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Details of Filing

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A handwritten signature in blue ink, which appears to read "Warwick Soden".

Registrar

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No. QUD 535 of 2013 ★

Federal Court of Australia
District Registry: Queensland
Division: General Division

Lex Wotton and Others
Applicants

State of Queensland and Another
Respondents

**ANNEXURE TO APPLICANTS’
CLOSING SUBMISSIONS:
DISPUTED FACTS**

B *Introductory*

At all relevant times, the Indigenous population of Palm Island was greater than 95% of its total population and from 19 November 2004 until the present day numbered approximately 2000 people.¹

1. The 2006 Census data reveals that there were 1852 Indigenous Australians who recorded their usual residence as Palm Island. Those Indigenous persons represented 96.5% of the usual resident population of Palm Island².

D *Arrest of Mulrunji and Death in Custody on 19 November 2004***D.1 *Arrest and Subsequent Treatment of Mulrunji to the Time of His Death*****(a) *Arrest***

The behaviour for which Mulrunji was arrested was commonplace and unremarkable on Palm Island.³At the time of his arrest, Mulrunji posed no risk to any person or property.⁴

2. No evidence was given by any person present at the scene of the arrest. However, the recorded interviews conducted on 19 and 20 November 2004 provide the basis for determining the events that led to Mulrunji's arrest.
3. In his record of interview on 19 November 2004, PLO Bengaroo said: "Cameron Doomadgee walked towards me and said 'Ah you're a black man like me', I said ah - 'what do you lock him up for'.⁵
4. In the re-enactment conducted on 20 November 2004, PLO Bengaroo gave a similar account. He said Mulrunji said: "Bengaroo you're black like us. Why can't you help - help the blacks".⁶

¹ 3FASC, 1B; Reply, 2.

² Exhibit A3, page 63.

³ Reply, 3(b)(i).

⁴ Reply, 3(b)(ii).

⁵ Exhibit A27, line 118.

5. Following the exchange, PLO Bengaroo told Mulrunji to “walk down the road otherwise he’d get locked up”.⁷
6. PLO Bengaroo’s evidence is that during the course of Patrick Bramwell’s arrest, Mulrunji, who was walking past at the time, said to PLO Bengaroo words which the Applicants submit would not warrant an arrest.
7. Further, in response to PLO Bengaroo’s statement that he told Mulrunji to keep walking, Mulrunji complied and continued to walk in the direction away from the arrest of Patrick Bramwell.
8. SS Hurley, who was not involved in the exchange between Mulrunji and PLO Bengaroo, alleged as Mulrunji walked away he called out abuse. SS Hurley said Mulrunji: “then mouthed off at us again. Ahh – calling out abuse. He then continued to walk down stopped again – turned again and mouthed off for a second time. By that stage I was just entering the police vehicle. I asked Lloyd who the male was that had mouthed off...he said it was Cameron Doomadgee and ahh – I advised Lloyd that umm – Doomadgee would be going in for his behaviour. There was ahh – people umm – you know there was people’s houses where he was umm – so I drove down to him – I asked him ahh – ahh – what his problem with the police was and ahh – I can’t remember whether he replied or what the situation was but I told him he was under arrest.”⁸
9. PLO Bengaroo said: “Chris started the vehicle, ah Chris had (ui) gone a couple of meters down the road, Chris said Cameron was calling out (ui)”.⁹
10. PLO Bengaroo said: “Ah, all of a sudden Chris said to me who was that (ui) – we pulled up and – next to Cameron and Chris said to me “I’m going to have him – lock him up”.¹⁰
11. PLO Bengaroo said he could not recall what Mulrunji had called out.¹¹ He maintained that position twice in his record of interview.¹²

⁶ Exhibit A35, line 308.

⁷ Exhibit A27, line 127.

⁸ Exhibit A26, line 127 to 135.

⁹ Exhibit A27, line 139.

¹⁰Exhibit A27, line 145.

¹¹ Exhibit A27, line 136.

12. Even when prompted during the course of his interview by DS Robinson who asked: "When you got to him, he was still being rude to you",¹³ PLO Bengaroo did not suggest that Mulrunji was "rude" at all. Instead in response to the question posed by DS Robinson, PLO Bengaroo replied: "When we got out we just jumped out (ui) I opened the back door of the car - the truck - and we just grab him and say you're coming with us."¹⁴
13. Ms Nugent said: "He was started swearing at them too eh: He was (UI) - when he walked down the road".¹⁵
14. She again said Mulrunji: "Was swearing at them - I don't know what he was doing but what he was saying, but he was swearing".¹⁶
15. Ms Nugent said: "I don't know what he was saying, but I heard him - I knew he was swearing, because (ui) told me - said he was swearing".¹⁷
16. It is the Applicants' submission that the Court could not find that the evidence of SS Hurley is credible in circumstances where it is inconsistent with two other witnesses. There is no dispute that Mulrunji was affected by alcohol at the time of the arrest. However, it is not an offence to be affected by alcohol in a public place and due to the social disadvantage that exists on Palm Island, being affected by alcohol in a public place is not an irregular occurrence.
17. The Applicants submit that the only credible accounts given about the events of Mulrunji's arrest is that given by PLO Bengaroo and Ms Nugent. Their accounts are consistent, there was an exchange of words, Mulrunji then walked away and they did not hear Mulrunji swear.
18. The Applicants submit that the evidence supports findings that:
 - a. Mulrunji did not swear during his exchange with PLO Bengaroo or after he walked away from the scene;
 - b. Mulrunji's arrest was arbitrary and without reasonable cause;

¹² Exhibit A27, line 421 to 424.

¹³ Exhibit A27, line 431.

¹⁴ Exhibit A27, line 433.

¹⁵ Exhibit A28, line 197.

¹⁶ Exhibit A28, line 202.

¹⁷ Exhibit A28, line 361.

- c. Mulrunji's arrest was contrary to the principle of "arrest as a last resort";¹⁸ and
- d. Mulrunji's arrest was due to him being an Aboriginal person.

E Aboriginal Deaths in Custody - Interest of the Community and Reasonable Expectations of the Community

Senior officers of the QPS stationed in communities with a significant population of Aboriginal persons, such as Palm Island had knowledge of the RCIADIC¹⁹: SS Hurley and DS Robinson²⁰, Inspector Richardson and SS Whyte²¹, Officers of rank inspector or higher²² and officers higher in the chain of command than SS Hurley, DS Robinson, Inspector Richardson, SS Whyte, and other senior officers stationed on predominantly Aboriginal communities²³

19. In 1991, the report of the Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**) was publicly released. The evidence of DI Webber, DSS Kitching and SS Whyte was that they were aware of the RCIADIC.²⁴

The community of Palm Island were aware of the existence of the report of the RCIADIC, and the general nature of the matters discussed therein and the recommendations made therein²⁵

20. Members of the Palm Island community were also aware of the RCIADIC report.²⁶ Mrs Agnes Wotton recalled the establishment of the RCIADIC occurring around the time that she was on the Aboriginal and Torres Strait Islander Council.²⁷

¹⁸ RCIADIC recommendation 87.

¹⁹ 3FASC, 31(a).

²⁰ 3FASC, 31(b).

²¹ 3FASC, 31(c).

²² 3FASC, 31(d).

²³ 3FASC, 31(e).

²⁴ DI Webber T963.45, DSS Kitching T1166.25 and SS Whyte T1547.30.

²⁵ 3FASC, 32(a).

21. Lex Wotton gave evidence that during the week following Mulrunji's death, he informed those present at two community meetings of the issues raised in the RICADIC. Mr Wotton said he advised the meeting that the RICADIC considered issues such as infrastructure, education, employment and when people come into custody and arrest as a last resort.²⁸

By reason of the circumstances in which Mulrunji was arrested and died, the history of Palm Island and the fact that Palm Island was a predominantly Aboriginal community, the community of Palm Island was prone to forming a suspicion that the death in custody of Mulrunji was caused by or contributed to by SS Hurley, and that a fair and impartial investigation of the death would not occur,²⁹ the community of Palm Island had cultural needs peculiar to the community, by reason of the community being predominantly Aboriginal, and against the background of the circumstances in which the Aboriginal community came to inhabit Palm Island, and the treatment of the community by Public Officials since that time.³⁰

22. Palm Island was also known as "Punishment Island"³¹, a name apt to its brutal past, a past that is still entrenched in the minds of many of the current residents. The community of Palm Island was established to confine and punish its Aboriginal residents.³² The RICADIC noted that Palm Island: "Quickly gained a reputation amongst Aborigines as a penal settlement because people were sent there from all parts of the state for 'punishment'".³³
23. Under the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897 (Qld)* and successive legislation, the Queensland Government implemented a regime which

²⁶ T591.0 and T592.

²⁷ T153.15.

²⁸ T592.0 and T600.40.

²⁹ 3FASC, 32(b).

³⁰ 3FASC, 32(c).

³¹ Exhibit A2: at 2.1.3.

³² Exhibit A2: 3.1.6.

³³ Exhibit 109, 85:6.

sought to exercise total control over the lives of Aboriginal people. The regime lasted from 1897 to the early 1970s.³⁴

24. Frankland, citing Reynolds, noted the passage of the *Aboriginals Protection and Restriction of the Sale of Opium Act 1897*: "Palm Island was the first comprehensive Aboriginal Protection Act in Queensland and, indeed, in Australia; it ushered in the long era of protection and segregation during which Aborigines and Torres Strait Islanders lost their legal status as British citizens and became, in effect, wards of the State."³⁵
25. The people who were forcibly removed³⁶ to and confined on Palm Island, including Mrs Agnes Wotton, were often separated from their families and loved ones and not permitted to return to the mainland in order to visit them or at all.
26. The RICADIC notes that: "once a removal order was obtained, Aborigines had no redress...In many instances Aboriginal people were unaware of the reason for their deportation and it was not uncommon for people who were victims of crime to be removed. A former protector explained that he had sent blacks from the Gregory Downs district because they were a 'nuisance'. 'They were being worked without pay and were being 'bedded down' he said. In such instances the perpetrators of the crime went free while the victims were punished."³⁷
27. Mrs Agnes Wotton was aged in her mid-teens when she was removed from her family and then later brought to Palm Island. Mrs Wotton was then restricted to living in the dormitory until she was married.³⁸
28. The *Bringing Them Home Report* cites the following account detailed in a confidential submission of a woman removed to Palm Island at 12 months old in the 1940s:

"When we got to Palm Island we stayed with our mother in the women's dormitory. The day we turned five years old we were taken off our mother. Girls were put in another

³⁴ Exhibit A2: 2.1.1. Frankland notes that the *Aborigines' and Torres Strait Islander' Act 1965* still gave power to the State to remove Aboriginal people from one reserve to another. Exhibit A217,10:3.

³⁵ Exhibit A217, 3:1.

³⁶ Exhibit A217, 5:2.

³⁷ Exhibit A109, 76:2.

³⁸ T149.40.

dormitory with other girls, some of them were orphans and some of them were children of unmarried mothers.

After about a couple of years, our mother got a job at the Palm Island Hospital as a night nurse. She was allowed to live there...and my brother and I, when we got up to school age, we were allowed to go down and visit her at the hospital and then spend about an hour together each Friday afternoon. That is the only contact I had with my mother and brother".³⁹

29. A further account contained in the *Bringing Them Home Report* is that of another Aboriginal woman written in the 1940s:

"One day the Superintendent [of Palm Island] sent for my mother and told her she would have to go and work on a cattle station. Arrangements were already made for me and my brother to live with another Aboriginal family who had no children of their own. I was four years old and my brother was 4 months old at the time. Later we were put in the dormitory when I was five years old and my brother one year old.

My mother had written several letters to the Superintendent on Palm Island to have my brother and I sent out to her on the station but to no avail it fell on deaf ears. She also wrote to the Superintendent to make arrangements for us to live with our grandmother in Ingham as she was getting a job there. But they wrote back to her and said my grandmother was a drunk and unfit person to be in charge of two young children and living in a gunyah was out.

Mother felt isolated, depressed and very upset and it affected her work. Because of this her bosses tried to have her removed back to Palm Island but the Superintendent would not hear of it so he ignored it. Mother finally had permission to come home to visit us after one year was up. When she finally came home to Palm Island I was five and my brother one year old. Our mother had become a stranger to us and we cried and cried because we had become very frightened of her. We clung to the skirts of our foster mother but our mother took us gently in her arms and kissed our tear stained faces and cradled us close to her breast".⁴⁰

³⁹ Exhibit A216, 6:1.

⁴⁰ Exhibit A216, 7:4.

30. Dr Kidd noted that in 1950:

The women's dormitory was so overcrowded they needed to sleep head to foot in the beds. Apart from a few who worked as domestics for white officials or in the sewing rooms, most girls were condemned to a life without purpose. There were not even gardens where they could grow their own food. [Dr Macken⁴¹] described the dormitory system as:

"pernicious... [it] must be broken down if these coloured women are to become properly adjusted to normal life. It is completely futile and artificial and unnatural to enclose, or rather encage, women, and to expect any sort of normal psychological balance on their release".⁴²

31. The RCIADIC noted:

"On Palm Island even children were gaoled for insignificant misdemeanours. Marnie Kennedy recalled her experiences as a child in the late 1920s:

I was singing this song 'Who Said I Was a Bum'. I didn't know that the matron was coming through the dormitory. Next thing I found myself in jail for the night because I was singing that song and using the word 'bum' ... Next time I went to jail we were hunting for stuff on the reef when we saw this big fish in the lagoon. A big one. Of course we started chasing it.

We had no sandshoes on but we were running over the coral chasing this fish. The police were blowing the whistle for us to come in and we never heard it. We were too busy chasing the fish. Finally we caught it and the police caught us and marched us off the jail. We kicked that fish all the way back to the jail. We spent the night there."⁴³

32. Dr Kidd concluded:

"The overcrowding and multiple-family tenancy of today is a direct result of funding and policy decisions implemented over many decades which have entrenched poverty and an insufficiency of dwellings. The policy to strip millions of dollars from the pockets of those

⁴¹ Director of the National Tuberculosis Campaign.

⁴² Exhibit A2: 3.2.20. Also cited in exhibit A216, 6:2.

⁴³ Exhibit A109, 87:1.

who rightfully earned it has, as premier Joh Bjelke-Petersen predicted almost 30 years ago, created terrible social stresses".⁴⁴

33. The Applicants submit that this brutal history of Palm Island is deeply entrenched in the minds of members of the community today, with many being either subjected to Government controls or descended from people who were. The Applicants submit that the history of Palm Island gives rise to the communities' peculiar cultural needs.
34. The Palm Island community was close knit and connected by features such as kinship ties and a sense that there were close connections between all members of the community.⁴⁵
35. A death on the Island affected the entire community and the community would always come together to support each other.⁴⁶ It is that feeling of connectedness that is responsible for bringing the community together in the days after Mulunji's death, where grieving and the search for answers took place in the public arena during community meetings held in the Mall. This emotional public display exhibited on the Island in the days after the death was partly due to the fact that as the RCIADIC notes:
"A death in custody is a public matter. Police and prison officers perform their services on behalf of the community. They must be accountable for the proper performance of their duties. Justice requires that both the individual interests of the deceased's family and general interest of the community be served by the conduct of thorough, competent and impartial investigations into all deaths in custody. Where such deaths involve a distinct group, such as Aboriginal people, who may be the target of racial discrimination these requirements become imperative".⁴⁷
36. It is the Applicants' submission that:
 - a. Mulrunji's death affected the entire community;⁴⁸
 - b. the community as a whole was upset;⁴⁹
 - c. the community was angry;⁵⁰

⁴⁴ Exhibit A2: at 3.2.39.

⁴⁵ T278.30.

⁴⁶ T278.35.

⁴⁷ 3FASOC, Annexure A, p122.

⁴⁸ T222.15.

⁴⁹ T154.30 and T-154.20.

⁵⁰ T183.0.

- d. the community wanted to know what had happened;⁵¹
- e. the community wanted answers⁵² on how Mulrunji died and why he died;⁵³
- f. the community wanted the police to provide those answers;⁵⁴
- g. there was suspicion of a cover up held by some members of the community.⁵⁵

37. The Applicants submit that these factors created an expectation in the community:

- a. that it be told what happened;⁵⁶
- b. for SS Hurley to tell the community how Mulrunji died;⁵⁷
- c. that SS Hurley would be suspended and removed from the Island;⁵⁸
- d. that SS Hurley would be charged for events relating to the death;⁵⁹
- e. that there would be justice for Mulrunji;⁶⁰
- f. that the community would be kept informed about the process and progress of the investigation;⁶¹ and
- g. that the CMC would be involved in the investigation.⁶²

38. There was also an expectation that police would uphold law and order.⁶³ Members of the community felt that instead of having their expectations met, their questions and demands fell on “deaf ears”.⁶⁴

⁵¹ T-153.25.

⁵² T180.40.

⁵³ T180.45.

⁵⁴ T181.5.

⁵⁵ T181.35 and T556.25.

⁵⁶ T308.40.

⁵⁷ T181.20.

⁵⁸ T154.10.

⁵⁹ T165.35.

⁶⁰ T165.45.

⁶¹ T248.25.

⁶² T598.5.

⁶³ T165.30.

⁶⁴ T181.15.

*The community of Palm Island were concerned to ensure that the First Respondent, all Public Officials, the Second Respondent and QPS officers and members paid appropriate regard to the report of the RCIADIC and the recommendations contained therein in relation to the investigation of deaths in custody of Aboriginal persons and the care of Aboriginal persons whilst in Police custody.*⁶⁵

39. Members of the Palm Island community were aware of the RCIADIC report.⁶⁶ Lex Wotton gave evidence that during the week following Mulrunji's death, he informed those present at two community meetings of the issues raised in the RCIADIC. Mr Wotton said he advised the meeting that the RCIADIC considered issues such as infrastructure, education, employment and when people come into custody and arrest as a last resort.⁶⁷ Mr Wotton also asked Insp Richardson about the involvement of the CMC in the investigation.⁶⁸

*The community of Palm Island had a special interest in the conduct of the Second Respondent, QPS officers, and other QPS members, in relation to the provision of policing services on Palm Island.*⁶⁹

40. The police continually failed to demonstrate any initiative by attending the various community meetings, where the community's expectations could have been determined and met.⁷⁰ It is not contradicted that it would have been beneficial to have police attend and participate in the community meetings.⁷¹
41. It is the Applicants' submission that in contrast to meeting the community's expectations, the police instead took action that only sought to increase tension on Palm Island. The sending in of police reinforcements caused a call for members of the community to form a human wall to prevent them from arriving at the police station.⁷²

⁶⁵ 3FASC, 32(d).

⁶⁶ T591.0 and T592.

⁶⁷ T592.0 and T600.40.

⁶⁸ T564.45.

⁶⁹ 3FASC, 32(e).

⁷⁰ T248.20.

⁷¹ T702.15.

⁷² T563.20.

In the days following the death, police were also seen wearing guns⁷³ and fined community members for traffic offences. Neither was a common practice on the Island.⁷⁴

42. The failure of the police officers on Palm Island to meet the community's expectations led to the passing of two resolutions; one calling for removal of SS Hurley from the Island and the second requesting that Premier Beattie, Police Minister Spence and Police Commissioner Robert Atkinson attend the Island and give the community assurances and to discuss issues surrounding the death.⁷⁵
43. The Applicants submit that the evidence supports findings that:
 - a. members of the Palm Island community were aware of the RCIADIC and had in fact discussed its contents during the course of community meetings held in the days immediately after Mulrunji's death;
 - b. members of the Palm Island community were concerned to ensure that the First Respondent, all Public Officials, the Second Respondent and QPS officers and members paid appropriate regard to the report of the RCIADIC and the recommendations contained therein in relation to the investigation;
 - c. DI Webber, DSS Kitching and SS Whyte were aware of the RCIADIC;
 - d. the community was prone to suspicion about the circumstances of the death and that a fair and impartial investigation of the death would not occur;
 - e. suspicion arose in the minds of some members of the community, including Lex Wotton and William Blackman Senior;
 - f. the community had peculiar cultural needs by reason of the community being predominately Aboriginal and against the background of the circumstances in which the Aboriginal community came to inhabit Palm Island, and the treatment of the community by Public Officials since;
 - g. the community had a special interest in the conduct of the QPS and its officers;
 - h. the community's needs and expectations which were not met by police officers in the days after the death.

⁷³ T590.15.

⁷⁴ T590.15.

⁷⁵ T563.10.

G *Events of 19 to 24 November 2004 Following Death in Custody*

G.1 Notification of Death and Appointment of Investigative Team

(a) Appointment of Investigation Team

DS Robinson was not the only QPS Officer who had local knowledge of Palm Island and its residents.⁷⁶

44. It is clear on the evidence that DS Robinson was not the only QPS Officer who had local knowledge of Palm Island and its residents. SS Dini gave evidence that Trevor Adcock was flown in to perform duties as the CCLO⁷⁷. Anthony Melrose was also present on the island to assist with local knowledge.⁷⁸

DS Robinson's involvement in the investigation was not limited to assisting with matters which required local knowledge of Palm Island and its residents, and included an active role in the investigation, such as taking statements from witnesses and asking questions when witnesses were being interviewed.⁷⁹

45. It is clear that DS Robinson's involvement was not confined to assisting with local knowledge of Palm Island but that he took an active and substantial role in the investigation. DI Webber conceded that "he (Robinson) ended up"⁸⁰ playing an extremely active role in the investigation. DS Kitching gave evidence that DS Robinson

⁷⁶ Reply, 32(c).

⁷⁷ T802.17.

⁷⁸ Exhibit A41, Item 260.

⁷⁹ Reply, 32(d).

⁸⁰ T947.23-25

assisted him in the investigation by taking statements⁸¹ and conceded that his role went beyond the use of local knowledge⁸².

(b) Transit from Palm Island airport

Constables Ben Tonges and Kristopher Steadman, who were present on Palm Island at the time, were not asked or directed by any officer to transport the Investigation Team from the airport⁸³; Constables Ben Tonges and Kristopher Steadman were aware of the death in custody and had conversed with SS Hurley at the Palm Island Police Station⁸⁴; Constables Ben Tonges and Kristopher Steadman were readily available to commence their shifts prior to 4 pm at which time they were rostered to commence dut.⁸⁵; at the time SS Hurley drove DI Weber and DSS Kitching from Palm Island airport to the Palm Island police station, the investigation team ought to reasonably have been aware that it was not appropriate for them to be driven by SS Hurley.⁸⁶

46. In its Defence⁸⁷, the Respondents contend that “neither Constable Tonges nor Constable Steadman was rostered on duty at the time the Investigation Team arrived on Palm Island”.
47. Const Steadman had attended the police station at least twice during the morning of 19 November to run personal errands. The first occasion was when Mulrunji was being taken into the station.⁸⁸ Const Steadman returned later in the morning to again run personal errands.⁸⁹ It was at this stage that he was advised of concerns regarding Mulrunji. In the company of Sgt Leafe, he went into the cell where Mulrunji was located and checked Mulrunji’s pulse and pupils.⁹⁰

⁸¹ T1194.20-25

⁸² T1194.30-35

⁸³ 3FASC, 128.

⁸⁴ 3FASC, 128(b).

⁸⁵ 3FASC, 128(c).

⁸⁶ Reply, 35.

⁸⁷ Defence: 82.

⁸⁸ Exhibit A49, line 91 to 115.

⁸⁹ Exhibit A49, line 453 to 457.

⁹⁰ Exhibit A49, line 469 to 482.

48. Const Tonges was at the back of SS Hurley's house around the time of Mulrunji's death.⁹¹ He was informed by Const Steadman that there had been a death in the watchhouse. He then went to the police station,⁹² where he remained for about 15 minutes.⁹³ Const Tonges said in a later interview given to the CMC: "Knowing that there would be an interview um ah an investigation and basically the census [sic] for everyone who went there don't go and that's basically what we did".⁹⁴
49. The Applicants submit that both Const Steadman and Const Tonges ought to have been asked or directed to attend to transporting the investigation team. There is no evidence to suggest that either officer would or could have refused. On the contrary, the evidence demonstrates that both were prepared to assist where required.
50. The CMC concluded: "The integrity of the investigation was compromised when Hurley, the officer most likely to be under investigation, met the investigation team at the airport and transported them to the police station."⁹⁵
51. Deputy Commissioner Rynders did not consider any disciplinary or managerial action was warranted.⁹⁶
52. The Applicants' submit that the evidence supports findings that:
 - a. Const Steadman and Const Tonges were aware that the death of Mulrunji had occurred;
 - b. Const Steadman together with Sgt Leafe entered the cell where Mulrunji's was located to check his pulse and pupils;
 - c. Const Steadman and Const Tonges were available to transport the investigation team from the Palm Island airport to the police station;
 - d. SS Hurley and Sgt Leafe transporting the investigation team from the Palm Island airport to the police station adversely affected the integrity of the investigation;

⁹¹ Exhibit A88, line 77.

⁹² Exhibit A88, line 93 to 107.

⁹³ Exhibit A88, line 147 to 150.

⁹⁴ Exhibit A88, line 222 to 224.

⁹⁵ Exhibit A50, 64:4.

⁹⁶ Exhibit R31, 73:145.

- e. SS Hurley and Sgt Leafe transporting the investigation team from the Palm Island airport to the police station adversely affected the appearance of impartiality and the impartiality an of the investigation into Mulrunji's death.

G.2 Conduct of Investigation on 19 November 2004

(a) Preliminary Interviews

After his initial interview on 19 November 2004, and prior to the interview referred to in paragraph 146 [FASOC], SS Hurley discussed the death of Mulrunji and surrounding circumstances with Sergeant Leafe.⁹⁷

- 53. The Applicants contend⁹⁸ that "before the Investigation Team arrived on Palm Island, SS Hurley, Sergeant Leafe and PLO Bengaroo discussed Mulrunji's death".
- 54. The Respondents contend⁹⁹:
 - a. that SS Hurley was the first response officer within the meaning of s 1.17 of the OPM;
 - b. SS Hurley was the most senior officer for purposes of section 7.1 of the PSAA; and
 - c. as the first response officer, SS Hurley was required to make an immediate assessment of the situation and inquire as to the circumstance surrounding the death.
- 55. It is not in dispute that SS Hurley, Sgt Leafe and PLO Bengaroo discussed the events surrounding Mulrunji's arrest, detention and death prior to the arrival of the Investigation Team. The details of those conversations are unknown as this was not an issue the Investigation Team pursued.
- 56. In dispute is the identity of the first response officer pursuant to section 1.17.1 of the OPM. DI Webber said in evidence that Sgt Leafe was the first response officer.¹⁰⁰

⁹⁷ 3FASC:132(b).

⁹⁸ 3FASOC: 126.

⁹⁹ Defence: 80.

¹⁰⁰ T930.40.

Initially, DSS Kitching gave evidence that SS Hurley was the first response officer.¹⁰¹ However, DSS Kitching then conceded that if the provision had been applied correctly, SS Hurley should not have been appointed the first response officer.¹⁰²

57. The Applicants submit that Sgt Leafe either was the first response officer as noted by DSS Webber or if he was not the first response officer, then in accordance with section 1.17.1 of the OPM, he ought to have been. Further, it is submitted that SS Hurley conducting the role of first response officer was not the correct application of the OPM.
58. The Applicants submit that SS Hurley acting in the role of first response officer did not need to make inquiry as to the circumstances of Mulrunji's death, because SS Hurley was the only officer who was with Mulrunji the entire time between his arrest and death. PLO Bengaroo was not alone with Mulrunji at all during this period. Sgt Leafe was only alone with Mulrunji for a short period when he checked on Mulrunji's condition during a cell check.
59. The Applicants submit that, on that basis, any discussion about the circumstances surrounding Mulrunji's death was not in accordance with the requirements of section 1.17.1 of the OPM.
60. Acting State Coroner Clements found: "The discussion by Senior Sergeant Hurley of the death of Mulrunji with Sergeant Leafe and Police Liaison Officer Bengaroo prior to being interviewed was inappropriate and contrary to the OPM. It had the potential to undermine the integrity of the investigation and undermine the appearance of the integrity of the investigation."¹⁰³
61. The Applicants submit that the evidence supports findings that:
 - a. Sgt Leafe ought to have been the first response officer pursuant to 1.17.1 of the OPM;
 - b. the discussions between SS Hurley, Sgt Leafe and PLO Bengaroo adversely affected the independence of their evidence;
 - c. the discussions between SS Hurley, Sgt Leafe and PLO Bengaroo compromised the integrity of the investigation and the appearance of the integrity of the investigation.

¹⁰¹ T1270.15.

¹⁰² T1270.35.

¹⁰³ Exhibit A95, 31:35.

*In the period between 19 November 2004 and 24 November 2004, inclusive, SS Hurley was not advised or directed by any QPS officer (other than as provided for in the OPM and the Code of Conduct), not to discuss the circumstances surrounding the death in custody with other QPS officers.*¹⁰⁴

62. SS Hurley said in his interview on 19 November 2004: "I noted that ahh - there was a lady there that I now know as Penny Sibley".¹⁰⁵
63. In his interview on 20 November 2004, SS Hurley said "there was also a lady there who is Penny Sibley I now know that. I didn't know Sibley at the time. Lloyd told me that's who it is."¹⁰⁶
64. Further, SS Hurley said that "only from hindsight and speaking to the people found out that Lloyd was the one that opened the door and um, um, Bramwell was over there".¹⁰⁷
65. The Applicants submit that at no time between 19 November and 24 November was SS Hurley either advised or directed not to discuss the circumstances of Mulrunji's death with other QPS officers. The Applicants submit that a direction should have been given to SS Hurley to only speak to members of the Investigation Team and only then in response to matters raised during their investigation.
66. DI Webber had the power and the authority to direct SS Hurley, Sgt Leafe and PLO Bengaroo not to speak to each other about the events surrounding the death.¹⁰⁸ He could have done so prior to his arrival on Palm Island, while still in Townsville.
67. DI Webber never directed SS Hurley not to discuss the circumstances surrounding the death with others. DI Webber did not direct DSS Kitching to tell SS Hurley not to discuss the circumstances surrounding the death with others.¹⁰⁹
68. The CMC concluded:

¹⁰⁴ 3FASOC: 131.

¹⁰⁵ Exhibit A26, line 169.

¹⁰⁶ Exhibit A34, line 16 to 17.

¹⁰⁷ Exhibit A34, line 205 to 207.

¹⁰⁸ T991.30.

¹⁰⁹ T991.20.

DI Webber had an obligation under the OPM to ensure the integrity of the independent versions of members was preserved as far as practicable. In the CMC's view, in the circumstances it would have been prudent for a direction to have been given to the witnesses not to discuss the incident before the investigation team arrived, re-enforced after the initial interviews. The failure to ensure that the witnesses did not discuss the incident, and the failure to establish what had been discussed, compromised the investigation's integrity and appearance of integrity.¹¹⁰

69. The Applicants submit that the evidence supports findings that:
- a. SS Hurley was not directed or advised by any QPS officer not to discuss the circumstances surrounding Mulrunji's death with other QPS officers;
 - b. the failure to direct or advise SS Hurley to not discuss the circumstances of the death with other QPS officers compromised the investigation's integrity and appearance of integrity.

In contravention of their obligations under section 1.17 of the OPM, DI Webber, as the regional crime coordinator, and Inspector Strohfeldt as regional duty officer, failed to instruct officers not to talk to each other about Mulrunji's death and the surrounding events, and thereby failed to ensure the integrity of the independent versions of events of officers was preserved as far as practicable.¹¹¹

70. DI Webber refused to accept that SS Hurley was not providing an independent recollection after having spoken to Sgt Leafe.¹¹² DI Webber did not accept that failing to respond to SS Hurley's assertion that he had discussions with Sgt Leafe was in breach of QPS policy.¹¹³
71. DI Webber did not agree with the proposition that he took no steps to protect the integrity of the investigation where SS Hurley was involved.¹¹⁴

¹¹⁰ Exhibit A50, 86:5.

¹¹¹ 3FASOC:241.

¹¹² T988.15-T989.20.

¹¹³ T990.5.

¹¹⁴ T991.25.

72. DSS Kitching agreed with the proposition that he had direct responsibility for the investigation under section 1.17 of the OPM to ensure the investigation was conducted impartially.¹¹⁵
73. The CMC concluded:
- “DI Webber had an obligation under the OPM to ensure the integrity of the independent versions of members was preserved as far as practicable. In the CMC’s view, in the circumstances it would have been prudent for a direction to have been given to the witnesses not to discuss the incident before the investigation team arrived, re-enforced after the initial interviews”.¹¹⁶
74. Deputy Commissioner Rynders concluded:
- “I accept that such a direction would have been prudent; however, I do not accept that the failure to do so should incur any disciplinary consequence”.
75. The Applicants submit that the evidence supports findings that:
- a. SS Hurley, Sgt Leafe and PLO Bengaro discussed matters relating to Mulrunji’s death and arrest after Mulrunji’s death but prior to the arrival of the investigation team;
 - b. DI Webber had direct responsibility under section 1.17 of the OPM to ensure that the investigation was conducted impartially;
 - c. DI Webber failed to ensure the investigation was conducted in an impartial way because he was conducting an investigation into a death in custody of an Aboriginal man in an Aboriginal community.
 - d. DSS Kitching had a responsibility to ensure that the investigation was conducted impartiality;
 - e. DSS Kitching failed to ensure that the investigation was conducted impartially because he was conducting an investigation into a death in custody of an Aboriginal man in an Aboriginal community;
 - f. DI Webber failed to instruct SS Hurley, Sgt Leafe and PLO Bengaroo not to discuss matters relating to Mulrunji’s death and surrounding events; and

¹¹⁵ T1199.15-25.

¹¹⁶ Exhibit A50, 86:5.

- g. the failure to instruct SS Hurley, Sgt Leafe and PLO Bengaroo not to discuss matters relating to Mulrunji's death meant the integrity of the independent versions of events of those officers was not preserved.

Further, after his initial interview on 19 November 2004, and prior to the interview referred to in paragraph 146 [of the 3FASOC] SS Hurley became aware of Roy Bramwell's allegations which were first made in the time between SS Hurley's first interview and subsequent interviews, in particular the re-enactment video. That Roy Bramwell's allegations became known to SS Hurley, either: because it was divulged to him by DS Robinson; or alternatively because SS Hurley was in his office and had a capacity to hear conversations or interviews, concerning the investigation or in the course of the investigation, from his office in the Palm Island Police Station.¹¹⁷

- 76. SS Hurley continued to perform policing duties on the Saturday morning, where he was working in the police station. DI Webber agreed that SS Hurley was performing duties around the station.¹¹⁸ This included SS Hurley working in the office of the Officer in Charge.¹¹⁹
- 77. The Bramwell re-enactment was conducted in the Day Room next to the office of the Officer in Charge.¹²⁰
- 78. Other than DSS Kitching, DS Robinson had the most thorough knowledge of the investigation.¹²¹ Potentially, he had more knowledge as he prepared the written statements independently of DSS Kitching.¹²²
- 79. Deputy Chief Magistrate Hine concluded: "Another instance of collusion is the mimicking of Bramwell's actions by Hurley in the video re-enactment of 20 November 2004, which conveniently explained earlier actions depicted by Bramwell in his re-enactment, and which were mentioned to Sergeant Robinson in Bramwell's interview and statement earlier that day. The suspicion is compounded by Hurley's failure to

¹¹⁷ 3FASOC: 133.

¹¹⁸ T998.20.

¹¹⁹ T998.15.

¹²⁰ See Exhibit A179.

¹²¹ T1219.35.

¹²² T1219.40

mention his repeated attempts to raise Mulrunji from the floor by grabbing his shirt when he was interviewed for the first time on 19 November 2004.¹²³

80. The Applicant submits that the evidence supports findings that:
- a. SS Hurley became aware of the Roy Bramwell allegations, which were made by Mr Bramwell after SS Hurley had been initially interviewed on 19 November 2004 but before SS Hurley conducted a re-enactment on 20 November 2004;
 - b. Roy Bramwell's re-enactment was conducted when SS Hurley was in the Officer in Charge's room, which was next to the area where the re-enactment was being conducted;
 - c. it was likely that SS Hurley became aware of the allegations made by Roy Bramwell either through his own observations by being in the police station at the time of the re-enactment or by being informed by one of the members of the investigation team, including DS Robinson;
 - d. by not directing SS Hurley to remove himself from the police station at the time the Roy Bramwell re-enactment was occurring, DI Webber and DSS Kitching compromised the integrity of the investigation in Mulrunji's death.

(b) Meal at SS Hurley's residence

*At or about 10.30pm on 19 November 2004, at SS Hurley's residence, DI Webber, DSS Kitching and DS Robinson had a meal with SS Hurley and discussed the investigation.*¹²⁴

81. DI Webber, SS Hurley, DS Robinson and DSS Kitching ate a meal at SS Hurley's house on the evening of 19 November at around 10:30 pm. Sgt Leafe and his wife were not present for the meal but they did attend the residence for part of the evening.¹²⁵
82. It is agreed that DS Robinson cooked the meal alone with SS Hurley and that a modest amount of beer was consumed by all four police officers.¹²⁶

¹²³ Exhibit A96, 132:347.

¹²⁴ 3FASC, 137.

¹²⁵ T909.35.

83. It was put to DI Webber whether there was any discussion about the investigation. He denied that and said the conversation between those present was about “various memorabilia in relation to football matches and different matches etcetera, so those were on display on the wall, so that was the subject of some conversation”.¹²⁷
84. However, DI Webber did concede that the meal at SS Hurley’s house was inappropriate.¹²⁸ DSS Kitching made the same concession.¹²⁹
85. Acting State Coroner Clements found that it was a serious error of judgement for the investigation team to be sharing a meal at the home SS Hurley.¹³⁰
86. The CMC found that the impartiality, and the appearance of impartiality, of the investigation was compromised.¹³¹
87. The CMC concluded: “The officers failed to consider how this informal association would be seen by the local community and the consequences for community trust and confidence in the independence of the investigation”.¹³²
88. Deputy Commissioner Rynders concluded: “The appearance of the impartiality of the investigation was compromised by investigators having a meal at Hurley’s residence. The decision by the investigators to eat there was flawed. However, given the lack of alternative I also consider that this mistake was easily made”.¹³³
89. Deputy Commissioner Rynders did not recommend disciplinary action or providing managerial guidance with respect to either DI Webber or DSS Kitching on this issue.¹³⁴
90. The Applicant submits that the evidence supports findings that:
 - a. DS Robinson, DI Webber and DSS Kitching ate a meal with SS Hurley at his house on 19 November 2004;

¹²⁶ ASF:147.

¹²⁷ T909.40.

¹²⁸ T956.35.

¹²⁹ T1218.20.

¹³⁰ Exhibit A95, 10:3.

¹³¹ Exhibit A50, 80:3.

¹³² Exhibit A50, 80:5.

¹³³ Exhibit R31, 96:174.

¹³⁴ Exhibit R31, 96:177.

- b. by eating a meal at SS Hurley's house, DI Webber and DSS Kitching compromised the impartiality, and the appearance of impartiality, of the investigation;
- c. DI Webber and DSS Kitching had compromised the impartiality, and the appearance of impartiality, of the investigation.

G.3 Conduct of Investigation on 20 November 2004

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

SS Hurley was not the best placed to provide information to investigators at the arrest scene as PLO Bengaroo was also present when SS Hurley arrested Mulrunji and was therefore equally well placed to provide information.¹³⁵ At the time the QPS officers attended the scene of the arrest, Roy Bramwell had already alleged that SS Hurley had assaulted Mulrunji in two interviews, and in a written statement but rather than interview SS Hurley at the Police Station in response to those allegations immediately, as they ought to have done, the investigating officers took SS Hurley to the scene of the arrest.¹³⁶ The investigating officers knew or ought reasonably have known that members of the community may become aware of the fact that PLO Bengaroo was not taken to the arrest scene.¹³⁷

- 91. During Saturday morning, DI Webber, SS Hurley, Insp Williams, DSS Kitching and Const Tibbey went to the arrest scene in Dee Street.¹³⁸ They were driven to the arrest scene by SS Hurley¹³⁹, who was on duty and wearing his police uniform at the time.¹⁴⁰
- 92. Despite claims that the visit was to record the arrest details, only photographs were taken by Const Tibbey. A video re-enactment did not occur and so SS Hurley did not place on live record his version of the arrest at the place it occurred. There were no written records taken, despite the number of police present.

¹³⁵ Reply, 36(a).

¹³⁶ Reply, 36(b).

¹³⁷ 3FASC, 145(b).

¹³⁸ T1036.45 to T1037.1

¹³⁹ T1227.45.

¹⁴⁰ T1038.1.

93. The arrest scene was in the middle of one of the suburban areas of Palm Island.¹⁴¹ There were members of the community around the arrest scene.¹⁴² DSS Kitching agreed that those people could have observed the re-enactment.¹⁴³
94. DSS Kitching agreed with the proposition that he knew that he “would be driving around a small community, clearly visibly, with Mr Hurley, who was clearly, visibly working”.¹⁴⁴
95. DI Webber conceded he knew that members of the community would see SS Hurley.¹⁴⁵ PLO Bengaroo did not accompany them and was not ever taken on a similar view.¹⁴⁶ DSS Kitching conceded that it was inappropriate that the Investigation Team was driven around by SS Hurley and for SS Hurley to be in uniform.¹⁴⁷
96. The Applicant submits that the evidence supports findings that:
- a. the investigation team did not attend the arrest scene with PLO Bengaroo;
 - b. members of the community were able to observe the investigation team being driven to the arrest scene by SS Hurley who was on duty and in uniform at the time;
 - c. members of the community were able to observe the re-enactment;
 - d. members of the community who observed the re-enactment would have observed that PLO Bengaroo was not present;
 - e. DI Webber and DSS Kitching compromised the appearance of impartiality of the investigation by permitting SS Hurley to transport the investigation team to the arrest scene;
 - f. DI Webber and DSS Kitching compromised the appearance of impartiality of the investigation by not taking PLO Bengaroo to the arrest scene.

¹⁴¹ T1038.1.

¹⁴² T1229.10.

¹⁴³ T1229.15.

¹⁴⁴ T1229.1.

¹⁴⁵ T1037.40.

¹⁴⁶ T1037.10 to T1037.20 and T1229.25.

¹⁴⁷ T1228.20.

G.4 Completion of Form 1 and Conduct of inquest

(c) Autopsy

On 23 November 2004, DSS Kitching attended the autopsy conducted by Dr Lampe in Cairns, and Dr Lampe made known to DSS Kitching that Mulrunji's death was not from natural causes and that the autopsy revealed that Mulrunji had four fractured ribs.¹⁴⁸

97. The Respondents:

- a. admit that on 23 November 2004, DSS Kitching attended the autopsy conducted by Dr Lampe in Cairns;
- b. admit that the cause of death was intra-abdominal haemorrhage due to ruptured liver and portal vein; and
- c. otherwise deny paragraph 160 of the [3FASOC].¹⁴⁹

98. The autopsy was conducted on Tuesday 23 November 2004¹⁵⁰ in the afternoon.¹⁵¹

99. DSS Kitching agreed that at the conclusion of the autopsy, Dr Lampe made known to him:

- d. that Mulrunji's death was not from natural causes;¹⁵²
- e. the causes of death were intra-abdominal haemorrhage due to a cleaved liver and a ruptured portal vein;¹⁵³ and
- f. that Mulrunji had four broken ribs.¹⁵⁴

100. DSS Kitching telephoned DSS Webber and outlined the findings of the autopsy.¹⁵⁵

¹⁴⁸ 3FASC, 160.

¹⁴⁹ Defence: 105.

¹⁵⁰ T1154.5.

¹⁵¹ T1068.30.

¹⁵² T1286.5.

¹⁵³ T1286.10.

¹⁵⁴ T1286.15.

¹⁵⁵ T1068.10.

101. DSS Webber agreed that during the phone call it became clear Mulrunji had not died from natural causes.¹⁵⁶
102. DSS Webber agreed that DSS Kitching had informed him that Mulrunji had died as a result of haemorrhaging in his abdominal cavity¹⁵⁷ and secondary was the rupture of the liver.¹⁵⁸
103. DI Webber also agreed that DSS Kitching informed him that Mulrunji's liver had virtually cleaved in two¹⁵⁹ and that Mulrunji had four broken ribs.¹⁶⁰
104. The Applicants' submit that the evidence supports a finding that on 23 November 2004, Dr Lampe made known to DSS Kitching that:
 - a. Mulrunji's death was not from natural causes;
 - b. the causes of death were intra-abdominal haemorrhage due to a cleaved liver and a ruptured portal vein; and
 - c. that Mulrunji had four broken ribs.

*On 24 November 2004, the Queensland Crime and Misconduct Commission (CMC) assumed responsibility for the investigation.*¹⁶¹

105. The Respondents admit paragraph 163 of the 3FASOC and say that the CMC assumed responsibility for the investigation at the request of the QPS made on 23 November 2004.¹⁶²
106. Despite the Respondent's admission, DSS Webber said in cross-examination that the CMC assumed the responsibility on Tuesday 23 November 2004.¹⁶³ However, in the Applicants' submission, the evidence demonstrates that the QPS was still responsible for the investigation on Tuesday.

¹⁵⁶ T1068.15.

¹⁵⁷ T1068.20.

¹⁵⁸ T1068.20.

¹⁵⁹ T1068.25.

¹⁶⁰ T1068.25.

¹⁶¹ 3FASOC:163.

¹⁶² Defence: 108.

¹⁶³ T943.15.

107. DSS Kitching attended the autopsy of Mulrunji on Tuesday 23 November 2004.¹⁶⁴
108. DSS Webber said that late Tuesday afternoon¹⁶⁵ he received a telephone call from DSS Kitching and during the telephone call he outlined the results of the autopsy.¹⁶⁶ DI Webber said at the time of the telephone call he was still responsible for the investigation.¹⁶⁷ DI Webber said after receiving the phone call from DSS Kitching he “informed his assistant commissioner in relation to the findings”.¹⁶⁸
109. DSS Kitching said that on arriving back from the autopsy in Cairns, he had a meeting with DI Webber who “informed him the CMC were to take carriage of the investigation”.¹⁶⁹
110. DSS Kitching said “A couple of days later, Inspector Bemis and Inspector Williams from the [Ethical Standards Command] arrived, and we gave them a briefing and handed over the investigation file to them”.¹⁷⁰
111. DSS Kitching was still communicating with the State Coroner on Wednesday, 24 November 2004, who at that time requested the word “fall” be removed from the autopsy certificate so that it did not appear that the pathologist was assisting the police in a “cover up”.¹⁷¹
112. DSS Kitching agreed that after “the investigation was taken over by the CMC, he had no further involvement with the investigation”.¹⁷²
113. The Applicants submit that the evidence supports findings that:
- a. DI Webber was still responsible for the investigation late on Tuesday afternoon 23 November 2004;
 - b. DSS Kitching was still conducting activities in relation to the investigation on Wednesday 24 November 2004;

¹⁶⁴ T1154.5.

¹⁶⁵ T1068.30

¹⁶⁶ T1068.10.

¹⁶⁷ T1068.35.

¹⁶⁸ T1068.40.

¹⁶⁹ T1154.25.

¹⁷⁰ T1154.35.

¹⁷¹ T1069.20.

¹⁷² T1154.45

- c. the CMC did not assume responsibility for the investigation until sometime on 24 November 2004.

H QPS Failures of 19 to 24 November 2004

H.5 Failures in Relation to Cultural Advisory Unit and Cross Cultural Liaison officers and to Consider Cultural Needs Which Exist Within The Palm Island Community

All QPS Officers were subject to the Policy in s. 6.4 of the OPM as referred to in paragraph 44.a [3FASOC], namely that officers should always consider cultural needs which exist within the community, which required officers to consider the matters referred to in paragraph 32 [3FASOC]¹⁷³

114. The Respondents admit that QPS officers were subject to the Policy in 6.4 of the OPM. However, they deny that the Policy required QPS officers to consider matters referred to in paragraph 32 of the 3FASOC.¹⁷⁴

115. The Policy in s. 6.4 states:

- a. To achieve the goals of the Service, strategies emphasising joint community and police activities have been adopted;
- b. Officers should always consider cultural needs which exist within the community.

116. The Applicants submit that QPS officers were required to consider the cultural needs of the Palm Island community. The community of Palm Island, at all relevant times:

- a. was almost entirely Aboriginal;¹⁷⁵
- b. was small and “close-knit”;¹⁷⁶

¹⁷³ 3FASOC: 188(a).

¹⁷⁴ Defence: 112.

¹⁷⁵ Exhibit A3, Exhibit JA-3, p1, paragraph 4.

¹⁷⁶ T278.30.

- c. had had a poor historical relationship with the authorities in general and the police in particular and had historically perceived the police to be controllers and oppressors;¹⁷⁷
 - d. from a socio-economic perspective: was one of the most disadvantaged Aboriginal or Torres Strait Islander communities in Australia;¹⁷⁸ had a median individual weekly income for Aboriginal or Torres Strait Islander people aged over 15 years of age of \$216 per week, compared with \$318 for Aboriginal or Torres Strait Islander people in Queensland generally and \$476 for people in Queensland overall¹⁷⁹; had an unemployment rate of about 17 per cent amongst Aboriginal or Torres Strait Islander residents, compared with 13.1 per cent for Aboriginal or Torres Strait Islander people in Queensland generally, and 4.7 per cent for people in Queensland overall;¹⁸⁰ had low levels of education.¹⁸¹
117. DSS Kitching was aware of the policy relating to joint community and police activities.¹⁸² DSS Kitching suggested that the contact with Owen Marpoondin and Andrea Kyle in their roles within the ATSILS constituted sufficient consultation with the community.¹⁸³ The Applicants submit that the evidence of Mr Marpoondin and Ms Kyle is that their communication with the investigation team was limited to ensuring that the Doomadgee family was informed of Mulrunji's death.
118. In developing a joint strategy with the community, the investigation team ought to have engaged with the elected representatives of the community, the Mayor and the Palm Island Council. No such steps were taken.¹⁸⁴
119. In respect of the cultural needs of the community, DI Webber agreed that he did not consider the cultural needs of the community.¹⁸⁵ DSS Kitching said he "did not entirely" agree with the proposition that at no stage did he consider the special

¹⁷⁷ Exhibit A2: 2.1.6.

¹⁷⁸ Exhibit A3, Exhibit JA-3, 1:6 and 2:3.

¹⁷⁹ Exhibit A3, Exhibit JA-3, 2:5.

¹⁸⁰ Exhibit A3, Exhibit JA-3, 2:6.

¹⁸¹ Exhibit A3, Exhibit JA-3, 1:6 and 2:3.

¹⁸² T1238.35.

¹⁸³ T1238.35.

¹⁸⁴ See evidence of DSS Kitching, T1238.40.

¹⁸⁵ T1010.5.

cultural needs of an Aboriginal Torres Strait Islander community.¹⁸⁶ However, there is no evidence to suggest that DSS Kitching did consider the cultural needs of the community.

120. There was a requirement for all QPS officers to comply with the Policy in section 6.4 of the OPM. The Policy sets out a clear mandate for strategies emphasising joint community and police activities and the need for QPS officers to consider the cultural needs within the community. DI Webber and DSS Kitching failed to undertake any steps during the investigation to meet with the elected representatives of the community and develop a strategy jointly with them that would have ensured that the community's needs were understood and addressed.
121. The community of Palm Island had peculiar cultural needs and at no stage during their investigation did DI Webber and DSS Kitching consider those cultural needs.
122. The Applicants submit that DI Webber and DSS Kitching failed to comply with section 6.4 of the OPM because they were conducting an investigation into a death in custody of an Aboriginal man in an Aboriginal community.
123. The Applicants submit that the evidence supports findings that:
 - a. the Palm Island community had peculiar cultural needs;
 - b. members of the investigation team were required to comply with required to comply with Policy in section 6.4 of the OPM;
 - c. DI Webber and DSS Kitching failed to comply with the Policy in section 6.4 of the OPM; and
 - d. by not complying with section 6.4 of the OPM, DI Webber and DSS Kitching compromised the impartiality of their investigation.

*All QPS Officers who were officers in charge of stations or establishments, were subject to the Policy in s. 6.4.7 of the OPM as referred to in paragraph 44.b of the [4FASOC] namely that they 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, which required officers to consider the matters referred to in paragraph 32 of the 3FASOC.*¹⁸⁷

¹⁸⁶ T1187.10.

¹⁸⁷ 3FASOC: 188(b).

124. The Respondents admit that QPS officers who were in charge of stations or establishments were subject to section 6.4.7 of the OPM.¹⁸⁸ However, they deny that the Policy required such QPS officers to consider the matters referred to in paragraph 32 of the 3FASOC.¹⁸⁹
125. Prior to the death of Mulrunji and up to 22 November 2004, SS Hurley was the officer in charge of the Palm Island police station. Following SS Hurley's removal from the Island on 22 November 2004, SS Whyte replaced SS Hurley as the officer in charge.¹⁹⁰ SS Whyte arrived on the Island with Inspector Richardson. Inspector Richardson's role was to have overarching command and control and to liaise with the QPS hierarchy.¹⁹¹
126. SS Whyte said that he had previously worked in a number of Aboriginal communities, including being promoted to Sergeant in Pormpuraaw in 1995, a role he remained in until 1997.¹⁹² SS Whyte considered himself to have "an idea about Indigenous communities". Of his time in Pormpuraaw, SS Whyte said: "When I was – when I was the officer in charge of Pormpuraaw police division there were 600 Aboriginal people. There were two people that didn't consume alcohol, to my knowledge...My wife and I and our two boys lived in that community for three years, so I have an idea about Indigenous communities. I have an idea – a very big idea – about the issues alcohol causes communities and people."¹⁹³
127. SS Whyte did not accept that his statement of such high alcohol use was an exaggeration – let alone a racially-loaded one.¹⁹⁴
128. In his record of interview on 26 November 2006, SS Whyte, referred to Lex Wotton as a "blackie blackie – half caste"¹⁹⁵ and in cross-examination SS Whyte did not accept that such a term was derogatory.¹⁹⁶
129. Further, in his record of interview, SS Whyte described Mr David Bulsey as "ah skinny fella, half caste fella um tall fella"¹⁹⁷ and observed "I have no problems with the

¹⁸⁸ 3FASOC: 44(b).

¹⁸⁹ Defence: 112.

¹⁹⁰ T1504.15.

¹⁹¹ T1504.20.

¹⁹² T1503.30.

¹⁹³ T1532.40 - 1533.0.

¹⁹⁴ T1581.35.

¹⁹⁵ R17, line 7.

¹⁹⁶ T1529.20.

¹⁹⁷ R17, pg 18, line 21.

Aboriginal people at all – none whatsoever. You know, at the end of the day, um, they will turn on you when they're drinking alcohol".¹⁹⁸

130. The Applicants submit that in contrast with SS Whyte's own views that he had "an idea about Indigenous communities", the views expressed by SS Whyte were actually discriminatory and revealed an entrenched attitude of considering Aboriginal people to be inferior to white Australians solely because of their race.
131. SS Whyte considered that the result of his inaction being the fire on 26 November was the fault of the Palm Island community¹⁹⁹ because they were trouble makers²⁰⁰ and not in anyway due to a failure of policing.²⁰¹
132. The Applicants submit that the discriminatory views held by SS Whyte ensured that he took no steps to comply with the Policy in section 6.4.7 of the OPM.
133. The Applicants submit that the evidence supports findings that:
 - a. SS Whyte was required to comply with the Policy contained in section 6.4.7 of the OPM;
 - b. in compliance with the Policy in section 6.4.7 of the OPM, SS Whyte was required to take into account the cultural characteristics of the Palm Island community;
 - c. in compliance with the Policy in section 6.4.7 of the OPM, SS Whyte was required to take into consideration the cultural needs of the Palm Island community;
 - d. SS Whyte did not comply with the Policy contained in section 6.4.7 of the OPM;
 - e. the views held by SS Whyte were of inferiority of Aboriginal people and Torres Strait Islanders based on or by reason of their race;
 - f. the failure by SS Whyte to comply with section 6.4.7 of the OPM was a breach of section 9 of the RDA.

¹⁹⁸ R17, pg 18 line 7.

¹⁹⁹ T1521.10.

²⁰⁰ 1531.10.

²⁰¹ T1531.20.

The existence and appropriate utilisation of those culturally-appropriate systems would have accorded with recommendations 210, 214, 215, 225, and 228 of the RCIADIC, as set-out in Annexure B [of the 3FASOC] and the reasonable expectations of the community referred to in paragraph 32 [3FASOC].²⁰² Further and/or in the alternative to paragraph 192 [of the 4FASOC] following the death in custody of Mulrunji: any advice and support to members of the QPS stationed on Palm Island was not appropriate in all the circumstances or not followed by members of the QPS stationed on Palm Island.²⁰³

134. The Respondents:

- a. admit that the existence of those systems accorded with recommendations 210, 214, 225 and 228 of the RCIADIC;
- b. admit that the appropriate utilisation of those systems accorded with those recommendations;
- c. otherwise deny paragraph 191.²⁰⁴

135. The Applicants submit that the expectations of the Palm Island community were as follows:

- a. to be told what happened to Mulrunji;²⁰⁵
- b. for SS Hurley to tell the community how Mulrunji died;²⁰⁶
- c. that SS Hurley would be suspended and removed from the Island;²⁰⁷
- d. that SS Hurley would be charged for events relating to the death;²⁰⁸
- e. that there would be justice for Mulrunji;²⁰⁹
- f. that the community be kept informed about the progress of the investigation;²¹⁰ and

²⁰² 3FASOC: 191.

²⁰³ 3FASOC: 193.

²⁰⁴ Defence 114.

²⁰⁵ T308.40.

²⁰⁶ T181.20.

²⁰⁷ T154.10.

²⁰⁸ T165.35.

²⁰⁹ T165.45.

²¹⁰ T248.25.

- g. that the Crime and Misconduct Commission should be involved in the investigation of the death in custody.²¹¹
136. In cross-examination, SS Dini said that following the fire on 26 November 2004: “We had meetings with the Council and Community Justice Group and others, and just talked about what’s happened and how we need to move forward from it. We put together a package of – of, you know, appropriate protocols and behaviour for police coming to indigenous communities. We – we delivered that to the council and they were pretty happy with – with how it looked. Then we made arrangements with the family. I think Trevor Adcock attended the – the funeral, which was later that week. And it was just basically about trying to normalise relations and – and get things back to an even footing. For their part, if the – any of the location residents had any complaints or questions about things that police were doing they would bring them to us and we would find out the answers and take it back to them, so to start that two-way flow of communication”.²¹²
137. However, no members of the QPS took steps to communicate with the Palm Island Council or the community justice group around the development of a package of appropriate protocols and behaviours for police following the death of Mulrunji and before the fire on 26 November 2004.
138. Further, SS Dini explained a plethora of proactive steps taken after the fire and over the next few years, including:²¹³
- a. he met with Elders, the community justice group, the Mayor and the Palm Island Council to discuss protocols on the Island, the make-up of the Island and the cultural sensitivities;
 - b. he developed of a cultural appreciation project;
 - c. the development of a community specific package (CATPRO) for QPS officers working on Palm Island;
 - d. the establishment of community police consultative groups; and
 - e. the development of three culturally specific self-paced learning modules for QPS officers, relating to Aboriginal people and Torres Strait Islanders.
139. Again, these steps were not in place prior to the events in November 2004.²¹⁴

²¹¹ T598.5.

²¹² T774.35.

²¹³ T821.10 to 822.25.

140. The Applicants submit that the evidence supports a finding that the steps taken by SS Dini in the initial days after the fire:

- a. in meeting with the Elders, the Palm Island Council and the community justice group;
- b. the development of protocols around behaviour of police coming into Palm Island; and
- c. two-way flow of communication

were steps that the QPS had the capacity to undertake following the death of Mulrunji and before the fire on 26 November 2004.

141. Further, the Applicants submit that the evidence supports findings that:

- a. the QPS failed to take steps that addressed the community's expectations following the death of Mulrunji but before the fire on 26 November 2004;
- b. the failure by the QPS to implement a process that ensured the appropriate utilisation of systems which were in accordance with recommendations 210, 214, 215, 225, and 228 of the RCIADIC led to the actions of the community on 26 November 2004 in which the Palm Island police station and the Palm Island Courthouse were burnt down.

The existence and appropriate utilisation of those culturally-appropriate systems would have accorded with recommendations 210, 214, 215, 225, and 228 of the RCIADIC, as set-out in Annexure B [of the 3FASOC] and the reasonable expectations of the community referred to in paragraph 32 [3FASOC].²¹⁵ Further and/or in the alternative to paragraph 192 [of the 4FASOC] following the death in custody of Mulrunji: any advice and support to members of the QPS stationed on Palm Island was not appropriate in all the circumstances or not followed by members of the QPS stationed on Palm Island.²¹⁶

²¹⁴ T821.45 to T822.1.

²¹⁵ 3FASOC: 191.

²¹⁶ 3FASOC: 193.

142. The Respondents:

- a. admit that the existence of those systems accorded with recommendations 210, 214, 225 and 228 of the RCIADIC;
- b. admit that the appropriate utilisation of those systems accorded with those recommendations;
- c. otherwise deny paragraph 191.²¹⁷

143. The Applicants submit that the expectations of the Palm Island community were as follows:

- a. to be told what happened to Mulrunji;²¹⁸
- b. for SS Hurley to tell the community how Mulrunji died;²¹⁹
- c. that SS Hurley would be suspended and removed from the Island;²²⁰
- d. that SS Hurley would be charged for events relating to the death;²²¹
- e. that there would be justice for Mulrunji;²²²
- f. that the community be kept informed about the progress of the investigation;²²³ and
- g. that the Crime and Misconduct Commission should be involved in the investigation of the death in custody.²²⁴

144. In cross-examination, SS Dini said that following the fire on 26 November 2004: “We had meetings with the Council and Community Justice Group and others, and just talked about what’s happened and how we need to move forward from it. We put together a package of – of, you know, appropriate protocols and behaviour for police coming to indigenous communities. We – we delivered that to the council and they were pretty happy with – with how it looked. Then we made arrangements with the family. I think Trevor Adcock attended the – the funeral, which was later that week.

²¹⁷ Defence 114.

²¹⁸ T308.40.

²¹⁹ T181.20.

²²⁰ T154.10.

²²¹ T165.35.

²²² T165.45.

²²³ T248.25.

²²⁴ T598.5.

And it was just basically about trying to normalise relations and – and get things back to an even footing. For their part, if the – any of the location residents had any complaints or questions about things that police were doing they would bring them to us and we would find out the answers and take it back to them, so to start that two-way flow of communication”.²²⁵

145. However, no members of the QPS took steps to communicate with the Palm Island Council or the community justice group around the development of a package of appropriate protocols and behaviours for police following the death of Mulrunji and before the fire on 26 November 2004.
146. Further, SS Dini explained a plethora of proactive steps taken after the fire and over the next few years, including:²²⁶
 - a. he met with Elders, the community justice group, the Mayor and the Palm Island Council to discuss protocols on the Island, the make-up of the Island and the cultural sensitivities;
 - b. he developed of a cultural appreciation project;
 - c. the development of a community specific package (CATPRO) for QPS officers working on Palm Island;
 - d. the establishment of community police consultative groups; and
 - e. the development of three culturally specific self-paced learning modules for QPS officers, relating to Aboriginal people and Torres Strait Islanders.
147. Again, these steps were not in place prior to the events in November 2004.²²⁷
148. The Applicants submit that the evidence supports a finding that the steps taken by SS Dini in the initial days after the fire:
 - a. in meeting with the Elders, the Palm Island Council and the community justice group;
 - b. the development of protocols around behaviour of police coming into Palm Island; and
 - c. two-way flow of communication

²²⁵ T774.35.

²²⁶ T821.10 to 822.25.

²²⁷ T821.45 to T822.1.

were steps that the QPS had the capacity to undertake following the death of Mulrunji and before the fire on 26 November 2004.

149. Further, the Applicants submit that the evidence supports findings that:

- a. the QPS failed to take steps that addressed the community's expectations following the death of Mulrunji but before the fire on 26 November 2004;
- b. the failure by the QPS to implement a process that ensured the appropriate utilisation of systems which were in accordance with recommendations 210, 214, 215, 225, and 228 of the RCIADIC;
- c. the failure by the QPS to implement a process that ensured the appropriate utilisation of systems which were in accordance with recommendations 210, 214, 215, 225, and 228 of the RCIADIC led to the actions of the community on 26 November 2004 in which the Palm Island police station and the Palm Island Courthouse were burnt down.

*Following the death of Mulrunji, no CCLO provided any advice to QPS Officers on Palm Island, either in connection with the investigation into the death in custody or other operational policing on Palm Island.*²²⁸

150. The Respondent pleads that on 19 November 2004, the CAU provided advice to officers on Palm Island about the matters pleaded in paragraph 194(b) of the 3FASOC.²²⁹

151. The Applicants submit that the role of a Cross Cultural Liaison Officer is specific and includes:

- a. to improve relations between members of the service and Aboriginal and Torres Strait Islander community groups;²³⁰
- b. to establish and maintain effective liaison between police and Aboriginal and Torres Strait Islander communities;²³¹

²²⁸ 3FASOC: 194(b).

²²⁹ Defence :117.

²³⁰ T776.10.

²³¹ T776.15.

- c. to identify the needs of those communities;²³²
 - d. to enable appropriate policies and strategies to be developed;²³³
 - e. to ensure that the police delivered an equitable service within the region.²³⁴
152. The role of a Cross Cultural Liaison Officer was distinct from the Cultural Advisory Unit which was based in Brisbane and reported to and advised the Police Commissioner.²³⁵
153. SS Dini was on holidays at the time of the death of Mulrunji and did not return to work until 26 November 2004²³⁶ and there was no one acting in his position²³⁷. Therefore, he was not in a position to provide advice to QPS Officers on Palm Island either in connection with the investigation into the death in custody or other operational policing issues on Palm Island.
154. The Applicants submit that the evidence supports findings that:
- a. the role of a Cross Cultural Liaison Officer was distinct from the Cultural Advisory Unit;
 - b. the role of a Cross Cultural Liaison Officer included:
 - to improve relations between members of the service and Aboriginal and Torres Strait Islander community groups;²³⁸
 - to establish and maintain effective liaison between police and Aboriginal and Torres Strait Islander communities;²³⁹
 - to identify the needs of those communities;²⁴⁰
 - to enable appropriate policies and strategies to be developed;²⁴¹
 - to ensure that the police delivered an equitable service within the region;²⁴²

²³² T776.15.

²³³ T776.15.

²³⁴ T776.15.

²³⁵ T778.10.

²³⁶ T778.20.

²³⁷ T778.30.

²³⁸ T776.10.

²³⁹ T776.15.

²⁴⁰ T776.15.

²⁴¹ T776.15.

- c. no Cross Cultural Liaison Officer provided any advice to QPS officers on Palm Island, either in connection with the investigation into the death in custody or other operational policing issues on Palm Island.

H.7 Failure of DI Webber to Ensure Constable Steadman Was Interviewed as Soon as Practicable

*Constable Steadman had been present in the police station after Mulrunji's death had been discovered and was visibly present in the cell on the surveillance footage, which was viewed by the Investigation Team.*²⁴³

- 155. The Respondents deny that DI Webber was required to comply with the Policy under section 1.17.²⁴⁴
- 156. Further, the Respondents deny that the Procedure in section 2.5.1 of the OPM imposed a requirement, having regard to the definition of "Procedure" as pleaded in paragraph 35 of the 3FASOC.²⁴⁵
- 157. It is not in dispute that Const Steadman was not interviewed by any member of the investigation team. Const Steadman was not interviewed until 8 December 2004, when he was interviewed by officers from the Crime and Misconduct Commission.²⁴⁶
- 158. DI Webber did not direct DSS Kitching²⁴⁷ or any other officer²⁴⁸ to interview Const Steadman. DSS Kitching did not direct DS Robinson to interview Const Steadman.²⁴⁹ DSS Kitching did not direct any other officer to interview Const Steadman.²⁵⁰

²⁴² T776.15.

²⁴³ Reply, 45(c).

²⁴⁴ Defence: 125(a).

²⁴⁵ Defence: 126(b).

²⁴⁶ Exhibit A95, p5 at 7.

²⁴⁷ T1020.45.

²⁴⁸ T1021.1.

²⁴⁹ T1212.45.

²⁵⁰ T1213.1.

159. DSS Kitching agreed Const Steadman was a critical witness.²⁵¹ DSS Kitching also agreed Const Steadman was an important observer of what occurred when Mulrunji was moved from the police van into the police station.²⁵²
160. Deputy Chief Magistrate Hine concluded that “it was clearly of the utmost importance that Steadman’s unaided and uncontaminated account be recorded”.²⁵³
161. The Applicants submit that the evidence supports findings that:
- a. that Const Steadman was a critical witness in the investigation into the death of Mulrunji;
 - b. Const Steadman was not interviewed by any member of the investigation team;
 - c. DI Webber was required to comply with the Policy under section 1.17 of the OPM and an Order under section 1.17 of the OPM to ensure that the provision of sections 16.24.1 to 16.24.5 were complied with;
 - d. in accordance with section 2.5.1 of the OPM, DI Webber and DSS Kitching had the responsibility to ensure that Const Steadman was interviewed;
 - e. DI Webber and DSS Kitching failed to carry out their obligations under section 2.5.1 of the OPM;
 - f. the failure to interview Const Steadman compromised the impartiality and the appearance of impartiality of the investigation.

H.9 Failure to Assist the Coroner in Relation to Conducting the Inquest, and Failures in Relation to the Form 1 and Supplementary Form 1

Through their involvement in the investigation into Mulrunji’s death, when the Form 1 was sent to the Coroner, each of DSS Kitching and DI Webber were aware or ought to have been aware that after the alleged fall, Mulrunji was observed on the watchhouse video to lay on the floor of the cell, apparently making loud noises as if in distress.²⁵⁴ The Form 1’s statement that Mulrunji “laid [sic] on the floor of the cell and went to sleep immediately” was incorrect.²⁵⁵ There were no good and

²⁵¹ T1213.20.

²⁵² T1213.10.

²⁵³ Exhibit A96, 153:39.

²⁵⁴ 3FASC, 212(c)(iii)(F).

²⁵⁵ 3FASC, 212(d).

*sufficient reasons not to prepare a Supplementary Form 1 to notify the Coroner of the allegations of assault made by Roy Bramwell and Penny Sibley, or of the fact of Mulrunji being dragged limp into his cell.*²⁵⁶

162. SS Hurley said in his re-enactment on 20 November 2004:

“Sgt Leafe was on the other hand and by the wrist like that we have dragged him then from there and we have dragged - this door was open and the watch house door was open. We dragged him from there into the cell, into the cell”.²⁵⁷

163. SS Hurley said further in his re-enactment when Mulrunji was being dragged “he was moving his legs and whatever but he wasn’t ah, I think he was resound (sic) to the fact that he was going in there”.²⁵⁸

164. Sgt Leafe said Mulrunji:

“Was basically limp and then not wanting to assist us at all. Um Senior Senior Hurley’s grabbed him by the left arm I’ve grabbed him by the right arm and we’ve dragged him in he didn’t help us in any way um he’s just laid his legs out flat and we’ve dragged him through and into the watchhouse”.²⁵⁹

165. DI Webber²⁶⁰ and DSS Kitching²⁶¹ both viewed the cell video on Friday 19 November 2004.

166. DSS Kitching conceded that he was aware that Mulrunji was limp when he was taken into the cell.²⁶²

167. It was put to DSS Kitching that the following entry on the Form 1 was not a correct account of what had occurred: “At the time the deceased was then physically restrained and placed in cell 2 of the Palm Island police watch-house and charged at

²⁵⁶ 3FASC, 212(e).

²⁵⁷ Exhibit A34, line 101 to 104.

²⁵⁸ Exhibit, A34, line 265.

²⁵⁹ Exhibit A36, line 58 to 62.

²⁶⁰ T1005.40.

²⁶¹ T1212.05.

²⁶² T1279.25.

- 10.26. At that time, the deceased laid on the floor of the cell and went to sleep immediately”²⁶³.
168. DSS Kitching did not accept that his description was not a correct account.²⁶⁴ However, DSS Kitching then conceded that Mulrunji was limp²⁶⁵ and was dragged by Sgt Leafe and SS Hurley into the cell.²⁶⁶
169. DSS Kitching also said that it could now be interpreted that Mulrunji did not go to sleep immediately²⁶⁷ and that the cell footage clearly showed Mulrunji was moving around on the floor of the cell.²⁶⁸
170. The CMC concluded: “The way Kitching completed the Form 1 is concerning. His description that Mulrunji ‘laid [sic] on the floor of the cell and went to sleep immediately’ is misleading. Kitching states on a number of occasions in the Form 1 that Mulrunji was aggressive and had to be restrained and twice states that Mulrunji assaulted Hurley, yet did not include either of the allegations made against Hurley”.²⁶⁹
171. Deputy Commissioner Rynders concluded the allegations of assault made by Mr Bramwell and Ms Sibley should have been included in the Form 1. Alternatively, a Supplementary Form 1 should have been prepared outlining these allegations.²⁷⁰
172. Deputy Commissioner Rynders consider managerial guidance appropriate for DSS Kitching.²⁷¹
173. The Applicants submit that the evidence supports findings that DSS Kitching and DI Webber were aware that Mulrunji:
- a. was limp and was dragged into the cell;
 - b. was not physically restrained or required to be physically restrained in any way whilst being taken to or placed in the cell;

²⁶³ T1278.20-28

²⁶⁴ T1278.30.

²⁶⁵ T1278.40.

²⁶⁶ T1278.40.

²⁶⁷ T1239.1.

²⁶⁸ T1270.5.

²⁶⁹ Exhibit A50, 108:9.

²⁷⁰ Exhibit R31, 156:241.

²⁷¹ Exhibit R31,158:249.

- c. was not observed by any QPS officer or witness to be active or aggressive prior to his death;
- d. may have been incapacitated or suffering from an injury;
- e. the injury may have been caused by a fall or from some other source;
- f. was observed on the watchhouse video to lie on the floor of the cell, intermittently rolling and moving round and apparently making loud noises and was obviously in physical distress.

*The Government Pathologist was not contacted as a matter of urgency with additional or relevant information which had come to hand that may have assisted the Government Pathologist in determining a cause of death at a time prior to an autopsy being conducted, or provided with a Supplementary Form 1 containing the additional or relevant information which had come to hand.*²⁷²

- 174. The Respondents admit no Supplementary Form 1 was prepared to include the allegations of assault made by Roy Bramwell and Penny Sibley.²⁷³
- 175. DI Webber conceded that the Coroner needed to know the facts that are in the Form 1 before they know whether to order an autopsy.²⁷⁴
- 176. DI Webber accepted that it was his responsibility to advise the Coroner and the Government Pathologist.²⁷⁵ This was a responsibility that he delegated DSS Kitching.²⁷⁶ DI Webber understood that the Form 1 was required to be sent to the Coroner as soon as practical.²⁷⁷ He conceded that did not happen.²⁷⁸
- 177. DI Webber also conceded that it was his responsibility to ensure that the sending of the Form 1 to the Pathologist and the Coroner was undertaken.²⁷⁹ Having delegated

²⁷² 3FASC, 212(f).

²⁷³ Defence: 134(j).

²⁷⁴ T1059.40.

²⁷⁵ T1057.15.

²⁷⁶ T1062.15.

²⁷⁷ T0158.5.

²⁷⁸ T1060.20.

²⁷⁹ T1058.25.

the responsibility of sending the Form 1 to DSS Kitching, DI Webber never asked DSS Kitching if the Form 1 had been sent.²⁸⁰

178. DSS Kitching completed the Form 1 on the evening of Friday 19 November 2004.²⁸¹ DI Webber saw the completed Form 1 that evening.²⁸²

179. DI Webber agreed that the allegations made by Roy Bramwell²⁸³ should have been included in the Form 1. DI Webber believed that DSS Kitching could have utilised a Supplementary Form 1 to include the allegation of Roy Bramwell and Penny Sibley.²⁸⁴ DI Webber said that he would have been “comfortable with providing a supplementary” Form 1 by the Monday morning.²⁸⁵

180. The Applicants submit that the evidence supports findings that:

- a. DSS Kitching and DI Webber had a duty under section 8.4.8 and 8.4.3 of the OPM;
- b. by not filing a Supplementary Form 1 prior to the autopsy on Tuesday, DSS Kitching and DI Webber breached their duties under section 8.4.8 and 8.4.3 of the OPM;
- c. DSS Kitching did not file a Supplementary Form 1 prior to the autopsy because he had dismissed the allegations made by Roy Bramwell and Penny Sibley;
- d. DSS Kitching dismissed the allegations of Roy Bramwell and Penny Sibley, because both persons were Aboriginal persons;
- e. DSS Kitching dismissed the allegations of Roy Bramwell and Penny Sibley, because both persons were Aboriginal persons and he preferred the account of SS Hurley, a white Australian.

H.10 Failure to Immediately Notify Next of Kin

²⁸⁰ T1058.45.

²⁸¹ T1058.0 and T1277.30.

²⁸² T1057.45.

²⁸³ T1060.35.

²⁸⁴ T1061.20.

²⁸⁵ T1062.5.

In contravention of the Notification Duty in section 16.24.3(vi)-(viii) of the OPM, his obligation in section 1.17 to ensure compliance with section 16.24, and, or alternatively, the Reasonable Diligence Duty, DI Webber did not make immediate arrangements, or cause immediate arrangements to be made, for Mulrunji's next of kin to be notified of his death.²⁸⁶

181. The RCIADIC recommends that immediate notification be given to the next of kin and that notification should be made in person preferably by an Aboriginal person known to those being notified. It also recommends full and frank reporting of such circumstances of the death as are known.²⁸⁷
182. Further, the RCIADIC recommends the appropriate Aboriginal Legal Service be notified immediately.²⁸⁸
183. DI Webber agreed section 16.243(vi)-(viii) of the OPM required him as the commissioned officer to immediately arrange for the next of kin to be notified.²⁸⁹
184. DI Webber determined that as the senior officer responsible for the investigation he should notify the next of kin.²⁹⁰ However, he conceded that section 16.243(vi)-(viii) of the OPM did not require the task of notification to be performed by him.²⁹¹
185. DI Webber arrived on Palm Island at approximately 2:55 pm.²⁹² He conceded that, prior to his arrival, he made no arrangements to notify the next of kin.²⁹³
186. DI Webber did not arrange to speak with representatives from ATSILS until after his arrival on the Island.²⁹⁴
187. DI Webber was advised by Inspector Strohfeldt of Mulrunji's death shortly after 11:30 am on Friday 19 November 2004.²⁹⁵ Ms Twaddle was not notified until about 3:40 pm

²⁸⁶ 3FASOC: 213.

²⁸⁷ RCIADIC, recommendation 19.

²⁸⁸ RCIADIC, recommendation 20.

²⁸⁹ T1012.40.

²⁹⁰ T906.15.

²⁹¹ T1012.45 and T1013.5.

²⁹² Exhibit A39, item 18.

²⁹³ T1013.35.

²⁹⁴ T1015.5.

on 19 November 2004.²⁹⁶ Mrs Doomadgee was not notified until about 3:55 pm on 19 November 2004.²⁹⁷ Despite the delay in notifying the next of kin, DI Webber was not prepared to concede that the next of kin were not advised in a reasonable time.²⁹⁸

188. Ms Twaddle attended the Palm Island police station about 1 pm on 19 November 2004 and was advised to return later. This was approximately one and a half hours after Mulrunji had died.²⁹⁹ At the time Ms Twaddle attended the police station, SS Hurley and the other police officers on Palm Island were aware that Mulrunji had died.³⁰⁰
189. The Applicants submit that DI Webber could have made immediate arrangements to notify the next of kin by:
- a. making contact with a representative from the community, such as an Elder or the Mayor;³⁰¹
 - b. seeking advice from DS Robinson as to who would have been an appropriate person to perform the notification;³⁰²
 - c. making inquiries with SS Hurley as to who would have been an appropriate person to perform the notification; and
 - d. speaking to representatives from the ATSILS to ascertain who would have been an appropriate person to perform the notification.

²⁹⁵ Exhibit A82, page 4, line 1.

²⁹⁶ Defence: 135(a).

²⁹⁷ Defence: 135(b).

²⁹⁸ T1015.45.

²⁹⁹ Exhibit F26, line 477. DI Webber became aware during the investigation that Ms Twaddle had attended the police station around 1 pm and SS Hurley had “effectively told her to go home”: T1013.20.

³⁰⁰ T1013.30. Sgt Leafe, PLO Bengaroo, Constables Tonges and Steadman had all been made aware of Mulrunji’s death by about 11:30 am on 19 November 2004.

³⁰¹ T1015.25 to T1015.40.

³⁰² By 11:50 am on 19 November 2004, DS Robinson was appointed to assist DSS Kitching in the investigation: Exhibit A39, item 8.

190. It was also possible for Sgt Leafe to have performed the notification. Sgt Leafe did ultimately attend the notification with DI Webber. DI Webber agreed that Sgt Leafe's involvement in the incident was not a bar to him performing the notification.³⁰³
191. DI Webber conceded in hindsight "there were other decisions or other people that could have possibly" performed the notification.³⁰⁴
192. There is some dispute as to who informed Tracey Twaddle and Doris Doomadgee of Mulrunji's death. DI Webber said it was him who informed Ms Twaddle and Mrs Doomadgee³⁰⁵. Owen Marpoondin said it was him who informed Ms Twaddle³⁰⁶ and Mrs Doomadgee³⁰⁷ of Mulrunji's death. DI Webber denied that he asked Mr Marpoondin to advise the family of Mulrunji's death.³⁰⁸ The Applicants submit that neither version is inconsistent with the other and it is likely that both DI Webber and Mr Marpoondin informed Ms Twaddle and Mrs Doomadgee.
193. The CMC considered the delay in notifying the family was unacceptable.³⁰⁹ The CMC noted: "In countenancing a substantial delay [for the notification], Webber made an error of judgment".³¹⁰ The CMC was critical of the Palm Island Review Team's investigation and found it unsatisfactory.³¹¹
194. Deputy Commissioner Rynders did not accept that DI Webber did not comply with section 16.24.3 of the OPM.³¹²
195. The Applicants submit that the evidence supports findings that:
- a. DI Webber did not make immediate arrangements for the next of kin to be notified;

³⁰³ T1016.15.

³⁰⁴ T1016.1.

³⁰⁵ T906.30 and T906.45.

³⁰⁶ T103.5, T108.35 and T109.5.

³⁰⁷ T103.35.

³⁰⁸ T1017.40.

³⁰⁹ Exhibit A50,130:3.

³¹⁰ Exhibit A50,129:4

³¹¹ Exhibit A50, 9.

³¹² Exhibit R31, 229:351.

- b. DI Weber did not immediately notify ATSILS;
- c. DI Webber breached section 16.24.3(vi)-(viii) and section 1.17 of the OPM by not taking steps to immediately notify Mulrunji's next of kin;
- d. DI Webber could have taken steps to ensure that the family was informed of Mulrunji's death prior to his arrival on Palm Island; and
- e. DI Webber did not make immediate arrangements to notify Mulrunji's next of kin because they were Aboriginal.

H.11 Failure to Treat PLO Bengaroo Appropriately

SS Hurley was the only QPS officer or member who had been present both at the scene of the arrest and the scene of the death.³¹³ The scene of the death was the watchhouse cell, and there is no evidence to suggest that PLO Bengaroo ever entered the cell or otherwise had any responsibility for Mulrunji's care whilst he was in the cell.³¹⁴ Each of the members of the Investigation Team and Inspector Williams failed to obtain a statement from PLO Bengaroo which was as comprehensive as possible or obtained at the earliest practicable opportunity³¹⁵; Each of the members of the Investigation Team and Inspector Williams, contrary to the reasonable expectation of the community, treated PLO Bengaroo as a person who was inferior to themselves and did not afford him the level of respect afforded to police officers who were not Aboriginal, such as SS Hurley.³¹⁶

196. By 10 pm on 19 November the investigation team had conducted the interviews of the following persons: SS Hurley³¹⁷, Sgt Leafe³¹⁸, PLO Bengaroo³¹⁹, Gladys Nugent³²⁰, Patrick Bramwell³²¹ and Edna Coolburra³²².

³¹³ 3FASC, 215(e).

³¹⁴ Reply, 48(a).

³¹⁵ 3FASC, 217(a).

³¹⁶ 3FASC, 217(b).

³¹⁷ Exhibit A26.

³¹⁸ Exhibit A30.

³¹⁹ Exhibit A27.

³²⁰ Exhibit A28.

³²¹ Exhibit A29.

197. An interview was conducted with Roy Bramwell at 8.15 am until 8.27 am³²³ by DSS Kitching and DS Robinson and a video re-enactment was conducted at 10:52 am on 20 November 2004 by Inspector Williams and DI Webber.³²⁴
198. PLO Bengaroo was not required by members of the investigation team to give a written statement. Instead PLO Benagroo was only required to participate in a record of interview on 19 November 2004³²⁵ and a re-enactment on 20 November 2004.³²⁶
199. In the course of his video re-enactment with Inspector Williams and DI Webber, PLO Bengaroo said: "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."³²⁷
200. Neither DI Webber nor Inspector Williams asked any follow-up questions about what PLO Bengaroo meant.³²⁸ DI Webber conceded that he "didn't take it as a serious proposition at that point".³²⁹
201. In his interview with the Palm Island Review team, DI Webber said in reference to Aboriginal and Torres Strait Islander people: "If challenged, I suppose, oh, they simply go into a shell and you just get nothing – you just get nothing – nothing further from them".³³⁰
202. DI Webber also said in the Palm Island Review, PLO Bengaroo was:
- a. at times was extremely difficult to understand and comprehend;³³¹

³²² Exhibit A31.

³²³ Exhibit A32.

³²⁴ Exhibit A33.

³²⁵ Exhibit A27.

³²⁶ Exhibit A35.

³²⁷ Exhibit A35, line 257 to 259.

³²⁸ T1032.20.

³²⁹ T1032.40.

³³⁰ T1029.40.

³³¹ Exhibit A21, 357:2, T1030.45.

b. difficult to talk to;³³² and

c. just did not want to be there.³³³

203. However, during this hearing, DI Webber's views had changed. When asked in evidence-in-chief whether he had any difficulties in understanding PLO Bengaroo and Roy Bramwell, DI Webber said he did not.³³⁴ DI Webber later agreed in cross-examination that his position was now at odds with what he had said during the Palm Island Review.³³⁵
204. DSS Kitching agreed that he too had found PLO Bengaroo difficult to understand.³³⁶ Despite this, DSS Kitching said he did not offer PLO Bengaroo a support person.³³⁷
205. The CMC concluded DI Webber³³⁸ and Insp Williams³³⁹ failed to ensure that all relevant lines of questioning were pursued with PLO Bengaroo and obtain a full statement from PLO Bengaroo as soon as practicable. The CMC also found that DI Webber³⁴⁰ and Insp Williams³⁴¹ took no steps to address the communication problems with PLO Bengaroo.
206. The CMC found the Palm Island Review's investigation of this allegation was unsatisfactory.³⁴²
207. Deputy Commissioner Rynders determined not to sanction DI Webber for his investigative approach³⁴³ and found that the allegation that DI Webber demonstrated a lack of vigour when questioning PLO Bengaroo could not be supported.³⁴⁴

³³² Exhibit A21, 358:2.

³³³ Exhibit, A21, 358:5 and T1031.20.

³³⁴ T913.25.

³³⁵ T1031.30.

³³⁶ T1201.20.

³³⁷ T1201.30.

³³⁸ Exhibit A50, 166:1.

³³⁹ Exhibit, A50, 169:5.

³⁴⁰ Exhibit A50, 166:1.

³⁴¹ Exhibit, A50, 169:5.

³⁴² Exhibit A50, 100:10.

³⁴³ Exhibit R31, 226:340.

³⁴⁴ Exhibit R31, 227:342.

208. The Applicants submit that the evidence supports findings that:

- a. by about 10 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;
- b. each of the members of the investigation team and Insp Williams:
 - contrary to sections 2.13.1 and 16.24.3 of the OPM, failed to obtain a statement from PLO Bengaroo which was as comprehensive as possible or obtained at the earliest practicable opportunity;
 - contrary to the reasonable expectation of the community, treated PLO Bengaroo as a person who was inferior to themselves and did not afford him the level of respect afforded to police officers who were not Aboriginal, such as SS Hurley;
 - failed to perform their duties in such a manner that public confidence and trust in the integrity and impartiality of the QPS and its members was preserved in accordance with section 10.6 of the Code of Conduct;
 - contrary to section 10.14 of the Code of Conduct:
 1. failed to demonstrate high standards of professional integrity;
 2. failed to perform 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;
 3. failed to provide courteous service to all those with whom they have official dealings;
 4. failed to perform their duties impartially and in the best interests of the community of Queensland, without fear or favour;
 5. contrary to section 10.15 of the Code of Conduct, failed to treat PLO Bengaroo with respect and dignity and in a reasonable, equitable and fair manner;

6. breached the Impartiality Duty, Integrity Duty and Reasonable Diligence Duty;
- c. because PLO Bengaroo was Aboriginal, members of the investigation team failed to obtain a statement from PLO Bengaroo which was as comprehensive as possible or obtained at the earliest practicable opportunity.

H.12 Failure to Treat SS Hurley as a Suspect

On about 19 November 2004 or, alternatively, 20 November 2004, each of the officers in the Investigation Team and Inspector Williams had reasonable grounds to suspect that Mulrunji had died as a result of an act of homicide in which SS Hurley was involved, or alternatively, that Mulrunji had been assaulted by SS Hurley prior to his death. Accordingly, those QPS officers suspected or, alternatively, ought reasonably to have suspected, that SS Hurley had been involved in the commission of an indictable offence.³⁴⁵

209. On 19 November 2004, the investigation team had conducted interviews with the following persons: SS Hurley³⁴⁶, Sgt Leafe;³⁴⁷ PLO Bengaroo³⁴⁸, Gladys Nugent³⁴⁹, Patrick Bramwell³⁵⁰ and Edna Coolburra.³⁵¹

210. On 19 November 2004, SS Hurley detailed in his record of interview that:

- a. Mulrunji had stuck SS Hurley in the face;³⁵²
- b. there was a struggle between Mulrunji and SS Hurley;³⁵³

³⁴⁵ 3FASC, 218.

³⁴⁶ Exhibit A26.

³⁴⁷ Exhibit A30.

³⁴⁸ Exhibit A27.

³⁴⁹ Exhibit A28.

³⁵⁰ Exhibit A29.

³⁵¹ Exhibit A31.

³⁵² Exhibit A26, line 174.

³⁵³ Exhibit A26, line 205 to 207, 314.

- c. Mulrunji had a small amount of blood above his right eye;³⁵⁴ and
 - d. SS Hurley described receiving a “tiny scratch on his arm on the left hand from the little wrestle” he had with Mulrunji.³⁵⁵
- 211. On 20 November 2004, Roy Bramwell made the allegations of assault by SS Hurley.³⁵⁶
- 212. DI Webber said that he never considered SS Hurley a suspect.³⁵⁷ DI Webber agreed in cross-examination up until the point of the Bramwell re-enactment, he had no grounds to consider an offence had occurred.³⁵⁸ However, DI Webber said he did not consider SS Hurley a suspect at the time when SS Hurley started his re-enactment³⁵⁹. DI Webber agreed if he had thought SS Hurley was a suspect, he would have warned him prior to the re-enactment commencing.³⁶⁰
- 213. Section 246 of the PPRA 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”.
- 214. After the Roy Bramwell re-enactment was concluded, DI Webber, SS Hurley, Insp Williams, DSS Kitching and Const Tibbey went to the arrest scene in Dee Street.³⁶¹ They were driven to the arrest scene by SS Hurley, who was in his police uniform and driving a marked police vehicle. Neither the drive to the arrest scene or the re-enactment at the arrest scene was recorded.
- 215. The Applicants submit that the evidence supports findings that:
 - a. SS Hurley was not at any stage considered to be a suspect by members of the investigation team;

³⁵⁴ Exhibit A26, line 289.

³⁵⁵ Exhibit, A26, line 413 to 415.

³⁵⁶ Exhibit A32.

³⁵⁷ T955.40.

³⁵⁸ T986.40.

³⁵⁹ T986.25.

³⁶⁰ T986.35.

³⁶¹ T1036.45 to T1037.1.

- b. the reason that SS Hurley was never considered a suspect by members of the investigation team was because he was a white police officer and Mulrunji was an Aboriginal man who had died in custody;
- c. on 19 November 2004 or, alternatively, 20 November 2004, each of the officers in the investigation team and Inspector Williams had reasonable grounds to suspect that Mulrunji had died as a result of an act of homicide in which SS Hurley was involved, or alternatively, that Mulrunji had been assaulted by SS Hurley prior to his death. Accordingly, those QPS officers suspected or, alternatively, ought reasonably to have suspected, that SS Hurley had been involved in the commission of an indictable offence;
- d. SS Hurley ought reasonably have been considered to be a “relevant person” within the meaning of section 246 of the PPRA;
- e. in contravention of the Presumption Duty and, or alternatively, the Reasonable Investigation Duty, DI Webber, DSS Kitching and DS Robinson failed to treat SS Hurley as a suspect in a homicide or assault investigation;
- f. in contravention of the Presumption Duty and, as a result, section 2.14.2 of the OPM and, or in the alternative, section 263 of the PPRA, the QPS officers other than SS Hurley involved in the discussions pleaded in paragraphs 129, 137 and 144 [of the 3FASOC] failed to electronically record those discussions in circumstances where: it was practicable to electronically record those discussions; or, in the alternative, it was practicable to have those discussions in a location in which they could have been and were electronically recorded.³⁶²

H.13 Failure to Provide Support to Aboriginal Witnesses

In contravention of section 6.3.6 of the OPM, members of the Investigation Team and/or Inspector Williams interviewed seven Aboriginal witnesses, being PLO Bengaroo, Roy Bramwell, Patrick Bramwell, Penny Sibley, Gladys Nugent, Edna Coolburra and Gerald Kidner (see paragraphs 134, 136, 137, 142, 146 and 149 [of the 3FASOC] and:

³⁶² 3FASOC: 224.

- a. *failed to adequately consider, or address, the Aboriginal witnesses' special needs;*
 - b. *failed to ask any of the Aboriginal witnesses whether they would like to have a support person present at the interview;*³⁶³
216. The Applicants contend that each of the Aboriginal witnesses had the following special needs, which ought to have been considered or addressed:
- a. the experience of social disadvantage and the poor relationship with the police³⁶⁴;
 - b. the use of Aboriginal English and of traditional Aboriginal forms of communication, such as use of narratives and silences³⁶⁵ and the eschewing of particular times or dates and other specific or numerical information;³⁶⁶
 - c. in particular, the use of a communication style which made a "question-and-answer" interview format inappropriate.³⁶⁷
217. DSS Kitching advised the Palm Island Review that due to his time working in Indigenous communities, he "developed a very good communication style with Indigenous persons".³⁶⁸
218. DSS Kitching also said: "I've spoken to many, many Indigenous persons over the years...and I still have no issues with obtaining a, an accurate version from them".³⁶⁹
219. DSS Kitching insisted he did not have any difficulty in understanding the Indigenous witnesses.³⁷⁰
220. The record of interviews and accompanying audio of the following witnesses were put to DSS Kitching in cross-examination:

³⁶³ 3FASOC: 225.

³⁶⁴ Exhibit A109: at 87, para 1-4.

³⁶⁵ Exhibit A6: 4(iii).

³⁶⁶ Exhibit A6: 5(iv)

³⁶⁷ Exhibit A6: 3(i).

³⁶⁸ Exhibit A21, 815:1150.

³⁶⁹ Exhibit A21, 819:1280.

³⁷⁰ T1150.35.

- a. Patrick Bramwell;³⁷¹
- b. Edna Coolburra;³⁷²
- c. Gladys Nugent;³⁷³ and
- d. Patrick Bramwell.³⁷⁴

221. The Applicants submit that the records of interviews demonstrate that DSS Kitching did not possess an effective understanding of the special needs of Indigenous witnesses. The CMC concluded that DI Webber's and DSS Kitching's statements show a lack of understanding of what might be involved for an Indigenous person being interviewed.³⁷⁵

222. DSS Kitching conceded:

- a. that he assumed the Indigenous witnesses did not have a special need, and that he did not identify any need;³⁷⁶
- b. he did not take any support persons to Palm Island;³⁷⁷
- c. he did not organise for another PLO to attend;³⁷⁸
- d. he did not make inquiries as to whether there was an appropriate community person who could have assisted as a support person;³⁷⁹
- e. after arriving on Palm Island he took no steps to find someone who would be willing or able to assist as a support person;³⁸⁰ and

³⁷¹ Exhibit A29 and Audio Exhibit A201, T1248 to T1260.

³⁷² Exhibit A31, T1261 to 1263.

³⁷³ Exhibit A28, T1263 to 1265.

³⁷⁴ Exhibit A32, T1266 to 1268.

³⁷⁵ Exhibit A50, 119:4.

³⁷⁶ T1244.5.

³⁷⁷ T1244.10.

³⁷⁸ T1244.10.

³⁷⁹ T1244.15.

³⁸⁰ T1244.20.

- f. he did not give any consideration to whether the witnesses ought to have a support person present.³⁸¹
223. The CMC concluded that there was simply no evidence that the question of special need was considered at any point³⁸² and the original investigating officers did not comply with their obligations under the OPM with respect to dealing with Indigenous witnesses.³⁸³
224. The CMC found that OPM clearly stated that when questioning Indigenous persons, the existence of a special need should be assumed until the contrary was clearly established.³⁸⁴ The CMC found that the Palm Island Review had ignored the fact that the OPM required that presumption.³⁸⁵
225. Deputy Commissioner Rynders did not find any evidence to establish that DI Webber and DSS Kitching breached any relevant policy and did not propose to commence any disciplinary action or give any managerial guidance.³⁸⁶
226. The Applicants submit that the evidence supports findings that:
- a. the Indigenous witnesses interviewed by the investigation team had special needs;
 - b. in contravention of section 6.3.6 of the OPM, members of the investigation team and/or Inspector Williams interviewed seven Aboriginal witnesses, being PLO Bengaroo, Roy Bramwell, Patrick Bramwell, Penny Sibley, Gladys Nugent, Edna Coolburra and Gerald Kidner and:
 - failed to adequately consider, or address, the Aboriginal witnesses' special needs;
 - failed to ask any of the Aboriginal witnesses whether they would like to have a support person present at the interview;³⁸⁷

³⁸¹ T1150.25.

³⁸² Exhibit A50, 118:8.

³⁸³ Exhibit A50, 118:6.

³⁸⁴ Exhibit A50, 118:7.

³⁸⁵ Exhibit A50, 121:3.

³⁸⁶ Exhibit R31, 174:77.

- c. the members of the investigation team contravened section 6.3.6 of the OPM because the officers conducting the investigation were white and had no regard for the needs of the witnesses who were Aboriginal.

H.14 Failure to Avoid Actual and Apparent Conflicts of Interest

DS Robinson had an actual and or, alternatively, an apparent conflict of interest in investigating the death of Mulrunji, in that DS Robinson: was a personal friend of SS Hurley; was from the same police station or establishment as SS Hurley; had worked closely with SS Hurley for about two years on Palm Island; had lived in close proximity to SS Hurley for about two years on Palm Island; and was stationed with SS Hurley on Palm Island in circumstances where SS Hurley was his superior officer. ³⁸⁸

227. DI Webber was aware that DS Robinson:

- a. was based in Palm Island;³⁸⁹
- b. had SS Hurley as his senior officer;³⁹⁰
- c. and SS Hurley worked closely together.³⁹¹

228. DSS Webber was also aware that DS Robinson had a relationship with SS Hurley and that the relationship between the two would have been known to residents on Palm Island.³⁹²

229. DSS Kitching was DS Robinson's direct line supervisor for criminal matters³⁹³ and SS Hurley was DS Robinson's supervisor for operational matters.³⁹⁴ DSS Kitching

³⁸⁷ 3FASOC: 225.

³⁸⁸ 3FASOC: 226.

³⁸⁹ T945.40.

³⁹⁰ T946.1.

³⁹¹ T946.5.

³⁹² T946.15.

³⁹³ T1190.20.

³⁹⁴ T1190.25.

assumed that DS Robinson and SS Hurley had worked closely together in the two years that DS Robinson had been on Palm Island.³⁹⁵

230. DI Webber continued to deny that DS Robinson had been appointed to the investigation.³⁹⁶ DI Webber did not accept that he was fully responsible for the appointment of DS Robinson.³⁹⁷
231. DSS Kitching conceded that the role taken by DS Robinson during the course of the investigation was determined by DSS Kitching.³⁹⁸ DI Webber conceded that by Friday afternoon, DS Robinson was playing a very significant role in the investigation.³⁹⁹
232. DI Webber⁴⁰⁰ and DSS Kitching⁴⁰¹ conceded that it was an important factor for the appearance of impartiality that it was known in the community that SS Hurley and DS Robinson had worked together.
233. DI Webber accepted that he and DSS Kitching had the responsibility to ensure impartiality of investigation.⁴⁰²
234. DSS Kitching never raised with DI Webber that he thought DS Robinson's relationship with SS Hurley affected the impartiality of the investigation⁴⁰³ or the appearance of the impartiality of the investigation.⁴⁰⁴
235. DSS Kitching conceded that the decision to involve DS Robinson in the interviews could be seen as fundamentally flawed.⁴⁰⁵
236. DI Webber accepted the involvement of DS Robinson in the investigation caused the perception of collusion.⁴⁰⁶

³⁹⁵ T1190.25.

³⁹⁶ T957.10 to T957.30.

³⁹⁷ T947.45.

³⁹⁸ T1191.5

³⁹⁹ T947.5.

⁴⁰⁰ T946.20.

⁴⁰¹ T1190.25

⁴⁰² T957.40.

⁴⁰³ T1191.1.

⁴⁰⁴ T1191.1.

⁴⁰⁵ T1191.10.

237. The Palm Island Review recommended that DI Webber and DSS Kitching both receive managerial guidance and that no action against Insp Williams was warranted.⁴⁰⁷
238. The CMC found ‘the evidence supports the conclusion that DS Robinson’s friendship with SS Hurley created a conflict of interest.⁴⁰⁸
239. The CMC concluded that DS Robinson’s conflict of interest was such that it should have prevented him from any involvement in the investigation.⁴⁰⁹ Deputy Coroner Clements criticised appointment of DS Robinson as unwise and inappropriate.
240. The Applicants submit that the evidence supports findings that:
- a. DS Robinson had a conflict of interest in investigating the death of Mulrunji;
 - b. DI Webber and DSS Kitching were aware that DS Robinson had a conflict of interest in investigation the death of Mulrunji but took no steps to prevent DS Robinson from participating in the investigation;
 - c. DS Robinson’s role in the investigation compromised the impartiality and appearance of the impartiality in the investigation.

H.15 Compromise of Integrity of Investigation

Inspector Williams failed to liaise closely with Inspector Webber such that he was able to overview the investigation properly.⁴¹⁰ Inspector Williams was not able to and did not confer with DI Webber about those matters which may have adversely affected an impartial investigation as they arose.⁴¹¹

241. The CMC noted the following: “Inspector Williams had a responsibility to identify whether there were any matters that adversely affected the impartiality of the

⁴⁰⁶ T958.40.

⁴⁰⁷ Exhibit A50, 55:1.

⁴⁰⁸ Exhibit, A50, 55:5.

⁴⁰⁹ Exhibit, A50, 55:10.

⁴¹⁰ 3FASC, 238(a).

⁴¹¹ 3FASC, 238(b).

investigation. In the CMC's view, once Williams knew that Robinson was from the same police establishment as Hurley and found out Robinson had been involved in the investigation, he should have taken steps to satisfy himself about any possible conflict of interest on the part of Robinson and its impact and then deal with the situation.⁴¹²

242. The CMC concluded: "There is no evidence that any of the officers....Williams representing the ESC – gave any consideration to Robinson's conflict of interest or the impact of any involvement by Robinson upon the impartiality of the investigation."⁴¹³

243. The Applicants submit that the evidence supports findings that:

- a. Inspector Williams failed to comply with the requirement for an impartial investigation in that he:
 - failed to liaise closely with DI Webber such that he was able to overview the investigation properly; and
 - as a result, was not able to and did not confer with DI Webber about those matters which may have adversely affected an impartial investigation as they arose.

J *Events From 22 November 2004*

J.1 *Week After Mulrunji's Death*

(a) *Hurley not suspended from duty*

*SS Hurley's removal from his operational duties on Palm Island on the afternoon of 22 November 2004 occurred following his being confronted by a crowd of Palm Island residents who were angry at the death of Mulrunji.*⁴¹⁴

⁴¹² Exhibit A50, 56:2.

⁴¹³ Exhibit A50, 56:3.

⁴¹⁴ 3FASC: 255.

244. SS Whyte was the only QPS officer present on the island on 22 November 2004 who was called to give evidence by the Respondents. Due to the fact that SS Whyte “could not recall”⁴¹⁵ the altercation that day between SS Hurley and some members of the Palm Island community, Mr Wotton’s account of 22 November 2004 following SS Hurley’s arrest of Tony Palmer⁴¹⁶ is unchallenged and must be accepted. In particular:
- Lex Wotton “saw a police vehicle coming down Police Lane, heading towards the police station, and as it got closer it turned into the driveway of the police station, and as it turned – even before it turned, we saw Chris Hurley driving the police car, and the passenger seat was Darren Robinson, the detective. In the back seat there was Lloyd Bengaroo, the police liaison officer, and there was a uniform police officer”⁴¹⁷;
 - Lex Wotton heard “(Tony Palmer) say ‘Get me out of here. Otherwise I’m going to be the next one’, and that really riled a lot of people up. People were starting to sing out abuse towards the police and stuff, and so they pulled up”⁴¹⁸. There was a crowd of between 150 to 200 people in attendance”⁴¹⁹;
 - Lex Wotton asked SS Hurley to explain the events that took place the previous Friday to which SS Hurley responded “What? Two years of service not good enough for you people?”⁴²⁰
245. Mr Wotton’s evidence is consistent with Inspector Richardson’s account of the 22 November altercation recorded on 23 November in which Inspector Richardson’s said “We had a meeting with them yesterday – a public meeting yesterday and I explained to the people they need to sit back and wait and let us put the investigation together, to tie it together, wait for the post-mortem to take place and lets see what happens from there. Then they can ask their questions once they get all the facts... These community problems frequently arise when there’s been a death in custody. They are emotional about the death – especially when there’s Police involved and quite often they become very personal against the officers. There’s attacks made and allegations made. The majority of it is unfounded but its developed through rumours and

⁴¹⁵ T1535.5.

⁴¹⁶ T561.26 - T562.26.

⁴¹⁷ T561.29 - T561.34.

⁴¹⁸ T561.40 - T561.42.

⁴¹⁹ T562.5.

⁴²⁰ T562.6.

spreading rumours...I think there was about 200 to 300 people outside the Police Station here demanding a meeting and asking questions with the officer in charge”⁴²¹

*If SS Hurley was required to be readily available for further interview on Palm Island by QPS investigators, he was not required to work in an operational capacity or otherwise perform any operational duties.*⁴²²

246. Inspector Webber accepted that the arrival of SS Whyte to the island on 22 November demonstrates that it was possible to allocate the role of ordinary operational police duties to another officer from that time.⁴²³

*If SS Hurley had a rostered day off on 21 November 2004, it could have been taken otherwise than on Palm Island.*⁴²⁴

247. The Court should infer from the continued operation of the airport and ferries that SS Hurley was at liberty to leave Palm Island on 21 November but chose not to do so. Further, he was not ordered by any more senior officer to do so.

*The Investigation Team, except DS Robinson, had departed Palm Island by 21 November 2004 and there was no reason for SS Hurley to remain on Palm Island after that date except to perform operational duties.*⁴²⁵ *SS Hurley was rostered to perform duties on Monday 22 November 2004, and did perform duties on that day such as participating in the arrest of a community member.*⁴²⁶

⁴²¹ Exhibit A7, “F175.1 Title01.mkv”

⁴²² Reply: 54(c).

⁴²³ T1009.37 and T1010.15.

⁴²⁴ Reply: 54(d).

⁴²⁵ Reply: 54(e).

⁴²⁶ Reply: 54(f).

248. DI Webber conceded that SS Hurley performed police duties on Palm Island on Friday 19 November 2004, Saturday 20 November 2004 and on Monday 22 November 2004, at which point SS Whyte replaced him.⁴²⁷ Further, SS Hurley's arrest of Tony Palmer demonstrates that he was performing Police duties on 22 November 2004

(b) Arrival of Inspector Richardson and SS Whyte

*The instruction by Acting Assistant Commissioner Roy Wall on 22 November 2004 that QPS Regional Duty Office, Inspector Brian Richardson travel to Palm Island to take charge of overall policing on Palm Island occurred after the removal of SS Hurley following a confrontation with members of the Palm Island community in relation to the death in custody of Mulrunji.*⁴²⁸

249. Mr Wotton gave evidence that at the meeting on the afternoon of Monday 22 November, he recalls asking Inspector Richardson "Why is (SS Hurley) still on the island?"⁴²⁹ to which Mr Richardson replied "We can assure you that he left the island immediately after what happened that morning. He was sent out that morning."⁴³⁰

(c) Public gatherings

*In the week after Mulrunji's death, a number of public gatherings took place in the "Mall" on Palm Island, adjacent to the police station, in which residents publicly expressed certain matters.*⁴³¹

250. On Tuesday 23 November, Mr Wotton and Mr Bulsey picked up Mr Roy Bramwell and explained that: "'Here's an opportunity to inform the community on what you supposed to have seen', because there were rumours in the community... and it was an opportunity for Roy to say things"⁴³². After Mr Bramwell spoke at the meeting⁴³³, Mr

⁴²⁷ T1009.22-37.

⁴²⁸ 3FASC: 257.

⁴²⁹ T565.7.

⁴³⁰ T565.8-9.

⁴³¹ 3FASC: 261.

⁴³² T591.43-47.

Wotton “was informing the community of some of the things that I understood...was in the Royal Commission into Aboriginal Deaths in Custody Report”.⁴³⁴

*Each of the gatherings was attended by officers of the QPS then working on Palm Island, or otherwise watched and/or monitored by QPS officers from the police station, from which it was possible to view the “Mall”.*⁴³⁵

251. Although SS Whyte chose to attend only a single meeting in the Mall, a less senior QPS officer attended the 23 November meeting on his behalf to provide a direct report⁴³⁶. Given the obvious significance of these meetings to the function of maintaining good order on the island, the proximity of the Mall to the police station and the QPS awareness of anger and grief in the community, the Court should infer that the practice of having a QPS officer monitoring the meetings continued throughout the week despite SS Whyte not knowing “whether that officer (was) there all the time, or staying there, or – or how many were there”⁴³⁷.

(d) Other community unrest

*In the period between 19 November 2004 and 25 November 2004, QPS officers stationed on Palm Island received various reports regarding discontent and unrest.*⁴³⁸

252. SS Whyte recalls attending the community meeting at the Mall at about 2:40pm on 22 November⁴³⁹ and that Mr Wotton spoke protesting the actions of police in relation to

⁴³³ Exhibit A7, “F175.1 Title01.mkv”; played in Court at T594.13.

⁴³⁴ T592.3-5.

⁴³⁵ 3FASC: 261.

⁴³⁶ T1553.35.

⁴³⁷ T1553.37.

⁴³⁸ 3FASC: 262(a) and (e).

⁴³⁹ T1539.40.

the death in custody⁴⁴⁰. By 23 November, SS Whyte “didn’t have any doubt that the community, or at least some members of it, were angry”⁴⁴¹ and further that that “there was a valid reason for that anger”.⁴⁴² SS Whyte also accepted that there was grief in the community⁴⁴³, that such a community reaction was consistent with the RCIADIC finding that a death in custody was particularly distressing not only for the immediate family but also for the community as a whole⁴⁴⁴ and that the rising anger and frustration in the community may lead to a deterioration of social order.⁴⁴⁵

*In the period between 19 November 2004 and 25 November 2004, QPS officers stationed on Palm Island observed a deterioration in the preservation of peace and good order and an increase in civil unrest upon Palm Island.*⁴⁴⁶

253. In the period between 19 November 2004 and 25 November 2004 a number of public gatherings were held and were either attended or observed by the police. SS Whyte conceded that he knew that the community was complaining about the death and that some members were angry.⁴⁴⁷
254. On 22 November, Mr Wotton saw that the police “were actually pulling people up for traffic offences, and the other thing that I noticed, that they were wearing guns, which they had never used to do on the island”.⁴⁴⁸ Mr Wotton gave evidence that by 23 November, Inspector Richardson had “discussions about things and one of the discussion was about kids rocking the police station and stuff”⁴⁴⁹. Further, it is agreed that on the same day, police received a report of a planned firebombing of the police

⁴⁴⁰ T1540.10.

⁴⁴¹ T1545.24.

⁴⁴² T1545.28.

⁴⁴³ T1548.14.

⁴⁴⁴ T1547.42.

⁴⁴⁵ T1548.19.

⁴⁴⁶ 3FASC: 262(b)-(d).

⁴⁴⁷ T1545.20-25.

⁴⁴⁸ T591.16-18.

⁴⁴⁹ T597.30.

station and barracks which they responded to by having the rural fire brigade on standby.⁴⁵⁰ On 24 November 2004, bricks were thrown at the police station.⁴⁵¹

(e) Release of Preliminary Autopsy Report

In response to receiving the information that Mulrunji's family were being advised of the autopsy results, Inspector Richardson knew or ought to have known that the release of the results of the post-mortem examination to members of the community was imminent.⁴⁵² In response to receiving the information that Mulrunji's family were being advised of the autopsy results, Inspector Richardson formed the opinion that there was an increased risk that civil unrest upon Palm Island would escalate.⁴⁵³

255. Inspector Richardson's knowledge of the imminent release of the autopsy report is assumed by the warning given to QPS members under his direction to "be on your toes and be on the look-out, you know things could turn a bit hostile"⁴⁵⁴.

J.2 Emergency Situation

(a) Public meeting

On or about 26 November 2004, at a community meeting was held on Palm Island, convened by the Palm Island Council, members of the Palm Island community gathered to hear the findings of the Preliminary Autopsy Report being announced by Mayor Erykah Kyle of the Palm Island Council.⁴⁵⁵

256. Mayor Erykah Kyle announced the autopsy results to the community at around 12:30pm on Friday 26 November.⁴⁵⁶

⁴⁵⁰ ASF: 257-262.

⁴⁵¹ ASF: 262.

⁴⁵² 3FASC: 268(b).

⁴⁵³ 3FASC: 268(c).

⁴⁵⁴ ASF: 266. Also see Exhibit A7, "F175.1 Title02.mkv" at 28:44 where Inspector Richardson talks about tension on the island, aggression toward police and the release of the autopsy report.

⁴⁵⁵ 3FASC, 269.

257. Inspector Richardson and SS Whyte, knew or ought to have known that the meeting on 26 November 2004 was to be held.⁴⁵⁷ Inspector Richardson and SS Whyte, knew or ought to have known that there was a risk that the results of the post-mortem examination would be released to members of the community who attended the meeting.⁴⁵⁸ On Thursday 24 November, SS Whyte “got a phone call from the CEO advising that the family is currently with Erykah Kyle and they’re going to be advised of the post mortem”⁴⁵⁹ and understood that there was “argument about whether the full or partial results of the autopsy (were to be) released in the public meeting on the Friday”.⁴⁶⁰ Given the daily meetings in the Mall which had occurred throughout the week and that SS Whyte was aware of the grief and anger in the community,⁴⁶¹ the risk of issues arising when the post-mortem results were revealed –irrespective of what those results were – would or should have been obvious to him.

*At the meeting, Mayor Kyle represented that SS Hurley was not responsible for any criminal wrongdoing in relation to the death.*⁴⁶²

258. At the public meeting held on 26 November 2004, Mayor Kyle conveyed the results of the autopsy report to the community. In doing so, she announced that the report revealed that there had been “an accident somewhere around the cell” and that Mulrunji’s has sustained injuries from a “fall”.⁴⁶³ The Court must find that the characterisation of the incident as an “accident” necessarily obfuscated any responsibility of criminal wrongdoing from SS Hurley.

⁴⁵⁶ Lex Wotton gave evidence on this meeting at T603-T607.12 with reference to video F75. William Blackman also gave evidence on this meeting at T182.33-T183.15.

⁴⁵⁷ 3FASC: 270(a).

⁴⁵⁸ 3FASC: 270(b).

⁴⁵⁹ T1566.15-17.

⁴⁶⁰ T1566.24-26.

⁴⁶¹ T1545.20-25.

⁴⁶² 3FASC: 271(b).

⁴⁶³ Exhibit A7, played at T603.20.

*No police officer or government representative addressed the crowd before, during, or after the meeting.*⁴⁶⁴

259. There is no evidence that any police officer or government representative made any effort to meaningfully address the crowd before, during or after the meeting. Indeed, SS Whyte gave evidence that he assumed that even his attendance “may have incited problems because if they wanted us at the meeting they would have invited us to the meeting”.⁴⁶⁵

*SS Whyte then walked away back into the Police Station.*⁴⁶⁶

260. While at the Police Station, Mr Wotton had a conversation with SS Whyte, who was in a group with two other officers, including Inspector Richardson and SS Robinson. The two parties moved together and, at the end of the conversation, “they walked away.”⁴⁶⁷

*That the persons outside the police station left the vicinity and moved back to the Mall area.*⁴⁶⁸

261. The persons who had gathered outside the police station left the vicinity and moved towards the Mall area as they became aware that a second report with respect to the autopsy was to be read at the Mall. Mr Wotton’s evidence is that a young girl “sang

⁴⁶⁴ 3FASC: 272.

⁴⁶⁵ T1578.21.

⁴⁶⁶ Reply: 61(d)(v).

⁴⁶⁷ T712.16.

⁴⁶⁸ Reply: 61(d)(vi).

out”⁴⁶⁹ that there was to be a “further report read out down at the mall”.⁴⁷⁰ Upon hearing that information, he left and went down to the Mall.⁴⁷¹

*A number of members of the community again went to the Police Station.*⁴⁷²

262. The crowd who had gathered at the Mall became aware that the Police were leaving the police station and were heading towards the barracks. Mr Wotton recalls that “someone sang out, the police are leaving the police station.”⁴⁷³ The crowd subsequently began to head towards the police station via the shops or alternatively via Main Street.⁴⁷⁴

*The First Applicant remained behind, but eventually followed, a crowd of between 50 to 100 members of the community and went to the Police Barracks.*⁴⁷⁵ SS Whyte called out to speak to the First Applicant, and Mr Wotton stated that the community had heard the results of the autopsy report and wanted the police to leave the Island within an hour and that he would escort the police so that they were not harmed.⁴⁷⁶ The First Applicant was told that the QPS Officers would leave Palm Island.⁴⁷⁷

263. Mr Wotton and SS Whyte both recall⁴⁷⁸ a conversation at the Mango Avenue gate that occurred after all of the police had retreated from the station to the barracks. Both witnesses recall Mr Wotton appealing to the crowd to cease throwing rocks at the

⁴⁶⁹ T713.5.

⁴⁷⁰ T713.6.

⁴⁷¹ T713.5-10.

⁴⁷² Reply: 61(d)(vii).

⁴⁷³ T607.33-35.

⁴⁷⁴ T607.35-40.

⁴⁷⁵ Reply: 61(d)(viii).

⁴⁷⁶ Reply: 61(d)(ix).

⁴⁷⁷ Reply: 61(d)(x).

⁴⁷⁸ Lex Wotton’s account is at T608.33-T609.10 and T610.5-21 and SS Whyte’s account is at T1590.31 to 1594.1.

barracks, which the crowd did.⁴⁷⁹ Mr Wotton recalls telling SS Whyte that “we heard the report and the community is upset. My advice to you is that you leave the island until the community settle down”.⁴⁸⁰ The witnesses have divergent accounts concerning SS Whyte’s reply. Mr Wotton recalls SS Whyte agreeing that the police would leave the island and sought assistance with organising transport, which Mr Wotton attempted to procure. SS Whyte recalls Mr Wotton offering to procure transport for police but asserts that such an offer was made at the hospital⁴⁸¹ and that SS Whyte responded to Mr Wotton’s request that police leave the island by telling Mr Wotton to “Fuck Off”⁴⁸² and by providing reassurance to his team by saying “it may be the case you have to fire a few fucking rounds...in the air to scare the shit out of these cunts”.⁴⁸³

*The First Applicant attempted to persuade the crowd to go home.*⁴⁸⁴

264. Mr Wotton attempted to calm the crowd who had gathered around the barracks, persuading them to go home by telling them to “leave them (the Police) alone, and let’s go.”⁴⁸⁵ He was successful in doing so.⁴⁸⁶ In his efforts to calm the crowd and to dissuade them from any further vigilance at the barracks, Mr Wotton co-operated with the Police, adhering to SS Whyte’s request that he persuade the crowd to disperse.⁴⁸⁷

(c) The Raids

⁴⁷⁹ T608.32-34 and T1591.12-17.

⁴⁸⁰ T608.43-45.

⁴⁸¹ T1591.26.

⁴⁸² T1591.30.

⁴⁸³ T1592.13-16.

⁴⁸⁴ Reply: 61(d)(xi).

⁴⁸⁵ T610.20-25.

⁴⁸⁶ T719.24.

⁴⁸⁷ T719.20-25.

*With respect to the entry and search of the home of the First and Third Applicants, that the First Applicant was arrested in the front yard of the property and no person inside the dwelling was arrested.*⁴⁸⁸

265. Lex Wotton was arrested⁴⁸⁹ “in front of the door on the veranda”⁴⁹⁰ of his house and Annexure A to the ASF indicates that no person inside the dwellings of the First and Third Applicants were arrested.

*The arrests otherwise were not caused by the entry and search of the dwellings as the persons to be arrested had been determined prior to those entries and searches.*⁴⁹¹ *The list of persons to be arrested had been prepared on the night of 26 November 2004 in Townsville by Detective Senior Sergeant David John Miles, by reference to advice from DS Robinson, the police running sheet of the previous week on Palm Island, and footage of the events of 26 November 2004.*⁴⁹²

266. DSS Campbell gave evidence that on the evening of 26 November, he and Robinson⁴⁹³ “started formulating, like, a master list of persons of interest or suspects”. Now, that list was generated in consultation with the mainland, but it also should be known that they had overall direction and control”.⁴⁹⁴ The Court should find that the arrests were not caused by the entry and search of the dwellings but rather as a result of the ‘master list of persons’ which had been determined prior to those entries and searches on 26 November.

⁴⁸⁸ Reply: 65(b).

⁴⁸⁹ Mr Wotton’s account of the arrest is at T658.35 to T659.16.

⁴⁹⁰ T658.25.

⁴⁹¹ Reply: 65(b).

⁴⁹² 3FASC: 285.

⁴⁹³ T1330.9.

⁴⁹⁴ T1329.32-34.

During the Raids, the SERT and PSRT officers, and DS Robinson entered the homes of all three Applicants with no reasonable cause to enter the premises.⁴⁹⁵ Neither the home of the First and Third Applicants nor the home of the Third Applicant was entered into with permission.⁴⁹⁶

- 267. No police officer who entered the home of the First and Third Applicants was called to give evidence. Therefore, there is no evidence before the Court of any reasonable suspicion that those officers may have held about who was present in the First and Third Applicants' home.
- 268. The Respondents' witness who participated in entries to other homes confirmed in their evidence that they were relying on emergency powers pursuant to the PSPA and were acting on DI Webber's instructions. DSS Campbell gave evidence that he did not obtain warrants as he was relying on the "instructions from above,"⁴⁹⁷ being the instructions of DI Webber or the MIR.⁴⁹⁸
- 269. SC Kruger gave evidence that the SERT Officers who entered homes under his command did so at his direction.⁴⁹⁹

During the Raids, the SERT and PSRT officers, and DS Robinson ransacked the home of the First and Third Applicants.⁵⁰⁰

- 270. The First and Third Applicants' home was ransacked in circumstances where Mr Wotton had been apprehended outside and the SERT and PSRT officers had no indication that any wanted person was inside the home.
- 271. SC Kruger gave evidence that the purpose of the entries was to "clear the house and make sure that there were no other people of interest in the house, or no threats within the house".⁵⁰¹ He conceded that there was no intelligence that a wanted person was

⁴⁹⁵ 3FASC: 287(a).

⁴⁹⁶ Reply: 66(a).

⁴⁹⁷ T1346.45-47.

⁴⁹⁸ T1347.1.

⁴⁹⁹ T1675.1-2.

⁵⁰⁰ 3FASC: 287(b).

⁵⁰¹ T1675.10-15

inside the home.⁵⁰² He gave further evidence that he did not recall being specifically advised that there would be women and children in the First and Third Applicants' home, but he was broadly aware that it was a possibility.⁵⁰³

*During the Raids, the SERT and PSRT officers, and DS Robinson entered the home of the Second Applicant whilst a relative of hers was naked or not fully clothed.*⁵⁰⁴

272. When SERT officers entered the Second Applicant's home, Richard Poynter was in the shower. There was a forced entry into the bathroom and he was forcibly removed from the shower and was subsequently made to put clothes on. Constable Folpp conceded that at the time that the SERT officers entered the Second Applicant's home, Mr Poynter was in the shower, was removed and was then able to put clothes on stating, "I believe that's what has occurred- what occurred".⁵⁰⁵ Ms Harvey recalls the SERT officers telling Mr Poynter to "put some clothes on".⁵⁰⁶

*During the Raids, the SERT and PSRT officers, and DS Robinson subjected Sub-Group Members, and the First Applicant, who were not resisting arrest, to violence – including through the use of tasers – in front of their families and loved ones.*⁵⁰⁷

273. SC Kruger gave evidence that when he arrived at Mr Wotton's house, he was quickly able to identify Mr Wotton and saw that he was unarmed, stating "I could see that there was no weapon in his hand".⁵⁰⁸ At that point, SC Kruger "slung" his assault rifle and took out his taser.⁵⁰⁹ He asked Mr Wotton to identify himself and then told him to get to the ground. When Mr Wotton asked why and looked over to his family, SC

⁵⁰² T1675.15

⁵⁰³ T1675.45-1676.5

⁵⁰⁴ 3FASC: 287(c).

⁵⁰⁵ T1762.22

⁵⁰⁶ T140.4

⁵⁰⁷ 3FASC: 287(d).

⁵⁰⁸ T1622:46.

⁵⁰⁹ T1622:46.

Kruger's evidence is that he formed the assumption that Mr Wotton was going to flee and decided to use his taser on Mr Wotton.⁵¹⁰

274. Mr Wotton gave evidence that before he was brought to his knees by the taser, he had not attempted to run from the police.⁵¹¹ Mr Wotton stated as the officer was shouting "get down on your knees",⁵¹² he could hear his children "crying, singing out loud".⁵¹³ He said that at the time he was "concerned" for his wife and children, thinking that if they were to come out of the house they were at risk of being shot by the police.⁵¹⁴
275. When challenged, SC Kruger said that, at the time, Mr Wotton had in fact not been running away, he stated that, in his mind, Mr Wotton had been "buying time to look for options available to him".⁵¹⁵ He conceded, "I did use the taser pre-emptively"⁵¹⁶ and justified his use of the taser as removing Mr Wotton's option to flee.
276. It was not put to Mr Wotton that he was at any stage contemplating running away and it therefore cannot be established that that he ever even considered doing so. Mr Wotton's evidence is that he knew that the police were going to arrest him and on seeing the police arrive, he went outside voluntarily.⁵¹⁷ At no stage did he attempt to run from the police.⁵¹⁸

*The Applicants and Sub-Group Members were compliant with police instructions and had made no threatening actions whatsoever.*⁵¹⁹

⁵¹⁰ T1672:14.

⁵¹¹ T659.45-46.

⁵¹² T658.35-36.

⁵¹³ T658.37.

⁵¹⁴ T658.40.

⁵¹⁵ T1673.13.

⁵¹⁶ T1679.13.

⁵¹⁷ T657.43-46.

⁵¹⁸ T659.45-46.

⁵¹⁹ 3FASC: 288.

277. Cecilia Wotton recalled that when DS Robinson entered her home, he told her to “get the fucking hell inside and lay down” which she did immediately: “I lie on the bed with my daughter who couldn’t hear anything. My brother was on the floor.”⁵²⁰
278. At the Second Applicant’s home, Mr Morton recalled that an officer told him to get on the ground when the police ran into the yard. He recalled that he did so on their instruction. He said that the officer subsequently told him to “put my face in the dirt” and that, after seeing that a gun was pointed at him, he put his head in the dirt “because I was scared”.⁵²¹

The SERT and PSRT officers, in the presence of DS Robinson, held a number of unarmed Sub-Group Members, and the First and Third Applicants, at gunpoint.⁵²² The SERT and PSRT officers, in the presence of DS Robinson, pointed guns at the children of the Applicants and the Sub-Group, including the First and Third Applicants’ daughter Schanara Bulsey, and forced the children to lie face down with guns continuing to point at them.⁵²³

279. Schanara Bulsey recalled SERT officers pointing their weapons at her head.⁵²⁴ At this time, she sat on the floor with her “knees up against (her) chest, (her) arms around (her) legs and (her) head in between (her) knees” while she “was hitting on the floor, crying”.⁵²⁵
280. Chevez Morton similarly recalled an officer, who was a “metre away, maybe half a metre away from me” pointing a gun at his head. At the time, he was lying on the ground which was covered in mud and recalled that he “looked up at him (the officer) and I saw the gun pointed at me”. Mr Morton further recalled that he looked up at saw that the barrel of the gun was “was pointed straight at me”.⁵²⁶
281. Krysten Harvey recalls that she was at the Second Applicant’s home the afternoon that the officers raided it. She recalled seeing the police arriving from inside the living

⁵²⁰ T340.36-40.

⁵²¹ T268.10.

⁵²² 3FASC: 288(a).

⁵²³ 3FASC: 288(c).

⁵²⁴ T171.14-16.

⁵²⁵ T170.29-34.

⁵²⁶ T268.10-15.

room and recalled being “scared”. She recalled being told to get on the ground at that the officers were “facing their guns at me” and that the guns were pointed “on my back or my head somewhere”. She recalled that there were two officers, one standing in front of her and one behind. She recalled that the officers were “just a step away”.⁵²⁷

(e) QPS conduct during and after emergency situation

*During the period that the emergency situation was in effect, and the days immediately after it was revoked, the QPS members commandeered the local school bus, thereby forcing children of the Applicants and Group Members to walk home at that time, and subsequently walk each school day to and from school in the summer heat.*⁵²⁸

282. It is agreed that on the afternoon of Friday 26 November 2004, a QPS officer took possession of the local St Michael’s Catholic School bus and that the bus was returned approximately a week after it was seized.
283. SS Dini said “I would imagine that the vehicle would have been returned to the school once the declaration was over”.⁵²⁹ And said that “I don’t recall seeing the bus being used after initially being used to bring people to the school”.⁵³⁰
284. Collette Wotton said that as a consequence of the QPS keeping possession of the bus for approximately a week, students were forced to walk to the school, “they had to actually walk from those different areas to the school, walk to school, walk home to school, and it was summer time at the time”.⁵³¹ As to the conditions, Ms Wotton gave evidence that “our kids don’t wear shoes. Some kids do. So you just imagine walking barefoot, and the tar melted. For me to walk back and forward it takes me an hour or a bit to walk from the school to make sure kids are safe to walk”.⁵³² Given that the school bus was seized for about a week, the Court should find that walking to school was the only available option for a number of children.

⁵²⁷ T139.6-29.

⁵²⁸ 3FASC: 290(a).

⁵²⁹ T789.20-23.

⁵³⁰ T789.28-29.

⁵³¹ T282.35-41.

⁵³² T282.42-45.

*During the period that the emergency situation was in effect, and the days immediately after it was revoked, the QPS members damaged property from the homes of the Applicants.*⁵³³

285. Cecilia Wotton gave evidence that during the raid of her home, the SERT officers caused damage to her property. She explained that when her home was raided, “about six or seven of them run in the house. They tipped everything upside down”⁵³⁴. The Respondents have not put on any evidence to the contrary.

*During the period that the emergency situation was in effect, and the days immediately after it was revoked, the QPS members established a visible presence throughout the island and patrolled the island in a manner which resembled a military occupation force.*⁵³⁵

286. The Respondents agree that the QPS established a visible presence throughout the island by patrolling the island during the period that the emergency situation was in effect, and the days immediately after it was revoked.⁵³⁶ Given that much of the visible QPS presence was performed by either SERT or PSRT officers, the Court can comfortably conclude that such patrolling resembled “a military occupation force”. The Applicants submit that such resemblance would have been particularly acute for members of the sub-group.
287. While the emergency declaration was in place on Palm Island, the QPS requested military assistance, including for riot gear and a Chinook helicopter.⁵³⁷ Mr Kitching gave evidence that he “believe(d)” that the QPS’ request had been denied.⁵³⁸ In light of the denial, the QPS themselves set about performing military duties:

⁵³³ 3FASC: 290(b).

⁵³⁴ T341.6-7

⁵³⁵ 3FASC: 290(c).

⁵³⁶ ASF: 319.

⁵³⁷ T1292.32-T1295.40.

⁵³⁸ T1295.15.

- SS McKay gave evidence that securing infrastructure was not a usual police duty. When questioned, he agreed that the OPM as at November 2004 did not contain a procedure on securing criminal infrastructure from attack and agreed that this was the case as it was not a policing role, stating “sometimes we have to apply principles from other- other aspects of our training”.⁵³⁹
- SS McKay also stated with respect to securing infrastructure being a military role that “in the greater scheme of things, I guess you would say that it is”.⁵⁴⁰
- DI Webber gave evidence that the number of police coming to the island was “significant”.⁵⁴¹ He gave evidence that he, along with Inspector Kachel and Richardson discussed “what we should do about securing of various infrastructure”⁵⁴² and the “necessity”⁵⁴³ to “establish effectively a police force command post”.⁵⁴⁴

288. During the period that the emergency situation was in effect, and the days immediately after it was revoked, the QPS members otherwise behaved in a disrespectful and intimidatory manner towards the Applicants and Group Members.⁵⁴⁵ By behaving in a disrespectful and intimidatory manner towards the Applicants and Group Members, QPS members created an atmosphere of hostility and intimidation, causing the Applicants to feel fearful, humiliated and degraded.⁵⁴⁶ The effect of the conduct of the QPS must be seen through the prism of Palm Island’s culture. Collette Wotton gave evidence that “the biggest thing in Indigenous family was respect. We – it was taught from our parents and our – our elders. Respect played a big part of our – all of our lives”.⁵⁴⁷

⁵³⁹ T1421.1-15.

⁵⁴⁰ T1421.17-18.

⁵⁴¹ T920.36.

⁵⁴² T920.30-31.

⁵⁴³ T920.32.

⁵⁴⁴ T920.32-33.

⁵⁴⁵ 3FASC: 290(d).

⁵⁴⁶ 3FASC: 290.

⁵⁴⁷ T278.24-26.

289. Journalist Tony Koch recalls a wailing elderly woman being told by a QPS officer “Stop yelling out. Shut up.”⁵⁴⁸ An Indigenous man, Mr Brad Foster, was present and immediately responded to this affront by telling the police officer “Speak with respect to her. Give her respect.” to which the officer replied, “Boy, get over here. Shut up, boy. Get here.”⁵⁴⁹ Mr Koch understood this exchange as being a “demonstration of (the officer’s) authority in front of his colleagues”.⁵⁵⁰ The Court should find that the elderly woman, Mr Foster and any other onlookers felt humiliated and degraded as result of the encounter.
290. In determining that the QPS behaved in a disrespectful and intimidatory manner towards the Applicants and Group Members, the Court should have regard to the seniority of SS Whyte. In unashamedly recalling his practice of describing the Palm Island residents as “cunts”, SS Whyte did not accept that such language was offensive but was rather was “the language used to enhance the morale of my people”.⁵⁵¹ The Court should find that this evidence is emblematic of the engagement style adopted by the QPS throughout the period that the emergency situation was in effect and in the days immediately after it was revoked. As the second most senior officer on the island, SS Whyte’s practice of using disrespectful and humiliating language is likely to have had a cascading effect on those under his command as he effectively gave licence to the use of such language.

(f) Evacuation of residents

*On or about 26 November 2004, the QPS evacuated the majority of the teachers, and other public sector employees from Palm Island.*⁵⁵²

291. It is agreed that the QPS arranged for a ferry to be available from Palm Island to Townsville on the afternoon of 26 November 2004 and that some teachers and service providers left on that ferry. The ferry did not operate in its normal commercial

⁵⁴⁸ T459.10.

⁵⁴⁹ T459.10-12.

⁵⁵⁰ T473.16.

⁵⁵¹ T1592.24-25.

⁵⁵² 3FASC: 291.

capacity, instead it travelled to Palm Island to collect people who the QPS had selected.⁵⁵³

292. Mr Sam gave unchallenged evidence regarding the ferry that it was “a special ferry... to take out non-Indigenous staff from the hospital and the teachers”.⁵⁵⁴
293. Mr Wotton recalled a conversation, “there were a few people that walked towards me, and they said, ‘We’re not allowed to jump on the ferry,’ and- and I said, ‘Why?’ and they said, ‘No, because no one’s allowed to leave the island but all the white staff’”.⁵⁵⁵ This evidence was unchallenged.
294. SS Dini recalled escorting a number of persons, assumed to be teachers, to the ferry and he said “most of them would have been Caucasian”.⁵⁵⁶
295. The QPS evacuated a number of persons who they identified as “Civilian Non Atsi”⁵⁵⁷ while commercial flights were suspended on Palm Island during the period between 1.45 pm on 26 November 2004 and 1.30 pm on 27 November 2004.
296. Inspector Kachel identified on the MIR running sheet a group of persons at the airport as “Civilian Non Atsi”.⁵⁵⁸ Twenty minutes after the report, Inspector Kachel reported “Concerns that civilians will be at risk if left by the police at airport alone”.⁵⁵⁹ It must be accepted that the report concerned the same 20 non-ATSI people as the previous entry.⁵⁶⁰ SS Dini gave evidence that the persons mentioned above were allowed to leave because “if we kept them on the island then we would be responsible for them and we didn’t want them- to put them in a dangerous situation so when the pilot asked if he could leave the airport and take the passengers with him it seemed to me a logical idea at the time”.⁵⁶¹
297. The evacuation of teachers and other public sector employees created the perception amongst community members, including the Applicants, that employees of service providers on the Island who were predominantly non-Aboriginal and not long-term

⁵⁵³ Exhibit A41, Item 11.

⁵⁵⁴ T312.5-6.

⁵⁵⁵ T656.13-24.

⁵⁵⁶ T799.8.

⁵⁵⁷ A41, Item 3; T1296.25-37.

⁵⁵⁸ A41, Item 3; T1296.25-37.

⁵⁵⁹ Exhibit A41, Item 6.

⁵⁶⁰ T1297.14-1298.20.

⁵⁶¹ T793.2-7.

residents of Palm Island were being removed from the island whilst the remainder of the Aboriginal Palm Island community were being left there under quasi-martial law.⁵⁶²

298. The Court should find that evacuation of the “civilian non-ATSI” served to heighten the perception of “martial law” in the mind of those Indigenous persons who remained on the island and were not permitted to leave.

*Over the course of the purported “emergency situation”, none of the Applicants or Group Members were permitted to travel to Palm Island or to leave Palm Island, otherwise than in police custody, as all flights and ferry services were suspended.*⁵⁶³

299. During the emergency situation, the ferry ceased its ordinary service and, instead of taking any passenger who had purchased a ticket, only took passengers selected by the QPS.⁵⁶⁴ Due to fact that all flights were suspended⁵⁶⁵, the ferry departed Palm Island with only 30 passengers on board⁵⁶⁶, despite having a carrying capacity of 147⁵⁶⁷ and that a number of witnesses recall Palm Island residents wishing to leave Palm Island but being unable to do so, the Court should find that the Applicants and all Group Members were not permitted to leave Palm Island during the emergency situation.

K Unlawfulness of Events From 22 November 2004

K.1 Failure to Immediately Suspend SS Hurley

*The failure to immediately suspend SS Hurley from duty following the death in custody was contrary to the reasonable expectations of the community.*⁵⁶⁸

⁵⁶² 3FASC: 291.

⁵⁶³ 3FASC: 292.

⁵⁶⁴ Exhibit A41, Items 32, 33, 38, 45, 58.

⁵⁶⁵ ASF: 322.

⁵⁶⁶ Exhibit A41, Item 58.

⁵⁶⁷ Exhibit A41, Item 11.

⁵⁶⁸ 3FASC: 293.

300. It is agreed that the officers stationed at Palm Island were aware that there was a feeling of anger held by some residents over Mulrunji's death and that there was a perception held by some residents that SS Hurley was not being held to account.⁵⁶⁹
301. In light of the seriousness of the allegations levelled against SS Hurely, the residents of the community of Palm Island expected that SS Hurley would be removed from the Island. Lex Wotton recalls DS Richardson being asked, "why was he (Hurley) still on the island."⁵⁷⁰
302. Agnes Wotton recalls that " they wanted the police to get rid of Chris Hurley off the island at the time"⁵⁷¹ explaining that the Palm Islanders see themselves as a community and that the feeling was endemic of that community⁵⁷² "when someone is very upset, it upsets the next person, the next person like that."⁵⁷³

*The failure to immediately suspend SS Hurley from duty following the death in custody was reasonably likely to, and did in fact, bring the QPS into disrepute.*⁵⁷⁴

303. As stated in the preceding paragraphs, it is evident that the community expectation was that SS Hurley should have immediately been suspended and removed from the island following Mulrunji's death. The failure to do so heightened the community's mistrust of the police so much so that they lost complete confidence in the service and brought the QPS into disrepute.
304. The 'CMC Review of the Queensland Police Service's Palm Island Review' concludes that the conduct of the initial QPS investigation team was "unacceptable" and that in

⁵⁶⁹ ASF:325.

⁵⁷⁰ T565.5-10.

⁵⁷¹ T154.15-16.

⁵⁷² T154.30-35.

⁵⁷³ T154.20-25.

⁵⁷⁴ 3FASC: 293.

June 2010, it was necessary to take steps to restore confidence in the police that had been lost by that conduct.⁵⁷⁵

K.2 Failure to Communicate With Local Community and Diffuse Tensions

Each of SS Hurley, DI Webber, Inspector Richardson and SS Whyte knew or reasonably ought to have known that the community of Palm Island, or a reasonable proportion thereof would be or were reasonably likely to be suspicious of the circumstances in which Mulrunji died in QPS custody.⁵⁷⁶

305. DI Webber accepted that “I think there was always going to be an element of suspicion”⁵⁷⁷ in the community arising from an Aboriginal death in custody.

306. It is agreed that some Palm Island community members expressed their dissatisfaction to Inspector Richardson, SS Whyte and DS Robinson about Mulrunji’s death.⁵⁷⁸ If the community’s anger directed at SS Hurley and suspicions concerning the death of Mulrunji on Monday 22 November were sufficiently ventilated to warrant SS Hurley’s removal from the island,⁵⁷⁹ the Court should find that each of these officers had knowledge of the community’s anger and suspicions.

Each of SS Hurley, DI Webber, Inspector Richardson and SS Whyte knew or reasonably ought to have known that the community of Palm Island, or a reasonable proportion thereof may perceive that the QPS would not be held to account for any wrongdoing in relation to the death of Mulrunji.⁵⁸⁰

307. On 22 November, at the only meeting attended by Inspector Richardson and SS Whyte when the community were addressed by the QPS, Lex Wotton gave uncontroverted evidence relating to the following exchange between Inspector Richardson and the

⁵⁷⁵ Exhibit A50.

⁵⁷⁶ 3FASC: 294(a)(i).

⁵⁷⁷ T1048.38-40.

⁵⁷⁸ ASF: 254.

⁵⁷⁹ T565.8-9.

⁵⁸⁰ 3FASC: 294(a)(ii).

community: "Inspector Richardson said 'I can assure you that there is no wrongdoing on behalf of police on any video footage.' There were questions. I think I asked about – well, I know I did ask, about the CMC, and who is investigating this matter, and when is it taking shape. I think he – his answer was, "They are investigating this matter at this very moment." There were a few other questions from the community and stuff like that, and I think after an hour – one of the things – there was one member of the community did yell out abuse towards Detective Robinson, and everyone shooshed him down, and – yes, there was a number of questions asked about a number of things, and – in relation to the death itself, and – and why was Hurley on the island".⁵⁸¹

308. The community would not have pressed Inspector Richardson for an update on the investigation and sought assurances that it was being conducted by the CMC if they did not harbour suspicions that the QPS would not be held to account for wrongdoing in relation to the death of Mulrunji.

*Each of SS Hurley, DI Webber, Inspector Richardson and SS Whyte knew or reasonably ought to have known that the community of Palm Island, or a reasonable proportion thereof were likely to react differently to other communities that were not predominantly Aboriginal, as Palm Island was.*⁵⁸²

309. Each of DI Webber,⁵⁸³ DSS Kitching,⁵⁸⁴ SS Whyte⁵⁸⁵ and SS Dini⁵⁸⁶ agreed that they had at least read the RCIADIC report in part, prior to November 2004. DI Webber accepted that "certainly that there needed to be an exercise of consideration in relation to any cultural issues that – that may arise, and included in that was the necessity to – to deal with and speak to – to the family of the deceased in a culturally, sort of, sensitive way"⁵⁸⁷ and that an Aboriginal death in custody "produced certain requirements in and of itself"⁵⁸⁸. Given DI Webber's rank and the fact that Inspector

⁵⁸¹ T564.44-T565.6.

⁵⁸² 3FASC: 294(a)(iii).

⁵⁸³ T963.47-964.1.

⁵⁸⁴ T1166.25-32.

⁵⁸⁵ T1547.29-42.

⁵⁸⁶ T825.14-17.

⁵⁸⁷ T903.41-44.

⁵⁸⁸ T944.8.

Richardson had been deployed “for overarching command and control, and liaison with the upper echelon of the Queensland Police Service”,⁵⁸⁹ the Court should find that each of these officers and all officers under their command knew or reasonably ought to have known that the community of Palm Island, or a reasonable proportion thereof, were likely to react differently to other communities that were not predominantly Aboriginal.

*Each of SS Hurley, DI Webber, Inspector Richardson and SS Whyte knew or reasonably ought to have known that the community of Palm Island, or a reasonable proportion thereof were likely to react differently to other communities in Queensland that did not share the same or similar history as Palm Island.*⁵⁹⁰

310. DI Webber was aware of Palm Island’s history “in a raw sense”⁵⁹¹ and how it was created. He also accepted that at least for some members of the community, such history “has engendered a deep mistrust of the authorities between Palm Island residents and the police”.⁵⁹²

311. Further, DI Webber accepted that an Aboriginal death in custody was “different to a death in a Brisbane watch house, for example, where the community was not small, close-knit and defined in the particular way”.⁵⁹³

*Each of SS Hurley, DI Webber, Inspector Richardson and SS Whyte knew or reasonably ought to have known that the community of Palm Island, or a reasonable proportion thereof would require culturally sensitive policing services to be provided to meet the reasonable expectations of the community.*⁵⁹⁴ *Each of SS Hurley, DI Webber, Inspector Richardson and SS Whyte knew or reasonably ought to have known that special considerations, efforts and strategic planning would have to be provided as part of the QPS services on Palm Island following the death in custody of Mulrunji, which adequately addressed the particular attributes of the Aboriginal community, cross-*

⁵⁸⁹ T1504.20-21.

⁵⁹⁰ 3FASC: 294(a)(iv).

⁵⁹¹ T944.26-28.

⁵⁹² T1048.5-7.

⁵⁹³ T1049.1-2.

⁵⁹⁴ 3FASC: 294(a)(v).

*cultural issues, the reasonable expectations of the community, and the obligation to preserve peace and good order in all areas of the State of Queensland, including Palm Island.*⁵⁹⁵

312. The cultural needs of the Palm Island community have been articulated in the reports prepared by Dr Diana Eades⁵⁹⁶ and Professor Jon Altman⁵⁹⁷. In the Hume video, Inspector Richardson says “When you are taking consideration of the history of the island here, you have to take all measures you can to make sure everyone’s safe”⁵⁹⁸. The Court should find that those needs were known or reasonably ought to have been known by each of SS Hurley, DI Webber, Inspector Richardson and SS Whyte.

*Each of SS Hurley, DI Webber, Inspector Richardson and SS Whyte knew or reasonably ought to have known that the QPS had CCLO’s and the CAU to assist in providing culturally sensitive policing, and which ought to be utilised upon Palm Island as part of an effective strategic plan to preserve peace and good order in all areas of the State, including Palm Island.*⁵⁹⁹

313. DI Webber gave evidence that he knew that SS Dini was a CCLO but was unable to cite a single instance in which culturally sensitive policing was deployed.⁶⁰⁰ Perhaps more telling, SS Whyte could not recall SS Dini performing “any cross-cultural liaison duties” or even that he was a CCLO despite being able to recall SS Dini’s presence on the island and the fact that SS Dini was under his command⁶⁰¹. SS Dini accepted “as a given” that he was “no longer acting as a CCLO but more as an administrative support”.⁶⁰²

⁵⁹⁶ Exhibit A6.

⁵⁹⁷ Exhibit A3.

⁵⁹⁸ Exhibit A7, “F175.1 Title01.mkv”

⁵⁹⁹ 3FASC: 294(c).

⁶⁰⁰ T1097.35-98.29.

⁶⁰¹ 1580.4-18.

⁶⁰² T802.6.

314. Indeed, SS Dini agreed that no-one was performing a CCLO role because “our priority would have been to identify and detain the main offenders and to ensure the security and safety of the people on the island”.⁶⁰³ The proposition implicitly indicates that SS Dini considered that this priority was mutually exclusive to the provision of culturally sensitive policing.

*No special measures were put in place or undertaken by the Second Respondent or QPS officers to preserve peace and good order on Palm Island in the period following the death of Mulrunji.*⁶⁰⁴

315. The Respondents have not led any evidence to indicate that Respondents adopted any special measures to preserve peace and good order on Palm Island in the period following the death of Mulrunji. The Court should find that no special measures were put in place or were even contemplated by the Respondents.

*In the week leading up to 26 November 2004, the QPS officers stationed on Palm Island, including in particular Acting Commissioner Wall, DS Robinson, Inspector Richardson and SS Whyte, had actual knowledge that there was a feeling of grief and anger amongst the residents of Palm Island over Mulrunji’s death in custody and a widespread perception that SS Hurley was not being held to account for that death.*⁶⁰⁵

316. SS Whyte acknowledged that “angst and disappointment that there was a death in custody”⁶⁰⁶ were common sentiments in the community in the week leading up to 26 November 2004 and further that “they expressed dissatisfaction with Hurley, and they wanted Hurley off the island”.⁶⁰⁷
317. SS Whyte said that the topics of “black deaths in custody and police being held accountable” were not common sentiments being expressed by the residents of Palm

⁶⁰³ T802.27-35.

⁶⁰⁴ 3FASC: 295.

⁶⁰⁵ 3FASC: 296(a)(i).

⁶⁰⁶ T1552.14-15.

⁶⁰⁷ T1552.5-6.

Island during the week on the basis that these sentiments were “not said to (him)”⁶⁰⁸. In view of the volume of evidence to the contrary, if the Court is minded to accept that SS Whyte’s recollection as being genuinely held, the Court should infer that SS Whyte’s failure to perceive these sentiments is due to a lack of engagement with the community and/or a lack of cultural sensitivity on his part and hence on the part of the QPS.

*In the week leading up to 26 November 2004, the QPS officers stationed on Palm Island, including in particular Acting Commissioner Wall, DS Robinson, Inspector Richardson and SS Whyte, anticipated that the grief and anger was such that it might lead to riotous and/or socially disorderly behaviour.*⁶⁰⁹

318. In the week leading up to 26 November 2004, the QPS officers were aware that there was grief and anger throughout the community and realised that those sentiments had to be controlled and managed, otherwise such frustrations may have led to civil unrest.
319. SS Whyte gave evidence that, as well as anger, grief was widespread throughout the island with respect to Mulrunji’s death.⁶¹⁰ He conceded that a deterioration of social disorder would likely result by an increase of anger and frustration throughout the week⁶¹¹ and conceded that social disorder of that kind would likely cause civil unrest.⁶¹²
320. SS Dini, the Cross Cultural Liaison Officer on the Island conceded that steps had to be taken to “deal with the situations at hand” in order to control the grief and anger felt throughout the island.⁶¹³

⁶⁰⁸ T1552.1-12.

⁶⁰⁹ 3FASC: 296(a)(ii).

⁶¹⁰ T1548.14.

⁶¹¹ T1548.19-20.

⁶¹² T1548.29.30.

⁶¹³ T811.45-812.8.

321. The Court must concluded that, on the facts, the QPS were aware that there was significant anger and grief felt throughout the community with respect to Mulrunji's death and that they were aware that such grief and anger, if uncontrolled, could lead to the kind of civil unrest that ultimately did eventuate.

*In the week leading up to 26 November 2004, the QPS officers stationed on Palm Island, including in particular Acting Commissioner Wall, DS Robinson, Inspector Richardson and SS Whyte, did not attempt to liaise with those members of the community who attended the public meetings and were apparently dissatisfied with the death of Mulrunji in police custody, and the subsequent police investigation.*⁶¹⁴

322. The Respondent has not led any evidence to indicate that Respondents attempted to liaise with those members of the community who attended the public meetings and were apparently dissatisfied with the death of Mulrunji in police custody and the subsequent police investigation. The Court should find that such events never occurred and, indeed, were never even contemplated or planned by the Respondents.

*In the week leading up to 26 November 2004, the QPS officers stationed on Palm Island, including in particular Acting Commissioner Wall, DS Robinson, Inspector Richardson and SS Whyte, did not issue or caused to be issued any public statement to the residents on Palm Island or otherwise, containing an apology for Mulrunji's death or an expression of regret or remorse for the death having occurred in police custody and/or an explanation of the investigation into Mulrunji's death and the procedure that would then be followed.*⁶¹⁵

323. The Respondents have not led any evidence to indicate that any QPS officer made any public apology or expression of regret for Mulrunji's death or made any attempt to provide an explanation of the investigation and the procedure that would be followed. The Court should find that none of these events occurred or were even contemplated

⁶¹⁴ 3FASC: 296(a)(iii).

⁶¹⁵ 3FASC: 296(a)(iv).

or considered by the Respondents at any level of authority either on the island or in Townsville or Brisbane on the mainland.

*In the week leading up to 26 November 2004, the QPS officers stationed on Palm Island, including in particular Acting Commissioner Wall, DS Robinson, Inspector Richardson and SS Whyte, instead of taking any steps to diffuse the community's grief and anger, and provide responsive and culturally sensitive policing in the community, increased the police presence upon the Island with Officers who were not appropriately trained in culturally-sensitive policing in a community such as Palm Island.*⁶¹⁶ *In the week leading up to 26 November 2004, the QPS increased the police presence on Palm Island with QPS officers from other establishments or stations, without ensuring that those officers were provided with appropriate training in relation to cross-cultural issues that existed by reason of the predominantly Aboriginal community and the history of the community.*⁶¹⁷

324. It is not in dispute that, following the death of Mulrunji, the number of QPS officers rostered to perform duties on Palm Island increased from seven QPS officers on 19 November to 20 QPS officers by 26 November.⁶¹⁸ Mr Wotton gave evidence that as at 23 November, those officers “were wearing guns, which they had never used to do on the island”.⁶¹⁹ Indeed, it is well-known that “in most Indigenous communities police (don’t) carry weapons because it upsets the residents”.⁶²⁰ The Court should find that an increase in police presence and the arming of police in circumstances where police do not usually carry firearms is antithetical to the provision of “culturally sensitive policing” and served to escalate, rather than diffuse, the community’s grief and anger.
325. The Respondents have not led any evidence to suggest that the QPS officers rostered on in the week prior to 26 November were appropriately trained in culturally-sensitive policing and accordingly the Court should find that these officers lacked such training. The Applicants accept that PLO Buttigieg, a PLO, was among these officers but given the complete absence of anything recorded in the log concerning any special tasks given to him to liaise with the community and SS Whyte’s lack of recollection of any

⁶¹⁶ 3FASC: 296(a)(v).

⁶¹⁷ 3FASC: 296(f).

⁶¹⁸ ASF: 253.

⁶¹⁹ T591.17-18.

⁶²⁰ T781.33-34.

such activity,⁶²¹ the Court should find that no cross-cultural liaison activity by appropriately trained officers took place or was even contemplated by the QPS in the week prior to 26 November.

326. The Court should not confuse SS Whyte's experience working in Aboriginal and Torres Strait Islander communities in northern Queensland with evidence of his being appropriately trained in culturally-sensitive policing. SS Whyte's recounting of such experience echoes the spirit of the *Aboriginal Protection Act*: "I was promoted to the rank of sergeant, to take charge of the Pormpuraaw Aboriginal community".⁶²² It should not be forgotten that in recalling this posting, SS Whyte made the incredible proposition that "when I was the officer in charge of Pormpuraaw police division there were 600 Aboriginal people. There were two people that didn't consume alcohol, to my knowledge".⁶²³ Subsequently, SS Whyte accepted that the Indigenous population of 600 people included under 18's who did not drink any alcohol⁶²⁴ but he was unable to come to terms with the fact that he had previously made an exaggeration⁶²⁵ (let alone a racially-loaded exaggeration).

*In the week leading up to 26 November 2004, no QPS officers or officials of the First Respondent took any steps to cause either the position of the QPS in relation to the death in custody, or the investigation, or an apology for Mulrunji's death or an expression of regret or remorse for the death having occurred in police custody to be communicated to the community on Palm Island.*⁶²⁶

327. The Respondents have not led any evidence to indicate that any QPS officer made any public apology or expression of regret for Mulrunji's death or made any attempt to provide an explanation of the investigation and the procedure that would be followed. The Court should find that none of these events occurred or were even contemplated or considered by the Respondents at any time at any level in the hierarchy.

⁶²¹ T1578.44-T1580.2.

⁶²² T1503.28-29, emphasis added.

⁶²³ T1532.41-43.

⁶²⁴ T1581.35-37.

⁶²⁵ T1581.39.

⁶²⁶ 3FASC: 296(b).

*In the week leading up to 26 November 2004, no other visible attempts were made by police to engage with the Aboriginal community upon Palm Island to adequately address the concerns amongst the community of Palm Island which had arisen since the death in custody of Mulrunji.*⁶²⁷

328. The Respondents have not led any evidence to indicate that the QPS made any visible attempts to engage with the Aboriginal community upon Palm Island to adequately address the concerns amongst the community of Palm Island which had arisen since the death in custody of Mulrunji. The Court should find that no meaningful attempts to engage with the community occurred or were even contemplated or considered by the Respondents.

*In the week leading up to 26 November 2004, Inspector Richardson, as the most senior QPS officer on Palm Island at the time was not adequately briefed on the contents of the Preliminary Autopsy Report.*⁶²⁸

329. It is agreed that Inspector Richardson and SS Whyte were not advised or otherwise made aware of the injuries that Mulrunji had sustained prior to his death while in police custody or the cause of death.⁶²⁹ Such matters are obviously fundamental to an “adequate briefing”.

*In the week leading up to 26 November 2004, Inspector Richardson, as the most senior QPS officer on Palm Island at the time failed to appropriately engage with the Palm Island Council, or the community in a culturally appropriate and sensitive way.*⁶³⁰

330. Inspector Richardson’s response to the community and the visible unrest was culturally inappropriate and was both insensitive and patronising. Although he was

⁶²⁷ 3FASC: 296(d).

⁶²⁸ 3FASC: 296(e)(i).

⁶²⁹ ASF: 266.

⁶³⁰ 3FASC: 296(e)(ii).

not called to give evidence, his characterisation of the community's concerns regarding Mulrunji's death as "rumours" and "not factual", as well as his remarks that the community can "sit back and wait"⁶³¹ for information to Mr Flynn is incongruous with the sensitivity that was necessary in dealing with the situation.

Inspector Richardson addressed the community on a single occasion on 22 November.⁶³² As tensions grew in the coming days, there were no meaningful efforts made by Inspector Richardson to engage with the community to acknowledge its grieving, loss and anger or to provide assurance that an independent and thorough investigation into the death would occur. Inspector Richardson also failed to ensure that any officers under his command would perform such a function. The lack of culturally appropriate engagement is seen most acutely by the fact that no CCLO was appointed to Palm Island at this critical time and that once a CCLO was appointed, that officer did not perform any cultural liaison tasks but was rather involved in administration and logistics. In the week leading up to 26 November 2004, the strategic planning of the QPS in response to the intelligence that the autopsy report was to be released to the members of the public, failed to take into account important and relevant information known to members of the QPS, such as DSS Kitching, DI Webber and Inspector Williams, namely the fact that Mulrunji had sustained four broken ribs and his liver had been ruptured at or about the time of his death.⁶³³ In the week leading up to 26 November 2004, no special or other arrangements were made by the QPS Officers on Palm Island in response to the information that the autopsy report upon the post-mortem examination of Mulrunji was to be released to the community, other than Inspector Richardson directing officers to be on their toes and look out because things might turn a bit hostile.⁶³⁴

331. On Tuesday 23 November, DI Webber became aware of the autopsy results and "spoke to Chief Superintendent Howell and Assistant Commissioner Wall, and (he believes) they – they briefed senior officers accordingly".⁶³⁵ At this time, discord, grief and suspicion were rife within the community and this fact was known to Inspector Richardson who held the function of acting as liaison with "the upper echelon"⁶³⁶ of

⁶³¹ Exhibit A7, Title01.mkv at 02.20 and Title02.mkv at 28.45.

⁶³² T563.20-T565.18.

⁶³³ 3FASC: 296(g).

⁶³⁴ 3FASC: 296(h).

⁶³⁵ T915.15-17.

⁶³⁶ T1504.20-21.

the QPS. The Court should find the confluence of the autopsy results themselves, the intelligence that the release of those results was imminent and situational awareness of unrest on the island meant that the QPS knew or ought to have known that special or other arrangements were necessary in order to preserve peace and good order on the island. The Court should also find that “directing officers to be on their toes and look out because things might turn a bit hostile” was an insufficient arrangement to preserve peace and good order in the circumstances which were known to the strategic planners of the QPS.

K.3 Unlawful Declaration of Emergency Situation

*The Certificate declaring the emergency situation was not issued as soon as practicable after the emergency situation was declared, but was issued almost 48 hours later, after the emergency situation had been revoked.*⁶³⁷

332. DI Webber, the incident co-ordinator, gave evidence that as at 26 November 2004, paperwork was “not a priority for completion at that time”.⁶³⁸ The Respondent have not offered any explanation as to why it was not practicable for the certificate to have been produced earlier.
333. DI Webber gave evidence that “there was no apparent ability to complete a form” and that there was “no police computer system etcetera to operate”.⁶³⁹ He subsequently conceded that on Friday, 26 November 2004, he had not turned his mind to producing the form.
334. DSS Kitching’s evidence was that, by 5.30 pm on 26 November 2004, the police had available to them an operating computer system, along with a functional telephone and fax.⁶⁴⁰
335. The Court must reject DI Webber’s evidence that there were no facilities available to him at the time to facilitate the production of the certificate. The Court must conclude that there is no acceptable explanation for the delay in the issuing of the certificate.

⁶³⁷ 3FASC: 299(e).

⁶³⁸ T1104.21.

⁶³⁹ T1083.29.

⁶⁴⁰ T1310.45-1311.12.

K.4 Unlawful Arrests

*The arrests conducted in the course of the Raids were not conducted with the minimum force necessary.*⁶⁴¹

336. SC Kruger gave evidence that he “tasered (Lex Wotton) because (he) formed the assumption that (Mr Wotton) was going to attempt to flee being arrested”.⁶⁴² With complete control over the duration of the charge,⁶⁴³ SC Kruger tasered Mr Wotton for “the full five seconds”.⁶⁴⁴ The Court should find that the tasering of Lex Wotton was wholly unnecessary:

- SC Kruger accepted that Mr Wotton was surrounded by heavily armed, protected officers directing their guns at Mr Wotton who was not wearing any shoes or a shirt;⁶⁴⁵ and
- SC Kruger accepted that Mr Wotton voluntarily walked out of the house,⁶⁴⁶ identified himself⁶⁴⁷ and “engaged with me in conversation”.⁶⁴⁸

K.5 Unlawful Entry into Dwellings by Police

*In the entry into dwellings by QPS members during the Raids, the occupants were unnecessarily disturbed.*⁶⁴⁹

⁶⁴¹ 3FASC: 300.

⁶⁴² T1672.13-15.

⁶⁴³ T1623.40.

⁶⁴⁴ T1673.15.

⁶⁴⁵ T1670.43-44.

⁶⁴⁶ T1670.47.

⁶⁴⁷ T1671.24.

⁶⁴⁸ T1671.21.

⁶⁴⁹ 3FASC: 303.

337. Jacinta Barry gave evidence that she was asleep when the police entered her home and that a loud “bang”⁶⁵⁰ caused by the police entering the home, woke her. She gave evidence that a police officer entered her bedroom, pushed a gun into her chest and told her to “sit the hell down.”⁶⁵¹ While held at gunpoint, she asked the police officer if she could go to the toilet. The police officer denied her request and she subsequently wet herself.⁶⁵² While held at gunpoint, the police officers searched the home, opening cupboard door and in the process “busted” a laundry door.⁶⁵³
338. The police did not find or apprehend any person at Ms Barry’s residence. She gave evidence that at the time of the raid, no person appearing on the ‘target list’ was residing, or had ever resided, at the residence and no one at the residence had participated in the riots.⁶⁵⁴
339. In the circumstances, the Court must find that the entry of the QPS into a home where there was no reasonable intelligence that a wanted person was to be found, and the violence which the occupants encountered from the officers caused unnecessary disturbance to the occupants.

L *Unlawful Racial Discrimination*

L.1 *Distinction, Exclusion, Restriction or Preference*

The Further Failures occurred during the aftermath of community discontent and suspicion over the involvement of SS Hurley in the arrest and death in custody of an Aboriginal member of the Palm Island community.⁶⁵⁵ The Further Failures occurred during a widespread perception in the community of Palm Island that the investigation by the QPS into the death was not being, or had not been conducted fairly and impartially.⁶⁵⁶

⁶⁵⁰ T479.25.

⁶⁵¹ T479.27-30.

⁶⁵² T480.27-45; T481.20.

⁶⁵³ T482.15.

⁶⁵⁴ T482.25-28.

⁶⁵⁵ 3FASC, 310.

⁶⁵⁶ 3FASC: 310.

340. Community discontent, suspicion over the involvement of SS Hurley and a widespread perception of a lack of impartiality in the QPS investigation had emerged at least from 22 November.⁶⁵⁷ Each of the Further Failures occurred after 22 November 2004.

L.3 Breach of Rights: Group Members

As a result of the breach of section 9 of the RDA, the Applicants suffered loss and damage.⁶⁵⁸ As a result of the breach of section 9(1) of the RDA pleaded in paragraph 321, the Applicants suffered loss and damage.⁶⁵⁹

341. The Applicants rely upon two affidavits of Stephen Ralph⁶⁶⁰. With respect to the first Applicant, the Court should find that “Mr Wotton has experienced high levels of psychological distress following his arrest in 2004. He reported experiencing periods of depression, anxiety and chronic sleep problems following his arrest up until his release from prison in 2010”.⁶⁶¹
342. With respect to the Second Applicant, the Court should find that “the experience of the emotional upheaval and trauma associated with the riot and its aftermath remained firmly imprinted upon her”⁶⁶². Describing the events of November 2004 at a general level, Ms Wotton told the Court that “they just treated us like rats”.⁶⁶³
343. The distress associated with these events is also apparent in Ms Wotton from the contemporaneous evidence before the Court. In a record of interview conducted by DS Robinson on 28 November 2004, after describing the raids as “just tiredness to elders”, Ms Wotton is told “so um like our intention isn’t to cause trauma or to put terror you know or fear into people but its, we are just trying to do a job you know, achieve these goals to locate these people and then um leave with as minimal damage done... are

⁶⁵⁷ ASF 254; T561.26 - T562.26; T1539.36-T1540.34.

⁶⁵⁸ 3FASC: 318.

⁶⁵⁹ 3FASC: 322.

⁶⁶⁰ Exhibit A9 and A10.

⁶⁶¹ Exhibit A9, page 19.

⁶⁶² Exhibit A9, page 29.

⁶⁶³ T288.11-12.

you happy that I have come back today to explain why we are here, does that help?" to which Ms Wotton replies "Yeah but I tell you, until everybody pulls out you know, we're gonna be, always suspicious, you know, in our own way because we don't know how many more other guys you guys are looking for you now".⁶⁶⁴ These remarks indicate that Ms Wotton was afflicted by the looming prospect of another raid. The Court should find that arbitrary and unlawful Police entries are capable of causing a trauma that extends beyond the actual entry itself.

344. The Win TV Courthouse video shows an interviewer asking "what do you think is going to happen to (the accused) in custody?"⁶⁶⁵ to which Ms Wotton replies, almost wailing, "we don't want no more Police brutality, we don't want our boys in custody thinking of putting the rope around their neck and making the matters worse. This is what I am making a plea for".⁶⁶⁶
345. With respect to the Third Applicant, the Court should find that "Ms Wotton displays a range of symptoms consistent with post-traumatic stress disorder. These symptoms include recurrent depressed mood, suicidal ideation, intrusive thoughts, and chronic anxiety as evidenced by a fear of being alone and recurrent nightmares. She presented as suffering from guilt and low self-esteem as a result of her difficulties in caring for her children, in circumstances where she has been burdened by a level of psychological distress that has significantly undermined her capacity to parent her children".⁶⁶⁷ Dr Reddan makes the observation that "these symptoms are in fact more consistent with Dysthymic Disorder (that is chronic mild to moderate depression)"⁶⁶⁸ but ultimately concedes that Ms Wotton may in fact suffer from post-traumatic stress disorder and that if this is the case she "requires referral to a psychiatrist or mental health service".⁶⁶⁹ Moreover, in responding to Mr Ralph's reply affidavit that suggested that Dr Reddan "had not considered the possibility that post-traumatic stress disorder and a depressive disorder may co-exist in one individual in what is

⁶⁶⁴ Exhibit A207.

⁶⁶⁵ Exhibit A215 at 25:47.

⁶⁶⁶ Exhibit A215 at 26:00.

⁶⁶⁷ Exhibit A9 at page 25.

⁶⁶⁸ Exhibit R35 at page 72.

⁶⁶⁹ Exhibit R35 at page 72.

described as a co-morbid relationship”⁶⁷⁰, Dr Reddan accepted that “co-morbidity is common”.⁶⁷¹

346. For each of the Applicants, Mr Ralph found that observed psychological damage suffered was “directly attributable to the events surrounding the 2004 riot and its aftermath”.⁶⁷² Dr Reddan’s report and her oral evidence at trial only took issue with Mr Ralph’s attribution of the November 2004 events as being causative of psychological distress with respect to Cecilia Wotton. Mr Ralph’s evidence that Lex Wotton and Agnes Wotton suffered psychological distress, which is directly attributable to the November 2004 events, is therefore unchallenged and must be accepted by the Court.
347. With respect to Cecilia Wotton, Dr Reddan asserts that Mr Ralph “failed to reflect upon any other relevant stressors and events. Being assaulted [sic] to the extent that one miscarries late in a pregnancy and then is left infertile has to be a very significant stressor”.⁶⁷³ Mr Ralph’s reply affidavit asserted that “the trauma arising from the miscarriage occurring in 1988 has contributed to some degree to Ms Cecilia Wotton’s current state of mental health, but in comparison to the traumatic events associated with the 2004 riot and the trauma Ms Wotton experienced at that time, the contribution of the much earlier miscarriage to Ms Wotton’s current state of mental health is significantly less than that arising from the trauma of 2004 and the events that followed⁶⁷⁴. Under cross-examination, Ms Wotton was asked to compare whether the suicides of Patrick Bramwell and Eric Doomadgee had affected her more “than what happened when the police came to (her) house and (her) husband was arrested and went on trial”.⁶⁷⁵ Ms Wotton gave unequivocal evidence that “when (SERT) came to my house, this affected me more”⁶⁷⁶ and explained “it’s how they held a gun up to my daughter and swore, shouted at us, told us to get down...and taking my husband away too... all the kids were scared, crying, screaming”.⁶⁷⁷ The Court should find that

⁶⁷⁰ T896.28-30.

⁶⁷¹ T896.39.

⁶⁷² Exhibit A9; See headings “4. The likely cause of that condition” on pages 21, 26 and 29 for each of the Applicants.

⁶⁷³ Exhibit R35 at page 72.

⁶⁷⁴ Exhibit A10; See [20] to [22].

⁶⁷⁵ T427.43-44.

⁶⁷⁶ T427.45.

⁶⁷⁷ T428.5-28.

these events caused Ms Wotton's post-traumatic stress-disorder and/or her persistent depressive disorder.⁶⁷⁸

Mr Ralph gave evidence that such damage has been prolonged and exacerbated due to the absence of an apology which would enable "the parties and community members to feel that their grievances have, to some extent, at least been acknowledged as being correct and allow them to move on from that point".⁶⁷⁹

M *Aggravated or Exemplary Damages*

M.2 Aggravated Damages

(b) Failure to discipline QPS officers

*The QPS has not, at any time, commenced an investigation into, or implemented disciplinary proceedings in respect of, the actions of any of the QPS officers involved in the Further Failures.*⁶⁸⁰

348. The Respondents have not lead any evidence of commencing an investigation into or implementing any disciplinary proceedings in respect of any of the QPS officers involved in the Further Failures and the Court should find that no such investigation has occurred.

349. A number of QPS officers were recommended for commendation for their actions during that period.⁶⁸¹The Applicants' rely on the memorandum dated 29 May 2006 from Chief Superintendent R.J Wall and addressed to the Assistant Commissioner,

⁶⁷⁸ At [25] of Exhibit A10, Mr Ralph gave evidence that Dr Reddan's use of the term 'Dysthymic Disorder' is a DSM-IV term and is in fact obsolete in DSM-V. In cross-examination, Dr Reddan accepted that Dysthymic Disorder has been re-labelled as Persistent Depressive Disorder in DSM-V but asserted that "dysthymia is still commonly referred to": T895.8-10.

⁶⁷⁹ T634.33-T645.39.

⁶⁸⁰ 3FASC: 336.

⁶⁸¹ 3FASC: 336.

being “recognition for officer and staff members who made significant contribution to the overall police response to the November 2004 Palm Island Riots.”⁶⁸²

350. Chief Superintendent Wall identifies and recommends numerous officers involved in various aspects of the incident- the riot, the investigation, the major incident room and strategic leadership- as being worthy of “ special recognition.” Chief Superintendent particularly articulates the “exceptional courage” and the “fortitude and restraint” which the police displayed and praised the “ high standard” of investigation undertaken by the Police.
351. The memorandum identifies three officers for their contribution with respect to the riot: Inspector Richardson, Senior Sergeant Whyte and Detective Sergeant Robinson.
352. The memorandum identifies three officers for their contribution with respect to the investigation: Detective Inspector Webber, Inspector Kachel and Inspector Underwood.
353. The memorandum identifies eight officers for their contribution with respect to the major incident room: SS Kelly, Sgt Lewis, AO2 Willis, AO2 Cleary, AO2 Rumble, DSS Kitching, DSS Scanlon; and DSS Miles.
354. The memorandum identifies three officers for their strategic leadership: Chief Superintendent Wall, Superintendent Howell and Inspector Wilson.
355. Further, DSS Kitching and SS Whyte gave evidence describing a ceremony where they received a “meritorious service award”⁶⁸³ for their “contribution in the MIR”.⁶⁸⁴ DSS Kitching recalled that the “many” people involved in the Palm Island situation were commended at the ceremony .⁶⁸⁵

*The fact of each of Inspector Williams, DI Webber, and DSS Kitching receiving managerial guidance was not made known to the public or to persons who had complained about the conduct of those officers in the course of the investigation of Mulrunji’s death, because Senior Sergeant Michael Bond of the Legal and Policy Unit of the QPS Ethical Standards Command was of the view that such advice may be viewed as “somewhat antagonistic” given the notoriety of the relevant events.*⁶⁸⁶

⁶⁸² Exhibit A60.

⁶⁸³ T1316.22-23.

⁶⁸⁴ T1316.20-45; T1611.1-20.

⁶⁸⁵ T1316.35-40.

⁶⁸⁶ 3FASC: 337.

356. In a confidential memorandum to the Office Manager of the Legal and Policy Unit, SS Bond of the Ethical Standards Command writes “given the history, publicity and sensitivity of this matter, I recommend the complainants are not notified of the outcome; specifically the fact officers received ‘managerial guidance’. Such advice may be viewed as somewhat antagonistic given the widespread publication of Deputy Commissioner Rynders’ determination of the matters and subsequent events”.⁶⁸⁷

⁶⁸⁷ Exhibit A70 at 3.