

Lex Wotton and Ors

Applicants

State of Queensland and Anor

Respondents

AMENDED AGREED STATEMENT OF FACTS

Headings used in this document are the headings used in the
Third Further Amended Statement of Claim

A. PRELIMINARY

1. The parties agree on the following facts for the purpose of this proceeding. On the pleadings there remain disputes about the relevance of some agreed facts.

B. INTRODUCTORY

2. The Applicants commence these proceedings as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976* (Cth).
3. In the Further Amended Originating Application filed on 25 August 2014, the Applicants identify the persons they represent in these proceedings (**Group Members**) as Aboriginal persons or Torres Strait Islanders resident on Palm Island as at 19 November 2004 and still resident on Palm Island as at and including 25 March 2010. The Group Members as so described number more than seven people.
4. At all relevant times, the Applicants and the Group Members (as identified by the Applicants) were Aboriginal persons or Torres Strait Islanders.
5. The Applicants identify that they also represent a sub-group of Group Members (**Sub-Group Members**), being persons who they identify:

- a. were apprehended or arrested by, or in the presence of Queensland Police Service (**QPS**) Special Emergency Response Team (**SERT**) or Public Safety Response Team (**PSRT**) officers in connection with the events on Palm Island on 26 November 2004;
 - b. were present at the apprehensions or arrests referred to in the preceding sub-paragraph;
 - c. otherwise witnessed or were present during the Raids as defined in the Third Further Amended Statement of Claim (**3FASC**); and/or
 - d. had their homes entered into, or their property otherwise interfered with, by officers of the QPS during the Operation.
6. The Sub-Group Members as so described number more than seven people.
7. According to the 2006 census published by the Australian Bureau of Statistics, the population of Palm Island was approximately 1855 people of whom 93.5% identified themselves as being Indigenous persons.
8. According to the 2001 census published by the Australian Bureau of Statistics, the population of Palm Island was approximately 1949 people of whom 90.8% identified themselves as being Indigenous persons.

C. POLICE SERVICE ADMINISTRATION ACT 1990 (Qld)

9. At all relevant times:
 - a. the Second Respondent was responsible for the efficient and proper administration, management and functioning of the QPS in accordance with law pursuant to s 4.8(1) and s 4.8(2) of the *Police Service Administration Act 1990 (PSA Act) (Prescribed Responsibility)*.
 - b. the Prescribed Responsibility further included the following responsibilities:
 - i. determination of priorities of the QPS;
 - ii. control of the human, financial and other resources of the QPS;
 - iii. determination of the number and deployment of QPS officers and staff members;
 - iv. training and development of members of the QPS;
 - v. discipline of members of the QPS;
 - vi. internal redeployment and retraining of QPS officers and staff members;
 - c. in discharging the Prescribed Responsibility, the Second Respondent, subject to the PSA Act, was to ensure compliance with the requirements of all Acts and laws binding members of the QPS, and directions of the Second Respondent.
 - d. the functions of the QPS were prescribed in s 2.3 of the PSA Act (**the Functions**), and included:
 - i. the preservation of peace and good order in all areas of the State.
 - ii. the protection of all communities in the State, and all members thereof –
 - A. from unlawful disruption of peace and good order that results, or is likely to result from actions of criminal offenders, or actions or omissions of other persons;
 - B. from commission of offences against the law generally.

- iii. the prevention of crime;
- iv. the detection of offenders and bringing of offenders to justice;
- v. the upholding of the law generally;
- vi. the administration, in a responsible, fair and efficient manner and subject to due process of law and directions of the Second Respondent, of –
 - A. the provisions of the Criminal Code;
 - B. the provisions of all other Acts or laws for the time being committed to the responsibility of the QPS;
 - C. the powers, duties and discretions prescribed for officers by any Act.
- vii. the provision of the QPS services, and the rendering of help reasonably sought, in an emergency or otherwise, as are –
 - A. required of officers under any Act or law or the reasonable expectations of the community; or
 - B. reasonably sought of officers by members of the community.
- e. in performance of the Functions, members of the QPS were to act in partnership with the community at large to the extent compatible with efficient and proper performance of those functions.
- f. in discharging the Prescribed Responsibility, the Second Respondent may give, and cause to be issued, to officers, staff members or police recruits, such directions, written or oral, general or particular as the Second Respondent considered necessary or convenient for the efficient and proper functioning of the police service.
- g. the Second Respondent gave directions, or caused directions to be issued in accordance with s 4.9(1) of the PSA Act, as contained in the QPS Operational Procedures Manual (OPM) and Human Resource Management Manual (HRMM) as amended from time to time.

- h. at any incident that called for action by police and at which QPS officers were present, the officer who was responsible for taking such action, and for action taken was –
 - i. the officer designated for the purpose in accordance with established administrative arrangements;
 - ii. if there were no officer such as is referred to in the preceding sub-paragraph, the officer present who was most senior by rank;
 - iii. if there were no officer such as is referred to in the preceding two sub-paragraphs, the officer present who was most senior by length of continuous service as an officer.

D. ARREST OF MULRUNJI AND DEATH IN CUSTODY ON 19 NOVEMBER 2004

D1 Arrest and subsequent treatment of Mulrunji to the time of his death

(a) Arrest

10. At or about 10.20am on 19 November 2004, Senior Sergeant Christopher Hurley (**SS Hurley**) arrested Cameron Francis Doomadgee, posthumously known as 'Mulrunji', as he was walking down Dee Street, Palm Island, and placed him in the locked area of a police van. Mulrunji was an Aboriginal person.
11. Police Liaison Officer Lloyd Bengaroo (**PLO Bengaroo**), an Aboriginal person employed in the QPS, was present with SS Hurley at the time of the arrest referred to in the preceding paragraph.
12. Upon arrival at the Palm Island Police Station (**Police Station**), SS Hurley removed Mulrunji from the police van and a struggle ensued.
13. At the time SS Hurley removed Mulrunji from the police van:
 - a. Roy Bramwell was inside the Police Station;
 - b. Penny Sibley was outside the Police Station in the vicinity of the police van;
 - c. Constable Steadman was standing at the front passenger's side of the police van in a position where he was able to see, and did see, some of the events that occurred after SS Hurley removed Mulrunji from the police van to the time when they entered through the door of the Police Station; and
 - d. Sergeant Leafe and PLO Bengaroo were also present in the vicinity.

(b) The Fall

14. On the way into the Police Station, Mulrunji and SS Hurley fell through the rear door of the Police Station as they were entering it (**the Fall**).
15. After the Fall, Mulrunji became limp and unresponsive.

16. Mulrunji was dragged, limp, to a watchhouse cell in the Police Station by Sergeant Michael Patrick Leafe and SS Hurley at about 10.26 am.

(c) Death

17. At or about 11 am on 19 November 2004, Mulrunji died in police custody on Palm Island.
18. The cause of Mulrunji's death was intra-abdominal haemorrhage due to a ruptured liver and portal vein. Mulrunji had also sustained four broken ribs.

D2 Discovery of death and notification of QPS officers

19. At about 11.19 am SS Hurley telephoned for the Queensland Ambulance Service to attend an emergency at the watchhouse.
20. At about 11.23 am SS Hurley telephoned Senior Sergeant Jenkins at the Townsville District Police Communications Centre and advised that Mulrunji might be deceased.
21. At about 11.30 am, SS Hurley called the Townsville District Police Communications Centre and advised Senior Sergeant Frank Jenkins of the death in custody.
22. At about 11.30 am, SS Hurley telephoned District Inspector Gregory Strohfeldt (**Inspector Strohfeldt**) and advised him of the death in custody.
23. At about 11.33 am SS Frank Jenkins telephoned Inspector Strohfeldt and advised him of the death in custody.
24. At about 11.45 am:
 - a. SS Hurley telephoned Detective Sergeant Darren Robinson (**DS Robinson**), the Officer in Charge of the Criminal Investigation Branch on Palm Island;
 - b. SS Hurley advised DS Robinson of the death in custody;
 - c. DS Robinson was in Townsville;
 - d. DS Robinson was the second most senior QPS officer stationed on Palm Island; and
 - e. SS Hurley was the most senior QPS officer then stationed on Palm Island.

D3 Officers in charge of Watchhouse and Responsible for Watchhouse

25. As at 19 November 2004:

- a. SS Hurley was the officer in charge of the watchhouse and cells at the Police Station;
- b. Inspector Strohfeldt:
 - i. was the QPS Officer to whom SS Hurley was directly responsible;
 - ii. had held this position since 29 March 2004;
 - iii. was stationed in Townsville, and had been stationed there since at least 29 March 2004; and
 - iv. had not visited Palm Island since 29 March 2004.

E. ABORIGINAL DEATHS IN CUSTODY – INTEREST OF THE COMMUNITY AND REASONABLE EXPECTATIONS OF THE COMMUNITY

26. In 1991, the report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), making recommendations concerning such deaths and the investigation thereof, was publicly released. In addition to the report of the RCIADIC, individual reports were also prepared in respect of each State and Territory of Australia, including Queensland.
27. The RCIADIC:
 - a. inquired into deaths in Australia, of Aboriginal persons and Torres Strait Islanders, whilst in police custody, prison or any other place of detention, between 1 January 1980 and 31 May 1989, and also into any subsequent action taken in respect of each of those deaths including the conduct of coronial, police and other inquiries and any other things that were not done but ought to have been done; and
 - b. was authorised, for the purpose of reporting on any underlying issues associated with those deaths, to take account of social and cultural and legal factors which, in the opinion of the Royal Commission, appear to have bearing on those deaths.
28. On 15 April 1991, the report of the RCIADIC was presented to all Australian Commonwealth, State and Territory Governments, including the First Respondent.
29. The passages set out in Annexure 'A' of the 3FASC are contained within the body of the RCIADIC report, and passages set out in Annexure 'B' of the 3FASC are contained in the report as recommendations of the RCIADIC.
30. The RCIADIC report was published in April 1991, some 13 years and seven months before November 2004.
31. In November 2004, the awareness of particular QPS officers of particular parts of the OPM varied according to their duties and experience.
32. Some members of the Palm Island community may have had the attributes or characteristics referred to in paragraph 32 of the 3FASC.

F. PROVISIONS APPLYING TO QPS OFFICERS/MEMBERS IN NOVEMBER 2004

F1 Operational Procedures Manual

33. In November 2004, Issue 24 - July 2004 of the OPM was in force, and contained Orders, Policies and Procedures.

(a) Use of Manual – Definition of Order, Policy and Procedure

34. Under the heading 'Use of Manual' in the OPM it states:

Policy and instructions in this Manual are in the form of Order, Policy and Procedure. These terms are defined in the 'Definitions' section of this Manual.

The OPM has been designed as a Service wide document and as such does not generally prescribe instructions unless applicable in all areas of the Service. In order to recognise the needs of local communities and policing requirements, it will be necessary for officers in charge of regions, districts and stations/establishments to develop Standing Operating Procedures (SOPs) and Standing Orders (SOs) to give effect to the OPM at a local level. These SOPs and SOs should then be held at local level with a reference to the relevant chapter of the OPM.

SOPs and SOs are to be ancillary to and not conflict with the OPM. The OPM will have precedence over any SOPs and SOs developed at the local level.

35. In the OPM, the terms Order, Policy and Procedure are defined as follows:

- a. **'ORDER** an order requires compliance with the course of action specified. Orders are not to be departed from'.
- b. **'POLICY** a policy outlines the Service attitude regarding a specific subject and must be complied with under ordinary circumstances. Policy may only be departed from if there are good and sufficient reason(s) for doing so. Members may be required to justify their decision to depart from policy'.
- c. **'PROCEDURE** a procedure outlines generally how an objective is achieved or a task performed, consistent with policies and orders. A procedure may outline actions which are generally undertaken by persons or organisations external to the Service'.

(b) Rules and Laws governing conduct in relation to persons in custody and Watchhouses

F2 Rules and Legislation governing conduct of the QPS following death in custody

(a) Operational Procedures

36. The death of Mulrunji was a 'death in custody' as that term is defined in s 16.24 of the OPM.

(i) Section 16.24.1 'Investigation of death in custody' OPM

37. Section 16.24.1 'Investigation of death in custody' of the OPM provided relevantly that:

A death in custody should be treated as a significant event, and the provisions of s. 1.4.6: 'Regional Duty Officer' and s. 1.4.7: 'Shift Supervisor' of this Manual apply. The first response or investigating officer as the case may be should notify the:

- (i) shift supervisor;
- (ii) regional duty officer;
- (iii) ...; and
- (iv) Officer in Charge, Cultural Advisory Unit, Office of the Commissioner.

Where the Officer in Charge, Cultural Advisory Unit, Office of the Commissioner, is to be notified, such notification should include the information outlined in parts (i) to (xiii) of s.16.24.3: "Additional responsibilities of officers investigating deaths in custody" of this chapter where available.

All deaths which occur while a person is "in custody" or while any person is in the company of police, should be fully investigated in accordance with s. 1.17: "Fatalities or serious injuries resulting from incidents involving members (Police related incidents)" of this Manual.

Where responsibility for the investigation of a death in custody reverts to a commissioned officer pursuant to s. 1.17: 'Fatalities or serious injuries resulting from incidents involving members (Police related incidents)' of this Manual, the investigation should be carried out in line with the provisions of s. 2.4: "Crime scene", s. 2.5: "Investigation" and Chapter 8: "Coronial Matters" of this Manual.

(ii) Section 13.30, 6.4 OPM - Cultural Advisory Unit, Office of the Commissioner/ Cross-Cultural Issues

38. Section 13.30 of the OPM provided that:

[t]he Cultural Advisory Unit (CAU), Office of the Commissioner, provides advice and support to members of the Service in relation to cultural issues and monitors racial incidents including offences against the Act. Also see s. 6.4: 'Cross-cultural issues' of this Manual.

39. Section 6.4 'Cross cultural issues' and the sub-sections thereof concerned cross-cultural issues relevant to policing in Aboriginal communities. It further provided:

a. Policy in s. 6.4 that:

To achieve the goals of the Service, strategies emphasizing joint community and police activities have been adopted.

Officers should always consider cultural needs which exist within the community.

b. Policy in s. 6.4.7 'Community involvement – responsibilities of officer in charge':

Officers in charge of stations or establishments should, in managing the provision of services, take into account the specific cultural and ethnic demographic characteristics of their area of responsibility and the needs thereby created.

40. Section 6.4.8 'Cross Cultural Liaison Officers' provided:

Cross cultural liaison officers are available in all regions. The role of a cross cultural liaison officer is to establish and maintain effective liaison between police, Aboriginal, Torres Strait Islander and ethnic communities to identify the needs of communities and enable appropriate policies and strategies to be developed to ensure the delivery of an equitable service within the district or region.

The principal responsibilities of cross cultural liaison officers include:

- (i) managing and coordinating cultural support activities in line with Service policy;
- (ii) developing and maintaining effective communication with Aboriginal/Torres Strait Islander and ethnic community representatives, colleagues and representatives of government departments and external agencies;
- (iii) developing and presenting community based policing programs in line with service policy; and
- (iv) providing operational support particularly in the investigation of crime in ethnic, Aboriginal and Torres Strait Islander communities.

PROCEDURE

Officers requiring assistance or advice can obtain the contact numbers for cross cultural liaison officers from the Bulletin Board on the QPS computer system.

- (iii) Section 1.4.6, s 1.4.7 OPM - Significant Events – allocation of resources, ensuring that information or intelligence is effectively evaluated and disseminated

41. Section 1.4.6 of the OPM, under the heading 'Significant events' provided Policies that:

Regional duty officers are to include in their activity log details of significant events occurring during their shift.

A significant event includes any:

...

- (iii) police related incidents resulting in death or serious injury as defined in s. 1.17 ...;

...

- (xii) Case of a death in custody as outlined in s. 16.24 ...

In each of these cases, the regional duty officer is to ensure a computer message is sent to the Deputy Commissioner, Deputy Chief Executive (Operations) ...

42. Section 1.4.7 of the OPM under the heading 'Shift Supervisor' provided Policies that the shift supervisor is responsible for:

- (i) the security and allocation of station or establishment resources;

...

- (vi) ensuring that information or intelligence is effectively evaluated and disseminated;

...

- (xii) in the case of significant events, as outlined in the above order, cause a computer message to be sent to the Deputy Commissioner, Deputy Chief Executive (Operations),... The information in the message should include (a) a summary of the event; (b) action taken or pending; (c) details of any complaints, suspects or offenders; and (d) the name, station and telephone number of the officer responsible for investigation of the event.

- (iv) Section 16.24.2 – OPM Additional First Response procedures for death in custody

- (v) Section 16.24.3 OPM – Additional responsibilities of officers investigating deaths in custody, including responsibilities for the Commissioned Officer (Detective Inspector Webber)

43. Section 16.24.3 'Additional responsibilities of officers investigating deaths in custody' provided Procedures that:

Where responsibility for the investigation of a death in custody or in police company reverts to a commissioned officer pursuant to s.1.17..., that commissioned officer should, as part of the investigation:

...

- (ii) Not presume suicide or natural death regardless of whether it may appear likely;

- (iii) Obtain statements from all witnesses, including police officers, as soon as practicable after the incident and prior to any debriefing session where practicable;
- (iv) Include investigations into the general care, treatment and supervision of the deceased immediately before the death in line with Service policy, orders and procedures;
- (v) Inquire fully into the circumstances of the arrest or apprehension including any relevant activities of the deceased beforehand;
- (vi) Immediately arrange for the next of kin or person previously nominated by the deceased to be notified. Cultural interests of the person being notified should be respected by using the cross cultural liaison officer, if practicable. Where the deceased is an Aborigine or Torres Strait Islander and there is a delay or inability to notify the next of kin, efforts to notify the next of kin should be recorded;
- (vii) In circumstances where the deceased is an Aborigine or Torres Strait Islander, notification should preferably be assisted by an Aboriginal or Torres Strait Islander person known to those being notified;
- (viii) If the deceased is an Aborigine or Torres Strait Islander, advise the Aboriginal and Torres Strait Islander Legal Service or other Aboriginal and Torres Strait Island community organisation with responsibility for the area, as soon as possible, whether or not the relatives have been located;

...

See also Chapter 8: Coronial Matters; and Appendix 16.4: Suggested format for reports on death in custody or in police company, of this Manual.

- (vi) Section 1.17 OPM – ‘Police related incidents’ – Integrity of Investigation, Responsibilities of Investigators, including First Response Officer, Regional Duty Officer, Regional Crime Coordinator, Ethical Standards Command
44. Section 1.17 ‘Fatalities or serious injuries resulting from incidents involving members (Police related incidents)’ provided Orders and Policies in relation to the investigation of ‘Police related incidents’ and conduct of QPS officers following ‘Police related incidents’, under the headings:
- a. ‘Definition’;
 - b. ‘Coordination’;
 - c. ‘Duties and responsibilities’;
 - d. ‘First response officer’;
 - e. ‘Regional duty officer’;

- f. 'Regional crime coordinator';
 - g. 'Role of the Internal Investigation Branch, Ethical Standards Command';
 - h. 'Integrity of Investigation';
 - i. 'Welfare'.
45. The death of Mulrunji fell within the defined term 'Police related incidents' in s 1.17 of the OPM.

Expeditious and Impartial Investigations under s 1.17 OPM

46. Under the heading 'Coordination' s 1.17 of the OPM provided an Order that '[i]nvestigations of police related incidents are to be conducted expeditiously and impartially and the psychological welfare of individuals considered', which applied to all QPS officers in relation to the investigation into the death in custody.
47. Under the heading 'Integrity of investigation' s 1.17 of the OPM provided a Policy that:

First response officers, regional duty officers and regional crime coordinators should ensure that the integrity of the independent versions of members directly involved and members who are witnesses to a police related incident is preserved as far as practicable.

In this regard, members directly involved in the incident or who are witnesses to the incident should be interviewed separately and as soon as practicable following the incident. It is highly desirable that interviews occur prior to any critical incident stress debriefing, including any defusing. Members directly involved in the incident or who are witnesses to the incident should not discuss the incident amongst themselves prior to being interviewed.

First Response Officer's Responsibilities under s 1.17 OPM

48. The first response officer's responsibilities under s 1.17 of the OPM included Orders that the first response officer was to:
- (i) assume command and control at the incident scene;
 - (ii) make an immediate assessment of the situation and inquire as to the circumstances surrounding the incident;
 - (iii) immediately notify the shift supervisor and the relevant regional duty officer in the region where the incident has occurred, and the appropriate police communications centre;
 - (iv) contain and preserve the scene;
 - (v) take possession of or safeguard exhibits;

- (vi) detain offenders;
- (vii) wherever practicable, ensure that members involved in the incident do not leave the scene; and
- (viii) wherever practicable, ensure that members who are involved in the incident, or who are witnesses to the incident, do not undertake, or continue to perform duties associated with the investigative process, or other duties at the scene.

Regional Duty Officer's responsibilities under s 1.17 OPM

49. The regional duty officer's responsibilities under s 1.17 of the OPM included Orders that the regional duty officer who is notified of a police related incident is to:

- (i) attend the scene, make an immediate assessment of the situation and make brief inquiries with persons at the scene, including members directly involved in the incident or who may be witnesses to the incident, as to the circumstances surrounding the incident
- (ii) assume command and control of the situation pending the arrival or involvement of the regional crime coordinator;
- (iv) cause the following officers or units to be immediately notified:
...
(h) the Deputy Commissioner, Deputy Chief Executive (Operations);
...
- (v) wherever practicable, ensure that members who are involved in the incident, or who are witnesses to the incident, do not undertake, or continue to perform duties associated with the investigative process, or other duties at the scene;
- (vi) wherever practicable ensure that members involved in the incident or who are witnesses to the incident are available for interview by the regional crime coordinator, officers from the Crime and Misconduct Commission or the Internal Investigation Branch, Ethical Standards Command, as the circumstances require.

Regional Crime Coordinator's responsibilities under s 1.17 OPM

50. The regional crime coordinator's responsibilities under s 1.17 of the OPM included:

- a. Under the heading 'Coordination':
 - i. an Order that:

All police related incidents are to be investigated by or under the direction of the regional crime coordinator unless otherwise directed by the Internal Investigation Branch, Ethical Standards Command or the Crime and Misconduct Commission.

ii. Policies that:

When investigating police related incidents, a regional crime coordinator should contact the investigation or appoint an independent senior investigator with sufficient criminal investigation background to carry out investigations. Considerations by regional crime coordinators in making any such appointments should include the gravity of the incident, the rank of the officers or the level of seniority of the members who are directly involved in the incident (as opposed to witnesses), and the establishment at which those officers or members directly involved in the incident are stationed.

In cases involving custody police related incidents, a regional crime coordinator should appoint an investigator from a police establishment other than from where the incident occurred, or where the officers or members directly involved in the incident are stationed.

Where the Crime and Misconduct Commission or Internal Investigation Branch, Ethical Standards Command, overviews an investigation of a police related incident, the regional crime coordinator retains responsibility for that investigation.

b. Under the heading 'Regional crime coordinator' Orders that the regional crime coordinator is to:

- (i) be directly responsible for the investigation of a police related incident, unless otherwise directed by the Deputy Commissioner, Deputy Chief Executive (Operations), or unless responsibility for the investigation is assumed by the Internal Investigation Branch, Ethical Standards Command or the Crime and Misconduct Commission;

...

- (iv) ensure that the members directly involved in the incident or who are witnesses to the incident are interviewed as soon as practicable and it is highly desirable that interviews occur prior to any critical incident stress debriefing, including any defusing; and
- (v) in cases of deaths in custody as defined in s. 16.24.1..., ensure that where necessary the provisions of ss. 16.24 to 16.24.5...are complied with.

Ethical Standards Command – Responsibilities of Officer representing, under s 1.17 OPM

51. The role of the officer representing the Internal Investigation Branch, Ethical Standards Command (ESC) under s 1.17 of the OPM included:

a. Orders that the officer is to:

- (i) on being advised of a police related incident, liaise with the regional crime coordinator and officers from the Crime and Misconduct Commission;

- (ii) make an immediate assessment of the incident in conjunction with the regional crime coordinator and Crime and Misconduct Commission officers; and
- (iii) in conjunction with the Crime and Misconduct Commission officers, overview the investigation and provide appropriate advice and assistance to the regional crime coordinator.

b. Policies that:

If, in the opinion of the officer representing the Internal Investigation Branch, Ethical Standards Command, proper investigational or procedural matters are not being adhered to, or there are matters which may adversely effect an impartial investigation, that member should confer with the regional crime coordinator and officers from the Crime and Misconduct Commission in an endeavour to resolve the issue.

If an issue can not be resolved, the officer of the Internal Investigation Branch, Ethical Standards Command is to advise the Superintendent, Internal Investigation Branch, Ethical Standards Command, who should if necessary discuss the issues with the Deputy Commissioner, Deputy Chief Executive (Operations). ...

The Deputy Commissioner, Deputy Chief Executive (Operations) may direct that the Superintendent, Internal Investigation Branch, Ethical Standards Command assume responsibility for the investigation of a police related incident. Following any such direction or as a result of the Internal Investigation Branch Ethical Standards Command assuming responsibility for an investigation, the regional crime coordinator and the appropriate assistant commissioner are to provide all reasonable assistance.

(vii) Sections 8.4.2, 17.1 – Requirement to treat Death as a Major Incident

52. Section 8.4.2 ‘First response actions – deaths’ of the OPM provided Orders that:

Where initial enquiries indicate beyond doubt that no suspicious circumstances surround the death, officers may treat the matter as a routine investigation. Officers are to treat all other cases as major incidents until such time as investigations indicate that no suspicious circumstances surround the death. The provisions of Chapter 2: ‘Investigative Process’ of this Manual apply.

Where the death of a person occurs whilst that person is in custody, officers are to comply with the provisions of Chapter 16: ‘Custody’ of this Manual. ... For homicides generally refer to s. 2.6.2: ‘Homicide’ of this Manual.

53. As outlined in s 17.1 of the OPM, Chapter 17 ‘Major Incidents’:

deals with the processes and procedures for the police response to major incidents. For the purposes of this chapter, major incidents include situations related to ... incident management. ... Incident management involves situations where the ... social routines of the community continue to operate with limited disruption. The Service

and other emergency services manage the situation within the limits of the normal operating environment.

(viii) Sections 17.3, 1.13, 1.13.1 – Management of Major Incidents

(ix) Sections 2.5.1, 2.5.3 OPM – Investigation of Major Incidents

54. Section 2.5.1 of the OPM provided as follows:

a. Policy:

- (iv) The investigation of offences and the management of incidents requiring police action are dependent on timely, accurate information being passed to investigating officers. Officers collecting such information should investigate the facts and circumstances as completely as possible in order to obtain relevant, usable information.
- (v) To ensure investigations are conducted in a professional manner, members should cooperate to allow the effective use of resources and to achieve desirable outcomes which reflect the needs and expectations of the community.
- (vi) In all investigations, officers should strictly adhere to first response procedures. The incident scene should be preserved and contained until the arrival of any specialists. Even so, primary investigation techniques should be followed in order to ensure that potential witnesses are identified and that complete information is obtained.
- (vii) The State Crime Operations Command is responsible for the control of certain investigative activities and should provide support and assistance to regions in appropriate cases (refer to s.2.7 of this chapter for responsibilities assigned to State Crime Operations Command).

b. Procedure:

It is critical that primary investigations be carried out as completely as possible. Wherever possible, primary investigations should be undertaken by the first response officer.

Activities undertaken during primary investigations may include:

- (i) identification of witnesses;
- (ii) identification of potential witnesses;
- (iii) interview of available witnesses;
- (iv) taking of statements from witnesses (suitable for court production);
- ...
- (xiii) identifying and notifying appropriate support groups;
- (xiv) notifying appropriate specialist groups;
- ...
- (xvi) arranging for necessary inquiries to be conducted by other members; and

- (xvii) recording of all activities undertaken and their outcomes.

Information obtained during the primary investigation will assist in the decision regarding the priority to be given to the investigation. Primary investigators should make recommendations in criminal offence reports for the information of supervisors.

- (x) Sections 2.7, 2.7.1, 2.7.2, 2.7.11, 2.6.2 OPM – State Crime Operations Command, Crime Operations Branch, Homicide Investigation Group

- 55. Section 2.7 ‘State Crime Operations Command’ provides a Policy that:

The State Crime Operations Command and the regions or commands should work together to provide high quality, professional investigative services to the community.

Officers in charge of regions or commands should ensure that information is distributed to the State Crime Operations Command in appropriate cases, in a timely fashion.

The Assistant Commissioner, State Crime Operations Command, should ensure that assistance is given to regions or commands in appropriate cases and that effective communication and feedback systems are maintained.

- 56. Section 2.7.1 defines the term ‘Major Crime’ to include ‘serious crime, especially offences involving violence against the person...’ and provides a Policy that ‘The major roles and responsibilities of the Crime Operations Branch, are those required for the investigation and suppression of organised and major crime.’

- 57. Section 2.7.2 ‘Functions of the Crime Operations Branch’ provides a Policy that:

Responsibilities include:

...

- (ii) major or organised crime which is not within the capabilities of regions; and
- (iii) serial or notable crimes at the discretion of the Assistant Commissioner, State Crime Operations Command; and
- (iv) other matters as directed by the Deputy Commissioner, Deputy Chief Executive (Operations).

Within Crime Operations Branch, specialist personnel will be maintained to investigate, assist, provide information, advise and train others in the following:
... • homicide ...

- 58. Section 2.7.11 of the OPM provided a Policy that ‘The Homicide Investigation Group, Crime Operations Branch will upon determination, be involved in the investigation of homicides, deaths in custody ...’.

F3 Human Resource Management Manual: Code of Conduct and Procedural Guidelines for Professional Conduct

59. The HRMM was issued by the Second Respondent pursuant to s 4.9 of the PSA Act and included:
- a. Section 17.1 'Code of Conduct', established by the Second Respondent in satisfaction of s 15 of the *Public Sector Ethics Act 1994* (Qld) (**PSE Act**); and
 - b. Section 17.2 'Procedural Guidelines for Professional Conduct' (**PGFPC**), which provided Procedures in relation to the conduct of members of the QPS.
60. As at November 2004, s 18 of the PSE Act provided that, 'A public official of a public sector entity must comply with the conduct obligations stated in the entity's code of conduct that apply to the official'.
61. As at November 2004:
- a. the Schedule to the PSE Act defined 'conduct obligation' as meaning an obligation stated in an approved code of conduct that must be complied with by public officials;
 - b. the Schedule to the PSE Act defined 'ethics obligations' as meaning the obligations referred to in s 5(2) of the PSE Act;
 - c. s 5(2) of the PSE Act provided that the obligations in Division 2 of Part 2 (ss 7-11) are the ethics obligations for public officials;
 - d. s 5(3) of the PSE Act provided that 'The ethics obligations are intended to provide the basis for codes of conduct for public officials and are not of themselves legally enforceable';
 - e. s 14 of the PSE Act provided that a code of conduct may:
 - i. provide obligations public officials must comply with; and
 - ii. contain other material as therein described.
62. In November 2004, Version 29 of the QPS Code of Conduct dated August 2003 (**Code of Conduct**) was in force.

(a) Section 2 Code of Conduct – Purpose and Scope

63. Section 2 ‘Purpose and Scope’ of the Code of Conduct provided:

The purpose of this code of conduct is to provide all members of the Queensland Police Service with a set of guiding principles and standards to assist them determine acceptable standards of conduct.

This code is intended to be used by members of the Service in determining what is right and proper in their actions.

This code outlines the Standards of Conduct that apply to all members of the Service.

All members of the Service are “Public Officials” as defined in the Public Sector Ethics Act and are employed at public expense for the benefit of the community. As such, in the delivery of policing services to the community, the Service and its members must strive to achieve the highest standards of conduct and accountability. In the provision of these policing services, the public are entitled to expect that all members will:

- Conduct themselves and discharge their responsibilities with professionalism and integrity;
- Observe fairness and equity in their official dealings with the public and other public sector staff;
- Comply with, and be seen to act within the spirit and letter of the law; and
- Act in the public interest and give priority to official duties and obligations.

At all times under the provisions of this code members are expected to conduct themselves in a manner that does not discredit:

- The individual member, having regard to their official position held within the Service; or
- The reputation of the Queensland Police Service.

64. Section 2 of the Code of Conduct did not contain ‘conduct obligations’ within the meaning of s 18 of the PSE Act.

(b) Section 7 Code of Conduct – Determination of Conduct

65. Section 7 ‘Determination of Conduct’ of the Code of Conduct provided that:

Determining whether a member’s conduct, **whether on or off duty**, is right and proper in terms of this code requires an examination of:

- The nature of the conduct exhibited; and
- The context in which the conduct takes place.

Within this framework, appropriateness of conduct is then determined with reference to the expectations of the Service, the wider community and the provisions of this code.

Members assessing the appropriateness of their conduct, or of the conduct of other members, against the provisions of this code should apply the **SELF** test:

- Would your decision withstand **Scrutiny** by the community or the Service?
- Will your decision **Ensure** compliance with your Oath of Service, this Code of Conduct and Service policy?
- Is your decision **Lawful**? Does it comply with all laws, regulations and rules?
- Is your decision **Fair** to the community, your family and colleagues and others?

Where the conduct of a member, whether on or off duty, does not satisfy the provisions of the SELF test or it will otherwise adversely reflect on the Service, it will be deemed by the Service as inappropriate under the provisions of this code.

The Service expects that members, in fulfilling their obligations under this code, will not only meet the minimum standards of conduct required, but will strive to, and encourage others under their supervision to achieve the highest standards of conduct possible.

66. Section 7 of the Code of Conduct did not contain ‘conduct obligations’ within the meaning of s 18 of the PSE Act.

(c) Section 9 Code of Conduct – Ethics Obligations

67. Section 9 ‘Ethics Obligations’ of the Code of Conduct states ‘[t]his section outlines the ethics obligations as stated in the Public Sector Ethics Act.’

(i) Respect for Law and System of Government

68. Section 9.1 ‘Obligation: Respect for the Law and System of Government’ of the Code of Conduct provided that ‘[a] public official should uphold the laws of the State and the Commonwealth and carry out official public sector decisions and policies faithfully and impartially.’
69. Section 9.1 of the Code of Conduct restated the ethics obligation in s 7(1) of the PSE Act.
70. Section 9.1 of the Code of Conduct did not contain ‘conduct obligations’ within the meaning of s 18 of the PSE Act.
71. Section 3.1 ‘Respect the Law and System of Government’ of the PGFPC provided:

The obligation under this principle, supports the system of responsible parliamentary government established in Queensland by convention and the rule of law. The role and responsibilities of the appointed public official in such a system are summarised in the following statements:

- public employment involves a position of trust (ie. Public officials are employed at public expense for the benefit of the community); and
- public officials must ensure that their powers and influence are used lawfully and fairly.

As such, public officials are expected to act properly, in good faith, in accordance with both the spirit and the letter of the law and in the best interests of the community of Queensland.

Members should refer to “The Role of the Public Official” in Appendix A of this section for further information.

72. Section 3.1 of the PGFPC did not contain ‘conduct obligations’ within the meaning of s 18 of the PSE Act.

73. Appendix A of the PGFPC provided:

The Role of the Public Official

The following statement sets out the role of the appointed public official in a system of responsible Parliamentary Government. It has particular relevance to the regular public servant or public employee who works in a government department or authority which provides service delivery, regulatory or policy-advisory functions.

Public employment involves a position of trust.

The standards of conduct which may be expected of public officials at all levels are therefore a matter for legitimate and continuing concern by the Government of the day, public sector organisations, and the community.

Public officials are employed at public expense for the benefit of the community, as identified by an elected Government and its agencies. In performing official duties, public officials are expected to act “in the public interest”.

Public officials at all levels take action and make decisions which can have significant effects on the lives of ordinary citizens, who generally expect to be able to take on trust that the powers exercised by those officials were used properly.

The idea of “the public interest” lies at the centre of the concept of responsible public service, which has its roots in the conventions of the “Westminster” tradition of democratic government and public administration. In general, “to act in the public interest” means to act in accordance with the law and the policy objectives of the elected Government, under the direction of the responsible Minister.

Public Officials are often called upon to make decisions or implement policy in circumstances in which their personal values and beliefs, or their individuals interests, may be in conflict with government policy. Or it may be necessary to recommend a course of action in a matter involving conflicting interests, or competing views about what “the public interest” requires.

Public officials also control, in various ways, the use of financial and other valuable resources provided by the community. The use, and misuse, of those resources raises important questions of professional ethics for administrators.

In our system of government and public administration, it is a long-established expectation that those public officials who make decisions or exercise powers on behalf of a minister, or who provide policy advice which may affect the welfare, rights or entitlements of the community and individuals, are subject to an ethical obligation to ensure that their powers and influence are used lawfully and fairly.

It is similarly expected that those public officials who control the financial and other resources provided by the community have an ethical obligation to ensure that those resources are used efficiently and appropriately.

Given those traditional expectations, concern will be likely to arise where public officials (especially those in positions of authority or sensitivity) become involved in, for example, questionable use of official information or inappropriate personal conduct in the workplace, conflicts between their personal interests and their duty as an official, or where their preparedness to implement the policies of the government of the day appears to be in question.

How public officials use their official positions, their powers and the resources available to them are therefore the central concerns of this Code of Conduct.

It is therefore essential that individuals and organisations have a clear understanding of the role of the public official, and of the “professional ethics” standards which may be expected in the public sector.

74. Appendix A of the PGFPC did not contain ‘conduct obligations’ within the meaning of s 18 of the PSE Act.
- (ii) Respect for Persons
75. Section 9.2 ‘Obligation: Respect for Persons’ of the Code of Conduct provided that:

[a] public official should treat members of the public and other public officials honestly and fairly, with proper regard for their rights and obligations. A public official is to act responsively in performing official duties.
76. Section 9.2 of the Code of Conduct restated the ethics obligation in s 8 of the PSE Act.
77. Section 9.2 of the Code of Conduct did not contain ‘conduct obligations’ within the meaning of s 18 of the PSE Act.
78. Section 3.2 ‘Respect for Persons’ of the PGFPC provided that:

This obligation covers the conduct of public officials in their dealings with members of the public, and other public officials. It requires that members be responsive to the reasonable demands of members of the community, including other public officials (e.g. by being courteous and helpful). It also requires that public officials avoid patronage, favouritism and act fairly in their management and dealings with all persons.

Public officials should not allow personal feelings to improperly influence their judgements (sic) or decisions on work related issues.

Under this obligation public officials are expected to respect the dignity, rights and views of all persons. This principle is complementary to both Equal Opportunity in Public Employment and Anti-Discrimination legislation in that all public officials are responsible for providing an environment conducive to equity of employment opportunity for members of target groups and ensuring that the workplace is free of unlawful discrimination.

The obligation encompasses and affirms the belief that the principle of natural justice is integral to sound administrative decision-making. This principle should be observed in the settlement of disputes or when making decisions that may result in adverse effects on a persons' rights, interests or legitimate expectations. Natural justice (or procedural fairness) is concerned with ensuring that a fair decision is reached by an objective decision maker.

79. Section 3.2 of the PGFPC did not contain 'conduct obligations' within the meaning of s 18 of the PSE Act.

(iii) Integrity

80. Section 9.3 'Obligation: Integrity' of the Code of Conduct provided that:

In recognition that public office involves a public trust, a public official should seek to maintain and enhance public confidence in the integrity of public administration and advance the common good of the community the official serves. Having regard to that obligation, a public official:

- Should not improperly use his or her official powers or position, or allow them to be improperly used;
- Should ensure that any conflict that may arise between the official's personal interests and official duties is resolved in favour of the public interest; and
- Should disclose fraud, corruption, misconduct and maladministration of which the official becomes aware. ...

81. Section 9.3 of the Code of Conduct restated the 'ethics obligations' in s 9 of the PSE Act.
82. Section 9.3 of the Code of Conduct did not contain 'conduct obligations' within the meaning of s 18 of the PSE Act.
83. In Appendix A, s 17.1 of the Code of Conduct and for the purposes of the PGFPC, the term 'Improper' is defined as: 'Improper means anything that is not

in accordance with propriety of behaviour or conduct suitable for a particular purpose, person or occasion.’

84. Section 3.3 ‘Integrity’ of the PGFPC provided:

This obligation requires public officials to recognise that public service involves a position of trust. It recognises that confidence in public administration may be compromised when the conduct of an official appears to, or involves dishonesty, untruthfulness or a conflict of interests between their private dealings and their public duty.

The obligation also requires that public officials ensure that their actions, conduct and relationships do not raise questions about their willingness and ability to:

- ...
- use official powers, influence, resources and information properly; and
- avoid using, the powers or influence of public office, official resources or official information, for personal or other improper advantage.

85. Section 3.3 of the Code of Conduct did not contain ‘conduct obligations’ within the meaning of s 18 of the PSE Act.

(iv) Diligence

86. Section 9.4 ‘Obligation: Diligence’ of the Code of Conduct provided that: ‘[i]n the performance of official duties, public officials should exercise proper diligence, care and attention. Officials should seek to achieve high standards of public administration.’

87. Section 9.4 of the Code of Conduct restated the ethics obligation in s 10 of the PSE Act.

88. Section 9.4 of the Code of Conduct did not contain ‘conduct obligations’ within the meaning of s 18 of the PSE Act.

89. Section 3.4 ‘Diligence’ of the PGFPC provided:

In practice, this obligation requires that public officials should:

- act with due diligence and provide ‘a fair day’s work’;
- observe the principles of ‘natural justice’;
- ensure that ‘duty of care’ requirements are observed;
- act in good faith and avoid negligent behaviour;

- provide expert and comprehensive advice commensurate to the position held; and
- seek to maintain high standards of public administration.

90. Section 3.4 of the PGFPC did not contain ‘conduct obligations’ within the meaning of s 18 of the PSE Act.

(d) Section 10 Code of Conduct – Standards of Conduct

91. Section 10 ‘Standards of Conduct’ of the Code of Conduct provided that:

The following standards are derived from the ethics principles and obligations as outlined in sections 8 and 9 of this code. They apply to all members of the Service and are the standards that will be used by the Service when determining appropriateness of a member’s conduct against the provisions of this code.

92. Section 10 of the Code of Conduct did not contain ‘conduct obligations’ within the meaning of s 18 of the PSE Act.

(i) Responsibility to Community, Government and the Law

93. Section 10.1 ‘Responsibility to Community, Government and the Law’ of the Code of Conduct provided that: ‘[m]embers are to act in good faith, in accordance with both the spirit and the letter of the law and in the best interests of the community of Queensland.’

(ii) Lawful Directions

94. Section 10.5 ‘Lawful Directions’ of the Code of Conduct provided that ‘[m]embers are to obey any lawful direction instruction or order given by any member or person authorised by law to do so.’ Accordingly, in all cases where a QPS officer failed to obey any lawful direction instruction or Order, such failure was a breach of s. 10.5 of the Code of Conduct.

95. Section 4.1 ‘Questioning Lawful Directions, Instructions or Orders’ of the PGFPC provided:

As outlined in s.10.5 of the Code of Conduct, all members have an obligation to obey any lawful direction instruction or order given by any member or other person authorised by law to do so. **This is a very clear statement by the Service to all members** in relation to their requirements when subject to lawful directions.

Where members fail to comply with any lawful direction in the performance of their official duties they should expect to be subject to appropriate

corrective or disciplinary action. The obligation to comply with lawful directions should not be taken lightly as it is paramount to the effective and efficient functioning of the Service.

Policing agencies and their members provide specific and unique services to the community that are vital to the well being of persons and maintenance of a peaceful, ordered and lawful society. As members of a policing agency we all have responsibilities in the provision of these services to the community. The best way of achieving this is through respect, support and compliance with the chain of command and lawful directions of authorised persons.

While the information contained in this section is supplied to assist members when dealing with unlawful, improper or inappropriate directions, instructions or orders, it is not prescriptive and could never cover every eventuality or situation that arises. **When dealing with matters of this nature, members are to at all times, conduct themselves in a professional manner.** Members are to make every effort to ensure that their actions in these situations are not observed or perceived by members of the community as undermining the authority of supervisors, the chain of command or public confidence in the Service.

96. Section 4.1 of the PGFPC did not contain ‘conduct obligations’ within the meaning of s 18 of the PSE Act.

(iii) Conflict of Interests

97. Section 10.6 ‘Conflict of Interests’ of the Code of Conduct, provided:

Members of the service are expected to perform their duties in such a manner that public confidence and trust in the integrity, objectivity and impartiality of the Queensland Police Service and its members is preserved.

Further, members are to ensure as far as practicable there is no conflict between their personal interests and the impartial fulfilment of their official duties and responsibilities.

Members are to avoid both actual or apparent conflicts of interests in all matters relating to their employment with the Service.

Where a conflict of interest does arise between the private interests of a member and the official duties or responsibilities of that member, the member is to disclose details of the conflict to their supervising Executive Officer.

All conflicts of interests relating to a member’s employment with the Service will be resolved in favour of the Service and the public interest.

98. In Appendix A, s 17.1 of the Code of Conduct and for the purposes of the PGFPC:

- a. ‘Apparent Conflict of Interests’ is defined as: ‘An apparent conflict of interests exists when it appears that a member’s private interests could interfere with the proper performance of their official duties.’
- b. ‘Actual Conflict of Interests’ is defined as: ‘An actual conflict of interests exists when a reasonable person, in possession of the relevant facts, would conclude

that the member's private interests are interfering with the proper performance of their official duties.'

99. In Appendix A, s 17.1 of the Code of Conduct did not contain 'conduct obligations' within the meaning of s 18 of the PSE Act.

100. Section 4.4 'Conflict of Interests' of the PGFPC provided:

As outlined under the provisions of the Code of Conduct, members are required to arrange their private affairs in a manner that will prevent any actual or apparent conflict of interests from arising wherever foreseeable. Further, members are to ensure there is no incompatibility between their personal interests and the impartial fulfilment of their official duties and responsibilities.

Whilst the Service recognises that it is difficult to foresee or predict every possible conflict of interests that may arise, members should take all reasonable steps in both their private and working environments to prevent or minimise the occurrence or likelihood of such conflict of interests arising.

Where members become aware of an actual or apparent conflict of interests between official duty and their private interests, they are required under the provisions of the Code of Conduct to disclose details of the conflict to their supervising Executive Officer.

The Executive Officer is to:

- i. consider information contained in the disclosure;
- ii. determine the extent of the conflict of interests; and
- iii. direct any remedial action to resolve the conflict.

Members should be aware that any conflict of interests which arises between their private interests and official duties or responsibilities will be resolved in favour of the Service and the public interest.

101. Section 4.4 of the PGFPC did not contain 'conduct obligations' within the meaning of s 18 of the PSE Act.

(iv) Personal Conduct, Influence to Secure Advantage

102. Section 10.8 'Personal Conduct' of the Code of Conduct provided that:

[a]t all times, members are to act and be seen to act properly and in accordance with both the spirit and the letter of the law and the terms of this code of conduct. Members are not to act in a manner which will adversely reflect on the service generally or on themselves as members of the Service.

103. Section 10.11 'Influence to Secure Advantage' of the Code of Conduct provided that:

Members shall not use the influence of their official powers or position, or the influence of any other person to obtain improperly, any ... advantage, either personally or on behalf of another.

(v) Performance of Official Duties

104. Section 10.14 'Performance of Official Duties' of the Code of Conduct provided:

In the performance of official duties members are to:

- (i) Demonstrate high standards of professional integrity and honesty;
- (ii) Apply themselves to the efficient and effective achievement of the functions of the Queensland Police Service;
- (ii) Perform any duties associated with their position diligently and to the best of their ability, in a manner that bears the closest public scrutiny and meets all legislative, Government and Service standards;
- (iii) Set and maintain standards of leadership that are consistent with corporate goals and policies, and be seen at all times to act in support of those corporate goals and policies;
- (iv) Promote and encourage members of the Service under their supervision to exercise high standards of personal and professional conduct;
- (v) Act with fairness and reasonable compassion;
- (vi) Provide conscientious, effective, efficient and courteous service to all those with whom they have official dealings. In particular, members are to be sensitive to the special circumstances and needs surrounding victims of crime;
- (vii) While members will put family responsibilities first, duty to the people of Queensland will always be given priority over the other private interests of members;
- (viii) Perform their duties impartially and in the best interests of the community of Queensland, without fear or favour;
- (ix) Act in good faith; and
- (x) Actively contribute to the achievement of the Service's corporate goals.

(vi) Conduct towards Members and Other Persons

105. Section 10.15 'Conduct Toward Members and Other Persons' of the Code of Conduct relevantly provided:

In the course of their duties, and in particular when exercising discretionary powers, members are to:

- (i) Treat all persons with respect and dignity and in a reasonable, equitable and fair manner;
- (ii) Not intimidate, engage in sexual or other forms of harassment, unlawfully discriminate or otherwise abuse any person;
- (iii) ...
- (iv) ...
- (v) Adhere to the principles of natural justice;

- (vi) ...
- (vii) ...
- (viii) ...
- (ix) Not allow personal relationships to adversely affect their work performance or that of other members; and
- (x) Not induce other members to breach this code.

106. Appendix A of the Code of Conduct for the purposes of the PGFPC defines the term 'Natural Justice' as:

Natural justice (or Procedural Fairness) is concerned with ensuring that a fair decision is reached by an objective decision maker. It requires that two rules be observed:

- The **hearing rule**, which states that a person or body deciding a particular matter must give the affected person the opportunity to present their case and have that material considered before any decision is made.
- The **rule against bias**, which states that a decision maker should have no personal interest in the matter to be decided, have no bias as to the outcome and act in good faith throughout the process.

F4 Duty to assist Coroner

107. In November 2004:

- a. The death of Mulrunji:
 - i. was a 'reportable death' as defined in s 8 of the *Coroners Act 2003* (Qld) (**Coroners Act**);
 - ii. was required to be investigated by a Coroner by reason of it being a reportable death, in accordance with s 11(2) of the *Coroners Act*;
- b. The Coroner investigating the death of Mulrunji was required to hold an inquest, in accordance with s 27(1)(a)(i) of the *Coroners Act*.
- c. The functions and powers of the State Coroner were set out in s 71 of the *Coroners Act*, which provided:
 - (1) The State Coroner's functions are -
 - (a) to oversee and coordinate the coronial system; and
 - (b) to ensure the coronial system is administered and operated efficiently; and
 - (c) to ensure deaths reported to coroners that are reportable deaths are investigated to an appropriate extent; and

- (d) to ensure an inquest is held if –
 - (i) the inquest is required to be held under this Act; or
 - (ii) it is desirable for the inquest to be held; and
- (e) to be responsible, together with the Deputy State Coroner, for all investigations into deaths in custody; and
- (f) to issue directions and guidelines about the investigation of deaths under this Act; and
- (g) any other function given to the State Coroner or a coroner under this or another Act.

d. Section 14 of the Coroners Act provided:

- (1) To ensure best practice in the coronial system, the State Coroner ... must issue guidelines to all coroners about the performance of their functions in relation to investigations generally ...
- (2) When preparing the guidelines, the State Coroner must have regard to the recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCADIC) that relate to the investigation of deaths in custody.
- (3) The guidelines must (a) deal with the investigations of deaths in custody. ...
- (4) When investigating a death, a coroner must comply with the guidelines and any directions issued to the coroner to the greatest practicable extent.

e. Version 0 December 2003, of the Queensland State Coroner's Guidelines (**Coroner's Guidelines**) had been issued by the State Coroner pursuant to s 14 of the Coroners Act.

f. Section 15(2) of the Coroners Act provided that, 'The duty of a police officer to help a coroner is stated in the *Police Powers and Responsibilities Act 2000* (Qld) (**PPR Act**), s 447A.'

g. Section 447A of the PPR Act established a duty in the following terms:

- (1) It is the duty of police officers to assist coroners in the performance of a function, or exercise of a power, under the Coroners Act 2003, including--
 - (a) the investigation of deaths; and
 - (b) the conduct of inquests.
- (2) Without limiting subsection (1), it is the duty of police officers to comply with every reasonable and lawful request, or direction, of a coroner.

- h. Section 8.4.1 of the Queensland Police Service Operations Procedures Manual (OPM) provided an Order that:

Officers are to assist coroners in the performance of a function, or exercise of a power, under the Coroners Act and are to comply with every reasonable and lawful request, or direction of a coroner.

108. All officers of the QPS had a duty to assist coroners in the performance of a function or exercise of a power under the Coroners Act in relation to the death of Mulrunji by s 447A of the PPR Act and s 8.4.1 of the OPM.
109. Clause 7.2 'How should deaths in custody be investigated?' of the Coroner's Guide-lines, provided that:

In principle

Deaths in custody warrant particular attention because of the responsibility of the state to protect and care for people it incarcerates, the vulnerability of people deprived of the ability to care for themselves, the need to ensure the natural suspicion of the deceased's family is allayed and public confidence in state institutions is maintained. Further, a thorough and impartial investigation is also in the best interests of the custodial officers.

...

In practice

All deaths in police custody ... will be undertaken by officers from the State Homicide Investigation Group and overviewed by officers from the Crime and Misconduct Commission or the Ethical Standards Command of the QPS. If the investigation is conducted in accordance with the policies of those agencies relating to such deaths it will be consistent with the recommendations of the RCADIC and these guidelines.

In all cases investigations should extend beyond the immediate cause of death and whether it occurred as a result of criminal behaviour. It should commence with a consideration of the circumstances under which the deceased came to be in custody and the legality of that detention. The general care, treatment and supervision of the deceased should be scrutinised and a determination made as to whether custodial officers complied with their common law duty of care and all departmental policies and procedures and whether these were best suited to preserving the prisoner's welfare. Only by ensuring the investigation has such a broad focus as to identify systemic failures will a Coroner be given a sufficient evidentiary basis to discharge his/her obligation to devise preventative recommendations.

In most cases a full internal autopsy should be undertaken by a forensic pathologist. The pathologist should be provided with all information gathered from the scene and any witnesses that is available at the time the autopsy is undertaken. If, during the course of the investigation evidence is uncovered that contradicts or is inconsistent with the information available when the autopsy was undertaken that information should be conveyed to the pathologist and he/she should be asked to provide a further report indicating whether the new information provides any basis to vary the conclusion of the earlier report.

110. The Coroner's Guidelines applied to coroners.

111. By operation of s 447A of the PPR Act, QPS officers investigating the death in custody should have provided the pathologist conducting the autopsy upon Mulrunji with all:

- a. Information gathered from witnesses that was available the time the autopsy was undertaken;
- b. Information about evidence that was uncovered that contradicted or was inconsistent with the information available when the autopsy was undertaken.

(a) Completion of Form 1

112. In relation to the QPS Investigation Team investigating Mulrunji's death, and Inspector Mark Williams of the QPS Ethical Standards Command (ESC) (**Inspector Williams**), s 8.4.3 'Responsibilities of investigating officers' of the OPM provided:

a. Procedure:

Where initial enquiries indicate that a death is one that falls within the ambit of Part 3 of the Coroners Act, the Service is obliged to investigate and report on the cause of the death. The actions required to do so will vary from case to case, dependent on the circumstances of the death. In all cases however, certain actions must be taken and certain reports must be completed. The following points provide a list of those reports and actions, and the sections that follow discuss those requirements in greater detail.

b. Policy:

In the case of any death which falls within the circumstances outlined in Part 3 of the Coroners Act the investigating officer is responsible for:

...

(v) completing a 'Police Report of a Death to a Coroner' (Form 1) then:

- (a) forwarding or delivering the original and a copy of the Form 1 to the coroner and obtaining from that person an order for autopsy;
- (b) delivering the order for autopsy and another copy of the Form 1 to the Government Pathologist who is to perform the autopsy;

...

- (d) forwarding an electronic copy of the Form 1 to their respective Officer in Charge so that it is checked and forwarded via Email to the State Coroner's Police Support Unit ...
- (e) submitting a signed copy of the Form 1 to the respective Officer in Charge to be forwarded to the local Coroner.
- (vi) completing, where applicable, a Supplementary Form 1 (QP528). The Supplementary Form 1 is used to provide additional information to a coroner or State Coroner.
- (vii) attending and witnessing the autopsy, where applicable, or arranging for the attendance of another officer in line with local arrangements;
- ...
- (ix) where an inquest is to be held, ensuring that the following forms have been completed as fully as possible and copies are available for submission to the coroner in compliance with s. 8.4.20 'Statutory forms' of this chapter:
 - (a) Form 1; ...

c. Order:

In cases where additional or relevant information comes to hand that may assist a government pathologist in determining a cause of death at a time prior to an autopsy being conducted, investigating officers are to contact the pathologist as a matter of urgency and provide that information on a Supplementary Form 1. The Supplementary Form 1 should also be completed and submitted in the same way as a Form 1. A copy of the Supplementary Form 1 should also be forwarded to the relevant pathologist.

113. In relation to the QPS Investigation Team investigating Mulrunji's death, and Inspector Williams, s 8.4.8 'Completion of Form 1' of the OPM provided Procedures that:

The purpose of the Form 1 is to assist the Coroner in deciding whether an autopsy should be ordered, and to assist the pathologist performing the autopsy to establish the cause of death. Therefore the investigating officer should complete the relevant parts of the form as soon as possible.

...

Where an officer has additional information that could not be included on the Form 1 at the time of submission, they should provide this information on a Supplementary Form 1 (QP528).

F5 Requirement for impartial investigation

114. In relation to the QPS Investigation Team investigating Mulrunji's death, and Inspector Williams, by reason of s 1.17 of the OPM under the heading 'Coordination', those QPS officers were subject to an Order that the

investigation of the death of Mulrunji was 'to be conducted expeditiously and impartially and the psychological welfare of individuals considered'.

115. By reason of s 1.17 of the OPM as referred to in paragraph 51 hereof and the fact that Inspector Williams was the officer representing the Internal Investigation Branch, ESC, in the investigation into the death of Mulrunji, upon being advised of the death of Mulrunji, Inspector Williams was subject to:

- i. Orders that he:
 - A. liaise with Detective Inspector Warren Webber (DI Webber) and officers from the Crime and Misconduct Commission (CMC);
 - B. make an immediate assessment of the incident in conjunction with those persons; and
 - C. in conjunction with the CMC officers, overview the investigation and provide appropriate advice and assistance to DI Webber.
- ii. Policies that:
 - A. If in his opinion, proper investigational or procedural matters were not being adhered to, or there are matters which may adversely affect an impartial investigation, he should confer with DI Webber and officers from the CMC in an endeavour to resolve the issue;
 - B. If an issue cannot be resolved, he should advise the Superintendent of the ESC.

116. Clause 7.2 of the Coroner's Guidelines provided that 'a thorough and impartial investigation is also in the best interests of the custodial officers'.

117. The QPS officers investigating Mulrunji's death in custody in November 2004 were obliged to:

- a. expeditiously conduct a thorough and impartial investigation, by virtue of s 1.17 of the OPM under the heading 'Coordination'; and
- b. comply with the standards of conduct in ss 10.1, 10.5, 10.6, 10.8, 10.11, 10.14 and 10.15 of the Code of Conduct, by virtue of s 18 of the PSE Act.

F6 Protections of the integrity of investigation

118. In November 2004, s 2.3 of the PSA Act provided as follows:

The functions of the police service are--

- (a) the preservation of peace and good order--
 - (i) in all areas of the State ...
- (b) the protection of all communities in the State and all members thereof--
 - (i) from unlawful disruption of peace and good order that results, or is likely to result, from--
 - (A) actions of criminal offenders;
 - (B) actions or omissions of other persons;
 - (ii) from commission of offences against the law generally;
- (c) the prevention of crime;
- (d) the detection of offenders and bringing of offenders to justice;
- (e) the upholding of the law generally;
- ...

119. In November 2004, clause 7.2 of the Coroner's Guidelines provided that:

Deaths in custody warrant particular attention because of the responsibility of the state to protect and care for people it incarcerates, the vulnerability of people deprived of the ability to care for themselves, the need to ensure the natural suspicion of the deceased's family is allayed and public confidence in state institutions is maintained.

120. Section 16.24.3 of the OPM provided a Procedure that a commissioned officer responsible for an investigation into a death in custody should:

- (iii) obtain statements from all witnesses, including police officers, as soon as practicable after the incident and prior to any debriefing session where practicable;
- (iv) include investigations into the general care, treatment and supervision of the deceased immediately before the death in line with Service policy, orders and procedures;
- (v) inquire fully into the circumstances of the arrest or apprehension including any relevant activities of the deceased beforehand.

121. Section 2.13.1 of the OPM provided a Policy that:

Statements form a written version of the oral testimony of a witness and therefore should be as comprehensive as possible.

... Statements should be obtained at the earliest practicable opportunity ... In appropriate situations statements should be obtained and should be accepted from suspects/offenders.

122. Section 2.13.8 of the OPM provided that:

Members who may be required to give evidence of conversations, events or occurrences should compile relevant notes at a time during the conversation, event or occurrence, or as soon as practicable thereafter while details are still fresh in their mind.

123. Section 1.17 of the OPM provided:

- a. a Policy that following a death in custody, police officers directly involved in the incident or who were witnesses to the incident should not discuss the incident amongst themselves prior to being interviewed;
- b. an Order that the regional duty officer who was notified or who became aware of a police related incident was to assume command and control of the situation pending the arrival or involvement of the regional crime coordinator and, 'wherever practicable, ensure that [QPS] members who are involved in the incident, or who were witnesses to the incident, [did] not undertake, or continue to perform duties associated with the investigative process, or other duties at the scene'; and
- c. a Policy that first response officers, regional duty officers and regional crime coordinators should ensure that the integrity of the independent versions of events of members directly involved and members who are witnesses to a police related incident is preserved as far as practicable.

F7 Support to Aboriginal Witnesses

124. Sections 6.3.2 and 6.3.6 of the OPM provided:

- a. An Order (6.3.2):

When an officer wishes to interview a person, the officer is to first establish whether a special need exists...the officer is to evaluate the ability of the person to be interviewed to look after or manage their own interests and is to establish whether the person meets the following conditions. The person is to be:

- (i) capable of understanding the questions posed;
- (ii) capable of effectively communicating answers;
- (iii) capable of understanding what is happening to him/her;
- (iv) fully aware of the reasons why the questions are being asked;
- (v) fully aware of the consequences which may result from questioning; and
- (vi) in the opinion of the investigating officer, capable of understanding his or her rights at law.

In making an evaluation, the officer is to take into account the following factors:

- (i) the seriousness of the condition giving rise to the special need [...];
- (ii) the reason for which the person is being questioned, whether as a witness or in relation to their complicity in an offence. Where the information to be obtained may later be used in a court, it will be necessary to show that any special need was overcome;
- (iii) the complexity of the information sought from the person; and
- (iv) the age, standard of education, knowledge of the English language, cultural background and work history of the person.

When questioning anyone with a special need officers must comply with ss. 249 and 250 of the Police Powers and Responsibilities Act.

b. A Policy (6.3.6):

Persons of Aboriginal and Torres Strait Islander descent are to be considered people with a special need because of certain cultural and sociological conditions. When an officer intends to question an Aborigine or Torres Strait Islander, whether as a witness or a suspect, the existence of a need should be assumed until the contrary is clearly established using the criteria set out in s. 6.3.1 'Circumstances which constitute a special need' of this chapter.

F8 Other duties

125. Section 16.24.3 of the OPM provided a Procedure that a commissioned officer responsible for an investigation into a death in custody should 'not presume suicide or natural death regardless of whether it may appear likely'.

126. Section 16.24.3(vi)-(viii) of the OPM provided a Procedure that a commissioned officer responsible for an investigation into a death in custody should:

- (vi) immediately arrange for the next of kin or person previously nominated by the deceased to be notified. Cultural interests of the person being notified should be respected by using the cross cultural liaison officer, if practicable. Where the deceased is an Aborigine or Torres Strait Islander and there is a delay or inability to notify the next of kin, efforts to notify the next of kin should be recorded;
- (vii) in circumstances where the deceased is an Aborigine or Torres Strait Islander, notification should preferably be assisted by an Aboriginal or Torres Strait Islander person known to those being notified;
- (viii) if the deceased is an Aborigine or Torres Strait Islander, advise the Aboriginal and Torres Strait Islander Legal Service or other Aboriginal and Torres Strait Islander community organisation with responsibility for the area, as soon as possible, whether or not the relatives have been located.

G. EVENTS OF 19 TO 24 NOVEMBER 2004 FOLLOWING DEATH IN CUSTODY

G1 Notification of Death and Appointment of Investigative Team

(a) Appointment of Investigation Team

127. Between about 11.40 am and 12 noon on 19 November 2004, Inspector Strohfeldt notified DI Webber of Mulrunji's death.
128. Between about 11.40 am and 12 noon on 19 November 2004, DI Webber appointed Detective Senior Sergeant Raymond Kitching (**DSS Kitching**), from the Townsville Criminal Investigation Branch, as the primary investigator in the investigation into Mulrunji's death and, therefore, the Investigating Officer under the OPM.
129. Some time shortly thereafter, DI Webber also appointed DS Robinson to assist with the investigation.
130. At or about 12.10 pm the ESC was notified of the death in custody.
131. At or about 12:20pm on Friday 19 November 2004 DI Webber notified Detective Inspector Aspinall, the Officer in Charge of the Coronial Support Unit in Brisbane, of Mulrunji's death. The State Coroner was immediately notified of the death.
132. At or about 2.20 pm on 19 November 2004, DI Webber, DSS Kitching and DS Robinson (**Investigation Team**) travelled to Palm Island by charter aircraft, accompanied by technical support staff (Senior Sergeant Arthy, Constable Tibbey, Sergeant Bartulovich, two Constables and a Human Services Officer).
133. Before the Investigation Team arrived on Palm Island, SS Hurley, Sergeant Leafe and PLO Bengaroo discussed Mulrunji's death.
134. Before the Investigation Team arrived on Palm Island, SS Hurley was the most senior officer on the island, for the purposes of s 7.1(1) of the PSA Act.

(b) Transit from Palm Island airport

135. SS Hurley and Sergeant Leafe met the Investigation Team at the Palm Island airport, bringing two vehicles to transport the Investigation team and support staff to the Police Station.

136. Constables Ben Tonges and Kristopher Steadman were present on Palm Island on 19 November 2004 and attended the Police Station after the death of Mulrunji.
137. Neither Constable Tonges nor Constable Steadman were asked or directed to transport the Investigation Team from the airport.
138. Neither Constable Tonges nor Constable Steadman were rostered on duty at the time the Investigation Team arrived on Palm Island.
139. SS Hurley drove DI Webber and DSS Kitching from the airport to the Police Station.
140. At that time, the Investigation Team was not aware of the allegation made later that SS Hurley had assaulted Mulrunji.
141. At that time, SS Hurley, DI Webber and DSS Kitching:
 - a. had knowledge of the types of matters required to be investigated following a death in custody, which included those matters referred to in s 16.24.3 of the OPM (as referred to in paragraph 43 hereof);
 - b. knew or reasonably apprehended that any persons present on Palm Island, including the Aboriginal residents of Palm Island may become aware of the fact that SS Hurley drove the investigators into the death of Mulrunji from the airport to the Police Station, as they were doing so openly and in broad daylight.

G2 Conduct of investigation on 19 November 2004

(a) Preliminary interviews

142. Between about 4.04 pm and 4.36 pm on 19 November 2004, DSS Kitching and DS Robinson interviewed SS Hurley. During the interview, SS Hurley made remarks to the following effect:
 - a. as SS Hurley removed Mulrunji from the police vehicle, Mulrunji had struck him in the face;
 - b. SS Hurley had then grabbed hold of Mulrunji and a 'struggle' had ensued, resulting in the two men falling through the door to the Police Station;

- c. after the 'fall', Mulrunji had been dragged into the cell by SS Hurley and Sergeant Leafe; and
 - d. after placing Mulrunji in the cell, SS Hurley had noticed 'a small amount of blood' coming from an injury above Mulrunji's right eye.
143. Between 19 November and 24 November 2004 neither DI Webber nor Inspector Strohfeldt advised or directed SS Hurley not to discuss the circumstances surrounding the death in custody with other QPS officers
144. Between about 4.50 pm and 7.10 pm on 19 November 2004, DSS Kitching and DS Robinson conducted recorded interviews at the following times:
- a. PLO Bengaroo was interviewed between 4.50 pm and 5.10 pm;
 - b. Gladys Nugent was interviewed between 5.34 pm and 5.45 pm; and
 - c. Patrick Bramwell was interviewed between 6.58 pm and 7.07 pm.
145. Between about 7.50 pm and 8.12 pm on 19 November 2004, DSS Kitching conducted a recorded interview with Sergeant Leafe. During the interview, Sergeant Leafe made remarks to the effect that:
- a. as SS Hurley was removing Mulrunji from the police vehicle, he had heard SS Hurley cry out that Mulrunji had hit him;
 - b. he had then seen SS Hurley 'scuffling' with Mulrunji; and
 - c. a few seconds later, Mulrunji had been lying limp on the ground of the Police Station and had felt like a 'dead weight' as Sergeant Leafe and SS Hurley dragged him into the cell.
146. Between about 8.22 pm and 8.35 pm on 19 November 2004, DSS Kitching and DS Robinson conducted a recorded interview with Edna Coolburra.
- (b) Meal at SS Hurley's residence**
147. At about 10.30 pm on 19 November 2004 DI Webber, DSS Kitching and DS Robinson ate a meal, prepared by DS Robinson, with SS Hurley at SS Hurley's residence, during which meal they consumed a modest amount of beer.
148. Sergeant Leafe and his wife were present for part of this time.

G3 Conduct of investigation on 20 November 2004

(a) Interview with Roy Bramwell

149. On 20 November 2004, between about 8.15 am and 8.27 am, DSS Kitching and DS Robinson conducted an interview with Roy Bramwell, an Aboriginal Palm Island resident. During that interview, Mr Bramwell alleged that he saw SS Hurley assault Mulrunji.
150. Between 8.27 am and 10.52 am on 20 November 2004 DS Robinson subsequently prepared a type written statement of Roy Bramwell.

(b) Arrival of Inspector Williams

151. At or about 10.30 am on 20 November 2004, Inspector Williams arrived on Palm Island to overview the QPS investigation.
152. Shortly after arriving on Palm Island, Inspector Williams received a briefing from DI Webber, DSS Kitching and DS Robinson, then reviewed the interviews and statements which were then in existence.

(c) Video re-enactments and trip to scene of arrest

153. At or about 10.52 am on 20 November 2004, Inspector Williams and DI Webber conducted a video re-enactment with Roy Bramwell of the events surrounding Mulrunji's death, during which Mr Bramwell repeated his allegation that SS Hurley assaulted Mulrunji.
154. At or about 11.20 am on 20 November 2004, SS Hurley drove DI Webber, Inspector Williams, DSS Kitching, and Constable Tibbey to the site of Mulrunji's arrest.
155. The investigating officers asked SS Hurley to recount events at the arrest scene, but did not take PLO Bengaroo to the scene or ask PLO Bengaroo to accompany them, either at that time, or at any other time. By the time SS Hurley recounted the events at the arrest scene, PLO Bengaroo had been interviewed by investigators on 19 November 2004 and participated in a video re-enactment on 20 November 2004 when he gave information about Mulrunji's arrest and the events that followed.

156. The investigating officers knew or ought reasonably have known that members of the community would be in a position to observe SS Hurley being taken to the arrest scene.
157. The arrest scene was in Dee Street, a public place.
158. Between about 11.53 am and 1.12 pm on 20 November 2004, Inspector Williams and DI Webber conducted video re-enactments with SS Hurley, PLO Bengaroo and Sergeant Leafe.
159. During the re-enactment interview with PLO Bengaroo referred to in the preceding paragraph:
- a. PLO Bengaroo was asked by Inspector Williams whether, after the fall, he was watching as SS Hurley and Sergeant Leafe dragged Mulrunji down the hallway in the Police Station leading to the cells;
 - b. PLO Bengaroo replied, 'No I wasn't';
 - c. Inspector Williams asked 'What were you doing? What, how come you were standing there?';
 - d. PLO Bengaroo replied, 'I can't remember. I just stood there because I was thinking, um, if I see something I might get into trouble myself or something ... the family might harass me or something you know.';
 - e. Inspector Williams responded, 'Oh, OK'; and
 - f. After the above exchange, DI Webber and Inspector Williams questioned PLO Bengaroo about whether he saw SS Hurley do anything while Mulrunji was on the ground and whether he saw SS Hurley punch Mulrunji.

(d) Further interviews

160. At or about 1.10 pm on 20 November 2004, DSS Kitching and Inspector Williams commenced a recorded interview with SS Hurley.
161. At some time on 21 November 2004, DSS Kitching conducted an interview with Ms Penny Sibley, an Aboriginal woman. Ms Sibley alleged that she saw SS Hurley punch Mulrunji outside the Police Station on 19 November 2004.

G4 Completion of Form 1 and conduct of inquest

(a) Form 1

162. The 'Form 1', published in the Queensland Gazette on 21 November 2003 pursuant to the *Coroners Act 2003* (Qld), was entitled 'Police Notification of Death to Coroner.'
163. The OPM provided in Procedures in s 8.4.8 (as referred to in paragraph 113 hereof) that:
- a. the purpose of the Form 1 was to assist the Coroner in deciding whether an autopsy should be ordered and to assist the pathologist performing the autopsy to establish the cause of death;
 - b. the investigating officer should complete the Form 1 as soon as possible;
 - c. where an officer has additional information that could not be included on the Form 1 at the time of submission, this information should be provided on a Supplementary Form 1.
164. Section 8.4.3 of the OPM (as referred to in paragraph 112 hereof) provided where the death was a reportable death, the investigating officer was responsible for:
- a. an Order that where additional or relevant information comes to hand that may assist the government pathologist in determining a cause of death at a time prior to the autopsy, the pathologist is to be contacted as a matter of urgency and provided with that information on a Supplementary Form 1, which should be completed and submitted in the same was as a Form 1, and forwarded to the pathologist also;
 - b. Policies that:
 - i. where an inquest is to be held, ensuring that the Form 1 was completed as fully as possible, at subparagraph (ix);
 - ii. completing the Form 1 then forwarding it to the coroner and obtaining an order for autopsy, to the Government Pathologist who is to perform the autopsy, and the investigator's officer in charge so

that it was checked and forwarded to the State Coroner's Police Support Unit and the local coroner, at subparagraphs (v)(a)-(e);

- iii. completing a Supplementary Form 1 where applicable, which is used to provide additional information to a coroner/State Coroner, at subparagraph (vi);
- iv. attending and witnessing the autopsy, or arranging for the attendance of another officer, at subparagraph (vii).

165. As regional crime coordinator, DI Webber was the officer in charge of DSS Kitching.

(b) Preparation of Form 1

166. DSS Kitching prepared a Form 1 on the night of Friday 19 November 2004 at about 8:58 pm, and forwarded it to DI Webber that night.

167. DSS Kitching stated in the Form 1:

- c. under the heading 'Summary of Incident':

The deceased was arrested by Senior Sergeant HURLEY of Palm Island Police at approximately 10.15am on the morning of the 19th November 2004 in Dee Street Palm Island for an offence of Breaching of the peace. At that time the deceased [sic] was aggressive and was restrained and placed in the rear of a caged police vehicle. The deceased was then transported to the Palm Island Police Station where he again became aggressive when police attempted [sic] to remove him from the rear of the police vehicle. At that time the deceased is alleged to have assaulted Senior Sergeant HURLEY. The deceased was then physically restrained and placed in Cell 2 of the Palm Island Police Watchhouse and charged at 10.26am. At that time the deceased laid on the floor of the cell and went to sleep immediately. A physical inspection was conducted of the deceased at 10.55am and he was asleep and breathing at that time. A further physical inspection of the deceased was conducted at 11.23 am. At that time police could not see the deceased breathing and could find no pulse. Queensland Ambulance Service was contacted immediately and attended the Palm Island Watchhouse and resuscitation [sic] was not possible.

- d. under the heading 'Précis of Statements':

Senior Sergeant Christopher James HURLEY has been interviewed by Detective Senior Sergeant KITCHING of the Townsville CIB. HURLEY stated that he arrested the deceased in Dee Street, Palm Island. At that time the deceased was aggressive and abusive towards police and was physically placed in the rear of a caged police vehicle. HURLEY states that upon arrival at the police station he opened the door on the cage of the police vehicle and at that time the deceased

became aggressive and punched HURLEY in the side of the face. HURLEY then physically restrained the deceased and struggled with him to the rear door of the police station where they both fell to the ground. Another police officer Sergeant Michael LEAFE then assisted Senior Sergeant HURLEY place [sic] the deceased into the watchhouse cell by dragging him with both arms. He was charged at 10.26am. HURLEY then conducted a physical inspection of the deceased at 10.55am and he was asleep and breathing. A further inspection was conducted by Sergeant LEAFE at 11.23am and the deceased was not breathing and had no pulse. HURLEY states that QAS attended the watchhouse and resuscitation [sic] was not possible. Dr IBE of the Palm Island Hospital later attended the watchhouse and pronounced life extinct. HURLEY noticed a small abrasion to the right eye of the deceased after [sic] he was found to be deceased. This injury was brought to the attention of HURLEY by the QAS. This was the only injury identified on the deceased.

168. DI Webber examined the Form 1 on the evening of Friday 19 November 2004 and:

- a. did not make any amendments to the Form 1;
- b. did not instruct DSS Kitching to forward the Form 1 to any person.

169. DSS Kitching and DI Webber:

- a. did not forward the Form 1 to the State Coroner, the Government Pathologist, the State Coroner's Police Support Unit or the local coroner on 19 November 2004;
- b. forwarded the Form 1 that had been completed on Friday 19 November 2004 by email to the State Coroner at 7.43 am on Monday 22 November 2004 and by fax to the State Coroner at 10.40 am on Monday 22 November 2004;
- c. did not cause the Form 1, as originally prepared by DSS Kitching to be amended to include the allegations that SS Hurley assaulted Mulrunji prior to his death, as made by Roy Bramwell and referred to in paragraphs 149 and 153 hereof and Penny Sibley, referred to paragraph 161 hereof.

170. Neither DI Webber nor DSS Kitching prepared a Supplementary Form 1 to notify the Coroner, State Coroner or Government Pathologist of the allegations of assault by SS Hurley made by Roy Bramwell and Penny Sibley. The reason/s for this failure and the relevance of these reasons is in dispute.

(c) Autopsy

171. On 23 November 2004, an autopsy was conducted by Pathologist Dr Guy Lampe in Cairns.
172. On 23 November 2004, DSS Kitching attended the autopsy conducted by Dr Lampe in Cairns, and Dr Lampe made known to DSS Kitching that the cause of death was intra-abdominal hemorrhage due to ruptured liver and portal vein.
173. On 23 November 2004, at or about the time of the autopsy but prior to the conclusion of the autopsy, DSS Kitching:
 - a. advised Dr Lampe that Mulrunji may have been sniffing petrol or drinking bleach; and
 - b. did not advise Dr Lampe of the allegations made by Roy Bramwell or Penny Sibley that Mulrunji had been assaulted by SS Hurley.

(d) Preliminary Autopsy Report

174. In his 'Preliminary Autopsy Report' dated 24 November 2004, Dr Lampe found that Mulrunji's death was 'as a result of hemorrhage into his abdominal cavity', which occurred 'secondary to a rupture of the liver (which [had] virtually cleaved the liver in two, as well as from a hole in the portal vein'. Dr Lampe further found that the degree of liver rupture and injury to soft tissues was 'indicative of a moderate to severe compressive force applied to the upper abdomen' and that 'there is nothing to suggest that this man has drunk any bleach or other caustic substance'.

(e) CMC assumption of investigation

175. Following the request of the QPS on 23 November 2004, the CMC assumed responsibility for the investigation on 24 November 2004.

H. QPS FAILURES OF 19 TO 24 NOVEMBER 2004

H1 Responsible officers

- 176. At the time of being notified of the death of Mulrunji on 19 November 2004, Inspector Strohfeldt was the regional duty officer for the purposes of s 1.17 of the OPM.
- 177. In the course of the investigation into the death of Mulrunji between 19 November 2004 and 24 November 2004, Inspector Williams was the officer representing the Internal Investigation Branch, ESC for the purposes of s 1.17 of the OPM.
- 178. In November 2004, DI Webber was the Regional Crime Coordinator. In the course of the investigation into the death of Mulrunji between 19 November 2004 and 24 November 2004 DI Webber was the commissioned officer responsible for the investigation of the death of Mulrunji for the purposes of s 1.17 of the OPM.

H5 Failures in relation to Cultural Advisory Unit and Cross Cultural Liaison Officers and to Consider Cultural Needs which exist within the Palm Island Community

- 179. Following the death of Mulrunji, the Officer in Charge, Cultural Advisory Unit, Office of the Commissioner (CAU) was required to be notified in accordance with s 16.24.1 of the OPM.
- 180. The CAU was responsible for the matters referred to in paragraph 38 hereof.
- 181. All QPS officers were subject to the Policy in s 6.4 of the OPM as referred to in paragraph 39.a hereof.
- 182. All QPS officers who were in charge of stations or establishments were subject to the Policy in s 6.4.7 of the OPM as referred to in paragraph 39.b hereof.
- 183. The QPS provided Cross Cultural Liaison officers (CCLO) to all regions, whose role is set out in s 6.4.8 of the OPM as referred to in paragraph 40 hereof.
- 184. In the premises, the QPS had systems in place which provided for advice and support to be given to QPS officers in relation to cultural issues which existed

on Palm Island following the death of Mulrunji, and to enable and assist QPS officers to comply with the Policy that they should always consider cultural needs which exist within the community.

185. The existence of the systems referred to in the preceding paragraph accorded with recommendations 210, 214, 215, 225 and 228 of the RCIADIC. The appropriate utilisation of those systems accorded with those recommendations.
186. Following the death of Mulrunji, no CCLO attended at Palm Island until 26 November 2004 at or about the start of the Riot referred to in paragraph 275 hereof.

H6 Failure of Inspector Strohfeldt to comply with s 1.17 OPM

187. As regional duty officer, Inspector Strohfeldt was required to comply with Orders under s 1.17 of the OPM as referred to in paragraph 49 hereof.
188. Inspector Strohfeldt was in Townsville on 19 November 2004 and did not attend Palm Island on 19 November 2004.
189. DI Webber travelled from Townsville to Palm Island on 19 November 2004, arriving on Palm Island at 2.55 pm.
190. Constable Steadman was not interviewed by the Investigation Team before the CMC took over the investigation on 24 November 2004. Constable Steadman was interviewed by CMC investigators on 8 December 2004.
191. Constable Steadman is the person in plain clothes seen in the watchhouse cell video.
192. SS Hurley continued to perform duties at the Palm Island Police Station on 19 November 2004.

H7 Failure of DI Webber to ensure Constable Steadman was interviewed as soon as practicable

193. As regional crime coordinator, DI Webber was:
 - a. subject to the Policies under s 1.17 of the OPM referred to in paragraph 50.a.ii hereof;
 - b. required to comply with the Order in s 1.17 of the OPM referred to in paragraphs 50.a.i and 50.b hereof.

194. QPS officers were subject to the Procedure in s 2.5.1 of the OPM referred to in paragraph 54.b hereof.
195. Neither DI Webber nor DSS Kitching interviewed Constable Steadman in the course of their investigation from Friday 19 November 2004 until the CMC took over the investigation on Wednesday 24 November 2004.
196. After the CMC took over the investigation on 24 November 2004, Constable Steadman was not interviewed until 8 December 2004.

H8 Failure to involve the State Crime Operations Command, Homicide Investigation Group

197. The State Crime Operations Command (SCOC) was under the direct control of the Deputy Commissioner, Deputy Chief Executive (Operations).
198. The SCOC had, as part of its operational structure, a division called the Crime Operations Branch (COB).
199. Within the COB, specialist personnel were maintained as part of the Homicide Investigation Group.
200. The Homicide Investigation Group was not involved in the investigation of Mulrunji's death in custody.
201. Over the period from 19 November 2004 to 24 November 2004 there was no direction by the Internal Investigation Branch or the CMC for the investigation not to be conducted by the regional crime coordinator.

H9 Failure to assist the Coroner in relation to conducting inquest and failures in relation to Form 1 and Supplementary Form 1

202. The Form 1 was completed on the evening of Friday 19 November 2004.
203. The Form 1 was sent to the Coroner at about 7.43 am and again at 10.40 am on Monday 22 November 2004, the next business day after 19 November 2004.
204. When the Form 1 was provided to the Coroner and the Government Pathologist, it did not include any reference to the allegations of assault by SS Hurley upon Mulrunji which had been made by Roy Bramwell and Penny Sibley.
205. Through their involvement in the investigation into Mulrunji's death, when the Form 1 was sent to the Coroner and Government Pathologist, each of DSS

Kitching and DI Webber were aware of or ought reasonably have been aware that:

- a. when removed from the police van, Mulrunji had been active and aggressive;
- b. SS Hurley was alleged to have physically assaulted Mulrunji by two witnesses, independently of each other, during the period between when he was removed from the police van and when he was taken to the cell;
- c. after the alleged fall, Mulrunji:
 - i. had been a 'dead weight';
 - ii. had been dragged limp to his cell;
 - iii. was not physically restrained or required to be physically restrained in any way whilst being taken to or placed in the cell;
 - iv. was not observed by any QPS officer or witness to be active or aggressive prior to his death (other than as recorded on the cell watchhouse video recording);
 - v. may have been incapacitated, or suffering from an injury caused by the fall; and
 - vi. was observed on the watchhouse video to lay on the floor of the cell, intermittently rolling and moving around and apparently making loud noises.

206. The Form 1 stated that Mulrunji 'laid on the floor of the cell and went to sleep immediately'.

207. No supplementary Form 1 was prepared to include the allegations of assault made by Roy Bramwell or Penny Sibley.

208. When present at the autopsy conducted by Dr Lampe, DSS Kitching:

- a. advised Dr Lampe that Mulrunji may have been drinking bleach or sniffed petrol; and
- b. did not advise Dr Lampe of the allegations made by Roy Bramwell or Penny Sibley that Mulrunji had been assaulted by SS Hurley.

H10 Failure to immediately notify next of kin

209. DI Webber was in attendance, accompanied by Sergeant Leafe and Owen Marpoondin of the Aboriginal and Torres Strait Legal Service when the following persons were notified of Mulrunji's death on 19 November 2004 at the following times:

- a. Mulrunji's partner, Ms Twaddle, at about 3.40 pm;
- b. Mulrunji's mother and other family members, at about 3.55 pm.

210. Sections 16.24.3(vi)-(viii) of the OPM conformed with recommendations 19 to 20 of the RCIADIC.

H11 Failure to treat PLO Bengaroo appropriately

211. By about 10.00 pm on 19 November 2004, each of the members of the Investigation Team knew or reasonably ought to have known that SS Hurley was the QPS officer most closely associated with Mulrunji's arrest and subsequent death in custody as:

- a. SS Hurley was the most senior officer on Palm Island at the time of the arrest and death of Mulrunji and the officer in charge of the watchhouse at the time of death;
- b. whilst both SS Hurley and PLO Bengaroo had been present at the arrest of Mulrunji, SS Hurley was the arresting officer;
- c. SS Hurley had been the officer who took Mulrunji from the police van into the Police Station;
- d. SS Hurley had been present at the Palm Island Police Station when Mulrunji is believed to have died, and was the officer who reported Mulrunji's death;
- f. Mulrunji sustained the injuries referred to in paragraph 142.d hereof, during the period between being removed from the van by SS Hurley and prior to being placed in the cell;
- g. prior to Mulrunji's death in custody, Mulrunji and SS Hurley had been involved in a struggle.

212. On or before 20 November 2004 and prior to being driven to the site of the arrest, each of the members of the Investigation Team and Inspector Williams knew or reasonably ought to have known of:
- a. the matters referred to in the preceding paragraph; and
 - b. the allegations made by Roy Bramwell that SS Hurley had assaulted Mulrunji in the Police Station at paragraphs 149 and 153 hereof.
213. DSS Kitching and DS Robinson conducted an audio-recorded interview with PLO Bengaroo on 20 November 2004 between 4.50 pm and 5.09 pm on 19 November 2004.
214. DI Webber and Inspector Williams conducted a video-recorded re-enactment interview with PLO Bengaroo between 12.10 pm and 12.22 pm on 20 November 2004.
215. On the morning of 20 November 2004 the following sequence of events occurred:-
- a. DSS Kitching and DS Robinson drove to Roy Bramwell's house at about 8.00 am to bring Roy Bramwell to the Police Station for an interview;
 - b. between 8.15 am and 8.27 am DSS Kitching and DS Robinson conducted an audio-recorded interview with Roy Bramwell;
 - c. DS Robinson then prepared a typed statement from the audio recording;
 - d. Inspector Williams arrived on Palm Island at about 10.30 am;
 - e. Inspector Williams was briefed on the investigation by DI Webber, DSS Kitching and DS Robinson and reviewed the interviews and statements then in existence;
 - f. between 10.52 am and 11.02 am DI Webber and Inspector Williams conducted a video-recorded re-enactment interview with Roy Bramwell;
 - g. at about 11.20 am DI Webber, Inspector Williams, DSS Kitching, Constable Tibbey and SS Hurley visited the scene of Mulrunji's arrest;
 - h. between 11.53 am and 12.07 pm DI Webber and Inspector Williams conducted a video-recorded re-enactment interview with SS Hurley;

- i. between 12.10 pm and 12.22 pm DI Webber and Inspector Williams conducted a video-recorded re-enactment interview with PLO Bengaroo;
 - j. between 12.50 pm and 1.12 pm DI Webber and Inspector Williams conducted a video-recorded re-enactment interview with Sergeant Leafe;
216. PLO Bengaroo was the second person interviewed on 19 November 2004 and the third person interviewed on 20 November 2004.

H12 Failure to treat SS Hurley as a suspect

217. Section 246 of the PPR Act defined 'relevant person' as a person 'in the company of a police officer for the purpose of being questioned as a suspect about his or her involvement in the commission of an indictable offence.'
218. Section 263 of the PPR Act provided that the questioning of a relevant person must, if practicable, be electronically recorded.
219. Section 2.14.2 of the OPM was a Policy providing that 'interviews of suspects for indictable offences are to be electronically recorded by using electronic recording equipment if practicable'.
220. The discussions that took place when SS Hurley transported DI Webber and DSS Kitching from the Palm Island airport on 19 November 2004 and at the visit to the site of the arrest on 20 November 2004 were not electronically recorded.
221. The conversations during the meal at SS Hurley's home on 19 November 2004 were not electronically recorded.
222. DI Webber, DSS Kitching and DS Robinson did not treat SS Hurley as a suspect in a homicide or assault investigation.

H13 Failure to provide support to Aboriginal witnesses

223. Members of the Investigation Team and Inspector Williams did not ask any of the seven Aboriginal witnesses (PLO Bengaroo, Roy Bramwell, Patrick Bramwell, Penny Sibley, Gladys Nugent, Edna Coolburra and Gerald Kidner) whether they would like to have a support person present at their interviews.
224. Specifically in relation to the interview of PLO Bengaroo, at the time of the interview:

- a. DSS Kitching formed the opinion that he found PLO Bengaroo difficult to understand, quiet and not very articulate;
- b. DI Webber formed the opinion that PLO Bengaroo was at times extremely difficult to understand and comprehend; and
- c. Inspector Williams formed the opinion that PLO Bengaroo was a very difficult person to interview, was quietly spoken and was 'for want of a better word terrified'.

H14 Failure to avoid actual or apparent conflicts of interest

- 225. DS Robinson was from the same police station or establishment as SS Hurley.
- 226. DS Robinson had worked with SS Hurley on Palm Island for about two years.
- 227. DS Robinson and SS Hurley had lived on Palm Island for about two years.
- 228. SS Hurley held a higher rank than DS Robinson.
- 229. DS Robinson participated in the investigation of Mulrunji's death.
- 230. The appearance of the impartiality of the investigation was compromised by the investigators having a meal at SS Hurley's house.
- 231. Between 19 November and 24 November 2004, DSS Kitching and DI Webber knew that DS Robinson was from the same police station as SS Hurley.
- 232. Between 19 November 2004 and the arrival of Inspector Williams on 20 November 2004, DSS Kitching and DI Webber allowed DS Robinson to be part of the Investigation Team.
- 233. SS Hurley was not suspended from duty immediately after Mulrunji's death.
- 234. On the afternoon of Saturday 20 November 2004, the Investigation Team returned to Townsville.
- 235. On Sunday 21 November 2004, SS Hurley had a rostered day off.
- 236. SS Hurley left Palm Island on the afternoon of Monday 22 November 2004.

H15 Compromise of integrity of investigation

- 237. DI Webber appointed DSS Kitching and not the State Homicide Investigation Group to conduct the investigation into Mulrunji's death.

238. SS Hurley:

- a. was present at the Police Station on 19 and 20 November 2004;
- b. maintained command of the scene until the arrival of the Investigation Team and took on the role of First Response Officer in between the time when Mulrunji was found to be deceased and the Investigation Team arrived on Palm Island; and
- c. collected the Investigation Team from the airport.

239. Neither DI Webber nor Inspector Strohfeldt provided any advice or instructions to SS Hurley not to undertake or continue to perform duties associated with the investigative process or other duties at the scene.

240. Inspector Williams was advised of the death of Mulrunji on 19 November 2004.

241. Inspector Williams was subject to the Orders and Policies referred to in paragraph 115 hereof.

242. DI Webber and Inspector Strohfeldt did not instruct officers not to talk to each other about Mulrunji's death and surrounding events.

243. In the course of conducting the interviews referred to in paragraphs 142, 144, 145, 146, 149, 160 and 161 hereof, DSS Kitching took no steps to ascertain what had been discussed by witnesses prior to their interviews.

I. UNLAWFUL RACIAL DISCRIMINATION IN QPS FAILURES

I1 Alleged Failures

244. The alleged acts and alleged failures to act on the part of the QPS as described in Parts H5 to H15 of the 3FASC (**Alleged Failures**) are constituted by acts or are themselves acts as defined in s 3 of the *Racial Discrimination Act 1975* (Cth) (**RD Act**).

I2 Distinction, exclusion, restriction, or preference

245. The Alleged Failures occurred during an investigation by the QPS into the death in custody of an Aboriginal resident of Palm Island, in circumstances where the residents of Palm Island were overwhelmingly Aboriginal or Torres Strait Islanders.

246. In 2004, residents of Queensland were entitled to expect that the QPS would uphold the law.

I3 Systemic and Institutional Racism

14 Breaches of Rights

J. EVENTS FROM 22 NOVEMBER 2004

J1 Week after Mulrunji's death

(a) *Hurley not suspended from duty*

247. After Mulrunji's death, SS Hurley remained on Palm Island until the afternoon of 22 November 2004.
248. SS Hurley was interviewed by the QPS investigators on both 19 and 20 November 2004.
249. On 21 November 2004, SS Hurley had a rostered day off.
250. At some time on 22 November 2004, Senior Sergeant Roger Whyte (SS **Whyte**) took over from SS Hurley as the officer in charge of the Police Station.

(b) *Arrival of Inspector Richardson and SS Whyte*

251. On 22 November 2004:
- a. Inspector Brian Richardson, who was then rostered to be Regional Duty Officer, was instructed by Acting Assistant Commissioner Roy Wall (**A/AC Wall**) to travel to Palm Island to take charge of overall policing on Palm Island, which Inspector Richardson did until 26 November 2004;
 - b. SS Whyte was also flown to Palm Island, and on that day was appointed to act as the Officer in Charge of the Police Station. SS Whyte continued to act in that role until 26 November 2004, under the command of Inspector Richardson.
252. Inspector Richardson was accompanied by nine other police officers who were not ordinarily stationed on Palm Island.
253. Following the death of Mulrunji the number of QPS officers rostered to perform duties on Palm Island was increased from 7 QPS officers on 19 November 2004 to approximately 20 QPS officers by 26 November 2004.

(c) *Public gatherings*

254. At 2.30 pm on 22 November 2004, a public meeting occurred in an open area on Palm Island next to the Palm Island Council Chambers. That meeting was attended by DS Robinson, Inspector Richardson and SS Whyte. At the meeting,

some Palm Island community members expressed their dissatisfaction to Inspector Richardson, SS Whyte and DS Robinson about Mulrunji's death.

255. At about 10:30 am on 23 November 2004, a public meeting occurred. Senior Sergeant Bennett observed this meeting. At least 150 Palm Island community members attended the meeting.
256. Over the course of the week between Mulrunji's death in custody on 19 November 2004 and the Riot on 26 November 2004, the First Applicant made demands to the effect that SS Hurley be arrested and taken off Palm Island.

(d) Other community unrest

257. Between 22 November 2004 and 24 November 2004, QPS officers stationed on Palm Island received reports from members of the community that other members of the community intended to cause damage to or fire bomb the Police Station and police barracks.
258. On 22 November 2004 at about 10:30 pm and on 24 November 2004 at about 12:40 am, rocks were thrown at a police vehicle.
259. On 23 November 2004 at about 2:30 pm, DS Robinson received a report from a confidential informant that certain persons were going to fire bomb the Police Station and barracks.
260. On about 23 November 2004, at about 3:20 pm, A/AC Wall directed that police officers on Palm Island take their weapons to their sleeping quarters with them.
261. On 23 November 2004 at about 5:20 pm, DS Robinson had spoken with Dwayne Blanket and Frank Conway (who were Palm Island residents) about threats to fire bomb the Police Station and police barracks.
262. On 23 November 2004 at about 5:40 pm, in response to intelligence that there was a threat that the Police Station may be firebombed, police officers on Palm Island arranged for units of the rural fire brigade to be on standby to attend the Palm Island Police Station compound if required.
263. On 24 November 2004 at about 11:00 pm, bricks were thrown at the Police Station.

(e) Release of Preliminary Autopsy Report

264. The CMC took over the investigation into Mulrunji's death in custody on 24 November 2004.
265. On 25 November 2004 at about 5:55 pm, SS Whyte spoke to Ms Denise Geia, who advised him that at that time Mayor Erykah Kyle was inside the Palm Island Council Chambers with members of Mulrunji's family, speaking with the family about the preliminary autopsy report. After speaking with Ms Geia, SS Whyte reported to Inspector Richardson the information Ms Geia had provided to him.
266. On the evening of 25 November 2004, at or about a time between 6:05 pm and 6:40 pm, Inspector Richardson was advised by A/AC Wall in a telephone conversation, that the results of the post-mortem examination upon Mulrunji had either been delivered to the family of Mulrunji or was about to be delivered to the family. In response, Inspector Richardson warned the QPS members under his direction to 'be on your toes and be on the look out, you know things could turn a bit hostile'.
267. Inspector Richardson and SS Whyte were not advised or otherwise made aware of:
- a. the injuries Mulrunji had sustained prior to his death whilst in police custody;
 - b. the cause of death, including the fact that Mulrunji's liver had been ruptured;
 - c. the fact that Mulrunji had sustained four broken ribs whilst in QPS custody.
268. The Coroner's office gave the Preliminary Autopsy Report dated 24 November 2004 to the CMC.

J2 Emergency situation

(a) Public meeting

269. On Friday 26 November 2004, a community meeting was held in the mall on Palm Island.

270. Following Mulrunji's death, and prior to the Riot, Inspector Richardson and SS Whyte considered that there was a risk that peace and good order may not be maintained on Palm Island.
271. At the meeting on 26 November 2004, Mayor Kyle represented that the preliminary autopsy report stated that:
- a. Mulrunji's death was caused by an accidental fall; and
 - b. there was an accident somewhere around the cell in the Police Station at 10.40 am on 19 November 2004, and Mulrunji was found dead at 11.23 am.
272. Mayor Kyle also represented that the doctor explained that there was a compressive force on Mulrunji's body where four ribs were broken and that caused a rupture to his liver and that caused a lot of bleeding.
273. During and after the meeting, the community protested against the death in custody of Mulrunji and the perceived failure of the QPS to hold SS Hurley to account for that death.
274. Following the community meeting:
- a. rocks were thrown at the Police Station;
 - b. the Police Station, courthouse and police residence of SS Hurley were set on fire;
 - c. a police vehicle was set on fire;
 - d. some members of the community yelled threats and obscenities;
 - e. many members of the community were angry and appeared to believe that SS Hurley had killed Mulrunji;
 - f. police officers moved from the police compound to the Palm Island hospital.
275. The events that have been referred to in the preceding paragraph are '**the Riot**'.
276. During the Riot, the First Applicant spoke to DS Robinson, Inspector Richardson and SS Whyte. The First Applicant told an unknown QPS officer that the Police should leave the island within one hour.

277. At some time after 3:00 pm, the crowd of Palm Island residents outside the hospital dispersed.

(i) QPS Missing Rifle

278. On 26 November 2004, when the police officers moved from the Police Station to the police barracks during the Riot, Constable Craig Robertson took with him from the Police Station a Ruger 'Mini-14' .223 calibre rifle (owned by the QPS). Constable Robertson did not have any ammunition or magazines for the Mini-14.

279. At about 1:00 pm on 26 November 2004, when the police officers moved from the police barracks to the Palm Island Hospital, Constable Robertson did not take the Mini-14 with him.

280. The Mini-14 was subsequently found in the police barracks on or about 8 December 2004.

(b) *Declaration of emergency situation*

281. At all material times, DI Webber was a commissioned officer, within the meaning of the *Public Safety Preservation Act 1986* (Qld) (**PSP Act**) and was employed under the PSA Act.

282. On Friday 26 November 2004, at or about 1:45 pm, DI Webber orally declared that an emergency situation existed on Palm Island. DI Webber relied on s 5 of the PSP Act (as in force at the time) to issue the Declaration.

283. No 'Certificate relating to the Declaration of an Emergency Situation' under s 5(2) of the PSP Act was issued or caused to be issued on 26 November 2004.

284. On 26 November 2004, DI Webber did not:

- a. make, or cause to be made, any public announcement to the Palm Island community or to the Palm Island Council that an emergency situation had been declared; or
- b. explain, or cause to be explained, to the Palm Island community or to the Palm Island Council why an emergency situation had been declared, what that entailed, and for how long it was expected to remain in place.

285. On Sunday 28 November 2004, DI Webber signed and issued a 'Certificate relating to the Declaration of an Emergency Situation' under s 5(2) of the PSP Act (**the Certificate**). No such certificate had been issued or caused to be issued on 26 November 2004.
286. Section 5(2) of the PSP Act provided that the certificate 'shall set out the nature of the emergency situation, the time and date it was declared to exist and the area in respect of which it exists'.
287. The Certificate:
- a. declared an emergency situation to exist for the entire island of Palm Island;
 - b. specified that the emergency situation was declared to exist on 26 November 2004 at 1.45 pm; and
 - c. specified that the emergency situation was declared for the purpose in paragraph (f) of the definition of emergency situation under the Schedule to the PSP Act, that is, 'any other accident; that causes or may cause a danger of death, injury or distress to any person, a loss of or damage to any property or pollution of the environment'.
288. On or about 26 November 2004, senior police officers on Palm Island, including DI Webber, formulated the following action plan (**Action Plan**):
- a. DS Robinson to identify addresses of interest;
 - b. SERT and PSRT officers to acquire addresses of interest;
 - c. DS Robinson to enter residence and identify persons of interest;
 - d. DS Robinson accompanied by SERT and PSRT officers who would apprehend the person or persons of interest with minimum force necessary, secure that person and that person would then be taken from the residence;
 - e. If doors were locked and secured, SERT would use force to gain entry;
 - f. Other occupants within the dwellings would not be disturbed, if possible;
 - g. Team would then move on.

289. A/AC Wall approved the Action Plan on or about 26 November 2004.
290. Police officers employed to work in SERT and PSRT had specialist training.
291. Section 2.24.1 of the OPM provided that the primary objective of the PSRT was to provide a unit of specially trained centralised QPS officers who were equipped to respond in the interest of public safety to instances of confrontation, violence and other specialist duties which exceeded normal police response.
292. Section 2.26.1 of the OPM provided that the SERT was a specialist support unit, established to provide the QPS with the ability to respond to terrorist incidents state-wide, whose primary role was to:
- a. respond to terrorist incidents within the arrangements agreed to under the State Antiterrorist Plan;
 - b. provide specialist police capability to resolve high risk situations and incidents which were potentially violent and exceeded normal capabilities of the QPS;
 - c. provide assistance to all officers of the QPS with low risk tasks which required specialist equipment, skills or tactics; and
 - d. provide a rescue function in incidents which required specialised recovery techniques.

Number of SERT and PSRT officers on Palm Island during the Operation

293. There were fourteen SERT officers and seven PSRT officers on Palm Island by the time of the first 'raid' at 5:00 am on 27 November 2004.
294. On Saturday 27 November 2004, the following additional SERT and PSRT officers travelled to Palm Island:
- a. four PSRT officers at or about 8:07 am via Police Airwing;
 - b. four SERT officers at an unknown time via an unknown aircraft.
295. In total, over the period from 27 November 2004 to 29 November 2004, there were 18 SERT officers and 11 PSRT officers on Palm Island.

(i) Number of other QPS officers on Palm Island during the emergency situation

296. During the afternoon and evening of Friday 26 November 2004, the following other QPS officers also travelled to Palm Island:

- a. eleven QPS officers and one police dog at or about 2.15 pm via Police Airwing;
- b. four QPS officers at or about 3.00 pm via an unknown aircraft;
- c. one QPS officer at or about 3.20 pm via Queensland Emergency Services helicopter;
- d. thirteen QPS officers and one police dog at or about 3.37 pm via an unknown aircraft;
- e. six QPS officers at or about 4.00 pm via an unknown aircraft;
- f. ten QPS officers at or about 4.40 pm via Police Airwing;
- g. one QPS officer between 5.30 pm and 6.00 pm via Queensland Emergency Services helicopter
- h. approximately seven QPS officers at unknown times via unknown aircraft;

297. During the course of 27 November 2004, the following other QPS officers also travelled to Palm Island:

- a. four QPS officers at or about 8.07 am via Police Airwing;
- b. three QPS officers at or about 10.13 am via Police Airwing.

298. During the course of 28 November 2004, one QPS officer travelled to Palm Island at or about 9.46 am via Police Airwing.

299. Throughout the Emergency Situation, a number of QPS officers were also transported from Palm Island back to Townsville for various reasons.

300. In total, over the course of the Emergency Situation, there were approximately between 59 to 82 other QPS officers (non-SERT or PSRT) on Palm Island.

(c) *The Operation*

301. Pursuant to the Action Plan, SERT officers entered and searched dwellings on Palm Island, that were occupied by members of the Palm Island community:

- a. Between about 5.00 am and 8.10 am on 27 November 2004;
 - b. Between about 12.00 pm and 12.15 pm on 27 November 2004;
 - c. Between about 6.15 pm and 6.35 pm on 27 November 2004; and
 - d. Periodically during the morning of 28 November 2004.
302. Each SERT officer was wearing:
- a. Dark blue police uniform;
 - b. Ballistic vest;
 - c. 'CT' over vest;
 - d. Ballistic helmet;
 - e. Fire retardant balaclava (which covered their faces); and
 - f. Goggles.
303. SERT officers were equipped with:
- a. Gas mask;
 - b. Sound and flash distraction devices;
 - c. Primary weapon – assault rifle and light source;
 - d. Secondary weapon – pistol and light source;
 - e. Oleoresin capicum (OC) spray;
 - f. Baton; and
 - g. Handcuffs.
304. Some SERT officers were further equipped with:
- a. Taser (version 1);
 - b. Method of entry equipment; and
 - c. Less lethal shotgun and extended range impact munitions.
305. Pursuant to the Action Plan, PSRT officers did not enter or search dwellings but remained outside the dwellings.
306. Each PSRT officer was wearing:

- a. Dark blue police uniform;
 - b. Public order vest with arm and leg protection (non ballistic);
 - c. Public order helmet with visor and flash hood; and
 - d. Cut resistant gloves;
307. PSRT officers were equipped with:
- a. Riot shield;
 - b. Pistol;
 - c. OC spray;
 - d. Baton; and
 - e. Handcuffs.
308. The dwellings entered and searched pursuant to the Action Plan included the home of the First and Third Applicants, the home of the Second Applicant, and the homes of other Palm Island residents.
309. No warrants to enter those dwellings had been obtained.
310. Outside the home of the First and Third Applicants, the First Applicant was tasered.
311. When police officers entered the home of the Second Applicant, Richard Poynter was in the shower.
312. When police officers entered the home of David Bulsey, Mr Bulsey was not fully clothed.
313. Pursuant to the Action Plan, DS Robinson identified the persons to be arrested and who were arrested.
314. No QPS officer obtained a warrant for the arrest of any person arrested in the presence of SERT and PSRT officers in connection with the events on Palm Island of 26 November 2004.
- (d) Revocation of emergency situation***
315. On Sunday 28 November 2004 at 8.10 am, DI Webber declared the emergency situation on Palm Island to be revoked.

316. After revoking the emergency situation, DI Webber recorded the revocation on a 'Revocation of Emergency Situation Certificate' which he signed and dated at 8.50 am on Sunday 28 November 2004. The revocation certificate was faxed to the QPS in Townsville at about 9.15 am on 28 November 2004.

(e) QPS conduct during and after emergency situation

317. On the afternoon of Friday 26 November 2004, a QPS officer took possession of the local St Michael's Catholic School bus with the agreement of the school principal.
318. The school bus was returned to the possession of the St Michael's Catholic School approximately one week later.
319. Over the course of the emergency situation and in the days immediately after it was revoked, the QPS established a visible presence throughout the island by patrolling the island.

(f) Evacuation of residents

320. On 26 November 2004, the QPS arranged for a ferry to be available from Palm Island to Townsville. Some teachers and service providers on the island left Palm Island on this ferry.
321. On 26 November 2004, the QPS arranged for the evacuation of some patients (including some Indigenous patients) from the Palm Island hospital to Townsville by Queensland Emergency Services helicopter.
322. Between 1.45 pm on 26 November 2004 and 1.30 pm on 27 November 2004, all commercial flights to and from Palm Island were suspended. During that period, all people on Palm Island were unable to leave Palm Island on commercial flights.

K. UNLAWFULNESS OF EVENTS FROM 22 NOVEMBER 2004

K1 Failure to immediately suspend SS Hurley

323. SS Hurley was not immediately suspended from duty following the death in custody of Mulrunji.

K2 Failure to communicate with local community and diffuse tensions

324. The number of police officers rostered to perform duties on Palm Island was increased after 19 November 2004 from seven officers to approximately 20 officers by 26 November 2004.

325. QPS officers stationed on Palm Island knew that there was a feeling of anger held by some residents of Palm Island over Mulrunji's death in custody, and a perception by some residents of Palm Island that SS Hurley was not being held to account for that death.

K3 Unlawful Declaration of Emergency Situation

326. The Dictionary to the PSP Act defined 'emergency situation' as:

- (a) any explosion or fire; or
- (b) any oil or chemical spill; or
- (c) any escape of gas, radioactive material or flammable or combustible liquids; or
- (d) any accident involving an aircraft, or a train, vessel or vehicle; or
- (e) any incident involving a bomb or other explosive device or a firearm or other weapon; or
- (f) any other accident;

that causes or may cause a danger of death, injury or distress to any person, a loss of or damage to any property or pollution of the environment, includes a situation arising from any report in respect of any of the matters referred to in paragraphs (a) to (f) which if proved to be correct would cause or may cause a danger of death, injury or distress to any person, a loss of or damage to any property or pollution of the environment.

327. Section 5 of the PSP Act provided:

- (1) Subject to section 6, if at any time a commissioned officer (the 'incident coordinator') is satisfied on reasonable grounds that an emergency situation has arisen or is likely to arise the commissioned officer may declare that an emergency situation exists in respect of an area specified by the commissioned officer.

- (2) The incident coordinator, as soon as practicable after he or she declares that an emergency situation exists, shall issue a certificate to this effect signed by the incident coordinator which certificate shall set out the nature of the emergency situation, the time and date it was declared to exist and the area in respect of which it exists.

328. At some time on 26 November 2004, the First Applicant was at the petrol station or the yard of the petrol station in possession of tools.

K4 Unlawful arrests

329. Section 198 of the PPR Act provided for circumstances in which arrests could be made without first obtaining a warrant. Relevantly it provided:

- (1) It is lawful for a police officer, without warrant, to arrest an adult the police officer reasonably suspects has committed or is committing an offence if it is reasonably necessary for 1 or more of the following reasons—
- (a) to prevent the continuation or repetition of an offence or the commission of another offence;
 - (b) to make inquiries to establish the person's identity;
 - (c) to ensure the person's appearance before a court;
 - (d) to obtain or preserve evidence relating to the offence;
 - (e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;
 - (f) to prevent the fabrication of evidence;
 - (g) to preserve the safety or welfare of any person, including the person arrested;
 - (h) to prevent a person fleeing from a police officer or the location of an offence;
 - (i) because the offence is an offence against section 444 or 445;
 - (j) because the offence is an offence against the Domestic and Family Violence Protection Act 1989, section 80;
 - (k) because of the nature and seriousness of the offence;
 - (l) because the offence is--
 - (i) an offence against the Corrective Services Act 2000, section 103(3); or
 - (ii) an offence to which the Corrective Services Act 2000, section 104 applies.
- (2) Also, it is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects has committed or is committing an indictable offence, for questioning the person about the offence, or investigating the offence, under chapter 7.

K5 Unlawful entry into dwellings by police

K6 Failure to comply with Code of Conduct

L. UNLAWFUL RACIAL DISCRIMINATION

L1 Distinction, exclusion, restriction or preference

330. The alleged acts and alleged failures to act on the part of the QPS as described in Parts J and K of the 3FASC (**Alleged Further Failures**) are constituted by acts or are themselves acts as defined in s 3 of the RD Act.

L2 Systemic and institutional discrimination**L3 Breaches of Rights: Group Members****L4 Breach of Rights: Sub-Group****L5 Loss and Damage: Group Members**

M. AGGRAVATED OR EXEMPLARY DAMAGES

M1 Exemplary Damages

M2 Aggravated Damages

(a) Inquest

331. On 27 September 2006, Acting State Coroner Christine Clements delivered her report in her inquest into the death of Mulrunji (**Inquest**). In her report, Acting State Coroner Clements concluded that the actions of SS Hurley caused Mulrunji's fatal injuries.
332. On 16 June 2009, the Court of Appeal set aside the whole of Acting State Coroner Clements' finding as to how Mulrunji died on the basis that her finding was not reasonably open on the evidence, and ordered that the inquest would be re-opened by another coroner.
333. On 14 May 2010, the Coroner (Deputy Chief Magistrate Hine) found that Mulrunji died of fatal injuries which resulted from some force to the abdomen of Mulrunji, either accidentally as Mulrunji and SS Hurley fell into the Police Station or by deliberate action of SS Hurley in the few seconds after they landed, but it was not possible to ascertain whether the force was deliberately inflicted or accidentally suffered.
334. On 19 December 2006, in response to the Acting State Coroner's comments, the Commissioner of Police formed an Investigation Review Team (**IRT**) to examine in detail any criticisms of the QPS and its members arising from the Inquest and the Acting State Coroner's findings. The Commissioner also requested the CMC to review the internal investigation.
335. The purpose of the IRT Review was to:
- a. examine and report on adverse comments made by Acting State Coroner Clements in her inquest findings dated 27 September 2006 other than comments regarding responsibility or misconduct for the death of Mulrunji; and
 - b. make recommendations.

336. In November 2008 the IRT delivered the three-volume report of its internal investigation, entitled 'Palm Island Review', to the CMC (**IRT's Palm Island Review**).

(b) Failure to discipline QPS officers

337. No member of the QPS, other than SS Hurley, was charged with a criminal offence in relation to Mulrunji's death or the subsequent investigation.

338. A list of all persons arrested for offences relating to the Riot, the relevant charges and the outcome of those charges can be found in **Annexure A – Schedule of All Charges**.

339. A copy of the First Applicant's bail conditions as at 6 December 2004 can be found in **Annexure B – Undertaking as to Bail**.

340. A copy of the First Applicant's bail conditions as at 1 July 2005 can be found in **Annexure C – Undertaking as to Bail**.

341. A copy of the First Applicant's bail conditions as at 30 September 2005 can be found in **Annexure D – Order, Cullinane J**.

342. A copy of the First Applicant's bail conditions as at 31 May 2007 can be found in **Annexure E – Undertaking as to Bail**.

343. On 5 February 2007, SS Hurley was charged with manslaughter and common assault. SS Hurley was acquitted by a jury of those charges in June 2007.

344. As at 5 February 2007 when SS Hurley was charged, the charges against some of the persons arrested for offences relating to the Riot had been discontinued or had been finalised, while the charges against others of the persons arrested for offences relating to the Riot were still ongoing.

345. On 3 November 2008, DS Robinson was awarded the Queensland Police Service Valour Award, being the highest commendation the QPS can bestow on an officer, for acts of bravery in hazardous circumstances, for his conduct in responding to the Riot.

346. In about June 2010, the CMC handed down a report entitled 'CMC Review of the Queensland Police Service's Palm Island Review' (**CMC Review**).

347. The CMC Review:

a. stated at p.163:-

In forming a view about whether to recommend disciplinary proceedings for misconduct to the QPS or to commence disciplinary proceedings for official misconduct before the QCAT, among other things, the CMC has regard to its over-riding responsibility to promote public confidence in the integrity of the QPS.

In the CMC's view that one of the most effective ways the QPS can promote public confidence and maintain standards of conduct is for it to be seen to take decisive action to respond to any failure on the part of its members to meet the expected high standards of conduct and performance. To give effect to this approach means that the CMC makes recommendations to the QPS to consider disciplinary proceedings. The CMC has power to appeal to the QCAT if it is dissatisfied with the findings of a QPS prescribed officer in disciplinary proceedings for misconduct.

b. stated at p.164:-

In the CMC's view the evidence is insufficient to support consideration of any criminal prosecution proceedings. It is noted that neither Coroner has referred any information to the Director of Public Prosecution for consideration of criminal proceedings.

- c. recommended (at p.166) that consideration be given to commencing disciplinary proceedings for misconduct against DI Webber;
- d. recommended (at p.167) that consideration be given to commencing disciplinary proceedings for misconduct against DSS Kitching;
- e. recommended (at p.168) that consideration be given to commencing disciplinary proceedings for misconduct against DS Robinson;
- f. recommended (at p.169) that the QPS give consideration to commencing disciplinary proceedings for misconduct against Inspector Williams;
- g. recommended (at p.170) that the QPS initiate management action to address the performance of DI Webber, DSS Kitching, Inspector Williams and DS Robinson;
- h. stated at p.175:-

3. *Requirement for the QPS to report to CMC*

To enable the CMC to be satisfied about the adequacy and appropriateness of the QPS response to its recommendations concerning disciplinary proceedings, pursuant to section 48(1)(c)(i) of the CM Act, the CMC requires the Commissioner of Police to report in writing to the

CMC within 14 days about the outcome of his consideration of the CMC's recommendations, specifically:-

- what course of action is intended to respond to the recommendations
- the reasons for that course of action.

If the CMC is satisfied it will refer the matter back to the Commissioner to proceed with the intended course of action.

However, if the CMC is not satisfied – that is, if the CMC is of the view that the intended action will not achieve the purposes of discipline – the CMC will assume responsibility for the matter and make application to the Queensland Civil and Administrative Tribunal (QCAT) to commence disciplinary proceedings.

i. stated at p.178:-

The CMC grants – as the Commissioner has noted – that within the QPS, ‘as with any large police department ... there will each year be events that range from honest mistakes and errors of judgment, [through] misconduct, ... [to] at the more serious end official misconduct and acts that amount to statutory offences.’

348. On 19 August 2010 the Supreme Court of Queensland in proceedings 6368 of 2010 ([2010] QSC 303) declared that the Commissioner of Police was disqualified from giving any personal consideration to commencing disciplinary proceedings but was not prevented from delegating the consideration of the commencement of disciplinary proceedings to a prescribed officer as defined in s 7.4 of the PSA Act.
349. The Commissioner delegated to Deputy Commissioner Rynders (**DC Rynders**) as a prescribed officer the task of considering the recommendations in the CMC Report and determining any disciplinary issues.
350. The Crime and Misconduct Commission, by letter dated 10 September 2010 to the Commissioner, advised that the matter was considered appropriate for consideration at the Deputy Commissioner level.
351. On 7 January 2011, DC Rynders handed down a 405 page report entitled ‘Report in Response to the CMC Review of the Queensland Police Services Palm Island Review’ (**Rynders’ Report**).
352. In the Rynders’ Report, DC Rynders:-

- a. expressed her view that DSS Kitching and DI Webber should be given managerial guidance in respect of DS Robinson's involvement in the investigation (paragraphs 123 and 124 of the report);
- b. expressed her view that DI Webber and DSS Kitching should be given managerial guidance in respect of their failure to ascertain the content of conversations between SS Hurley, Sergeant Leafe and PLO Bengaroo (paragraph 198 of the report);
- c. stated that DSS Kitching would be given managerial guidance in respect of his failure to inform Dr Lampe of the alleged assaults (paragraph 249 of the report);
- d. stated that DI Webber would be given managerial guidance in respect of DI Webber's failure to ensure that a Supplementary Form 1 was submitted (paragraph 254 of the report);
- e. stated that Inspector Williams should be reminded of his supervisory responsibilities as an ESC officer by way of managerial guidance in relation to DS Robinson's involvement in the investigation (paragraph 380 of the report);
- f. stated that Inspector Williams should be reminded of his obligations by way of managerial guidance in relation to his failure to ascertain the content of conversations between SS Hurley, Sergeant Leafe and PLO Bengaroo (paragraph 410 of the report);
- g. considered that Inspector Williams should be provided with managerial guidance in respect of a failure to ensure the Supplementary Form 1 was submitted (paragraph 449 of the report);
- h. otherwise concluded that no disciplinary action should be taken against DI Webber, Inspector Williams, DSS Kitching or DS Robinson.

353. The CMC did not appeal against the findings of DC Rynders in the Rynders' Report.

354. The CMC did not assume responsibility for or take any disciplinary against DI Webber, Inspector Williams, DSS Kitching or DS Robinson.

355. In July and August 2011, pursuant to the recommendations of the IRT in the IRT's Palm Island Review and DC Rynders in the Rynders' Report, Inspector Williams, DI Webber and DSS Kitching received managerial guidance in relation to their conduct during their investigation into Mulrunji's death in custody, pursuant to s 11 of the *Police Service (Discipline) Regulations 1990*.

N. VICARIOUS LIABILITY OF RESPONDENTS

356. Under s 18A of the RD Act, a person is liable for acts which are unlawful under s 9 if those acts are performed by an employee or agent of a person in connection with his or her duties as an employee or agent; and the person did not take all reasonable steps to prevent the employee or agent from performing the acts.
357. Police officers, police recruits and special constables were employed pursuant to s 2.5A of the PSA Act.
358. Pursuant to ss 5.4(2)(b), 5.7(3)(b) and 5.11(1)(b) of the PSA Act the conditions of employment for executive officers, commissioned officers and police recruits in the employ of the QPS were governed by a contract of employment made, or taken to be made, between them and the Crown.
359. Pursuant to s 5.15(b) of the PSA Act, an officer of the QPS, other than one who held appointment on a contract basis, was taken to be an employee of the Crown.
360. All relevant conduct by QPS officers as alleged in the 3FASC, if it occurred, occurred in the course of employment of those QPS officers and within the scope of those QPS officers' employment duties.
361. Those acts were performed by QPS officers as employees or agents of the First Respondent.
362. Should any findings of unlawful discrimination be made against QPS officers in relation to any actions referred to in the 3FASC, the First Respondent is vicariously liable for those actions.

O. AHRC Complaint

363. By letter dated 25 March 2010, the Applicants lodged a written complaint with the Australian Human Rights Commission (AHRC), pursuant to s 46P of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), on behalf of themselves and the Group Members. In the complaint, the Applicants alleged that the State of Queensland had unlawfully discriminated against them in contravention of s 9 of the RDA, and identified four heads of discrimination.
364. On 16 February 2012, the AHRC held a conciliation conference attended by representatives of the Applicants and the State of Queensland in Townsville. The complaint was not resolved at that conference or afterwards.
365. On 20 April 2012, the Applicants advised the AHRC by letter that they were no longer relying on the third head of discrimination.
366. On 13 June 2013, a delegate of the President of the AHRC, by letter to the Applicants' legal representatives, granted leave for the complaint to be amended to remove the third head of discrimination. The delegate also notified the Applicants in that letter of her decision to terminate the complaint under s 46PH(1)(i) of the AHRC Act on the ground that she was satisfied that there was no reasonable prospect of the matter being settled by conciliation.




Lex Patrick Wotton & Ors (Applicants)
State of Queensland & Anor (Respondents)

Annexure A

SCHEDULE OF CHARGES ARISING FROM 26/11/04

Acquitted or charges withdrawn

Surname	First	Middle	DOB	Charges	Indict No.	Plea	Outcome	Court	Date
BLACKMAN	William	Neville	25/10/1968	Rioter Damaging Building, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Rioter Injuring Building or Machinery etc	2447/06	N/A	Nolle Prosequi	Brisbane District Court	1/02/2007
				Rioter Injuring Building or Machinery etc	262/07	Not Guilty	Found Not Guilty	Brisbane District Court	5/03/2007
BLANKET	Dwayne	Daniel	13/07/1978	Rioter Damaging Building, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Rioter Injuring Building or Machinery etc	2447/06	N/A	Nolle Prosequi	Brisbane District Court	1/02/2007
				Rioter Injuring Building or Machinery etc	262/07	Not Guilty	Found Not Guilty	Brisbane District Court	5/03/2007
BULSEY	David	John	13/07/1952	Unlawful Assembly		N/A	NETO	Townsville Magistrates Court	29/11/2004

CLUMPOINT	John	Major	15/03/1964	Rioter Damaging Building, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
 Juvenile offender whose identity is protected under the <i>Youth Justice Act 1992</i>			11/10/1988	Rioter Damaging Building, Machinery etc	2447/06	N/A	Nolle Prosequi	Brisbane District Court	1/02/2007
				Rioter Damaging Building, Machinery etc	262/07	Not Guilty	Found Not Guilty	Brisbane District Court	5/03/2007
				Rioter Damaging Building, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
PARKINSON	Lester	Kenneth	13/10/1978	Arson – Structure or Building	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Rioter Damaging Building, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Arson – Structure or Building	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
POYNTER	Lance	Gabriel	26/08/1970	Rioter Damaging Building, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Rioter Injuring Building or Machinery etc	2447/06	N/A	Nolle Prosequi	Brisbane District Court	1/02/2007
				Rioter Injuring Building or Machinery etc	262/07	Not Guilty	Found Not Guilty	Brisbane District Court	5/03/2007
POYNTER	Richard	James	12/04/1972	Rioter Damaging Building, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006

ROBERTSON	Shane	Wallace	28/02/1977	Rioter Damaging Building, Machinery etc	12/06	N/A	Nolle Prosecui	Townsville Dis- trict Court	28/07/2006
				Arson – Structure or Building x2	12/06	N/A	Nolle Prosecui	Townsville Dis- trict Court	28/07/2006
WOTTON	Fleur	Christine	31/05/1974	Rioter Damaging Building, Machinery etc	12/06	N/A	Nolle Prosecui	Townsville Dis- trict Court	28/07/2006
				Arson – Structure or Building	12/06	N/A	Nolle Prosecui	Townsville Dis- trict Court	28/07/2006
WOTTON	Agnes	Benita	20/08/1944	Rioter Damaging Building, Machinery etc	12/06	N/A	Nolle Prosecui	Townsville Dis- trict Court	28/07/2006

Convicted

Surname	First	Middle	DOB	Charges	Indict No.	Plea	Outcome	Court	Date
BARRY	Cedric	William	18/11/1984	Enter Dwelling and Commit Indictable Offence		N/A	Withdrawn	Townsville Mag- istrates Court	9/12/2004
				Stealing by Looting – In Civil Unrest		Guilty	15m imprison- ment	Townsville Mag- istrates Court	9/12/2004
				Enter Dwelling with Intent		Guilty	6m imprison- ment	Townsville Mag- istrates Court	9/12/2004
COOLWELL	George	Andrew	21/09/1986	Enter Dwelling and Commit Indictable Offence		N/A	Withdrawn	Townsville Mag- istrates Court	1/12/2004
				Stealing by Looting – In Civil Unrest		Guilty	2m imprison- ment	Townsville Mag- istrates Court	1/12/2004
				Enter Dwelling with Intent		Guilty	6m imprison- ment suspended	Townsville Mag- istrates Court	1/12/2004

Surname	First	Middle	DOB	Charges	Indict No.	Plea	Outcome	Court	Date
for 2 years after 4m									
KIDNER	Terrence	John Alfred	22/02/1983	Rioter Damaging Building, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Arson – Structure or Building	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Rioter Damaging Building, Machinery etc	2447/06	N/A	Nolle Prosequi	Brisbane District Court	1/02/2007
				Arson – Structure or Building	2447/06	N/A	Nolle Prosequi	Brisbane District Court	1/02/2007
				Rioter Injuring Building or Machinery etc	206/07	Guilty	4 years imprisonment suspended for 4 years after 16m (166 days PSC)	Townsville District Court	8/05/2007
NORMAN	Alissa	Jane	21/08/1973	Rioter Damaging Building, Machinery etc		Guilty	12m ICO	Townsville District Court	28/07/2006
						(CA amended sentence on appeal)	18m imprisonment with PRD 8/04/07	Court of Appeal	8/12/2006
			30/03/1990	Rioter Damaging Building, Machinery etc	5/06	N/A	Nolle Prosequi	Townsville Childrens Court	28/07/2006

Juvenile offender whose identity is protected under the *Youth Justice Act 1992*

Surname	First	Middle	DOB	Charges	Indict No.	Plea	Outcome	Court	Date
NUGENT	Robert	Terrance	10/03/1982	Rioter Damaging Buildings, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Rioter Damaging Buildings, Machinery etc	260/06	Guilty	150hrs Community Service	Townsville District Court	28/07/2006
				Rioter Damaging Buildings, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Arson – Structure or Building	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
PARKER	Russell	Edward Elias	27/10/1985	Stealing by Looting – In Civil Unrest	19/06	Guilty	6m imprisonment with 125 days PSC and PRD at 1/3/07	Townsville District Court	1/03/2007
				Arson – Structure or Building x 2	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Rioter Injuring Building or Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Stealing by Looting – In Civil Unrest	19/06	Guilty	6m imprisonment with 9 days PSC	Townsville District Court	28/07/2006
PARKER	Russell	Wayne	5/09/1967	Rioter Damaging Buildings, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Rioter Damaging Buildings, Machinery etc	260/06	Guilty	18m imprisonment suspended for 3 years after 6m (9days PSC)	Townsville District Court	28/07/2006

Surname	First	Middle	DOB	Charges	Indict No.	Plea	Outcome	Court	Date
POYNTER	Jason	Richard	21/01/1978	Riot	260/06	(CA amended sentence on appeal)	2 years imprisonment with PRD 28/4/07	Court of Appeal	8/12/2006
					37/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
					260/06	Guilty	12m ICO (8 days PSC)	Townsville District Court	28/07/2006
					260/06	(CA amended sentence on appeal)	15m imprisonment with PRD 8/5/07	Court of Appeal	8/12/2006
POYNTER	Lincoln	Hector	26/07/1961	Riot	37/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
					260/06	Guilty	4m imprisonment suspended for 1 year after serving 10 days (already served 10 days PSC)	Townsville District Court	24/08/2006
SHEPHERD	David	Shane	29/12/1977	Riot Damaging Building, Machinery etc	260/06	Guilty	18m imprisonment with PRD 1/07/2007 (6 days PSC)	Townsville District Court	1/03/2007
SIBLEY	Garrison	Brian	29/03/1978	Riot Damaging Building, Machinery etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
					12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006

Surname	First	Middle	DOB	Charges	Indict No.	Plea	Outcome	Court	Date
THOMPSON	Anthony	Shane	10/06/1980	Wilful Damage	36/06	Guilty	6m imprisonment with 88 days PSC	Townsville District Court	28/07/2006
							80h Community Service	Palm Island Magistrates Court	21/06/2006
WATSON	Joseph	Frank	5/11/1986	Enter Dwelling and Commit Indictable Offence		N/A	Withdrawn	Townsville Magistrates Court	1/12/2004
				Stealing by Looting – In Civil Unrest		Guilty	2m imprisonment	Townsville Magistrates Court	1/12/2004
				Enter Dwelling with Intent		Guilty	6m imprisonment suspended for 2 years after 4m	Townsville Magistrates Court	1/12/2004
WILSON	Thomas	Gary	1/04/1985	Wilful Damage		Guilty	80h Community Service	Palm Island Magistrates Court	21/06/2006
WOTTON	Lex	Patrick	28/04/1967	Wilful Damage		N/A	NETO	Townsville Magistrates Court	6/12/2004
				Rioter Damaging Building, Machinery, etc	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Arson – Structure or Building	12/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006
				Riot	37/06	N/A	Nolle Prosequi	Townsville District Court	28/07/2006

Surname	First	Middle	DCB	Charges	Indict No.	Plea	Outcome	Court	Date
				Rioter Damaging Building, Machinery etc	2447/06	N/A	Nolle Prosequi	Brisbane District Court	1/02/2007
				Arson – Structure or Building x2	2447/06	N/A	Nolle Prosequi	Brisbane District Court	1/02/2007
				Arson – Aircraft/Motor Vehicle	2447/06	N/A	Nolle Prosequi	Brisbane District Court	1/02/2007
				Riot	2447/06	N/A	Nolle Prosequi	Brisbane District Court	1/02/2007
				Rioters Injuring Building or Machinery etc	262/07	N/A	Nolle Prosequi	Brisbane District Court	24/10/2008
				Rioters Injuring Building or Machinery etc	460/08	Not Guilty	6 years imprisonment with 110 days PSC and PED 18/7/10	Townsville District Court	7/11/2008

Annexure B



QUEENSLAND POLICE SERVICE

Northern Regional Office
PO BOX 3737
HERMIT PARK QLD 481210

TELEPHONE (07) 4726 8777

FACSIMILE (07) 4726 8732



FACSIMILE

Our Ref:

Your Ref:

TO: Inspector Tom GOCKEL
Deputy Commissioner's Office

FAX NO: 3364 4053

FROM: Inspector Neal WILSON
NR- Regional Office

SUBJECT: BAIL

TOTAL PAGES: 4
(including this page)

Tom,

As discussed.

N A WILSON
INSPECTOR
STAFF OFFICER
NORTHERN REGION

THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE MAY BE CONFIDENTIAL INFORMATION, AND MAY ALSO BE THE SUBJECT OF LEGAL PROFESSIONAL PRIVILEGE AND/OR PUBLIC INTEREST IMMUNITY. IF YOU ARE NOT THE INTENDED RECIPIENT, ANY USE, DISCLOSURE OR COPYING OF THIS DOCUMENT IS UNAUTHORISED. IF YOU HAVE RECEIVED THIS DOCUMENT IN ERROR, PLEASE TELEPHONE (07) 4726 8777.

3.93

FORM 7
QUEENSLAND
BAIL ACT 1980
(Section 20)
UNDERTAKING AS TO BAIL

Particulars of Defendant and Conditions of Bail

Defendant: LEX PATRICK WOTTON
Residential Address: 2/12-14 LAMINGTON ROAD, WEST END
Date of Birth: 22/04/1967
Offence: ARSON OF MOTOR VEHICLE; SERIOUS ASSAULT - POLICE OFFICER X 3; RIOTER
DAMAGING BUILDING; ARSON - STRUCTURE OR BUILDING X 2

The conditions of Bail are that the defendant shall:-

(a) Appear and surrender into custody at:-

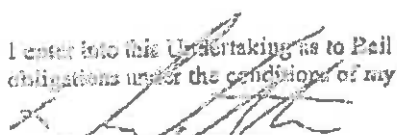
Time: 9:30 am
Date: 18 MARCH 2005
Place: TOWNSVILLE

(b) Not depart from the Court, unless bail is enlarged, and, as often as bail is enlarged, return to the Court and surrender into custody.

SEE ATTACHED FOR BAIL CONDITIONS

Undertaking of Defendant

I enter into this Undertaking as to Bail and acknowledge receipt of a notice in Form 8 setting forth the nature and extent of my obligations under the conditions of my bail and the consequence of my failure to comply with these conditions.


Signature of Defendant

Certificate of person before whom undertaking is made

I have satisfied myself that the defendant understood the nature and extent of his obligations under the conditions of bail and the consequences of failure to comply with them.

Undertaking entered into on:
Date: 6 December 2004
Place: TOWNSVILLE
in the State of Queensland before me.


Signature
Title: Justice of the Peace

Form 8
QUEENSLAND
BAIL ACT 1980
(Section 20)

NOTICE TO DEFENDANT AND SURETY OR SURETIES
OF UNDERTAKING AS TO BAIL

1. A defendant who fails to appear in accordance with his undertaking without reasonable cause therefore or who breaks any other condition of the undertaking commits an offence and is liable to a penalty of 40 penalty units* or imprisonment for two years.
2. Where a Court is satisfied that a defendant has failed to appear before the Court in accordance with his undertaking and surrender into custody, the Court may declare that the undertaking be forfeited. If forfeiture is declared, you may be required to pay the sum of money for which you are bound by the undertaking.
3. Where a deposit of money or other security is made by the defendant and/or the surety or sureties as a condition of bail and the undertaking has been declared to be forfeited because of the failure of the person released to appear in accordance with his undertaking, the deposit or other security may become forfeited and paid to Her Majesty.
4. A surety may make application to the Court at any time before a condition of the undertaking is broken by the defendant, or the defendant is apprehended pursuant to Section 29 of the *Bail Act 1980*, for discharge of his liability with respect to the undertaking.
5. If a surety believes that the defendant is likely to break the condition for his appearance and for that reason wishes to be relieved of his obligations and notifies a member of the police force in writing to that effect, that member of the police force may apprehend the defendant without a warrant.
6. Information about effect of guilty plea

The attention of the defendant is drawn to subsections 13(1) and (2) of the *Penalties and Sentences Act 1992* -

"Guilty plea to be taken into account"

13.(1) In imposing a sentence on an offender who has pleaded guilty to an offence, a court -

(a) must take the guilty plea into account; and (b) may reduce the sentence that it would have imposed had the offender not pleaded guilty.

(2) A reduction under subsection 1(b) may be made having regard to the time at which the offender -

(a) pleaded guilty; or

(b) informed the relevant law enforcement agency of his or her intention to plead guilty."

Signature of person before whom undertaking is given

[Handwritten Signature] 6888/

*Penalty units are determined under the *Penalties and Sentences Act 1992*. As at 18th December 1995, 1 penalty unit equals \$75.00

SPECIAL BAIL CONDITIONS

ADULT

Defendant: LEX PATRICK WOTTON File No: T/M12177/04

- ☐ The defendant shall reside at 2/12-14 LAMINGTON ROAD, WEST END or at such other place or places as is firstly agreed in to writing by the Officer in Charge of Police at Townsville.....
- ☐ The defendant is subject to a curfew and shall not be absent from or depart his residence between the hours of 7:00pm and 6:00am daily
- ☐ The defendant shall present himself at the front entrance of his residence when required to do so by a Police Officer checking compliance with a bail condition.
- ☐ The defendant shall report personally to the Officer in Charge of Police at Townsville between the hours of 8:00am and 6:00pm each day commencing on the first day of his release from custody.
- ☐ The defendant shall not visit Palm Island during the duration of his Bail.
- ☐ The Defendant shall not during his bail leave the boundaries of the city of Townsville and Thuringowa without firstly obtaining the consent of the Officer in charge Townsville Police.
- ☐ The defendant shall have no contact whatsoever either directly or indirectly with any prosecution witnesses who are known by him to be prosecution witnesses in the matters with which he has been charged or with any person charged with an offence arising out of the Palm Island riots on 26 November 2004
- ☐ The defendant shall attend before the Townsville Thuringowa Community Justice Group as and when directed to do so by the Coordinator of the Justice Group.
- ☐ The Defendant shall not directly or indirectly organise or participate in any public rally, mutiny or protest or other event in relation to the death of Cameron Doomadgee at Palm Island, the Palm Island riots on 26 November 2004 or the circumstances which have resulted in him being charged with these matters

Judge M. Irwin
Chief Magistrate

Annexure C

File: MAG-198556/04(1)

FORM 7
QUEENSLAND
BAIL ACT 1980
(Section 20)

UNDERTAKING AS TO BAIL

Particulars of Defendant and Conditions of Bail

Defendant: **LEX PATRICK WOTTON**
Residential Address: **FARM AREA, PALM ISLAND**
Date of Birth: **28/04/1967**
Offence: **SERIOUS ASSAULT POLICE OFFICER X 3; RIOTER DAMAGING BUILDING; RSON OF BUILDING X 3**

The conditions of Bail are that the defendant shall:-

(a) Appear and surrender into custody at:-

Time: **9:00 am**
Date: **18 JULY, 2005**
Place: **TOWNSVILLE**

(b) Not depart from the Court, unless bail is enlarged, and, as often as bail is enlarged, return to the Court and surrender into custody.

THE DEFENDANT SHALL RESIDE AT THIS RESIDENCE AT FARM ARE, PALM ISLAND OR AT SUCH OTHER PLACE OR PLACES AS FIRSTLY AGREED IN WRITING BY THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS EXCEPT FROM 8TH TO 11TH JULY, 2005.

THE DEFENDANT SHALL HAVE NO CONTACT WHATSOEVER EITHER DIRECTLY OR INDIRECTLY WITH ANY PROSECUTION WITNESSES WHO ARE KNOWN BY HIM TO BE PROSECUTION WITNESSES IN THE MATTERS WITH WHICH HE HAS BEEN CHARGED.

THE DEFENDANT SHALL REPORT TO THE OFFICER IN CHARGE POLICE PALM ISLAND ON MONDAY 4TH JULY, 2005 BETWEEN 8.00 A.M. AND 4.00 P.M.

Undertaking of Defendant

I enter into this Undertaking as to Bail and acknowledge receipt of a notice in Form 8 setting forth the nature and extent of my obligations under the conditions of my bail and the consequence of my failure to comply with these conditions.

Signature of Defendant

Certificate of person before whom undertaking is made

I have satisfied myself that the defendant understood the nature and extent of his obligations under the conditions of bail and the consequences of failure to comply with them.

Undertaking entered into on:

Date: **1 July 2005**

Place: **TOWNSVILLE**

in the State of Queensland before me.

Signature

Title: **Justice of the Peace**

July 1, 2005

Form 8
 QUEENSLAND
 BAIL ACT 1980
 (Section 20)

NOTICE TO DEFENDANT AND SURETY OR SURETIES
 OF UNDERTAKING AS TO BAIL

1. A defendant who fails to appear in accordance with his undertaking without reasonable cause therefore or who breaks any other condition of the undertaking commits an offence and is liable to a penalty of 40 penalty units* or imprisonment for two years.
2. Where a Court is satisfied that a defendant has failed to appear before the Court in accordance with his undertaking and surrender into custody, the Court may declare that the undertaking be forfeited. If forfeiture is declared, you may be required to pay the sum of money for which you are bound by the undertaking.
3. Where a deposit of money or other security is made by the defendant and/or the surety or sureties as a condition of bail and the undertaking has been declared to be forfeited because of the failure of the person released to appear in accordance with his undertaking, the deposit or other security may become forfeited and paid to Her Majesty.
4. A surety may make application to the Court at any time before a condition of the undertaking is broken by the defendant, or the defendant is apprehended pursuant to Section 29 of the *Bail Act 1980*, for discharge of his liability with respect to the undertaking.
5. If a surety believes that the defendant is likely to break the condition for his appearance and for that reason wishes to be relieved of his obligations and notifies a member of the police force in writing to that effect, that member of the police force may apprehend the defendant without a warrant.
6. Information about effect of guilty plea

The attention of the defendant is drawn to subsections 13(1) and (2) of the *Penalties and Sentences Act 1992* -

"Guilty plea to be taken into account


13.(1) In imposing a sentence on an offender who has pleaded guilty to an offence, a court -

(a) must take the guilty plea into account; and (b) may reduce the sentence that it would have imposed had the offender not pleaded guilty.

(2) A reduction under subsection 1(b) may be made having regard to the time at which the offender

(a) pleaded guilty; or

(b) informed the relevant law enforcement agency or his or her intention to plead guilty."


 signature of person before whom undertaking is given


 6/8/80

*Penalty units are determined under the *Penalties and Sentences Act 1992*. As at 18th December 1995, 1 penalty unit equals \$75.00



61 7 47997555

Annexure D

IN THE SUPREME COURT OF QUEENSLAND AT TOWNSVILLE

REGISTRY: TOWNSVILLE
NUMBER: S. 6 to 105,RE: AN APPLICATION FOR BAIL BY LEX PATRICK WOTTON

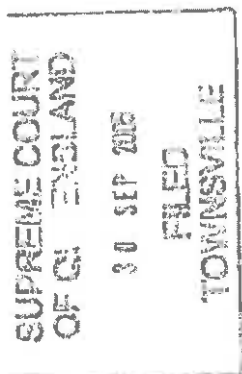
ORDER

Judge: Collinane J
Date of Order: 30th September 2005
Document initiating this hearing: Application filed 27th September 2005

It is ordered that:

In relation to the following charges:

- (a) That on the 26th day of November 2004 at Palm Island in the State of Queensland one Lex Patrick WOTTON willfully and unlawfully set fire to a motor vehicle namely a Toyota Hilux utility.
- (ii) That on the 26th day of November 2004 at Palm Island in the State of Queensland one Lex Patrick WOTTON willfully and unlawfully damaged a window the property of the Commissioner of the Police Service and it is averred that the said window was used by the Police Service.
- (iii) That on the 26th day of November 2004 at Palm Island in the State of Queensland one Lex Patrick WOTTON assaulted Kathleen Anne RICHARDSON a Police Officer whilst Kathleen Anne RICHARDSON was acting in the execution of her duty.
- (iv) That on the 26th day of November 2004 at Palm Island in the State of Queensland one Lex Patrick WOTTON assaulted Roger Craig WHYTE a Police Officer whilst Roger Craig WHYTE was acting in the execution of his duty.
- (v) That on the 26th day of November 2004 at Palm Island in the State of Queensland one Lex Patrick WOTTON assaulted Peter Ashley BETTS a Police Officer whilst Peter Ashley BETTS was acting in the execution of his duty.

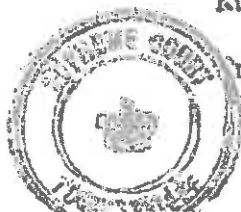


ORDER

ANDERSON TELFORD LAWYERS

Rule 8

Criminal Practice Rules 1999

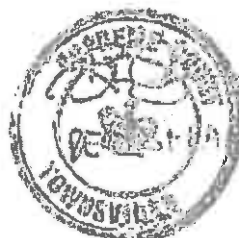
Suite 2, 135 Sturt Street,
Townsville 4810
Phone: (07) 4721 5870
Facsimile: (07) 4772 7749
Our Ref: ART/RAB:385-05

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- (vi) That on the 26th day of November 2004 at Palm Island in the State of Queensland one Lex Patrick WOTTON being riotously assembled unlawfully destroyed building namely Palm Island Police Station and Palm Island Police House.
- (vii) That on the 26th day of November 2004 at Palm Island in the State of Queensland one Lex Patrick WOTTON wilfully and unlawfully set fire to a building namely the Palm Island Police Station.
- (viii) That on the 26th day of November 2004 at Palm Island in the State of Queensland one Lex Patrick WOTTON wilfully and unlawfully set fire to a building namely the Palm Island Police residence.

That the applicant be admitted to bail upon his own undertaking, such undertaking being conditioned that:-

1. The applicant reside at Farns Road, Palm Island in the State of Queensland.
2. The applicant have no contact with any witness in relation to the above charges.
3. The applicant shall surrender into custody at the time and place stated when notified by the Court and not depart from the Court unless and until Bail is enlarged.



Annexure E

0003815551

File: DIS-00000580/07(1)

Form 10
QUEENSLAND
BAIL ACT 1980
(Section 20)

UNDERTAKING AS TO BAIL FOLLOWING GRANT OF BAIL BY JUDGE OF
THE SUPREME OR DISTRICT COURT OR COURT OF APPEAL

Particulars of Defendant and Conditions of Bail

Defendant: LEX PATRICK WOTTON
Residential Address: PALM ROAD
PALM ISLAND QLD 4816
Address for Service of Notices:
Date of Birth: 23/04/1967
Occupation:
it:
Other Security:
Offences: RIOTER DAMAGING BUILDING, MACHINERY ETC

Undertaking of Defendant

I, the abovesigned defendant, upon being granted bail, acknowledge receipt of a notice in Form 8 setting forth the nature and extent of my obligations under the conditions of my bail and the consequences of my failure to comply with them and I undertake as follows:

(1) I shall appear before the:

Court: DISTRICT COURT
Place: BRISBANE
Sittings: 30/04/2007

(2) I shall obey the directions of the Court, whether given to me personally or to my counsel or solicitor, with respect to any further or further directions by me and, if I am directed to appear personally, I shall surrender into custody and not depart from the Court unless my bail is enlarged.

(3) I will immediately give written notice to the Director of Public Prosecutions or, as the case may be, the Deputy Director of Public Prosecutions, of any change of my address for service of notices or my residential address other than the change that arises if I surrender into custody.

Note to Defendants:

In the case of a prosecution by the Director of Public Prosecutions, this notice may be given by-

- (a) mail sent to G.P.O. Box 2403, Brisbane Qld, 4001; or
- (b) facsimile message sent to number (07) 3220 0035.

In the case of a prosecution by the Deputy Director of Public Prosecutions, this notice may be given by-

- (a) mail sent to G.P.O. box 347, Brisbane Qld, 4001; or
- (b) facsimile message sent to number (07) 3229 4124.

(4) I shall reside at Palm Rd, Palm Island.

(5) When called for employment I may leave Palm Island.

Signature

Date: 31/05/2007

Received by: 31/05/2007 12:53 PM

Printed 31/05/2007 12:47:24

Signature as at the time of printing

PAGE 2 OF 2

12. Jun. 2007 9:54

Original Activity 974/07

No. 1034 5. 3

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Certificate of Person Before Whom Undertaking is Made

I have satisfied myself that the defendant understood the nature and extent of his obligations under the conditions of bail and the consequences of failure to comply with them.

Undertaking entered into on:

Date: 31/05/2007

Place: BRISBANE

In the State of Queensland before me

Signature



Title: Justice of the Peace



11/11/81

0003815551

Form 8
QUEENSLAND
BAIL ACT 1980
(Section 20)

NOTICE TO DEFENDANT AND SURETY OR SURETIES
OF UNDERTAKING AS TO BAIL

1. A defendant who fails to appear in accordance with his undertaking without reasonable cause therefore or who breaks any other condition of the undertaking commits an offence and is liable to a penalty of 40 penalty units* or imprisonment for two years.
2. Where a Court is satisfied that a defendant has failed to appear before the Court in accordance with his undertaking and surrender into custody, the Court may declare that the undertaking be forfeited. If forfeiture is declared, you may be required to pay the sum of money for which you are bound by the undertaking.
3. If a deposit of money or other security is made by the defendant and/or the surety or sureties as a condition of bail and the undertaking has been declared to be forfeited because of the failure of the person released to appear in accordance with his undertaking, the deposit or other security may become forfeited and paid to Her Majesty.
4. A surety may make application to the Court at any time before a condition of the undertaking is broken by the defendant, or the defendant is apprehended pursuant to Section 29 of the Bail Act 1980, for discharge of his liability with respect to the undertaking.
5. If a surety believes that the defendant is likely to break the condition for his appearance and for that reason wishes to be relieved of his obligations and notifies a member of the police force in writing to that effect, that member of the police force may apprehend the defendant without a warrant.
6. Information about effect of guilty plea

The attention of the defendant is drawn to subsections 13(1) and (2) of the Penalties and Sentences Act 1992 -

"Guilty plea to be taken into account

13.(1) In imposing a sentence on an offender who has pleaded guilty to an offence, a court -

(a) must take the guilty plea into account; and

(b) may reduce the sentence that it would have imposed had the offender not pleaded guilty.

(2) A reduction under subsection 1(b) may be made having regard to the time at which the offender -

(a) pleaded guilty; or

(b) informed the relevant law enforcement agency or his or her intention to plead guilty."

Signature of person before whom undertaking is given

*Penalty units are determined under the Penalties and Sentences Act 1992. As at 1/1/81, one penalty unit equals \$75.00



Annexure F

Persons Relevant to the Proceedings

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Palm Island Residents

Doomadgee Family

Last name	First name	Comment
Bonner	Alfred Stephen	Uncle of Mulrunji; allegedly witnessed struggle between SS Hurley and Mulrunji outside police station.
Clay	Noby Ngarle Maria	Niece of Mulrunji; allegedly witnessed arrest.
Doomadgee	Emily Grace	Niece of Mulrunji; allegedly witnessed arrest.
Twaddle	Tracey	Partner of Mulrunji; allegedly tried to visit him at the police station at 1pm on 19 November 2004.

Wotton Family

Last name	First name	Comment
Bulsey	Schanara	Applicants' witness; daughter of Lex and Cecilia Wotton.
Harvey	Krysten	Applicants' witness; granddaughter of Agnes Wotton.
Morton	Chevez Joseph	Applicants' witness; great-nephew of Agnes Wotton.
Sibley	Sonny	Brother of Cecilia Wotton, lived with Lex and Cecilia Wotton.
Wotton	Agnes Benita	Second Applicant.
Wotton	Albert	Applicants' witness; son of Lex and Cecilia Wotton.
Wotton	Cecilia Anne	Third Applicant.
Wotton	Collette	Applicants' witness; sister of Lex Wotton.
Wotton	Fleur Christine	Sister of Lex Wotton; daughter of Agnes Wotton.
Wotton	Lex Patrick	First Applicant.

Blackman/Oui Family

Last name	First name	Comment
Blackman	Emmanuel	Son of William Snr and Mersane.
Blackman	Isaiah	Son of William Snr and Mersane.
Blackman	Simeon	Son of William Snr and Mersane.
Blackman	William Lloyd (Jnr)	Applicants' witness; son of William Snr and Mersane.
Blackman	William Thomas (Snr)	Applicants' witness.
Oui	Mersane Delena Dawn	Applicants' witness.

Clumpoint Family

Last name	First name	Comment
Clumpoint	Cindy	Ex-wife of John Clumpoint
Clumpoint	John Major	Applicants' witness.
Clumpoint	Ray-Ray	Daughter of John and Cindy Clumpoint.
Clumpoint	Wade	Son of John and Cindy Clumpoint.
Clumpoint	Willy	Nephew of John Clumpoint.

Death in Custody/Investigation

Last name	First name	Comment
Bramwell	Patrick Edward	Arrested with Mulrunji.
Bramwell	Roy Leonard	Arrested prior to Mulrunji and was present in the police station when Mulrunji was brought in; made allegations that SS Hurley assaulted Mulrunji.
Coolburra	Edna Marie	Allegedly witnessed arrest.
Kidner	Gerald Brian	Allegedly witnessed arrest.
Marpoondin	Owen	Applicants' witness; former ATSILS officer; accompanied DI Webber to advise Mulrunji's family of his death.
Nugent	Gladys May	Partner of Roy Bramwell; allegedly witnessed arrest.
Sailor (née Kyle)	Andrea	Applicants' witness; former ATSILS officer; daughter of Mayor Erykah Kyle.
Sibley	Florence Margaret (Penny)	Allegedly witnessed SS Hurley and Mulrunji's struggle outside police station.

Other Relevant Sub-Group Members

Last name	First name	Comment
Barry	Gail Marie	Daughter of Jucinta Barry.
Barry	Jucinta	Applicants' witness.
Nona	Solomon Iona	Apprehended and tasered at Jucinta Barry's house.

Palm Island Council and Justice Group

Last name	First name	Position	Comment
Geia	Denise Elizabeth	Council employee	
Kyle	Erykah	Mayor	Spoke at public meeting on 26 November 2004 and earlier that week.
Walsh	Hal Austin Andrew	Youth Justice Worker	
Zacchias	Sam	Deputy Mayor	Applicants' witness.

Other

Last name	First name	Comment
Bolton	Matthew Claude	Queensland Ambulance Service (QAS) Paramedic; responded to call re Mulrunji.
Foster	Bradley	Member of Carpentaria Land Council; present on Palm Island after riot.
Hume	Stephen Arthur	Channel 10 camera operator.
Ibe	Kenneth	Chief Medical Officer, Palm Island; signed Mulrunji's death certificate.
Koch	Anthony Patrick	Applicants' witness; journalist for the <i>Australian</i> .
Shepherd	Frank	Solicitor at ATSILS.

Police

Police officers stationed on Palm Island on or before 19 November 2004

Last name	First name	Rank/Position	Comment
Bengaroo	Lloyd Chester	Police Liaison Officer	
Hooker	Timothy James	Constable	Was not on Palm Island when death occurred.
Hurley	Christopher James	Senior Sergeant	
Leafé	Michael Patrick	Sergeant	
Poole	Gene Duane	Constable	Was not on Palm Island when death occurred.
Robinson	Darren Allan	Detective Sergeant	Not present on Palm Island when death occurred, travelled over to Palm Island with investigation team.
Steadman	Kristopher	Constable	
Tonges	Benjamin William	Constable	

Death In Custody/Investigation

Last name	First name	Rank/Position	Comment
Arthy	Lloyd Frederick	Senior Sergeant/National Regional Forensic Services Coordinator	Led forensic team.
Aspinall	Gilbert John	Detective Inspector, Coronial Support Unit	Received phone call from DI Webber on 19 November 2004 advising of death in custody.
Crawley	Justin D	Scenes of Crime Officer	Took photographs at autopsy.
Henman	Anthony	Constable	Present at first autopsy.
Jenkins	Stephen Frank	Senior Sergeant, Officer in Charge of Townsville District Communications Centre	Received call from SS Hurley re death in custody.
Kitching	Raymond Joseph	Detective Senior Sergeant	Respondents' witness.
Tibbey	Rodney Derrick	Senior Constable (Scenes of Crime Officer)	
Webber	Warren Thomas George	Detective Inspector/Regional Crime Coordinator.	Respondents' witness.
Williams	Mark David	Inspector, Ethical Standards Command	Participated in investigation from 20 November 2004.

Police officers stationed on Palm Island during the week beginning 22 November 2004

Last name	First name	Rank/Position	Comment
Abraham	Peter Richard	Senior Constable	
Bellchambers	C	Senior Constable	
Beltramelli	A	Constable	
Bennett	T	Senior Sergeant	
Betts	Peter Ashley	Detective Senior Constable/ Acting Sergeant	
Boniface	Wayne Anthony	Constable	
Browne	Andrew Valentine	Constable	
Burke	Peter	Sergeant	
Croft	G	Sergeant	
Jaques	K	Senior Constable	
Kinbacher	Andrew	Plain Clothes Constable	
Lone	B	Senior Constable	
McCarthy	Patrick Terrence	Constable	
McLucas	Brett Andrew	Detective Sergeant	

Last name	First name	Rank/Position	Comment
Muller	Jeffrey	Constable	
Murphy (Randall)	Darren	Sergeant	
Notaro	J	Constable	
Pagett	R	Senior Constable	
Reeves	Richard Paul	Senior Constable	
Richardson	Brian Allan	Inspector	
Richardson	Kathleen Anne	Detective Senior Constable	
Robertson	Craig Stuart	Constable	
Tabuai	Bertram Murray	Constable	
Thomas	Peter John	Senior Constable	
Smith	Andrew	Senior Constable	
Wanchap	I	Constable	
Whyte	Roger Craig	Senior Sergeant	Respondents' witness.
Williams	S	Constable	

Police officers deployed to Palm Island on or after 26 November 2004

Last name	First name	Rank/Position	Comment
Amiguet	Peter Thomas	Senior Sergeant	
Angel	Jeffrey		
Baker	Alan	Plain Clothes Senior Constable	
Berigan	Patrick Stephen	Plain Clothes Senior Constable	
Borman	G	Sergeant	
Britton	David	Plain Clothes Senior Constable	
Brosnan	Jason Anthony	Plain Clothes Senior Constable	
Burrows	J	Senior Constable	
Butler	Aaron	Plain Clothes Constable	
Campbell	Gary Colin	Detective Sergeant	Respondents' witness.
Cross	Sandra Kay	Plain Clothes Senior Constable	
Darby	E	Senior Constable	
Davis	B	Constable	
Dini	David Gino	Senior Sergeant	Respondents' witness.

Last name	First name	Rank/Position	Comment
Douglass	Tracey Michelle	Plain Clothes Senior Constable	
Doyle	Glenn	Senior Sergeant	
Egerton	Louisa May	Plain Clothes Senior Constable	
Enchong	Robert	Plain Clothes Constable	Allegedly attended Agnes Wotton's residence on 1 December 2004 and instructed her to go to the police station.
Flynn	Peter Francis	Detective Sergeant	
Gehringer	Kevin	Detective Senior Constable	
Godfrey	Robyn Anne	Plain Clothes Constable	
Golding	Adam Richard	Detective Senior Constable	
Grant	Louise Elizabeth	Plain Clothes Constable	
Hartley	Tracey	Plain Clothes Constable	
Hussey	Warren Albert Charles	Sergeant	Dog squad.
Kachel	Glenn Malcolm	Inspector	
Knight	Brian Robert	Detective Senior Constable	

Last name	First name	Rank/Position	Comment
Kruger	Rodney William	Acting Sergeant	Respondents' witness; SERT Operative 3.
Mahony	John Thomas	Detective Sergeant	
Marriott	P	Sergeant	
McKay	Donald	Senior Sergeant	Respondents' witness; SERT Operative 1.
McKay	Sharon Joy Arne	Constable	
Napper	G	Senior Constable	
Nicholas	Geoffrey	Senior Constable	Respondents' witness.
Plasto	Kieran Anthony	Detective Sergeant	
Price	Garth	Detective Senior Constable	
Reynolds	D	Senior Constable	
Squire	Brian Maxwell	Detective Senior Constable	
SERT	Operative 2		
SERT	Operative 4		
SERT	Operative 5		

Last name	First name	Rank/Position	Comment
SERT	Operative 6		
SERT	Operative 7		
SERT	Operative 8		
Trapnell	Michael	Detective Senior Constable	
Underwood	Steven	Inspector	Commander of PSRT.
Walmsley	Ronald	Inspector	
Webber	Warren Thomas George	Detective Inspector/Regional Crime Coordinator.	Respondents' witness.

Police officers in the Major Incident Response Room

Last name	First name	Rank/Position	Comment
Kitching	Raymond, Joseph	Detective Senior Sergeant	Respondents' witness.
Miles	David John	Detective Senior Sergeant	
Scanlon	Cheryl	Detective Senior Sergeant	

Senior Command police officers

Last name	First name	Rank/Position	Comment
Atkinson	Robert	Commissioner	
Howell	John Ashton	Superintendent	
McDonnell	Graham John	Assistant Commissioner, North Regional Operations	
Strohfeldt	Gregory	District Inspector	SS Hurley's immediate supervisor.
Wall	Roy	Chief Superintendent/ Acting Assistant Commissioner	
Wilson	Neal Alexander	Inspector/ Acting Superintendent	Advised of death in custody by SS Hurley by telephone on 19 November 2004.

Palm Island Review

Last name	First name	Rank/Position	Comment
Davey	Alan George	Assistant Commissioner	
Gee	Robert	Inspector	
McKay	Mike	Acting Superintendent	

Response to CMC

Last name	First name	Rank/Position	Comment
Barnett	Ross	Deputy Commissioner, Specialist Operations	
Bond	Michael	Senior Sergeant, Legal and Policy Unit	
Goldsworthy	TJ	Office Manager, Legal and Policy Unit	
Rynders	Kathleen	Deputy Commissioner	Authored report in response to CMC.

Subsequent Investigations

Inquests

Last name	First name	Rank/Position	Comment
Barnes	Michael	State Coroner	Presided over first Inquest.
Clements	Christine	Acting State Coroner	Presided over second Inquest.
Hine	Brian	Deputy Chief Magistrate	Presided over third Inquest.
Lampe	Guy	Dr, Queensland Health Pathology and Scientific Services	Conducted first autopsy.

Prosecution

Last name	First name	Rank/Position	Comment
Clare	Leanne	Director of Public Prosecutions	
Street	Sir Laurence	AC KCMG QC	

CMC

Last name	First name	Rank/Position	Comment
Barry	Britton	Detective Sergeant	
Berni	Kenneth William	Detective Inspector, CMC	
Florence	Lisa	Employee of CMC	
Gunnow	Ann	Acting Chairperson of the CMC	
Moynihan	Martin	AO QC, Chairperson of the CMC	
Webster	Kenneth	Detective Inspector	

SERT Entries and targets

No	Address	Date	Time	Person(s) to be located	Person(s) apprehended
1.	Wotton house, Farm Road, Farm area	27/11/04	05:00	Lex Patrick Wotton	Lex Patrick Wotton
2.	Clay house, Farm Road, Farm area	27/11/04	05:10	Shane Wallace Robertson	.
3.	Norman house, Machinery Lane, Farm area	27/11/04	05:15	Juvenile offender whose identity is protected under the <i>Youth Justice Act 1992</i>	Garrison Brian Sibley
4.	Parker house, Farm Road	27/11/04	05:25	Russell Wayne Parker Snr	Russell Wayne Parker Snr
5.	Bulsey House, Puttaburra Lane	27/11/04	05:45	David John Bulsey	David John Bulsey
6.	Poynter House, Luma Luma Street and Tarpoline Drive, Top End	27/11/04	06:00	Lincoln Hector Poynter Jason Richard Poynter	.
7.	Berma Poynter house, Luma Luma Street	27/11/04	06:02	Jason Richard Poynter	.
8.	Walsh house, Barnfield Highway, Butler Bay	27/11/04	06:05	Jason Richard Poynter	.
9.	Clumpoint house, Butler Bay Rd, Butler Bay	27/11/04	06:15	John Major Clumpoint	John Major Clumpoint
10.	Obah unit, Blue Units, Reuben Crescent, Butler Bay	27/11/04	06:25	Jason Richard Poynter	.
11.	Barry house, Luma Luma Street, Top End	27/11/04	06:35	Jason Richard Poynter	Solomon Nona (on outstanding warrant)

No	Address	Date	Time	Person(s) to be located	Person(s) apprehended
12.	Alberta Poynter house Sailor Street, Top End	27/11/04	06:40	Jason Richard Poynter	Lance Gabriel Poynter
13.	Telsten Sibley's house, Clumpoint Road, Bottom End	27/11/04	08:00	Shane Wallace Robertson	Shane Wallace Robertson
14.	Nugent house, Dee Street	27/11/04	12:00	Rifle/persons	-
15.	Agnes Wotton's house, Gribble Street	27/11/04	18:15	Richard James Poynter	Richard James Poynter
16.	Blackman/Oui house, Reuben Crescent, Butler Bay	27/11/04	18:30	William Neville Blackman	-
17.	Biara house, Cooktown Street, Cooktown area	28/11/04 29/11/04	05:20 04:45	Russell Edward Parker Jnr	-
18.	Pearson house, Reuben Crescent	28/11/04	05:36	Russell Edward Parker Jnr	-
19.	Wallaby Point	28/11/04	06:20	Russell Edward Parker Jnr Robert Terrence Nugent	Russell Edward Parker Jnr Robert Terrence Nugent