

NOTICE OF FILING

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Details of Filing

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Registry:	QUEENSLAND REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 11/09/2015 4:55:29 PM AEST

A handwritten signature in blue ink, reading "Warwick Soden".

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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**Respondents' Defence to
Third Further Amended Statement of Claim**

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

No. QUD 535 of 2013

Lex Wotton and Ors
Applicants

State of Queensland and Anor
Respondents

A DEFINITIONS

1. The Respondents are not required to and do not plead to Part A of the Third Further Amended Statement of Claim (3rd FASC).

B INTRODUCTORY

2. As to paragraph 1 of the 3rd FASC the Respondents admit that the Applicants have commenced these proceedings as a representative party pursuant to Part IVA of the *Federal Court of Australia Act 1976*.
3. As to paragraph 1A, 2 and 3 of the 3rd FASC the Respondents admit that in the Amended Originating Application filed on 29 May 2014 and the Further Amended Originating Application filed on 25 August 2015 the Applicants identify that the Group Members to whom this proceeding relates are Aboriginal persons and Torres Strait Islanders resident on Palm Island as at 19 November 2004 and who were still resident on Palm Island as at and including 25 March 2010.
4. As to paragraph 1B of the 3rd FASC, the Respondents:
 - (a) say that according to the 2006 census, as published by the Australian Bureau of Statistics, 93.5% of the population on Palm Island was indigenous and the population was approximately 1855 people;

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- (b) say that according to the 2001 census, as published by the Australian Bureau of Statistics, 90.8% of the population on Palm Island was indigenous and the population was approximately 1949 people; and
 - (c) therefore deny that at all times the indigenous population of Palm Island was greater than 95% of its total population.
5. As to paragraph 1C of the 3rd FASC, the Respondents admit that the Group Members as described in the Amended Originating Application and the Further Amended Originating Application number more than seven people.
 6. As to paragraphs 4 and 5 of the 3rd FASC, the Respondents admit that in the Further Amended Originating Application the Applicants identify the Sub-Group in the way described and that the Sub-Group members so described number more than seven people.

C POLICE SERVICE ADMINISTRATION ACT 1990

7. The Respondents admit paragraph 6 of the 3rd FASC.

D ARREST OF MULRUNJI AND DEATH IN CUSTODY

D1 Arrest and Subsequent Treatment of Mulrunji to time of death

8. As to paragraph 7 of the 3rd FASC, the Respondents:-
 - (a) admit paragraph 7;
 - (b) say that Mulrunji was arrested for creating a public nuisance;
 - (c) say that Mulrunji was placed in the locked area of a police van so as to be transported to the Palm Island police watchhouse;
 - (d) say that at the time Mulrunji was arrested he was significantly intoxicated with the following levels of alcohol in his system:-
 - (i) 262mg/100ml in vitreous fluid;
 - (ii) 292mg/100ml in abdominal cavity blood;
 - (iii) 413mg/100ml in urine.
9. As to paragraph 8 of the 3rd FASC, the Respondents:-

- (a) admit paragraph 8;
 - (b) say that after Mulrunji was arrested he was transported with Patrick Bramwell to the Palm Island watchhouse in the police van;
 - (c) say that SS Hurley drove the van and PLO Bengaroo was a passenger in the van.
10. As to paragraph 9 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 9;
 - (b) say that the struggle between SS Hurley and Mulrunji ensued after:
 - (i) Mulrunji resisted being removed from the police van;
 - (ii) Mulrunji struck SS Hurley when being removed from the police van.
11. As to paragraph 10 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 10;
 - (b) say that Sergeant Leafe and PLO Bengaroo were also present in the vicinity.
12. As to paragraph 11 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 11;
 - (b) say that SS Hurley and Mulrunji fell through the rear door of the Palm Island police station after Mulrunji and/or SS Hurley tripped on a step leading to the door of the police station.
13. As to paragraph 12 of the 3rd FASC, the Respondents:-
- (a) admit that after the fall, Mulrunji became limp and unresponsive;
 - (b) say that at the time of the fall Mulrunji and SS Hurley were struggling.
14. The Respondents admit paragraph 13 of the 3rd FASC.
15. The Respondents admit paragraph 15 of the 3rd FASC.
16. As to paragraph 16 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 16;
 - (b) say further that the preliminary autopsy report dated 24 November 2004 and the autopsy report dated 25 January 2005 determined that Mulrunji had the significant condition of coronary atherosclerosis.

D2 Discovery of Death and Notification of QPS Officers

17. The Respondents admit paragraph 21 of the 3rd FASC.
18. As to paragraph 22 of the 3rd FASC, the Respondents:-
 - (a) say that at about 11.23am on 19 November 2004 SS Hurley telephoned Senior Sergeant Jenkins at the Townsville District Police Communications Centre and advised that Mulrunji might be deceased;
 - (b) admit paragraph 22.
19. As to paragraph 23 of the 3rd FASC, the Respondents:-
 - (a) admit that at about 11.30am on 19 November 2004 SS Hurley telephoned DI Strohfeldt and advised him of the death in custody;
 - (b) say that SS Hurley did so after Queensland Ambulance Service Officer Bolton confirmed to SS Hurley that Mulrunji had died.
20. The Respondents admit paragraph 24 of the 3rd FASC.
21. The Respondents admit paragraph 25 of the 3rd FASC.

D3 Officers in Charge of and Responsible for Watchhouse

22. As to paragraph 26 of the 3rd FASC, the Respondents:-
 - (a) admit paragraph 26(a);
 - (b) in relation to Inspector Strohfeldt:-
 - (i) admit paragraphs 26(b)(i), (iv) and (v);
 - (ii) say that Inspector Strohfeldt was the commissioned officer responsible for the watchhouse and cell at the Palm Island police station in the sense that he was the commissioned officer to whom SS Hurley was directly responsible;
 - (iii) admit paragraphs 26(b)(ii) and (iii) on the basis stated above.

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

23. The Respondents admit paragraphs 27, 28, 29 and 30 of the 3rd FASC.

24. As to paragraph 31 of the 3rd FASC, the Respondents:-

- (a) say that the RCIADIC report was published in April 1991 some 13 years and 7 months before November 2004;
- (b) say that after the publication of the RCIADIC report the Operational Procedures Manual (OPM) of the Queensland Police Service was amended to reflect the recommendations of that report;
- (c) say that in November 2004 QPS officers were aware of the contents of the OPM;
- (d) say that in November 2004 the awareness of particular QPS officers of particular parts of the OPM would vary according to their duties and experience;
- (e) say that for the foregoing reasons, the QPS officers referred to in paragraph 31 would not reasonably be expected to be aware of the content and recommendations of the RCIADIC report other than in a general way;
- (f) therefore deny paragraph 31.

25. As to paragraph 32 of the 3rd FASC, the Respondents:-

- (a) say that paragraph 32 is embarrassing because it alleges knowledge or a state of mind or expectations of a group of people described as the community of Palm Island, which group of people is not homogenous in terms of age, education, knowledge, intellectual ability or interest in the matters referred to in paragraph 32;
- (b) admit that some members of the Palm Island community may have had the attributes or characteristics referred to in paragraph 32;
- (c) are unable to say which members or how many members of the Palm Island community may have had any of those attributes or characteristics;
- (d) otherwise say that paragraph 32 is evasive and ambiguous and likely to cause prejudice, embarrassment or delay in the proceeding within the meaning of Rules 16.02(2)(c) and (d) of the Federal Court Rules and should be struck out;
- (e) say that they therefore object to pleading to paragraph 32;
- (f) say that if they are required to plead to paragraph 32, they deny paragraph 32.

F PROVISIONS APPLYING TO QPS OFFICERS IN NOVEMBER 2004

F1 Operational Procedures Manual

26. The Respondents admit paragraphs 33 and 34 of the 3rd FASC.
27. As to paragraph 35 of the 3rd FASC, the Respondents:-
- (a) say that the words “persons and organisations” does not appear in the definition of “Procedure” and the words used are “persons or organisations”;
 - (b) with that change being made, admit paragraph 35.
28. As to paragraphs 36 to 40 of the 3rd FASC, the Respondents:-
- (a) say that the provisions of the OPM pleaded therein are not elsewhere mentioned in the 3rd FASC;
 - (b) say that those provisions of the OPM are not the basis of, and are otherwise not relevant to, any claim for relief made in the proceeding;
 - (c) say that those provisions relate to matters in respect of which the Applicants were not given leave to amend their pleading;
 - (d) say that accordingly paragraphs 36 to 40 are irrelevant and they are not required to plead, and object to pleading to paragraphs 36 to 40.

F2 Rules and Legislation Governing Conduct of QPS Following Death in Custody

29. As to paragraphs 41 to 47 of the 3rd FASC, the Respondents:-
- (a) say that in paragraph 47 the subparagraph numbered (xi) is in fact numbered (xii);
 - (b) with that change, admit paragraphs 41 to 47.
30. As to paragraph 48 of the 3rd FASC, the Respondents:-
- (a) say that the provision of the OPM pleaded therein is not elsewhere referred to in the 3rd FASC;
 - (b) say that that provision of the OPM is not the basis of, and is not otherwise relevant to, any claim for relief made in the proceeding;
 - (c) say that that provision of the OPM relates to a matter in respect of which the Applicants were not given leave to amend their pleading;
 - (d) say that accordingly paragraph 48 is irrelevant and they are not required to plead, and object to pleading to paragraph 48.

31. As to paragraph 49 of the 3rd FASC, the Respondents:-
- (a) say that paragraphs (a)(i), (a)(x) and (a)(xi) of s.16.24.3 of the OPM are not elsewhere referred to in the 3rd FASC;
 - (b) say that those provisions of the OPM are not the basis of, and are not otherwise relevant to, any claim for relief in the proceeding;
 - (c) say that accordingly they are not required to plead, and object to pleading to that part of paragraph 49;
 - (d) otherwise admit paragraph 49.
32. As to paragraphs 50 to 59 of the 3rd FASC, the Respondents:-
- (a) say that in paragraph 54 the expression used in subparagraph (iii) is “incident has occurred” not “incident occurred”;
 - (b) say that in paragraph 56(b) the subparagraph numbered (iii) is in fact numbered (iv);
 - (c) with those changes, admit paragraphs 50 to 59.
33. As to paragraphs 60 to 62 of the 3rd FASC, the Respondents:-
- (a) say that the provisions of the OPM pleaded therein are not elsewhere referred to in the 3rd FASC;
 - (b) say that those provisions of the OPM are not the basis of, and are not otherwise relevant to, any claim for relief made in the proceeding;
 - (c) say that accordingly paragraphs 60 to 62 are irrelevant and they are not required to plead, and object to pleading to paragraphs 60 to 62.
34. The Respondents admit paragraphs 63 and 65 to 68 of the 3rd FASC.
35. As to paragraph 64 of the 3rd FASC, the Respondents:-
- (a) say that the provision of the OPM pleaded therein is not elsewhere referred to in the 3rd FASC;
 - (b) say that that provision is not the basis of, and is not otherwise relevant to, any claim for relief in the proceeding;
 - (c) say that accordingly paragraph 64 is irrelevant and they are not required to plead, and object to pleading to paragraph 64.

36. As to paragraph 69 of the 3rd FASC, the Respondents:-

- (a) say that the provision of the OPM pleaded therein is not elsewhere referred to in the 3rd FASC;
- (b) say that that provision is not the basis of, and is not otherwise relevant to, any claim for relief in the proceeding;
- (c) say that accordingly paragraph 69 is irrelevant and they are not required to plead, and object to pleading to paragraph 69.

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

37. The Respondents admit paragraph 70 of the 3rd FASC.

38. As to paragraph 71 of the 3rd FASC, the Respondents:-

- (a) admit that s.18 of the *Public Sector Ethics Act* 1994 (the PSE Act) as in force in November 2004 was in the terms pleaded;
- (b) deny that QPS officers thereby had a statutory obligation to comply with the Code of Conduct;
- (c) say that the Schedule to the PSE Act defined “conduct obligation” as meaning an obligation stated in an approved code of conduct that must be complied with by public officials;
- (d) say that the Schedule to the PSE Act defined “ethics obligations” as meaning the obligations referred to in s.5(2) of the PSE Act;
- (e) say that s.5(2) of the PSE Act provided that the obligations in Division 2 of Part 2 (ss.7-11) are the ethics obligations for public officials;
- (f) say that s.5(3) of the PSE Act provided that “*The ethics obligations are intended to provide the basis for codes of conduct for public officials and are not of themselves legally enforceable*”;
- (g) say that s.14 of the PSE Act provided that a code of conduct may:-
 - (i) provide obligations public officials must comply with;
 - (ii) contain other material as therein described;

- (h) says that the contents of a code of conduct which provide obligations public officials must comply with are the conduct obligations referred to in s.18 of the PSE Act;
 - (i) say that other parts of a code of conduct are not conduct obligations within the meaning of s.18 of the PSE Act.
39. The Respondents admit paragraph 72 of the 3rd FASC.
40. The Respondents are not required to and do not plead to paragraph 73 of the 3rd FASC.
41. As to paragraph 74 of the 3rd FASC, the Respondents:-
- (a) say that save for some minor and immaterial transcription errors in the text of s.2 they admit paragraph 74;
 - (b) say that s.2 of the Code of Conduct does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
42. As to paragraph 75 of the 3rd FASC, the Respondents:-
- (a) say that save for some minor and immaterial transcription errors in the text of s.7 they admit paragraph 75;
 - (b) say that s.7 of the Code of Conduct does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
43. The Respondents admit paragraph 76 of the 3rd FASC.
44. As to paragraph 77 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 77;
 - (b) say that s.9.1 of the Code of Conduct restates the ethics obligation in s.7(1) of the PSE Act;
 - (c) say that s.9.1 of the Code of Conduct:-
 - (i) is not itself legally enforceable;
 - (ii) does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
45. As to paragraph 78 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 78;

- (b) say that s.3.1 of the PGFPC does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
46. As to paragraph 79 of the of the 3rd FASC, the Respondents:-
- (a) admit paragraph 79;
 - (b) say that Appendix A of the PGFPC does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
47. As to paragraph 80 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 80 if the word “off” is deleted and the word “of” is substituted;
 - (b) say that s.9.2 of the Code of Conduct restates the ethics obligation in s.8 of the PSE Act;
 - (c) says that s.9.2 of the Code of Conduct:-
 - (i) is not itself legally enforceable;
 - (ii) does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
48. As to paragraph 81 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 81;
 - (b) say that s.3.2 of the PGFPC does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
49. As to paragraph 82 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 82;
 - (b) say that s.9.3 of the Code of Conduct restates the ethics obligation in s.9 of the PSE Act;
 - (c) says that s.9.3 of the Code of Conduct:-
 - (i) is not itself legally enforceable;
 - (ii) does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
50. As to paragraph 83 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 83;

- (b) say that Appendix A of the Code of Conduct does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
51. As to paragraph 84 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 84;
 - (b) say that s.3.3 of the Code of Conduct does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
52. As to paragraph 85 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 85;
 - (b) say that s.9.4 of the Code of Conduct restates the ethics obligation in s.10 of the PSE Act;
 - (c) say that s.9.4 of the Code of Conduct:-
 - (i) is not itself legally enforceable;
 - (ii) does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
53. As to paragraph 86 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 86;
 - (b) say that s.3.4 of the PGFPC does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
54. As to paragraph 87 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 87;
 - (b) say that s.10 of the Code of Conduct as pleaded in paragraph 87 does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
55. The Respondents admit paragraphs 88 and 89 of the 3rd FASC.
56. As to paragraph 90 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 90;
 - (b) say that s.4.1 of the PGFPC does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.

57. As to paragraph 91 of the 3rd FASC, the Respondents admit paragraph 91 if the word “objectively” is inserted after the word “integrity” in paragraph 90(a).
58. As to paragraph 92 of the 3rd FASC, the Respondents:-
 - (a) admit paragraph 92;
 - (b) say that Appendix A s.17.1 of the Code does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
59. As to paragraph 93 of the 3rd FASC, the Respondents:-
 - (a) admit paragraph 93;
 - (b) say that s.4.4 of the PGFPC does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.
60. The Respondents admit paragraphs 94 to 97 of the 3rd FASC.
61. As to paragraph 98 of the 3rd FASC, the Respondents:-
 - (a) admit paragraph 98;
 - (b) say that Appendix A of the Code of Conduct does not contain “conduct obligations” within the meaning of s.18 of the PSE Act.

F4 Duty to Assist Coroner

62. The Respondents admit paragraph 99 of the 3rd FASC.
63. As to paragraph 100 of the 3rd FASC, the Respondents:-
 - (a) admit that QPS officers had a duty to assist coroners in the performance of a function or exercise of a power under the *Coroners Act* in relation to the death of Mulrunji by s.447A of the PPRA and s.8.4.1 of the OPM;
 - (b) otherwise deny paragraph 100.
64. As to paragraph 101 of the 3rd FASC, the Respondents:-
 - (a) admit paragraph 101;
 - (b) say that the Coroner’s Guidelines applied to coroners only and not to police officers.
65. As to paragraph 102 of the 3rd FASC, the Respondents:-
 - (a) deny paragraph 102(a);

- (b) admit that by the operation of s.447A of the PPRA police officers investigating a death in custody should do the things described in paragraph 102(b);
 - (c) deny that such police officers were obliged to do the things described in paragraph 102(b) by the operation of s.14 of the *Coroners Act* or the matters pleaded in paragraphs 74 and 77-81 of the 3rd FASC;
 - (d) deny paragraph 102(c).
66. The Respondents admit paragraphs 103 and 104 of the 3rd FASC so far as it applies to the investigation team and Inspector Williams.

F5 Requirement for Impartial Investigation

67. The Respondents admit paragraph 105 of the 3rd FASC so far as it applies to the investigation team and Inspector Williams.
68. As to paragraph 106 of the 3rd FASC, the Respondents:-
- (a) admit paragraphs 106(i) and 106(ii);
 - (b) say that the matters pleaded in paragraph 106(b) did not impose any obligation on Inspector Williams or DI Webber.
69. The Respondents admit paragraph 107 of the 3rd FASC.
70. As to paragraph 108 of the 3rd FASC, the Respondents:-
- (a) admit that QPS officers investigating Mulrunji's death in custody in November 2004 were obliged to do the things mentioned:-
 - (i) in paragraph 108(a) by s.1.17 of the OPM pleaded in paragraph 52 of the 3rd FASC;
 - (ii) in paragraph 108(i)(ii) by s.18 of the PSE Act pleaded in paragraph 71 of the 3rd FASC;
 - (b) otherwise deny paragraph 108 because there was no obligation to do the things mentioned for the reasons pleaded in paragraphs 38 and 41 herein.

F6 Protection of Integrity of Investigation

71. The Respondents admit paragraphs 109 to 113 of the 3rd FASC.

72. As to paragraph 114 of the 3rd FASC the Respondents admit paragraph 114 if the words “were involved” in paragraph (b) are deleted and the words “are involved” are substituted.
73. As to paragraph 115 of the 3rd FASC, the Respondents:-
- (a) deny paragraph 115 because the matters pleaded in paragraphs 70 to 97 and 109 to 114 of the 3rd FASC and the common law do not impose obligations in the terms described;
 - (b) say that in investigating a death in custody QPS officers were subject to the requirements of the law including applicable provisions of the OPM and Code of Conduct.

F7 Support to Aboriginal Witnesses

74. As to paragraph 116 of the 3rd FASC, the Respondents:-
- (a) say that the words “The person is to be:” should be inserted before paragraph (i) of the Order in s.6.3.2 of the OPM;
 - (b) with that change, admit paragraph 116.

F8 Other Duties

75. As to paragraphs 117-118 of the 3rd FASC, the Respondents:-
- (a) admit that the OPM contained Procedures in the terms pleaded;
 - (b) deny that such Procedures imposed a duty, having regard to the definition of “Procedure” as pleaded in paragraph 35 of the 3rd FASC;
 - (c) deny that the Procedure in s.16.24.3 of the OPM required a presumption of homicide or required a death to be treated as a homicide or required a person to be treated as a homicide suspect.
76. The Respondents deny paragraph 119 of the 3rd FASC and say that, as alleged in paragraph 214 of the 3rd FASC the Notification Duty conformed with recommendations 19 to 20 of the RCIADIC.

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

G1 Notification of Death and Appointment of Investigation Term

77. The Respondents admit paragraphs 120, 121, 122 and 123 of the 3rd FASC and say further as to paragraph 122 that DS Robinson was appointed to assist with the investigation because of his extensive local knowledge of Palm Island and its residents.
78. As to paragraph 124 of the 3rd FASC, the Respondents admit that at about 12.20pm on Friday 19 November 2004 DI Webber notified Detective Inspector Aspinall, the officer in charge of the Coronial Support Unit in Brisbane, of Mulrunji's death and that the State Coroner was immediately notified of the death.
79. The Respondents admit paragraph 125 of the 3rd FASC.
80. As to paragraph 126 of the 3rd FASC, the Respondents:-
 - (a) admit paragraph 126;
 - (b) say that SS Hurley was the first response officer within the meaning of that expression in s.1.17 of the OPM pleaded in paragraph 54 of the 3rd FASC;
 - (c) say that SS Hurley was the most senior officer for the purposes of s.7.1(1) of the PSAA pleaded in paragraph 6(h) of the 3rd FASC;
 - (d) say that as the first response officer SS Hurley was required to make an immediate assessment of the situation and inquire as to the circumstances surrounding the incident.
81. As to paragraph 127 of the 3rd FASC, the Respondents:-
 - (a) admit paragraph 127;
 - (b) say that other than SS Hurley and Sergeant Leafe, PLO Bengaroo was the only other police officer on duty at the Palm Island police station when the investigation team arrived on Palm Island at approximately 2.55pm on 19 November 2004;
 - (c) say that whilst PLO Bengaroo could have transported the investigation team from the airport to the police station, he too was to be interviewed as part of the investigation into Mulrunji's death;
 - (d) say that there was no taxi service or public transport on Palm Island that could have transported the nine investigating officers and their equipment from the airport to the police station.

82. As to paragraph 128 of the 3rd FASC, the Respondents:-

- (a) admit that Constable Tonges and Constable Steadman were present on Palm Island on 19 November 2004 and attended the police station after the death of Mulrunji;
- (b) admit that Constable Tonges and Constable Steadman were not asked or directed to transport the investigation team from the airport;
- (c) say that neither Constable Tonges nor Constable Steadman was rostered on duty at the time the investigation team arrived on Palm Island;
- (d) otherwise do not know and cannot admit paragraph 128.

83. As to paragraph 129 of the 3rd FASC, the Respondents:-

- (a) admit that SS Hurley drove DI Webber and DSS Kitching from the Palm Island airport to the Palm Island police station;
- (b) say that at the time SS Hurley drove DI Webber and DSS Kitching from the Palm Island airport to the Palm Island police station, the investigation team was not aware of the allegation made later that SS Hurley had assaulted Mulrunji;
- (c) say that the trip from the Palm Island airport to the Palm Island police station is 2.8 kilometres in distance, with an estimated driving time of six minutes;
- (d) admit that during the trip from the Palm Island airport to the Palm Island police station, there was a conversation about:
 - (i) what the investigation team was going to do;
 - (ii) the role of the Tactical Crime Squad in taking over the general policing functions;
 - (iii) safety concerns on Palm Island once it became known that there had been a death in custody;
- (e) admit paragraphs 129(a) and 129(c);
- (f) deny paragraph 129(b).

G2 Conduct of Investigation on 19 November 2004

84. The Respondents admit paragraph 130 of the 3rd FASC.

85. As to paragraph 131 of the 3rd FASC, the Respondents:-

- (a) say that having regard to paragraph 241 of the 3rd FASC, paragraph 131 is embarrassing and irrelevant to the extent it refers to any QPS officer other than DI Webber or Inspector Strohfeldt;
 - (b) admit that between 19 November and 24 November 2004 neither DI Webber nor Inspector Strohfeldt advised or directed SS Hurley not to discuss the circumstances surrounding the death in custody with other QPS officers.
86. The Respondents deny paragraph 132 of the 3rd FASC.
87. The Respondents deny paragraph 133 of the 3rd FASC.
88. The Respondents admit paragraph 134 of the 3rd FASC and further say that:-
- (a) PLO Bengaroo was interviewed between 4.50pm and 5.10pm;
 - (b) Gladys Nugent was interviewed between 5.34pm and 5.45pm;
 - (c) Patrick Bramwell was interviewed between 6.58pm and 7.07pm.
89. The Respondents admit paragraphs 135 and 136 of the 3rd FASC.
90. As to paragraph 137 of the 3rd FASC, the Respondents:-
- (a) admit that from 10.30pm until approximately 11.30pm on 19 November 2004 DI Webber, DSS Kitching and DS Robinson ate a meal, prepared by DSS Robinson, with SS Hurley at SS Hurley's residence, during which meal they consumed a modest amount of beer;
 - (b) admit that Sergeant Leafe and his wife were present for part of that time;
 - (c) deny that there were any discussions with SS Hurley concerning the investigation.

G3 Conduct of Investigation on 20 November 2004

91. As to paragraph 138 of the 3rd FASC, the Respondents:-
- (a) admit paragraph 138 and say that the interview occurred on 20 November 2004;
 - (b) say that during his interview Roy Bramwell stated that:-
 - (i) he saw SS Hurley punch Mulrunji after Mulrunji had been taken inside the police station;

- (ii) he could only see Mulrunji's legs at the time SS Hurley was alleged to have punched Mulrunji;
 - (iii) he saw Mulrunji punch SS Hurley and swear at him when Mulrunji was in the back of the police van before being taken into the police station.
- 92. As to paragraph 139 of the 3rd FASC the Respondents admit that between 8.27am and 10.52am on Saturday 20 November 2004 DS Robinson prepared a typed statement of Roy Bramwell.
- 93. As to paragraph 140 of the 3rd FASC, the Respondents admit that Inspector Mark Williams of the QPS Ethical Standards Command arrived on Palm Island to overview the QPS investigation at or about 10.30am on Saturday 20 November 2004.
- 94. The Respondents admit paragraph 141 of the 3rd FASC.
- 95. As to paragraph 142 of the 3rd FASC, the Respondents:-
 - (a) admit paragraph 142;
 - (b) say that during the video re-enactment Roy Bramwell stated that:-
 - (i) he did not hear or actually see SS Hurley punch Mulrunji;
 - (ii) he only saw SS Hurley's elbow "come up three times"
- 96. The Respondents admit paragraph 143 of the 3rd FASC.
- 97. As to paragraph 144 of the 3rd FASC, the Respondents:-
 - (a) admit paragraph 144;
 - (b) say that SS Hurley was the officer who arrested Mulrunji and was best placed to provide information to the investigators at the arrest scene;
 - (c) say that PLO Bengaroo had been interviewed by investigators on 19 November 2004 and participated in a video re-enactment on 20 November 2004 when he gave information about Mulrunji's arrest and the events that followed;
 - (d) say that there was no reason relating to the investigation which made it necessary for PLO Bengaroo to also attend the arrest scene.
- 98. As to paragraph 145 of the 3rd FASC, the Respondents:-
 - (a) admit paragraph 145(a);
 - (b) say that Mulrunji was arrested in Dee Street, a public place;

(c) do not know and cannot admit paragraph 145(b).

99. The Respondents admit paragraph 146 of the 3rd FASC.

100. As to paragraph 147 of the 3rd FASC, the Respondents:-

- (a) deny that DI Webber asked the questions pleaded in paragraphs 147(a) and 147(c) and made the statement in paragraph 147(e) because Inspector Williams asked those questions and made that statement;
- (b) say that the question in paragraph 147(a) related to what PLO Bengaroo was doing as SS Hurley and Sergeant Leafe dragged Mulrunji down the hallway in the police station leading to the cells;
- (c) admit that PLO Bengaroo made the statements attributed to him;
- (d) say that after making the statement in paragraph 147(d) PLO Bengaroo was questioned about whether he saw SS Hurley do anything while Mulrunji was on the ground and whether he saw SS Hurley punch Mulrunji.

101. The Respondents admit paragraphs 148 and 149 of the 3rd FASC.

G4 Completion of Form 1 and Conduct of Inquest

102. The Respondents admit paragraphs 150 to 156 of the 3rd FASC.

103. As to paragraph 157 of the 3rd FASC, the Respondents:-

- (a) admit paragraphs 157(a) and 157(c);
- (b) deny paragraph 157(b) and say that the Form 1 was sent by email to the State Coroner at 7.43am on Monday 22 November 2004 and was faxed to the State Coroner at 10.40am on Monday 22 November 2004;
- (c) say that Monday 22 November 2004 was the first business day after Friday 19 November 2004.

104. As to paragraphs 158 and 159 of the 3rd FASC, the Respondents:-

- (a) admit paragraphs 158 and 159 of the 3rd FASC;
- (b) say further in relation to paragraph 158 that DSS Kitching intended to send a Supplementary Form 1 to the Coroner containing a précis of all statements from interviews conducted during the investigation but the investigation was handed over to the CMC before he could do so.

105. As to paragraph 160 of the 3rd FASC, the Respondents:-

- (a) admit that on 23 November 2004 DSS Kitching attended the autopsy conducted by Dr Lampe in Cairns;
- (b) admit paragraph 160(b);
- (c) otherwise deny paragraph 160.

106. The Respondents admit paragraph 161 of the 3rd FASC.

107. As to paragraph 162 of the 3rd FASC, the Respondents:-

- (a) deny that the preliminary autopsy report stated that *"there was no evidence to suggest the ingestion of any caustic substance"*;
- (b) say that the preliminary autopsy report stated that *"there is nothing to suggest that this man has drunk any bleach or other caustic substance"*;
- (c) otherwise admit paragraph 162.

108. The Respondents admit paragraph 163 of the 3rd FASC and say that the CMC assumed responsibility for the investigation at the request of the QPS made on 23 November 2004.

H QPS FAILURES OF 19 TO 24 NOVEMBER 2004

H1 Responsible Officers

109. As to paragraph 164 of the 3rd FASC, the Respondents:-

- (a) admit that at the time Inspector Strohfeldt was notified of the death of Mulrunji as pleaded in paragraphs 23 and 24 of the 3rd FASC, Inspector Strohfeldt was the regional duty officer for the purposes of s.1.17 of the OPM;
- (b) say that Inspector Strohfeldt was the regional duty officer on 19 November 2004 because he had been rostered as such on Monday 15 November 2004 and not because of being notified of Mulrunji's death.

110. The Respondents admit paragraphs 165 and 166 of the 3rd FASC so far as it relates to the period from Friday 19 November 2004 until the CMC assumed responsibility for the investigation on Wednesday 24 November 2004.

H5 Failures in Relation to Cultural Advisory Unit, Cross Cultural Liaison Officers and to consider Cultural Needs

111. The Respondents admit paragraphs 186 and 187 of the 3rd FASC.

112. As to paragraph 188 of the 3rd FASC, the Respondents:-

- (a) admit that QPS officers were subject to the Policy in s.6.4 of the OPM pleaded in paragraph 44(a) of the 3rd FASC;
- (b) deny that that Policy required QPS officers to consider the matters referred to in paragraph 32 of the 3rd FASC;
- (c) admit that QPS officers who were in charge of stations or establishments were subject to the Policy in s.6.4.7 of the OPM pleaded in paragraph 44(b) of the 3rd FASC;
- (d) deny that that Policy required such QPS officers to consider the matters referred to in paragraph 32 of the 3rd FASC.

113. The Respondents admit paragraphs 189 and 190 of the 3rd FASC.

114. As to paragraph 191 of the 3rd FASC, 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.

115. As to paragraph 192 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 192;
- (b) say that the CAU was first notified of Mulrunji's death at 11.50am on 19 November 2004, and was further notified at 12.30pm on 19 November 2004.

116. As to paragraph 193 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 193;
- (b) say that at the time the CAU was first notified of Mulrunji's death at 11.50am on 19 November 2004, it provided advice regarding the relevant sections of the OPM

to be complied with and advised that the Aboriginal and Torres Strait Island Legal Service needed to be engaged;

- (c) say that when the CAU was contacted at 12.30pm, a contingency plan for policing for Palm Island, if required, was discussed.

117. As to paragraph 194 of the 3rd FASC, the Respondents:-

- (a) admit paragraph 194(a);
- (b) say that on 19 November 2004 the CAU provided advice to QPS Officers on Palm Island about the matters pleaded in paragraph 194(b);
- (c) deny paragraph 194(b).

118. The Respondents deny paragraph 195 of the 3rd FASC.

119. As to paragraph 196 of the 3rd FASC, the Respondents:-

- (a) object to pleading to paragraph 196(a) insofar as it relates to Sergeant Leafe and Constable Steadman because the 3rd FASC does not allege that the conduct of those officers is in issue;
- (b) say that the Policy in s.6.4 of the OPM pleaded in paragraph 44(b) of the 3rd FASC is addressed to officers in charge of stations or establishments;
- (c) say that DI Webber was not such an officer and that Policy did not apply to him;
- (d) otherwise deny paragraph 196.

120.

H6 Failure of Strohfeldt to comply with s.1.17 OPM

121. The Respondents admit paragraph 197 of the 3rd FASC.

122. As to paragraph 198 of the 3rd FASC, the Respondents:-

- (a) admit that Inspector Strohfeldt did not attend Palm Island on 19 November 2004 after being notified of Mulrunji's death at about 11.30am on that day;
- (b) say that DI Webber, the regional crime coordinator, was involved in and directly responsible for the investigation into Mulrunji's death from the time between 11.40am and 12 noon on 19 November 2004 when Inspector Strohfeldt notified him of Mulrunji's death;

- (c) say that DI Webber travelled from Townsville to Palm Island on 19 November 2004, arriving on Palm Island at 2.55pm;
- (d) say that Inspector Strohfeldt was in Townsville on 19 November 2004;
- (e) say that Inspector Strohfeldt could not reasonably have travelled to Palm Island on 19 November 2004 to arrive on Palm Island any earlier than 2.55pm;
- (f) say that paragraphs (i) and (ii) of s.1.17 of the OPM pleaded in paragraph 55 of the 3rd FASC require the regional duty officer to do the things in paragraph (i) pending the arrival or involvement of the regional crime coordinator;
- (g) deny that Inspector Strohfeldt failed to comply with paragraphs (i) and (ii) of s.1.17 of the OPM in the circumstances pleaded above;
- (h) deny that Inspector Strohfeldt failed to comply with paragraph (iv) of s.1.17 of the OPM;
- (i) deny that Inspector Strohfeldt failed to comply with paragraph (v) of s.1.17 of the OPM because it was not practicable to ensure that members who were involved in the incident or were witnesses to the incident did not undertake or continue to perform duties associated with the investigative process or other duties at the scene;
- (j) deny that Inspector Strohfeldt failed to comply with paragraph (vi) of s.1.17 of the OPM because members involved in the incident or who were witnesses to it were available for interview.

123. As to paragraph 199 of the 3rd FASC, the Respondents:-

- (a) say that Inspector Strohfeldt could not reasonably have travelled to Palm Island on 19 November 2004 to arrive on Palm Island before DI Webber and the investigation team;
- (b) say that Inspector Strohfeldt was not in a position and could not reasonably have been in a position to make inquiries to determine whether or not Constable Steadman had relevant evidence to give;
- (c) otherwise deny paragraph 199.

124. As to paragraph 200 of the 3rd FASC, the Respondents:-

- (a) admit that Constable Steadman was not interviewed by the investigation team before the CMC took over the investigation on 24 November 2004;
- (b) say that Constable Steadman was interviewed by CMC investigators on 8 December 2004;
- (c) admit that SS Hurley continued to perform duties at the Palm Island police station on 19 November 2004;
- (d) deny that Constable Steadman not being interviewed by the investigation team was a result of Inspector Strohfeldt not attending Palm Island;
- (e) say that Constable Steadman not being interviewed by the investigation team was the result of the matters pleaded in paragraphs 126(c) and (d) hereof;
- (f) otherwise deny paragraph 200.

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

125. As to paragraph 201 of the 3rd FASC, the Respondents:-

- (a) admit that as regional crime coordinator DI Webber was subject to the Policy under s.1.17 of the OPM pleaded in paragraph 53;
- (b) deny that DI Webber was required to comply with that Policy;
- (c) admit that as regional crime coordinator DI Webber was required to comply with the Order in s.1.17 of the OPM pleaded in paragraph 56(b)(v).

126. As to paragraph 202 of the 3rd FASC, the Respondents:-

- (a) admit that QPS officers were subject to the Procedure in s.2.5.1 of the OPM pleaded in paragraph 63(b) of the 3rd FASC;
- (b) deny that the Procedure in s.2.5.1 of the OPM imposed a requirement, having regard to the definition of "Procedure" as pleaded in paragraph 35 of the 3rd FASC.

127. As to paragraph 203 of the 3rd FASC, the Respondents:-

- (a) admit that neither DI Webber nor DSS Kitching interviewed Constable Steadman in the course of their investigation from Friday 19 November 2004 until the CMC took over the investigation on Wednesday 24 November 2004;

- (b) say that after the CMC took over the investigation on 24 November 2004, Constable Steadman was not interviewed by CMC investigators until 8 December 2004;
- (c) say that Constable Steadman did not approach the investigation team to inform them that he had any evidence to give relating to the investigation;
- (d) say that there was no information available to the investigation team which indicated that Constable Steadman had seen SS Hurley remove Mulrunji from the police van or the fall through the door of the police station.

128. The Respondents deny paragraph 204 of the 3rd FASC.

H8 Failure to involve the SCOC, Homicide Investigation Group

129. As to paragraph 205 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 205;
- (b) say that the provisions of the OPM and the Coroner's Guidelines (if they applied to police officers, which is denied) pleaded in paragraph 205 did not require the involvement of the SCOC in the investigation.

130. The Respondents admit paragraphs 206, 207 and 208 of the 3rd FASC.

131. As to paragraph 209 of the 3rd FASC, the Respondents object to pleading thereto because the applicants do not allege any breach of the QPS internal notification requirements;

132. The Respondents deny paragraph 210 of the 3rd FASC.

133. As to paragraph 211 of the 3rd FASC, the Respondents:-

- (a) admit that the Homicide Investigation Group was not involved in the investigation of the death of Mulrunji;
- (b) say that there was no requirement for the Homicide Investigation Group to be involved in that investigation by reason of the matters pleaded in paragraphs 205 to 210 of the 3rd FASC;
- (c) say that DI Webber's conduct of the investigation was in accordance with the Order in s.1.17 of the OPM pleaded in paragraph 56(a) of the 3rd FASC that all police related incidents are to be investigated under the direction of the regional

crime coordinator unless otherwise directed by the Internal Investigation Branch, Ethical Standards Command or the Crime and Misconduct Commission;

- (d) say that over the period from 19 to 24 November 2004 there was no direction by the Internal Investigation Branch or the CMC for the investigation not to be conducted by the regional crime coordinator.

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

134. As to paragraph 212 of the 3rd FASC, the Respondents:-

- (a) admit that the Form 1 was completed in the evening of Friday, 19 November 2004;
- (b) admit that the Form 1 was sent to the Coroner at about 7.43am and again at 10.40am on Monday 22 November 2004, the next business day after 19 November 2004;
- (c) admit paragraph 212(b);
- (d) admit paragraph 212(c)(i) and (ii);
- (e) do not know and cannot admit that the loud noises being made by Mulrunji as alleged in paragraph 212(c)(iii) were noises made as if in distress;
- (f) otherwise admit paragraph 212(c)(iii);
- (g) deny paragraph 212(c)(iv);
- (h) admit that the Form 1 stated that Mulrunji “laid on the floor of the cell and went to sleep immediately”;
- (i) deny that that statement was incorrect;
- (j) admit that no supplementary Form 1 was prepared to include the allegations of assault made by Roy Bramwell or Penny Sibley;
- (k) admit paragraph 212(g);
- (l) otherwise deny paragraph 212.

H10 Failure to immediately notify next of kin

135. As to paragraph 213 of the 3rd FASC, the Respondents:-

- (a) admit that Mulrunji's partner, Ms Twaddle, was notified of Mulrunji's death at about 3.40pm on 19 November 2004 by DI Webber who was accompanied by Sergeant Leafe and Owen Marpoondin of the Aboriginal and Torres Strait Islander Legal Services;
- (b) admit that Mulrunji's mother and other family members were notified of Mulrunji's death at about 3.55pm on 19 November 2004 by DI Webber who was accompanied by Sergeant Leafe and Owen Marpoondin;
- (c) say that DI Webber, as the commissioned officer responsible for the investigation into Mulrunji's death decided to personally notify Mulrunji's next of kin and did so at the earliest opportunity after arriving on Palm Island, after ascertaining the circumstances of the death, and arranging the support of appropriate persons when notifying the next of kin;
- (d) deny that DI Webber contravened s.16.24.3 (vi) to (viii) of the OPM;
- (e) deny that DI Webber contravened s.1.17 of the OPM;
- (f) deny that DI Webber contravened the Reasonable Diligence Duty.

136. The Respondents admit paragraph 214 of the 3rd FASC.

H11 Failure to treat PLO Bengaroo appropriately

137. As to paragraph 215 of the 3rd FASC, the Respondents:-

- (a) say that PLO Bengaroo was also present at the scene of the arrest and the scene of the death;
- (b) therefore deny paragraph 215(e);
- (c) otherwise admit paragraph 215.

138. As to paragraph 216 of the 3rd FASC, the Respondents:-

- (a) say that paragraphs 143 and 146 of the 3rd FASC do not plead allegations made by Roy Bramwell;
- (b) say that to the extent paragraph 215 is admitted, and subject to paragraph (a) hereof, they admit paragraph 216;
- (c) say further that the members of the investigation team and Inspector Williams had formed the view that the allegations by Roy Bramwell were not credible.

139. As to paragraph 217 of the 3rd FASC, the Respondents:-

- (a) say that DSS Kitching and DS Robinson conducted an audio-recorded interview with PLO Bengaroo on 20 November 2004 between 4.50pm and 5.09pm on 19 November 2004;
- (b) say that DI Webber and Inspector Williams conducted a video-recorded re-enactment interview with PLO Bengaroo between 12.10pm and 12.22pm;
- (c) say that on the morning of 20 November 2004 the following sequence of events occurred:-
 - (i) DSS Kitching and DS Robinson drove to Roy Bramwell's house at about 8am to bring Roy Bramwell to the police station for an interview;
 - (ii) between 8.15am and 8.27 DSS Kitching and DS Robinson conducted an audio-recorded interview with Roy Bramwell;
 - (iii) DS Robinson then prepared a typed statement from the audio recording;
 - (iv) Inspector Williams arrived on Palm Island at about 10.30am;
 - (v) Inspector Williams was briefed on the investigation by DI Webber, DS Kitching and DS Robinson and reviewed the interviews and statements then in existence;
 - (vi) between 10.52am and 11.02am DI Webber and Inspector Williams conducted a video-recorded re-enactment interview with Roy Bramwell;
 - (vii) at about 11.20am DI Webber, Inspector Williams, DSS Kitching, Constable Tibbey and SS Hurley visited the scene of Mulrunji's arrest;
 - (viii) between 11.53am and 12.07pm DI Webber and Inspector Williams conducted a video-recorded re-enactment interview with SS Hurley;
 - (ix) between 12.10pm and 12.22pm DI Webber and Inspector Williams conducted a video-recorded re-enactment interview with PLO Bengaroo;
 - (x) between 12.50pm and 1.12pm DI Webber and Inspector Williams conducted a video-recorded re-enactment interview with Sergeant Leafe;
- (d) say that PLO Bengaroo was the second person interviewed on 19 November 2004 and the third person interviewed on 20 November 2004;

- (e) say that PLO Bengaroo was interviewed as comprehensively as possible and at the earliest possible opportunity;
- (f) deny paragraph 217.

H12 Failure to treat SS Hurley as a suspect

140. As to paragraph 218 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 218;
- (b) say that the cause of death was not known until 24 November 2004.

141. The Respondents admit paragraph 219 of the 3rd FASC.

142. The Respondents deny paragraph 220 of the 3rd FASC.

143. The Respondents admit paragraph 221 of the 3rd FASC.

144. As to paragraph 222 of the 3rd FASC, the Respondents admit that s.2.14.2 of the OPM was a Policy providing that “interviews of suspects for indictable offences are to be electronically recorded by using electronic recording equipment if practicable”.

145. As to paragraph 223 of the 3rd FASC, the Respondents:-

- (a) admit that DI Webber, DSS Kitching and DS Robinson did not treat SS Hurley as a suspect in a homicide or assault investigation;
- (b) deny that the Procedure in s.16.24.3 of the OPM required a presumption of homicide to be made;
- (c) do not know the meaning of the ‘Reasonable Investigation Duty’ referred to therein, and therefore cannot plead to the allegation that DI Webber, DSS Kitching and DS Robinson contravened such a duty.
- (d) otherwise deny paragraph 223.

146. As to paragraph 224 of the 3rd FASC, the Respondents:-

- (a) admit that the discussions pleaded in paragraphs 129 and 144 of the 3rd FASC were not electronically recorded;
- (b) admit that conversations during the meal at SS Hurley’s house were not electronically recorded;
- (c) deny that conversations during the meal at SS Hurley’s house were or included discussions concerning the investigation;

- (d) deny that there was any requirement to electronically record those discussions or conversations.

H13 Failure to provide support to Aboriginal witnesses

147. As to paragraph 225 of the 3rd FASC, the Respondents:-

- (a) admit that members of the investigation team and Inspector Williams did not ask the seven Aboriginal witnesses whether they would like to have a support person present at their interviews;
- (b) say that under s.6.3.6 of the OPM the use of a support person was discretionary having regard to the ability of the person being interviewed to look after or manage their own interests;
- (c) deny that the seven Aboriginal witnesses had any special needs relevant in the circumstances of being interviewed as witnesses;
- (d) admit paragraph 225(c) and say further that:-
 - (i) DSS Kitching also formed the opinion that PLO Bengaroo was not difficult to talk to;
 - (ii) DI Webber was also of the opinion that if PLO Bengaroo was challenged he would go into a shell and an interviewer would get nothing further from him;
 - (iii) Inspector Williams also formed the view that PLO Bengaroo's role caused him distress and that PLO Bengaroo felt he could do nothing without further risk of ridicule and censure from his own people;
- (e) otherwise deny paragraph 225.

H14 Failure to avoid actual and apparent conflicts of interest

148. As to paragraph 226 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 226(a);
- (b) admit that DS Robinson was from the same police station as SS Hurley;
- (c) admit that DS Robinson had worked with SS Hurley on Palm Island for about two years;

- (d) admit that DS Robinson and SS Hurley had lived on Palm Island for about 2 years;
- (e) say that SS Hurley held a higher rank than DS Robinson;
- (f) otherwise deny paragraph 226.

149. The Respondents deny paragraphs 227 and 228 of the 3rd FASC.

150. As to paragraph 229 of the 3rd FASC, the Respondents:-

- (a) admit that the appearance of the impartiality of the investigation was compromised by the investigators having a meal at SS Hurley's residence;
- (b) otherwise deny paragraph 229.

151. The Respondents deny paragraph 230 of the 3rd FASC.

152. As to paragraph 231 of the 3rd FASC, the Respondents:-

- (a) admit that between 19 November and 24 November 2004 DSS Kitching and DI Webber knew the matters pleaded in paragraph 148(b) hereof;
- (b) admit that between 19 November 2004 and the arrival of Inspector Williams, DSS Kitching and DI Webber allowed DS Robinson to be part of the investigation team;
- (c) say that after the arrival of Inspector Williams DS Robinson performed only administrative tasks in relation to the investigation;
- (d) otherwise deny paragraph 231.

153. As to paragraph 232 of the 3rd FASC, the Respondents:-

- (a) admit that SS Hurley was not suspended from duty immediately after Mulrunji's death;
- (b) say that on the afternoon of Saturday 20 November 2004 the investigation team returned to Townsville;
- (c) say that on Sunday 21 November 2004 SS Hurley had a rostered day off;
- (d) admit that SS Hurley left Palm Island on the afternoon of Monday 22 November 2004;
- (e) otherwise deny paragraph 232.

154. The Respondents deny paragraph 233 of the 3rd FASC.

H15 Compromise of integrity of investigation

155. As to paragraph 234 of the 3rd FASC, the Respondents:-

- (a) admit that DI Webber appointed DSS Kitching and not the State Homicide Investigation Group to conduct the investigation with Mulrunji's death;
- (b) otherwise deny paragraph 234.

156. The Respondents deny paragraph 235 of the 3rd FASC.

157. As to paragraph 236 of the 3rd FASC, the Respondents:-

- (a) admit paragraphs (i) to (iii) of the Particulars to paragraph 236;
- (b) otherwise deny paragraph 236.

158. As to paragraph 237 of the 3rd FASC, the Respondents:-

- (a) admit that neither DI Webber nor Inspector Strohfeldt provided any advice or instructions to SS Hurley not to undertake or continue to perform duties associated with the investigative process or other duties at the scene;
- (b) deny that the provisions of the OPM referred to required the giving of such advice or instructions;
- (c) otherwise deny paragraph 237.

159. As to paragraph 238 of the 3rd FASC, the Respondents:-

- (a) admit that Inspector Williams was advised of the death of Mulrunji on 19 November 2004;
- (b) admit that Inspector Williams was subject to the Orders and Policies pleaded in paragraph 57 of the 3rd FASC;
- (c) deny that Inspector Williams failed to comply with those Orders and Policies.

160. The Respondents deny paragraph 239 of the 3rd FASC.

161. As to paragraph 240 of the 3rd FASC, the Respondents:-

- (a) say that they requested particulars of the appropriate advice that Inspector Williams ought to have provided to DI Webber;
- (b) say that the Applicants responded by saying:-

“The Applicants do not ask the Court to determine precisely what advice Inspector Williams ought to have provided to DI Webber about those matters, nor could they. The allegation is that appropriate advice ought to have been provided.”;

- (c) say that paragraph 240 is so lacking in particularity that they are unable to plead thereto;
- (d) say that paragraph 240 is evasive and ambiguous and is likely to cause prejudice, embarrassment or delay in the proceeding within the meaning of Rules 16.02(2)(c) and (d) and should be struck out;
- (e) deny paragraph 240 because they do not know what is being alleged.

162. As to paragraph 241 of the 3rd FASC, the Respondents:-

- (a) admit that DI Webber and Inspector Strohfeldt did not instruct officers not to talk to each other about Mulrunji’s death and the surrounding events;
- (b) deny that DI Webber and Inspector Strohfeldt thereby failed to ensure the integrity of the independent versions of events of officers was preserved as far as practicable;
- (c) deny that the failure to give such an instruction was a contravention of obligations under s.1.17 of the OPM;
- (d) says that the relevant provision of s.1.17 of the OPM did not require DI Webber or Inspector Strohfeldt to give such an instruction.

163. The Respondents admit paragraph 242 of the 3rd FASC.

164. The Respondents deny paragraph 243 of the 3rd FASC.

I UNLAWFUL RACIAL DISCRIMINATION IN QPS FAILURES

II QPS Failures

165. As to paragraph 244 of the 3rd FASC, the Respondents:-

- (a) admit that the acts and failures to act alleged are constituted by acts or are themselves acts as defined in s.3 of the RDA;
- (b) deny that the acts were done in breach of s.9 of the RDA.

I2 Distinction, exclusion, restriction or preference

166. As to paragraph 245 of the 3rd FASC, the Respondents:

- (a) admits that the acts described as the QPS Failures occurred during an investigation by the QPS into the death in custody of an Aboriginal resident of Palm Island;
- (b) deny that those acts occurred during the arrest and death in custody;
- (c) admit that the residents of Palm Island were overwhelmingly Aboriginal or Torres Strait Islanders;
- (d) do not know and cannot admit paragraph 245(b);
- (e) otherwise deny paragraph 245.

167. As to paragraph 246 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 246;
- (b) say that because the QPS is a large organisation consisting of individuals it is inevitable that in the performance of the functions of the QPS honest mistakes and errors of judgment will be made from time to time;
- (c) say that subject to the matter pleaded in (b) above, they admit paragraphs 246(a), 246(b), 246(c), 246(d), 246(e)(i) and 246(e)(ii);
- (d) say that ordinarily the Second Respondent and QPS officers provided services which attempted to meet the cultural needs and ethnic demographic characteristics and needs of all communities;
- (e) say that it is impossible to provide to communities QPS services which will always meet such needs and characteristics because in some instances there is an inevitable tension between the laws applied in providing police services and such needs and characteristics.

168. The Respondents admit paragraph 247 of the 3rd FASC.

169. The Respondents deny paragraphs 248 to 250 of the 3rd FASC.

I3 Systemic and institutional discrimination

170. As to paragraph 251 of the 3rd FASC, the Respondents:-

- (a) say that paragraph 251 is evasive and ambiguous and likely to cause prejudice, embarrassment or delay in the proceeding within the meaning of Rules 16.02(2)(c) and (d) of the Federal Court Rules because:-
 - (i) the acts or failures alleged to comprise the QPS Failures are the acts of individuals;
 - (ii) the QPS Policies, Orders and Procedures are expressed in terms which provide for individuals to act or refrain from acting in specified ways;
- (b) say that paragraph 251 should be struck out;
- (c) object to pleading to paragraph 251 for the above reasons;
- (d) say that if they are required to plead to paragraph 251 they deny paragraph 251.

171. As to paragraph 252 of the 3rd FASC, the Respondents:-

- (a) say that the establishment of the QPS Policies, Orders and Procedures is the making of a law and is for that reason outside the field of operation of s.9 of the RDA;
- (b) say that to the extent that the QPS Policies, Orders and Procedures relate to particular matters by reference to the race, colour, descent or national or ethnic origin of a person, such as s.16.24.3(a)(vii) and (viii) and s.6.3.6 of the OPM, such provisions are a special measure within the meaning of s.8 of the RDA and are for that reason outside the field of operation of s.9 of the RDA;
- (c) say that to the extent the QPS Policies, Orders and Procedures do not differentiate between persons on the basis of race, colour, descent or national or ethnic origin, the establishment of the QPS Policies, Orders and Procedures is not an act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin;
- (d) deny, therefore, that the establishment of the QPS Policies, Orders and Procedures is an act as described in paragraph 252(a);
- (e) say that the allegation in paragraph 252(b) is evasive and ambiguous and likely to cause prejudice, embarrassment or delay in the proceeding within the meaning of Rules 16.02(2)(c) and (d) of the Federal Court Rules because it pleads a matter which is not a material fact in a claim for a breach of s.9 of the RDA, namely, that

the establishment and/or application of the QPS Policies, Orders and Procedures was systemic and institutional discrimination;

- (f) say that paragraph 252(b) should be struck out;
- (g) object to pleading to paragraph 252(b);
- (h) say that if they are required to plead to paragraph 252(b) they do not know and therefore cannot admit paragraph 252(b) because they do not know what is meant by the expression “systemic and institutional discrimination” and do not know how the Applicants relate that expression to the terms of s.9 of the RDA.

I4 Breaches of rights

172. As to paragraph 253 of the 3rd FASC, the Respondents:-

- (a) say that having regard to responses 37 and 40 of the Further and Better Particulars filed by the Applicants on 2 September 2015 it is not necessary to plead to paragraphs 253(b) and 253(f).
- (b) deny that the QPS Failures were capable of having the purpose or effect described in s.9 of the RDA on the recognition, enjoyment or exercise on an equal footing by the Applicants and Group Members of the other rights pleaded in paragraphs 253;
- (c) deny that the QPS Failures had that purpose or effect on the recognition, enjoyment or exercise on an equal footing by the Applicants and Group Members of those other rights.

173. The Respondents deny paragraph 254 of the 3rd FASC.

174. The Respondents deny paragraph 255 of the 3rd FASC.

J EVENTS FROM 22 NOVEMBER 2004

J1 Week after Mulrunji's death

175. As to paragraph 256 of the 3rd FASC, the Respondents:-

- (a) admit that SS Hurley remained on Palm Island until the afternoon of 22 November 2004;

- (b) say that SS Hurley was interviewed by the QPS investigators on both 19 and 20 November 2004 and it was necessary for him to remain on Palm Island for that purpose;
- (c) say that on Sunday 21 November 2004 SS Hurley had a rostered day off;
- (d) say that it was appropriate for SS Hurley to remain on Palm Island to be readily available for further interview by the QPS investigators if that became necessary;
- (e) say that on 22 November 2004 SS Whyte took over from SS Hurley as the officer in charge of the Palm Island Police Station;
- (f) otherwise deny paragraph 256.

176. As to paragraph 257 of the 3rd FASC, the Respondents:-

- (a) admit that on Monday 22 November 2004 Inspector Brian Richardson, who was then rostered as the Regional Duty Officer, was instructed by Acting Assistant Commissioner Roy Wall to travel to Palm Island to take charge of overall policing on Palm Island, which Inspector Richardson did until Friday 26 November 2004;
- (b) admit paragraph 257(b);
- (c) otherwise deny paragraph 257.

177. The Respondents admit paragraphs 258 and 259 of the 3rd FASC.

178. As to paragraphs 260 and 261 of the 3rd FASC, the Respondents:-

- (a) admit that a meeting at 2.30pm on 22 November 2004 was attended by DS Robinson, Inspector Richardson and SS Whyte;
- (b) say that the meeting occurred in an open area on Palm Island next to the Palm Island Council chambers;
- (c) say that approximately 200 Palm Island community members attended the meeting;
- (d) say that at that meeting the First Applicant demanded that SS Hurley be arrested and taken off Palm Island;
- (e) admit that at the meeting, some Palm Island community members expressed their dissatisfaction to Inspector Richardson, SS Whyte and DS Robinson about Mulrunji's death;

- (f) admit that there was a meeting at about 10.30am on 23 November 2004 which was observed by SS Bennett;
- (g) say that at least 150 Palm Island community members attended the meeting;
- (h) admit that there was a private meeting in the Palm Island Council chambers at about 3.00pm on 24 November 2004 attended by Inspector Richardson and SS Whyte;
- (i) admit that there were private meetings in the Palm Island Council chambers at 10.30am and 3.30pm on 25 November 2004 attended by Inspector Richardson and SS Whyte;
- (j) otherwise deny paragraphs 260 and 261.

179. As to paragraph 262 of the 3rd FASC, the Respondents:-

- (a) admit that between 22 November and 24 November 2004 QPS officers stationed on Palm Island received reports from members of the community that other members of the community intended to cause damage to or fire bomb the police station and police barracks;
- (b) admit that the incidents under the heading "Particulars" occurred;
- (c) say that at 12.10pm on 23 November 2004 a Palm Island community member attended the police station and told police that during the meeting held at about 10.30am that day the First Applicant had threatened to burn down all government buildings;
- (d) otherwise deny paragraph 262.

180. As to paragraph 263 of the 3rd FASC, the Respondents:-

- (a) admit paragraph 263;
- (b) say that the direction was given in response to the matters pleaded in paragraph 179 herein;
- (c) say that in further response to those matters:-
 - (i) police officers took the action pleaded in paragraph 264 of the 3rd FASC;
 - (ii) Palm Island community members were interviewed about the threats to firebomb the police station and police barracks;

(iii) police officers attended meetings with community members when invited.

181. As to paragraph 264 of the 3rd FASC, the Respondents:-

- (a) say that on 23 November 2004 at about 5.40pm, police officers on Palm Island arranged for units of the rural fire brigade to be on standby to attend the Palm Island police station compound if required;
- (b) otherwise say that in the limited time available to prepare this pleading, and notwithstanding their reasonable enquiries, they do not know and therefore cannot admit whether Sergeant Leafe was involved in arranging for the rural fire brigade to be on standby to attend the police station.

182. As to paragraph 265 of the 3rd FASC, the Respondents:-

- (a) admit that on 25 November 2004 at 5.55pm, SS Whyte spoke with Ms Denise Geia, who advised him that at that time Ms Kyle was inside the Palm Island Council chambers with members of Mulrunji's family, speaking with the family about the preliminary autopsy report;
- (b) admit that after speaking with Ms Geia, SS Whyte reported to Inspector Richardson the information Ms Geia had provided to him;
- (c) otherwise deny paragraph 265.

183. As to paragraph 266 of the 3rd FASC, the Respondents:-

- (a) say that Inspector Richardson was advised at about 6.05pm;
- (b) otherwise admit paragraph 266.

184. As to paragraph 267 of the 3rd FASC, the Respondents:-

- (a) admit paragraph 267;
- (b) say that the cause of death was not known until the preliminary autopsy report was issued on 24 November 2004;
- (c) say that the CMC took over the investigation on 24 November 2004;
- (d) say that preliminary autopsy report was given by the coroner's office to the CMC.

185. As to paragraph 268 of the 3rd FASC, the Respondents:-

- (a) admit paragraph 268(a);
- (b) otherwise deny paragraph 268.

J2 Emergency situation

186. As to paragraph 269 of the 3rd FASC, the Respondents

- (a) admit that a community meeting was held in the mall on Palm Island on Friday 26 November 2004;
- (b) do not know and cannot admit whether the Palm Island Council convened the meeting;
- (c) do not know and cannot admit whether the members of the Palm Island community gathered to hear the findings of the preliminary autopsy report being announced by Mayor Kyle.

187. As to paragraph 270 of the 3rd FASC, the Respondents:-

- (a) admit that following Mulrunji's death, and prior to the riot on 26 November 2004, Inspector Richardson and SS Whyte considered that there was a risk that peace and good order may not be maintained on Palm Island;
- (b) say that Inspector Richardson and SS Whyte formed that view based on the unsettled atmosphere on Palm Island following Mulrunji's death, during which:
 - (i) at various times, some Palm Island residents threw rocks at the roof of the Palm Island police station, the roof of the police barracks, and at QPS vehicles;
 - (ii) SS Whyte received intelligence on 23 November 2004 that some Palm Island residents had threatened to firebomb the police station;
- (c) say that on the morning of 26 November 2004, prior to the riot, Inspector Richardson participated in a telephone conversation with Ms Denise Geia, who:-
 - (i) advised Inspector Richardson that she did not think any community meeting would be held on Palm Island on 26 November 2004;
 - (ii) gave Inspector Richardson the impression that Palm Island residents would not commit any acts of violence or otherwise 'cause trouble' on 26 November 2004;
- (d) say that Inspector Richardson and SS Whyte considered the risk that peace and good order would not be maintained on Palm Island on 26 November 2004 to be low;

- (e) otherwise deny paragraph 270.

188. As to paragraph 271 of the 3rd FASC, the Respondents

- (a) admit that at the meeting Mayor Kyle represented that the preliminary autopsy report stated that Mulrunji's death was caused by an accidental fall;
- (b) deny that at the meeting Mayor Kyle represented that SS Hurley was not responsible for any criminal wrong doing in relation to the death;
- (c) say that Mayor Kyle represented that:-
 - (i) the preliminary autopsy report stated there was an accident somewhere around the cell in the Palm Island police station at 10.40am on 19 November 2004, and Mulrunji was found dead at 11.23am;
 - (ii) the accident was a fall resulting in compressive force on Mulrunji's body, which caused a rupture in his liver and a lot of bleeding;
 - (iii) there was an investigation into Mulrunji's death, the findings of which would go to the CMC.

189. As to paragraph 272 of the 3rd FASC, in the limited time available to prepare this pleading, and notwithstanding their reasonable enquiries, the Respondents do not know and therefore cannot admit whether any police officer or government representative addressed any members of the Palm Island community present at the meeting on 26 November 2004, either before, during or after the meeting.

190. As to paragraph 273 of the 3rd FASC, the Respondents:-

- (a) deny that the community protested against the death in custody of Mulrunji and the perceived failure of the QPS to hold SS Hurley to account for that death following the meeting because the protest occurred during the meeting;
- (b) say that during the meeting, after Mayor Kyle had spoken about the information contained in the preliminary autopsy report, persons including the First Applicant addressed the meeting protesting against Mulrunji's death being reported to be an accident and SS Hurley not being placed in prison for murder;
- (c) say that during the meeting, after Mayor Kyle had spoken, the First Applicant said to the meeting that things were going to burn and that the Palm Island community would decide when that would occur;

- (d) say that following the community meeting, a large crowd of members of the Palm Island community, led by the First Applicant, moved towards the Palm Island police station, many armed with various weapons and other implements, whereupon they engaged in violent and threatening behaviour:

Particulars

- (i) the police station was attacked using, amongst other things, rocks and bricks;
- (ii) the police station and Palm Island court house were set alight and totally destroyed by fire;
- (iii) a QPS vehicle was seized;
- (iv) the Palm Island police barracks, in which police officers barricaded themselves, was attacked using, amongst other things, rocks and bricks;
- (v) SS Hurley's residence was attacked using rocks and bricks, set alight and totally destroyed by fire;
- (vi) members of the crowd yelled threats and obscenities, including threats to kill the police officers and the accusation that SS Hurley and the police generally had killed Mulrunji and must pay;
- (vii) the First Applicant told Inspector Brian Richardson that the police officers on Palm Island had one hour to leave Palm Island otherwise they would be harmed and burned out;
- (viii) police officers on Palm Island subsequently fled to the Palm Island hospital, whereupon a large crowd of members of the Palm Island community gathered and were verbally aggressive towards the officers and threw rocks at them;
- (ix) after the police officers had left the Palm Island police barracks and had fled to the Palm Island hospital, the police barracks were looted;
- (x) the crowd at the Palm Island hospital gradually dispersed later on 26 November 2004, after additional police officers arrived on Palm Island;

- (e) say that during the events described in the preceding paragraph (**the Riot**) at least six police officers lost personal property, including watches, digital video cameras, sunglasses, clothes and bags;
- (f) say that some police officers were physically harmed by members of the Palm Island community during the Riot;
- (g) say that many police officers feared that their death was imminent.

191. As to paragraph 274 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 274;
- (b) say that the crowd of Palm Island residents outside the hospital, numbering between 100 and 150 people, did not disperse until after 3pm;
- (c) say that the crowd of residents dispersed gradually over a period of time;
- (d) say that as the crowd dispersed, some members of the crowd continued to yell threats and throw rocks at police officers.

192. The Respondents admit paragraph 275 of the 3rd FASC.

193. As to paragraph 276 of the 3rd FASC, the Respondents:-

- (a) admit that at or about 1.45pm on Friday 26 November 2004 in response to the Riot, DI Webber orally declared that an emergency situation existed on Palm Island (**Declaration**);
- (b) say that DI Webber made the Declaration, at the Townsville Airport, enroute to Palm Island;
- (c) say that DI Webber relied on s. 5 of the *Public Safety Preservation Act* 1986 (as in force as at 26 November 2004) (**PSP Act**) to issue the Declaration;
- (d) say that DI Webber declared an emergency situation to exist on Palm Island in light of information he had received from other police officers in relation to the Riot:

Particulars

- (i) that the lives and safety of police officers and other persons on Palm Island were in imminent danger;

- (ii) that the Palm Island police station and SS Hurley's residence had been set alight, and police officers were under attack and believed they were going to die;
 - (iii) that attempts were being organised by rioters on Palm Island to attack the Palm Island airport and to block the road between the airport and the township;
 - (iv) that the airstrip on Palm Island was also to be blocked to prevent aircraft from landing on Palm Island;
 - (v) that an ambush had been established on the road to the Palm Island airport so as to prevent police reinforcements from attending the scene, and the road had been blocked with a truck;
 - (vi) that the hour the rioters had given police officers to leave Palm Island before they would be killed had expired or would shortly expire;
 - (vii) that police officers on Palm Island were under continual attack by rocks and fire and were going to move on foot from the Palm Island police barracks to the Palm Island hospital rather than being burnt out;
- (e) say that DI Webber declared an emergency situation to exist on Palm Island by telephoning the QPS Townsville Communications Centre and advising of his declaration;
- (f) say that when he telephoned the QPS Townsville Communications Centre DI Webber requested that:-
- (i) the Communications Centre broadcast the Declaration over the QPS radio network to inform all police officers of the Declaration's existence;
 - (ii) police assistance be provided for Palm Island;
 - (iii) the Communications Centre advise all airport authorities of the existence of the Declaration and that a no fly zone be established for Palm Island through the issue of a NOTAM;
- (g) deny that the Declaration was made purportedly pursuant to s.5 of the PSP Act and say that it was made in fact and in law pursuant to s.5.

194. As to paragraph 277 of the 3rd FASC, the Respondents:-

- (a) say that on Sunday 28 November 2004 when DI Webber was on Palm Island he received from the mainland a “Certificate relating to the Declaration of an Emergency Situation” which he signed and issued as soon as possible after receiving it, thereby recording the Declaration he made on 26 November 2004;
- (b) admit that no certificate was issued or caused to be issued on 26 November 2004;
- (c) admit that on 26 November 2004, DI Webber did not:
 - (i) make, or cause to be made, any public announcement to the Palm Island community or to the Palm Island Council that an emergency situation had been declared;
 - (ii) explain, or cause to be explained, to the Palm Island community or to the Palm Island Council why an emergency situation had been declared, what that entailed, and for how long it was expected to remain in place;
- (d) say that on 27 November 2004, Inspector Glen Kachel and SS David Dini organised and subsequently participated in a meeting with the Palm Island Council, held in the Council’s chambers, during which various matters regarding the restoration of law and order to Palm Island were discussed, and attempts were made by Inspector Kachel and SS Dini to engage the Council’s assistance in that regard.

195. As to paragraph 278 of the 3rd FASC, the Respondents deny the allegation and say that:-

- (a) s. 5(2) of the PSP Act provided that the certificate 'shall set out the nature of the emergency situation, the time and date it was declared to exist and the area in respect of which it exists';
- (b) the Certificate:
 - (i) declared an emergency situation to exist for the entire island of Palm Island;
 - (ii) specified that the emergency situation was declared to exist on 26 November 2004 at 1.45pm; and
 - (iii) specified that the emergency situation was declared for the purpose in paragraph (f) of the definition of emergency situation under the Schedule to the PSP Act, that is, 'any other accident; that causes or may cause a

danger of death, injury or distress to any person, a loss of or damage to any property or pollution of the environment'.

196. The Respondents admit paragraphs 279 and 280 of the 3rd FASC.

197. As to paragraph 281 of the 3rd FASC, the Respondents:-

- (a) admit that police officers employed to work in the Special Emergency Response Team (**SERT**) and the Public Safety Response Team (**PSRT**) had specialist training;
- (b) say that s. 2.24.1 of the OPM provided that the primary objective of the PSRT was to provide a unit of specially trained centralised QPS officers who were equipped to respond in the interest of public safety to instances of confrontation, violence and other specialist duties which exceeded normal police response;
- (c) say that s. 2.26.1 of the OPM provided that the SERT was a specialist support unit, established to provide the QPS with the ability to respond to terrorist incidents state-wide, whose primary role was to:
 - (i) respond to terrorist incidents within the arrangements agreed to under the State Antiterrorist Plan;
 - (ii) provide specialist police capability to resolve high risk situations and incidents which were potentially violent and exceeded normal capabilities of the QPS;
 - (iii) provide assistance to all officers of the QPS with low risk tasks which required specialist equipment, skills or tactics; and
 - (iv) provide a rescue function in incidents which required specialised recovery techniques; and
- (d) say that PSRT officers are armed with normal police accoutrements, but that SERT officers are armed with additional weapons;
- (e) otherwise deny paragraph 281.

198. As to paragraph 282 of the 3rd FASC, the Respondents:-

- (a) deny that around 60 SERT and PSRT officers were flown to Palm Island on or about 26 November 2004;

- (b) say that approximately 17 SERT officers and approximately 7 PSRT officers travelled to Palm Island on Friday 26 November 2004, following DI Webber's Declaration;
- (c) admit that SERT officers and some PSRT officers travelled to Palm Island by helicopter;
- (d) say that some PSRT officers travelled to Palm island by other aircraft on Saturday 27 November 2004.

199. As to paragraph 283 of the 3rd FASC, the Respondents:-

- (a) say that dwellings were entered and searched between about 5.00am and 8.10am and 12.00 and 12.15pm and 6.15pm and 6.35pm on 27 November 2004 and periodically during the morning of 28 November 2004;
- (b) deny that PSRT officers searched dwellings;
- (c) deny that PSRT officers had their faces covered with balaclavas and say that PSRT officers wore public order helmets with visors and flash hoods;
- (d) admit that armed SERT officers entered and searched dwellings and that SERT officers' faces were covered by balaclavas;
- (e) say that s.8 of the PSP Act and s.19 of the PPRA authorised the entry and search of dwellings;
- (f) say that as a result of the entry and search of dwellings a number of persons were arrested for offences relating to the Riot;
- (g) otherwise deny paragraph 283.

200. The Respondents admit paragraph 284 of the 3rd FASC.

201. As to paragraph 285 of the 3rd FASC, the Respondents:

- (a) say that the list of persons to be apprehended on the morning of Saturday 27 November 2004 was developed by DSS Campbell in consultation with DSS Miles;
- (b) say that the list was developed over the late evening of 26 November and the early morning of 27 November;
- (c) say that the list was developed by reference to information provided by police officers on Palm Island and in the QPS Townsville Major Incident Response

Room established for the response to the Riot as well as video footage of events of 26 November 2004;

- (d) say that DSS Campbell provided to SERT officers the names of persons to be apprehended during the searches conducted in the morning of 27 November 2004, prior to the searches commencing;
- (e) say that during the period from 27 November 2004 to 29 November 2004, DSS Miles and DSS Campbell continued to develop a list of persons to apprehend during the searches conducted during that period, as more information regarding the identities of alleged offenders became available to them;
- (f) otherwise deny paragraph 285.

202. The Respondents admit paragraph 286 of the 3rd FASC.

203. As to paragraph 287 of the 3rd FASC, the Respondents:-

- (a) admit that the homes of the Applicants and other Palm Island residents were entered;
- (b) admit that no warrants to enter the homes had been obtained;
- (c) say that some homes were entered with permission after occupants opened their front doors;
- (d) admit that some homes were entered without permission after occupants failed to respond to police officers' requests to open their doors;
- (e) say that there was reasonable cause to enter the homes;
- (f) deny that homes were ransacked;
- (g) admit that when police officers entered the Second Applicant's house Richard Poynter was in the shower and that when police officers entered David Bulsey's house he was not fully clothed, but otherwise deny paragraph 287(c);
- (h) admit that the First Applicant was tasered because he resisted arrest;
- (i) otherwise deny that anyone was subjected to violence;
- (j) otherwise deny paragraph 287.

204. As to paragraph 288 of the 3rd FASC, the Respondents:-

- (a) deny that the First Applicant was compliant with police instructions;

- (b) deny that persons were held at gunpoint;
- (c) admit that the Third Applicant and Schanara Bulsey were instructed to sit or lie down upon police officers entering their home until the officers were satisfied that there was no potential threat;
- (d) otherwise deny paragraph 288.

205. As to paragraph 289 of the 3rd FASC, the Respondents:-

- (a) admit that at 8.10am on Sunday 28 November 2004 DI Webber declared the emergency situation on Palm Island to be revoked;
- (b) say that DI Webber declared the emergency situation to be revoked for the following reasons:-
 - (i) a number of offenders were in custody;
 - (ii) there was a significant level of resources on Palm Island to respond to any further incident of civil unrest;
 - (iii) the locations were secured;
 - (iv) there were no untoward incidents to indicate any danger to police patrols;
- (c) say that the emergency situation was not revoked before 8.10am on Sunday 28 November 2004 because DI Webber considered, for the following reasons, that a high risk situation continued to exist:-
 - (i) serious offences including arson and riotous behaviour had been committed;
 - (ii) there had been threats to murder police officers;
 - (iii) there was ready access in the Palm Island community to weapons including knives, spears, machetes and other blade type weapons as well as rocks;
 - (iv) a QPS firearm (a semi-automatic .223 Mini-Ruger rifle) was reported missing from the police barracks and could not be located;
 - (v) there were ongoing concerns about a further outbreak of violence and civil unrest because it was unknown what further action might be planned by residents of Palm Island;

- (d) say that after revoking the Declaration DI Webber recorded the revocation on a Revocation of Emergency Situation Certificate which he signed and dated at 8.50am on 28 November 2004;
- (e) admit that the Certificate was faxed to the QPS in Townsville at about 9.15am on 28 November 2004;
- (f) otherwise deny paragraph 289.

206. As to paragraph 290 of the 3rd FASC, the Respondents:-

- (a) say that on the afternoon of Friday 26 November 2004 at the Palm Island airport SS Dini, the officer in charge of the Cross Cultural Unit in Townsville, asked the Principal of St Michael's school if the QPS could use the school bus to transport incoming QPS reinforcements from the airport into the town;
- (b) say that the Principal, who was then driving the bus, agreed to the request;
- (c) say that at that time the Principal was the only occupant of the bus;
- (d) say that the bus was returned to the school as soon as possible;
- (e) deny paragraph 290(a);
- (f) admit that there was some minor damage to property as a result of the force reasonably necessary to be used to enter and search dwellings, including minor damage to the Second Applicant's bathroom door, but otherwise deny paragraph 290(b);
- (g) say that the QPS established a visible presence throughout the island by police officers patrolling the island;
- (h) say that that was done to reassure residents that the police were present on the island and to perform the functions under s.2.3 of the PSAA to preserve peace and good order and to protect the community from unlawful disruption of peace and good order;
- (i) deny that the police patrolled the island in a manner which resembled a military occupation force and say that paragraph 290(c) is embarrassing because it does not identify what is meant by the expression "resembled a military occupation force";
- (j) deny paragraphs 290(c) and 290(d).

207. As to paragraph 291 of the 3rd FASC, the Respondents:-

- (a) say that on 26 November 2004 the QPS arranged for a ferry to be available to Palm Island residents who wished to leave the island;
- (b) admit that on 26 November 2004 some teachers and other Palm Island residents left Palm Island by ferry;
- (c) deny that the majority of teachers and other public service employees were evacuated by the QPS;
- (d) deny that any evacuation of people from Palm Island created the perception pleaded;
- (e) otherwise deny paragraph 291.

208. As to paragraph 292 of the 3rd FASC, the Respondents:-

- (a) admit that between 1.45pm on 26 November 2004 and 1.30pm on 27 November 2004 all commercial flights to and from Palm Island were suspended;
- (b) admit that during that period all people on Palm Island were unable to leave Palm Island by that means;
- (c) otherwise deny paragraph 292.

K UNLAWFULNESS OF EVENTS FROM 26 NOVEMBER 2004

K1 Failure to immediately suspend SS Hurley

209. As to paragraph 293 of the 3rd FASC, the Respondents:-

- (a) admit that SS Hurley was not immediately suspended from duty following the death in custody;
- (b) otherwise deny paragraph 293.

K2 Failure to communicate with local community and diffuse tensions

210. The Respondents deny paragraph 294 of the 3rd FASC.

211. As to paragraph 295 of the 3rd FASC, the Respondents:-

- (a) say that they requested particulars of the special measures which should have been put in place or undertaken;

- (b) say that the Applicants responded by saying:-

“The Applicants do not ask the Court to make findings on precisely which special measures ought to have been put in place or undertaken, nor could they. The allegation is that no special measures were put in place or undertaken, and that special measures ought to have been put in place and undertaken.”

- (c) say that paragraph 295 is so lacking in particularity that they are unable to plead thereto;
- (d) say that paragraph 295 is evasive and ambiguous and is likely to cause prejudice, embarrassment or delay in the proceeding within the meaning of Rules 16.02(a), (c) and (d) and should be struck out;
- (e) say that the number of police officers rostered to perform duties on Palm Island was increased after 19 November 2004 as pleaded in paragraphs 257 to 259 of the 3rd FASC;
- (f) say that the increased number of police officers rostered to perform duties on Palm Island after 19 November 2004 was a measure to preserve peace and good order on Palm Island;
- (g) otherwise deny paragraph 295 because they do not know what is being alleged.

212. As to paragraph 296 of the 3rd FASC, the Respondents:-

- (a) admit that QPS officers stationed on Palm Island knew that there was a feeling of anger held by some residents of Palm Island over Mulrunji's death in custody, and a perception by some residents of Palm Island that SS Hurley was not being held to account for that death;
- (b) otherwise deny paragraph 296.

K3 Unlawful declaration of emergency situation

213. The Respondents admit paragraphs 297 and 298 of the 3rd FASC.

214. As to paragraph 299 of the 3rd FASC, the Respondents:-

- (a) deny that the declaration of an emergency situation was unlawful or invalid for the reasons pleaded;
- (b) say that there was an event meeting the definition of 'emergency situation';

- (c) say that the certificate did provide adequate particulars of the emergency situation, in that it:
 - (i) declared an emergency situation to exist for the entire island of Palm Island;
 - (ii) specified that the emergency situation was declared to exist on 26 November 2004 at 1.45pm;
 - (iii) specified that the emergency situation was declared for the purpose in paragraph (f) of the PSP Act definition of emergency situation, that is, 'any other accident; that causes or may cause a danger of death, injury or distress to any person, a loss of or damage to any property or pollution of the environment';
- (d) say that at the time DI Webber made the Declaration, he was of the view that the accident criteria in the definition of 'emergency situation' in the Dictionary to the PSP Act fitted the circumstances that had arisen on Palm Island at the time;
- (e) say that an accident includes an event that is unexpected or an unforeseen course of events;
- (f) say that the Riots constituted an event that was unexpected or an unforeseen course of events;
- (g) deny that the emergency situation ended before 8.10am on 28 November 2004 at which time DI Webber declared the emergency situation to be revoked;
- (h) say, in relation to paragraph 299(d) that:
 - (i) the First Applicant was seen at about 5.30pm on 26 November 2004 standing in a yard at the back of the Palm Island petrol station;
 - (ii) the First Applicant was holding a pick;
 - (iii) the First Applicant refused to leave that location when SS Dini told him to leave;
 - (iv) SS Dini subsequently ordered QPS officers to patrol the perimeter of the petrol station to secure that location.

K4 Unlawful Arrests

215. The Respondents deny paragraph 300 of the 3rd FASC.

216. The Respondents admit paragraph 301 of the 3rd FASC.

217. The Respondents deny paragraph 302 of the 3rd FASC.

K5 Unlawful entry into dwellings by police

218. The Respondents deny paragraph 303 of the 3rd FASC.

219. As to paragraph 304 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 304;
- (b) say that there was an emergency situation at the time police officers entered dwellings;
- (c) say that DI Webber could have been and was satisfied on reasonable grounds that it was necessary to enter and search premises.

220. As to paragraph 305 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 305;
- (b) say that police officers who entered dwellings reasonably suspected that a person to be arrested or detained was at the dwelling;
- (c) say that s.19 of the PPRA provided lawful authority for the police officers to enter the dwellings without the consent of the owner or occupier.

221. The Respondents deny paragraph 306 of the 3rd FASC.

K6 Failure to comply with Code of Conduct

222. The Respondents deny paragraph 307 of the 3rd FASC.

L UNLAWFUL RACIAL DISCRIMINATION

L1 Distinction, exclusion, restriction or preference

223. As to paragraph 308 of the 3rd FASC, the Respondents repeat and rely on paragraph 25 of this Defence.

224. As to paragraph 309 of the 3rd FASC, the Respondents:-

- (a) admit that the acts and failures to act alleged are constituted by acts or are themselves acts as defined in s.3 of the RDA;
- (b) deny that the acts were done in breach of s.9 of the RDA.

225. As to paragraph 310 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 310;
- (b) say that some of the acts alleged (those in Parts K1 and K2) occurred before the Riot at a time when some members of the community were discontented;
- (c) say that some of the acts alleged (those in Parts K3 to K6) occurred after and in response to the Riot in circumstances where the peace and good order of Palm Island had been unlawfully disrupted, and the community of Palm Island was in need of protection from the unlawful disruption of peace and good order.

226. As to paragraph 311 of the 3rd FASC, the Respondents repeat and rely on paragraphs 167 and 168 of this Defence.

227. The Respondents deny paragraph 312 of the 3rd FASC.

228. As to paragraph 313 of the 3rd FASC, the Respondents:-

- (a) deny that the acts described as the Further Failures whether taken individually or as a whole constituted or involved a distinction, exclusion, restriction or preference within the meaning of s.9(1) of the RDA;
- (b) say that if the acts involved any such distinction, exclusion, restriction or preference, they deny that they were based on the race, colour, descent or national or ethnic origin of the Applicants and Group Members as either:-
 - (i) Aboriginal persons; or
 - (ii) Aboriginal persons who reside in a community that is predominantly made up of Aboriginal persons; or
 - (iii) Aboriginal persons who reside in a community that is predominantly made up of Aboriginal persons who reside in a remote location;
- (c) say that the acts in Part K3 of the 3rd FASC were based on the conduct pleaded in paragraphs 190 and 193 hereof and the functions of the QPS to preserve peace and good order and protect communities from the unlawful disruption of peace and good order;
- (d) say that acts in Part K4 of the 3rd FASC were based on reasonable suspicions that the persons arrested had committed indictable offences, and the functions of the QPS to preserve peace and good order, to protect communities from the unlawful

disruption of peace and good order, and to detect offenders and bring them to justice;

- (e) say that the acts in Part K5 of the 3rd FASC were based on reasonable suspicions that the persons arrested had committed indictable offences and could be located at the dwellings entered by police officers, and the functions of the QPS to preserve peace and good order, to protect communities from the unlawful disruption of peace and good order, and to detect offenders and bring them to justice;
- (f) say that the acts in Part K6 of the 3rd FASC were based on the functions of the QPS to preserve peace and good order, to protect communities from the unlawful disruption of peace and good order, and to render help reasonably sought in an emergency or otherwise.

L2 Systemic and institutional discrimination

229. As to paragraph 314 of the 3rd FASC, the Respondents:-

- (a) say that paragraph 314 is evasive and ambiguous and is likely to cause prejudice, embarrassment or delay in the proceeding within the meaning of Rules 16.02(2)(c) and (d) because:-
 - (i) the acts or failures alleged to combine the Further Failures are the acts of individuals;
 - (ii) the QPS Policies, Orders and Procedures are expressed in terms which provide for individuals to act or refrain from acting;
- (b) say that paragraph 314 should be struck out;
- (c) object to pleading to paragraph 314 for the above reasons;
- (d) say that if they are required to plead to paragraph 314 they deny paragraph 314.

230. As to paragraph 315 of the 3rd FASC, the Respondents:-

- (a) say that the establishment of the QPS Policies, Orders and Procedures is the making of a law and is for that reason outside the field of operation of s.9 of the RDA;
- (b) say that to the extent that the QPS Policies, Orders and Procedures relate to particular matters by reference to the race, colour, descent or national or ethnic

origin of a person, such as s.16.24.3(a)(vii) and (viii) and s.6.3.6 of the OPM, such provisions are a special measure within the meaning of s.8 of the RDA and are for that reason outside the field of operation of s.9 of the RDA;

- (c) say that to the extent the QPS Policies, Orders and Procedures do not differentiate between persons on the basis of race, colour, descent or national or ethnic origin, the establishment of the QPS Policies, Orders and Procedures is not an act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin;
- (d) deny, therefore, that the establishment of the QPS Policies, Orders and Procedures is an act as described in paragraph 315(a);
- (e) say that the allegation in paragraph 315(b) is evasive and ambiguous and likely to cause prejudice, embarrassment or delay in the proceeding within the meaning of Rules 16.02(2)(c) and (d) of the Federal Court Rules because it pleads a matter which is not a material fact in a claim for a breach of s.9 of the RDA, namely, that the establishment and/or application of the QPS Policies, Orders and Procedures was systemic and institutional discrimination;
- (f) say that paragraph 315(b) should be struck out;
- (g) object to pleading to paragraph 315(b);
- (h) say that if they are not required to plead to paragraph 315(b) they do not know and therefore cannot admit paragraph 315(b) because they do not know what is meant by the expression “systemic and institutional discrimination” and do not know how that expression relates to the terms of s.9 of the RDA.

L3 Breach of Rights: Group Members

231. As to paragraph 316 of the 3rd FASC, the Respondents:-

- (a) say that having regard to responses 61 and 40 of the Further and Better Particulars filed by the Applicants on 2 September 2015 it is not necessary to plead to paragraphs 316(b) and 316(f) of the 3rd FASC;
- (b) deny that any of the acts relied on in paragraphs 313 or 315 of the 3rd FASC were capable of having the purpose or effect described in s.9 of the RDA on the recognition, enjoyment or exercise of an equal footing by the Applicants and Group Members of the other rights pleaded in paragraph 316;

- (c) deny that any of the acts relied on in paragraphs 313 or 315 of the 3rd FASC had that purpose or effect on the recognition, enjoyment or exercise on an equal footing by the Applicants and Group Members of those other rights.

232. The respondents deny paragraphs 317 and 318 of the 3rd FASC.

L4 Breach of Rights: Sub-Group

233. The respondents deny paragraphs 319 to 322 of the 3rd FASC.

L5 Loss and Damage: Group Members

234. The respondents deny paragraphs 323 and 324 of the 3rd FASC.

M AGGRAVATED OR EXEMPLARY DAMAGES

M1 Exemplary Damages

235. As to paragraph 325 of the 3rd FASC, the Respondents:-

- (a) deny that the alleged breaches of s.9 of the RDA were so egregious as to entitle the Applicants to exemplary damages;
- (b) say the Applicants did not claim exemplary damages in their complaint to the Australian Human Rights Commission;
- (c) say that the Applicants are not and should not be entitled to claim exemplary damages.

M2 Aggravated Damages

236. As to paragraph 326 of the 3rd FASC, the Respondents:-

- (a) deny that they engaged in the conduct pleaded in paragraphs 327 and 334;
- (b) deny that any pleaded conduct of the Respondents after November 2004 aggravated any loss or damage suffered by the Applicants or Group Members;
- (c) say that since only the Applicants claim aggravated damages it is irrelevant whether the pleaded conduct aggravated any loss or damage suffered by Group Members;
- (d) deny that the Applicants are entitled to aggravated damages.

237. As to paragraph 327 of the 3rd FASC, the Respondents:-

- (a) admit that on 27 September 2006 Acting State Coroner Christine Clements delivered her report into her inquest into the death of Mulrunji;
- (b) admit that in her report, Acting State Coroner Clements concluded that the actions of SS Hurley caused Mulrunji's fatal injuries;
- (c) say that on 16 June 2009 the Court of Appeal set aside the whole of Acting State Coroner Clements' finding as to how Mulrunji died on the basis that her finding was not reasonably open on the evidence; and it was ordered that the inquest be re-opened by another coroner;
- (d) say that on 14 May 2010 the coroner (Deputy Chief Magistrate Hine) found that Mulrunji died of fatal injuries which resulted from some force to the abdomen of Mulrunji either accidentally as Mulrunji and SS Hurley fell into the Palm Island watchhouse or by deliberate actions of SS Hurley in the few seconds after they landed, but it is not possible to ascertain whether the force was deliberately inflicted or accidentally suffered;
- (e) object to the allegation that Acting State Coroner Clements called Mulrunji's arrest completely unjustified on the ground that the allegation is irrelevant to any relief claimed in these proceedings;
- (f) object to the allegation that Acting State Coroner Clements stated in her 27 September 2006 report that SS Hurley's treatment of Mulrunji was 'callous and deficient' on the ground that the allegation is irrelevant to any relief claimed in these proceedings.

238. The Respondents admit paragraph 328 of the 3rd FASC.

239. As to paragraph 329 of the 3rd FASC the Respondents:-

- (a) say that the purposes of the IRT review were to:-
 - (i) examine and report on adverse comments made by Acting State Coroner Clements in her inquest findings dated 27 September 2006 other than comments regarding responsibility or misconduct for the death of Mulrunji;
 - (ii) make recommendations;

- (b) say that the matters in paragraph (a) hereof were admitted by the Applicants and the Respondents in paragraph 169 of the Agreed Statement of Facts filed on 23 December 2014;
- (c) otherwise deny paragraph 329.

240. The Respondents admit paragraph 330 of the 3rd FASC.

241. As to paragraph 331 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 331(a) and say that Inspector Williams, DI Webber and DSS Kitching received managerial guidance in relation to their conduct during their investigation into Mulrunji's death in custody, pursuant to s.11 of the *Police Service (Discipline) Regulations* 1990;
- (b) admit that no member of the QPS, other than SS Hurley, was charged with criminal proceedings in relation to Mulrunji's death or the subsequent investigation;
- (c) say that having regard to responses 65(a) and 65(b) of the Further and Better Particulars filed by the Applicants on 2 September 2015, the fact that no member of the QPS should have been charged with a criminal offence cannot have aggravated any loss or damage suffered by the Applicants or Group Members;
- (d) admit that on 3 November 2008 DS Robinson was awarded the Queensland Police Service Valour Award, being the highest commendation the QPS can bestow on an officer, for acts of bravery in hazardous circumstances, for his conduct in responding to the Riot;
- (e) deny paragraph 331(d).

242. As to paragraph 332 of the 3rd FASC, the Respondents:-

- (a) admit that the First and Second Applicants and other persons described as Group Members were charged in November and December 2004 with various offences in relation to the Riot;
- (b) say that as a result of those charges a number of convictions resulted;
- (c) say that on 7 November 2008 the First Applicant was sentenced to 6 years imprisonment for the offence of rioting causing destruction;

- (d) say that between 28 July 2006 and 8 May 2007 10 other persons were convicted of offences relating to the Riot and sentenced to terms of imprisonment or in one case (Bronson Norman) to perform 150 hours of community service.

243. As to paragraph 333 of the 3rd FASC, the Respondents:-

- (a) admit that SS Hurley was charged with manslaughter and common assault on 5 February 2007;
- (b) say that SS Hurley was acquitted by a jury of those charges in June 2007;
- (c) admit that by 5 February 2007 the charge against the Second Applicant had been discontinued;
- (d) deny that by 5 February 2007 all Group Members who faced charges had either faced trial or had the charges abandoned, and say that:
 - (i) between 5 March 2007 and 20 March 2007, John Clumpoint, William Blackman, Lance Poynter, Dwayne Blanket and Terrence Kidner faced trial in the District Court of Queensland in relation to alleged offences committed during the Riot;
 - (ii) Robert Terrence Nugent and David Shane Shepherd were sentenced in March 2007;
 - (iii) Terrence Kidner was sentenced in May 2007.

244. As to paragraph 334 of the 3rd FASC, the Respondents deny paragraph 334 and say that the CMC Review:-

- (a) stated at p.163:-

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

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

- (b) stated at p.164:-

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

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

“3. Requirement for the QPS to report to CMC

To enable the CMC to be satisfied about the adequacy and appropriateness of the QPS response to its recommendations concerning disciplinary proceedings, pursuant to section 48(1)(c)(i) of the CM Act, the CMC requires the Commissioner of Police to report in writing to the CMC within 14 days about the outcome of his consideration of the CMC’s recommendations, specifically:-

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

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

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

- (i) stated at p.178:-

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

the more serious end official misconduct and acts that amount to statutory offences.’”

245. On 19 August 2010 the Supreme Court of Queensland in proceedings 6368 of 2010 (2010 QSC 303) declared that the Commissioner of Police was disqualified from giving any personal consideration to commencing disciplinary proceedings but was not prevented from delegating the consideration of the commencement of disciplinary proceedings to a prescribed officer as defined in s.7.4 of the PSAA.
246. The Commissioner delegated to Deputy Commissioner Rynders as a prescribed officer the task of considering the recommendations in the CMC Report and determining any disciplinary issues.
247. The Crime and Misconduct Commission, by letter dated 10 September 2010 to the Commissioner, advised that the matter was considered appropriate for consideration at the Deputy Commissioner level.
248. On 7 January 2011 in a 405 page report entitled “Report in Response to the CMC Review of the Queensland Police Services Palm Island Review” Commissioner Rynders:-
 - (a) expressed her view that DSS Kitching and DI Webber should be given managerial guidance in respect of DS Robinson’s involvement in the investigation (paragraphs 123 and 124 of the report);
 - (b) expressed her view that DI Webber and DSS Kitching should be given managerial guidance in respect of their failure to ascertain the content of conversations between SS Hurley, Sergeant Leafe and PLO Bengaroo (paragraph 198 of the report);
 - (c) stated that DSS Kitching would be given managerial guidance in respect of his failure to inform Dr Lampe of the alleged assaults (paragraph 249 of the report);
 - (d) stated that DI Webber would be given managerial guidance in respect of DI Webber’s failure to ensure that a Supplementary Form 1 was submitted (paragraph 254 of the report);
 - (e) stated that Inspector Williams should be reminded of his supervisory responsibilities as an ESC officer by way of managerial guidance in relation to DS Robinson’s involvement in the investigation (paragraph 380 of the report);

- (f) stated that Inspector Williams should be reminded of his obligations by way of managerial guidance in relation to his failure to ascertain the content of conversations between SS Hurley, Sergeant Leafe and PLO Bengaroo (paragraph 410 of the report);
- (g) considered that Inspector Williams should be provided with managerial guidance in respect of a failure to ensure the Supplementary Form 1 was submitted (paragraph 449 of the report);
- (h) otherwise concluded that no disciplinary action should be taken against DI Webber, Inspector Williams, DSS Kitching or DS Robinson.

249. The Crime and Misconduct Commission did not appeal to the Queensland Civil and Administrative Tribunal against the findings of Deputy Commissioner Rynders.

250. The Crime and Misconduct Commission did not assume responsibility for or take any disciplinary proceedings against DI Webber, Inspector Williams, DSS Kitching or DS Robinson.

251. As to paragraph 335 of the 3rd FASC, the Respondents:-

- (a) deny paragraph 335;
- (b) repeat and rely on paragraphs 241(a), 248 and 253 of this Defence.

252. As to paragraph 336 of the 3rd FASC, the Respondents:-

- (a) admit that on 3 November 2008 DS Robinson was awarded the Queensland Police Service Valour Award for acts of bravery in hazardous circumstances for his conduct in responding to the Riots;
- (b) say that in the limited time available to prepare this pleading and notwithstanding their reasonable enquiries, they do not know and cannot admit paragraph 336 otherwise.

253. As to paragraph 337 of the 3rd FASC, the Respondents:-

- (a) admit that in July and August DI Webber, DSS Kitching and Inspector Williams received managerial guidance pursuant to s.11 of the *Police Service (Discipline) Regulations* 1990 in accordance with the report of Deputy Commissioner Rynders;

- (b) say that in the limited time available to prepare this pleading and notwithstanding their reasonable enquiries, they do not know and cannot admit paragraph 337 otherwise.

N VICARIOUS LIABILITY OF RESPONDENTS

254. The Respondents admit paragraphs 338 and 340 of the 3rd FASC.

255. As to paragraphs 339 and 342 of the 3rd FASC, the Respondents:

- (a) admit that all relevant conduct by QPS members as alleged in the 3rd FASC occurred in the course of the employment of those QPS members;
- (b) admit that these acts were performed by QPS members as employees or agents of the First Respondent;
- (c) otherwise deny paragraphs 339 and 342.

256. As to paragraph 341 of the 3rd FASC, the Respondents:

- (a) admit that pursuant to ss. 5.4(2)(b), 5.7(3)(b) and 5.11(1)(b) of the PSA the conditions of employment for executive officers, commissioned officers and police recruits in the employ of the QPS were governed by a contract of employment made, or taken to be made, between them and the Crown;
- (b) admit that pursuant to s. 5.15(b) of the PSA, an officer of the QPS, other than one who held appointment on a contract basis, was taken to be an employee of the Crown;
- (c) deny that QPS members were employed under s. 5.15(1)(b) of the PSA because there is no such section in the PSA Act.

257. As to paragraphs 343 and 345 of the 3rd FASC, the Respondents:

- (a) deny that any actions of the Respondents or QPS members referred to in the 3rd FASC constitute acts of unlawful discrimination;
- (b) say that should any findings of unlawful discrimination be made against QPS members in relation to any actions referred to in the 3rd FASC, the First Respondent is vicariously liable for those actions;
- (c) otherwise deny paragraphs 343 and 345.

258. As to paragraph 344 of the 3rd FASC, the Respondents:

- (a) deny that there were any unlawful acts committed by QPS members;
- (b) admit that all relevant conduct by QPS members as alleged in the 3rd FASC occurred in the course of the employment of those QPS members and within the scope of those QPS members' employment duties;
- (c) say it is unnecessary, having regard to that admission, to further plead to paragraph 344;
- (d) say that if it is necessary to further plead to paragraph 344, they deny paragraph 344.

O AHRC COMPLAINT

259. The Respondents admit paragraphs 346 to 349 of the 3rd FASC.



Jackie Hamilton
for GR Cooper
Crown Solicitor
Solicitor for the Respondents
Dated: 10 September 2015

This pleading was settled by Mark Hinson QC