me firsthand what trauma does to the brain and how this is expressed behaviourally and emotionally. I will be forever indebted to him for allowing me into his life and for being my greatest teacher on the subject of trauma."

252. This chapter outlines:

(a) Kumanjayi's early years;

(b) Exposure to domestic and family violence;

(c) Early adolescence;

(d) Late adolescence;

(e) Kumanjayi's life in the years leading up to the incident;

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276 In understanding the events of Kumanjayi's childhood and his teenage years, I have been greatly assisted by the closing submissions of the Brown Family, and of the Walker Lane and Robertson Families.

277 Statement of Kerri-Anne Chilvers dated 17 June 2020 [8-10] at [1.5].

(f) The impact of early trauma;

(g) A deeper understanding of how trauma impacted on Kumanjayi and led to his impulsive behaviour;

(h) Posthumous Neuropsychological assessment of Dr Laura Scott;

(i) The failure of schooling in Yuendumu;

(j) Time in youth detention;

(k) Efforts of community police to help Kumanjayi;

(l) Service providers who assisted (and attempted to assist) Kumanjayi;

(m) Minimising the damage caused by alcohol and solvent use, and early testing for FASD; and

(n) Overcrowded and unsuitable housing.

Kumanjayi's early years

253. Kumanjayi was born on 13 October 2000 in Alice Springs Hospital; the child of Selena Nambajimba Lee Lane (born 13 February 1982), and Frank Walker (born 1 October 1970).

254. There is some evidence that Kumanjayi was exposed to alcohol and volatile substances whilst in utero,[278] and that he was born prematurely.[279]

255. Kumanjayi initially lived with his parents and his maternal grandparents, Ann and Joseph Lane, in Haasts Bluff.[280] As a baby, he struggled with health issues and was repeatedly admitted to Alice Springs Hospital. He suffered recurrent pneumonia and gastroenteritis, and, at the age of eight months, was admitted

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278 For example, the statutory declaration of Kerri-Anne Chilvers dated 30 June 2020 [8-11] at [8.4] and All CP documents [2-84B] case note dated 8 July 2014 at 437.

279 NT Health Inpatient admission record dated 13 October 2000 [2-5].

280 Closing written submissions of the Brown Family dated 29 October 2024 at [33].

to hospital and diagnosed with "Failure to Thrive". His first year was spent moving between various family members living in Haasts Bluff, Papunya, Yuendumu and Warlpiri Camp in Alice Springs.[281]

256. Both of Kumanjayi's parents had problems with substance abuse and their relationship broke down after his birth. Given those issues, negotiations between the Walker and Lane families soon commenced to nominate a suitable carer for him.

257. At a meeting at Alice Springs Hospital in June 2001, it was decided by family that Leanne Nakamarra Oldfield Brown, who was then in a relationship with Kumanjayi's father, would be his primary carer. The couple initially took Kumanjayi with them to live in Warlpiri camp in Alice Springs, and Ms Oldfield continued to care for Kumanjayi after the couple broke up. Kumanjayi had very limited contact with his biological parents. He was only five years old when his father passed away and twelve years of age when his mother passed.

258. Kumanjayi called Leanne Oldfield "mum" and she cared for him with the assistance of her mother, Margaret Brown, and the wider Brown family. Ms Oldfield assumed care for Kumanjayi without any formal carer payments. She clearly loved him very much and she did her very best to look after him in the challenging circumstances they found themselves in.

259. Despite Ms Oldfield's best efforts, during his early childhood Kumanjayi suffered ongoing ear infections, chest infections and other conditions,[282] including meningitis.[283]

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281 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [59]; closing oral submissions of the former Department of Territory Families, Housing and Communities (TFHC) on 28 November 2024 at 5918, which clarify that Kumanjayi never came into the care of TFHC.

282 Closing written submissions of the Brown Family dated 29 October 2024 at [43].

283 Timeline of the life of Kumanjayi Walker [2-2] at 6.

Exposure to domestic and family violence

260. Between the ages of four and eleven years, Kumanjayi spent most of his time living in Katherine, with periods in Alice Springs, Ti Tree, Yuendumu and Adelaide.[284]

261. After Kumanjayi's father passed away, Ms Oldfield formed a relationship with a new partner who was addicted to alcohol and was abusive. Their home in Katherine was marred by domestic and family violence that would have had an injurious effect on Kumanjayi and compromised Ms Oldfield's ability to care for him.

262. Kumanjayi continued to experience ear and hearing problems as he grew and in May 2008 Ms Oldfield took him to Katherine's Wurli Wulinjang Health Service, due to concerns that he might be deaf. He was found to have a perforated left ear and a foreign body in his right ear.[285] It does not seem that he received any treatment for his subsequent hearing problems.[286]

263. Kumanjayi was enrolled at McFarlane Primary School in Katherine. Initially he enjoyed school and had a good attendance record but as he got older and the curriculum became more demanding, he struggled to keep up and was identified as having "special needs". It is hardly surprising that he struggled at school, given his likely exposure to alcohol in utero, his ongoing hearing problems and the environment of instability and violence at home.

Early adolescence

264. After his early years in Katherine, Ms Oldfield moved with Kumanjayi back to Central Australia. They stayed with family and travelled frequently.

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284 Statement of Leanne Nakamarra Oldfield dated 18 July 2022 [8-48B] at [10].

285 Patient Summary Wurli Wurlinjang Health Service [2-21].

286 Expert report of Dr Laura Scott dated 27 November 2022 [10-13B] at 3.

265. When he was aged around eleven years, Kumanjayi was living in Yuendumu when the town experienced significant upheaval caused by riots affecting its south and west camps. Ms Oldfield and Kumanjayi were among residents who fled the violence, moving to South Australia for a period. Kumanjayi was cared for there by members of the Brown, Lane and Walker families.

266. Kumanjayi returned to Yuendumu with Ms Oldfield and throughout his teenage years he spent time in different communities with his large family. He was still cared for primarily by Ms Oldfield and her family (the Brown family) but when he was in Papunya he spent time with the Lane family, from his mother's side. In Yuendumu he was also embraced by the Robertson family, particularly Lottie and Eddie, who were the grandparents of Rickisha Robertson (his girlfriend from the time he was 15 years old).

267. From the age of 13 years, he was enrolled in the Yuendumu School, but his attendance was irregular and traumatic. He was reportedly teased by other children and called "crazy", and he struggled with the work. There were occasions when he acted aggressively towards other students, prompting teachers to ask him to leave the school grounds.

268. Kumanjayi was first charged with criminal offending in 2013, within a few months of him returning to Yuendumu. From then on, his offending was constant and only stopped while he was in custody or in a residential program offering a structured and supported environment. According to Police, there was no specific event identified as being the trigger for Kumanjayi's sudden recidivist offending at 13 years of age.[287]

269. The majority of Kumanjayi's juvenile offending was for property crime rather than violence, but I do not dismiss the gravamen of the impact of that crime on the community. His offending usually targeted services or businesses in Yuendumu, including the School, Health Clinic, Child Care facility, Sports and Recreation Centre and Mining facility, and often involved malicious damage that would cause the shutdown of that facility. Some of his childhood

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[287] NT Police Coronial file – History of [Kumanjayi] Walker [2-1] at [19].

offences were in the form of breaches of bail or court orders, or absconding from youth detention or a residential rehabilitation program. Efforts made by the Court to keep him away from Yuendumu were not successful and he regularly returned to Yuendumu.

270. In 2013 Kerri-Anne Chilvers met Kumanjayi through her role as a social worker and she continued to work with him until his death.

271. Evidence suggests that from the age of around 13 years, Kumanjayi began to engage in substance abuse, including with alcohol, petrol and solvent sniffing and cannabis.

272. In early 2014, Kumanjayi was identified as a "High Risk Youth" by youth workers from the Warlpiri Youth Development Aboriginal Corporation (**WYDAC**). Alongside families caring for Kumanjayi, WYDAC developed an early diversionary plan which included participation in the Mount Theo Diversion program for around four weeks. The program involved taking children and young people out on country at the outstation of Mount Theo, where they were looked after, and guided, by Elders and a youth worker or counsellor. He did well there.

273. When Kumanjayi participated in the Mount Theo Program in March 2014, the program manager was Kerri-Anne Chilvers. She spent significant periods with him and saw that he actively engaged in all one-to-one program activities, the culturally based activities, educational sessions and most group activities. When describing Kumanjayi's overall behaviour during the program, Ms Chilvers said:

> "…he functioned well and I would [attribute] this to the relatively safe, supportive, structured environment that was provided for him at Mt Theo Outstation."[288]

> "[Kumanjayi] responded well to a structured environment and clear boundaries whilst at Mt Theo. Whilst difficult to engage, there were definitely signs of improvement during the four weeks. Unfortunately, four weeks really wasn't enough time for

[288] Statutory declaration of Kerri-Anne Chilvers dated 30 June 2020 [8-11] at [4.4].

> significant changes to be made or for any changes made to be sustained."[289]

274. This last remark was insightful. A Child Protection Report Outcome provides an example of what was happening for Kumanjayi by 27 April 2014:[290]

> "WALKER was walking streets of Yuendumu between 7.30pm and 3am with no adult supervision with a group of children younger than him. They unlawfully entered the health clinic and a construction site causing significant damage. WALKER has matters before the court for the offences. People in community are angry at WALKER. Leanne indicated she has no control over WALKER.
>
> Today WALKER was sent home from school. Behaviour was violent and becoming increasingly worse. WALKER scheduled for health assessment on 13/5/14."

275. On 13 May 2014, Kumanjayi was arrested in relation to alleged property offending. While in the Yuendumu police station cells, he used an item of clothing to threaten suicide. Police removed the item, but he continued to make threats of self harm, saying that he would hurt himself if he was taken to juvenile detention. He punched himself and hit his head on the cell walls and threatened to poke his own eyes out. Family and police members calmed him down, and he was transferred to Alice Springs Youth Detention Centre (**ASYDC**).[291]

276. In an interview with a Probation and Parole Officer on 26 June 2014, Kumanjayi was asked about his substance use and disclosed that he first started drinking rum and coke and beer when he was 13 years old, both when in Alice Springs and Yuendumu. He also stated that he started smoking cannabis at 13 years of age and that he was given the drugs by others in Yuendumu Community. Kumanjayi admitted to having been exposed to petro-chemicals as well and referenced stealing aerosol cans from adults.[292] At

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289 Letter of Kerri-Anne Chilvers to Magistrate dated 5 June 2014 [2-31] at 2.

290 A Child Protection Report dated 27 April 2014 [2-02].

291 Timeline of the life of Kumanjayi Walker [2-2] at 23.

292 Timeline of the life of Kumanjayi Walker [2-2] at 25.

around this time, a separate counsellor from the Mt Theo program expressed concerns that Kumanjayi may have had an organic brain impairment / foetal alcohol spectrum disorder (**FASD**).[293] His family also told Probation and Parole that he was talking about hanging himself.[294]

277. While in ASYDC, Kumanjayi punched and broke a television screen on 26 June 2014. This was the first time he was considered for Youth Diversion, but he was found unsuitable due to his "suicidal tendencies" and already extensive history.[295]

278. By the time he was 14 years of age, Kumanjayi's needs could not be accommodated at Yuendumu school. A note from a stakeholder meeting of 1 July 2014 includes:[296]

    (a) child stated he has been teased a lot. He is called crazy at school and also in Corrections by other children;

    (b) discussed child needs an assessment around his cognitive and development due to concerns around his mental health;

    (c) discussed potential family carers;

    (d) Police: concerned regarding level of supervision of WALKER. He and other children are walking around the streets and breaking into different properties and family are not taking responsibility and looking after the children;

    (e) Beth: family are struggling in trying to care for WALKER as he can be difficult in relation to his behaviours. Given that family are not really aware of WALKER's mental health this needs to be assessed and discussed with family if there are concerns; and

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293 Timeline of the life of Kumanjayi Walker [2-2] at 24.

294 Timeline of the life of Kumanjayi Walker [2-2] at 24.

295 Timeline of the life of Kumanjayi Walker [2-2] at 25.

296 All CP documents [2-84B] case note dated 8 July 2014 at 437.

(f) Kylie: Yuendumu school is not the best school to meet his educational needs. He needs one on one.

279. Sergeant Anne Jolley was the Officer in Charge of Yuendumu Police Station for extended periods when Kumanjayi was in contact with Police as a teenager. She reported her concerns for his wellbeing and safety multiple times to the Department of Children and Families, often referred to as Territory Families,[297] and she was clearly upset by the circumstances in which Kumanjayi was living.[298]

280. On 8 July 2014 there was a meeting between service providers, including police, Corrections, WYDAC and Territory Families. A note of that stakeholder meeting refers to a discussion that Kumanjayi may be living in different houses; it was unclear who was caring for him, there was concern that his biological mother (now deceased) had sniffed solvents while he was in utero, and that he was called "crazy" at school.[299]

281. By 9 December 2014, it was reported that the community were angry and frustrated with Kumanjayi because of his break-ins. Local Police expressed "relief" that he would be attending the "BushMob" boarding school program in the new year.[300]

282. In a note on 22 August 2015, Police expressed concern for the welfare of Kumanjayi, who was constantly roaming the Yuendumu Community at all hours of the morning and whose behaviour appeared to be escalating. On 3 September 2015, Sgt Jolley submitted a child abuse report to Territory Families because she was concerned about the deterioration in Kumanjayi's health.[301] It appeared that no-one was caring for him, he had lost a lot of

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297 See, for example, Support Request Overview 264193 by Anne Jolley dated 12 May 2014 [2-67]; Support Request Overview 380542 by Anne Jolley dated 11 September 2015 [2-70]; Support Request Overview 410959 by Anne Jolley dated 16 April 2016 [2-72]; Statutory declaration of Sergeant Anne Jolley dated 14 April 2020 [7-69] at [14], [20].

298 See Inquest evidence of Sergeant Anne Jolley on 14 and 15 September 2022 at 274-429.

299 All CP documents [2-84B] case note dated 8 July 2014 at 437.

300 All CP documents [2-84B] case note dated 9 December 2014 at 460.

301 Statutory declaration of Sergeant Anne Jolley dated 14 April 2020 [7-69] at [14].

weight and members of the community found him sleeping in the back of the church in a swag.[302]

283. On 5 October 2015, Sgt Jolley again contacted Territory Families and reported that she thought Kumanjayi needed to be taken into care, since no one was looking after him, he was refusing to go to WYDAC, he was pacing and erratic and appeared to be agitated because there was no "gunja", and she was aware that he had issues with cannabis.

284. In 2015, Ms Chilvers was working as a social worker for WYDAC and with the help of Kumanjayi's family, Central Australia Youth Link Up Service (**CAYLUS**), Central Australia Aboriginal Legal Aid Service (**CAALAS**), and Terri Waller (Founder / Director of the SevGen program in Queensland) proposed that Kumanjayi travel to Queensland for a six-month period to undertake the SevGen program. The Youth Magistrate agreed and Kumanjayi's kinship mother, Leanne Oldfield, accompanied him for the entire residential period.

285. Ms Chilvers gave evidence as to the program's success:[303]

> "Over this six-month period, within the context of a safe, structured, culturally supportive and loving environment, [he] once again thrived and there were no issues whatsoever with either his behaviour or with the law during this time. Not only did he stay out of trouble in QLD, he remained out of trouble for a significant period of time after his return to Yuendumu."

Late adolescence

286. Around February 2016, when Kumanjayi was aged 15 years, he commenced a relationship with 14 year old Rickisha Robertson. Ms Robertson was living with her grandparents, Lottie and Eddie Robertson, at House 577 in Yuendumu.

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302 Inquest evidence of Sergeant Anne Jolley on 14 September 2022 at 404-405.

303 Statutory declaration of Kerri-Anne Chilvers dated 30 June 2020 [8-11] at [5.2].

287. Unfortunately, some time after his return to Yuendumu, Kumanjayi's behaviour deteriorated and he began to reoffend. At the age of 15, he was given a second opportunity to undertake the SevGen Program, but he left after several weeks so that he could return to his girlfriend, Ms Robertson.

288. Within months of commencing a relationship with Ms Robertson, Kumanjayi engaged in episodes of serious and distressing physical violence towards her, exhibiting a familiar pattern of a child exposed to domestic family violence repeating that violence in their own relationship. Between 2016 and his death in 2019, Kumanjayi often exhibited controlling and threatening behaviours towards Ms Robertson, and he assaulted her on a number of occasions. During this time, he was also served with several Domestic Violence Orders for her protection. [304]

289. It seems likely that this offending may have been a product of the domestic violence Kumanjayi had been exposed to as a child and his inability to self regulate; however, that does not make it acceptable, nor does it detract from the adverse impact it had on Ms Robertson. There was a clear need for urgent intervention to stop his violent and destructive behaviour.

290. On 12 August 2016, Kumanjayi was arrested for domestic assaults on Ms Robertson. He was refused bail and detained in Alice Springs Youth Detention Centre. By that time, Ms Chilvers had changed jobs and was now a Case Coordinator/Program Facilitator with the Domestic Violence Specialist Children's Service (**DVSCS**) at Tangentyere Council, allowing her to again take on a role of case coordinator and support person for Kumanjayi. [305]

291. Kumanjayi was now a young person aged 16 years. Ms Chilvers visited him in youth detention during this period and undertook activities to challenge his use of violence. She explained in her evidence that Kumanjayi surprised her "with his capacity to articulate the effects of violence on the person, on the person's family and on the community". It seemed to [her] that he had "a clear

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304 Kumanjayi Walker Criminal history and PROMIS involvements [2-61D].

305 Statutory declaration of Kerri-Anne Chilvers dated 30 June 2020 [8-11] at [6.2].

understanding of the negative impacts of violence and he displayed genuine remorse for his actions".[306] He was capable of understanding the cycle of violence within relationships.

292. Ms Chilvers believed that a National Disability Insurance Agency (**NDIA**) / National Disability Insurance Scheme (**NDIS**) assessment was needed to properly determine Kumanjayi's support needs. She thought that he likely had frontal lobe/cognitive impairment (probably caused by foetal alcohol syndrome) and she tried to have him referred to Central Australian Aboriginal Congress (**Congress**) for a FASD assessment, so he could, at the very least, be assessed for disability support. The referral did not eventuate.

293. In August 2016, it was proposed that he engage with Alcohol and Other Drugs Services Central Australia (**ADSCA**) in Alice Springs as he had self-reported use of petro-chemicals, and his kinship mother, Leanne Oldfield, disclosed that he had been using cannabis in the last few months.[307]

Kumanjayi's life in the years leading up to the incident

294. In preparation for Kumanjayi's release from detention in 2016, his maternal grandparents, Joseph and Ann Lane, were identified as suitable carers and offered to care for him at Papunya. Kumanjayi was released on 18 November 2016 and moved to Papunya,[308] but he did not remain there long. On 12 February 2017 he was brought to Yuendumu Police Station by Senior ACPO Derek Williams and charged with property offences. He was granted bail by a magistrate, on condition that he reside in Papunya.

295. On 17 February 2017, two WYDAC Youth Engagement Workers attended an address in Yuendumu to collect Kumanjayi to take him to Papunya, pursuant to his bail conditions. When they arrived in Papunya, Kumanjayi refused to

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306 Statutory declaration of Kerri-Anne Chilvers dated 30 June 2020 [8-11] at [6.3].

307 Timeline of the life of Kumanjayi Walker [2-2] at 50.

308 Statutory declaration of Kerri-Anne Chilvers dated 30 June 2020 [8-11] at [8.2].

leave the car and the workers were forced to return him to Yuendumu. On 18 February 2017, Kumanjayi was arrested in Yuendumu for outstanding criminal offences and remanded to ASYDC.

296. On 6 March 2017, when he was 16 years old, Kumanjayi and two other young people broke through the air conditioning units and onto the roof of the detention centre, before fleeing over the fence. Police were called and used a dog to track the young escapees to the bush some kilometres away. According to the Use of Force Report, Kumanjayi was given a number of chances to surrender and when he refused, the police dog was sent in to detain him and he was bitten by the dog on the right thigh. He was then taken to hospital where the wounds were cleaned, before he was returned to custody.

297. While he remained in ASYDC he continued to have domestic violence and substance abuse counselling with Ms Chilvers. In the background, other service providers were coordinating possible accommodation or residential supported care for him.

298. A case note dated 7 April 2017 reads:[309]

> "On 7 April 2017 Departmental staff spoke with Sergeant Annie Jolley of Yuendumu Police Station. Sergeant Jolley explained that because of [Kumanjayi]'s behavioural issues, he is no longer welcome at Yuendumu community. Sergeant Jolley explained that while Ms Oldfield may claim to care for [Kumanjayi] there has been no responsible adult in Yuendumu to look after [him] and that he has never really received care like a child deserves...[Kumanjayi] walks around all night, breaks in places and has been a negative influence on young children. Sergeant Jolley added that there was a time when [Kumanjayi] was sleeping on the floor at the church in a dirty swag. Ms Jolley added that [Kumanjayi] is a troubled young man through no fault of his own."

299. In April 2017, Kumanjayi was transferred to Don Dale Youth Detention Centre in Darwin. Around that time, significant efforts were made by Ms Chilvers to return Kumanjayi to the SevGen Program in Queensland, or alternatively to

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309 Territory Families Progress notes for Kumanjayi Walker [2-62] at 81: Progress note dated 7 April 2017.

admit him to the Central Australian Aboriginal Alcohol Programmes Unit (**CAAAPU**) in Alice Springs, or a similar substance abuse intervention program.

300. On 2 May 2017, a Forensic Psychological Assessment was completed by Psychologist Kate Crawley at the request of a Judge in the Alice Springs Youth Justice Court. Her major conclusions were as follows:[310]

(a) Kumanjayi had a cognitive impairment, not a mental illness;

(b) he likely suffered an intellectual disability of mild to moderate severity which required further investigation to determine what should be done to assist him;

(c) his intellectual disability could be attributed to a range or combination of things, including exposure to alcohol and petrochemicals while in utero, premature birth, neglect issues as an infant into early childhood, failure to thrive, and prolonged exposure to trauma; and

(d) he also likely suffered trauma as a young child due to exposure to adult intoxication, neglect, overcrowding and violence, which is known to have a wide but varied impact on a given child's behavioural, social and emotional functioning.

301. As a result, Ms Crawley made a number of recommendations to the Youth Justice Court sentencing Kumanjayi, including that therapeutic programs or other residential conditions should be close to community and family to whom he has significant ties, and that finding appropriate and meaningful employment for him was important.

302. Kumanjayi was released from youth detention on 17 July 2017 and returned to Yuendumu, where he lived with members of the Brown family, and with Eddie and Lottie Robertson at House 577.

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310 Forensic psychological assessment of Kate Crawley dated 02.05.17 [2-46].

303. By the time he was 17 years of age, Kumanjayi consistently reported having a dependency on cannabis, at times using it daily. During interviews with his Probation and Parole Officer, he disclosed having consumed cannabis both in Yuendumu and Papunya and admitted that when he assaulted his girlfriend on one occasion he had been smoking cannabis.[311] He acknowledged his addiction and how it impacted on his behaviour, and he requested help to deal with his drugs use, but he had trouble remaining engaged after completing short term programs.

304. On 10 January 2018, Kumanjayi and Rickisha Robertson were accepted onto what is known as the Family Safety Framework (**FSF**), a multi-agency approach to high-risk domestic violence offenders and victims who are likely to be, or are, experiencing imminent risk of serious harm or death. The meeting is chaired by NT Police and includes stakeholders like Health, Education, Territory Families, Women's Centre, Territory Housing and WYDAC. All the agencies are expected to share information and engage and provide support where required.[312]

305. On 10 May 2018, Kumanjayi was arrested at House 577 in Yuendumu for a number of outstanding offences and was remanded to ASYDC. A Youth Outreach Re-Engagement Officer (**YOREO**) conducted a Bail Assessment Report for the Youth Justice Court on 18 May 2018. He recommended bail with a number of conditions, including that Kumanjayi live with Leanne Oldfield, who was now at Warlpiri Camp in Alice Springs and was happy to care for him.

306. On 18 May 2018, Kumanjayi was granted conditional bail to live with Ms Oldfield at Warlpiri Camp, but within a few days he returned to Yuendumu to resume his relationship with Ms Robertson, again breaching his bail agreement. On 31 May 2018, Kumanjayi was arrested at House 577, and was once again remanded to ASYDC.

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311 Timeline of the life of Kumanjayi Walker [2-2] at 56.

312 See the Family Safety Framework documents annexed to the statutory declaration of of Gemma Bonanni dated 18 February 2020 [8-1].

307. While in detention Kumanjayi continued to receive regular support from the YOREO, and from Ms Chilvers, now a Community Psychologist with the Remote Alcohol & Drug Workforce Program, to try to address his substance abuse issues. Ms Chilvers also provided trauma-sensitive therapy.

308. On 15 July he escaped from ASYDC, before being arrested by Police at Warlpiri Camp the following day. On 21 July he was restrained by guards at the ASYDC after he became angry and frustrated about being denied a phone call. While being restrained on the ground, he reportedly lifted his head and hit it against the concrete floor, causing a laceration that required sutures.[313]

309. He was again transferred to Don Dale Youth Detention Centre (**DDYDC**) on 27 August 2018.

310. On 2 October 2018, Kumanjayi was sentenced in Alice Springs Youth Court. He received nine months detention commencing on 23 May 2018, but the sentence was suspended immediately on entering a good behaviour bond with conditions, including that he undertake a three month residential rehabilitation program at Drug & Alcohol Services Australia (**DASA**). The Judge told Kumanjayi (emphasis added):[314]

> "I'm going to impose a sentence so you don't transition from detention into gaol. This will be the chance to get out today and go to DASA and hopefully learn how to control yourself, and then someone will work out where you will best stay after you get out of DASA. *That might be the big thing that needs to be worked out, where you're best going to be able to live and hopefully do some meaningful activities and stay out of trouble. Otherwise I am concerned for the future."*

311. Kumanjayi was at DASA for about nine days, before he had a confrontation with a youth worker about a mobile phone, then absconded. Ms Chilvers and others tried to convince Kumanjayi to hand himself in to police, but he did not.

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313 Timeline of the life of Kumanjayi Walker [2-2] at 70.

314 Sentencing remarks of Local Court Judge Bamber 2 October 2018 [2-51].

312. On 24 November 2018, Kumanjayi was at Ms Robertson's house (House 577) and was arrested without incident by Sergeant Julie Frost and Constable Felix Alefaio. He was remanded into Alice Springs Correctional Centre (**ASCC**), as he was now an adult.

313. He was released on bail on 20 December 2018, on condition that he undertake the eight week CAAAPU residential rehabilitation program. He successfully completed this program on 13 February 2019, and this success was attributed to intensive support he received from his family, the program case officers at CAAAPU and weekly visits he received from YOREO Richard Kruger.[315]

314. Upon completing the program, Kumanjayi was subject to bail conditions including that he live with Ms Oldfield at Warlpiri Camp in Alice Springs. He sought and was granted permission to travel to Yuendumu for a funeral, but breached his bail when he removed an Electronic Monitoring Device (**EMD**) and failed to return to Alice Springs after the funeral. He committed an unlawful entry at the Yuendumu Big Shop and stole $5000 worth of cigarettes. He was arrested at House 565 on 18 March 2019 and remanded to ASCC.

315. Ms Chilvers remained in contact with Kumanjayi while he was in custody, but the only family member he contacted was Ms Robertson.

316. On 26 June 2019, Kumanjayi appeared before Alice Springs Local Court and was dealt with for all of his outstanding criminal matters. He received a total sentence of sixteen months imprisonment, backdated to 22 February 2019. The sentence was to be suspended after eight months on conditions that included successfully completing the CAAAPU program. He was released on 21 October and entered the eight week CAAAPU program.[316]

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315 Kumanjayi continued to receive YORET support as he was still subject to the Youth Justice Suspended Sentence Order that had been imposed on 2 October 2018.

316 *Police v Walker* – sentencing remarks of Local Court Judge Birch dated 26 June 2019 [2-53] at 4.

The impact of early trauma

317. I have little doubt that Kumanjayi's behavioural problems as an adolescent and young adult stem from his exposure to alcohol in utero and the trauma he experienced as a young child, largely because of his exposure to violence and alcohol and concomitant neglect. At the time I publish these Findings, there is a growing body of evidence about the long-term negative impact on children from exposure to trauma, particularly domestic family violence, during their formative years.[317]

318. Kerri-Anne Chilvers worked with Kumanjayi for seven years between 2013 and 2019, first as a social worker and then as his psychologist. Her current research on trauma and its effects on the brain and behaviour was inspired by Kumanjayi, because she was committed to understanding his situation and to providing him with appropriate therapeutic treatment.[318] Ms Chilvers' evidence allows for a greater understanding of Kumanjayi's response on 6 and 9 November 2019, and it is this type of information that could and should inform the risk assessment planning that police do for an arrest of someone in his circumstances.

A deeper understanding of how trauma impacted on Kumanjayi and led to his impulsive behaviour

319. Ms Chilvers gave evidence of a body mapping exercise that provided her with a unique insight into how Kumanjayi experienced the build-up of tension and explosion of anger in his body. As part of the process, clients are asked to do an internal body map, drawing on the parts of the body to indicate where they

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317 See, for example, *Royal Commission into the Protection and Detention of Children in the Northern Territory* (2016) [20-11]. In fact, Recommendation 25.1(5) of the RC was that "All Northern Territory Police receive training in youth justice which contains components about childhood and adolescent brain development, the impact of cognitive and intellectual disabilities including FASD and the effects of trauma, including intergenerational trauma": Chapter 25 at 223.

318 Affidavit of Kerri-Anne Chilvers dated 28 November 2022 [8-11A] at [23]; Inquest evidence of Kerri-Anne Chilvers on 30 November 2022 at 3953.

feel their inner emotions. When she did that activity with Kumanjayi, Ms Chilvers asked him to focus on the feelings inside his body at the peak of the build-up phase, just prior to the explosion. She was struck by his unusual response; the only area inside his body that he was able to identify as feeling anything, even when he was really wild, was in his hands. Ms Chilvers provided the following recreation of Kumanjayi's drawing:[319]

320. When she attempted to do some breathing exercises with Kumanjayi to teach him some strategies he could utilise to calm himself when he got upset or angry, Ms Chilvers discovered that "he had absolutely no awareness whatsoever of his breath even entering his body, let alone being able to master the process of deep breathing for self-regulation purposes".

321. Ms Chilvers explained that although she did not understand it at the time, she has since learned that children who grow up with significant developmental trauma, fail to develop what is called "interoception", defined as "the conscious awareness of what is going on inside one's own body, in terms of feelings and sensations". She discovered that Kumanjayi had no internal body awareness; he was not aware of either his internal body sensations or his internal feeling states. In trauma related terms, this is also called "dissociation". The professional opinion of Ms Chilvers, who worked closely with Kumanjayi for seven years and has devoted much of her career to the

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[319] Statutory declaration of Kerri-Anne Chilvers dated 30 June 2020 [8-11] at [6.6].

study of developmental trauma, is that "as a result of the high level of dissociation that [Kumanjayi] experienced, he had absolutely no capacity for self-regulation".[320] The expert opinion of Ms Chilvers provides me with significant insight into the actions of Kumanjayi on 6 and 9 November 2019.

322. In a "posthumous trauma-informed assessment of Kumanjayi" prepared to assist the Coroner, Ms Chilvers explained the impact of Complex Developmental Trauma, defined as:[321]

> "...the exposure to multiple traumatic events that occur within family and community systems, that are chronic and begin in early childhood...The impact...is greater than it is for any other type of trauma because it occurs within the context of the family and community - systems which are meant to provide a source of safety, support and stability for the child."

323. The childhood experience of complex trauma can have long-lasting adverse effects on the brain, and on mental and physical health. Citing leading research,[322] Ms Chilvers explained in evidence that adverse childhood experiences can impact a child's ability to manage or regulate internal states and to process emotions. Symptoms typically observed in children and adolescents affected by complex trauma include hyper-arousal, heightened perception of threat, emotional reactivity, poor affect regulation, relationship disturbances, anger, rage, dissociation and feelings of shame, guilt and failure. Other symptoms include poor impulse control, substance abuse, self-destructive behaviours and/or oppositional behaviours. In addition, individuals typically grow up with cognitive impairments such as attention disorders, poor motivation and planning skills, memory and learning difficulties. Kumanjayi struggled with all of these symptoms.

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320 For example, statutory declaration of Kerri-Anne Chilvers dated 30 June 2020 [8-11] at [6.8].

321 Affidavit of Kerri-Anne Chilvers dated 28 November 2022 [8-11A] at annexure KAC-1 "Trauma Informed Assessment and recommendations" at [2.1].

322 Affidavit of Kerri-Anne Chilvers dated 28 November 2022 [8-11A] at annexure KAC-1 "Trauma Informed Assessment and recommendations" at [3.1].

324. Ms Chilvers set out the known adverse childhood experiences for Kumanjayi, which included:[323]

(a) prenatal exposure to substances;

(b) premature birth;

(c) failure to thrive, pneumonia and other health and social issues as an infant (neglect);

(d) repeated exposure to substance misuse from an early age and throughout his childhood (abuse);

(e) repeated exposure to family violence from an early age and throughout his childhood (abuse); and

(f) removal from the care of his mother as an infant, death of both parents as a child, and being raised in kinship care, and disconnected from maternal family (attachment / disconnection).

325. While each of these alone is enough to significantly impact upon the development of a child, the collective and cumulative impact of such a history of early childhood trauma is, in her words, "immeasurable".[324]

326. Kumanjayi presented to Ms Chilvers with symptoms of hyperarousal, including difficulties falling asleep, irritability and outbursts of anger, usually triggered by being teased. He experienced difficulty concentrating, distractibility, hyperactivity, hyper-vigilance, poor impulse control and an exaggerated startle response. All of these symptoms are indicators of an over aroused sympathetic nervous system and of Post-Traumatic Stress Disorder (**PTSD**).

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323 Affidavit of Kerri-Anne Chilvers dated 28 November 2022 [8-11A] at annexure KAC-1 "Trauma Informed Assessment and recommendations" at [5.1] Table 2.

324 Affidavit of Kerri-Anne Chilvers dated 28 November 2022 [8-11A] at annexure KAC-1 "Trauma Informed Assessment and recommendations" at [5.2].

327. Ms Chilvers' evidence is crucial in understanding why, as a result of his developmental trauma, Kumanjayi had difficulty recognising, let alone controlling, his internal emotions and resulting behaviour. As a result of the high level of dissociation that Kumanjayi experienced, he had significantly impaired capacity for self-regulation.[325]

328. Kumanjayi functioned most successfully when provided with a stable, structured and supported environment, as evidenced by his initial stays at Mount Theo Outstation, and his 6 month residential stay at SevGen in Queensland. Ms Chilvers explained that "what best supports those who do not have the capacity for interoception and/or self-regulation, is a calm, structured and supportive environment, which explains why [Kumanjayi] functioned so well whilst at Mt Theo and SevGen and why he didn't function so well when in community or within the context of an intimate relationship".[326]

329. The progress that Kumanjayi made in these programs was short lived, as he would then return to the unstructured environment of Yuendumu or Alice Springs, where his relationships were more volatile, the availability of food and shelter could be unpredictable and where there were long periods of boredom and frustration.

Posthumous Neuropsychological assessment of Dr Laura Scott

330. To understand why Kumanjayi behaved the way that he did on 6 and 9 November 2019, I received evidence relevant to his cognitive functioning.

331. As noted above, when he was 13, Ms Chilvers made a referral for Kumanjayi to undergo a neurological assessment as she was concerned that he may have FASD. Concerns about FASD were also noted in youth detention assessments

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325 Affidavit of Kerri-Anne Chilvers dated 28 November 2022 [8-11A] at annexure KAC-1 "Trauma Informed Assessment and recommendations" at [3.1].

326 For example, statutory declaration of Kerri-Anne Chilvers dated 30 June 2020 [8-11] at [6.8].

in 2017 and 2018, and at least one of Kumanjayi's relevant family members had been diagnosed with FASD.[327]

332. For the purpose of this Inquest, Dr Laura Scott prepared a posthumous neuropsychological assessment for Kumanjayi, based on a review of available records, as well as interviews with Ms Chilvers, Ms Crawley and members of Kumanjayi's family. Dr Scott was satisfied that:[328]

> "[Kumanjayi's] neuropsychological profile is consistent with a neurodevelopmental disorder (i.e. a disorder of early brain development). There was a documented history of developmental delay impacting physical development, hearing, language, academic performance, emotional and behavioural regulation. This was consistently identified by informal carers, education and health professionals from the first year of life. Cognitive and behavioural difficulties persisted throughout his life and resulted in significant adaptive impairment.
>
> Mr Walker's globally reduced level of cognitive function, in the context of significant impairments in adaptive function which emerged in early childhood is consistent with a mild Intellectual Disability (mild ID)."

333. Dr Scott said that "It is ultimately unclear the exact cause of his [intellectual disability] though prenatal alcohol exposure and early meningitis appear to be the two main risk factors".[329]

334. Dr Scott found that Kumanjayi also likely met the criteria for Attention Deficit Hyperactivity Disorder (**ADHD**) and noted that Kumanjayi's "cognitive and behavioural impairments due to neurodevelopment disorder would have been further exacerbated...by various psychosocial vulnerabilities" including childhood trauma and substance use.[330]

335. Relevantly, Dr Scott explained that:[331]

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327 For example, statutory declaration of Kerri-Anne Chilvers dated 30 June 2020 [8-11] at [8.5].

328 Expert report of Dr Laura Scott dated 27 November 2022 [10-13B] at 19.

329 Expert report of Dr Laura Scott dated 27 November 2022 [10-13B] at 19.

330 Expert report of Dr Laura Scott dated 27 November 2022 [10-13B] at 19.

331 Expert report of Dr Laura Scott dated 27 November 2022 [10-13B] at 19-20.

> "Children exposed to repeated traumatic events (referred to variously as complex or developmental trauma) experience altered development of multiple bodily systems including the brain, gut, cardiovascular and immune systems. They develop significant problems with cognitive function, regulation of sleep/wake cycles, emotion regulation and the stress response.
>
> They often become hypervigilant and can demonstrate disproportionate or exaggerated responses to perceived threat."

336. In specifically considering Kumanjayi's reaction to Mr Rolfe and Constable First Class Eberl inside House 511 on 9 November 2019, Dr Scott said:[332]

> "Mr Walker was highly impulsive, with poor planning and organisational skills due to his disability. His cognitive and behavioural symptoms of mild ID, ADHD and trauma would have seriously compromised his capacity to comprehend the seriousness of his situation and to accurately assess the potential risks of his actions."

The failure of schooling in Yuendumu

337. Given the link between complex developmental trauma and poor impulse control, it is not difficult to understand why school would have been so challenging for a child like Kumanjayi, and for his teachers and carers.

338. The Court has learnt of additional reasons why schooling would have been challenging for Kumanjayi, including that he moved frequently, did not always have stable accommodation and, like many children in Yuendumu, experienced food insecurity.[333]

339. There is evidence that Kumanjayi had hearing difficulties that adversely impacted his capacity to learn, and likely contributed to his poor behaviour and concentration at school and his subsequent offending.[334] The nexus

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[332] Expert report of Dr Laura Scott dated 27 November 2022 [10-13B] at 20.

[333] See, for example, Child Protection Report referred to above, 27 April 2014 [2-02].

[334] It is accepted that Aboriginal children in the Northern Territory experience some of the highest rates of otitis media in Australia, often leading to learning difficulties and long term deafness.

between hearing difficulties and criminal offending has been known for decades. As Counsel Assisting pointed out in written submissions, over thirty years ago the Royal Commission into Aboriginal Deaths in Custody, reporting in 1991, noted the relationship between childhood ear disease, hearing loss and poor school performance, and the connection between those conditions and involvement in the criminal justice system. In 2016, the *Royal Commission into the Protection and Detention of children in the Northern Territory*[335] received evidence about the large number of children impacted by hearing loss in the NT and the link between hearing loss and entry into the criminal justice system.[336]

340. After Kumanjayi stopped attending Yuendumu School, there were attempts to help him to get back into some form of education program, including at Bushmob, in juvenile detention and (most successfully) through SevGen. Although worthwhile, these short term interventions were not enough to compensate for Kumanjayi dropping out of mainstream education.

Time in youth detention

341. From the age of 13 to 18, Kumanjayi spent a considerable period of time in custody in juvenile detention or under some restraint, such as being in custody, on bail or subject to a Court order.

342. Police investigators tracked that history to show that Kumanjayi was under some form of restraint for at least half of every year from the age of 14 years, and for the rest of his life. In 2019, there were no days when he was not under some form of restraint.[337]

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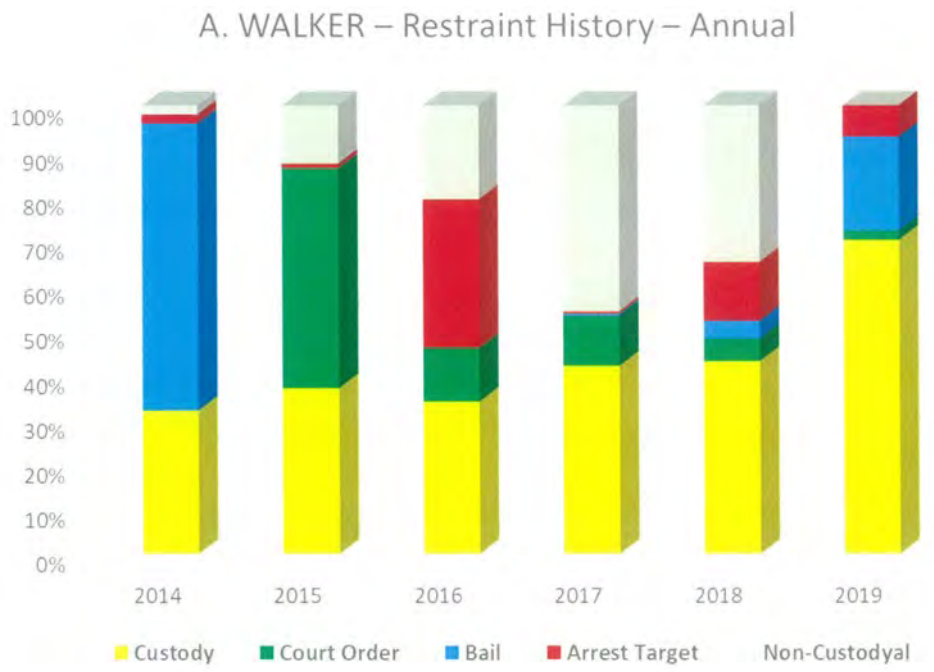
335 *https://www.royalcommission.gov.au/child-detention*

336 See Report of Dr Howard Bath "Growing them Strong, Together: Promoting the Safety and Wellbeing of the Northern Territory's Children" [20-8]; Statement of Dr Howard Bath dated 1 October 2016 [20-9]; Transcript of the evidence of Dr Howard Bath to the Royal Commission on 31 May 2017 [20-10]; Statement of Dr Damien Howard dated 5 October 2016 [20-10A]; Transcript of the evidence of Dr Damien Howard to the Royal Commission on 13 October 2016 [20-10B].

337 NT Police Coronial file – History of [Kumanjayi] Walker [2-1] at 20.



343. In November 2017, the *Royal Commission into the Protection and Detention of Children in the Northern Territory*, mentioned above, delivered its final report to the Commonwealth and Northern Territory Governments. The Commission's mandate included reviewing the detention of children held in Darwin's Don Dale Youth Detention Centre and in the Alice Springs Youth Detention Centre over the ten years from 1 August 2006, which included two of the years that Kumanjayi spent time in both facilities.

344. Chapter 10 of that report contains the following findings:[338]

> "The youth detention centres used during the relevant period were not fit for accommodating, let alone rehabilitating, children and young people.
>
> The poor condition of youth detention centres created the potential for harm to be caused to children and young people. The inadequate facilities put children and young people's health, safety and wellbeing at serious risk, and played a part in incidents that occurred at youth detention centres.
>
> At different times and in different youth detention centres during the relevant period, the conditions under which children and young people were detained fell far short of acceptable standards under

[338] Chapter 10, Volume 2A at 101.

> international instruments and Australian guidelines. Severe, prison-like and unhygienic conditions, and inadequate security due to poor infrastructure, caused children and young people to suffer punishment."

345. This Inquest heard expert evidence that Kumanjayi was a child who had experienced trauma since birth and the way to assist him to function was to provide him with safe boundaries, security and comfort. The descriptions of the two detention centres during the period examined by the Royal Commission are not consistent with the goals of rehabilitation, healing or reducing crime. His time in detention may have contributed to his experiences of complex trauma, thereby hindering any chance of successful rehabilitation and further reducing his capacity for self regulation.

346. Given his ongoing levels of recidivism it seems reasonably clear that detention neither deterred nor rehabilitated Kumanjayi, and his isolation from family and community likely had a deleterious effect on his overall prospects for rehabilitation both in and out of detention. On this issue I heard eloquent closing oral submissions of the Parumpurru Committee:[339]

> "Kumanjayi spent much time in custody as a teenager…and as he got older he remained caught up in the justice system, regularly being detained. So, what lessons have we learnt about …rigid systems of punishment, where the process obscures the purpose. And so, with sadness and with anger our clients ask us…what has Kumanjayi's trajectory taught us. Who is learning from these failings. How is it when the life of a troubled young man is so fully analysed as in this inquest, so publicly examined, how do we suddenly once again have the age of imprisonment reduced back down to 10 year olds. That's what we are being asked…How would gaol and spit hoods have helped a young Kumanjayi Walker, it beggars belief.
>
> One might simply ask how much youth crime would end, how much public money would be saved if the government provided well-funded, well-resourced youth centres open 24 hours a day, providing support, safety, counselling and very importantly food, and a place to rest and be safe."

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339 Closing oral submissions of the Parumpurru Committee on 27 November 2024 at 5873.

347. It is beyond the scope of this Inquest to inquire into the details of Kumanjayi's detention conditions now, or to make recommendations directed to implementing change in youth detention centres (noting that there was a Royal Commission into those conditions in 2016 that made 227 recommendations), but it is worth noting that Kumanjayi spent time in detention centres that were subsequently criticised for their abject failure to provide for the needs of some of the most vulnerable children in the Northern Territory.[340]

Efforts of community police to help Kumanjayi

348. There was persuasive evidence at Inquest of the thoughtful way in which a number of community police officers tried hard to engage with Kumanjayi and to agitate with other agencies for greater assistance for him.

349. There were numerous examples where police living in Yuendumu arrested Kumanjayi peacefully and without incident. That included SACPO Derek Williams, who gave evidence that he would transport Kumanjayi in the front seat of the car to the station after picking him up, as well as Sergeant Julie Frost, Sergeant Anne Jolley, Constable Felix Alefaio and Constable Lanyon Smith.

350. During evidence in 2022, Counsel Assisting, Dr Dwyer SC, reminded Sgt Jolley of the efforts she and other stakeholders had made to get care and support for Kumanjayi, and of her note that he was "a troubled young man, through no fault of his own". The exchange included:[341]

DR DWYER SC: Did you feel for him?

SGT JOLLEY: I did.

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340 To the extent that Counsel Assisting intended to suggest I could make an assumption about Kumanjayi's treatment in either detention centre, and the way it actually impacted on his behaviour, I do not agree there is an evidential foundation for that, and it was not within the scope of my Inquest to conduct a detailed review of his treatment in detention centres.

341 Inquest evidence of Sergeant Anne Jolley on 14 September 2022 at 407.

DR DWYER SC: If I suggest to you that there was no full mental health or cognitive assessment done for him until 2017, what do you say about that, in circumstances where stakeholders were asking for [help] in 2014?

SGT JOLLEY: It appears to have let him down.

351. Throughout the course of her evidence, I was struck by the compassion and dedication of Sgt Jolley, who returned to Yuendumu after Kumanjayi was killed so that she could offer her support and experience to the community. She had obviously gained the trust and respect of the community over many years. I commend her for her contribution to Yuendumu, her efforts to help Kumanjayi, and for her significant contribution to this Inquest.

Service providers who assisted (and attempted to assist) Kumanjayi

352. The nature of the trauma experienced by Kumanjayi, and the ongoing instability at Yuendumu, meant that by the time he started offending as a teenager there was no quick intervention that would have prevented him coming into conflict with the law. A review of some of the programs he engaged in shows that progress was made at times and in the right environment there was some hope for him, but progress was unable to be maintained when he returned to community life.

353. The Court heard evidence of Kumanjayi's interaction with different service providers, including BushMob, a residential therapeutic treatment facility located in Alice Springs for young people aged between 12 and 25 years, and Drug and Alcohol Services Australia (**DASA**), an adult three-month residential rehabilitation program, run from Aranda House.

354. There were two programs that stand out for their success with Kumanjayi, and they highlight the type of intervention that is necessary for children and young people in community who experience complex trauma. They were the Mount Theo Diversion program, and SevGen.

355. There is a significant lesson to take from the success Kumanjayi had at SevGen Program, a six month alternative education program for Aboriginal young people. SevGen is short for Seven Generations and refers to the idea of looking back and learning from the past seven generations; and thinking forward to the next seven generations. SevGen provided accommodation at a sacred site at Mother Mountain in Queensland. The participants at SevGen are provided with strong cultural education and support from local Elders after school and on weekends. This is a structured, long-term intervention, which required family members to stay close by.

356. While Kumanjayi's second participation at SevGen was not as successful as his first, that does not detract from the lesson to be learnt about what actually works for someone with Kumanjayi's complex needs; that is, a pro-social, structured, longer term therapeutic and culturally engaging environment, with the security of family close by, that facilitates learning and secure attachment. That is persuasive evidence that lends itself to a recommendation for more supported facilities of that kind to be made accessible (close to country) to young people whose developmental trauma leads them to come into negative contact with police and the criminal justice system, of whom there are many in the Central desert and throughout the Northern Territory. To that end, I have made recommendation 5.

Minimising the damage caused by alcohol and solvent abuse & early testing for FASD

357. In relation to the urgent need for action to prevent and address the long term damage caused to young people like Kumanjayi by alcohol and solvent abuse, the Court received evidence from two experts who have been awarded for their excellence and service to the Northern Territory. Dr Donna Ah Chee and Dr John Boffa are respectively the Chief Executive Officer and Chief Medical Officer Public Health of the Central Australian Aboriginal Congress; the

largest Aboriginal community-controlled health service in the Northern Territory.[342]

358. Dr Boffa acknowledged that Kumanjayi would have benefitted from an assessment by Congress to see if he had a diagnosis of FASD and was eligible for NDIS support, but explained that there is a huge chasm between the need for testing and the resources available to meet that need in the Northern Territory. In his words:[343]

> "Congress can't be everything to everyone. We've got…the only assessment service for neurodevelopment…outside of capital cities. We've scrounged money together from five different sources, none of it is recurrent. We've got a waiting list of over 200 people, young people and children, to be assessed. We can only complete two comprehensive assessments per week. That's neuropsychologist, speech pathologist, occupational therapist, paediatrician and Aboriginal family support workers as a team. It takes about six weeks to do one assessment. Our main funded contract is with Territory Families, so we have to give priority 1 to children in child protection and young people in youth detention. And 83 percent of all young people in youth detention have a neurodevelopmental disorder…surprise, surprise…So, we're really locking up people with neurodevelopment issues that need NDIS plans. So, he should have been assessed, there's no doubt about it."

359. The evidence of Drs Boffa and Ah Chee makes it clear just how desperate the situation is for children like Kumanjayi who are in need of a neurodevelopmental assessment. I accept the evidence of Dr Boffa that this is

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342 Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1674-75. At the time of giving evidence, Dr Ah Chee was the Independent Chair of the NT Children and Families Tripartite Forum and the Aboriginal Medical Services Alliance of the NT (**AMSANT**). She is an expert member of the National Aboriginal and Torres Strait Islander Health Implementation Plan Advisory Group and represented Congress on the Alice Springs People's Alcohol Action Coalition. Dr Ah Chee has been the lead investigator in some key research projects which involve alcohol consumption and the impact on Aboriginal and Torres Strait Islanders. Dr Boffa is a practising senior medical practitioner and has been involved in key research and policy development for over three decades. In 2012 he was awarded the Northern Territory Australian of the Year for his research and reform with alcohol in early childhood illness: Inquest evidence of Dr Boffa on 14 October 2022 at 1677.

343 Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1703.

a public health issue.[344] Indeed, it is a public health crisis and if it remains as feebly funded as it currently is, the community pays the price; while young people like Kumanjayi miss out on essential care, the community (and services like schools and police) are adversely impacted by the behavioural problems of individuals like Kumanjayi who have limited capacity to self regulate.

360. Doctors Boffa and Ah Chee directed me to the Australian Early Development Census (**AEDC**), which assesses all children in the first year of primary school across five domains – physical health and wellbeing; social competence; emotional maturity; language and cognitive skills (school-based) and communication skills and general knowledge.[345] Evidence suggests that where children are developmentally vulnerable on two or more domains, they will not complete high school unless there is serious intervention by the age of seven. According to Dr Boffa "the data on the AEDC from the 2021 census is the worst we've seen". A check of the most recent report from the AEDC supports the evidence of Dr Boffa and highlights the deeply concerning issues for the Northern Territory in particular - where the percentage of children who are vulnerable on two or more domains is about double that of the other jurisdictions. For example, in NSW in 2021, the percentage of children who were vulnerable on two or more domains was 10.5%, up from 10.3% in 2009; in Queensland, it was 13.2 % in 2021, down from 15.8 % in 2009. In Western Australia, it was 10.2% in 2021, down from 12.2% in 2009. In the Northern Territory, in 2021, a startling 25.7% of kids were vulnerable on two or more domains, up from 23.5% in 2009.[346]

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344 While Congress is the only public service arranging testing, private testing may be arranged, but at the cost of around $9,000 per client, it is likely to be prohibitively expensive and will not allow for the testing of all children under 5 years: Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1703.

345 Discussed by Drs Ah Chee and Boffa: Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1703. Over a decade ago, the Australian Government invested in the AEDC, in recognition that early childhood development is "foundational for children's later health, wellbeing and life chances". Beginning in 2009 and occurring every three years, five collections have now taken place.

346 Australian Early Development Census National Report 2021; Early Development in Australia: https://www.aedc.gov.au/resources/detail/2021-aedc-national-report

361. Since acquired brain injury is a major reason why people become dependent on substances and get caught in a cycle of criminal offending, experts in the NT and elsewhere advocate for early testing for acquired brain injury, in order to provide for early intervention that minimises the harm done to and by that individual.[347] Once an individual is diagnosed with FASD, the response required is "slow stream rehab", described by Dr Ah Chee as involving "intervention through speech pathology, through occupation therapy, through neuropsychologists with families and giving advice to parents about behavioural management and a range of other skills to support these young people and to the teachers in the schools". The good news is that the brain can rewire itself with early intervention, but evidence shows that without it, children cannot complete school and will struggle to work. It is essential to screen children early to pick up developmental delay and then formulate an early childhood intervention plan.

362. I heard compelling evidence that screening children under 5, using the Ages & Stage Questionnaire (**ASQ**) development assessment tool (adjusted for cultural considerations), can make a real difference to the lives of young people like Kumanjayi Walker and can help prevent the type of offending cycle that he became engaged in, which led to the conflict with police. To that end, I have made recommendation 29, taking into account the submissions of NT Health that: a) Child Health Nurses are trained to conduct this screening but that it is neither necessary nor feasible for all remote health staff to be trained to conduct these screens, and b) NT Health is finalising regular reporting on a range of Key Performance Indicators (**KPIs**) for early childhood assessments including ASQ -3 and ASQ-TRAK2. For a child under the age of seven years, an ASQ alone will be accepted by the National Disability Insurance Agency for an early childhood early intervention plan, which can then be used to obtain services for the child in need.[348] If, as the experts have

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347 Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1703.

348 Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1708.

told me, early assessment and treatment can avoid negative interaction with police and keep children at school, then the cost effectiveness is obvious.

363. Again, mindful that I am not conducting a roving commission of inquiry, I have carefully considered the nexus between the lack of testing for Kumanjayi's acquired brain injury, and the events of 9 November 2019. I am satisfied that the nexus exists. In the NT, there are hundreds more vulnerable children and adults like Kumanjayi, who have profound developmental trauma and, as a consequence, are vulnerable to loss of self control and conflict with police. Adequate early testing of children, and accompanying action to address the vulnerabilities and prevent the cycle of offending, is necessary to minimise the risk of a deadly conflict.

364. The final topic covered by Drs Ah Chee and Boffa was the devastating impact of alcohol abuse in the NT, particularly on Aboriginal people and particularly on vulnerable children and adults like Kumanjayi. Kumanjayi's parents were affected by alcohol related illness, meaning he was genetically predisposed to developing addictions (epigenetic changes), and he was likely born with FASD.[349] His brain injury and his addiction were major reasons why he came into conflict with law enforcement and could not cope with mainstream schooling. Further, alcohol is a major cause of early childhood trauma, which impacted on Kumanjayi in the damaging ways outlined above.

365. In addition to early testing and treatment plans, Drs Ah Chee and Boffa advocate for population health measures to reduce alcohol supply. They highlight measures that have had a positive impact on reducing alcohol related harm (including a minimum floor price and Police Auxiliary Liquor Inspectors (**PALIs**)) and express concern that those measures might be reduced, particularly if Government does not have accurate data to guide policy development.[350] Congress is one of several organisations in the NT that have called for the establishment of an alcohol monitoring group that enables

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349 Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1711. See also the opinion of Kerri-Anne Chilvers that Kumanjayi "probably" had FASD: For example, statutory declaration of Kerri-Anne Chilvers dated 30 June 2020 [8-11] at [6.11].

350 Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1715.

government and Aboriginal community leaders to sit together and look at the relevant data, for example, admissions to hospitals, presentations to the Emergency Department, child protection data, police data and alcohol-related crime, so that alcohol policies can be made based on solid evidence of what reduces crime, injury and death.[351] I have made relevant recommendations in recent inquests and this is an ongoing and urgent issue in the NT.[352]

Overcrowded and unsuitable housing

366. Kumanjayi's behaviour cannot be properly understood without understanding the instability of his home environment, including a lack of meaningful shelter, overcrowding and food insecurity; all problems that are interrelated.

367. In her posthumous assessment of Kumanjayi, Ms Chilvers referred to the knock-on effects of the "chaotic environment, in an overcrowded housing situation" that Kumanjayi found himself in when living in Yuendumu, including "no consistency, no food security, minimal supervision and support". In those circumstances "his capacity for distress tolerance diminished".[353]

368. Dr Simon Quilty, a physician and expert in heat stress and housing, gave compelling evidence about the adverse effect of the style of overcrowded and depressed housing in which Kumanjayi grew up, and the way in which that is likely to have contributed to his hearing loss, and to his learning and

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351 Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1717.

352 In a series of recent inquests into the deaths of four women from acts of domestic and family violence, I made a related recommendation that the NT Government should develop and enforce an evidence-based strategy to reduce alcohol availability, taking into account that alcohol increases the frequency and severity of DFSV and reducing alcohol availability has a significant impact on reducing DFSV.

353 Affidavit of Kerri-Anne Chilvers dated 28 November 2022 [8-11A] at annexure KAC-1 "Trauma Informed Assessment and recommendations" at [6.6]; the closing oral submissions of the former Department of Territory Housing, Families and Communities on 28 November 2024 at 5920-5921 identify some of the efforts being made to improve access to and quality of housing in remote communities.

behavioural problems.[354] The impact on children of overcrowded housing and energy insecurity includes difficulty sleeping and, reduced ability to function at school.

369. At the time Kumanjayi was becoming involved in the juvenile justice system he was often homeless within the community of Yuendumu and walking around late at night and in the early hours of the morning, making it more likely he would come into harm or commit property offences. That would have affected his school attendance and physical and mental well-being and made it more likely that he came into contact with police.

370. Given the limitations on the scope of my inquiry, I do not think that this Inquest lends itself to a specific recommendation on housing, although I have no doubt that poorly designed and overcrowded housing does contribute to the failure of some Aboriginal children in community to thrive, and probably impacted on the poor health and education outcomes for Kumanjayi. I commend the evidence of Dr Quilty to those engaged in the important role of planning and supporting housing programs in the Territory.

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354 On the link between poor housing design and overcrowding and poor health and education outcomes, see, in particular, the expert evidence of Dr Simon Quilty, expert statement dated 26 November 2022 [10-12C] and Inquest evidence on 28 November 2022 at 3834-3869.

CHAPTER THREE ZACHARY ROLFE'S STORY: UNDERSTANDING HIS DECISIONS ON 9 NOVEMBER 2019

Introduction

371. The life experiences of Mr Rolfe are far removed from those of Kumanjayi Walker, the young man he killed during the ill-fated arrest on 9 November 2019. That is part of the reason why neither man understood why or how the other would react that day, when Mr Rolfe, a complete stranger, entered House 511 on the day of Kumanjayi's grandfather's funeral, and attempted to detain Kumanjayi in a close quarters arrest.

372. Before continuing, I acknowledge that Mr Rolfe is a man who has been through highly and extended stressful periods following the death of Kumanjayi. I have no doubt that the court proceedings and surrounding events have been much more than tough on him and his family and, when I assessed his demeanour in court, I took into account the strain that someone in his circumstances would be under. Mr Rolfe gave evidence over many days and provided the Court with some supporting material. I am satisfied that Mr Rolfe, who was represented by a team of extremely experienced counsel, was afforded every opportunity to participate in this Inquest and to present his version of events fully and fairly.

373. I have been careful to consider favourable evidence relevant to Mr Rolfe's attitudes and actions and the way in which he was viewed by some of his supervisors. That includes evidence about his work ethic and community engagement. I have, for instance, been told of an occasion where he was praised for demonstrating compassion and empathy towards an Aboriginal teenager who had attempted to take his own life.[355] I make the assumption that there were other occasions where he demonstrated sensitivity on the job that

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355 Email "RE Thank you to the police from the Emergency Department ASH" dated 9 September 2019 [3-173], cited in the closing written submissions of Zachary Rolfe dated 11 November 2024 at [6].

have not been documented. As noted further below, a number of his policing colleagues complimented Mr Rolfe for his hard work and professionalism.[356]

374. Further, as discussed in the Introduction and again in Chapter One, it was important for me to review relevant evidence of the actions and attitudes of Mr Rolfe in the context of how challenging the job of a police officer in Alice Springs is. I have taken into account that Mr Rolfe was a police officer with relatively limited experience and that he and other officers were tasked with difficult jobs and had a relentless workload that was sometimes monotonous and confronting.

375. Nevertheless, I received a substantial body of evidence that plainly reveals examples of Mr Rolfe's conduct (including dishonesty) and attitudes that reflect very poorly on him, and in a way that is relevant to my assessment of the events of 9 November.

376. Chapters Three and Four outline, in a general, or thematic, way, my Findings regarding Mr Rolfe's short time as a police officer and I make some brief observations regarding the relevance of those Findings to my investigation of the events of 9 November 2019.

Why did the Inquest examine Mr Rolfe's background as an officer in NT Police?

377. At an early stage of the coronial investigation, and almost two years prior to the commencement of this Inquest, the then officer in charge (**OIC**), Det Supt Scott Pollock, drew attention to evidence of Mr Rolfe's concerning use of force history, based on 46 incidents that had been reviewed by tactical expert Detective Senior Sergeant Andrew Barram.[357] Det SSgt Barram had been an

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356 On 28 December 2018, Mr Rolfe received an email from Acting Superintendent Mace thanking him and other IRT members for their hard work and dedication in Borroloola: email "Thank you" from Acting Superintendent Tanya Mace dated 28 December 2018 [3-171]; on 3 January 2019, Commander Currie recognised the "professionalism and dedication" of IRT members, one of whom was Mr Rolfe, in locating an escaped prisoner: email "FW Borroloola Police Station" dated 3 January 2019 [3-172].

357 Coronial Memorandum of Commander POLLOCK – DRAFT reformat and amendment of Report dated January 2021 [1-6A] at 43.

officer of the NT Police since 1997 in the roles of general duties, Operational Safety Tactics Instructor at the NTPFES College, seven years as Officer in Charge of the Operational Safety Section (**OSS**), and detective in the Professional Standards Command (**PSC**). He had provided expert opinion evidence on approximately 25 previous occasions and had given evidence in the Local and Supreme Courts of the Northern Territory and the NT Civil and Administrative Tribunal.[358]

378. Det SSgt Barram identified five incidents during which Mr Rolfe had used force that was, in his expert opinion, not "reasonable, necessary, proportionate and appropriate".[359]

379. On the basis of his review, Det SSgt Barram found that Mr Rolfe "consistently fails to use effective communication as a tactical option to defuse a situation, and appears to prefer to go hands-on", that his arrest style "precludes any opportunity for uncooperative subjects to modify their behaviour and become more co-operative", that Mr Rolfe "interprets any non-compliance or lack of cooperation as a threat, and he therefore responds with a higher level use of force than would reasonably be considered necessary in the circumstances".[360] Perhaps most importantly, he found that Mr Rolfe "has demonstrated a tendency to rush into situations with a disregard for his and others' safety"[361] and that, whether or not the ultimate use of force could be justified, his "decisions and actions *precipitate* confrontations where he then uses force".[362]

380. The concerns of Det Supt Pollock and his successor as OIC, Commander David Proctor, extended to Mr Rolfe's honesty in the context of his use of force. They referred to evidence from Detective Superintendent Virgina Read, of the

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358 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [3]-[12].

359 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [33].

360 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [50].

361 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [19].

362 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [51].

NT Police's Professional Standards Command (**PSC**), that, prior to November 2019, "Rolfe was repeatedly engaging in concerning behaviour' that she had raised 'with the Alice Springs 'Command Management Team' (**CMT**) on at least 3 occasions".[363] These behaviours included what Det Supt Read perceived to be: a pattern of failing to activate, or choosing to de-activate, BWV in a way that meant that there was no objective record of allegedly excessive uses of force; and, her suspicions that he had colluded with officers in the context of serious allegations that he had engaged in misconduct.

381. The early coronial investigators also raised concerns regarding Mr Rolfe's declining mental health in the months prior to 9 November 2019. They noted a report of Professor Andrew McFarlane AO, psychiatrist, which referred to a variety of ways in which Mr Rolfe's "psychological symptoms could have impacted on his appraisal, interpretation and behavioural response to policing duties he was required to carry out at Yuendumu".[364] Medical notes from 9 and 30 August 2019, which included a score of 27 out of 30 on a K10 measure of psychological distress, were, in Professor McFarlane's view, "indicative of significant symptoms of depression and / or anxiety" and, on 9 October 2019, Mr Rolfe was commenced on Escitalopram, a medication used to treat major depressive, and generalised anxiety, disorders.[365] Professor McFarlane opined that Mr Rolfe's "emerging symptoms are likely to have been a contributing factor to his increasing use of force when confronted with violence or threats of violence".[366] Given the timing of the diagnosis, he considered that it was "probable that Rolfe continued to have significant ongoing symptoms at the

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363 Coronial Memorandum of Detective Superintendent Pollock – DRAFT Nov 2020 [1-2A] at 40.

364 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 44 citing the Expert report of Professor Alexander McFarlane dated 15 July 2020 [10-11] at 108.

365 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 44 citing the Expert report of Professor Alexander McFarlane dated 15 July 2020 [10-11] at 15.

366 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 44 citing the Expert report of Professor Alexander McFarlane dated 15 July 2020 [10-11] at 4.

time the incident occurred on 9 November 2019".[367] In addition to the symptoms of the underlying mental illness, Escitalopram was "associated with an increased risk of committing violent crime in younger adults" and Mr Rolfe's commencement on it was "likely to have impacted on his capacity for behavioural inhibition".[368]

382. Perhaps of greatest concern to the early coronial investigators was what they perceived to be a lack of any meaningful intervention by Mr Rolfe's supervisors.[369] Allegedly unjustified applications of force were cleared, uncritically, as "reasonable". Steps that ought to have been taken to ensure the integrity of NT Police's system for internal oversight of police use of force were not taken. Use of Force Case Note Entries (**UoF CNEs**), without which no audit of a use of force generally occurred, were not always filed by front-line officers. "Custody and Illness Injury Reports" (**CiiRs**), which ought to have prompted a further review by the Divisional Superintendent, were rarely submitted, despite requirements to do so in the case of an arrest occasioning injury.[370] In Det Supt Pollock's view, the "oversight to submit CiiRs 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".[371]

383. The coronial investigators identified an arguable nexus between these failures and Mr Rolfe's behaviours. Det Supt Pollock considered that, but for the failures of those tasked with supervising him, it was "*more than likely* that Rolfe's actions and behaviours would have been suitably addressed at an early

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367 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 44 citing the Expert report of Professor Alexander McFarlane dated 15 July 2020 [10-11] at 4.

368 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 44 citing the Expert report of Professor Alexander McFarlane dated 15 July 2020 [10-11] at 4.

369 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 26.

370 Only the Ryder incident (PROMIS 8391540) had a CiiR submitted, in addition to the Use of Force report: Coronial Memorandum of Commander POLLOCK – DRAFT reformat and amendment of Report dated January 2021 [1-6A] at 45.

371 Coronial Memorandum of Commander POLLOCK – DRAFT reformat and amendment of Report dated January 2021 [1-6A] at 45.

stage".[372] Instead, by "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".[373] While Det Supt Pollock considered this to be "evident in the review…conducted by Senior Sergeant Andrew Barram",[374] it was corroborated by other evidence, including that of a junior constable who had served alongside Mr Rolfe, his former partner, Claudia Campagnaro:[375]

> "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."

384. Even at that early stage, the investigative interest in Mr Rolfe's short career as a police officer was dictated by, and responsive to, key issues that Det Supt Pollock and Commander Proctor identified as arising from the events of 9 November 2019. Questions that had begun to emerge included: Did Mr Rolfe deliberately disregard a 5:00am arrest plan developed by two more senior officers, Supt Jody Nobbs and Sgt Julie Frost, and instead lead the IRT on an evening arrest attempt? Did Mr Rolfe enter House 511 in a way that re-created the very circumstances that led to the nearly fatal arrest attempt on 6 November 2019? How did Mr Rolfe engage with Kumanjayi within House 511? What might have affected his threat perception? Was any or all of this conduct by Mr Rolfe a product of a tendency to rush in? An over-preparedness to use force? A lack of regard for the consequences of his actions? A disrespect, or even contempt, for more senior officers? A sense of impunity when using force? If these views were held, how were they fostered and why were they not addressed? Was any disorganised, or undisciplined, behaviour the result of a culture of ill-discipline within the ASPS? Is Mr Rolfe a credible historian

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372 Coronial Memorandum of Commander POLLOCK – DRAFT reformat and amendment of Report dated January 2021 [1-6A] at 45.

373 Coronial Memorandum of Commander POLLOCK – DRAFT reformat and amendment of Report dated January 2021 [1-6A] at 43.

374 Coronial Memorandum of Commander POLLOCK – DRAFT reformat and amendment of Report dated January 2021 [1-6A] at 43.

375 Recorded statutory declaration of Claudia Campagnaro [3-152] at 32

on the subject of his use of force? Why was it that, in the immediate aftermath of Kumanjayi's death, Mr Rolfe and other officers at the Yuendumu Police Station were so concerned not to be recorded speaking to each other on BWV?[376]

385. As matters transpired, the evidence from which these issues arose, and on which these provisional views were based, represented only a fraction of the evidence that would ultimately become available to the Inquest. Although it was not all one way, in most respects the additional evidence strengthened the inference that Mr Rolfe held and expressed concerning attitudes towards the use of force, and the Aboriginal population he was policing, and that these attitudes manifested in his conduct on 9 November 2019 in ways that increased the likelihood of a fatal confrontation with Kumanjayi. It strengthened the inference that he was willing to lie, or engage in other dishonest conduct, to avoid adverse consequences that might otherwise have resulted from his conduct. It strengthened the inference that these attitudes and other problematic behaviours were fostered by a culture within the ASPS that prioritised "results" and "efficiency", and failed adequately to investigate, and respond to, allegations of misconduct and inappropriate conduct by Mr Rolfe.

386. The provisional views of Det Supt Pollock and Cmdr Proctor might not ultimately have been proven to be correct. But whether correct or not, the point is that the potential significance of the evidence of Mr Rolfe's short time in the NT Police and the events of 9 November 2019 has always been clear, and direct. Against the background of the thorough coronial investigation and the concerns it raised, the purpose of investigating Mr Rolfe's conduct during his short time in the NT Police was to understand *what* Mr Rolfe did on 9 November 2019, *how* it contributed to Kumanjayi's death,

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376 Coronial Memorandum of Commander POLLOCK – DRAFT dated November 2020 [1-2A] at 59-60. See, for example, the statements, "camera has got to be off … fucking hell!" and "we can't discuss anything right now.....cameras are working".

and *why* he might have done it. The purpose was to prevent another death in circumstances similar to Kumanjayi's.

A note on Mr Rolfe's submissions

387. In most respects, Mr Rolfe's closing submissions to the Inquest were limited to general issues (such as the standard of proof), or threshold issues he contended prohibited me from making any of the findings sought by Counsel Assisting and other parties. Unlike Counsel Assisting and most of the interested parties, Mr Rolfe chose not to make comprehensive submissions in the alternative regarding the facts I should or should not find if I did not accept his submissions on those threshold issues.[377]

388. This appears to have been a forensic decision. Mr Rolfe was aware of the incidents about which adverse findings were sought by Counsel Assisting (and others) and was aware that I proposed to deal with all issues, whether threshold or substantive, once, in my published Findings. He must also have been aware of at least the real possibility that I would not determine the threshold issues in his favour, given that I had already heard, and dismissed, lengthy submissions on these issues at an earlier stage of the proceedings.

389. In those somewhat unusual circumstances, it is important that I make clear, I have not treated Mr Rolfe's choice not to make more detailed submissions about the facts as an admission. This choice does not permit me more readily to draw an inference adverse to him, or in any other way relieve me of the task of carefully weighing the evidence (including his own) regarding the allegations of misconduct by him. It was entirely for Mr Rolfe, on the advice of his highly experienced counsel team, to choose not to make submissions on many of the substantive issues.

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[377] I have had regard to the written and oral submissions made on his behalf, along with follow up emails sent by his legal representative, Mr Officer, after the submissions process had closed.

390. Because Mr Rolfe's submissions related primarily to general, or threshold, issues, it is appropriate that I deal with them at the outset:

(a) Insofar as Mr Rolfe's submissions concern the use of supposedly "unlawfully" obtained telephone data, I dismissed this submission in *Ruling No 2* at [19]-[33]. Mr Rolfe did not identify any relevant change of circumstance that would warrant me revisiting that ruling.

(b) Insofar as Mr Rolfe submitted that the 'sanctity' or 'incontrovertibility' of the jury verdict prevents any adverse findings regarding his use of force (whether on 9 November 2019 or otherwise), I dismissed this submission in *Ruling No 2* at [39]-[41]. Again, Mr Rolfe did not identify any relevant change of circumstance that would warrant me revisiting that ruling.

(c) Insofar as Mr Rolfe submitted that I lacked power to make any findings, comments or recommendations regarding any alleged prior misconduct, or dishonesty, I dismissed this submission (in substance) in *Ruling No 2* at [34]-[37]. When raised by Mr Rolfe for a second time, I again considered and dismissed the submission, in greater detail, in *Ruling No 3*. Mr Rolfe's submissions do not explain why matters I identified at that time as potentially relevant to the cause and circumstances of Kumanjayi Walker's death have, in the intervening period, ceased to be relevant. Nevertheless, for the reasons set out in Chapter One, I have, for the third time, considered and rejected Mr Rolfe's submissions on "scope".

(d) As discussed in the Introduction, I accept Mr Rolfe's submissions regarding the applicable standard of proof when making findings of misconduct or dishonesty.[378] That standard is the civil standard of proof having regard to the principles in *Briginshaw v Briginshaw*.[379] I have reminded myself that findings of dishonesty or other misconduct are

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[378] Closing written submissions of Zachary Rolfe dated 11 November 2024 at [43]-[51].

[379] (1938) 60 CLR 336.

serious and may have serious reputational and other consequences. I must exercise caution when considering whether to make an adverse finding against an individual or an entity and the evidence required to prove facts supporting any finding ought to be commensurate with the gravity of those facts.[380] Such persuasion is not reached on the basis of "inexact proofs, indefinite testimony, or indirect inferences."[381] Nevertheless, there remains a "critical…difference between the criminal standard of proof and the civil standard of proof", and "[n]o matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied".[382]

(e) As discussed in the Introduction, I also accept Mr Rolfe's submissions regarding "the potentially distorting prism of hindsight."[383] Because an inquest (like most court proceedings), is retrospective, "it can be easy or seductive to conclude that what did occur was always going to occur and, from that conclusion, to view the actions or inactions of those involved more critically".[384] Particularly when making findings of misconduct or dishonesty, I have remained cognisant of this potential.

(f) As I have said elsewhere in these Findings, insofar as Mr Rolfe suggests that the Inquest "explored the issue of racism at large", I reject that suggestion. To the extent that the Inquest investigated this issue, it was for the purpose of determining whether Mr Rolfe had any attitudes towards Aboriginal people that rendered more likely his fatal

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380 See closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [38]; citing *Inquest into the Death of Matthew Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Bryant and Bhavita Patel*, Coroners Court of Victoria, 19 November 2020 at [1.38-1.39].

381 See, for example, eg *Re Day* (2017) 91 ALJR 262 per Gordon J at [15]-[18], helpfully extracted in the closing written submissions of Zachary Rolfe dated 11 November 2024 at [45].

382 *Refjek v McElory* (1965) 112 CLR 517 per the Court at [11].

383 See *Inquest into the deaths of Matthew Si, Thalia Harkin, Yosuke Janno, Jess Mudie, Zachery Bryant Bhavita Patel*, 19 November 2020 at [1.42].

384 See *Inquest into the deaths of Matthew Si, Thalia Harkin, Yosuke Janno, Jess Mudie, Zachery Bryant Bhavita Patel*, 19 November 2020 at [1.42].

interaction with Kumanjayi Walker and, if he did, how to prevent those attitudes developing in other officers.

(g) Insofar as Mr Rolfe made submissions regarding the use of "tendency" evidence, I do not find them persuasive. Those submissions relied on the decision of Burns J at his trial. This was problematic for a number of reasons. First, Burns J was applying the laws of evidence, which do not apply in this Inquest. Second, Burns J's ruling was based on only a fraction of the evidence available to this Inquest. Third, the issues to which the alleged tendency evidence went in the criminal trial (Mr Rolfe's decision making during the critical interaction with Kumanjayi) were far narrower than the issues that arose in this Inquest. Fourth, and finally, Burns J did conclude that even the limited tendency evidence proposed to be adduced by the Crown "met the basal requirement of relevance".[385]

(h) I reject the suggestion that I permitted examination of "all of Mr Rolfe's prior use of force incidents".[386] The Inquest examined roughly a quarter of Mr Rolfe's reported use of force incidents, and the overwhelming majority of these occurred in the last 18 months of his short career as a police officer.

(i) As discussed elsewhere in these Findings, I accept Mr Rolfe's submission that s 34(3) of the *Coroners Act* prohibits a Coroner from making a finding or comment that a person may be guilty of an offence. As Mr Rolfe recognised, however, it is entirely permissible for a Coroner to make findings of fact about issues that may be relevant, perhaps even substantially so, to the question of whether an offence has been committed, "without addressing and/or analysing the legal effect of those facts".[387] I have applied the tests Mr Rolfe identified. At no point have I asked, or attempted to answer, the question of whether Mr

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385 *The Queen v Rolfe* (No 7) [2022] NTSC 1 at [108].

386 Closing written submissions of Zachary Rolfe dated 11 November 2024 at [3.1].

Rolfe has committed an offence. Where making certain findings—such as a finding that Mr Rolfe engaged in force that was avoidable or unnecessary in an objective sense—I have, out of an abundance of caution, refrained from making findings about other matters relevant to Mr Rolfe's state of mind, or purpose, when applying this force.

Mr Rolfe's background and military career

391. Mr Rolfe was born into and raised by a loving, stable family in Canberra, a city and childhood far removed from the experiences of Kumanjayi. He completed high school without studying Aboriginal history or issues, and he did not have a large amount of contact with the sole Aboriginal student he knew attended the school.[388]

392. In October 2010, Mr Rolfe joined the Australian Army as a soldier in the infantry, and from an early stage expressed an interest in joining the Special Air Service Regiment (known as the **SASR** or **SAS**)[389], a special forces unit of the Australian Army that is a direct command unit of the Special Operations Command (**SOC**).

393. It is not in dispute that while in the State of Queensland on 4 September 2011, Mr Rolfe was charged with the offence of public nuisance and violent behaviour arising out of a fight involving a number off duty Australian Defence Force (**ADF**) soldiers and members of the public. Police intervened and Mr Rolfe was deemed to have been participating in the fight. He was charged and sent an infringement notice for $300, which he paid.[390] The circumstances of the fight as described by Mr Rolfe at the Inquest were that a

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388 Inquest evidence of Zachary Rolfe on 29 February 2024 at 5447.

389 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5094.

390 Zachary Rolfe Queensland Police Record and offence details, contained within the Queensland Police Service recruitment file for Zachary Rolfe's Expression of Interest for Queensland Police dated 1 February 2016 [3-56]. In December 2011, Mr Rolfe was also spoken to by Queensland Police about a different matter involving the assault on another ADF member, and he did not disclose that in his application or interview with NT Police, but I have not regarded that as a matter of significance.

fellow soldier was being assaulted and had lost consciousness, and Mr Rolfe intervened in the fight to come to his aid. Mr Rolfe told this Court that he paid the fine on the infringement notice he was sent, because it was easier to do that than to contest the notice.[391] There is nothing to contradict the version now given by Mr Rolfe, but regardless of the circumstances, there is no doubt that he was issued with the infringement notice and did not contest the charge. I pause to note that it is not Mr Rolfe's conduct on this occasion that is relevant to this Inquest, but the honesty of the statements he made about it during his applications to become a police officer.

394. When Mr Rolfe was around 20 years of age, approximately 18 months after he joined the army, he was on an Army rugby tour when he committed an offence of theft that might be described as "skylarking", but that nevertheless involved dishonesty and ill-discipline. The circumstances as outlined by Mr Rolfe[392] (and again, there is no evidence to either contradict or validate him) were that he and other officers, some more senior, were drunk one night when someone made a "bet or dare" as to who could find cigarettes. A number of soldiers went through an open dormitory and stole tobacco from someone's room, which Mr Rolfe disclosed to a superior officer the next morning when he was about to return the tobacco. After Mr Rolfe's conduct was reported to the Military Police, he pleaded guilty to a charge of theft and was placed on a good behaviour bond for a period of two years.[393] I again pause to note that it is not Mr Rolfe's conduct on this occasion that is relevant to this Inquest, but the honesty of the statements he made about it during his applications to become a police officer.

395. Over a six month period between July 2014 and January 2015, Mr Rolfe served with the Australian Army in Afghanistan, providing force protection to elements who were mentoring the Afghan National Army.[394] He did not see

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391 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5103, 5116.

392 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5095.

393 Inquest evidence of Zachary Rolfe on, 26 February 2024 at 5095.

394 Inquest evidence of Zachary Rolfe on 16 November 2022 at 3261 and on 26 February 2024 at 5096.

active combat and there is no evidence that he suffered any physical or psychiatric injury as a result of his service.[395] In August 2014, Mr Rolfe applied to join the SAS but his application was not supported by his superiors because he was still within the two-year good behaviour period imposed for the theft.[396]

396. In May 2015, Mr Rolfe left his position as a permanent member of the ADF and transitioned to the active reserve, believing that the opportunity to join the SAS would still be there for him at a later date.[397] He gave evidence that he left the ADF for various reasons; to "move on" or pursue a new career and lifestyle change.[398]

397. Between 2 October and 23 November 2015, Mr Rolfe completed advanced tactical training courses in the United States run by "Trojan Securities International", a private company providing training in, amongst other things, tactical advanced firearms. Mr Rolfe explained in evidence that he wanted to learn new skills and he believed that those skills would assist him generally and in any future policing role.[399]

398. From May 2015 until he was accepted into NT Police, Mr Rolfe worked as a law clerk for a firm of solicitors in Canberra.

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395 Zachary Rolfe ADF Service History [3-64B].

396 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5097; see also Department of Defence Application for Special Forces dated 28 August 2014 [3-64E].

397 Inquest evidence of Zachary Rolfe on 16 November 2022 at 5098.

398 See Zachary Rolfe NT Police application dated 2 February 2016 [3-4]; Inquest evidence of Zachary Rolfe on 16 November 2022 at 3262 and on 26 February 2024 at 5098.

399 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5098-5099; Trial evidence of Zachary Rolfe on 4 March 2022 [7-115A] at 1122.

Dishonesty, and other issues, arising from Mr Rolfe's application to join the Northern Territory Police Force

399. Mr Rolfe applied to join four Australian police forces in late 2015 and early 2016, and was ultimately accepted into NT Police. As I noted in *Ruling No 3*, three broad issues emerged from Mr Rolfe's applications:

(a) the first was evidence of dishonesty by Mr Rolfe during the application process;

(b) the second was evidence of the results of psychometric testing Mr Rolfe participated in during the application process; and

(c) the third was evidence regarding the decision by NT Police not to seek Mr Rolfe's ADF file.

Application 1 – The Victorian Police

400. It appears that the first Australian police force that Mr Rolfe applied to join was Victoria Police (**VicPol**). Unsurprisingly, every jurisdiction requires applicants to complete a form providing basic information, including disclosure of prior criminal charges. In his application to VicPol, Mr Rolfe failed to disclose that he had received an infringement notice in Queensland in 2011.[400] In evidence, Mr Rolfe said that at the time he completed the application he had completely forgotten about the Queensland infringement, and that it was not particularly memorable for him, having regard to other experiences he had had in his life.[401] For reasons outlined below, I do not find that explanation to be credible.

401. In completing the form applicants were required to give a truthful answer to the question whether they had ever used illegal drugs. Mr Rolfe falsely

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400 VicPol Recruitment correspondence [3-51]; Inquest evidence of Zachary Rolfe on 26 February 2024 at 5101.

401 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5102-5103, 5110.

answered "no" to that question,[402] when the truth was that he had previously consumed cannabis and MDMA.[403] At Inquest, Mr Rolfe agreed that he lied about his prior drug use and said that he did so to give himself the "best chances" of getting into the police force.[404]

402. On 16 January 2016, Mr Rolfe passed the VicPol entrance exam.[405]

Application 2 – The Queensland Police

403. On 1 February 2016, Mr Rolfe applied to the Queensland Police Force.[406] Once again, he did not disclose the fact of the 2011 Queensland infringement and in evidence he claimed that the failure to disclose was a mistake and he had simply forgotten about it.[407]

404. On 7 March 2016, Queensland Police notified Mr Rolfe that his application had been vetted, and he had failed the integrity check due to his non-disclosure of a prior offence. As a result, he was excluded from applying to the Queensland Police Service for a period of ten years. [408]

Application 3 – The Western Australia Police Force

405. On 2 February 2016, Mr Rolfe applied to join the Western Australia Police Force. In that application (completed just over one month *before* he was notified by Queensland police of the ten year ban) he once again failed to disclose his Queensland infringement, or his conviction for theft while in the

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402 VicPol Recruitment correspondence [3-51].

403 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5108-5109.

404 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5108.

405 VicPol Recruitment correspondence [3-51].

406 Queensland Police Service recruitment file for Zachary Rolfe's Expression of Interest for Queensland Police dated 1 February 2016 [3-56].

407 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5103, 5117-5118.

408 Queensland Police Service recruitment file for Zachary Rolfe's Expression of Interest for Queensland Police dated 1 February 2016 [3-56].

ADF.[409] He answered "no" to a question about whether he had ever been investigated by any police force, law enforcement, defence force, government department or state or federal agency. That answer was clearly incorrect.[410] Mr Rolfe withdrew his Western Australian application after being accepted into the Northern Territory Police Force.[411]

Application 4 – The Northern Territory Police Force

406. On 2 February 2016, the same date he applied to the Police Force in Western Australia, Mr Rolfe applied to join NT Police. He had no specific interest in the Northern Territory or NT Police and in fact it was his least favoured option.[412]

407. In his written application there were four dishonest answers relating to:[413]

    (a) the Queensland infringement for public nuisance in 2011;

    (b) his military conviction for theft;

    (c) the fact that he had applied to other police forces; and

    (d) his history of illicit drug use.

408. Mr Rolfe accepted that his answers to these four questions were incorrect, but described three out of four as "errors", admitting only one deliberately false answer concerning his drug use.[414]

409. In the written application, Mr Rolfe was asked: "Have you ever been the subject of any complaints, internal investigations or ever had any disciplinary

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409 Western Australia Police Recruitment File for Zachary Rolfe's Application for Employment as a Police Officer dated 2 February 2016 [3-59].

410 Inquest evidence of Zachary Rolfe on 29 February 2024 at 5448.

411 Inquest evidence of Zachary Rolfe on 29 February 2024 at 5448.

412 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5089.

413 Zachary Rolfe NT Police application dated 2 February 2016 [3-4].

414 Inquest evidence of Zachary Rolfe on 26 February 2022 at 5120 and 5122.

action imposed on you?". Mr Rolfe marked his application form "No".[415] That statement was false, because as outlined above, while a soldier in the Australian Defence Force in 2012, Mr Rolfe had been the subject of an internal military investigation for the charge of theft, and he had pleaded guilty at a military trial and been the subject of disciplinary action as a result.

410. In his written application, Mr Rolfe initially marked both the "Yes" and "No" boxes when answering the question: "Have you previously applied to join any other police service?". He then crossed out the "Yes" box, leaving the answer as "No".[416] That statement was false because he had in fact applied to join the Victoria Police Service on 30 December 2015 and the Queensland Police Force on 1 February 2016 (that is, the day before his application to join NT Police).

411. In his written application to NT Police, Mr Rolfe did not disclose the fine he had received in Queensland for "Public nuisance – violent behaviour". But he did disclose this matter during his oral interview, nine days after he received his integrity ban from Queensland Police for this same non-disclosure. In the interview he gave a narrative that painted him as a brave young man who had rushed in to assist his comrade, which he says elicited a response from a member of the interview panel to the effect of "You'll fit in here".[417]

412. He falsely answered "no" to a question about whether he had ever used illicit drugs. In evidence at the Inquest, Mr Rolfe accepted that his answer in relation to drug use was deliberately false and said that he had given it because he thought the truth might adversely affect his chances to be accepted into a police force.[418] With respect to the remaining "errors" he claimed that each of them was an innocent mistake rather than a deliberate lie.

413. I do not accept the various explanations given by Mr Rolfe for having failed to complete the forms accurately and truthfully, with respect to his

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415 NT Police recruitment file for Zachary Rolfe [3-50A] at 6.

416 NT Police recruitment file for Zachary Rolfe [3-50A] at 6.

417 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5126.

418 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5119-5123 and on 29 February 2024 at 5547.

Queensland criminal infringement, the ADF offence and his recent applications to other police forces. Mr Rolfe claimed that personal administration was not his strong suit and he had not read the form carefully.[419] Yet he also described himself as someone of above-average intelligence who was attentive to detail.[420] Further, in his work in the law firm over 18 months, he would have gained an understanding of the importance of attention to detail in legal documents,[421] and the significance of completing forms carefully and honestly. I am comfortably satisfied that he lied in his application forms and I do not accept the evidence he gave at Inquest when he denied those lies and attempted to justify the errors.

414. To be clear, it is not his original offending conduct that is of concern (the Queensland infringement, army offence or illicit drug use), but his willingness to lie about it in important documents when applying for jobs as a police officer, a job where integrity is paramount. Furthermore, he was unwilling to admit to those lies many years later, when he gave evidence under oath at the Inquest into Kumanjayi's death.

Mr Rolfe is recruited to NT Police

415. On 28 February 2016, Mr Rolfe completed the psychological testing required as part of his NT Police application.[422] In evidence before the Inquest, Mr Rolfe said that he answered that test honestly.[423] The results indicated several features of concern, each of which was dismissed by Mr Rolfe at Inquest. The concerning results were:[424]

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419 See Inquest evidence of Zachary Rolfe on 29 February 2024 at 4457.

420 See Inquest evidence of Zachary Rolfe on 26 February 2024 at 5089 and 5099.

421 See Inquest evidence of Zachary Rolfe on 26 February 2024 at 5119.

422 Australian Institute of Forensic Psychology (**AIFP**) Psychological Profiling Report [3-6].

423 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5123.

424 Australian Institute of Forensic Psychology (**AIFP**) Psychological Profiling Report [3-6] at 7. In evidence, Mr Rolfe did not agree that he was less likely than others to accept responsibility for a mistake, brush off the significance of the error, minimise his role or blame other people: Inquest evidence of Zachary Rolfe on 26 February 2024 at 5124.

(a) "After making a mistake, Zachary is less likely than many others to accept responsibility. He may brush off the significance of the error, seek to minimise his own role, or to blame others";[425]

(b) "The 'Aggression' score is above average. Whether Zachary will act with firm assertiveness or frank aggression cannot be determined from this scale alone";[426] and,

(c) Friction between Mr Rolfe and his father was a pattern that "has frequently found to be associated with later resentment of authority figures in highly structured organisations in which employees are expected to comply with strict procedures. In the present case, other data confirm this could be a problem".[427]

416. In accordance with the position outlined by Counsel Assisting, I do not rely on the report to prove those asserted facts, in circumstances where the authors of the report were not called to give evidence. Instead, the relevance of the report to these Findings is that NT Police was on notice that Mr Rolfe had been flagged as a recruit who was, on the face of its own psychometric testing:

(a) less likely to accept responsibility for his mistakes;

(b) more likely to seek to minimise his own role or to blame others;

(c) above average in his aggression score; and,

(d) more likely to resent persons in authority and struggle to comply with the strict procedures of a hierarchical institution like the NT Police.

417. As set out in Chapter Four, from late 2018, NT Police became aware of an increasing number of complaints about Mr Rolfe's use of force and apparent

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425 Australian Institute of Forensic Psychology (**AIFP**) Psychological Profiling Report [3-6] at 7.

426 Australian Institute of Forensic Psychology (**AIFP**) Psychological Profiling Report [3-6] at 10.

427 Australian Institute of Forensic Psychology (**AIFP**) Psychological Profiling Report [3-6] at 15.

dishonesty. What I foreshadowed as a possibility in *Ruling No 3* proved to be correct, in that the evidence at Inquest demonstrated that "what the Police Force learned about Rolfe during his recruitment called for a greater degree of ongoing supervision and/or assessment to ensure Rolfe's suitability as a police officer and, in particular, his suitability for deployment with a tactical team such as the IRT".[428]

418. At the time of Mr Rolfe's tenure in NT Police, this aspect of the recruitment process was inappropriately siloed from the ongoing supervision and assessment of recruits once they commenced as junior constables. As Deputy Commissioner Smalpage said in evidence "while initial assessment processes must be rigorous, they need to be supplemented by ongoing assessments".[429]

419. The recruitment process, and in particular the psychometric testing, may identify areas of potential concern that can and should inform both ongoing assessments and the type of intervention or supports that a particular officer requires.

420. In this case, the recommendation of Mr Rolfe's psychometric testing during recruitment was that he should be subject to a "further evaluation with comprehensive report & structured interview".[430] This did not occur. The warnings set out in the psychometric testing report now appear prophetic, since they raise similar concerns to the ones I have about his conduct in Yuendumu on 9 November 2019, at least leading up to the first shot inside House 511. Had NT Police returned to and reflected on the psychometric test results, it might have informed the action they could have taken when, from mid-2019, Mr Rolfe was identified as the subject of a number of strikingly similar complaints that were yet to be fully investigated by the time he was deployed to Yuendumu.

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428 *Inquest into the death of Kumanjayi Walker (Ruling No 3)* [2022] NTLC 019 at [47]. I accept Counsel Assisting's analysis as to the relevance of this evidence: Closing written submissions of Counsel Assisting dated 22 October 2024 at [241]-[242].

429 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [214].

430 Australian Institute of Forensic Psychology (**AIFP**) Psychological Profiling Report [3-6] at 1.

421. On 16 March 2016, Mr Rolfe attended an interview panel comprised of Superintendent Sachin Sharma, Sergeant Kevin Agnew and psychologist Bruce Van Haeften.[431] Mr Van Haeften was not present to make any independent psychological assessment of Mr Rolfe and he had a role that was equal to the other interviewers.

422. Shortly before the interview commenced, Mr Rolfe completed a personal history form on which he disclosed that he had an application pending with the Queensland Police Force.[432] He did not, however, disclose that he had omitted to tell Queensland Police about his military conviction for theft, or that more than a week earlier he had been notified that his application to Queensland Police had, as a result of this omission, been refused and he was excluded from reapplying for ten years. When his interviewers asked him questions about the circumstances of the Queensland infringement, he gave the favourable account he outlined at Inquest about having acted in defence of his ADF comrade, and that assuaged any concerns the interviewers may otherwise have had about the incident.[433] I make no finding as to whether Mr Rolfe's account was accurate, but note that it was not tested by the interviewers.[434] Further, Mr Rolfe was not asked the most significant question, which was why he had failed to disclose the incident in the first place. NT Police concede that this was an oversight.[435]

423. At the time of the interview, the panel was not aware that Rolfe's "pending" application with the Queensland Police Service had already been determined

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431 Statutory declaration of Senior Constable Kevin Agnew dated 23 January 2020 [7-1] at annexure A (Interview notes).

432 Statutory declaration of Senior Constable Kevin Agnew dated 23 January 2020 [7-1] at annexure A (Interview notes); Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3150-3151.

433 Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3159-3160.

434 In fact, Rolfe gave evidence at Inquest that one of the panel members responded by saying "You'll fit in here": Inquest evidence of Zachary Rolfe on 26 February 2024 at 5126.

435 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [197]; Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [203].

and rejected and that he had been excluded from applying to the Queensland Police Service for ten years on the basis of integrity concerns.[436]

424. At Inquest, Mr Rolfe said that he disclosed the Queensland infringement to the interview panel because he had been reminded of it by the email he received from Queensland Police on 7 March 2016. He said that he did not disclose his military disciplinary matter because it did not come up and he had not realised that he had made the error in his application.[437] I do not accept Mr Rolfe's explanation for his selective disclosure. I am satisfied that he was strategic in what he revealed to or secreted from the interview panel, and he disclosed the Queensland infringement only because he was worried that NT Police would do their due diligence and discover the Queensland record, as Queensland Police had done. In other words, Mr Rolfe disclosed the bare minimum he thought necessary to avoid being penalised for his earlier dishonesty.

425. At the time of Mr Rolfe's interview, NT Police relied on a candidate's self-report and did not request their integrity history from the ADF because responses to such requests were not always forthcoming or timely.[438] It is not clear who was responsible for such a deficiency, but it appears that this lax practice evolved over an unknown period of time.[439]

426. Based on the information available at interview, and in the absence of any evidence that he had lied in his application or misled the panel, Mr Rolfe was regarded as an excellent candidate for NT Police.[440] The lies he had told the panel were not identified because no one on the recruitment team took the steps they ought to have taken as part of basic due diligence to check a candidate's application. That should have involved checking his criminal

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436 Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3151.

437 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5120 and 5123.

438 See Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [198]-[201].

439 See Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [199].

440 Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3163.

record in different Australian jurisdictions and seeking his personnel files from the ADF.[441]

427. The Chair of the panel that assessed Mr Rolfe's application, Senior Constable Kevin Agnew, acknowledged that the failure to disclose the ADF disciplinary matter in the application and the interview was a "hugely" significant omission.[442] Had SC Agnew discovered the omission, he "would never have recommended [Rolfe] and he would've gone to the NT Police Integrity Committee to be further assessed".[443] He explained that in light of each of the stages at which Mr Rolfe was given an opportunity (and failed) to disclose this part of his history, NT Police would likely have interpreted the omission as being deliberate, and rarely, if ever, would the force recruit someone who had deliberately failed to provide information of such significance in an application.[444]

428. Deputy Commissioner Smalpage concurred in his evidence, stating:[445]

> "Had the information regarding Constable Rolfe's ADF history been received during the recruitment processes, his application would have been put to the NTPF Challenge Panel for assessment as to his suitability for employment. Constable Rolfe would have been required to satisfy the panel that in spite of his proven misconduct in the ADF, he was a suitable applicant for the NTPF.
>
> Due to the lack of accurate information provided to the NTPF Recruitment Section by Constable Rolfe, the decision to offer him employment was not fully informed. His conviction for a dishonesty offence in particular was significant. Knowledge as to that matter, and further inquiries which would have been made as a consequence, could have adversely influenced the decision to offer him employment."

429. NT Police acknowledge the flaws in their recruitment process at the relevant time and have implemented significant improvements in their systems and due

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441 Inquest evidence of Senior Constable Kevin Agnew on 4 November 2022 at 3239-3241.

442 Inquest evidence of Senior Constable Kevin Agnew on 4 November 2022 at 3239.

443 Inquest evidence of Senior Constable Kevin Agnew on 4 November 2022 at 3240.

444 Inquest evidence of Senior Constable Kevin Agnew on 4 November 2022 at 3240.

445 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [202]-[203].

diligence, which they have explained in detail in written and oral evidence. These changes are summarised in Chapter Twelve. I accept that NT Police has taken action to remedy the weaknesses that Mr Rolfe's recruitment process revealed and I am pleased they have done so. In those circumstances, there is no need for me to make recommendations about that issue.

Mr Rolfe commences training

430. On 22 April 2016, Mr Rolfe was offered employment by NT Police and on 30 May 2016, he commenced a six-month training period at the College in Darwin, joining his colleagues to form Squad 129.[446]

Training on cultural engagement

431. Mr Rolfe had very little engagement with Aboriginal people before he commenced work with NT Police,[447] and he seemed to have developed no particular interest in the issues or history relating to Aboriginal Australians.[448] That is not a criticism, but it underscores the importance of meaningful training for recruits on topics that affect Aboriginal people across the Northern Territory, as well as training that is specific to the communities the recruits will be policing.

432. Relevantly, that should include the relatively recent history of European colonisation of each community, the resilience and significance of Aboriginal

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446 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [229].

447 Mr Rolfe's evidence about his engagement with Aboriginal people prior to joining the NT Police was that he "had a couple of kids in our school but not much…And obviously in the Army there's a lot, that – I worked with a lot of the lads I worked with.": Inquest evidence of Zachary Rolfe on 26 February 2024 at 5090 and he "had a number of Indigenous mates" in the Army: Inquest evidence of Zachary Rolfe on 26 February 2024 at 5132.

448 I formed this impression upon seeing and hearing him give evidence in the Inquest when he was asked about the cultural awareness or cultural competency training he received when he was a recruit. His answers lacked any real detail and indicated to me that he could not recall much about that training: see Inquest evidence of Zachary Rolfe on 16 November 2022 at 3262-3266.

culture, advice on how to engage with communities respectfully, the value of community engagement and relationships, and the impact of intergenerational and developmental trauma on current generations.

433. According to NT Police records, Mr Rolfe's Squad 129 received one week of cultural awareness training which "included a series of lectures around issues faced by police in 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".[449]

434. While I do not doubt that the intentions of NT Police were sincere, it appears to have had little impact on Mr Rolfe, or some of his colleagues who gave evidence.

435. At Inquest, Mr Rolfe said that he was unable to recall details of what was taught to him, suggesting that it was not "conveyed in an obviously memorable way".[450] He agreed that it was not a "big issue" for him.[451] While there will be some recruits who are more interested than others in Aboriginal history and current engagement, there was a theme amongst the officers I heard from that suggests the training they received was superficial.[452]

436. In their first three years, police recruits were (and are at the time of writing) sent out of Darwin and into one of three areas: Alice Springs, Tennant Creek or Katherine. In each of those places, the vast majority of individuals who police will be called on to protect and arrest will be Aboriginal people, many of them in crisis, or intoxicated, and some who are angry and upset. Surely, dealing respectfully and effectively with Aboriginal people, and minimising

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449 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [271].

450 Inquest evidence of Zachary Rolfe on 29 February 2024 at 5450.

451 Inquest evidence of Zachary Rolfe on 29 February 2024 at 5450.

452 See, for example, the Inquest evidence of Constable Mitchell Hansen on 27 October 2022 at 2669-2670; Inquest evidence of Constable James Kirstenfeldt on 19 October 2022 at 2019-2020.

the risk of violent conflict, are some of the most important skills for any NT police officer.

437. Mr Rolfe's evidence about the significance of this type of cultural skills training was underwhelming. Mr Rolfe said that he did not find the cultural training he received at the College to be useful because he did not encounter "cultural clashes" or "cultural problems" but simply "human problems of humans asking for help and then humans breaking the law".[453] He felt that his training and life experience had prepared him adequately for his role.[454] When giving the evidence, his demeanour might be described as nonchalant at times, and stubborn and combative at others. Yet even putting aside his demeanour, it was the content of what he said that was most concerning.

438. If Mr Rolfe really believes that understanding cultural differences is not relevant to good policing, then this at best demonstrates his naivety and a lack of understanding of the way in which Aboriginal people are often disadvantaged during their dealings with police, given their different language, culture and history of trauma. At worst, it demonstrates an arrogance and cynicism about issues that are of vital import. Given Mr Rolfe's obvious intelligence, I am inclined to think that he was being deliberately obtuse in failing to see the importance of understanding culture to good policing, but whatever the reason, his answers were problematic.

439. In truth, the importance to good policing practice of respecting cultural differences is obvious, and it was expressed well and often by other police officers who gave evidence at the Inquest. By way of example of a thoughtful answer about the importance of culture (and there were numerous), Acting Assistant Commissioner Travis Wurst, who has worked remotely at Papunya and Yuendumu, spoke of the importance of Aboriginal Community Police

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453 Inquest evidence of Zachary Rolfe on 16 November 2022 at 3263-3264.

454 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5090.

Officers (ACPOs) in providing him with a cultural understanding of community. The evidence of A/AC Wurst included that:[455]

(a) the ACPOs "were able to integrate me into that community so that I had an understanding of what was and was not appropriate and the way in which I should and should not communicate with people and how it should occur. I also was given the opportunity to understand where I should and should not go in that community from a cultural appropriateness point of view";

(b) learning what was and was not appropriate included "[b]ody language, eye contact, skin group relationships, the marriage protocols, sensitivities around ceremonies, the relationship between men and women within the community";

(c) he became very familiar with Elders in the community, as well as emerging leaders, who taught him "how to negotiate my way through some of the sensitivities that may occur in our daily business"; and

(d) in dealing with conflict that might arise in the community, he "regularly" went to Elders or emerging leaders to assist him.

440. Later in this chapter I will detail some of the offensive racist remarks that were shared by Mr Rolfe and a small number of his colleagues in the Alice Springs command. The comments were blatant and shameful racism. Whatever the limitations of the police training package on cultural engagement, that cannot be blamed for Mr Rolfe's use of racist language, which appeared to have become normalised for Mr Rolfe, at least amongst the cohort of officers involved in the text exchanges.

441. At the time of the texts, Mr Rolfe was close to 30 years old and had been privileged by an excellent education. He should not have needed to be told how intolerable and unethical racism is.

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455 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 958-959.

442. Nevertheless, it is possible that a better understanding of NT history and the reason for intergenerational trauma experienced by Aboriginal people, and how this affects behaviour, may help police appreciate the impact of racism and what to do if they see it. Despite Mr Rolfe's stubborn failure to see how understanding cultural difference might inform good policing, during the second tranche of his evidence, he accepted that training on trauma-informed engagement would have assisted him in working with community members, particularly young people.[456]

443. Since Kumanjayi's death, partly as a result of the deficiencies identified by reviewing the training that Mr Rolfe and his cohort received, NT Police advise that they have improved the quality and depth of cultural training that is given to its recruits. Some of those changes are summarised in Chapter Twelve. It is always best practice to continually evaluate and adapt training methods and content, and I am assured by NT Police that they will do so. I have nevertheless made recommendations directed to ensuring that takes place.

Training on the use of force

444. Mr Rolfe gave evidence that the training he received at the College was "extensive" in relation to arrests and use of force.[457] Alongside other recruits in Squad 129, he was trained in police powers,[458] the use of firearms[459] and defensive tactics.[460] Use of force is guided by the "General Order, Operational Safety and Use of Force"[461] and the "Instruction, Operational Safety and Use of Force"[462]. One key principle taught is that: "The success of an operation will be primarily judged by the extent to which the use of force is avoided or

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456 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5188.
457 Inquest evidence of Zachary Rolfe on 28 May 2024 at 5732.
458 Squad 129 Timetable [3-10].
459 Inquest evidence of Zachary Rolfe on 2 March 2022 at 1029.
460 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1102.
461 See General Order, Operational Safety and Use of Force [17-2].
462 See Instructions, Operation Safety and Use of Force [17-3].

minimised",[463] and the dictate that "lethal force must be the option of last resort".[464]

445. An important part of the training of all recruits involved the "10 Operational Safety Principles" and the "Tactical Options Model", both reproduced below.[465] Mr Rolfe was taught about de-escalation techniques including communication and tactical withdrawal,[466] as well as ICENCIRE (Isolate; Contain; Evacuate; Negotiate; Conclude; Investigate; Rehabilitate; Evaluate) and risk management.[467]

446. While it is not feasible in these Findings to include a detailed review of all the training that NT Police provides, I have taken into account relevant information from the brief of evidence, including (but not limited to) the numerous reports and oral evidence of Detective Senior Sergeant Barram[468] and defence expert Ben McDevitt;[469] the evidence of Mr Rolfe and the evidence of other members of the IRT, at both this Inquest and the criminal trial of Mr Rolfe.

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463 See discussion in the Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [230].

464 Trial evidence of Zachary Rolfe on 2 March 2022 [7-115A] at 1030.

465 Inquest evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1029-1031 and on 3 March 2022 at 1102-1108.

466 Inquest evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1103-1104.

467 Rolfe Recruit Training Exam 1 [3-9], Training Exam 6 [3-11], see also Squad 129 Timetable [3- 10]; Trial evidence Zachary Rolfe [7-115A] on 2 March 2022 at 1034 and on 3 March 2022 at 1102.

468 Email from Detective Senior Sergeant Andrew Barram to Detective Acting Superintendent Kirk Pennuto dated 10 March 2020 [10-3]; Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4]; Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5]; Statutory declaration of Detective Senior Sergeant Andrew Barram dated 1 April 2020 [10-6]; Statutory declaration of Detective Senior Sergeant Andrew Barram dated 11 June 2020 [10-7]; Statutory declaration of Detective Senior Sergeant Andrew Barram dated 21 August 2020 [10-8]; Committal evidence of Detective Senior Sergeant Andrew Barram on 3 September 2020 [10-9A]; Trial evidence of Detective Senior Sergeant Andrew Barram on 28 February 2022 [10-9B] and Inquest evidence of Detective Senior Sergeant Andrew Barram on 18 November 2022.

469 Expert report of Ben McDevitt dated 29 June 2020 [10-26]; Expert report of Ben McDevit dated 16 August 2021 [10-27]; 10-27; Trial evidence of Ben McDevitt [10-27A] on 8 March 2022; "Assess and Re-assess: A conflict de-escalation model" by Ben McDevitt [10-27B]; and Inquest evidence of Ben McDevitt on 7 March 2023.

447. Ultimately, as I set out in Chapter Eight dealing with the events of 9 November 2019, I agree with the position of NT Police that Mr Rolfe did not adhere to all of the use of force policies, procedures and training during his involvement with Kumanjayi Walker. Crucially, he did not adhere to the 10 Operational Safety Principles and he ignored the key lessons of the Tactical Operations Manual and ICENCIRE,[470] creating a situation known as "officer induced jeopardy".

The 10 Operational Safety Principles

448. The 10 Operational Safety Principles are central to developing a plan for an operation and when reacting to an incident, particularly when they involve a person who is armed or reasonably suspected of being armed. Police are taught that not all of these principles can or should be applied on every occasion and it is up to the members attending to know them and make an assessment as to which technique to apply, and when, in any given situation. The main objective is to "resolve confrontations with the minimal amount of force and the maximum level of safety possible".

449. The 10 Operational Safety Principles are as follows:

1. Safety First	The Safety of police, the public and offenders/suspects is paramount.
2. Risk Assessment	An assessment is to be made of the possible risks associated with any course of action or option being considered.

[470] Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [238]. DC Smalpage suggests that both Mr Rolfe and C1C Eberl failed to adhere to the 10 Operational Safety Principles and ICENCIRE, but I am not critical of C1C Eberl. First, Mr Rolfe assumed the role of the de facto team leader of the operation after 7pm and led the IRT members into error; and second, once it is understood that only Mr Rolfe and Cst Kirstenfeldt received the full briefing from Sgt Frost, it is easier to appreciate the way in which the arrest plan was disregarded by Mr Rolfe. This is explored further in Chapters Seven and Eight.

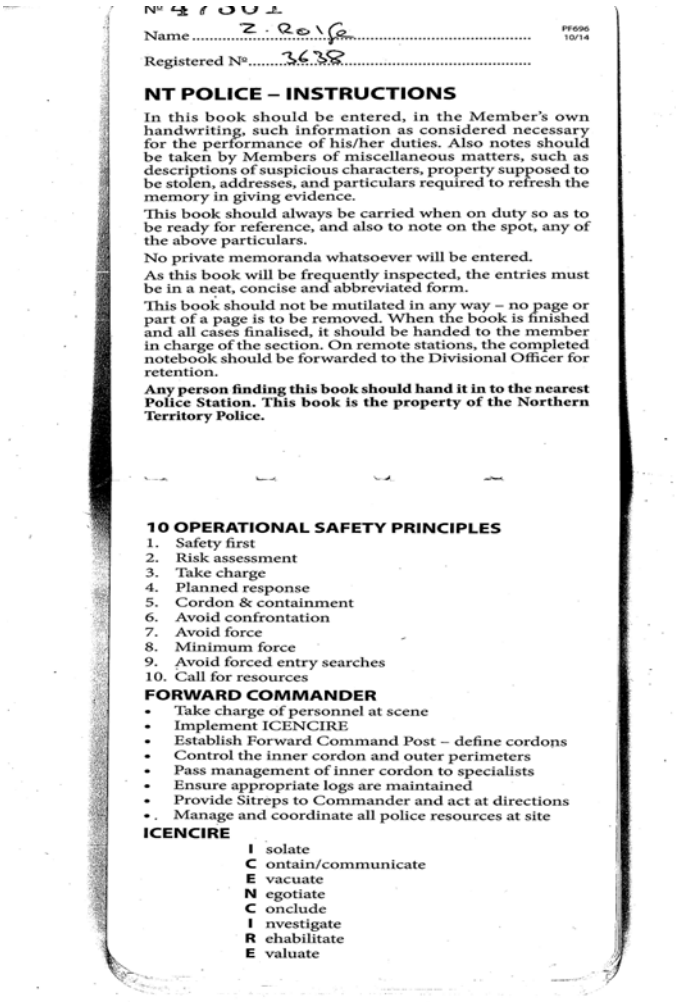
3. Take Charge	Effective command and control must be exercised.
4. Planned Response	From an unplanned response every effort must be made to develop a plan of action.
5. Cordon and Contain	Unless it is impractical to do so a "cordon & contain" approach is to be adopted.
6. Avoid Confrontation	A violent confrontation is to be avoided as much as is reasonably possible.
7. Avoid Force	The use of force is to be avoided as much as is reasonably possible.
8. Minimum Force	Where force cannot be avoided, only minimum force reasonably necessary and justifiable is to be used.
9.Avoid Forced Entry Searches	Forced entry searches are to be used as a last resort.
10. Resources	It is accepted that the "safety first" principle may require more resources, more complex planning and more time.

ICENCIRE

450. Recruits are taught by the acronym of ICENCIRE (Isolate; Contain; Evacuate; Negotiate; Conclude; Investigate; Rehabilitate; Evaluate), which clearly emphasises the importance of planning, so as to minimise the risk of conflict. ICENCIRE is relevant to a number of situations, including armed resistance to lawful arrest. Further, it teaches Police that “an unplanned response or approach may precipitate [cause] a confrontation and that [i]t is only possible

to be threatened if you place yourself in a position where you can be threatened".[471]

451. There can be no doubt about the significance of these tactical principles, since the 10 Operational Safety Principles and ICENCIRE are reproduced on the first page of every police notebook, including the one carried by Mr Rolfe in Yuendumu on 9 November 2019. It appears in this format:[472]



Nº 47301

Name Z. Rolfe PF696 10/14

Registered Nº 3638

NT POLICE – INSTRUCTIONS

In this book should be entered, in the Member's own handwriting, such information as considered necessary for the performance of his/her duties. Also notes should be taken by Members of miscellaneous matters, such as descriptions of suspicious characters, property supposed to be stolen, addresses, and particulars required to refresh the memory in giving evidence.

This book should always be carried when on duty so as to be ready for reference, and also to note on the spot, any of the above particulars.

No private memoranda whatsoever will be entered.

As this book will be frequently inspected, the entries must be in a neat, concise and abbreviated form.

This book should not be mutilated in any way – no page or part of a page is to be removed. When the book is finished and all cases finalised, it should be handed to the member in charge of the section. On remote stations, the completed notebook should be forwarded to the Divisional Officer for retention.

Any person finding this book should hand it in to the nearest Police Station. This book is the property of the Northern Territory Police.

10 OPERATIONAL SAFETY PRINCIPLES

1. Safety first
2. Risk assessment
3. Take charge
4. Planned response
5. Cordon & containment
6. Avoid confrontation
7. Avoid force
8. Minimum force
9. Avoid forced entry searches
10. Call for resources

FORWARD COMMANDER

- Take charge of personnel at scene
- Implement ICENCIRE
- Establish Forward Command Post – define cordons
- Control the inner cordon and outer perimeters
- Pass management of inner cordon to specialists
- Ensure appropriate logs are maintained
- Provide Sitreps to Commander and act at directions
- Manage and coordinate all police resources at site

ICENCIRE

I solate
C ontain/communicate
E vacuate
N egotiate
C onclude
I nvestigate
R ehabilitate
E valuate

The importance of 'If/then' thinking

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471 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at 9.

472 Inquest Exhibit 19: "7-115D ROLFE, Zachary – official police notebook 47301 pp1-9".

452. Relevantly, Police are taught “if/then” thinking, which is explained simply as:[473]

> “We must always be a step ahead of a potential violent subject or situation by employing if/then thinking practices.
>
> You must continually consider- "If they do this then I will do that in response.”

Tactical Options Model framework

453. In parallel with other jurisdictions in Australian, Police in the NT work within a “Tactical Options Model framework”, represented in training by the ‘tactical options wheel’, a diagram with concentric circles. That diagram is reproduced below, along with the commentary that sits under it in the Manual.

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[473] Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at 9.

Physical confrontations are not static but are dynamic by nature. The Tactical Options wheel turns in either direction, moment by moment to the appropriate option depending on all the circumstances. These circumstances may include factors such as: size, special skills, age, or sex of the subject and police officer.

The role of the police officer is to apply the correct tactics and communication in an endeavour to bring about a peaceful resolution to the incident. The escalation/de-escalation of the incident may be, in some cases, dictated by the officer's correct choice of tactics.

Members should be aware that mere presence is a tactical option. Prior to deciding on this option members should analyse the situation, prepare a plan, make all possible inquiries about the subject and request any assistance deemed appropriate.

454. The tactical options that police have range from being present in a situation to empty hand tactics and less lethal weapons (batons, taser, OC Spray) through to lethal firearms.[474] The clear message to recruits from the "Tactical Options Model" is that at the centre of all tactical options is the requirement to think about "safety first", assessment, re-assessment and good communication.

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474 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at 9.

455. There was no dispute that the training Mr Rolfe received reinforced the need for optimal planning and good situational awareness. Included in the training package was the following clear advice, which, to be frank, also accords with a common sense approach to engaging with community members.[475]

> **Awareness**
>
> One of the most beneficial and effective ways an officer can safeguard him/herself is the ability to anticipate danger. The anticipation of danger requires the use of all available senses by being prepared for the unexpected. Members must stay alert, be aware of their surroundings and develop effective intuition.
>
> The hindrance to all these skills is complacency. It does not matter how many times you have done it, have been to it, have patrolled it, or have seen it, each situation is different. Complacency is a disease, but fortunately there is a cure. It is called awareness. Awareness is knowledge of your surroundings, knowing what you're getting into and staying in control at all times.
>
> 1. Stay alert / Maintain situational awareness
>
> 2. Maintain a safe distance
>
> 3. Always watch the subject's hands
>
> 4. Anticipate danger/problems before they happen - have a plan
>
> 5. Identify behavioural warning signs
>
> 6. Expect the unexpected or unusual
>
> 7. Be aware of surrounds
>
> 8. Always put yourself in a position of advantage
>
> 9. Do NOT become complacent
>
> **Mental States of Awareness**

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475 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at 12-13.

> One of the most important factors affecting a police officer's survival and ability to handle any situation in which they may be confronted, is the officer's mental state of awareness.
>
> We must consider all possibilities in many situations BEFORE they occur.
>
> **"IF/THEN" THINKING**
>
> We must always be a step ahead of an offender or situation by employing if/then thinking. The members must continually consider- "If he does this then I will do that in response.

456. Of further relevance to the circumstances of Kumanjayi's death, Mr Rolfe was trained as follows:

(a) not to assume that he would be given any warning about any edged weapon attack,[476]

(b) that edged weapons could be concealed,[477]

(c) to draw his firearm if presented with an edged weapon, present lethal cover, and assess the situation,[478]

(d) to assess and re-assess the level of threat and to create distance to enable a reactionary gap,[479] and

(e) if required to shoot, fire at the centre of the offender's seen mass, and shoot until the threat is incapacitated, or stopped.[480]

457. There is no doubt that edged weapons can be lethal and there are circumstances which will justify police discharging a firearm in response, in which case the likelihood of death or serious injury is high, given police are

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476 Trial evidence of Zachary Rolfe on 2 March 2022 [7-115A] at 1031-1032.

477 Trial evidence of Zachary Rolfe on 4 March 2022 [7-115A] at 1165.

478 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1031-1032 and on 29 February 2024 at 5463.

479 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1032 and on 4 March 2022 at 1162, 1772.

480 Inquest evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1032-1033 and on 4 March 2022 at 1130-1132; Inquest evidence of Zachary Rolfe on 29 February 2024 at 5463.

trained to fire at the central mass and continue to fire until the threat is stopped. That is precisely the reason why, when there is time to plan, as there was for the arrest of Kumanjayi Walker, it is necessary to conduct a thorough risk assessment. I will return to this theme in my assessment of the actions of Mr Rolfe and the other IRT members in the failed arrest of Kumanjayi.

458. While the type of tactical training Mr Rolfe and Squad 129 received was not in dispute, there was a key disagreement around the nuance of the training he received about what to do when presented with an "edged weapon". Mr Rolfe submits that his police training was that "when presented with an edged weapon a police officer is entitled to use their firearm, and when doing so, they are to aim at centre body mass and discharge the firearm until the threat is eliminated".[481] At various stages in the committal and trial of Mr Rolfe, it was suggested that "knife equals gun" as if the presentation of an edged weapon automatically justified the discharge of an officer's firearm.[482]

459. By contrast, the position of NT Police at the Inquest was:[483]

(a) the presentation of an edged weapon does not always justify the discharge of a firearm and an officer will have to assess the situation and determine whether that is justified, and

(b) even after the discharge of a firearm, police training requires the officer "to assess and re-assess the threat, to attempt to de-escalate, and to create a reactionary gap".

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481 Closing written submissions of Zachary Rolfe dated 11 November 2024 at [122.5].

482 Trial evidence of Zachary Rolfe on 2 March 2022 at 1031: "The way I was trained was if we were presented - if someone was threatening us with an edged weapon, our first response was to go for our firearm, unless that was impossible"; at 1107: "I was trained, if you were faced with an edged weapon, as a threat, to pull my firearm".

483 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [218].

460. The evidence of some other police witnesses at Mr Rolfe's trial[484] was largely consistent with this position.

461. Following the acquittal of Mr Rolfe, NT Police Management took a number of actions to clarify the position: it updated training modules including a new use of force training package which emphasises communication, conflict resolution, de-escalation, risk assessments and situational awareness[485]; and circulated a direction to correct any misunderstanding on the issue. An Internal Broadcast sent to all sworn officers on 7 June 2022 reads:[486]

Authorised by

Commander, College Command

For the attention of all sworn members – Operational Safety Requirements

This broadcast is issued to address an identified erroneous belief or misconception amongst some members that "knife equal's gun" in all circumstances when members are faced with a physical threat to themselves or others during their operational duties. This phrase may have derived from past training and has since been used incorrectly, poorly explained or wrongfully interpreted. This

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484 Senior Constable First Class Christopher Hand gave evidence at Trial that if presented with a knife you could draw your firearm, but he was not trained to always draw his firearm, rather that it depends on the situation including what you think their intent is and who else is around: Trial evidence of Senior Constable First Class Christopher Hand on 9 February 2022 at 84; Senior Constable Lanyon Smith agreed that when presented with an edged weapon it might warrant the drawing of a firearm (Trial evidence of Senior Constable Lanyon Smith on 9 February 2022 at 115), and he explained "we are also taught tactical disengagement and other options" (at 116)..

485 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1223].

486 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at Annexure MS-28 "Internal Broadcast: For the attention of all sworn members – Operational Safety Requirement" sent 7 June 2022.

matter is brought to the attention of all sworn members as the phrase was subject of proceedings during the Supreme Court trial of Constable Zachary Rolfe.

Operational safety training does not use this phrase as it bears no true resemblance in relation to a member's situational awareness, available tactical options and decision making when confronted with a weapon including an edged weapon.

As delivered in training, when confronted with an edged weapon, blunt weapon or any other weapon members should in the first instance consider the principles of 'Threat, Time, Distance, and Cover'. Adherence to these taught principles and added Situational Awareness in dynamic, unpredictable, and at times dangerous environments, will provide members the optimum response to maintaining everyone's safety and the ability in making a more informed Use of Force (UOF) decision. Like any other UOF decision, it needs to be lawful and justified and must be reasonable, necessary, proportionate and appropriate to the circumstances.

When faced with a life or death situation in which a member has to make a decision to use force that is likely to cause death or serious harm, lethal force should always be used as a last resort and only to protect life. If other tactical options are available, members need to risk assess and consider if there is a less than lethal alternative and is it likely to be effective. Risk assessment and planning should always form part of any response when entering into an unknown environment and to turn an uncontrolled environment into a controlled one. As provided in training members are reminded to refresh themselves and apply the 'Ten Operational Safety Principles', 'Tactical Options Model', 'Police /Subject categories', 'ICENCIRE' and 'If / Then thinking'. Members are reminded of the Force Philosophy that applies to the planning, implementation and evaluation of Police operations which provides that "The success of an operation will be primarily judged by the extent to which the use of force is avoided or minimised".

Scenario Based Training

462. Both NT Police and Mr Rolfe accept that he received scenario based training, but that it did not cover the exact scenario of Kumanjayi's arrest.[487] That is not surprising given the extraordinary circumstances involved in Mr Rolfe ignoring the arrest plan and substituting his own ad hoc one to enter House 577 and 511 to "grab up" Kumanjayi. I am not critical of the theory or scenario training Constable Rolfe received from NT Police in relation to tactical skills or dealing with edged weapons. However, the circumstances of Kumanjayi's death offer a salutary example of where officers can put themselves and others in unnecessary danger and it would be useful in scenario training to provide an example of what can go wrong when there is insufficient planning. I will return to this in my recommendations.

Summary of my conclusions on Mr Rolfe's training

463. Mr Rolfe gave evidence that he was confident of his tactical skills,[488] which is perhaps not surprising given his experience in the ADF. He topped the exam results in his NT Police recruit squad, a fact that demonstrates his intelligence and potential.[489]

464. Aside from issues of "cultural competency" and awareness discussed above, the main areas for further improvement in the training that are revealed by Kumanjayi's death are an opportunity to emphasise with ADF recruits the importance of community engagement and de-escalation; and the contrast in approach between a Police force and paramilitary force (recommendation 21 relates). That is not a criticism of ADF recruits, but an opportunity to ensure that their background does not inadvertently confuse their tactical priorities.

465. I will return to the changes that have already been introduced, and the further recommendations, in Chapter Twelve.

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487 Trial evidence of Zachary Rolfe on 4 March 2022 [7-115A] at 1188-1189; Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [222].

488 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5128.

489 Squad 129 Exam Results [3-13].

Mr Rolfe's experience as a police officer

Mr Rolfe commences at Alice Springs Police Station (ASPS)

466. On 14 December 2016, Mr Rolfe commenced work as a Probationary Constable at Alice Springs Police Station. At that time, recruits had a choice of being posted to Katherine, Tennant Creek or Alice Springs, and Alice Springs was the first choice for Mr Rolfe, since he had heard it was the busiest police station in the NT and he wanted to learn as much as he could, as quickly as possible.[490]

467. As a constable working in a general duties patrol group, Mr Rolfe worked on the ground floor of the ASPS.[491] The most senior officer located on the ground floor was the Officer in Charge of the station, who was a Senior Sergeant. Detectives and higher-ranking members, including Superintendent Pauline Vicary, were located on the upper floors, and were therefore geographically removed from the general duties team. That is a relevant consideration with respect to the importance of the mentoring provided to younger police officers by the sergeants. As I reflect several times in these Findings, the role of sergeants and senior sergeants in mentoring patrol groups and the IRT, setting standards and supervising use of force, is integral to an effective police force, and they had access to the troops on the floor on a daily basis.

468. For the three years that Mr Rolfe worked in Alice Springs Police Command, the general duties workforce was organised by "patrol group". There were five patrol groups. Although staffing varied, each patrol group generally comprised of a majority of constables, sometimes a senior constable and two sergeants. Of the sergeants, the first, the "Shift Sergeant", had operational responsibility for the patrol group during the shift[492] and was responsible for

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490 Inquest evidence of Zachary Rolfe on 16 November 2022 at 3265-3266.

491 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5131; Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [226].

492 Trial evidence of Sergeant Robert Kent on 8 February 2022 [7-74A] at 58-59.

allocating duties, determining shift priorities, reviewing UoF CNEs, and otherwise supervising the work of the more junior officers.[493] The second sergeant on shift was the "Custody Sergeant" and was not generally involved in an operational capacity with the work of the patrol group.[494]

469. Alongside other recruits, Mr Rolfe attended a one or two day Induction before starting in general duties at ASPS. The evidence suggests that the induction package delivered at that time was not about building skills to bridge any cultural divide or to promote engagement with Aboriginal communities, and nor was it about the type of specific issues he could expect to encounter in policing the population in and around Alice Springs. Mr Rolfe said that he was taught about the different town camps and communities in Alice Springs but that the training was "more geographical than cultural".[495]

470. On 27 December 2016, in his first week as a sworn member, Mr Rolfe and another member, Acting Sergeant Jamieson, together with a civilian, rescued two Katherine residents from the Hugh River Crossing after their vehicle was swept into the water. One was rescued at the crossing but Mr Rolfe then travelled 5 kilometres downstream, in the river and on land, searching for the missing female and successfully rescued her in treacherous conditions. For this act of courage and bravery Mr Rolfe received numerous bravery medals: the Australian National Bravery Medal, a Hong Kong bravery medal, the Royal Humane Society Gold Clark Medal and a Royal Lifesaving Cross of Bravery.[496] He did not, however, receive a NT Police commendation, likely at least in part because Superintendent Vicary, who was the incident controller and who conducted the debriefs, had concerns about the decision making around the rescue.[497] Superintendent Vicary discussed with both officers her concerns that they were not trained to engage in such rescues, that they should not have

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493 Trial evidence of Sergeant Evan Kelly on 9 February 2022 [7-73A]at 122; Inquest evidence of Sergeant Evan Kelly on 21 October 2022 at 2266.

494 Trial evidence of Sergeant Robert Kent on 8 February 2022 [7-74A] at 58-59.

495 Inquest evidence of Zachary Rolfe on 16 November 2022 at 3266.

496 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [231].

497 Recorded statutory declaration of Superintendent Pauline Vicary dated 11 February 2020 [7-133] at 4.

allowed a civilian to have assisted and about risk management, as she was concerned that they had put themselves at considerable risk.[498] Mr Rolfe referred to the debrief as giving "us a bit of a smack" and believed that he had "got the brass off side".[499] While I do not doubt Mr Rolfe's courage in this rescue operation, I am not in a position to draw any conclusions as to the appropriateness of him engaging in the rescue instead of following the instructions to wait for back up assistance.[500] Mr Rolfe denied that the response by NT Police to his act of bravery caused him to resent authority, but he acknowledged that he formed an adverse view about Superintendent Vicary.[501] Efforts to ensure he appreciated the need not to get involved in "risky behaviour" were pursued in morning meetings by Superintendent Virginia Read but the only message Mr Rolfe received was "I should have stood on the side of that river and watch these people drown".[502]

471. In his three years in Alice Springs, Mr Rolfe attended around 3,000 jobs, the vast majority of which I know nothing about.[503] There were occasions when he was praised for his work ethic and professionalism. On 28 December 2018, for example, he received an email from Acting Superintendent Tanya Mace thanking him and other IRT members for their hard work and dedication in Borroloola, which included dealing with unlawful entries into a hotel and the Borroloola Police Station, a significant aggravated assault and the recapture of an escaped prisoner.[504] On 3 January 2019, Commander Currie recognised the "professionalism and dedication" of IRT members, one of whom was Mr Rolfe, in locating that escaped prisoner.[505]

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498 Inquest evidence of Pauline Vicary on 2 November 2022 at 3039.

499 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5155.

500 Bravery award nomination and related documents including PROMIS record and CAD Log [3-29].

501 His lack of respect increased over time but later improved: Inquest evidence of Zachary Rolfe on 27 February 2024 at 5230, 5232.

502 Inquest Evidence of Zachary Rolfe on 26 February 2024 at 5156.

503 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5092.

504 Email "Thank you" from Acting Superintendent Tanya Mace dated 28 December 2018 [3-171].

505 Email chain "FW Borroloola Police Station" dated 3 January 2019 [3-172].

472. Mr Rolfe's evidence was that he considered that his level of compassion increased, not decreased during his time in Alice Springs.[506] He said that there were opportunities for positive engagement with Aboriginal people during his time at Alice Springs and pointed to the example of playing Xbox with a young child when he attended premises in relation to a domestic violence call out.[507] On 8 September 2019, just two months before Kumanjayi's death, the Director of the Central Australian Retrieval Service emailed Commander Currie to praise Mr Rolfe's actions in assisting with a distressed child who had self-harmed and was in the emergency department at the Alice Springs Hospital.[508]

473. There can be no doubt that over the course of his three years in NT Police, Mr Rolfe worked hard and demonstrated tactical skills and enthusiasm, earning him the admiration and respect of his patrol group members and some supervisors. However, while his attitude towards policing in the NT varied, contrary to what Mr Rolfe himself claimed, there is objective evidence that he spiralled downwards, particularly after he was overlooked a number of times for selection into the Tactical Response Group (TRG). The chronology set out below is not intended to be a comprehensive critique of Mr Rolfe's experience in NT Police, but rather a broad overview that allows for analysis of some of the major pressures and influences on him, and the attitudes and behaviour that resulted.

Mr Rolfe's involvement in the Immediate Response Team (IRT) and the Tactical Response Group (TRG)

474. In February 2017, Mr Rolfe submitted an Expression of Interest (**EOI**) to undergo training as part of the Alice Springs based Immediate Response Team (**IRT**), the nature and development of which is described in Chapter One. In brief, the IRT was a "part time capability" comprised of officers who

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506 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5092.

507 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5201-5202.

508 Email "RE Thank you to the police from the Emergency Department ASH" dated 9 September 2019 [3-173].

volunteered to receive enhancement skills training to enable them to support general duties police or respond to high-risk incidents in certain circumstances.

475. Between 8 and 19 May 2017, Mr Rolfe attended and passed the initial training course for the IRT which was run in Alice Springs by members of the Territory Response Group (**TRG**). The TRG is promoted as an elite tactical squad and it was Mr Rolfe's aspiration to join. At the time Mr Rolfe passed the initial IRT course in 2017, the IRT was called the Alice Springs Cordon and Containment Team (**ASPCCT**). The focus of the course was rural cordon and containment with the introduction of basic close quarter tactics (**CQT**) being room entry and hostage rescue.[509] Thereafter Mr Rolfe completed further training with the IRT including on:[510]

(a) 1 November 2017 (IRT qualification shoot, weapons handling and qualification, AR-15 and Glock),

(b) 14 February 2018 (IRT general training, close quarter tactics),

(c) 24 April 2019 (annual IRT training),

(d) 6 June 2019 (requalification on less lethal validation: beanbag shotgun), and

(e) 13 July 2019 (weapons handling and qualification, AR-15 and Glock).

476. Together, the initial and further training covered: ICENCIRE, the 10 Operational Principles, the Tactical options Model and the IRT Standard Operating Procedures (SOP).[511]

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509 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 23.

510 TRG Training Records (Rolfe) [3-37]; Trial evidence of Sergeant Lee Bauwens on 24 February 2022 at 759-762.

511 Trial evidence of Sergeant Lee Bauwens on 23 February 2022 at 748-755

477. Before his deployment to Yuendumu Mr Rolfe deployed with the IRT on eight occasions.[512] Each deployment was for general support and for the arrest of persons he described as high-risk, who had a propensity for using violence.[513] He had a reputation for being hard-working, willing, and fit, and in turn he said he enjoyed his colleagues and found the work to be rewarding and enjoyable.[514]

478. The IRT provided an opportunity for Mr Rolfe to maintain his tactical skills and to use leadership skills. He assisted with training sessions on house clearing, reconnaissance and weapons handling and he assisted Sgt Bauwens in preparing a business case for IRT equipment.[515]

479. He became a close colleague of Sgt Bauwens who allowed him to have input into IRT processes including who should be permitted to join, such as Constable Sykes, Mr Rolfe's formed ADF colleague. Cst Sykes was then permitted to go on deployments notwithstanding he had not been recruited and trained as required by the IRT SOP.[516]

480. The ad hoc nature of the IRT propelled Mr Rolfe to a de facto leadership role. That had direct implications on 9 November 2019, when, in the absence of any policy requiring that a team leader be appointed, Mr Rolfe assumed the role of de facto team leader and took charge after the briefing by Sergeant Frost, substantially changing the nature of the plan. I will return that that issue in Chapters Seven and Eight of these Findings.

481. While he enjoyed the IRT, Mr Rolfe had mixed feelings about general duties and Alice Springs more generally. As early as August 2017 he messaged his family that the NT wasn't for him and he "just wanted war".[517] By October

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512 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5167.

513 Trial evidence of Zachary Rolfe on 2 March 2022 at 1037.

514 Inquest evidence of: Zachary Rolfe on 26 February 2024 at 5162- 5163; Lee Bauwens on 22 February 2024 [7-7A] at 4960-4961.

515 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5161, 5162, 5163, 5466; MFI MMM Messages 106-107, 111-115.

516 Inquest evidence of Zachary Rolfe on 29 February 2024 at 5467.

517 MFI MMM message 5.

2017 he had applied to the Australian Defence Force (**ADF**) for service in Special Operations Command (**SOCMED**). His career goal was to transition into the military and in his application for SOCMED he said "I have enjoyed and still enjoy my time as a police officer but more than ever my desire is to join the SASR".[518]

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

483. Mr Rolfe scored above the required standard for the TRG and was recommended to apply for future vacancies. After the selection training, he returned to Alice Springs and continued in general duties policing. Although he applied for vacant positions at the TRG as they came up, other candidates were offered the spots over him and (as demonstrated by the text messages below) it was a source of frustration and anger to Rolfe that he was repeatedly overlooked in favour of others whom he considered less talented.

Mr Rolfe's beliefs, attitudes and values

484. The evidence received in the Inquest disclosed highly disturbing and troubling values held and expressed by Mr Rolfe throughout his policing career. He expressed these values freely with some of his colleagues, including some more senior officers. There is no evidence that anyone in this group challenged or corrected Mr Rolfe's attitudes. Sadly, it appears they were tolerated, and worse still, shared and encouraged. Each of these attitudes—whether they be frustration with more senior officers, attraction to high-adrenaline policing, contempt for "bush cops" or remote policing, sexism or racism—had the potential to increase the likelihood of a fatal encounter with Kumanjayi.

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518 Zachary Rolfe Special Operations Command Application [3-64F] at 3.

Frustration with being overlooked for TRG spot

485. Despite having passed the selection criteria for the TRG in August 2018, Mr Rolfe was not offered any of the vacant positions that came up in 2019 and he was convinced that they had gone to less worthy candidates. He was frustrated with the suggestion that he might have to serve "out bush" to improve his chances with the TRG, work which he considered to be irrelevant to tactical work and instead, he thought he should be recommended based on his arrest rates.

486. On 15 February 2019, he texted a female friend to express his disappointment:[519]

> "Hey just got the email literally just then .. didn't get the position, such a joke. Out of .. myself and the last 3 people to get TRG positions (since I've been qualified) I'm the only one that passed selection with enough points to be "encouraged to apply" they all just passed so got "eligible to apply" yet I haven't got the position.
>
> Fuckin ..... fuck haha"

487. When he sent a message to a colleague on 17 February with the same complaint, he was "reassured" in a way that supported his belief that he was being treated unfairly:[520]

MR ROLFE:	Bro, no love for me from TRG
COLLEAGUE:	Lots of love on the floor mate! You've just been fucked over by selections and the shit process. Don't let it get you down mate, you'll get a job in there this year.

488. On 5 May 2019, Mr Rolfe sent a text to Ben Roberts-Smith which embedded a complaint about the "new diverse world" where girls take priority over him, and in which he expressed his frustration that his policing was "not going

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519 MFI MMM message 50.

520 MFI MMM messages 51, 52.

anywhere and I need some wild times badly".[521] Those complaints were intensified one month later, when a female friend and colleague passed the TRG training. He wrote to a male officer to say:[522]

> "Bro did you hear [BB] passed TRG…what a fucking joke. Her and two others".

489. In September 2019, just two months before Kumanjayi was killed, Mr Rolfe was informed that he had not been the successful applicant for the next vacant position for the TRG. Mr Rolfe asked for and received feedback to the effect that other applicants had longer and more diverse careers, and it was recommended that he go "out bush" for 12 months. Rather than take any of that perfectly reasonable feedback on board, he described it to his sergeant, Paul Kirkby, as a "Fucking joke", and rather than provide him with mature leadership and advice, Sgt Kirkby doubled down on the criticism of management, and reinforced Mr Rolfe's view that he was hard done by. Their exchange read:[523]

SGT KIRKBY:	Problem with your application?
MR ROLFE:	Nah application was fine, except that dashy wrote a stupid comment and vicary didn't fill out her bit at all.
	But they reckon that the other applicants have "longer and more diverse careers then me.
	And recommend I go out bush for 12 months haha
	Fucking joke
SGT KIRKBY:	That's their standard line now.
	Everyone knows people go out bush cause they're fucking lazy. Maybe that's who

521 MFI MMM message 249.

522 MFI MMM message 260.

523 MFI MMM messages 462-464.

> they're looking for now. The order of preference now is blacks, chicks, gays and lazy fucks – then Zac

490. In the continuing exchange, Mr Rolfe told Sgt Kirkby that he "[didn't] want to get to trg bad enough to waste 12 months of my life out bush".[524] That response by Mr Rolfe is revealing. It demonstrates a sad lack of curiosity about remote communities in the NT and a lack of interest in and understanding of the cultural opportunities that remote work can offer. Further, it demonstrates Mr Rolfe's impatience and a lack of respect for senior officers in recruitment who were trying to give him sensible solutions as to how he could achieve a spot in the TRG, with patience and application.

491. His impatience with getting a spot in TRG was clearly something he discussed with a number of family and friends and colleagues,[525] so much so that on the day after Kumanjayi was shot, Mr Rolfe engaged in the following exchange with a male friend:[526]

> MALE FRIEND: Hey brah, super stoked for you.
>
> ROLFE: My man
>
> MALE FRIEND: Let's see those pussies in TRG say no now.
>
> MR ROLFE: Oath

492. While I do not go so far as to suggest that Mr Rolfe engaged with Kumanjayi in a particular way in order to improve his chances at a spot in the TRG, he appears to have thought, after the event, that this show of force in dealing with Kumanjayi might assist him. In evidence, Mr Rolfe denied that this message celebrated his use of force or was "toxic" and instead claimed it was a healthy celebration of his "being alive".[527]

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524 MFI MMM message 466.

525 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5423.

526 MFI MMM message 600.

527 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5424.

Lack of respect for police hierarchy – disdain for "the bosses"

493. It is striking that so early on in his career as a junior constable, Mr Rolfe was comfortable expressing his disdain for senior colleagues such as Superintendents Vicary and Read and the TRG selection panel. Mr Rolfe admitted that on occasions he resented authority figures and he did not respect rank until the person earned his respect.[528] In evidence he explained that he did not disrespect "the brass" per se. He said that "if someone who was a member of the brass had done something that I deemed an error" and when he (Mr Rolfe) "deemed them to be worthy of contempt, then I would feel contempt towards them" "regardless of rank".[529] Mr Rolfe made it clear that if he was given a command, and he thought there was a better way, he would speak up and he would not obey a command that he considered was unsafe or unlawful.[530] He respected some in the hierarchy, but not others.[531]

494. As discussed earlier, Mr Rolfe refused to be corrected when it came to his risky behaviour in his first week at Alice Springs when he participated in a brave but dangerous rescue. Superintendent Read attempted to address that behaviour in at least three conversations but these efforts seemingly proved futile and ended when Mr Rolfe took a "NTPA member up there with me".[532]

495. On 5 February 2019, he wrote to his then girlfriend that "this station is a mess and the bosses don't have a clue".[533]

496. On 28 February 2019, concerning one superintendent who had called off a police pursuit, he texted Constable Sykes, to state that "she's an idiot".[534]

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528 Inquest evidence of Zachary Rolfe on 28 May 2024 at 5709.
529 Inquest evidence of Zachary Rolfe on 26 February 2022 at 5124-5125.
530 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5125.
531 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5125.
532 Inquest evidence of Zachary Rolfe on 28 May 2024 at 5712.
533 MFI MMM message 11.
534 MFI MMM message 74.

497. On 2 March 2019 he texted to a fellow constable that he had sent intelligence to the bosses and "got no reply". His work colleague responded, "Hahaha useless ay" and Mr Rolfe agreed.[535]

498. On 8 April 2019, he texted a friend that "work was a little average today, just cop bosses being lazy and creating red tape, fuck it".[536]

499. On 3 September 2019, in response to being told that the TRG selection had favoured candidates who spent time out bush, Mr Rolfe described the selectors as "fucking idiots".[537]

500. Mr Rolfe did not trust the Professional Standards Command (**PSC**) or the detectives, as he thought the PSC did not apply the rules equally across the ranks and there were no rules for the detectives. Mr Rolfe thought the constables and sergeants were resentful of "the brass" because of poor leadership and because "the brass" did not support the members on the ground.[538]

501. In evidence at the Inquest Mr Rolfe confirmed that he did not think the bosses were up to the job or "performing to a good degree", and maintained his right to hold that opinion.[539]

Lack of respect for women

502. Despite his denials and claims that his messages were meaningless,[540] I am satisfied that Mr Rolfe held and expressed views which were derogatory and

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535 MFI MMM messages 82-84.

536 MFI MMM message 163.

537 MFI MMM message 428.

538 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5178-5179.

539 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5205-5206.

540 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5295 and on 28 February 2024 at 5385-5386.

disrespectful of women and, in particular, of his female colleagues, including, and perhaps particularly, his female bosses.

503. He sent a grotesque picture (a meme of a significantly overweight and grotty Penguin character from the movie Batman) to a colleague with the caption "girls like this talk the most sh*t" and his added comment "Literally 50% of the women at our work". Later in the same exchange he said "girls and bushcops all disgust me ha ha".[541]

Contempt for bush police

504. It will be evident from the messages already outlined that Mr Rolfe (and at least two of his superiors) demonstrated a lack of respect for community (bush) police that was arrogant and unwarranted. He thought the work-load was higher in Alice Springs and police "went bush" because of the slower pace.[542] He said his only exposure to bush police had been negative, in the sense that they required the assistance of the IRT to perform their own role.[543] Those attitudes are likely to have had a significant impact on the level of respect that Mr Rolfe had for the actions of Officers Hand and Smith, the "bush cops" who responded to Kumanjayi's behaviour in Yuendumu on 6 November, and to the 9 November Ops Order/arrest plan that was formulated by Sgt Frost, another "bush cop".

505. On 9 July 2019, Mr Rolfe texted Sgt Bauwens about their success in detaining a suspect and added:[544]

> "Yeah the bush cops would never have been able to get him. impossible for them..

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541 MFI MMM messages 353-359.

542 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5274-5275.

543 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5300.

544 MFI MMM messages 330-332.

> So it was good we went, the bush cops fucked up as usual but that just mean we had a run instead of getting him cordoned properly so it's all good
>
> He was fair rapid."

506. When Sgt Bauwens texted Mr Rolfe that that "bushcoons" weren't used to cops "going after them", Mr Rolfe replied, "yeah, bushcops blow my mind", reflecting the feeling of superiority that Mr Rolfe, still a junior constable, had over officers stationed in remote community.[545]

507. On 12 July 2019, Mr Rolfe's texted another constable that "Bush cops are fucking shit house" and later (referencing the sexist photograph depicting the grotesque "Penguin" image) "Girls and bushcops all disgust me haha".[546]

508. On 3 September 2019, when Sgt Kirkby sent a text soothing Mr Rolfe's disappointment at missing out on a spot in the TRG by criticising management, Mr Rolfe replied:[547]

> "They're fucking idiots. Prioritising lads that go out bush so they can be lazy and do no work."

509. In what is perhaps the most contemptible exchange (set out above), on 22 September Mr Rolfe and Sgt Kirkby were again exchanging complaints about the TRG selection process:[548]

> MR ROLFE: Nah application was fine, except that dashy wrote a stupid comment and vicary didn't fill out her bit at all.
>
> But they reckon that the other applicants have "longer and more diverse careers then me.

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545 MFI MMM messages 337-338.

546 MFI MMM messages 357, 359.

547 MFI MMM messages 427-428.

548 MFI MMM messages 463-464, 466.

> And recommend I go out bush for 12 months haha
>
> Fucking joke
>
> SGT KIRKBY: That's their standard line now.
>
> Everyone knows people go out bush cause they're fucking lazy. Maybe that's who they're looking for now. The order of preference now is blacks, chicks, gays and lazy fucks – then Zac
>
> …
>
> MR ROLFE: I know ey, I don't want to get to trg bad enough to waste 12 months of my life out bush doing nothing.

510. This came a few weeks after Sgt Kirkby had thanked Mr Rolfe for acting dramatically on his body worn video to help cover for Sgt Kirkby "losing [his] shit" in an incident were a member of the public "press[ed] [his] buttons".[549]

511. The view expressed by Mr Rolfe and Sgt Kirkby (and to some extent by Sgt Bauwens) that bush cops were lazy and underemployed is unfounded. The view was genuinely held by Mr Rolfe, who had no proper basis for it. It is revealing of his arrogance, sense of superiority and lack of respect for colleagues. One only need to look at the extraordinary work of bush cops in Yuendumu like Sgt Frost, Senor Constable First Class Hand and Senior Constable Lanyon Smith in 2019, and Sergeant Anne Jolley in 2022 to know what a relentless work load they carried. Mr Rolfe was too ignorant and too egotistical to respect that, and he was encouraged in those views by these two senior officers. It is an understatement to say that their apparent lack of respect for their colleagues does them no credit.

512. In the lead up to 9 November 2019, Mr Rolfe was a young man frustrated with his job who thought he could do better than bush cops. As outlined in Chapter

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549 MFI MMM message 430, dealt with in more detail in Chapter Four.

Five, when Officers Hand and Smith reacted in the way they did on 6 November, Mr Rolfe was scathing. Having watched the BWV of the axe incident he engaged in texts with A/Sgt McCormack that demonstrated he believed he knew better than they did about how to handle Kumanjayi:[550]

> A/SGT MCCORMACK: I'm sorry I fucking watched that...fuck me...
>
> MR ROLFE: Yeah ey
>
> A/SGT MCCORMACK: U imagine if that other cop got killed and he stood there and watched it with his fucking hands up...what the fuck have we become
>
> MR ROLFE: I know ey...fuck my whole Life

513. He thought (wrongly) that Officers Hand and Smith were cowards;[551] he thought police should have drawn their firearms, and he expressed that sentiment widely and publicly when he participated in a television interview on 4 September 2022 in which he said, "I won't lie about it, I have called those two men cowards" but went on to explain it was not because of their actions (or lack of actions) in dealing with Kumanjayi but for, what he claimed, was their "failure to take personal responsibility for their lack of conditioning, or training" and the "lie" they told, that they made a decision not to draw and fire their weapons. He did not believe their actions were a tactical withdrawal or an active decision, instead he maintained both officers were scared and "their bodies took over". He thought their actions were "unacceptable". Mr Rolfe made an arrangement with a national news outlet whereby he would record his reflections on the trial, knowing that what he said may be broadcast on the program. When those officers gave evidence that Mr Rolfe did not like at his trial he recorded himself saying: "Fuck Hand and fuck Smith, whatever".[552]

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550 MFI MMM messages 547-550.

551 7News Spotlight Footage video 3 [20-54] and video 3 – transcript [20-55] at 5-6.

552 7News Spotlight Footage video 2 [20-52], video 2 – transcript [20-53] at 1.

Attraction to adrenalin style policing and "cowboy shit with no rules"

514. I have no difficulty accepting the submission of Counsel Assisting that the associated (and relevant) themes that emerge from a review of Mr Rolfe's policing in the NT are his attraction to high intensity paramilitary type work, his dissatisfaction with NT Police and general duties policing, and his disregard for rules.

515. I have already noted that in February 2017, Mr Rolfe submitted an expression of interest to undergo training with the IRT and by May 2017, he had passed the initial IRT training delivered by the TRG. Just a few months later, in August of 2017, he was messaging family that the NT wasn't for him and that he "just want[ed] war...but also luxury living".[553] By October 2017, he had applied to the Australian Defence Force (ADF) for service in Special Operations Command (SOCMED) and his career goal was to transition into the military. Mr Rolfe stated in his SOCMED application: "I have enjoyed and still enjoy my time as a police officer but more than ever my desire is to join the SASR".[554]

516. He was disappointed when there was a chance the IRT, which he referred to as a "tactical response team" was potentially going to be changed to "*drumroll* full time traffic/bush station relief hahaha the two worst things" which would show "how bad the station is going".[555]

517. There is ample evidence that Mr Rolfe took great satisfaction from his job when he could engage in risky, high-adrenaline situations, including pursuits and arrests. He denied that he found this the most enjoyable part of his job,[556] yet as NT Police point out, this is contradicted by some of the messages found

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553 MFI MMM message 5.

554 Zachary Rolfe Special Operations Command Application [3-64F] at 3.

555 MFI MMM message 53.

556 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5226.

on his mobile phone which show him revelling in "high risk" work; with (as he perceived it) fewer or no rules.[557]

518. On 14 October 2018, Mr Rolfe wrote:[558]

> "The NT sucks but it does have positives like less rules and fairly wild."

519. On 28 February 2019 he engaged in the following exchange with a friend in Perth:[559]

MR ROLFE:	...I'm in a semi tac team down in Alice, coz TRG is too far away to be of any use. But I've passed trg selection just waiting for a spot to open up ey. So I just do general duties and whenever something "high risk" is on just do our own thing.
PERSON A:	Fuck Yeha man that sounds solid. ... Good on you man sounds like your killing it.
MR ROLFE:	...police is cool man I could do this for good I reckon, not in the NT but elsewhere for sure. ...Alice springs sucks haha The good thing is it's like the Wild West and fuck all rules in the job really ... but it's a shit hole. Good to stay here coz of the volume of work but will be good to leave.

520. On 4 May 2019, Mr Rolfe texted a family member to get a phone number for former SASR soldier Ben Roberts-Smith so that he could contact him about

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557 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [245].

558 MFI MMM message 9.

559 MFI MMM messages 65-69.

the prospect of private overseas work because he was "just gonna try and find the most wild work to do all around the world I guess".[560]

521. Mr Rolfe sent a message to Mr Roberts-Smith on 5 May 2019 which clearly reveals his attitude to policing at that time and his desire to move on. He wrote:[561]

> "I'm at work at the moment but was gonna see if you were free sometime for a chat about some work. I'm heading over SA soon for that ronin course mainly just for shits and giggles but yeah, policings good but it's not going anywhere and I need some wild times badly."

522. When Mr Roberts-Smith offered to connect him with the right people "running contracts out of Kabul/Afg, Syria/Iraq, and Lybia/Africa", Mr Rolfe replied enthusiastically, adding in a dig about the "new diverse world" he found himself in where others got opportunities he clearly thought he was more deserving of:[562]

> "That'd be wicked, I know it sounds dumb to some people but you'd get it, I just want some dangerous shit (whilst being professional..) TRG will happen at some point, I've already passed just waiting for a spot but they're about to run a new course and they're gonna pump a few girls through so with the new diverse world those girls will take priority over me so I've got time to do other stuff."

523. On 30 July 2019, Mr Rolfe texted a friend enthusiastically:[563]

> "We have this small team in Alice, IRT, immediate response team. We're not full time, just get called up from Gd's for high risk jobs, it's a sweet gig, just get to do cowboy stuff with no rules..."

524. On 2 October 2019, he texted another junior constable he had been in the squad with, Mitch Hansen, and wrote:[564]

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560 MFI MMM message 248.
561 MFI MMM message 249.
562 MFI MMM message 251.
563 MFI MMM message 376.
564 MFI MMM message 494.

"Mitchy…lets do some hero shit today."

525. Being excited by high risk/high adrenalin work is not in itself problematic, and young men and women should be able to enjoy the physical challenge and adventure involved in being a police officer in the NT. So much the better for recruitment and retention if the important job of policing is also full of adventure and opportunity.

526. Further, I am very conscious that tactical engagement is demanding and that having fit, proactive, young officers on general duties is a great asset to NT Police. It is right to recognise the value of hard work, along with courage, stamina and tactical skill. The problem is when excitement about showing off those skills switches into a desire to exercise, and admiration for, the use of force and a lack of accountability around it.

527. Much of the hard work in policing requires skills of listening, good communication, compassion and patience, and I was not taken to any evidence in the text exchanges that suggested Mr Rolfe valued those attributes in himself or other police officers.

528. I have taken into account stories of Mr Rolfe showing compassion, including to a child who had self-harmed and when he played X-Box with a child in the home of a domestic family violence victim, but those stories do not detract from the objective evidence that Mr Rolfe enjoyed and identified himself closely with his use of force, including when it caused injuries to suspects. It is not inconsistent for Mr Rolfe to have been compassionate to people he viewed as victims, and to rush in and derive a misguided sense of satisfaction and self-esteem from his exercising force against those he labelled suspects or "bad guys".

529. The relevance of this attitude to policing in the NT revealed by Mr Rolfe's messages is that, combined with the incidents of avoidable or unecessary use of force summarised in the next chapter, and the lack of accountability for that use of force, there is a body of evidence that compels a conclusion that by 9 November 2019, Mr Rolfe had come to glorify his violent confrontations with suspects, who were almost exclusively Aboriginal men. I am satisfied

that the evidence demonstrates he had a tendency to rush in to get his man, with too little regard for the risk of injury to a suspect. Mr Rolfe's view that there were fewer rules was supported by the lack of appropriate oversight of his conduct by NT Police, and the failure of that organisation to sanction him when he was found to have been in breach, issues I return to in Chapter Four.

Celebration of the use of force

530. On numerous occasions in 2019, Mr Rolfe sent footage from his own body worn video, or other media, to colleagues, family and friends. It is clear that a significant motivation for doing so was that he was proud of, and wished to be celebrated for, his physical feats of tactical skill or ability. He thought that using force against sometimes arrest targets, and causing them serious injury, was funny.

531. On 8 April 2019, following his arrest of a 17 year old Aboriginal boy, CW, Mr Rolfe had the following text exchange with a police colleague:[565]

MR ROLFE:	Check out [CW]'s new mugshot haha
FEMALE OFFICER:	Hahahahahah those bandages I wonder what they're from ..... Clumsy boy he must be
MR ROLFE:	So clumsy haha

532. This exchange is clearly mocking of CW and making light of his injury.[566] The exchange appears to imply that the sender and recipient thought that the notion that CW might have suffered these injuries accidently was funny, and perhaps even unlikely.

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565 MFI MMM messages 164-167.

566 As I set out in Chapter Four, the arrest of CW was an example of Mr Rolfe failing to turn on body worn video during an arrest, meaning that there was insufficient evidence when it came to investigating the complaint made by CW.

533. The next evening, that same female police officer was on an evening shift when she messaged Mr Rolfe to express her frustration that an Aboriginal female was not being truthful with police. The officer suggested that she had lost her temper with the female arrestee and admitted that she may have been "hangry", a slang blending of hungry and angry. The exchange continued:[567]

MR ROLFE:	Hate that.
	Oi if you're hungry you're definitely allowed to towel locals up
FEMALE OFFICER:	If your last name rhymes with olfe you're allowed to towel up locals
MR ROLFE:	I do have a license to towel locals. I like it

534. On another occasion, after Mr Rolfe sent another officer a video of him causing significant injuries to Albert Bailey, the other officer responded in terms that suggest that Mr Rolfe had a reputation for conduct of that kind (or, at least, that it was familiar to that officer):[568]

OFFICER:	I love these. *I've seen this move so many times now, the old sprint then rodeo Rolfe wrecking ball bulldozer.* Just waiting for the day for this move to evolve into a flying drop kick. First one there wins.
	…
MR ROLFE:	Alright challenge on for flying drop kick haha
OFFICER:	I'm with perky man it's definitely doable we were in the river while he was flogging someone proper I didn't know what to do so just kicked sand on him to join in panic mode

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567 MFI MMM messages 172-178.

568 MFI MMM messages 526-532.

I liked it

MR ROLFE: Hahahahaha

535. I am not critical of officers messaging each other about their frustration with members of the public, and I respect the value of light-hearted banter or "gallows humour" between colleagues called on to do a tough job, in circumstances that must be very frustrating at times. But the telling (and troubling) aspect of this exchange is that it clearly reveals an inside "joke" that is not in fact remotely funny: that Mr Rolfe had a reputation for heavy handed tactics or "towelling up the locals", which Mr Rolfe shared, found funny and, seemingly, encouraged.

536. In addition, on 23 June 2019, he sent two close family members the footage of an arrest when he and a group of officers had jumped a fence, and forcefully entered a home, where Mr Rolfe pointed his Glock Pistol at the suspect and shouted for him to "get on the fucking floor". Mr Rolfe later copied the footage from his own body worn video onto his personal phone. That act in itself is a serious misuse of evidence belonging to NT Police. His actions were made worse by the fact that he then distributed the video, so as to elicit a positive response from others about his policing style and actions. The message accompanying the text commenced "Mark and I kicking in doors yewwww".[569]

537. I make no adverse comment about the tactics used by Mr Rolfe during the arrest, but his actions in sending this and other body worn videos to family and friends was immature, unethical and a serious breach of police policy with regard to the use of evidence.

538. On 25 September 2019, Mr Rolfe sent a video to his parents showing him and other police chasing down a suspect, which concludes with Mr Rolfe pushing the suspect so hard that he falls into a structure and injures his arm. Whether

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[569] MFI MMM messages 298-299.

or not the force used was justified, is not the point; the point is that it was glorified. The commentary read:[570]

> "The main chase body worn is mine...haha treated him to the old illegal shoulder charge. Because I wear body armour I'm not as rapid as the locals initially but they still can't outrun me.
>
> Turns out the dude wasn't who we were looking for and is now in a sling for nothing haha don't run from police."

539. On 4 September, Mr Rolfe sent two of his close family members a photo of positive comments that Sergeant Paul Kirkby had made about him, accompanied by a follow up text that read: "me and that Sarge stomp heads together".[571]

Mr Rolfe held and expressed racist attitudes and beliefs

540. When Mr Rolfe started work in Alice Springs he had limited experience of Aboriginal people but they made up the majority of the people he was engaging with in his role and, in spite of the training he had received, he found the experience to be "eye opening".[572] Evidence of racism, and more particularly, racism associated with his work experiences, first emerged on review of Mr Rolfe's text messages. Contrary to Mr Rolfe's submissions[573] his phone revealed multiple offensive and racist remarks about Aboriginal people who he (or his colleagues) encountered through policing.

541. Mr Rolfe himself was at pains to suggest that his racist text messages had been misrepresented at the Inquest. In an essay that he caused to be published in February 2023 Mr Rolfe expressed his anger that his private text messages had been aired in the Inquest[574] and sought to dismiss the seriousness of his

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570 MFI MMM messages 479-480.

571 MFI MMM messages 434, 439.

572 Inquest evidence of Zachary Rolfe on 29 February 2024 at 5450, 5452.

573 Closing written submissions of Zachary Rolfe dated 11 November 2024 at [85] and [87].

574 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5288.

racist text messages. He attempted to either justify or explain his text messages. First, by claiming he used rude and racist terms regarding nearly every race in private. While all of Mr Rolfe's text messages were in evidence, only certain of them were identified (by the Counsel Assisting team and by interested parties) as being potentially relevant to the Inquest. As an interested party Mr Rolfe was always able to identify any relevant text. Because he claimed: "that he did not treat a single race differently from others. In private I talked shit about nearly every group at times. Yet they (the Inquest) released just a tiny snippet to make me out to be racist, a few messages out of thousands",[575] Mr Rolfe in particular was asked to identify any additional text messages that provided the context he claimed was lacking. Despite that open invitation, at no time did Mr Rolfe identify any additional messages to put the identified messages into clearer "context".

542. Second, Mr Rolfe tried to justify his racist text messages when he asserted that the words effectively meant nothing as "the words only mean what *the person using them or hearing them* puts a value on them".[576] However, a year later, when asked to reflect on his racist messages, Mr Rolfe acknowledged that he understood that racist language was unacceptable,[577] that he "should have done better", "there were words and themes I should not have used",[578] and he felt "a sense of shame and definitely regret".[579] I accept that, belatedly, Mr Rolfe (the person using those words) now concedes the racist content of his text messages and feels ashamed and regretful.

543. On reading his messages, there is no doubt in my mind (the person hearing those words) that Mr Rolfe's phone revealed racist messages exchanged by Mr Rolfe, including those with four other officers, that are thoroughly shameful and regretful. There are two matters that were particularly

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575 Inquest Exhibit 26: "'I was a good cop' – Zach Rolfe breaks his silence – NT Independent article dated 23.02.23".

576 Inquest Exhibit 26: "'I was a good cop' – Zach Rolfe breaks his silence – NT Independent article dated 23.02.23".

577 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5133, qualified with it being accepted in the NT Police.

578 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5288.

579 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5291.

concerning. The first is that they involve not just junior officers, but two sergeants; a rank of officer that is supposed to play an important role in mentoring constables. The second is how dismissive Mr Rolfe was of the seriousness of that racism, at least initially.

544. While maintaining that his own racist text messages had been misrepresented and taken out of context and that he had not used racist language in the police station,[580] and with no warning beforehand that he would do so, in February 2024, Mr Rolfe gave evidence that in fact, he had been exposed to the widespread use of racist language when he was a police officer for three years in Central Australia[581] and, further, that racism exhibited by members of the TRG at their Christmas function each year was effectively sanctioned in NT Police.[582] Mr Rolfe said that although he had initially been shocked by what he claimed to be, widespread use of racist language in the NT Police, he explained that because its use was "normalised" he became "desensitised" to it. Certainly, racist language and attitudes appear to have been normalised amongst some of Mr Rolfe's cohort, but I also heard from many officers who are passionate about their commitment to the communities they police and expressed zero tolerance of racism in all forms, including conduct by word or deed.

545. On 27 April 2019, fellow Constable Mark Sykes texted Mr Rolfe "Heard you had a rough arvo yesty, grubby fucks...", to which Rolfe replied:[583]

> "Nah bra just slightly annoying haha coons man".

546. A week later, on 3 May 2019, Mr Rolfe wrote to a close family member:[584]

> "I just don't get why all that work has got me to the point where it's my job to look after Neanderthals who drink too much alcohol haha".

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580 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5289.
581 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5133-5136.
582 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5134.
583 MFI MMM messages 209-210.
584 MFI MMM message 241.

547. Mr Rolfe referred to Aboriginal people as "losers".[585]

548. As discussed earlier, Mr Rolfe approved of his reputation for having "a licence to towel up locals".[586]

549. Of great concern to me was the way in which Mr Rolfe's senior officers engaged in, and encouraged, both racist exchanges and lack of respect for other officers.

550. On 22 June 2019, the following exchange occurred:[587]

SGT KIRKBY:	Who was the silly bitch?
MR ROLFE:	Fuck knows some white bitch who thinks she aboriginal
SGT KIRKBY:	Lying in the dirt pissed!
	Doing a fucking good impression

551. On 9 July 2019, Sergeant Lee Bauwens, the head of the IRT and a senior officer Mr Rolfe looked up to, texted to praise him for an arrest which Mr Rolfe claimed he had affected after the "bush cops fucked up as usual". Sgt Bauwens wrote to Mr Rolfe: "These bush coons aren't used to people going after them." Mr Rolfe replied "Yeah bushcops blow my mind, I'll tell you about these dudes when I see you".[588]

552. The example Sgts Kirkby and Bauwens set for Rolfe in these text exchanges is lamentable. Time and time again, the Inquest heard evidence that the most important rank in the NT Police were the sergeants. These officers were sufficiently senior to provide mentorship and guidance to more junior officers, but were also still undertaking front-line duties and interacting, on a day to day basis, with junior officers.

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585 MFI MMM message 173.
586 MFI MMM message 178.
587 MFI MMM messages 295-297.
588 MFI MMM message 338.

553. The evidence of racism is not just in the language used, which includes "bush coon", "nigga" and "neanderthals", but also in the casual way in which a number of officers (and in some cases civilians) shared a "joke" with Mr Rolfe about his use of force against Aboriginal suspects. In one case, Mr Rolfe shared his amusement about an innocent Aboriginal man, who he chased and pushed over, injuring that man's arm which ended up in a sling. That suggests a callousness towards that suspect which is dangerous.

Dehumanisation of arrest targets

554. Mr Rolfe volunteered his understanding about why the use of racist language was problematic. While on the one hand acknowledging that he had become desensitised to racist language (due to exposure and normalisation), and having conceded that racism might lead to some police officers dehumanising members of the community; Mr Rolfe maintained that:

(a) he himself did not use racist language in the police station,[589] and

(b) he did not dehumanise members of the community, when he said:[590]

> "Well I can only speak for myself, and I know that there are studies that do show that it – the normalisation of that language can dehumanise someone. And that's been used in the past by military in war situations, its utilised as a tool to dehumanise the enemy. I can speak from me only that, I can tell you that wasn't the case for me…"

555. Yet Mr Rolfe's phone messages provide multiple examples of attitudes and actions he took which appear to be dehumanising of members of the public.

556. Take, for example, his discussion of the community in Borroloola where he was sent for an IRT job. On 9 March 2019, he wrote to another police officer that "The losers up here are being nice to each other while we 're around",

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589 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5289.

590 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5138.

apparently because, according to Mr Rolfe, "we smashed this town last time so they're all behaving so I'm just getting some mad RnR Ha ha".[591]

557. On 10 March 2019 he wrote to a female friend:[592]

> "I'm out at Borroloola (a random community on the coast) coz they're rioting, but we came up last time they did this and smashed the whole community so this time as soon as we arrived they started behaving. Which is cool so I'm just getting heaps of sleep and reading and working out haha."

558. It is consistent with having dehumanised suspects that Mr Rolfe sent evidence from his body worn video to friends and family on multiple occasions which depicted his use of force against and sometimes injuries to Aboriginal suspects seeking validation and approval for his dynamic approach and/or to make a joke out of the consequential injuries.

559. Towards the end of February 2018, Rolfe commenced a relationship with another young constable at the Alice Springs Police Station, Claudia Campagnaro. The relationship ended in September 2018. Having heard her evidence, and the evidence of Mr Rolfe, I have no difficulty accepting the credibility of Ms Campagnaro. She was a compelling witness and her evidence of Mr Rolfe's attitudes is corroborated by and consistent with independent evidence, including Mr Rolfe's text messages, his recording and dissemination of BWV of his use of force, and his own evidence as to widespread use of racist language in the NT Police (most particularly in ASPS and the TRG) and his desensitisation to it. She gave evidence that Mr Rolfe made a number of deeply concerning statements about his attitudes to the use of force, his attraction to violence and "killing" (and, hence, his interest in the ADF), his desire to "shoot someone" during the course of his work as a police officer so that he could go on paid leave, and his awareness that more senior officers within the Alice Springs Police Station were "covering up" or "fixing up" his "jobs" when there were suggestions that he had used unjustified force.

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591 MFI MMM messages 90, 95.

592 MFI MMM message 94.

560. Whether Mr Rolfe meant what he said to Ms Campagnaro or was just showing off to try to impress her is difficult to know. Ultimately, Ms Campagnaro's evidence merely lends weight to the overwhelming objective evidence from the phone download, and Mr Rolfe himself, that demonstrates his racist attitudes and that these had progressed to a dehumanising of suspects.

561. When I weigh all that evidence against Mr Rolfe's assertion, I do not share his level of confidence in his ability to strictly compartmentalise his racist attitudes and beliefs from his behaviour. The whole man was present in Yuendumu on 9 November 2019, with all the skills and attributes that in some ways made him an effective police officer, and also all his flaws. The events reveal evidence of some of his positive skills such as his willingness to assume leadership, his decisiveness and his capacity for first aid. The events reveal evidence of some of his flaws, such as his willingness to ignore the chain of command and the 5am arrest plan, his prioritisation of an arrest outcome over arrest planning, and his choice to enter House 511 in the manner that he did, increasing the risk that force would be required rather than adopting a cordon and contain approach.

562. An officer who dehumanises and devalues the lives of arrestees may be less inclined to do everything necessary to avoid injuring them. He may be more inclined to rush in without regard for suspects', his or others' safety. He might be insufficiently risk averse. That was the effect of the evidence, as to how Mr Rolfe communicated about suspects and treated numerous suspects he came to arrest, and it is relevant to my assessment of his actions on 9 November 2019.

563. It is not possible for me to say with certainty that Mr Rolfe's racist attitudes were operative in his decisions on 9 November or were a contributing cause of Kumanjayi's death, but I cannot exclude that possibility.

564. That I cannot exclude that possibility is a tragedy for Kumanjayi's family and community who will always believe that racism played an integral part in Kumanjayi's death; and it is a taint that may stain the NT Police.

565. I am satisfied that Mr Rolfe was a person who held racist attitudes and had dehumanised suspects at the time of Kumanjayi's death. Those attitudes and the consequences of those attitudes increased the risk of a fatal interaction. Those racist attitudes were present in Mr Rolfe when he entered House 511 and they were present during the events that unfolded resulting in Kumanjayi's death. Those attitudes are, at a minimum, one of the relevant circumstances of Kumanjayi's death.

Decline in Mental health

566. There was evidence presented that on occasions in 2017 and 2018 Mr Rolfe experienced insomnia or anxiety and was motivated to seek medical assistance.[593] It is to his credit that he identified these issues at the time and, even more so, that he sought and was willing to receive medical assistance.

567. By the third year of policing in Alice Springs, Mr Rolfe's attitude to policing the community, and his mental health, had clearly declined, and was likely to be adversely impacting on his work, given the frustrated and low moods he was experiencing. I am in no way critical of Mr Rolfe for experiencing mental health challenges and accept that these health issues likely arose or were contributed to by the nature and intensity of the work he was exposed to in Alice Springs.[594]

568. In February 2019, the text messages sent by Mr Rolfe to family and friends reveal his level of burnout. He let them know that "the NT was not for me" and it "sucks".[595] He texted one female friend on 7 February 2019:[596]

> "I'm run down and burnt out from work shit atm. I'm feeling really sad and sorry for myself right now. I'm having a weak head

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593 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [263].

594 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5205 and 27 February 2024 at 5312.

595 MFI MMM messages 3, 9.

596 MFI MMM message 21.

> moment, letting the losers get me down, even got jealous about the new hot gyn dude haha..I'm a loser now, I'm going to lay down and recharge...'fuck"

569. To a family member, he texted on 8 February 2019 that he was coming to Canberra and was "burnt out as fuck".[597] To the head of the IRT, Sgt Lee Bauwens, he texted that he was "burnt out as fuck", but was having three days off and after that would be recharged and "ready for anything".[598] But three days later, on 12 February, he was seeking medication for a "killer migraine".[599]

570. The next day, on 13 February, he was apologising by text to another family member for sounding like a "downer" on the phone and "was a bit over the NT and definitely over the department" and expressed an understanding that he had to "get out of this state".[600] Just 5 days later, on 18 February 2019, he engaged in the Araluen Park UoF and pushed two older and heavily intoxicated Aboriginal men to the ground, discussed in greater detail in the next chapter.

571. On the evening of 1 March 2019, Mr Rolfe sent a text to a family member which read:[601]

> "Feel like instead of knowing everything's gonna be sweet I'm waiting for the next shitty thing to happen, which is fine I know coz everything takes time but I feel like i put more effort in then most to get to where I feel I deserve but I get shat on a bit more. I just don't want all this shit to build up until I do something dumb, full why I don't go out to the pubs here coz I know if some scum pushes me I'll go too far and get in trouble."

572. On 3 May 2019, he wrote that he was in a rut, with no routine or brotherhood and no challenge or hardship, concluding the message with:[602]

> "I know it'll get better, it's just a moment in time and I'm being a pussy. I'm sure I work a lot harder then most people, just don 't get

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597 MFI MMM message 22.
598 MFI MMM message 24.
599 MFI MMM message 34.
600 MFI MMM messages 39, 46.
601 MFI MMM message 80.
602 MFI MMM message 241.

> why all that work has got me to the point where it 's my job to look after Neanderthals who drink too much alcohol haha."

573. On 3 October 2019, his text exchange with a family member included:[603]

> "There's just nothing I can actually DO to help myself. And people say good things take time but that's not true, everyone who did selection with me that I beat is already in trg, people who have done selection after me are in now. That's just a slack saying.
>
> Plus I don't see any positives in Alice, you guys have seen this place, Emma Roberts Smith's saw what it's like, it's a shit hole, there's nothing good here.
>
> I dunno, I'm over it. I'm gonna work out and head to work. I'm all out of caring haha."

574. Of course, it was entirely appropriate that Mr Rolfe reach out to family to express his frustration and this text in isolation would not be of concern. Put in the context of other evidence, including the messages expressing frustration with work and celebrating aggressive arrests, they are problematic, and are consistent with a significant decline in his mental health throughout 2019. In that year, Mr Rolfe had been overlooked for a spot in the TRG multiple times, was the subject of numerous outstanding external complaints alleging excessive use of force, and had been found by a Local Court Judge to have lied in court and to probably have assaulted an Aboriginal man.

575. On 9 October 2019, Mr Rolfe did a sensible thing (as he had done in the past) and attended on a General Practitioner, after which he was prescribed Escitalopram, an antidepressant in the category known as SSRIs (Selective Serotonin Reuptake Inhibitors). In a message to a family member on the same day, he wrote, "I let the losers get me down for a long time but this might be the little advantage I need to beat them".[604] I note this was just three days before his UoF against Albert Bailey, discussed in the next Chapter.

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603 MFI MMM message 499.

604 MFI MMM message 505.

576. At no time did Mr Rolfe make any official notification to his superiors at work that he was struggling with low mood or was taking an anti-depressant. That meant that the NT Police could not reach out and offer assistance and, importantly, did not have an opportunity to assess whether he was fit for duty or in what capacity. Aside from communicating with family members, it appears Mr Rolfe did let a police colleague know that he was taking antidepressants, when he sent him a photo of the medication, in case he failed "a drug test or something".[605] This was not formal report to the NT Police.

577. On 14 October 2019, two days after his UoF on Albert Bailey, Mr Rolfe exchanged texts with CV, who was then a more senior officer in NT Police and who was also in the IRT. Mr Rolfe sent him the photo of his medication and the exchange continued an hour later when CV thanked him for the chat and his assistance that afternoon, and as follows (emphasis added):[606]

MR ROLFE:	Yeah all good brother, always down for a chat about our weird shit haha.
CV:	This is going to sound wired bro but in the nicest way of course, glad someone thinks the way I do and I'm not going mad
MR ROLFE:	Nah I feel exactly the same man, cut from the same cloth. I've only talked to you and sykesy about my head, but even he doesn't get violent like us. But you're not mad, we're just different then then normal folk

578. It is deeply regrettable that the senior officer who Mr Rolfe engaged with in this exchange did not do one or both of the following: alert other members of the NT Police about Mr Rolfe's mental health issues; or, encourage Mr Rolfe to speak about the issues with his immediate supervisors to determine what help he needed and what duties he was fit for in the meantime.

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605 MFI MMM messages 507, 511.

606 MFI MMM messages 517-521.

579. Unfortunately, by the time of the Inquest, CV had left the NT Police and his own mental ill-health precluded him from giving evidence at the Inquest. That was a missed opportunity to understand what Mr Rolfe and CV had discussed about their mutual mental health conditions. Further, since Mr Rolfe denied any problematic UoF, it was not possible to get any nuanced understanding from him about whether and how his mental health decline was contributing to his tendency to rush in and to celebrate aggressive use of force.

580. If the NT Police had known about this mental health concerns, and certainly if they had known about an exchange with CV about the two of them (according to Mr Rolfe) "getting violent", he should not have been eligible to be deployed to Yuendumu, still less to assume the role of Team Leader on that mission.

581. At the Inquest Mr Rolfe was asked about the text exchange with CV:[607]

> DR DWYER SC: …it (the text message) sounds like when you read it you're having an exchange with CV about emotional stress you are under, how you respond to it and feelings of anger that are expressing themselves in violence with violent behaviour or tense behaviour?
>
> MR ROLFE: I would actually agree with you except for the expressing. Maybe a, maybe a, like mere a desire to express in that way. Lesser than expressing, does that make sense?
>
> DR DWYER SC: Can you explain that?

582. While asserting he was not deflecting, Mr Rolfe answered to the effect that although you may want to inflict violence on someone, the healthy outlet is to turn it into boxing. However, a text which includes "getting violent like us" does not sound like healthy boxing to me and I do not accept that this text message was referencing boxing.

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[607] Inquest evidence of Zachary Rolfe on 27 February 2022 at 5311-5312.

583. The evidence establishes that from February 2019, Mr Rolfe was expressing that he was frustrated and burnt out by his work. One or even several messages to that effect would not be of concern, but it is the cumulative nature of those messages, together with the very concerning message he sent to CV about "getting violent" and the prescription of anti-depressants that he did not report to his supervisors, that cause me to have concern about his fitness to deploy in the IRT mission on 9 November 2019. I cannot reach a definitive conclusion as to the impact of Mr Rolfe's mental health decline on the decisions he made that day, but there is significant reason to be concerned.

584. Three weeks after sending the text to CV, and while still actively under investigation for the offence of perjury and while the subject of unresolved numerous complaints alleging excessive use of force and suspected dishonesty, Mr Rolfe was deployed to Yuendumu with the IRT, where he killed Kumanjayi Walker during an attempted arrest that was vastly different to the one set out in an Operations Plan by a senior officer.

CHAPTER FOUR ZACHARY ROLFE'S PROBLEMATIC USES OF FORCE AND THE FAILURE OF THE NORTHERN TERRITORY POLICE FORCE TO MENTOR AND SUPERVISE

Introduction

585. Of great concern to Detective Superintendent Pollock, his successor Commander David Proctor[608] and this Court is the lack of any detailed review by the supervisors of Mr Rolfe during his "Use of Force" (**UoF**) incidents. Of further concern is that some of these matters should have had a mandatory "Custody and Illness Injury Report" (**CiiR**) submitted on the PROMIS Case by the senior attending member, but did not. At the relevant times, the "General Order - Custody and Transport", required that a CiiR be completed when a person received an injury or medical treatment while in custody. Once submitted, the CiiR was to be subject to review by the Divisional Superintendent to ensure the member/s acted appropriately and in accordance with training, education and policy. On review of Mr Rolfe's use of force incidents, there were numerous incidents where the suspect suffered an injury, and yet no CiiR was submitted.[609]

586. In Detective Superintendent Pollock's final draft report, he wrote:[610]

> "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 episodes is concerning."

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608 Coronial Investigation Report of Commander David Proctor of 31 August 2021 [1-1A] at 26.

609 Only the Ryder incident (PROMIS 8391540) had a CiiR submitted, in addition to the Use of Force report: Coronial Investigation Report of Commander David Proctor of 31 August 2021 [1-1A] at 123.

610 Coronial Memorandum of Commander POLLOCK – DRAFT reformat and amendment of Report dated January 2021 [1-6A] at 44-45.

587. Throughout the coronial investigation, other evidence emerged about the five UoF incidents reviewed by Det SSgt Barram and others which appear to have escaped Det SSgt Barram's scrutiny because the mandatory UoF Case Note Entry (**CNE**) had **not** been completed by Mr Rolfe.

588. Neither Det SSgt Barram nor Det Supt Pollock had any idea when they were conducting their reviews that Mr Rolfe had filmed some of the occasions when he had used force (including some that caused serious injury to the suspect) and had then distributed those films to family and friends for his own amusement, and to celebrate his physical prowess or tactual advantage.

589. With respect to a number of complaints the failure of Mr Rolfe to turn on his BWV means that I cannot reach a definitive conclusion as to whether the force was justified on those occasions, and I have merely noted Mr Rolfe's failure to comply with relevant police policy and the lack of adequate oversight by NT Police.

590. In relation to Mr Rolfe's compliance with General Orders, a review conducted after Kumanjayi's death found little in the way of records, information from PROMIS cases or supervisor comments on Mr Rolfe's "MYCareer profile" to indicate that Mr Rolfe was an officer who was non-compliant with General Orders. However, in addition to the problematic UoF incidents Det SSgt Barram identified, it emerged that on 13 of the 46 occasions reviewed, Mr Rolfe failed to activate his BWV, thereby failing to comply with instructions. On 6 of the 13 occasions, he was provided remedial advice by a supervisor, watch commander, or divisional superintendent.[611]

591. While it is true that Mr Rolfe turned his BWV on before he entered House 511 and shot Kumanjayi on 9 November 2019, evidence about his attitude to using BWV is significant since it a) shows a consistent failure to respect rules and b) reveals a willingness to manipulate the BWV evidence, which means that I

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611 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 33.

must consider carefully what weight I give to Mr Rolfe's own statements recorded on BWV that was captured on the day.

592. Ultimately, there were twelve instances of Rolfe's use of force that I have set out below, including the five originally identified by Det SSgt Baram.[612] I have set each of these instances out in chronological order, alongside some of the more relevant text messages exchanged by Mr Rolfe and his colleagues around the time.[613] In assessing the circumstances and the relevance of Mr Rolfe's history concerning UoF to the events of 9 November 2019, I have paid careful attention to the evidence that was given by Mr Rolfe and any officers who were with him, as well as the submissions of interested parties who engaged with the evidence.

593. This chapter deals specifically with a number of UoF incidents that were identified as of concern during the Inquest. It discusses:

(a) A note on the use of force statistics;

(b) A note on Detective Senior Sergeant Barram's evidence;

(c) A summary of conclusions;

(d) Consideration of prior use of force incidents, namely:

i. Incident 1 – Bojangles Saloon – 2 April 2017 (Barram review 1),

ii. Incident 2 - 17 September 2017 – Off-duty fight on Todd Mall (PROMIS 8263433),

iii. Incident 3 - Malcolm Ryder 11 January 2018 (Barram review 2),

iv. Incident 4 - 14-year-old TG - 11 August 2018,

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612 I have adopted the structure used by Counsel Assisting of setting out a description of events, followed by any disciplinary steps taken and then my findings on each matter. A more thorough analysis of Mr Rolfe's text messages is conducted in Chapter Three.

v. Incident 5 - Araluen Park – 18 February 2019 (Barram Review 3),

vi. Incident 6 - the arrest of Master CW- 1 April 2019,

vii. Incident 7 - Luke Madrill- 20 April 2019,

viii. Incident 8 - Christopher Walker -22 June 2019,

ix. Incident 9 - Antonio Woods – 28 June 2019,

x. Incident 10 - Tyson Woods - 8 September 2019,

xi. Incident 11 - Todd Tavern Foot chase - 24 September 2019 (Barram review 4),

xii. Incident 12 – Albert Bailey – 12 October 2019 (Barram Review 5); and

(e) 3 September 2019 – Mr Rolfe is thanked by Sgt Kirkby for covering for him when he "lost his shit" during an arrest.

594. What emerges from a review of Mr Rolfe's use of force history is that:

(a) Mr Rolfe's behaviour in a significant number of UoF incidents is consistent with his interest in adrenalin style policing, outlined in Chapter Three.

(b) Mr Rolfe's behaviour reflects a tendency to rush in and to "get his man", with too little thought for whether unnecessary harm will be inflicted on the suspect.

(c) Mr Rolfe's behaviour in some UoF incidents, and subsequently in distributing videos of the arrest to friends and family, is consistent with "dehumanising" the subjects of his arrest.

(d) There was a serious failure of supervision at the sergeant and senior sergeant level, by officers who should have shown more leadership and ought to have addressed aspects of Mr Rolfe's conduct that were problematic.

(e) There was an extraordinary failure by senior police (and the systems that support them) to facilitate an adequate and timely investigation into Mr Rolfe, once it emerged that there was a concerningly similar theme to the complaints being made against him; namely, that Mr Rolfe was involved in a number of matters where he did not have his BWV on at the crucial moment of arrest, many where he was the only officer at the scene at the moment of arrest and where the suspect he arrested suffered a serious injury. Once that information was available, it was incumbent on NT Police to take urgent interim action to mitigate the risk to the public while Mr Rolfe was working, either by suspending him from certain duties (and certainly the IRT), or at the very least, ensuring that he was warned and counselled about his suspected behaviour and carefully supervised.

(f) By mid-2019, although NT Police Professional Standards Command (PSC)[614] had flagged Mr Rolfe as having a pattern of rushing in to arrest suspects and causing head injuries, nothing was done to mitigate further risk to the public. At a minimum, Mr Rolfe should have been carefully monitored and supported during a thorough investigation, and he should not have been eligible for deployment in the IRT during that time, even less to assume the role (self appointed) of a Team Leader for that mission.

(g) The inaction by NT Police was particularly surprising given the publicly available findings of a local court Judge that Mr Rolfe had lied in court and had probably assaulted an Aboriginal man, causing a head wound that required sutures.

(h) The failure of adequate formal supervision over Mr Rolfe's use of force at the level of sergeant and senior sergeant would have emboldened Mr Rolfe in his tendency to rush in and to "get his man", with little thought for the impact on the suspect.

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614 Email from Det Supt Read to Office of the Ombudsman, dated 5 July 2019 [3-84].

(i) The absence of good mentoring (particularly the explicit sanctioning of rule breaking and contempt for bush cops by Sgt Kirkby) gave Mr Rolfe further reason to think he was superior to some of his senior colleagues, particularly community police, and that his tactics in the field would be sanctioned.

A note on use of force statistics

595. I received evidence of the statistics relating to Mr Rolfe's use of force over the (almost) three years that he was a police officer in Alice Springs, but I am not able to draw useful inferences from them and have not taken them into account in my reasoning.[615]

A note on Det SSgt Barram's evidence

596. Detective Senior Sergeant Barram gave evidence at both the jury trial of Mr Rolfe and at Inquest, as did the use of force expert retained by Mr Rolfe, Mr Ben McDevitt, whose evidence I consider in Chapter Eight.

597. I am satisfied that Det SSgt Barram has the requisite expertise to assist this Court in reviewing the use of force incidents. That expertise includes his lengthy service as an officer of the NT Police since 1997 as a general duties police officer, Operational Safety Tactics Instructor at the NTPFES College, Officer in Charge (for 7 years) of the Operational Safety Section (**OSS**),[616]

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615 Closing written submissions of Counsel Assisting dated 22 October 2024 at [246]-[249]. The statistics are limited in various ways in including a) there is no scope in this inquest to review the circumstances of every use of force incident reported by Rolfe and to compare it to the use of force incidents reported by his colleagues and b) there were clearly incidents where Mr Rolfe used force and did not report it- see, for example, his failure to report striking Tyson Woods, outlined below.

616 The in-service training authority for the NT Police, which has responsibility for all NT Police Operational Safety Tactics and Training (which includes Defensive Tactics, Firearms, other police weapons, Incident Management, Police Use of Force, Tactical Communications and Emergency Care Management Program and first aid training).

and detective in the PSC.[617] Prior to being engaged to provide expert opinion evidence at Mr Rolfe's criminal trial, he estimated that he had provided evidence, in statement form, on approximately 25 occasions,[618] and had given evidence in the Supreme and Local Courts of the Northern Territory and the NT Civil and Administrative Tribunal.

598. In addition to being tasked to provide an opinion on the use of force on 9 November 2019 (to which I will return in Chapter Eight), Det SSgt Barram was required to review all NT Police Use of Force incidents that Mr Rolfe was identified as having participated in from the commencement of his deployment as an operational police officer.

599. As outlined above, Det SSgt Barram reviewed each of the 46 UoF CNEs in which Mr Rolfe was recorded as being involved.[619] His expert opinion was that in the majority of those instances, which mostly also involved other police officers, the force used was "reasonable, necessary, proportionate and appropriate". However, there were five occasions where this was not the case, and where Mr Rolfe:[620]

> "…engaged in conduct that unnecessarily led to situations where force was then required, that would not have been necessary had ROLFE adhered to police use of force philosophy and training. It is my view that on these occasions ROLFE has demonstrated a tendency to rush into situations with a disregard for his and others' safety, and a disregard for NT Police Training practice and procedure."

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617 See, for a more detailed summary of Det S/Sgt Barram's qualifications and experience: Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [3]-[12].

618 Inquest evidence of Detective Senior Sergeant Andrew Barram on 18 November 2022 at 3391.

619 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [15].

620 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [19] and [33].

600. These five use of force incidents were the Bojangles Saloon Incident, the Malcolm Ryder Incident, the Albert Bailey Incident, the Araluen Park Incident and the Todd Mall Incident.

601. In summarising his conclusions, Det SSgt Barram stated:[621]

> "Having reviewed historical use of force incidents in which Constable Zachary ROLFE has been involved, I do not believe he endeavours to bring about a peaceful resolution to some incidents, and instead uses quite heavy-handed tactics. I have identified five (5) incidents in which, in my opinion, the force used by ROLFE was excessive, and inconsistent with the use of force philosophy and the 10 Operational Safety Principals. In these five incidents, ROLFE chose to use a tactical option that was not reasonable, necessary, proportionate and appropriate to the circumstances. ROLFE'S choice of tactical option in these cases has resulted in injuries to subjects and the potential for injury to himself, which could easily have been avoided.
>
> ROLFE consistently fails to use effective communication as a tactical option to defuse a situation, and appears to prefer to go hands-on, which is not in line with the Force Philosophy. This precludes any opportunity for uncooperative subjects to modify their behaviour and become more cooperative. The result is that, in the matters reviewed, force is used where none is needed. It is my view that ROLFE interprets any non-compliance or lack of cooperation as a threat, and he therefore responds with a higher level use of force than would reasonably be considered necessary in the circumstances.
>
> In my opinion, ROLFE also demonstrates a tendency to want to "get his man" no matter what, and pays little or no regard to the consequences of his actions, which has resulted in quite severe and totally unnecessary injuries to subjects in some cases. In disregarding the consequences of his actions, he also disregards his training and the use of force policy. ROLFE'S decisions and actions precipitate confrontations where he then uses force. The force would not have been necessary but for ROLFE'S decisions and actions in precipitating the confrontation."

602. Having reviewed Det SSgt Barram's written evidence, and having heard him examined and cross-examined, I am satisfied that he gave his evidence in

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621 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [49]-[50].

accordance with the decorum and objectivity I would expert of an expert witness. He was fair and objective, dispassionate, reasoned and reasonable. I assessed him to be an eminently qualified, and highly credible, witness.

603. Importantly, while I place weight on the evidence of Det SSgt Barram, given his years of experience in the NT and credibility as a witness, I have not given it undue weight. I have carefully considered the primary evidence I have received in relation to each use of force incident, including objective evidence such as BWV and the evidence of Mr Rolfe and other officers. That evidence, and my assessment of it, has been far more influential to my fact finding than any other witness' opinion about it. Indeed, in a number of respects my findings differ from Det SSgt Barram: even with the assistance of Det SSgt Barram's opinion, I am not prepared to find positively that Mr Rolfe's conduct during the Bojangles Saloon Incident, the Malcolm Ryder Incident or the Todd Mall Chase involved the use of excessive force.[622]

604. Importantly, and as I have already noted, the review conducted by Det SSgt Barram was less comprehensive than the review I conducted during the Inquest. In part, that was because evidence on Mr Rolfe's telephone download demonstrated that there were additional incidents where Mr Rolfe had used force but had not completed a UoF CNE. Of those incidents, I have found that at least three involved the use of avoidable or unecessary force: namely, the Master TG Incident, the Master CW Incident, and the Tyson Woods Incident. The Inquest also received other evidence relevant to Mr Rolfe's use of force, or his attitudes towards the use of force, that was not available to Det SSgt Barram.

605. Ultimately, although I have not always reached the same conclusion as Det SSgt Barram on the use of force incidents he considered, on the basis of the

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622 In my view, this difference of opinion does not diminish my assessment of Det S/Sgt Barram as a credible and reliable witness. My assessment of these three incidents was finely balanced. Even where different to my own, I can understand Det S/Sgt Barram's conclusions, and do not consider them to have been unreasonable. It is significant that on each occasion where I have not reached the same conclusion as Det S/Sgt Barram that is not because I have positively found the force used to be appropriate, but because I consider there to be a degree of uncertainty that precludes me from making a positive finding on the *Briginshaw* standard that it was excessive or otherwise inappropriate.

evidence he did consider, and the additional evidence available to the Inquest, I agree with, and accept, his ultimate conclusions regarding Mr Rolfe's approach to the use of force.

Summary of conclusions

606. Based on my review of the use of force incidents in this part of this chapter, and the general evidence I have already referred to, I make the following findings regarding Mr Rolfe:

(a) I am actually satisfied that, on at least five occasions, Mr Rolfe used force that was unnecessary.[623] Those occasions were Araluen Park, Master TG, Albert Bailey, Tyson Woods and Master CW.[624] I have concerns about the force used on a further two occasions, but am unable, on the state of the evidence, to make positive findings (those occasions were Malcolm Ryder and Luke Madrill). There were other instances where I am satisfied that it was avoidable.

(b) These instances are instances where Mr Rolfe used force without proper regard for the risk of injury to those persons, all of whom were Aboriginal boys or men. Those occasions were inconsistent with the "10 Operational Safety Principles" and NT Police's overriding philosophy on the use of force. The failed arrest of Kumanjayi on 9 November was

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623 On behalf of Mr Rolfe, Mr Officer submitted that "the Coroner is expressly prohibited from making a finding of excessive force at all" (Closing oral submissions of Zachary Rolfe on 27 November 2024 at 5896) and "cannot make any finding that Zach Rolfe at any point in time – especially not 9 November – for it cuts across the jury acquittal, any (inaudible) just an excessive force": at 5899. Mr Officer submits that I "can't make any finding of excessive force – only that he used force": at 5899. I reject the suggestion that I am limited to finding only that he "used force". I have carefully avoided using legal terms that suggest I am applying a legal standard. Rather, I am reaching a conclusion on the facts, and I am confident in concluding that the facts clearly reveal at least five instances where the force used by Mr Rolfe was avoidable and unnecessary.

624 Save with respect to CW, I note that each of these instances were "conceded to be excessive" by NT Police: Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [438]. That concession was not, of course, a concession by Mr Rolfe and it did not relieve me of the task of finding the facts on the basis of the evidence before me.

an exemplar of the failure to implement the 10 Operational Safety Principles.

(c) Mr Rolfe was a man whose "ego [was] wrapped up in [his] use of force"[625] and who took pride in, and derived a sense of self-worth from, expressing his dominance over others (generally, Aboriginal men) through the use of force. That ego was a factor that may have led him into error on 9 November 2019.

(d) On at least five occasions when Mr Rolfe used force he advertised it to his colleagues or family member because he thought it was "funny", and/or reflected his prowess.[626] Generally, he did so by improperly sharing police media (photos and videos) depicting his use of force or the injuries that had resulted from it. Videos he took of himself watching his own BWV depict him laughing at the moment he applied force, or, as in the case of Albert Bailey, at the moment the arrest target began to bleed profusely. In short, Mr Rolfe glorified his own use of force, and assumed (rightly) that he would be praised for it (by the persons he shared it with).[627] That conduct is relevant to the events of 9 November, since, when taken together with the contempt he showed for the passivity of Officers Hand and Smith on 6 November 2019, it reflects his prioritising of a show of force over peaceful resolution.

(e) By early 2019, Mr Rolfe was eager to get out of Alice Springs and into the TRG and ultimately another police force or the SASR. He was frustrated that others he deemed less capable were getting available TRG spots ahead of him and he was too impatient, and too lacking in humility, to work out bush for a period so as to make his application

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625 Inquest evidence of Zachary Rolfe on 28 May 2024 at 5747.

626 Those occasions included Master TG, Araluen Park, Tyson Woods, Todd Tavern Foot Chase and Albert Bailey.

627 I do not go so far as to accept Counsel Assisting's suggestion that he had a "fascination with violence", at least not in any way that is relevant to the events of 9 November 2019. I accept that he gloried the use of force and that he thought this was a show of strength (see Closing written submissions of Counsel Assisting dated 22 October 2024 at [167]).

more competitive. That lack of humility and his impatience may be factors that led him into error on 9 November 2019.

(f) Mr Rolfe had a tendency to rush into situations without regard for his and others' safety, and a disregard for NT Police Training practice and procedure. He prioritised "getting his man" over using force in a way that would minimise risk of harm to the suspect. What happened on 9 November 2019 when he assumed the role of team leader is a classic example of that tendency.

(g) Mr Rolfe had a tendency to seek out situations in which force would be necessary because he found "combat situations" exhilarating, because they provided him with an opportunity to demonstrate his prowess as a young, fit, and "effective" police officer, and being recognised for doing so contributed to his sense of self-worth. It is reasonable to assume that what happened on 9 November 2019 is an example of that.

(h) Mr Rolfe had, and knew that he had, a tendency to "over-react" or "lose his shit" when people "pressed his buttons".[628] Towards the end of his time as a police officer in the NT, he was aware that he was becoming increasingly volatile in the context of his declining mental health and/or increasing frustration.

(i) Mr Rolfe had a tendency to act dishonestly in the context of his use of force, in a way that does not allow me to place great weight on his own evidence as to why he chose certain tactics, where that evidence is self-serving.

(j) Taken together, Mr Rolfe's tendencies, and his inability to accept any criticism of even grossly unnecessary uses of force, demonstrate that he had (and still has) malformed attitudes towards the use of force that made him dangerous as a front-line police officer.

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[628] See, for example, when Sgt Kirkby messaged Mr Rolfe about "losing [his] shit" after someone had "press[ed] [his] button" and Mr Rolfe replied that he had "done the same thing…more than once before": MFI MMM messages 430-431.

607. I make the following findings regarding the NT Police's supervision and discipline of Mr Rolfe:

(a) There was a serious failure of supervision at the sergeant and senior sergeant level, by officers who should have shown more leadership and ought to have addressed aspects of Mr Rolfe's conduct that were problematic.

(b) There was a serious failure by senior police (and the systems that support them) to facilitate an adequate and timely investigation into Mr Rolfe, once it emerged that there was a concerningly similar theme to the complaints being made against him; namely, that Mr Rolfe was involved in a number of matters where he did not have his BWV on at the crucial moment of arrest, many where he was the only officer at the scene at the moment of arrest and where the suspect he arrested suffered a serious injury. Once that information was available, it was incumbent on NT Police to take urgent interim action to mitigate the risk to the public while Mr Rolfe was working, either by suspending him from certain duties (and certainly the IRT), or at the very least, ensuring that he was warned and counselled about his suspected behaviour and carefully supervised.

(c) The inaction by NT Police was particularly surprising given the publicly available, and positively worded, findings of a local court Judge that Mr Rolfe had probably assaulted an Aboriginal man, causing a head wound that required sutures, and had lied in a statutory declaration and on oath about doing so.

(d) The failure of adequate formal supervision over Mr Rolfe's use of force at the level of sergeant and senior sergeant would have emboldened Mr Rolfe in his tendency to rush in and to "get his man", with little thought for the impact on the suspect.

(e) The failure of NT Police to properly supervise Mr Rolfe, or to reign him in (formally or informally), contributed to the sense of impunity with which he approached his work as an officer at the Alice Springs Police

Station. That conduct is relevant to the events of 9 November, when he displayed a supreme overconfidence in overriding the arrest plan he had been briefed on by Sgt Frost and substituting it with his own ill planned solution.

(f) The absence of good mentoring (particularly the explicit sanctioning of rule breaking and contempt for bush cops by Sgt Kirkby) gave Mr Rolfe further reason to think he was superior to some of his senior colleagues, particularly community police, and that his tactics in the field would be condoned (or at least not sanctioned).

608. Although not wholly "irrelevant", I am appropriately guarded about the probative value of these findings when it comes to Mr Rolfe's decision making during the critical moments of his struggle with Kumanjayi Walker. By the time Mr Rolfe discharged his weapon, he was already at close quarters with Kumanjayi (as was C1C Eberl), who was physically resisting him and had stabbed him to the shoulder with a pair of scissors. As the NT Police submitted,[629] these circumstances were very different to the circumstances of the prior incidents (none of which involved a claim of self-defence by Mr Rolfe). Any specific tendencies or patterns of behaviour revealed by those incidents do not translate easily to the critical moments when Mr Rolfe was struggling with Kumanjayi. And a mere propensity to "use force unnecessarily" would be too general to assist me in any meaningful way to resolve the issues that arise from those critical moments.

609. However, as I have already noted above, and as I conclude in Chapter Eight, the real failures on 9 November 2019 occurred in the lead up to Mr Rolfe's entry into House 511, and in the way he approached Kumanjayi once inside the house. Although in some significant respects these failures were institutional, this was also a case of officer induced jeopardy, where a very junior officer, Mr Rolfe, made a series of flawed decisions that significantly increased the risk of a fatal interaction with a member of the public. For the

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629 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [434].

reasons set out in Chapter Eight, I have found, for example, that from around 7pm on 9 November 2019 Mr Rolfe disregarded Sgt Frost's 5am arrest plan and, as de facto team leader, instead led the IRT immediately on a search for Kumanjayi. After leaving the YPS to search for Kumanjayi, the manner of the search, and, in particular, Mr Rolfe's entries into House 577 and 511, and the manner in which he closed the gap between himself and Kumanjayi, effectively re-created the very same circumstances that had resulted in the nearly fatal "axe incident" on 6 November 2019.

610. On these issues, the evidence of the prior use of force incidents, and the NT Police's oversight of them, is highly probative. Mr Rolfe's conduct was in keeping with what I have found to be his tendencies to rush into situations without regard for the consequences of his actions, to prioritise "getting his man" above other considerations, like safety, and his attraction to "adrenaline style policing". In addition, his interactions with Sgt Frost, and his disregard for the arrest plan, are in keeping with his demonstrated lack of discipline, contempt for authority and "bush cops" and his contempt for women. The approach of Mr Rolfe and the other members of the IRT in Yuendumu on 9 November 2019 is consistent with an "us and them" approach to policing.

Prior Use of Force

Incident 1– Bojangles Saloon - 2 April 2017 (Barram review 1)

Facts of the incident

611. On 2 April 2017, Mr Rolfe and another officer, Senior Constable McCormack, attended the Bojangles Saloon on Todd Street at around 1:45am in response to a fight on the street outside the venue.

612. As Counsel Assisting submitted,[630] neither officer activated their BWV so the description of this event is limited to the description in Mr Rolfe's UoF CNE:[631]

> "Member ROLFE and McCORMACK attended Bojangles in response to a fight outside on the street.
>
> On arrival members observed two males, [MALE 1] and [MALE 2], in the midst of a fist fight. Members exited the vehicle and MALE 1 immediately became compliant. MALE 1 was placed in the cage of a second Police vehicle.
>
> MALE 2 continued to be disorderly and argumentative and when approached by attending members to be arrested as the second offender for fighting in a public place he has run from police.
>
> ROLFE and McCORMACK ran after MALE 2 and yelled at him to stop running, The members followed MALE 2 for approximately 200m down South Terrace before ROLFE caught up with MALE 2 and tackled him on the bitumen [sic], both parties falling to the ground.
>
> In the circumstances the force used was reasonable and appropriate to apprehend the offender who was running away at the time.
>
> MALE 2 then became compliant and was handcuffed."

613. On 2 April 2017, Mr Rolfe's Patrol Sergeant, Acting Senior Sergeant Alistair Gall, reviewed the UoF CNE based solely on Mr Rolfe's description of the incident in the UoF CNE. A/SSgt Gall simply re-stated Mr Rolfe's version, before concluding that "use of force [was] justified and necessary to effect the arrest of the male and to stop him escaping custody."[632] A/SSgt Gall also noted, without criticism, that "BWV was [not] activated in time before the male fled Police".[633]

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630 Closing written submissions of Counsel Assisting dated 22 October 2024 at [268].

631 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at Annexure F, 11.

24 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at Annexure F, 12.

25 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at Annexure F, 8.

614. On 3 April 2017, the UoF CNE was reviewed by a Divisional Superintendent who concluded that "no further action was required."[634] Again, no issue was identified regarding Mr Rolfe's failure to activate his BWV.

615. Following Kumanjayi's death, Det SSgt Barram reviewed the UoF Event himself and concluded that:[635]

> "In my opinion, a better response to this incident, which is in line with the safety first principal and use of force philosophy, would have been to not pursue the male who was running away. General Duties policing is about problem solving. In this situation, the problem was a fight in a public place. When one of the combatants runs away, the immediate problem is solved. To then pursue him for several hundred metres, tackle him to the ground, resulting in minor injuries to him, handcuff him, drag him back and then take him to the watch-house to ultimately just write him a $400 ticket is overzealous. In choosing to pursue the male, this then led to a situation where force was used when it could have been avoided. When seen in this context, this force was not reasonable, necessary, proportionate or appropriate."

616. Assistant Commissioner Bruce Porter, on behalf of the NT Police, agreed with Det SSgt Barram that "in choosing to pursue the male, this ultimately led to a situation where force was used when it could have been avoided".[636] Nevertheless, he concluded that because the "identity of the male was not known to police at the time, it was reasonable for police to pursue and apprehend the male for fighting in a public place,"[637] and he was not prepared to make a positive finding that the force was unreasonable.[638]

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634 Affidavit of Assistant Commissioner Bruce Porter APM dated 13 July 2022 [7-111B] at [47].

635 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [19].

636 Affidavit of Assistant Commissioner Bruce Porter APM dated 13 July 2022 [7-111B] at [53].

637 Affidavit of Assistant Commissioner Bruce Porter APM dated 13 July 2022 [7-111B] at [53].

638 Inquest evidence of Assistant Commissioner Bruce Porter APM on 6 March 2023 at 4503-4504.

Findings on the Bojangles saloon incident

617. With respect to the use of force, I have ultimately concluded that there is insufficient evidence to determine whether Mr Rolfe's decision to pursue and apprehend Male 2, or the manner in which he did so, was inappropriate and/or involved the use of unecessary force. That is largely because of Mr Rolfe's failure to activate his BWV.

618. I agree with AC Porter and Det SSgt Barram that the force Mr Rolfe used was *avoidable*, in the sense that a different officer might not have chosen to pursue Male 2 and tackle him to the ground, causing him injury. I do not, however, agree with Det SSgt Barram that this necessarily means that the use of force was unreasonable or "excessive".

619. As Counsel Assisting submitted, there are circumstances in which it will be appropriate and/or necessary for a police officer to arrest, and take into custody, a person suspected of an offence such as fighting in a public place.[639] Because this is a question of fact and degree, the "gaps in the evidence" about this incident mean I am unable to positively determine whether this use of force was unnecessary or unreasonable. On the available evidence I am not persuaded to accept NAAJA's submission to the contrary.[640]

620. For similar reasons, I reject Counsel Assisting's submission that I should rely on this incident as evidence a pattern on Mr Rolfe's part of a "disregard for NT Police training, practice and procedure".[641] The most I am willing to say is that it is *some* evidence that is *consistent* with a pattern of rushing in, or giving chase, where other officers might not have acted in the same way.

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639 See, *DPP v Carr* (2001) 127 A Crim R 151 (NSWSC); *Prior v Mole* [2015] NTSC 65, [45]-[70].

640 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [343]-[347].

641 Closing written submissions of Counsel Assisting dated 22 October 2024 at [175(5)].

Findings regarding oversight of this UoF by NT Police

621. I find that the oversight of this UoF by the NT Police was inadequate, although for slightly different reasons to those suggested by Counsel Assisting.

622. In relation to the non-activation of BWV, I accept the submission of Counsel Assisting and the NT Police that there is no documentary record of either A/SSgt Gall or the Divisional Superintendent taking any associated remedial or disciplinary action.

623. In mid-July 2022, prompted by this Inquest, the NT Police informed the Court that the PSC had "determined that Mr Rolfe should be provided with remedial advice for his failure to activate his [BWV]".[642] That advice was provided by email on 26 July 2022, five years after the events and many years after the expiration of the statutory limitation periods had precluded police from taking of any formal disciplinary action under the *Police Administration Act* (**PAA**).[643] Mr Rolfe replied to the email, four minutes after receiving it, stating: "I acknowledge receipt of remedial advice".[644]

624. I accept Mr Rolfe's evidence that when provided by email many years after an incident, remedial advice is unlikely to be effective. I also accept Mr Rolfe's evidence that, when provided in this way, the junior officer is likely to view the remedial advice as "a tick in the box from Professional Standards Commands to say that they have conducted a …investigation", rather than a genuine attempt to "make [the junior officer] a better police officer".[645]

625. I accept the NT Police's submission that it is *possible* that A/SSgt Gall provided some form of guidance about BWV to Mr Rolfe (or his patrol group)

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642 Affidavit of Assistant Commissioner Bruce Porter APM dated 13 July 2022 [7-111B] at [52].

643 Affidavit of Assistant Commissioner Bruce Porter APM dated 2 September 2022 [7-111C] at 26-28.

644 Affidavit of Assistant Commissioner Bruce Porter APM dated 2 September 2022 [7-111C] at 26.

645 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5328.

at this time.[646] But if any guidance was given, it was clearly ineffective: as the NT Police accepted, "Constable Rolfe continued not to adhere to body-worn camera policy".[647]

626. I consider that the real deficiencies in the oversight of this use of force incident were, first, that A/SSgt Gall's review involved the uncritical acceptance of Mr Rolfe's account of this use of force incident as "necessary" and, second, that Mr Rolfe was given no guidance regarding his choice to pursue the male. As A/SSgt Gall stated when giving evidence, this was "a low-level offence and if the offender hadn't been pursued, then there would have been no application of force".[648] Given that Mr Rolfe had just five months experience as a probationary constable, A/SSgt Gall accepted that, even if the use of force was not excessive, "this was a matter that might have warranted some guidance to Constable Rolfe about exercising discretion and making different choices in the context of using force".[649]

627. The delay in responding to, or the provision of an inadequate and ineffective response to, a failure by Mr Rolfe to activate his BWV is not acceptable. This was a missed opportunity to make it clear to Mr Rolfe early in his career that NT Police:

(a) had an expectation that its policies would be complied with,

(b) would hold police accountable for failure to comply, and

(c) would offer support and advice where genuine mistakes had been made.

Incident 2 - 17 September 2017 – Off-duty fight on Todd Mall (PROMIS 8263433)

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646 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [299] and, therefore, I do not accept Counsel Assisting's submission at [276] that I should positively find that *no* guidance was given.

647 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [299].

648 Inquest evidence of Acting Senior Sergeant Alistair Gall on 1 November 2022 at 2962.

649 Inquest evidence of Acting Senior Sergeant Alistair Gall on 1 November 2022 at 2962.

628. A second incident identified in the Proctor Report detailed that Mr Rolfe had been involved in a fight in Alice Springs on 17 September 2017, as a result of which he may have suffered a fractured jaw.[650] Save for the fact that it was contained in the Proctor Report, the Inquest did not conduct any meaningful examination of this incident. Given the paucity of evidence, and the context (Mr Rolfe was off duty), I accept Counsel Assisting's submission that it is neither necessary nor appropriate to make any findings about this incident.[651]

Incident 3 - Malcolm Ryder 11 January 2018 – Barram review 2

Facts of the incident

629. On 11 January 2018, Mr Rolfe was involved in an arrest of a man named Malcolm Ryder, who suffered a serious head injury. Mr Ryder was not the original arrest target, but had come home to find that his son was being arrested and confronted police who had entered his house. The confrontation led to a physical interaction between Mr Rolfe and Mr Ryder that was not captured on BWV, because, save for Constable Geranios, none of the attending members had activated their BWV. This physical interaction was the subject of a number of disciplinary investigations and a contested hearing before a judge of the Local Court of the Northern Territory.

630. In none of these investigations or proceedings does it appear to have been controversial that Mr Ryder was rendered unconscious during his apprehension,[652] and was required to be transported to the Alice Springs Hospital for treatment of a 4cm laceration above his right eyebrow and a 1cm laceration on the left side of his forehead. Those wounds required 13 sutures

650 Coronial Investigation Report of Commander David Proctor of 31 August 2021 [1-1A] at 33-34.

651 Closing written submissions of Counsel Assisting dated 22 October 2024 at [279].

652 Statutory declaration of Malcolm Ryder dated 07 August 2018 [3-126] at [24].

and 3 sutures respectively to close.[653] It also appears never to have been controversial that Mr Rolfe caused some or all of those injuries.

631. What was in dispute was how and why Mr Rolfe caused those injuries. Mr Rolfe's version of events was, in substance, that he punched Mr Ryder to the head with a closed right fist to stop him trying to scratch his face.[654] Mr Rolfe gave this version informally, in a statutory declaration and at the contested Local Court hearing. Mr Ryder, by contrast, said that he did not attempt to scratch Mr Rolfe's face, that he had already been handcuffed and restrained when Mr Rolfe punched him to the side of the head and then "pulled [his] head up into the air and then smashed it onto the floor".[655] Mr Ryder gave this account in a near contemporaneous complaint in his record of interview, which he later repeated in a sworn statutory declaration and orally at the Local Court hearing.

Not appropriate to make findings about what occurred during Ryder Incident

632. It was apparent during the Inquest that this incident was more forensically complex than any of the other use of force incidents. Unlike some other incidents, Mr Rolfe's use of force was not recorded objectively on BWV or CCTV; there was a direct conflict between Mr Rolfe's account and that of the arrest target, Mr Ryder; there was a very large number of additional witnesses who would have given contentious evidence about their perceptions of the interaction between Mr Rolfe and Mr Ryder or matters such as Mr Rolfe's post incident conduct and, unlike the matter of CW (discussed below), the best, and most contemporaneous evidence from Mr Ryder's perspective (his electronically recorded record of interview) could not be located.

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653 Assorted clinical notes of the Alice Springs Hospital and St Johns Medical Reports relating to Malcolm Ryder [3-128].

654 Statutory declaration of Zachary Rolfe dated 11 January 2018 [3-120] at [11];: Transcript of Proceedings before Judge Borchers on 3 April 2019 [3-122] (evidence of Mr Rolfe).

47 Statutory declaration of Malcolm Ryder dated 07 August 2018 [3-126] at [22]-[23]; Transcript of Proceedings before Judge Borchers on 3 April 2019 [3-125A] evidence of Mr Ryder at 95.

633. As a result, and although Det SSgt Barram concluded that the arrest and injury of Malcolm Ryder amounted to an excessive use of force by Mr Rolfe,[656] Counsel Assisting made it clear early in the Inquest that I should not attempt to resolve the question of whether Mr Rolfe used excessive force when arresting Mr Ryder. Instead, I considered that all parties (including myself) approach the Ryder matter on the basis that its relevance, if any,[657] was the adequacy of NT Police's response to Mr Ryder's allegation and, from May 2019, the adequacy of NT Police's response to the positive findings of a judge of the Local Court that Mr Rolfe had used excessive force against Mr Ryder and then lied, on oath, about doing so. That is the approach I have taken in these Findings.

Oversight of this UoF by NT Police

634. On the afternoon of 5 June 2018, a solicitor at NAAJA wrote to the PSC and the NT Ombudsman enclosing a letter of complaint against Mr Rolfe on behalf of Mr Ryder.[658] The substance of the complaint reflected Mr Ryder's account of what had occurred while Mr Rolfe was on top of him affecting the arrest; namely, that Mr Rolfe had, without lawful justification or excuse, "punched Mr Ryder to the left side of the face" and "then grabbed Mr Ryder by the hair and pulled his head back violently and pushed it with force into the ground", which "caused Mr Ryder to lose consciousness" and to require stitches to two locations on his head.[659]

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656 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] [43].

657 I have not overlooked that Mr Rolfe's objections to "scope", which I dismissed in *Rulings No 2 and 3*, extended to the Ryder Incident.

658 Bundle of emails between NAAJA, PSC and NT Ombudsman regarding the Ryder Complaint [3-134].

659 Letter of complaint from Sophie Trevitt to PSC and NT Ombudsman, undated [3-133] at 2.

635. By 1:10pm the next day, 6 June 2018, an investigating sergeant at the PSC (the **Investigating Sergeant**) forwarded the email to a Senior Investigation Officer at the NT Ombudsman (the **NTO Investigator**), for assessment:[660]

> Hi [NTO Investigator],
>
> New CAP [Complaint Against Police] for your assessment.
>
> I've attached available material and will drop off BWV later.
>
> Request matter is declined.
>
> All force used was lawful and reasonable.
>
> Kind regards
>
> PSC Investigator

636. I accept Counsel Assisting's submission that, in the absence of BWV, there was no basis for the Investigating Sergeant to positively conclude that "All force used was lawful and reasonable" (that is, unless he simply assumed that Mr Rolfe's version was true, and Mr Ryder's version was false). It is concerning that this view was expressed in such categorical terms in a letter to the Ombudsman's Office, after no proper investigation and within 24 hours of receiving the complaint.

637. On 8 June 2018, the NTO Investigator replied to the Investigating Sergeant's email. She did not decline the complaint as they had requested. Instead, she informed another senior officer at the PSC who was copied to the email chain that it should be investigated as a Category 2 complaint (a category 2 complaint to the Ombudsman is a complaint that is investigated and reported directly to the complainant).[661]

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660 Further bundle of emails between NAAJA, PSC and NT Ombudsman NAAJA regarding the Ryder complaint [3-135] at 1.

661 Further bundle of emails between NAAJA, PSC and NT Ombudsman NAAJA regarding the Ryder complaint [3-135] at 3.

638. At around this time, Detective Acting Commander Virginia Read reviewed the complaint. She noted that the BWV of Cst Geranios did not capture the critical moments when Mr Rolfe had interacted physically with Mr Ryder. Upon her review of the PROMIS case and the attending officers' statutory declarations, she became concerned about elements of the conduct and honesty of the officers.[662] As she explained in her statement:[663]

> "I found concerns with the use of force – ASR spray by one of the officers and issues pertaining to the statements prepared by Rolfe and Constable Xhenita Zendeli. The statements contained versions of events that appeared to have been collaborated [sic] upon as they were very similar and did not reflect what was conveyed in the BWV footage."

639. Det A/Cmdr Read assigned the investigation back to the Investigating Sergeant who had originally written to the Ombudsman. She may not have been aware that he had already suggested that the matter be declined. In her letter to the Investigating Sergeant, she outlined her concerns regarding the use of force and what appeared to be evidence of collusion between Mr Rolfe and Constable Zendeli.[664]

640. On 11 July 2018, the Investigating Sergeant wrote to the NAAJA solicitor and informed her that the complaint had been assigned to him for investigation.[665] On 7 August 2018, that NAAJA solicitor forwarded to the Investigating Sergeant two statutory declarations from Mr Ryder and Ms Hayes, which provided in sworn form, accounts of the excessive use of force by Mr Rolfe and other police members during the incident on 11 January 2018.[666]

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662 Statutory declaration of Detective Acting Commander Virginia Read dated 11 March 2020 [7-115] at [5].

663 Statutory declaration of Detective Acting Commander Virginia Read dated 11 March 2020 [7-115] at [5].

664 Statutory declaration of Detective Acting Commander Virginia Read dated 11 March 2020 [7-115] at [6].

665 Bundle of emails between NAAJA, PSC and NT Ombudsman regarding the Ryder Complaint [3-134] at 5.

666 Bundle of emails between NAAJA, PSC and NT Ombudsman regarding the Ryder Complaint [3-134] at 3.

641. Later the same day, the Investigating Sergeant emailed Mr Rolfe, Constables Zendeli, Bonney, Chatterton, Lehrain and Geranios notifying them of the fact of the complaint and requiring them to give a response by way of email. The Investigating Sergeant's email "suggest[ed]" to the officers that they watch Officer Geranios' BWV (the only BWV of the incident) prior to replying.[667] Although the purpose of that suggestion is unclear, I accept Counsel Assisting's submission that its effect was to give the officers, about whom Det A/Cmdr Read had raised concerns of collusion, an opportunity to reconcile their accounts with the objective evidence, and, in that way, compromised any examination of the officers' credibility.

642. On 3 October 2018 (five months before the Local Court hearing into the incident), the Investigating Sergeant submitted a "Report of Investigation by Police Standards Command". It re-stated Mr Rolfe's version of events, with no testing of the facts or query about the versions given and no recognition of the gravity of the head injury sustained by Mr Ryder, which is described simply as cuts to the head. There was no engagement with the concerns of Det A/Cmdr Read regarding collusion as between at least Constable Zendeli and Mr Rolfe, and, as I have noted, the group requests for responses by email, rather than individual interviews, and the suggestion that the officers watch Officer Geranios' BWV, compromised any investigation into that issue. The Investigating Sergeant sought no other evidence, even though there was other evidence available, for example accounts of the two police who interviewed Mr Ryder, non-police witnesses and hospital records.

643. Ultimately, I accept Counsel Assisting's submission that the impression one gets from reading the report is that the Investigating Sergeant simply assumed Mr Rolfe's version to be correct and then applied the law and relevant NT Police policy to that version of events. While I cannot speculate as to how Det A/Cmdr Read would have received the report, it is unfortunate that it was finalised at a time when she was on leave.[668] Whatever her response might

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667 Initial Email Response to Complaint – Constable Breanna Bonney [3-108] at 4.

668 Statutory declaration of Detective Acting Commander Virginia Read dated 11 March 2020 [7-115] at [6].

have been, and whether or not a more thorough investigation would have proven or disproven Mr Ryder's complaint (or been inconclusive), this was a missed opportunity to adequately and independently investigate the use of force by Mr Rolfe.

The Local Court hearing in September 2018 and April 2019

644. A hearing of the allegations against Mr Ryder proceeded before Judge Borchers in the Local Court at Alice Springs over three days on 3 September 2018 and 2 and 3 April 2019.[669] The Court heard the examination and cross-examination of seven witnesses – five police officers called by the prosecution (including Mr Rolfe) and two for the defence (including Mr Ryder).[670]

645. On 9 May 2019, Judge Borchers acquitted Mr Ryder. His reasons included very serious adverse findings about Mr Rolfe. As Counsel Assisting submitted, and no party ever contested, Judge Borchers found that:

(a) descriptions by Mr Rolfe and Constable Bonney that Ms Hayes (another member of Mr Ryder's household) and Mr Ryder were "very hostile" or "aggressive" were "untrue", and inconsistent with their demeanour in the telephone footage recorded by Ms Hayes on her telephone;[671]

(b) he could not accept the evidence of either Mr Rolfe or Constable Zendeli when they said they saw punches thrown by Mr Ryder in a bedroom;[672]

(c) the evidence to that effect was not borne out by the evidence of the other attending police officers and was inconsistent with the BWV of the interaction, and was "wrong and…a pure fabrication";[673]

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669 The delay between the two hearing blocks occurred due to listing issues within the Court: Transcript of Proceedings before Judge Borchers on 3 September 2018 [3-140] at 96.

670 Transcript of Proceedings before Judge Borchers on 3 September 2018 [3-140] at 5.

671 Transcript of Proceedings before Judge Borchers on 9 May 2019 [3-143] at 3.

672 Transcript of Proceedings before Judge Borchers on 9 May 2019 [3-143] at 8.

673 Transcript of Proceedings before Judge Borchers on 9 May 2019 [3-143] at 9.

(d) "that Rolfe's evidence lacks credibility. He lied. He has lied in a statutory declaration…";[674]

(e) Mr Rolfe's account of his interactions with Mr Ryder was false. Judge Borchers found that at the time Mr Rolfe grabbed Mr Ryder, Mr Ryder was moving into the lounge area and facing away from the police officer.[675] Mr Rolfe grabbed Mr Ryder's collar at the back of his neck, pushed him onto the ground roughly, and punched him to the left eyebrow.[676] Mr "Ryder then turned away and the officer, [Rolfe]…grabbed his hair and pushed his head into the floor", knocking him unconscious.[677] At "no time did [Mr Ryder] attempt to scratch or punch the police officer", as Mr Rolfe alleged;[678] and,

(f) at the time Constable Zendeli claimed that she was required to punch Mr Ryder to the elbow because he was "resisting", Mr Ryder was, on the face of the BWV, clearly unconscious (as he had been described by Constable Geranios as being "totally slack").[679]

646. I do not express any view about whether these findings were, or were not, correct. As I explain below, it is the fact that a sitting judge made such extremely serious findings that is relevant to my assessment of the adequacy of the NT Police's oversight of Mr Rolfe, in the final six months before he shot and killed Kumanjayi Walker.

Findings regarding oversight by the NT Police

647. In respect of those responsible for managing or supervising Mr Rolfe—relevantly, Sgt Bauwens, as OIC of the IRT, the patrol sergeants of the ASPS

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674 Transcript of Proceedings before Judge Borchers on 9 May 2019 [3-143] at 10.
675 Transcript of Proceedings before Judge Borchers on 9 May 2019 [3-143] at 9.
676 Transcript of Proceedings before Judge Borchers on 9 May 2019 [3-143] at 9.
677 Transcript of Proceedings before Judge Borchers on 9 May 2019 [3-143] at 9.
678 Transcript of Proceedings before Judge Borchers on 9 May 2019 [3-143] at 9.
679 Transcript of Proceedings before Judge Borchers on 9 May 2019 [3-143] at 11.

and other senior officers within Southern Command—there was no evidence that any of them had taken responsibility for even speaking to Mr Rolfe about Judge Borcher's findings that he had (in effect) assaulted Mr Ryder and then lied on oath about doing so. No steps were taken to adjust the management or supervision of Mr Rolfe. Indeed, there is no evidence that any senior member spoke to Mr Rolfe about the findings at all.

648. I find this inaction very difficult to understand, in light of the broad consensus amongst NT Police officers at the Inquest (save for Sgt Bauwens) that Judge Borcher's findings should have prompted serious consideration of whether Mr Rolfe was suitable for deployment as a front-line police officer. A fair summary of that evidence was contained in Counsel Assisting's submissions:[680]

> "(1) Superintendent Nobbs gave evidence that they were 'extraordinary' findings of a kind almost without precedent in his career.[681] He agreed that had a judicial officer made comments of that kind about an officer under his command, they would have been of great concern to him.[682]
>
> (2) Similarly, Assistant Commissioner Porter gave evidence that the inaction by those responsible for supervising Mr Rolfe was a 'significant failing' of the NTPF.[683]
>
> (3) SSgt Alistair Gall, who was, in the most immediate sense, the 'senior officer who was making decisions about how Constable Rolfe was utilised', agreed that he 'needed to know [about Judge Borchers' findings] in order to make decisions about whether or not Constable Rolfe was suitable'—that is, 'safe'—'for deployment with a tactical team like the IRT.'[684] Indeed, SSgt Gall said this was not just a matter of Mr Rolfe's suitability for deployment with the IRT but his suitability for use as a general duties officer at all.[685] Suffice to say, his evidence was that no-one within the IRT, the ASPS, the PSC or the NTPF executive more broadly ever 'sat down and

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680 Closing written submissions of Counsel Assisting dated 22 October 2024 at [303]

681 Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2941.

682 Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2942.

683 Inquest evidence of Assistant Commissioner Bruce Porter APM on 8 March 2024 at 4700.

684 Inquest evidence of Acting Senior Sergeant Alistair Gall on 1 November 2022 at 2969.

685 Inquest evidence of Acting Senior Sergeant Alistair Gall on 1 November 2022 at 2968.

> considered all of the information that was then available, that might have borne on the decision about whether Mr Rolfe was suitable for ongoing deployment as a general duties police officer.'[686]"

649. Mr Rolfe's direct supervisors within the ASPS—most notably, A/SSgt Gall and Sgt Bauwens—claimed to have no knowledge, or only a "little" knowledge, of the findings. Those claims are difficult to accept, in light of the "extraordinary" nature of the findings,[687] the small size of the ASPS and the number of police involved in the incident, the fact that the transcript of those findings was being shared amongst ASPS officers, the decision was being discussed in the ASPS, it "was definitely widely known",[688] and Mr Rolfe was openly expressing contempt for the decision, for example, in this text message:

CONSTABLE:	No one can say how he was knocked out..."It is more likely that Ryder was punched in the face by Rolfe" ... fkn lol
	Such mystery
	fkn dweebs man too funny whatevs
MR ROLFE:	Fucking dweebs haha

650. Not only did Sgt Bauwens, the OIC of the IRT, claim not to have known about the findings, unlike almost every other police officer to give evidence to the Inquest he denied their relevance to his supervision of Mr Rolfe. He appeared to claim that findings by a sitting judge that a police officer had assaulted a member of the public, and lied about doing so, were irrelevant to his role as supervisor because they were not "performance related".[689]

651. In my view, the failure of the NT Police to take any action in response to these extremely serious findings represents one of the most serious failures of

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686 Inquest evidence of Acting Senior Sergeant Alistair Gall on 1 November 2022 at 2970.

687 See Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2941.

688 Inquest evidence of Zachary Rolfe on 27 February 2024 at 2569.

689 Inquest evidence of Sergeant Lee Bauwens on 22 February 2024 at 4976.

oversight examined by the Inquest. Having carefully considered the arguments of Counsel Assisting and the interested parties, I am satisfied that until it was determined whether there should be disciplinary and/or criminal investigations into his conduct, it was inappropriate for Mr Rolfe to continue to be deployed in the IRT (a specialist, semi-tactical, team that might be called out to higher risk arrests) and, probably, also inappropriate for him to continue to work in general duties where he might be called upon to use force, at least without some safeguards in place. The deferral of any action in respect of his duties until the conclusion of an investigation, years after the event, was unacceptable.

652. As to that investigation, apparently unbeknownst to Mr Rolfe's supervisors, the PSC did conduct an investigation into the Ryder Incident. As I have noted, on or around 12 June 2019, Det A/ Cmdr Read referred the Ryder Incident to the Internal Investigation Division for investigation.[690] The matter was, in turn, referred to an officer within the Special References Unit, Detective Sergeant Sonia Kennon.

653. On 17 October 2019, just weeks prior to Mr Rolfe's deployment to Yuendumu, Det Sgt Kennon submitted a memorandum to the Superintendent of the Special References Unit.[691] In addition to the concerns arising from the evidence led at Mr Ryder's hearing, the memorandum raised fresh concerns regarding evidence of potential collusion between the attending members when they had submitted their statements between January and March 2018 (this time, Constables Zendeli and Bonney).[692] Det Sgt Kennon recommended that the investigation file be submitted to the office of the Director of Public Prosecutions (ODPP), to determine whether there was sufficient evidence to support a prosecution.

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690 Statutory declaration of Detective Acting Commander Virginia Read dated 11 March 2020 [7-115] at [8].

691 Memorandum of Detective Sergeant Sonia Kennon dated 17 October 2019 [3-144].

692 Memorandum of Detective Sergeant Sonia Kennon dated 17 October 2019 [3-144] at 18.

654. There is no evidence that any action was taken in relation to this recommendation until well after Mr Rolfe killed Kumanjayi Walker on 9 November 2019. Although Counsel Assisting made lengthy submissions[693] about the adequacy of the NT Police's response to that recommendation, in my view it is not necessary or appropriate for me to express a view about those matters. The relevance of the Ryder Incident is that it represented a missed opportunity to provide additional supervision, guidance, training or discipline to Mr Rolfe *prior* to his deployment to Yuendumu. The ultimate outcome of the investigation in the years following November 2019 is not sufficiently connected with Kumanjayi's death to require further consideration by me.

Incident 4 – 14-year-old TG - 11 August 2018

655. This incident was not reviewed by Det SSgt Barram and came to light during the coronial investigation.

The evidence of the arrest of TG

656. On 11 August 2018, Mr Rolfe and other police were searching for a 14-year-old Aboriginal child known at Inquest as "TG", who had run from the courthouse in breach of his bail conditions and was hiding. Although he was clearly bailed because of a crime he was alleged to have committed, he was also a child of slight build who was likely to have experienced significant trauma, given that he had been removed from family and taken into care.[694]

657. While searching for TG, Mr Rolfe had his BWV activated. It captures him moving decisively around a school in search of TG and then going towards a green wheelie bin and checking inside. Mr Rolfe is fast and decisive,

693 Closing written submissions of Counsel Assisting dated 22 October 2024 at [308]-[317].

694 See Complaint file CAP 2018-302 – TG [3-76] at Statement of Facts at 2.

conducting a thorough scan of the area and arriving at the bin while other police are dispersed. The video shows him lift the lid of the bin, and on seeing the child inside, he makes a clicking sound with his tongue and then slams the lid shut, confining TG inside. He does not otherwise communicate with TG. Mr Rolfe then throws the bin to the ground—in a gesture accurately described by the PSC as "sudden and forceful"[695] and by Supt Jody Nobbs as "very violent"[696]—so that the child spills onto the concrete and is then pulled out, and hand cuffed.[697]

658. Assistant Commissioner Bruce Porter APM, the head of the PSC, gave evidence that "the force used by Constable Rolfe in slamming the lid of the bin down, pulling the bin over and pulling [TG] out constituted an excessive use of force"[698] and that the application of force was inconsistent with NT Police policy, including the 10 Operational Safety Principles and the Tactical Options Model.[699] He explained that:[700]

> "Master TG was hiding in the bin. He was just sitting in the bin. There was no verbal communication from Constable Rolfe to Master TG, which is the key thing in relation to our operational training and tactics … you always have to communicate. It is right in the centre of our tactical options model. He provided no instruction to Master TG. And there was no requirement or need for him at that point in time to close the lid or put the bin down in the manner that he did onto the ground to apprehend Master TG, because he's already apprehended and contained within that bin."

659. Similarly, Superintendent Jody Nobbs gave evidence that Mr Rolfe's conduct was "completely unnecessary"[701] and "excessive".[702] He explained that this was an incident of a "small statured 14-year-old contained in a bin." He "was

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695 See email of Detective Sergeant Lisa Bayliss dated 10 September 2018, in Complaint File CAP 2018-302 – TG [3-76].

696 Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2953.

697 Zachary Rolfe Body worn video of arrest of TG (CAP2018-302) [3-77].

698 Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at [21. See also the Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2953.

699 Affidavit of Assistant Commissioner Bruce Porter APM dated 13 July 2022 [7-111B] at [21].

700 Inquest evidence of Assistant Commissioner Bruce Porter on 3 March 2023 at 4366.

701 Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2953.

702 Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2948.

contained [and] wasn't going anywhere".[703] Other "options were available [to Mr Rolfe] in terms of engaging the youth", which included advising the youth that he was under arrest, or that he was going to lower the bin to the ground and arrest him.[704] Communication was all the more necessary in light of the reason for the arrest (a breach of bail).[705] Instead, Mr Rolfe's conduct gave rise to an unnecessary risk of injury.[706] He said that Mr Rolfe's conduct did not "align with our training framework".[707]

660. Even when confronted with this evidence, Mr Rolfe maintained that in confining TG and then throwing him to the ground, he "used the minimum force necessary".[708] He rejected the suggestion that, even once confined in the bin, he could have engaged in dialogue with the child.[709] He gave evidence that he was "follow[ing] his training".[710]

Oversight of this UoF Event by NT Police

661. The evidence of the oversight of this UoF Event by the NT Police and the NT Ombudsman was not controversial. Having reviewed the primary evidence myself, I am satisfied that the summary of this evidence in Counsel Assisting's submissions at [330]-[335] is accurate and have largely adopted that summary below.

662. At some time prior to 10 September 2018,[711] NAAJA filed a complaint with the NT Ombudsman regarding Mr Rolfe's apprehension of TG.[712] The

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703 Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2948.
704 Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2948.
705 Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2948.
706 Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2948.
707 Inquest evidence of Superintendent Jody Nobbs on 1 November 2022 at 2948.
708 Inquest evidence of Zachary Rolfe on 1 March 2024 at 5564.
709 Inquest evidence of Zachary Rolfe on 1 March 2024 at 5564.
710 Inquest evidence of Zachary Rolfe on 1 March 2024 at 5564.
711 The letter of complaint is dated '8 August 2018', which cannot be correct given that the events it described occurred on 11 August 2018.
712 Complaint File CAP2018-302 [3-76] at 14.

complaint was expressed as being made on "limited instructions" and without the benefit of the body-worn video.[713] The substance of that complaint was that Mr Rolfe had chased TG, that TG had "complied" with a "direct[ion] by a police officer to get on the ground", that the police officer had then continued to run towards TG and, upon reaching him, "dropped his knee on [TG]'s head".[714] That was clearly a distortion of what occurred and the account from TG was not accurate.

663. On 10 September 2018, at 11:08am, a Senior Investigation Officer at the NT Ombudsman (the **NTO Investigator**) notified the PSC that the complaint had been received. The NTO Investigator noted that the complainant believed that Mr Rolfe's body-worn video had been activated and sought a copy of that footage.[715] At 2:52pm that day, the allocated Investigating Officer at the PSC, Detective Sergeant Lisa Bayliss, responded to the NTO Investigator's email. Det Sgt Bayliss confirmed that there was "BWV of the arrest" but noted (rightly) that the "version of events as suggested by the complainant is not correct".[716]

664. However, what followed from Det Sgt Bayliss in her email is an expression of concern about the way in which Mr Rolfe removed TG from the bin, and that concern was entirely justified. Det Sgt Bayliss wrote:[717]

> "The IO notes that the arresting officer Rolfe did not give [TG] an opportunity to comply with any police directions to get out of the wheelie bin, instead he immediately resorted to using the RISC principle to effect arrest, which was quite sudden and forceful.
>
> The reason for this action is not recorded on PROMIS and until an officer response is sought, the full circumstances leading up to Rolfe's actions is unknown."

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713 Complaint File CAP2018-302 [3-76] at 14.
714 Complaint File CAP2018-302 [3-76] at 14.
715 Complaint File CAP2018-302 [3-76] at 25.
716 Complaint File CAP2018-302 [3-76] at 18.
717 Complaint File CAP2018-302 [3-76] at 19.

665. On 11 September 2018, the NTO Investigator wrote back to Det Sgt Bayliss to inform her that the allegations could not be supported; the matter was being finalised under s67(1)(e) and NAAJA would be notified. She thanked Det Sgt Bayliss for providing the footage and congratulated Mr Rolfe for his "good job" for capturing the whole incident on his BWV.[718] On 12 September 2018, the NTO Investigator wrote a letter to NAAJA formerly closing the complaint on the basis that there was "no evidence to support [TG] was chased, given directions to lay on the ground or that the officer dropped his knee on [TG]'s head".[719] While that was indeed the case, there is no evidence as to why the email by Det Sgt Bayliss raising her concerns as to the way TG was removed from the bin, or their own review of the BWV, did not provoke the interest of the NTO Investigator.

666. Despite the apparent concerns of Det Sgt Bayliss, and the fact that Mr Rolfe had failed to file a UoF Case-note Entry on PROMIS, there is no evidence that the PSC took any further steps to investigate, discipline or counsel Mr Rolfe in relation to his apprehension of TG.[720]

Findings on the TG incident

667. I am not naive about the potential volatility of young people and I accept that police may need to take decisive action to assert control. Yet the sudden, forceful, and, in my view, violent conduct of slamming the bin lid and throwing the bin to the ground was wholly unnecessary and frankly disturbing. That type of use of force was entirely avoidable. There was no reason Mr Rolfe could not have communicated with TG while he was in the bin. I am grateful for the frank assessments and evidence of senior police who reviewed this incident. Even without the assistance of submissions of Counsel

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718 Complaint File CAP2018-302 [3-76] at 21.

719 Complaint File CAP2018-302 [3-76] at 27.

720 The evidence does not suggest that TG's matter was re-examined in any detail.

Assisting, the NT Police and many other interested parties, I would have found it to be gratuitous and avoidable.

668. In reaching this conclusion, I reject Mr Rolfe's evidence that his conduct was justified, and, in particular, his assertion that he could not have engaged in dialogue with the child. In doing so, I am unable to say whether Mr Rolfe genuinely believed that his use of force against TG was justified or whether his evidence to this effect was dishonest. I am not sure which would be more concerning.

Findings regarding oversight by NT Police

669. I accept Counsel Assisting's submission that "both the NT Ombudsman and the PSC failed adequately to respond to a serious example of excessive force by a police officer".[721]

670. In my view, the failure by the PSC and NT Ombudsman to take any steps to investigate, or discipline, Mr Rolfe for either the application of force depicted on the BWV, or his failure to provide an account of the use of force in a UoF CNE on PROMIS, was seriously remiss. These failures are all the more difficult to understand in circumstances where Det Sgt Bayliss raised concerns about each issue in her email of 10 September 2018.

671. An adequate response to the incident would have provided an opportunity to congratulate Mr Rolfe on his use of BWV to capture the incident, allowing as it did for the false aspects of the complaint by TG to be identified and dismissed. But it was also an opportunity to take disciplinary action, or, at the very least, provide guidance, about a clearly inappropriate application of force and the importance of communication in policing, particularly when policing offenders who are young or present with other vulnerabilities.

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[721] Closing written submissions of Counsel Assisting dated 22 October 2024 at [337].

672. Thus, by the end of 2018, there were at least three incidents where NT Police failed to adequately scrutinise and respond to Mr Rolfe's conduct. Each were missed opportunities for increased education and oversight of Mr Rolfe by NT Police that might have mitigated any risk he posed.

2019 – The year of Kumanjayi's death

673. By the end of 2018 and beginning of 2019, just over two years into his job as a police officer based in Alice Springs, the mental and emotional health of Mr Rolfe appeared to have deteriorated in a way that contributed to the risk he posed to members of the public whom he arrested.

674. Mr Rolfe was struggling with his mental health, in the context of his work and workload. Medical records from December 2018 reveal that he was experiencing shift-work related insomnia and had been prescribed a sedative.[722] In messages from February 2019, he complained to one friend of being "rundown and burnt out from work bullshit atm"[723] and was "feeling real sad and sorry for [him]self";[724] to another, he said he was "burnt out as fuck".[725] In February 2019, he apologised for being a "downer" in a text to a close family member and said that he was "over the NT and definitely over the department".[726]

675. As set out in the previous chapter, by 15 February 2019, it is clear that Mr Rolfe was becoming frustrated that he had not been accepted into the TRG. He felt like he had been overlooked, and that less deserving candidates than he had been selected, adding to his frustration with NT Police hierarchy.

676. This was the beginning of a downward trend in Mr Rolfe's mental health that continued over the course of the year and culminated in his commencement

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722 Bath Street Medical Centre Records [3-49] at 3.
723 MFI MMM message 21.
724 MFI MMM message 21.
725 MFI MMM messages 22 and 24.
726 MFI MMM message 39.

on anti-depressants in October 2019, just a few weeks before Kumanjayi's death.

Incident 5 – Araluen Park – 18 February 2019 (No 3 in the Barram Review)

Facts of the incident

677. On 18 February 2019, Mr Rolfe and another young Constable who had been in Squad 129, Mitch Hansen, attended a general disturbance job at Araluen Park in Alice Springs at around 6.55pm. Two heavily intoxicated Aboriginal men appeared to be arguing; they were staggering and occasionally swinging wide loose armed punches at each other, without any strength or coordination. As Mr Rolfe and his colleague approached, one of the males turned and staggered away from the altercation. Mr Rolfe then moved in rapidly and pushed the man hard, causing him to fall over heavily onto the ground. Moments later, Mr Rolfe pushed the second man to the ground, again causing him to fall heavily to the ground.

678. On review of the BWV footage, the conclusion reached by Det SSgt Barram was:[727]

> "There was no need to push either of these men over as they were not a threat to ROLFE or anyone else. This was an excessive use of force, being any force where none is needed, and no regard appears to have been given by ROLFE to the potential for injury that could have been caused. No attempt was made to lower them to the ground in a controlled manner. One of the men attempted to stand back up and ROLFE pushed him heavily to the ground again. This was also completely unnecessary. This situation could have been handled without any force being applied. Both men were at risk of stumbling over and hurting themselves due to their intoxicated state, and it would have been prudent from a duty of care perspective to have both men sit down so they did not fall down, and this would have been best achieved by asking or assisting them to sit down. The manner in which ROLFE pushed them both over was more likely to cause injury than if they fell

[727] Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [44].

> down themselves or any injuries they were likely to cause each other by fighting. The force used was not reasonable, necessary, proportionate or appropriate."

679. Following the use of force, Mr Rolfe can be heard on the BWV to say to another officer that they "might have to give [one of the Aboriginal males] an infringement *just to justify the use of force*".[728]

680. Later the same day, Mr Rolfe used his phone to film the incident from his BWV and captured the sounds of himself and others watching the playback. In footage stored on his telephone, Mr Rolfe can be heard to add sound effects ("ootz, ootz") and to laugh at the point when he pushes each man over.[729] Mr Rolfe conceded at Inquest that he filmed the incident because he thought it was funny.[730] He said he knew that this breached relevant NT Police policies, including as to confidentiality.[731]

Oversight of this UoF by NT Police

681. Mr Rolfe did complete a UoF CNE for the incident, which was cleared in February 2019 by the supervising officer, without apparent concern. This decision has since been the subject of disciplinary penalty for the supervising officer.

682. Following the identification of this incident by Det SSgt Barram in March 2020, the incident was reviewed by the PSC. The PSC found that Mr Rolfe's application of force was excessive. AC Porter noted, in particular, that Mr Rolfe had used no verbal communication at all, and concluded that there was

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728 MFI PPP: "BWV of Zachary Rolfe from Araluen Park 18 February 2019".

729 MFI XX: "Video IMG_0157 from Cst Rolfe's phone – film of BWV of incident at Araluen Park 18.02.19".

730 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5220.

731 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5220.

no need to push the two men given their intoxicated state.[732] He observed that they did not pose a threat to police.[733]

683. Due the expiration of the limitation period, no disciplinary action could be taken pursuant to Pt IV of the PAA.

Findings regarding the Araluen Park incident

684. I agree with the opinion reached by Det SSgt Barram and am comfortably satisfied that Mr Rolfe used excessive force against two intoxicated older Aboriginal men who posed no threat to him and little to each other. I again reject Mr Rolfe's evidence that no less forceful alternative was available to him (including that of simply directing the two men, who had already separated, to "stop fighting"). In rejecting this evidence, I am again unable to say whether Mr Rolfe genuinely believed that his conduct was justified, or that his evidence to this effect was dishonest. I am again not sure which would be more concerning.

685. In relation to Mr Rolfe's conduct in filming himself watching his own BWV, Counsel Assisting noted, correctly, that this is the first of at least five known instances[734] where Mr Rolfe expressed amusement, and so derived amusement from, the reviewing, or sharing, of police media following his applications of force against Aboriginal men. On each of these occasions Mr Rolfe openly laughed, or otherwise expressed his amusement, most clearly at the very moment force was applied to the Aboriginal man (or, in Albert Bailey's case, at the moment Mr Bailey begins bleeding while lying on the pavement).

686. I accept Counsel Assisting's submission that Mr Rolfe's conduct in sharing, or boasting, about these and other use of force incidents, is reflective of Mr Rolfe's sense of superiority, the extent to which he had dehumanised the

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732 Inquest evidence of Assistant Commissioner Bruce Porter on 3 March 2023 at 4367.

733 Inquest evidence of Assistant Commissioner Bruce Porter on 3 March 2023 at 4367.

734 The Araluen Park Incident; the CW Incident; the Tyson Woods Incident; the Todd Tavern Incident; and the Albert Bailey Incident.

Aboriginal population he was policing, and the sense of impunity with which he approached his work as an officer at the Alice Springs Police Station. I do not, however, go so far as Counsel Assisting and find this was reflective of "morbid fascination with violence".[735] In my view, the better characterisation is of an immature or cavalier attitude, and a lack of care for whether he injured an arrestee.

687. In relation to the oversight of this incident, I do not understand how a reasonable supervising officer could fail to flag this use of force incident as problematic. This was, again, a significant missed opportunity to take disciplinary action against, or, at the very least, provide some form of guidance to, Mr Rolfe, in response to this problematic and disturbing use of force.

688. Finally, I note that messages on Mr Rolfe's telephone at this time appear to disclose a level of self-awareness into his declining mental health. On 1 March 2019, Mr Rolfe wrote to a family member in terms that suggest that he had very low self-esteem, that he didn't "want all this shit to build up until I do something dumb" and that he was concerned "if some scum pushes me I'll go too far and get in trouble". At the same time, he was also sending messages that he was consuming cannabis[736] and was "try[ing] to get some Seratonin vitamins from somewhere".[737]

689. While I am unable to find positively that Mr Rolfe's conduct at Araluen Park was connected with any mental health difficulty he was experiencing in February 2019, there is more than a possibility of such a connection. This underlines the importance of interventions—even informally—when inappropriate conduct by an officer is identified by the NT Police.

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735 Closing written submissions of Counsel Assisting dated 22 October 2024 at [192].

736 MFI MMM message 162.

737 MFI MMM message 93.

Incident 6 – the arrest of Master CW- 1 April 2019

690. This UoF Incident involved the arrest by Mr Rolfe of a 17-year-old Aboriginal teenager, "CW", on 1 April 2019. Because Mr Rolfe did not complete a UoF CNE for this incident it was not the subject of Det SSgt Barram's review.

Facts of the incident

691. On 1 April 2019, at around 7:15pm, CW was sighted by police in the area of Anzac Oval in Alice Springs. He was in breach of his bail. He was chased by police officers, including Mr Rolfe, through the Todd River, over Wills Terrace and toward Anzac Hill.[738] The terrain on Anzac Hill is rocky, covered in spinifex grass and is uneven in parts. Visibility in the area was mixed, as a result of low lighting.[739]

692. Mr Rolfe had activated his BWV video when he began chasing CW but after around three minutes, at a time when he was still actively pursuing CW, he turned the BWV off. According to the time-stamp on Mr Rolfe's BWV, this occurred at approximately 9:49pm.[740]

693. There is more BWV footage after Mr Rolfe turned his camera off, because his superior, Sgt Paul Kirkby, had activated when he arrived on the scene at 9.56pm, seven minutes after Mr Rolfe turned his camera off. That video shows the following:[741]

    (a) Sgt Kirkby approached Mr Rolfe and CW. Mr Rolfe is standing over CW, who is on the ground next to a large rock and/or bush.

738 Complaint File CAP2019-116 [3-79] at 6.
739 Complaint File CAP2019-116 [3-79] at 6.
740 MFI QQQ: "BWV of Zachary Rolfe in relation to CW 1 April 2019".
741 MFI SS: "Sgt Kirkby BWV re CW".

(b) The audio commences 30 seconds into the BWV. CW can be heard to yell, loudly, "I want my lawyer. I'm bleeding. I'm bleeding. I'm bleeding sir".

(c) Sgt Kirkby asks "Why is he bleeding?"

(d) CW then demands of Mr Rolfe, "Why did you do that?"

(e) Mr Rolfe replies: "do what?"

(f) CW responds, "I want to speak to my lawyer he banged me against the rock". CW repeats the allegation that Mr Rolfe hit him against the rock a number of times. He refers at one point to being "kicked in the dick", or similar.

(g) At approximately 1 minute 10 seconds into the BWV, and while CW is repeating his complaint, Sgt Kirkby can be heard to say to Mr Rolfe, "I've got a camera on",[742] to which Mr Rolfe responds, "Yep".[743] In evidence at the Inquest, Sgt Kirkby appeared to agree that he said this to "warn" Mr Rolfe not to "say something" that "might be inappropriate at that time".[744]

(h) Sgt Kirkby and Mr Rolfe led CW to a nearby police wagon where they met Sgt Bauwens, who assists to search CW before moving him into the police cage. During this time, CW continued to ask "why did you do that to me" or similar to Mr Rolfe. In doing so, CW appeared agitated, but he was not yelling or aggressive. At this point, for a reason not evident on the face of the BWV, Mr Rolfe grabbed CW's face and pushed it backwards, holding him in that position. Mr Rolfe yelled at CW "Don't spit on him. Don't bleed on him. Stop talking! Stop Talking!". It is not apparent from the BWV whether CW was in fact doing or threatening to do any of those things.

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742 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2386.
743 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2386.
744 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2386.

694. CW was first taken to the Alice Springs Police station and later removed from his cell and conveyed to the Alice Springs Hospital for medical treatment. Later that evening he was returned to the watch house after receiving medical treatment. He had received four stitches to his head area, and had a large bandage wrapped around his head and butterfly plasters to a wound across the top of his nose, as depicted in this photograph which was located on Mr Rolfe's mobile telephone:[745]

695. At 10:31pm, Sgt Kirkby created a UoF CNE for the PROMIS record associated with CW's arrest.[746] In the CNE, Sgt Kirkby described arriving at CW's location after Mr Rolfe. He observed CW "on his stomach and .... ROLFE had his knee on [CW's] shoulder in a three-point hold". He observed CW to be bleeding from the head or face. He noted that CW was "yelling" about wanting a lawyer, having his head bashed, and being kicked in the dick "etc, etc".[747]

696. There is no evidence that Mr Rolfe completed a UoF CNE or otherwise contributed to the entry on PROMIS for this job. He did, however, complete

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745 MFI MMM image 9, which has been partially obscured by Counsel Assisting to maintain privacy.

746 PROMIS 8927087 Case Note 44079738 (CW) dated 1 April 2019 [3-82A].

747 PROMIS 8927087 Case Note 44079738 (CW) dated 1 April 2019 [3-82A] at 1-2.

a statutory declaration, dated 1 April 2019, in which he gave the following account of turning off his BWV and of the apprehension:[748]

> "[4] I turned my Body Worn Video on and chased [CW] from the river through St Joseph's flexible learning centre and up onto ANZAC Hill. I lost sight of [CW] and turned my Body Worn Video off as it was giving my position away due to the light and sound that it emits, this was a tactical consideration.
>
> …
>
> [6] As [a nearby police] vehicle stopped and turned the vehicle lights on I saw [CW] dive onto the ground. At this time I was approximately 30 meters from [CW]S position. I informed the other units that I believed he had gone to ground. Myself and Sergeant Paul KIRBY (sic) located [CW] lying on the ground and placed him under arrest and cautioned him.
>
> At this time I observed that [CW] had a small cut on his forehead, / believed it must have occurred when he dived on the ground to hide from the Police vehicle or earlier during the chase as he was running in the dark without a torch through extremely rough and rocky terrain."

697. Early the next day, on 2 April 2019, CW participated in a video record of interview (**EROI**).[749] CW was advised of his rights to decline to speak to police and was assisted throughout the interview by a support person. Having reviewed the audio-visual exhibit for myself, I agree with Counsel Assisting's assessment that CW was quiet and cooperative and made admissions to property offending. Towards the end of his EROI, he gave a lengthy account of his pursuit by police.

698. CW described a point in the chase when he claimed that an officer (who could only be Mr Rolfe) had slammed his head into the ground more than once. Although my assessment of CW's credibility is based on my review of the

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748 Complaint File CAP2019-116 [3-79] at 90.

749 Complaint file CAP2019-116 - CW – EROI [3-81].

entire account between him and the Interviewing Officer (**IO**), I have extracted the most pertinent passage:[750]

> CW: So I hid under this one rock and I could see a torch in the distance, so I thought the coppers already found me, so I turned around, and seen this copper grabbed me, grabbed me by the head and he went bang, bang, bang against a rock … he just keep going. That's when they arrested me. This cop … I just didn't get treated right at that time when I got arrested. So they chucked me in a paddy wagon and brought me to the watch house
>
> IO: Ok. So what are you saying the police man did when he caught you?
>
> CW: He just grabbed my head and slammed it against a rock. That's why I got big stitches right here. I was all bleedin' everywhere.
>
> IO: How did he grab you?
>
> CW: He grabbed me by the hair … with his knee, he locked me … locked my back and just grabbed me by the back hair and just whack, whack, whack against the rock. I was like 'stop it stop it stop it' I already gave myself up but he keep on doing it … a couple of times.
>
> IO: Sorry where was his knee when he was doing that?
>
> CW: In the middle – on top of the spine.
>
> IO: Alright, if his knee is in your back. How did he do that with your head I don't really understand.
>
> CW: He stepped on my back, held my two hands behind my back with one hand, and just went bang, bang.
>
> IO: Are you aware that police now have body worn cameras? They have cameras on their … [the officer points to his chest].

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750 Complaint file CAP2019-116 - CW – EROI [3-81].

> CW: Yes. I was trying to turn around to see if the body cam was on or not but I couldn't because he just keep my head and … whack … I'm not too sure if it was on or not.

699. As I note further below, it is significant to my assessment of the credibility of CW's complaint that he said that he was aware (and was certainly made aware by the IO) that the NT Police officers wore BWV and he would not have known that Mr Rolfe had deliberately de-activated his BWV. That is, he made, or at the very least maintained, his complaint despite what must have been an awareness that an untruthful account of Mr Rolfe slamming his head into the ground would likely be disproven by the BWV.

Mr Rolfe's text messages about, and at the time of, the CW incident

700. On 8 April 2019, Mr Rolfe sent a female colleague a copy of the police mugshot of CW that depicted the injuries he had suffered during his apprehension. The two officers expressed their amusement and insinuated that Mr Rolfe's own account of how CW obtained the injuries (by falling down) was implausible.[751] I have already referred to this exchange, but for ease of reference it reads:

MR ROLFE:	Check out [CW]'s new mugshot haha
FEMALE OFFICER:	Hahahahahah those bandages I wonder what they're from
	…… Clumsy boy he must be
MR ROLFE:	So clumsy haha

701. The day after sending CW's mugshot to that female officer, Mr Rolfe exchanged messages with the same female friend concerning his "licence to towel up locals" and that he liked it.[752] As it happens, though spoken in jest,

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751 MFI MMM messages 165 and 167.

752 MFI MMM message 178.

they were true words. I accept Counsel Assisting's submission that Mr Rolfe derived "enjoyment" from the use of force,[753] and I find that these and similar messages reveal the extent to which Mr Rolfe had dehumanised the largely Aboriginal population he was policing, his disinterest in the risk of injury associated with his hands on policing style, and the sense of impunity with which he approached the use of force.

702. On 11 April 2019, Mr Rolfe sent a photo of the mugshot of CW to another police officer with whom he regularly worked, PH, although there was no text to accompany the image. In evidence in the inquest, Mr Rolfe accepted that PH was one of his "good mates" and "potentially" someone he would "often send … videos where [he'd] been in some hell chase or fun job".[754]

The complaint, PSC Investigation and CRP Process

703. Late on 1 April 2019, or early on 2 April 2019, A/SSgt Gall audited the UoF CNE submitted by Sgt Kirkby. In reviewing the UoF CNE, A/SSgt Gall reviewed both Sgt Kirkby's description of the incident and Sgt Kirkby's BWV. He agreed that both depicted, or described, CW making a complaint that Mr Rolfe had "assaulted" him. Despite this, A/SSgt Gall's comments clearing the UoF Incident include no reference to CW's complaint. Indeed, when cross-examined at the inquest, A/SSgt Gall conceded that he had *not* "taken into account [CW's]…allegations".[755] In effect, he assumed that Mr Rolfe's account (of a fall) was correct, and then applied the law and NT Police policy to that account.[756] Unsurprisingly, he concluded that the force Mr Rolfe claimed he used (a three point hold) was "minimal, justified [and] necessary".[757]

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753 Closing written submissions of Counsel Assisting dated 22 October 2024 at [385](e).
754 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5241.
755 Inquest evidence of Acting Senior Sergeant Alistair Gall on 1 November 2022 at 2965.
756 Inquest evidence of Acting Senior Sergeant Alistair Gall on 1 November 2022 at 2965.
757 PROMIS 8927087 Case Note 44079738 (CW) dated 1 April 2019 [3-82A].

704. On 2 April 2019 (on the day of CW's interview) Senior Sergeant Peter Malley forwarded the complaint to members of the PSC, including Superintendent Pauline Vicary.[758]

705. On 16 April 2019, Sgt Lisa Bayliss formally notified Mr Rolfe of the complaint, told him that it was being dealt with through the Complaints Resolution Process (**CRP**) and sought his response to it.[759] Det Supt Read was copied into the email to Mr Rolfe. The CRP is designed for handling (so called) "minor" complaints about police conduct and is an informal review process that involves a senior police officer discussing the complaint with the complainant and the relevant police officers.

706. On 17 April 2019, Mr Rolfe responded to the email. He did so by copying-and-pasting the content of his statutory declaration, with the addition of two paragraphs in which he gave detailed reasons for his "tactical" decision to de-activate his BWV instead of using covert mode.[760] Mr Rolfe wrote:[761]

> "Of note, ideally my Body Worn Camera would have been on covert mode but as I'm sure you are aware there are two ways to turn your body worn camera onto covert mode, one of which is to access evidence.com on your iPad and enter into the settings and (as long as your iPad is currently synced up to your camera and in your possession) and change it that way - I am not able to do this while running after an offender. The other way is to hold down a small button for approximately 10 seconds - This is also difficult whilst on the run and further you cannot tell if it is activated once complete.
>
> In addition, as far as I'm aware, Section 14A(B) of the Surveillance Act prohibits police from using body worn video if not overt."

707. In other words, in his statutory declaration, and in his April 2019 email, Mr Rolfe held himself out as having a detailed technical, and legal, understanding of covert mode and how to activate it (in the field, it was as simple as

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758 Complaints Resolution Process (CRP) File No. 2019-116 (CW) [3-78] at 2.

759 Complaint File CAP2019-116 [3-79] at 71.

760 Complaint File CAP2019-116 [3-79] at 71.

761 Complaint File CAP2019-116 [3-79] at 181.

"hold[ing] down a small button for approximately 10 seconds")[762] but claimed that it would have been impractical, illegal or otherwise improper, for him to do so during the apprehension of CW.

708. At the Inquest, Mr Rolfe gave what I find to be a very different account of his reason for failing to activate his BWV. When asked to "tell [the Court] about stealth mode" he appeared to claim that he was unable to do so, stating that the Court would "need to ask someone else" because he had never been able to "figure out how to do it".[763] For much of his evidence, he re-asserted, in unqualified terms, that he had never known how to activate covert mode (he "couldn't figure out how to use stealth mode, *ever*"),[764] claimed that he "hadn't received enough training to know how to use stealth mode"[765] and claimed to have a recollection of having tried, unsuccessfully, to work out how to activate stealth mode with his colleagues in the muster room.[766] I am satisfied that this was not an account of having forgotten how to activate covert mode (which might be understandable)—it was a positive account of never having known how to use covert mode.

The Complaints Resolution Process (**CRP**)

709. On 24 May 2019, A/SSgt Alistair Gall called CW for the purposes of the CRP process and he attended with his sister-in-law, "A". The interview was recorded and since it is so integral to an understanding of the credibility of CW and to the failure of accountability in this case, I will set out a lengthy extract from it:[767]

> A/SSGT GALL: So remember that time when you got arrested – when you went to the Watch House – you were chased, you remember,

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762 Complaint File CAP2019-116 [3-79] at 181.
763 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5128.
764 Inquest evidence of Zachary Rolfe on 26 February 2024 at 2024, 5129.
765 Inquest evidence of Zachary Rolfe on 27 February 2024 at 2024, 5246.
766 Inquest evidence of Zachary Rolfe on 2 February 2024 at 5555.
767 Acting Senior Sergeant Alistair Gall BWV – CW (CRP_2019-05-24_2206) [3-80].

through Anzac Oval and through Anzac Hill. You remember that.

CW: Yep.

A/SSGT GALL: You remember that. Yep. You got arrested and taken to the Watch House and you had to go to hospital cos of that cut to your head. You remember.

CW: Yep.

A/SSGT GALL: Yeah. Ok. So um. I just wanted to know if you wanted to talk to me about that.

CW: Um, yes, please.

A/SSGT GALL: So, yeah. So we've completed an investigation CW and you know we wear those body-worn cameras? You know we wear those cameras CW?

CW: Pardon

A/SSGT GALL: Do you remember that we wear those cameras on our chest? Those cameras? So, CW, I've spoken to the two police officers and I've looked at the video footage from those cameras and, look, it – the members have told me that you hit … you probably hit your head your head on a rock, or something—

CW: Nah. That's wrong.

A/SSGT GALL: Ok. What happened then CW.

CW: Nah. I was hiding down there – down there by the rock and a copper just come up behind me and I said "I surrender" and he grabbed me by the head and started slamming me against the rock.

A/SSGT GALL: Ok.

A: That should be in the footage isn't it?

A/SSGT GALL:	Look. It's not … it's … some of the footage is a bit unclear.
CW:	So why would I got to the hospital to get four stitches?
A/SSGT GALL:	So you claim the officer slammed your head against a rock.
CW:	Yep. Yes, yeah, that's correct.
A/SSGT GALL:	Do you know how many times.
CW:	I'm not too sure, because I was a bit drunk, but I only remember about four or three times.
A/SSGT GALL:	Ok. I'm just writing this down.
CW:	But I think it was four, because I counted every bump of it.
A/SSGT GALL:	As I said, we've viewed the CCTV footage and it certainly doesn't show him doing that.
CW:	It wasn't on CCTV cameras, it was behind Anzac Oval near St Phillips [school] I think. They don't have cameras around there.
A/SSGT GALL:	No, there's no CCTV you're right. But I'm mainly talking about the body-worn cameras we wear.

710. At the conclusion of the interview, SSgt Gall explained that there were essentially two versions of events and, therefore, that the CRP would be unresolved.[768]

711. On 26 June 2019, Sophie Trevitt, a solicitor with NAAJA who was representing CW, wrote to SSgt Gall and thanked him for meeting her that

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[768] Acting Senior Sergeant Alistair Gall BWV – CW (CRP_2019-05-24_2206) [3-80].

morning, and for the opportunity to review the BWV. She then reiterated a number of requests in relation to a further investigation of the complaint. Ms Trevitt made reasonable requests for statements be taken from the relevant members addressing matters of concern to her client.[769]

712. On 5 July 2019 Det Supt Read wrote to Roxene Cahill, the Assistant Ombudsman, informing her that she had reviewed the CW and another open investigation, and had concerns about Mr Rolfe. In a refreshing show of concern and independent review, she wrote:[770]

> "At this stage I am going to request that the [CW] complaint be re-categorised to a CAT 2. I have concerns about the evidence provided by [Mr] Rolfe (who is already on our radar for his history of providing incorrect version of events). His response is not adequate and given that [CW] suffered a head injury requiring sutures, the complaint should require further in-depth investigation. I don't agree that it should have been a CRP in the first place."

713. On 8 July 2019, the NT Ombudsman re-opened the investigation and it was re-categorised as a Category 2 complaint under s 66 of the *Ombudsman Act* and referred back for investigation by the PSC.[771] From this point onwards, the PSC was empowered by s 83(1) to direct an officer to provide information, including in an interview.

714. That same day, at 11:39pm, Mr Rolfe emailed A/SSgt Gall. He had clearly been sent the 26 June 2019 email from Ms Trevitt and his reply appears to be a copy-and-pasted version of that email, with some brief responses to it.[772]

715. Despite the serious concerns expressed by Det Supt Read, no further steps were taken in this investigation until 19 November 2019, ten days after Kumanjayi Walker's death. I find that this delay was unacceptable. On that day, Det Supt Read emailed Sgt Lee Bauwens directing him to provide

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769 Complaint File CAP2019-116 [3-79] at 41.

770 Email from Detective Superintendent Virginia Read to the Ombudsman's Office dated 5 July 2019 [3-84] at 2.

771 Complaint File CAP2019-116 [3-79] at 5.

772 Complaint File CAP2019-116 [3-79] at 158.

information regarding CW's complaint.[773] Sgt Bauwens provided his response, by return email, on 28 November 2019.[774]

716. In January 2020 (one month after Kumanjayi's death), Det Supt Read forwarded a number of drafts of her report of the investigation to the NT Ombudsman (draft s 92 report). She acknowledged that the key allegation regarding the blows to CW's head was "unresolved" but expressed concern about Mr Rolfe's conduct and reliability. As Det Supt Read noted in her draft s 92 report, "the area had some light from street lights and buildings", "the officers were running after [CW] with torch lights" and "the sound of boots on the rocky and grassy ground would have been sufficiently loud enough for [CW] to hear the officers pursuing him".[775] Detective Supt Read was entirely justified in reaching the conclusion that "[i]t is unlikely that Rolfe's account of attempting to not give [CW] his position away because of the light and sound of the BWV was entirely truthful" and that "[h]is claims for not activating the camera do not appear to be credible".[776] As I note below, I have very similar concerns regarding the credibility of Mr Rolfe's account of why he turned his BWV off.

717. On 23 April 2020, Cameron Mitchell, Senior Investigation Officer at the Ombudsman, wrote a lengthy email to Det Supt Read noting that the NT Ombudsman had now completed its review of the draft report and expressed the view that "directed interviews should be conducted with <u>at least</u>...[Mr] Rolfe...Sgt Kirkby...[and] Constable Stewart...in order to test the credibility of their responses and explore a number of unanswered questions".[777] Further, Mr Mitchell raised concerns that while Sgt Kirkby had entered a UoF CNE and Mr Rolfe did not,[778] when it was Mr Rolfe who had first arrived at CW's location, and applied force to effect the arrest.

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773 Complaint File CAP2019-116 [3-79] at 82.
774 Complaint File CAP2019-116 [3-79] at 81.
775 Complaint File CAP2019-116 [3-79] at 14.
776 Complaint File CAP2019-116 [3-79] at 14.
777 Complaint File CAP2019-116 [3-79] at 171-172.
778 Complaint File CAP2019-116 [3-79] at 172.

718. In spite of the concerns of Det Supt Read, and the Ombudsman Senior Investigation Officer's call for directed interviews, there is no evidence that anything was ever done to further the investigation at that time, or later, probably because of the intervening events with the trial of Mr Rolfe arising out of the death of Kumanjayi.

Findings on the CW incident

719. After considering all the available evidence, including the evidence of Mr Rolfe and his colleagues,[779] the existing BWV, the interviews between police and CW and the subsequent messages, I reject Mr Rolfe's account that CW suffered his injuries during a fall and am comfortably satisfied that Mr Rolfe deliberately deactivated his BWV during the pursuit, caught up with CW, and brought him to the ground. After apprehending him, he grabbed CW by the hair while crouched or kneeling on CW's back and he banged his head into the ground more than once, causing lacerations to CW's head and face.

720. In assessing CW's evidence, I have carefully reviewed the BWV of his contemporaneous complaint and the audio-visual exhibits of his two interviews with police (the first in his record of interview on 2 April 2019; the second in his CRP interview on 24 May 2019). Having taken into account matters that might be said to detract from CW's credibility,[780] I am nevertheless actually satisfied that, on the core allegation that Mr Rolfe brought him to the ground and then banged his head and/or face into the ground, CW was telling the truth. I believe him.

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779 Including Sgt Kirkby: see Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2382*ff*.

780 Although neither Counsel Assisting, Mr Rolfe, nor any other interested party drew my attention to any matter that was said to detract from CW's credibility, I have carefully reviewed the materials for such evidence. I have, for example, taken into account: that CW was intoxicated at the time of the incident, perhaps substantially so, and that a fall would not be inconsistent with the context and the injuries; that CW's complaint was made while he was being arrested for his own criminal offending; and that CW' statement that Mr Rolfe's was "kicking my dick" while he was pinned to the ground cannot have been correct. Further, although it contained many admissions against interest, other aspects of the record of interview were more guarded (including his partial no-comment answers).

721. Although CW gave some partial no-comment answers, for the majority of his 2 April 2019 interview he was quiet and co-operative. He made admissions against interest to at least some property offending and of his attempts to evade police. He made, or at the very least persisted in, his complaint despite what must have been an awareness that if he gave an untruthful account of Mr Rolfe slamming his head into the ground, it could be disproven by the BWV.

722. Rather than disengage, CW chose to participate in the CRP process in May 2019. CW's version of events during the CRP interview was materially consistent with his accounts at the time he was arrested, during his EROI and later to NAAJA. CW did not minimise his own involvement and admitted, against interest, that his memory was not perfect because he was drunk. Most importantly, CW again had no way of knowing that Mr Rolfe had de-activated his BWV. Like the IO's comments during the EROI, A/SSgt Gall's repeated references to the BWV in his introductory remarks are likely to have conveyed to CW that there was, or was highly likely to be, footage of the critical interactions between CW and Mr Rolfe (that was the impression it made on "A", who, after CW re-iterated his complaint, stated "[t]hat should be in the footage isn't it?"). Having listened to the recording itself, CW struck me as engaged and credible.[781]

723. In evidence at the Inquest, Mr Rolfe maintained his denials that he had brought CW to the ground, or grabbed his head or hair and bashed his head into the ground, and maintained that CW had fallen while running over uneven ground. He accepted that he had deliberately de-activated his BWV, but maintained his account that this had been for "tactical" reasons: that is, to avoid "giving away [his] position".[782]

724. Like Det Supt Read, I consider Mr Rolfe's asserted "tactical" reason for de-activating his BWV (a desire not to give away his position) to be unpersuasive, in part because the area was, at least, intermittently lit by street-lights and

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781 CW participated voluntarily; having been repeatedly reminded that police wore BWV. CW did not waiver when challenged with the police version; and his account of his head being struck was clear.

782 Inquest evidence of Mr Zachary Rolfe on 27 February 2024 at 5247.

also because of the amount of noise Mr Rolfe can be heard making while pursuing CW at speed over the rocky scrub. In turn, Mr Rolfe's excuses as to why he did not activate covert mode (which would have achieved the asserted "tactical consideration") were flimsy, and I do not accept either of the two explanations as credible.[783] Furthermore, the inconsistency between those accounts was stark.

725. When assessing these accounts, I also take into account Mr Rolfe's non-adherence to NT Police BWV policy and his acceptance that, by the time of the CW incident, he had repeatedly been cautioned for that failure.[784] I take into account Mr Rolfe's evidence that, during his early years at the ASPS there was a "reluctance" to use, and a "big kick back" against, BWV by his "cohort". Despite, or perhaps because of, its capacity to provide "proof of an offence or inappropriate behaviour by a police officer", BWV was viewed by Mr Rolfe and his cohort as "a negative" because it would "enable more complaints against police" and be "used against police", including by the PSC.[785] I also take into account the text messages sent between Sgt Kirkby and Mr Rolfe in September 2019 in which Mr Rolfe stated that he was willing to "make my camera face the other way"[786] so as not to capture inappropriate conduct by police officers and his quite striking admission at the inquest (although only after being confronted with the messages) that what he was describing in these messages was deliberately "manipulating the body-worn

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783 The first included what I consider bordering on specious legal and policy arguments and which tended to suggest that it was for Mr Rolfe, not the NT Police, to decide whether he complied with the requirement that his BWV be activated. As to the second, I accept the NT Police's submission that it is "implausible" that Mr Rolfe did not know how to activate stealth mode in light of Mr Rolfe's intelligence and the simplicity of the written instructions that Mr Rolfe ultimately conceded were likely to have been available to him (see Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [352] and Exhibit 25: "Axon How To: Body2: Stealth Mode"). His claim not to have known was, in any event, contradicted by his email of 17 April 2019.

784 Inquest evidence of Mr Zachary Rolfe on 27 February 2024 at 5260 in which Mr Rolfe agreed that by this time he had received multiple warnings about the use of BWV including personal warnings and station wide broadcasts.

785 Inquest evidence of Mr Zachary Rolfe on 26 February 2024 at 5129-5130.

786 MFI MMM message 431.

video so that things that are said, that could have been deemed unprofessional by PSC, were not captured".[787]

726. Taking those matters together, I am comfortably satisfied that I should reject Mr Rolfe's accounts—to the PSC and in this Inquest—of why he de-activated his BWV during his pursuit of CW. I am satisfied that Mr Rolfe de-activated his BWV because he did not want his apprehension of CW to be recorded. In my view, this conduct very significantly decreases the credibility of Mr Rolfe's denial that he engaged in the conduct described by CW.

727. When I combine these findings with my general assessment of Mr Rolfe's credibility about this incident, which was very poor, and when I also consider the evidence of CW, I am comfortably satisfied that Mr Rolfe did bring CW to the ground, and bash his head into a rock more than once.

728. There are three final matters I should make clear. The first is that I do not accept certain of the arguments Counsel Assisting made in support of a finding that CW's account was true (and that Mr Rolfe's was untrue). I do not, for example, accept Counsel Assisting's submission[788] that I should infer from the absence of evidence of injury to CW's hands that the account of a fall by Mr Rolfe was improbable.[789] Nor do I accept Counsel Assisting's submission that Mr Rolfe's messages to his female colleague regarding CW's mugshot are "evidence from which it may be inferred that Mr Rolfe knew that his account of the incident was untrue".[790]

729. The second is that I am mindful that I must not make any finding that any person has committed a criminal offence. The fact that I have rejected his account that he did not engage in the conduct alleged by CW, does not mean

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787 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5249.

788 Closing written submissions of Counsel Assisting dated 22 October 2024 at [385](d).

789 Even if I could infer that CW did not suffer such an injury (which I cannot), I am not sure it render an account of a fall less probable than an account of CW being brought to the ground during a chase.

790 Closing written submissions of Counsel Assisting dated 22 October 2024 at [385](g)(ii).

that I have made any finding about what Mr Rolfe's state of mind, or motivation.

730. Third and finally, I have taken into account, when assessing CW's evidence, that I did not have the benefit of seeing him cross-examined on oath.[791] It is important that I make clear, however, that Mr Rolfe was aware that it was open to him require CW for cross-examination. The witness list was the product of much back-and-forth, and Counsel Assisting invited the parties to identify witnesses who they required. Mr Rolfe did ask, from time to time, that certain witnesses be called, even though Counsel Assisting or another party would not otherwise have required them, and Counsel Assisting accommodated many of those requests and similar requests made by other interested parties. In circumstances where the rule in *Browne v Dunn* did not require Mr Rolfe to put his denial to CW in cross-examination before he could contest the version, one can understand this forensic decision.[792]

Findings regarding oversight of this use of force incident

731. In relation to this incident, the NT Police's supervision and discipline of Mr Rolfe was wholly inadequate, for reasons that were not isolated to this instance.

732. First, Mr Rolfe did not complete a UoF report as he was required to do. Although Sgt Kirkby did complete a report, he did not ensure that the junior officer who had actually used the force completed the necessary report.

733. Second, although CW suffered an injury while in custody, there was no CiiR, another breach of the General Order (Custody and Transport). As noted above, once a CiiR was competed it ought to have been reviewed by the Divisional

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791 Although there was some testing of CW's account by the investigating officers during his VROI and, to a lesser extent, during the CRP process.

792 I do not draw any adverse inference from this forensic decision.

Superintendent to ensure the member/s acted appropriately and in accordance with training, education and policy.

734. Third, A/SSgt Gall's review of Sgt Kirkby's UoF CNE was wholly inadequate. Seemingly because Mr Rolfe gave a different version, A/SSgt Gall did not take into account what he knew to be an allegation of serious misconduct by a police officer. He simply assumed that Mr Rolfe's version (of a fall) was correct and then applied the law and NT Police policy to that version.[793] While A/SSgt Gall was entitled to be sceptical of CW's complaint, in the face of the evidence of CW's injuries, and in the absence of any objective evidence to contradict CW's allegation (which A/SSgt Gall knew was the result of Mr Rolfe's decision to de-activate his BWV), there was no basis to uncritically prefer the officer's version. As A/SSgt Gall accepted at inquest, he should have "escalated the matter".[794] I note that A/SSgt Gall's evidence was that his approach to this UoF CNE reflected his ordinary practice when reviewing UoF CNEs, which was something he did most shifts.[795]

735. Fourth, A/SSgt Gall accepted at the Inquest that, having already cleared Mr Rolfe's use of force when auditing Sgt Kirkby's UoF CNE, there was an apparent conflict of interest in his being assigned to investigate CW's complaint for a second time as a part of the CRP. Not only did A/SSgt Gall appear already to have formed a view about the UoF, but he was also (in effect) being asked to review his own earlier conduct of the original audit.[796]

736. Fifth, as Det Supt Read later noted, the complaint was inappropriately categorised as appropriate for the CRP. It was too serious, and involved a factual contest between the version of the complainant and an officer that was unlikely ever to be resolved during that process. As a result of its inappropriate categorisation, no meaningful investigative step was taken

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793 Inquest evidence of Acting Senior Sergeant Alistair Gall on 1 November 2022 at 2965.
794 Inquest evidence of Acting Senior Sergeant Alistair Gall on 1 November 2022 at 2965.
795 Inquest evidence of Acting Senior Sergeant Alistair Gall on 1 November 2022 at 2966.
796 Inquest evidence of Acting Sergeant Alistair Gall on 1 November 2022 at 3025-3026.

between 1 April 2019 (the date of the incident) and 8 July 2019 (the date the complaint was re-categorised).

737. Sixth, once the incident was re-categorised on 8 July 2019, there is no explanation for the failure to finalise the investigation prior to the expiration of the limitations period under the PAA in October 2019.[797] Indeed there is no evidence of any investigative step being taken between 8 July 2019 and 19 November 2019, and it appears that it is only the fact of Kumanjayi's death that prompted action to be taken in mid-November 2019, by which time it was far too late.

738. Seventh, given the seriousness of the allegation, and the concerns within the PSC regarding Mr Rolfe's honesty, I accept Counsel Assisting's submission that Mr Rolfe should have been directed to provide information about the incident in an interview, pursuant to s 83(1) of the *Ombudsman Act* (as opposed to simply being asked to respond by email).

739. Ultimately, in light of the seriousness of CW's account, the evidence of injury, and the fact that there was no objective evidence of the incident because Mr Rolfe had deliberately de-activated his BWV, a thorough, independent and timely investigation was warranted. Such an investigation was all the more necessary in light of the recent and damning findings Judge Borchers had made about Mr Rolfe's application of force, and dishonesty, in the Ryder matter.[798] What occurred was neither thorough, independent nor timely. I am not prepared to describe it as an "investigation" at all.

Incident 7 - Luke Madrill- 20 April 2019

Facts of the incident

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[797] Under the PAA, any action regarding a breach of discipline must be commenced within 6 months of the conduct occurring or being discovered, unless a magistrate agrees to extend that time.

[798] Whether or not Judge Borchers' findings were correct, it is the fact of the findings that warranted concern.

740. Around two weeks after the incident with CW, in an incident with striking similarities, Mr Rolfe failed to activate his BWV during another night-time foot-chase that resulted in a complaint of excessive force resulting in injury, this time by Luke Madrill.

741. At 3:40am on 20 April 2019, Luke Madrill was asleep at his mother's house in Charles Creek, Alice Springs when officers from Mr Rolfe's Patrol Group attended to arrest him in relation to an ongoing investigation. Mr Madrill ran out of the house and into bushland behind Charles Creek and was pursued on foot by three police officers, including Mr Rolfe, Probationary Constable Nwakor-Osaji and Constable James Kirstenfeldt.

742. Despite the fact that the officers attended at the residence for the purposes of a planned "attempt to locate an active arrest target", and despite Mr Rolfe anticipating that Mr Madrill might attempt to flee the location on foot,[799] none of the officers activated their BWV until after the pursuit, apprehension and arrest had occurred.

743. When Luke Madrill ran from police, both he and Mr Rolfe were faster than the other officers, who eventually lost sight of them for a period. By the time the Probationary Constable caught up, Mr Madrill was lying on the ground and Mr Rolfe was standing over him. Constable Kirstenfeldt then arrived at the scene.

744. It appears that Mr Rolfe did not activate his BWV until some time after Mr Madrill was lying on his back on the ground, handcuffed, and up against what appears to be a boulder.[800] When audio on the BWV commenced, both Mr Madrill and Mr Rolfe were clearly out of breath. As soon as Mr Rolfe started to tell Mr Madrill that he was under arrest, Mr Madrill can be heard on the BWV to complain of pain to his knee and he states: "he banged my knee". Mr

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799 See, the statement Mr Rolfe made at the time of Mr Madrill's charge at paragraphs [2]-[3]: NT Police Professional Standards Command file for CAP2019-342 - MADRILL, Luke [3-163] at 48.

800 BWV of Zachary Rolfe in Complaint file CAP2019-342 NAAJA obo MADRILL, Luke DRAFT [3-163].

Rolfe told Mr Madrill of the plan to walk him down the hill and that he would be seen by an on-duty nurse.

745. The BWV captures footage of Mr Rolfe beginning to walk down the hill with Mr Madrill, who can be heard to complain again about the pain in his knee. The following is audible:

> MR MADRILL: Ahh Ow
>
> MR ROLFE: Your knee hit that rock
>
> MR MADRILL: Yeah, you fucking sling me

746. Mr Rolfe did not respond to the allegation made by Mr Madrill, but deactivated his BWV within seconds of it being made.

747. Mr Madrill was processed into custody at the ASPS where he repeated his complaint to officer Dave Munro.[801] At 6:44pm on 20 April 2019, Officer Munro warned Mr Rolfe in the following terms:[802]

> "Hey mate. Just a heads up. Old mate was complaining about being chucked down the hill and said he was going to tell his lawyer. Had some knee pain. Didn't want to speak with us about it. Hurts letting you know."[803]

748. Mr Rolfe replied:[804]

> "Thanks brother, expected it."

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801 Complaint file CAP2019-342 NAAJA obo MADRILL, Luke DRAFT [3-163] at 36. Custody records for Mr Madrill reveal that Mr Madrill had ample opportunity to make the complaint: Officer Munro spoke to Mr Madrill at 8:40am, removed Mr Madrill from his cell for the purpose of an electronic record of interview at 8:45am, and spoke to him again at 3:44pm.

802 MFI MMM message 187.

803 I accept that this may have been intended to read "just letting you know" as Officer Munro sent a subsequent message at 6:49pm which read "Haha. That last bit was supposed to say "just letting you know". Good luck.": MFI MMM message 190.

804 MFI MMM message 188.

Findings on the Luke Madrill arrest

749. NAAJA submitted that I should find that Mr Rolfe "slung" Mr Madrill down the hill, as Mr Madrill described in his contemporaneous complaint. After careful consideration, I do not accept that I can reach this conclusion.

750. On the one hand, I am satisfied that there is a striking similarity between this complaint and the complaint by CW (outlined above). I am also satisfied that Mr Rolfe failed to activate his BWV, in contravention of NT Police policy and that, within seconds of the making of the complaint by Mr Madrill, Mr Rolfe turned off his BWV. All in all, the incident is extremely suspicious. I place limited weight on what Mr Rolfe himself said about the incident, since I do not accept Mr Rolfe to be a credible witness when it comes to various issues that reflect poorly on him.

751. Nevertheless, because Mr Rolfe failed to activate his BWV and deliberately deactivated his BWV at the time of Mr Madrill's complaint, the only account before the Inquest is the summary of the complaint in a letter drafted by Mr Madrill's legal representatives. While I accept that Mr Madrill's injuries were consistent with his complaint, I am left in a position where there is insufficient evidence to make such a finding.

Oversight of this UoF by NT Police

752. On 14 October 2019, NAAJA made a formal complaint,[805] the summary of which is consistent with the conduct recorded on Mr Rolfe's BWV and in Officer Munro's text to Mr Rolfe. It reads:[806]

> "[….]

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805 Complaint file CAP2019-342 NAAJA obo MADRILL, Luke DRAFT [3-163] at 16-18. There is no evidence that Dave Munro or any other officer reported the compliant, although Mr Madrill clearly complained to police about his treatment by Rolfe on the day of his arrest.

806 Complaint file CAP2019-342 NAAJA obo MADRILL, Luke DRAFT [3-163] at 17.

c) Madrill exited the residence and ran into the bushland behind Charles Creek. The Apprehending Members pursued Mr Madrill;

d) after running for a few minutes, the client stopped and put his hands on his back, stating words to the effect of "I'm stopped, you can arrest me now";

e) one of the Apprehending Officers took hold of Mr Madrill, picked him up and "slung" him down the hill, causing him to roll 3 or 4 times and collide with a large rock;

f) Mr Madrill screamed out in pain, and told the Apprehending Officers they didn't need to use such force as he had clearly accepted the arrest; and

g) in response to this, one of the Apprehending Officers stated "that's good you got flipped, you think you're good". Both Apprehending Officers were laughing at Mr Madrill at this time.

[…]"

753. Although on the day of his arrest, Mr Madrill was clearly in pain and complained to police about his treatment by Mr Rolfe, it is clear that no complaint was reported or entered into the NT Police's records. This was particularly concerning, given that the complaint was repeated to Officer Munro at the ASPS on 20 April 2019, who understood that Mr Madrill wished to take action in relation to the complaint (or, at the very least, to seek legal advice about it).[807] This is likely to have contravened relevant NT Police general orders, including cl 85 of the NT Police Code of Conduct[808] (which requires all members to "report…any suspected or actual improper conduct") and cll 74 and 75 of the NT Police General Order on Complaints Against Police (which require officers to take certain steps to record and report complaints against other members). It is disturbing that Officer Munro gave

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807 Complaint file CAP2019-342 NAAJA obo MADRILL, Luke DRAFT [3-163] at 36, I note that there was ample time for the complaint to be made and for it to be recorded and reported as custody records reveal Officer Munro spoke to Mr Madrill at 8:40am, 8:45am and 3:44pm.

808 Northern Territory Police Force Code of Conduct [17-28]. In circumstances where I have not heard from Officer Munro, I do not go so far as to find that Officer Munro did suspect that Mr Rolfe had engaged in the conduct he described in his text message.

Mr Rolfe the "heads-up" via text message but for some reason failed to follow NT Police complaint notification procedures.

754. The NAAJA complaint was not made until 14 October 2019, less than one month before Kumanjayi's death, and it was not acted on before the tragic events of 9 November 2019.

755. Had the complaint been reported, and investigated, promptly, it is possible that the NT Police would have identified the concerning similarities between this arrest and the arrest of CW. They may even have identified that these concerning arrests, both of which involved complaints alleging excessive force following pursuits, were occurring at the very time that Mr Rolfe was expressing, and demonstrating, his frustration with his role in the NT Police and his attraction to adrenalin-style policing.

Incident 8 - Christopher Walker -22 June 2019

756. This incident concerned a forced entry to a house following a report that an armed offender had broken in. Mr Rolfe, Constable Mark Sykes, Constable Kirstenfeldt and others entered the house through the front door at speed, with firearms drawn.

757. On 23 June 2019, Mr Rolfe breached NT Police policy when he sent clips of this event from his BWV to his family.[809] In the accompanying message, he told family that he had been having "a sweet time" and that, together with Mark Sykes, had "gotten so many high priority targets". This was "good for mark so he already has a sweet rep".[810] The feedback from his family was overwhelmingly positive.

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809 MFI MMM message 298.

810 MFI MMM message 300.

758. On 11 July 2019, Mr Rolfe sent the same BWV to a friend who knew both Mr Rolfe and another officer involved in the job, and that too elicited an enthusiastic response.[811]

Findings

759. I make no finding that Mr Rolfe used excessive force on this day and I accept that the incident was serious and appears to have called for a dynamic entry.

760. The relevance of this incident is that it is a clear example of Mr Rolfe distributing BWV to boast about and derive enjoyment from his use of his force on duty, in a way that was immature and ill-disciplined. He knew that sharing the footage with his family and his friend was a breach of NT Police policy.[812]

761. I have no difficulty accepting the submission of Counsel Assisting that the decision to share this and other videos of his use of force, particularly when taken together with other similar evidence, is reflective of a man whose "ego [was] wrapped up in [his] use of force",[813] and who took pride in expressing his dominance over others through the use of force.

Incident 9 - Antonio Woods – 28 June 2019

762. This incident arose out of an arrest of a 20-year-old Aboriginal man, Antonio Woods, on 28 June 2019. The arrest followed another foot-chase at night.

763. At some point, it appears that Mr Woods tripped and fell to the ground. Constable Hansen and Mr Rolfe arrived at Mr Woods' location before any other officers. Neither of them had their BWV activated. At some point, Cst Hansen did activate his BWV, and the footage depicts Mr Woods lying in the

811 MFI MMM messages 350-352.

812 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5293.

813 Inquest evidence of Zachary Rolfe on 28 May 2024 at 5747.

dirt and Mr Rolfe standing over him. After 38 seconds, Cst Hansen turns off his BWV.

764. Constable Kirstenfeldt arrived at the scene on foot at around the time Cst Hansen turned off his BWV.[814] Cst Kirstenfeldt's BWV was activated[815] and depicts his interactions with Mr Woods. He was followed a short time later by Sgt Kirkby. Having reviewed that footage, I agree with the characterisation of Counsel Assisting and the NT Police that Cst Kirstenfeldt was unjustifiably rude and aggressive.[816] Mr Woods made complaints of an excessive use of force by an officer that would have been overheard by all four officers. In a written letter of complaint dated 15 January 2020, NAAJA informed the NT Ombudsman that Mr Woods instructed that, after he tripped and fell to the ground, a "member of the Police Force kicked the left side of Mr Woods' face, and kicked the back right side of Mr Woods' head, approximately six times".[817]

765. Because of the paucity of the evidence,[818] I am unable to make any finding that any NT Police officer, including Mr Rolfe, used force in a way that was inappropriate. I note that no party, including NAAJA, submitted that I could or should make such a finding. As a result, I have not summarised the evidence in relation to this matter in detail. It is recorded at paragraphs [385]-[391] of the NT Police's Closing Submissions and [406]-[412] of Counsel Assisting's Closing Submissions.

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814 Complaint file CAP2020-27 BWV of Constable Mitchell Hansen [3-164], in which Constable Kirstenfeldt can be scene approaching Constable Hansen in the final seconds of Constable Hansen's BWV.

815 Complaint file CAP2020-27 BWV of Constable James Kirstenfeldt [3-164]; MFI TT: "Cst Kirstenfeldt BWV re Antonio Woods".

816 Closing written submissions of Counsel Assisting dated 22 October 2024 at [410]; Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [389].

817 NAAJA letter to Office of the Ombudsman re Antonio Woods dated 15 January 2020 [3-83].

818 The only accounts from Mr Woods before the Inquest are the account on BWV at the scene (at a time where he appears to be highly intoxicated) and the second hand hearsay account in the letter of complaint.

766. I do, however, agree with the findings made by the PSC about this incident, and accept in substance the submissions of Counsel Assisting and the NT Police that:

(a) Mr Rolfe and Sgt Kirkby failed to activate their BWV, in contravention of NT Police policy;

(b) Constable Hansen deactivated his BWV 38 seconds into the interaction with Mr Woods and at a point where he is lying in the dirt and Mr Rolfe is standing over him;

(c) Constable Kirstenfeldt was aggressive, rude and uncivil towards Mr Woods;

(d) Sgt Kirkby failed to reprimand Constable Kirstenfeldt for his aggression, rudeness and incivility to Mr Woods;

(e) No officer (including Sgt Kirkby) reported, or in any other way recorded, the complaints Mr Woods made in their presence of an excessive use of force. This again appears likely to have contravened relevant NT Police policy, including cl 85 of the NT Police Code of Conduct[819] and cll 74 and 75 of the NT Police General Order on Complaints Against Police.[820]

767. As the NT Police submitted,[821] Sgt Kirkby, Mr Rolfe, Cst Hansen and Cst Kirstenfeldt *were* ultimately provided with remedial advice regarding their respective failures. This advice was not, however, provided until between July and August 2022, over three years after the incident.

768. That delay is plainly unsatisfactory. Because of the very short limitations period in the PAA, it foreclosed disciplinary steps other than remedial advice. Even if remedial advice was the appropriate disciplinary response, I have

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819 Northern Territory Police Force Code of Conduct [17-28].

820 General Order Complaints against Police [17-27].

821 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [388]-[391].

already said that I accept Mr Rolfe's evidence that the provision of remedial advice by the PSC many years after the fact is likely to be viewed by the subject officer as a box-ticking exercise.

769. The principal reason for the delay was because the officer whose role it ought to have been to supervise the more junior officers, Sgt Kirkby, did not take any steps in relation to the inappropriate conduct he observed, nor did he report the complaint by Mr Woods, and so was himself in breach of NT Police policy. In fairness to Sgt Kirkby, I note that he accepted in his closing submissions that his conduct during, and his response to, the arrest of Mr Woods was not satisfactory.[822]

3 September 2019 – Mr Rolfe is thanked by Sgt Kirkby for covering for him when he "lost his shit" during an arrest

770. On 3 September 2019, Mr Rolfe engaged in a text exchange with one of his patrol sergeants, Sgt Paul Kirkby, that reflects very poorly on the credibility and professionalism of both individuals. It demonstrates a willingness to joke about the manipulation of evidence or covering up for one another after an incident where an officer loses their temper and behaves in a way that might prompt a complaint.

771. The relevant exchange was as follows:[823]

SGT KIRKBY:	Sorry about the stress caused by losing my shit the other night. Stress you didn't need. You sorted it well. I'd just had enough. He was the second person to press my button that night.
MR ROLFE:	Bro there was literally no stress about it. I'm all for that shit, I've done the same thing to you more than once before.

822 Closing written submissions of Sergeant Paul Kirkby dated 11 November 2024 at [16].

823 MFI MMM messages 430-433.

> I'm always ready to make my camera face the other way and be a dramatic cunt for the film
>
> Haha
>
> SGT KIRKBY: And the Oscar goes to …
>
> MR ROLFE: Haha

772. When Mr Rolfe was asked about the messages, he accepted that he was willing to use his voice to "cover up" unprofessional behaviour by police officers, or "manipulate" BWV so that it did not capture unprofessional behaviour.[824] He volunteered that his motive for doing so was to avoid the PSC taking action in relation to this behaviour. He denied, however that this would have occurred when a police officer had used force inappropriately[825] and he dismissed the messages as "theatrical".[826]

773. Sergeant Kirkby was examined at some length regarding this exchange. Counsel Assisting described that evidence, and Sgt Kirkby's credibility when giving it, as follows:[827]

> "First, when asked a series of simple questions about the meaning of these text messages (including his own) he answered, on at least six occasions, that he didn't know what they meant.[828]
>
> Second, Sgt Kirkby then vacillated between having no, or only a limited, memory of the context for the message and a detailed description of the apprehension of an Aboriginal man during a foot-chase at the 'trucking yards'.[829] Once in full flight, he described a dynamic police pursuit apparently involving Sgt Kirkby leaping over 'fences', and concluding with Sgt Kirkby 'grabbing' or 'tackling' the Aboriginal and then 'crash[ing] into a shed'.[830] Sgt Kirkby accepted that if he 'tackled [the Aboriginal

824 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5253.
825 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5253.
826 Inquest evidence of Zachary Rolfe on 27 February 2024 at 5253.
827 Closing written submissions of Counsel Assisting dated 22 October 2024 at [415].
828 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2389-2390.
829 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2390.
830 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2390.

man], and it was into a garden shed, that was a use of force'. He said that it was 'likely that [the Aboriginal man] was detained'.[831]

Third, when asked whether he would have submitted a UoF CNE, as required by the general orders, he at first said that he would have ('yeah, yep').[832] When informed that coronial investigators had searched police records for any UoF incident matching this description in the lead up to the 3 September 2019 text, and that there was no such record, Sgt Kirkby answered 'Oh, no.'[833] When asked directly whether he 'fail[ed] to write up a use of force report because you wanted to cover up having lost your temper at that time', he did not deny it ('*No, I don't know. I don't know*').[834]

Fourth, when examined about whether he would have made a note of the use of force incident in his police notebook, he said 'Normally you would, yes'.[835] When asked whether the notebook was still in existence, he said 'Probably'.[836] When asked whether he had disposed of any notebooks since August 2019, he then said that 'one had been disposed of'.[837] He said that he had 'left it in my *shirt* and it got washed'.[838] As matters transpired, it was precisely the notebook in which Sgt Kirkby had 'probably' made a note of the 'trucking yards' pursuit that had been destroyed. He provided a statutory declaration to the Inquest regarding the circumstances in which the notebook had been destroyed.[839] By this time, the notebook had 'gone through the wash while still in the pocket of my police *pants*'. When asked '[w]as it your shirt or was it your pants pocket, or are you just making this evidence up?' Sgt Kirkby gave a confusing answer that concluded with 'I don't know.'[840]

Fifth, the Coroner will assess Sgt Kirkby's demeanour in the witness box. It did him no favours."

774. Ultimately, Counsel Assisting submitted that I should find that Sgt Kirkby's evidence was evasive and non-responsive, and that aspects of his evidence

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831 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2390-2391.
832 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2390-2391.
833 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2390-2391.
834 Inquest evidence of Sergeant Paul Kirkby on 16 November 2022 at 3332.
835 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2424.
836 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2424.
837 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2424.
838 Inquest evidence of Sergeant Paul Kirkby on 24 October 2022 at 2424.
839 Statutory declaration of Sgt Paul Kirkby dated 2 November 2022 [7-79B] at [4].
840 Inquest evidence of Sergeant Paul Kirkby on 16 November 2022 at 3322.

were deliberately false (such as his claim not to recall what the messages meant).

775. Sgt Kirkby submitted that it was "perverse" to suggest that he was "wholly (or even partially) untruthful through the course of his evidence".[841] Indeed, he submitted that "[h]is evidence was some of the most truthful and telling throughout the proceedings".[842] His submissions noted that he had denied ever seeing an officer "perform" for the camera to conceal their use of force.

776. I had the chance to carefully observe both Sgt Kirby and Mr Rolfe giving evidence about this issue and I have no difficulty in rejecting Sgt Kirby's evidence on this issue as wholly lacking in credit. In answering the perfectly reasonable questions put to him by interested parties, he was evasive. I cannot accept the evidence he gave to the effect that he didn't know what his own messages meant ("and the oscar goes to…"), and must assess his denial that he ever saw an officer "perform" in some way on BWV in that context. Sgt Kirkby's account of a so-called "trucking yard" chase for which he did not fill out a UoF CNE, developed and, at times, defied common sense. Counsel Assisting submitted that I should go further and find that Sgt Kirkby's answers to the Inquest were deliberately false. They may well have been, but I do not think that is a matter that is necessary for me to determine.

777. In my view, the messages speak for themselves. Their relevance is that they demonstrate that Sgt Kirkby, a supervising officer, and Mr Rolfe, a junior officer who often worked under his command, felt comfortable openly discussing the manipulation of BWV to avoid recording, or to depict in a more favourable light, inappropriate police conduct. That inappropriate conduct appeared to involve "losing their shit" at members of the public, something Mr Rolfe said he had done in Sgt Kirkby's presence "more than once." Although the exchange might have involved a degree of gallows humour and

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841 Closing written submissions in reply of Sergeant Paul Kirkby dated 26 November 2024 at [9].

842 Closing written submissions in reply of Sergeant Paul Kirkby dated 26 November 2024 at [9].

theatrics, Mr Rolfe, at least, accepted that he *was* prepared to manipulate BWV to avoid accountability for certain conduct.

778. Given the issues with the credibility of Sgt Kirkby's and Mr Rolfe's evidence, and given the dishonesty inherent in manipulating BWV to avoid accountability for even minor "unprofessional" or "inappropriate" conduct, I simply cannot accept Mr Rolfe's evidence that this conduct would never have occurred where it involved more significant misconduct such as excessive use of force. My inability to accept Mr Rolfe's denial of this conduct does not mean that I make a positive finding that it occurred. I do, however, have grave suspicions that it might have, in light of other evidence that suggests that Mr Rolfe may have engaged with arrest targets, or filed police paperwork, in a disingenuous way to "justify",[843] or avoid complaints regarding,[844] his use of force.

779. In my view, this incident reflects an egregious failure of mentoring by a sergeant, who should have been setting standards for the younger officer regarding the proper use of such an important police accountability tool, BWV. Having said that I accept Sgt Kirkby's submission[845] that I should reject Counsel Assisting's submission[846] that Sgt Kirkby "counselled a more junior officer, Mr Rolfe, to avoid capturing misconduct by other officers". His conduct would, however, clearly have conveyed to Mr Rolfe that he, Sgt Kirkby, did not disapprove of that conduct, and that he tolerated it.

780. Although Sgt Kirkby downplayed his professional involvement with Mr Rolfe, submitting that they "only worked together on a limited basis",[847] it is clear that Sgt Kirkby was a significant supervising figure in Mr Rolfe's short career as a police officer. Sgt Kirkby was present for a number of the concerning incidents examined by the Inquest, including the matter of CW, Antonio

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843 See the CW Incident.

844 See the Albert Bailey Incident.

845 Closing written submissions in reply of Sergeant Paul Kirkby dated 26 November 2024 at [3].

846 Closing written submissions of Counsel Assisting dated 22 October 2024 at [170(3)(c)].

847 Closing written submissions in reply of Sergeant Paul Kirkby dated 26 November 2024 at [4]

Woods and the occasion in August or September 2019 when Sgt Kirkby "lost his shit". Sgt Kirkby was also the patrol sergeant who audited almost a quarter of Mr Rolfe's UoF CNEs.[848] Indeed, shortly after this text exchange, Sgt Kirkby wrote an official commendation/recommendation for Mr Rolfe, praising him for his work. On 4 September 2019, Mr Rolfe took a photo of that email and sent it to a family member with a note that read: "me and that Sarge stomp heads together".[849]

Incident 10 - Tyson Woods - 8 September 2019

781. In the early hours of 8 September 2019, Mr Rolfe and another police officer attended at Lasseters Casino in Alice Springs, in response to a report of a youth disturbance.[850] Upon arrival, Mr Rolfe and the other member took an 18 year-old man, Tyson Woods, into custody for a suspected assault (he had been reported to have thrown a radio at a Casino staff member).

782. Once Mr Woods had been moved to a position standing outside the police car, there is BWV of the interactions between Mr Rolfe, the second officer, and Mr Woods.[851] Mr Woods can be seen leaning on the bonnet of the car, while the second officer takes his details for the purpose of issuing him a Notice to Appear.[852] Mr Woods appears drunk and was slurring his words. Although he was not happy about being arrested he was not aggressive.

783. During this interaction Mr Woods can be seen to slap the bonnet of the car in front of him with an open hand. In response, Mr Rolfe, without warning, struck Mr Woods with force to the head. When asked about the incident at the

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848 Inquest evidence of Sergeant Paul Kirkby on 25 October 2022 at 2422-2423.

849 MFI MMM message 439.

850 PROMIS 9072699 Case Summary [3-168] at 2.

851 MFI VVV: "BWV of Mr Rolfe's interaction with Tyson Woods on 9 July 2029 – BWV 1" and MFI WWW "BWV of Mr Rolfe's interaction with Tyson Woods on 9 July 2029 – BWV 2".

852 Police issued Mr Woods a Notice to Appear for the incident: PROMIS 9072699 Case Summary [3-168] at 3.

Inquest, Mr Rolfe did not deny striking Mr Woods to the head, saying that "it might have been a small slap".[853]

784. As a result of this, Mr Woods became upset and swore, and can probably be described as distressed, but he was still not aggressive. Mr Woods asked for Mr Rolfe's name and complained to the second officer, who is visible in the BWV, that "he [Rolfe] bin just fucking hit me", "he bin just fucking hit me in the face, I want his name", "I will fuckin' report you bro, you bin hit my face".[854]

785. This troubling UoF Event was not known to Det SSgt Barram, or the NT Police, until it was identified from material on Mr Rolfe's phone during the course of this Inquest. That is because, in breach of the police General Orders, Mr Rolfe did not file a UoF CNE following his application of force, meaning that no one of a senior rank had reviewed the incident prior to the Inquest into Kumanjayi's death.

786. This incident was uncovered during the coronial investigation because, upon examination of Mr Rolfe's Cellebrite download, it appeared that he had filmed himself watching the BWV of him striking Mr Woods.[855]

787. That telephone recording starts with Mr Rolfe pressing the play button on the computer. When the part of the BWV that depicts Mr Rolfe striking Mr Woods is played, both Mr Rolfe and the person to whom he is showing the video laugh. Mr Rolfe laughs again, and says, "that's all it was, a little smack."

788. This is yet another occasion where Mr Rolfe can be seen to record on his phone his own use of force from his BWV, and then rewatch it (or send it on, in breach of NT Police policy and possibly the law).[856] Although the NT Police

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853 Inquest evidence of Zachary Rolfe on 27 May 2024 at 5672-5673.

854 MFI WWW "BWV of Mr Rolfe's interaction with Tyson Woods on 9 July 2029 – BWV 2"

855 MFI XXX: "Mobile phone recording of BWV of Mr Rolfe's interaction with Tyson Woods on 9 July 2029".

856 Counsel Assisting set out in submissions how this evidence was identified. See Inquest evidence of Zachary Rolfe on 27 May 2024 at 5679. The Woods Telephone Video depicts a

was in possession of this evidence from shortly after the phone was seized from Mr Rolfe, these occasions where Mr Rolfe recorded and replayed or distributed his own use of force incidents were only identified during the Inquest proceedings.

789. I have no difficulty in finding that in striking Mr Woods, Mr Rolfe's conduct was objectively unnecessary. While I am not able to determine whether he struck him with an open or closed fist, and I do not know what was in the mind of Mr Rolfe when he acted, it was no doubt painful and humiliating for Mr Woods.

790. Mr Rolfe's evidence about this event was evasive and lacking in credibility. Despite the footage obviously demonstrating Mr Rolfe striking Mr Woods, and Mr Rolfe's subsequent description of it on the video on his phone as a "little smack", Mr Rolfe maintained in oral evidence that it was unclear whether he had in fact struck Mr Woods. He conceded only that Mr Woods "*may* have been" struck.[857] He was unable to express a view about the justification for this application of force, because he did not have enough "context" for the job.[858] When pressed to identify a context that could have justified the use of force, he was unable to do so, and gave a non-responsive answer.[859]

791. I am satisfied that Mr Rolfe's failure to file a UoF CNE was deliberate. By that time, Mr Rolfe had been a police officer for nearly three years and he was well aware that any application of force, let alone a deliberate strike to an individual under arrest, was required to be recorded in this way. He knew that Mr Woods believed that Mr Rolfe's act was unjustified (having heard his

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computer screen on which the Woods BWV is displayed. At the bottom of the screen the words "[v]iewed by zbrr (ntpol.au.evidence.com) on 16 Sep 2019". The obvious inference is that the Woods Telephone Video depicts Mr Rolfe watching the BWV back on his evidence.com account on 16 September 2019.

857 Inquest evidence of Zachary Rolfe on 27 May 2024 at 5672-5673.

858 Inquest evidence of Zachary Rolfe on 27 May 2024 at 5673.

859 That is, he volunteered that his conduct might have been a "fear-based response", which seemed to refer to Mr Woods conduct immediately prior to the strike rather than any part of the broader "context" to the interaction: Inquest evidence of Zachary Rolfe on 27 May 2024 at 5673.

immediate complaint: *"he bin just fucking hit me in the face, I want his name"*, *"I will fuckin' report you bro"*) and that he may be prepared to make a complaint. In addition, Mr Rolfe *did* contribute to a PROMIS entry for this job,[860] albeit one that made no reference to Mr Rolfe striking Mr Woods, rendering implausible the notion that he might simply have forgotten to attend to his paperwork.

792. Ultimately, while I do not accept Counsel Assisting's submission[861] that I should find that Mr Rolfe did not file a UoF CNE in relation to this incident because he *"knew"* that there was no justification for his use of force, I do find that Mr Rolfe would have been aware of the possibility that submitting a UoF CNE would prompt an audit by a more senior officer, and perhaps even a more formal disciplinary investigation, and that these disciplinary processes might not be resolved in his favour.

793. This incident is of significance. First, it reflects on Mr Rolfe's credibility. I do not accept that the failure to report the use of force was accidental and find instead that it was likely to be a deliberate decision motivated by a desire to avoid potential disciplinary investigation.

794. Second, while I have not expressed a view about the lawfulness of this incident, or attempted to identify Mr Rolfe's state of mind, I do accept NAAJA's submission that the incident "gives further credence to Detective Senior Sergeant Barram's opinion that he did not believe Mr Rolfe 'endeavours to bring about a peaceful resolution to some incidents, and instead uses quite heavy-handed tactics'".[862]

795. Third, I accept the submission of Counsel Assisting, and, in substance, the NT Police,[863] that this "UoF Event demonstrates the fallibility of accountability

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860 PROMIS 9072699 Case Summary [3-168]; Inquest evidence of Zachary Rolfe on 27 May 2024 at 5674.

861 Closing written submissions of Counsel Assisting dated 22 October 2024 at [429(2)].

862 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [380].

863 Who 'acknowledge[d] the risk that inappropriate uses of force may go undetected if the use of force itself is not reported': Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [398].

mechanisms that depend almost entirely on self-report by police officers".[864] Although Mr Rolfe denied this was his intent, he accepted that "[t]he effect of the paperwork and the fact that [his] colleague didn't report it in any way…mean[t] that the slap to the head or the punch to the head [was] covered up" and that he was "just left on the job to carry on as usual".[865] I accept the point made by Mr McMahon SC in cross-examination that little weight can be placed on Mr Rolfe's UoF statistics once it is recognised that those statistics were largely based on self-report, and that Mr Rolfe was prepared not to report instances that he knew might raise questions about his use of force.[866]

Incident 11 - Todd Tavern Foot chase - 24 September 2019 – (Barram review 4)

796. On 24 September 2019, Mr Rolfe stopped and spoke to a man who he believed (wrongly) may have escaped custody. When that man ran from police, Mr Rolfe gave chase. BWV depicts Mr Rolfe pursuing the man for a considerable distance before the man slows down, at which point Mr Rolfe then pushes him into a barrier outside a bar with considerable force. As a result of this application of force, the arrest target was taken to hospital where he received treatment for an injury to his shoulder and had an arm placed in a sling.[867]

797. Det SSgt Barram concluded that Mr Rolfe's conduct was excessive, basing that opinion, in large part, on his view that the arrest target appeared to be giving up immediately prior to the application of force. NAAJA submitted that I should accept that opinion and find that the use of force was excessive.

798. While I consider Det SSgt Barram's characterisation of it to be reasonable, having reviewed the BWV for myself I consider that another, equally reasonable, interpretation is that the arrest subject was slowing down to avoid the barrier. I also agree with AC Porter's evidence that, even if the arrest

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864 Closing written submissions of Counsel Assisting dated 22 October 2024 at [431].

865 Inquest evidence of Zachary Rolfe on 27 May 2024 at 5680.

866 Inquest evidence of Zachary Rolfe on 27 May 2024 at 5675.

867 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [45].

target was "giving up", Mr Rolfe may not have had time to avoid a collision. Ultimately, I accept the NT Police's submission that it is not possible to determine whether the force was unreasonable, unnecessary or inappropriate.[868]

799. In my view, it is what happens afterwards, with respect to Mr Rolfe's celebration of this application of force that is most concerning, and of greatest relevance in understanding his approach to policing. Following the event, Mr Rolfe again used his phone to film the BWV and so captured himself watching the incident. Counsel Assisting submitted that, at the moment the arrest target is pushed to the ground, Mr Rolfe can be heard to laugh.[869] Having reviewed the BWV for myself, however, I am not willing to make that finding.[870] Given the messages I discuss below, the fact that I cannot hear laughter does not change the fact that Mr Rolfe evidently found the footage amusing.

800. On 25 September 2019, Mr Rolfe sent the footage of his chase (apparently from his and another officer's BWV) to members of his family.[871] His accompanying message stated:[872]

> "The main chase body worn is mine... haha treated him to the old illegal shoulder charge. Because I wear body armour I'm not as rapid as the locals initially but they still can't outrun me.
>
> Turns out the dude wasn't who we were looking for and is now in a sling for nothing haha don't run from police."

801. This incident is relevant to the events on 9 November 2019. First, it is probative of what Det SSgt Barram found was Mr Rolfe's tendency to want to "get his man no matter what" while paying "little or no regard to the

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868 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [401].

869 MFI YY: "Video IMG_2299 from Cst Rolfe's phone of BWV of incident 24.09.19 (Todd Tavern)".

870 There is some noise at this point, but it is difficult to distinguish between noise on the footage being played, noises Mr Rolfe is making and, possibly, some background noise in the ASPS muster room. It is entirely possible that the 'laughter' is a cough.

871 MFI MMM message 479.

872 MFI MMM message 480.

consequences of his actions, which has resulted in quite severe and totally unnecessary injuries to subjects in some cases". That is, in substance, consistent with the position taken by AC Porter, in evidence, and the NT Police, in submissions: namely, that although not unreasonable or excessive, alternative tactics could have been used and Mr Rolfe would have benefitted from further instruction "to equip him to consider other approaches and avoid confrontation".[873]

802. Second, Mr Rolfe's decision to record, and then share, the BWV with his family is reflective of a man whose "ego [was] wrapped up in [his] use of force",[874] and who took pride in expressing his dominance over others through the use of force, and, to the extent that Mr Rolfe expressed amusement about it, is probative of the extent to which he had dehumanised the population he was policing.

Incident 12 - 12 October 2019 – Albert Bailey – Barram Review No 5

803. At approximately 2:30am on 12 October 2019, a number of NT Police officers including Mr Rolfe, Constables Sykes, Hansen and Crotty and Sgt Evan Kelly were standing on Todd Street watching the Bojangles bar. On the other side of the council lawns, Albert Bailey and his domestic partner were having an argument that Counsel Assisting fairly described as "animated".[875] During this argument, Mr Rolfe and other officers claimed that Mr Bailey "approached [the partner] and shoved her with his shoulder before attempting to headbutt her".[876] Having reviewed the CCTV for myself, I accept that Mr Bailey was acting aggressively, standing very close to his partner, and at one point

873 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [402].

874 Inquest evidence of Zachary Rolfe on 27 May 2024 at 5747.

875 Closing written submissions of Counsel Assisting dated 22 October 2024 at [439].

876 Investigation file Intinv 2020-001 - 12 October 2019 [3-165] Folio 2 - PROMIS 9103041 Case Summary report dated 3.2.2020 at 3.

appears to move towards her, perhaps shoving her with his shoulder or pushing her.[877]

804. Four officers—Mr Rolfe, Constables Hansen and Sykes and Sgt Evans—ran across the council lawns and reached Mr Bailey at roughly the same time. From Mr Rolfe's BWV, it appears that he reached out with two hands and pushed Mr Bailey hard and at full speed into the brick wall of the Council building, with no warning. The CCTV suggests that this occurred at the same time as Constable Hansen made contact with Mr Bailey's body with his shoulder. After hitting the wall, the man fell heavily into a bench seat attached to the wall of the Council building, and likely struck his head on the seat. As a result of colliding with the brick wall, or the seat, Mr Bailey's forehead was split open in a large laceration.

805. Following the application of force, Mr Bailey can be seen on the BWV on the ground bleeding profusely.[878] Sgt Evans assisted Mr Rolfe to ground stabilise Mr Bailey, while Constables Hansen and Sykes restrained Mr Bailey's partner, who was attempting to assist him and was protesting loudly that he had not assaulted her. Mr Bailey was conveyed to the Alice Springs Hospital, where he received 9 stitches.

806. Shortly after the Albert Bailey Incident, Mr Rolfe again used his mobile phone to film himself watching his use of force against Mr Bailey. As Mr Bailey began to bleed profusely, Mr Rolfe can be heard to laugh.[879]

807. On 14 October 2019, Mr Rolfe messaged a paramedic, clearly referencing the arrest of Mr Bailey, and told her that he had "had some busy shifts lately, mashed some dudes face against a wall and that talkative G [redacted] paramedic came and quickly got on board that we were treating him extra nice so he didn't make a complaint".[880]

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877 MFI NN: "Video: CCTV Rock Bar of incident 12 October 2019 (Bailey)"; Investigation file Intinv 2020-001 - 12 October 2019 [3-165] Folio 12 – CCTV Footage.

878 MFI MM: "Video: Cst Rolfe BWV of incident 12 October 2019 (Bailey)".

879 [3-161] IMG_2581.

880 MFI MMM message 515.

808. On 16 October 2019, Mr Rolfe sent a recording (taken from his BWV)[881] of the application of force to Mr Bailey to a friend using Instagram messaging. The message read:[882]

MR ROLFE:	Saw him head but his missus haha got him.
	[Sends video file]
PARTY B:	I love these. I've seen this move so many times now, the old sprint then rodeo Rolfe wrecking ball bulldozer. Just waiting for the day for this move to evolve into a flying drop kick. First one there wins.
MR ROLFE:	*[Sends a photo file]*
	Alright challenge on for flying drop kick haha.
PARTY B:	I'm with perky man it's definitely doable we were in the river while he was flogging someone proper I didn't know what to do so just kicked sand on him to join in panic mode
	I liked it
MR ROLFE:	Hahahahaha

Findings regarding this use of force incident

809. Det SSgt Barram gave evidence that this application of force by Mr Rolfe was excessive, resulting in quite a significant injury, and that his response "was

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881 It is evident from the timing of the message and the accompanying text that this is the footage of the incident where Albert Bailey was detained.

882 MFI MMM messages 525-532.

not reasonable, necessary, proportionate and appropriate to the situation". In his opinion:[883]

> "A more appropriate response, in line with use of force training, policy and procedure would have been to use dynamic verbal commands directing the man to desist. If considered necessary to take the man down, it would have been more appropriate to use a taught technique such as a takedown from the rear (for example a harness bump takedown) to take the man to the ground in a more controlled manner and minimising the risk of injury."

810. Counsel Assisting, NT Police, NAAJA and the families all submit that this application of force was excessive. I am satisfied that this level of force was unnecessary and avoidable. In saying that, I recognise that there was clearly a need for police to intervene in the incident. Having reviewed the CCTV footage, I accept Mr Rolfe's evidence that he believed that Mr Bailey had pushed or attempted to headbutt his partner, and that there was a risk of further violence if police did not intervene.

811. What concerns me about this incident is that there does not appear to have been any communication between Mr Rolfe and Mr Bailey prior to this very significant application of force and I do think that alternatives were clearly available. In circumstances where Mr Bailey was being approached by as many as five police officers, it is likely that a combination of verbal commands and presence would have prevented any further violence. Even if some degree of force was necessary, the incident is, in my view, entirely consistent with the ultimate conclusions reached by Det SSgt Barram that:[884]

> "ROLFE also demonstrates a tendency to want to "get his man" no matter what, and pays little or no regard to the consequences of his actions, which has resulted in quite severe and totally unnecessary injuries to subjects in some cases."

812. My view that Mr Rolfe did not have adequate regard for the consequences of his use of force on this occasion is reinforced by his conduct after it. Rather

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883 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at 18-19.

884 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at 19.

than reflecting on the injuries he had caused Mr Bailey, I am satisfied that Mr Rolfe celebrated his use of force by filming himself watching his own BWV and sending it to other persons who should not have had access, in breach of NT Police policy. While I do not accept Counsel Assisting's submission that this reflected Mr Rolfe's "morbid fascination with violence", I found Mr Rolfe's conduct, and, in particular, his laughter at the moment when Mr Bailey began to bleed, to be wrongheaded and very disturbing.

813. I accept that police in the NT get fed up, disheartened and probably disgusted with the sheer volume of domestic family violence they police. As the Coroner of the Northern Territory, I am acutely aware of how much of the work of police (as well as my office, and essential services like health and crisis care) is consumed by domestic violence. It is understandable that Mr Rolfe or any other officer might be angry with an offender or quick to use force against an offender they believe may be about to strike. What is entirely unacceptable, and problematic, is the celebration of that use of force, as if that is the only way to do what Mr Rolfe described as "hero shit".[885] That is a dangerous attitude that prioritises rushing in, and is consistent with Mr Rolfe's lack of appreciation for other styles of policing (such as those practiced by many "bush cops") and a lack of understanding of the 10 Operational Safety Principles.

Oversight of this UoF by NT Police

814. Mr Rolfe completed a UoF CNE regarding the Bailey incident. However, Mr Rolfe's UoF CNE and sworn statement omitted any reference to the manner in which Mr Bailey sustained his significant injuries.[886]

815. The UoF CNE was reviewed by Sgt Evan Kelly, an officer who was himself involved in the event. In his evidence at Inquest, Sgt Kelly accepted that in

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885 MFI MMM message 494.

886 Investigation file Intinv 2020-001 - 12 October 2019 [3-165]: Folio 7 – Evidence of Constable Rolfe.

ground stabilising Mr Bailey, he (Kelly) had used force against Mr Bailey and that this application of force formed a part of the same use of force incident involving Mr Rolfe. He accepted that, in effect, this meant that he had been called upon to review his own use of force, which was inappropriate.[887] Further, he accepted that not only was there an apparent conflict of interest insofar as the review of Mr Rolfe's conduct was concerned, but the result was that no-one reviewed Sgt Kelly's own use of force.[888]

887 Inquest evidence of Sergeant Evan Kelly on 21 October 2022 at 2277.

888 Inquest evidence of Sergeant Evan Kelly on 21 October 2022 at 2277.

CHAPTER FIVE LEAD UP TO THE EVENTS OF 9 NOVEMBER - THE SEARCH FOR KUMANJAYI

Introduction

816. To understand why the Immediate Response Team (IRT) was called on to assist with the arrest of Kumanjayi Walker on 9 November it is necessary to consider the significant pressures on police and the community of Yuendumu at that time, and the events that led up to the request being made.

817. This chapter is divided into the following significant issues and events:

(a) The reason for Kumanjayi's arrest – breach of his suspended sentence and escape from CAAAPU on 29 October 2019;

(b) 30 October 2019 – first attempted arrest at Warlpiri camp;

(c) Around 1 November 2019– Yuendumu police ask Kumanjayi's family for assistance;

(d) 5 November 2019 – a warrant issues for Kumanjayi's arrest;

(e) 6 November 2019–Mr Rolfe alerted to the outstanding arrest;

(f) 6 November 2019 – Yuendumu police attempt an arrest and Kumanjayi wields an axe – the "axe incident";

(g) SC Smith and SC1C Hand were justified in attempting to arrest Kumanjayi;

(h) Events in Yuendumu following the "axe incident" – local police negotiate with family for Kumanjayi to hand himself in after the funeral of his grandfather;

(i) 7 November 2019 – a further attempt to arrest Kumanjayi at Alice Springs;

(j) 8-9 November 2019 – police resources in Yuendumu are stretched thin;

(k) The evening shift on 8/9 November 2019;

(l) The morning of 9 November 2019 – the need for further resources and a call up of the IRT;

(m) Notification that clinic staff were leaving;

(n) Sgt Frost requests further resources from Supt Nobbs; and

(o) Formal approval of the IRT deployment by A/AC Wurst.

The reason for Kumanjayi's arrest – breach of his suspended sentence and escape from CAAAPU on 29 October 2019

818. At the conclusion of Chapter Two, I noted that Kumanjayi Walker was last sentenced on 26 June 2019 by Judge Birch, in the Local Court at Alice Springs, to a total effective sentence of 16 months imprisonment. The sentence was backdated to commence on 22 February 2019,[889] and suspended after eight months, on condition that Kumanjayi complete a period of residential rehabilitation at the Central Australian Aboriginal Alcohol Programs Unit (**CAAAPU**).[890]

819. On 21 October 2019 Kumanjayi was released from the Alice Springs Correctional Centre to enter CAAAPU. He was required to satisfactorily participate in the program, to wear an electronic monitoring device (**EMD**), and to meet weekly with Kate Sexton, a Probation and Parole Officer with NT Community Corrections.[891]

820. Kumanjayi breached the conditions of his release on Tuesday 29 October 2019, when he cut the EMD off his leg and left CAAAPU to return to Yuendumu. His grandfather had passed away and the desire to be with his family for funeral and ceremony obligations appears to have overridden any

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889 *Police v Walker* – sentencing remarks of Judge Birch dated 26 June 2019 [2-53] at 4.

890 *Police v Walker* – sentencing remarks of Judge Birch dated 26 June 2019 [2-53] at 4.

891 Statutory Declaration of Kate Sexton dated 13 November 2019 [8-58] at [4].

commitment to the conditions set by the Court, even if it meant that his freedom would be short lived.

821. At 2:27am on 29 October 2019, Community Corrections notified Police that Kumanjayi had removed his EMD at 12:40am and had left CAAAPU. This was recorded by a police member in a Computer Aided Despatch (**CAD**) entry and night shift crew attended two addresses to search for him, including 6 Warlpiri Camp in Alice Springs.[892]

822. When Ms Sexton arrived at work that morning, she was informed that Kumanjayi had removed his EMD and absconded from CAAAPU. She later completed the paperwork for breaching a client on a suspended sentence and for an arrest without warrant and provided it to her team leader.[893]

823. An alert was created on the Police Realtime Online Management Information System (**PROMIS**) identifying Kumanjayi as an "active target" for a breach of suspended sentence, meaning he was to be taken into custody by police at any available opportunity.[894]

824. What happened between 30 October and 9 November 2019 concerning Kumanjayi and his family, and the searches for him conducted by police in Alice Springs and Yuendumu, is important context for the events of 9 November. Most of it is not controversial, and I have borrowed significantly from the chronology set out by Counsel Assisting, which was not subject to challenge.

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892 Timeline of Walker last week [2-4B] at 1; closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [465]; Recorded statutory declaration of Acting Sergeant Charneca Joachim dated 15 January 2020 [7-68] at 4.

893 Statutory Declaration of Kate Sexton dated 13 November 2019 [8-58].

894 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [27].

30 October – First attempted arrest (Warlpiri Camp)

825. At around 8am on 30 October 2019, Sergeant Robert Kent commenced work as Shift Sergeant in the Alice Springs Police Station.[895] Early in his shift, he received information from the Watch Commander, Senior Sergeant Darrell Kerr, that Kumanjayi Walker had been seen at House 2, Warlpiri Camp, in Alice Springs earlier that morning. It was credible information which had been given to Sergeant Frost at the Yuendumu Police Station.[896]

826. As a result, Sgt Kent conducted searches for Kumanjayi Walker on PROMIS, discovering that he had a history of police involvements that included allegations or convictions for escaping custody and assaulting a police officer. Sgt Kent arranged for the day shift members to meet him at the Alice Springs Bunnings Warehouse carpark, adjacent to Warlpiri Camp, so that he could brief his team and proceed to an arrest. Once there, Sgt Kent phoned Sgt Frost and she said that a "reliable source" had told SACPO Derek Williams that Kumanjayi was at Warlpiri Camp at House 6 earlier that morning.[897]

827. Following the briefing, the patrol group (consisting of Sgt Kent and six fairly junior constables) attended at House 6, where they searched the residence but were unable to locate Kumanjayi. Leanne Oldfield was there with her husband Nathan Coulthard and they told Sgt Kent that Kumanjayi had been at the house earlier but had since left.[898] Neighbouring houses were canvassed but there was no further information as to his whereabouts.

828. On his return to the Alice Springs Police Station, Sgt Kent sent an email to Sgt Frost informing her that their efforts to locate and arrest Kumanjayi had been unsuccessful. At around 3.30pm, he updated PROMIS to reflect these events.[899]

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895 Statutory declaration of Sergeant Robert Kent dated 27 November 2019 [7-74] at [7].
896 Statutory declaration of Sergeant Robert Kent dated 27 November 2019 [7-74] at [8].
897 Statutory declaration of Sergeant Robert Kent dated 27 November 2019 [7-74] at [10].
898 Trial evidence of Sergeant Robert Kent [7-74A] on 8 February 2022 at 65.
899 Trial evidence of Sergeant Robert Kent [7-74A] on 8 February 2022 at 65-66.

829. In the meantime, Leanne Oldfield contacted Kate Sexton to let her know that police had been to the house to look for Kumanjayi and she didn't know where he was. Ms Oldfield asked what was left on Kumanjayi's suspended sentence and said that either she or Kumanjayi would call Ms Sexton if he got in contact.[900] Later, on 1 November, Ms Oldfield informed Psychologist Kerri-Ann Chilvers that Kumanjayi was with her at Elder Street. Ms Chilvers drove there and spoke to Kumanjayi who was looking calm. Kumanjayi asked if he could return to CAAAPU and Ms Chilvers made a phone call but was told there would need to be a meeting for a decision on readmission. CAAAPU were to ring Ms Oldfield with the decision.[901]

830. From the police perspective, from 31 October 2019, Kumanjayi was listed as an arrest target in the daily Tasking Coordination Group – Bail Target Document (**TCG**), which is sent to all Alice Springs members to identify the tasks and priorities for each day. The initial entry read "Breach Suspended Sentence Case 21911252. Absconded CAAAPU removed EMD".[902]

Around 1 November – Yuendumu police ask Kumanjayi's family for assistance

831. In Yuendumu, Senior Constable Lanyon Smith also read the relevant PROMIS report on or around 29 October 2019 and so he knew that Kumanjayi had absconded from CAAAPU. At about that time, he visited Lottie and Eddie Robertson at House 577 and asked them to let police know if Kumanjayi returned to Yuendumu.[903] SC Smith had a "good relationship" with Lottie and Eddie[904] and they agreed to let police know if they heard from him.[905]

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900 Statutory Declaration of Kate Sexton dated 13 November 2019 [8-58] at [9].

901 Inquest evidence of Kerri-Ann Chilvers on 30 November 2022 at 3937.

902 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [29]-[30]. See also the recorded statutory declaration of Acting Senior Sergeant Alistair Gall dated 30 January 2020 [7-42] at 12-13.

903 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 560 and 567.

904 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 560 and 567.

905 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 567.

5 November – A warrant issues for Kumanjayi's arrest

832. On Tuesday, 5 November 2019, a warrant issued for the arrest of Kumanjayi Walker.[906] It was most likely on that day that his Probation and Parole Officer, Ms Sexton, phoned SC Smith[907] and discussed the warrant. SC Smith told Ms Sexton that he was aware of a family funeral in Yuendumu that Friday and that Kumanjayi may travel to the community to attend.[908]

6 November 2019 –Mr Rolfe alerted to the outstanding arrest

833. On the morning of 6 November 2019, Sergeant Evan Kelly and Mr Rolfe were both on duty at the Alice Springs Police Station. Sgt Kelly started his shift at 6.30am and received the "handover sheet", which listed outstanding PROMIS jobs requiring further investigation. One of the items on that list was the outstanding arrest of Kumanjayi Walker and at 6.36am, Sgt Kelly accessed the relevant PROMIS breach report.

834. Shortly after receiving the handover, Sgt Kelly tasked Mr Rolfe to "have a look" at Kumanjayi. It is likely that he did so during the muster briefing for the patrol group, which occurred at around 7am that day.[909] Mr Rolfe then accessed the PROMIS records associated with Kumanjayi at 7:07am, 7:09am and 7:11am.[910]

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906 Trial exhibit 1.6: "Warrant dated 5 Nov 2019, for the arrest of K. Walker under s.43 of the *Sentencing Act"* [19-56].

907 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 566-567.

908 Statutory Declaration of Kate Sexton dated 13 November 2019 [8-58] at [12].

909 Trial evidence of Sergeant Evan Kelly [7-73A] on 9 February 2022 at 124.

910 Trial exhibit 1.1: "Agreed facts dated 6 February 2022" [19-56] at [45] and [47].

6 November 2019 – Yuendumu police attempt an arrest and Kumanjayi wields an axe

835. At around 5pm on Wednesday 6 November 2019, SC Smith was taking a statement from a community member when he heard from a credible source that Kumanjayi had been seen "over at West Camp, Eddie and Lottie's house", which SC Smith knew to be House 577.[911]

836. Just half an hour later, Senior Constable First Class Chris Hand and SC Smith received a telephone call from Vanessa Watts, a Remote Area Nurse, who reported a break-in at the home of her manager who lived next door and was away in Alice Springs. The officers arrived at the nurse's home at around 5:55pm and began their investigation, which included making observations of houses affected, speaking to witnesses, taking photographs, and developing fingerprints. In Chapter Eleven, I consider the concerns of nursing staff, and the subsequent decision of NT Health to close the Yuendumu Medical clinic and evacuate nurses out of the community.

837. Although there was no definitive evidence to prove Kumanjayi was involved in the attempted house breaking, it was reasonable for police to consider him a suspect, given that:

(a) he had a significant criminal record as a juvenile which included breaking into dwellings in Yuendumu,

(b) he was known to associate with other young people who committed similar offences,[912]

(c) he had just cut off his EMD and absconded from CAAAPU, and police knew he could return to Yuendumu,

(d) he was unlikely to have any independent means to support himself, and

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911 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 560.

912 Inquest evidence of Senior Constable First Class Christopher Hand on 19 September 2022 at 648.

(e) as SC1C Hand explained in evidence, the suspicion was based in part, on the proximity of the nurses' quarters to House 577, where it had been reported that Kumanjayi had been seen earlier that day.[913]

838. Shortly before 6:25pm, the two officers left the nurses' quarters and drove the short distance to House 577 to make inquiries about, and if possible to arrest, Kumanjayi Walker. In the yard outside House 577, police spoke briefly to Janice Burns, the partner of Ethan Robertson, who is the son of Eddie and Lottie Robertson. In response to a question asked by SC1C Smith, Ms Burns told them that Kumanjayi was inside.[914]

839. Both officers activated their BWV before entering the house and I have evaluated the events that occurred, based on those videos; the evidence of SC1C Hand and SC Smith (both of whom I found to be highly credible officers), and the evidence of members of Kumanjayi's family who were present.

840. The BWV depicts SC Smith entering House 577 and SC1C Hand following. SC Smith met Ethan Robertson who was just inside the doorway, and SC Smith asked in a whisper where Kumanjayi was. Mr Robertson pointed to the room on the left of the lounge.

841. As SC Smith approached the door, he had no reason to think that the arrest scenario would be different to any of the four prior occasions he had arrested Kumanjayi, which were, as set out below, uneventful. The officers knocked on the door of the room they had been directed to, and when it was eventually opened by Rickisha Robertson, Kumanjayi's girlfriend, the room was in darkness. SC1C Hand shone his torch in the room and saw that Kumanjayi was laying on the bed.

842. The following events occurred in rapid succession:

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913 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 568-569.

914 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 569.

(a) SC Smith asked to speak to Kumanjayi, before moving forward slightly into the room.

(b) Kumanjayi got up from the bed and said that he wanted to talk to “Lottie”.

(c) SC1C Hand told him that he could do that after they had put handcuffs on him.

(d) Rickisha prevented police from entering the room by stretching her arm across the span of the door.

(e) SC1C Hand took Rickisha by the arm and moved her out of the doorway saying, “Out the way or you’ll get locked up as well”.

(f) When she was touched, Rickisha immediately yelled out about her arm.

(g) Kumanjayi said, “You’ve been fucking hitting my wife, eh”.

(h) Kumanjayi picked up a small axe, sometimes referred to as a tomahawk, and moved towards the officers quickly, shaking the axe in a threatening manner.

(i) Kumanjayi continued to move out of the bedroom towards them, shaking the tomahawk in their direction.

(j) While the officers were backing up, they can be heard trying to sooth Kumanjayi with their voices, telling him to “whoa” and that they were leaving.

(k) With the axe held aloft, Kumanjayi moved very close to SC1C Hand who had backed towards the kitchen doorway.

(l) Within seconds, Kumanjayi got close to the door of the house, dropped the axe and ran off towards nearby bushland.

843. I do not downplay the seriousness of this incident.[915] What Kumanjayi did that day was threatening, frightening and highly dangerous. Given the training that police receive about the dangers posed by edged weapons, and how close Kumanjayi was to the officers, they would have been justified in drawing their firearms. As it happened, in the very few seconds they had to react, Officers Smith and Hand tactically retreated, and used verbal commands. It was a strategy that involved no use of force and it let Kumanjayi escape from the room.

844. On 8 November, Assistant Commissioner Travis Wurst sent an email to SC1C Hand, with whom he had worked, checking on his welfare. The subsequent reply by SC1C Hand helps to explain what was going through his mind at the time and reveals him to be a thoughtful and resilient officer. SC1C Hand responded:[916]

> "…I don't think he wanted to chop us up, he just wanted to escape…No one was injured, and then that's the best result in my view."

845. During the trial of Mr Rolfe, SC1C Hand gave evidence that, "He [Kumanjayi] had plenty of opportunity to assault us and he didn't, and he ran out of the house because he didn't want to be arrested". He expanded on his email to Acting Assistant Commissioner Wurst, and said:[917]

> "He wasn't injured. We weren't injured. No one in the house were – was injured. There was a lot of young kids in there. And we knew who Kumanjayi – where he lived, and allowing him to run out of the house, we can formulate a plan later on to affect an arrest."

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915 I reject the suggestion by the WLR family that it was "a 'display' of strength to avoid arrest and protect his teenage wife, rather than an intentional assault": closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [69]. To characterise Kumanjayi's actions in this way seriously underplays what occurred.

916 Statutory declaration of Acting Assistant Commissioner Travis Wurst dated 20 August 2020 at annexure TW-001.

917 Trial evidence of Senor Constable First Class Christopher Hand on 9 February 2022 [7-53A] at 82.

846. Concerning remote policing SC1C Hand said:[918]

> "Working in remote communities can be quite challenging. Not only working there, but you live there, and if you need to arrest somebody or deal with somebody, you want to do it as peacefully as possible. Without the use of unnecessary violence, because that can have consequences later on with family, and you've got to live in the community, go to the shop, and see, you know, the same people at the shop and their families. Another reason for adopting the most peaceful approach was how far away back up is."

847. The evidence of SC Smith in the trial and at Inquest was similarly frank and thoughtful. When asked at the trial what was going through his mind when Kumanjayi ran towards him and his colleague with the axe he said:[919]

> "---I was shocked, somewhat scared. Everything was processing extremely fast in a short period. I had adrenaline going through me, but I didn't feel that he was going to hurt me. It was more of an intimidation to get out of the room.
>
> – I knew him, he knew me. Kumanjayi, being a Warlpiri man, it was more of a show to his partner, who was in the room, and his family. But he just wanted to get away."

848. When SC Smith was asked why he didn't draw his Glock, he said:[920]

> "--There's a – it's a not a simple yes or no answer as to why I didn't draw it. It's a combination of training and knowledge of Kumanjayi. I didn't know what was still in the room behind Kumanjayi. There might have been another person. I was fully aware that, to the right of me, there was Lottie Robertson and Rickisha Robertson. There was a wall and by me drawing my Glock, there was a possibility that that may escalate him as opposed to de-escalating. And I could've – if I'd fired the shot, I didn't know where the shot would go. There was a potential for other people to get hurt."

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[918] Trial evidence of Senor Constable First Class Christopher Hand on 9 February 2022 [7-53A] at 82.

[919] Trial evidence of Senior Constable Lanyon Smith on 9 February 2022 [7-122A] at 112.

[920] Trial evidence of Senior Constable Lanyon Smith on 9 February 2022 [7-122A] at 112.

SC Smith and SC1C Hand were justified in attempting to arrest Kumanjayi

849. I do not think that Kumanjayi was being unfairly targeted by local police when they attended House 577 to try and arrest him. First, it would have been preferable for Kumanjayi to hand himself in on the warrant, but he had not done so by 6 November, some 5 or so days after SC Smith had informed his grandparents of the warrant and asked for their cooperation in getting him to hand himself in. Second, for the reasons outlined above, by 6 November 2019, it was reasonable for police to consider Kumanjayi a suspect for the break-ins at the nurses' quarters that were understandably causing the nurses significant distress and placing a strain on scarce resources. As SC1C Hand said, the break-ins to the nurses' quarters provided an impetus to act swiftly on the warrant, in the "hope that that w[ould] prevent any further criminal offences".[921]

850. With the benefit of hindsight, it would have been better to return in daylight the next day and with the assistance of SACPO Derek Williams, but the officers had not anticipated a violent response from Kumanjayi because prior to 6 November 2019, SC Smith had arrested Kumanjayi uneventfully on four occasions, including arrests in the afternoon and two arrests at House 577. The circumstances of these earlier arrests were set out in some detail by Counsel Assisting:[922]

(a) On 2 May 2018, SC Smith had attended House 511 with Cst Alefaio to arrest Kumanjayi for property offending. He was greeted by Margaret Brown. He informed Ms Brown that police were there to arrest Kumanjayi.[923] Ms Brown accompanied officers into the house and was present during the arrest. SC Smith explained that if practicable, it was his experience that the presence of a responsible adult could assist during arrests of children and young adults.[924] Following the arrest, SC

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921 Inquest evidence of Senior Constable First Class Christopher Hand on 19 September 2022 at 648.

922 Closing written submissions of Counsel Assisting dated 22 October 2024 at [484].

923 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 560.

924 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 560.

Smith became aware of a significant conflict in community that afternoon that was likely to necessitate police attendance and arrests. In consultation with Sgt Frost, it was decided to "unarrest" Kumanjayi so that the three officers stationed in Yuendumu could all respond to this potentially violent conflict, instead of attending to the care and transport of Kumanjayi were he to remain in custody.[925]

(b) On 10 May 2018, SC Smith attended at House 577 with Cst Alefaio and SACPO Derek Williams to "complete" the arrest that had commenced on 2 May 2018.[926] This arrest occurred at around 7am in the morning.[927] At least SC Smith and Cst Alefaio entered the house, approached the "yellow doorway" and knocked.[928] This was the same room Kumanjayi was located in on 6 November 2019.[929] When the door opened, Cst Alefaio put his baton through the doorway to prevent it being closed. He spoke to Kumanjayi, who was standing in the bedroom, asked him to turn around, and handcuffed him without resistance.[930] SC Smith recalled Kumanjayi crying in the cells, out of what he thought was sadness, not anger. He said that this was not uncommon with Kumanjayi. He recalled that family would often come down to the station to console him.[931]

(c) On 31 May 2018, SC Smith and Cst Alefaio again attended at House 577 to arrest Kumanjayi. Kumanjayi was in his bedroom (the same bedroom as on 10 May 2018 and 6 November 2019).[932] SC Smith again described an "uneventful" arrest, during which Kumanjayi was compliant and cooperated without resistance.[933]

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925 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 560.
926 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 562.
927 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 562.
928 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 562.
929 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 562.
930 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 562.
931 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 563.
932 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 563.
933 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 563.

(d) On 19 March 2019, SC Smith attended at House 564 to arrest Kumanjayi with Constables Hand and Leilani Weathers.[934] This arrest occurred at around 1pm in the afternoon.[935] The officers entered the house, located Kumanjayi lying on a mattress playing video games with some younger children, and quickly arrested him. Kumanjayi did not resist.[936]

851. The significance of reflecting on those four earlier successful arrests by SC Smith is that they: a) provide a helpful insight into community policing; b) help explain why (unlike the members of the IRT on 9 November, who had watched the 6 November BWV before setting out) SC1C Hand and SC Smith had no reason to suspect Kumanjayi would react violently, and c) provide a useful contrast to the failed arrest attempt on 9 November 2019.

852. It will be evident from these remarks that I was impressed by SC1C Hand and SC Smith. Both are clearly competent officers, who cultivated and valued their good relationships with the community. They are also mature and serious professionals, who were humble when reflecting on their own responses. They have been under significant scrutiny and pressure since 6 November 2019, and I commend them for their service to the NT Police and their willingness to engage fully and meaningfully with this Inquest. I agree with the submissions of NT Police that the response by Officers Hand and Smith "was an example of prudent tactical disengagement", where "they drew on their personal knowledge of Kumanjayi and their remote policing experience"; they avoided injury, and their management of the situation was commendable.[937]

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934 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 564.

935 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 564.

936 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 564.

937 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [496].

Events in Yuendumu following the "axe incident" – local police negotiate with family for Kumanjayi to hand himself in after the funeral for his grandfather

853. Immediately after Kumanjayi dropped the axe and fled the house, he was chased by SC Smith and SC1C Hand, on foot and with the police car, through the bush at the edge of the community. The officers were diligent in their efforts of pursuit, but Kumanjayi was faster. At one point Kumanjayi held a rock in his hand and yelled at police that he would shoot them (though I accept that "shoot" in this context meant throw or discharge the rock.)[938] When it became evident that they would not catch Kumanjayi, the officers returned to House 577 at around 6:49pm, still with their BWV activated. Lottie Robertson was standing on the porch and as SC Smith approached the house, he said to her, "Not happy, Lottie, not happy at all". She replied "Yeah, me too. I'm not happy". SC Smith said, "I don't like axes coming to Chris or me". During the discussion that followed, Lottie said to Rickisha, "Your life was in danger, too", which I accept reflected an appreciation of the seriousness of what had occurred. In a tone that was firm but not angry, SC1C Hand can be heard to say, "So next time he does that he might – he might get shot" (which in this context I understood to mean "shot" with a gun). SC1C Hand asked, "Can you tell Eddie, bring him up to the police station good way, we'll look after him, you know us".[939]

854. At around 6:40pm, SC1C Hand called Sgt Frost to tell her what had happened.[940] Sgt Frost then called herself on duty and drove to the Yuendumu Police Station so that she could debrief the officers when they returned. Having done so, and having viewed their BWV, Sgt Frost, together with Officers Hand and Smith, drove back to House 577 to speak with Eddie and

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938 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [490].

939 Trial exhibit 5: "BWV of SC 1/C Christopher Hand (aftermath of axe incident) on 06.11.19" [19-100]; Trial exhibit 2.1(b): "Transcript of HAND's BWV at H577 after axe Incident)" [19-57]; Trial evidence of Senior Constable First Class Christopher Hand [17-53A] on 9 February 2022 at 77-110, and esp 92.

940 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 25; Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 12.

Lottie Robertson. Sgt Frost was clearly upset with Kumanjayi, with good reason, but she had a good relationship with his grandparents, and it was appropriate that she go back to them and discuss the next steps.

855. The conversation that Sgt Frost had with Eddie and Lottie Robertson was not recorded and it is understandable that, after the tragic events of 9 November 2019, memories of exactly what was said and how it was interpreted now differ. Sgt Frost wanted to stress the seriousness of what had occurred and she admitted in evidence that when she spoke with Eddie, Lottie and Rickisha Robertson, she was angry and "raised her voice".[941] Sgt Frost was responsible for the Yuendumu Police Station and she was speaking to members of Kumanjayi's family soon after Kumanjayi had run at two of her officers (one of whom was her life partner) with an axe. Kumanjayi had put the community, Rickisha and both of her police officers in danger; the situation was serious and had to be dealt with. It is understandable that she was upset and anxious. As I set out below, the next day Sgt Frost apologised to Eddie and Lottie Robertson for having raised her voice, as was appropriate, and they in turn said that they were sorry for what Kumanjayi had done, and expressed sympathy for the officers.

856. During her attendance at the house on the evening of 6 November, Sgt Frost told Rickisha Robertson that since she had blocked the officer's entry to the bedroom, she would be charged with an offence of hindering police in the execution of their duties, but that if she was able to get Kumanjayi to the police station, she would consider not prosecuting her.[942]

857. During her discussion with Eddie and Lottie Robertson, Sgt Frost made it clear that her preference was for Kumanjayi to hand himself in when he returned to

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941 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 797.

942 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 8. Trial evidence of Sergeant Julie Frost [7-39B] on 10 February 2022 at 166-188, esp 168. Recorded statutory declaration of Senior Constable Lanyon Smith dated 11 November 2019 [7-121] at 7. Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 795-796.

the house, but that if he did not, she would have to bring in additional resources from Alice Springs. She said words to the effect of:[943]

> "What we're going to do is I'm going to give [Kumanjayi] two hours where you can hand him [in], you can bring him to the Police Station and we will deal with him very fairly. But if he's not at the police station within two hours, I'm going to be pulling resources from town because this is very serious."

858. To which Eddie Robertson replied:[944]

> "Okay, I'll try my hardest to get him there but we can't make him."

859. At 7:36pm, Sgt Frost spoke to Superintendent Jody Nobbs by telephone for a little over seven minutes,[945] even though Supt Nobbs was not on duty at the time of the call.[946] Sgt Frost told him about the axe incident earlier that day, and that Eddie Robertson had agreed to assist, and that it was hoped that his family would facilitate Kumanjayi's surrender. Supt Nobbs asked Sgt Frost to create a formal notification to the Watch Commander, who was the on-duty senior police officer, who would facilitate a response if necessary.[947] The purpose of notifying the Watch Commander was to ensure that there was "operational awareness across the operational footprint of Southern Command", so that it could support Yuendumu, if there was a surge, or urgent deployment was required.[948]

860. Relevant to the events of 9 November 2019, Sgt Frost added alerts to PROMIS for Kumanjayi. The first was, "Active target – Can be arrested – assault

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943 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 8. Trial evidence of Sergeant Julie Frost [7-39B] on 10 February 2022 at 166-188, esp 168. Recorded statutory declaration of Senior Constable Lanyon Smith dated 11 November 2019 [7-121] at 7. Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 795-796.

944 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 8. Trial evidence of Sergeant Julie Frost [7-39B] on 10 February 2022 at 166-188, esp 168. Recorded statutory declaration of Senior Constable Lanyon Smith dated 11 November 2019 [7-121] at 7. Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 795-796.

945 Superintendent Jody Nobbs phone records for 5-9 November 2019 [4-18] at 8.

946 Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1097.

947 Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1097-1098.

948 Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1097-1098.

police" and the second was, "May be violent – May be violent towards police".[949]

861. At 9:26pm, Sgt Frost also added a case note entry to the PROMIS job arising out of the attempted arrest entitled: "Yuendumu R/S – Assault upon Members of Police Force". The case note recorded that:[950]

> "Extensive negotiation has since taken place with family of WALKER in order for him to present himself to [YPS.]
>
> Further resources will be considered if WALKER fails to present himself to the police station.
>
> Supt NOBBS briefed in relation to the incident."

862. At 9:49pm, the Alice Springs Watch Commander, Senior Sergeant Michael Milde, forwarded a new incident to all superintendents. It read:[951]

> *** New Incident Entered Into WebEOC ***
>
> Incident Type: ASSAULT AGGRAVATED
>
> Initial Description: 9126603 - At approx. 8pm Yuendumu members became aware of the location of an Arrest Target in the community being [Kumanjayi] WALKER (13/10/2000). Members HAND/ SMITH attended the location and were-advised that WALKER was in the rear bedroom.
>
> WALKERS partner answered the door and blocked access to the darkened room. Soon after WALKER ran at police with a small axe held over his head threatening members. He managed to escape the room and was chased on foot and vehicle by members. In the process of the chase WALKER has thrown rocks at the police vehicle causing damage to the drivers side door.

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949 Trial evidence of Sergeant Julie Frost [7-39B] on 10 February 2022 at 166-188, esp 170. Trial exhibit 7: "Person Entity Profile Report for Kumanjayi Walker" [19-58] at 4.

950 Trial exhibit 8: "PROMIS Case Note (44194706) (axe incident) (created on 06.11.2019)" [19-59].

951 Recorded statutory declaration of Acting Senior Sergeant Alistair Gall dated 30 January 2020 [7-42] at Annexure F.

> WALKER was unable to be located. Negotiations have started with family re WALKER surrender.
>
> Supt NOBBS / TDO FOLEY advised. Enquiries cont
>
> Date/Time Initiated: 06/11/2019 21 :33
>
> Initiated By: Alice Springs Watch Commander - mmilde
>
> Significant Incident: Yes
>
> Executive Only: No
>
> Media Notified: Yes
>
> NTFRS Notified: No

863. At around 10:45pm, SC Smith and SC1C Hand finished their shifts for the day.[952] They were on call for the evening of 6-7 November 2019, but did not get called out.[953] SC1C Hand described this as "lucky", given their levels of fatigue.[954]

7 November 2019

864. On 7 November 2019, Sgt Frost and SC1C Hand were on duty at the Yuendumu Police Station, commencing their shifts at 8:00am.[955] Working alongside them was SACPO Derek Williams.[956]

865. At around 9am, Sgt Frost returned to House 577 with SACPO Williams to speak to Eddie and Lottie Robertson once again. She apologised for raising

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952 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 17.

953 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 17.

954 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 17.

955 Chronology of events of 6-9.11.19 prepared by Sergeant Julie Frost [7-38] at 3.

956 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 17.

her voice the night before, and Eddie and Lottie Robertson also apologised for what occurred.[957] That is an example of good policing, and the type of respectful relationships that can be built between community members and officers stationed remotely.

866. By this time, Sgt Frost was aware, having been told either by SC Smith or SACPO Williams, that a funeral was planned for Friday 8 November 2019. During the conversation with the Robertsons, it was either proposed by Sgt Frost or requested by Eddie or Lottie, that Kumanjayi be allowed to go to the funeral without the police trying to arrest him in the interim, provided that "after the funeral" he would hand himself in.[958] A negotiated surrender maximised the prospect of an arrest without force, and provided Sgt Frost with time to prepare a planned response in the event that a surrender did not occur.[959]

867. Although there is some inconsistency between Sgt Frost and SACPO Williams as to the exact arrangements discussed, I accept that both provided their earnest recollections and their genuine perspectives as to how they interpreted it.

868. On Sgt Frost's version of events, first given to police by interview on 13 November 2019, and maintained consistently after that, Kumanjayi was to be permitted to go to the funeral provided that he "present[ed] himself to the Police Station on *Friday night*."[960] She said that she told Eddie and Lottie Robertson that, if he didn't present himself by then, "we're getting members from Alice Springs and they will go in a lot harder than what we do."[961] At the Inquest, Sgt Frost explained that in saying those words she was conveying to Eddie and Lottie Robertson that, "as soon as the funeral was over there was

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957 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 797.

958 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 801.

959 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 801.

960 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 17.

961 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 17.

an expectation he would hand himself in" and police would defer active attempts to arrest Kumanjayi "overnight".[962]

869. By contrast, on SACPO Williams' version, first given on 20 November 2019, the timing of Kumanjayi's surrender was more open ended. He and Sgt Frost said that they would allow Kumanjayi to attend the funeral and would defer his arrest until "after the funeral *but not straight after the funeral but Sunday or Monday you know*, to grab him and yeah that's all we said there."[963] It is not clear how much SACPO Williams saw and overheard of the conversation between Sgt Frost and Eddie and Lottie Robertsons, as he took a phone call around the same time. I am also not certain whether SACPO Williams was recalling what was actually said, as opposed to what he interpreted was meant, by "after the funeral".[964] It is perfectly understandable that, even by 20 November, he could not remember the exact words used in the conversation.

870. I accept that the likely reason for the differing interpretations is two-fold: first, that there was no discussion of a precise time or date for the surrender, and second, the non-Warlpiri participant (Sgt Frost) and the Warlpiri participants (including SACPO Williams) are likely to have come to the conversation with very different assumptions regarding the nature and duration of "funerals", and sorry business (*malamala*) and also different concepts of time, and the strictness of the arrangements.[965] Unlike Western funerals, there is no strict timing for an order of service and "funeral

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962 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 802.

963 Recorded statutory declaration of Senior Aboriginal Community Police Officer Derek Williams dated 20 November 2019 [7-139] at 26.

964 Inquest evidence of Senior Aboriginal Community Police Officer Derek Williams on 7 September 2022 at 176.

965 The Walker, Lane and Robertson Families explain that "sorry business" is referred to in Yuendumu as *Malamala* (Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [64]). The families provided evidence about the importance of *Malamala* in Warlpiri culture, and the frustrations of Yapa community members at the lack of understanding that Kardiya have of these importance cultural practices: see Statutory Declaration of Eddie Robertson dated 22 November 2022 [8-51B] at [14]-[24].

arrangements", may be fluid and changeable and include extended periods of mourning.[966]

871. With the benefit of hindsight, it would have been more helpful for police to have given Kumanjayi's family more time to allow for a longer funeral period to have passed and it would have been preferable to clearly articulate a date and time as a deadline for his surrender, with perhaps an opportunity for a further and final warning when the funeral period had definitely finished. I accept that what occurred during this conversation was an example of miscommunication between people of different cultures, even though they had known and worked together for some time.

872. At the end of the conversation, Sgt Frost thought that it was clearly understood by Kumanjayi's family, who would pass it on to him, that Kumanjayi would have to surrender immediately following the Friday funeral. By contrast, Kumanjayi's family likely thought there was an agreement with police that he would be permitted to surrender in the days following the "funeral", and that police would not actively attempt to arrest Kumanjayi while the funeral (and perhaps Sorry Business or *malamala*) was still proceeding. At the time this was an unintended and unrecognised miscommunication, and it was not until the Inquest that it was identified and "unpicked".

873. At 8:46pm on Thursday 7 November, SACPO Williams texted Sgt Frost to say, "Hey boss, the funerals been pushed back to Saturday"[967] and it was understood that the plan was still in place for a surrender after the delayed funeral.[968] On the Saturday morning of the funeral SACPO Williams spoke to

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966 See Musharbash, Yasmine "'Sorry Business is Yapa Way': Warlpiri Mortuary Rituals as Embodied Practice" 2009, in Mortality, Mourning and Mortuary Practices in Indigenous Australia, edited by Katie Glaskin et al. 21-36.

967 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 11.

968 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 802.

Margaret and Jean Brown, who were in the midst of preparations, and told them that Kumanjayi needed to hand himself in after the funeral.[969]

7 November 2019 – a further attempted arrest at Alice Springs

874. At 8:15am on 7 November 2019, the Commander Southern, Bradley Currie, forwarded Watch Commander Milde's WebEOC addressing the axe incident to Assistant Commissioners Travis Wurst and Dr Narelle Beer. Cmdr Currie noted:[970]

> "Fyi, I have spoken to the OIC Sgt Julie Frost to confirm the welfare of our members. They are a little shaken by the incident. I am advised the footage is confronting. Supt Nobbs will confirm welfare again today of the members and will monitor the situation: and consider additional resources etc pending community negotiations. ESS will be notified and welfare will continue to be monitored."

875. At 11:52am, A/AC Wurst forwarded Cmdr Currie's email regarding the axe incident to SC1C Hand and enquired if he was alright.[971] I have set out his reply above.[972]

876. In Alice Springs the arrest of Kumanjayi became one of the priorities for general duties police. The actions taken later that day, which involve Mr Rolfe, are not in dispute, or the subject of any criticism.[973] In fact, they offer an example of a coordinated and planned approach to arrest, under the leadership of Sgt Evan Kelly.

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969 Inquest evidence of Senior Aboriginal Community Police Officer Derek Williams on 7 September 2022 at 176; Recorded statutory declaration of Senior Aboriginal Community Police Officer Derek Williams dated 20 November 2019 [7-139] at 28.

970 Trial exhibit 1.9: "Emails dated 7 Nov 2019 between Travis Wurst and Chris Hand" [19-56].

971 Trial exhibit 1.9: "Emails dated 7 Nov 2019 between Travis Wurst and Chris Hand" [19-56].

972 Trial exhibit 1.9: "Emails dated 7 Nov 2019 between Travis Wurst and Chris Hand" [19-56].

973 As a result, I have largely adopted the outline of events from the submissions of Counsel Assisting on this topic.

877. At 3:00pm, Sgt Kelly commenced as "Shift Sergeant" in Alice Springs. The shift began with a muster briefing for his patrol group, which included Mr Rolfe, and Constables Mitch Hansen, Shane King, Breanna Bonney and James Kirstenfeldt.[974]

878. When Mr Rolfe arrived at the station just before 3pm, he logged onto the computer to check his emails and the daily Intelligence Sheet, a document created by the Police Intelligence Unit which includes active arrest targets and any significant jobs that have occurred in the last 24 hours. On the Intelligence Sheet, he saw an active arrest target for Kumanjayi Walker, for breach of parole and assault police.[975] Mr Rolfe gave evidence that generally when someone has assaulted a police officer, it's signalled throughout the station in a specific email, but on this occasion that had not been done. Mr Rolfe looked up the PROMIS entry attached to that assault. Mr Rolfe identified that there were two officers who had been assaulted by Kumanjayi Walker, SC1C Chris Hand and SC Lanyon Smith, neither of whom he knew.

879. Still on the computer, Mr Rolfe went to the case log, which allows police to log evidence, but there were no police statements uploaded to the job, meaning he could not know Officers Hand and Smith's versions of events. He could, however, see that their BWVs had been uploaded. He then logged onto the Axon website, which stores police BWV, to watch the footage.[976] He viewed the BWV one at a time, and then put them on the split screen so that he could view them together.

880. When he gave evidence at his trial in 2022 about his thoughts at this time he said:[977]

> "From my observations, I saw it was a perfect example of a human fear-based reaction that we have all- not- sorry-that I am aware of

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974 Trial evidence of Sergeant Evan Kelly [7-73A] on 9 February 2022 and 125.

975 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1037.

976 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1038.

977 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1039.

> of fight, flight, freeze posture and I saw a perfect example of "freeze and flight."

881. At the Inquest Mr Rolfe agreed with statements he had made in the Spotlight interview that he believed Officers Hand and Smith did not have sufficient training to deal with threats upon their lives and responded like "regular humans", whereas he (Mr Rolfe) was desensitised to violence and conditioned to respond professionally.[978]

882. According to Mr Rolfe, Sgt Kelly was close by in his office. At or shortly after the muster briefing, Mr Rolfe brought the axe incident to Sgt Kelly's attention,[979] because the "offender was, potentially, a risk to Alice Springs members",[980] after which Mr Rolfe and other members of the patrol group watched the BWV of the axe incident together. This is likely to have occurred at 3:16pm.[981] According to Mr Rolfe, after Sgt Kelly watched the BWVs a number of times they had a discussion and Sgt Kelly "agreed that the incident should've been relayed up the chain of command and a higher response should've been already organised".[982]

883. Of significance to the later events on 9 November 2019, while watching the BWV with the group, Sgt Kelly offered his opinion, formed on the limited information he had available, that Officers Hand and Smith had demonstrated a lack of "situational awareness" by allowing themselves to be in such close quarters with Kumanjayi in House 577.[983] I have already outlined my reasons for concluding that Officers Hand and Smith handled the incident well, in light of their previous experiences and knowledge of Kumanjayi and their reading of the situation. But Sgt Kelly's opinion about situational awareness

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978 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5357.

979 Trial evidence of Sergeant Evan Kelly [7-73A] on 9 February 2022 at 126.

980 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1039.

981 Trial evidence of Sergeant Evan Kelly [7-73A] dated 9 February 2022 at 121-135, especially 128.

982 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1039; Inquest evidence of Sergeant Evan Kelly on 21 October 2022 at 2270; Recorded statutory declaration of Sergeant Evan Kelly dated 18 December 2019 [7-72] at 9; Recorded statutory declaration of Sergeant Evan Kelly dated 29 January 2020 [7-73] at 8.

983 Inquest evidence of Sergeant Evan Kelly on 21 October 2022 at 2269-2270; Trial evidence of Sergeant Evan Kelly [7-73A] dated 9 February 2022 at 128-129.

was also a fair comment. It was appropriate that he discuss that concern with his patrol group so that they could learn from the BWV.

884. That day, Mr Rolfe phoned Sergeant Lee Bauwens, as head of the IRT, to let him know about the axe incident. Mr Rolfe thought "it was a potential job that IRT should have already been called out for".[984]

885. Later in the shift, Mr Rolfe identified an old link between Kumanjayi and House 6 at Warlpiri camp. He gave evidence at his jury trial that he also identified that Kumanjayi had a "very extensive criminal history", and that "he was moving towards violent crimes, including violence against women and violence against police". Mr Rolfe agreed with a question asked by his counsel that he (Mr Rolfe) characterised Kumanjayi as "a high-risk offender, extremely violent, who was using – was willing to use potentially lethal weapons against police".[985]

886. Sgt Kelly authorised a search for Kumanjayi at House 6 Warlpiri camp. It commenced with members of the patrol group participating in a "bonnet briefing", a police briefing around the bonnet of their cars in the Bunnings car park, led by Mr Rolfe. When asked what that entailed, Mr Rolfe explained:[986]

> "It was just a small set of SMEAC orders, which is what we're taught.. an acronym that stands for Situation Mission Execution, Admin and Logistics and Command Signals...Generally, I just utilised my phone and Google Maps, to identify the house in question...And informed the patrol group that we would arrive, we would set up a cordon, because we had numbers for the cordon...About five or six...potentially seven."

887. Once at Warlpiri camp, the Patrol Group cordoned off the house Kumanjayi was suspected to be in, before one officer knocked at the door. Since there

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984 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 103.

985 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1040.

986 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1041-42.

was no answer, it was determined that there was no basis to enter the house and the search concluded.[987]

888. Under the supervision of Sgt Kelly, the attending members, including Mr Rolfe, were conscious of the limits on their right of entry under s126 of the *Police Administration Act 1928* (NT) (**PAA**). Although police had "loose information" that Kumanjayi might be at the house, Sgt Kelly understood that this did not provide them with the necessary reasonable grounds to believe that Kumanjayi was present in the house and they had no permission from an owner to enter.[988]

889. I agree with the submission of NT Police that in contrast to the 9 November arrest, the "members who attended Warlpiri Camp appropriately applied the 10 Operational safety Principles and ICENCIRE, and their actions were consistent with the NT Police philosophy of use of force".[989]

890. During the afternoon of 7 November 2019, Mr Rolfe again viewed the BWV of the axe incident and either sent or showed a copy of the BWV to Acting Sergeant Shane "Paddy" McCormack who, coincidentally, was later responsible for helping to muster the four members of the IRT deployment on 9 November.

891. Having watched the footage, A/Sgt McCormack engaged in the following text exchange with Mr Rolfe:

> A/SGT McCORMACK: I'm sorry I fucking watched that. fuck me...
>
> MR ROLFE: Yeah ey
>
> A/SGT McCORMACK: U imagine if that other cop got killed and he stood there and watched it with his

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987 Inquest evidence of Sergeant Evan Kelly on 21 October 2022 at 2270-2271.

988 Inquest evidence of Sergeant Evan Kelly on 21 October 2022 at 2280, 2271.

989 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [550].

fucking hands up…what the fuck have we become

MR ROLFE: I know ey…fuck my whole life

892. At the inquest, A/Sgt McCormack rejected the suggestion that he thought the situation had been handled poorly by the community police. Rather, he said, he "was glad [he] didn't see a police officer seriously injured or killed" and he "thought … they left it to chance". He accepted he was critical at the time and "possibly" expressed that Mr Rolfe, but A/Sgt McCormack said, (reasonably in my view), that he "was critical in a way that you're critical when you first see something but that doesn't mean you don't get a better appreciation about it". A/Sgt McCormack accepted that the exchange he had with Mr Rolfe was impulsive. With the benefit of hearing the evidence of A/Sgt McCormack and understanding that the text was sent soon after watching the very confronting BWVs, I accept that it was an impulsive exchange, but that he did not intend any personal criticism of Officers Hand and Smith, or of community police. I accept the evidence of A/Sgt McCormack that he had "worked in communities for a long time" and knew that "it's a tough job working bush".[990]

8 November 2019

893. On Friday, 8 November 2019, Mr Rolfe was on duty for a general duties shift, commencing at 3pm and finishing at 1am the following morning. Mr Rolfe watched the BWV of the axe incident again and showed it to others on patrol.[991] At his trial in 2022, Mr Rolfe explained that he disseminated information about Kumanjayi during the shift, because:[992]

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990 Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2216.

991 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1133-1134.

992 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1044.

> "there was still no major alert given to the police station, about the incident on Wednesday night. I showed a number of members, in the station, on other patrol groups, the BWV of the axe incident".

894. Asked why that was important from his perspective, Mr Rolfe said:[993]

> "For a safety position for those officers that – who hadn't been made aware of this. For example, if they were to be sent to arrest someone for a breach of parole, that's fairly standard, and they might not be expecting such violent resistance."

895. Mr Rolfe watched the BWV of the axe incident at least 10 times before he went to Yuendumu.[994] I accept that Mr Rolfe genuinely believed that Kumanjayi posed a serious danger to other police officers,[995] and that serves to underscore the mistakes he made on 9 November.

8-9 November – Police resources in Yuendumu are stretched thin

896. The events of 8 and 9 November 2019 cannot be properly understood without an appreciation of the situation on the ground for the community of Yuendumu, and the police officers stationed there.

897. For Kumanjayi's family, preparations were likely underway for the funeral of Kumanjayi's grandfather, an important Elder. Family members had come from other communities and interstate to pay their respects.

898. For the police in Yuendumu, the combination of recent rioting in Nyirripi, crime in Yuendumu, staff leave and the funeral arrangements for Kumanjayi's grandfather, meant that resources were stretched thin and fatigue levels were high.

899. In November 2019, the Yuendumu Police Station and District was staffed by the following seven officers: Sergeant Julie Frost, Senior Constable First

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993 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1045.

994 Inquest evidence of Zachary Rolfe on 28 May 2024 at 5717.

995 Inquest evidence of Zachary Rolfe on 28 May 2024 at 5511.

Class Chris Hand, Senior Constable Lanyon Smith, Constable Leilani Weathers, Constable Felix Alefaio, Constable Mark Parbs and Senior Aboriginal Community Police Officer (SACPO) Derek Williams. Yet a snapshot of what the policing levels really looked like on 9 November reveals that they regularly coped with fewer staff members on the ground. It shows how much stress they were under and highlights the challenge of ensuring that remote stations are adequately resourced to deal with staff absences and/or a surge in work. The situation in reality was:

(a) Cst Weathers, although a gazetted member of the Yuendumu Police Station, was "away" for the duration of the lead-up to 9 November 2019.[996]

(b) SC Smith was a part of the Territory Relief pool. He had been relieving in Yuendumu for a few years and was effectively working there as a permanent officer.[997] He returned to Alice Springs on 8 November 2019 for rostered time off.[998]

(c) SC1C Hand was also a part of the Territory Relief pool and had arrived in Yuendumu on 1 November 2019.[999] On 8 November, Sgt Frost and SC1C Hand decided (understandably) that SC1C Hand should *not* play a part in the arrest of Kumanjayi, lest it be suggested that he had a "bias" against Kumanjayi as a result of the axe incident.[1000]

(d) Cst Parbs was relieving from Alice Springs as a part of the Southern Remote Support Unit. By his own description, his placement in Yuendumu, Nyirripi, Willowra and other southern desert communities

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996 Recorded statutory declaration of Constable First Class Mark Parbs dated 15 January 2020 [7-108] at 9.

997 Recorded statutory declaration of Constable First Class Mark Parbs dated 15 January 2020 [7-108] at 9.

998 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 21.

999 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 3.

1000 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 17; Trial evidence of Senior Constable First Class Christopher Hand [7-53A] on 9 February 2022 at 77-110, esp 101.

was "pretty sporadic".[1001] He was in Nyirripi from 5 November 2019 until the morning of 9 November 2019, when he returned to Alice Springs.

(e) Cst Alefaio was a gazetted officer. Like Cst Parbs, he was rostered in Nyirripi from 5 November 2019 until the morning of 9 November 2019, when he was due to go to Alice Springs for some rostered time off. At the request of Sgt Frost, he agreed to sacrifice that time off and return to Yuendumu in light of the level of fatigue that Yuendumu Police were experiencing.

(f) SACPO Derek Williams was an important member of the police station. His availability was sometimes limited by the need to avoid cultural conflicts.

900. As Sergeant Julie Frost explained in her evidence, in the days leading up to 9 November 2019 the Yuendumu Police Station had "huge resource problems".[1002] Some of its regular staff were away on leave and a "huge contingency of staff was going to Nyirripi at the time because of a large number of riots in the Community".[1003] Three staff were due to go on leave on Friday 8 or Saturday 9 November 2019 and there was the funeral in Yuendumu scheduled for the weekend of 9-10 November 2019, which some members of the Nyirripi community might attend. Officers feared that there may be more riots, if people who did not get along came into contact with each other during the funeral.[1004]

901. When Kumanjayi absconded from CAAAPU the limited police workforce at Yuendumu was already under strain, and was becoming increasingly

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1001 Recorded statutory declaration of Constable First Class Mark Parbs dated 15 January 2020 [7-108] at 17.

1002 Trial evidence of Sergeant Julie Frost [7-39B] on 10 February 2022 at 166-188, esp 175.

1003 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 10-11. There is a helpful and more detailed summary of the operational demands on the Yuendumu Police Station in the Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [561]-[573].

1004 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 11.

fatigued.[1005] From 5 November 2019, Constables Mark Parbs and Felix Alefaio were working out of the demountable THEMIS station at Nyirripi, due to conflict in that community. When Constables Parbs and Alefaio made an arrest that day, SC1C Hand and SACPO Williams drove half way to Nyirripi to take custody of the prisoner. They then began the drive to Alice Springs, intending to do another "half-way meet" with Alice Springs officers. For reasons unknown, the Alice Springs officers did not meet the Yuendumu Police as planned, but instead drove to Papunya. As a result, the Yuendumu officers had to drive the prisoner all the way to Alice Springs before driving back to Yuendumu, and they finished what should have been a day shift at around 12:30am the next morning.[1006]

The evening shift on 8/9 November 2019

902. A snapshot of the relentless workload of the Yuendumu police in the week leading up to 9 November makes it clear just how out of touch (and disrespectful) Sgt Kirkby and Mr Rolfe were when they texted each other about so called "lazy bush cops".[1007]

903. Going into the evening of 9 November, there was already a high-level of fatigue within the Yuendumu Police Station. At the beginning of their on-call shift that evening, Sgt Frost and SC1C Hand were the only sworn police officers in Yuendumu. They were called out to jobs on a least three occasions during the night, including to a domestic violence incident in Yuelamu, which required them to drive 40-50 minutes each way in the dark. By the morning of 9 November 2019, neither would have had more than an hour or two of sleep in the previous 36 hours.

1005 Inquest evidence of Senior Constable First Class Christopher Hand on 19 September 2022 at 645.

1006 Inquest evidence of Senior Constable First Class Christopher Hand on 19 September 2022 at 646.

1007 See message from Zachary Rolfe to Sergeant Paul Kirkby at 11:52am on 3 September 2019 (MFI MMM message 428) and message from Sgt Kirkby to Mr Rolfe at 4:26pm on 22 September 2019 (MFI MMM message 464).

904. At 5:46am, having arrived back at the Yuendumu Police Station, Sgt Frost emailed Supt Nobbs, Southern Crime Command and the Alice Springs Watch Commanders, as follows:[1008]

> "Please be advised that myself and Chris Hand have been up now since 12:30am and will be knocking off in the next 2 mins after attending 3 jobs overnight. Whilst we are rostered to start at 10am today, we will now be starting our rostered shift at around 2pm. Due to fatigue levels from being up all night and following on from a heavy workload throughout the week, we ask that you do not contact us on the on-call phone other than for an emergency situation.
>
> There are no other members in Yuendumu at the moment that can assist with the workload and call outs. Having said this, I have 2 members (Mark Parbs and Felix Alefaio) who will be travelling from Nyirripi this morning to help out and should be here around 10 – 10:30am. I have told them to look in the admin bin for any jobs and action them. I have also advised them to contact you to provide an alternative phone number so you don't have to call Yuendumu on-call mobile phone in the event of an emergency, (or alternatively, you can contact the station number) Parbs and Alefaio will know to continue to look in the admin bin though."

905. Having seen her give evidence, and having carefully reviewed her previous statements, interviews and evidence in this matter, I formed a view that Sgt Frost is a hardworking, earnest and professional police officer. Anyone would have been concerned by the huge workload that she and her officers were coping with at that time, and the email she sent alerted senior officers that Yuendumu Police were at the end of their resourcing capacity. That is relevant to the decision made the following morning to call in help from Alice Springs.

[1008] Trial exhibit 1.11: "Email dated 9 Nov 2019 at 5.46am from Julie Frost to Jody Nobbs and JESCC Supervisors. Watch Commanders - Alice Springs re Yuendumu on call availability" [19-56].

The morning of 9 November 2019 - the need for further resources and a call up of the IRT

906. At around 10:00am on 9 November 2019, Constables Alefaio and Parbs arrived at Yuendumu Police Station from Nyirripi. Despite Sgt Frost's hope that both would remain in Yuendumu to work overtime, Cst Parbs was unable to do so because he had a doctor's appointment in Alice Springs[1009] and he departed Yuendumu at around midday. SACPO Derek Williams was on shift to assist police that day.

907. That left a staffing contingent in Yuendumu Police Station, expected to cover Yuelamu and Nyirripi communities, of only three commissioned officers (two of whom were exhausted), and SACPO Derek Williams.

Notification that clinic staff were leaving

908. The house break-in reported on 6 November to SC1C Hand and SC Smith was the latest in a series of property offences that NT Health clinic staff had been subjected to. It is evident that at least from that time on, many Yuendumu clinic staff were feeling concerned and stressed, primarily because of the fear of serious night time property offending.

909. In Chapter Eleven of these Findings, I have analysed the decision making of NT Health staff that led to a direction being given to all Kardiya (non-Aboriginal) Clinic staff in Yuendumu to evacuate to Alice Springs by lunch time on 9 November. While this is set out in detail in Chapter Eleven, I briefly note the significance of it here as it relates to the police decision to call out the IRT. As I set out in Chapter Eleven, the NT Health decision to evacuate was made without any consultation with NT Police or community Elders and after negligible input from Aboriginal staff members. While it was entirely understandable that NT Health staff were frustrated and exhausted by the

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[1009] Recorded statutory declaration of Constable First Class Mark Parbs dated 15 January 2020 [7-108] at 3.

break-ins, there are important lessons to be learnt as to how better to collaborate with all stakeholders to see if such a decision can be avoided or mitigated in a similar situation.

910. On the morning of 9 November, between 9:00am and 10:30am, there were several discussions between the nurses in Yuendumu and NT Health management about the impact of the break-ins on staff safety and morale. Staff were advised that if they were feeling unsafe, they would be accommodated in Alice Springs.

911. Sometime around 10:30am, two clinic staff members spoke to Constables Parbs and Alefaio outside the Yuendumu Police Station, and told them of the likelihood that they would be leaving the community that day.[1010] At 10:54am, Constable Parbs texted Sgt Frost to relay the message, telling her that "Cassie from the clinic…informed us that her bosses have directed clinic staff to start packing due to the break-ins at their properties…[s]he has not stated they're leaving community but it's a possibility at this stage".[1011]

912. The clinic staff did not consult with Yuendumu Police to assist with their decision making and Sgt Frost was rightly concerned about the health needs of the Yuendumu community, and the likely additional demands on the limited police resources if the clinic staff left. At 11:00am, Sgt Frost (who was supposed to be off-duty and resting) phoned nurse Cassandra Holland to discuss the evacuation.

913. Sgt Frost asked about the contingency planning for community medical needs while health staff were evacuated.[1012] Ms Holland replied that in the event of a medical emergency, there was an "expectation" that Yuendumu police would escort the Yuelamu clinic staff to enable them to attend. Sgt Frost emphatically rebutted that proposal and told Ms Holland that was

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1010 Recorded statutory declaration of Constable First Class Mark Parbs dated 15 January 2020 [7-108] at 5.

1011 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at Annexure JF1.

1012 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 805.

"[a]bsolutely not going to happen and was not something that police had the resources to do".[1013]

914. Sgt Frost then called Lorraine Walcott at the Yuelamu health clinic. Ms Walcott confirmed her understanding, which had come from health "bosses", was that police would accompany nurses to any jobs during the period of the withdrawal of health services from Yuendumu. Sgt Frost advised Ms Walcott that she would have to call her bosses and tell them that that would not be happening.[1014]

915. Sergeant Frost was "very concerned" that the nurses were leaving, and that there had been so little discussion with police.[1015] She was particularly concerned by the "expectations" of health bosses that Yuendumu Police would accompany nurses from Yuelamu to Yuendumu. This would involve "significant resource[s]" and place "extra pressure" on the station, at a time when it was already stretched nearly to breaking point.[1016]

Sgt Frost requests further resources from Supt Nobbs

916. In the hours that followed the NT Health decision to withdraw health staff from Yuendumu, Sgt Frost spoke to Supt Nobbs[1017] at 1:09pm (for five minutes) and 2:01pm (for 11 minutes). In the first call, Sgt Frost explained her concerns that Kumanjayi had not yet been arrested and that there was a significant resource deficit in Yuendumu, particularly in light of: the need to manage the funeral that day, the planned total withdrawal of health services from Yuendumu as a result of the unlawful entries, and NT Health's

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1013 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 805.

1014 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 806.

1015 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 806.

1016 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 807.

1017 Who was not on duty but who, as a commissioned officer, continued to answer work calls: see Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [584].

expectation that police would escort nurses from Yuelamu to any medical calls in Yuendumu.

917. The expectation that Yuendumu police could manage the additional workload and call-outs likely to flow from the nurses' evacuation, and particularly overnight, was not reasonable. Indeed, Sgt Frost was already back on duty even though she had taken steps to try to protect a period of necessary rest. On any objective assessment of the situation, help was required and sensibly Sgt Frost asked Supt Nobbs to send out additional police resources to Yuendumu. After some discussion, an agreement was reached that the IRT and a dog handler should attend.[1018] Both Sgt Frost and Supt Nobbs expected the IRT to perform general support duties in addition to arresting Kumanjayi.[1019]

918. Likely in the second conversation (after A/AC Wurst had approved the deployment of the IRT and dog handler), Supt Nobbs asked Sgt Frost to prepare an "Operations Order" (the arrest plan or Ops Order) and advised her to speak with A/Sgt Shane McCormack regarding the details it should contain, before sending it to Supt Nobbs for approval. I will come to the details of that Ops Order in Chapter Seven.[1020]

919. Meanwhile, Cst Alefaio, who had not had computer access while working in Nyirripi, learned of the axe incident from SC1C Hand at about midday. He agreed to stay and assist with the arrest of Kumanjayi and understood that Sgt Frost wanted someone with local knowledge, who knew Kumanjayi and his family, to be involved in Kumanjayi's arrest.[1021]

1018 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 808; Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1102.

1019 Recorded statutory declaration of Sergeant Julie Frost dated 5 December 2019 [7-37] at 4-5.

1020 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 808-809.

1021 Inquest evidence of Constable Felix Alefaio on 20 September 2022 at 732.

Formal approval of the IRT deployment by A/AC Wurst

920. As might be expected, approving the additional resources for Yuendumu required decision making up the chain of command, followed by the issuing of formal orders. As soon as Sgt Frost communicated her request for assistance, Supt Nobbs set about getting the necessary formal approvals.

921. At 1:51pm, Supt Nobbs called Acting Assistant Commissioner Travis Wurst to authorise the approval of the deployment of the IRT, which then occurred. Had this been labelled as a Planned High Risk arrest deployment, the TRG would have had responsibility for the operation.[1022]

922. However, Supt Nobbs explained that although there was a "heightened sense of risk" associated with the arrest of Kumanjayi Walker, this was not, to his mind, a "high risk" deployment for the purposes of the IRT's SOP and, therefore, was a deployment which could be approved at the Commander level under cl 1.2.1 of the SOP. Ordinarily Commander Currie would be the person to give approval, but he was on personal leave, and authority to approve lay with the nominal Assistant Commissioner (Dr Narelle Beer). A/AC Wurst was acting in her position on 9 November.[1023]

923. A/AC Wurst was based in Darwin and was on-call from his home. Supt Nobbs requested approval for a "general support" deployment of the IRT. Supt Nobbs outlined six reasons for requesting the deployment, all of which were valid:[1024]

    (a) the increased rate of property offending in Yuendumu,

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1022 Alice Springs – Immediate Response Team Standard Operating Procedures [17-23] (IRT SOP) at [1.1.2]. Deployment of the IRT for an unplanned High Risk operation, such as a siege, active shooter, barricaded person or "civil disorder where death or injury has or is likely to occur" required approval of an Assistant Commissioner, and that "all plans and actions must be developed in consultation with [and] approved by the TRG Tactical Commander before being presented to the Forward Commander.": IRT SOP at [1.1.1]. The exception to this was in response to an active armed offender incident, in which case the Watch Commander was able to deploy the IRT as soon as practicable, and then advise the Commander Southern, Assistant Commissioner Southern Operations and Tactical Commander as soon as practicable: IRT SOP at [1.1.1].

1023 Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1104.

1024 Inquest evidence of Superintendent Jody Nobbs on 31 October 2022 at 2890.

(b) the imminent withdrawal of health services from Yuendumu,

(c) the level of fatigue within the Yuendumu Police Station and a desire to provide respite to local officers,

(d) there was to be a funeral,

(e) Kumanjayi Walker remained at large, and needed to be arrested, and

(f) the need to protect Rickisha Robertson.

924. A/AC Wurst approved a general support deployment of the IRT in blue uniforms. According to Supt Nobbs, he approved their deployment with AR-15 long-arm rifles and non-lethal munitions. A/AC Wurst did not recall all these and other details. He had taken the call while at home in his garden and was not making notes and neither was Supt Nobbs, who was also on a day off.

925. When formulating a loose plan for Kumanjayi's arrest, Sgt Frost was mindful that he had a history of running from police and she requested the services of a Police Dog Operations Unit (**DOU**) member in addition to the IRT. This verbal request was relayed to and approved by A/AC Wurst. No request for a trained negotiator to accompany the IRT was made or considered at this time.[1025]

926. A/AC Wurst was not involved in any discussion of the 5am arrest plan but he was broadly aware that a plan was being developed for a negotiated surrender, and if that was not achieved, an active arrest. He was not aware of the details of the IRT SOP, but Supt Nobbs was.

927. Following that approval, Supt Nobbs phoned Alice Springs Superintendent Pauline Vicary, who was also off duty, to advise her that four IRT members were to be deployed to Yuendumu and they would need to work overnight.[1026]

1025 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 59-60.

1026 Recorded statutory declaration of Superintendent Pauline Vicary dated 30 November 2019 [7-132] at 3.

CHAPTER SIX CALL OUT OF THE IMMEDIATE RESPONSE TEAM (IRT) - MOBILISING RESOURCES FROM ALICE SPRINGS

Introduction

928. The IRT members were picked at random by Acting Sergeant Shane McCormack, who had been delegated the task of calling police officers from a list that made up the current IRT, to draft four individuals who happened to be willing and available to go to Yuendumu on 9 November 2019. Although A/Sgt McCormack did not appoint a team leader for the mission to Yuendumu (and was not instructed or obliged to do so) he asked Mr Rolfe to tell the others about the job after they gathered at the Alice Springs Police Station.[1027] Of the four police officers who volunteered for the Yuendumu job, it was Mr Rolfe who: a) had a tendency to take the lead in tactical operations; b) had watched the BWV footage of the axe incident on 6 November (as had others) and formed an adverse view of the way the community police had handled themselves, and c) been involved in a previous attempt to arrest Kumanjayi Walker on 7 November. In those circumstances, and in the vacuum created by the absence of a formal requirement in the IRT SOP for a team leader, Mr Rolfe assumed a de facto leadership role and conducted the first briefing for the IRT in the Alice Springs Police Station.

929. Mr Rolfe's early adoption of a leadership role for the mission to Yuendumu likely had an important impact on the team dynamic and on his own behaviour. This chapter provides important context for the subsequent team briefing conducted by Sgt Frost in Yuendumu, and for the IRT's "post-briefing" decision-making that evening. It addresses the following topics:

    (a) Call out of the IRT – communication of the mission between Supt Nobbs, A/Sgt McCormack and SSgt Shaun Furniss;

[1027] Recorded statutory declaration of Constable First Class Anthony Hawkings dated 13 November 2019 [7-58] at 22-23; Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 24.

(b) Recruiting the IRT members to Yuendumu – a random selection;

(c) The addition of the dog handler;

(d) A/Sgt McCormack delegates the IRT "briefing" to Mr Rolfe in Alice Springs;

(e) Inadequate IRT procedures contributed to communication difficulties;

(f) The "kit" of weapons taken to Yuendumu; and

(g) The IRT and dog handler depart Alice Springs for Yuendumu in 3 separate cars.

Call out of the IRT – communication of the mission between Supt Nobbs, SSgt Furniss and A/Sgt McCormack

930. To facilitate the deployment, Supt Nobbs had conversations with Senior Sergeant Shaun Furniss, who was the Watch Commander at the Alice Springs Police Station, and A/Sgt Shane McCormack, the most senior police officer on duty that day, who was also a member of the IRT. The IRT SOP directed that, "the OIC of the IRT" was to "discuss with the relevant Superintendent [Supt Nobbs] or Watch Commander [SSgt Furniss], the purpose and scope for IRT involvement."[1028] Ordinarily that discussion would have involved the OIC of the IRT, Sergeant Lee Bauwens, but since he was away on personal leave, it fell to others with less experience of the workings of the IRT.

931. Exactly what was said in each of the calls referred to in this and the preceding chapter (including between Sgt Frost and Supt Nobs; between Supt Nobbs and A/AC Wurst; between Supt Nobbs and SSgt Furniss and between SSgt Furniss and A/Sgt McCormack) was the subject of evidence and cross examination at Inquest, but to my mind there were no really significant discrepancies. Policing is a dynamic profession and officers are required to make decisions

[1028] Alice Springs Immediate Response Team Standard Operating Procedures [17-23] at [1.2.1].

on the go, after processing significant amounts of information. I do not expect police officers to have identical memories of exactly what was discussed in each phone call made. In this case, the officers who gave evidence had no knowledge at the time of the calls of just how significant their conversations would become after Kumanjayi's death. They did their best to give evidence of what they recalled and there was broad agreement as to the essential points and flavour of each communication.

932. At around 1:30pm, Supt Nobbs called SSgt Furniss and asked him whether it would be possible, from a rostering perspective, to deploy the IRT to Yuendumu. Supt Nobbs informed SSgt Furniss of the need to apprehend Kumanjayi Walker *and* also the need to provide general duties support to the Yuendumu Police Station, noting NT Health's proposal to withdraw services from the community, the increase in property crime and the funeral.[1029] The two officers also discussed the deployment of the dog unit.

933. After being called by Supt Nobbs, S/Sgt Furniss saw his role as administrative rather than operational, limited to "putting people in contact...getting a response and getting members in".[1030] Following this first call with Supt Nobbs, SSgt Furniss walked into A/Sgt McCormack's office in Alice Springs and asked him "who was currently in charge of the IRT".[1031] He told A/Sgt McCormack that Supt Nobbs was making enquiries about a potential deployment of the IRT and he delegated to A/Sgt McCormack the responsibility of identifying IRT members for deployment.[1032] At the time A/Sgt McCormack was a suitably qualified and experienced senior member of the IRT, but he was at the Alice Springs Police Station performing duties as the supervisor of the Auxiliary members tasked to Point of Sale Inspection (**POSI**) duties.

1029 Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1105-1106, 1108 and on 31.10.22 at 2889; Inquest evidence of Senior Sergeant Shaun Furniss on 28 September 2022 at 1167-1168 and Statement of Senior Sergeant Shaun Furniss dated 30 November 2019 [7-41] at 17-18.

1030 Inquest evidence of Senior Sergeant Shaun Furniss on 28 September 2022 at 1165-1166.

1031 Inquest evidence of Senior Sergeant Shaun Furniss on 28 September 2022 at 1169.

1032 Inquest evidence of Senior Sergeant Shaun Furniss on 28 September 2022 at 1169.

934. With the benefit of hindsight, it is regrettable that Sgt Bauwens was not on duty to take responsibility, or that there was no other senior member who had delegated authority for the IRT who had a working knowledge of best practice in terms of briefing members. Sgt Bauwens said that there was not really an IRT member who could stand in for him.[1033] If there had been, it might have led to the appointment of a team leader and/or clear communication of the purpose and scope of the IRT deployment, which Supt Nobbs had indicated was two-fold: to arrest Kumanjayi Walker *and* to provide general duties support. That is not a criticism of any individual officer. Clearly there were deficiencies in the IRT SOP (for example, the absence of a requirement for a team leader to be appointed) that did not assist. By 9 November 2019, A/Sgt McCormack had been a member of the IRT for about a year and a half,[1034] and did not occupy a position of leadership within it. He conceded that, although he knew that the IRT had a SOP, he was not acquainted with it.[1035] He did not know whether the IRT had a 2IC and, if it did, who that officer was. In his own words, it fell to him to coordinate the deployment of the IRT simply "because I was at work when the phone call came in".[1036] It is understandable that from his perspective he "didn't take much interest" in what Supt Nobbs told him of the reasons for the deployment, because he "was more concerned trying to get members to be available".[1037]

935. There were a series of further calls, in relatively quick succession, between Supt Nobbs and SSgt Furniss, as well as a conference call that also included A/Sgt McCormack.[1038] During this conference call, Supt Nobbs said "he wanted four IRT members" to be deployed in uniform ("blues"), which was

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1033 Inquest evidence of Sergeant Lee Bauwens on 22 February 2024 at 4943.

1034 Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2188.

1035 Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2194.

1036 Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2190.

1037 Recorded statutory declaration of Acting Sergeant Shane McCormack dated 21 November 2019 [7-95] at 19-20.

1038 Recorded statutory declaration of Senior Sergeant Shaun Furniss dated 30 November 2019 [7-41] at 7; Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2201.

suggestive of General Policing assistance, or a general support role.[1039] A/Sgt McCormack's said that he understood that he was asked to get four members from the IRT, more because they were the officers who were likely to answer their phones, than because it was an IRT deployment.[1040]

936. It is clear to me that Supt Nobbs outlined what he wanted from the IRT,[1041] and that he briefed SSgt Furniss and A/Sgt McCormack on the broad rationales for the deployment. He explained to them that a plan for the deployment—including an arrest plan for Kumanjayi Walker—was still being developed in consultation with Sgt Frost.[1042] SSgt Furniss' recollection is that Supt Nobbs told him that "it was proposed that that was early the next morning that they would go and – and arrest him."[1043] Although A/Sgt McCormack was informed of the broad rationales for the deployment, he did not recall being told of the fatigue levels of Yuendumu police or that the IRT members would be relieving for the local members. In his mind the significant purpose of the deployment was to arrest Kumanjayi.[1044]

Recruiting the IRT members to Yuendumu – a random selection

937. From around 2:15pm, A/Sgt McCormack called or texted members of the IRT for the purposes of determining their availability for deployment to Yuendumu. The process of identifying the members was a random one and

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1039 Recorded statutory declaration of Senior Sergeant Shaun Furniss dated 30 November 2019 [7-41] at 7; Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2201-2202.

1040 Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2198-2199.

1041 Recorded statutory declaration of Senior Sergeant Shaun Furniss dated 30 November 2019 [7-41] at 7.

1042 Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2202-2203.

1043 Inquest evidence of Senior Sergeant Shane Furniss on 28 September 2022 at 1168.

1044 Recorded statutory declaration of Acting Sergeant Shane McCormack dated 21 November 2019 [7-95] at 4, 7, 31, 42; Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2199, 2206.

A/Sgt McCormack was working through a list to identify four members who happened to be available and would be willing to go.[1045]

938. Ultimately, the four members of the IRT who agreed to be deployed were, in order of seniority: Constable First Class Anthony Hawkins, Constable First Class Adam Eberl, Constable James Kirstenfeldt and Zachary Rolfe. A summary of the relevant experience of each is set out below (noting that Chapter Three explores the background of Mr Rolfe in some detail).

939. Constable First Class Anthony 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. He was posted to Alice Springs on 25 April 2014 and while he has remained in that location, he has served on relief postings to Alpurrurulam, Haasts Bluff, Apatula and Ltyentye Apurte police stations. He joined the IRT on 26 November 2018. Prior to 9 November, he had deployed with the IRT on 6 general support operations.

940. Constable First Class Anthony Eberl (then 39 years) served as a police officer in South Australia between 2012 and 2015 before being recruited to the NT Police on 15 June 2015. He was posted to Alice Springs on 2 October 2015 and was stationed for one month in Apatula in January 2017 before returning to Alice Springs. He had 6 weeks remote service experience in 2017. C1C Eberl joined the IRT on 26 November 2018 and had only deployed on 2 general support operations before 9 November 2019.

941. When he was about 25 years old, Constable First Class Eberl moved to a community in South Australia and his neighbour was a Ramindjeri Elder. That Elder trained C1C Eberl in Ramindjeri martial arts, and taught and mentored him about culture and showing respect to country. C1C Eberl describes this as an extremely important relationship, which lasted about ten years until the Elder passed away. What he learned has helped him in his work as an NT Police Officer, for example “when I go and work somewhere. I ask permission to walk their land. Seek out the Elders of the area, and it shows respect. And

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[1045] Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2199, 2210.

they tell you where you can and can't walk. They also explain you know, cultural areas. And they'll also tell you stories and things".[1046]

942. Both C1C Hawkings and C1C Eberl appeared to me to be serious officers who were professional and sincere. They were reflective, and willing to make reasonable concessions in court. I got the impression that both genuinely care about their work and the community they serve.

943. Constable James Kirstenfeldt (then 35 years) is a former ADF member who, like Mr Rolfe, conducted paramilitary type close protection training with Ronin International in the United Kingdom in 2010. He joined the NT Police just after Mr Rolfe, in November 2016 and was posted to Alice Springs on 9 June 2017. Like Mr Rolfe, he had not served in remote Aboriginal communities, and demonstrated little interest in doing so.

944. Cst Kirstenfeldt joined the IRT on 26 November 2018 and had deployed on 4 general support operations since that time, leading up to Yuendumu. Prior to the death of Kumanjayi, Cst Kirstenfeldt was with Mr Rolfe on one of the inappropriate use of force incidences described in Chapter Four. He took an aggressive stance against the "bosses" after the death of Kumanjayi and sent immature text messages to Mr Rolfe.

945. By the time of their deployment, a comparison of the experience and presentation of the IRT members is as follows:

(a) Constables First Class Hawkings and Eberl were of the same rank and significantly more senior than Mr Rolfe and Constable Kirstenfeldt. CIC Hawkings had more years in the police overall, if his New Zealand service is included, but C1C Eberl was the most senior Northern Territory police officer;

[1046] Inquest evidence of Constable First Class Adam Eberl on 17 October 2022 at 1803.

(b) Constables First Class Hawkings and Eberl had experience working in remote central Australian communities, whereas Mr Rolfe and Cst Kirstenfeldt had none (except for their short IRT deployments);

(c) Prior to 9 November 2019, Mr Rolfe had participated in a total of seven IRT deployments into remote communities; four of these in 2018 and three in 2019. Details are contained in the coronial memorandum of Commander David Proctor APM.[1047] It appears that on three of those seven occasions, he was with Sgt Bauwens, who would naturally have performed the leadership role as head of the IRT. Four of the deployments related to events described as "community unrest" or "general support", and three were for the arrest of a specific target(s).

946. At approximately 2.30pm, Mr Rolfe received a phone call on his mobile from A/Sgt Shane McCormack in relation to the IRT call out, "[t]o travel to Yuendumu to arrest [Kumanjayi] Walker". Mr Rolfe was told to "come to the station and dress in [his] blue police uniform but to bring [his] camouflage kit".[1048]

The addition of the dog handler

947. At around 2pm, SSgt Furniss called out the Dog Operations Unit (**DOU**) member Senior Constable First Class Adam Donaldson. SC1C Donaldson was not a member of the IRT and was deployed in response to the request from Sgt Frost, approved by A/AC Wurst.

1047 Details are set out in a chart in the Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 31-32. Commander Proctor refers to nine IRT deployments, but he has included a callout to Papunya in June 2019 where the team was on standby at the Airwing to fly in, but was ultimately not required and was stood down, and the deployment to Yuendumu on 9 November 2019.

1048 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1045.

948. SC1C Donaldson is a former ADF member who joined the NT Police on 26 February 2007. He had served in Alice Springs, Nyirripi and Darwin prior to joining the Dog Operations Unit in 2015.

949. SSgt Furniss told SC1C Donaldson that the Dog Unit was being deployed "because of nurses having left the community because there had been a lot of break-ins", that is, to deal with property crime, and also for the second purpose of assisting with the arrest of Kumanjayi.[1049]

950. I have considered the submissions of the Parumpurru Committee that the deployment of the Dog Unit to Yuendumu to arrest Kumanjayi was inappropriate and unnecessary, particularly given that when he was a child he was hospitalised for injuries inflicted by a police dog.[1050] The Parumpurru Committee also submit that the Aboriginal community at Yuendumu were fearful of police dogs and that the use of a police dog in community reveals a policing disregard for community values and attitudes, as well as a policing culture of structural racism.[1051] They submit that dogs are not an appropriate police accoutrement to be deployed in Yuendumu.[1052] I would not be doing them justice if I did not include this impassioned final submission: "The imagery of the state using dogs against humans is extraordinarily powerful, and intimidating. The use of dogs against people has a terrible, shameful history. The time is past when it can be considered acceptable in the NT".[1053]

1049 Inquest evidence of Senior Constable First Class Adam Donaldson on 20 October 2022 at 2138.

1050 Closing written submissions of the Parumpurru Committee of Yuendumu dated 28 October 2024 at [179]-[184].

1051 Closing written submissions of the Parumpurru Committee of Yuendumu dated 28 October 2024 at [194-200].

1052 Closing written submissions in reply of the Parumpurru Committee of Yuendumu dated 25 November 2024 at [22].

1053 Closing written submissions of the Parumpurru Committee of Yuendumu dated 28 October 2024 at [177]-[200]; closing written submissions in reply of the Parumpurru Committee of Yuendumu dated 25 November 2024 at [20]-[23].

951. I have also considered the submissions of NT Police[1054] and the Northern Territory Police Association[1055] on this issue and the evidence of Deputy Commissioner Murray Smalpage.[1056] I accept that police dogs are very skilled at tracking suspects and also provide a tactical, non-lethal use of force option for NT Police officers, who must apply the 10 Operational Safety Principles and comply with other use of force policies when utilising a police dog. Applying those principles means that: "half the time the dog doesn't get out of the car"; if taken out of the vehicle 90% of the times its mere presence is a sufficient deterrent;[1057] and a dog is only deployed after a handler gives a person multiple opportunities to surrender and warns them that if they do not do so the dog will be released.[1058] I also accept that the use of a police dog in the apprehension of an offender can reduce the risk of harm to Police.[1059]

952. I accept that the presence of a police dog acts as an effective deterrent against offending, including the kind of property offending the Yuendumu nurses were experiencing; and escape, as effected by Kumanjayi on 6 November which he may well have re-attempted. The police dog was also a non-lethal tool that may have assisted with the arrest of Kumanjayi if he chose to flee.[1060]

953. The use or presence of a police dog can be intimidating or frightening for any person, and I accept that this is particularly so for many Aboriginal community members. However, I do not accept that this deployment was inappropriate or unnecessary in these circumstances. There were sound operational reasons for the deployment of the Dog Unit to Yuendumu on 9

1054 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [128]-[134].

1055 Closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [39]-[40].

1056 Affidavit of Deputy Commissioner Murray Smalpage affirmed 10 February 2023 [7-120BB] at [151]-[161]; Inquest evidence of Deputy Commissioner Murray Smalpage on 2 March 2023 at 4277-4283.

1057 Inquest evidence of Senior Constable First Class Adam Donaldson on 20 October 2022 at 2168, 2135.

1058 Inquest evidence of Senior Constable First Class Adam Donaldson on 20 October 2022 at 2168, 2181.

1059 Inquest evidence of Deputy Commissioner Murray Smalpage on 2 March 2023 at 4280.

1060 See the recorded statutory declaration of Superintendent Jody Nobbs dated 29 November 2019 [7-101] at 11.

November, particularly given the seriousness of Kumanjayi's actions on 6 November when he escaped from Officers Smith and Hand after threatening them with an axe.

954. I am mindful that the evidence before me relates to this specific deployment of the dog operations unit and therefore I consider that it is not appropriate for me to comment on the appropriateness of the use of police dogs more generally, either in Yuendumu or within the NT. I am not satisfied that the use of the dog unit on this occasion establishes the existence of structural racism within NT Police.

955. Having had the opportunity to consider the submissions of the Parumpurru Committee, I do think the circumstances of this arrest suggest that it would be helpful (with the aim of minimising the risk of conflict for the future) for there to be a Mutual Respect Agreement between Police and the community of Yuendumu which covers (*inter alia*) the use of police dogs in their community. As submitted by Mr McMahon SC for the Parumpurru Committee: "Long after this inquest is over our clients will be there, living at Yuendumu, every day engaging with the police. It's necessary and essential that that relationship works well...[and] [t]he evidence is that dogs harm that relationship".[1061] "If police wish to serve their community it is incumbent [upon them] to listen to their community."[1062] I hope that a reflection on these Findings and the relevant recommendation might lead to meaningful engagement between community members and NT Police on this issue, perhaps with the benefit of the mediation services that are the subject of recommendation 4, and/or the consultation group that is the subject of recommendations 5 – 8.

[1061] Closing oral submissions of the Parumpurru Committee of Yuendumu on 27 November 2024 at 5867-5868.

[1062] Closing written submissions in reply of the Parumpurru Committee dated 25 November 2024 at [23].

A/Sgt McCormack delegates the IRT "briefing" to Mr Rolfe in Alice Springs

956. It is significant that when calling the IRT members into the Alice Springs Police Station, A/Sgt McCormack informed officers C1C Hawkings and C1C Eberl that they should "see Rolfey" [Mr Rolfe] when they arrived at the station, because, in his words, "you'll get some information from him, he'll give you the run down".[1063] Although A/Sgt McCormack did not nominate an IRT team leader,[1064] he effectively delegated the job of the Alice Springs briefing to Mr Rolfe, who (along with Cst Kirstenfeldt) had some prior involvement with the attempted arrest of Kumanjayi in Warlpiri Camp on 7 November, and who had watched the BWV footage depicting the attempted arrest of Kumanjayi by Officers Hand and Smith in Yuendumu on 6 November.

957. Mr Rolfe was the first of the IRT members to arrive at the station at around 2.45pm and he spoke to A/Sgt McCormack to confirm what the tasking/mission was.[1065] In his trial in 2022, Mr Rolfe said that he asked A/Sgt McCormack twice what the mission was, and A/Sgt McCormack confirmed that it was to arrest Kumanjayi Walker. He was also provided with the following information:[1066]

(a) the names of other IRT members;

(b) that they would have support in the form of a dog handler, SC1C Donaldson;

(c) that there was really no new intelligence since Wednesday night in regard to Kumanjayi's location or anything in regard to the incident;

1063 Recorded statutory declaration of Constable First Class Anthony Hawkings dated 13 November 2019 [7-58] at 22-23; Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 24, 28.

1064 Recorded statutory declaration of Acting Sergeant Shane McCormack dated 21 November 2019 [7-95] at 90.

1065 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1046, and on 3 March 2022 at 1109.

1066 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1046; Trial evidence of Acting Sergeant Shane McCormack on 14 February 2022 [7-96A] at 277.

(d) there was a funeral taking place;

(e) that the IRT would be expected to drive to Yuendumu and hopefully get more intelligence from Sgt Frost at the time; and

(f) that the nurses had evacuated Yuendumu that morning due to break-ins or attempted break-ins at their sleeping quarters.

958. When the other IRT members arrived soon after, A/Sgt McCormack did not provide any real briefing, but informed them that they were to deploy to Yuendumu to "liaise with Julie Frost who is the OIC of Yuendumu" regarding the arrest of Kumanjayi Walker.[1067] A/Sgt McCormack then deferred to Mr Rolfe, who effectively "briefed" the other members of the IRT regarding the arrest, and played the video of the axe incident for them.[1068] According to C1C Hawkings and C1C Eberl, during the briefing conducted by Mr Rolfe, A/Sgt McCormack was not really present; he "has come and gone"[1069] and he "was fluctuating between his office" and the muster room, where the "briefing" was occurring.[1070]

959. According to Mr Rolfe, when he briefed the other members, he informed them that "our task was to travel to Yuendumu to arrest Kumanjayi Walker for the reasons of the axe incident on Wednesday night".[1071] C1C Hawkings and C1C Eberl had not seen the BWV of the axe incident, so Mr Rolfe logged on to a computer and showed it to them. During that viewing C1C Eberl shared his

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1067 Recorded statutory declaration of Acting Sergeant Shane McCormack dated 21 November 2019 [7-95] at 7, and Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2229.

1068 Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 30-31.

1069 Recorded statutory declaration of Constable First Class Anthony Hawkings dated 13 November 2019 [7-58] at 22-23.

1070 Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 27-28.

1071 Trial evidence of Zachary Rolfe [7-115A] on 4 March 2022 at 1136 (Rolfe); Inquest evidence of Zachary Rolfe on 28 February 2024 at 5374.

opinion that he was "surprised that they [Officers Smith and/or Hand] didn't use a firearm in that incident".[1072]

960. Mr Rolfe conveyed information about Kumanjayi's previous criminal history and that the nurses had been evacuated.[1073] He was in the company of the other IRT members for about 30 minutes before they left for Yuendumu at about 3.30pm.

961. In his evidence, Cst Kirstenfeldt said that when he left Alice Springs he knew the mission was to arrest Kumanjayi and he was not aware of any other role.[1074]

962. Just before departing Alice Springs, Mr Rolfe sent a text message to a close family member at 2.59pm: "Heading out to Yuendumu to grab this guy…Hopefully back tomorrow. No reception. x".[1075] Concerning this message, the NT Police submitted that it may have been an early indication of the speed with which Mr Rolfe planned to go about arresting Kumanjayi and returning to Alice Springs after what he anticipated would be a quick job.[1076]

963. While Superintendent Nobbs had intended the IRT be deployed to assist police in Yuendumu for a number of reasons, including to provide respite for Yuendumu police, by the time the IRT members had been given their initial briefing by Mr Rolfe at the Alice Springs Police Station, their "mission" had been reduced to "simply" arrest Walker.

964. From the time A/Sgt McCormack delegated the briefing to him, Mr Rolfe had assumed the lead. Mr Rolfe had already formed a strong opinion about what he considered was a substandard performance by the Yuendumu police officers' attempted arrest of Kumanjayi and, in the absence of a formal Team

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1072 Trial evidence of Constable First Class Adam Eberl on 22 February 2022 [7-33B] at 682.

1073 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1048.

1074 Committal evidence of Constable James Kirstenfeldt on 2 September 2020 [7-80A] at 112 and 113; Trial evidence of Constable James Kirstenfeldt on 15 February 2022 [7-80B] at 376; Inquest evidence of Constable James Kirstenfeldt on 19 October 2022 at 2032, 2064, 2091.

1075 Message from Zachary Rolfe to family member at 2:59pm on 9 November 2019 (MFI MMM message 552).

1076 Closing written submissions of the Northern territory Police Force dated 19 November 2024 at [669].

Leader being nominated by A/Sgt McCormack, he was willing to occupy that space.

965. The fact that Mr Rolfe was prepared to brief the team and to assume a leadership role is demonstrative of some of his positive qualities, including hardwork, and a sense of responsibility. The IRT SOP was deficient. There was no clear requirement for a Team Leader to be appointed and in that vacuum Mr Rolfe willingly stepped up.

Inadequate IRT procedures contributed to communication difficulties

966. In the absence of adequate policies or procedures to cover IRT briefings, there are insufficient records of the briefings that took place. That includes:

(a) the briefings provided by Supt Nobbs to SSgt Furniss and A/Sgt McCormack,

(b) the conversation between A/AC Wurst and Supt Nobbs during which the deployment of the IRT was authorised, and

(c) the "briefing" provided by A/Sgt McCormack to Mr Rolfe and from Mr Rolfe to the IRT members at Alice Springs Police Station.

967. A system should have been in place that required written records of those briefings, to minimise the risk of miscommunication.

968. SSgt Furniss assumed that a verbal briefing would be provided by A/Sgt McCormack, while A/Sgt McCormack, who was busy managing the point-of-sale-intervention, largely left it to Mr Rolfe to brief the other members of the IRT. Although A/Sgt McCormack did tell members of the IRT that they would get details from Sgt Frost on arrival in the community, he made it clear that Mr Rolfe had a superior awareness of Kumanjayi and the mission at hand. A/Sgt McCormack provided little detail of the background and rationale for the deployment of the IRT or of the intent of Supt Nobbs on deploying

them.[1077] He did not appreciate or convey to Mr Rolfe or the other members the rationale and purpose behind the "general duties/general support" aspect. He made no mention of the family of Kumanjayi Walker being intermediaries to assist in him handing himself in to police or the direction from Supt Nobbs that police were not to actively pursue or arrest Kumanjayi Walker until after the funeral. That is why it is likely that, in effect, the message A/Sgt McCormack conveyed to Mr Rolfe and the members of the IRT had condensed to: "deploy to Yuendumu to arrest Walker".

969. Cst Kirstenfeldt and Mr Rolfe, both of whom had been involved in an attempt to arrest Kumanjayi that week, had been expecting a call out of the IRT to assist with the arrest in Yuendumu[1078] and it must have made sense to them that this was the focus of the deployment. Further, Mr Rolfe had a firm view of the mistakes (as he saw it) that Officers Hand and Smith had made on 6 November[1079] and had informed Sgt Bauwens about that incident because he thought the IRT would be called out to assist with the arrest.[1080]

The IRT protocols were lacking- compare those for the TRG

970. As is clear from this and the next two chapters, Mr Rolfe does not bear sole responsibility for the cascade of events that followed. The loose procedures and substandard SOP of the IRT directly contributed to the failure of the mission. Although the IRT is currently disbanded, there are important lessons for the future in the event any equivalent group is ever re-established, and also for occasions when police are called out from Alice Spring to attend jobs in remote communities. Those lessons include: the need for a better SOP with

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1077 Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2190.

1078 Inquest evidence of Constable James Kirstenfeldt on 19 October 2022 at 2043.

1079 That they had "frozen in fear": Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1039 and 3 March 2022 at 1115. See also Inquest evidence of Zachary Rolfe on 27 February 2024 at 5340.

1080 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1039, 1133.

clear lines of authority, a formal risk assessment, and clear briefing procedures which would include record keeping.

971. If the Tactical Response Group (**TRG**) had been called out, then the types of formal protocols described above would have been in place. At the relevant time, the TRG, which is based in Darwin, had been operating since at least 1991 and had protocols that required, amongst other things:[1081]

(a) Communication with the officer in charge or remote sergeant requesting TRG support, to clearly identify what the TRG's task is to be, so that appropriate planning can be undertaken.[1082]

(b) A risk assessment to be conducted in relation to the person or persons to be apprehended, using a standard risk matrix.[1083]

(c) Allocation of a team leader.[1084]

(d) Identification of the local Forward Commander, so that the TRG members know the chain of command.[1085]

(e) Video recording of briefings, and decision making processes.[1086]

(f) A formal briefing.

972. Although the IRT was formulated to fill a gap in available resources based in Alice Springs, the semi-professional, voluntary and part-time nature of the

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1081 Although the "professionalism" of the TRG was called into question by Mr Rolfe when he revealed evidence of a racist awards ceremony that took place at the Christmas function held each year, there was no evidence that this impacted their planning and execution of TRG jobs. The Inquest received evidence of the written protocols and procedures applicable to the TRG, which clearly demonstrated their superior procedures in place for planning and leadership. See inquest evidence of Constable Mitchell Hansen on 27 October 2022 at 2673-2677.

1082 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2513.

1083 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2506; Affidavit of Deputy Commissioner Murray Smalpage affirmed 12 July 2022 [7-120A] Annexure MS-12 Alice Springs Immediate Response Team Review dated 30 May 2022 at 12.

1084 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2511; Inquest evidence of Constable Mitchell Hansen on 27 October 2022 at 2676.

1085 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2514.

1086 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2524, 2534.

group appears to have led to sub-standard protocols that were not the subject of any rigorous oversight. That is not the fault of any one individual. Sgt Bauwens was himself managing the group in a part-time and often voluntary capacity and a second in command (**2IC**) was never formally appointed or trained.[1087] One problem that is clear in hindsight is that, with Sgt Bauwens away on leave, there was no-one else who could step in. In particular, there was no-one else who had Sgt Bauwens' prior level of experience with the TRG. Sgt Bauwens had worked in the TRG for around ten years. Had he been at work on 9 November 2019, he would likely have assumed the role of Team Leader and imposed a more disciplined approach. The fact that those protocols were not in place is not the fault of any one individual, but it is a symptom of an ad hoc, underfunded group whose mission expanded under the direction of Sgt Bauwens, without sufficient resourcing and oversight.

The "kit" of weapons taken to Yuendumu

973. In accordance with the instructions given by Supt Nobbs, the IRT members had been directed to wear their blue police uniforms. It does not appear that his instruction to "take their full kit" was passed on, so the members determined for themselves what they would take, as follows:

(a) C1C Eberl took his Glock pistol, an AR15 rifle, Aerosol Subject Restraint (**ASR**) or pepper spray, Baton, Camouflage uniform, and10 Calibre Ballistic Vest (but no Electronic Control device (ECD) or Taser),

(b) C1C Hawkings took his Glock pistol, an AR15 Rifle, ECD, ASR, Baton, 10 Calibre Ballistic Vest (but no load bearing vest or helmet),

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[1087] Inquest evidence of Sergeant Lee Bauwens on 22 February 2024 at 4940.

(c) Cst Kirstenfeldt took a Bean Bag Shotgun, Glock pistol, ECD, ASR, handcuffs, radio, spare magazine and Baton (but no load bearing vest), and

(d) Mr Rolfe took his Glock pistol, a spare magazine, taser, pepper spray, Baton and handcuffs, and was wearing his tactical body armour.[1088]

974. According to Mr Rolfe, a few days prior to the trip, he had "jarred [his] right thumb and wrist a little bit" when training in the gym, and he strapped it up to give it more support before he left the station.[1089]

The IRT and dog handler depart Alice Springs for Yuendumu in three cars

975. SC1C Donaldson was called up by SSgt Furniss who told him that the nurses had left Yuendumu due to break-ins and the police dog was needed to deal with property crime and to assist with the arrest of Kumanjayi Walker. SC1C Donaldson departed from his home residence with police dog Loki. He briefly stopped at Alice Springs Police Station but did not attend any briefing and then headed straight to Yuendumu, arriving before the other officers.

976. At around 4pm, the four members of the IRT left Alice Springs for Yuendumu. They broke up into two groups to travel in separate cars. Mr Rolfe and Cst Kirstenfeldt, who socialised outside of work and were members of the same patrol group, were in one car and C1C Hawkins and C1C Eberl were in the other.

977. When Mr Rolfe was asked whether he recalled any "conversation … about the mission" in the car with Cst Kirstenfeldt, he said:[1090]

> "I believe there was a brief conversation that we were, obviously, aware that the mission was to arrest Walker. The only comment

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1088 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1048.
1089 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1049.
1090 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1050.

> that I can recall myself making is that we should've been sent out earlier. As in, days earlier, not hours earlier on that day."

978. The significance of the three cars departing separately is that they each arrived in Yuendumu at different times, and as each car arrived the members met separately with Sgt Frost before one short meeting where all 5 were finally in the same room with her. As set out in the next chapter, that fractured Sgt Frost's briefing, and added to the miscommunication that subsequently occurred.

CHAPTER SEVEN THE 5AM ARREST PLAN

Introduction

979. Events moved quickly on the afternoon on 9 November 2019 and by the time the four IRT members set out on their drive to Yuendumu, Sgt Frost was still in the process of finalising the Operations Order that was intended to govern their actions.

980. The evidence heard at inquest demonstrates that the IRT members were told to expect a briefing from Sgt Frost when they arrived, but the staggered arrivals and the conduct of Mr Rolfe and Cst Kirstenfeldt, who arrived in community first and met with Sgt Frost before Constables First Class Hawkings and Eberl, muddied the waters of the subsequent briefing given by Sgt Frost. That sequence of events significantly contributed to the communication breakdown between Sgt Frost and the IRT as a team.

981. On arrival, Sgt Frost made available to Mr Rolfe and Cst Kirstenfeldt a printed copy of the email containing the Operations Order which set out the plan for them to commence duties on 9 November 2019 at 11pm, at which time the IRT were to conduct high visibility patrols and respond to call outs. On 10 November 2019 the IRT were to meet SC1C Donaldson and Yuendumu local member Cst Alefaio at 5am to attempt the arrest of Kumanjayi Walker. Ultimately, Mr Rolfe effectively re-briefed the four IRT members and SC1C Donaldson, jettisoning the 5am arrest plan set out in the Operations Order and substituting an inferior approach, to attend the houses of interest and "grab up" Kumanjayi immediately, without the benefit of a local member.

982. The following chapter is set out under these topics:

(a) Drafting of the Operations Order, with a 5am arrest plan;

(b) The Ops Order/arrest plan is emailed to the IRT by Sgt Frost at 4.45pm;

(c) Briefing of the IRT in Yuendumu by Sgt Julie Frost:

i. SC1C Donaldson arrives first and is briefed and goes into community,

ii. Sgt Frost briefed the IRT in two separate groups,

iii. Briefing Cst Kirstenfeldt and Mr Rolfe is "challenging",

iv. In spite of the challenging situation, Mr Rolfe and Cst Kirstenfeldt are briefed on the 5am arrest plan,

v. Mr Rolfe and Cst Kirstenfeldt are provided copies of the Ops Order/arrest plan,

vi. C1C Eberl and C1C Hawkings arrive, and a further part of the briefing takes place, and

vii. SC1C Donaldson is called back to Yuendumu Police Station;

(d) Mr Rolfe assumed a de facto leadership role, and briefs the team on a different plan; and

(e) A new plan that is not "intel gathering".

Drafting of the Operations Order, with a 5am arrest plan

983. After the IRT call out was approved, Sgt Frost was instructed by Supt Nobbs to contact A/Sgt McCormack for assistance to prepare the Operations Order (Ops Order or arrest plan).[1091]

984. A/Sgt McCormack compiled some detail around the arrest target (Kumanjayi) and the deployed members, then forwarded the information by email to Sgt

[1091] Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 34-35; Inquest evidence of Sergeant Julie Frost on 21 November 2022 at 823, Sgt Frost confirms the arrest plan and Ops Order are one and the same.

Frost and several other recipients at 4.22pm.[1092] The text of the email (as written) was as follows:

> Date: 09/11/2019
>
> **IRT call out- Arrest of Violent Offender- WALKER/Charles (Arnold)**
>
> WALKER is an active target for Breach Suspended Sentence (9118468)
>
> Active target to be arrested for assault Police (9126603)
>
> Multiple alerts for violent behaviour
>
> Auth: Supt NOBBS
>
> **SITUATION:**
>
> 06/11/2019 Yuendumu Members HAND and SMITH attended House 577 Yuendumu community to arrest WALKER. WALKER came at members while holding an axe and fled the location.
>
> Of note funeral is taking place in community this weekend
>
> **TASK:**
>
> Provide a local presence of armed Police to uphold law and order in the community, provide support to local members.
>
> Arrest WALKER and transport back to Alice Springs
>
> **IRT MEMBERS:**
>
> Rolfe
>
> Kirstenfeldt
>
> Eberl Hawkins

[1092] Inquest exhibit 12: "Email from A/Sgt Shane McCormack to Sgt Julie Frost 9 November 2019 at 16:24 (annexure C to affidavit of Superintendent Nobbs 29.11.19)" (Tendered 20 October 2022).

Dog Handler- Donaldson and GP dog

HOURS

09/11/2019: 1430 TO BE CONFIRMED

EQUIPMENT:

Bean Bag Shotguns x 2, 2-AR15's Swags and safety equipment.

VEHICLES:

652- (cage vehicle)

CEPO 865

985. The detail recorded by A/Sgt McCormack in this email demonstrates his understanding of the plan. First, it specified the dual purpose of the IRT mission, which was to provide a "local presence of armed Police to uphold law and order in the community, provide support to local members", as well as to arrest Kumanjayi; second, it records the axe incident and multiple alerts for violent behaviour, emphasising the risk Kumanjayi may pose in another arrest scenario; and third, it notes that a funeral is taking place in community this weekend, although it does not specify that Kumanjayi's family was involved.

986. In addition to Sgt Frost, the email was addressed, or copied, to Supt Nobbs, SSgt Alistair Gall, Sgt Lee Bauwens, SSgt Shaun Furniss and C1C Hawkings, among others, but not to Mr Rolfe or Cst Kirstenfeldt.

The Ops Order/arrest plan is emailed to the IRT by Sgt Frost at 4.45pm

987. Sgt Frost had been instructed to seek the assistance of A/Sgt McCormack before she completed the Ops Order, which she completed promptly after receiving his email. In those circumstances, it was not possible for her to complete the Ops Order any earlier.

988. Between 4:24pm and 4:49pm, Sgt Frost finalised the arrest plan in the form of the Ops Order.[1093] She copied the information regarding equipment, the identity of the IRT members, and vehicles into the Ops Order, and emailed A/Sgt McCormack to thank him for his assistance.[1094]

989. At 4:49pm, Sgt Frost emailed Supt Nobbs the Ops Order/arrest plan,[1095] and one minute later, Supt Nobbs phoned Sgt Frost back to tell her that the order was approved for forwarding to the IRT.[1096]

990. At 4:59pm, Sgt Frost emailed the Ops Order/arrest plan to each of the members of the IRT, copying the dog handler SC1C Donaldson, Cst Alefaio, Supt Nobbs and others.[1097] There is no dispute that at the time the email was sent to the IRT and SC1C Donaldson, all five officers were in transit to Yuendumu and they could not access their emails enroute.

991. In preparation for the arrival of the Alice Springs members Sgt Frost printed five copies of the four page email of the Ops Order/arrest plan and placed them on a desk in the Yuendumu muster room, together with single page A4 maps and an A3 laminated map of the Yuendumu community.[1098]

992. Given the significance of the four-page Ops Order/arrest plan at the Inquest, it is worth setting all of it out here, with each page identified by page numbers which have been added at the top, for ease of reference:

[PAGE 1]

1093 Committal evidence of Sergeant Julie Frost on 1 September 2020 [7-39A] at 23.

1094 Trial exhibit 1.12: "FROST emails with McCORMACK on 9.11.19 at 1622-1647" [19-56].

1095 Inquest exhibit 13: "Email from Sgt Julie Frost to Supt Nobbs 9 November 2019 at 16:49 (annexure D to affidavit of Superintendent Nobbs 29.11.19)" (Tendered 20 October 2022).

1096 Trial exhibit 1.5: "Summary of CCRs and RCCRs on 9.11.19" [19-56] at 2; Trial evidence of Sergeant Julie Frost on 11 February 2022 [7-39B] at 232; Chronology of events of 6-9 November 2019 prepared by FROST [7-38] at 3.

1097 Inquest exhibit 14: "Email from Sgt Julie Frost to IRT, Watch Commanders and Alice Springs Supervisors 9 November 2019 at 16:59 (annexure E to affidavit of Superintendent Nobbs 29.11.19) ("the arrest plan")" (Tendered 20 October 2022).

1098 Trial evidence of Sergeant Julie Frost on 11 February 2022 [7-39B] at 178, 181, 186, 234; Inquest evidence of Senior Constable First Class Christopher Hand on 19 September 2022 at 663-665.

Chapter Seven

Date: 09/11/2019

Arrest of [Kumanjayi] WALKER - PROMIS 9126603

Good afternoon all

Please be advised of the following:

IRT call out- Arrest of violent offender - Arnold Charles WALKER

Authorisation - Supt Nobbs

TASK - Arrest WALKER and transport back to Alice Springs. Provide a local presence of armed police to uphold law and order in the community and provide support to local members.

SITUATION:

At around 00:40hrs on 29 October 2019, WALKER removed his EMD and absconded from CAAPU. WALKER returned to Yuendumu sometime after absconding primarily for the purpose of attending a family funeral (Saturday afternoon on 9/11/19)

At around 6:25pm on 6/11/2019, members HAND and SMITH attended House 577 in Yuendumu to arrest WALKER after a warrant was issued for his arrest, having received information that WALKER was currently at the location. Upon opening the bedroom door, WALKER'S partner Rekeisha ROBERTSON obstructed members from entering allowing WALKER time to retrieve an axe that was secreted under bedding. He ran at members threatening member SMITH first and then member HAND. He was then able to escape and was chased by members. WALKER threw rocks at the police vehicle, causing damage to the vehicle in order to further evade police. WALKER has remained outstanding since this time.

WALKER is currently now facing fresh offences as follows:

- Criminal Damage (removal of EMD at CAAPU)
- Assault Police
- Criminal damage to Police vehicle
- Breach Suspended Sentence

Arnold WALKER

DOB: 13/10/2000

PID:869819

[PAGE 2]

[three colour photographs of Kumanjayi were included here]

Please be advised of numerous alerts for May try to escape custody / May be suicidal / Violence alerts

MEMBERS:

IRT - Adam EBERL / Tony HAWKINS / Zac ROLFE / James KIRSTENFELDT

SDOU - Adam DONALDSON

Local members - Felix ALEFAIO / Julie FROST. Member HAND will remain separate to operation due to conflict of interest.

PLAN-DAY 1

Saturday 9 November 2019

11pm - IRT commence duty and conduct high visibility patrols and respond to call outs

Sunday 10 November 2019

5am - SDOU DONALDSON and Yuendumu ALEFAIO commence duty along with IRT members to effect arrest of WALKER.

[PAGE 3]

If arrested –

- WALKER to be taken to Yuendumu Watch House and placed on Section 137 PAA and will be immediately conveyed by 2 x IRT members (pending fatigue levels) in to ASP W/H along with SDOU member travelling behind in convoy for additional

security measures. The file and transport risk assessment will be completed in event of arrest. Interview and completion of full file to be completed by crime members if available. The 2 IRT members and SDOU member will remain in ASP.

- If fatigue levels exist - FROST to be called out and WALKER will be conveyed by FROST/ALEFAIO with SDOU member DONALDSON travelling in convoy for additional security.

- 2 remaining IRT members to remain in Yuendumu on stand down and to provide high visibility patrols as well as on-call duties from 11pm - 7am.

- Local members to commence duty as per rostered shifts (as below)

No arrest - IRT and SDOU to stand down until Sunday evening where the above plan will again be implemented.

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PLAN - DAY 2

Sunday 10 November 2019

11pm - IRT commence duty and conduct high visibility patrols and respond to call outs

Monday 11 November 2019

5am - SDOU DONALDSON and Yuendumu ALEFAIO commence duty along with IRT members to effect arrest of WALKER.

If arrested –

- WALKER to be taken to Yuendumu Watch House and placed on Section 137 PAA and will be immediately conveyed by 2 x IRT members (pending fatigue levels) in to ASP W/H along with SDOU member travelling behind in convoy for additional security measures. The file and transport risk assessment will be completed in event of arrest. Interview and completion of full file to be completed by crime members if available. The 2 IRT members and SDOU member will remain in ASP.

- If fatigue levels exist - FROST to be called out and WALKER will be conveyed by FROST/ALEFAIO with SDOU member DONALDSON travelling in convoy for additional security.

- Local members to commence duty as per rostered shifts

No arrest - Liason with Supt Nobbs and Supt Vicary.

IMPLEMENTATION OF PLAN

LOCATIONS OF INTEREST

- House 577 Yuendumu (primary residence)

- House 512/515/516/454 (Jean Brown)

EQUIPMENT:

[PAGE 4]

- Bean Bag Shotguns x 2, 2-AR15's

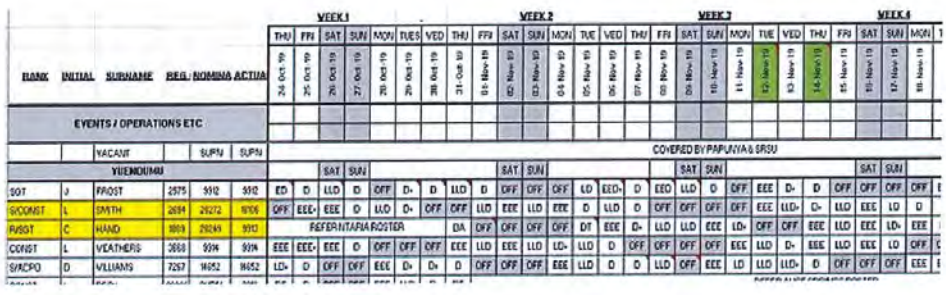
- Swags and safety equipment.

VEHICLES:

- ASP 652

- CEPO 865

ADMIN:



PROMIS 9118468 - Breach of suspended sentence

PROMIS 9126603 -Aggravated assault - police members

> Overtime hours from 9/11/2019 - 14:30hrs onwards (to be confirmed).
>
> Cost Code-16EACA07
>
> Station journal for OT recording - 8837911
>
> Thankyou
>
> Julie

Briefing of the IRT in Yuendumu by Sgt Julie Frost

SC1C Donaldson arrives first and is briefed and goes into community

993. The first of the group of five officers to arrive from Alice Springs was the dog handler, SC1C Donaldson, who can be seen on the Yuendumu Police Station CCTV to enter the muster room at 5.49pm,[1099] where he remained with Sgt Frost for thirty minutes.[1100] During this time, Sgt Frost briefed SC1C Donaldson on recent events in Yuendumu, including the withdrawal of health services following an increase in property offending and the 6 November 2019 axe incident. SC1C Donaldson was briefed on Sgt Frost's plan for the IRT and dog unit and provided with a copy of the Ops Order and map. He can be seen holding the Ops Order at 6:09pm on the station CCTV.[1101]

994. According to SC1C Donaldson, he read the Ops Order "then and there".[1102] He knew that Sgt Frost was his senior officer and that, having been handed a document by her with information relevant to his deployment, it was his duty to read the document carefully.[1103] He was told by Sgt Frost, consistent with

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1099 Trial exhibit 2.4: "87 Stills from YPS CCTV" [19-57] at 1.

1100 Trial exhibit 2.4: "87 Stills from YPS CCTV" [19-57] at 4.

1101 Trial evidence of Senior Constable First Class Adam Donaldson on 15 February 2022 [7-30B] at 359-360; Trial exhibit 2.4: "87 Stills from YPS CCTV" [19-57] at 11.

1102 Trial evidence of Senior Constable First Class Adam Donaldson on 15 February 2022 [7-30B] at 354.

1103 Inquest evidence of Senior Constable First Class Adam Donaldson on 20 October 2022 at 2141-2142.

the Ops Order, that the plan was that the IRT were "to be assisting with the unlawful entries at the nurses quarters to start with" and that the attempted arrest of Kumanjayi Walker was planned for "the following day".[1104] He understood that this plan had been designed by Sgt Frost and Supt Nobbs and that the ultimate authorisation or approval for the plan had come from Supt Nobbs.[1105] He understood that an early morning arrest was a common police tactic.[1106] With the benefit of hindsight, it is a shame that he was not present for the subsequent briefings Sgt Frost gave to the IRT, since he was a credible, comparatively neutral participant and an officer who is respectful of the chain of command.

995. While waiting for the rest of the IRT to arrive, SC1C Donaldson went for a drive around the community of Yuendumu to orient himself. CCTV footage shows him leaving the police station at 6:18pm. He returned to his car and drove towards the nurses' quarters[1107] so that he would know where to go that night, if it proved necessary.[1108] He took the Ops Order with him and likely left it in his car.[1109]

Sgt Frost briefed the IRT in two separate groups

996. The members of the IRT arrived at Yuendumu Police Station in two separate cars, more than twenty minutes apart: Mr Rolfe and Constable Kirstenfeldt

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1104 Trial evidence of Senior Constable First Class Adam Donaldson on 15 February 2022 [7-30B] at 354. See also, recorded statutory declaration of SC Adam Donaldson dated 21 November 2019 [7-30] at 15-17.

1105 Inquest evidence of Senior Constable First Class Adam Donaldson on 20 October 2022 at 2139-2140.

1106 Inquest evidence of Senior Constable First Class Adam Donaldson on 20 October 2022 at 2142.

1107 Inquest evidence of Senior Constable First Class Adam Donaldson on 20 October 2022 at 2139-2140; Trial evidence of Senior Constable First Class Adam Donaldson on 15 February 2022 [7-30B] at 360.

1108 Trial evidence of Senior Constable First Class Adam Donaldson on 15 February 2022 [7-30B] at 360.

1109 Trial exhibit 2.4: "87 Stills from YPS CCTV" [19-57] at 9.

arrived first at about 6:33pm[1110] then Constables First Class Eberl and Hawkings arrived at about 6:56pm.[1111]

997. The nature of the briefing subsequently given by Sgt Frost to the members of the IRT, who arrived in two separate cars about 20 minutes apart, is significant and was the subject of much dispute, in the various proceedings where the circumstances of Kumanjayi's arrest was aired.

998. In brief, Sgt Frost gave evidence that she did not want to commence the briefing until all four members of the IRT had arrived, and SC1C Donaldson had returned to the station, but when Cst Kirstenfeldt and Mr Rolfe arrived they wanted information. She had a "challenging" conversation with Cst Kirstenfeldt and she was, in effect, pressured to commence the briefing.[1112] At that time, she provided the two officers with a print-out of the Ops Order and discussed what was required for the 5am plan, including that a local member, Cst Alefaio, would meet with the IRT members at 5am the next day and they would set out from there. When Mr Rolfe suggested that it might be helpful to do some "intelligence gathering" to prepare for the 5am arrest, Sgt Frost agreed.

999. Sgt Frost's recollection is that around 20 minutes later, when C1C Hawkings and C1C Eberl arrived, she also told them about the Ops Order and 5am plan. When Cst Kirstenfeldt asked, "what do we do if we come across him" in the meantime, she said words to the effect of, "well, if you come across him, by all means arrest him".[1113] She did not, however, deviate in any way from the arrest plan. She was of the view that all four members were briefed on the details of the 5am arrest.

1000. On the other hand, both Cst Kirstenfeldt and Mr Rolfe denied having been given a copy of the Ops Order. They allege that while Sgt Frost discussed her

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1110 Trial exhibit 25: "CCTV Footage" [19-100] Yuendumu_Frontcounter.mp4 at 18:33.56.

1111 Trial exhibit 25: "CCTV Footage" [19-100] Yuendumu_Frontcounter.mp4 at 18:58.32.

1112 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 819.

1113 Inquest evidence of Sergeant Julie Frost on 21 November 2022 at 827; Chronology prepared by Sergeant Frost of 6-9 November 2019 [7-38] at 3.

"preference" for a 5am arrest, she did not hand them the Ops Order or specify that it was part of a formal plan.

1001. Although CCTV footage appears to show Cst Kirstenfeldt holding a document that is folded at the corner, consistent with the four-page Ops Order, Cst Kirstenfeldt claimed that this was an A4 print out of a map.

1002. Although Mr Rolfe photographed the House numbers, or locations of interest, directly from the Ops Order, he claimed that he did not know it was in fact an Ops Order and did not read the remainder of it.

1003. Mr Rolfe accepted that he was the "de facto" team leader for the mission, and that he briefed the IRT again before they set out after 7pm, but he maintained that what they were doing when they proceeded directly to search House 577 and House 511, (including telling community members that they were there to "grab up [Kumanjayi]"), was in fact just "intelligence gathering".

1004. For their part, C1C Hawking and C1C Eberl gave evidence that they were not aware of the written Ops Order and did not recall having been told by Sgt Frost about a 5am arrest plan. They recalled a brief overview by Sgt Frost where they were told some information, including houses of interest. They did not realise that there was a formal plan to hold off on an arrest until 5am, or that the local member, Cst Alefaio, would meet them at the police station around 5am so he could head out with them. They recalled Mr Rolfe conducting a briefing after Sgt Frost left, which was basically to head straight out to arrest Kumanjayi Walker with the team of four IRT and SC1C Donaldson.[1114]

1005. Such is the nature of the various events that led up to the trial and Inquest, that there became numerous versions of what these officers recall from the briefing, all of which I have taken into consideration, as well as the oral

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[1114] Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [783], fn 2232 and fn 2233 and [784] fn 2234.

evidence I heard at Inquest. In chronological order for each officer the main accounts are:

(a) Sgt Frost's evidence in her chronology of events[1115] (prepared prior to 13 November 2019[1116]), two Police interviews,[1117] at committal,[1118] at trial[1119] and at Inquest;[1120]

(b) Mr Rolfe's police notebook,[1121] account to Spotlight,[1122] at trial[1123] and at Inquest;[1124]

(c) Cst Kirstenfeldt's evidence in his two police interviews,[1125] at committal,[1126] at trial[1127] and at Inquest;[1128]

1115 Chronology of events of 6 to 9 November 2019 prepared by Sergeant Julie Frost [7-38].

1116 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 840-841.

1117 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36]; Recorded statutory declaration of Sergeant Julie Frost dated 5 December 2019 [7-37].

1118 Committal evidence of Sergeant Julie Frost on 1 September 2020 [7-39A].

1119 Trial evidence of Sergeant Julie Frost on 10 and 11 February 2022 [7-39B].

1120 Inquest evidence of Sergeant Julie Frost on 21 and 23 September 2022 at 768-954.

1121 Northern Territory Police Force Official Notebook 47301 entry by Zachary Rolfe on 10 November 2019 [7-115C] at1-7.

1122 7News Spotlight Footage video 1 [20-50], video 1 – transcript [20-51], video 2 [20-52], video 2 – transcript [20-53], video 3 [20-54] and video 3 – transcript [20-55].

1123 Trial evidence of Zachary Rolfe on 2 to 4 March 2022 at 1028-1190 [7-115A].

1124 Inquest evidence of Zachary Rolfe on 16 November 2022 at 3259-3317, 26 February to 1 March 2024 at 5087-5605 and 27 May to 28 May 2024 at 5671-5761.

1125 Recorded statutory declarations of Constable James Kirstenfeldt on 10 November 2019 [7-79] and 21 November 2019 [7-80].

1126 Committal evidence of Constable James Kirstenfeldt on 2 September 2020 at 111-129 [7-80A].

1127 Trial evidence of Constable James Kirstenfeldt on 15 and 16 February 2022 at 373-443 [7-80B].

1128 Inquest evidence of Constable James Kirstenfeldt on 19 and 20 October 2022 at 2016-2131.

(d) C1C Hawkings evidence in his three police interviews,[1129] at committal,[1130] at trial[1131] and at Inquest;[1132]

(e) C1C Eberl's evidence in his three police interviews,[1133] at committal,[1134] at trial[1135] and at Inquest.[1136]

1006. For the reasons explored below, I reject the versions given by Mr Rolfe and Cst Kirstenfeldt at Inquest with respect to the briefing given by Sgt Frost. Where there is a conflict, I prefer the evidence of Sgt Frost, particularly where it is corroborated by other evidence.

1007. Ultimately, I have concluded that Sgt Frost, C1C Eberl and C1C Hawkings have done their best to give an honest account of what they recall from the briefing. Regrettably, there was a genuine breakdown in communication between the three, partly as a result of Sgt Frost having been persuaded to start the briefing before all of the group arrived, so that it ended up being fractured, and partly because Mr Rolfe took the lead as soon as Sgt Frost went back to her desk, and he briefed the IRT and SC1C Donaldson on actions that were not consistent with those documented in the Ops Order and explained to him and Cst Kirstenfeldt by Sgt Frost.

1129 Recorded statutory declarations of Constable First Class Anthony Hawkings on 10 November 2019 [7-57], 13 November 2019 [7-58] and 11 February 2020 [7-59].

1130 Committal evidence from Constable First Class Anthony Hawkings on 2 September 2020 at 83-110 [7-59A].

1131 Trial evidence of Constable First Class Anthony Hawkings on 17 and 18 February 2022 at 496-552 [7-59B].

1132 Inquest evidence of Constable First Class Anthony Hawkings on 18 and 19 October 2022 at 1907-2015.

1133 Recorded statutory declarations of Constable First Class Adam Eberl dated 10 November 2019 [7-31], 13 November 2019 [7-32] and 11 February 2020 [7-33].

1134 Committal evidence of Constable First Class Adam Eberl on 2 September 2020 at 131-171 [7-33A].

1135 Trial evidence of Constable First Class Adam Eberl on 22 and 23 February 2022 at 680-726 [7-33B].

1136 Inquest evidence of Constable First Class Adam Eberl on 17 and 18 October 2022 at 1748-1905.

Briefing Mr Rolfe and Constable Kirstenfeldt is challenging

1008. The first of the IRT team to arrive were Cst Kirstenfeldt and Mr Rolfe, who can be seen on the CCTV entering the Yuendumu Police station at 6.33pm, before crossing a corridor and entering the muster room. What happened next, and until the full complement of the IRT and SC1C Donaldson headed out into the community around 7.05pm, was the subject of significant controversy, and cross examination.

1009. I accept the evidence of Sgt Frost that she did not want to give the briefing to members of the IRT piecemeal and would have preferred to wait until all four IRT members had arrived, and SC1C Donaldson had returned, before she commenced. Instead, Cst Kirstenfeldt and Mr Rolfe wanted information as soon as they arrived.

1010. Sgt Frost gave her first statement to police four days after the shooting, on 13 November 2019, when she had no real knowledge of any of the IRT officers and no reason to be critical of them. She described her interaction with the first two officers who arrived as follows:[1137]

> "Um they came in and ah it was a bit of a...challenging conversation with them in terms of ah they weren't particularly listening I guess but ah regardless, I gave them a mini brief, nothing formal, um and then, probably half hour later the other two…arrived..."

1011. When asked to expand on what she meant by a challenging conversation, Sgt Frost focused on Cst Kirstenfeldt, explaining that:[1138]

> "I guess it was ah along the lines that um the members really wanted to take over the conversation, well I suppose KIRSTENFELDT wanted to take over the conversation and, and um control it and um…wasn't prepared to really listen to what I was saying, he just wanted um…ah it was frustrating, I guess, um…in

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[1137] Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 16.

[1138] Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 31.

> terms of, I felt that he was totally trying to take over the station at that point in time. Um…that's it."

1012. In the Inquest Cst Kirstenfeldt conceded that he was asking a lot of questions of Sgt Frost, focussed on the task of locating and arresting Kumanjayi,[1139] and that he was trying to obtain information from her[1140] although Mr Rolfe considered that Cst Kirstenfeldt was professional.[1141]

1013. The challenging manner that Sgt Frost describes is, however, consistent with how I have seen Cst Kirstenfeldt behave on another occasion captured on BWV, when his conduct in barking orders at a suspect was unprofessional, aggressive and intimidating.[1142]

1014. Having assessed the evidence, I accept Sgt Frost as an honest and accurate witness on this point. There was no reason for her to embellish the difficulty she experienced with this conversation (which on one view was an admission on her part as to a shortcoming in her leadership), and I am satisfied she did not do so. I have no difficulty finding that Cst Kirstenfeldt was intense and challenging as described by Sgt Frost and that he was asking a lot of focussed questions as he conceded, affecting her capacity to exert her authority at a point in time when she was exhausted by overwork, and when she was grateful to have reinforcements from Alice Springs. As for Mr Rolfe, I do not think he was overtly dismissive of Sgt Frost, but he came to Yuendumu with a single determination to arrest Kumanjayi and had told Cst Kirstenfeldt in the car that management should not have waited so long to call out the IRT.[1143]

1139 Inquest evidence of Constable James Kirstenfeldt on 19 October 2022 at 2044.

1140 Inquest evidence of Constable James Kirstenfeldt on 19 October 2022 at 2049.

1141 Inquest evidence of Former Constable Rolfe on 28 February 2024 at 5376.

1142 Inquest MFI TT: "Cst Kirstenfeldt BWV re Woods".

1143 As discussed at the end of Chapter Six in his trial evidence it was Mr Rolfe's opinion that the IRT "should have been sent out earlier. As in days earlier not hours earlier on that day": Trial evidence of Zachary Rolfe on 2 March 2022 at 1050.

Despite the challenging situation, Mr Rolfe and Constable Kirstenfeldt are briefed on the 5am arrest plan

1015. The evidence given by Sgt Frost on 13 November, four days after Kumanjayi's death, impressed me as an honest recollection and account. When asked about the "message" or "briefing" she was trying to give to the first two officers who arrived, she explained:[1144]

> "Yeah, well look, it was a basic brief, it was a basic message and, "All you're required to do is um provide that high visibility Policing and um get some intel on um [Kumanjayi] and get ready for a 5:30am arrest" and it was sort of um kind of said to me that you know, "This is how we do it" um it's like, "Okay, well if, I appreciate the fact that you've come out and I appreciate the fact you've come to help up, if that's how you do it, that's fine but this is what your mission is and…that is to provide that high visibility Policing and to make an arrest of [Kumanjayi] that is your mission, I suppose.
>
> Um so I didn't, look, I didn't override or didn't say um anything necessarily, I thought, "Well I'm gonna, you're the specialist team, I'll let you do what you need to do, um and I trust that you'll do it very well and you'll arrest [Kumanjayi] and um you'll cover the call, um so we can actually get some sleep um and I'll be ready for, at 5:30 to hear that you've arrested him and I'll be ready to be called back in for the Watch House side of things and to get the risk assessment sent into the bosses for approval to get him transported straight in" um so I guess I didn't really particularly override what they had planned. Adam, by that – Adam DONALDSON was already cruising around the Community…"

1016. Sgt Frost "got the impression that they didn't really want me to tell them how to do their job", but she was very thankful they were there to help.[1145] She described them as "all professional and um ready to work hard and ready to work throughout the night". She said:[1146]

[1144] Sgt Frost initially mistakenly says that Cst Kirstenfeldt arrived first with C1C Eberl, but she is clearly referring to Mr Rolfe.

[1145] Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 33.

[1146] Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 33-34.

> "Look, do your intel thing and then go and have a nap and then get up and you know, do what you need to do or get up at 5:30" and you know but they said, "No, we're going to be working all through the night."

1017. Sgt Frost gave a similar account when she participated in a second interview a few weeks later, on 5 December 2019. In relation to the informal or "mini briefing" she gave to Cst Kirstenfeldt and Mr Rolfe, she explained (emphasis added):[1147]

> "I gave a Briefing I, I, minimal, Bri-, not minimal Briefing, it wasn't a formal Briefing I suppose, it was a ah, this is the situation, this is what we, what I'm expecting you guys to do, this is a map, these are the locations of interest. Um, and I reiterated the fact, I think I gave them a copy of the um, the email each which laid out what I expected or what I wanted and that was to provide high visibility Po- Policing in the Community overnight and then at 5:30 in the morning, I will then um, ah, Constable Felix ALEFAIO will um, start duty and he will then assist with the arrest. Because Felix had known [Kumanjayi], ah or Mr WALKER, um, so I wanted that local knowledge to be with, with the Team when they did the arrests.
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> …
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> …overnight the Plan was, was that they were going to do the high visibility Policing, familiarise themselves with the Town, perhaps gather some Intel…you know, just prepare for the arrest. They were also going to cover call for…Chris HAND and myself because we'd been up all night the previous night as well. So I gave them the run down on um, you know this, if you get called to this, um you know, we'll 'if you get called to Yuelamu, this is the path you take or if you not sure, Felix can come in and assist. So, um, we're talking about the Call side of things as well. But the whole u…plan was that they were going to come, they were going to be working all through the night, um be available for Call, anything that happens. Um, and then at 5:30 in the morning,…Felix will commence duty and then they will have a Briefing then amongst themselves um, I was gonna step out of that conversation because of um, the potential for ah, me being conflicted due to my partner being involved on the um, the ah, axe incident. Um, and that's, and that, that was the Plan. Ah, and I did say that **'look, if you do come across him by some chance, by all means…no brainer…go and**

[1147] Recorded statutory declaration of Sergeant Julie Frost dated 5 December 2019 [7-37] at 6-7.

> **lock him up'**. But um, the, the whole plan was, was that, that's what they were gonna, there to do."

1018. When asked whether Cst Kirstenfeldt and Mr Rolfe agreed to the plan, Sgt Frost explained that they didn't agree or disagree, and she expected that what she wanted would be followed.[1148]

1019. Consistent with the evidence of Sgt Frost, Cst Alefaio gave a frank interview with investigators on 11 November 2019, less than two days after the shooting, in which he stated that he was sitting at his computer in the muster room and overheard Sgt Frost briefing IRT members in relation to the 5am plan. Cst Alefaio was not under any scrutiny at that (or any other) time and had no reason to be anything but frank. He said that Sgt Frost told the officers that the plan was for the IRT to "drive around the community…and make their presence known, because there was a lot of unlawful entry (sic) as well…and you know, sort of and at the same time…while they are there they're going to start getting intels of ah [Kumanjayi] Walkers whereabout (sic)".[1149] As for the timing of the arrest, the plan was that "we" (that is, the IRT, the dog handler and Cst Alefaio) would "go look for him at 5:00am in the morning".[1150] Constable Alefaio gave that evidence under oath at trial,[1151] and in the Inquest.[1152]

1020. When giving evidence at the jury trial in 2022, Mr Rolfe stated that Sgt Frost let them into the station and led them into the muster room, where SC1C Hand and Cst Alefaio were present. SC1C Hand was sitting at a desk on the opposite side of the muster room, and Cst Alefaio was sitting near him. When asked

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1148 Recorded statutory declaration of Sergeant Julie Frost dated 5 December 2019 [7-37] at 7.

1149 Recorded statutory declaration of Constable Felix Alefaio dated 11 November 2019 [7-2] at 14.

1150 Recorded statutory declaration of Constable Felix Alefaio dated 11 November 2019 [7-2] at 15.

1151 Trial evidence of Constable Felix Alefaio on 15 February 2022 [7-2A] at 368; Inquest evidence of Constable Felix Alefaio on 20 September 2022 at 734.

1152 Trial evidence of Constable Felix Alefaio on 15 February 2022 [7-2A] at 368; Inquest transcript of Constable Felix Alefaio on 20 September 2022 at 734.

what he spoke to Sgt Frost about, Mr Rolfe gave evidence of the following conversation (emphasis added):[1153]

> "One of the first things we started speaking about after introductions was our mission for being there was - in our mind - was to arrest Kumanjayi Walker. She mentioned to me specifically that **she'd prefer us to arrest Kumanjayi in the morning at about 5am** because she was tired and she wanted to have a night off to sleep, but she did tell me that if we were to arrest him during the night she would - we were to call her, and her and the other local police, would attend the station and handle the custody processing of Kumanjayi."

1021. Mr Rolfe further stated that Sgt Frost produced some small maps of the community on an A4 printout, and an A3 map that was laminated. When Sgt Frost mentioned arresting Kumanjayi at 5am, Mr Rolfe said he asked where Kumanjayi would be at that time, and she told him that "she had no idea", but was showing them on the map the houses of interest of "where he and his friends had been linked to".[1154]

1022. Similarly, in his evidence at the Inquest Mr Rolfe said:[1155]

> "Julie Frost told me that she wanted us to arrest [Kumanjayi] Walker at 5am. I asked her where he was going to be at 5am. She said she had no idea and I said words to the effect of 'in order to make a plan, an arrest plan, we need more intelligence than that and we will need to go and gather intelligence."

1023. From his earliest evidence, reiterated under oath at the Inquest, it is clear that Mr Rolfe knew of Sgt Frost's plans for a 5am arrest, no matter the label he gave to her commitment to that plan or his assessment of its viability.

1024. He also knew something about her plans for general duties policing overnight because at his trial he said that Sgt Frost had suggested that he could conduct an RBT (random roadside breath test). But claimed he was confused because

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1153 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1059.

1154 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1060.

1155 Inquest evidence of Mr Zachary Rolfe on 28 February 2024 at 5377.

he maintained he believed his only task was to arrest Kumanjayi Walker, and he did not see how setting up an RBT could assist.[1156]

1025. Mr Rolfe gave evidence that Sgt Frost told him she had no further intelligence from the Wednesday night, but she did know about a change in the funeral arrangements.[1157] She said that she had attempted to negotiate with the family and the timings for that negotiation had changed. She said that the final negotiation time was after the funeral and she had informed the family that if he hadn't handed himself in after the funeral she would get a specialist team from Alice Springs in to affect the arrest.

1026. Mr Rolfe gave evidence that prior to the arrival of C1C Hawkings and C1C Eberl, he raised with Sgt Frost the need for further intelligence to inform her (in his words) "preference" for a 5am arrest. At his trial he said:[1158]

> "...generally when IRT would attend a community we would introduce ourselves to the community - because we are guests in the community, we would introduce ourselves to the community while attempting to gather intelligence about the person that we are generally trying to locate and, at the same time, try to gain community assistance for our task. I said perhaps that's the best course forward seeing as we had no intelligence. And she agreed with me at that point. That was before the other officers arrived at the station."

1027. When asked this question by his Senior Counsel at trial:[1159]

> "And did she say anything to you, at any stage, about what would happen if you did come across him?"

1028. Mr Rolfe replied:[1160]

> "Correct, she said, 'Obviously arrest him'."

1156 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1063.
1157 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1060.
1158 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1061.
1159 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1061.
1160 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1062.

1029. Mr Rolfe claimed that in discussing the plan with Sgt Frost, he asked her for a local member to attend that evening with the IRT, but she refused to allow that to happen, and she declined to give a reason for doing so. At his trial Mr Rolfe stated:[1161]

> "And I requested that a local member come out with us, who was aware of him, could identify him from a distance, and could also know his family friends which would assist us in looking for him. Frost told me that herself and Chris Hand would not be coming out with us, because there was a conflict of interest. Because Hand had been involved in the axe incident, and Frost was his partner. She said that Felix Alefaio couldn't come out with us. But she didn't give a reason. And Felix didn't give a reason. He just looked at me blankly in regard to that."

1030. The first version of events given by Constable Kirstenfeldt in his police interview of 10 November 2019 is likely to be his genuine memory of what occurred at that briefing. He stated:[1162]

> "Ah Constable ROLFE and I drove to Yuendumu together and followed by the other vehicle with Adam EBERL and Tony HAWKINGS. Ah, we arrived here first and came straight to the station and spoke with Sergeant Julie FROST, trying to gather some Intel for an arrest target being [Kumanjayi] WALKER. He goes by both names.
>
> Um, was speaking with her, she gave us ah, information on the houses that he, that the previous incident with the assault police three days ago I believe occurred. It was at House 577, I think. It's the rear house of a group of six of them in the far corner of the camp.
>
> We waited for the other guys to get here. Ah, Julie informed us that ah, Adam DONALDSON, the Dog Handler was already here. Ah, I called him on his mobile phone, and he came back to the station.
>
> We devised a plan on gathering some information and some Intel on his whereabouts. Um, houses that he goes to, ah, other breakers that he hangs around with and also importantly ah, any family

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1161 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1062.

1162 Recorded statutory declarations of Constable James Kirstenfeldt on 10 November 2019 [7-79] at 4.

> members that don't like him but might give up information and that.
>
> So, the evening for us was initially just going to be an information gathering session and with a plan on hitting the house that we could get um, down to with some intel at about five o'clock in the morning, sorta just as the sun's coming up.
>
> Um, once everyone was here, we came up with a plan to go to the initial house where it happened, at ... I'm gonna say 577, but I'm not a hundred percent sure that's correct. Um, we went to that house.
>
> I drove. I had ROLFE with me in the car ...."

1031. Just ten days later Constable Kirstenfeldt was interviewed again on 21 November 2019. On this occasion concerning the briefing he said:[1163]

> "...spoke with Julie about what happened, where he is or where he is most likely to be, who his family and friends are, who his little crew of house breakers and all that are and where their families are, and where he's gonna' hide and where he's gonna' run, who doesn't like him and might be willing to give him up, and she wanted us to do some RBTs as well that night so, she asked how long we were happy to work for and we were happy to work through the night...
>
> ...like I said we weren't there as IRT, we were there as a force multiplier.
>
> And that so we were going to be doing general duties police work through the night for Yuendumu."

1032. Cst Kirstenfeldt also said of the plan, "we were just trying to intel gather to find out where he would so, where he would be so that we could ah, snatch and grab him later on". And similarly, "I'm pretty sure she sent the plan that we were gonna' do, or what we do anyway which is just intel gather and snatch him in early morning".

[1163] Recorded statutory declaration of Constable James Kirstenfeldt on 21 November 2019 [7-80] at 21-22. Recorded statutory declaration of Constable James Kirstenfeldt on 10 November 2019 [7-79] at 4.

1033. It is clear from Cst Kirstenfeldt's earliest accounts that he was informed of "general duties police work through the night" and the morning arrest plan which he referred to as: "five o'clock in the morning", "just as the sun's coming up", a "snatch and grab him later on" and a "snatch him early in the morning".[1164]

1034. I accept Sgt Frost's evidence on the briefing of Mr Rolfe and Cst Kirstenfeldt. Her evidence was supported not only by the evidence of Cst Alefaio but also by Mr Rolfe's and Cst Kirstenfeldt's knowledge of the 5am arrest plan as demonstrated by their evidence.

1035. Both Mr Rolfe and Cst Kirstenfeldt were together throughout the briefing. Mr Rolfe said that a 5am arrest was (as he put it) Sgt Frost's "preference" but Cst Kirstenfeldt certainly understood it more formally than that. Cst Kirstenfeldt understood that their first "evening was initially just going to be an information gathering session and with a plan on hitting the house that we could get um, down to some intel, at about five o'clock in the morning, sorta just as the sun's coming up"[1165] and that the plan was for "general duties police work through the night" and "what we do any way which is just intel gather", and to "snatch him in early morning".[1166] Where the evidence between Mr Rolfe and Cst Kirstenfeldt differs, I accept the evidence of Cst Kirstenfeldt as to the briefing covering the overnight plan for general duties/high visibility /RBT/intel gathering policing duties, followed by the 5am/sun up/early morning arrest plan. On this point Cst Kirstenfeldt's evidence is largely consistent with the evidence of Sgt Frost and Cst Alefaio; and Mr Rolfe is an outlier.

1036. Finally, I do not accept Mr Rolfe's evidence that he asked Sgt Frost if a local member could assist them with his stated "intel gathering" mission as they

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1164 Recorded statutory declaration of Constable James Kirstenfeldt on 21 November 2019 [7-80] at 23, 24.

1165 Recorded statutory declarations of Constable James Kirstenfeldt on 10 November 2019 [7-79] at 4; Inquest transcript of Constable James Kirstenfeldt on 19 October 2022 at 2039-2040.

1166 Recorded statutory declaration of Constable James Kirstenfeldt on 21 November 2019 [7-80] at 23, 24.

headed out into the community on the evening of 9 November. The Ops Order clearly specified an early morning arrest plan which involved a local member, Cst Alefaio, meeting with the IRT in the police station at 5am, before moving to the houses of interest where Kumanjayi was expected to be staying. It defies logic that Sgt Frost would have declined to give any reason for Cst Alefaio not being able to accompany them during the evening, without mentioning that she had indeed rostered him on as the local member who would meet them in the station at 5am the next day.

Mr Rolfe and Constable Kirstenfeldt are provided copies of the Ops Order/arrest plan

1037. With respect to the formal Ops Order that had been emailed to the IRT and others at 4.49pm, it was not in dispute that Mr Rolfe and other members of the IRT were enroute to Yuendumu at 4.49pm and did not receive the email before they arrived.

1038. It was, however, a matter of significant contest whether Mr Rolfe and Cst Kirstenfeldt were given a copy of that four page Ops Order once they arrived. Five copies of the Ops Order had been printed out by Sgt Frost and placed on the corner of a desk in the muster room.

1039. While SC1C Donaldson said that he was given a copy of the Ops Order by Sgt Frost before he drove around Yuendumu to get his bearings, both Mr Rolfe and Cst Kirstenfeldt denied that the document had been provided to them by Sgt Frost or referred to in her briefing. Mr Rolfe did admit, however, that in addition to the maps referred to above, Sgt Frost did "direct [him] to a piece of paper with some house numbers" of relevance on it, which he took a photo of.[1167] She then told him extra house numbers of interest and he did not recall if he wrote them down in his police notebook or on one of the maps. Mr Rolfe accepted that after the events he came to appreciate that the piece of paper

[1167] Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1061.

with the house numbers on it (that he had photographed) was part of the Ops Order, but he claimed that at the time, Sgt Frost did not identify the document as the Ops Order or arrest plan, and "the only part of that piece of paper that was brought to [his] attention was that small section with relevant house numbers".[1168]

1040. In contrast to Mr Rolfe's evidence, in his recorded statutory declaration on 21 November 2019, Cst Kirstenfeldt said that he did see an email from Sgt Frost (emphasis added):[1169]

DET SC WILSON:	Yup, what I mean by that, *obviously you got the email from Julie FROST here, the Sergeant out there.*
CST KIRSTENFELDT:	*Ah ha.*
DET SC WILSON:	And she got it to you in the email as IRT coming to assist, um, so that would mean that the –
CST KIRSTENFELDT:	*First time I saw that email was out at Yuendumu.*
DET SC WILSON:	yup
CST KIRSTENFELDT:	When we were asking Julie FROST details of what's going on. I think that was sent while we were on our way, or it got sent to people above us or, or I don't know but *I didn't see the email until I was already out there.*
	….
DET SC WILSON:	…now we are talking about the email that um had been sent out which seemed to have a plan on it and the situation, do you recall when you sort of read through that

[1168] Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1061.

[1169] Recorded statutory declaration Constable James Kirstenfeldt on 21 November 2019 [7-80] at 13 and 24.

CST KIRSTENFELDT: Ah I still don't know I have.

DET SC WILSON: Yup okay um.

CST KIRSTENFELDT: *Just skimmed through it...*

DET SC WILSON: Yup um just for the recording it's the pretty much approval that um Sergeant FROST um the plan she sent in to get approval to have you guys.

CST KIRSTENFELDT: *I'm pretty sure she sent the plan that we were gonna' do,* or what we do anyway which is *just intel gather and snatch him in early morning.*

1041. Having carefully considered all of the evidence I am comfortably satisfied that Sgt Frost not only "briefed" Mr Rolfe and Cst Kirstenfeldt of the 5am arrest plan, but, as she said in her evidence, she also provided them with copies of the Ops Order/arrest plan, with the reasonable expectation that they would read it. In coming to this finding, I was assisted by substantial objective evidence which supported Sgt Frost on this issue.

1042. The first objective evidence is CCTV footage from the Yuendumu police station which shows Cst Kirstenfeldt holding a document.[1170] He denied that this was the Ops Order and at both the trial and Inquest claimed that he may have been holding an A4 copy of a map. He was not certain, and at Mr Rolfe's committal proceedings and trial, when reminded of the contents of his 21 November 2019 recorded statutory declaration, Cst Kirstenfeldt accepted that Sgt Frost had given him a print-out of an email which he "skimmed" but thought he would "remember if it was more than one page".[1171] There is no evidence of any other email having been printed except for the Ops Order, and Sgt Frost said she printed five copies of it for the Alice Springs members. It

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1170 Trial exhibit 25: "CCTV Footage" [19-100] Yuendumu_Frontcounter.mp4.

1171 Trial evidence of Constable James Kirstenfeldt on 16 February 2022 [7-80B] at 409-411; Committal evidence of Constable James Kirstenfeldt on 2 September 2020 [7-80A] at 114; see also Inquest evidence of Constable James Kirstenfeldt on 19 October 2022 at 2049 in which he seemed to suggest he may have been holding a copy of Acting Sergeant Shane McCormack's email of 9 November 2019 extracted above (Inquest Exhibit 12).

simply does not make sense that Sgt Frost would print copies of the Ops Order for the Alice Springs police members, hand one copy to SC1C Donaldson, and then provide Cst Kirstenfeldt a different email. I have watched the footage and carefully viewed the stills, and I am persuaded to the requisite standard that Cst Kirstenfeldt was holding a multi-page document folded in the corner, and I am satisfied that the evidence establishes this was the Ops Order printed by Sgt Frost for the very purpose of providing it to the Alice Springs members. That it could be any other email defies logic.

1043. The second piece of objective evidence is a photograph of part of the Ops Order showing relevant house numbers, which was found on Mr Rolfe's mobile phone.[1172] Mr Rolfe admitted that this was a photo he had taken of the Ops Order that evening but claimed that Sgt Frost did not identify it as the Ops Order and he had not read the rest of the document.[1173]

1044. Mr Rolfe has elsewhere given evidence confirming that he is someone who pays attention to detail,[1174] and that while in the Yuendumu Police station before setting out, he was focussed on gathering "intel". In those circumstances, it is simply not plausible that when he photographed the house numbers on the Ops Order he somehow carelessly missed or misconstrued or overlooked or somehow failed to scan and appreciate the nature of the document, particularly when directly above the house numbers that he photographed there were bolded headlines that read "**PLAN-DAY 2**" and **"IMPLEMENTATION OF PLAN"**. Further, there was content that included the Monday 5am arrest plan (which was to come into effect if there had been no successful arrest on the Sunday morning), including references to the SDOU DONALDSON, ALEFAIO and the IRT in capital letters and the gamut of duties to be performed by the IRT, including conducting high visibility patrols and responding to call outs; and there were references to

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1172 Image 5005.JPG created 9/11/2019 at 6:37:21PM from Apple iPhone XS (A1920) Extraction report (redacted) [3-161] at 12763.

1173 Inquest evidence of Zachary Rolfe on 28 May 2025 at 5752-5755.

1174 In his Inquest evidence Mr Rolfe agreed that having worked as a clerk in a legal firm he understood how important attention to detail is in legal documents: Inquest evidence of Zachary Rolfe on 26 February 2024 at 5119.

Superintendents Nobbs and Vicary (which were captured in Mr Rolfe's photo). I have extracted a copy of the full page three of the Ops Order and the photo taken by Mr Rolfe of the bottom of that page to emphasise just how flimsy and unpersuasive his evidence was:

Page three of the Ops Order:[1175]

Annex E P3

If arrested –

- WALKER to be taken to Yuendumu Watch House and placed on Section 137 PAA and will be immediately conveyed by 2 x IRT members (pending fatigue levels) in to ASP W/H along with SDOU member travelling behind in convoy for additional security measures. The file and transport risk assessment will be completed in event of arrest. Interview and completion of full file to be completed by crime members if available. The 2 IRT members and SDOU member will remain in ASP.
- If fatigue levels exist – FROST to be called out and WALKER will be conveyed by FROST / ALEFAIO with SDOU member DONALDSON travelling in convoy for additional security.
- 2 remaining IRT members to remain in Yuendumu on stand down and to provide high visibility patrols as well as on-call duties from 11pm – 7am.
- Local members to commence duty as per rostered shifts (as below)

No arrest – IRT and SDOU to stand down until Sunday evening where the above plan will again be implemented.

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PLAN – DAY 2

Sunday 10 November 2019

11pm - IRT commence duty and conduct high visibility patrols and respond to call outs

Monday 11 November 2019

5am - SDOU DONALDSON and Yuendumu ALEFAIO commence duty along with IRT members to effect arrest of WALKER.

If arrested –

- WALKER to be taken to Yuendumu Watch House and placed on Section 137 PAA and will be immediately conveyed by 2 x IRT members (pending fatigue levels) in to ASP W/H along with SDOU member travelling behind in convoy for additional security measures. The file and transport risk assessment will be completed in event of arrest. Interview and completion of full file to be completed by crime members if available. The 2 IRT members and SDOU member will remain in ASP.
- If fatigue levels exist – FROST to be called out and WALKER will be conveyed by FROST / ALEFAIO with SDOU member DONALDSON travelling in convoy for additional security.
- Local members to commence duty as per rostered shifts

No arrest – Liason with Supt Nobbs and Supt Vicary.

IMPLEMENTATION OF PLAN

LOCATIONS OF INTEREST

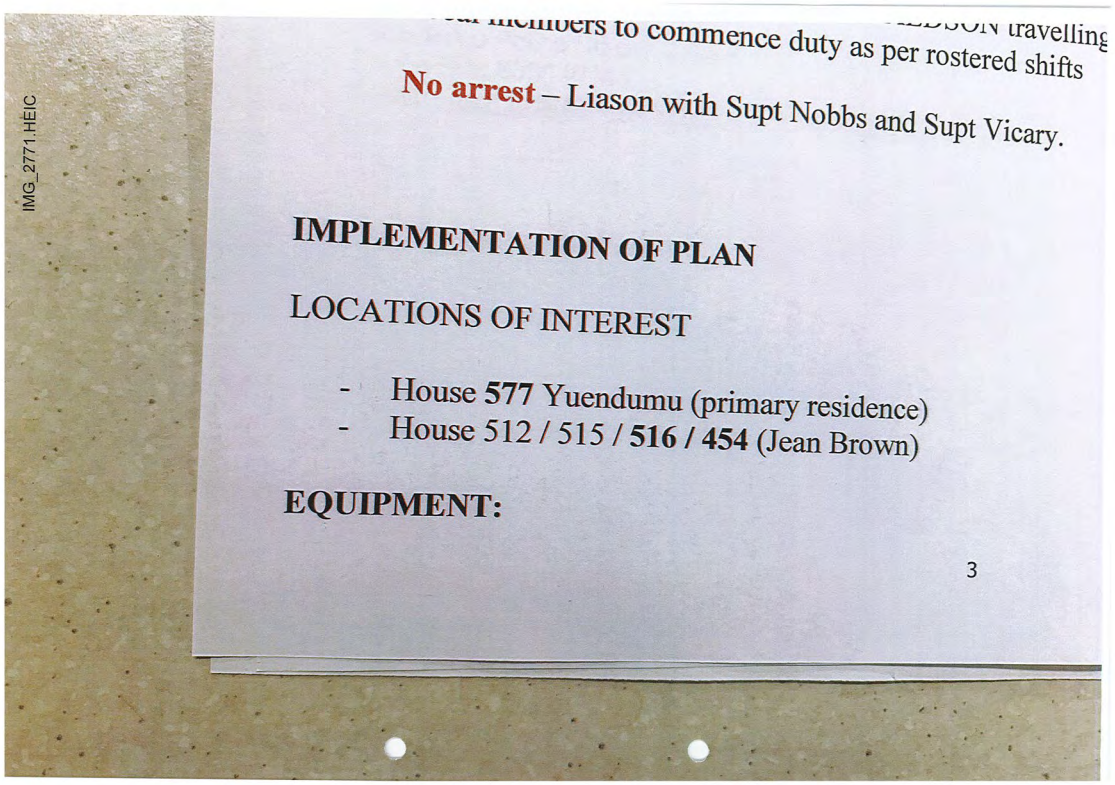
- House **577** Yuendumu (primary residence)
- House 512 / 515 / **516 / 454** (Jean Brown)

EQUIPMENT:

3

[1175] Inquest exhibit 14: "Email from Sgt Julie Frost to IRT, Watch Commanders and Alice Springs Supervisors 9 November 2019 at 16:59 (annexure E to affidavit of Superintendent Nobbs 29.11.19) ("the arrest plan")" (Tendered 20 October 2022) at 3.

Photo taken by Mr Rolfe at 6:37pm on 9 November 2019:[1176]



1045. The photo taken by Mr Rolfe at 6:37pm clearly shows that he was photographing page three of a multipage document, and the portion he photographed referenced Superintendents Nobbs and Vicary. The seriousness of this document to the task at hand was unmistakable.

1046. The third piece of objective evidence was found on C1C Hawkings' BWV[1177] when he returned to the Yuendumu Police Station immediately after the shooting. His BWV recorded the desk in the muster room where the copies of the Ops Order had been placed by Sgt Frost. A still from that footage formed part of the brief of evidence,[1178] in respect of which I make two further observations. First, that BWV shows one copy of the Ops Order folded open at page 3 (the page Mr Rolfe photographed) and second, I am satisfied that

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1176 Image 5005.JPG created 9/11/2019 at 6:37:21PM from Apple iPhone XS (A1920) Extraction report (redacted) [3-161] at 12763.

1177 Body worn video of Constable First Class Anthony Hawkings, 4 of 10 [4-1].

1178 Statutory declaration of Matthew Sorrell dated 20 August 2021 [10-17B] at annexure MS5-1.

clearly visible to any person taking a photograph of that page, was another copy of the Ops Order unfolded and showing page one. Page one disclosed the list of email recipients including the Watch Commanders, the Territory Duty Superintendents and "Rolfe, Zachary", visible to any oblique scan of the document.

1047. The Ops Order also contained a photograph (referred to in trial as a "mugshot") of Kumanjayi, that was the same photo on Mr Rolfe's phone that he held up against Kumanjayi's face to identify him; but on what appears to be a different background.[1179] At trial, Mr Rolfe claimed not to have taken that photo from the Ops Order, but rather from a computer screen in Alice Springs before he left for Yuendumu.[1180] The photograph on Mr Rolfe's phone is time stamped 6:51pm on 9 November 2019, and during the Inquest, Mr Rolfe explained that "[he] may have taken a photo earlier at the station and then screenshotted that photo which would change the data of that photo." That explanation is plausible, and I accept it.

1048. Based on an analysis of the objective evidence, I reject the evidence given by Mr Rolfe to the effect that he was not aware of the fact or content of the Ops Order/arrest plan, except for the "locations of interest".

C1C Eberl and C1C Hawkings arrive and a further part of the briefing takes place

1049. As depicted on the CCTV footage from Yuendumu Police station, at approximately 6:56pm, Constables First Class Hawkings and Eberl entered the Yuendumu Police Station. Both gave evidence that a) they were not aware that there was a written Ops order that had been emailed while they were enroute; b) they had expected to get a briefing from Sgt Frost on their arrival and c) they were aware that Mr Rolfe had already gathered some information from

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1179 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5381.

1180 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1062.

Sgt Julie Frost by way of a briefing prior to their arrival.[1181] Neither C1C Eberl nor C1C Hawkings recalled Sgt Frost providing another briefing of any substance after they arrived.

1050. As noted at the beginning of this chapter, on her part, Sgt Frost gave evidence that after Officers Hawkings and Eberl arrived, she told all four officers again about the 5am plan.

1051. C1C Hawkings said that apart from greeting him on arrival Sgt Frost did not participate in his briefing at Yuendumu which was conducted by Mr Rolfe, and he did not receive a written arrest plan.[1182]

1052. Similarly to CIC Hawkings, CIC Eberl did not recall receiving the arrest plan.[1183] But he did recall that Sgt Frost provided a map and identified the location of the "axe incident," House 577, and he did recall Sgt Frost saying, "if you find him, arrest him and bring him back to the station".[1184]

1053. When SC1C Donaldson returned he said that Mr Rolfe was giving a briefing and Sgt Frost was not actively involved.[1185]

1054. With respect to the information passed on by Sgt Frost to C1C Eberl and C1C Hawkings, there remains a conflict between the recollections of Sgt Frost and those two officers and again I have resolved it by relying on the available objective evidence.

1181 Recorded statutory declarations of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 32-33.

1182 Recorded statutory declaration of Constable First Class Anthony Hawkings on 13 November 2019 [7-58] at 30, 32, 34; Committal evidence of Constable First Class Anthony Hawkings on 2 September 2020 [7-59A] at 86, 87; Trial evidence of Constable First Class Anthony Hawkings on 17 February 2022 [7-59B] at 500, 504.

1183 Trial evidence of Constable First Class Anthony Eberl on 22 February 2022 [7-33B] at 685, 686.

1184 Recorded statutory declaration of Constable First Class Adam Eberl on 13 November 2019 [7-32] at 40; Inquest evidence of Constable First Class Adam Eberl on 17 October 2022 at 1765.

1185 Recorded statutory declaration of Senior Constable First Class Adam Donaldson on 21 November 2019 [7-30] at 18; Inquest evidence of Senior Constable First Class Adam Donaldson on 20 October 2022 at 2144.

1055. In contrast to the situation with Cst Kirstenfeldt, where CCTV shows him holding the Ops Order, and Mr Rolfe, who took a photo of the Ops Order, there is no independent evidence to show that Officers Eberl and Hawkings ever held the Ops Order. There is, however, objective evidence that copies of the Ops Order (including the one photographed by Mr Rolfe) were left on the muster room desk, as evidenced by CIC Hawkings BWV on his return to the police station after the shooting.[1186]

1056. Ultimately, I have concluded that while Officers Frost, Eberl and Hawkings are giving their honest recollections about the conversation that took place, the objective evidence supports Officers Eberl and Hawkins recollections that they did not receive their copies of the Ops Order/arrest plan. Such was the fractured nature of the briefing; I am satisfied that Sgt Frost is likely to be honestly, but genuinely mistaken on this aspect of it.

SC1C Donaldson is called back to Yuendumu Police Station

1057. Shortly before 7pm, Cst Kirstenfeldt called SC1C Donaldson on his mobile phone and told him to return to the police station because "they" (the IRT) "we're gunna' go out and look for Walker".[1187] SC1C Donaldson's understanding at that point in time was that there must have been a change to the plan, because, as he explained in evidence at the inquest, an active search at around 7pm that evening was "not the discussion [he] had [had with Sgt Frost] that afternoon or what the email said".[1188]

1186 Body worn video of Constable First Class Anthony Hawkings, 4 of 10 [4-1]; Statutory declaration of Matthew Sorrell dated 20 August 2021 [10-17B] at annexure MS5-1.

1187 Recorded statutory declaration Senior Constable First Class Donaldson on 10 November 2019 [7-29] at 6.

1188 Inquest of Senior Constable First Class Adam Donaldson on 20 October 2022 at 2143.

Mr Rolfe assumes a de facto leadership role, overrides Sgt Frost and briefs the team on a different plan

1058. Upon his return to Yuendumu Police Station at approximately 7pm, SC1C Donaldson found the four members of the IRT in the muster room, gathered around a desk. Mr Rolfe "was giving a brief on where we were going to go, we were gonna go look for him, ah look for [Kumanjayi] Walker that afternoon".[1189]

1059. In his interview four days after the shooting, C1C Hawkings told investigators that on arrival at Yuendumu, he was briefed by Mr Rolfe together with C1C Eberl, Cst Kirstenfeldt, and SC1C Donaldson[1190] and the tenor of Mr Rolfe's briefing was "let's get in there and let's pretty much get out there and locate him".[1191] The briefing conveyed that:[1192]

> "The idea was to get back to the Station, hopefully … identify him, locate him quickly and then return back to the Station and come back to Alice Springs".

1060. From that briefing C1C Hawkings understood that the best "intel" was that Kumanjayi was at House 577 or House 511 and that the IRT would go to those locations where Mr Rolfe and Cst Kirstenfeldt would effect a "standard…entry to the address" with C1C Hawkings and C1C Eberl "tak[ing] the back…in the event that he runs".[1193] Put simply, the plan was to "locate Kumanjayi Walker", who would be "immediately arrested".[1194]

1189 Recorded statutory declaration of SC Adam Donaldson dated 21 November 2019 [7-30] at 18.

1190 Recorded statutory declaration Constable First Class Anthony Hawkings on 13 November 2019 [7-58] at 31.

1191 Recorded statutory declaration Constable First Class Anthony Hawkings on 13 November 2019 [7-58] at 32.

1192 Recorded statutory declaration Constable First Class Anthony Hawkings on 13 November 2019 [7-58] at 32.

1193 Recorded statutory declaration Constable First Class Anthony Hawkings on 13 November 2019 [7-58] at 33.

1194 Committal evidence of Constable First Class Anthony Hawkings on 2 September 2020 [7-59A] at 104 (in response to puttage by Mr Edwardson KC).

1061. C1C Eberl gave essentially the same evidence. He understood that Mr Rolfe and Cst Kirstenfeldt had been given some information by Sgt Frost and Mr Rolfe, who was taking charge,[1195] passed the information on with reference to a map.[1196] When asked whether he left the Yuendumu Police Station at 7:06pm "with a plan to arrest Kumanjayi" he answered, "Definitely, yep".[1197]

1062. Although Mr Rolfe referenced the map that had been provided by Sgt Frost and pointed out the likely houses where he might stay, neither Mr Rolfe nor Cst Kirstenfeldt mentioned the Ops Order or the 5am arrest plan (or "preference") to C1C Eberl or C1C Hawkings.[1198] After the events, when he learned of the written Ops Order approved by Supt Nobbs, C1C Eberl said, a) he would "100%" wanted to know about it, and b) he would have followed those orders.[1199] C1C Hawkings rather understatedly said, "It would have been nice to have known the full plan" and "it was not for anybody to change the plan".[1200]

1063. When he heard the briefing given by Mr Rolfe, SC1C Donaldson understood the plan as outlined by Mr Rolfe to be inconsistent with the plan on which he had been briefed earlier that day.[1201] So different was this briefing to the plan as outlined by Sgt Frost that SC1C Donaldson assumed that there must have been a conversation between Sgt Frost and the IRT that he had not been privy to during which the plan had changed.[1202] SC1C Donaldson did not deliberately ignore the 5am arrest plan because he believed the plan had changed in his absence.

1195 Inquest evidence of Constable First Class Eberl on 17 October 2022 at 1763.

1196 Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 33, 34; Inquest evidence of Constable First Class Anthony Hawkings on 19 October 2022 at 1949.

1197 Inquest evidence of Constable First Class Anthony Eberl on 17 October 2022 at 1765.

1198 Inquest evidence of Constable First Class Eberl on 17 October 2022 at 1764, 1766.

1199 Inquest evidence of Constable First Class Eberl on 17 October 2022 at 1766-1767.

1200 Inquest evidence of Constable First Class Anthony Hawkings on 19 October 2022 at 1948, 1949.

1201 Inquest of Senior Constable First Class Adam Donaldson on 20 October 2022 at 2145.

1202 Inquest of Senior Constable First Class Adam Donaldson on 20 October 2022 at 2146, 2147.

1064. Unlike Mr Rolfe and Cst Kirstenfeldt, I do not think that C1C Eberl and C1C Hawkings deliberately ignored the 5am plan either; they were simply unaware of it. Their evidence about not knowing of the Ops Order and 5am plan is consistent with the timing of their arrival at the Yuendumu Police Station, the fact that they were in the station for little more than 9 minutes, including the period they were bringing luggage and equipment into the station, and the objective evidence which supports that they were not physically handed a copy of the Ops Order/arrest plan. Furthermore, their understanding of what was about to occur was consistent with SC1C Donaldson's understanding of a new or changed plan. The understanding that C1C Eberl and C1C Hawkings had of the plan was based on the "briefing" they received from Mr Rolfe at some point between 7pm and 7:06pm: that is, to "locate Kumanjayi Walker" who would be "immediately arrested".[1203]

1065. It is regrettable that Sgt Frost did not remain with all five officers when Mr Rolfe re-briefed them. I accept, as Counsel Assisting asserts, that since she was "the author of the Ops Order, the ranking officer and, in effect, the Forward Commander, it was incumbent upon Sgt Frost to remain with the IRT for the duration of the briefing by Mr Rolfe".[1204] However, I am not critical of Sgt Frost for not doing so on this occasion. She was understandably exhausted and still had work to do before she could leave the station that night, but more relevantly, she could not have imagined that Mr Rolfe would ignore the direction for a 5am arrest plan and would effectively undermine her by re-briefing the team members contrary to her Ops Order.

1066. Although it is clear that Sgt Frost came into the muster room at some point between 7pm and 7:06pm and spoke to the officers, she was not present for the majority of Mr Rolfe's briefing. When Sgt Frost left, Mr Rolfe gave the IRT members and SC1C Donaldson his own briefing. Mr Rolfe's briefing was, as he knew, inconsistent with the briefing Sgt Frost had given based on the Ops Order but was consistent with the briefing he had given the IRT members

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1203 Committal evidence of Constable First Class Anthony Hawkings on 2 September 2020 [7-59A] at 104.

1204 Closing written submissions of Counsel Assisting dated 22 October 2024 at 199.

in Alice Springs, and what he understood the mission to be after talking with A/Sgt McCormack. In a nutshell it was to arrest Kumanjayi Walker as soon as possible.

1067. As described by Cst Kirstenfeldt, "once everyone was here we came up with a plan to go to the initial house where it happened", House 577, and when Kumanjayi was not there "we came up with a similar plan" of checking House 518 and 511.[1205] An examination of the CCTV footage of the Yuendumu Police Station reveals that, reflective of the simplicity of his plan, Mr Rolfe's re-briefing to the members of the IRT took little more than a minute or two.

A new plan that is not "intel gathering"

1068. There were several reasons why Mr Rolfe may have felt motivated to jettison the 5am arrest plan and instead insert his own plan. Some that come to my mind[1206] are: first, he considered himself to have superior tactical skills; second, he had assumed a leadership role for the mission; third, he had a tendency to rush into an arrest; fourth, he did not respect the chain of command; fifth, there was no risk assessment that might have slowed down the plan or helped him to understand why Sgt Frost had chosen an early morning arrest; sixth, he had genuine doubts about the efficacy of the 5am plan; and seventh, he had an interest in effecting the arrest of Kumanjayi Walker in a way that was strong and more decisive than a bush cop could have done, and he simply did not see the need to wait.

1069. Mr Rolfe and Cst Kirstenfeldt appear not to have clearly understood that the 5am plan had been approved by Supt Nobbs, a factor which may have affected their response to it. Mr Rolfe had previously expressed disdain towards community police ("bush cops"), and criticism of the way in which community police Officers Hand and Smith responded to the axe incident on 6 November.

1205 Recorded statutory declaration of Constable James Kirstenfeldt dated 10 November 2019 [7-79] at 4-5.

1206 Including attributes of Mr Rolfe that have been considered earlier in these findings.

He was dismissive of some of his female colleagues. He may have been more respectful and more circumspect if had known senior male officers were involved in the design and/or approval of the plan.

1070. In an interview that Mr Rolfe did for the Channel 7 Spotlight program during his criminal trial (planned for release post-trial), Mr Rolfe openly expressed his disdain for the Ops Order/arrest plan written by Sgt Frost, claiming that "the only line in that five page email that consisted [of] a plan was this…Sunday morning at 5am. Start shift, and arrest [Kumanjayi]. There was no location. There was no execution. There was no roles and responsibilities. There was a timing…that's it".[1207] When he expressed that opinion, I note that Mr Rolfe neglected to mention the houses of interest that he had photographed and the arrangement for a local member, Cst Alefaio, to meet at 5am and participate, which would have obviated the need for Mr Rolfe to get so close to Kumanjayi for identification purposes.

1071. Mr Rolfe maintained that disdain when he gave evidence at the Inquest. Concerning the Ops Order/arrest plan he said, "If she had an actual plan at 5am and knew the location for example, I would have followed her…I don't see the plan. I'm looking at the email. I don't see a plan" and "that is not a plan that is a timing" and of the "timing" he claimed it was only a "preference".[1208] He further explained "I saw some people make faces when I said this wasn't a plan but I was just looking that there is no execution, admin log, command or sig (inaudible) on this document…all I can see is a timing".[1209]

1072. In response to those perceived shortcomings, Mr Rolfe proposed that "in order to develop a plan we need more intelligence"[1210] and "informed her [Sgt Frost] how the IRT would usually go about the business in this scenario".[1211] He said, "our objective now was to gather intelligence in regard to Kumanjayi Walker's

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1207 7News Spotlight Footage – video 3 – transcript [20-55] at 8.
1208 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5384.
1209 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5387.
1210 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5384.
1211 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5386.

whereabouts, with the secondary priority being, if possible, to arrest at 5am".[1212] And in response to this proposal, Sgt Frost assented to the members going out early to "do their intel thing".[1213] Sgt Frost agreed that she said "if you do come across him by some chance, by all means, no brainer, go and lock him up".[1214] I accept the submissions of the NT Police that this comment by Sgt Frost "was a reference to what could happen if the IRT were to see Kumanjayi in the course of their patrols in the community" but it was not an agreement that the IRT should actively search for Kumanjayi.[1215]

1073. Cst Kirstenfeldt participated in the conversation about "intel". He also told Sgt Frost, "We are going to go out and gather intelligence" and she replied "good". To Sgt Frost, gathering intelligence meant "[f]amiliarising yourself with a particular person, looking up information report systems, looking at their profile, looking at vehicles they may have; that type of stuff".[1216] Sgt Frost thought that he and his colleagues would be "driving around the community, familiarising themselves with the community, doing a discreet drive past 577 and 511, particularly while it was still daylight hours…Playing basketball with the kids and having general conversations, perhaps doing an RBT, a random breath test stationed [sic], a myriad of things they could have done." She did not anticipate that they would be going straight to House 577.[1217]

1074. So far as Sgt Frost was concerned, except for her understanding of the addition of "intel gathering" there were no other changes to her arrest plan. She explained that her 5am arrest plan included an opportunity for the members to sleep until 11pm, but following the "intel gathering" conversation "that's the only thing that had changed. They said no, we're going to drive around now, gather intel and all that sort of conversation. So that's the thing that did

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1212 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5386.

1213 Recorded Statutory declaration of Sergeant Julie Frost on 13 November 2019 [7-36] at 34.

1214 Recorded Statutory declaration of Sergeant Julie Frost on 5 December 2019 [7-37] at 7.

1215 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [787].

1216 Inquest evidence of Sergeant Julie Frost on 23 September 2022 at 942.

1217 Inquest evidence of Sergeant Julie Frost on 23 September 2022 at 942.

change".[1218] To be clear, Sgt Frost was not informed of and did not consent to an immediate search for the purpose of locating and arresting Kumanjayi. Sgt Frost had planned and locally staffed for a 5am arrest which was approved by Supt Nobbs, and which remained her plan.

1075. There was no discussion of exactly what "gathering intel" meant. And it was this potential for ambiguity which created a crack in the arrest plan. Mr Rolfe deliberately interpreted "gathering intel" in a way that suited his plan not to wait until the morning, but rather to lead the IRT straight into the community to arrest Kumanjayi, and then get back home to Alice Springs.

1076. At the Inquest, Supt Nobbs was shown the body worn video of the IRT members after they left the station and their approach to House 577. His response to what he was viewing was visceral.[1219] He explained what he understood by the term "intelligence gathering"[1220] and agreed that what he saw on the BWV videos was neither consistent with the arrest plan he had approved, and nor was it consistent with his understanding of intelligence gathering. His assessment of what was depicted on the BWV was that he was viewing an active search.[1221]

1077. Similarly, Cmdr Proctor reported that when the IRT members left the Yuendumu Police Station "they commenced activities to locate and arrest Kumanjayi Walker, under the auspices of intelligence gathering".[1222] Consistent with Supt Nobbs and Cmdr Proctor, Sgt Frost did not expect that by "gathering intel", Mr Rolfe meant that they would go straight to the houses of interest and commence searching. An immediate active search had not been discussed or approved.

1078. There is an inherent contradiction in the evidence of Mr Rolfe. On the one hand, he accepted that he understood Sgt Frost wanted the IRT to arrest

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1218 Committal evidence of Sergeant Julie Frost on 1 September 2020 [7-39A] at 26.

1219 Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1115.

1220 Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1115.

1221 Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1118-1119.

1222 Coronial Investigation Report of Commander David Proctor of 31 August 2021 [1-1A] at 71.

Kumanjayi around 5am the next morning, and that they would just be "intel gathering" in the interim, but on the other he gave evidence that as the de facto team leader of the IRT mission, he briefed the team that they should head straight to the houses Kumanjayi was suspected to be at, and set up a soft cordon with SC1C Donaldson ready "to utilise his canine to chase him".[1223] This was in reality a new and substituted approach.

1079. Failures in operational policy and procedures created an environment which did not safeguard the 5am arrest plan from this adulteration. As Cmdr Proctor commented:[1224]

> "The informal conversations, mini briefings, reference to difficult conversations, lack of detail in briefings and specifics in relation to identified actions, and lack of acknowledgement of command and rank created a high level of ambiguity and an environment where people were able to operate in autonomy. It also identifies the failures of existing systems, policies and procedures."

1080. In his report on the operation, Professor Alexander McFarlane AO, Professor of Psychiatry at the University of Adelaide, also proffered an explanation for the failure of the arrest plan. He writes:[1225]

> "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."

1081. Although Mr Rolfe was not a passive player in the deployment, the whole of this comment by Professor McFarlane is correct. With the benefit of a hindsight lens, it is easier to see reasons why the failure of systems and procedures contributed to the communication breakdown between key players

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1223 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1064.

1224 Coronial Investigation Report of Commander David Proctor of 31 August 2021 [1-1A] at 68.

1225 Expert report of Professor Alexander McFarlane dated 15 July 2020 [10-11] at 3.

and left a leadership vacuum that was filled by Mr Rolfe, who lacked the experience and maturity to appreciate the value and nuance of the 5am arrest plan and who did not respect the chain of command.

1082. It is true, as Professor MacFarlane suggests, that "Rolfe was deployed into an ambiguous environment that had little structure and direction with no apparent supervisor or team leader defined". That was partly as a function of the paucity of the IRT SOP, which meant there were no formal briefing procedures or a formal requirement for a team leader. It is also, however, a function of Mr Rolfe refusing to listen properly to Sgt Frost explaining the Ops Order, which he was free to query and request more details about, but not free to disregard, in substitution for his own plan.

1083. It was Mr Rolfe's belief that he could take charge and re-brief the team that ultimately led to the jettisoning of the arrest plan. As the next chapter reveals, when Mr Rolfe re-briefed the IRT, it took less than two minutes and did not involve any risk assessment, plan for the individual roles each team member was to play, or the strategy to be adopted as they moved through the community seeking out Kumanjayi. It did not include a local member who could help with identification.

1084. While the 5am plan was not without its weaknesses, it was a tried and tested approach that police officers were expected to understand.[1226] It was replaced with one that was vastly inferior. With the funeral still taking place, and no local member to assist, the community were confronted by the IRT carrying long arms and Mr Rolfe leading a search of houses without a properly considered, agreed, coordinated or approved approach. I will return to this change in approach and why I found it to be an active search and not "intel gathering" in the next Chapter.

[1226] Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1112.

CHAPTER EIGHT A FLAWED ARREST AND THE KILLING OF KUMANJAYI WALKER

Introduction

1085. In order to make my own assessment of the circumstances of the tragic shooting of Kumanjayi Walker I have taken into account all available evidence, which includes: the BWV footage; the evidence of Mr Rolfe and Constable First Class Eberl as to what they experienced; the committal, trial and Inquest transcripts; and expert opinions. That includes the opinion of the expert called by the defence at trial, Mr Ben McDevitt and the opinion of Detective Senior Sergeant Barram, the expert called on behalf of the prosecution at the trial. Both experts are impressive witnesses with significant relevant experience and both were called as expert witnesses by Counsel Assisting, to inform the Inquest.

1086. I also heard evidence from senior and highly respected police officers in the Northern Territory (current and retired) who have considered the circumstances of the flawed arrest. That includes Detective Superintendent Pollock, now retired, who had nearly 40 years experience in the NT Police; Commander Proctor APM, who had been a police officer in the NT for over 36 years and Deputy Commissioner Murray Smalpage, who had served as a police officer in Western Australia and the NT over a 44 year career.

1087. Both of the experts and all of the senior officers named above came to the same opinion, that the arrest of Kumanjayi was characterised by a lack of adequate planning and a lack of appropriate risk assessment.

1088. After considering all the evidence and the submissions of interested parties, I share the opinion of these senior officers in finding that Mr Rolfe's actions were a stark example of "officer induced jeopardy",[1227] which arose because

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[1227] See also the Inquest evidence of Detective Acting Superintendent Kirk Pennuto on 21 November 2022 at 3570-3571.

Mr Rolfe ignored the written Ops Order/arrest plan and substituted his own approach.

1089. Instead of following the Ops Order, Mr Rolfe assumed the role of de facto Team Leader and led the IRT straight out of the Yuendumu Police station and over to the two houses (577 and 511) that were suspected to be the places where Kumanjayi was staying. When he made that decision Mr Rolfe did not follow his training in the 10 Operational Safety Principles, and he did not do his own planning or risk assessment.

1090. At around 7.19pm, Mr Rolfe directed that he and Cst Kirstenfeldt would enter and "clear" House 577 and then he and C1C Eberl would enter and "clear" House 511. After entering House 511 and spotting a male resembling Kumanjayi, Mr Rolfe took him by the arm, guided him back to a wall, and stood in front of him at less than an arm's length away. Since he did not have a local member of police to assist him to identify Kumanjayi, Mr Rolfe placed himself close to Kumanjayi so that he could hold his own iPhone up to Kumanjayi's face to compare a dated photo of Kumanjayi with the person standing in front of him. This left Mr Rolfe's body exposed and limited his tactical options. The house was dark, and Mr Rolfe failed to ensure that he could see Kumanjayi's hands at all times. Mr Rolfe was so focused on the identification and arrest that he lost situational awareness and left himself (and his partner C1C Eberl) exposed to what happened next. He lost situational awareness in part due to a failure of planning and a failure of risk assessment.

1091. Kumanjayi had a small pair of scissors in his trouser pocket and when he was trapped against the wall, he lashed out and stabbed Mr Rolfe in the shoulder, causing a small wound. Mr Rolfe then shot Kumanjayi three times in just three seconds. Although Mr Rolfe only sustained a small puncture wound to the shoulder, Kumanjayi's actions were extremely dangerous, and I accept he could have caused more harm if the blade had struck Mr Rolfe in a different part of his body.

1092. As I have explained further below and in Chapter Two, Kumanjayi's actions can be better understood in the context of his cognitive impairment and the impact of his developmental trauma and likely PTSD.

1093. Kumanjayi's actions were predictable and foreseeable. Just three days earlier, Kumanjayi ran towards two community based police officers with a small tomahawk or axe when they attended House 577 to arrest him. Unlike those two officers, the IRT, and Mr Rolfe in particular, was on notice that police needed to be prepared for an erratic and potentially threatening response by Kumanjayi. However, instead of following the written Ops Order and attending to any further preparation or planning that was required for the 5am arrest plan, Mr Rolfe led members of the IRT straight into the houses of interest.

1094. I accept the opinion of Det SSgt Barram that during his time in the NT Police, Mr Rolfe demonstrated a tendency to rush into situations with a disregard for his and others' safety, and in disregard of NT Police training, practice and procedure.[1228] I accept the opinion of Det SSgt Barram that Mr Rolfe demonstrated a tendency to want to "get his man" no matter what.[1229] What happened on 9 November 2019 was a further example of those tendencies being demonstrated, with tragic results.

1095. This chapter addresses the following topics:

(a) The funeral of Kumanjayi's grandfather was still in progress;

(b) The IRT head out into the community with "long arms" after 7pm to "grab up [Kumanjayi]" - they were not "intel gathering";

(c) Mr Rolfe "clears" House 577 – this was not "intel gathering";

[1228] Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [19].

[1229] Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [51].

(d) Mr Rolfe disengaged the retention security features on his holster to search House 577 - in a “state of readiness”;

(e) The IRT move on to Houses 511 (the red house) and 518 (the blue house);

(f) C1C Eberl and Mr Rolfe enter House 511;

(g) The confrontation with Kumanjayi:

i. A loss of situational awareness - Kumanjayi is cornered against the wall and strikes out at Mr Rolfe with scissors,

ii. Mr Rolfe responds by shooting Kumanjayi three times, in under three seconds,

iii. Mr Rolfe’s explanation for shooting Kumanjayi,

(h) The trial of Zachary Rolfe for the killing of Kumanjayi Walker:

i. The charges laid - only in relation to the second and third shots fired,

ii. The evidence of defence and prosecution experts at trial - the first shot,

iii. The experts differ on shots 2 and 3,

iv. The Jury verdict;

(i) My Findings on the first shot - what really happened immediately prior:

i. Kumanjayi’s act of stabbing Mr Rolfe was sudden and dangerous,

ii. Kumanjayi did not, as alleged, place his hand on Mr Rolfe’s service weapon before Mr Rolfe discharged the first shot,

(j) The broader issue for the Inquest - a stark example of “officer induced jeopardy”:

(k) Was the entry into House 511 legal?

(l) The relevance of Mr Rolfe's use of force history - a tendency to rush in and a sense of impugnity;

(m) The relevance of Mr Rolfe's problematic attitudes of racism, sexism, arrogance and disregard for authority.

1096. Before embarking on this chapter I remind myself again in terms of s 34(3) of the Act:

> "A coroner must not, in an investigation, include in a finding or comment that a person is or may be guilty of an offence."

1097. I also remind myself of the effect of the trial and jury verdict and my decision in *Ruling No 2,*[1230] which was not the subject of appeal, in which I said:

> "Ultimately, provided I do not include in a finding or comment a statement that a person is or may be guilty of an offence (s 34(3)), it does not 'controvert' an acquittal for a Coroner to inquire into the facts underlying an offence of which the person has been acquitted (Ref: Inquest into the death of Vlado Micetic (Scope of Inquest Ruling) Coroner's Court, Victoria, Coroner Jamieson, 19 August 2019). In any event, as Mr Boulten SC submitted in oral argument, (Ref: Transcript of Proceedings, Inquest into the death of Kumanjayi Walker (12 September 2022) 246) even if the verdict of acquittal somehow set the parameters for fact finding during the inquest, that could only be in respect of the second and third shots fired by Constable Rolfe, because only those shots were the subject of the charges of which Constable Rolfe was acquitted."

1098. I have carefully read the submissions made by all interested parties as to the limits of what I can find or comment on, given the statutory prohibition on me making any finding or comment that a person is or may be guilty of an offence (s34(2)). I note, for example, the helpful analysis in *Perre v Chivell* [2000] SASC 279, cited in the submissions made on behalf of Mr Rolfe.[1231]

[1230] Inquest into the Death of Kumanjayi Walker (Ruling No2) [2022] NTLC 017 at [41].

[1231] Closing written submissions of Zachary Rolfe dated 11 November 2024 at [118].

The funeral of Kumanjayi's grandfather was still in progress

1099. During the day and into the early evening of Saturday 9 November, the community of Yuendumu hosted the funeral of respected Elder, Mr Brown, who was a grandfather for Kumanjayi. It commenced with a ceremony held at the Yuendumu Basketball Sports precinct followed by a burial service at the Yuendumu Cemetery, and it was still going when the IRT left the police station to find Kumanjayi.[1232]

1100. Kumanjayi had returned to Yuendumu to attend his grandfather's funeral and participate in malamala (Sorry Business), as he was culturally obliged to do. He would have been worried about being arrested before the funeral and the completion of malamala because of his cultural responsibilities. As SACPO Williams said, "he had a big role to play".[1233] The cultural imperative to attend to these responsibilities was likely one of the reasons for him violently resisting arrest on 6 November 2019. Some family believe he may have handed himself in if police had explained that they could and would support him getting "funeral bail", but the police did not tell family members of this possibility.[1234]

1101. Samara Fernandez-Brown also returned to Yuendumu for this important funeral. Shortly before the funeral she saw Kumanjayi near the red house (House 511).[1235] He later attended the funeral which was held at the basketball court and was present until about 4 or 5pm.[1236]

1232 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 70.

1233 Recorded statutory declaration of Senior Aboriginal Community Police Officer Derek Williams dated 20 June 2020 [7-140] at 5; Statutory Declaration of Senior Aboriginal Community Police Officer Derek Williams dated 9 August 2022 [7-140AA] at [26]; Trial evidence of Senior Aboriginal Community Police Officer Derek Williams dated 15 February 2022 [7-140A] at 348-349.

1234 Statutory Declaration of Eddie Robertson dated 22 November 2022 [8-51B] at [12], [15].

1235 Affidavit of Samara Fernandez-Brown dated 22 July 2022 [8-25A] at [7].

1236 Recorded statutory declaration of Senior Aboriginal Community Police Officer Derek Williams dated 20 June 2020 [7-140] at 6.

1102. By the early evening, it appears that Kumanjayi was at House 577 and then headed over to House 511.

The IRT head out into the community with long arms after 7pm to "grab up [Kumanjayi]" - they were not "intel gathering"

1103. In Chapter Six I considered Mr Rolfe's jettisoning of the Ops Order/arrest plan and his substitution of a new plan under the guise of "intelligence gathering". Acting on this new plan, in the fading daylight, the IRT and the dog handler SC1C Donaldson left the Yuendumu Police Station at approximately 7:06pm and drove directly to House 577, the home of Eddie and Lottie Robertson, where Kumanjayi usually stayed with his girlfriend, Rickisha.

1104. In his evidence at the Inquest, Cst Kirstenfeldt admitted that the whole 5am plan was "abandoned" by the time the IRT set out into the community from the station at 7:06pm.[1237] From there, he understood that the plan was not to do some intelligence gathering for the purposes of the 5am arrest, but rather:[1238]

> "My understanding from leaving the station was that we were going to the house where the axe incident occurred which was 577, to find some…information on his whereabouts and if he was there, arrest him."

1105. At his jury trial in 2022, Mr Rolfe said that when he left Yuendumu Police station, the plan was to go to House 577, and to park the three police vehicles surrounding the house as best they could to set up a "soft cordon", because that was Kumanjayi's last known location.[1239]

1237 Inquest evidence of Constable James Kirstenfeldt on 19 October 2022 at 2051.

1238 Inquest evidence of Constable James Kirstenfeldt on 19 October 2022 at 2051.

1239 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1063. Rolfe gave evidence that they did not have the numbers for a completely effective cordon and control, and could therefore only do a "soft cordon". I note, however, that the 5.00am arrest plan involved at least one other member, Constable Alefaio.

1106. After a brief discussion outside the Yuendumu police station,[1240] before departing the IRT and SC1C Donaldson armed themselves with the following weapons:

(a) Constable First Class Hawkings: AR15 rifle, Glock pistol, Taser, OC Spray, baton.

(b) Constable First Class Eberl: Glock pistol, OC Spray, baton (his AR 15 rifle was left at the Yuendumu Police Station).

(c) Mr Rolfe: Glock pistol, Taser, OC spray, baton.

(d) Constable Kirstenfeldt: Shotgun (beanbag rounds), Glock pistol, Taser, OC Spray, baton.

(e) Senior Constable First Class Donaldson, the Dog Operation Unit member: Glock pistol, ASR, ECD and Baton (in addition to his Police dog, Loki).

1107. Unlike the others, Mr Rolfe also wore body armour under his shirt.[1241]

1108. Having half the IRT team carry visible "long arms" appears to be the opposite of "intel gathering", which relies on the good will of community members sharing information with police, and there was no satisfactory answer given as to why C1C Hawkings and Cst Kirstenfeldt carried those weapons through the community. One female community member was so upset about seeing police carrying a long arm rifle that she rather bravely asked C1C Eberl why the officer had that gun, and said that she was concerned that it looked like he "has got it aimed to shoot someone". C1C Eberl reassured her that "No, he's not aiming to shoot anyone, is he?", and she replied "it's not right" and

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1240 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 70.

1241 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1048; Inquest evidence of Constable First Class Adam Eberl on 19 October 2022 at 1768, Inquest evidence of Constable First Class Anthony Hawkings on 19 October 2022 at 1931, Statutory declaration of Constable James Kirstenfeldt dated 21 November 2019 [7-80] at 14. The dog handler SC Donaldson was wearing a load bearing vest: Recorded statutory declaration of SC Adam Donaldson dated 21 November 2019 [7-30] at 7.

"stop it". Although he had spoken quite politely to the community member, in a serious lapse of judgement, C1C Eberl added, "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". I agree with the conclusion reached by Commander Proctor that this was "an entirely inappropriate comment and suggestive of a retaliatory policing".[1242] At the Inquest, C1C Eberl himself accepted that his response was inappropriate, and he apologised for his insensitivity.[1243] I accept that it was an ill-considered remark that appears out of character for that officer.

1109. There is ample evidence that the actions of Mr Rolfe were inconsistent with intel gathering, but it is the words used by Mr Rolfe in his first interactions with community members that really underscore how disingenuous it is for him to still contend that he was doing anything other than setting straight out to arrest Kumanjayi that evening.

1110. Just minutes after leaving the Yuendumu Police station, immediately before entry into House 577, Mr Rolfe sought information from community members by stating that police were "here to grab [Kumanjayi] up".[1244] Again, minutes later, in preparation to search the next House, Mr Rolfe approached a community member to announce "we're new in town. We're here to grab up [Kumanjayi]".[1245]

Mr Rolfe "clears" House 577 – this was not "intel gathering"

1111. In order to have eyes on every approach to the house, Mr Rolfe's "soft cordon" of House 577 consisted of Mr Rolfe and Cst Kirstenfeldt parked on the corner near the front door, C1C Hawkings and C1C Eberl parked on the side,[1246] and SC1C Donaldson parked on the side closest to the men's business area, so that

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1242 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 138.

1243 Inquest evidence of Constable First Class Adam Eberl on 19 October 2022 at 1778.

1244 Body worn video of Zachary Rolfe, 1 of 4 [4-1].

1245 Body worn video of Zachary Rolfe, 2 of 4 [4-1].

1246 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1064.

if Kumanjayi ran, SC1C Donaldson could utilise Loki (his patrol dog) to chase him.

1112. On approaching the house, Mr Rolfe directed the other members of the IRT to cover each of the two doors to the house and indicated that he was going to speak to the man sitting outside, who (in the absence of a local member of police) none of the IRT members knew or recognised. The following exchange reveals Mr Rolfe's plan:

MR ROLFE:	Is this your house mate?...Is this your house?
MALE:	No, my dad's house.
MR ROLFE:	Your Dad's house. Eddie's house, aye? Hey, man, my name's Zac, nice to meet you, mate how you doing? Hey we're here to grab, um, [Kumanjayi] up, aye?
MALE:	[Kumanjayi]?
MR ROLFE:	Is he inside?
MALE:	Nah.
MR ROLFE:	He's – ay no trouble...Do you mind if I check inside?
MALE:	Yeah.
MR ROLFE:	So do you know where [Kumanjayi] will be?
MALE:	Nah.
MR ROLFE:	'Cause we've gotta get him, aye...before he gets ----–

1113. This brief conversation, captured on BWV, encapsulates precisely and in his own words what Mr Rolfe planned for the IRT as he left the Yuendumu Police Station. He planned to go directly to the houses where Kumanjayi was suspected to be staying to attempt an arrest. Those actions contradicted the

Ops Order. They ignored the 5am arrest plan and they ignored a critical aspect of the plan that required the IRT to be accompanied by a local member (Cst Felix Alefaio) who knew Kumanjayi, could recognise him without getting up close and who had arrested him previously without incident.[1247]

1114. Mr Rolfe spoke politely to the community member when extracting the information from him and the community member responded politely and truthfully. Mr Rolfe showed him a map on his phone, and at Mr Rolfe's request, the community member pointed out where he said Kumanjayi was. They had this exchange:

MR ROLFE:	…is he over that way or is he out, aye?
MALE:	He's at the oval there.
MR ROLFE:	He's at the other side? Which house at?
MALE:	I don't know which numbers.
MR ROLFE:	Show me on these photos hey?
MALE:	(inaudible) twin houses.
MR ROLFE:	So here, so here? So on the other side of this oval?
MALE:	Just around this area *[pointing to map on phone]*.

1115. In response to a question by Mr Rolfe as to whether he would mind if they searched the house, the community member did not say much and he may or may not have acquiesced, but he could not truly be regarded as having given free consent in circumstances where a) he had indicated that it was not his house, and b) he was confronted by a number of armed officers, who were strangers to the community, two of whom were carrying long arms. Before entering the house, Mr Rolfe told the community member that he would "just

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[1247] Inquest evidence of Constable Felix Alefaio on 20 September 2022 at 733.

check the house real quick". Despite being told that there was no one inside, and that Kumanjayi was elsewhere, Mr Rolfe said he would "just check this [house], to make sure it was safe". Mr Rolfe then told the community member that it was nice to meet him and proceeded inside.

1116. Before they entered the house Cst Kirstenfeldt came around from the side of the house and told Mr Rolfe that he had spoken to a child through the window who said that Kumanjayi might be sleeping there that night, but had just left.[1248] Despite that information, the two officers entered the house while the children were inside, with Mr Rolfe "in a state of readiness" to discharge his firearm, as discussed below. Mr Rolfe came across the two children watching television and said hello, and Cst Kirstenfeldt spoke to the children and told them not to tell Kumanjayi that police had been there.

Mr Rolfe disengages the retention security features on his holster to search House 577 - in a "state of readiness"

1117. Expert evidence about the entry into House 577 was given by Det SSgt Barram, who examined the relevant forensic evidence (including the available BWV footage and Mr Rolfe's accoutrement belt and retention holster). He concluded that during the search Mr Rolfe had completed some of the stages needed to disengage the retention features of his firearm, contrary to NT Police training, practice and procedure.[1249]

1118. As I noted in Chapter Three, Det SSgt Barram has been a member of the NT Police since 20 January 1997 and has over 25 years' experience in Policing,

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1248 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1064. In his evidence at trial, Rolfe claimed that he still believed it was "a requirement" to search the house, because he did not trust the word of a 10-year old child as "actionable intelligence": Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1065.

1249 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 11 June 2020 [10-7] at [13]. For his part, Ben McDevitt noted that there was nothing in the written policies about not disengaging part of the retention device, but he conceded that he had not trained any NT Police Officers and that his only source of knowledge on the issue was the training material that he had read: Trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1269. This is in contrast to Det SSgt Barram's knowledge and experience in the training of NT Police officers.

having performed numerous roles that qualify him to give expert evidence in the appropriate use of force, and the pragmatic aspects of policing under pressure. That includes his experience as a general duties officer in major NT Centres and relieving in remote communities; as Operational Safety Tactics Instructor at the NTPFES College; and as a use of force expert in many other matters.[1250]

1119. To ensure that a firearm remains in the control of an officer, there are three "levels" of retention security features on the holster.[1251] This means that to draw a firearm from its retention holster, an officer must perform the following three separate actions:

    1. Depress the hood button.

    2. Rotate the hood closure.

    3. Push the thumb lever rearward.

1120. After reviewing the footage and the still images taken from it, and after examining Mr Rolfe's accoutrement belt and holster, which were in good working order, Det SSgt Barram concluded that:[1252]

> "Mr Rolfe had disengaged the first two of the three "levels" of retention security features on the holster. This made his firearm less secure, [as] he moved through House 577 and Yuendumu Community. This is a departure from police training, practice and procedure and is indicative of an officer anticipating and preparing for the drawing their firearm."

1121. For his part, Mr Rolfe acknowledged that the BWV footage shows him "placing [his] hand on [his] Glock in its holster and using [his] thumb to release the first retention device on that holster."[1253] Mr Rolfe stated that while

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1250 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [3]-[12]. See further, Chapter Three.

1251 Hence the name of the "Safariland model 6360 ALS / SLS Level III Retention Holster": see statutory declaration of SSgt Barram dated 11 June 2020 [10-7] at [8].

1252 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 11 June 2020 [10-7] at [13].

1253 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1057.

there were "technically" three retention devices on the holster, there were only two that required any action to release the Glock. When asked at his trial to explain in his own words what he did as he moved through House 577, Mr Rolfe said:[1254]

> "We are trained – in training, we trained to prepare for a potential threat or a potential situation, which was described as "if/then" thinking. So, at that time, clearing that house or searching through that house, I was [preparing] for a violent offender who had, just days previously, in that same house attacked two police officers with a potentially lethal weapon. So, all I was doing was preparing for, if I was presented with a case where I had to follow my training and utilise drawing my firearm, depending on the situation I was presented with."

1122. He agreed with his Senior Counsel, Mr Edwardson KC, who then asked:[1255]

> MR EDWARDON KC: In other words, it was a state of readiness?"
>
> MR ROLFE: Correct.

1123. The next day, when Mr Edwardson KC was asking Mr Rolfe to describe his actions inside House 577, he prompted him about a thumb injury, which elicited the following exchange:

> MR EDWARDSON KC: And that was because of a thumb injury?
>
> MR ROLFE: Correct. So, in regard to this incident – obviously, anywhere within that house, I am within that reactionary gap that we talked about before, which went more towards my thought process of, if I'm confronted with a potentially lethal incident, I am prepared. In our training, we are taught that it is – in the use of force process, to put your hand on your Glock. Nowhere have I been trained and nowhere have I read in any training manual when you put your hand on your Glock, not to release that retention

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1254 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1057.

1255 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1057.

> device. And the injury to my thumb caused – there was pain and it made it harder to release that device, pushing it down and forward. So, I did that. That's how that contributed to my thought process
>
> MR EDWARDSON KC: In other words, it was a factor that you took into account to ensure that, if you did have to use your firearm, you were able to remove it from its holster?
>
> MR ROLFE: Correct.

1124. Since Mr Rolfe turned his BWV on for the search, I am also able to see for myself what his actions were as he moved through House 577.

1125. Whether or not Mr Rolfe's actions are described as a release of one or two of the safety features on the holster retention device, he was entering the house in relative darkness, knowing there were children inside, and anticipating that he may be confronted by Kumanjayi, whom he could not recognise easily and thought to be highly dangerous. His primary preparation for that task was not a risk assessment, or a team brief, or an if/then plan, instead he disengaged part of the safety mechanism on his holster, in a state of readiness, and walked in with Cst Kirstenfeldt.

1126. Mr Rolfe's thumb was strapped and he did have an injury that he said caused him pain. However, if, as he said, that injury affected him to the point that he had to modify his practice and release part of the safety mechanism on his holster, he ought to have disclosed the injury to A/Sgt McCormack at the time he was being called out for the IRT job, so that a decision could be made as to whether he was fit to attend.

1127. I do not have to resolve the divergence between Mr Rolfe and Det SSgt Barram about the retention device (or whether it is ever legitimate to disengage part

of it before sighting a suspect)[1256] to find that Mr Rolfe's actions in searching House 577, and directing the IRT members to participate, were nothing like the "intelligence gathering" he had discussed with Sgt Frost.

1128. Mr Rolfe is a clever man, and he obviously had his own reasons for thinking that he had a better idea than the arrest plan devised by Sgt Frost. It is regrettable that he did not just admit that and explain his reasoning to the court, instead of stubbornly insisting that he was "intel gathering".

1129. Given that a child had told Cst Kirstenfeldt that Kumanjayi had left minutes earlier and would return to sleep there that night, Mr Rolfe was asked at trial why he could not just wait until later before searching House 577. One reason Mr Rolfe gave was that many in the community would now know that a specialist team from Alice Springs was looking for Kumanjayi; Kumanjayi would find out, and it would not be likely that he would return to that house.[1257] That is sensible reasoning and also precisely another example of why it was disingenuous for Mr Rolfe to maintain the pretence that searching House 577 and surrounds could be effective "intel gathering" to prepare for an early morning arrest.

1130. In addition to making my own commonsense assessment of the evidence, I have also taken into account the opinions of senior police, who rejected Mr Rolfe's explanation of "intel gathering", including:[1258]

    (a) Deputy Commissioner Murray Smalpage, whose extensive career included two tours of duty through the Bureau of Criminal Intelligence, being Director of Intelligence for the WA police and a front-line officer for extended periods. He rejected any suggestion that the IRT had

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1256 Ben McDevitt gave evidence that there were circumstances where it was legitimate to disengage the retention device, but he had not trained anyone in the NT and could not offer an opinion as to what was taught: Trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1269.

1257 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1066.

1258 Although I also heard evidence from the head of the TRG, Meacham King, that the actions of the IRT in hearing straight to House 577 was not "intel gathering": Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2518. I have not taken into account that opinion, given the later attack on the credibility of Sgt Meacham and other members of the TRG.

engaged in intelligence gathering on this night of 9 November and said:[1259]

> "Intelligence gathering would generally consist of activities that were better preparing you for the activity that may occur for the execution phase of the plan. Access and easement routes, location of the house, where Kumanjayi may frequent, what vehicles he may be in. There's lots and lots of other intelligence gathering activities that would assist you in supplementing your plan. In my view what I saw was the execution phase where they went straight to House 577 to effect his arrest."

(b) Commander David Proctor APM considered that the IRT members were attempting to locate and arrest Kumanjayi "under the auspices of intelligence gathering" and noted that the manner in which they armed themselves "does not seem consistent with Intelligence gathering activities".[1260]

(c) Detective Superintendent Scott Pollock who said that, despite the suggestion that Mr Rolfe and the other IRT members left the station on an intelligence gathering exercise, "it was clear they were going to attempt to locate and arrest Walker".[1261]

(d) Superintendent Jody Nobbs, who explained that what the IRT did under the label of "intelligence gathering" was outside the scope of his clear instructions, was counterproductive to the 5am arrest plan and undermined it. He said it was not intelligence gathering.[1262]

1131. Mr Rolfe's conduct in leading the IRT straight out to search the houses where Kumanjayi was suspected to be, was not only contrary to the Ops Order, but

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1259 Inquest evidence of Deputy Commissioner Murray Smalpage on 28 February 2023 at 4071.

1260 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 69-70.

1261 Coronial Memorandum of Detective Superintendent Pollock – DRAFT Nov 2020 [1-2A] at 19 and repeated in the subsequent draft coronial memoranda prepared by Detective Superintendent Pollock [1-3A], [1-4A], [1-5A], [1-6A].

1262 Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at T1116, T1122, and on 31 October 2022 at 2922.

contrary to his training and good police work for reasons which include the following:

(a) The open display and carry of the AR15 by an officer outside the premises was likely to create fear and unrest.[1263]

(b) The decision to move straight to "grab up [Kumanjayi]" lacked the protections that the plan articulated in the Ops Order provided, namely he proceeded without the support of the local Yuendumu police and at a riskier time in the evening, as compared to an early morning arrest.

(c) There was a serious lack of planning or risk assessment concerning the decision to attend and search house 577.[1264] For example, no consideration appears to have been given to the children who were inside the house, and the risk to them (at the very least, of serious trauma) in the event of a violent confrontation with Kumanjayi.

(d) Led by Mr Rolfe, the IRT members decided to actively locate Kumanjayi, without giving due consideration to the 10 Operational Safety Principles and ICENCIRE. Mr Rolfe chose an option that was more likely to result in the use of force than the 5am arrest plan, which had been approved by his superiors and was designed to include a local member who could recognise and communicate with Kumanjayi.[1265]

(e) Unlike the community police officers who confronted Kumanjayi on 6 November 2019 and were taken by surprise when he responded with violent resistance, Mr Rolfe and his fellow IRT members knew Kumanjayi was prepared to arm himself to escape arrest, and they were on notice that he may do so again on the evening on 9 November. That information was not an invitation for Mr Rolfe to disengage the

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1263 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 72.

1264 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 72.

1265 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 72.

retention feature on the bolster of his firearm to make it easier to draw his Glock. On the contrary, it was the reason to complete a thorough risk assessment and arrest plan to minimise the risk of a violent confrontation.

1132. After exiting the house, Mr Rolfe again approached the community member to illicit information about Kumanjayi's immediate whereabouts and asked him again to point out on the map on his phone the house where Kumanjayi was. The community member told Mr Rolfe that Kumanjayi was with Rickisha, "probably" at the house that Kumanjayi's mother was staying at. He identified the house that he said Kumanjayi was heading towards as either House 511 or House 518 (with more emphasis on 511).[1266] Mr Rolfe remained polite and respectful in his engagement with the community member, and he thanked him for his assistance.

The IRT move on to Houses 511 (the red house) and 518 (the blue house)

1133. At around 7.19pm, the four members of the IRT headed towards the location identified by the community member outside House 577. The IRT decided again to park in a way that was an attempt to surround the properties,[1267] and SC1C Donaldson, who was contacted by Mr Rolfe on radio, moved into the area to join them.

1134. According to Cst Kirstenfeldt:[1268]

> "At that stage, a lot of younger people, not children but around eighteen twenty sorta years old started flocking to that area and building up around us. The house next door to 518, they started banging on the fence. I went over to see what was going on. It seemed like they were trying to get attention, warn people, that

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1266 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1066.

1267 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1066.

1268 Recorded statutory declaration of Constable James Kirstenfeldt dated 10 November 2019 [7-79] at 6.

> sort of thing. There was a lot of yelling going on and banging on the fences."

1135. At the time, Cst Kirstenfeldt was confused by this behaviour, but by the time of the Inquest, he realised that this group was making noise to attract the attention of the community.[1269] This community response to the actions of the IRT provides further evidence as to why Mr Rolfe and Cst Kirstenfeldt were so wrong to think they knew better than Sgt Frost when she tried to explain the 5am arrest plan set out in the Ops Order. Sgt Frost knew her community and was an experienced "bush cop". Her plan factored in known community behaviours and was far superior to the hasty, makeshift arrangements substituted by Mr Rolfe as de facto team leader.

1136. As recorded on his BWV, Mr Rolfe approached a female who was in the backyard of House 518 and asked her to "come here for a sec". When she did, Mr Rolfe said:

> "My name's Zac, aye, we're new in town. We're here to grab up [Kumanjayi] aye...Is it this house or this house? [Kumanjayi] Walker. Where's Rickisha? ...Do you know Rickisha? Have you seen this man? [showing a photo of Kumanjayi]...Looking for this man, aye."

1137. In discussions with his IRT colleagues, who were trying to clarify which house Kumanjayi might be in, Mr Rolfe replied "could be either of them, but I think 511".

1138. The IRT members then made further enquiries with persons in the vicinity of House 511, including another female, who was asked by Mr Rolfe:

> "Hey missus...Where's [Kumanjayi] at?...Have you seen Rickisha today?"

1139. Within metres of the perimeter of House 511, Mr Rolfe engaged in another conversation of significance, this time with two females whom he did not know, and whose names he did not ask. Investigators later identified them as

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[1269] Inquest evidence of Constable James Kirstenfeldt on 20 October 2022 at 2065.

Elizabeth Snape and Leanne Oldfield. The conversation recorded on his BWV was:

MR ROLFE:	Whose house is this?
MS OLDFIELD:	Margaret's but they still in...um...[*waving her arm towards an area in town*]
MR ROLFE:	Can we go check inside? Cause we're lookin' for...[*trails off*]
MS OLDFIELD:	Go, go [inaudible]
MR ROLFE:	Go check inside?
MS OLDFIELD:	Margaret's house.
MR ROLFE:	Alright.

1140. According to Mr Rolfe, although one of the women identified that it was Margaret's property, he believed that they were lawful occupiers of that house, and that he had received a positive answer to his request for permission to enter.[1270]

1141. To determine what was said by Ms Oldfield to Mr Rolfe, I have carefully listened to the BWV and taken into account the evidence of Mr Rolfe. The first time Ms Oldfield says "Margaret's" she can clearly be heard, but the words at the end, where Ms Oldfield says "Margaret's house" for the final time, appear to be said as she is walking away, and they are faint. I do not accept that he was genuinely given permission to enter, even if he genuinely believed that he had. However, since there was a warrant out for Kumanjayi's arrest, Mr Rolfe did not actually need permission to enter if he had a reasonable belief that Kumanjayi was inside. I will return to the circumstances of this entry later in these Findings.

[1270] Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1068.

1142. Around the same time Mr Rolfe was speaking with Ms Oldfield, C1C Eberl made his way to the front of the open doorway of House 511 and from his position outside the house saw a male. He quickly told Mr Rolfe that "there's someone went in the back room here" and the following conversation was captured on the BWV of C1C Eberl:

C1C EBERL:	[*to a community member outside*] Hey mate, we're looking for [Kumanjayi] Walker. Do you know him?
MALE:	Um, yeah, maybe they went to graveyard.
C1C EBERL:	Who else is in the house mate?
MALE:	I don't know (Inaudible). They all gone to graveyard.
C1C EBERL:	Who went in the back there? Someone went in the back room, who was that?
MALE:	I don't know
C1C EBERL:	So you don't know who else is in the house?
MALE:	Yeah.

1143. When C1C Eberl was engaged in conversation with the community member, Mr Rolfe lifted the radio to his mouth and broadcast to the IRT members and SC1C Donaldson:

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

1144. The decision to enter the house was clearly made by Mr Rolfe, who had a) assumed the role of team leader and b) transmitted his decision to "clear this red house" when C1C Eberl was still speaking with a community member.

1145. Mr Rolfe had been told that there was a funeral on in the community. There was a note to that effect in the Ops Order, and there were community members clearly indicating that they thought Margaret and Kumanjayi were around the graveyard. That information was effectively ignored.

1146. Rather than pause to do a risk assessment, make any sort of plan or wait for the other IRT members to establish a cordon around House 511, Mr Rolfe made the call to "clear" the house, after which C1C Eberl entered, followed by Mr Rolfe.

C1C Eberl and Mr Rolfe enter House 511 (the red house)

1147. C1C Eberl and Mr Rolfe entered House 511, which was in darkness. C1C Eberl's torch illuminated a male inside the house, who was, in fact Kumanjayi. He was wearing a cap backwards and had his right hand in the pocket of his pants. Since C1C Eberl was in front, he was the first to speak with Kumanjayi and he asked him "Hey, what's your name mate?". Mr Rolfe followed with the same question "Hey mate, what's your name?". C1C Eberl repeated "what's your name?" then lightly touched Kumanjayi on the shoulder and said: "stop there, stop mate, we're just asking you a question, no need to keep walking". When Kumanjayi gave his name as "Vernon", C1C Eberl asked "Vernon who?", and Kumanjayi said "Vernon Dixon".

1148. Mr Rolfe then took control. He told Kumanjayi to "just come over here for a sec" and took him by the arm, then led him to the side wall of the front room. Kumanjayi's back was around half a metre from the wall and since Mr Rolfe kept his right hand on Kumanjayi's arm above the elbow, it is possible to say he was an "arm's length" in front of him. The following is then captured on Mr Rolfe's BWV:

KUMANJAYI:	My name is Vernon Dixon.
MR ROLFE:	Is it?
KUMANJAYI:	Yeah. And she's my aunty
	[Kumanjayi points outside with his right hand, which is empty]
MR ROLFE:	Don't stress, be calm. I'm gonna put a photo next to your face and see who you are.

[Mr Rolfe removes Kumanjayi's hat using his right hand and holds it next to Kumanjayi's left shoulder]

KUMANJAYI: Yeah.

C1C EBERL: That's all, okay?

KUMANJAYI: Yeah, I'm Vernon Dixon.

[Kumanjayi takes the hat and puts it back on]

C1C EBERL: Yeah, just chill out ---

MR ROLFE: Don't stress.

C1C EBERL: ---we're just gonna compare a photo, ok, that's all.

MR ROLFE: Relax, relax, I need this hat off, I need this hat off.

[Mr Rolfe removes Kumanjayi's hat with his right hand]

C1C EBERL: Hey Vernon, just relax.

KUMANJAYI: I'm just telling you the truth.

[Mr Rolfe drops Kumanjayi's hat on the ground and immediately places the fingertips of his right hand on or very close to Kumanjayi's chest]

C1C EBERL: Yes, I understand.

[The hat can be heard hitting the ground and Kumanjayi bends down and picks it up]

C1C EBERL: Just leave your hat off ---

KUMANJAYI: Yeah.

C1C EBERL: --- don't put it on.

[Kumanjayi puts his hat back on, using both hands, then puts both arms back down by his sides, perhaps into the pockets of his pants]

[With his right hand on Kumanjayi's chest, Mr Rolfe used his left hand to hold up his phone next to Kumanjayi's face]

MR ROLFE: Look straight ahead.

KUMANJAYI: That's not me

MR ROLFE: That's not you?

KUMANJAYI: Yeah, my name's Vernon Dixon.

[Approximately 8 seconds after Mr Rolfe first took his phone out to hold it up against held Kumanjayi's face]

MR ROLFE: Okay, good man, ok, cool. Easy mate, easy. Just put your hands behind your back.

1149. Mr Rolfe gave evidence that it took him some time before he was satisfied that the man referring to himself as "Vernon Dixon" was in fact Kumanjayi Walker. The only way he was able to make that identification was because of a sharp skin fold in Kumanjayi's left ear.[1271]

1150. When talking to Kumanjayi, Mr Rolfe was polite. I interpret his use of terms like "just relax" and "easy" as a genuine attempt to use calm language in the face of Kumanjayi's presentation, which could be described as fidgety and nervous.

[1271] Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1071.

The confrontation with Kumanjayi

A loss of situational awareness; Kumanjayi is cornered against the wall and strikes out at Mr Rolfe with scissors

1151. Situational awareness was hampered by poor lighting and poor planning. At the time the two officers entered House 511, the entire home was in darkness, save for the police torches, making it difficult for them to see who was in the house or what they were doing. Because Mr Rolfe was close to him and focused on identifying him, he was not paying attention to what Kumanjayi was doing with his hands, and Mr Rolfe did not notice that his right hand was in his pocket.

1152. Since the IRT was not accompanied by any local member (contrary to the approved Ops Order), in attempting to identify him, Mr Rolfe had closed the gap between himself and Kumanjayi; ushering him to a wall and coming within a metre of him. Mr Rolfe held up an outdated image of Kumanjayi that he (Mr Rolfe) had stored on his phone and compared this to the man in front of him. During this process Mr Rolfe twice took Kumanjayi's hat off with one hand, and each time, Kumanjayi put it back on, then put both hands back beside him. It took around 8 seconds for Mr Rolfe to be satisfied that he had made a positive identification, and he then directed Kumanjayi to put his hands behind his back. Mr Rolfe accepted at trial that he placed himself in a position inside House 511 where he could be threatened.[1272]

1153. Constable First Class Eberl gave evidence that at the point Mr Rolfe did the photograph comparison, he (Eberl) suspected or believed that "Vernon Dixon" was Kumanjayi Walker.[1273] Constable First Class Eberl said: 'Easy, mate, easy,' and Mr Rolfe told Kumanjayi to put his hands behind his back. Kumanjayi began to resist, and a struggle ensued.

1154. What happened next appeared to take Mr Rolfe by surprise.

[1272] Trial evidence of Zachary Rolfe on 4 March 2022 [7-115A] at 1164.

[1273] Trial evidence of Adam Eberl on 23 February 2022 [7-33B] at 698, 718.

1155. Mr Rolfe gave evidence that after he gave the instruction to "just put your hands behind your back", he saw Kumanjayi raising his arms and he started striking Mr Rolfe around the head and neck area.[1274] He said that he saw Kumanjayi hitting him in the head using a "hammer fist" motion.[1275] Mr Rolfe saw a metal blade protruding from Kumanjayi's hand,[1276] being held like a dagger.[1277] Mr Rolfe did not suffer any head injuries, and nor did he feel the blade hitting his head.[1278] He rejected the suggestion that it was too dark, or that the situation developed too quickly, for him to have seen the blade. His other actions are expanded on further below.

1156. C1C Eberl's evidence is that in response to Kumanjayi beginning to struggle, he said: "Stop it mate".[1279] and used a distraction strike to the side of the face of Kumanjayi so that he would stop fighting and so Constable First Class Eberl could grab his arm.[1280]

1157. The BWV footage shows that at 7.21.57pm, Kumanjayi used the scissors that were in his right hand to strike downwards in a stabbing motion. Mr Rolfe raised his left arm to ward off the strike, which appears to have caused the 3mm puncture wound to Mr Rolfe's shoulder.[1281]

1274 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1072.

1275 Inquest evidence of Zachary Rolfe on 29 February 2024 [7-115A] at 5514.

1276 Trial evidence of Zachary Rolfe on 3 March 2022 [7-115A] at 1072, on 4 March 2022 at 1167-1168; Inquest evidence of Zachary Rolfe on 29 February 2024 at 5512.

1277 Trial evidence of Zachary Rolfe on 4 March 2022 [7-115A] at 1168.

1278 Trial evidence of Zachary Rolfe on 4 March 2022 [7-115A] at 1167.

1279 Body worn video of Zachary Rolfe, 2 of 4 [4-1]; Body worn video of Constable First Class Adam Eberl, 2 of 4 [4-1].

1280 Recorded statutory declaration of Constable First Class Adam Eberl dated 10 November 2019 [7-31] at 5; Recorded statutory declaration of Constable First Class Adam Eberl dated 11 February 2020 [7-33] at 15; Committal evidence of Constable First Class Adam Eberl on 2 September 2020 [7-33A] at 156; Trial evidence of Constable First Class Adam Eberl on 23 February 2022 [7-33B] at 699; Inquest evidence of Constable First Class Adam Eberl on 17 October 2022 at 1787.

1281 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [119].

Mr Rolfe responds by shooting Kumanjayi three times, in under three seconds

1158. At 7.22.00pm, Mr Rolfe's BWV shows he had his firearm drawn and had a double-handed grip on it.[1282] Kumanjayi had his back to Mr Rolfe and the footage shows Mr Rolfe maintain a right-handed grip on his firearm and he used his left hand to brace against C1C Eberl's back. At this time, Kumanjayi was wrestling with C1C Eberl. It appears Mr Rolfe braced his left hand on C1C Eberl's back to halt his rearward movement.

1159. As Det SSgt Barram described in his report,[1283] at 7.22.01pm Mr Rolfe fired Shot 1 from his firearm as indicated by the muzzle flash seen on his BWV footage. The BWV footage, photos taken by the Crime Scene Investigator and the subsequent post mortem medical report, show that Shot 1 struck Kumanjayi in the middle to upper right region of his back. This shot was not fatal.

1160. After Kumanjayi was shot once, both he and C1C Eberl fell to the ground, landing on a mattress near the front door. The time was 7.22.02pm. The BWV shows that Kumanjayi was underneath C1C Eberl, with his right side on the mattress. Kumanjayi's right arm and right hand containing the scissors appeared to be underneath him.[1284] C1C Eberl maintained the headlock he had on Kumanjayi. Although it is difficult to see from the BWV exactly what Kumanjayi is doing, he did not relinquish the scissors until after he was handcuffed.

1161. At some time during the struggle, it is possible that C1C Eberl was scratched with the scissors, although he was not aware of it at the time. C1C Eberl

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1282 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [124]-[126].

1283 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [124]-[126].

1284 As per the assessment by SSgt Barram: see Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [140].

received a superficial wound and bruising to his upper left arm, and his police shirt was later revealed to be slightly damaged.[1285]

1162. While Kumanjayi was lying on the ground beneath C1C Eberl, Mr Rolfe moved forward and fired two more rounds into the left side of Kumanjayi's chest, at close range. At 7.22.03pm Mr Rolfe stood over C1C Eberl and Kumanjayi, placed his left hand on C1C Eberl's lower back and fired Shot 2 into Kumanjayi's left side. At 7.22.04pm, Mr Rolfe fired Shot 3 into the same area of Kumanjayi's body.

1163. As is evident from that summary, Mr Rolfe fired the first shot at 7.22.01pm; the second at 7.22.03p.m. and the third at 7.22.04pm. The second shot was fired 2.6 seconds after the first shot, and the third shot was fired 0.5 seconds after the second shot. This means there was a total of 3.1 seconds between the first and third shot. The entire shooting incident, including audio, was captured on the body worn video of the involved members.[1286]

1164. At no time did Mr Rolfe issue a standard warning to Kumanjayi prior to shooting him.[1287]

1165. Firing two shots in rapid succession is sometimes referred to as a "double tap",[1288] although at trial Mr Rolfe denied that he had used a double tap, and described it instead as a "controlled pair".[1289] According to Det SSgt Barram, this technique is taught and practiced in the NT Police firearms training package, along with practicing other multiple-shot and multiple-target

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1285 The report of AFP Forensic Chemist, Timothy Simpson, records "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": Expert report of Timothy Simpson, dated 11 June 2020 [7-157] at 3.6.1.

1286 While C1C Eberl's BWV camera dislodged from his uniform during the struggle with Walker, it continued to record.

1287 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [141].

1288 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [142].

1289 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1096, and on 4 March 2022 at 1176.

combinations that may be applicable to various tactical scenarios. Whether it is reasonable to fire multiple shots depends on the circumstances, but NT Police are trained to fire as many shots as are necessary to stop the threat, and to keep firing until that threat has ceased.

1166. After Kumanjayi was shot for a third time, it appears that he was writhing in pain and calling out.

1167. C1C Eberl, who had been focused on detaining Kumanjayi, seemed shocked that Mr Rolfe had discharged his firearm. His voice is captured on the BWV footage, "Did you? Fuck…".

1168. In response, Mr Rolfe replied, seemingly to explain and reassure him:

> "It's all good, 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! Let go of the scissors!"

1169. Kumanjayi yelled out repeatedly for "Leanne", the mother who had raised him. At 7.22.49pm the BWV captures him saying: "I'm going to kill you mob". I do not think that comment can be used to infer what Kumanjayi's earlier intention might have been, since he must have been in agony when he called that out having just been shot three times. Several seconds after Kumanjayi was shot, the scissors were removed, Kumanjayi was handcuffed, and frantic calls were made to the IRT members outside to render assistance and to help get them all away from the scene.

Mr Rolfe's explanation for shooting Kumanjayi

1170. Since Mr Rolfe declined to be interviewed by the NT Police,[1290] or to provide a statement setting out his version of events, his first public version of events was his evidence in chief at the trial.

1171. At trial, as at Inquest, Mr Rolfe was asked to describe what he remembered "seeing, hearing and perceiving" just before he discharged the first shot. He answered as follows:[1291]

> "So when I said, "Put your hands behind your back" as soon as I said that Kumanjayi started resisting. He raised his arms and started striking me around my head and neck area and I immediately raised my left arm and left shoulder to protect my neck. Kumanjayi struck me twice on the top of the head in a hammer fist motion, which is using the writers palm coming downwards on the top of my head. I thought this was strange because he wasn't using his knuckles so I - at that point, I looked at his hands. That was the first time I ID'd [sic] that he had a metal blade protruding---
>
> So I saw him holding a blade in a dagger-like grip and then I had my shoulder up and my arm out to protect myself and then he stabbed me in my left shoulder.
>
> Instinctively from then – from then, I jabbed him just with my left hand…In the face with my left fist.
>
> Instinctively at the same time, I put my hand on my Glock. At which point I realised his left hand was already on my Glock."

1290 I note that arrangements were made for Mr Rolfe to provide a statement on 10 November 2019, and he attended the Alice Springs Police Station for this purpose; however, the intended interview was postponed until investigators had the opportunity to view his BWV and decide whether it should proceed as an interview under caution, instead of a voluntary statement. The interview was further delayed allowing the DPP to review the footage and provide an initial opinion: Coronial memorandum of Commander Proctor APM dated 31 August 2021 [1-1A] at 81, 96-97.

On 12 November 2019 Mr Rolfe formally declined to be interviewed: Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 50.

1291 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1072.

1172. Mr Rolfe said that he was aware at the time that C1C Eberl was in close proximity. He continued with his evidence:[1292]

> "So as soon as saw him with the blade, I immediately feared for my life. And instinctively I went for my Glock.
>
> His hand was on my Glock, and I twisted my hips back, which were trained to do with speed, to knock that hand off my Glock, and step back. As soon as I stepped back, Kumanjayi's focus turned to Eberl, and I immediately feared for Eberl's life. Kumanjayi started stabbing Eberl in the chest and neck area."

1173. When asked by his Senior Counsel Mr Edwardson KC whether he was able to see that C1C Eberl was being stabbed, or whether that was "just the impression he got", he replied that his "perception was that Eberl was being stabbed".[1293]

1174. Mr Rolfe gave evidence that he considered that Kumanjayi was potentially armed with a lethal weapon and the areas on the body that are particularly vulnerable to a weapon such as this are the neck, underarm, chest, groin, thigh and stomach.[1294] Although Mr Rolfe was wearing body armour, he knew that C1C Eberl was not.[1295]

1175. Mr Rolfe continued his evidence, saying:[1296]

> "So I drew my Glock, and when it was safe to fire, still fearing for Eberl's life, I fired one round into centre of seen mass of Kumanjayi…I was aiming at the centre of mass. Pulled the trigger and was able to confirm that it hit the target."

1176. At trial, as at Inquest, Mr Rolfe claimed that he continued to fire Shots 2 and 3 in accordance with his training, because police are taught to continue firing until "we achieve incapacitation" and he did not believe that Kumanjayi had been incapacitated by Shot 1.[1297]

1292 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1072-1073.
1293 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1073.
1294 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1073-74.
1295 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1074.
1296 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1074.
1297 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1074-1075.

1177. As noted above, the evidence established that there was a time lapse of 2.6 seconds between the first shot and the second shot, and .53 seconds between the second shot and the third shot. Mr Rolfe gave evidence of what happened between those 2.6 seconds, explaining at trial:[1298]

> "So after I fired the first shot, Kumanjayi and Eberl fell to the ground. That's what my perception, they fell to the ground, and they began fighting on the ground...most of Kumanjayi's body was behind Eberl's body, but they were facing the same direction. I saw – I could see Kumanjayi's right – Kumanjayi's right arm, with the blade in it, still moving and stabbing Constable Eberl on the ground."

1178. Mr Rolfe gave evidence that he continued to be in fear for C1C Eberl's life, and "needed to incapacitate the threat immediately by the use of [his] firearm".[1299] He moved towards the two of them on the ground and placed his left hand on C1C Eberl's back, so that C1C Eberl didn't move back into his line of fire, and he then fired two more rounds into Kumanjayi's centre of mass. At that point, he observed Kumanjayi's right arm stop trying to stab C1C Eberl and so he holstered his gun.[1300]

1179. Mr Rolfe rejected the suggestion put to him in cross examination that after the first shot, Kumanjayi's hands were pinned under him and the threat had been brought under control. He gave evidence that his "perception" was that Kumanjayi was not incapacitated at any time before he discharged Shot 3.

1180. Broadly, Mr Rolfe gave the same explanations for his conduct when he gave evidence at the Inquest.

The trial of Zachary Rolfe for the killing of Kumanjayi Walker

1181. Given the public interest in this Inquest, and the unusual circumstance that it was preceded by a high profile trial, I have summarised what happened with

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1298 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1074.

1299 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1076.

1300 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1076.

respect to the charging and acquittal of Mr Rolfe following the death of Kumanjayi. Again, in outlining this summary, I am not intending to question the jury verdict or to make any comment to suggest that a person is or may be guilty of a criminal offence,[1301] and my purpose is merely to clarify what took place at the trial proceedings, which preceded this inquest by six months, and to highlight some of the significant evidence there.

1182. Just four days after Kumanjayi was killed, on 13 November 2019, Mr Rolfe was charged with an offence of murder, with "back up" (alternative) charges of manslaughter and "violent act causing death". After a five week trial, Mr Rolfe was found not guilty of all criminal charges he faced.

1183. At the time Mr Rolfe was charged, the police did not have access to all the evidence, but what they did have included BWV footage from Mr Rolfe and C1C Eberl showing the shooting, the account of events inside House 511 that had been given by C1C Eberl, and the medical reports in relation to injuries sustained by Kumanjayi and Mr Rolfe. As was his right, Mr Rolfe declined to be interviewed or to give a statement about what had occurred. That meant that at no time prior to being charged (or even prior to the trial commencing) did the police or prosecuting authority have access to a version of events from Mr Rolfe, that they could consider in weighing up the strength of the case.

The charges were laid only in relation to the second and third shots fired

1184. The Crown relied on the expert evidence of Det SSgt Barram, whose significant qualifications were outlined in Chapter Three.[1302] Det SSgt Barram reviewed the BWV footage and formed a view (in summary) that Mr Rolfe's act of discharging the first shot at 7.22.01pm was not the only option he could

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1301 As set out elsewhere, Section 34(3) of the *Coroners Act NT* specifically precludes a Coroner making a comment to that effect.

1302 The expert qualifications of Det SSgt Barram have been summarised elsewhere and are set out in his statements.

have taken, and not in accordance with best practice, but it appeared to be a reasonable action to take in in defence of C1C Eberl.[1303]

1185. On the other hand, Det SSgt Barram considered that Shots 2 and 3 were not a proportionate response to the threat, because (again, in short summary)[1304] Kumanjayi was effectively being restrained by C1C Eberl on the ground when these shots were discharged.

1186. Mr Rolfe gave evidence that, contrary to Det SSgt Barram's assessment, Kumanjayi was not under effective control until after he discharged Shot 3. He said that Kumanjayi was not being effectively controlled by C1C Eberl and that Kumanjayi's hand was not trapped underneath him, meaning that C1C Eberl continued to be at risk of being stabbed.

1187. In his defence, Mr Rolfe relied on evidence from defence expert Ben McDevitt, whose impressive CV includes 38 years in various law enforcement and regulatory agencies.[1305] Mr McDevitt had, among other career achievements, spent 12 years as a member of the Australian Federal Police (AFP) Special Operations Team (or SOT, similar to a TRG). He was previously responsible for all the AFP training, and had trained as a police negotiator and police forward commander. He had not had any experience in the Northern Territory operational policing context.[1306]

1188. On behalf of Mr Rolfe, Mr McDevitt reviewed the opinions that were expressed by Det SSgt Barram. The key questions that the experts disagreed on at trial was whether the threat to C1C Eberl, of being stabbed by Kumanjayi, had ceased after Shot 1, or in other words, whether the threat had been neutralised because C1C Eberl had effective control over him.

1303 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [121].

1304 His full opinion was set out in detail in the expert reports he prepared for trial, which were included in the brief of evidence. Since I have not found it necessary to come to a conclusion about the use of force inside House 511, I have not set it out in detail.

1305 Trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1237. Trial exhibit 83: "Curriculum Vitae of Ben McDevitt" [19-98].

1306 Trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1268.

1189. Mr McDevitt's opinion was that the threat to C1C Eberl had not been removed after Shot 1.[1307] In fact, he opined that "once the struggle went from a standing struggle to the ground it became a far more dangerous and dire situation for Constable Eberl" since he no longer had the use of his legs and it was more difficult to retain his own weapon. Mr McDevitt could not see the logic in dividing the threat into two phases of standing and lying down,[1308] and he did not think that police had obtained control over Kumanjayi until they had removed the edged weapon from him, and handcuffed him; that is, after Shot 3 had been fired.[1309]

1190. In cross examination, Mr McDevitt agreed that the BWV did not depict Kumanjayi's upper body moving during those 3.1 seconds between Shots 1 and 3; and he agreed that he could not see on the BWV Kumanjayi attempt to, or actually stab Cst Eberl in those few seconds. He said that he could not see a lot of detail; and could not see what range of movement was available to Kumanjayi. He agreed that if the upper arm was pinned between the mattress and Kumanjayi's body, that would have affected his capacity and ability to use the scissors and would have affected the level of threat.[1310] He was clear that if the threat had been removed after Shot 1, then it would not have been appropriate or necessary to discharge further shots,[1311] but he maintained that "subject control had not been achieved, nor had the threat been removed until the weapon had been removed from Mr Walker and Mr Walker had been handcuffed…".[1312]

1191. Ultimately, that is not an issue that I am able to resolve in this Inquest, and I have not sought to do so.

1192. After considering the submissions of the NT Police and those appearing for Mr Rolfe and NT Police, I decline to make findings as to the justification for

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1307 Trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1253-1254.
1308 Trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1257.
1309 Trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1257-58.
1310 Trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1279.
1311 Trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1282.
1312 Trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1285.

Shots 2 and 3, which were the subject of criminal charges and in relation to which a jury found Mr Rolfe not guilty. Although the Coroner performs an entirely different role to a criminal court, and it is arguable that I could make some comment about the discharge of those last two shots, provided that I did not offend against s34(2) of the Act by suggesting that someone is or might be guilty of an offence, I do not consider that it is appropriate for me to do so here, if there is even a small risk that it could be seen to undermine the jury verdict. Ultimately, I agree with the submissions of the NT Police that:[1313]

> "…[I] should not make any findings about what happened inside House 511 after the firing of the first shot, including whether Constable Rolfe used excessive force against Kumanjayi Walker. Constable Rolfe was found by a jury to be not guilty of murder of Kumanjayi Walker, along with associated charges. The jury was not satisfied beyond reasonable doubt that his use of force against Kumanjayi was unjustified or excessive in the circumstances as Constable Rolfe perceived them to be. What took place in House 511 after the firing of the first shot, and the conduct of the murder trial, should not form part of the Coroner's findings or considerations. This is a fundamental line of delineation beyond which the Coroner should not go."

My Findings on the first shot- what really happened immediately prior to the discharge

Kumanjayi's act of stabbing Mr Rolfe was sudden and dangerous

1193. In contrast to shots 2 and 3, the first shot discharged by Mr Rolfe has never been the subject of criminal charges.

1194. That means that any findings I make with respect to the first shot could not be said to traverse the jury verdict. I remind myself again, however, that there

[1313] Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [18].

is a statutory preclusion on me making any comment to the effect that someone is guilty of a criminal offence.[1314]

1195. It is not in dispute that immediately before Mr Rolfe discharged his firearm for the first time, he was stabbed in the shoulder by Kumanjayi, with scissors that were around 13cm in total length (handle and blade). That caused an injury that was described as a 3mm puncture wound that did not require stitches. At trial, those scissors were described by forensic pathologist Dr Marianne Tiemensma as "very light weight, it's very small, it's blunt",[1315] but Mr Rolfe could not have known that in the moment he was struck. I have set out the evidence that Mr Rolfe gave at trial as to what was in his mind at the relevant time and why Mr Rolfe said that he feared for his own life and the life of his colleague, C1C Eberl, who was assisting with the arrest Kumanjayi.

1196. Even though the scissors were small and caused only a minor puncture wound on this occasion, they were a dangerous implement and there was evidence given at the trial that they could have caused a serious injury if they had hit a vulnerable area of the body.[1316] Further, in that dynamic and dark environment, Mr Rolfe would not have been able to determine exactly what type or length of blade Kumanjayi possessed.

1197. It is not appropriate to downplay the danger or seriousness of what Kumanjayi did when he stabbed Mr Rolfe.[1317] While Kumanjayi's likely FASD and developmental trauma may help explain why he sometimes lashed out,

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1314 I note that the *Coroners Act 1993 (NT)* states that the coroner "**must** investigate and report on the care, supervision and treatment of the person while being held in custody or contributed to by injuries sustained while being held in custody" (sec 26(1)(a)) and that the coroner "**must** make such recommendations with respect to the prevention of future deaths in similar circumstances as the coroner considers to be relevant" (sec 26(2). Those sections suggest that I must look at the treatment of Kumanjayi by Mr Rolfe inside House 511, after he was detained, and until the time of his death, while at all times I am mindful that I do not offend against the statutory prohibition on "including in a finding or comment a statement that a person is or may be guilty of an offence" (sec 34(2)).

1315 Trial evidence of Dr Marianne Tiemensma on 22 February 2022 [10-21B] at 669.

1316 Trial evidence of Dr Keith Matthew Towsey on 18 February 2022 [19-29] at 566.

1317 As the submissions of the Walker, Lane and Robertson Families sought to do. The potential lethality of the scissors was described by defence expert Ben McDevitt at trial, see Trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1257.

including on 9 November, that does not excuse what he did when he stabbed Mr Rolfe with the scissors, nor does it make it less dangerous.

Kumanjayi did not, as claimed by Mr Rolfe, place his hand on Mr Rolfe's service weapon before Mr Rolfe discharged the first shot

1198. I do, however, have a significant concern about one aspect of the version of events given by Mr Rolfe in his evidence about what happened in House 511, which was not a version that had been given before SSgt Barram provided his evidence at trial.

1199. Unlike the initial police investigators, including Det SSgt Barram, I have additional evidence in the form of accounts given by Mr Rolfe that I can weigh up alongside the other evidence. I have had the advantage of reviewing Mr Rolfe's statements and his evidence at trial, and of observing him give evidence in the Inquest, as well as hearing and reading relevant submissions.

1200. Although the public heard Mr Rolfe's version of events for the first time at trial, by the time the Inquest had commenced, there was evidence that he had given at least three earlier versions of the events inside House 511. In each of those earlier accounts, Mr Rolfe never said that before he fired Shot 1, he realised that Kumanjayi's hand was on his Glock. That is surprising, because if that was true, it would surely be one of the most serious concerns for a police officer in that situation, and an important justification for Mr Rolfe fearing for the safety of himself and CIC Eberl.

1201. Mr Rolfe's earlier versions were as follows:

(a) On 10 November 2019, the morning after the incident, Mr Rolfe was in Alice Springs Hospital for a medical review. After he returned home, between 2am and 3am, he received a phone call from fellow officer, Constable Breanna Bonney. He described to her the incident leading up

to the shooting and did not mention that Kumanjayi had touched or tried to get his Glock.[1318]

(b) That same morning, commencing at 2.32am (according to his notebook entry) Mr Rolfe wrote notes in his police issued notebook about what had occurred, including as to his state of mind at the time he discharged the shots. In his notes, Mr Rolfe records that after he was stabbed, he observed "Walker attempting to stab Eberl with blade and I yelled "he's stabbing you" or words to that effect. Fearing for Eberl's life - I unholstered my Glock – Fired into Walker's torso".[1319] But he did not mention that Kumanjayi's hand was on his Glock.

(c) Perhaps most significantly (and unbeknown to the prosecutor at trial) on 5 December 2019, within weeks of the shooting, Mr Rolfe gave a lengthy and detailed interview to Kristin Shorten of the Australian, a journalist whom he knew was sympathetic to him. Just two days after the shooting, on 11 November, Ms Shorten had sent Mr Rolfe a text message stating:[1320]

> "I know what you did was totally warranted. If you ever want me to write an article in your defence, with or without naming you, say the word".

Mr Rolfe replied to that message:

> "…Hundred percent I already thought about it if I want to put my side out there I would always come to you. Once all this investigation is over we'll get to that. It'd be good to get some truth out there. Thank you heaps. Will talk soon hey."

1202. Although Ms Shorten offered to write a piece "without naming or quoting you, so it sounds like we never spoke" and although Mr Rolfe said he was "down for that", in the end, he gave Ms Shorten a lengthy video recorded interview (to be broadcast after the trial) in which he described the shooting of

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1318 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5412-5413.

1319 Zachary Rolfe's Official police notebook 47301 [7-115D] at 1-9.

1320 MFI MMM messages 668-675.

Kumanjayi in great detail. In fact, he did so on camera in more than one "take", and in none of those takes did Mr Rolfe say or even suggest that Kumanjayi had put his hand on his Glock.[1321]

1203. Yet at his trial, some two and a half years after that interview and the death of Kumanjayi, Mr Rolfe claimed for the first time that moments before he discharged Shot 1, when he (Mr Rolfe) went for his Glock he "realised his [Kumanjayi's] left hand was already on my Glock". In response, at trial Mr Rolfe said that "I twisted my hips back, which we're trained to do at speed, to knock that hand off my Glock and step back" and proceeded to shoot. That evidence was repeated by Mr Rolfe at the Inquest and was the subject of significant cross examination. It forms a significant link in the chain of circumstances surrounding Kumanjayi's death.[1322]

1204. At Inquest, Mr Rolfe conceded that "the significance of Kumanjayi putting his hand on [his] Glock is that he could have then withdrawn the weapon and shot [him]"; and "to lose control of [his] service weapon [was] one of the most serious things that could happen to a police officer".[1323] Had that really happened, it is likely that Mr Rolfe would have disclosed that in at least one of his early accounts. Particularly in his notebook, which contained some detail and was written on his own time and in his own hand at home. And perhaps even more particularly to Ms Shorten on 5 December 2019, the sympathetic journalist to whom he gave an exclusive recorded interview within weeks of Kumanjayi's death, which was to be ready to go to air as soon as the trial completed.

1321 The Australian's Kristin Shorten interview with Zachary Rolfe on 5 December 2019 [20-72] (the transcript of this interview is found at [20-73]).

1322 That is particularly so since s26(1) of the *Coroner's Act* requires that "[w]here a coroner holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody, the coroner (a) must investigate and report on the care, supervision and treatment of the person while being held in custody or caused or contributed to by injuries sustained while being held in custody and (b) may investigate and report on a matter connected with public health or safety or the administration of justice that is relevant to the death.

1323 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5412.

1205. Having reviewed the available evidence, I am firmly satisfied that the account given by Mr Rolfe about Kumanjayi's hand being on his Glock cannot be accepted.

1206. In coming to the conclusion that I do not accept Mr Rolfe about this detail, I largely relied on the inconsistency between his first three accounts and the account he gave at his trial,[1324] but also on my assessment of all the evidence. Mr Rolfe was not an entirely credible witness. His evidence was not convincing and defied commonsense when he claimed that when the IRT left Yuendumu Station they were "intel gathering", and nor was his evidence credible concerning his knowledge of Sgt Frost's arrest plan.

1207. I reject Mr Rolfe's evidence that the late relaying of this significant information can be explained by the way that memory works "in regard to critical incidents".[1325] There was no attempt by Mr Rolfe to elicit any expert evidence to demonstrate that this was a plausible explanation in his case.

1208. Those appearing on behalf of Mr Rolfe complain that neither Counsel Assisting nor any other interested party took Mr Rolfe through the BWV footage of when, they claim, you can see that there was an opportunity for Kumanjayi to reach down and touch the weapon.[1326] That submission is misleading and unhelpful, for the following reasons:

    (a) First, as the experienced counsel appearing for Mr Rolfe knew, they were at liberty to show the footage to Mr Rolfe themselves during their examination of him. Knowing this, Mr Officer, then appearing for Mr Rolfe, asked the Solicitor Assisting and court officer to queue up the relevant stills from the BWV footage in preparation for his examination of Mr Rolfe. For an unknown reason (which Mr Officer is under no

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1324 Closing written submissions of the Brown Family dated 29 October 2024 at [244]: "to omit such a critical fact is consistent with the allegation being a fabrication".

1325 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5416-5417.

1326 Closing written submissions of Zachary Rolfe on 11 November 2024 at [162] and [190].

obligation to disclose), Mr Officer chose not to show those BWV stills.[1327]

(b) Second, the BWV footage is in evidence, and I have watched it for myself and satisfied myself that at no time can Kumanjayi's hand be seen on Mr Rolfe's Glock.

(c) Third, the entire transcript from the trial and Inquest is in evidence and I have read for myself the examination and cross examination of Mr Rolfe on this point and others.

(d) Fourth, those appearing for Mr Rolfe have had ample opportunity to make oral and written submissions about this and every other aspect of the actions taken Mr Rolfe.

1209. To be clear, I do not accept what Mr Rolfe said with respect to Kumanjayi's left hand being on his Glock immediately before he discharged Shot 1. I do not accept that was a factor in the decision Mr Rolfe made to discharge his weapon after Kumanjayi struck him with the scissors.[1328]

1210. Mr Rolfe has given evidence as to what was in his mind at the time he discharged shots 1 to 3, but I am not in a position to reach any conclusion as to his state of mind, and I decline to do so.[1329] The only evidence as to what was in Mr Rolfe's mind at the time he discharged the shot came from him. In circumstances where I do not accept one important aspect of the account given by Mr Rolfe, I am not able to make a finding as to what was in his mind at the

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1327 See Inquest transcript on 28 November 2024 at 5973-5974.

1328 It is the position of NT Police that the "use of force on Kumanjayi was properly within the remit of the Supreme Court should not be traversed again in this inquest": Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [837]. Although the first shot was not the subject of a criminal charge, I have reached the same conclusion that it is not appropriate for me to make a finding on the use of force inside House 511.

1329 As set out above, I am mindful of the statutory restrictions on making any finding or comment that suggests someone is guilty of a criminal offence and I am not intending to do so. I note the restrictions discussed in *Perre v Chivell* (2000) 77 SASR 282, set out elsewhere. I am not (as those appearing for Mr Rolfe cautioned against) applying the facts found to the relevant law to determine or find guilt, and am not characterising those facts in terms of legal concepts or conclusions. See discussion in the closing submissions made on behalf of Mr Rolfe at [113].

time he discharged Shot 1. I acknowledge that the objective facts are that he did so immediately after Kumanjayi had struck him with scissors, and in circumstances where Kumanjayi was in close proximity to C1C Eberl and physically engaged with C1C Eberl at that time.[1330]

The broader issue for the Inquest - A stark example of "officer induced jeopardy"

1211. It will be clear from the comments I have already made that I am highly critical of the way in which Mr Rolfe ignored the Ops Order/ arrest plan, and his basic training on risk assessment, and led the team (particularly C1C Eberl) into a dangerous situation inside House 511. It was dangerous for the officers and for Kumanjayi.

1212. Mr Rolfe had assumed the role of team leader, and he made the decision to enter House 511, at the time and in the way they did, in breach of the written Ops Order, and with insufficient planning and without properly informing the other two IRT members or SC1C Donaldson of their roles.

1213. Mr McDevitt, the tactical expert called on behalf of Mr Rolfe at trial, agreed that lessons should have been learnt from what happened on 6 November 2019. If Kumanjayi was to be arrested at night (noting, of course, that this was not what was envisaged in the Ops Order), then there would need to be cordoning and containing and staying away from being close range, and possibly a need to "put surveillance in and wait until he was out of the premises and less likely to have access to a weapon". The key being not to repeat the mode of attempted arrest that had already failed on 6 November.[1331]

1330 In the course of this analysis I have considered the submissions of the Walker, Lane, Robertson Families with respect to making a report pursuant to section 35(3), and I decline to make such a report.

1331 Inquest evidence of Ben McDevitt on 7 March 2023 at 4594, in response to questioning by Dr Freckelton KC for the Northern Territory Police Force.

1214. Critically, one major difference between the arrest that Mr Rolfe led, and the 5am arrest plan was the inclusion of a local officer who knew Kumanjayi. That had two benefits. First, it eliminated the need for an officer to get close to Kumanjayi to identify him, and second, it meant that there was a local officer Kumanjayi was familiar with who would be better placed to de-escalate and reassure Kumanjayi (and any other family members who would likely be present).

1215. Mr McDevitt agreed that a "key component" in the 5am arrest plan was "having a local member who could assist in the identification and play a role in defusing or deescalating any tensions which might otherwise arise".[1332] In his words, having a local person who could recognise Kumanjayi was "absolutely critical", and having a person who Kumanjayi had a good relationship with would have been (in his words) a "fantastic asset".

1216. The moral of this story, and the central lesson to take away from the unnecessary and tragic death of Kumanjayi Walker, is that he and Mr Rolfe should never have been together in House 511 in fading light on the evening of 9 November 2019. This is a cautionary tale of "officer induced jeopardy".

1217. In Chapter Three above, I outlined police training that emphasises the 10 Operational Safety Principles the first of which is "Safety First". Those principles are on the first page of every police notebook, and they are worth reciting again, so that the folly of entering House 511 that night is made clear. They are:[1333]

[1332] Inquest evidence of Ben McDevitt on 7 March 2023 at 4601-04.

[1333] Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at 12-13.

1. Safety first	The Safety of police, the public and offenders/suspects is paramount
2. Risk Assessment	An assessment is to be made of the possible risks associated with any course of action or option being considered
3. Take Charge	Effective command and control must be exercised.
4. Planned Response	From an unplanned response every effort must be made to develop a plan of action.
5. Cordon and Contain	Unless it is impractical to do so a "cordon & contain" approach is to be adopted.
6. Avoid Confrontation	A violent confrontation is to be avoided as much as is reasonably possible.
7. Avoid Force	The use of force is to be avoided as much as is reasonably possible.
8. Minimum Force	Where force cannot be avoided, only minimum force reasonably necessary and justifiable is to be used.
9. Avoid Forced Entry Searches	Forced entry searches are to be used as a last resort.
10. Resources	It is accepted that the "safety first" principle may require more resources, more complex planning and more time.

1218. Det SSgt Barram compared the 10 Operational Safety Principles with the actions taken by the IRT members and the police tactics used in this incident. His conclusions are set out below:[1334]

> **Regarding Principle 1, Safety First,** little regard appears to have been given to this. In choosing to enter and "clear" a premises where they suspected Kumanjayi may be, combined with their knowledge that he had previously armed himself with a hatchet when confronted by police two days earlier, and was therefore

[1334] Statutory declaration of Detective Senior Sergeant Andrew Barram dated 12 March 2020 [10-4] at [92]-[105].

likely to do so again if confronted by police, these officers knowingly put themselves into a potentially very dangerous situation. It is my opinion that this situation could have been avoided if they had followed the standard police procedure of "cordon and contain" as per the ICENCIRE[1335] plan.

Regarding Principle 2, Risk Assessment, little if any assessment was made of the risk of entering, of precipitating or forcing a confrontation, or that WALKER could be armed.

Regarding Principle 3, Take Charge, it is unclear to me who was in charge of the IRT members, and it appears to me there was no effective command and control being exercised by any of them. There did not appear to be any consideration given to what, if any, police powers existed to authorise entry into the residence. Part of effective command and control is effective communication. There was very poor communication between the members present. Whilst ROLFE did transmit that they were "going to clear this red house", it was not communicated by radio to other members that EBERL had seen a person inside the house. There was also no communication to the other members to ensure they were in position to form an effective cordon to contain anyone attempting to run out of the premises.

Regarding Principle 4, Planned Response, FROST had made a plan to allow WALKER to surrender himself at the Police Station, and had communicated that to his family members. FROST further planned that if WALKER did not hand himself in, then all available police would attend at 5.00am the next day to arrest him. On arrival at Yuendumu, the IRT members were verbally briefed by FROST on her plans, and told to conduct high visibility patrols of the community and to make some enquiries as to where WALKER might be located the next morning. It appears to me that the IRT members departed significantly from this plan and began searching for WALKER immediately upon leaving the Police Station. ROLFE'S BWV records him saying "We're here to grab up [Kumanjayi] aye."

This statement and their actions in attending House 577 upon leaving the station, then House 511 immediately after reinforces my view.

There was no planning process or discussion undertaken prior to entering House 511, and no evidence of [if/then thinking].

[1335] **I**solate, **C**ontain, **E**vacuate, **N**egotiate, **C**onclude, **I**nvestigate, **R**ehabilitate, **E**valuate.

In this situation, prior to EBERL and ROLFE considering entering House 511, some basic planning should have been undertaken involving considerations and contingencies following the "if/then" line of thinking as a bare minimum, such as:

If there is someone in the house, then...

If WALKER is in the house, then...

If WALKER is in the house and he is armed with a weapon, then...

If one of the IRT members is injured by WALKER, then...

If WALKER is injured by one of the IRT members, then..

Given the rapidly diminishing light conditions, then...

Given the number of other people, including children in the vicinity, then...

Had ROLFE and EBERL undertaken this process, it would have brought about a realisation that they did not have many contingencies or options open to them, which may have better informed their decision to enter the house.

Regarding Principle 5, Cordon and Containment, all police are taught that this is the incident management approach that should be undertaken unless it is impracticable to do so. This was not an emergency situation that required immediate search and entry. There were no circumstances that made it impractical to adopt a cordon and contain approach in this situation. The ICENCIRE Plan should have been implemented.

Regarding Principle 6, Avoid Confrontation, it does not appear to me that any steps were taken to avoid a confrontation, and in fact, it appears that the actions taken limited the options available to avoid a confrontation and made a confrontation more likely. Given their prior knowledge that WALKER had previously armed himself with a hatchet when confronted by police 2 days earlier, these officers should have taken steps to ensure they did not end up in the same situation. In my opinion, WALKER'S actions if confronted by police were predictable, and ROLFE'S and EBERL'S decision to disregard the Force Philosophy precipitated this confrontation.

> **<u>Regarding Principle 7,</u> Avoid Force,** rather than taking actions to avoid force such as using a cordon and contain approach, in choosing to enter the residence the officers created a situation where it was more likely that force would need to be used.
>
> **<u>Regarding Principle 8,</u> Minimum Force,** the decision to enter the house is not in line with the minimum force philosophy
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> **<u>Regarding Principle 9,</u> Avoid Forced Entry Searches,** the members did not consider this as an option of last resort, it was their first choice to conduct a forced entry search, which precipitated a confrontation that may have been avoided had they not entered, and the events that followed. This contradicts police training, policy and procedure.
>
> **<u>Regarding Principle 10,</u> Resources,** by rushing into the residence, the officers ignored the "safety first" principle, did not make good use of the resources that were already there, did not request additional resources that were nearby, did not have any plan, and appeared to be chasing a quick result rather than utilising more time to arrange a planned response. Other resources that could have been considered were to deploy DONALDSON'S General Purpose dog, asking for other members from the station to attend to bolster the cordon, including a senior member of suitable experience and rank to take the role of forward commander, establishing inner and outer cordons, and asking for a trained negotiator to attend, or at least assigning someone to that role.

1219. In Det SSgt Barram's report, he concluded that prior to entering, a number of options were still available to the police members, such as knocking on the door and asking the person they saw to come to them to talk, or if the person reacted violently, closing the door and containing the person inside the house, then applying the ICENCIRE plan to the incident and attempting to negotiate a peaceful resolution. It was his opinion, based on their training, Mr Rolfe and C1C Eberl should not have considered that entering the house was a reasonable tactic at that time.[1336]

1220. I agree with Det SSgt Barram's assessment, with the qualification that first, I have accepted that, of the IRT members it was only Mr Rolfe and Cst Kirstenfeldt who were aware of the Ops Order, which included the 5am arrest

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[1336] Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [92]-[106].

plan, and second, entry into House 511 was the responsibility of Mr Rolfe, since he assumed the team leader role and made the decision that he and C1C Eberl would enter.

1221. Police training specifies that one of the most effective ways an officer can safeguard themselves is to anticipate danger, which requires the use of all available senses and being prepared for the unexpected. Members must stay alert, be aware of their surroundings and develop effective intuition. The hindrance to all these skills is complacency, which is described in training as a "disease" for which the cure is "awareness", that is "knowledge of your surroundings, knowing what you're getting into and staying in control at all times". The advice to police, spelt out in training is:

    1. Stay alert / Maintain situational awareness
    2. Maintain a safe distance
    3. Always watch the subject's hands
    4. Anticipate danger/problems before they happen - have a plan
    5. Identify behavioural warning signs
    6. Expect the unexpected or unusual
    7. Be aware of surrounds
    8. Always put yourself in a position of advantage
    9. Do NOT become complacent

1222. Entry into House 511 was blighted with a lack of planning for what might happen inside, even though Mr Rolfe had been critical of the lack of situational awareness of community police on 6 November 2019, when those officers had far less warning of possible danger than he did.

1223. In the expert opinion of Det SSgt Barram:[1337]

> "I have already commented on their lack of situational awareness, particularly with regard to allowing WALKER to approach them with his right hand in his pocket. They did not maintain a safe distance, moving to within arm's reach. They did not anticipate danger or have a plan to keep themselves out of it. They failed to identify behavioural warning signs, such as WALKER having his right hand in his pocket and then also putting his left hand into his pocket as well, where they should have anticipated he may have weapons hidden.
>
> They showed no particular awareness of their surroundings, such as choosing to unnecessarily enter a darkened house. They did not put themselves in a position of advantage, and in fact put themselves in a vulnerable position within arm's reach of a person they suspected to be armed.
>
> A number of times they took the hat off WALKER'S head and he was able to get it back and put it back on his head. The fact that offenders have previously been known to hide weapons such as razor blades and fish hooks in hats is repeatedly covered in Defensive Tactics training. Their level of complacency and lack of situational awareness in this situation was poor practice and not reflective of NT Police training."

1224. Even having made the mistake of entering the house without a proper plan, Mr Rolfe had safer options available after he identified that the man inside the house was in fact Kumanjayi Walker. On the one hand, given knowledge that Kumanjayi was a flight risk and had previously grabbed a hidden weapon, Mr Rolfe and C1C Eberl could have closed in rapidly and taken firm control to ensure he did not escape, with one officer grabbing each arm. Alternatively, Mr Rolfe could have chosen "Tactical Disengagement" by moving back outside, and containing Kumanjayi inside the house, buying time to implement the ICENCIRE plan, and attempt a negotiated resolution.[1338]

1337 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [111].

1338 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [114]-[115].

1225. The death of Kumanjayi Walker, was entirely avoidable, and can be explained by the phenomenon of Officer Induced Jeopardy, defined as:[1339]

> "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."

1226. While Mr McDevitt remained of the view that he was not critical of Mr Rolfe firing three shots, he saw the need to take a broader view and was critical of the nature of the arrest inside the house. He gave the following evidence at Inquest:[1340]

> "I think the problem for them - and I've seen it on multiple occasions – that they seem to have put the priority of identification of who it was that they were talking to up front, and that led them, I think, to close the gap with Mr Walker which, you know, I think they shouldn't have done. They could have established his identity from a safer distance if you like."

1227. When Counsel Assisting, Mr Coleridge, reminded him of similar evidence he had given at trial, Mr McDevitt affirmed it was still his view that: [1341]

> "[t]his singular focus on getting in there and establishing identity and closing the gap means that there wasn't enough focus on their own safety, for example. … As I said at the trial … your safety is largely reliant on your reaction speed, a large factor, a large component of which is distance of help. You need distance to be able to respond in time."

1228. All parties to the inquest appeared to accept the expertise of Detective Superintendent Scott Pollock, the original Officer in Charge of the Coronial

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1339 Coronial memorandum of Detective Superintendent Scott Pollock – Draft Jan 2021 [1-6A] at 35.

1340 Inquest evidence of Ben McDevitt on 7 March 2023 at 4570.

1341 Inquest evidence of Ben McDevitt on 7 March 2023 at 4570 and trial evidence of Ben McDevitt [10-27A] on 8 March 2022 at 1262.

investigation (retired by the time of the Inquest). Det Supt Pollock's view was:[1342]

> "All IRT team members who attended Yuendumu, were trained in the ICENCIRE principle. These principles should have been considered and applied, when they set out to locate Kumanjayi 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 Kumanjayi was suspected of being the male inside the house, was deficient.
>
> When Kumanjayi's family members were present, there was an ideal opportunity to properly call in all members to cordon the house and negotiate with a then unknown male from the premises.
>
> By entering the premises in haste, both Constables Eberl and Rolfe place themselves in a situation best described as officer created jeopardy [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.]
>
> 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 Kumanjayi from occurring."

1229. Similarly, in assessing the folly of the IRT's actions with respect to House 511, Commander David Proctor APM, the second OIC appointed, opined that his comments were similar to the ones he made when critiquing Mr Rolfe's search of House 577, with a "compounding factor in relation to the actions at House 511 [being] the sighting of an unidentified male person, who could possibly have been and subsequently turned out to be Kumanjayi Walker". In his view, "[t]he failure to consider any elements of the 10 safety principles

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[1342] Coronial memorandum of Detective Superintendent Scott Pollock – Draft Jan 2021 [1-6A] at 35; see also where Det Supt Pollock adopted that evidence during the Inquest: Inquest evidence of Detective Superintendent Scott Pollock on 22 November 2022 at 3697-98.

and ICENCIRE resulted in the IRT members choosing to enter the premises and confront the person".[1343]

1230. Superintendent Jody Nobbs, a highly experienced officer who Mr Rolfe had looked up to, gave evidence that when Mr Rolfe entered House 511, he repeated the error that had been made by Officers Hand and Smith on 6 November, by placing himself in close confines with the suspect, allowing police very little room to move.[1344]

1231. Deputy Commissioner Smalpage, who had been a member of the police force for 44 years, expressed a similar opinion, and gave evidence that at the point where C1C Eberl notified Mr Rolfe that a male had entered the house, it being a house that had been nominated (by Sgt Frost and the community member at House 577) as one of the houses where Kumanjayi might be, tactics should have been employed to establish a cordon, call the male out, and not enter the building or put themselves in close proximity with Kumanjayi.[1345]

The reflections of Mr Rolfe

1232. In his evidence at Inquest, Mr Rolfe was asked to consider his actions in entering House 511 to determine if he had any insight, or anything to offer by way of reflections.

1233. Asked if he accepted the opinion of Supt Nobbs, that he had repeated the error made by Officers Hand and Smith on 6 November by placing himself in close confines with the suspect evidence, Mr Rolfe replied "Well, you know in the culmination of the event, yes, as it's - that is what happened".[1346]

1343 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 74.

1344 Inquest evidence of Superintendent Jody Nobbs on 31 October 2022 at 2922.

1345 Inquest evidence of Deputy Commissioner Murray Smalpage on 28 February 2023 at 4075-4076.

1346 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5405.

1234. With respect to DC Smalpage's evidence about the alterative option of a cordon and control, Mr Rolfe did not accept that police had the resources to do that.[1347] He did agree that this would have created more distance than entry into the house,[1348] but questioned whether that was safer, answering, "Yes, potentially, unless [Kumanjayi] committed an act of violence against someone else and caused their death or injury".[1349] That answer does Mr Rolfe no favours, since he did not suspect there was more than one person in the house, and was entering the house to affect an arrest, not to ensure the occupants were safe. I accept the evidence of DC Smalpage that a cordon and control option was more appropriate (even if described as a "soft cordon") in circumstances where there were only two entry points to the house.

1235. Concerning his decision to enter House 511, Mr Rolfe conceded very few mistakes. His major concessions can be summarised as:

(a) an acceptance that he made the wrong threat assessment going into House 511,

(b) an acknowledgement that the officers were in danger in House 511, and

(c) (somewhat grudgingly) that Supt Nobbs had accurately identified that they had repeated the mistakes made on 6 November 2019, even after watching the 6 November BWV.

1236. In re-examination, Mr Rolfe was taken back to the concept of "officer induced jeopardy":[1350]

> DR DWYER SC: Do you accept that what was actually involved then, given your evidence yesterday, is an act of officer induced jeopardy as described by a number of senior officer?

1347 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5406.
1348 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5405.
1349 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5405.
1350 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5756.

MR ROLFE: Yes. I believe the, again, I think I've talked about it before. The idea of officer induced jeopardy isn't entirely accepted or researched, yes. But by the – the way in which people are talking about that, every time an officer does their job, every time an officer does their duty in arresting an offender, that would induce officer induced jeopardy.

1237. When asked whether he accepted that Kumanjayi's death "could have been avoided with a planned response, with a suitably experienced team leader in place", Mr Rolfe replied "yeah", but then appeared to shift responsibility onto others. He said:[1351]

> "Yeah, there's many things that could have occurred previously that – there are many social policies and policing policies that could have changed, including on the ground level, team leader, local police presence that could have averted that death, potentially."

1238. When Senior Counsel Assisting pressed him whether "in terms of [his] own personal responsibility, [did he] accept that there were things that [he] could have done in terms of preparation and risk assessment that might have prevented Kumanjayi's death?", he replied "Potentially, yes".[1352]

1239. In her final set of questions for Mr Rolfe, Senior Counsel Assisting took him to some pages of notes he had made and taken into the witness box with him (which were called for and disclosed over objection). Included on one of the pages was a note that Mr Rolfe described as his "musings", where he had written, "The arrest was a success, whether you pass an exam with 79 or 100 percent, still a success. It could just be better." That prompted the following exchange between Mr Rolfe and Senior Counsel Assisting:[1353]

DR DWYER SC: In fact, on reflection, think about it now sitting there in the witness box, a young

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1351 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5757.

1352 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5757.

1353 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5758, and see exchange from 5757-5760.

man lost his life. The community is still in mourning. The police and community are still dealing with the fallout many years after. You would agree, wouldn't you, that in fact your confrontation to try and arrest Kumanjayi Walker resulted in an abject failure in terms of policing in the Northern Territory?

MR ROLFE: ---Again, the thing is I need to say is that if the success of a mission is primarily judged on the extent that use of force is avoided or minimised and if the findings are that I used minimum force necessary, then by police own standards, the arrest was a success.

DR DWYER SC: Who made a finding that you used the minimum force necessary?

MR ROLFE: ---That's what I'm saying. If the police have made the finding that I haven't done that, then I would accept that the arrest would be a failure. But I have not been made aware of that finding.

1240. I am not aware of any such positive finding having been made by the NT Police and that answer from Mr Rolfe was a bewildering and stubborn failure to grapple with what he knows to be incontrovertible evidence. Five very senior NT police officers (DC Smalpage, Cmdr Proctor, Det Supt Pollock, Supt Nobbs and Det SSgt Barram) gave similar and compelling evidence. They each concluded that the entry into House 511 and the loss of situational awareness and the subsequent shooting was avoidable. Accepting that evidence, as I do, the arrest of Kumanjayi Walker was a failure and Mr Rolfe did himself no favours by not taking the opportunity to demonstrate more insight on what he could have done differently.

1241. Ironically, just a few days earlier, on the afternoon of 7 November 2019, Sgt Kelly had spoken to Mr Rolfe and a group of officers about the lack of "situational awareness" that he perceived SC Smith and SC1C Hand had demonstrated by allowing themselves to end up at such close quarters with

Kumanjayi in House 577.[1354] Mr Rolfe himself was similarly critical of Officers Hand and Smith. It was a significant tactical error which he repeated when he directed entry into House 511.

1242. Why did Mr Rolfe repeat that error and put himself (and C1C Eberl and Kumanjayi) in jeopardy? The answer lies in understanding Mr Rolfe's own ego, hubris and lack of respect for those in authority he deemed not to be worthy. There was ample evidence of these attitudes in his text exchanges, and it was on display on the evening of 9 November.

1243. My purpose in setting that out is not to be overly critical of Mr Rolfe as a person. He is more than the sum of the mistakes he made on 9 November 2019, and more than his conduct in the NT Police, both positive and negative, but it is impossible to understand the cascade of events on 9 November without appreciating that his personality, and the lack of appropriate oversight and checks on him until that time, played a significant part in the unfolding tragedy.

Was the entry into House 511 legal?

1244. The power for a police officer to lawfully enter into someone's home is set out in the *Police Administration Act 1978*, which authorises police to enter a place or premises if they have (a) the power to arrest a person under a warrant and (b) a belief on reasonable grounds that the person was at the place or premises.[1355] Alternatively, police may enter a premises to search for a person if they are given consent to do so.[1356]

1245. The Act also authorises police to enter a place or premises without a warrant if they believe on reasonable grounds that (a) the person has committed an

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1354 Trial evidence of Sergeant Evan Kelly [7-73A] at 121-135, especially 128; Inquest evidence of Sergeant Evan Kelly on 21 October 2022 at 2270.

1355 Section 126.

1356 There was no dispute about the legal framework. See the helpful outline in the closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [803].

offence punishable by a term of imprisonment of six months or more and (b) the person is at the place or premises.[1357]

1246. Mr Rolfe submitted that as there was a warrant and he had consent to enter House 511, the entry was lawful.[1358] The NT Police submitted that there was a level of "uncertainty" as to whether Mr Rolfe was in fact given permission to enter House 511, in spite of his sworn evidence.[1359] However, the Walker, Lane, Robertson families, the Brown Family and Counsel Assisting, urged me to find that the search of House 577 was not lawful.[1360]

1247. There is an implied licence to enter onto private property via a driveway or path to speak to a person or for other lawful purposes. But that licence does not extend to entering a house. For a person to lawfully enter a house there must be an invitation or permission from the occupier, or another lawful basis.[1361]

1248. For his part, Mr Rolfe was able to clearly articulate his understanding of the legal basis for a police officer to enter a house for the purpose of effecting an arrest of a person when a warrant has issued. In 2022, he explained at his trial:[1362]

> "So, as police officers we have legislated powers. One of those powers is a power of entry. If we believe, on reasonable grounds, that someone is within a house, who either has a warrant, or has committed an indictable offence, which is an offence where the potential imprisonment is over two years, then we can enter that location without permission. And using the minimum force required. If we don't have that belief, on reasonable grounds, then

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1357 Section 126(2); at the time the relevant section was 126A.

1358 Closing written submissions of Zachary Rolfe dated 11 November 2024 at [161]-[162].

1359 Closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [826]-[827].

1360 Closing written submissions of the Walker Lane Robertson Families dated 29 October 2024 at [107]-[127]; Closing written submissions of the Brown Family dated 29 October 2024 at [228]; Closing written submissions of Counsel Assisting dated 22 October 2024 at [561](2).

1361 *Roy v O'Neill* (2020) 272 CLR 291, per Kiefel J at [11]-[17], per Bell and Gageler JJ at [32]-[37], and per Keane and Edelman JJ at [68]-[83].

1362 Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1044.

> we will ask for permission, and require being given permission to enter that location."

1249. Mr Rolfe's explanation demonstrates a good understanding of section 126 of the *Police Administration Act 1978*, set out above, which provides that a member of a Police Force may enter a place to attempt an arrest if there is a warrant for a person's arrest *and* the member believes on reasonable grounds that the person is at that place. If the police officer does not hold that belief, they will only be able to lawfully enter with permission.

1250. In Chapter Five I noted that an arrest warrant issued for Kumanjayi on 5 November 2019, so the first condition for police entry into House 511 was met. The next question was whether Mr Rolfe believed on reasonable grounds that Kumanjayi was at House 511.

1251. NT Police seem to suggest that there was a reasonable ground for that belief, given that (references included):[1363]

> "Constable First Class Eberl observed someone inside the house go to the back and shut a door or walk past a doorway.[1364] He suspected that the person could be Kumanjayi Walker.[1365] Constable Rolfe disagreed that he knew there was a good chance that Kumanjayi was inside the house.[1366] On the basis of enquiries that had just been made, however, he thought it was reasonable to conclude that the person inside House 511 was Kumanjayi Walker."

1252. However, the evidence of Mr Rolfe at trial was that he *did not* think Kumanjayi was present within House 511. He said that he "d[idn't] think 511 was actually mentioned to me by Julie Frost as a house of interest" and he did not think the person in the house was Kumanjayi.[1367] He confirmed his state of mind in his

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1363 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [828], noting that the reference numbers have been changed in my reproduction of that paragraph.

1364 Recorded statutory declaration of Constable First Class Adam Eberl dated 10 November 2019 [7-31] at 4; Committal evidence of Constable First Class Adam Eberl on 2 September 2020 [7-33A] at 141.

1365 Committal evidence of Constable First Class Adam Eberl on 2 September 2020 [7-33A] at 141; Inquest evidence of Constable First Class Adam Eberl on 17 October 2022 at 1781.

1366 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5399.

1367 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1069. See closing written submissions of Counsel Assisting dated 22 October 2024 at 190.

evidence at the Inquest when he disagreed with the proposition "that he thought there was a good chance Kumanjayi might be in that house" but accepted that "it was at least possible" that it was Kumanjayi.[1368] The effect of Mr Rolfe's evidence, if accepted, was that he had not formed the requisite reasonable belief that Kumanjayi was at House 511, that would have enabled him to enter without permission. There is no reason for me to doubt his evidence as to his state of mind because he immediately acted in a way that was consistent with that state of mind:

(a) He took steps to see if he could come to a reasonable belief by seeking additional information about where Kumanjayi and Rikisha were. He asked one female community member who was in the yard next door -

MR ROLFE:	My name's Zac, we're new in town. We're here to grab up [Kumanjayi] aye.
FEMALE 1:	(inaudible)
MR ROLFE:	Is it this house or this house?
FEMALE 1:	Who?
MR ROLFE:	[Kumanjayi] Walker. Where's Rikisha?
FEMALE 1:	Across there, over there.
MR ROLFE:	Which? Proper, proper?
FEMALE 1:	Yeah
MR ROLFE:	Actual?
FEMALE 1:	(inaudible) go ask them people.
MR ROLFE:	Rikisha just, is Rikisha with them?
FEMALE 1:	I don't know, I'm visitor.

[1368] Inquest evidence of Zachary Rolfe on 28 February 2024 at 5399-5400.

MR ROLFE: Do you know Rikisha? Have you seen this man?

FEMALE 1: I'm visitor.

And then another community member (later identified as Leanne Oldfield)

MR ROLFE: Yeah? Hey little one! Hey Missus...hey Missus, where's [Kumanjayi] at?

FEMALE 2: I don't know.

MR ROLFE: Where's ah, have you seen Rikisha today?

FEMALE 2: No I'm not from here.

(b) When additional information as to Kumanjayi's presence at the house was not forthcoming, he tried to get permission to enter House 511 from the same lady who had just told him "I'm not from here" –

MR ROLFE: Whose house is this?

MS OLDFIELD: Margaret's but they still in...um...

[waving her arm towards an area in town]

MR ROLFE: Can we go check inside? Cause we're lookin' for...[trails off]

MS OLDFIELD: Go, go [inaudible]

MR ROLFE: Go check inside?

MS OLDFIELD: Margaret's house.

MR ROLFE: Alright.

1253. Concerning this conversation at his trial Mr Rolfe said:[1369]

> MR ROLFE: Yes I asked them whose property it was and they said – one of them said it was Maragret's. I believe that referring to Margaret Brown. I asked them again if they knew who Kumanjayi Walker was, or where he was, and they both denied that. And then, I, believing that they were lawful occupiers of that house, asked permission for us to enter that property.
>
> MR EDWARDSON SC: And did they give you that permission?
>
> MR ROLFE: Yes, they did.

1254. Under cross examination at his trial,[1370] Mr Rolfe explained that he knew that he needed permission from a lawful occupant to enter the house and, although he did not know the name of the female he was speaking to in the yard and she told him the house was Margaret's house, he believed she was a lawful occupant because: "They [the woman he was talking to and a second female] were extremely comfortable inside that property, and they were inside the property yard, the perimeter, making themselves at home". At the Inquest under examination by Counsel for the Walker, Lane, Robertson Families, Mr Rolfe gave similar evidence and added that the "front door was open".[1371]

1255. As to whether Mr Rolfe had a basis for believing that a lawful occupant had given him permission to enter House 511, the WLR family submitted Mr Rolfe's evidence should not be accepted.[1372] While I cannot be sure whether or not Mr Rolfe genuinely thought he had permission after his cursory chat to a community member outside House 511, I do not think that he did in fact have permission, nor that he had a proper basis to think that he did.

1369 Trial evidence of Mr Rolfe on 3 March 2022 [7-115A] at 1068.

1370 Trial evidence of Zachary Rolfe on 04/03/2022 [7-115A] at 1157.

1371 Inquest evidence of Zachary Rolfe on 2 February 2024 at 5488.

1372 Closing written submissions of the Walker Lane Robertson Families dated 29 October 2024 at [123]; and these submissions were adopted in the closing written submissions of the Brown Family dated 29 October 2024 at [228].

1256. First, while Mr Rolfe knew that he needed permission from a "lawful occupant", he was very lax, even reckless, in his efforts to confirm whether he was speaking to one. The grounds that he gave for coming to his stated belief which he confirmed during his evidence at the Inquest were flimsy and unconvincing. If it was an honest belief, it was not a reasonable one because:

    (a) that evening there were many people outside houses and moving about the community and I do not consider that any sound conclusion as to occupancy could be drawn from a brief assessment that someone appeared "extremely comfortable" being present outside a house and in a yard,

    (b) the addition of an open door could not be attributed to the women in the yard and, to my mind, did not increase the likelihood that they were occupants,

    (c) Mr Rolfe knew the house was Margaret's and that she was elsewhere, and

    (d) there was no attempt by Mr Rolfe to ask who they were, why they were there, what their relationship was to Margaret, or whether they were staying or at the house and these enquiries could easily have been made.

1257. Second, when the BWV is listened to carefully, no permission is in fact given. At its highest the response was ambiguous and, given the power that was about to be exercised, much greater care should have been taken to clarify and confirm that permission had been granted. That that was not done is another example of reckless haste by Mr Rolfe and a recklessness as to the limitations of his police powers.

1258. As noted above, on my assessment of the evidence, I do not accept that permission was genuinely given to enter House 511. On the other hand, I do think that, on the objective evidence, there was a proper basis for a reasonable suspicion that Kumanjayi was the person who had walked into House 511 as police were approaching, given what the police had been told when they left House 577, and that it was a house he was known to frequent, but that is

contrary to the evidence given by Mr Rolfe (consistent with his subsequent actions) that he did not believe that there was a good chance Kumanjayi was inside.

1259. Ultimately, I agree with the submission made by NT Police, that there is "very little use" that can be made of the issue with respect to entry.[1373] I agree with the submission that (references included):

> "to the extent that parties seek to use the lawfulness of the entry to suggest that the trial should have been conducted and the jury directed in an alternative manner,[1374] or to suggest that the method of entry enabled Kumanjayi to resist the arrest with a weapon, with attendant implications for the ability of Constable Rolfe to rely on self-defence,[1375] this should not be accepted. Firstly, it cannot be the case that a young man for whose arrest a warrant had been issued, and who had assaulted police officers with an axe three days earlier, would be entitled to defend himself against an arrest by stabbing a police officer with a pair of scissors. It could not be said that Kumanjayi's actions were a reasonable response to the circumstances in which he found himself, regardless of the lawfulness of the entry. Secondly, and more importantly, such matters were properly within the province of the jury trial. It is not appropriate for the Coroner to traverse or comment on those matters."

1260. For the Inquest, the real gravamen of the entry was not the lack of permission from an occupant, or a lack of reasonable grounds to believe that Kumanjayi was present inside House 511, but rather the complete disregard for the Ops Order, the lack of any risk assessment, and the abandonment of good police practice and training set out in the 10 operational principles, in favour a flawed arrest approach consistent with Mr Rolfe's tendency to rush in.

1261. I agree entirely with the comment made by NT Police that:[1376]

1373 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [829].

1374 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [144].

1375 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [145]-[147].

1376 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [829].

> "It is conceded that it may be an example of the overly zealous, wilfully impulsive or overly assertive policing style demonstrated by Constable Rolfe."

What is the relevance of Mr Rolfe's use of force history? A tendency to rush in and a sense of impunity

1262. Mr Rolfe made a serious strategic and tactical error when he ignored the arrest plan set out in the Ops Order and led the IRT team straight to a search of House 511, which he decided that he and C1C Eberl were "just gonna clear this house". Once inside, he compounded that error by putting himself within half a metre of Kumanjayi for the purpose of identifying him, without making sure that he could see and control Kumanjayi's hands.

1263. I have previously identified other occasions when Mr Rolfe demonstrated (as described by Det SSgt Barram), a "tendency to rush into situations with a disregard for his and others' safety", and "a disregard for NT Police training, practice and procedure",[1377] along with "a tendency to want to 'get his man no matter what'", with "little or no regard to the consequences of his actions".[1378] Det SSgt Barram opined that "in disregarding the consequences of his actions, he also disregarded his training and the use of force policy". Mr Rolfe's "decisions and actions precipitate confrontations where he then uses force. The force would not have been necessary but for Mr Rolfe's decisions and actions in precipitating the confrontation".[1379]

1264. At trial, Det SSgt Barram explained the importance of risk assessment, developing a plan of action, and turning an unplanned response into a planned

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[1377] Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [19].

[1378] Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [51].

[1379] Statutory declaration of Detective Senior Sergeant Andrew Barram dated 26 March 2020 [10-5] at [51].

response. When asked about why it was necessary to continually assess, reassess and step back, he said:[1380]

> "Because - well, time is on our side, so we utilise time to try and come up with a less forceful option than rushing in and perhaps causing an incident that doesn't need to happen."

1265. I agree with Det SSgt Barram that:[1381]

> "In keeping with his tendency to rush into situations without regard for his, or others' safety, and his tendency to want to get his man at all costs, Rolfe entered House 511 and created a situation in which the very risks that had arisen during the 6 November 2019 attempted arrest were repeated: it was a situation of officer-induced jeopardy."

1266. I accept the evidence of Ms Campagnaro that Mr Rolfe told her that he believed that he could largely use force with impunity, because more senior officers, including SSgt Alistair Gall, constantly "fixed up" his jobs.[1382] That belief may have contributed to him thinking that he did not have to follow an Ops Order devised by (as he thought) a bush sergeant, and that there would be no consequences for him if he substituted his own approach.

What is the relevance of Mr Rolfe's problematic attitudes of racism, sexism, arrogance and disregard for authority?

1267. The Inquest heard evidence that the attitudes, values and personality traits of an individual officer, as well as the culture in which they operate, may impact on decision making.

1268. In response to cross examination by Mr Officer, psychologist Bruce van Haeften explained the relevance of individual or personality traits to the

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1380 Trial evidence of Detective Senior Sergeant Andrew Barram [10-9B] on 28.2.22 at 899.

1381 Statutory declaration of Detective Senior Sergeant Andrew Barram dated 13 March 2020 [10-4] at [102].

1382 Statutory declaration of Claudia Campagnaro dated 10 September 2021 [8-8A] at [21].

behaviour of that individual in a particular scenario, during the following exchange:[1383]

> MR OFFICER: So those characteristics of an individual or personality traits, may or may not be apparent or may or may not have an impact depending on the situation that presents that person who holds those traits at the time?---
>
> MR VAN HAEFTEN: I would suggest that personality trait and values and beliefs and attitudes would have a fairly significant impact on people's behaviour in different situations.
>
> MR OFFICER: Yes, so it depends on the situation, doesn't it?---
>
> MR VAN HAEFTEN: No, that's the opposite of what I'm saying. It would be fairly consistent across situations.

1269. Mr Van Haeften went on to explain that other variables that may impact on decision making include an individual's mental health conditions, the role that they have in terms of decision making, the scope and resources that they have, having to make decisions in a high stress situation, or being under pressure. Mr Van Haeften agreed with Mr Officer that training for police officers was another variable, and added:[1384]

> "And I think that strong characteristics, strong stable characteristics such as personality will guide how people make decisions when the stress is elevated."

1270. In a further exchange, Mr Officer addressed the fact that the situation in House 511 could not be an example of Mr Rolfe having become desensitised to violence or suffering, since it was a unique event. Mr Van Haeften agreed

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1383 Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3178.

1384 Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3179.

that "[e]xposure to a unique event that someone hadn't experienced before is different to repeat exposure to an event". The exchange continued:[1385]

> MR OFFICER: Yes. And so in those unique events, when we talk about characteristics and having in mind your qualification at par 9.5 which I read to you, is it the case that an individual in that situation would fall back on their training...in...decisions they make in the moment?
>
> MR VAN HAEFTEN: I would say the decisions that they make as well as the training will be influenced by their attitudes and values.

1271. Thus, there is convincing evidence that it is important to consider the attitudes, values and personality traits of Mr Rolfe, as well as the culture he was exposed to while serving as an officer in Alice Springs, when trying to understand the decision he made, first, in determining whether to enter into House 511 in defiance of both the Ops Order and his training on the 10 Operational Safety Principles, and second, in the moment when he determined to discharge the first shot.

1272. I accept the evidence of Mr Van Haeften that the personality traits and values of an individual officer may guide the approach they take including as to planning for the use of force, and actual use of force. His evidence accords with common sense.

1273. I received evidence that satisfied me that Mr Rolfe derived a sense of gratification and self-esteem from his own use of force, his physical prowess and superior tactical skills. That is likely to have impacted on his decision to ignore the Ops Order and the 5am arrest plan. I am confident that Mr Rolfe's own sense of superiority is likely to have contributed to his decision to rush into House 511, without the necessary risk assessment and planning that is needed to minimise the risk of injury to suspects.

[1385] Inquest evidence of Bruce Van Haeften on 3 November 2022 at 3179.

1274. Mr Rolfe expressed attitudes that were sexist, and since he did not know that other senior officers had approved the 5am arrest plan, his lack of respect for a female superior may have contributed to his willingness to jettison that plan and approach the matter differently.

1275. The issue of Mr Rolfe's racism is more difficult. Mr Rolfe's legal counsel rejected the suggestion that the death of Kumanjayi was a "racially motivated hit job",[1386] and yet that suggestion was never made in this Court.

1276. It may be that his racist attitudes led to a dehumanising of suspects like Kumanjayi Walker. Faced with an opportunity (indeed, an obligation) to do everything possible to minimise the risk of injury, Mr Rolfe's dehumanising of the target may have contributed to his failure to take an alternative, less risky path, and his willingness to rush in.

1277. Although police are taught that if presented with an edged weapon, they are justified in drawing their firearm, as Det SSgt Barram explained, it does not automatically follow that they are entitled to shoot the suspect or would choose to do so. Faced with a number of options as to how to respond in that very moment, it is possible that the fact that Mr Rolfe had developed racist attitudes about Aboriginal people and had come to dehumanise Aboriginal suspects, had something to do with his decision to discharge his firearm immediately, rather than step back, create distance between him and Kumanjayi, and issue the standard warning to C1C Eberl.

1278. As to his other options once in the room: the Brown Family submitted, that Mr Rolfe could have kept his distance and asked Kumanjayi to raise his hands;[1387] and NT Police submitted, "once Constable Rolfe became aware of the existence of the weapon, while Constable Rolfe did what he asserts he believed was necessary, it appears he did not consider tactical decisions, such

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1386 Closing written submissions of Zachary Rolfe dated 11 November 2024 at [7].

1387 Closing written submissions of the Brown Family dated 29 October 2024 at [231].

as moving into Kumanjayi's field of vision and calling for him to drop the weapon".[1388]

1279. But the primary submissions were that Mr Rolfe should not have entered House 511 at all. As submitted by NT Police:[1389]

> "Nothing required the IRT to enter House 511 at the time they did. They should not have considered entering at that point: they did not know who would be in the house, or what potential weapons might be present. Knowing that someone was at the premises they could have knocked on the door and asked the persons inside to come out, as they did at Warlpiri camp two days earlier. They could have contacted Sergeant Frost and sought further direction and/or the assistance of Constable Alefaio at that point. There were sufficient resources to have allowed for a negotiated result, rather than them entering the dwelling in order to effect an arrest. Constable Rolfe accepted that he put himself directly in Kumanjayi's path".

1280. In the days leading up to Kumanjayi's death, Mr Rolfe had expressed a view to a number of police officers that he thought that the community police officers, Hand and Smith, had been, in effect, weak or indecisive for not drawing their firearms, and Mr Rolfe's disdain for their approach, and his own arrogance, may have been a factor in his decision to discharge his Glock immediately (Shot 1), in what he considered was a show of strength.

1281. Mr Rolfe thought that he should be lauded for his actions in house 511. In an essay he caused to be published on 23 February 2023 (while the Inquest was in progress) he suggested that, "In a different state I would have got a medal for it".[1390] Some of his friends seemingly shared his views and attitudes, for example, at 1.45pm on 10 November, when Kumanjayi's family were dealing with their grief, he engaged in this exchange:

1388 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [880].

1389 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [873].

1390 Affidavit of Assistant Commissioner Bruce Porter APM affirmed 31 May 2023 [7-111E] at [37].

FRIEND:	Hey brah, super stoked for you.
MR ROLFE:	My man
FRIEND:	Let's see those pussies in TRG say no now.
MR ROLFE:	Oath

1282. That text message is extremely distasteful, although it may be explained by the hubris of Mr Rolfe (and his friend). For his part, in evidence at the Inquest, Mr Rolfe explained the text as a "natural response to staying alive when someone tries to kill you" and pointed out that the text message did not say, "'Hey bruh, super stoked for you that you shot someone on duty and now you've enhanced your policing career and your likely to get into TRG now'. It doesn't say that. So on the flipside of the coin, without knowing his and my relationship, without knowing our vocabulary, of course there could be misconceptions about what this means".[1391]

1283. I cannot positively conclude that Mr Rolfe's values (which included racist attitudes and dehumanising of Aboriginal suspects) contributed to his decision to pull the trigger of his Glock and discharge Shot 1, although I cannot exclude that possibility.[1392] The fact that he held those values increased the risk of his use of violence. What I can be confident of is that some of those values are likely to have contributed to the decision to ignore the Ops Order, and enter into House 511 in the manner that he did.

1391 Inquest evidence of Zachary Rolfe on 28 February 2024 at 5423-5424.

1392 It will be evident then that I do not think it is appropriate for any person to be referred to the DPP for charging in relation to this first shot. I have given careful consideration to the submissions made on this issue and determine that the relevant threshold is not met.

CHAPTER NINE THE AFTERMATH OF THE SHOOTING

Introduction

1284. In the aftermath of the shooting, the entire community faced a time of enormous stress and turmoil. Members of Kumanjayi's family who were close to House 511 were immediately struck with fear and dread, as they tried to comprehend that he had been shot. After he was removed from the scene, they went into the house and saw a mattress soaked with blood, and three bullet shells scattered throughout the front room. For the police officers in and around House 511, their focus was on getting Kumanjayi out of the area and to somewhere they could safely attempt first aid. For Sgt Frost and her team back at the Yuendumu Police station, there was shock that Kumanjayi had been shot, and that such a confrontation had occurred less than an hour after the IRT left the station, and there was anxiety about what would come next. For the remainder of the community, there was understandable shock, anger, fear and confusion.

1285. On reviewing the aftermath of Kumanjayi's tragic death, I am struck by the importance of the police training that focuses on minimising the risk of violent confrontation. The cost of poor planning is the increased risk of using deadly force. The use of deadly force in a remote community was catastrophic for Kumanjayi and his family and created a potentially volatile situation for community leaders and the local Police to manage. However, in spite of their anxiety, trauma and distress, the community largely remained calm and the fears of the police were not realised.

1286. In the tense environment that followed, urgent and difficult decisions needed to be made, including how to perform first aid when the clinic was shut, when and how to inform Kumanjayi's family of his death and how to safely remove Mr Rolfe from the community. The fall-out from those decisions is still being felt.

1287. I am full of admiration for the bravery and leadership of local leaders, particularly Senior ACPO Derek Williams, Elders like Kumanjayi Nelson (who has now passed away), Warren Williams, Ned Jampijinpa Hargraves, and younger leaders like Samara Fernandez-Brown. Without their courage and their spirit of cooperation, the residents of Yuendumu, including police, would have been in a far worse position.

1288. This chapter reviews the following critical events:

(a) Removal of Kumanjayi from House 511- the decision not to treat at the scene;

(b) The efforts of IRT members to provide first aid were first rate, but in vain;

(c) Cause and time of death;

(d) Efforts to secure medical assistance;

(e) The impact of the clinic closure on the treatment of Kumanjayi;

(f) The immediate response of Kumanjayi's community;

(g) The exceptional leadership and bravery of Aboriginal leaders;

(h) Communication between Police and Kumanjayi's family – no family permitted inside the police station to comfort him before he passed;

(i) The decision not to evacuate;

(j) The ruse – a decoy trip to the airport disguising the evacuation of Mr Rolfe;

(k) Police notification of Next of Kin;

(l) Establishing and guarding the crime scene; and

(m) Police attempt to facilitate calm and restore some trust.

Removal of Kumanjayi from House 511- the decision not to treat at the scene

1289. The shooting of Kumanjayi by Mr Rolfe, described in detail in the last chapter, happened at a time when House 511 was surrounded by women and children, some of whom were just coming back from the funeral area. Since the IRT had been circulating in the small community for about 15 minutes beforehand, news had spread that they were heading to House 511, and some people were concerned to see strange and armed police in the area.[1393] When Mr Rolfe discharged his weapon three times, the noise of the shots rang out in the community followed by the shouting of police and the sounds of Kumanjayi calling out in agony and the terrified screams of community members outside, all chillingly captured on the police body worn video.

1290. Understandably, the scene caused chaos and fear. While the community grappled to understand what had just occurred, the police themselves were scrambling to take control of the situation. Even C1C Eberl, who was inside the house, did not register that Mr Rolfe had discharged his weapon until he saw Kumanjayi's injuries while attempting to affect an arrest. For Officers Hawkings, Kirstenfeldt and Donaldson waiting outside, they had only been told by Mr Rolfe that he and C1C Eberl were going to "clear this red house", had not been included in any risk assessment as there was none, and they too were scrambling to understand what had happened.

1291. After Kumanjayi was handcuffed and the scissors removed from his hand, Mr Rolfe quickly searched him for other weapons.[1394]

[1393] I note, for example, the comment of Elizabeth Snape to C1C Eberl when she saw an officer carrying a longarm rifle and wanted to know why he had a gun, since it looked like "he's got it aimed to shoot someone". Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 138. Cst Kirstenfeldt had also observed a group of people "flocking" to the area near house 518 and banging on the fence "like they were trying to get attention, warn people, that sort of thing. There was a lot of yelling going on and banging on the fences": Recorded statutory declaration of Constable James Kirstenfeldt dated 10 November 2019 [7-79] at 6.

[1394] Trial evidence of Zachary Rolfe [7-115A] on 2 March 2022 at 1077-1078.

1292. The police members present were conscious of the need to commence first aid for Kumanjayi but did not consider that it was safe to treat him at the scene, surrounded by a shocked, traumatised, and potentially volatile community.[1395]

1293. C1C Hawkings told the police members that they had to leave.[1396] There was potential for police to be assaulted and he thought it sensible to remove that risk and deliver first aid away from the crowd, in a more appropriate environment.[1397] Mr Rolfe could hear people wailing and crying and he did not think it would be safe to treat Kumanjayi inside the house with lots of people around, with emotions high and a risk that police would be assaulted. He also thought there would be more medical supplies elsewhere.[1398] Both C1C Hawkings and Cst Kirstenfeldt had previously been in situations where they or their colleagues had been injured by crowds. While I accept that the officers held these fears based on their own previous experiences or knowledge of the experience of colleagues, it is important to recognise that no-one in the community interfered and there were no acts of violence towards the police at House 511.[1399]

1294. The police also needed medical supplies. The first aid kits were in the police cars, rather than immediately to hand, and were basic.[1400]

1395 Inquest evidence of Constable First Class Anthony Hawkings on 19 October 2022 at 1968; Recorded statutory declaration of Constable James Kirstenfeldt dated 21 November 2019 [7-80] at 34; Inquest evidence of Constable James Kirstenfeldt on 20 October 2022 at 2105-2106.

1396 Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 53; Recorded statutory declaration of Constable First Class Adam Eberl dated 11 February 2020 [7-33] at 15; Recorded statutory declaration of Constable First Class Anthony Hawkings dated 10 November 2019 [7-57] at 5-6.

1397 Inquest evidence of Constable First Class Anthony Hawkings on 19 October 2022 at 1969, 1977- 1978, 2008-2009.

1398 Inquest evidence of Zachary Rolfe on 2 February 2024 at 5505-5506.

1399 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [160]; Closing written submissions of the Brown family dated 29 October 2024 at [258].

1400 Inquest evidence of Constable First Class Adam Eberl on 18 October 2022 at 1889; Inquest evidence of Constable First Class Anthony Hawkings on 19 October 2022 at 2008.

1295. Mr Rolfe and C1C Eberl picked Kumanjayi up from under his armpits and "dragged him to the car",[1401] which was contrary to Police policy.[1402] As he was placed into the back of the police truck Kumanjayi accused the police, "You mob got no respect. Shame on you".[1403]

1296. I acknowledge the concerns of the family. The effect of the decision to remove Kumanjayi from the scene was perceived as police giving priority to effecting the arrest instead of the urgent delivery of first aid. However, I am not critical of police for not attempting to stabilise Kumanjayi at the scene or for taking him to a safe place, where they could focus on first aid with access to additional equipment.

1297. Understandably, members of Kumanjayi's family were extremely upset that police dragged him to one of the vehicles, before placing him inside.[1404] This was the last time Leanne Oldfield and others saw Kumanjayi alive.[1405] Drag marks were later observed on the ground which added to his family's distress, and some described that when police dragged him they were treating him very disrespectfully, like a "kangaroo" or a "dog".[1406] I can understand why the family felt that way. Members of the IRT explained that they did not mean any disrespect in dragging Kumanjayi, but they did so because of the chaotic

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1401 Inquest evidence of Zachary Rolfe on 2 February 2024 at 5506; inquest evidence of Constable James Kirstenfeldt on 20 October 2022 at 2067; Recorded statutory declaration of Senior Constable First Class Adam Donaldson dated 10 November 2019 [7-29] at 14.

1402 Inquest evidence of Zachary Rolfe on 2 February 2024 at 5506.

1403 BWV of C1C Adam Eberl [4-3]; the Parumpurru Committee submitted that "those words of Kumanjayi Walker are at the heart of this inquest": Closing written submissions of the Parumpurru Committee dated 28 October 2024 at [11]; and that this "cry" to Kumanjayi's "captors…summed up pretty much everything we're doing here and analysing.": closing oral submissions of the Parumpurru Committee on 27 November 2024 at 5875.

1404 Recorded statutory declaration of Leanne Oldfield dated 10 November 2019 [8-48] at 3, 11, 14-15, 20; Recorded statutory declaration of Elizabeth Snape dated 10 November 2019 at 8, 9, 30-32; Recorded statutory declaration of Ayeetta Dickson dated 10 November 2019 [8-19] at 4, 18, 20-21; Recorded statutory declaration of Nathan Coulthard dated 10 November 2019 [8-17] at 2, 6-7; Recorded statutory declaration of Myron Brown dated 26 November 2019 [8-4] at 7, 17-18, 25 29, 31.

1405 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [162]; closing written submissions of the Brown family dated 29 October 2024 at [259], [263].

1406 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [161]; see also the closing written submissions of the Brown family dated 29 October 2024 at [260].

environment and the urgent need to remove him as quickly as possible, both for safety reasons and to render first aid.[1407]

1298. Concerning this aspect of police behaviour the NT Police submitted (footnotes included):[1408]

> "The dragging should not have occurred; objectively, it was disrespectful, distressing to community members, and inconsistent with the NTPF Instruction - Custody and Transport.[1409] However, it is submitted that the Territory Coroner should view the actions of the members through the prism of the urgent need to provide first aid and the perception of the members that the circumstances were dire.[1410]"

1299. I remind myself of the urgency of the circumstances, but even so, it takes no additional time to lift a person by their arms and legs as compared to dragging them and this is what police are specifically instructed to do. The Custody and Transport Instruction could and should have been followed. This was a disrespectful act which demonstrated to Kumanjayi's family a lack of care for him. It should not have happened and it could and should have been avoided, particularly in circumstances where other officers were available to assist and/or cover off safety. I do not consider that urgency adequately explains or excuses this conduct. It was appropriate (and appreciated) that NT Police acknowledged that the dragging should not have occurred.

1407 Inquest evidence of Zachary Rolfe on 2 February 2024 at 5506; Recorded statutory declaration of Constable First Class Anthony Hawkings dated 13 November 2019 [7-58] at 45-46.

1408 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at 288.

1409 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [233]-[234].

1410 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [234]; Inquest evidence of Deputy Commissioner Murray Smalpage on 28 February 2023 at 4084. See also Inquest evidence of Zachary Rolfe on 29 February 2024 at 5506.

1300. On his way out of the yard, Constable First Class Eberl was bitten by a dog,[1411] and needed to shout to get the animal off him. The BWV captures the scene, which was harrowing and tense for the community and members of the IRT.

The efforts of IRT members to provide first aid were first rate, but in vain.

1301. Kumanjayi was placed into the back of the police vehicle driven by C1C Hawkings. Mr Rolfe and C1C Eberl sat in the back alongside Kumanjayi and uncuffed him to assess his injuries.[1412] The trip took just over 4 minutes and on arrival at the Yuendumu police station, Kumanjayi was taken into a police cell. Mr Rolfe applied a three-sided bandage to slow the collapse of Kumanjayi's lungs and put pressure on the back wound to seal it.[1413] It was obvious that Mr Rolfe had a good knowledge of first aid, and he was confident and competent in its application.

1302. I acknowledge that Mr Rolfe's capacity and willingness to provide good first aid care to Kumanjayi is an example of one of his strengths, though of little comfort to Kumanjayi's family. Although it is distressing for family to know that Kumanjayi was attended to in a police cell, the few advantages of that area were that it was clean and well lit, and the efforts of police were captured on CCTV.[1414]

1411 Recorded statutory declaration of Constable First Class Adam Eberl dated 10 November 2019 [7-31] at 5; Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 53; Recorded statutory declaration of Constable James Kirstenfeldt dated 10 November 2019 [7-79] at 23.

1412 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1078; Recorded statutory declaration of Constable First Class Adam Eberl dated 10 November 2019 [7-31] at 6; Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 67.

1413 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1078; Recorded statutory declaration of Constable First Class Adam Eberl dated 10 November 2019 [7-31] at 6; Recorded statutory declaration of Constable James Kirstenfeldt dated 10 November 2019 [7-79] at 8.

1414 Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1078; Recorded statutory declaration of Constable First Class Adam Eberl dated 10 November 2019 [7-31] at 6; Inquest evidence of Deputy Commissioner Murray Smalpage on 28 February 2023 at 4084.

1303. I have carefully reviewed the available footage and the actions taken by the police officers involved in attending to his wounds, as well as the expert evidence of Professor Michael Reade,[1415] who is the Defence Professor Of Military Medicine and Surgery at the University of Queensland and a specialist intensive care physician and anaesthetist, who also reviewed all available footage. It is clear to me that each of the members of the IRT, and SC1C Donaldson, did their best to preserve Kumanjayi's life after he was shot. The members attempted to keep Kumanjayi still and correctly positioned.[1416] Mr Rolfe and Cst Kirstenfeldt had specific experience with gunshot wounds given their previous military service and training.[1417] Sgt Frost noted their efforts and was comfortable that they were doing what was necessary, while she continued her responsibilities as the Forward Commander, liaising with Sgt Nobbs and attempting to secure medical support and backup.[1418]

1304. Police recognised the likelihood that Kumanjayi's lungs had been punctured,[1419] and Cst Kirstenfeldt correctly identified that the penetrating injury had caused a pneumothorax or hemopneumothorax.[1420] He briefly

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1415 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13], which provides a detailed explanation of the life saving measures attempted at [14] – [17], [37], [38], [41] and notes that any variations in application compared to training were reasonable and would not have made a difference to the outcome.

1416 Recorded statutory declaration of Constable First Class Adam Eberl dated 10 November 2019 [7-31] at 8; Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 68-69; Recorded statutory declaration of Constable James Kirstenfeldt dated 10 November 2019 [7-79] at 7; Recorded statutory declaration of Constable James Kirstenfeldt dated 21 November 2019 [7-80] at 38. They knew to position him to try to help the blood drain from his lungs.

1417 Recorded statutory declaration of Constable James Kirstenfeldt dated 10 November 2019 [7-79] at 26-27; Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 67; Recorded statutory declaration of Constable James Kirstenfeldt dated 21 November 2019 [7-80] at 39; Trial evidence of Constable James Kirstenfeldt on 16 February 2022 at 418-419; Inquest evidence of Constable James Kirstenfeldt on 20 October 2022 at 2102-2103.

1418 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 830.

1419 Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 67; Trial evidence of Zachary Rolfe [7-115A] on 3 March 2022 at 1078; Recorded statutory declaration of Constable James Kirstenfeldt dated 10 November 2019 [7-79] at 7, 26-27; Recorded statutory declaration of Constable James Kirstenfeldt dated 21 November 2019 [7-80] at 38, 43.

1420 Recorded statutory declaration of Constable James Kirstenfeldt dated 10 November 2019 [7-79] at 7, 26-27; Inquest evidence of James Kirstenfeldt on 20 October 2022 at 2102-2103;

contemplated performing an emergency surgical intervention but realised that they did not have the equipment to do so. Had a specialist trauma first aid kit been available, Cst Kirstenfeldt would have attempted further treatment, given his advanced first aid skills.[1421] While it would have been preferable to have that specialist equipment available, the severity of Kumanjayi's injuries meant that, given the skills of the police, it would not have preserved his life.[1422]

1305. It is deeply upsetting to see, captured on the station CCTV and BWV, Kumanjayi's distress during the last hour of his life. His family has told me that not being permitted to be with him and comfort him has caused them deep and lasting pain.

1306. The members diligently monitored Kumanjayi and did their best to keep him comfortable and to reassure him they were trying to help. C1C Eberl, in particular, demonstrated his compassion in the way in which he spoke to Kumanjayi and tried to support him. He tried to make him more comfortable,[1423] and held Kumanjayi's hand and stroked his hair.[1424]

1307. As Kumanjayi deteriorated, the members used a defibrillator and performed Cardio Pulmonary Resuscitation (CPR), only stopping when it became apparent that the defibrillator was not registering and there were no signs of life.[1425] They spoke with a St John's Ambulance paramedic over the phone and

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Trial evidence of Dr Michael Reade on 21 February 2022 [10-13A] at 626-627; Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at [9]; Body worn video of Constable First Class Adam Eberl of 9 November 2019 (File 3 of 4) [4-1].

1421 Inquest evidence of Constable James Kirstenfeldt on 20 October 2022 at 2103-2104. Those advanced skills, developed while Cst Kirstenfeldt was in the Australian Defence Force, are beyond what is expected of NT Police.

1422 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at [33].

1423 See Body worn video of Constable First Class Adam Eberl of 9 November 2019 (File 3 of 4) [4-1] and transcript of Body-worn footage of Constable First Class Adam Eberl of 9 November 2019 (File 3 of 4) [4-3] at 19.

1424 Inquest evidence of Constable First Class Eberl on 17 October 2022 at 1826.

1425 Recorded statutory declaration of Constable First Class Anthony Hawkings dated 13 November 2019 [7-58] at 56; Recorded statutory declaration of Constable James Kirstenfeldt dated 10 November 2019 [7-79] at 8; Recorded statutory declaration of Constable James Kirstenfeldt dated 21 November 2019 [7-80] at 43; Body worn video of Constable First Class Anthony Hawkings of 9 November 2019 (File 4 of 10) [4-1].

Cst Kirstenfeldt correctly advised that there was a "a weak femoral pulse and he's got a hemopneumothorax",[1426] but there was no additional instruction that could help and the officers were well placed themselves to understand what they could and could not do to assist Kumanjayi.[1427]

Cause and time of death

1308. At approximately 8.15pm, less than an hour after being shot, Kumanjayi lost consciousness. After 24 minutes of attempting resuscitation, the IRT members stopped CPR, and they pronounced Kumanjayi to be deceased at 8.36pm.[1428]

1309. The medical cause of death was determined by the pathologist, Dr Marianne Tiemensma, to be "gunshot injury to the chest and abdomen".[1429] Three projectile and two small metallic fragments were retrieved from the body and three gunshot wound tracks were present in the body as follows:

(a) The fatal gunshot wound track to the chest [shot 2 or 3] traversed the torso in a horizontal direction, from left to right, with resultant perforation of numerous chest and abdominal organs.

(b) Two other gunshot wound tracks were present, and although no vital structures were injured in their tracks, their presence, and contributions in the cause of death cannot be excluded completely.

1426 See a description of this and confirmation it was correct in the Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at [9].

1427 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at Attachment 1: Running Sheet; Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at Attachment JF3; Body worn video of Constable First Class Anthony Hawkings of 9 November 2019 (File 4 of 10) [4-1]; Body worn video of Zachary Rolfe of 9 November 2019 (2 of 4 (Actual Incident)) [4-1]. I am not critical of the members for not performing mouth to mouth resuscitation, because it would not have made any difference to Kumanjayi's chance of survival.

1428 Body worn video of Constable First Class Anthony Hawkings of 9 November 2019 (File 4 of 10) [4-1]; Body worn video of Constable First Class Adam Eberl of 9 November 2019 (File 4 of 4) [4-1].

1429 Post mortem report of Dr Marianne Tiemensma dated 21 January 2020 [1-15] at 2.

1310. Dr Tiemensma explained in her post-mortem report that the "mechanism of Kumanjayi's death, was a combination of respiratory failure (due to the haemothorax and diaphragmatic and right lung injury) and hypovolaemia (blood loss)".[1430]

1311. Professor Michael Reade was tasked to review the medical cause of death and to assess the standard of the first aid provided to Kumanjayi at the scene and the survivability of those wounds.[1431]

1312. Professor Reade's report sets out in detail the trajectory of each of the three bullet wounds and the damage they caused to Kumanjayi. He agreed with the examining pathologist's written opinion of Kumanjayi's medical cause of death,[1432] and he outlined in detail the reasons for his opinion.

1313. After assessing the actions of the police officers, Professor Reade opined that they did everything possible to render first aid in the timeliest way, within their capability and with the equipment they had available. This is set out in detail in his report and I will not repeat all of that very sensitive, and distressing information in my findings. The conclusion he reached was that:[1433]

> "While [Police] have limited training, skills and equipment to provide the required life-saving treatment, they demonstrate an appreciation of the seriousness of the situation, and a clear commitment to doing whatever they can to prevent Mr Walker from dying including application of direct first aid and calling for appropriate clinical help."

Efforts to secure medical assistance

1314. Since Mr Rolfe's confrontation with Kumanjayi occurred so soon after the IRT left the Yuendumu Police station, Sgt Frost was still at the station

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1430 Post mortem report of Dr Marianne Tiemensma dated 21 January 2020 [1-15] at 3.
1431 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13].
1432 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at 5.
1433 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at 12.

finishing her work when she received a call from one of the IRT members advising her that Kumanjayi had been shot.[1434]

1315. Body worn video of C1C Hawkings captures Sgt Frost on the phone requesting aeromedical retrieval 6 minutes and 45 seconds after the First Shot was fired.[1435] Sgt Frost contacted the Yuelamu Clinic at 7.25pm (7 minutes and 50 seconds after the First Shot) and told nurse Lorraine Walcott that she was required at Yuendumu urgently,[1436] and then rang the Yuendumu Clinic phone and requested that Ms Symonds immediately arrange for the medical plane.[1437] Ms Symonds called the "Medical Contact and Retrieval Centre" and arranged for them to speak with Sgt Frost. Sgt Frost also spoke to an Alice Springs-based doctor about the need for a medical plane.[1438] Another of the phone calls Sgt Frost made was to Supt Nobbs to request assistance with the medical evacuation and additional police resources.[1439]

1316. The Yuelamu nurses were Lorraine Walcott, who had started the job two months earlier, in September 2019, and had only been to the Yuendumu dialysis clinic (Purple House) and not the medical clinic;[1440] and nurse Heather Zanker, who had only started at Yuelamu 5 days earlier, on 4 November

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1434 Inquest evidence of Sergeant Julie Frost dated 21 September 2022 at 829; Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at Attachment 1: Running Sheet; Recorded statutory declaration of Lorraine Walcott dated 10 November 2019 [9-14] at 5, 15.

1435 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at [19].

1436 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 829; Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at Attachment 1, Running Sheet; Recorded statutory declaration of Lorraine Walcott dated 10 November 2019 [9-14] at 5, 15.

1437 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 18; Inquest evidence of Sergeant Julie Frost dated 21 September 2022 at 828 and on 23 September 2022 at 869; Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at Attachment 1: Running Sheet; Affidavit of Luana Symonds affirmed 5 October 2022 [9-12A] at [113]; Inquest evidence of Luana Symonds on 10 October 2022 at 1273-1274.

1438 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 829.

1439 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 18, 39; Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 829; Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at Attachment 1: Running Sheet.

1440 Inquest evidence of Lorraine Walcott on 12 October 2022 at 1419.

2019.[1441] The nurses understood the urgency of Kumanjayi's situation, but they were delayed leaving left Yuelamu until approximately 7.50, because they needed to attend to a sick child and collect equipment. [1442]

1317. As identified in the submission of the WLR Family, there was one Aboriginal health practitioner who had not been evacuated from Yuendumu. Neither the IRT, Sgt Frost, nor any of the Senior Command in the NT Police knew that (and seemingly nor did the nurses from Yuelamu) so no attempt was made to seek that person's assistance to care for Kumanjayi.[1443] Had there been better communication between NT Health and NT Police concerning the evacuation of the nursing staff, that is information that could have been shared. It would have no doubt been of considerable comfort to his family and Kumanjayi had he received care from a local Aboriginal health practitioner even though that person did not have keys to the clinic, so no additional equipment would have been available. See further discussion in Chapter Eleven.

1318. The Yuelamu nurses arrived in Yuendumu at approximately 9.08pm.[1444] They entered the police compound at approximately 9.16pm[1445] but sadly they were too late and Kumanjayi had already passed away. They examined Kumanjayi and pronounced him to be deceased at approximately 9.25pm[1446] (noting that police had already determined his death earlier). The expert evidence was that the nurses could not have prevented Kumanjayi's death even if they had been able to immediately depart Yuelamu.[1447]

1441 Inquest evidence of Lorraine Walcott on 12 October 2022 at 1420.

1442 Recorded statutory declaration of Lorraine Walcott dated 10 November 2019 [9-14] at 16; Inquest evidence of Lorraine Walcott on 12 October 2022 at 1429.

1443 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [164].

1444 Recorded statutory declaration of Lorraine Walcott dated 10 November 2019 [9-14] at 5, 17; Inquest evidence of Lorraine Walcott on 12 October 2022 at 1429.

1445 Inquest evidence of Lorraine Walcott on 12 October 2022 at 1430-1431.

1446 Recorded statutory declaration of Lorraine Walcott dated 10 November 2019 [9-14] at 22-23; Recorded statutory declaration of Heather Zanker dated 10 November 2019 [9-16] at 4-5; Inquest evidence of Lorraine Walcott dated 12 October 2022 at 1432.

1447 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at [34].

1319. Sgt Frost, Supt Nobbs and the Alice Springs Watch Commander were liaising with the Medical Retrieval and Consultation Centre (**MRaCC**), a 24hr emergency service that coordinates medical retrieval and the Royal Flying Doctor Service (**RFDS**) pilot to try to get a retrieval flight sorted as soon as possible,[1448] but despite their efforts a medical retrieval team was not able to be dispatched prior to Kumanjayi passing away. Ultimately, after being advised that Kumanjayi was deceased, Supt Nobbs stood down the RFDS pilot at approximately 8.45pm and the police members who were in transit to the RFDS hangar were redirected to the Police Air Wing hangar.[1449]

The impact of the clinic closure on the treatment of Kumanjayi

1320. The circumstances of Kumanjayi's shooting, and the efforts to administer first aid, were made significantly more traumatic for his family and police because of the clinic closure. Had the Yuendumu clinic been open, Kumanjayi would have been transported there, meaning that nursing staff, rather than the IRT team (which included the man who had inflicted the injury) would have administered first aid.

1321. While that would have been more comfortable for Kumanjayi (including from the perspective of pain relief and medication), it is not likely to have led to him surviving the injuries.

1322. Professor Reade outlined the facilities in the Yuendumu clinic if it had been open and staffed by a team of nurses noting that "it lacked most of the

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[1448] Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 829-830, and on 23 September 2022 at 869; recorded statutory declaration of Superintendent Jody Nobbs dated 29 November 2019 [7-101] at 25-26, or [34]; Statement of Damien Myles dated 29 September 2022 [9-7B] at 2; Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1123-1126 and on 31 October 2022 at 2856-2857.

[1449] Recorded statutory declaration of Superintendent Jody Nobbs dated 29 November 2019 [7-101] at [42]; Inquest evidence of Superintendent Jody Nobbs on 27 September 2022 at 1125-1126.

resources that would be expected in a trauma resuscitation bay and that would be required to deliver" potentially life-saving treatment.[1450]

1323. The initial medical treatment available for a patient at Yuendumu clinic with a gunshot wound is emergency care, including intravenous fluids, haemorrhage (bleeding) control, airway management and cardiopulmonary resuscitation if required. The Yuendumu Clinic was not equipped for administering blood transfusions or performing surgery. If a patient had multiple gunshot wounds to the centre body mass, all attempts would be made to stabilise them before transporting them by air to Alice Springs.[1451] The RFDS-capable airstrip is approximately 500m from the clinic.

1324. Although Professor Reade was not certain of the level of training the remote nurses had, he would have expected them to:[1452]

> "provide basic airway support with a Guedel airway, breathing support with a bag-valve-mask apparatus, insert a laryngeal mask airway if the patient could tolerate this without the assistance of intravenous sedatives, apply bandages for external haemorrhage control, properly apply appropriate dressings to a penetrating chest wound, decompress a tension pneumothorax using a needle, insert an intravenous cannula and administer non-blood fluid, and administer adrenaline intravenously as part of the Advanced Life Support algorithm. However, they would most likely not have been able to use intravenous sedatives and muscle relaxants to facilitate endotracheal intubation, insert an intercostal catheter connected to an underwater seal drain or one-way flutter valve, or perform a Focussed Assessment with Sonography in Trauma (FAST) scan to diagnose the hemopneumothorax or hemoperitoneum, unless they had training and experience additional to that routinely required of Remote Area Nurses in the Northern Territory".

1325. The nearest hospital to Yuendumu is Alice Springs Hospital which provides a competent general trauma and critical care service and could provide immediate emergency surgery for Kumanjayi, had he reached the hospital

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1450 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at 2[23].

1451 In his report, Professor Reade cited the information provided by Nurse Fiona Cameron as to the treatment they would have initiated: Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at [23].

1452 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at [24].

quickly enough after being shot. Optimal treatment provided in hospital would have included: a right chest intercostal catheter to drain the build-up of blood, and an exploratory laparotomy, which could have identified and facilitated treatment for the injuries to his spleen, kidney and liver. Professor Reade explained that these procedures would most likely have been performed as an abbreviated damage control laparotomy, followed by a period of stabilisation in an intensive care unit and then by definitive surgery within 24-48 hours. Appropriate adjunctive critical care management would have included sedation, muscle relaxation, intubation and mechanical ventilation, intravenous fluid resuscitation and analgesia (pain relief).[1453]

1326. Thus, there was little doubt that Kumanjayi could have been treated, and possibly saved, if he had been shot close to Alice Springs Hospital.

1327. The next question was whether the Yuendumu clinic staff would have been able to keep Kumanjayi alive long enough to have him transported safely to Alice Springs Hospital. A realistic time estimate from urgent calling for an aeromedical retrieval team to reach Yuendumu would be 60-120 minutes, with a point estimate of 90 minutes.[1454]

1328. With the resources that could reasonably be expected to be present in the Yuendumu clinic, and had it been staffed by its usual complement of nurses, Professor Reade found that it was "possible" that Kumanjayi may have been supported medically long enough to have been transported, but only if there was a nurse skilled in trauma care, and not all remote nursing staff would be expected to have those advanced skills.[1455] At the trial of Mr Rolfe, Professor Reade gave evidence that he could not be certain whether the training of remote clinic nurses would have been sufficient to perform the type of interventions necessary to sustain life until Kumanjayi could be transported to Alice Springs Hospital (including intubation, mechanical ventilation, blood transfusion). In those circumstances, he agreed it was speculative and "all [he]

1453 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at [29] – [30].

1454 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at [27].

1455 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at [32].

could really reliably say is that could have been the case, but [he] couldn't give…a degree of certainty over that".[1456]

1329. The evidence of Professor Reade was not contentious, and he was not required for cross examination at the Inquest. In summary, his evidence demonstrates that:[1457]

(a) If Kumanjayi had been shot at Alice Springs, it was likely he would have survived because the Alice Springs Hospital has a general trauma and critical care service, with doctors capable of providing immediate, and effective emergency surgery.

(b) If the Yuendumu Clinic had been open, and staffed with its usual complement of Remote Area Nurses, then some but not all the prehospital interventions necessary to prolong Mr Walker's life would have been applied. Whether this would have been sufficient to result in his ultimate survival would be dependent on the time it took for an aeromedical retrieval flight to arrive.

(c) If an aeromedical retrieval aircraft had landed from Alice Springs within 60-120 mins of Kumanjayi being shot, as is theoretically possible (noting the evidence that the shortest time possible was probably 90 mins) then the wounds he sustained may have been survivable, but this is not certain.

1330. In spite of those best case, potential, scenarios for survival, the optimal chain of events did not occur this night. Even if the clinic had been open and equipped as envisaged by Professor Reade, the facts of this night were that at 7.28pm the first request for retrieval was made. The fastest flight time to Yuendumu is about 50 minutes. There was some delay for the plane and staff to be ready for departure. Even when the plane was apparently ready to depart, the order for take-off was not given by the Royal Flying Doctor Service (RFDS) chain of command as the NT Police had advised that the community

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1456 Trial evidence of Dr Michael Reade on 21 February 2022 [10-13A] at 629.

1457 Statutory declaration of Dr Michael Reade dated 19 September 2020 [10-13] at 25-26.

was in "lockdown". The take-off order had still not been given by 8.25pm as the RFDS was still grappling with whether or not it was safe to land in Yuendumu and retrieve Kumanjayi. Even if the plane had departed at 8.25pm, it would not have arrived in time to save Kumanjayi. In fact, when Kumanjayi passed away, the RFDS plane had still not left the ground. In those circumstances, even if the clinic had been open, the sad reality of that night and for Kumanjayi was that, given the inevitable delays in retrieval, it was almost certain that he could not have survived the shooting.[1458]

The immediate response of Kumanjayi's community

1331. Kumanjayi's family and others in the community quickly learnt that he had been shot and was seriously injured, but beyond that, they were left to speculate and to worry. Little wonder that there was a tense atmosphere and that some expressed themselves by shouting in anger.[1459]

1332. For the most part, the community was relatively calm, thanks largely to the efforts of Senior ACPO Derek Williams, Elders and a particular young leader and her mother whom I have singled out below.[1460] Samara Fernandez-Brown and her mother confiscated weapons from some of the many community members as they made their way towards the police station.[1461]

1333. There were, however, at least some individuals who were angry and throwing rocks at the police station, with some landing on the roof causing loud noises that could be heard by and alarmed the police inside.[1462] Sgt Frost also received

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1458 Closing written submissions of NT Health dated 19 November 2024 at [548]-[551].

1459 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 831.

1460 See, for example, the video "2 Still waiting for news.mp4" [4-20].

1461 Inquest evidence of Samara Fernandez-Brown on 7 September 2022 at 123.

1462 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 831, 850, 857; Inquest evidence of Zachary Rolfe on 29 February 2024 at 5510; Recorded statutory declaration of Constable First Class Adam Eberl dated 13 November 2019 [7-32] at 73; Recorded statutory declaration of Constable James Kirstenfeldt dated 10 November 2019 [7-79] at 8; Recorded statutory declaration of Constable First Class Anthony Hawkings dated 11 February 2020 [7-59] at 27; Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 30, 33.

a call from one of the school staff members advising that an angry group was moving towards the police station.[1463]

1334. After hearing from Sgt Frost that Kumanjayi had been shot, SACPO Derek Williams and his father Warren Williams attended the police station. They went inside briefly but then left and remained outside the building to help calm the crowd that had gathered.[1464] SACPO Williams gave evidence that people were "yelling and screaming and wanted to throw rocks at the station".[1465] He also saw and heard a few young men throw some rocks onto the roof, about 5 times, and he told them not to do that because the police needed to concentrate on providing CPR to Kumanjayi.[1466] He told Cst Alefaio to lock the door of the police station[1467] and Cst Alefaio warned Cst Kirstenfeldt to "be careful".[1468] He told Sgt Frost that the crowd was very angry,[1469] but he also told her "yeah there will be trouble but people just want to find out. Elders will help with sorting out families". He said, "all be in danger [and] elders will sort it from there". [1470]

1335. SACPO Williams and Sgt Frost communicated via text during the evening, and police on the ground and in management in Darwin sought his wise

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1463 Inquest into the death of Kumanjayi Walker, evidence of Julie Frost, 21 September 2022, page 851; Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at Attachment 1: Running Sheet.

1464 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 19; Recorded statutory declaration of Senior Aboriginal Community Police Officer Derek Williams dated 20 November 2019 [7-139] at 17-18; Statutory declaration of Senior Aboriginal Community Police Officer Derek Williams dated 9 August 2022 [7-140AA] at [39]; Recorded statutory declaration of Warren Williams dated 8 January 2020 [8-72] at 4.

1465 Trial evidence of Senior Aboriginal Community Police Officer Derek Williams on 15 February 2022 [7-140A] at 350.

1466 Inquest evidence of Senior Aboriginal Community Police Officer Derek Williams on 8 September 2022 at 185, 255.

1467 Recorded statutory declaration of Senior Aboriginal Community Police Officer Derek Williams dated 20 November 2019 [7-139] at 4; Statutory declaration of Senior Aboriginal Community Police Officer Derek Williams dated 9 August 2022 [7-140AA] at [40].

1468 See Body worn video of Constable James Kirstenfeldt of 9 November 2019 (File 2 of 2) [4-1] and transcript of Body-worn footage of Constable James Kirstenfeldt of 9 November 2019 (File 2 of 2) [4-5] at 51-55.

1469 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 56.

1470 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at Annexure JF4: text messages between Sgt Frost and SACPO Williams.

counsel.[1471] At 8.48pm, SACPO Williams spoke briefly to A/AC Wurst and advised him that the community was very upset and angry and may try to hurt police in the station.[1472]

The exceptional leadership and bravery of Aboriginal leaders

1336. Senior ACPO Williams was in an invidious position, trying to do his absolute best both as a loyal member of the NT Police and as a senior man of culture assisting his community. He was walking in two worlds. He navigated that course with great courage, dignity and capacity.

1337. As expressed in the submissions of the NT Police (references excluded):[1473]

> "The evening was a very difficult experience for Senior ACPO Williams. He was required to 'walk in two worlds', to uphold police law as an ACPO and to maintain cultural beliefs and family relationships as a community member. He had himself attended the funeral that afternoon. Although he was Kumanjayi's uncle he put that aside and focused on keeping everyone calm and safe. Senior ACPO Williams remained outside the police station professionally attempting to calm community members for several hours."

1338. In their submissions, the NT Police express their justifiable pride and gratitude for the work of SACPO Williams on the night of Kumanjayi's death. On behalf of the Police Force, I am urged to acknowledge the effect of this terrible night on SACPO Williams, and to commend his efforts to "maintain peace and prevent unrest within the community".[1474] I do commend his efforts on that night, and also in the years that have followed, when he was required

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1471 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 56, 63.

1472 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 16 September 2022 at 987

1473 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [918].

1474 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [918].

to go through the court processes of a trial and this Inquest, and to withstand the scrutiny of his community.

1339. Warren Williams, a respected Elder who had performed many roles in the community, stood beside his son throughout the night, offering comfort and support and a voice of calm. The Williams men were assisted by Mr N, who has sadly since passed away, and by Ned Jampijinpa Hargraves.

1340. Samara Fernandez-Brown continued to provide support to community members, while they attempted to find out from police what was going on.

1341. No doubt there were others in the community who also selflessly comforted others and helped to ensure the community remained as calm as it could in the circumstance. All the leaders and voices of calm are to be commended.

Communication with Kumanjayi's family – no family permitted inside the police station to comfort him before he passed

1342. The frustration felt by many community members who were not being told the status of Kumanjayi or what had happened inside House 511 is entirely understandable, as is the pain of Kumanjayi's family. They had heard (or heard about) an unknown police officer discharging his gun inside House 511, some had seen Kumanjayi being dragged away, there was a mattress inside the house covered in blood, and bullet casings. Yet until 4.30am the next morning, his next of kin was left to speculate about what had taken place and no family members were permitted inside the station to see or comfort Kumanjayi.

1343. Kumanjayi's adopted mother, Leanne Oldfield, had been outside House 511 at the time of the shooting[1475] and she remained there instead of going to the police station. His grandparents, Eddie and Lottie, were well respected members of the community who lived close by. SACPO Williams and his father were related to Kumanjayi, but they were not his next of kin, and in

[1475] Statement of Leanne Oldfield dated 18 July 2022 [8-48B] at [18]-[19].

any event, they were outside the police station speaking to community members and assisting to manage the emotions and expectations of the assembled crowd.

1344. That meant no member of Kumanjayi's family was present while he was receiving first aid or at the time of his death. Further, his death was not communicated to Kumanjayi's family and community members at the time or soon after his death. Kumanjayi's next of kin, Eddie and Lottie, were not notified until approximately 4am the next morning when they were woken and told the news. Other family members did not learn the news until later in the morning.

1345. Samara Fernandez-Brown explained how wrong this was for the family. She said:[1476]

> "The right thing would have been to have them inside the police station with Kumanjayi for his own comfort and for theirs and even for the rest of us, even if we couldn't be in there, to know that he had somebody giving him that level of comfort."

1346. The NT Police made several significant concessions concerning how this was handled and the hurt caused to Kumanjayi's family, while at that same time urging me to keep in mind the extenuating circumstances. In written submissions they acknowledged that it must have been distressing for Kumanjayi not to have his family present at this time. They acknowledged that not being able to provide comfort to him during his last hour on earth has caused deep anguish to his family members who were anxiously waiting outside for information. Police accept that Kumanjayi's family was not given information about his passing in a timely way, and that it was culturally inappropriate for Kumanjayi's body to have been left inside the police station for a significant period unattended by family and community members.[1477]

1476 Inquest evidence of Samara Fernandez-Brown on 7 September 2022 at 135.

1477 Inquest evidence of Warren Williams on 8 September 2022 at 273. See Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [926]- [928].

1347. Nevertheless, the NT Police offer three primary reasons for not allowing family into the police station and for failing to notify them promptly of Kumanjayi's death:

(a) Initially police were focused on providing first aid and this was a "highly graphic, highly distressing" scene.[1478] It would not have been appropriate for family members to be present at that time, in the same way that family members are not permitted to be present during emergency procedures at hospitals.[1479]

(b) The police were concerned that the family and community might react with hostility towards them, leading to unrest and placing others, including police, at risk.[1480]

(c) Since there would inevitably be an investigation after Kumanjayi's death, they restricted entry to the police station to preserve evidence.[1481]

1348. Although in my view there would have been ways to work around the issue of managing evidence, I can appreciate the concerns of the police, and the difficulty of balancing the relevant considerations. It must be heartbreaking for Kumanjayi's family to think of him in the police station alone during that time. The difficulty for police, however, was that once one member of the family had information that Kumanjayi was critically unwell and then had passed away, they could not be expected to keep that from other community members.

1349. The police did not even tell SACPO Williams about Kumanjayi passing away, and for cultural reasons he did not ask. Although the crowd was initially upset

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1478 Inquest evidence of Deputy Commissioner Murray Smalpage on 28 February 2023 at 4085-4086.

1479 Inquest evidence of Deputy Commissioner Murray Smalpage on 1 March 2023 at 4179.

1480 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 832; Inquest evidence of Superintendent Jody Nobbs on 31 October 2022 at 2831 – 2832, 2837; Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 982-985; Inquest evidence of Constable First Class Adam Eberl on 17 October 2022 at 1826.

1481 Inquest evidence of Deputy Commissioner Murray Smalpage on 1 March 2023 at 4178.

and angry, SACPO Williams said that they settled down over time.[1482] Ms Fernandez-Brown took some videos on her phone of the gathered crowd and they depict a worried, enquiring, and sombre gathering,[1483] and I accept the submissions of the Brown Family that there was no attempted breach of the police station.[1484]

1350. In hindsight, instead of a blanket of complete secrecy, a better path may have been to negotiate with a family member to seek their consent to enter the station, on condition that they remain in the station and travel with Kumanjayi to Alice Springs. They could have then travelled with Kumanjayi (after he passed away) on the medical evacuation plane back to Alice Springs. For example, Eddie and Lottie Robertson, or Warren Williams, all highly respected Elders who perform several leadership roles, could have been trusted to assist police. Alternatively, on reflection, A/AC Wurst accepts that SACPO Williams should have been told.[1485] That said, police on the night did not have the benefit of calm reflection and I must be careful of hindsight bias.

1351. Several senior police officers who were involved in making difficult decisions that evening had significant experience working in communities and were concerned how the residents would react to the devastating news of Kumanjayi's death.

1352. A/AC Wurst was concerned that if information was shared in relation to the passing of Kumanjayi, there was a serious risk that the community would react violently against police and that the security of the police station might be breached.[1486] He was concerned for the welfare of police members, taking into account his own experiences in Yuendumu and what had been communicated

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1482 Inquest evidence of Senior Aboriginal Community Police Officer Derek Williams on 8 September 2022 at 253-254.

1483 Inquest evidence of Samara Fernandez-Brown on 7 September 2022 at 124-125

1484 Closing written submissions of the Brown Family dated 29 October 2024 at [302].

1485 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 991 – 992, 994.

1486 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 988.

to him by police on the ground, including from SACPO Williams.[1487] He knew that violence had broken out at Yuendumu on a fairly regular basis over the previous 15 years, a fact that I came to learn about myself in considering the devastating impact on the community of the interfamilial violence and rioting of 2010. A/AC Wurst had also experienced retributive violence at Papunya and Kintore.[1488]

1353. Supt Nobbs, who had significant experience in remote communities, including in the Central Desert, shared the concern of A/AC Wurst that there may be violence directed towards police, and perhaps a breach of the police station. He feared for the safety of community members including police, people waiting outside the police station, those who might become involved in unrest and other stakeholders.[1489]

1354. Both A/AC Wurst and Supt Nobbs drew on their significant policing experience and they spoke candidly, but with respect and concern for the community of Yuendumu, in explaining how fraught the decision was. A/AC Wurst said that he knew it was at odds with policy, and the way in which Kumanjayi's family and community should have been permitted to deal with his passing, but he could not conceive of how even one person in the family could be told the information.[1490] He said he had reflected deeply and felt for the family, but he still did not see how they could have done it differently. He gave evidence at inquest that:[1491]

> "I didn't know who that would be and my experience and I - this is not to be critical whatsoever of community members, but I have experienced people who are community leaders who, when they've been told certain things, have reacted very emotionally and if that were to occur with a person that we created a line of

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1487 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 987-988.

1488 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 1058-1059.

1489 Inquest evidence of Superintendent Jody Nobbs on 31 October 2022 at 2831.

1490 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 988-989.

1491 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 988.

> communication with, that could be misconstrued by the community and it could have triggered that particular negative reaction toward the police and the police station. It was a very very difficult time from a decision-making point of view about how to progress through that process…if we had've communicated with the wrong person by phone and that information had've been misconstrued or misused, that was the potential outcome that at my point in time as the decision-maker, I was grappling with and it's – I've grappled with it every day since."

1355. In the submissions of the NT Police, it is acknowledged that the decision not to tell the community or SACPO Williams of the death remains "uncomfortable" for the NT Police and for the witnesses, like A/AC Wurst and Supt Nobbs who wrestled with it[1492] and now accept that SACPO Williams could have been informed.[1493]

1356. The complexity of the decision making was expressed by Deputy Commissioner Smallpage when he told the Inquest:[1494]

> "The difficulty we face as police is, unfortunate as it is, from time to time, we have high levels of community unrest where police officers either meet in the middle to try and resolve complex social issues at short notice in the middle of the night, middle of the day with limited resources, and I think perhaps there is a degree that the sense of those sorts of widely-known issues are a reality for policing. So, it does lead to then our apprehension as police officers in a remote location about safety, about how we're going to manage this, what could occur and we have seen instances of community violence and unrest, which has led to damage, houses being burnt, a whole raft of difficult social problems and the police have to deal with that."

1357. The Brown Family countered with this submission:[1495]

> "But to treat the community of Yuendumu in a particular way because of one or more officers' experiences in a different Aboriginal community is to treat them in an unfavourable manner

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1492 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [936].

1493 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [936], citing Inquest evidence of Deputy Commissioner Murray Smalpage on 1 March 2023 at 4213-4214.

1494 Inquest evidence of Deputy Commissioner Murray Smalpage on 1 March 2023 at 4214-4215.

1495 Closing written submissions of the Brown Family dated 29 October 2024 at [306].

> based on race. An objective assessment of what was unfolding at the police station would have revealed that the crowd outside the station were calm and being managed by elders. The fear-based response of the NTPF inside the station was driven by an unconscious bias against the community of Yuendumu because of race."

1358. This was not simply a withholding of information. Combined with other actions, it was done in such a way as to give the misleading impression to Kumanjayi's family that he was still alive and receiving treatment. The Brown Family refers to this as "the first lie".[1496] Not only do the family feel betrayed by the NT Police, but they also feel besmirched.

1359. On behalf of the NT Police and officers at the scene, it was put to me that they acted "out of concern about the extraordinary and worrying situation, in part born of their own and others' experience, not because of cruelty or racist stereotyping".[1497] On considering the matter carefully, and though it is distasteful to the community, I accept that submission. I accept the evidence of A/AC Wurst that the decision for senior officers was "an exercise in risk management, in response to an unfolding situation which required the weighing up of multiple competing factors".[1498] In all the circumstances, I am not critical of police, although, like Police, I deeply regret the hurt caused, and that Kumanjayi's family continues to feel.

1360. The impact of this "lie" on Kumanjayi's family and community will be felt for many years to come and is yet another reason why the NT Police teach recruits that careful planning and risk assessment is required to minimise the risk of lethal force being necessary.

1496 Closing written submissions of the Brown Family dated 29 October 2024 at [307] – [315].

1497 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [929].

1498 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 992.

The decision not to evacuate

1361. After considering the circumstances, Supt Nobbs ordered Police to evacuate due to the potential risk that the police station compound might be breached, which could have led to a catastrophic outcome.[1499]

1362. Holed up inside the Yuendumu Police station after the shooting, Sgt Frost feared for the safety of herself and the other police members.[1500] Seventeen years earlier, she had been working in Palumpa as a remote nurse when there was a police shooting at Wadeye and she had vivid memories of having witnessed riots in the community and at the police compound, that occurred at that time.[1501] Anyone who understands the impact of trauma would understand why this weighed on her mind and contributed to her fears about what may happen in Yuendumu on the night in question.

1363. Sgt Frost communicated the order to evacuate to SACPO Williams, and asked if he would like to evacuate, but understandably, he wanted to remain in Yuendumu.[1502] Sgt Frost and C1C Hand prepared themselves to leave by packing up their firearms and pets.[1503]

1364. The decision of Supt Nobbs was not unreasonable and was based on information he had at the time as well as his own prior experience.[1504] There was, however, a valid alternative view that it was best for police to remain in

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1499 Inquest evidence of Superintendent Jody Nobbs on 31 October 2022 at 2924.

1500 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 18, 39; Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 829-831; Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at Attachment 1: Running Sheet.

1501 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 18; Committal evidence of Sergeant Julie Frost on 1 September 2020 [7-39A] at 46-48; Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 829, 832-833, 847-848.

1502 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 834; Inquest evidence of Senior Aboriginal Community Police Officer Derek Williams on 8 September 2022 at 254; Statutory declaration of Senior Aboriginal Community Police Officer Derek Williams dated 9 August 2022 [7-140AA] at [46].

1503 Inquest evidence of Sergeant Julie Frost on 23 September 2022 at 947; Inquest evidence of Senior Constable First Class Christopher Hand on 20 September 2022 at 698.

1504 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [363].

the community to assist with peace and order and A/AC Wurst overturned the evacuation order, taking into account broader considerations.[1505]

1365. The challenge for police that night is reflected in the fact that senior officers, acting reasonably and with the best interests of police and the community in mind, held different views. Commander Martin Dole, who had considerable experience in communities in the Central Desert, did not fear that there would be serious damage and injury caused to police at Yuendumu in the immediate aftermath of Kumanjayi's death.[1506]

1366. In hindsight, the decision not to evacuate was vindicated. The community dispersed after the plane believed to be carrying Kumanjayi left the airstrip. The perimeter of the police station was never breached, and the glass external windows of the police station were not smashed.[1507]

1367. That did not, however, mean that the decision was a simple one.

The ruse- a decoy trip to the airport disguising the evacuation of Mr Rolfe

1368. Once the decision not to evacuate had been made, the next challenge for Police was how to ensure the safe removal of Mr Rolfe to Alice Springs and the safe transport into Yuendumu of police who could support the local staff.

1369. When a plane was arranged to pick up Mr Rolfe and take him back to Alice Springs, it was decided to deceive the community by giving them the impression that it was an evacuation flight for Kumanjayi for urgent medical attention. That decision was made to try to minimise the risk of conflict at the police station that night, but NT Police now accept that the community felt angry and betrayed when they discovered the deception and that trust in the police has been severely damaged ever since.

1505 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [365].

1506 Inquest evidence of Commander Martin Dole on 21 November 2022 at 3590.

1507 Inquest evidence of Deputy Commissioner Murray Smalpage on 1 March 2023 at 4211-4212.

1370. Seven Alice Springs police members travelled by police air wing to assist at Yuendumu, arriving at 10.45pm.[1508] Acting Senior Sergeant Terry Zhang was appointed to the role of Forward Commander.[1509] When the Alice Springs members arrived, the plane hovered east of Yuendumu for a time waiting for confirmation that it was safe to land.[1510]

1371. The aircraft was a plane ordinarily used by police, but it was badged "RFDS" (under a lease agreement), which gave it the appearance of being a medical plane. Although that had not been planned by police, it ultimately played a part in the ruse.[1511]

1372. Given the crowd of people still gathered outside the Yuendumu police station at the time the plane planned to land, Police were concerned about whether they could safely drive to the airstrip to collect the Alice Springs members and then return to Yuendumu station.[1512] They also needed to get Mr Rolfe back to Alice Springs, away from the community.[1513] Mr Rolfe believed he would be in danger once he was identified as the shooter.[1514]

1373. In an effort to minimise the risk of confrontation, Sgt Frost and Supt Nobbs determined that the ambulance with the two Yuelamu nurses would travel in convoy with two police cars to the air strip and back, so that the community would believe Kumanjayi was being evacuated[1515] or alternatively it "would

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1508 Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 [1-1A] at 49.

1509 Recorded statutory declaration of Senior Sergeant Terry Zhang dated 5 December 2019 [7-147] at 6.

1510 Inquest evidence of Acting Senior Sergeant Terry Zhang on 27 October 2022 at 2633. Recorded statutory declaration of Acting Senior Sergeant Terry Zhang dated 5 December 2019 [7-147] at 4-5.

1511 Inquest evidence of Superintendent Jody Nobbs on 31 October 2022 at 2858.

1512 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 21-22.

1513 When the Yuelamu nurses arrived in Yuendumu, Nurse Walcott applied a dressing to Mr Rolfe's left shoulder, but he still needed to see a doctor in Alice Springs to be fully checked: Recorded statutory declaration of Lorraine Walcott dated 10 November 2019 [9-14] at 22-24; Inquest evidence of Lorraine Walcott on 12 October 2022 at 1432-1433.

1514 Inquest evidence of Zachary Rolfe on 29 February 2024 at 5510-5511.

1515 Inquest evidence of Superintendent Jody Nobbs at 1128-1129.

appear to the community that the purpose of the trip was to collect medical staff".[1516]

1374. At this point in the evening, the frustration of the community was understandable, since they were not being updated with any information about Kumanjayi's welfare. As a result, a small number in the community were volatile, as demonstrated by the events that followed.

1375. In accordance with these arrangements, the ambulance and police cars set off in convoy to the airstrip, followed by several members of the community driving behind in cars. Some community members got out of their cars and waited on the bitumen outside the airstrip fencing while the convoy was inside the area, trying to get some information on what was taking place. When the police cars and ambulance drove away from the airstrip back towards the police station, some community members threw rocks at the convoy,[1517] out of frustration and anger at the police.

1376. However understandable that frustration and tension was, there is no denying that a small number of the community behaved in a way that put police and medical staff in danger. One rock was thrown through the front passenger side window of the first police vehicle driven by Cst Alefaio, smashing the window and missing his passenger's face by centimetres.[1518] It hit Cst Alefaio's forearm, but he was able to keep driving. Rocks were also thrown at the ambulance, causing damage to the front windscreen and two side windows, and most significantly, injuries to the head, arm and face of Nurse Lorraine Walcott.[1519] Nurse Walcott had cuts across her nose. She had only been in community a matter of months and who had driven in the dark to render urgent assistance to Kumanjayi. The assault on her was extremely frightening.

1516 Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at 22; Inquest evidence of Superintendent Jody Nobbs on 31 October 2022 at 2866-2867, 2925.

1517 Inquest evidence of Constable Felix Alefaio on 20 September 2022 at 757.

1518 Inquest evidence of Constable Felix Alefaio on 20 September 2022 at 741.

1519 Inquest evidence Constable Felix Alefaio on 20 September 2022 at 757; Recorded statutory declaration of Lorraine Walcott dated 10 November 2019 [9-14] at 33; 11x photographs [9-14A]; Recorded statutory declaration of Heather Zanker dated 10 November 2019 [9-16] at 3.

1377. After the trip to the airstrip, more rocks were thrown onto the roof of the police station and this caused Nurse Walcott to be fearful for her safety.[1520] At 11.25pm, police received a report from WYDAC that there was a fire at the medical clinic,[1521] and it is understandable that the police feared the situation could escalate.[1522] To the credit of the community it did not escalate and it clearly settled down soon afterwards.

1378. At the time, the nurses did not know they were part of a police ruse on the community, and they believed they went to pick up medical personnel.[1523] Again, with the benefit of hindsight, police have conceded that the involvement of the two Yuelamu nurses in the airstrip ruse was unnecessary and should not have occurred.[1524]

1379. The deception was successful as family members living in Alice Springs went to the Alice Springs Hospital in anticipation of Kumanjayi's arrival.[1525] The Brown Family refer to this part of the ruse as the "second lie" and submit it has contributed to a "long psychological scar";[1526] and Samara Fernandez-Brown said when she discovered the lie, she felt "sickened" by it.[1527]

1380. Police have conceded that the ruse, which was conducted not only on the community but also on the nurses,[1528] should not have occurred.[1529]

1520 Inquest evidence of Lorraine Walcott on 12 October 2022 at 1453.

1521 Inquest evidence of Lorraine Walcott on 12 October 2022 at 1453; Inquest evidence of Sergeant Julie Frost on 23 September 2022 at 945; Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at Attachment 1: Running sheet; Inquest evidence of Senior Constable First Class Christopher Hand on 20 September 2022 at 726.

1522 Inquest evidence of Senior Constable First Class Christopher Hand on 20 September 2022 at 726.

1523 Recorded statutory declaration of Heather Zanker dated 10 November 2019 [9-16] at 6; Recorded statutory declaration of Lorraine Walcott dated 10 November 2019 [9-14] at 7; Inquest evidence of Lorraine Walcott on 12 October 2022 at 1448.

1524 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [949].

1525 Inquest evidence of Samara Fernandez-Brown on 7 September 2022 at 148.

1526 Closing written submissions of the Brown family dated 29 October 2024 at [316]-[320], [337].

1527 Inquest evidence of Samara Fernandez-Brown on 7 September 2022 at 149.

1528 Closing written submissions of NT Health dated 19 November 2024 at [405].

1529 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [949].

Nevertheless, I accept the highly challenging environment, the nerves and volatility on that night were all factors in this decision which was made by police who were exercising their best endeavours to keep the peace.

The notification of Next of Kin

1381. At 11.05pm, Eddie Robertson, contacted the police station and asked whether Kumanjayi was alive.[1530] SC1C Chris Hand answered the phone and told Mr Robertson that he did not have any information that he could give him. He took his number so that he could call him back later.[1531]

1382. Around one hour later, at 12.07am, Acting Senior Sergeant Terry Zhang spoke to Supt Nobbs and then to Eddie Robertson over the phone and told him the "third lie";[1532] that Kumanjayi was still receiving medical treatment.

1383. This was part of the overall ruse. Despite the *General Order: Deaths in Custody* (the form of General Order then in force) which required that a family representative and the Aboriginal Legal Service or other Aboriginal Community Organisation be notified of a death as "soon as is practicable",[1533] Police wanted the community to continue to believe that Kumanjayi was still alive (and had been transported out for medical treatment) until the arrival of the TRG in the morning, just in case the community reacted to the truth of his passing by rioting.[1534]

1384. A/SSgt Zhang gave evidence that he felt uncomfortable during the call, and I accept that he was genuine when he expressed to the community that he was

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1530 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at Attachment 1: Running sheet.

1531 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at Attachment 1: Running sheet.

1532 Closing written submissions of the Brown family dated 29 October 2024 at [321] – [327].

1533 General Order: Deaths in Custody, and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public (OP-C1) – 10 November 2011 (updated 8 September 2016) [17-7] at [25.10].

1534 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 991; Inquest evidence of Acting Senior Sergeant Terry Zhang on 27 October 2022 at 2634-2635.

sorry for lying. Even so, he still believed that it was necessary to maintain the ruse, because he believed if he told Mr Robertson about Kumanjayi's death, the information would have been disseminated through the community.[1535]

1385. At approximately 1.15-1.30am on Sunday 10 November, seven members of the TRG arrived in Yuendumu.[1536] They included Tactical Commander Senior Sergeant Meacham King, who had previously been to Yuendumu, including during riots in 2010.[1537] He gave evidence that he had previously encountered family members being extremely emotional or agitated, leading to violence, when a person had passed away and family members were shown the body. Although the police were prepared for civil disorder, when the TRG arrived their vehicles were not pelted with rocks, there were no people on the road and few outside the police station, and things were quiet.[1538]

1386. At around 3.45am, TRG members contacted SACPO Williams to confirm his safety and then asked him to attend the station and identify Kumanjayi's body. SACPO Williams explained that he could not perform this task because it was not culturally appropriate for him to do so, given his relationship with Kumanjayi.[1539]

1387. At approximately 4.00am police contacted Eddie Robertson by phone and asked him to attend the police station, but did not tell him why.[1540] Mr Robertson attended as requested and was informed for the first time that his grandson had passed away. He declined to identify his body and was shocked and upset to learn of Kumanjayi's death as he had been deceived by the ruse.

1535 Inquest evidence of Acting Senior Sergeant Terry Zhang on 27 October 2022 at 2634-2635. SSgt Zhang gave the false information to Eddie Robertson at the direction of Superintendent Nobbs, who also believed that it was regrettable, but necessary, to give Mr Robertson misleading information at that time, in order to avoid the information spreading throughout the community before daybreak.

1536 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at Attachment 1: Running sheet; Statutory declaration of Sergeant Meacham King dated 25 November 2019 [7-77] at [7].

1537 Statutory declaration of Sergeant Meacham King dated 25 November 2019 [7-77] at [6].

1538 Adopting the closing written submissions of the Brown Family dated 29 October 2024 at [340] and [344].

1539 Statutory declaration of Senior Aboriginal Community Police Officer Derek Williams dated 9 August 2022 [7-140AA] at [49].

1540 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2554.

He said, "I stopped talking when he said you want to identify that man. My goodness, and I thought he was alive."[1541] Police arranged with Mr Robertson that they would come back to his home at around 6.30am to notify other close family members, particularly Rickisha Robertson and Leanne Oldfield, and requested Mr Robertson's assistance.[1542]

1388. At around 6.44am, Sgt King, Sgt Frost and A/SSgt Zhang attended House 577 to advise Rickisha that Kumanjayi had passed away.[1543]

1389. Reflecting on things they could have done with more cultural sensitivity, NT Police have acknowledged that when notifying the next of kin they did not use the culturally appropriate reference for a Warlpiri person who has recently passed (that is, Kumanjayi) and, in fact, they used the wrong first name.[1544] Sgt King explained in his evidence that he understood it would have been better to use the word "Kumanjayi", but he attempted to use Kumanjayi's name to avoid any confusion over the person being discussed (though in the circumstances it is hard to see how any such confusion might have arisen, other than from the use of the wrong name).[1545] As the Brown Family pointed out in their submissions, Sgt King's further attempts to explain the circumstances of the shooting as "self-defence" was an assumption at that time, which was presumptuous, offensive and disrespectful to the family. It reinforced fears that police were biased and engendered mistrust towards the police.[1546]

1390. On behalf of the NT Police, Deputy Commissioner Murray Smalpage told the Inquest that this communication was culturally insensitive and fell short of what is to be expected of police officers given the responsibility to

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1541 Recorded statutory declaration of Eddie Robertson dated 27 November 2019 [8-51] at 31.

1542 Statutory declaration of Sergeant Meacham King dated 25 November 2019 [7-77] at [28].

1543 Body worn video of Sergeant Meacham King on 10 November 2019 [7-77B] and transcript at 2-3.

1544 Body worn video of Sergeant Meacham King on 10 November 2019 [7-77B] and transcript at 2.

1545 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2557-2558.

1546 Closing written submissions of the Brown Family dated 29 October 2024 at [346].

communicate the death of an Aboriginal person.[1547] The NT Police acknowledged that police should have prepared and formulated a proper communication strategy for the notification.[1548] The Forward Commander, A/SSgt Zhang offered his sincere apologies for this clumsy and culturally insensitive communication.[1549]

1391. After attending House 577, Sgt King, Sgt Frost and A/SSgt Zhang went to speak with Kumanjayi's mother, Leanne Oldfield, who was understandably devastated. SACPO Williams was also present and assisted with the notification to the Brown family.[1550] Again, the Police were fortunate to have his assistance.

1392. Later, when establishing the crime scene Sgt King confirmed with SACPO Williams that Kumanjayi was to be referred to as "Kumanjayi" and not by his first name from that time on.[1551]

Establishing and guarding the crime scene

1393. It is an important part of any investigation that police take all reasonable steps to establish a "crime scene", which is a physical scene that may provide potential evidence to an investigator. The *General Order: Deaths in Custody* (the form of General Order then in force) required that the scene be treated as a "'suspicious' investigation crime scene", which "involves adherence, wherever possible and practical, to all procedures in relation to securing the scene to preserve the integrity of evidence, exhibits and witnesses." The scene is to be "fully secured until a thorough crime scene examination is conducted

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1547 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [378]-[379].

1548 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [379]; Inquest evidence of Senior Sergeant Terry Zhang on 27 October 2022 at 2736, 2738.

1549 Inquest evidence of Senior Sergeant Terry Zhang on 27 October 2022 at 2661.

1550 Inquest evidence of Sergeant Meacham King on 26 October 2022, page 2557.

1551 Inquest evidence of Sergeant Meacham King on 26 October 2022 at 2557.

by Forensic Services, unless the circumstances of the incident dictate otherwise".[1552]

1394. Between approximately 2.44am and 4.00am a "crime scene" was established at the Yuendumu Police Station and examined by the Forensic Examination Team.[1553]

1395. Although there is an imperative to set up the crime scene as quickly as possible, so as not to allow evidence to be lost or disturbed, House 511 was not declared a crime scene until 7.10am on 10 November 2019, almost 24 hours after Kumanjayi was shot. A crime scene was not immediately established at House 511 due to the need to perform first aid and because of fears for the safety of police members.[1554]

1396. Throughout the day on 10 November, various members of the NT Police performed the role of crime scene guard outside House 511. Inexplicably, some carried longarm weapons at the time,[1555] an action that was wholly unnecessary and overzealous.

1552 General Order: Deaths in Custody, and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public (OP-C1) – 10 November 2011 (updated 8 September 2016) [17-7] at [13], [25.1]; Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [371].

1553 Statutory declaration of Senior Constable Ian Spilsbury dated 2 March 2020 [7-156] at 2, 4.

1554 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [372].

1555 Inquest Exhibit 7: Image shown to Acting Assistant Commissioner Wurst (Tendered 26 September 2022); Inquest evidence of Samara Fernandez-Brown on 7 September 2022 at 138.

1397. It frightened the community, and particularly the children,[1556] that were coming to terms with the fact that Kumanjayi had been shot. It made them feel like they had done something wrong when, from their perspective, the reverse was true.

1398. Samara Fernandez-Brown described that in the days following his passing, people in the community were fearful, especially seeing police in camouflage and with shotguns. Even so, she wanted to know what was happening and tried to speak to the police but found their responses defensive. She said some police were "very insensitive and very disrespectful and didn't take into consideration that we had just lost a family member, and it was our right to enquire about what's just happened. [A policeman] made it feel like we were wrong for even asking".[1557] The WLR Family submit that "the family and community were treated disrespectfully and there has been insufficient recognition of wrongdoing".[1558]

1399. It is not clear what the rationale for longarm weapons was, who made that decision or why no-one thought to question it. A/SSgt Zhang gave evidence that he did not order those members to carry longarms, but similarly did not order them not to do so.[1559] A/SSgt Zhang accepted that such weapons were "absolutely not" necessary in the circumstances, and were not justified by risk and he apologised to the community that they were carried at that time.[1560] Sgt Meacham King said that he was not aware of members carrying longarms, even though it was captured on his BWV, but agreed they were not required.[1561]

1400. Allowing members of the TRG to guard the house of a grieving family with longarms caused further unnecessary hurt and fear. It was intimidating.[1562] The

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1556 Inquest evidence of Samara Fernandez-Brown on 7 September 2022 at 150-151.

1557 See closing written submissions of the Brown family dated 29 October 2024 at [352].

1558 Closing written submissions of the Walker, Lane and Robertson Families dated 29 October 2024 at [174].

1559 Inquest evidence of Acting Senior Sergeant Terry Zhang on 27 October 2022 at 2658.

1560 Inquest evidence of Acting Senior Sergeant Terry Zhang on 27 October 2022 at 2659.

1561 Inquest evidence of Sergeant Meacham King on 27 October 2022 at 2550.

1562 Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 1065.

NT Police accepts that longarms are not ordinarily used to guard a crime scene[1563] and they should not have been used on 10 November 2019.[1564]

Police attempt to facilitate calm and restore some trust

1401. In the days following Kumanjayi's death, there were significant efforts made by local and senior police to re-establish trust and calm in the community.

1402. The Acting Commissioner of Police, Michael Murphy, and A/AC Travis Wurst travelled to Yuendumu on 10 November[1565] and met with about 500 community members, including members of Kumanjayi's family. This meeting took place at the basketball hall and lasted for about an hour and a half.[1566]

1403. A/AC Travis Wurst remained in Yuendumu as the Senior Executive member responsible for providing community engagement. In this role he:[1567]

(a) engaged with Kumanjayi's family members, Warlpiri and Luritja/Pintupi Elders, local interest groups including WYDAC and other community members who wanted to engage with police,

(b) attended the sorry camps that had been established in the community, along with local member Senior Constable Lanyon Smith, and Detective Acting Superintendent Michael Schumacher,

(c) determined the most appropriate police officers to be brought into Yuendumu to provide ongoing support to the community, including

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1563 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [196].

1564 Inquest evidence of Deputy Commissioner Murray Smalpage on 28 February 2023 at 4095-4096.

1565 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [104]-[105].

1566 Statutory declaration of Acting Assistant Commissioner Travis Wurst dated 20 August 2020 [7-145] at [95]-[100].

1567 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [102]-[103]; Statutory declaration of Acting Assistant Commissioner Travis Wurst dated 20 August 2020 [7-145] at [103]-[117].

members who had previously served in the community and had strong local connections, and

(d) developed an engagement plan to support future deployment of officers in the Yuendumu community.

1404. On 12 November, the Chief Minister, the Police Minister and the new Commissioner of Police, Jamie Chalker APM, travelled to Yuendumu. The Chief Minister and Commissioner met with Warlpiri and Luritja/Pintubi Elders, before attending a public community meeting at the basketball hall.[1568]

1405. Later that same day, a traditional cleansing ceremony was held at the Yuendumu Police Station.[1569] It was planned through consultation between Police and the community[1570] and about 500 community members marched to the Police station for the ceremony.[1571] The ceremony took about three hours. All community members were allowed to move through the station,[1572] and use red paint to place painted handprints on the outside wall of the police station.[1573]

1406. There are many lessons to be learnt from Kumanjayi's death in the hope that a similar tragedy can be avoided, including, in the terrible event that there is another shooting, about how to handle the aftermath. One of those is that in the days following, there is an important role to be played by skilled negotiators and persons trained in avoiding conflict, some who may be police employees and others who should be outside of police. This is one of several

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1568 Statutory declaration of Acting Assistant Commissioner Travis Wurst dated 20 August 2020 [7-145] at [122].

1569 Statutory declaration of Acting Assistant Commissioner Travis Wurst dated 20 August 2020 [7-145] at [123]-[127].

1570 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [109].

1571 Statutory declaration of Acting Assistant Commissioner Travis Wurst dated 20 August 2020 [7-145] at [123]-[124].

1572 Statutory declaration of Acting Assistant Commissioner Travis Wurst dated 20 August 2020 [7-145] at [123]-[125].

1573 Statutory declaration of Acting Assistant Commissioner Travis Wurst dated 20 August 2020 [7-145] at [126]. These were later washed off, after Police were advised that they were not a part of any traditional ceremony or grieving process, and that it would be alright to remove them: Statutory declaration of Acting Assistant Commissioner Travis Wurst dated 20 August 2020 [7-145] at [129].

inquests where I can identify the need to bolster the services of mediators and community leaders skilled in conflict avoidance, and it is one reason why I have made a recommendation to that effect.

CHAPTER TEN THE CORONIAL INVESTIGATION

Introduction

1407. In the Northern Territory, as in other jurisdictions in Australia, there are guidelines governing the investigation into a police death in custody that aim to ensure a thorough and objective investigation, and to give the public confidence that there is a system in place to safeguard against the abuse of police powers. Those guidelines are also a protection for police, since if implemented, they operate to remove unwarranted suspicion.

1408. Of particular importance in the Northern Territory is the Police "General Order: Deaths in Custody, and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public (OP-C1)" (Dated 10 November 2011 and updated on 8 September 2016), referred to as the Death in Custody General Order.[1574]

1409. Although senior police made an effort to implement the General Order as soon as they were notified that Kumanjayi had been shot by police, there was a clear breach when Mr Rolfe and his colleagues, including witnesses to the events on 9 November 2019, met for a gathering at Mr Rolfe's home the very next evening, at a time when Mr Rolfe had not given a police interview or any statement accounting for his actions.

1410. There were a number of factors that made the investigation into the death of Kumanjayi Walker, and particularly the actions of Mr Rolfe, challenging, including:

    (a) First, the fact that the shooting occurred in Yuendumu meant there were logistical difficulties in ensuring all relevant officers were kept separate;

[1574] General Order: Deaths in Custody, and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public (OP-C1) – 10 November 2011 (updated 8 September 2016) [17-7].

(b) Second, the intersection of the coronial and criminal matters exposed the fact that the NT did not have a clear guideline determining how the two separate investigations should run, without interfering with each other; and

(c) Third, the fact that Mr Rolfe was charged with a serious criminal offence, for which there would be a high profile and closely scrutinised trial, prevented any formal debrief in relation to what was obviously a very distressing (and potentially triggering) event for many officers, and in circumstances where the charging and trial of Mr Rolfe caused deep divisions that have reverberated in the Police force for many years.

1411. While some of the problems with the investigation can be put down to mistakes made by individuals, others are systemic issues. An analysis of the investigation provides an important opportunity to improve those systems, so that they are less flawed when, inevitably, the next critical incident occurs.

1412. This chapter covers the following issues:

(a) Potential contamination of key witness accounts;

(b) The absence of a formal debriefing process;

(c) The absence of drug testing for an involved officer; and

(d) The confusion caused by concurrent criminal and coronial investigations.

Potential contamination of key witness accounts

1413. At the time that Kumanjayi was killed, the Police Death in Custody General Order[1575] was in effect. The importance of this General Order cannot be

[1575] General Order: Deaths in Custody, and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public (OP-C1) – 10 November 2011 (updated 8 September 2016) [17-7].

overstated, given its role in ensuring that deaths in police custody are fairly and objectively investigated. That General Order mandated that "[a]ll members, whether directly or indirectly involved in the incident, are to be segregated from all other witnesses, including other police immediately after the incident",[1576] and that it must be "ensure[d]" that "communication between such witnesses is prevented".[1577]

1414. For the period Kumanjayi was still alive at Yuendumu, the focus of all the IRT members was performing first aid and it was not possible to separate them from each other. Similarly, in the short time after Kumanjayi passed away and before Mr Rolfe was transported to Alice Springs, it would have been difficult to isolate him.

1415. In spite of those difficulties, investigators clearly gave consideration to the segregation of witnesses required by the General Order during this time. For example:

(a) Detective Acting Senior Sergeant Leith Phillips spoke with Constable First Class Anthony Hawkings and advised him that no one was to discuss anything (a conversation C1C Hawkings passed on to Sgt Frost at 9:12pm on 9 November).[1578]

(b) At 09.25pm on 9 November, Acting Commander Janelle Tonkin and Detective Acting Superintendent Kirk Pennuto spoke, noting that the "capacity to separate witnesses is almost zero", and that A/Cmdr Tonkin had directed that "BWV is a must".[1579]

1576 General Order: Deaths in Custody, and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public (OP-C1) – 10 November 2011 (updated 8 September 2016) [17-7] cited as Death in Custody General Order at [26.1].

1577 General Order: Deaths in Custody, and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public (OP-C1) – 10 November 2011 (updated 8 September 2016) [17-7] at [15].

1578 Body worn video of Constable First Class Anthony Hawkings of 9 November 2019 (File 6 of 10) [4-1] at 11:42Z, and transcript of Body worn video of Constable First Class Anthony Hawkings of 9 November 2019 (File 6 of 10) [4-4] at 2 of 8.

1579 Statutory declaration of Detective Acting Superintendent Kirk Pennuto dated 19 March 2020 [7-109] at annexure KP-01: notes at 3 (paginated as 134).

(c) At approximately 9.30pm, Det A/SSgt Leith Phillips gave a briefing to officers departing from Alice Springs to Yuendumu and specified that as far as possible, the members involved be separated until their version of events had been obtained, that all body-worn was to be secured and that their versions were to be recorded by way of audio-visual or at least audio statutory declaration.[1580]

(d) When he arrived at Yuendumu, Acting Senior Sergeant Terry Zhang conducted a briefing with most of the members present and gave them a clear direction not to discuss what happened in relation to the shooting.[1581]

1416. With the exception of Mr Rolfe, the members of the IRT (C1C Eberl, C1C Hawkings, Cst Kirstenfeldt) and the dog handler SC1C Donaldson were all interviewed prior to the completion of their shifts on 10 November 2019.[1582] Cst Alefaio, Sgt Frost and SC1C Hand were interviewed on 11, 13 and 14 November respectively.[1583] The interviews were conducted prior to the body-worn footage being viewed and were a significant initial step in the investigation,[1584] but the members were not advised at the completion of those interviews to refrain from discussing the matter with any other witness, as required by the General Order.[1585] NT Police concedes that it was always going to be necessary for further statements to be taken from the members involved.

1417. While efforts were made by senior police to prevent contamination occurring at Yuendumu police station, it appears that the ball was dropped after Mr Rolfe returned to Alice Springs.

1580 Statutory declaration of Detective Acting Senior Sergeant Leith Phillips dated 20 April 2020 [7-110] at [20].

1581 Inquest evidence of Acting Senior Sergeant Terry Zhang on 27 October 2022 at 2636.

1582 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [363]-[364].

1583 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [365].

1584 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [366].

1585 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [367].

1418. At 6.58pm on 10 November 2019 Acting Sergeant McCormack sent a message suggesting an "IRT debrief" the following afternoon at the IRT watchhouse.[1586] He said that the purpose of the debrief was to be a welfare check for Mr Rolfe and others, although he didn't describe it as such because he thought that sort of softer language might mean the men declined.[1587]

1419. Mr Rolfe suggested that the "debrief" take place at his house and, in breach of the Death in Custody General Order, on the afternoon of 11 November 2019, Mr Rolfe attended a social gathering at his home with a number of police officers who came and went,[1588] including witnesses to the events of 9 November 2019.[1589]

1420. I accept that the initial idea of an IRT debrief at the watchhouse was intended as a welfare check and that members attended due to their concerns for Mr Rolfe.[1590] However, Mr Rolfe had not yet provided a statement and that meant that the gathering had the potential to contaminate (either deliberately, or inadvertently) the version of events that Mr Rolfe eventually gave.[1591] NT Police acknowledges that the gathering was "ill-advised and should not have occurred" and risked contaminating the evidence that might be given.[1592] The NTPA also acknowledges that the gathering raised concerns regarding the potential for breach of procedural guidelines designed to safeguard the integrity of investigations.[1593]

1586 Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2218.

1587 Inquest evidence of Acting Sergeant Shane McCormack on 21 October 2022 at 2235.

1588 It is unclear exactly how many people attended this gathering, but "there was enough people there that you sort of couldn't find somewhere to sit. There was like people standing around the loungeroom": Inquest evidence of Constable Mitchell Hansen on 27 October 2022 at 2705.

1589 C1C Hawkings, C1C Eberl and Cst Kirstenfeldt were all there: Inquest evidence of Constable First Class Adam Eberl on 17 October 2022 at 1796.

1590 Inquest evidence of Sergeant Evan Kelly on 21 October 2022 at 2273; Inquest evidence of Constable First Class Anthony Hawkings on 18 October 2022 at 1940.

1591 As acknowledged by Assistant Commissioner Travis Wurst: Inquest evidence of Acting Assistant Commissioner Travis Wurst on 26 September 2022 at 998.

1592 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at 984.

1593 Closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [54]-[55].

1421. While I can appreciate the desire of police officers to support each other and to debrief, the importance of separating officers should have been well understood.

1422. I am satisfied that during the gathering, there was some discussion about what had occurred in the room when Kumanjayi was shot,[1594] including that Mr Rolfe had adhered to NT Police training.[1595]

1423. Although this gathering was the most egregious example of the risk of contamination, there was also another matter that gave rise to serious concern. At 11am on 10 November 2019, Mr Rolfe was texted by a senior colleague (via a junior one) with what appears to be a suggestion as to how evidence should be given about what occurred; including an acronym of (IAMO + P) used to explain why force was justified.[1596]

1424. NT Police concedes that there was a risk that the conduct of the officers sending those texts could have contaminated Mr Rolfe's evidence or influenced his account of what occurred during the shooting and it is very clear that those texts should not have been sent.[1597] They point out that Mr Rolfe recorded a version of events (albeit brief) in his police notebook at 01.47am, and (unsurprisingly) he raises there the issue of self defence. But that was not known to the persons sending the texts. Even if, given his notebook entry, the text message could only have influenced Mr Rolfe's account in a minor way, I am seriously troubled by the fact that two officers would text Mr Rolfe about the evidence he should give, particularly the senior officer. Both officers have since recognised their behaviour to be inappropriate; they said they sent the texts in a moment of heightened emotions and they apologised for it. I understand if these acknowledgments and apologies provide little reassurance to Kumanjayi's family.

1594 Inquest evidence of Constable First Class Adam Eberl on 17 October 2022 at 1796.

1595 Recorded statutory declaration of Constable First Class Breanna Bonney dated 30 January 2020 [7-17] at 6.

1596 Statutory declaration of Sergeant Ian Nankivell dated 14 October 2022 [7-100A] at [5], [8].

1597 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [980].

1425. It is necessary to scrutinise the applicable General Order on Deaths in Custody and the training that police receive about how to implement it during an investigation, to ensure that the General Order and training are adequate. In an age where police are connected by personal devices, I suggest that the General Order be updated to include a specific direction that officers should not discuss evidence either in person, or via any phone or electronic messaging service.[1598] This may seem basic, but since emotions will run high after a police connected death, there must be a specific and clear direction. As this was not a flagged recommendation, I will not make formally make it one, but I trust that police command reading these findings will take it into account.

The absence of a formal debriefing process

1426. It is important for NT Police to review the processes it has in place for informal and formal debriefing after an incident like this, to ensure that it is safeguarding police members welfare, at the same time it attempts to ensure the integrity of their evidence.

1427. I accept the submissions made by NT Police that the strong and lasting relationships police form during their service is part of what attracts some of them to the job and enables them to remain in it.[1599] The work of police in the Northern Territory is extremely challenging, and positive bonding between members and a positive, supportive and respectful work culture should be fostered.

1428. It is entirely understandable that after an event as traumatic as a police shooting, police colleagues will need to be reassured about the welfare of

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[1598] This could be added to [37] of the new Crime (Homicide and Serious) Investigation General Order: Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at Annexure MS-04.

[1599] Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [985].

those involved. They may wish to get together to offer each other support and to help each other to release the tension.

1429. It was submitted by NT Police that it is usual for debriefings to be conducted after critical incidents,[1600] and a debrief was provided for in the IRT SOP,[1601] but no debriefing was offered to NT Police members following the death of Kumanjayi Walker,[1602] since there were concerns that a debrief would interfere with Mr Rolfe's right to a fair trial.[1603]

1430. I note that NT Police accepts that it could have taken steps to manage the safety and welfare of members in a way that did not involve a group of members getting together in one location, particularly before their second statements were taken.[1604] The NTPA notes that even though the importance of a debrief is accepted, there has still never been a debrief for the officers at Yuendumu on 9 November 2019.[1605] Perhaps it is still not too late for that, at least in part, to be rectified.

1431. I note, and urge NT Police to consider, the NTPA submissions that its welfare policy should ensure that there is no stigma attached to officers accessing supports, confidentiality is appropriately protected, and members have a choice of in-house or private services.[1606] Importantly, professional trauma counselling services should be available to all police.[1607] I accept the submissions of the NTPA that there is a the need for "structured, professional

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1600 Inquest into the death of Kumanjayi Walker, evidence of Murray Smalpage, 3 March 2023, page 4411.

1601 Closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [51].

1602 Inquest into the death of Kumanjayi Walker, evidence of Mitchell Hansen, 27 October 2022, page 2733.

1603 Inquest into the death of Kumanjayi Walker, evidence of Murray Smalpage, 3 March 2023, page 4411.

1604 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [988].

1605 Closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [55].

1606 Closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [43]-[44].

1607 Closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [52].

support mechanisms, and formal debriefing processes to help officers manage the psychological aftermath of traumatic incidents effectively."[1608]

1432. I recommend that police should develop a welfare policy which includes a consistently followed debrief process, including for this situation, and they should design that on the basis of expert advice. Such a policy might provide for private and/or group debriefs led by an expert facilitator, for example, a psychologist. Steps, including if necessary to seek legislative protection, should be taken to ensure that the content of these debriefs remain confidential.

The absence of drug testing for an involved officer

1433. In every jurisdiction around Australia other than the Northern Territory, police are required to submit to drug and alcohol testing following the discharge of a firearm.[1609] At the time of Kumanjayi's death (and at the time of writing these findings), the NT remains an outlier in not requiring such testing to take place.

1434. Consequently, at no time after Mr Rolfe shot Kumanjayi was he required to be tested for alcohol or drug use. Had he been tested, results would have revealed that he was taking the anti-depressant medication that he had been prescribed two weeks earlier (Escitalopram). Since Mr Rolfe had not revealed the fact of his prescription, or the decline in his mental wellbeing, to his employer,[1610] neither Mr Rolfe's psychiatric condition, nor the impact of medication he was on could be considered before his deployment to

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1608 Closing written submissions of the Northern Territory Police Association dated 13 November 2024 at [55].

1609 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [338] and Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [966].

1610 Although, as set out earlier, he had told a fellow police officers (including one senior officer) via a text exchange.

Yuendumu, and it was only discovered during the coronial investigation by examining his phone messages.

1435. While there is no evidence to suggest that Mr Rolfe was adversely affected by this prescribed medication or other drugs on 9 November, there is also no objective evidence that he was not.

1436. The text messages on Mr Rolfe's phone indicated that he was someone who used recreational drugs from time to time. Mr Rolfe admitted to using cannabis while he was a serving police officer,[1611] and he had previously used MDMA.[1612] The absence of a testing regime means that there is no objective way to prove or disprove Mr Rolfe's assertion that he had not used recreational drugs around the time of the shooting.

1437. As I said in *Ruling No 3,*[1613] the public policy served by a regime of drug testing police officers after a critical incident is obvious. At the time that Deputy Commissioner Smalpage gave evidence to the inquest in 2022, NT Police was actively pursuing the implementation of suitable drug and alcohol testing powers as those applicable in other jurisdictions. DC Smalpage explained that:[1614]

> "Amendments to the *Police Administration Regulations* are being progressed to implement drug and alcohol testing. The anticipated commencement date of the drug and alcohol testing regime is December 2022. A *General Order: Drug and Alcohol Testing of Police Officers* has been developed and will be promulgated once the Police Administration Regulations – Drugs and Alcohol Testing come into force."

1438. While I accept the sincerity of that evidence and the aspirations of the then Deputy Commissioner, I am not aware of any movement on such an amendment.

1611 See, for example Inquest evidence of Zachary Rolfe on 27 February 2024 at 5330, 5698.

1612 Inquest evidence of Zachary Rolfe on 26 February 2024 at 5109.

1613 *Inquest into the death of Kumanjayi Walker (Ruling No 3)* [2022] NTLC 019 at [80].

1614 Affidavit of Deputy Commissioner of Police Murray Smalpage dated 12 July 2022 [7-120A] at [338].

The confusion caused by concurrent criminal and coronial investigations

1439. From a very early stage in the investigation into Kumanjayi's death, there were two streams of inquiry – one criminal and one coronial – which proceeded concurrently. That is different to other jurisdictions, which will pause the coronial investigation in the event of criminal charges being laid, until that process has been finalised.

1440. On 13 November 2019, Mr Rolfe was charged with criminal offences in relation to Kumanjayi's death, the most serious one being a charge of murder but nevertheless, both separate investigations into the criminal and coronial aspects of the investigation, proceeded.

1441. I am informed by NT Police that Detective Acting Superintendent Pennuto was appointed the commissioned officer in charge of the criminal investigation, and officers from the Special References Unit were utilised as investigators under his command.[1615]

1442. For the Coronial investigation, Detective Superintendent Scott Pollock was appointed the commissioned officer in charge, following advice from the Deputy Coroner that the Office wanted a concurrent coronial investigation.[1616] Det Supt Pollock had a reputation and track record for excellence and had previously conducted gold standard coronial investigations that were recognised as rigorous and independent.

1443. The coronial and criminal investigations had some overlap, but they had very different purposes. The criminal investigation was directed by NT Police investigators and was concerned with whether Mr Rolfe acted lawfully or unlawfully when Kumanjayi was shot. By contrast, the coronial investigation was directed by the Northern Territory Coroner, at that time Judge Greg

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[1615] Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at 990.

[1616] Inquest evidence of Commander Martin Dole on 21 November 2022 at 3581; Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [35]-[38].

Cavanagh.[1617] It had a broader purpose to inquire into system issues including the recruitment, training, supervision and culture of NT Police members and particularly members of the IRT.[1618]

1444. I am assisted by the submissions of NT Police which explain an otherwise confusing system of delegation. As they set out, Assistant Commissioner Nicholas Anticich was then the Assistant Commissioner for Crime, Intelligence and capability, and he oversaw both investigations,[1619] although in reality he had no direct involvement in the coronial investigation. Although Det Supt Pollock reported to AC Anticich, his work was directed by the Deputy Coroner.

1445. In May 2020, for reasons that are unclear to me, a decision was made to replicate the criminal command structure in the coronial matter.[1620] Commander David Proctor APM was appointed the Commissioned Officer in Charge of the coronial investigation, and Det Supt Pollock felt that he was removed from the coronial investigation, although it appears he continued to work on the investigation after that time. Det Supt Pollock no longer directly reported to the Coroner, and this function devolved to Cmdr Proctor. Cmdr Proctor prepared the final Coronial Memorandum. He had inherited a number of draft reports prepared by Det Supt Pollock and there is substantial overlap among the drafts and final Coronial Memorandum.[1621]

1617 Judge Cavanagh retired in 2023 and I, Judge Elisabeth Armitage, replaced him.

1618 Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [41]. See Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [994].

1619 Inquest evidence of Assistant Commissioner Nicholas Anticich on 22 November 2022 at 3627-3629.

1620 Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [46]. Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [996].

1621 So as to avoid any suggestion that the information has been supressed, each of the draft version of the reports of Detective Superintendent Pollock and Commander Proctor APM appear in the coronial brief of evidence: see Coronial Memorandum of Commander POLLOCK – DRAFT dated November 2020 [1-2A]; Coronial Memorandum of Commander POLLOCK – DRAFT with Cmdr PROCTOR comments dated November 2020 [1-3A]; Coronial Memorandum of Commander POLLOCK – DRAFT dated January 2021 [1-4A];

1446. I accept the submission of NT Police that it was "both problematic and ineffective" to have parallel investigations running.[1622] It created mistrust and agitation amongst the officers in the different investigative streams and appeared to fuel some suspicion from those supporting Mr Rolfe that police were withholding information from the defence team. These issues have been clearly identified by NT Police, which is anxious to avoid that unnecessary tension being repeated.

1447. The problems with contemporaneous investigations were that:

(a) Some senior members, most notably Assistant Commissioner Narelle Beer, did not know if they were being directed to answer questions pursuant to the coronial or criminal investigations and seemed to be worried that this might jeopardise their rights. AC Beer was concerned to know whether her statement was voluntary or in the nature of a directed interview, or alternatively, pursuant to the Coroner's powers.[1623] The problem was a significant one, since if statements are taken under compulsion, they are not likely to be admissible in a trial.[1624]

(b) It was confusing to have multiple, and sometimes competing, General Orders applicable to the investigative response.[1625] For example, the

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Coronial Memorandum of Commander POLLOCK – DRAFT with further handwritten comments dated January 2021 [1-5A]; Coronial Memorandum of Commander POLLOCK – DRAFT reformat and amendment of Report dated January 2021 [1-6A]; Coronial Memorandum of Commander PROCTOR – Consultative DRAFT [1-7A]; and Coronial Investigation report of Commander David PROCTOR APM - Consultative DRAFT 19042021 dated 19 April 2021 [1-8A]. The final Coronial Memorandum of Commander David Proctor APM dated 31 August 2021 is at [1-1A].

1622 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [997].

1623 See eg Statement of Narelle Beer, 30 January 2020, pages 2-6, Folio 7-10, 4 June 2020, pages 1-2, Folio 7-12A; See also Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [60]-[65].

1624 Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [65]; Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1000].

1625 Deaths in Custody General Order, Coronial Investigations General Order, Major Crime General Order; Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [25]-[26].

Deaths in Custody General Order required that members be interviewed by the completion of their shift,[1626] but to do so when a member was regarded as a suspect would contravene their right to silence and potentially affect the admissibility of evidence at any trial.[1627]

(c) Due to their different focus, the two investigations necessarily had different investigative priorities. For example, it was not a priority for the criminal investigation that statements be obtained from executive police members.[1628] Questions relevant to the coronial investigation were not otherwise relevant for the criminal investigation, and it would have been odd to confuse them.

(d) The two investigations also created challenges for information management and disclosure. For example, criminal investigators said they were not aware of the contents of the coronial brief or whether they could access that material,[1629] or may not have considered the coronial investigation when adhering to the disclosure processes and/or may have believed that the material was obtained on behalf of the Coroner and therefore ought only be provided to the Coroner. Det A/Supt Pennuto was accused of failing to disclose material from the coronial case that was alleged to have been available to hm (in particular, the drafts of the Pollock coronial memorandum), when that was not the case.[1630] As far as AC Anticich was concerned, coronial investigators had full access to statements and exhibits sourced by the criminal team,

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1626 General Order: Deaths in Custody, and Investigation of Serious and/or Fatal Incidents Resulting from Police Contact with the Public (OP-C1) – 10 November 2011 (updated 8 September 2016) [17-7] at [26.2]-[26.3].

1627 Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [51]-[52], [54]; Inquest evidence of Detective Acting Superintendent Kirk Pennuto on 21 November 2022 at 3561-3562.

1628 Inquest evidence of Detective Acting Superintendent Kirk Pennuto on 21 November 2022 at 3561-3562.

1629 Inquest evidence of Detective Acting Superintendent Kirk Pennuto on 21 November 2022 at 3517, 3565. See also Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [57].

1630 Inquest evidence of Detective Acting Superintendent Kirk Pennuto on 21 November 2022 at 3565.

and could conduct any further investigations as they saw fit,[1631] whereas Det Supt Pollock said that he did not have access to the ancillary information held by the criminal investigation team, but that criminal investigators had been given access to all coronial materials, save for the draft reports.[1632]

(e) It is evident that suspicion turned to criticism and AC Anticich became concerned that the coronial investigation would critique, and potentially undermine, the criminal investigation, at a time when that evidence had not been tested in court.[1633]

1448. In their detailed submissions, NT Police explained what happened as a result of that confusion and tension. On 23 November 2020, AC Anticich directed that coronial investigators "refrain from looking at the adequacy of the criminal investigation until the conclusion of the criminal trial to ensure that the criminal trial was not compromised by critiques being made while the prosecution was still underway".[1634] On 27 November 2020 at a Joint Management Committee (JMC), AC Anticich directed that any coronial investigation into the criminal proceedings be suspended until such time as he had advised the Coroner.[1635] He then sought his own legal advice and received an opinion from prosecutors and came to the view that he did not have authority to suspend the coronial investigation. On 30 November 2020, he advised the Coroner's Office in writing that he had withdrawn the suspension

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1631 Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [55].

1632 Inquest evidence of Detective Superintendent Scott Pollock on 22 November 2022 at 3676-3677.

1633 Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [69]; discussed in the Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1002].

1634 Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [73]-[74]; discussed in the Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1003].

1635 Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [75].

of the coronial investigation and that the coronial team were to work at the direction of the Coroner.[1636]

1449. This situation created unnecessary tension and hostility between individuals in NT Police, and was a source of considerable distress to Det Supt Pollock, who had decades of distinguished service and could be trusted to do a thorough, objective and excellent job. That being said, there was no sinister intent and I agree with NT Police that it did not in fact stifle the coronial investigation.[1637]

1450. I accept that it was necessary for primacy to be given to the criminal investigation, and that in the future, it should be clear that this is what the General Orders provide for. Evidence gathered during the criminal investigation can form a significant part of the coronial investigation, and additional information relevant to the coronial process can be gathered when the criminal process has been finalised.

1451. I am satisfied that during the course of the Inquest, NT Police remodelled the *General Order for Crime (Homicide and Serious) Investigation*,[1638] which was promulgated on 21 November 2022. It provides that in future matters where a person has died after contact with police, the Deputy Commissioner will appoint one commissioned officer (of at least Superintendent rank) to be in charge of the investigation. That officer will be the Senior Investigating Officer (SIO) who will be responsible for both the criminal and the coronial aspects of the investigation, reporting to the Assistant Commissioner heading up the Joint Management Committee, and also receiving direction from the Coroner. The SIO will be responsible for strategic direction and decision-

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1636 Affidavit of Assistant Commissioner Nicholas Anticich dated 3 September 2022 [7-4A] at [76].

1637 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1003].

1638 General Order for Crime (Homicide and Serious) Investigation V1.0 dated 21 November 2022 [17-30].

making. This change is intended to minimise conflict and avoid the difficulties that may arise from separate criminal and coronial investigations.[1639]

[1639] Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [109]-[113].

CHAPTER ELEVEN THE CLOSURE OF THE YUENDUMU HEALTH CLINIC AND WITHDRAWAL OF KARDIYA STAFF ON THE MORNING ON 9 NOVEMBER 2019

Introduction

1452. In the days leading up to 9 November, clinic staff in Yuendumu were the victims of an increase in property crime (including break-ins to their houses). They were tired and many were frightened. After they reported this to management, NT Health decided to evacuate the nurses, and all other Kardiya (non-Aboriginal/Yapa) staff. NT Health then expected the local police to accompany nurses from Yuelamu to attend any overnight health call-outs in Yuendumu. This additional burden, on the already overstretched police officers, contributed to the decision of senior police to approve a callout of the IRT. After Kumanjayi was shot, the fact that there was no operational local Health Clinic to which he could be transferred for treatment, and no local clinic nursing staff to treat him, exacerbated the traumatic aftermath of the shooting.

1453. Section 26 of the *Coroner's Act* imposes specific obligations on me when holding an inquest into a death in custody. Section 26(1) requires the NT Coroner to "investigate and report on the care, supervision and treatment of the person while being held in custody or caused or contributed to by injuries sustained while being held in custody"[1640] and provides that I "may investigate and report on a matter connected with public health or safety or the administration of justice that is relevant to the death".[1641] Further, s 26(2) of the Act provides that the coroner who holds an inquest into the death of a person held in custody "must make such recommendations with respect to the prevention of future deaths in similar circumstances as the coroner considers to be relevant". Those sections compel a careful review of the way in which

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[1640] Section 26(1)(a) of the *Coroners Act 1993 (NT)*.

[1641] Section 26(1)(b) of the *Coroners Act 1993 (NT)*.

Kumanjayi was cared for after he was shot and the limitations on that care as a result of the clinic closure.

1454. Before I embark on that review, it is important to recognise the vital and challenging job undertaken by clinic staff and NT Health management, through the whole of the NT, but particularly in remote communities. In Yuendumu and in many communities, remote nurses often live in community, whereas the doctor is often fly in/fly out. The nurses have a huge responsibility caring for community members, and may work long hours, in communities far from their own homes and family. In order to maximise their ability to provide care for the community and to be present in times of emergency, it is essential to foster mutual respect and cultural competence. There are important lessons to be learnt from the tragic circumstances of Kumanjayi's death, and NT Health has already implemented changes in response to these circumstances.

1455. An analysis of the circumstances of Kumanjayi's death reveals that the Yuendumu Clinic was staffed by caring professionals who were working under significant pressure. When several of the staff members had their houses broken into, they were (understandably) genuinely shaken and fatigued. The level of threat was objectively serious and NT Health management has an obligation to provide a safe working and living environment for staff. In some extreme circumstances (hopefully very rarely) staff may need to be removed from community for a short period of time if their safety is at risk.

1456. The removal of staff meant that community members were temporarily left without an effective clinic. That is significant for the community, and it is essential that there are clear policies to assist decision making around the withdrawal of staff and risk mitigation.

1457. NT Health acknowledged that there were flaws in the decision making process concerning the temporary withdrawal of clinic staff, including: the absence of a written risk assessment, a failure to properly include local Warlpiri staff in

the decision making, and inadequate consultation and communication with key stakeholders (particularly Police and the broader Aboriginal community).[1642]

1458. I accept, however, that NT Health staff were making difficult decisions, when time and options were limited, and it is important that I appreciate the reality of the context in which those decisions were made. Ultimately, I am not critical of any individual staff (including management) for the decision to withdraw staff from Yuendumu. Furthermore, I am satisfied that the way in which NT Health has acknowledged failings in the decision making process and participated in this Inquest reflects its commitment to continue to improve the systems that govern their important work in remote communities. Later I will set out the systems improvements that have already been implemented.

1459. At the commencement of their thoughtful submissions, representatives for NT Health said this (excluding references):

> "*First* and foremost, NT Health acknowledges the deep and ongoing trauma and grief experienced by Kumanjayi's family, friends and community, as a result of his tragic death. This inquest has provided an opportunity to reflect on Kumanjayi's life and his strengths: his love of animals, games, and music; his style and humour; his quiet composure; and the respect and admiration he commanded amongst peers. The loss of Kumanjayi has been felt by many, and it will continue to be felt long after this inquest has concluded. NT Health extends again its sincere condolences to Kumanjayi's family, friends and community. NT Health wishes to also respectfully acknowledge the Brown family, the Walker, Lane and Robertson families, and the Parumpurru Committee, as well as their legal representatives, for their participation in the inquest, including their extensive closing submissions.
>
> *Second*, it is most unfortunate the Yuendumu Primary Health Care Centre (**Clinic**) staff were not with Kumanjayi on 9 November 2019, to render any assistance they could, when he needed it most. Many of those staff have devoted much of their lives to serving their community and improving health outcomes, particularly for Aboriginal people in remote communities. Many had lived in Yuendumu, with their own children or family, for years, and felt the loss of a young person from their community sharply. Their

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[1642] Closing written submissions of NT Health dated 19 November 2024 at [7].

> thoughts are "*constantly*" with Kumanjayi and with his family and their loss.
>
> *Third*, NT Health's very reason for being is to provide medical care to Northern Territorians. However, the risks confronting health staff in the provision of that care are real, particularly in remote communities, and should not be ignored."

1460. In the remaining opening paragraphs, NT Health: explain some of those risks; summarise the justification for the temporary withdrawal of nursing staff on 9 November; explain why, nonetheless, the circumstances revealed a need to review and strengthen the decision making process; and set out the steps taken to strengthen the decision making process with respect to any future threats to staff safety. Finally, NT Health took the opportunity to "acknowledge the efforts of Counsel Assisting and the representatives of the Brown family, the Walker, Lane and Robertson families, and the Parumpurru Committee, in making this inquest accessible to members of the Yuendumu community, and to the broader public". The respect shown to Kumanjayi's extended family and the submissions made by their representatives, was greatly appreciated.

1461. In this chapter I have addressed the closure of the Yuendumu Clinic and the ramifications of that decision, and have reviewed the lessons learnt by NT Health. The topics covered are:

(a) The nature of health services in Central Australia;

(b) Health care in Yuendumu, including mental health services;

(c) The challenges of providing health care in Yuendumu;

(d) The impact of break-ins experienced by NT Health clinic staff;

(e) NT Health policy allowing temporary withdrawal and reduction of health services to protect staff;

(f) Chronology of the withdrawal of Kardiya staff, including events on 6, 7 and the night of 8/9 November 2019;

(g) The decision of management on 9 November 2019;

(h) The decision of management is conveyed to staff;

(i) Police express concern about the Clinic closure to NT Health;

(j) The clinic reopens after Kumanjayi's death;

(k) NT Health acknowledges mistakes were made;

(l) The lessons learnt and changes introduced by NT Health; and

(m) Further steps to avoid the risk of recurrence.

The nature of health services in Central Australia

1462. In Central Australia, NT Health delivers acute care services (including Alice Springs Hospital); Mental Health Services and Primary and Public Health Care.[1643]

1463. As set out in the submissions of NT Heath, the Primary and Public Health Care branch delivers health services through 23 remote Primary Health Care Centres (**PHCCs**) in Central Australia. Their stated goal is to "provide accessible care for all Territorians that is culturally appropriate, evidence based and as close to home as possible".[1644]

1464. Two of the PHCCs are operated by NT Health in partnership with the Central Australian Aboriginal Congress Aboriginal Corporation (**Congress**). Congress operates four PHCCs in the region and another Aboriginal Community Controlled organisation, Pintupi Homelands Health Service, operates the PHCC in Kintore.

[1643] Closing written submissions of NT Health dated 19 November 2024 at [56]; citing the Affidavit of Naomi Heinrich dated 22 August 2022 [9-5B] at [32], [35] and annexure NH-2.

[1644] https://health.nt.gov.au/governance-strategies-committees/about

Health care in Yuendumu

1465. The Yuendumu Clinic is set up to provide comprehensive primary health care services to a population which fluctuates between around 800 to approximately 1,200 residents. In November 2019, the population was approximately 993.[1645]

1466. At the time of Kumanjayi's death, there was a separate small clinic in Yuelamu, a community located 70kms (50 mins drive) away, with a population that fluctuates between 175-250 people. Since April 2021, Yuendumu Clinic staff have also provided services to Yuelamu, including the 24/7 on-call service for after-hours care and acute or emergency presentations.[1646]

1467. The Yuendumu Clinic hours are the standard clinic opening hours for NT Health PHCCs in Central Australia: 8:00am to 5:00pm, four days per week, and 8:00am to 1:00pm on Friday, with the clinic closed to patients in the afternoon to allow staff to undertake various non-consultation duties, such as professional development and checks of equipment.[1647]

1468. Outside of the clinic opening hours, including evenings and Saturday and Sunday, emergency health care services are provided by two staff members who are rostered on-call and they are required to attend any after-hours call-outs.[1648]

1469. The Court was provided with an overview of the primary, secondary and tertiary health care provided by the clinic which underscores just how vital the clinic is to the community, and conversely, the risk to the community when services are withdrawn.[1649]

1645 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [45].

1646 Affidavit of Dr David Reeve dated 28 September 2022 [9-9A] at [29].

1647 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [39]; Affidavit of Dr David Reeve dated 28 September 2022 [9-9A] at [35].

1648 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [40].

1649 A far more detailed overview is provided in the comprehensive and extremely helpful closing written submissions of NT Health dated 19 November 2024 at [67]-[69].

1470. With respect to primary health care, the clinic provides services including: General Practitioner services (visiting doctor); management and co-ordination of chronic illness; ante- and post-natal care; and after-hours emergency and acute illness care.[1650]

1471. The clinic hosts various specialist outreach services including: mental health services (which includes a monthly visiting psychologist and mental health nurse); chronic disease services (which includes diabetes, respiratory, cardiac and kidney); and ophthalmology.[1651] Sadly, in spite of the high level of need, there is no permanent psychologist based in the community.

1472. For tertiary services, NT Health provides various travel and retrieval services to enable patients from Yuendumu to travel to Alice Springs Hospital and other hospitals (for example, patient assisted travel, low acuity medical retrieval, and high acuity medical retrievals). I received evidence that 10 patients on average are retrieved from Yuendumu and admitted to the Alice Springs Hospital's Emergency Department every month,[1652] with one or two every year falling into the most urgent category of removal.[1653]

1473. The Yuendumu Clinic is the largest remote PHCC in Central Australia.[1654] In 2019, and now, the staffing allocation is:[1655]

(a) one Clinic Manager;

(b) six Remote Area Nurses;

(c) one Remote Area Midwife;

1650 The full list is set out in the closing written submissions of NT Health dated 19 November 2024 at [67].

1651 The full list is set out in the closing written submissions of NT Health dated 19 November 2024 at [68].

1652 Closing written submissions of NT Health dated 19 November 2024 at [70].

1653 In the years 2018/19 to 2022/23, between 0 and 3 Yuendumu patients per year were categorised as ATS 1, the most urgent category of patient (fewer than one patient every eight months in the period 1 July 2018 to 27 October 2022 2018 to 27 October 2022): Closing written submissions of NT Health dated 19 November 2024 at [71].

1654 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [49].

1655 Affidavit of Naomi Heinrich dated 22 August 2022 [9-5B] at [88].

(d) one Remote Medical Practitioner;

(e) two Aboriginal Health Practitioners;

(f) three Aboriginal Community Workers;

(g) two Alcohol and Other Drug Workers;

(h) a Strong Women Worker;

(i) two administrative support staff; and

(j) a cleaner / gardener / driver.

1474. In November 2019, the staff employed were:

(a) Clinic Manager - Luana Symonds;

(b) six Remote Area Nurses - Vanessa Watts, Julie Cook, John Alting, Cassandra Holland and two nurses who were on leave and not in community on 9 November 2019;

(c) two Graduate Nurses - Lisa Meredith and Matilda Starbuck;

(d) a Child Health Nurse;

(e) a Rural Medical Practitioner - Dr Rosser, in residence in Yuendumu four days per week and not in community on Saturday, 9 November 2019;

(f) a Remote Area Midwife - Ms Janine Riwaka;

(g) an Aboriginal Health Practitioner (AHP) - Ms Nola Fisher, who was not in community on Saturday, 9 November 2019;

(h) two Aboriginal Community Workers (ACW) - J Williams and Mary Butcher;

(i) an administrative staff member; and

(j) a cleaner / driver / gardener - Mr Lance Symonds.

1475. Generally, there were also two student Aboriginal Health Practitioners (**AHPs**) at the clinic, and there may have been one present in 2019.

1476. I am informed by NT Health that of these 17 staff, four were Aboriginal: Dr Rosser, Ms Fisher, Mr Williams and Ms Butcher. Of these employees, the last three listed are local Warlpiri staff. Ms Fisher is a longstanding member of staff with considerable experience and specialised skills in children's health.[1656]

1477. With respect to the non-Aboriginal staff, all the nurses who gave evidence at the inquest had experience working with Aboriginal people in remote communities before they worked in Yuendumu, except for the first-year Graduate Nurse. Some had lived in Yuendumu with their families for years, and had well-established relationships with the community and its Elders and other leaders.[1657] While Nurse Starbuck was junior, she presented as skilled and passionate about the work she was doing in community.

Mental Health Services

1478. While I have not listed every service provided at the Yuendumu Clinic, it will be relevant to my recommendations function to briefly set out the mental health support services available, which are greatly in demand throughout Central Australia and indeed the whole of the Northern Territory.

1479. According to the submissions of NT Health, in addition to the mental health care services provided by primary health care clinicians at the clinic, specialist mental health services in Central Australia are delivered through several independent specialist multidisciplinary teams across NT Health's Mental Health Services branch.[1658] These include:

1656 Closing written submissions of NT Health dated 19 November 2024 at [76].

1657 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [44]; Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at 1 [2], 2 [15]-[17] and 4 [38].

1658 Closing written submissions of NT Health dated 19 November 2024 at [84].

(a) the visiting Community Psychologist (Social and Emotional Well-being) and mental health nurse;

(b) the Mark Sheldon Remote Mental Health Team, and

(c) the Child and Youth Mental Health Team.

1480. The visiting Community Psychologist (Social and Emotional Well-Being) and mental health nurse attend Yuendumu monthly. On behalf of NT Health, it is submitted that that the service is based on the Social and Emotional Well-Being (**SEWB**) model of mental health care: a model of social, emotional, spiritual and cultural wellbeing developed by and for Aboriginal people.

1481. In Chapter Two, I outlined the history of developmental trauma experienced by Kumanjayi and the positive connection he made with Ms Kerri-Anne Chilvers, who worked with him over an extended period in different roles, as her skills and experience developed. In the 18 months from January 2018 to June 2019, she was the Community Psychologist providing services to Yuendumu.[1659] Ms Chilvers lived in Yuendumu from time to time, as a child and adult, and has a long-term and strong connection with the community.[1660] I have stated elsewhere that she was clearly passionate about her work, and particularly so when it came to working with Kumanjayi and his family.

1482. When she gave evidence to the Inquest, Ms Chilvers was a Trauma and Addiction Counsellor. She was the Project Lead for the Integrating Trauma Practice into Alcohol and Other Drugs Service Central Australia project, which aims to integrate trauma-informed practice across the Central Australian Alcohol and Other Drugs Services, including the visiting service to Yuendumu.[1661]

1659 Affidavit of Kerri-Anne Chilvers dated 28 November 2022 [8-11A] at 2 [15]; Inquest evidence of Kerri-Anne Chilvers on 30 November 2022 at 3975.

1660 Inquest evidence of Kerri-Anne Chilvers on 30 November 2022 at 3944.

1661 Affidavit of Kerri-Anne Chilvers dated 28 November 2022 [8-11A] at 2 [6] and 5–8 [28] – [40]; Inquest evidence of Kerri-Anne Chilvers on 30 November 2022 at 3942.

1483. The Mark Sheldon Remote Mental Health Team is a visiting outreach service for adult patients with serious and persistent mental health conditions. The service visits 29 remote communities in Central Australia (including Yuendumu), based on clinical need, and has an active client base of approximately 150 patients at any given time. I am informed by NT Health that non-Indigenous Clinicians work with Indigenous practitioners in a mentorship arrangement, each learning from and supporting the other.

1484. For completeness, I note that Yuendumu is also served by Purple House, a service that provides culturally safe dialysis and support across remote Australia and operates 20 clinics that provide accessible dialysis care. In March 2008, based on its success in Kintore, the Kurra Aboriginal Corporation funded Purple House to establish a dialysis service in Yuendumu. The Tanami Regional Dialysis Unit began operating in 2010, and in 2014, increased from a two chair, to a four chair unit. In 2019, Purple House took over the residential Aged-Care program.[1662]

The challenges of providing health care in Yuendumu

1485. The Child and Youth Mental Health Team provides specialist mental health services to children and youth in Central Australia, but the team is not easily accessible. Although there is a significant need for mental health services for children and young adults, there is presently no-one trained in child and adolescent mental health based in Yuendumu or providing an outreach service. Young people may be assisted to travel to Alice Springs for consultations and can also be seen within their communities via telehealth (including audio-visual link) consultations.[1663]

1486. Young people who demonstrate behavioural or emotional disturbances may be referred for assessment and treatment to their community's PHCC, visiting

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1662 https://www.purplehouse.org.au/yuendumu/

1663 Affidavit of Dr Marcus Tabart dated 2 December 2022 [9-12B] at 11 [53].

community psychologist, social and emotional well-being team, or visiting paediatrician service.[1664]

1487. I do not doubt the value of those services, but note that they are hampered by a lack of resourcing. The work done by Kerri-Anne Chilvers was the best hope to change Kumanjayi's trajectory and it is deeply regrettable that it did not start earlier in his life. For this reason, I have made recommendations addressing the need to strengthen an strengthen mental health services for children and young adults in Yuendumu and for a review of the allied support services (including a service similar to the pre-existing youth service known at WYDAC) that should be available to assist.

The impact of break-ins experienced by NT Health clinic staff

1488. Although there is no doubt that remote community nursing offers many rewards, it comes with challenges caused by remoteness and isolation. I heard evidence that it can be difficult to attract staff who are content to work and live remotely. Since a doctor is not permanently based in Yuendumu, staff living in the community assume significant responsibility for the delivery of care, both in and out of hours.

1489. I accept the submissions of NT Health that its staff in Yuendumu were placed at risk when their houses were broken into, and while it is important not to overstate the risks, it is also important to fairly acknowledge what those risks are and attempt to engage the whole community in addressing them. The submissions of NT Health identify relatively isolated but very serious incidents in remote communities where staff have been subjected to harm.[1665]

1664 Affidavit of Dr Marcus Tabart dated 2 December 2022 [9-12B] at 12 [57].

1665 That includes, an incident in 2018, when a Clinic nurse woke to an intruder leaning over her in her bed (see Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [81(a)]; Inquest evidence of Sergeant Julie Frost on 23 September 2022 at 932; Statement of Complaint of Robyn Carmichael dated 4 April 2018 [9-3A], and in 2019, when a Clinic

1490. I received evidence that Remote Area Nurses (**RANs**) (not specific to Yuendumu) experience rates of violence two times higher than their urban counterparts.[1666] That risk is exacerbated if the nurse is female, in and around their own accommodation, and after hours.[1667]

1491. While NT Health has a legal[1668] and moral obligation to protect its staff and cannot leave them exposed to unacceptable risk, it also has an obligation to the community of Yuendumu, to provide a health clinic dedicated to addressing their health care needs. The community cannot lightly be deprived of those services. According to Naomi Heinrich, the NT Health Regional Executive Director of Central Australia:[1669]

> "That balance of risk, that's a balance that we undertake every day in the work that we do to provide the best possible clinical service to our community, be it in Yuendumu or in Alice Springs, whilst maintaining the safety of our staff…that is the core business of our staff."

1492. The safety issue for staff in this case, which is also an issue in some other remote communities from time to time, arose when there was a sustained period where the houses of clinic staff were being broken into at night, causing fear and fatigue, and also trauma, frustration and anger.

1493. It was clear from the research cited by NT Health and the evidence of a number of the staff, that this is not an isolated issue, and nor was it unique to

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worker and WYDAC worker had their home broken into and ransacked and their car and wheelchair stolen: Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [81(b)]; Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at 5 [49]; Inquest evidence of Sergeant Julie Frost on 23 September 2022 at 932, cited in Closing written submissions of NT Health dated 19 November 2024 at [5].

1666 Affidavit of Tina Fleming dated 31 August 2022 [9-4A] at annexure TF-1: Northern Territory Department of Health Remote Area Nurse Safety Review Final Report (2016), at 54–95, cited by Closing written submissions of NT Health dated 19 November 2024 at [103].

1667 See evidence cited by Closing written submissions of NT Health dated 19 November 2024 at [103(e)].

1668 See, for example, the *Work Health and Safety (National Uniform Legislation) Act 2011 (NT)*, ss19(1), (3)(a), and (4) read with ss5 and 10 which sets out the legislative responsibility of NT Health to provide for the safety of its staff, cited in Closing written submissions of NT Health dated 19 November 2024 at [114].

1669 Inquest evidence of Naomi Heinrich on 13 October 2022 at 1582; See also Inquest evidence of Dr David Reeve on 12 October 2022 at 1488.

Yuendumu. For example, Helen Gill, then Clinical Nurse Manager, described a period of community unrest in Mount Liebig in 2004, shortly after she commenced as a Remote Area Nurse in Central Australia.[1670] In that instance, nursing staff were temporarily withdrawn from Mt Liebig and delivered services from a neighbouring community. One nurse who had experienced several attempted break-ins while she was at home was so impacted that she did not return to work in the community after being temporarily moved to Alice Springs. Ms Gill observed the break-ins to have a cumulative effect on that nurse.

1494. The issue of break-ins committed in Yuendumu that impact the security of service providers is not new. I heard that in 2018, a community meeting was called after a female nurse woke to find a man standing over her bed.[1671] She must have been terrified by this experience.

1495. Even if the break-ins are committed by children or young adults, and even if they are motivated by petty theft, or even boredom, they must surely be frightening and frustrating to victims. Incidents of this type rob nurses of their sense of security and the sleep they so desperately need. I agree entirely with the submission of NT Health that break-ins present a serious and immediate risk to staff safety, and can cause ongoing and cumulative trauma to staff.[1672] NT Health will not be able to attract and retain staff to provide services in communities if staff do not feel safe.

1496. Accordingly, NT Health needs to have a well understood plan which clearly sets out the steps to take if staff are at serious risk and the withdrawal of services is contemplated. The decision process should include consideration of whether additional supports can be called in to mitigate the risks to staff,

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1670 Affidavit of Helen Gill dated 3 October 2022 [9-5AA] at [11]-[13].

1671 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [81(a)]; Inquest evidence of Sergeant Julie Frost on 23 September 2022 at 932; Statement of Complaint of Robyn Carmichael dated 4 April 2018 [9-3A].

1672 See, for example, Affidavit of Tina Fleming dated 31 August 2022 [9-4A] at 89; Recorded statutory declaration of John Alting dated 22 June 2020 [9-1] at 17–18; cited in Closing written submissions of NT Health dated 19 November 2024 at [113].

and a balancing of the risks to staff against the risk to the community if services are withdrawn.

NT Health policy allowing temporary withdrawal and reduction of health services to protect staff

1497. I received evidence from NT Health that in order to comply with its obligation to protect staff, it is at times necessary to temporarily withdraw staff from a community or reduce health services. I am informed that this is consistent with a whole-of-government policy aimed at protecting remote workers[1673] and is only done as a matter of last resort, "when there are serious and imminent concerns for staff safety".[1674]

1498. Between May 2018 and 12 October 2022, there were another four instances of NT Health withdrawing nursing staff from any of its 23 remote PHCCs:[1675]

(a) From 3 – 7 August 2018, in Ali Curung, staff were withdrawn in response to community fighting that involved axes and machetes and NT Police ceasing their services after being attacked. During this period, St John Ambulance provided an emergency service from Tennant Creek.

(b) On 18 October 2018, staff were withdrawn from Imanpa, due to unrest and fighting in the community. During this period, NT Health provided emergency services from Erldunda.

(c) On 14 November 2018, staff were withdrawn from Willowra, on the advice of the local Night Patrol, in response to escalating tensions and

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1673 See Affidavit of Dr David Reeve dated 28 September 2022 [9-9A] at 99–109 at Annexure DR-9: the Remote Worker Safety Policy, prepared by the Department of the Chief Minister and Cabinet, approved 25 January 2021.

1674 Inquest evidence of Dr David Reeve on 12 October 2022 at 1461 and 1465.

1675 Closing written submissions of NT Health dated 19 November 2024 at [115].

the perceived risk of violence against staff. During this period, NT Health provided emergency services from Ti Tree.

(d) On 15 October 2019, from Imanpa, in response to staff being abused by community members and rocks being thrown at the PHCC.

1499. The next occasion, and fifth incidence of withdrawal, was on 9 November 2019 in Yuendumu.

Chronology of the withdrawal

1500. In the lead up to November 2019, property crime was particularly problematic. I heard evidence that the level of property crime in Yuendumu was "disproportionately high"[1676] and "break-ins were quite prolific in the community".[1677] I am informed that the Northern Territory has twice the rate of unlawful entries as the next highest Australian jurisdiction, and the rate of such crime in Yuendumu was "disproportionately high again".[1678]

1501. In the months prior to 9 November 2019, the crime problem in the community worsened again.[1679] I accept the submissions, based on the evidence of clinic staff, that they had become inured to much of this crime, even though some staff had encountered situations that were far from acceptable, including young people in their yard, people trying the locks on the doors to their homes or breaking into their garages, with signs of attempted entry like knives wedged in the doors to their homes and scratch marks around their locks.[1680]

1676 Inquest evidence of Superintendent Jody Nobbs on 31 October 2022 at 2832–3.

1677 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 782.

1678 Inquest evidence of Superintendent Jody Nobbs on 31 October 2022 at 2832–3, cited in the Closing written submissions of NT Health dated 19 November 2024 at [119].

1679 Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at 4–5 [39]–[42]; Recorded statutory declaration of Cassandra Holland dated 12 February 2020 [9-7] at 14–15; Recorded statutory declaration of Luana Symonds dated 20 November 2019 [9-12] at 30; Recorded statutory declaration of Vanessa Watts dated 22 June 2020 [9-15] at 2 and 4; Inquest evidence of Vanessa Watts on 10 October 2022 at 1282–3 and 1287; Inquest evidence of Matilda Starbuck on 11 October 2022 at 1350–51.

1680 Closing written submissions of NT Health dated 19 November 2024 at [120].

1502. The NT Police were aware of the extent of the problem and took action to try to address it with key stakeholders. Monthly "Community Safety Action Plan Meetings" (also termed Community Safety Meetings) were convened by police in Yuendumu. They aimed to bring the community together to discuss and address community issues. The meetings were usually attended by Yuendumu night patrol, Yuendumu women's safe house, Yuendumu Old Persons Program, the Yuendumu school, WYDAC, Yuendumu Mediation, the then Department of Territory Families, the then Department of Housing, the Council, the Clinic, and community members, including Elders such as Eddy Robertson, Lottie Robertson, Valerie Martin, Mr Simms (who has since passed away) and Ned Hargraves.[1681] Ms Symonds or Ms Watts attended these meetings on behalf of NT Health. I heard evidence that "children and break-ins" was a standing agenda item at these meetings,[1682] and the escalation in break-ins prior to November 2019 was discussed at the meetings.[1683]

1503. The NT Police took action to try to address the problem, with significant care and leadership shown by Superintendent Jody Nobbs. In March 2019, Supt Nobbs determined that police "needed to do something decisive".[1684] He visited Yuendumu for a week and established the Yuendumu Community Safety Committee Framework (fortnightly meetings that he continued to chair). During this first week, he held multiple meetings, including discreet conversations with clan groups, Elders and stakeholders. Supt Nobbs describes the actions taken as follows:

(a) implementing high visibility patrolling as a circuit breaker;

1681 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [81]; Inquest evidence of Luana Symonds on 10 October 2022 at 1231–2.

1682 Inquest evidence of Sergeant Julie Frost on 21 September 2022 at 776 and 23 September 2022 at 932.

1683 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [79]; Inquest evidence of Luana Symonds on 10 October 2022 at 1232; Inquest evidence of Sergeant Julie Frost on 23 September 2022 at 932.

1684 Inquest evidence of Superintendent Jody Nobbs on 31 October 2022 at 1082.

(b) broad-based community engagement around target hardening strategies at repeat victim locations;

(c) building an integrated interagency framework; and

(d) identifying repeat offenders and supporting them through an end-to-end model (beginning with early intervention and engagement, continuing to repeat offender management, all the way through to tactical enforcement).

1504. Supt Nobbs gave an example as to how that would work if there was information to suggest that a young person was involved in break-ins. He would ask for assistance from stakeholders, for example: Health (for a FASD assessment); Territory Families (advice on any Child Protection issues;) the School (to link the child into a support service like the Wanta early morning school program); and he would bring in Elders to request their assistance.

1505. NT Health staff recalled at least two additional community meetings held in 2019 to discuss break-ins; one was at the request of the local shop after it had experienced a break-in that affected the service that could be delivered to the community. Nurse Watts attended both meetings and she recalled that there was "a lot of discussion" about what could be done to address the causes of the escalating crime and that "everybody wanted to come up with a solution or do what they could to help", and that "the Elders were just as upset as everybody else was [...] They didn't like what was going on or understand what was going on and they were at a loss as to what to do as well".[1685]

1506. NT Health took some steps to mitigate the problem, including installing more secure windows, doors and fences at staff accommodation.[1686] It is not my role to audit those efforts but I note that I heard evidence that colour bond security fences had been put up horizontally, instead of vertically, which had the effect

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1685 Inquest evidence of Vanessa Watts on 10 October 2022 at 1285.

1686 Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at 5 [44]-[45].

of creating a ladder for anyone who wanted to break-in, and also reduced visibility into the yards which concerned some staff.[1687]

1507. Very sadly, I am informed by NT Health that in the years since Kumanjayi's death, attempted home invasions and other violence and crime against Yuendumu Clinic staff has continued.[1688]

Chronology of the withdraw of Kardiya staff

1508. I am grateful to all interested parties, and to Counsel Assisting, for carefully setting out the chronology leading up to the decision of NT Health to withdraw health staff, but particularly to NT Health for the careful way in which the evidence was addressed. I have borrowed significantly from their submissions.

1509. Although there are some factual disputes between witnesses who were on the ground, there is broad agreement as to the basic chronology leading up to the withdrawal, the reasons for the decision to withdraw clinical staff, things that should and could have been done differently by NT Health and the lessons to be learnt to avoid, as far as is possible, the need to withdraw staff again.

6 November 2019

1510. On 6 November 2019, the home shared by Ms Symonds, the Clinic Manager, and her husband was broken into while Ms Symonds was at work. They lived in a duplex and shared a wall with Nurse Watts and her 4-year-old son. Across the road from Ms Symonds, Midwife Riwaka and her husband lived in a duplex

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1687 See Inquest evidence of Cassandra Holland on 11 October 2022 at 1377.

1688 "NT Health Riskman records for Yuendumu WHS issues 2019" [9-17] at 25 (incident date: 18 Nov 2019); Recorded statutory declaration of John Alting dated 22 June 2020 [9-1] at 9–10, 16; Recorded statutory declaration of Matilda Starbuck dated 4 June 2020 [9-11] at 31–2; Inquest evidence of Luana Symonds on 10 October 2022 at 1232.

and shared a wall with Graduate Nurse Starbuck, who lived alone. Other health staff lived in another part of town.[1689]

1511. Police attended and Ms Symonds was understandably distressed when describing what happened. Senior Constable Hand gave the following evidence:[1690]

> "She was pretty distressed. She was – she said it was the first time that her house had been broken into in her time at Yuendumu. And I didn't know her that well, but she said that you know, she was under the impression that it was a no-go zone for clinic houses to get broken into, that they – those houses shouldn't – you know, that it should be off limits from – from being broken into. But unfortunately on this occasion, it had been broken into."

1512. Constable Smith said that he talked to Mr and Mrs Symonds, and another staff member, possibly Ms Riwaka, about how they were feeling.[1691] He said that they told him that they were upset because they weren't the only clinic house that had been broken into in the weeks prior.[1692] He said that one or more of them said words to the effect of, "We're here to support community, patients, and this [is] what happens when we're at work".[1693] When asked whether he got a sense of what morale was like among the nurses, he answered, "It was low".[1694]

1513. The NT Police PROMIS Case summary for this attendance was recorded as follows:[1695]

> "HAND / SMITH report attending Unit 1/613 Yuendumu Community at 1755hrs to a report of an unlawful entry.
>
> TIME: 1600hrs - 1700hrs 06/11/2019

1689 Closing written submissions of NT Health dated 19 November 2024 at [166].

1690 Inquest evidence of Senior Constable First Class Christopher Hand on 19 September 2022 at 647.

1691 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 568, 625.

1692 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 568.

1693 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 568.

1694 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 568.

1695 NT Police PROMIS Summary – Case 9126489 [1-22] at 2-3.

> PROPERTY STOLEN: $250 in coins
>
> PROPERTY DAMAGE: Offenders smashed a hole in the gyprock ceiling at the rear of the house under the verandah and jemmied open the security screen that covers the kitchen window
>
> CIRCUMSTANCES: [Unknown] offenders have entered the yard of the premises and attempted to gain entry to the house via the ceiling at the rear of the property by smashing a hole in the gyprock. Entry wasn't gained via this method, however entry was gained by jemmying the security screen that was on the kitchen window at the rear of the property and the window was slid open. Once inside they have rummaged around the house and stole a bag containing approx $250 in coins (AUD) and [an] iPhone 6. The iPhone was later recovered by the occupants in a neighbouring yard."

1514. In addition to a shovel, there were other tools scattered around the yard, apparently used during the break in. Ms Symonds said that in her conversation with police, she was told that the person they suspected was responsible for the break-ins was an adult, not a child.[1696] That it is consistent with the officers' suspicion that Kumanjayi was responsible for the offending. The police subsequently drove directly to House 577 to try to locate and arrest him.[1697] Later that evening, Ms Symonds' window was repaired, her window security screen was bolted down with additional screws, and additional bolts were installed in her door.[1698]

1515. Both police officers in attendance appeared to have suspected Kumanjayi's involvement in the break in at Ms Symonds' house. Although SC Smith accepted that he "had no evidence" to this effect, he thought that there was a "definite link" between the break in at Ms Symonds house "and the information [he] had received about Kumanjayi being back in the community...less than an hour beforehand".[1699] His suspicion was based, in

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1696 Inquest evidence of Luana Symonds on 10 October 2022 at 1257.

1697 Closing written submissions of NT Health dated 19 November 2024 at [167].

1698 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [92]; Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at 7 [61]; Recorded statutory declaration of Matilda Starbuck dated 4 June 2020 [9-11] at 5; Inquest evidence of Luana Symonds on 10 October 2022 at 1237–8.

1699 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 568-569.

part, on the proximity of Ms Symonds house to House 577, where he was told Kumanjayi had been seen earlier that day.[1700] SC Hand gave similar evidence when explaining why the two officers left Ms Symonds' house for House 577 to attempt to apprehend Kumanjayi at around 6:30pm.[1701]

7 November 2019

1516. On 7 November 2019, Ms Symonds' car was broken into at the Yuendumu Clinic. The front passenger window of the car had been smashed and the glove box was open, although nothing had been taken.[1702] Ms Symonds was concerned that with the window smashed she "would not be able to lock the car, and there was a risk of people getting into it, or the car getting stolen".[1703] As a result, the couple decided that they would travel to Alice Springs together the following day to get the car repaired.[1704]

1517. At approximately 9.30am on 8 November 2019, Mr and Mrs Symonds left Yuendumu and drove to Alice Springs where they remained during the events that led to Kumanjayi's death.[1705]

Night of 8/9 November 2019

1518. On the night of 8/9 November 2019, Vanessa Watts, Mathilda Starbuck and Janine Riwaka were all woken up by property offending at, or near, each of their homes and the home of Ms Symonds, on First Street.

1700 Inquest evidence of Senior Constable Lanyon Smith on 15 September 2022 at 568-569.

1701 Inquest evidence of Senior Constable First Class Christopher Hand on 19 September 2022 at 648.

1702 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [4].

1703 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [5].

1704 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [96].

1705 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [97].

1519. At around midnight, Ms Watts was the first to wake up to the sounds of a person or persons attempting to break into her home.[1706] She got out of bed, turned on the lights, and heard people running away.[1707] She then went back to bed.

1520. A short time later, she was woken up again, this time by noise at Ms Symonds' house. Ms Watts described the noise in this way:[1708]

> "Not long after that time I was woken up again, this time to really loud banging coming from next door, at Luana's. The force that was being used to try to break into Luana's was reverberating into my accommodation. It sounded to me as if someone was trying to smash through the window that had been used to gain access two days earlier. Another RAN, Janine [Riwaka's] husband Parua had fixed the window after the break in on 6 November and had put many screws into it to try and make Luana's premises safe."

1521. When asked how she was feeling, Ms Watts answered, "I was a little bit scared, just because of the – just the real force that was being used".[1709] She distinguished this experience from earlier occasions when she had heard kids outside her accommodation at night, which was something she said happened "regularly":[1710]

> "They used to – I used to have a garage that was attached to my house, because it was a duplex, and they'd quite often jump that – be in the garage. The kids would be in the garage, but just seeing if there was anything in there, but – so you'd hear them jumping the garage door, because it was like a barn door. So, you'd hear them in the garage or trying the door. But never had I had someone forcibly trying to, you know, use real force to get my door open."

1706 Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at [60].
1707 Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at [60].
1708 Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at [61].
1709 Inquest evidence of Vanessa Watts on 10 October 2022 at 1293.
1710 Inquest evidence of Vanessa Watts on 10 October 2022 at 1293.

1522. At 1:17am, Ms Watts called the police and requested that they attend. [1711] The noise continued while Ms Watts was on the phone, and she did not feel safe to go outside until she saw the light from the police car arriving.[1712]

1523. Ms Watts called Ms Starbuck and told her that there were people trying to break in at Luanna's and that she had called the police.[1713] Ms Starbuck said that the call woke her up and that Ms Watts sounded a "bit distressed",[1714] and she agreed to come out and speak to the police with her.[1715]

1524. SC Hand and Sgt Frost arrived at First Street shortly after Ms Watts' call. At the home of Ms Symonds, they found evidence of an attempt to gain entry to the window that had been used as a point of entry on 6 November 2019, and evidence of garden implements that they suspected of having been used to attempt to gain entry to the house. These included a shovel and a "pick-axe", "minus the handle".[1716] The end of the pickaxe was wedged underneath the security screen of the window,[1717] and had apparently snapped off as the offenders tried to jemmy open the Crimsafe screen again.[1718] The implements scattered in the yard were an "assortment of tools", including "big axe heads", "metal...rods", "rakes", and multiple "big heavy shovels" and "pick axes".[1719]

1525. In the yard of Vanessa Watts' house, the cover of a Ute belonging to the Yuendumu Clinic was open and raised and there was some medical equipment (first aid kits, bandages etc), strewn around nearby.[1720]

1711 NT Police PROMIS Summary – Case 9128959 [1-23].

1712 Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at [65].

1713 Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at [65].

1714 Inquest evidence of Matilda Starbuck on 11 October 2022 at 1321.

1715 Inquest evidence of Matilda Starbuck on 11 October 2022 at 1321.

1716 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 19; Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at [66].

1717 Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at [65].

1718 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 19.

1719 As referenced in the Closing written submissions of NT Health dated 19 November 2024 at [172].

1720 Recorded statutory declaration of Senior Constable First Class Christopher Hand dated 14 November 2019 [7-52] at 20.

1526. In the driveway of Janine Riwaka's house they found a red Jeep Cherokee with a smashed rear window.[1721]

1527. The police officers gave nursing staff some advice about how better to lock up their belongings. They also mentioned that they suspected that a particular person was involved in the break-ins.

1528. Ms Starbuck described a conversation with one or both of Sgt Frost and SC Hand in which the officers suggested, at least to her, that they suspected that a particular person was involved in the break-ins:[1722]

> "Um, so when the police came, they did all our statements, like went through everything and we got the job number, um, and they had thought it might have been related to the fella that was in Community, um, but they hadn't – didn't specifically say or anything like that."

1529. At Inquest, Ms Starbuck gave evidence that she was told by police that the suspect was a person who "had lunged at police officers with an axe prior when they were trying to arrest them". Ms Watts recalled that Sgt Frost told her that police were getting "additional resources" out the following day to help with the problem of the break-ins.[1723]

1530. Understandably, both nurses were upset and fearful after the attempted break-ins.

1531. Ms Watts gave evidence that in her four years in Yuendumu, she had woken to the sound of people trying her locks or attempting to gain entry into her garage from time to time. However, she had never experienced people persistently trying to get into her home while she was inside, nor any break-in which was so "forceful" or which was perpetrated "with a shovel or a pickaxe".[1724] She was concerned by this escalation and by the fact that there

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1721 NT Police PROMIS Summary – Case 9129310 [1-24] at 2.

1722 Recorded statutory declaration of Matilda Starbuck dated 4 June 2020 [9-11] at 5.

1723 Inquest evidence of Vanessa Watts on 10 October 2022 at 1294.

1724 Recorded statutory declaration of Vanessa Watts dated 22 June 2020 [9-15] at 2; Inquest evidence of Vanessa Watts on 10 October 2022 at 1294.

were multiple attacks on the property of Clinic staff. She was particularly concerned for Ms Starbuck, who was young, lived alone and appeared frightened.[1725] Ms Riwaka also expressed her fear for Ms Starbuck after seeing the weapons that had been left outside.[1726]

1532. For her part, Ms Starbuck felt "unnerved" and "nervous"[1727] after the attempted break-is and was scared that the intruders would return, armed with pickaxes and other tools, and break into her home while she was there alone.[1728]

1533. There can be no doubt that nurses are entitled to feel safe and that there were good reasons not to feel safe after the number and nature of the attempted break-ins worsened. During the inquest, a number of persons in the community – Yapa and Kardiya – expressed their gratitude for clinic staff and sympathy for the position they were in.

The decision of management on 9 November 2019

1534. The next morning there were a series of urgent phone calls between the Yuendumu Clinic staff and between the clinic staff and management, that ultimately led to the decision to withdraw all clinic staff (other than local Aboriginal staff) from Yuendumu. Understandably, in those heightened circumstances and in the absence of detailed contemporaneous notes, there are some differences in the recollections among the staff involved as to the exact conversations. It is neither possible, nor necessary, for me to resolve every difference in memory. I have no doubt that staff are doing their best to recollect what was said and why, and in these findings, I am focused on recording the most significant facts, the reasons for decisions and the lessons to be learnt from them.

1725 Affidavit of Vanessa Watts dated 5 October 2022 [9-15A] at 7 [69]; Inquest evidence of Vanessa Watts on 10 October 2022 at 1290 and 1293.

1726 Recorded statutory declaration of Janine Riwaka dated 22 June 2020 [9-10] at 11.

1727 Inquest evidence of Matilda Starbuck on 11 October 2022 at 1322-7.

1728 Inquest evidence of Matilda Starbuck on 11 October 2022 at 1352.

1535. Given it was a Saturday, the Yuendumu Clinic was closed on 9 November 2019, and two staff were rostered on the emergency on-call roster, as they were each weekend.

1536. Via a series of phone calls, information was conveyed to Ms Helen Gill, then Clinical Nurse Manager, that overnight there had been break-ins at the homes of nurses on First Street. At 9:08am, Ms Gill called Dr David Reeve, the Population and Primary Health Care Manager, and relayed that information to him. Dr Reeve was understandably concerned for the staff who were affected, and especially Ms Watts who lived with her young son and was reportedly upset about the break-ins.[1729] Dr Reeve perceived it as a "very serious situation",[1730] but was just receiving the information at this early stage and no decisions were made.

1537. At 9:12am, Ms Gill called Ms Holland, and they discussed a number of matters. Ms Holland told Ms Gill that a pick-axe and large stick had been left outside Ms Symonds' home, a fact she found concerning. Ms Gill asked whether there was alternative secure accommodation in Yuendumu but was advised that there was not. Given the lack of a safe alternative in Yuendumu, she offered for Ms Watts to be accommodated in Alice Springs.[1731]

1538. At 9:30am, Ms Gill called Ms Holland to discuss the next steps. Ms Holland gave evidence that Ms Gill asked her to "visit the group of nurses" affected by the offending overnight and "deliver the message that if they felt unsafe they would be accommodated in Alice Springs".[1732] By contrast, Ms Gill maintained that she asked Ms Holland to go and visit the nurses to check how they were feeling (not to tell the nurses that they could be accommodated in Alice Springs if they wished). It is not necessary for me to resolve those

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1729 Affidavit of Dr David Reeve dated 28 September 2022 [9-9A] at 16–17 [97]-[102]; Affidavit of Helen Gill dated 3 October 2022 [9-5AA] at 9 [62]; Statutory declaration of Dr David Reeve dated 22 November 2019 [9-9] at 2–3 [6].

1730 Inquest evidence of Dr David Reeve on 12 October 2022 at 1477.

1731 Affidavit of Helen Gill dated 3 October 2022 [9-5AA] at 9 [65].

1732 Recorded statutory declaration of Cassandra Holland dated 12 February 2020 [9-7] at 12.

conflicting accounts.[1733] The significant issue is that there was ongoing concern for the nurses at that stage, which is understandable.

1539. At 9:40am, Ms Gill called Ms Symonds, who was in Alice Springs with her husband to have their car fixed. As set out in the submissions of NT Health, it is accepted that during that phone call, Ms Gill:[1734]

(a) relayed to Ms Symonds the previous night's events on First Street;

(b) discussed that if Mr and Ms Symonds were not comfortable returning to Yuendumu that weekend, they could remain in Alice and "meet and discuss a safety plan" on Monday for their return to community; and

(c) told Ms Symonds that she had discussed with Ms Holland that if Ms Watts was feeling unsafe, they could bring her out of community; and

(d) if any of the other affected staff members were feeling unsafe, they could discuss bringing them out of community.

1540. Ms Symonds was disappointed and upset that there had been a further attempted break-in at her property and she was concerned about the safety of staff in the community. She told Ms Gill that she would consider her position and speak to the other Clinic staff and report back to her.[1735]

1541. After speaking with Ms Gill, Ms Symonds did attempt to call various staff. As could be expected, there were several phone calls and conversations among the affected staff. In a call between Ms Symonds and Ms Riwaka, Ms Riwaka gave her account of the previous night's events and said that staff were feeling distressed about the offending. A plan was formed to gather at the home of Ms Riwaka to discuss the situation further and how staff members were feeling.

1733 See Closing written submissions of NT Health dated 19 November 2024 at [223].

1734 Affidavit of Helen Gill dated 6 April 2021 [9-5] at Annexure HG-2, 20 (9:40).

1735 Affidavit of Luana Symonds dated 5 October 2022 [9-12A] at [98]-[100]; Inquest evidence of Luana Symonds on 10 October 2022 at 1239.

1542. Nurse Cassandra Holland gave evidence that she received a phone call from Ms Symonds, who was angry about what had occurred and who told her to inform people within the community that the nurses were likely to be leaving due to the break-ins.[1736] At this time, Ms Holland and Mr Thomas Alting were on-call and treating a patient at the Clinic. Ms Holland recalls the patient was a female Elder, who was accompanied by other members of the community.

1543. She told the Elder what Ms Symonds had said to her, namely that the nurses may temporarily withdraw from the community, due to safety concerns arising from the break-ins. The Elder said she would pass the information on to other Elders within the community. Ms Holland recalls that the Elder was understanding of the reasons why Clinic staff may be required to withdraw, and acknowledged the difficulty that the break-ins were causing, saying words to the effect of "we have to take more care of the safety of nurses". Ms Holland told Mr Alting what Ms Gill had told her, namely, that "that the executives wanted us to visit the group and offer them time out of the community, with accommodation in Alice Springs if they felt their safety was jeopardised".

1544. After addressing the needs of the patient, Ms Holland and Mr Alting locked up the Clinic and drove to the Riwakas' home to speak with them, Ms Watts and Ms Starbuck.

1545. Sometime between 9:40am and 11:15am, the nurses gathered at the Riwakas' house and discussed the events. Ms Symonds participated in part of the gathering via phone. Neither Helen Gill, nor any members of the executive management, were part of the meeting. Those in attendance at various times were:

(a) In person: Mr Alting, Ms Cook, Ms Holland, Ms Meredith, Ms Riwaka, Mr Riwaka, Ms Starbuck and Ms Watts (Ms Starbuck also suggests that Ms Cook's partner, Craig, and Ms Meredith's partner, Rex.

[1736] Inquest evidence of Cassandra Holland on 11 October 2022 at 1383. See also Statement of events of Cassandra Holland dated 19 November 2019 [9-6] at 1; Recorded statutory declaration of Cassandra Holland dated 12 February 2020 [9-7].

(b) On the telephone: Mr Clode and Ms Rudolph (who were out of town on leave, and due to return shortly), and Ms Symonds (who was in Alice Springs in the circumstances outlined above).

1546. Mr Alting, Ms Cook and Ms Meredith lived as neighbours in another part of Yuendumu. Over the previous night there had also been two attempted break-ins to their properties. Ms Meridith had woken to the sound of three or four intruders on the roof of her accommodation, attempting to pull the iron off her roof. Ms Meredith and Ms Cook had also seen intruders in Mr Alting's back yard trying to break into his house through a back window and Ms Meredith had seen intruders on Mr Alting's roof. Mr Alting apparently slept through these events and learned of them in the morning.[1737]

1547. All the staff who were affected by the attempted break-ins discussed what had happened the night before. This was the first time that all the nursing staff, across the various living areas, heard each other's stories and gained a full appreciation of what had occurred the previous evening. As might be expected, given it was not a formal meeting, there was no scribe and since they had gathered to discuss events they were distressed about, there are some different recollections of exactly what was discussed, by whom, and at what stage of the meeting. I accept, however, that at least a majority of the nursing staff were concerned that there had been a recent escalation in the attempted home break -ins and property crime against nurses.[1738]

1548. Following that meeting, Ms Symonds called Ms Gill and informed her that she had discussed the matter with staff who "have stated that all of them do not feel safe and are requesting to be removed to ASP".[1739]

1737 Closing written submissions of NT Health dated 19 November 2024 at [199].

1738 Affidavit of Cassandra Holland dated 6 October 2022 [9-7A] at 7 [50]; Recorded statutory declaration of Cassandra Holland dated 12 February 2020 [9-7] at 13–14; Recorded statutory declaration of Matilda Starbuck dated 4 June 2020 [9-11] at 6; Inquest evidence of Matilda Starbuck on 11 October 2022 at 1325–6 and 1353–4; Inquest evidence of Cassandra Holland on 11 October 2022 at 1385.

1739 Affidavit of Helen Gill dated 6 April 2021 [9-5] at Annexure HG-2, 20 (11:15).

1549. At some point during the meeting, Ms Holland asked Mr Riwaka who she should speak to, to get the news about the possible withdrawal of staff out to the community. Ms Holland had only lived in Yuendumu for five months, while Mr Riwaka had lived in the community much longer, worked at the community pool, and was well connected in the community. Mr Riwaka advised Ms Holland to speak with Jimmy Langdon and Eddie Robertson, two men who Ms Holland knew to be community Elders. Sometime before 10:54am,[1740] Ms Holland and Mr Alting prepared to leave the meeting to find Mr Langdon and Mr Robertson.

1550. As Ms Holland and Mr Alting were leaving, Mr J Williams, an Aboriginal staff member, arrived at the front of Ms Riwaka's house. Ms Watts spoke with J Williams and explained that nursing staff did not feel safe, and may leave the community for the weekend, due to safety concerns arising from the escalating break-ins and home invasions. According to Ms Watts, Mr Williams was asked if he wished to be withdrawn and he said he did not,[1741] but he was sympathetic to the decision of nurses to withdraw.

1551. It is deeply regrettable that NT Health did not invite Aboriginal staff members, including J Williams, into the home of Ms Riwaka to fully participate in the meeting to discuss the break-ins that were affecting the nurses so significantly. When his exclusion, and the exclusion of other Aboriginal staff from the discussions was identified at the inquest, various staff members accepted that they should have been included.[1742]

1552. Ms Holland and Mr Alting drove to Mr Langdon's house, and when he was not home, they informed various members of his family that Clinic staff may leave the community for the weekend due to the escalating break-ins. Ms Holland also explained that Clinic staff would ensure that patients had adequate medications before any withdrawal.

1740 Inquest evidence of Vanessa Watts on 10 October 2022 at 1301.

1741 Mr J Williams was not required for evidence.

1742 See, for example, the Inquest evidence of Matilda Starbuck on 11 October 2022 at 1332.

1553. Ms Holland and Mr Alting then looked for Mr Robertson but could not find him.

1554. Save for later speaking to Mr Roberson about access to the morgue, that is the sum total that was done by NT Health in terms of efforts to communicate with the Aboriginal community on 9 November 2019 about the withdrawal.

1555. Ms Holland and Mr Alting then spoke to Officers Mark Parbs and Felix Alefaio, who were returning to the Yuendumu Police Station from a job at the Childcare Centre. Ms Holland (whom they knew as "Cassie") pulled up in her car. Constable First Class Parbs explained that Ms Holland:[1743]

> "… said that um, ah, 'her bosses' ah, she didn't state who, ah, 'told them to start packing up and getting prepared for leaving Community'. Um, it wasn't a certain thing that they were leaving but she just wanted to let us know that, that's what their Direction had been at that stage and would like that passed onto, onto Julie. So I said 'yeah, no worries' and ah, we ah, we went our way and Felix and I went back to the Police Station to write the job [from the Childcare Centre] up."

1556. At 10:54am, Officer Parbs sent the following text message to Sgt Julie Frost:[1744]

> "All good Julie! Hey I see you guys were called out last night so I'm not calling you now.
>
> FYI Cassie from the clinic pulled us up before here in Yuendumu. She's informed us that her bosses have directed clinic staff to start packing due to break ins at their property's? (sic) She has not stated they're leaving community but it's a possibility at this stage."

1557. Ms Symonds was attempting to call various clinic staff. At 11:15am, she called Ms Helen Gill and told her that the Yuendumu Clinic staff were feeling unsafe. She is likely to have also communicated that staff had met and were

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[1743] Recorded statutory declaration of Constable First Class Mark Parbs dated 15 January 2020 [7-108] at 5.

[1744] Recorded statutory declaration of Sergeant Julie Frost dated 13 November 2019 [7-36] at Annexure JF-1.

requesting to be withdrawn, although there are different recollections of exactly what was said. At that time accommodation in Alice Springs was the only assistance immediately on offer from NT Health. Although the evidence does not suggest that withdrawal was the unanimous request of all clinic staff, my assessment was that there were at least a majority who appear to have felt that clinic staff were a target of crime that was escalating, and some were starting to feel that withdrawal was the best option. It was not easy for Ms Symonds to get a complete picture from her position in Alice Springs, but she was obviously trying to assess the situation and protect the staff.

1558. At 11:35am, Ms Gill called Ms Cameron and told her that Clinic staff were requesting to be withdrawn from community because the multiple attempted break-ins of their homes meant they did not feel safe. Around midday, Ms Cameron called Dr Reeve to pass on that request, and the information that there had been three attempted break-ins, vehicles had been smashed and staff felt unsafe. Following that phone call and with that information, Dr Reeve made the decision to withdraw staff from Yuendumu. Dr Reeve took full responsibility for doing so. He said that he understood that the decision to withdraw staff was a "very big decision" and as the responsible General Manager, he was best placed to make it.[1745]

1559. The main points given by Dr Reeve to justify his decision to withdraw clinic staff included that:

(a) He understood that staff were feeling unsafe, and wished to be removed from Yuendumu to Alice Springs, for the remainder of the weekend;

(b) The property offending appeared to be escalating;

(c) The offending happened when staff were present, which would be "more likely to result in violence" and "showed a certain brazenness";[1746]

[1745] Inquest evidence of Dr David Reeve on 12 October 2022 at 1477.

[1746] Affidavit of Dr David Reeve dated 28 September 2022 [9-9A] at 18 [108(e)].

(d) He thought that the risks associated with the reduction in services could be mitigated by the on-call service continuing to be provided from Yuelamu, having regard to the clinical profile of those two communities and the low risk of an adverse health event in Yuendumu over that weekend.

1560. At around 11:40am, Ms Gill called Ms Riwaka, and via speakerphone, spoke to the people then present at her house, and on the telephone. Ms Gill wrote a "timeline" recording the most significant aspects of the conversation. Staff were given an opportunity to express how they felt and I am satisfied that at least a vocal majority indicated that they wanted to leave the community for a period and go to Alice Springs, because of the break-ins. Later in this meeting, Ms Holland expressed a desire to stay in Yuendumu, but Ms Gill denied this request because it would leave Ms Holland in the position of having to respond to call-outs without a second person on-call. At one point in her oral evidence, Ms Symonds suggested that Mr Alting proposed to remain,[1747] but by contrast Mr Alting gave evidence that he was willing to go to Yuelamu to provide on-call cover.[1748] Although much time was spent by Counsel Assisting and NT Health in setting out the evidence, and attempting to distinguish different recollections to identify precisely what was said by various staff members, it is not possible or necessary to determine all those details. It is clear to me that most staff present at the meeting were concerned by the break-ins and it was that collective experience that was passed on to management to justify the decision to leave.

1561. I am satisfied that there was an understanding amongst the staff assembled that several actions would need to be taken before the staff could leave, including:

[1747] Inquest evidence of Luana Symonds on 10 October 2022 at 1241.

[1748] Recorded statutory declaration of John Alting dated 22 June 2020 [9-1] at 7; Recorded statutory declaration of Janine Riwaka dated 22 June 2020 [9-10] at Annexure JR-01, 3.

(a) Ms Riwaka was asked by Ms Gill to notify the local community, especially the Elders, of the proposed withdrawal;

(b) staff were to notify local police of the proposed withdrawal;

(c) staff were to notify the Yuendumu Old Persons Program of the withdrawal and provide additional medication for any old or vulnerable patients in the community;

(d) some staff were to stay in community until the afternoon to ensure the handover of the body for the funeral taking place that day.

1562. While it was entirely appropriate that the local community and police be told of the decision to evacuate staff, notifying the community or important stakeholders like police is not a substitute for consultation. As acknowledged by NT Health, there are lessons to be learnt from the decision of NT Health to evacuate staff on 9 November, without adequately engaging local Aboriginal staff, local community and local police before the decision was made, since each of those stakeholders may be significantly affected by the decision and might contribute relevant information to inform the decision.

The decision of management is conveyed to staff

1563. Following the decision made by Dr Reeve to evacuate staff, he asked that inquiries be made with local staff to determine if anyone was willing to go to Yuelamu to assist in covering Yuendumu. That was an important strategy to mitigate the risk of withdrawing local staff, particularly since Yuelamu was a community with its own needs and there were only two nurses based there.

1564. Around 12:10pm, Ms Gill called Ms Riwaka to pass on that Dr Reeve had approved the withdrawal of local clinic staff from Yuendumu and had requested two staff stay at Yuelamu to support with any possible emergency calls to Yuendumu. Ms Riwaka agreed to discuss this with the Clinic nursing

staff and get back to Ms Gill. She told Ms Gill that she had talked to the local Warlpiri staff, and they had indicated they wished to stay in community.[1749]

1565. At 12:36pm, Ms Riwaka called Ms Gill back and advised her (incorrectly) that no Clinic nursing staff were willing to go and stay at Yuelamu. It is unfortunate she did so, because there was clear evidence from Mr Alting that he would have been happy to go, and that would have provided important cover for the Yuelamu nurses. I have indicated elsewhere that when they got the call to say Kumanjayi had been shot, the two Yuelamu nurses were delayed leaving because they had to attend to a paediatric case. Clearly Mr Alting's presence would have been of assistance to them and may have meant that they (or he) could have left earlier to head to Yuendumu. That would not have changed the chance of Kumanjayi surviving, but it does underscore the need to make every effort to provide the most appropriate backup, and that did not occur here.

1566. At 12:40pm, Ms Gill called Ms Cameron and advised her (based on the incorrect information she had) that no Yuendumu staff member was willing to relocate to Yuelamu. Ms Cameron said she would notify Dr Reeve, but, as conceded by NT Health, she did not do so.[1750]

1567. At 12:48pm, Ms Gill called Yuelamu nurse Lorraine Walcott and told her that Yuendumu nursing staff were being relocated to Alice Springs for the weekend and Yuelamu PHCC staff were to cover emergency only callouts from Yuendumu for that period. Nurse Walcott said that she had minimal sleep the night before due to fighting and yelling in Yuelamu, but agreed to cover the Yuendumu community for emergencies only until Monday.[1751] About an hour later, Ms Gill called the second nurse in Yuelamu, Ms Helen Zanker, who also explained her fatigue and sleep deprivation due to events the night before and

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1749 Affidavit of Helen Gill dated 3 October 2022 [9-5AA] at 13 [89].

1750 Closing written submissions of NT Health dated 19 November 2024 at [364].

1751 Affidavit of Helen Gill dated 6 April 2021 [9-5] at Annexure HG-2, 21 (12:48); Affidavit of Helen Gill dated 3 October 2022 [9-5AA] at 13–14 [93] – [95]; TS (14.10.2022), 1650 (Helen Gill).

her reluctance to cover another community. Ms Gill acknowledged that Ms Zanker and Ms Walcott sounded tired, and had been busy and were fatigued.[1752]

1568. It is significant that Ms Gill said to Ms Zanker that any patients seen in Yuendumu should be seen in the Clinic, but if the patient was required to be seen in the community, then she should contact Police and ask for an escort to the relevant area in order to see the patient.[1753] That suggestion was made without taking into account the information that Sgt Frost had passed on to a member of NT Health, that police were exhausted as a result of their own sleep deprivation and would not be available to escort nursing staff.

1569. Arrangements were made to ensure access to the morgue so the funeral could proceed. Mr Robertson was provided keys and told that the nurses were leaving. From around 2pm, clinic staff began to leave Yuendumu. Throughout the afternoon, various phone calls were made between NT Health staff to communicate the decision to evacuate Kardiya staff, and the steps taken in community to mitigate the risk.

1570. It should be evident from what I am setting out that although, in the cold light of day, a coroner and those contributing to this Inquest can carefully parse the decisions made, there were dedicated staff members in NT Health and NT Police who were having to make these decisions in highly pressured circumstances, when they were all very fatigued, because of disturbances in the community and limited resources.

Police express concern about the Clinic closure to NT Health

1571. At 2:28pm, Supt Nobbs called Ms Gill and informed her that he had been notified that Yuendumu health staff were being removed and he was concerned

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1752 Closing written submissions of NT Health dated 19 November 2024 at [368].

1753 Closing written submissions of NT Health dated 19 November 2024 at [368], citing Affidavit of Helen Gill dated 6 April 2021 [9-5] at 8 [55] – [59] and 21 (Annexure HG-2) (13:20); Affidavit of Helen Gill dated 3 October 2022 [9-5AA] at 14–15 [99] – [102]; Inquest evidence of Helen Gill on 14 October 2022 at 1650–1.

to know what contingency plans were in place. Ms Gill told him about the NT Health concerns regarding the break-ins and property crime, and Supt Nobbs offered reassurance that Police had arranged for extra members to travel to Yuendumu. He may also have mentioned the tactical squad and a dog handler.

1572. Understandably, he asked Ms Gill whether this arrangement would change NT Health's decision. He thought that the "absence of [a] medical service in Yuendumu was an unacceptable risk"[1754] to the community and asked what the contingency plan was. Ms Gill told him that the plan was for nursing staff from Yuelamu PHCC to cover Yuendumu on a call out basis. Supt Nobbs advised Ms Gill that Police could support the Yuelamu nurses with escorts to critical incidents, but not to routine calls for assistance, and that appears to have been accepted by Ms Gill.

1573. Both Supt Nobbs and Ms Gill were doing their best to ensure their own staff could manage in these very difficult circumstances.

1574. At approximately 6:30pm, staff from the Clinic met for dinner in Alice Springs to debrief. Meanwhile, for the staff at Yuelamu, it was only about an hour later, at 7:25pm, when Sgt Frost called the Clinic on-call phone number to advise that there had been a shooting at Yuendumu and urgent help was needed. At around 7:45pm, after attending to the sick child and packing the ambulance, Nurses Walcott and Zanker departed for Yuendumu. They did their very best to provide care in this tragic and distressing environment.

1575. I have noted elsewhere that sometime after 9.34pm, Ms Walcott and Ms Zanker drove in the ambulance to the airstrip as instructed by police, believing that they were picking up medical personnel. At 10:45pm, the ambulance and police vehicles departed in convoy, and on the way back, a rock thrown by a member of the community came through a window on the ambulance and

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[1754] Recorded statutory declaration of Superintendent Jody Nobbs dated 29 November 2019 [7-101] at 17.

struck Nurse Walcott, causing injuries to her head and arm. The NT Police have apologised for putting the nurses in that risky position that night.[1755]

1576. It is evident that Nurses Walcott and Zanker showed considerable courage and dedication to the community of Yuendumu in attending to assist, although sadly, there was nothing they could do to save Kumanjayi's life as he passed away before they arrived.

1577. It is not hard to appreciate the stress and trauma of the first responders at Yuendumu, both police and nurses, who did their best to save Kumanjayi, and nor is it hard to appreciate Kumanjayi's family's own fear and trauma, as they tried to comprehend their possible loss. The loss of life and the circumstances in which it occurred was a tragedy for the entire community.

The clinic reopens after Kumanjayi's death

1578. On Sunday 10 November, under the direction of Dr Reeve, Ms Gill arranged for the Willowra clinic to cover on-call services from Yuendumu and later in the day the Laramba clinic took over the on-call services.

1579. At around 1:30pm on 11 November 2019, Dr Reeve and other staff arrived in Yuendumu, including staff from the Aboriginal Health Practitioner Workplace Development Division. By this time, nurses from the community of Laramba had already arrived and opened the Yuendumu Clinic.

1580. Dr Reeve met with Elders who were on the Local Health Advisory Group and explained the reason for his decision to temporarily withdraw health staff and the reduction of services to Yuendumu. The Elders agreed to most staff returning.

1581. I am advised by NT Health that Mr J Williams played an important role in organising this meeting, organising ongoing community meetings to address

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[1755] Closing written submissions of NT Health dated 19 November 2024 at [406].

concerns following the staff withdrawal, and ensuring that it was safe for Clinic nursing staff to return to work. Mr Williams received a Community Safety Award for his work following the incident.

1582. On Tuesday, 12 November 2019, the Yuendumu Clinic nurses returned and took over from the Laramba nurses.

NT Health acknowledges mistakes were made

1583. Although NT Health maintains that its decision to temporarily withdraw nursing staff was justified, it concedes that there were issues with NT Health's processes in relation to this withdrawal, and several important lessons to learn.[1756]

1584. I have already set out above that NT Health staff on the ground conceded that an Aboriginal staff member who arrived at the home of the Riwakas should have been invited to come inside and participate in the meeting.

1585. Further, NT Health concede that more effort should have been made to communicate with members of the Aboriginal community before the decision was made to leave.

1586. The position was expressed in a most thoughtful way by Warren Japargardi Williams, who has always had a good relationship with health staff and empathised with the situation the nurses were in. He took the attempted break-ins seriously and thought that staff had "evacuated for good reason" and he didn't blame them for it.[1757] However, he also thought that staff from NT Health should have been sitting down with Elders and community leaders and "trying to work this out with the community" before they got to the stage of evacuating staff.

1756 Closing written submissions of NT Health dated 19 November 2024 at [7] and [431] and following; see also Affidavit of Dr David Reeve dated 28 September 2022 [9-9A] at 19 [114]; Inquest evidence of Helen Gill on 14 October 2022 at 1671.

1757 Inquest evidence of Warran Williams on 8 September 2022 at 284-285.

1587. Concerning the decision to evacuate, NT Heath acknowledges:

(a) A written risk assessment, including an assessment of clinical risk to community members, was not completed, and it should have been;

(b) Local Warlpiri staff at the Clinic were not adequately included in the decision making about the temporary withdrawal;

(c) In the circumstances, more extensive discussion should have taken place between NT Health and NT Police, prior to the temporary withdrawal;

(d) Although some community leaders and services were contacted in the short time available, there should have been greater efforts to discuss the potential withdrawal of staff with community leaders before the decision was made;

(e) The Temporary *Withdrawal of Health Services for Staff Safety PHC Remote CAHS Guideline (Temporary Withdrawal Guideline)* should have placed greater emphasis on the need for consultation prior to any withdrawal of staff.

1588. A number of interested parties urged me to make a finding that the decision to withdraw non-Warlpiri staff was infected by racism.[1758] I have read those submissions carefully, and although I acknowledge that there were significant and regrettable mistakes made by NT Health, I am not satisfied that this is an example of racism, systemic or otherwise. In this regard, I have found the analysis of systemic bias in the *Inquest into the Death of Tanya Day* to be particularly helpful.[1759]

1589. I am satisfied that the *Briginshaw* standard applies in relation to a finding of racism against an individual, institutional racism by a corporate entity or institutional racism by NT Health.

[1758] See, for example, Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [679] and following.

[1759] Finding, *Inquest into the death of Tanya Day*, 9 April 2020, per Deputy State Coroner English.

1590. On behalf of NAAJA,[1760] I am urged to make findings that evidence of racism can be found in a number of respects, including: 1) the overestimation of threat to clinic staff; 2) the disproportionate favouring of the safety of clinic staff over the health needs of the community; 3) the marginalisation of the Warlpiri staff; 4) the desire to collectively punish the community for break-ins to clinic staff residences and 5) the lack of prioritisation of cultural competency.[1761]

1591. However, while NT Health acknowledges that there were flaws in its decision making process, I am not satisfied that systemic (or any form of) racism was a factor in that decision making. I am, for example, not satisfied that, given the evidence set out in this chapter, that the inferences that would need to be made to support findings urged on me by NAAJA, listed at (1)-(5) are available.[1762] I accept that there was a failure to prioritise cultural competency as part of the decision making, but I am not satisfied to the requisite standard that was as a result of racism. In my view, some of the clinic staff were understandably exhausted, fearful and even fed up with the attempted break-ins to their homes overnight. Ms Symonds, the Clinic Manager, admitted to feeling anger, but in the circumstances, all of the emotions were understandable, and I do not believe the decision to evacuate was motivated by a desire to punish the community.

1592. The fact remains that NT Health management had a dilemma to deal with because a significant number of clinic staff were feeling unsafe as a result of serious and escalating crime, which was targeted at or near their homes. While there can be no doubt that the decision to evacuate staff greatly affected the Aboriginal members of the community, and that the vast majority of residents

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1760 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024.

1761 NAAJA also urged for a finding that an example of racism was the decision of the Royal Flying Doctors Service (**RFDS**) refusing to attend Yuendumu on the unfounded perception of violence within the Yuendumu community. I do not accept that submission and note that the RFDS was not a party nor afforded an opportunity to be heard regarding any such finding or recommendation. Had I been inclined to make such a finding I would have been obliged to put the organisation on notice.

1762 I accept the rebuttal argument made by NT Health in its Closing written submissions dated 19 November 2024 at [563]-[571].

in the community are Aboriginal, it would also have impacted the non-Aboriginal community members had one of them suffered a serious injury, accident or illness.

1593. It is important to understand that the decision to evacuate affected the trust that some community members have in their clinic staff, and every effort must be made by NT Health to work together with the community to avoid that situation in the future.

Lessons learnt and changes introduced by NT Health

1594. I am informed by NT Health, and accept, that in the years since these events, the Department has reflected on this withdrawal, and ways to strengthen processes and decision making in the future. In particular:[1763]

(a) It has taken practical steps to enable the continuation of health services in circumstances where it would otherwise be unsafe to do so, by engaging private security guards to provide for the safety of nurses in the community;

(b) The Temporary Withdrawal Guideline has been updated and now includes both:

i. a decision-making guide – to assist the decision-maker in obtaining information relevant to their decision, including through proactive consultation with Indigenous staff, police and the community; and

ii. a notification checklist – to be completed by the Primary Health Care Manager (PHCM) to ensure appropriate notice of any withdrawal is given to all relevant parties prior to the withdrawal, and written notices of closure with information about the

[1763] Closing written submissions of NT Health dated 19 November 2024 at [8].

alternative service arrangements in place are placed in the community.

(c) NT Health's policies have been amended to incorporate the whole of government policy on Remote Worker Safety Policy, developed after this incident, which addresses circumstances arising in remote locations that pose a serious risk to the safety of workers and the management of withdrawal of services;

(d) Building on the actions from the Remote Area Nurse Safety Review, NT Health will provide longer term improvements in safety for its remote staff.

1595. I accept the submission that the measures outlined above "aim to reduce the need for future withdrawals of staff and reductions of health services, and where such action is contemplated, ensure that the local community and relevant stakeholders are adequately consulted, the decision-maker is fully informed, and if a decision to withdraw staff is made, all relevant persons are appropriately notified prior to the withdrawal".[1764]

1596. It was reassuring to read in the submissions filed on its behalf that:[1765]

> "NT Health is committed to learning from these events and strengthening its processes for the future, particularly in relation to how it draws on the resources of stakeholders and community members to inform its decision-making, and how it can improve the delivery of health services in remote communities."

1597. Each of these measures was expanded on in the submissions of NT Health.

Practical steps to enable the continuation of health services

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[1764] Closing written submissions of NT Health dated 19 November 2024 at [8].

[1765] Closing written submissions of NT Health dated 19 November 2024 at [433].

1598. With respect to the use of security guards, since December 2020, NT Health has used security guards to increase security. This has enabled the continuation of health services where it would otherwise not have been safe to do so.[1766]

The Temporary Withdrawal Guideline

1599. The Central Australian Health Service (**CAHS**) *Temporary Withdrawal Guideline* (and relevant documents) has been reviewed and updated several times since Kumanjayi passed away. There are two key existing changes to the withdrawal guidelines relevant to the issues raised in this inquest, first, the introduction of a decision making tool; and second, the introduction of a notification checklist.[1767]

1600. The Temporary Withdrawal Guideline now includes a decision making tool, designed to guide decision makers and ensure they seek and evaluate all relevant information in the time available, including by consulting community leaders and Indigenous staff. Decisions to withdraw staff should, wherever possible, be made after consultation with the relevant community and specifically with NT Health's local Aboriginal staff.[1768]

1601. The Withdrawal Policy now includes a Notification Checklist that is designed to strengthen the communication of withdrawals with relevant stakeholders. The Checklist guides the notification process by setting out the relevant stakeholders who should be notified. It is designed to be completed by the PHCC Manager, who records the notifications that have been completed. The relevant stakeholders included in the checklist (as a minimum requirement) are the PHCC staff, NT Health personnel, the community, and other services and agencies. Further details are set out in the Policy, including that

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1766 Inquest evidence of Dr David Reeve on 12 October 2022 at 1465–6, cited in Closing written submissions of NT Health dated 19 November 2024 at [602].

1767 Closing written submissions of NT Health dated 19 November 2024 at [581].

1768 Closing written submissions of NT Health dated 19 November 2024 at [582]-[585], citing related evidence.

notification of the community is achieved through notifying the Shire Administrator, a chairperson, a council member, or a community elder.[1769]

Incorporating the Remote Worker Safety Policy

1602. At the time of writing its submissions, NT Health was updating its Temporary Withdrawal Guideline to incorporate the Remote Worker Safety Policy.[1770]

1603. The Remote Worker Safety Policy provides for a "whole-of-government approach" to events in community that present a serious risk to staff safety, which is coordinated through the relevant regional coordination committee (**RCC**) and implemented in Central Australia through the Central Australian Remote Worker Safety Plan. It provides that:[1771]

> "Withdrawing staff and thus a service from community should only be done in the most extreme cases of unacceptable risk and after communication and consultation with the Regional Coordination Committee. The unnecessary or unwarranted withdrawal of services may have a magnified impact on a community if that withdrawal is made in haste without consideration for the broader community safety outcomes in mind. Instead, a surge capacity model should be implemented to guarantee ongoing service delivery throughout an event. This may be on a time-limited or ongoing basis. When supported by sufficient evidence, NT Police, Fire and Emergency Services have the capacity to deliver an immediate surge or staged response capability to any community in the Northern Territory to enhance community safety and support local services."

1604. The procedure is important and appears to me to require the type of coordination with stake holders that is likely to have made a significant difference on 9 November 2019 and may have encouraged key stakeholders to work together to find a solution that did not involve evacuating staff.

1769 Closing written submissions of NT Health dated 19 November 2024 at [590], citing Affidavit of Dr David Reeve dated 28 September 2022 [9-9A] at 67 (Annexure DR-6).

1770 Closing written submissions of NT Health dated 19 November 2024 at [601].

1771 Cited in Closing written submissions of NT Health dated 19 November 2024 at [597].

1605. The procedure for the management of an event posing risk to the health and safety of staff is set out in section 3.1 of the Policy. Amongst other things, it includes urgently convening the relevant agencies in the relevant Regional Coordination Committee and conducting an assessment of the risk in accordance with section 3.2 of the policy. The list of question in relation to a potential withdrawal of staff appears to be thorough and includes:

(a) Is the perceived risk to an individual or all staff?

(b) Is the level of risk high enough to warrant immediate removal of the staff member or the service? Why?

(c) Which other staff/agencies need to be alerted to the risk?

(d) Is NT Police able to provide a stronger security presence to alleviate the risk?

(e) Is there appropriate housing or office accommodation available to mitigate the risk until a full assessment of risk is undertaken?

(f) In the event of staff or a service being removed, is there surge team capability to run an interim service until a full risk assessment is undertaken?

(g) How long does a surge team need to be maintained for?

(h) What resources have been identified to manage the relationship with community to return to regular services?

1606. Significantly, it provides that a withdrawal should only be considered if a surge response enabling the continued safe provision of services cannot be implemented.

Further steps to avoid the risk of recurrence

1607. With respect to remaining reforms, NT Health (and other parties) made submissions about proposed recommendations impacting on remote service delivery, which I have taken on board.

1608. An issue that particularly stood out to me relates to evidence given by Dr Donna Ah Chee, the then CEO of Congress. Dr Ah Chee gave compelling evidence about a crisis in the availability of Aboriginal health care workers in Yuendumu and elsewhere,[1772] explaining that many years ago there was a change to raise the entry level for an Aboriginal health practitioner, motivated by good intentions about increasing their clinical capacity. The unintended negative impact was to "decimate" the Aboriginal health practitioner work force in the Northern Territory. To remedy that, there is a need to move "back to the future" to the "Basic Skills Aboriginal Health Worker", to attract Aboriginal language speakers back into the clinics. She estimated that the NT had gone from around 400 registered health workers, to "well under 200 now, Territory wide".[1773] Further, Dr John Boffa explained that in addition to tertiary placements, there was a need to support traineeships in the clinics. His evidence is that, "…a combination of being able to employ them, while they're training, and learning on the job, with some extra support from places like Batchelor would really get us back to a situation where we've got that critical work force".[1774]

1609. Dr Ah Chee and Dr Boffa gave evidence that health staff have to be supported to build culturally appropriate relationships in community not only to be more effective clinicians but equally importantly to create connection and longer term commitment to the community,[1775] a fact that NT Health endorses. The employment of more local Yapa staff will surely assist with that goal.

1610. Further, Dr Ah Chee and Dr Boffa gave evidence of the following areas of reform that are needed to ensure adequate health care for individuals like

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1772 Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1688.
1773 Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1688.
1774 Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1687.
1775 Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1696.

Kumanjayi. I am satisfied that an increase in these services is the best opportunity to divert young people from the life of addiction and offending that contributed to Kumanjayi's clash with police in the community. Their evidence supported the fact that:

(a) first, there is an enormous amount of unmet need for trauma counselling, particularly in the wake of Kumanjayi's death[1776] and

(b) second, every effort should be made to attract a psychologist and social workers into the community. They were very concerned about the length of time that there had been no psychologist in Yuendumu;

1611. It is an example of what can be achieved in an inquest that both NT Health and Congress were able to identify the changes that had been introduced or were still needed, to help avoid a withdrawal of clinic services in the future and to strengthen the services provided by local Yapa staff. I am grateful to both services, and to the interested parties who reviewed the actions of NT Health on 9 November 2019, for assisting in the development of recommendations that aim to save lives, by enhancing future service provision in a way that is safe and accessible for staff and community.

[1776] Inquest evidence of Dr Donna Ah Chee and Dr John Boffa on 14 October 2022 at 1694-1694,.

CHAPTER TWELVE DEATH PREVENTION: A SUMMARY OF CHANGES INTRODUCED SINCE KUMANJAYI'S DEATH AND CORONIAL RECOMMENDATIONS

Introduction

1612. As I have noted from time to time during these reasons, the process of identifying and responding to issues that emerged from the events of 9 November 2019 began well before the commencement of the Inquest. By that time, the NT Police and NT Health (among other institutions) had already taken significant measures to reform processes and procedures or improve culture. Further steps were taken, or commitments to take steps were given, during the course of the inquest.

1613. These changes, and commitments to change, are necessary context for the recommendations I make in this Chapter. On the one hand, many of these changes are impressive, and reduce the need for associated recommendations. On the other, some changes, or commitments to change, appear inadequate, insufficiently concrete, or unlikely to be effective. In addition, given the profound historical failures of Australian governments to implement recommendations of the RCIADIC and related inquests and inquiries it is also important that there be a written record of commitments to change, to ensure that such commitments are honoured.

1614. This chapter outlines submissions, responses and undertakings concerning and by NT Police and NT Health on the following topics:

(a) NT Police

i. Anti-racism Strategy

ii. Anti-racism and Unconscious Bias Training

iii. Body Worn Video

iv. Briefings

v. Community Resilience and Engagement Command (now the Community Resilience Command)

vi. Cultural Awareness Training

vii. Complaints Against Police and Disciplinary Matters

viii. Dragging

ix. Drug and Alcohol Use

x. Early Intervention

xi. Ex-ADF Members

xii. Fatigue

xiii. Immediate Response Team Abolition

xiv. Incident Management

xv. Aboriginal employment

xvi. Investigation

xvii. Leadership

xviii. Notification of Next of Kin

xix. Recruitment

xx. Risk Assessment

xxi. Territory Duty Superintendent

xxii. Use of Force Policy

xxiii. Use of Force Reviews and Audits

xxiv. Use of Force Training

xxv. Wellbeing

(b) NT Health

i. Changes to Withdrawal Policy,

ii. Decision-Making Toll,

iii. Notifications Checklist,

iv. Remote Worker Safety Policy and Central Australian Remote Worker Safety Plan, and

v. Use of Security Guards.

NT Police

1615. Like Counsel Assisting, and most of the interested parties, I acknowledge the substantial efforts the NT Police has already made to address issues that have been identified during this Inquest. I also acknowledge, like some interested parties, "the positive impact of the successful implementation of [this] change".[1777]

1616. Nevertheless, it is important to make clear that in identifying the steps taken by the NT Police I am not saying that I accept that each of these measures is adequate, or likely to be effective, to address the underlying concerns. As the NT Police noted, "there remains further work to be done".[1778] Other parties went further, and submitted that certain measures were insufficient, unlikely to be effective, or that there was no evidence that they would be effective. It is convenient to identify the key themes of these submissions at the outset.

1617. First, although interested parties like NAAJA acknowledged that specific reform measures, such as the anti-racism framework, were essential to prevent another death in circumstances similar to Kumanjayi's, they argue that this

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[1777] Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [187].

[1778] Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1130].

and other measures were unlikely to be sufficient unless the NT Police reckoned with the fact that it "is institutionally racist". NAAJA submitted:[1779]

> "Deep structural change requires a true reckoning with the forces that enable that racism. In this context, NAAJA submits that the Coroner should not accept that effective change will necessarily follow from the information presented in the NT Police submissions. This is especially the case where NT Police have not made submissions or provided evidence of how it will measure the impact of its changes. Nor how the changes go to dealing with the very real and enduring reality that members of the force say they develop negative perceptions of Aboriginal people *as a consequence of doing their job*."

1618. Second, NAAJA observed that I should be sceptical of assertions that there has been change, or commitments to change, unless there is persuasive evidence of those changes. It submitted that there is "conduct of the NT Police that undermines its credibility with respect to its actions before and after Kumanjayi's death…that relate to many of the purported changes".[1780] It further noted that, even where the NT Police cited evidence of change, that evidence was of "limited effect where the purported change is identified, but not supported by data or any ongoing method to embed the change in the NT Police".[1781]

1619. Third, although it supported in principle the NT Police's proposed anti-racism strategy and anti-racism training, NAAJA noted that these initiatives "focus largely on the role and impact of a single person who has worked in the NT Police for less than six months".[1782] To be clear, NAAJA emphasised that Ms Leanne Liddle was highly experienced, and eminently qualified, to undertake this important work.[1783] Its concern, however, was that "there is no evidence

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1779 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [188].

1780 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [189].

1781 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [190].

1782 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [192].

1783 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [192].

that, in the absence of Ms Liddle as the Executive Director of the CREC, the NT Police has embedded and guaranteed the role/s required at all levels of the force to deliver on – by its own submission – the further work that it says needs to be done".[1784]

1620. Fourth, NAAJA was critical of the reliance of the NT Police on "broadcast" messages, particularly where these messages appeared to amount to a "one and done" response to complex, or entrenched, issues.[1785] It submitted:[1786]

> "The NT Police refers to the use of 'broadcast' messages since Kumanjayi Walker died in 2019 until the date of its submissions (one message in relation to racist language; two messages in relation to body-worn cameras; one message in relation to adhering to SMEAC principles; one message in relation to use of force reviews; one message about misconception that 'knife = gun'). The NT Police has not provided evidence that this method combats the entrenched and dangerous issues, such as racism and procedural non-compliance, that are known to exist in the NT Police. In the very least, the sentiment and effect of these messages should have been incorporated into the General Orders."

1621. Fifth, NAAJA submitted that claims that "[i]mprovements to leadership and behavioural expectations are cited to have occurred…since Kumanjayi Walker died" are undercut by "Commissioner Murphy's accept[ance] that he misled led the public and gaslighted the Aboriginal community about racism".[1787] NAAJA contended that "submissions on impactful leadership can only be considered alongside the fact that significant failures of leadership continue to occur".[1788]

1784 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [192].

1785 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [193].

1786 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [193].

1787 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [204].

1788 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [204].

1622. Finally, NAAJA made a number of more specific submissions about particular aspects of the NT Police's reform agenda. For instance, it submitted as follows:

(a) "In circumstances where it no longer carries out spot checks on whether officers are complying with their obligations to activate body-worn cameras, it appears that one factor the NT Police is relying on determine whether use of body-worn cameras is compliant, is civilian complaints. This is a backwards approach".[1789]

(b) "The CREC was established in 2020. By early 2023, it was identified as fundamental in shifting the thinking of the NT Police. There is no evidence the impact of the CREC has shifted the actions and impacts of the force, or how it might measure any such shift".[1790]

(c) "Cultural awareness training has been developed for recruits, but it is unclear if this is currently being delivered. Cultural awareness training has been proposed for delivery at all stations but is not underway. Foundational cross-cultural training is described as 'available', but there is no evidence of uptake".[1791]

(d) "The NT Police says it has taken disciplinary action against members for racist or inappropriate conduct, but this is occurring alongside egregious and public examples emerging of racism and dishonesty at the most senior levels of the force with no apparent disciplinary consequences".[1792]

(e) "The NT Police submits that the comments by Judge Borchers would today be reviewed by the Prosecutions Review Panel Meeting, but the

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1789 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [195].

1790 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [196].

1791 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [197].

1792 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [198].

evidence provides that that they have not subsequently considered the subsequent potential perjury charges (or the use of force) for the purposes of referral of the matter to the DPP".[1793]

(f) "The NT Police and Commissioner Murphy refer to a focus on culture change and a 'modern managerial approach' to correcting and guiding officers' behaviour, rather than a punitive approach, without evidence of how this will deliver the desired and necessary change. The NT Police submits the focus on education has 'involved increased engagement of members with the PSC, a readiness by more members to acknowledge poor behaviour and a less adversarial approach, resulting in improvements to behaviour and a willingness by members to learn from their mistakes' - without evidence to quantify or support this position".[1794]

(g) "In 2022 there was a 'plan' to move some disciplinary decision making to the Office of the Deputy Commissioner, but this does not appear to have been implemented as of November 2024".[1795]

(h) "There is no evidence that the introduction of the 'Policing Mindset' session to the College program will have any impact on the use of force by ex-ADF members".[1796]

(i) "The custodial care course to be completed every 12 months was updated in 2022 to include a preclusion on dragging. The NT Police has not submitted whether this is effective and/or whether it has identified any non-compliant instances of dragging since then".[1797]

1793 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [199].

1794 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [200].

1795 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [201].

1796 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [202].

1797 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [203].

(j) "The introduction of psychometric testing in recruitment is relied on as a change. 'Open dialogue style' interviews are used to 'ask about…racism' and to consider whether answers during interviews reveal any 'biases against others'. However, it also submits at [1242] that the psychometric testing does not screen for 'racist tendencies or biases'. And the NT Police does not explain whether any action is taken if racism or bias is identified, or whether any level of bias or racism is tolerated in recruits".[1798]

(k) "Several changes to use of force procedures and related issues are not supported by evidence that these measures are successful in ensuring force is not used excessively".[1799]

1623. I will now turn to the NT Police's submissions, and evidence, regarding the changes themselves.

Anti-racism strategy

1624. The NT Police has established an Aboriginal reference panel, which, it submits, brings together Aboriginal employees and enables them to speak freely about how the NT Police can be a better, culturally safe and culturally competent workplace.[1800]

1625. On 1 July 2024, Ms Leanne Liddle joined the NT Police as the Executive Director of the Community Resilience and Engagement Command (**CREC**). Ms Liddle is an Arrente woman and a traditional owner of Alice Springs.[1801] She served as South Australia's first female Aboriginal officer and later

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1798 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [204].

1799 Closing written submissions in reply of the North Australian Aboriginal Justice Agency dated 25 November 2024 at [206].

1800 Inquest evidence of Michael Murphy on 29 May 2024 at 5802; Evidence of Michael Murphy in the Inquest into the deaths of Kumanjayi Haywood, Kumarn Rubuntja, Ngeygo Ragurrk and Miss Yunupingu on 20 May 2024 at 10 [7-100AA].

1801 Statement of Leanne Liddle, undated [10-10C] at [2].

completed a law degree.[1802] Ms Liddle has worked in multiple public service and policy roles, including as the Director of the Aboriginal Justice Unit within the NT Department of Attorney-General and Justice.[1803] She was the 2022 NT Australian of the Year.

1626. Foreshadowing Ms Liddle's commencement with NT Police, Commissioner Murphy said:[1804]

> "She brings a wealth of experience and will challenge the thinking and the current culture of the Northern Territory Police Force to make it better for our employees and the community we serve. And she will look at a range of matters for us, your Honour, around you know, strategic planning, implementation, workshops, education, what's embedded in training through the recruits, what in-service training look like, helping achieve the 30 percent recruitment goal for Aboriginal employees across the Northern Territory Police Force, breaking down barriers attached to recruitment in service pathways as well. Because there are barriers that stop people progressing through the Northern Territory Police, making sure that Aboriginal people have an opportunity to advance through the ranks of the police force, become supervisors, become commissioned officers, and one day, a Commissioner of Police...She will be strengthening the partnerships with all the Aboriginal agencies, the Anti-discrimination Commissioner, the Human Rights Commissioner, the Ombudsman embedding herself in the processes like this where racist tones and evidence comes up in complaints against police. So we've got an extraordinary amount of work to do that we haven't invested in previously, to identify what the issues are and correct it, and make sure that people are educated that it is no longer acceptable, not for one minute."

1627. I was informed that, as a part of her role, Ms Liddle has commenced work on developing a NT Police Anti-Racism Strategy which includes reform of recruitment, retention, promotion processes, cultural awareness training and other policies, including the development of a specific policy to provide members with guidance about the use of discretion.

1802 Curriculum Vitae of Leanne Liddle, annexed to statement of Leanne Liddle, undated [10-10C].

1803 Inquest evidence of Leanne Liddle on 6 March 2023 at 4426-4428.

1804 Inquest evidence of Michael Murphy on 29 May 2024 at 5780.

Anti-Racism and Unconscious Bias Training

1628. In November 2021, NT Police created an online Unconscious Bias Training Package.[1805] I was informed that by 12 November 2024, 1,742 members had completed this training.

1629. Respectful Workplace workshops have been facilitated, and the Respect, Equity and Diversity Policy, together with its associated training, have been updated.[1806] On 1 December 2022, a broadcast was sent to members addressing the unacceptability of the use of racist and other inappropriate language.[1807]

1630. I was also informed that Ms Liddle had arranged for David Hollinsworth, Adjunct Professor in Aboriginal Studies at the University of the Sunshine Coast, to deliver anti-racism training to the NT Police executive, the Professional Standards Command, the TRG, and the Territory Safety Division in December 2024 and January 2025.[1808]

Body-worn video

1631. On 1 December 2022, an agency-wide broadcast was sent to remind members about their obligations in relation to copying or releasing body-worn footage.[1809]

1805 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [266].

1806 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [75]-[78].

1807 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [66]-[67].

1808 Professor Hollinsworth is the author of the report Campaign to Combat Racism dated 16 October 2023 [20-71A].

1809 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [290].

1632. After a period where spot-checking was performed on body worn video,[1810] and members who had repeatedly not complied with their BWV obligations were referred to the PSC,[1811] the NTFP detected a significant decrease in non-compliance with activation of body-worn cameras.

1633. NT Police informed me that spot-checking no longer occurs in this way. It justified the discontinuance of spot-checking on the bases that:

(a) supervisors are required to check body worn footage when assessing uses of force; and,

(b) the Annual Report of the Ombudsman for 2023-2024 notes a marked decrease in the incidence of body worn video procedural breaches detected in Complaints Against Police. In 2022, there were 46 breaches, in 2023, there were 17 and there were only five in 2024.[1812]

1634. While these are very positive developments, I share NAAJA's concern that spot-checking has been discontinued. The evidence obtained at the Inquest revealed numerous examples of supervisors failing to review, or to ask to be provided with, BWV when auditing UoF CNEs. I am also concerned that the decrease in non-compliance might, at least to some degree, be attributable to the practice of spot-checking itself, which would, as a matter of common sense, act as a deterrent.

1810 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [284].

1811 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [284].

1812 Annual Report of Ombudsman NT, published 24 October 2024 at 42 and 52, available at https://ombudsman.nt.gov.au/__data/assets/pdf_file/0006/1455531/2023-24-Annual-Report-OMB-final.pdf.

Briefings

1635. On 2 December 2022, a broadcast was sent to the agency reminding members of the importance of briefings and adherence to SMEAC principles.[1813] I was informed that briefings and SMEAC are addressed in the Sergeant Development Course (see below).[1814]

*Community Resilience and Engagement Command (**CREC**)*

1636. In October 2020 the NT Police established the CREC[1815] to strengthen relationships between the agency and Aboriginal communities.[1816] As I have noted, it is now under the leadership of Ms Leanne Liddle (and is now called the Cultural Reform Command).

1637. The aims of the CREC include fostering a culture of shared decision-making, establishing culturally appropriate engagement and protocols, and establishing employment opportunities and career pathways for Aboriginal people.[1817] Evidence of senior police officers at the Inquest was that the CREC has been "fundamental in shifting [the] thinking" of the NT Police and shaping its future direction.[1818] In particular, the NT Police submitted that the CREC has:

(a) led to the employment and extensive training of Aboriginal Liaison Officers (**ALOs**),[1819] who work for the NT Police from within their own communities and liaise between police and community members.[1820]

1813 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [150].

1814 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [149].

1815 Since the close of submissions the CREC has been renamed.

1816 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [305].

1817 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [305].

1818 Inquest evidence of Deputy Commissioner Murray Smalpage on 28 February 2023 at 4134.

1819 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [305], [309]-[312].

1820 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [10], [13].

ALOs are able to interpret for police, advise them on cultural and community matters, and assist community members to access policing services.[1821] The CREC also supports ALOs to enhance their skills and assist them in discharge of their roles.[1822] As at 13 November 2024, there were 91 ALOs across the Northern Territory,[1823] and three former ALOs had progressed to working as ACPOs. The innovation of ALOs in the NT has proved influential outside the NT; representatives of other policing jurisdictions have visited the NT Police to learn from the ALO program.[1824]

(b) under the leadership of its previous executive director, developed a cultural responsiveness framework,[1825] implemented a mentoring program for Aboriginal employees,[1826] and continued the development of Mutual Respect Agreements.[1827] Mutual Respect Agreements involve direct and local community decision-making and set standards for what police and community members should do and set out clear directions for police members and community members to work together to resolve community issues.[1828]

(c) under the leadership of Ms Liddle, begun to develop an anti-racism strategy as set out above, and is continuing to look at promotional and development opportunities for Aboriginal employees, and is providing training and advice to NT Police members in the field. While the

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1821 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [11]-[12].

1822 Inquest evidence of Deputy Commissioner Murray Smalpage on 28 February 2023 at 4136.

1823 There are 56 ACPOs, made up of 7 ACPOs, 7 First Class ACPOs and 42 Senior ACPOs.

1824 Inquest evidence of Deputy Commissioner Murray Smalpage on 28 February 2023 at 4137-4138.

1825 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [313.iii].

1826 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [28]-[30]; Inquest evidence of Deputy Commissioner Murray Smalpage on 28 February 2023 at 4137.

1827 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [33]-[37].

1828 Inquest evidence of Commander Martin Dole on 22 November 2022 at 3607-3608.

CREC's mentoring program has come to its conclusion, the mentoring relationships remain in place.

Complaints against Police and Disciplinary Matters

Internal processes

1638. The NT Police submitted, and I accept, that it has taken some steps to improve the PSC's internal processes for responding to complaints against police and other disciplinary matters. Without determining that these steps will be effective, or sufficient, to address the issues identified during the inquest, I note that the steps were said to include:

(a) Reviewing and updating its template forms.[1829]

(b) Flow charts have been developed to assist in the training of new PSC members.[1830]

(c) PSC staff members were reminded to consider complaints comprehensively. NT Police asserts that enquiries are now made beyond an individual complaint to determine whether there appears to be a pattern of concerning behaviour or a broader trend.[1831]

(d) Investigation timeframes are now flagged electronically to ensure statutory timeframes are not missed, and templates for the seeking of extensions have been updated.[1832]

1829 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1158].

1830 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1158].

1831 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1158].

1832 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1158].

Taking of disciplinary action

1639. In addition, the NT Police submitted that disciplinary action has been taken against members who have engaged in racist or inappropriate conduct,[1833] and that disciplinary action has also been taken against supervisors who have been found to have neglected their responsibilities.[1834] I am guarded about whether this represents a meaningful "reform" to the PSC or its processes. First, taking disciplinary action against officers for racist conduct is the bare minimum to be expected of a modern police force, not a matter that deserves commendation. The real question will be how consistently this action is taken, how rigorous the disciplinary investigation into matters such as racism is, and how effective these disciplinary actions and investigations are at deterring racist conduct. Second, as I noted in Chapter One, some of the evidence at the Inquest revealed recent, and contradictory, approaches to discipline for officers who engaged in racist behaviour that even the most senior officers, such as former Commissioner Murphy, identified as regrettable and liable to send the message that racism was tolerated, or would be dealt with leniently.

Failed Prosecutions panel

1640. I was informed that in 2020, a Failed Prosecutions panel was established. It is now called the Prosecutions Review Panel Meeting. It meets regularly to review all failed prosecutions (including acquittals and withdrawals), including charges that were inappropriately drafted, actions or omissions by police, and preparation issues.[1835] Where any misconduct is identified, that is referred to the PSC.[1836] I was informed that, today, comments such as those made by Judge Borchers in the case of Malcolm Ryder would be reviewed by

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1833 See eg Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at [83].

1834 See eg Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at [81].

1835 Inquest evidence of Assistant Commissioner Bruce Porter APM on 3 March 2023 at 4334-4335.

1836 Inquest evidence of Assistant Commissioner Bruce Porter APM on 3 March 2023 at 4334-4335.

the Prosecutions Review Panel Meeting, providing an opportunity for a structured, considered review, followed by prompt action as required.

MOU between NAAJA and NT Police regarding footage relevant to complaints

1641. On 19 September 2023, NT Police entered into a Memorandum of Understanding (**MOU**) with NAAJA in relation to enabling footage to be viewed before any formal complaint is made.

Response to the Galliott Report

1642. As I noted in Chapter One, under a former Commissioner, the NT Police commissioned an external review of the PSC, led by Commander Mark Galliott of Victoria Police. The Galliott Report noted, among other matters, the "considerable adversarial environment" within which the system operated.[1837] The NT Police submitted that the Galliott Report advocated for a better remedial system that embraces modern managerial practices,[1838] that is "preventative, efficient, effective and protects the physical and mental health and wellbeing of all employees".[1839]

1643. As a result of the Galliot report, the NT Police submits that it has "initiated an important focus on culture-change and education".[1840] It submits that it is "concentrating upon the longer term, and ultimately more effective, process of shifting the culture of the PSC to make it less punitive and more accessible and thereby of greater assistance to members".[1841] It submits that, "[w]here

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1837 Galliott Report at 11: Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at annexure BP-16.

1838 Galliott Report at 14: Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at annexure BP-16.

1839 Galliott Report at 9: Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at annexure BP-16.

1840 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1164].

1841 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1164].

possible, the NT Police intends to deal with disciplinary matters (which exclude criminal behaviour) via a modern managerial approach which focuses on correcting and guiding behaviour, as opposed to a punitive focus". The former Commissioner Murphy said this of this approach:[1842]

> "It's about people owning their mistakes, their behaviours, their conduct, so we can move forward faster, correct the behaviours, give them an opportunity to reform. It's repeated. There'll be firmer interventions, educating the workforce. We're sharing stories about people who have made poor judgement, poor choices or mistakes, so people learn from that so we don't have people going off on sick leave for years at end, and we can move through so there's a safe place to report conduct, misconduct, self-report. It's a change in the, I guess, how the Professional Standards Command work. But you know, it's a different aspect if a crime's committed."

1644. While NAAJA, and a number of other interested parties, recognised the importance of many of the findings of the Galliot report, they opposed what they characterised as its major recommendation. In NAAJA's submission, the "report recommends an overhaul of the current system but rejects an independent civilian model of investigation, in favour of a model where NT Police conduct investigations and the Ombudsman's role is reduced to conducting random audits of the complaints". [1843]

1645. NAAJA submitted that in light of the evidence of serious, and persistent, failings in NT Police disciplinary processes, "it is clear that there should not be reduced oversight or independence in investigations of police complaints".[1844] It submitted that, "if anything, there needs to be wholly independent investigations of police complaints".[1845] In addition, it argued

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1842 Inquest evidence of Michael Murphy on 29 May 2024 at 5801.

1843 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [669].

1844 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [670].

1845 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [670].

that the Galliott report "cannot be relied upon to address the issues raised by this inquest", in circumstances where:[1846]

671.1 Commander Galliott was not briefed with the evidence before this inquest, or even provided with examples of similar failures in police accountability;

671.2 consideration of the *Ombudsman Act* was outside the scope of the of the Galliott Review;

671.3 while the report cites support for a civilian oversight model (rather than a wholly independent investigation mode) in several royal commissions and inquests, most relevantly, however, it does not cite or consider the 1991 Royal Commission and specifically recommendation 226 and the recommendation of wholly independent investigations; and

671.4 the report considered the Ombudsman independently investigating complaints, however, did not recommend this as it considered it was apparent there is limited capability in the local community with the requisite skillsets for these roles, and current investigative expertise and specialist resources lies within the NT Police. In our submission, any current under resourcing that a civilian investigation body might have can be in the medium term resolved by either directly funding that body or diverting resources from the NT Police (who would have a reduced role in complaint investigation) into that body and should otherwise not be considered fatal to establishing a wholly independent investigation model.

1646. The Galliott Report made extensive recommendations, to which the NT Police agreed in principle.[1847] I note, as a matter of some concern, that under the leadership of a successive Commissioner of Police, Michael Murphy, the NT Police has determined that not all of the Galliott recommendations are currently able to be implemented.[1848] In circumstances where there is real controversy between the NT Police and other interested parties (such as

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1846 Closing written submissions of the North Australian Aboriginal Justice Agency dated 28 October 2024 at [671].

1847 Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at [107].

1848 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1164].

NAAJA, the families and the Parumpurru Committee) about whether the reform model proposed by the Galliott Report is appropriate at all, the decision of the NT Police to adopt only *some* of that report's recommendations significantly undermines my confidence that its preference for that model will address the issues identified during this inquest.

1647. The NT Police is also attempting to have the PSC educate and engage with operational members, to prevent the PSC from operating in a "silo" and to address any perceptions that the PSC only exists to "catch out" members or jeopardise their careers.

1648. On 3 January 2024, AFP member Commander Jason Kennedy was seconded to the NT Police for 12 months for the purpose of implementing reform. Under his guidance, PSC members have visited police stations throughout the Northern Territory to engage with members and educate them about the integrity framework, professional standards and the complaints process.

1649. This shift in policy and the new educative process have involved increased engagement of members with the PSC, a readiness by more members to acknowledge poor behaviour and a less adversarial approach, resulting in improvements to behaviour and a willingness by members to learn from their mistakes.

1650. In addition, the Commissioner and Deputy Commissioner are planning to move some of the decision-making about disciplinary matters to the Office of Deputy Commissioner for consistency, so that racist behaviour can be dealt with more effectively and responsively.[1849]

Cultural Awareness Training

1651. I was informed that the CREC has developed a new three-day cross-cultural training session for recruits, which replaced the previous cultural awareness

[1849] Inquest evidence of Michael Murphy on 29 May 2024 at 5800-5801.

training provided at the College.[1850] Recruits receive instruction from the CREC, the Aboriginal Interpreter Service, the Multicultural Council of the Northern Territory, and the Northern Land Council.[1851] An Aboriginal education provider, Cross-Cultural Consultants, presents a full day of instruction, and Aboriginal NT Police members also give presentations as part of a panel discussion.[1852]

1652. During their six months at the College, recruits are expected to complete a written assignment about a particular Aboriginal language and culture; on the last day of the cross-cultural training, they present what they have learned to other recruits.[1853]

1653. A practice that has developed is for recruits to contact the CREC while they are at the College, seeking to be put in touch with ALOs who can provide them with insights to assist with their cultural presentations.[1854] Following the presentations, recruits are expected to submit a self-reflective account of their experience and how they will apply what they have learned in the future.[1855]

1654. In response to submissions of other interested parties, the NT Police submitted that it would not be feasible to extend recruit training over several months, or to incorporate a two-week remote period for recruits while they are still at College. It submitted that putting police in remote communities requires

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1850 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [271]-[273] Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [49]-[54],[305]; Statutory declaration of Sergeant Matthew Allen dated 11 August 2022 [7-2B]; Inquest evidence of Sergeant Matthew Allen and Senior Constable Bradley Wallace on 3 November 2022 at 3194-3198, 3205-3212.

1851 Statutory declaration of Sergeant Matthew Allen dated 11 August 2022 [7-2B] at [9]; Inquest evidence of Sergeant Matthew Allen and Senior Constable Bradley Wallace on 3 November 2022 at 3205-3208.

1852 Statutory declaration of Sergeant Matthew Allen dated 11 August 2022 [7-2B] at [10]-[11]; Inquest evidence of Sergeant Matthew Allen and Senior Constable Bradley Wallace on 3 November 2022 at 3206-3207.

1853 Statutory declaration of Sergeant Matthew Allen dated 11 August 2022 [7-2B] at [3], [7], [11].

1854 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [50].

1855 Statutory declaration of Sergeant Matthew Allen dated 11 August 2022 [7-2B] at [3], [7], [11]; Inquest evidence of Sergeant Matthew Allen and Senior Constable Bradley Wallace on 3 November 2022 at 3195-3198, 3208-3209.

additional infrastructure such as adequate housing. Instead, the NT Police submitted that it was:

(a) "considering" allocating further time for recruits to learn about engagement with Aboriginal communities; and,

(b) "exploring" marketing itself as a police force that engages its recruits in deep education about Aboriginal culture so as to widen the pool of suitable potential applicants.

Dragging

1655. As at the time of Kumanjayi's death, the custodial care course that police members were required to complete every 12 months had not been amended to reflect the preclusion on dragging under any circumstances. That amendment was made on 12 May 2022.[1856]

Drug & Alcohol Use

1656. The Northern Territory is the only Australian jurisdiction that cannot require police officers to submit to drug and alcohol testing following the discharge of a firearm.[1857] As a result of that anomaly, Mr Rolfe was not drug tested following the shooting of Kumanjayi Walker and, therefore, it will never be known whether a prescription or other drug was present in his blood.

1657. The NT Police informs me that it has drafted proposed amendments to the *Police Administration Regulations* and prepared a new General Order Drug and Alcohol Testing of Police Officers, and Standard Operating Procedures

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1856 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [235].

1857 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [338].

for Drug and Alcohol Testing of Police Officers.[1858] Despite the fact that the need for this reform was identified prior to the commencement of the Inquest in 2022, I was informed that reform initiatives remain in progress, subject to the drafting priorities of the Office of Parliamentary Counsel.

1658. In circumstances where this deficiency has been apparent for many years, it is extremely disappointing that the reform has not occurred.

Early Interventions

1659. On 6 November 2024, the NT Police implemented a new Early Intervention Policy. I was informed that this policy is designed "to identify and manage risk factors affecting a member's wellbeing or performance, provide for early intervention mechanisms and initiatives, enable engagement with the member and monitor and document early intervention processes".[1859] I was informed that the policy "identifies risk factors that may affect wellbeing, performance or behaviour, and facilitates 'early intervention conversations' to raise concerns and ensure a member is offered welfare support".[1860] I was informed that the policy is not intended to be punitive, but to offer support; it supplements but does not replace the requirement to adhere to general orders, policies and performance standards.

1858 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [339]-[340]; Affidavit of Deputy Commissioner Murray Smalpage dated 2 September 2022 [7-120B] at [45]; Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [415].

1859 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1172].

1860 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1172].

Ex-ADF Members

1660. The NT Police College has implemented a new, specific session in its recruit training course intended to emphasise the difference between the force used by police and the force used in other occupations, including in the military.[1861]

1661. The session is entitled "Policing Mindset". It currently runs for two hours, and is delivered mid-way through the course, just prior to delivery of use of force training. I was informed that it "encourages recruits to consider how their past professional skills and experiences might subconsciously affect their policing decisions, and the differences between using force in NT Police compared with other police forces or agencies such as the ADF".[1862] As I have noted, NAAJA submitted that there was no evidence that the session would have this effect.

Fatigue

1662. Noting the relevance of member fatigue to my Findings, NT Police has taken steps to address member fatigue, particularly in remote areas. These steps include:

(a) Reintroducing the position of Territory Duty Superintendent (**TDS**), one of whose roles is to monitor the extent of overtime service undertaken by members.[1863]

(b) Increasing the member numbers at regional and remote stations (with an increase of 24% from May 2019 to May 2022).[1864]

1861 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [39].

1862 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1176].

1863 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [252]-[253].

1864 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [313][v]; Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [255].

(c) Introducing an electronic rostering system,[1865] now due to be implemented in 2025, which the NT Police submits "will significantly assist in addressing fatigue as supervisors will be able to access information about the working hours of members easily and use this information when making rostering and deployment decisions".[1866]

(d) Introducing a new Fatigue Management Policy, to be developed in consultation with the NTPA.[1867] As at 16 November 2024, that policy had been drafted and was in the final stages of approval. I was informed that, once approved, it will be implemented as a matter of priority.[1868]

Immediate Response Team Abolition

1663. In response to the death of Kumanjayi Walker, on 18 November 2019, Senior Sergeant Lee Morgan recommended that the IRT cease to be deployed to locations outside Alice Springs, that its SOPs be reviewed, and that if it was deployed within Alice Springs, a team leader be appointed and the Shift Sergeant/Watch Commander oversee and manage all IRT functions.

1664. On 27 November 2019, the IRT unit was suspended.[1869]

1665. On 30 May 2022, Superintendent Shaun Gill completed a thorough review of the IRT, which recommended that it be formally disbanded immediately.[1870] On 31 May 2022, the IRT formally ceased to exist as a result of a decision

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1865 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [257]-[258].

1866 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1178].

1867 Affidavit of Deputy Commissioner Murray Smalpage dated 13 September 2023 [7-120C] at [41].

1868 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1179].

1869 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [185].

1870 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at annexure MS-12.

made by the NT Police executive.[1871] The NT Police submitted, expressly, that it "does not intend to replace it, under any other name or in any form".[1872]

Incident Management

1666. The NT Police has commenced using a new incident management system, ICCS+, which is used by all other Australian policing jurisdictions.[1873]

1667. ICCS+ was developed by the Australian and New Zealand Policing Advisory Agency (**ANZPAA**).[1874] ICCS+ contains command and control principles, such that a new Command and Control General Order was not required.[1875]

Aboriginal Employment

1668. As at May 2024, the highest ranking Aboriginal and Torres Strait Islander (**ATSI**) officer was an acting superintendent.[1876] There were also six sergeants who identified as ATSI, two of whom were acting up as senior sergeants, in addition to 177 lower-ranked employees.[1877]

1669. The NT Police's submissions in relation to the employment of ATSI staff were what might be called "aspirational". The NT Police submitted that it was the

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1871 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [185].

1872 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1182], citing Inquest evidence of Deputy Commissioner Murray Smalpage on 28 February 2023 at 4123; Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [356].

1873 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [445]-[453].

1874 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [247].

1875 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [457]-[458].

1876 Inquest evidence of Michael Murphy on 29 May 2024 at 5802; Inquest evidence of Michael Murphy in Inquest into the deaths of Kumanjayi Haywood, Kumarn Rubuntja, Ngeygo Ragurrk and Miss Yunupingu on 20 May 2024 [7-100AA] at 11.

1877 Inquest evidence of Michael Murphy on 29 May 2024 at 5802; Inquest evidence of Michael Murphy in Inquest into the deaths of Kumanjayi Haywood, Kumarn Rubuntja, Ngeygo Ragurrk and Miss Yunupingu on 20 May 2024 [7-100A] at 5, 11.

"goal" of the former Commissioner (Michael Murphy) "to ensure that, in accordance with merit, Aboriginal staff are promoted into senior roles".[1878]

1670. As to how the NT Police proposes to achieve that goal, it submitted that:

(a) It is "committed to enhancing the literacy, numeracy, communication, and computer skills of lower-ranked Aboriginal members. It recognises that English is not the first or even the second language of most Aboriginal employees, and that deficits in these skills have the potential to inhibit career progression. Multiple skills enhancement courses are made available by the NT government for all government employees, including police. The NT Police reaffirms its preparedness to encourage and fund its employees, including its Aboriginal employees, to undertake such courses and is rolling out enhanced internal communications about these options to ensure that their existence is effectively brought to the attention of all employees".[1879]

(b) "The Anti-Racism Strategy that is being developed by new CREC Executive Director Ms Leanne Liddle is also intended to improve employment and promotional opportunities for Aboriginal members".[1880]

(c) "Work continues to be undertaken to attract both ALOs and ACPOs into the NT Police and to transition ACPOs who wish to become Constables to that role. There is now a pathway for ACPOs with adequate experience to transfer to the Constable stream via an individually

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1878 Inquest evidence of Michael Murphy in Inquest into the deaths of Kumanjayi Haywood, Kumarn Rubuntja, Ngeygo Ragurrk and Miss Yunupingu on 20 May 2024 [7-100AA] at 12. See also Inquest evidence of Commander Martin Dole on 22 November 2022 at 3615-3616.

1879 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1254].

1880 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1255].

tailored program instead of undertaking the 31-week recruit constable course".[1881]

(d) "ALOs who aspire to become ACPOs or police members in the Constable stream are encouraged to do so. However, the roles of ALO (public servant) and police officer (sworn member) are very different. Accordingly, there is no such transition course and ALOs wishing to serve as sworn police members must apply afresh to become a recruit. Not all ALOs aspire to becoming a police member. Not all ACPOs wish to transition to the Constable stream. However, the NT Police is committed to doing all it can to assist ALOs and ACPOs who wish to change roles to do so and to acquire the skills for that purpose".[1882]

(e) "In addition, the performance management system MyCareer is being replaced by a more accessible personnel system that will enable members to map out their career goals. Supervisors will be able to review this information and provide support to the member to achieve their career goals accordingly".[1883]

Investigation

1671. On 21 November 2022, the NT Police addressed the problem identified during this inquest of having two parallel criminal and coronial investigations arising out of a death in custody by promulgating a new General Order Crime (Homicide and Serious) Investigation.[1884] The new General Order was

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1881 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1256].

1882 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1257].

1883 Closing written submissions of the Northern Territory Police Force dated 19 November 2024 at [1258].

1884 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [108]-[117], and annexure MS-4.

developed in response to the challenges that arose from having two concurrent investigations headed by two different commissioned officers.[1885]

1672. The new order provides for the separation of witnesses.[1886] It also provides that one commissioned officer, of at least the rank of Superintendent, is to be responsible for both the criminal and coronial aspects of an investigation, reporting to an Assistant Commissioner and also providing updates to and receiving direction from the Territory Coroner.[1887] The new General Order also clarifies the requirement for all relevant members to be interviewed or provide statements in death and serious injury matters involving contact with police. They may only decline to do so on the ground of self-incrimination.[1888]

Leadership

1673. The NT Police emphasised the steps it has taken to address leadership in the ASPS, in particular, and the NT Police more broadly.

1674. I was informed that the previous Commissioner met with a large number of sergeants in relation to matters including leadership and behavioural expectations.[1889] During 2020 and 2021, Deputy Commissioner Smalpage and then-Deputy Commissioner Murphy met personally with each member of the rank of Senior Sergeant, Superintendent, Commander, and Assistant Commissioner in relation to these matters.[1890] Cmdr Dole also engaged in a

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1885 Inquest evidence of Commander Martin Dole on 22 November 2022 at 3602-3603.

1886 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [369].

1887 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [111]-[112], and annexure MS-4.

1888 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [117], and annexure MS-4.

1889 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [65].

1890 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [63].

process of meeting with all members of sergeant rank and above to set expectations about workplace behaviour.[1891]

1675. I was also informed that sergeants have attended leadership training developed and run by the Australian Institute of Police Management (**AIPM**).[1892] The NT Police College has also developed a Sergeant Development Course, covering matters such as rank responsibility, auditing, discipline, body-worn video procedures and compliance, briefing and culture.[1893] I was informed that this week-long course was initially offered to substantive sergeants and then remote sergeants; it has now been extended to acting sergeants and opened to senior or first class constables as a learning and development opportunity. Fifteen such courses, attended by 274 participants, have been delivered during 2023 and 2024; two further courses are scheduled for the remainder of 2024.

1676. I was also informed that there have been significant staffing changes at the Alice Springs Police Station,[1894] and a restructure of the layout of the Station,[1895] with key supervising officers now being located closer to the muster room.[1896] The NT Police submits that this has resulted in less of a division between middle management and direct line supervisors[1897] and provides both an opportunity for ongoing mentoring and supervisor awareness of any unacceptable practices.

Notification of next of kin

1891 Inquest evidence of Commander Martin Dole on 22 November 2022 at 3610-3611, 3614-3615.

1892 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [71]; Affidavit of Deputy Commissioner Murray Smalpage dated 13 September 2023 [7-120C] at [52]-[53].

1893 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [72]; Affidavit of Deputy Commissioner Murray Smalpage dated 13 September 2023 [7-120C] at [49]-[51].

1894 Inquest evidence of Commander Martin Dole on 22 November 2022 at 3609.

1895 Inquest evidence of Commander Martin Dole on 22 November 2022at 3610.

1896 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [74].

1897 Inquest evidence of Commander Martin Dole on 22 November 2022 at 3610.

1677. The new General Order Crime (Homicide and Serious) Investigation provides members with further guidance and imposes upon them additional obligations with respect to notifying next of kin of a death.[1898] It requires that notifications should be delivered in a culturally appropriate and sensitive manner.[1899]

Recruitment

1678. I am informed that the NT Police now requests the ADF disciplinary records of all ex-ADF recruit applicants at the beginning of the recruitment process.[1900] Such requests are now being processed by the ADF – generally within two to ten weeks.[1901] Ex-ADF applicants are not offered employment with the NT Police unless and until their military disciplinary history has been received and considered.[1902] This also applies to recruit applicants who have previously served in other Australian police forces.

1679. I am also informed that ex-ADF members applying to join the NT Police must now obtain their ADF medical record, and provide it to the medical practitioner who conducts their medical assessment.[1903] The practitioner is able to interpret and consider the medical records and ask the applicant further questions as required.[1904]

1680. In addition to these changes to recruitment processes regarding ex-ADF members, I am informed that:

1898 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [377]-[381] and annexure MS-4.

1899 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at annexure MS-4.

1900 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [392].

1901 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [218].

1902 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [219]; Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [392].

1903 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [394]-[396].

1904 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [394]-[396].

(a) Since 2022, as part of the application process, applicants have been required to complete a statutory declaration attesting to the truthfulness of their responses,[1905] enabling false statements made by them to be prosecuted pursuant to the *Criminal Code* or the *Oaths, Affirmations and Declarations Act 2010 (NT)*.[1906]

(b) Since February 2022, the NT Police has utilised a new pre-employment psychological testing service, known as Talogy. It incorporates psychometric testing and assessments specifically formulated for police and firefighters.[1907]

(c) At interview, applicants are asked about a wide range of matters, including racism and the skills and knowledge required to police in remote communities. Discussions take place with applicants about their Talogy test results, and they are also asked questions about their mental health. NT Police recruit interviews are now conducted in an open dialogue style; interviewers do not generally ask pre-formulated questions but utilise flexible interviewing techniques to explore relevant issues and any matters of concern that are known or that emerge during discussions.[1908] Amongst other things, interviewers look to see whether a person's answers during their interview reveal any biases against others.[1909]

(d) In circumstances where the psychometric testing or an applicant's answers in interview prompt concerns about their mental health, the NT Police refers the applicant to an in-house psychologist before a decision is made by the Challenge Panel as to their selection.[1910]

1905 Affidavit of Deputy Commissioner Murray Smalpage dated 2 September 2022 [7-120B] at [26] and annexure MS-2.

1906 Section 119 *Criminal Code*, section 27 *Oaths, Affirmations and Declarations Act 2010*.

1907 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [223].

1908 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [224].

1909 Inquest evidence of Senior Constable Kevin Agnew on 4 November 2022 at 3246.

1910 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [223][iii].

(e) In January 2020, the NT Police implemented new recruitment guidelines that address the criminal histories of recruit applicants.[1911] Applicants who have committed offences as an adult, including theft, deception, aggravated assaults and drug offences, must be referred to the Review Panel (formerly the Integrity Panel), and, absent exceptional circumstances, they must be excluded from the selection process.[1912] Applicants who have committed less serious offences, such as common assault or criminal damage, are to be referred to the Panel which may exclude the applicant from the process taking into account prescribed criteria.[1913] Applicants who have committed street offences may continue to be part of the selection process, provided certain nominated criteria are met.[1914] Applicants who fail to disclose relevant information or provide false information are also referred to the Panel; such acts or omissions are deemed to be deliberate unless the applicant can clearly demonstrate otherwise.[1915]

(f) When conducting reference checks, NT Police staff now ask a question of referees about any conflicts of interest.

1681. Finally, I note that the affidavit of former Deputy Commissioner Smalpage referred to a new Recruitment, Retention, Retirement General Order which was anticipated to be promulgated by the end of March 2023.[1916] Finalisation of this Order has been delayed, pending concluding drug and alcohol testing

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1911 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at annexure MS-24; Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [390].

1912 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at annexure MS-24.

1913 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at annexure MS-24.

1914 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at annexure MS-24.

1915 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at annexure MS-24

1916 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [399].

reform. I again express my disappointment that this reform has not yet been finalised.

Risk Assessment

1682. Risk assessments form part of the Sergeant Development Course.[1917]

1683. There are new sections on risk assessments in the General Order Operational Safety and Use of Force.[1918] Members are reminded that risk assessments are an integral part of maintaining operational safety and minimising the use of force, and that risk assessments are constant.[1919] The General Order sets out the six steps to be considered in the risk assessment process (aim, option, risks, selected option, risk controls, evaluate).[1920] It reminds members to think carefully about intended actions when about to become involved in a situation which may necessitate a confrontation, and that risk assessment is about objective evaluation, the seeking of information and the use of sound tactics, not about emotional reaction.[1921]

Territory Duty Superintendent

1684. The NT Police submitted that "if circumstances of 6 and 9 November 2019 were to be repeated, namely, if another 'axe incident' were to occur in a remote community, and fatigued members in that community required additional support to effect an arrest and manage other challenges such as an influx of people into the community for a funeral, or the proposed withdrawal

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1917 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [149].

1918 General Order Operational Safety and Use of Force, promulgated 14 September 2023 [17-35] at 15-16 and Appendix A.

1919 General Order Operational Safety and Use of Force, promulgated 14 September 2023 [17-35] at 15.

1920 General Order Operational Safety and Use of Force, promulgated 14 September 2023 [17-35] at 15-16.

1921 General Order Operational Safety and Use of Force, promulgated 14 September 2023 [17-35] at page 16.

of health staff, the current resources, particularly the Territory Duty Superintendent **(TDS**), would enable it to provide a better response".[1922]

1685. The NT Police submitted that it is that responsibility of the TDS to oversee all serious or significant incidents occurring in the Northern Territory outside business hours, providing a higher level of risk management and decision-making as required.[1923] The TDS is a dedicated permanent role, performed by a member 24 hours per day, seven days per week. It is supported in real time by the Territory Intelligence Section.[1924] There are five members in the role of TDS; a dedicated TDS email address ensures they all receive TDS emails, and each TDS commences and concludes their shift by handing over to the member taking over or relieving them.[1925] The TDS approves and reviews risk-assessments after hours.[1926] The TDS assesses the level of risk associated with a situation, directs a response strategy to reduce the level of risk, and actively monitors the application of their instructions.[1927]

1686. The NT Police submitted that, in event of another "axe incident" in a remote community, the station sergeant would be expected to advise the TDS.[1928] The TDS would notify the executive of the incident, consult with the remote sergeant, conduct a risk assessment and assist the sergeant to determine the most appropriate response.[1929] Depending on the risk posed by the need to apprehend a person, the TDS would liaise as required with the TRG to

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1922 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [271].

1923 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [275].

1924 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [189]-[193].

1925 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [276].

1926 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [339].

1927 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [339].

1928 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [277].

1929 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [277].

determine whether it would be appropriate for the TRG to assist.[1930] The TRG would not necessarily be required to be deployed, in either its general support or high risk capacity,[1931] but the risks of the particular situation and the stages at which they would be likely to manifest would be identified, and strategies to reduce the risk of harm to the offender, the public and police would be put in place.[1932]

1687. The NT Police submitted that, although member fatigue would be less likely to arise now compared with 2019,[1933] in the event of fatigue, the relevant sergeant would contact the TDS directly, instead of emailing JESCC as Sergeant Frost did.[1934] The TDS is in a position to, and has the responsibility to, monitor the fatigue levels of the members involved.[1935] The TDS would also have greater oversight over the challenges being experienced by the remote station over the relevant time period.[1936] It would be the TDS, as opposed to a fatigued Sergeant Frost and an off-duty Superintendent Nobbs, who would undertake the bulk of the work and planning.[1937]

1688. The NT Police submitted that, if health staff expressed an intention to leave a community, it is expected that the TDS would also be notified; the TDS would notify the executive, and NT Health would be contacted.[1938] Any proposed withdrawal by health staff would be managed pursuant to the Remote

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1930 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [277].

1931 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [320.

1932 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [319].

1933 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [277]-[278].

1934 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [278].

1935 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [277].

1936 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [278].

1937 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [278].

1938 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [279].

Worker Policy and Remote Worker Safety Plan; these allow for a more considered response and better and coordinated planning by police and health staff, reducing any risks to the community.[1939]

Use of force policy

1689. The Officer in Charge of the Operational Safety Section conducted a review of all policies and procedures to ensure they were contemporary and provided a sound foundation for preventing and responding to violent confrontations.[1940] The new General Order Operational Safety and Use of Force was drafted in response to this review.

1690. On 14 September 2023, the NT Police promulgated the new General Order Operational Safety and Use of Force.[1941] It clarifies previous policies and instructions and combines them in one document.[1942] Its development was the subject of extensive consultation across the NT Police as well as with the NTPA and the Ombudsman's Office.[1943]

1691. The new General Order is more detailed than the previous General Order and relevant Instruction.[1944] The NT Police noted that the Tactical Options Model has been updated to include the words "de-escalate" in the centre of the wheel:

1939 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [279].

1940 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [242].

1941 Affidavit of Deputy Commissioner Murray Smalpage dated 13 September 2023 [7-120C] at [54]. See also General Order Operational Safety and Use of Force, promulgated 14 September 2023 [17-35].

1942 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [243].

1943 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [119].

1944 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [120].

Former Tactical Options Model (Statement of Andrew Barram, 13 March 2023, [28], Folio 10-4):

Current Tactical Options Model (New Operational Safety and Use of Force General Order, page 14, Folio 17-35):

Use of force reviews and audits

1692. On 31 August 2022, a broadcast was disseminated to all members, reiterating the requirement for supervisors to review BWV and other relevant materials when assessing the use of force, and the requirement to detail the material

that was reviewed and whether the narrative matches the BWV and other material reviewed.[1945]

1693. Templates have been created to assist members, supervisors and officers in charge to discharge their use of force reporting responsibilities: a guide now exists to assist members to complete a Use of Force report and a dot-point guide has been created for those undertaking a use of force review.[1946]

1694. The use of force audit process has now been amended to require that each use of force is audited by a Senior Sergeant after being assessed by a supervisor.[1947] This is set out in the new General Order Operational Safety and Use of Force,[1948] although this process was in place well prior to the promulgation of the order on 14 September 2023.[1949]

1695. Pursuant to the new General Order, supervisors who were substantially involved in the relevant use of force incident must allocate their assessment to an independent reviewer;[1950] they should not assess their own use of force.[1951]

1696. The NT Police submitted that, since August 2022, the NT Police has utilised a new process for Use of Force reviews, whereby a member's use of force is not only reviewed by their supervisor, but by an independent reviewer with sufficient experience.[1952] Senior Constable Hawkings has performed this role,

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1945 Affidavit of Assistant Commissioner Bruce Porter APM dated 2 September 2022 [7-111C] at [69] and annexure BP-12.

1946 Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at [120].

1947 Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at [119].

1948 General Order Operational Safety and Use of Force, promulgated 14 September 2023 [17-35] at 19-20.

1949 Inquest evidence of Sergeant Evan Kelly on 21 October 2022 at 2285-2286, 2274.

1950 General Order Operational Safety and Use of Force, promulgated 14 September 2023 [17-35] at 19. Compare with former General Order at [17-2] and Instruction at [17-3].

1951 See Inquest evidence of Sergeant Evan Kelly on 21 October 2022 at 2276-2277.

1952 Affidavit of Assistant Commissioner Bruce Porter APM dated 13 July 2022 [7-111B] at [127], Affidavit of Assistant Commissioner Bruce Porter APM dated 2 September 2022 [7-111C] at [70]- [71], Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at [122].

as set out in the submissions filed on his behalf.[1953] If this process identifies any excessive use of force or failures by supervisors to discharge their duties with respect to the assessment and reporting of the use of force, the SME makes a report to the PSC.[1954] The NT Police Risk Management and Internal Audit division (**RMIA**) then conducts broader analyses of the use of force to ensure any trends or matters of concern are identified.[1955] This new process has resulted in referrals to PSC for investigation.[1956] While return to work SME reviews have at times been delayed due to staffing issues, and RMIA use of force trending analyses ceased for a period due to the implementation of new data system SerPro, this new process remains in place.

Use of Force Training

1697. A new use of force training package is now delivered.[1957] The NT Police submitted that this package emphasises effective communication, conflict resolution skills, and de-escalation.[1958] It submits that there is now a greater focus on the factors to be incorporated in decision-making in relation to the use of force, including its risks, and the available options, as well as upon situational awareness.[1959]

1698. Recruits are also now taught to use a specific decision-making model in deciding whether and how to use force.[1960] They receive "scenario" or "reality-

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1953 Closing written submissions of Senior Constable Anthony Hawkings and Senior Constable Adam Eberl dated 8 November 2024 at [16]. It was initially intended that this role be fulfilled by an expert based at the College, but reviewers are no longer confined to that physical location.

1954 Affidavit of Assistant Commissioner Bruce Porter APM dated 13 July 2022 [7-111B] at [132].

1955 Affidavit of Assistant Commissioner Bruce Porter APM dated 13 July 2022 [7-111B] at [128],[230].

1956 Affidavit of Assistant Commissioner Bruce Porter APM dated 9 February 2023 [7-111D] at [124]-[125].

1957 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [277].

1958 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [277].

1959 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [434].

1960 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [250]-[251].

based training" as part of their use of force training, which includes stress exposure training to aid in improving their decision-making.[1961] Recruits receive an additional day of theory training in decision-making, situational awareness, and the role of cognitive bias in a use of force context.[1962] They also receive seven days of scenario training and assessment (previously they received one day), with recruits completing up to six training scenarios and five assessment scenarios.[1963]

1699. There have also been changes to the process by which recruits debrief following their use of force assessment scenarios.[1964] Rather than instructors simply advising recruits how they performed, a range of debriefing techniques are used and recruits examine their own decision-making and performance and ways in which they could improve.[1965]

1700. A formal de-escalation package has not been implemented.[1966] However, the concept of de-escalation has been embedded in all training and policy. As set out elsewhere in these submissions, de-escalation is now emphasised throughout training and ongoing education. Members are taught to take active measures to reduce risk and the intensity of a situation to reduce the immediacy of any threat, and to avoid confrontations.[1967]

1701. On 7 June 2022, an agency-wide broadcast was issued to address any misconception amongst operational members that "knife = gun" in all

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1961 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [252], [258].

1962 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [435].

1963 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [435].

1964 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [435].

1965 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [436].

1966 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [438].

1967 New General Order Operational Safety and Use of Force, promulgated 14 September 2023 [17-35].

circumstances when members are faced with a physical threat from an edged weapon to themselves or others during their operational duties.[1968]

1702. On 1 July 2022, a new online firearms assessment, designed to complement existing face-to-face training, became mandatory for in-service NT Police members.[1969] Members must undertake pre-reading of firearms and safety principles information and achieve a pass mark of 100 per cent, prior to undertaking the physical firearms requalification exercise.[1970]

1703. Since November 2020, recruits have also received specific training in the use of the Patrol Rifle via the Police Patrol Rifle User Course.[1971]

Wellbeing

1704. The NT Police advised that it is continuing efforts to reinvigorate its peer support program, which will now be launched in 2025.[1972]

1705. A chaplain and social worker are now permanently based in Alice Springs to provide support to members in the Southern Region.[1973]

1706. Between November 2021 and March 2022, the NTPFES conducted an independent review of its support and wellbeing service.[1974] Its wellbeing

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1968 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [270] and annexure MS-28.

1969 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [244].

1970 Affidavit of Deputy Commissioner Murray Smalpage dated 12 July 2022 [7-120A] at [244].

1971 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [193].

1972 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [241].

1973 Affidavit of Deputy Commissioner Murray Smalpage dated 10 February 2023 [7-120BB] at [238].

1974 Affidavit of Deputy Commissioner Murray Smalpage dated 13 September 2023 [7-120C] at [43].

strategy was approved by government in May 2023 and, I am informed, is to be fully implemented by 2027.[1975]

1707. The NT Police has also implemented Mental Health WellChecks. I am informed that all frontline staff, support staff exposed to trauma, and all incoming recruits are able to have periodic discussions with NT Police clinicians about their exposure to psychological hazards during the course of their duties.[1976] As at September 2023, more than 200 WellChecks had been conducted.[1977] That figure is now over 450; since March 2024, clinicians have attended police stations in Greater Darwin monthly to provide better support to members, including WellChecks and referrals to external services. It is the experience of the NT Police that members have increasingly taken the opportunity to seek support.

NT Health

1708. Save to the extent that there was argument about the recommendations I should make, there was less controversy regarding the steps NT Health has taken to address issues arising from the Inquest.

Changes to withdrawal policy

1709. In 2020, CAHS reviewed its Temporary Withdrawal Guideline. An updated policy was approved on 22 July 2022 and remains in force.[1978] It is

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1975 Affidavit of Deputy Commissioner Murray Smalpage dated 13 September 2023 [7-120C] at [44].

1976 Affidavit of Deputy Commissioner Murray Smalpage dated 13 September 2023 [7-120C] at [46].

1977 Affidavit of Deputy Commissioner Murray Smalpage dated 13 September 2023 [7-120C] at [46].

1978 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 10 [66]-[67], 63 (Annexure DR-6).

accompanied by a Temporary Reduction of Health Service PHC Remote CAHS Guideline.[1979]

1710. On 31 August 2022, NT Health endorsed a Root Cause Analysis (**RCA**) in relation to Kumanjayi's death.[1980] The RCA recommended that NT Health implement a whole-of government policy framework to, among other things, guide the withdrawal of remote health services, including decision making tools and checklists.[1981]

1711. The Guidelines have since been further updated[1982] to incorporate the whole-of government Remote Worker Safety Policy, prepared by the Department of Chief Minister and Cabinet.[1983] That policy, together with the Central Australian Remote Worker Safety Plan[1984] developed under it, assist staff in their assessment of whether a temporary withdrawal or reduction in services is necessary.[1985]

1712. The NT Health submitted that the key existing changes to the withdrawal guidelines relevant to the issues raised in this Inquest, were:

(a) the introduction of a decision-making tool; and

(b) the introduction of a notification checklist.

1713. I will say something about the changes to each, in turn.

1979 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 11 [68]-[71], 71 (Annexure DR-7).

1980 Enclosed with Letter from Naomi Heinrich to Maria Walz dated 31 August 2022 [9-5C]

1981 Letter from Naomi Heinrich to Maria Walz dated 31 August 2022 [9-5C] at 13.

1982 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 14 [85]; Inquest evidence of Helen Gill on 14 October 2022 at 1671.

1983 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 13 [76]-[77], 99 (Annexure DR-9).

1984 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 14 [82], 110 (Annexure DR-10).

1985 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 13 [76]-[77].

Decision-making tool

1714. The Temporary Withdrawal Guideline now includes a decision-making tool, designed to guide decision-makers and ensure they seek and evaluate all relevant information in the time available, including consulting community leaders and Indigenous staff.

1715. Decisions to withdraw staff should, wherever possible, be made after consultation with the relevant community[1986] and specifically with NT Health's local Aboriginal staff.[1987]

1716. Previously, NT Health's withdrawal policies did not emphasise consultation with community members.[1988] The updated policy emphasises the need for such consultation wherever possible. The policy requires that "Where possible discussions should involve the community leadership as much as possible". The decision-making tool prompts decision-makers to ensure such consultation has taken place. The Department submitted, and I accept, that this will go at least some way towards promoting proactive consultation in relation to future withdrawals.[1989]

1717. As the Department submitted, this change reflects the lesson learned that local Aboriginal staff and communities should, wherever possible, be consulted prior to any decision to withdraw staff.[1990]

Notifications checklist

1718. The Withdrawal Policy now includes a Notification Checklist. The stated purpose of this Checklist is to strengthen the communication of withdrawals with relevant stakeholders.[1991] As the Department submitted, when a

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1986 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 11 [70].
1987 Inquest evidence of Helen Gill on 14 October 2022 at 1671.
1988 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 19 [114].
1989 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 19 [114].
1990 Inquest evidence of Helen Gill on 14 October 2022 at 1671.
1991 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 10–11 [67(a)].

withdrawal decision is made, it is critical that the community and key stakeholders are adequately notified of the decision, insofar as the time and circumstances allow.

1719. The Checklist guides this notification process by setting out the relevant stakeholders who should be notified. The Checklist is designed to be completed by the PHCC Manager, who records the notifications that have been completed, and then attached to the RiskMan Incident Report for the relevant incident.[1992]

1720. The relevant stakeholders included in the checklist are the PHCC staff, NT Health personnel, the community, and other services and agencies.[1993] Notification of these stakeholders is a minimum requirement.[1994]

1721. Notification of the community is achieved through notifying the Shire Administrator, a chairperson, a council member, or a community elder.[1995] Notification is by telephone with a follow-up fax or email, both clearly providing alternate service arrangements and complying with Health Centre Phones and eFaxes requirements.[1996] Further, a notice of closure is to be placed on the doors of the health centre and the community notice boards. The notices must include information regarding alternate service arrangements.

1722. Notification of all PHCC staff is by telephone or, if safe, in person.[1997]

1723. The Department submitted, and I accept, that the Checklist reflects lessons learned[1998] and will help ensure proactive notification of community and stakeholders in relation to any future withdrawals.[1999]

1992 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 10–11 [67(a)].
1993 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 67 (Annexure DR-6).
1994 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 67 (Annexure DR-6).
1995 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 67 (Annexure DR-6).
1996 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 61 and 67 (Annexure DR-6).
1997 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 67 (Annexure DR-6).
1998 Inquest evidence of Helen Gill on 14 October 2022 at 1671.
1999 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 19 [114].

Remote Worker Safety Policy and Central Australian Remote Worker Safety Plan

1724. The Department submitted that the Remote Worker Safety Policy provides for a whole-of-government approach to events in community that present a serious risk to staff safety, which is coordinated through the relevant regional coordination committee (**RCC**).[2000] This Policy is implemented in Central Australia through the Central Australian Remote Worker Safety Plan.[2001]

1725. The Central Australia Regional Coordination Committee (**CaRCC**) is the relevant Regional Coordination Committee for the Central Australian Region. It is chaired by the Regional Executive Director, Department of the Chief Minister and comprises senior government representatives from the Department of the Chief Minister, NT Health, and NT Police, Fire and Emergency Services, amongst others.[2002]

1726. The Remote Worker Safety Policy provides that the Northern Territory Government supports staff to ensure their safety, while acknowledging it is imperative that core and statutory services maintain a community presence and continue to be effectively delivered.

1727. The principles underpinning the Remote Worker Safety Policy are as follows:

(a) empowering local decision making;

(b) establishing a process of open communication and consultation across agencies;

(c) responding earlier to events affecting, or likely to affect, community and the delivery of services in the community;

2000 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 99–109 (Annexure DR-9).

2001 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 110–113 (Annexure DR-10).

2002 Affidavit of Naomi Heinrich dated 22 August 2022 [9-5B] at 192–201 (Annexure NH-10).

(d) ensuring that available and appropriate government resources are prioritised and deployed; and

(e) maintaining safe and liveable communities.

1728. The policy provides that:

> "Withdrawing staff and thus a service from community should only be done in the most extreme cases of unacceptable risk and after communication and consultation with the Regional Coordination Committee. The unnecessary or unwarranted withdrawal of services may have a magnified impact on a community if that withdrawal is made in haste without consideration for the broader community safety outcomes in mind. Instead, a surge capacity model should be implemented to guarantee ongoing service delivery throughout an event. This may be on a time-limited or ongoing basis. When supported by sufficient evidence, NT Police, Fire and Emergency Services have the capacity to deliver an immediate surge or staged response capability to any community in the Northern Territory to enhance community safety and support local services."

1729. The procedure for the management of an event posing risk to the health and safety of staff is set out in section 3.1 of the Policy. Amongst other things, it includes urgently convening the relevant agencies in the relevant Regional Coordination Committee and conducting an assessment of the risk in accordance with section 3.2 of the policy.

1730. The relevant questions in relation to a potential withdrawal of staff include the following:

(a) Is the perceived risk to an individual or all staff?

(b) Is the level of risk high enough to warrant immediate removal of the staff member or the service? Why?

(c) Which other staff/agencies need to be alerted to the risk?

(d) Is NT Police able to provide a stronger security presence to alleviate the risk?

(e) Is there appropriate housing or office accommodation available to mitigate the risk until a full assessment of risk is undertaken?

(f) In the event of staff or a service being removed, is there surge team capability to run an interim service until a full risk assessment is undertaken?

(g) How long does a surge team need to be maintained for?

(h) What resources have been identified to manage the relationship with community to return to regular services?

(i) and any other relevant questions to enable exchange of information to develop and support a mutually beneficial agency response for staff and community.

1731. A withdrawal should only be considered if a surge response enabling the continued safe provision of services cannot be implemented.

1732. NT Health is presently updating its Temporary Withdrawal Guideline to incorporate the Remote Worker Safety Policy.[2003]

Use of security guards

1733. Finally, in addition to policy changes, since December 2020, NT Health has used security guards to increase security and enable the continuation of health services in Central Australia.[2004] This has enabled the continuation of health services where it would otherwise not have been safe to do so.[2005]

2003 Affidavit of David Reeve dated 28 September 2022 [9-9A] at 14 [85].

2004 Inquest evidence of David Reeve on 12 October 2022 at 1465.

2005 Inquest evidence of David Reeve on 12 October 2022 at 1465–1466.

Recommendations

1734. Having regard to the reforms already introduced, I make the following recommendations, pursuant to my power in section 26(2) of the Act:

To the Northern Territory Government

To the Minister for Aboriginal Affairs and Community Development; Attorney-General; Minister for Education and Training; Minister for Children and Families; Minister for Youth and Disability; and/or other relevant Minister

1. The Northern Territory Government convene a meeting with local Council and service providers to provide and implement the expansion of night patrol in Yuendumu, with a focus on training local employees to deter youth crime and link young persons/offenders into services, and diversion programs.

2. The Northern Territory Government review the availability of youth services in Yuendumu (including the closure of WYDAC), and develop and implement a plan to support sustainable youth services with good governance, to be designed in consultation with community representatives.

3. As part of a review into youth services in Yuendumu, in consultation with the community, the Northern Territory Government plan for and implement services targeting engagement with: young people who have engaged in offending; young people with disability, and young people who have dropped out of school, with a view to reducing offending behaviour.

4. The Northern Territory Government train and adequately resource culturally skilled mediators, such as the Southern Tanami Kurdiji, to be available permanently, in Yuendumu. Those mediators should be

trained and remunerated to work in conflict resolution processes, including to assist to resolve conflicts caused by:

(a) crime suspected to be committed by youth and young adults;

(b) tensions between police and community members; and

(c) tensions between service providers (including police, school and clinic) and/or service providers and community.

5. In consultation with the community of Yuendumu, the Northern Territory Government provide for Aboriginal-led, on-country programs, rehabilitation and diversion services for young people with substance abuse issues who come into contact with, or are at risk of coming into contact with, the criminal legal system (for example, the Mirrilingki On-Country Drug and Alcohol Program).

6. The Northern Territory Government undertake a consultation with the community of Yuendumu to determine whether there is broad support for the Parumpurru proposed establishment of a single, elected, remunerated, leadership group in Yuendumu as a means of providing community control over the delivery of services.

7. If the establishment of the leadership group referred to above is sufficiently supported, then the Northern Territory Government should:

(a) implement the leadership group, including by providing governance training and support;

(b) consider specific requirements for good governance for such a group, such as at least two (2) independent board members from outside the community; and

(c) together with the elected leadership group, co-design the groups ‘terms of reference’.

8. The Northern Territory Government, together with the elected leadership group or (if one does not yet exist) community representatives, co-design a 10 year plan for youth and young adults in Yuendumu, including a mapping report for the resourcing required to achieve goals for reducing criminogenic factors affecting young people. The 10-year plan should set out goals and a timetable, as well as a mechanism for annual reporting on meeting objectives, and should include:

   (a) youth wellbeing and opportunities for youth engagement;

   (b) school retention and re-engagement of children not in attendance;

   (c) specific plans for reducing crime committed by youth and young adults;

   (d) sustainability of youth services;

   (e) culturally appropriate mediation services involving or relating to youth; and

   (f) strategies to reduce alcohol/cannabis consumption and supply.

9. The Northern Territory Government introduce amendments to the Police Administration Regulations, or elsewhere as required, to implement mandatory drug and alcohol testing of a police member after a critical incident similar to other jurisdictions in Australia.

10. The Northern Territory Government convene a committee of leaders from relevant funding and service providers, including Aboriginal Community Controlled Health Organisations, to develop a strategy for strengthening the provision of culturally competent and sustainable mental health services in the Central Australia Region, including Yuendumu, That strategy is to be made to be publicly

available, its implementation is to be regularly evaluated and it is to include plans for:

(a) specialist services for young people;

(b) recruitment for services on country; and

(c) pathways for Aboriginal employees to be engaged, trained and adequately remunerated as mental health specialists.

Northern Territory Police Force

11. The Northern Territory Police Force is to engage with the Yuendumu elected leadership group or (if one does not yet exist) community representatives such as any Law and Justice Group, the Parumpurru Committee and the Southern Tanami Kurdiji, to develop a Mutual Respect Agreement with Yuendumu (and with other consenting remote communities) including identifying the circumstances when it would be appropriate for police not to carry firearms in community, and in relation to the deployment of the Dog Operations Unit.

12. The Northern Territory Police Force is to take all steps necessary to ensure that, except for the lawful destruction of an animal, general duty members do not openly carry AR-15 semi-automatic assault rifles or other similar weapons except with documented prior approval by a Senior Sergeant (or above) or in an emergency.

13. The Northern Territory Police Force is to ensure that there are clear policies and procedures in place for specialist units addressing circumstances when the open carry of AR-15 semi-automatic rifles or other similar weapons is (or is not) permitted, and a process for how that is to be operationally determined and documented.

14. The Northern Territory Police Force is to train its members, and incorporate into its policy and procedures, that where culturally

appropriate and operationally feasible, it is best practice for a frontline NTPF member to consult or liaise with an ALO or ACPO, including as to the desirability of an ACPO's presence, in any planned interaction or arrest of an Aboriginal person. This consultation should include identification of the Aboriginal person's known vulnerabilities (if any), and planning focused on a trauma-informed/de-escalation/minimisation of force approaches.

15. The Northern Territory Police Force is to incorporate into (scenario) training of new NTPF recruits, the circumstances of Kumanjayi's death as an example of the danger to officers and the community when there is insufficient arrest planning, and as an example of "officer induced jeopardy".

16. The Northern Territory Police Force set up a working group with representatives from the main relevant agencies (including a senior member of the Cultural Reform Command (CRC), a senior member of the PSC, NAAJA, NT Legal Aid, the Ombudsman, and Anti-Discrimination Commission) to develop and implement improved procedures for addressing complaints made by Aboriginal people about police use of force and/or allegations of racism, including time frames and communication protocols.

17. The Northern Territory Police Force amend the process for evaluation of complaints to require the PSC to liaise with or consult a Cultural Reform Command (CRC) member of the rank of superintendent or above before finalising the investigation of a complaint. The General Order 'Complaints Against Police' should be amended to give effect to this change.

18. The Northern Territory Police Force take measurable action to ensure that PSC investigations are determined in a prompt and efficient manner, and to identify and implement changes that ensure the

mental health and wellbeing of a police member under investigation is supported. This should include:

(a) developing appropriate time frames for the completion of an investigation that are clearly set out in relevant policies and procedures;

(b) transparent annual reporting on whether time frames are being achieved; and

(c) embracing changes to the disciplinary process to implement the stated commitments to a managerial approach (as recommended in the Galliott report commissioned by NT Police).[2006]

19. The Northern Territory Police Force, ensure that the "Anti-Racism Strategy" that is being developed by the Cultural Reform Command (CRC), is published on the Northern Territory Police website and includes:

(a) a consideration of all policies, procedures, training and recruitment; co-design and input from the Aboriginal Community and legal service sector; and a stated aim of ensuring the safety of Aboriginal people;

(b) the stated NTPF commitment to reaching a 30 per cent Aboriginal proportion in the workforce;

(c) the stated NT Police commitment to a significantly increased level of Aboriginal leadership; and

(d) ongoing six monthly publication of reports tracking progress in recruiting, retaining and promoting appropriately qualified and

experienced Aboriginal staff in different roles and ranks across the force.

20. The Northern Territory Police Force is to take steps to move the Cultural Reform Command (CRC) to a command structure of equivalence to the Domestic Violence and Youth Command, namely, led by an Assistant Commissioner with the power to give members directions, so as to ensure that NT Police remains committed to the Anti-Racism Strategy and training for future generations and to ensure that Anti-Racism Strategy and training continues to receive the priority it demands.

21. Recognising that the Northern Territory Police Force has recently introduced a new training session called the "Policing Mindset" for recruits (encouraging recruits to consider how their past professional skills and experiences might subconsciously affect their policing decisions, and the differences between using force in NT Police compared with other police forces or agencies such as the ADF) this is to be evaluated at the end of a 12 month period, and if positive, embedded as training for recruits. If the evaluation identifies that the training is not effective, alternative training is to be implemented and evaluated.

22. Recognising that the Northern Territory Police Force training College is engaging an external provider to deliver a trauma informed program which includes intergenerational trauma in a youth context, this training program is to be evaluated within 12 months of its introduction, and if positive, the program is to be embedded in recruit training and made available to current serving officers.

23. The Northern Territory Police Force is to develop and implement induction packages for all police locations. This process is to be facilitated by the Cultural Reform Command (CRC) in consultation with local members, ACPOs and ALOs. Induction packages should

contain information about cultural considerations, including practices, obligations, language, familial relationships, and significant contact points in the community. Such packages should be subject to annual review by CRC, with the assistance of the community advisory group or (if it does not exist) elders in community.

24. The Northern Territory Police Force is to ensure that its General Order concerning a death in custody outlines clear investigative structures and procedures for when criminal and coronial investigations run side by side.

25. The Northern Territory Police Force should develop a debrief and welfare policy which:

    (a) makes it clear that police witnesses to deaths in custody are to be separated from other witnesses (including police witnesses) as soon as practicable after an incident until their statements are obtained;

    (b) provides for a consistently followed debrief process for death in custody incidents, including where there is a possibility that a criminal investigation will precede a coronial one for example, private and/or group debriefs (whichever is operationally appropriate) led by an expert facilitator, such as a psychologist;.

    (c) includes member witnesses whenever investigative parameters permit;

    (d) facilitates operational learning;

    (e) provides for sufficient professional and peer welfare supports to be made available to all police witnesses, preferably immediately after an incident or as soon as practicable within 24 hours of an incident; and

(f) ensures confidentiality.

26. Recognising that the Northern Territory Police Force has recently introduced a new "Early Intervention Policy" to identify members whose performance, wellbeing or behaviour is problematic or raises "red flags", and which provides for "early intervention conversations" and other assistance measures; the Northern Territory Police Force is to thoroughly evaluate the effectiveness of the policy after 12 months and take all steps necessary to strengthen and resource the full implementation of the policy if weaknesses are identified.

27. With respect to the new "Early Intervention Policy", the Northern Territory Police Force is to ensure that all members identified for intervention are, in the initial intervention, offered professional and/or peer welfare support, appropriate to the members situation.

28. The Northern Territory Police Force is to establish a policy which aims to ensure that all members achieve a minimum of four months continuous remote posting in their first three years of employment in NT Police. The policy should identify the kinds of exceptional circumstances that may preclude a member from completing such a posting, for example, contractual requirements, health conditions, or specific family obligations that cannot otherwise be accommodated

NT HEALTH

29. NT Health take all steps necessary to ensure its primary health care service providers (remote and major) screen all children under 5 years of age, who are accessing a NT primary health care service, using the ASQ (Ages and Stages Questionnaire) development assessment tool or the culturally adapted ASQ-Trak, or an appropriate equivalent developmental screening tool. With respect to that screening, NT Health should ensure that:

(a) the screening of each child is to occur as often as is recommended by the screening tool;

(b) any child identified with results which may indicate FASD, is to be referred and followed up for an early childhood intervention plan under the NDIS and a FASD assessment;

(c) both screening and referrals are to be included in the services Key Performance Indicators (KPIs);

(d) every effort is made to work with Aboriginal Community Controlled Health Organisations, Territory Families, the Department of Education, early childhood service providers, and any community leadership group, to promote screening and referrals of all children.

30. NT Health strengthen its implementation of the Remote Engagement and Coordination Strategy and work to strengthen Local Health Advisory Groups (**LHAG**), with additional priority in Yuendumu, to ensure that:

(a) there are set periodic meetings between remote Primary Health Care Centres and the LHAG for which attending LHAG members are remunerated;

(b) there are centre specific strategies in place to improve engagement between non-Aboriginal staff and community members, and between non-Aboriginal staff and Aboriginal staff;

(c) the LHAG is consulted on location specific cross-cultural orientation;

(d) all new staff (Aboriginal and non-Aboriginal) have participated in a cross-cultural orientation which includes information specific to their place of employment;

(e) there are centre specific plans in place for the inclusion of cultural consultation and engagement when decisions are being made about how to resolve challenges/problems that arise in remote communities (including, for example, unlawful entry into houses); and

(f) there is consultation with the LHAG on centre/location specific plans concerning any withdrawal of NT Health services, whether temporary or permanent.

31. In consultation with its Northern Territory Government counterparts, and other community stakeholders NT Health revise its Temporary Withdrawal Guideline to ensure withdrawal is a last resort and is to take place only after consultation with Aboriginal staff and community stakeholders. Once formulated, NT Health is to:

(a) publish the guidelines on the NT Health website; and

(b) implement a policy to promote awareness of the Temporary Withdrawal Guideline, particularly amongst leaders and elders in remote communities.

32. NT Health and its remote Primary Health Care Centres actively participate in, promote, and, where necessary, initiate and develop, additional forums for collaboration with remote community groups, such as the local community council, schools, police, any community leadership group, and non-government agencies to share information and address local issues, including staff safety. To that end, NT Health should:

(a) ensure that the conveners of forums such as the Regional Coordination Committee and the Community Safety Action Plan Meetings have up to date contact details for the relevant NT Health remote Primary Health Care Centre;

(b) ensure that the NT Health centre is on the notification list for meetings; and

(c) ensure that NT Health remote Primary Health Care Centres maintain their own records of attendance at meetings, together with the agenda and/or minutes.

33. NT Health should strengthen recruitment, professional development and support of its Aboriginal staff, particularly in remote Primary Health Care Centres, including by:

(a) increasing and supporting access to cadetships;

(b) increasing and supporting access to the basic skills Aboriginal Health Worker training; and

(c) strengthening pathways for Aboriginal health workers to become Aboriginal Health Practitioners.

FORMAL FINDINGS

1735. The formal findings that I make are:

(a) The identity of the deceased is Charles Arnold Walker, born on 13 October 2000 at Alice Springs Hospital, in the Northern Territory.

(b) The time of death was 8:36pm on 9 November 2019. The place of death was Yuendumu Police Station, in the Northern Territory.

(c) The cause of death was gunshot injury to the chest and abdomen.[2007]

(d) The particulars required to register the death:

i. The deceased was Charles Arnold Walker.

ii. The deceased was of Aboriginal descent.

iii. The deceased was unemployed.

iv. The death was reported to the Coroner by Police.

v. The cause of death was confirmed by Forensic Pathologist Dr Marianne Tiemensma.

vi. The deceased's mother was Selena Nambajinba Lee Lane and his father was Frank Walker.

[2007] Post mortem report of Dr Marianne Tiemensma dated 21 January 2020 [1-15] at 2.

ANNEXURE A THE YUENDUMU SCHOOL DOORS

EXCERPTS FROM WARLUKURLANGU ARTISTS "YUENDUMU DOORS – KURUWARRI"[2008]

Yukanjakurlangu – The doors[2009]

Ngayilparnalu yirrarnu yangka kurdu-kurduku yilpalu milya-pungkarla jukurrpa. Ngulakulkurnalu yirrarnu kuurlurla. Yangka jukurrpa. Kulakalu milya-pinyi, kajikalu kardiyapiya nyinakujaku. Nyampuju karna yirri-pura. Junganyayirni. Yijardu. Kurdu-kurduku karnalujana yirri-purami, kurdu-kurdurlu yungulu milya-pinyilki jukurrpa. Kuruwarrinyayirni yikalu milya-pinyi ngalipanyangu yangka yungulu milya-pinyi–jukurrpaju. Ngulajangkarnalu nyampuju yirrarnu.

We painted these Dreamings on the school doors because the children should learn about our Law. The children do not know them and they might become like white people, which we don't want to happen. We are relating these true stories of the Dreamtime. We show them to the children and explain them so that the children will know them. We want our children to learn about and know our Law, our Dreamings. That is why we painted these Dreamtime stories.

TOLD BY: **PADDY JAPALJARRI STEWART**

2008 Warlukurlangu Artists, Kuruwarri Yuendumu Doors (Australian Institute of Aboriginal Studies, 1987). Translations by Tess Napaljarri Ross with Nickie Piper.

I include the Warlpiri text and English translations, as well as a "key" to identify some of the features of the painting; however, I am mindful of the challenges of translating from Warlpiri to English, and note that that the translations and key "provide only an imperfect, infinitesimal glimpse into the complexities of Warlpiri religion and society": Warlukurlangu Artists, Kuruwarri Yuendumu Doors (Australian Institute of Aboriginal Studies, 1987) at 2.

2009 Warlukurlangu Artists, Kuruwarri Yuendumu Doors (Australian Institute of Aboriginal Studies, 1987) at 3.

Door 1 Yaparranjikirli – Young Boys – painted by Larry Jungarrayi Spencer[2010]

Nyampu Kirrirdi. Kirrirdi yali. Nyampu kalu watiya karrimi. Nyampunya Kirrirdiji–tuwangka. Kirrirdi yapakurlangu. Nyarrparaku ngurraraju nyampuku? Jungarrayiki. Nyampurlalu yanu, nyampu karlumparralu yanu. Mulju wita ka karri karlarra. Nyinajalpalu ngurrangka yalumpurlajuku– nyanungu Yaparranji. Malulu. Yawirrilypiri yirdiji. Yananyarralu, yananyarralu Kirrirdiji. Kirrirdirlalpalu lukartardi panturnu. Manyu-karrijalpalu yalumpurla–lukartardilpalu panturnu. Panturnulu, lukartardi yangka wirinyayirni. Witawangu. Wirinyayirni. Kurlardalpalu manurnu wita-witarlu wurnininypardu. Wiri wajalpalu kanjayanu. Yawirrilypiri karna wangka. Kutungurluwangulpalu kangurnu, pinkangurlu. Yananyarralu, ngunajalu, ngunajalu. Panturnulu. Karrijalu. Manyu-karrijalu, manyu-karrijalu, manyu-karrijalu. Ngirntijala nyampuju. Ngirntinyayirnijala. Ngayilpanyanu jururnu. Nganimpanyangu walya nyampuju warlalja. Wapirrarlu yampija–wajawaja-manu nyuruwiyi–purlka ngajukupalangurlu. Warluwitawangurlu, Kaalymawanarlu. Purlka Warluwitawangujarrarlu. Kaalymawanarlu. Yampijalu walya. Warringiyinyanurlulurla yungu. Kajanyanurlulku kalu mardarni. Kuja nyanungu palka-jarrija kuruwarrirla. Yaparranjiji. Nyampu karla ngunami Jungarrayikilki. Yungurnalurla nganimparlu jinta walya yalumpuwardingkirlilki. Japaljarrikipalanguku. Jintangku kanyanu mardarni. Walya nyampujurnarla yungu. Nyampu karnangku ngarrirni jaarlparrarlu. Ngari karnangku ngarrirni. Nyampujulpanyanu ngirntijala jururnu. Pupu. Nyampurlalpanyanu jururnu. Nyampurlalpanyanu jururnurra. Jururnulpanyanu ngayirnijarrarlu–lukartardipinkiwanarlu. Walilpalu wankakurlu parnkanjinanu–nyampukurraju lukartardikirliji. Ngayilpalunyanu wangkajarra, ‘Ya! Yantirnili manyuku kuja. Manyu-karrimirlipa! Lukartardilkirlipa pantirni. Wankakurlu witapardu nyampuju. Kuja.’ Nyampu Kirrirdi. Karru. Yangka yarlu kujaka karrinjayani. Ngurra nyanungu. Jukurrpawarnunyayirnirna yirri-purami. Wapirrakurlangu, ngajukupalangukurlangu. Nyurruwiyirna wajawaja-manu. Nganimpa kajirnalu palimirra, ngulaju lawalku. Kuruwarri nyampukuju. Jukurrpaku. Jungarrayi karnarla nyinami jinta. Walya yalumpukuju. Ngulajangkalu yanurra wapurnungkukurra kujakalu karrimi,

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[2010] Warlukurlangu Artists, Kuruwarri Yuendumu Doors (Australian Institute of Aboriginal Studies, 1987) at 16-19.

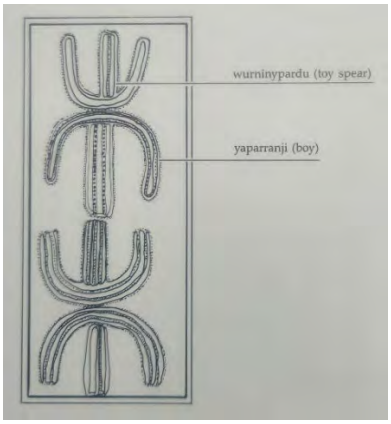
ngulangkalu panturnu lukartardiyijala. Panturnulu, panturnulu, panturnulu–yirdiyirla kakarrarni. Panturnulu. Ngulawarnulu pardija tarnngajuku. Tarnngalkulu yanu. Jurnkupukurra yinyakurra .Jurnkupu ngapa–mulju

TOLD BY: **LARRY JUNGARRAYI SPENCER**

This painting is about Kirrirdi, a creek on the south side of Yuendumu. There are trees from which young Dreamtime people chopped bark which they made into round discs used for spearing with toy spears. This place created by the Dreaming belongs to Jungarrayi. The natural water source is called Kirrirdi.

In the Dreamtime, there were young uninitiated Boys who travelled across the country to the west. There is a small soakage to the west of Kirrirdi, where those Boys were living. It is called Yawirrilypiri. They went to Kirrirdi where they played with big toy discs made from the bark of river gums and spears made from long grass. The Boys gathered their spears and carried them a long way. They walked and slept and walked and slept. They played at tossing the discs in the air and trying to spear them as they flew.

The land of this story and painting belongs to us. It is our own. Our fathers left it to us a long time ago. Their names were Warluwitawangu and Kaalymawana. They gave the land to their sons. That land which came from those Boys in the Dreamtime belongs to Jungarrayi – he alone holds it. This painting depicts the Boys playing with their toy spears on the open, treeless plain near the Kirrirdi waterhole. Finally, they went to Jurnkupu, which is now a soakage.



ANNEXURE B

A CONDENSED OUTLINE OF THE HISTORY OF YUENDUMU

1. The community of Yuendumu is approximately 300kms north west of Alice Springs (Mbantua) and lies on the south eastern edge of the Tanami desert. It takes approximately three hours to travel from Alice Springs to Yuendumu by car, on mostly sealed roads.

2. Yuendumu has a population that fluctuates between around 800 to approximately 1200 residents, and is occupied mostly by Warlpiri people, and a smaller number of Anmatyerre and Pintupi people.[2011] The community has two stores, a primary and secondary school, health clinic, Women and Children's Centre, safe house, community council, mediation centre, church, elderly people's home, police station, a night patrol service and an art centre – Warlukurlangu Arts. There is (or was) also a youth centre by the name of WYDAC (Warlpiri Youth Development Aboriginal Corporation), which was hugely popular and an important resource at different periods of its operation, but has experienced significant difficulties since Kumanjayi's death. It was not operating for large periods during the Inquest,[2012] and by the time the evidence closed, the future of WYDAC, and programs aimed at helping vulnerable youth like Kumanjayi, was extremely uncertain.

Early contact between Warlpiri and non Aboriginal settlers in the Central Desert and the protection era 1910-1937

3. Traditionally, Warlpiri people lived in the Tanami Desert, in an area extending roughly 500 kilometres to the north-east, about 250 kilometres to the north

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2011 Census data for remote Aboriginal settlements are unreliable, because of "high mobility and under-enumeration", Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at p 182, Chap 1, end note 14. The Territory Health Services surveys conducted in 1998 to 2000 found the following figures: In November 1998, of 818 persons living at Yuendumu, 745 were Indigenous, and 73 were non-Indigenous. In June 1999, of 721 persons living at Yuendumu, 640 were Indigenous, and 81 non-Indigenous. And in August 2000, of 901 persons living at Yuendumu, 795 were Indigenous and 106 were non-Indigenous.

2012 Closing written submissions of Counsel Assisting dated 22 October 2024 at [4].

and 200 kilometres to the south of Yuendumu, and bordered in the east by Anmatyerre country.[2013] The Warlpiri lived as hunter-gatherers, harvesting food across their lands and living according to their customary law.[2014] Walpiri customary law functioned as a "coherent and integrated suite of principles and practices that gave meaning and structured order to the world, establishing clear relationships and lines of authority between all members of the community, with the highest authority vested in older men and women who had acquired their status over decades" (a gerontocratic system).[2015]

4. The first contact between Aboriginal people in Central Australia and Europeans came in the late 1880s when small-scale gold mines were established in the Tanami, and a Wolfram (Tungsten) mine was set up at Mission Creek.[2016]

5. Between the 1920s and 1940s a large number of non Aboriginal people moved to Warlpiri country *en masse*, particularly gold prospectors and pastoralists. In 1926 William Braitling was granted a pastoral lease over a large area of Warlpiri land, which became known as the Mount Doreen Station. This land includes the Pikilyi water area, which is approximately thirty to forty square kilometres and has the only permanent water source in the huge Warlpiri estate. As well as providing this vital water supply for Warlpiri, and for plants and animals, this is an area of huge cultural and ceremonial significance. Warlpiri refer to this area as their "heartland".[2017]

6. After the lease was granted, Warlpiri were excluded from accessing the water source, and contemporaneous reports recorded "very brutal and dehumanising treatment of Warlpiri going on, on that station, that people are being forced to provide their labour in return for very meagre food supplies in conditions akin to slavery…[t]hey documented instances of physical assault, of Warlpiri

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2013 Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 17-18.

2014 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [12].

2015 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [36].

2016 Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 18.

2017 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4613-4614.

being tied up and flogged and they're being flogged for transgressing their forced exclusion from the springs."[2018] There were also "many…documented instances of venereal disease being found among the young Warlpiri women and girls, and reports of mounted stockmen, in effect, raiding Warlpiri camps and kidnapping girls and young women and taking them off."[2019]

7. Warlpiri people were being forced to work on the station for food and at the same time, by being excluded from the Pikilyi water area they were being "excluded from their own ways of subsisting," by being denied access to this vital water source, and the vegetation and hunting grounds that the water source supported.[2020] Other pastoral stations had also been established, and there was an increase in cattle, which were despoiling water sources. These developments meant that Warlpiri were in competition for water and hunting grounds all over their country.[2021]

The Coniston Massacre - 1928

8. By the late 1920s, the scarcity of food and water resources was contributing to tensions between Aboriginal and non-Aboriginal people. This was also a time of quite severe drought.[2022] There is evidence that by 1928, Aboriginal people in the southern Warlpiri and Anmatyerre regions were starving. Some researchers suggest that as tensions grew, some Aboriginal people were killing stock as retaliation for being driven away from water sources, as well as to restore "self-confidence and prestige".[2023] Throughout this period, there were

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2018 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4614-4615.

2019 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4615.

2020 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4614-4615.

2021 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4615.

2022 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4616.

2023 Dr Melinda Hinkson, *Remembering the Future- Warlpiri Life through the prism of drawing*, (2014) [20-20A] at 12.

several well publicised incidents of non-Aboriginal people being acquitted over the deaths of Aboriginal persons across inland and North Australia.[2024]

9. In 1928, the area known today as Yuendumu and its surrounds became the site of the last documented state-sanctioned massacre of Aboriginal people in Australia. The trigger for the massacre was the killing of a dingo trapper, Fred Brooks, whose body was found in a shallow grave on Coniston station. Over several months following Brooks' killing, "dozens (possibly hundreds)" of Warlpiri, Anmatyerre and Kaytete[2025] men, women and children[2026] were murdered in what became known as the Coniston massacre. The organised acts of revenge were carried out by groups of vigilante men led by a World War One veteran-turned police officer, Constable George Murray. Ultimately, no one was convicted for Brooks' murder, nor for the many Aboriginal people killed in reprisal.[2027]

10. The Massacre still echoes through the lives of the Warlpiri, in the living memory of those who witnessed it, and in the memories that have been spoken of and passed down to new generations. Its "significance is ongoing and relevant to the present."[2028] Only eight years before Kumanjayi Walker was killed, Warlpiri woman Liddy Napanangka Walker drew this picture from her memory of the scene of her father's murder during the Massacre, which occurred when she was five years old, explaining it as follows:[2029]

2024 Dr Melinda Hinkson, *Remembering the Future- Warlpiri Life through the prism of drawing*, (2014) [20-20A] at 12

2025 "Campaign to Combat Racism" Report (Revised) of Adjunct Professor David Hollinsworth dated 16 October 2023 [10-71A] at 40.

2026 Also described as "an estimated 100 innocent men, women and children": Vaarzon-Morel, Petronella "Hope in a time of world-shattering events and unbearable situations: policing and an emergent 'ethics of dwelling' in Lander Warlpiri Country" 2022 The Australian Journal of Anthropology special edition [20-36] at 4.

2027 Closing written submissions of Counsel Assisting dated 22 October 2024 at [18].See further Dr Melinda Hinkson, *Remembering the Future- Warlpiri Life through the prism of drawing*, (2014) [20-20A] at 55. The initial hearings into the Conistan deaths were conducted by Constable Murray himself.

2028 Expert Witness Report of Dr Yasmine Musharbash dated 23 August 2022 [10-32] at 9.

2029 Liddy Napangangka Walker: Remembering the scene of her father's shooting, Yuendumu 2011; taken from Dr Melinda Hinkson, *Remembering the Future- Warlpiri Life through the prism of drawing*, (2014) [20-20A] at 55.

The setting is a protected area of well-treed country bordered by two large rocky outcrops. The large yellow and brown ovoid shapes in the foreground and along the top of the picture are rock formations, the roundels in pink, brown and blue are trees. Napanangka has drawn her father standing and then fallen to the ground after he was shot; he appears in the drawing as two figures, one curved and one straight in deep green in the mid left of the picture. Napanangka herself appears as the small green arc on the furthest right hand side of the canvas, crouching with another child near a tree and being shielded by several adults depicted as larger pink and brown arcs. She did not see the man who shot her father, so he is not drawn.

Establishment of Yuendumu in 1946 and the early days of the community of Yuendumu

11. The Goldrush of the 1930s saw a further influx of non Aboriginal people to the Walpiri lands.

12. In 1946, the government's "Native Affairs Branch" established Yuendumu as a rations depot, with the stated aim to:[2030]

> "...control the shift of Aborigines to towns; to develop the potential of the reserves; to train the Aborigines in order that they might contribute to the development of the reserves in particular and of the country generally; and to provide health services to the Aborigines."

13. Under the terms of the protection era (1890s to 1950s), Warlpiri people were wards of the state, unable to vote and subject to strict authority imposed by officials in the Yuendumu government settlement. There were limitations on Warlpiri moving in and out of the settlement, and children were prohibited from speaking their Warlpiri language in the school.[2031]

14. The settlement included a gardened area adjacent to the houses of the Missionary and the Superintendent, known as the Park, around which the Kardiya staff built houses, and a number of institutions including the school, store and soup kitchen.[2032]

15. Warlpiri families at Yuendumu resided in "traditional shelters built out of bush materials, sometimes augmented by corrugated iron and sackcloth (so-called humpies)",[2033] which were up to a kilometre from the settlement hub. The orientation of these shelters reflected the family's connection to country, following the directions from which people had originally come "in" to the settlement.

16. In these early days of Yuendumu:[2034]

> "...there was a mutually maintained separation between Warlpiri people living at a significant distance from the centre of the

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2030 Long 1970:199, cited by Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 18.

2031 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [13].

2032 Closing written submissions of Counsel Assisting dated 22 October 2024 at [24].

2033 Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24]at 20; Hinkson 10-30 at 2.

2034 Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 20.

> settlement and non-Indigenous staff living in houses and working in buildings located around the Park."

17. Warlpiri authority was "relatively unimpeded" in these camps; in contrast to the imposition of government authority in the settlement hub.[2035]

Warlpiri encouraged to move into the Yuendumu settlement hub – 1950s

18. From the 1950s, Warlpiri were encouraged to move into settlement housing and this relocation "fundamentally altered living arrangements and fractured broader kinship networks and the flexibility and security enabled by bough-shelter encampments."[2036]

19. A Baptist Church Mission was established to run the settlement of Yuendumu for a few years during the 1950s, and it was responsible for the store, school, clinic and a communal kitchen. The school had twelve or thirteen kardiya (non Aboriginal) teachers and two Yapa (Aboriginal) assistant teachers. Warren Williams, who is a grandfather for Kumanjayi, remembers a happy childhood in Yuendumu during the Mission era, including the children really wanting to go to school.[2037]

20. By the mid-1950s a government supervisor had taken over the operation of the settlement and around the same time, the Yuendumu Cattle Company was established under government ownership, with wages paid by the Department of Aboriginal Affairs.[2038]

21. Social security legislation was passed in 1959 to include Aboriginal people, and pensions and family payments started being paid from 1966, but often via

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2035 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [14].

2036 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [14], citing Keys, 1996.

2037 Inquest evidence of Warren Williams on 8 September 2022 at 263; Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 18; Closing written submissions of Counsel Assisting dated 22 October 2024 at [21].

2038 Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 18.

third parties, and unemployment payments were generally not paid at all in remote areas. Direct and full payment of social security did not start in Yuendumu until 1969, which coincided with the end of communal meals and the issuing of communal blankets.[2039]

Assimilation and the Stolen Generation – 1937 to 1972

22. A period of assimilation from 1937 was formalised in 1961 when it was defined in Commonwealth legislation.[2040] One feature of this policy was the removal of some "part" Aboriginal children from their communities to place them in institutions or with adoptive families, with the stated aim that it would "integrate" them into mainstream Australian society.[2041] As a result of this policy, many children were taken from Warlpiri families in the 1960s, and became part of what are now called the "Stolen Generation". "The experience and abiding fear of child removal remains an active memory as well as a lived reality for many older Warlpiri in the present."[2042]

23. The 1967 census allowed Aboriginal people to be counted in the census for the first time.

"Report following a Visit to Yuendumu and Hooker Creek (1974)"

24. In 1974, Dr H.C Coombs and Professor William Stanner produced a document for the government entitled "*Report following a Visit to Yuendumu and Hooker Creek*".[2043]

2039 Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 18.

2040 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4611.

2041 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [15].

2042 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [15]

2043 Dr HC Coombs and Professor WEH Stanner (1974) [20-16A].

25. The report was a result of an extensive survey that Dr Coombs and Professor Stanner undertook to understand the challenges faced by residents of Yuendumu and Hooker Creek (now Lajamanu) at that time, with a focus on the possibilities for economic development.[2044]

26. An important theme of this report was "community control of ideas for the future, being led by Warlpiri people themselves", while "being very realistic about what the range of possibilities were".[2045] It developed the idea of community governance structures that presumed that the bulk of the work would be undertaken by a local authority, grounded in Warlpiri customary decision making.[2046] For example, "Dr Coombs and Professor Stanner observed that policy with respect to housing should be based on support for local housing associations with maximum local involvement in the management, manufacture of materials, design and construction."[2047]

27. Other recommendations included creating economic opportunities (including the existing cattle project and arts scene, as well as investigating the feasibility of a market garden, piggery, poultry run and tree nursery);[2048] better employment and education opportunities; cultural education for non-Aboriginal health staff working in community; greater diversity of activities for young people; better facilities for young people; supporting traditional authority and decision making; cooperation to limit supply of alcohol; clarification the responsibility of the Aboriginal community for law and order, and "aboriginalisation of services". Many of those recommendations could be repeated today.

2044 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4621.

2045 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4622

2046 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4623.

2047 Closing written submissions of the Parumpurru Committee of Yuendumu dated 28 October 2024 at [317], citing Coombs and Stanner, Report on Visit to Yuendumu and Hooker Creek, Australian Government Publishing Service, 1974, at 35. See further, a copy of the Report at 20-16A.

2048 Dr HC Coombs and Professor WEH Stanner (1974) [20-16A] at 17.

A shift in policy to self determination and then self management – 1972 to 1996

28. From 1972 until the mid-1990s the Federal Government applied a policy of self-determination and then self-management, with Indigenous-specific funding, greater land rights and culturally inspired community activity and development.[2049] The Department of Aboriginal Affairs was founded in 1972.[2050]

29. Community was the "key unit of focus" during this time[2051] and the 1970s in particular featured a strong focus on "community development", such as through the 1976 *Commonwealth Aboriginal Councils and Associations Act*, which provided a vehicle for Indigenous communities to incorporate for public purposes, as well as the development of the Community Development Employment Projects (CDEP) scheme.[2052] This scheme granted money to organisations (not individuals) focused on community development and employment of community members. It enabled the establishment of some of the largest and most successful Aboriginal organisations in the NT.[2053]

30. During this period, the federal government supported national Aboriginal representation, first through the National Aboriginal Consultative Committee. In Yuendumu, this support was reflected in a number of young Warlpiri men being identified as leaders in the making and given educational opportunities outside the NT. They were drawn into engagement with the processes of political representation.[2054]

31. In 1978 the first elected Yuendumu Council assumed responsibility for the administration of the settlement[2055] and in 1979 the Yuendumu Cattle Company

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2049 Closing written submissions of the Brown Family dated 29 October 2024 at [15]; drawing from Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [16]-[18].

2050 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4612.

2051 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4623.

2052 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [26].

2053 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4627-4628.

2054 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [17].

2055 Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 18.

became an Aboriginal corporation called the Ngarliyikirlangu Cattle Company, which operated until the mid-1990s.[2056]

32. Despite this, by the late 1970s, Yuendumu had a 71 per cent unemployment rate (compared to around six per cent nationally, and forty-four percent nationally for Aboriginal people at that time).[2057] In 1981 social geographer Elspeth Young observed that:[2058]

> "…the town [of Yuendumu] has virtually no economic rationale. It is neither a market town, a mining centre, nor a centre for communications - functions which have been responsible for the growth of other towns in the Territory. It remains dependent on the rest of Australia for almost every cent its community spends, and every article consumed."

33. More settlement housing was built for Yapa in Yuendumu during the 1970s-1990s, originally in the form of crude one and two bedroom dwellings with communal toilet blocks. The structures were arranged in clusters, which became suburb-like and started to be named after their orientation (East Camp, South Camp, West Camp and North Camp),[2059] and Yapa and Kardiya were housed in closer proximity.[2060] About a dozen Warlpiri outstations were established, one of which became the town of Nyirripi, 150km from Yuendumu.[2061]

34. Nationally, the Aboriginal and Torres Strait Islander Commission (**ATSIC**) was established in 1991 as a regional and national representative body. ATSIC was also the major agency for funding Indigenous Specific programs and supported the CDEP Scheme, Community Governance, the Community Housing and Infrastructure Program (**CHIP**), programs for arts support,

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2056 Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at fn 12.

2057 Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 19.

2058 (Young 1981: 56) cited in Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 19.

2059 Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 21.

2060 Closing written submissions of Counsel Assisting dated 22 October 2024 at [25].

2061 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4624.

languages revitalisation and cultural revival, Outstation Resource Agencies, women's night patrol, women's centres and media associations.[2062] With ATSIC funding, senior Yuendumu women established a Night Patrol in 1991.[2063]

35. Building on the 1970s' strong focus on community development, the mid-1990s in Yuendumu was a period of "vibrant...intercultural activity", involving Walpiri and Western attitudes and cultural practices being worked into new and productive engagements, in the context of mutual respect relationships. Dr Hinkson identifies this intercultural activity in the "creative development of governance models of community organisation boards, as well as in the operation of several community organisations that fostered local activity while being explicitly engaged with the institutions of wider Australian society".[2064]

36. An "impressive generation of people born in the 1950s" were "creative leaders" of this approach, working "tirelessly to creatively reinterpret Warlpiri law in response to changing times and to orient their community to an optimistic future."[2065] They "felt they had room to make decisions. They had a sense of the possibility of being able to choose between different options" and "Warlpiri people were working very tirelessly to create something called a community."[2066]

37. In 1995 the community-controlled incorporated organisations in Yuendumu included Warlukurlangu Aboriginal Artists Association, Yurrampi Crafts, Warlpiri Media Association, Tanami Network (videoconferencing network), Yuendumu Women's Centre, Yuendumu Women's Museum, Yuendumu Night Patrol, Yuendumu Men's Museum, Yuendumu Housing Association,

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2062 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [18].
2063 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [44].
2064 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [23], [26].
2065 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [23], [26].
2066 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4624.

Yuendumu Mining Company, Yuendumu Social Club, Yuendumu Outstation Resource Agency, and the Ngarlikirlangu Cattle Company.

38. Each of these community organisations, as well as the Yuendumu School, Clinic and Yuendumu Community Governance Council, was overseen by a board of governance whose makeup was guided by Warlpiri principles, generally drawing male and female representatives from each of the four patrilineal groupings that organise Warlpiri society and who share responsibility for the enactment of Warlpiri law. This often meant that senior men and women held multiple positions, which required attendance at regular meetings. This affirmed the practice of Warlpiri customary authority, but also drew attention and energy away from ceremonial activity and authority.[2067]

39. Employment within these organisations was flexible, to recognise family and cultural responsibilities as well as the aspiration of many Warlpiri for part-time work.[2068] The flexibility and culturally attuned management of these organisations at this time played a significant role in retaining Aboriginal staff.[2069]

40. The CDEP played an important role at this time, as it enabled this flexibility of employment while providing the assurance of a base welfare payment, and the capacity to work a flexible number of hours to make additional income.[2070]

41. The day to day running of these organisations saw Warlpiri and non-Warlpiri employees working closely together, with a commitment to “both ways” or “two ways”; that is, reciprocal engagement and exchange between Western and Warlpiri systems of knowledge.[2071]

42. The early to mid 1990s also saw Warlpiri-initiated community meetings, which were “well attended public forums for dealing with all manner of issues

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2067 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [28].
2068 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [27].
2069 Dr Musharbash
2070 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4626.
2071 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [29].

requiring collective and public resolution, including the physical disciplining of children for such misdemeanours as breaking into the community stores or petrol sniffing."[2072]

43. At that time, Yuendumu was being ravaged by a petrol sniffing crisis. More than seventy young people from the community were sniffing petrol; groups roamed the streets every night, breaking into homes and offices and frightening residents with violence.[2073] In 1995 in an effort to address this crisis, a number of Elders helped found the Mt Theo Substance Misuse Aboriginal Corporation. The Mt Theo Program involved Elders taking young people with petrol sniffing problems to Mt Theo Outstation, which is about 150km northwest of Yuendumu. Once there the young people were cared for by the Warlpiri Elders and immersed in culturally focused on-Country activities, while working to address their substance abuse.[2074] This program grew into a number of services administered by Warlpiri Youth Development Aboriginal Corporation (**WYDAC**) and Southern Tanami Kurdiji Indigenous Corporation.[2075]

44. Throughout the 1990s, Elders in Yuendumu had strong and mutually respectful lines of communication with police.[2076] Night Patrol, in particular, operated as a vital conduit between Yapa community and the Police during much of this time.[2077] At this time there was also a "tendency for police to discreetly allow Elders to practice customary law, sometimes referred to as 'payback' in the resolution of disputes."[2078]

2072 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [31]

2073 Closing written submissions of Counsel Assisting dated 22 October 2024 at [41].

2074 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [46]; Closing written submissions of Counsel Assisting dated 22 October 2024 at [41].

2075 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [47].

2076 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [42].

2077 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [45].

2078 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [42].

Policy shift to a "mutual obligation" approach – 1996 to 2007

45. From 1996 there was a shift in policy to a "mainstreaming" or "normalisation" approach to governance; that is, a disbanding of Indigenous specific services and "mainstreaming" the governance of Indigenous Australians.[2079] This era was marked by a focus on "individual responsibility" rather than community development,[2080] and "an approach to governing Aboriginal communities…on par with the approach to Australian citizens at large."[2081]

46. This approach:[2082]

> "…aimed to socially engineer behavioural change among residents of remote Aboriginal communities, through principles of 'mutual obligation', part of a broader trend in public administration occurring in the USA and UK often described in terms of new public management and 'neoliberal' governance. Under this shift citizens are regarded as having obligations as well as rights, administered by a new coercive approach from government."

47. ATSIC was disbanded in 2004 and the federal government "sought to dilute native title and land rights laws, dismissed the symbolism of reconciliation in favour of 'practical' outcomes, rejected the global Indigenous rights agenda and refused to apologize to the Stolen Generations."[2083]

48. Meanwhile in the Territory, the NT government introduced mandatory sentencing provisions in 1997, which related to crimes against property. This was often referred to as the "three strikes" legislation and it disproportionately affected young Aboriginal offenders.[2084]

2079 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [50].

2080 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4628.

2081 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4612.

2082 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [19].

2083 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4612; Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [51].

2084 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [85].

49. In 2006, the federal *Crimes Amendment (Bail and Sentencing) Act* prohibited judicial officers taking cultural and customary considerations into account when sentencing or making bail determinations.[2085]

The Federal Government Intervention and Stronger Futures 2007-2022

50. The "Little Children are Sacred" report was tabled in June 2007, prompting the Federal Government to launch the Northern Territory National Emergency Response (known as "the Intervention"), in response to a "national emergency" in respect of child sexual assault and the need to protect vulnerable women and children.[2086] The Intervention was intended as a five year exceptional policy, but its core measures were extended for another decade by the 2012 "Stronger Futures for the Northern Territory" federal legislation.[2087]

51. Without consultation, the Intervention imposed measures that included:[2088]

    (a) welfare quarantining, which was compulsory income management quarantining fifty per cent of welfare payments and being directed how to spend that money,[2089]

    (b) compulsorily leasing all discrete Aboriginal communities on Aboriginal-owned land for five years, in effect dispossessing traditional owners of land rights era recognition of their authority over their lands,

    (c) abolishing the CDEP and replacing it with a Community Development Program (CDP) with financial penalties for failure to comply with strict

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2085 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [86].

2086 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [53]-[54].

2087 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [20].

2088 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [56]; Closing written submissions of Counsel Assisting dated 22 October 2024 at [44].

2089 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4627.

attendance requirements and a loss of focus on community development,[2090]

(d) abolishing the permit system for entry into Aboriginal towns, which resulted in a disempowering of traditional owners who lost ability to control the movement of people into their communities,

(e) establishing government appointed Government Business Managers (**GBMs**) as the prime authority for mediating between local communities and the federal government. GBMs had the legal authority to attend any meeting of a community organisation, inspect any computers and even to expel any resident, including traditional owners,

(f) increasing police presence and granting police new discretionary powers to enter houses without warrant, and

(g) introducing compulsory school attendance measures, accompanied by fines on parents of absentee students.

52. Dr Hinkson explained that:[2091]

> "These new legislative measures systematically disassembled the forms of authority that had been granted to NT Aboriginal people in the running of their own communities in the previous policy era."

53. The ideological shift reflected in this significant change of policy was that:[2092]

> "…things have not been working in remote Aboriginal communities…Aboriginal kinship and people's kinship responsibilities and ways of organising their communities through kinship models are themselves problematic. So the only future that is being imagined for Aboriginal people is to learn to live as responsible individuals in nuclear family like scenarios…"

2090 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4630.

2091 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [55].

2092 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4629.

54. I received evidence that this shift to "individualism" is a "devastating prospect" from a Warlpiri perspective:[2093]

> "...to be regarded as a free-standing individual first and foremost...shears you of all the relationships that give you your identity, that give you your sense of who you are. And those relationships are...not arbitrary, they don't just hang as a social network. They connect you to the country from which you also take your sense of who you are and for which you have responsibilities. They relate you to the entire community in very particular ways. And indeed, responsibility flows through those relationships...So the idea of an individual responsibility...absolutely cuts through that propound set of relationships that lie at the heart of what it is to be a Warlpiri person."

55. As a result of the Intervention policies, Elders report feeling that their authority to intervene and discipline youth who had been offending in the community had been undermined.[2094]

56. In combination with the measures introduced by the Intervention, mandatory sentencing laws introduced in 2013 for violent offending (actual or threatened) meant that:[2095]

> "Warlpiri [had] the perception that if they discipline their children, they are liable to be arrested."

57. Following the Intervention, there was also a reduction in Warlpiri employment,[2096] and "heightened levels of shame, frustration and demoralisation experienced by Warlpiri as they have been compelled to navigate and respond to the new policy landscape and accompanying changed social attitudes".[2097]

2093 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4630.

2094 Closing written submissions of Counsel Assisting dated 22 October 2024 at [51]; Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [98].

2095 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [92], [98].

2096 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [65].

2097 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [57].

58. Professor Hinkson argues that there was also "a great deal of intervention by police and other authorities to stop Warlpiri and other remote Aboriginal people sorting their own problems out."[2098]

59. A further significant policy change affected Yuendumu in 2008: the NT government passed legislation abolishing community government councils and amalgamating them into eight centralised shires. This "decisively undercut the primary community-based institution through which local Warlpiri authority was recognised and interfaced with wider Australia, and where significant employment of local people had occurred."[2099] A practical example of the effect of this shift is that instead of local people being employed to fix housing problems like a broken window or blocked toilet without delay, the centralised process means that tenants wait three to four months for minor repairs to be arranged and carried out.[2100]

60. Changes to housing policy also affected Warlpiri during this time, in particular, new tenancy agreements for public housing, which contained strict new terms including:[2101]

    (a) limits on the number of residence and dogs allowed in a house,

    (b) a prohibition on lighting of fires in yards (interfering with the Warlpiri practice of cooking and eating with kin around an outdoor fire),

    (c) prohibiting defective vehicles from being kept on the property,

    (d) a requirement not to allow "anti-social behaviour", and

    (e) prohibiting tenants from allowing flammable items (including fuel) on premises.

2098 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4637.

2099 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [66].

2100 Closing written submissions of the Parumpurru Committee of Yuendumu dated 28 October 2024 at [318], citing Inquest evidence of Warren Williams on 8 September 2022 at 290.

2101 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [74].

61. As Dr Hinkson explained:[2102]

> "Warlpiri saw these new tenancy agreements as a direct attack on their preferred ways of living, including the practice of offering shelter to extended family."

62. In 2009, the NT government abandoned its longstanding commitment to bi-lingual education and introduced a policy requiring compulsory teaching in English for the first four hours of each school day. This policy was in effect for four years and, for a school that had been a model of two way learning, during those years "students were left with the clear impression that Warlpiri language was not an integral part of their education and not necessary to their future"[2103] and:[2104]

> "[the] dilution of Warlpiri language teaching and teachers coincided with the diminishment of Warlpiri authority under the terms of the [Intervention]. Across this period from 2007 until the present children have grown up with no structured experience of Warlpiri authority. Many adults observe that as a result, 'kids don't listen' to their elders anymore."

Conflict following the death of Kumanjayi Watson

63. In September 2010, Kumanjayi Watson from the west side of Yuendumu died after being stabbed in a fight with three south side boys in Alice Springs. A few days later, fifty or so west side residents, many armed with iron bars, spears, nulla nullas and axes, attacked family groups from the south side. Five people were seriously injured, six cars and a house were torched and four more houses damaged.[2105] In the two years that followed, some 130 south and west side residents and their supporters were charged with riot-related offences, and a large number of these people received a prison term. There were

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2102 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [75].

2103 Disbray 2014, in Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [70].

2104 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [71].

2105 Closing written submissions of Counsel Assisting dated 22 October 2024 at [46].

hundreds more who took part in the rioting and violence but were not charged. Nearly half of the population of Yuendumu was directly or indirectly dragged into the conflict and the community's relationship with the police was made precarious because of a perception that police were taking sides in the conflict.[2106]

64. More than 100 residents from south camp fled the violence to Adelaide and then to Alice Springs, but with allegations of black magic and fighting over payback and reprisal attacks, the conflict raged for years.[2107]

65. The effects of this conflict included low school attendance, the withdrawal of community services, rising Yapa unemployment, cancellation of cultural and sporting activities, withdrawal of funding for programs, activities, offices and positions, shutdown of some services due to recruitment challenges, and significant trauma to children and adults in Yuendumu.[2108] The worst of the conflict was ultimately resolved through Yapa mediation processes, guided by Elders from both sides and involving nearly 200 people.[2109]

Today: the effects of past government policies and intergenerational change in authority

66. At the time that Dr Hinkson gave evidence in the Inquest (8 March 2023) she said that it was unclear whether relevant federal government policy was entering a new period;[2110] however, Warlpiri continue to be excluded from their traditional lands which are within Mount Doreen Station and:[2111]

2106 Closing written submissions of Counsel Assisting dated 22 October 2024 at [47]-[48].
2107 Closing written submissions of Counsel Assisting dated 22 October 2024 at [46].
2108 Closing written submissions of Counsel Assisting dated 22 October 2024 at [49].
2109 Closing written submissions of Counsel Assisting dated 22 October 2024 at [50].
2110 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4613.
2111 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4617.

> "[T]he dispossession of a place like Pikilyi, has profound consequences for Warlpiri people. Spiritual, cultural, social, psychological, and indeed, economic."

67. Dr Hinkson has observed "a sense of...generalised criminalisation of Aboriginal people living in remote communities," as a result of federal and Territory policies, beginning with the introduction of mandatory sentencing laws in 1997 and including the Intervention measures. This criminalisation, coupled with the high incarceration rates of Aboriginal people in the NT, has had "quite devastating" effects on Warlpiri familial structures and culture:[2112]

> "...in terms of the separating of parents from children and then the extended pressure that goes onto extended family budgets of a very meagre kind to feed...those additional mouths, to make sure that people are cared for adequately, that they're going to school...[and] it certainly has a flow on effect at the level of morale and demeanour in the community."

68. The "profound disempowerment" of Warlpiri Elders that has occurred as a result of government policies since 1996 has undermined the authority of these Elders, impacting on familial relationships and the capacity for Elders to discipline young people.[2113] "Warlpiri people are given the sense that it is no longer viable, ...[or] legal, for them to be able to administer their customary law".[2114]

69. In addition, the experience of widespread unemployment continues in Yuendumu. Anthropologist Dr Yasmine Musharbash has written that:[2115]

> "The lack of employment is a distinguishing factor of life at Yuendumu; it is not only expressed through statistics but manifested...in the ways Warlpiri people live their lives."

70. The last generation of Warlpiri men and women who had been born in the desert rather than a clinic, passed on through the late 1990s and up to the mid-

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2112 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4644.

2113 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4645.

2114 Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4646.

2115 Dr Yasmine Musharbash, *Yuendumu Everyday; Contemporary life in remote Aboriginal Australia* (Aboriginal Studies Press, 2008) [20-24] at 19.

2010s. Those "senior men and women were keepers of a significant repertoire of ceremonial knowledge, songs, knowledge of country, practices of customary authority, as well as exchange and diplomatic relationships with neighbouring communities. They were the primary authorities who sat on the boards of community organisations…administered discipline to wayward youth, and presided more generally over the administration of authority in their community."[2116]

71. The following generation "included an impressive generation of bi-culturalists—men and women who completed a strictly enforced school-based education in the 1950s and early 1960s. Several of the men and women of this generation went on to be school-teachers and community leaders who shouldered multiple and at times burdensome responsibilities in the community domain. These were the leaders who presided over a period in which 'two-way' schooling and bi-cultural approaches to community development were energetically pursued."[2117]

72. For the generations of Warlpiri born since the late 1960s, Dr Hinkson observes that they "have grown up in a very different social world, one in which the practice of Warlpiri forms of authority was possible and in various ways enabled until the mid-1990s, but subsequently systematically undermined and dismantled."[2118] Several senior and middle-aged leaders have left Yuendumu to settle elsewhere "citing despair and frustration around the diminishment of Warlpiri community control and capacity to resolve disputes."[2119]

73. Dr Hinkson has observed that there has been:[2120]

> "…a profound and systematic reduction since 1996 in senior Warlpiri people's capacity to administer authority over Warlpiri children and their community more broadly. The diminishment of Warlpiri authority has occurred as a result of changes in government policy and associated political and public attitudes

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2116 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [132].
2117 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [133].
2118 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [134].
2119 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [135].
2120 Expert statement of Associate Professor Dr Melinda Hinkson (undated) [10-30] at [5].

> towards remote living Aboriginal people in the Northern Territory, as well as for demographic and other structural reasons. As the capacity for Warlpiri to administer authority has been undermined, the punitive governance and policing of the Warlpiri community by external authorities and officials has increased."

74. Dr Hinkson was able to provide a number of hopeful examples of ways that Warlpiri authority could be enabled in the future, including:[2121]

(a) NT Government's local decision-making framework policy,

(b) Community control over law and justice issues,

(c) The Mount Theo substance abuse program,

(d) Continued operation and local decision-making around night patrol,

(e) Law and Justice Groups,

(f) Community governance in relation to housing,

(g) Indigenous land management and Indigenous protected area opportunities.

[2121] Inquest evidence of Dr Melinda Hinkson on 8 March 2023 at 4646.

Photo on left is of the Yuendumu School Doors Artists: Paddy Jupurrurla Nelson, Roy Jupurrurla Curtis, Paddy Japaljarri Stewart, Paddy Japaljarri Sims, Larry Jungarrayi Spencer

Photo on right is of Door 1 Yaparranjikirli – Young Boys – painted by Larry Jungarrayi Spencer in situ at Yuendumu School