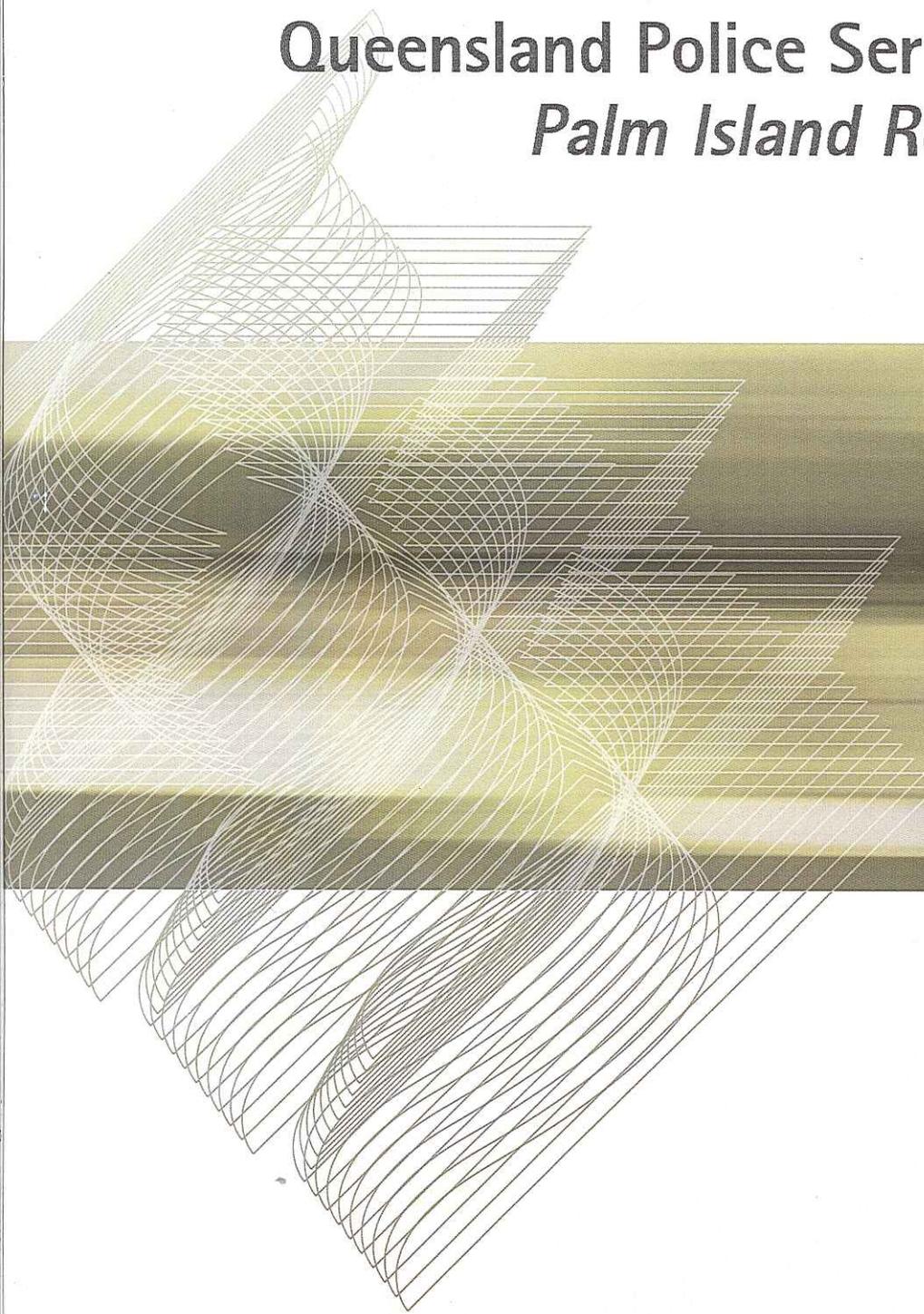


CMC Review of the Queensland Police Service's *Palm Island Review*

June 2010



CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

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QUEENSLAND

CMC vision:

That the CMC make a unique contribution to protecting Queenslanders from major crime and to promoting a trustworthy public sector.

CMC mission:

To combat crime and improve public sector integrity.

ACKNOWLEDGMENTS

The CMC respectfully advises that this publication contains the names of deceased persons and apologises for any distress this may cause.

We have observed the Indigenous protocol and sought permission from relatives to use the names mentioned. We acknowledge the assistance received from the Palm Island community, Palm Island Council, the Community Justice Group on Palm Island and ATSILS in giving effect to the protocol.

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Dear Sirs

In accordance with section 69 of the *Crime and Misconduct Act 2001*, the Crime and Misconduct Commission hereby furnishes to each of you its report *CMC Review of the Queensland Police Service's Palm Island Review*. The Commission has adopted the report.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Martin Moynihan'. The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Martin Moynihan AO QC
Chairperson

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ABBREVIATIONS

ATSILS	Aboriginal and Torres Strait Islander Legal Service
CAP	Competency Acquisition Program
CIB	Criminal Investigation Branch
CMC	Crime and Misconduct Commission
DPP	Director of Public Prosecutions
ESC	Ethical Standards Command
HRMM	Human Resource Management Manual
IIB	Internal Investigations Branch
IRT	Investigation Review Team
MOU	Memorandum of Understanding
NOK	Next of kin
OPM	Operational Procedures Manual
PLO	Police Liaison Officer
QAS	Queensland Ambulance Service
QCAT	Queensland Civil and Administrative Tribunal
QPS	Queensland Police Service
RCIADIC	Royal Commission into Aboriginal Deaths in Custody
RCC	Regional Crime Coordinator
RDO	Regional Duty Officer

KEY FIGURES

Police

Palm Island police officers

Senior Sergeant Christopher Hurley	Officer in Charge, Palm Island Station
Sergeant ¹ Michael Leafe	Palm Island police officer
Acting Senior Constable Benjamin Tonges	Palm Island police officer
Constable Kristopher Steadman	Palm Island police officer
*Detective Sergeant Darren Robinson ²	Officer in Charge, CIB on Palm Island, and involved in the initial QPS investigation
Police Liaison Officer ³	Police Liaison Officer, Palm Island

Initial QPS Investigation team

*Detective Inspector Warren Webber	Regional Crime Coordinator, Northern Region, Townsville
*Detective Senior Sergeant Raymond Kitching	Officer in Charge of the Townsville CIB, primary investigator in the initial QPS investigation
*Detective Sergeant Darren Robinson	Officer in Charge, CIB on Palm Island, and involved in the initial QPS investigation
*Inspector Mark Williams	Inspector with Ethical Standards Command, QPS

QPS Northern Region

*Acting Assistant Commissioner	Acting Assistant Commissioner, Northern Region
*Acting Chief Superintendent	Acting Operations Coordinator, second-in-command to Acting Assistant Commissioner
District Inspector Gregory Strohfeldt	Regional Duty Officer and the officer responsible for Palm Island policing (supervisor of Sen. Sgt Hurley)
Acting Superintendent Neal Wilson	District Officer

-
- ¹ Leafe is now a Senior Sergeant.
 - ² Officers whose names or positions are asterisked are those whose conduct is discussed at length in the *Palm Island Review* and in this report.
 - ³ While on Palm Island seeking permission from relatives about the use of the names of deceased persons in this report, the CMC spoke with Palm Island community members and police officers. During that time, the Police Liaison Officer requested that his name not be used in our report. The CMC agreed to this request as we do not consider that identifying him by his position detracts from our report.

Members of the QPS Investigation Review team

*Acting Superintendent

*Inspector

Other figures⁴

Roy Bramwell

Palm Island resident and witness in the Palm Island Police Station

Patrick Bramwell
(also known as Patrick Nugent)

Palm Island resident arrested and being held in the Palm Island watch-house

Florence (Penny) Sibley

Palm Island resident and witness near the Palm Island Police Station

Dr Guy Lampe

a pathologist for Queensland Health Pathology and Scientific Services who performed the autopsy on Mulrunji

4 We have not included the names of all the witnesses, only those who are key figures in this report.

CHRONOLOGY⁵

Initial QPS investigation of 19–23 November 2004

19 November 2004

- 11.30 am Shortly⁶ before 11.30 am Mulrunji died following his arrest and lodgement in a cell at the Palm Island watch-house by Senior Sergeant Hurley.
- 11.40 am – midday Detective Inspector Webber, Regional Crime Coordinator for the Townsville District, was advised of the death by District Inspector Gregory Strohfeldt, Hurley's supervisor. Webber appointed Detective Senior Sergeant Kitching as primary investigator, with assistance to be provided by Detective Sergeant Robinson.
- Detective Inspector Webber also contacted the Acting Assistant Commissioner (Assistant Commissioner for the Northern Police Region) and his second-in-command, the Acting Chief Superintendent (Acting Operations Coordinator) about the matter.
- 12.10 pm QPS Northern Regional Complaints Manager Kachel was asked to notify the Ethical Standards Command (ESC) and the CMC of Mulrunji's death.
- 12.20 pm At about this time Detective Inspector Webber notified the Office of the State Coroner of Mulrunji's death.
- 2.20 pm The investigation team (Detective Inspector Webber, Detective Senior Sergeant Kitching and Detective Sergeant Robinson) travelled to Palm Island by charter aircraft, accompanied by technical support staff (Senior Sergeant Arthy, Constable Tibbey, Sergeant Bartulovich, two Constables and a Human Services Officer)
- 2.55 pm Senior Sergeant Hurley was involved in transporting some of those officers from the Palm Island airport to the police station.
- 3:00 pm By about this time, investigative inquiries commenced.
- Detective Inspector Webber discussed the death with officers of the Aboriginal and Torres Strait Islander Legal Service.
- 3.40 pm Detective Inspector Webber and Sergeant Leafe notified Tracey Twaddle, Mulrunji's partner, of his death.
- 3.55 pm Mulrunji's mother and other family members were informed of his death.
- 4.04–4.36 pm Detective Senior Sergeant Kitching and Detective Sergeant Robinson conducted a recorded interview with Senior Sergeant Hurley.

5 The chronology has been prepared using various sources of material, including the IRT report, various CMC reports, documents from the QPS, CMC files, and material from the (second) Inquest. We are not able to attest to the absolute accuracy of this chronology; however we believe this to be as accurate as possible based on the material available to us. A detailed chronology is provided in Chapter 5, pages 24–29.)

6 Between about 10.55 am and 11.19 am

- 4.50–7.10 pm Detective Senior Sergeant Kitching and Sergeant Robinson conducted recorded interviews with the PLO, Gladys Nugent and Patrick Bramwell.
- 7.50–8.12 pm Detective Senior Sergeant Kitching conducted a recorded interview with Sergeant Leafe.
- 8.00 pm Acting Assistant Commissioner was provided with an update about the matter.
- 8.22–8.35 pm Detective Senior Sergeant Kitching and Detective Sergeant Robinson conducted a recorded interview with Edna Coolburra.
- 10.30 pm At about this time, Detective Inspector Webber, Detective Senior Sergeant Kitching and Detective Sergeant Robinson ate a meal with Hurley, prepared by Robinson, at Senior Sergeant Hurley's residence.

20 November 2004

- 8.15–8.27 am Detective Senior Sergeant Kitching and Detective Sergeant Robinson conducted an interview with Roy Bramwell, during which Bramwell alleged he saw Hurley assault Mulrunji.
- by 10.30 am Inspector Williams of the Ethical Standards Command arrived on Palm Island to overview the QPS investigation.
- 10.52 am Inspectors Williams and Webber conducted a video re-enactment with Roy Bramwell, where Bramwell repeated his allegation of Hurley assaulting Mulrunji.
- 11.20 am Hurley drove Webber, Williams, Kitching and Tibbey to the scene of Mulrunji's arrest.
- 11.53 am – 1.12 pm Inspectors Williams and Webber conducted video re-enactments with Hurley, the PLO and Leafe.
- 1.10 pm Detective Senior Sergeant Kitching and Inspector Williams commenced a recorded interview with Senior Sergeant Hurley.

21 November 2004

Kitching and Williams travelled to Ingham and Kitching interviewed Ms Sibley.

22 November 2004

- 10.40 am At Kitching's request the Form 1 (the police report of the death made to the Coroner pursuant to the *Coroners Act 2003*) was faxed to the Coroner's Office in Townsville.

23 November 2004

An autopsy was conducted by Pathologist Dr Guy Lampe in Cairns, which revealed that Mulrunji's death was not from natural causes.

24 November 2004

In light of the autopsy results, the CMC assumed responsibility for the investigation.

Significant events after the death of Mulrunji

28 February 2005

The first day of hearings in the first inquest into Mulrunji's death commenced.

1 August 2005

The first day of hearings in the second Inquest into Mulrunji's death commenced.

27 September 2006

The Inquest findings were published. They included comments by the Acting State Coroner that were critical of the initial investigation conducted by the QPS.

3 January 2007

On this date, the Investigation Review Team (IRT) established by the Commissioner of Police to examine in detail the adverse comments by the Acting State Coroner in the Inquest findings commenced work.

5 February 2007

The Attorney-General commenced proceedings against Senior Sergeant Hurley for manslaughter and assault in relation to Mulrunji.

20 June 2007

At the conclusion of his trial in the Townsville Supreme Court, Senior Sergeant Hurley was acquitted of the charges.

24 November 2008

The CMC was provided with the QPS report, the *Palm Island Review*.

8 March 2010

The first day of hearings of the third inquest into Mulrunji's death commenced.

14 May 2010

The findings of the third inquest were published.

Note about inquests

Throughout this report 'the Inquest' unless otherwise specified refers to the second inquest conducted by Acting State Coroner Christine Clements.

EXECUTIVE SUMMARY

Background

On 19 November 2004, Mulrunji died in police custody on Palm Island. In the findings of the Inquest (which were delivered in September 2006), Acting State Coroner Christine Clements was critical of the initial QPS investigation of the death of Mulrunji and of various aspects of policing on Palm Island. In addition to general critical comments about arrest and policing, she made fourteen comments specifically about the investigation of Mulrunji's death.

In response to the Acting State Coroner's comments, the Commissioner of Police formed an Investigation Review Team (IRT) in December 2006 to examine in detail any criticisms of the QPS or its members arising from the Inquest and the Acting State Coroner's findings. It consisted of an Acting Superintendent and an Inspector. The Commissioner requested the CMC to review the internal investigation.

Subsequently, the CMC received, and referred to the QPS to deal with in conjunction with its review, two complaints of alleged misconduct against the members of the initial QPS investigation team. The complaints were based on the evidence before the Inquest and the findings of the Acting State Coroner.

The *Palm Island Review*

In November 2008 the QPS delivered the three-volume report of its internal investigation, entitled *Palm Island Review*, to the CMC.

The CMC understands from the report that the IRT, after considering a range of relevant material, including the Acting State Coroner's general and specific criticisms, distilled a number of specific criticisms into allegations, and identified a total of eleven officers including Webber, Williams, Kitching, Hurley, Leafe and Steadman, as having criticisms or allegations against them⁷, or being witnesses to or involved in events and therefore needing to be interviewed.

The *Palm Island Review* does not deal with the conduct of all the officers criticised by the Acting State Coroner. The report states that several matters concerning Hurley could not be finalised until the ongoing legal proceedings were complete. The CMC concurs with this view.

In writing the *Palm Island Review*, the IRT came to focus on the conduct of five officers: Detective Inspector Warren Webber (Regional Crime Coordinator), Detective Senior Sergeant Raymond Kitching (Investigating Officer), Inspector Mark Williams (the Ethical Standards Command representative), the Acting Assistant Commissioner, Northern Region and the Acting Chief Superintendent, Northern Region⁸.

7 The executive summary to the *Palm Island Review*, which contains the only reference to any methodology employed by the IRT, did not make clear whether it was referring to criticisms or allegations by the Acting State Coroner, the IRT or both.

8 Issues concerning the conduct of Hurley, Leafe and Steadman are yet to be examined, and the other officers interviewed were not the subject of criticism by the Acting State Coroner or allegations formulated by the IRT. Following the findings of the third inquest the CMC will now investigate the allegations against Hurley and other officers.

From the report, the CMC deduce that the IRT's process for each allegation was to interview each of the relevant subject officers and other relevant witnesses, consider that evidence and other material, and make recommendations in relation to the conduct of the individual officers and for procedural change to address any systemic issues.

The CMC review

After examination of the *Palm Island Review*, the CMC was not satisfied with the IRT's process, conclusions or recommendations concerning the initial QPS investigation on Palm Island in November 2004.

Where the CMC is dissatisfied with an agency's investigation and /or any conclusions and recommendations, we may require the agency to conduct further inquiries and / or to reconsider the conclusions and recommendations, or we may assume responsibility for and complete the investigation of a complaint. In the case of the *Palm Island Review*, the CMC undertook its own detailed re-examination of the events on Palm Island.

Methodology and scope

The CMC, like the IRT, focused on the conduct of Webber, Kitching, Williams, the Acting Assistant Commissioner, Northern Region and the Acting Chief Superintendent, Northern Region; it also examined the conduct of Detective Sergeant Darren Robinson, the officer in charge of the CIB on Palm Island who participated in the initial QPS investigation.

The CMC's review does not examine the circumstances of Mulrunji's death, nor the conduct of Senior Sergeant Hurley.

The CMC set out to review both:

1. the circumstances of the initial QPS investigation on Palm Island and the conduct of the individual officers involved in it, and
2. the IRT's review of that investigation — the adequacy, impartiality and transparency of the IRT's process and the soundness and reasonableness of their conclusions and recommendations.

In assessing both the initial QPS investigation and the IRT review, the CMC considered not only the information contained in the *Palm Island Review* but also all other evidence available to it and to the IRT. Key materials included:

- relevant sections of the police Operational Procedures Manual (OPM) current at the time of Mulrunji's death
- the report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC)(1991), particularly its recommendations
- the video re-enactments of interviews conducted at the Palm Island Police Station on 20 November 2004
- some of the statements prepared for the (second) Inquest into the death of Mulrunji
- the transcript of the Inquest
- transcripts of the interviews conducted by the IRT
- various interviews conducted by the QPS, the IRT and the CMC
- the standards for internal investigations as set out in section 18 of the QPS *Human Resource Management Manual*
- the QPS Code of Conduct.

The re-examination of these documents has been complex and taken considerable time, and prolonged the production of this report. The CMC acknowledges and apologises for this delay and the difficulty this has caused, not only to members of the Doomadgee family and the Palm Island community, but also to the broader membership of the QPS.

CMC consideration of requirements for investigating deaths in custody

As the starting point of its review, the CMC examined the requirements for investigation of Indigenous deaths in custody.

When Mulrunji died in police custody in November 2004, there were detailed QPS procedures, including the QPS Operational Procedures Manual (OPM) and the Code of Conduct, that should have governed the actions of the police officers involved in the investigation. There were also two sets of external guidelines that should have informed the investigations—the 1991 recommendations of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC), which the Queensland Government and the QPS said that they had implemented, and the State Coroner’s guidelines.

From the time of the discovery of Mulrunji’s death, the provisions of the OPM concerning a police investigation of a death in custody immediately applied — the aim of the manual being to provide guidance and instructions in all aspects of operational policing to enable police to discharge their duties ‘lawfully, ethically and efficiently’⁹.

The set of operating procedures provided were intended to achieve thoroughness and impartiality. As well as a range of investigative instructions, they included a specific direction not to assume the death was due to natural causes or suicide even where it appeared likely, and a direction requiring officers who intended to interview Indigenous witnesses to assume that they had special needs until the contrary was clearly established (using specific criteria).

The OPM also set out specific requirements, in the event of a death in custody, for particular officer roles including those of the regional crime coordinator, the representative of the Ethical Standards Command (ESC) and the investigating officer.

Further to these guidelines, the QPS Code of Conduct in force at the time relevantly required officers to declare any conflict of interest to conduct themselves and discharge their responsibilities with professionalism and integrity, and to act in the public interest.

The CMC therefore examined the conduct of the officers involved in the initial QPS investigation in light of their respective procedural obligations under the OPM, the recommendations and spirit of the Royal Commission, and the QPS Code of Conduct; it took into account each officer’s experience, length of service and seniority in the QPS.

When considering the conduct of the IRT, the CMC judged the quality of their internal investigation according to the standards for internal investigation as set out in section 18 of the Queensland Police Service *Human Resource Management Manual* and the QPS Code of Conduct; it also took into account each officer’s experience, length of service and seniority in the QPS.

9 The Police Commissioner, introduction to the OPM, July 2004

Summary and discussion of principal allegations contained in the *Palm Island Review*

Nine main allegations were formulated by the IRT, as follows:

- Officers serving on Palm Island involved in investigation
- Hurley transporting investigators
- Dinner at Hurley's residence
- Discussions between witnesses
- Off the record discussion between Webber, Williams and Hurley
- Lack of vigour in questioning of the PLO
- The Form 1
- Lack of support to Indigenous witnesses
- Notification of the deceased's family.

A further three allegations — Forensic processes; Investigative process; and Control of the incident — were considered by the IRT as 'lines of inquiry'.

These are briefly summarised as follows.

Allegation 1. Officers serving on Palm Island involved in investigation

The Acting State Coroner was concerned about the involvement in the investigation of Detective Sergeant Darren Robinson, the officer in charge of the CIB on Palm Island, who was known to be a friend of Hurley's¹⁰. In her view those appointing the team had the responsibility to recognise the perception of collusion that this might create.

Though Robinson said he had been appointed to the team investigating Mulrunji's death, Webber and Kitching maintained that he had not been formally appointed but had been involved in the investigation because of his local knowledge and to assist Kitching by taking statements. According to them, he had taken on a more active role than anticipated but this was simply forced by circumstances.

The IRT implicitly acknowledge that the integrity of the investigation was compromised by the inclusion of Robinson but justify this in terms of logistics and the lack of other easily available options.

The CMC considers that Robinson clearly should not have been involved in the investigation in any way. Not only was he a friend of Hurley's but in investigating complaints against Hurley by Palm Island residents not long before, he had demonstrated bias towards Hurley: Robinson should have declared his conflict of interest. Both Webber and Kitching should have realised that Robinson had a clear conflict of interest which would adversely impact — at the very least — upon the perception of impartiality of the investigation. Other options for local knowledge and investigative support were available at the time and should have been implemented. Williams also had an obligation to ensure compliance with the OPM requirement for impartiality of the investigation.

Allegation 2. Hurley transporting investigators

The Acting State Coroner was concerned that the investigation's appearance of impartiality was undermined by Hurley, the officer most likely to be under investigation, meeting the investigating officers at the airport on their arrival and transporting them to the police station, and driving the investigators to the scene of Mulrunji's arrest the following day.

10 The Acting State Coroner was also concerned about the involvement of Kitching, who was from Townsville and knew Hurley personally. The CMC is of the view that the involvement of Kitching in the circumstances was not inappropriate.

Webber and Kitching considered that their transport from the airport by Hurley simply reflected the lack of transport options on Palm Island. They did not consider the possible negative perception this might create in the Palm Island community, despite their concern about the potential for unrest once Mulrunji's death became known.

The IRT acknowledge that in normal circumstances investigators would have little or no contact with officers involved in similar incidents until they were ready to interview or record conversations, but argue that in remote places such as Palm Island officers involved in the incident may need to be used and that at the time there did not appear to be any reasonable alternative.

Regarding the drive to the scene of the arrest on the following day, Webber considered Hurley was the best person to take them there and explain the events that had occurred. Neither Webber or Kitching recorded the information given by Hurley during that trip. The IRT found that it was appropriate for Hurley to drive the team to the scene, it being a standard method of investigation and Hurley having already been interviewed.

In the CMC's view, Hurley's transportation of the investigators compromised the investigation's appearance of impartiality, particularly since other more appropriate options were available. Their failure to ask the PLO as well as Hurley to recount events at the arrest scene, and to appropriately record the information from both, also detracted from the comprehensiveness and impartiality of the investigation.

Allegation 3. Dinner at Hurley's residence

The Acting State Coroner was concerned that the investigation's appearance of impartiality was undermined by the investigation team (Webber, Kitching and Robinson) eating dinner at Hurley's residence while the investigation was being conducted.

As in Allegation 2, Webber and Kitching explain this event in terms of the lack of resources on Palm Island. They also said that there had been no allegation that anything improper had been discussed, and that Kitching had already conducted an interview with Hurley and recorded a full version of the incident. Robinson agrees that they could have gone to his accommodation, but does not accept the inappropriateness of cooking and eating the meal at Hurley's residence¹¹.

The IRT state that the officers having a meal and consuming alcohol at Hurley's residence affected the perceived impartiality of the investigation but focus on a lack of logistical support for the investigation team as providing an acceptable reason for this event to have taken place. They seem to lay the blame for this largely on 'senior officers', particularly the Acting Chief Superintendent, rather than holding Webber and Kitching responsible. They did not consider Robinson's position. Like the officers, the IRT ignore the other available options — for example, they do not pursue why Robinson's residence was not used as a venue, and consider it would have been inconvenient for Robinson to bring the meal across the road to the police station.

In the CMC's view, it was inappropriate for the investigating officers to be associating informally with someone who was most likely to be the subject of the investigation in a matter that could involve homicide, and that such association would be likely to impact on the impartiality of the investigation. In its focus on logistical issues, the IRT fails to call attention to the real failure of judgment on the part of Webber, Kitching and Robinson to understand the risk presented in this situation and to make other arrangements.

11 Robinson makes this statement in the Inquest. He was not interviewed by the IRT.

Allegation 4. Discussions between witnesses

The Acting State Coroner was critical of the fact that Hurley, Leafe and the PLO had discussions about Mulrunji's death before the investigation team arrived on Palm Island. She was also concerned that Hurley was able to further discuss the matter with Leafe before his second interview — that is, after the investigation team had arrived and commenced the investigation.

Webber considered that it would be pointless to tell Hurley, Leafe and the PLO not to talk to each other before the investigation team arrived. Partly because he thought there was bound to be some conversation, and they also had to continue to provide policing services on the island.

The IRT's findings are somewhat inconsistent and confusing. They find that senior officers could have given a direction to Hurley regarding preservation of the crime scene, separation of witnesses, and the intent of the relevant section of the OPM, commenting that 'Hurley and other officers were given few if any directions or advice....'.

They also find that any discussions between the officers after their initial interview did not technically breach the OPM, though they point out that an experienced officer would understand that the intent of the relevant OPM section was to require officers not to discuss serious police-related incidents until an investigation was complete. However, they fall short of actually applying this standard themselves. Instead they provide their own 'practical' reinterpretation of the OPM requirement — that the ethical test that should be applied is that officers should openly admit to having discussed a matter.

Given Webber's obligation to ensure that the integrity of independent versions should be preserved as far as possible, the CMC considers it would have been prudent for him to have given a direction to the witnesses not to discuss the incident before the investigation team arrived or, if that did not occur, after their initial interviews. The failure to address this issue at any stage compromised the investigation's integrity.

Allegation 5. Off the record discussion between Webber, Williams and Hurley

The Acting State Coroner was critical of the failure to record discussion which occurred between Hurley and the investigators about discrepancies in time¹² between the surveillance video-recorder in the Palm Island watch-house and the actual time.

Hurley said that the time discrepancy on the watch-house video-recorder was caused by the unreliability of power supply on the island. This was apparently accepted by the other officers, who nevertheless give conflicting and confusing accounts of when this conversation took place and who was there at the time.

The IRT note that recording the conversation would have lessened criticism. At the same time, they seem to dismiss it as merely administrative and not relevant to the actual investigation into Mulrunji's death.

In the CMC's view, neither the investigators nor the IRT pay sufficient attention to the OPM requirement to make some appropriate record of conversations about which they may be required to give evidence. Given the importance of video footage to any investigation, any discussion with a witness about time discrepancies should have been recorded — in the interests of accuracy about the timing of events, any potential concern about the integrity of the evidence, and overall thoroughness and impartiality (and perception of impartiality) in the investigation.

¹² Office of the State Coroner, *Finding of Inquest*, 2006, <www.courts.qld.gov.au/mulrunji270906.pdf>, page 10

Allegation 6. Lack of vigour in questioning of the PLO

The Acting State Coroner was critical of the failure of both Webber and Williams to ask the PLO to clarify what he meant by a particular statement during a re-enactment interview. At the time the investigators were aware that Roy Bramwell had alleged he saw Hurley assault Mulrunji after the fall in the watch-house.

During the interview, Webber asked the PLO whether he was watching what happened after Hurley and Mulrunji fell in the watch-house. The PLO said he wasn't. Williams asked the PLO 'What were you doing? What, how come you were standing there?' to which the PLO replied:

I can't remember. I just stood there because I was thinking, um, if I see something I might get into trouble myself or something. The family might harass me or something you know.

Williams then replied 'Oh, OK' and Webber went on to ask the PLO another question.

Webber told the IRT that it wasn't that the PLO was necessarily seeing anything improper or doing anything improper, he simply did not want to know about it. Webber said that his experience of Aboriginal communities would suggest that 'if they get directly involved in things they can expect repercussions'. He also said that the PLO was at times extremely difficult to understand and 'a very reluctant witness'. Williams also said that the PLO was a very difficult person to interview and he had difficulty in understanding him.

The IRT concluded that both officers made a mistake about what the PLO said or meant but there were not sufficient grounds for disciplinary action.

The CMC considers that the whole point of conducting the re-enactment interviews seems to have been to gather evidence in relation to Roy Bramwell's allegation of assault and about what occurred when Hurley brought Mulrunji into the police station. The PLO's answer related to that central point, yet neither Webber nor Williams pursued it. It is concerning, particularly if they felt the PLO was difficult to interview, that Webber and Williams did not take steps to ensure that they were able to elicit information from the PLO and understand what he said.

Allegation 7. The Form 1

The Acting State Coroner was concerned that the Form 1 did not include Roy Bramwell's allegation that he saw Hurley assault Mulrunji, which meant the information was not available to the pathologist at the time of the first autopsy. Form 1 is a QPS form for reporting a death to the Coroner under the *Coroners Act 2003*, to assist the Coroner in deciding whether an autopsy should be ordered and to assist the pathologist performing the autopsy to establish the cause of death.

Kitching prepared a Form 1 on the night of 19 November 2004 with information collected from witnesses up to that point and sent it to the local Coroner on Monday 22 November without updating it in relation to assault allegations by Roy Bramwell and Penny Sibley. Nor did he prepare a Supplementary Form 1 detailing these. Webber checked the form on the evening of 19 November but said he did not subsequently think to have the assault allegation included on the Form 1 as he didn't consider it had any significant effect on the investigation.

Kitching attended the autopsy and personally briefed the pathologist but the pathologist's record of the autopsy does not indicate any oral information from Kitching about allegations of intentional assault. Kitching told the IRT that at the time the Form 1 was sent to the Coroner (Monday 22), he had not had the opportunity to go back and modify it. He also said, variously, that it was an oversight, and that the information may have 'drifted from his mind' because of his doubts about Bramwell's credibility.

In response to a suggestion from the IRT, Kitching agreed that he only offered to pathologists information that he considered reliable and relevant. This seems in stark contradiction to his inclusion on the Form 1 of hearsay evidence about Mulrunji drinking bleach and his exclusion not only of Bramwell's evidence but also of Penny Sibley's allegation of assault (the credibility of which had not been questioned). In effect, Kitching seems to have informed the pathologist of information adverse to Mulrunji but excluded allegations adverse to Hurley.

The IRT found that criticism of police would not have occurred had a senior officer reminded or directed Kitching to mention the Bramwell allegations in the Form 1 or during the autopsy. The IRT also considered it was clear from the re-enactment interview that Bramwell had not been a credible witness.

Clearly Kitching failed to fulfil his obligation to complete the Form 1. His actions — at the least — create a perception of bias.

In the CMC's view, the IRT failed to adequately consider this allegation. The IRT ignore important parts of the OPM that are inconsistent with the investigators' actions and explanations, and as a consequence their report does not adequately examine the conduct of the investigators. Instead, the IRT appear to be simply providing reasons to justify Kitching's failure to make this information available to the pathologist, and Webber's and Williams' failure to check the Form 1.

The IRT has also implicitly supported the investigators' statements by focusing on the issue of Bramwell's credibility (despite their recommendation that Kitching receive guidance on this issue). The issue of the credibility of a witness is irrelevant to the purpose of preparing a Form 1, which neither the officers nor the IRT properly consider.

Allegation 8. Lack of support to Indigenous witnesses

The Acting State Coroner was critical of the lack of support provided to the Indigenous witnesses by the investigation team. In practical terms, this would normally take the form of a support person being provided for the Aboriginal and Torres Strait Islander witness or suspect.

Kitching and Webber both told the IRT that they did not consider that at any stage a support person was required for any witness, particularly since what was required at the time was just a straightforward collection of evidence process. Both claimed extensive experience in dealing with Aboriginal people, enabling them to easily establish a rapport. However, Robinson admitted to the Inquest that he experienced communications difficulties with Aboriginal witnesses.

The IRT found that no specific obligation from a policy perspective was placed on the investigators to use a support person unless they were of the view that one was needed, and they were not aware of any specific complaints by witnesses about their treatment by the investigators. The IRT also noted that the witnesses were not cross-examined to any great extent during these initial interviews.

The CMC considers that Webber, Kitching, Williams and Robinson clearly did not comply with the obligations under the OPM with respect to dealing with Aboriginal witnesses. Although seven Indigenous witnesses were interviewed, there is no evidence of the witnesses being offered the opportunity to have a support person or that the question of special need was even considered at any point.

In the CMC's view, the IRT in reviewing this allegation also failed to identify or refer to the obligations under the OPM in relation to interviewing Indigenous witnesses. In fact, its finding that 'there was no specific obligation to use a support person, unless the investigators considered one was required' ignores the specific provisions of the OPM.

Similarly, assertions by both the investigators and the IRT about the so-called 'straightforward' interview situation at Palm Island stand in considerable contrast to the alleged communication difficulties during the re-enactment interview with the PLO. Such assertions also highlight their lack of real understanding of the well documented communication issues associated with questioning Aboriginal witnesses, which the OPM requirement was intended to address.

Allegation 9. Notification of the deceased's family

The Acting State Coroner was critical of the fact that Mulrunji's family was not notified of his death until the arrival of the investigation team on the island four hours later, and that family members had earlier been sent away from the police station, including by Hurley, without being told about his death. Both the OPM of the time (and the RCIADIC) gave high priority to immediate notification of the family in the event of a death in custody.

Webber told the Inquest and the IRT that he expected the notification of family to be his responsibility, and that he treated it as a priority on arrival at the island. He considered it was inappropriate for a junior officer or an officer involved in the incident to speak to the family.

The IRT supports Webber's decision to personally notify Mulrunji's family, 'given that the two most senior officers on the island had been directly involved in the incident'. They appear to have formed the view that the distress caused from hearing of Mulrunji's death from an officer involved, or from junior officers, would be greater than that caused from a lengthy delay in being informed of the death.

In the CMC's view, the delay in notifying the family of Mulrunji's death was not acceptable. It was more important for the family to be notified without delay than it was to be notified by a senior officer. Another officer, such as Leafe (who actually accompanied Webber in notifying the family) or Tonges, could have respectfully and sensitively carried out this responsibility, probably with the support of a member of ATSILS. They could also have assured the family that the senior officer responsible for the investigation would visit them as soon as he arrived on Palm Island.

The IRT supported Webber's decision, and recommended no further action be taken in relation to Webber's conduct. The IRT's support of Webber's decision is puzzling in light of the high priority given to prompt notification given by the OPM (and RCIADIC). Like Webber, the IRT also appear not to have considered the other options available.

The IRT recommended that the acting Chief Superintendent be chastised and receive guidance in relation to a number of specific issues, including his failure to give directions or advice to Hurley or the investigation team about notification of Mulrunji's death.

It is hard to avoid the perception that they are attempting to justify Webber's decision.

Allegations 10, 11 and 12 — Forensic processes, Investigative process, Control of the incident

The *Palm Island Review* states that the IRT identified a range of related issues as lines of inquiry, which are addressed in the report or in the interviews of the subject officers. These related issues appear to be those discussed in the last three allegations: Forensic processes, Investigative process and Control of the incident.

However, the inclusion of these in the IRT report is confusing. The allegations themselves are vague, and the evidence, findings and recommendations provide little further detail.

The CMC is of the view that two issues identified in these allegations did warrant more detailed consideration:

- What instructions, if any, were given to Hurley concerning the management of the crime scene prior to the arrival of the investigation team
- Need for independent investigation
- Whether Hurley could hear the accounts of other witnesses.

These are briefly outlined as follows.

Instructions to Hurley about managing the crime scene

The issue of what, if any, instructions were given to Hurley about managing the scene of the incident until the investigation team arrived is canvassed by the IRT during interviews with a number of the officers. However, it makes no findings or recommendations about the failure to provide Hurley with advice or directions, except in relation to the Acting Chief Superintendent.

Whether Hurley could see and hear witness interviews

The IRT says that it was inferred during questioning at the Inquest that Hurley was capable of seeing and hearing interviews conducted with witnesses. Subsequently, information provided to the CMC from Roy Bramwell, Leafé and Robinson indicating there may have been a mirror in the police station (between Hurley's office and the front counter) was passed on to the IRT, with advice that this needed to be considered. The IRT said it found no direct evidence that Hurley could have heard or seen any interviews with witnesses conducted by police.

In the CMC's view, the IRT in considering this issue appear to have simply asked Webber, Williams and Kitching where Hurley was while the interviews were being conducted, and whether he would have been able to see or hear the interviews. They failed to explore with Webber or Kitching the discrepancies between different accounts, examine any other evidence, or pursue the issue of a possible mirror in the police station despite having this having been brought to their attention.

Other issues for possible investigation

Although the IRT obviously decided to consider issues other than those raised by the Acting State Coroner in her findings, in the CMC's view there were a number of other, more significant issues that could have been investigated by the initial investigation team and by the IRT. These include the failure of the first investigators to question Hurley about relevant matters, issues relating to the questioning of Roy Bramwell, and the provision of inaccurate information; these are discussed in Chapter 10 of our report.

Conclusions and recommendations

The CMC acknowledges that considerable time has passed since the events on Palm Island, and is aware of the need to bring these matters to an end as soon as possible. However, in the CMC's view the desire for resolution of these matters should not take precedence over the need for justice to be seen to be done. The over-riding concern is to maintain proper standards of conduct of members of the QPS and ensure that the public can have confidence in the QPS.

In reaching our conclusions and recommendations, we have asked ourselves two questions:

- Does the evidence support grounds for disciplinary action?
- If so, who should consider the appropriate disciplinary action?

In answering these questions we took into account the material outlined above, the purposes of discipline and the responsibility of the Commissioner of Police, and the Service, 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.

The CMC sets out below its conclusions and recommendations about disciplinary proceedings and discusses the broader implications for the QPS.

The initial QPS investigation and the conduct of the officers involved

In the CMC's view the investigation into the death of Mulrunji was seriously flawed, its integrity gravely compromised in the eyes of the very community it was meant to serve. The way in which the investigation was conducted destroyed the Palm Island community's confidence that there would be an impartial investigation of the death.

There is evidence to suggest that the investigation was conducted in a manner that paid no heed to QPS' own policies and procedures, let alone its Code of Conduct, and ran counter to the spirit of the RCIADIC recommendations.

The investigation failed the people of Palm Island, the broader Indigenous community, and the public generally. Furthermore, it called into question the reputation of the Service and damaged public confidence in the integrity of the Queensland Police Service and its members.

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 Prosecutions for consideration of criminal proceedings.

However, contrary to the view of the QPS expressed in the *Palm Island Review*, the CMC considers the conduct of the officers involved in the initial QPS investigation serious enough to warrant consideration of disciplinary proceedings.

Consideration of disciplinary proceedings against officers involved

In considering the conduct of the individual officers and whether it warrants consideration of any disciplinary action and/or management action, the CMC has taken into account the obligations and requirements of each officer under the QPS Code of Conduct and the OPM; each officer's experience in the QPS; the evidence of the allegations and the officers' continuing attitude.

The CMC is of the view that:

- there is evidence which, if accepted by a prescribed officer, is sufficient to support consideration of disciplinary action for misconduct against Webber, Kitching, Robinson and Williams

AND

- the conduct of Webber, Kitching, Robinson and Williams may involve official misconduct and there is evidence supporting disciplinary proceedings for official misconduct.

For the reasons outlined above, the CMC makes the following recommendation.

Recommendations

The CMC recommends that consideration be given to commencing disciplinary proceedings for misconduct against Webber.

The CMC recommends that consideration be given to commencing disciplinary proceedings for misconduct against Kitching.

The CMC recommends that consideration be given to commencing disciplinary proceedings for misconduct against Robinson.

The CMC recommends that the QPS give consideration to commencing disciplinary proceedings for misconduct against Williams.

The CMC is of the view that no disciplinary proceedings against the Acting Assistant Commissioner would have been warranted in relation to the conduct of the initial QPS investigation. However, in the CMC's view, had the Acting Assistant Commissioner not retired, it would have been appropriate for the QPS to consider guidance or some other managerial action with respect to several aspects of his conduct.

The CMC is of the view that disciplinary proceedings against the Acting Chief Superintendent would not have been warranted in relation to the conduct of the initial QPS investigation. However, had the Acting Chief Superintendent remained with the QPS, the CMC would have recommended the QPS give consideration to management action to address his response to the issues arising from the initial QPS investigation.

Considerations of management action

The CMC concludes that Webber, Williams, Kitching and Robinson all failed to comply with the provisions of the OPM and the RCIADIC recommendations about investigating an Indigenous death in custody. They have not demonstrated any insight into their failings, claiming that they acted appropriately and seeking, in some cases, to blame others for the adverse impact of their investigation. For that reason, the CMC is also of the view that consideration should be given to performance management of the officers.

Recommendation

The CMC recommends that the QPS initiate management action to address the performance of Webber, Kitching, Williams and Robinson.

The *Palm Island Review* and the conduct of the members of the IRT

Given the public interest in the QPS response to the criticisms of the Acting State Coroner, the Commissioner of Police quite appropriately requested that the CMC conduct a review of the *Palm Island Review*. This was a case in which it should have been clear to the QPS that it was necessary for them to act in the public interest and conduct a thorough, competent and impartial investigation of the initial QPS investigation. Yet, in the CMC's view, the QPS failed to do so.

In the CMC's view, the *Palm Island Review* did not do justice to the seriousness of the event: the death of an Indigenous man in police custody.

The *Palm Island Review* creates the impression that the QPS failed to acknowledge the context of the initial QPS investigation and to appreciate the seriousness of the investigators' conduct. In the CMC's view, the evidence creates the perception that the IRT's investigation was focused on simply allowing the officers concerned to provide largely unchallenged explanations for their conduct in response to the Acting State Coroner's criticisms, rather than finding out what actually happened and pursuing the reasons why any identified failures or deficiencies in the initial QPS investigation occurred.

The CMC can have no confidence in the integrity of the conclusions and recommendations in the *Palm Island Review*. Contrary to the view expressed by the Commissioner of Police, the CMC considers that the conduct of the members of the IRT is sufficiently serious to warrant consideration of disciplinary proceedings.

Consideration of disciplinary proceedings in relation to the *Palm Island Review*: IRT members

In considering the conduct of the members of the IRT the CMC has taken into account the obligations and requirements of the IRT under the QPS Code of Conduct and Section 18 of the HRMM; the experience of the members of the IRT in the QPS; and the evidence of the IRT's investigation, their findings and recommendations. It has also taken into consideration the issues they raise in their procedural fairness submission (details of which are given in Chapter 12 of this report).

The CMC recognises that the IRT members did not act in isolation. It acknowledges that they received assistance and advice from an Assistant Commissioner; were overseen by the QPS Solicitor; and gave detailed regular briefings to the Commissioner of Police, who fully supported their findings.

None the less, the members of the IRT were obliged to perform their function in accordance with the prescribed standards and their ethical obligations.

The CMC suggests that the evidence which supports consideration of disciplinary proceedings can be summarised as follows:

- The IRT failed to hold the officers involved in the initial QPS investigation accountable for their conduct.
- They justified conduct of the initial QPS investigation team on doubtful grounds.
- They suggested explanations for the officers conduct not advanced by the officers themselves.
- They accepted evidence without testing it.
- They asked a series of questions appearing to be designed to elicit a specific desired response.
- They asked questions which create a perception of bias.
- They demonstrated a lack of thoroughness and a lack of diligence.
- They made inadequate findings in relation to the conduct of the investigating officers. They failed to consider the totality of the investigating officers' conduct, dealing with each allegation separately, rather than looking for patterns of behaviour and coming to an overall conclusion.

The CMC is of the view that:

- there is evidence which, if accepted by a prescribed officer, is sufficient to support consideration of disciplinary proceedings against the members of the IRT

AND

- the conduct of the members of the IRT may involve official misconduct and there is evidence supporting disciplinary proceedings for official misconduct.

For the reasons outlined above, the CMC makes the following recommendation.

Recommendation

The CMC recommends that the QPS give consideration to disciplinary proceedings against the members of the IRT.

Requirement for QPS to report to CMC

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.

If the CMC is not satisfied with the proposed course of action, it will assume responsibility for the matter and make application to the Queensland Civil and Administrative Tribunal (QCAT) to commence disciplinary proceedings.

Prevention and systemic issues

An important focus for the QPS in investigating a matter, and for the CMC in reviewing a QPS investigation, is identifying any systemic concerns, deficiencies in policy or procedures or organisational culture, and developing strategies to address them.

Policies and procedures

Since Mulrunji's death and the subsequent events on Palm Island, the QPS has developed and implemented new operational procedures for investigations of deaths in custody.

However, the implementation of new operational procedures and education and training sessions alone is not the answer.

At the time of the initial QPS investigation, the QPS already had provisions in place in the OPM which would have ensured an impartial investigation; provisions that the officers simply failed to follow. Officers must also be able to appreciate the reasons for policy and procedures and why adherence to them is so important; they must honour both the letter and the spirit of the OPM if they are to appropriately carry out their responsibilities.

The QPS stated that it accepted the RCIADIC recommendations and had implemented policies and procedures to give effect to them, yet the investigation of Mulrunji's death, and the treatment of his family and community, ran directly counter to the spirit of the Royal Commission.

If the members of the initial QPS investigation team and the IRT had simply complied with the relevant provisions of the Code of Conduct, OPM and Section 18.2 of the HRMM, history would have been decidedly different.

Organisational issues — implications for the QPS

The actions of the Service in responding to the events on Palm Island lead us to several observations on the QPS and its culture.

Once the Acting State Coroner had made the criticisms of the investigation of Mulrunji's death, it was imperative that the QPS did not compound the identified failings of that investigation, if public confidence in the Service, and the self-esteem of members of the Service, were to be restored.

Both the investigation of Mulrunji's death and the IRT investigation should have been impartial and thorough. Unfortunately, in the CMC's view, neither was. In the CMC's view, the initial QPS investigation and the *Palm Island Review* were characterised by double standards and an unwillingness to publicly acknowledge failings on the part of police.

In the CMC's view, the officers investigating Mulrunji's death and the authors of the *Palm Island Review* were handicapped in the performance of their professional duties by their over-identification with fellow officers who were under examination, as described by the Royal Commission:

The essential problem of the expertise of specialist, operational police investigators being employed in post-death investigations derives from the possibility of bias. In blunt terms, they may wish to protect other police from blame. They may wish to protect them from exacting scrutiny. More subtly, they may sympathetically project themselves into the position of the custodial officers and regard their explanations as having a credibility which they do not deserve¹³.

Even the Commissioner, while he has by his own admission 'always publicly acknowledged that the initial investigation on Palm Island should have been different and undertaken better than it was', fails to acknowledge or understand the seriousness of the essential failings of that investigation.

The Commissioner also appears unable to recognise the failings of the IRT's investigation.

13 E. Johnston, *National report: Royal Commission into Aboriginal Deaths in Custody*, vol. 1, Australian Government Publishing Service, Canberra, 1991, page 121

The QPS and its officers must recognise the need to be thorough and impartial, and be seen to be thorough and impartial, particularly when investigating their own officers. Tensions in the relationship between the police and the Palm Island community have shown that communities will not tolerate the application of a double standard by the police service, whereby its own officers are investigated less rigorously than an ordinary citizen would be.

Accountability is essential to public confidence in the police service

In the CMC's view, the *Palm Island Review* indicates that there is a belief within QPS that the best way to protect the reputation of the Service is not to expose its shortcomings. This erroneous belief about what is best for the organisation can only ultimately be self-destructive. It will erode public confidence and debilitate the morale of good officers and tarnish them unfairly.

High-profile cases such as the Palm Island matter set the public perceptions of the QPS. If the QPS wants the public to be confident that matters involving its own officers can be investigated rigorously and impartially, then it cannot perpetuate a culture that countenances failure to meet expected standards without consequence.

The CMC is strongly of the view that one of the most effective ways in which the QPS can engender public confidence, protect its reputation, and maintain high standards and the self-esteem of its members is to be seen to take certain, timely, responsive and decisive action when there is a failure to meet these standards.

The Commissioner sets the standards against which the members of the QPS are measured. It is his responsibility to maintain them and promote public confidence. He is responsible for the culture in which the *Palm Island Review* was produced, and hence he must be held accountable for it.

The CMC looks to the Commissioner of Police to acknowledge the unacceptable conduct of the members of the initial QPS investigation team and the flawed *Palm Island Review* and now take appropriate action to restore the confidence of the public, and of its own members, in the Service.

INTRODUCTION

For more than five years questions around the death of Mulrunji in police custody on Palm Island and its investigation by the Queensland Police Service have generated continuing debate and high levels of public and media interest, as well as a succession of legal proceedings including a third inquest.

This report — a review by the CMC of an internal investigation by the QPS of the initial police investigation into the events on Palm Island in November 2004 — necessarily examines some of those events. It does not deal with the circumstances of Mulrunji's death, as these have now been the subject of three inquests. The primary focus of this report is on the internal investigation initiated by the Commissioner of Police, and what that investigation tells us about the manner in which the QPS has responded to criticisms of its officers.

Our review has been a detailed and lengthy process, prolonged by the need for us to obtain and analyse information and documentation additional to that provided to us by the QPS in their report. We acknowledge that our review is well overdue, and the CMC apologises for its failure to bring this matter to a close earlier.

However, the late delivery of this report should in no way be taken to imply that we did not understand the importance of the issue. Quite the contrary — we believe this report to be an important one and we have taken time to do justice to the complexity of the evidence. We make it public so that its messages can be considered by the people of Palm Island, the wider community and particularly the QPS.

Twenty years ago, a Royal Commission brought the issue of Aboriginal deaths in police custody into sharp focus — not only for police and Indigenous people but also for the wider Australian community. In 1991 the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) handed down recommendations outlining the responsibilities of police officers assigned to any such investigations, including a number of recommendations to ensure that any investigations into the death of an Indigenous person in custody would be thorough and impartial. These recommendations were made in the interests not only of the deceased and their community, but also of the officers under investigation and the officers investigating them. On a number of occasions, the Queensland Police Service publicly stated that its official procedures reflected RCIADIC's recommendations.

Thirteen years after RCIADIC, in November 2004, Mulrunji died in the Palm Island watch-house. Despite the RCIADIC recommendations specifically intended to ensure thoroughness and impartiality in an investigation of an Indigenous death in custody, the circumstances of Mulrunji's death and the subsequent police investigation exacerbated longstanding distrust between police and sections of the Palm Island community, culminating in a riot and the burning of the police station.

We acknowledge the historical complexity of the relationship between police and Indigenous people, which was explored at length in our report last year on policing Indigenous communities¹⁴. It is not the intention of this report to re-explore those issues. None the less, in reviewing this tragic chain of events, one can only deeply regret that the various provisions of RCIADIC designed to ensure the integrity of investigations, aid police to bridge cultural differences, and support Indigenous people in distressing circumstances were in this case so neglected by members the Queensland Police Service — with disastrous consequences for all concerned.

14 CMC, *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities*, 2009

Based on the evidence of our review, the CMC is of the view that in both the original investigation and the internal investigation that followed, QPS officers not only violated the spirit of the RCIADIC recommendations, but failed to meet even the procedural standards and ethical obligations espoused by their own organisation. Had these been met, no further action by the CMC may ever have been necessary.

In the case of the initial investigation, QPS standards and procedures should have guaranteed the people of Palm Island a thorough and impartial investigation.

Similarly, once questions were raised about the integrity and impartiality of the initial police investigation into Mulrunji's death, QPS standards for the conduct of internal investigations should have ensured the utmost rigour and independence on the part of the reviewing officers.

Unfortunately, in the CMC's view, in neither investigation was that the case.

In asking the CMC to review the internal investigation, the Commissioner of Police quite rightly identified it as a question of public confidence. At the heart of this matter is the ability and, perhaps more importantly, the *will* of the Queensland Police Service to properly investigate the conduct of its own officers.

Should the QPS show itself unable or unwilling to impartially assess or adequately censure the behaviour of its officers, then it is the responsibility of the CMC to do so.

As an oversight body, the CMC has an overriding responsibility to promote public confidence in the integrity of public agencies and — if misconduct does happen within a public agency — in the way it is dealt with¹⁵.

In correspondence between QPS and the CMC, the Commissioner of Police has stated that he and the Service have learned many lessons from Mulrunji's death and the events on Palm Island.

In the interests of public confidence in the QPS, the CMC is making this report public, and referring this matter to the Commissioner of Police to consider the evidence presented in this report and its recommendations, and to put in train a course of action to respond decisively and restore public confidence in the QPS.

We look to the QPS to demonstrate that it can act thoroughly and impartially, in the interests of both police integrity and public confidence, as it should have done in November 2004.

15 Section 34(d) of the *Crime and Misconduct Act 2001*

Part 1:

Background to the CMC review

WHAT EVENTS LED TO THIS REPORT?

Mulrunji's death, initial investigations and Inquest¹⁶

On 19 November 2004 Mulrunji died in police custody on Palm Island. On the same day the Queensland Police Service (QPS) commenced an investigation into the circumstances of his death.

Following an autopsy report which revealed the death was not from natural causes, at the request of the Commissioner of Police the Crime and Misconduct Commission (CMC) took over the police investigation on 24 November 2004. CMC officers travelled to Townsville that afternoon and received briefings about the matter on 24 and 25 November 2004. The CMC conducted an extensive investigation over the following months and prepared a report for the Coroner.

On 1 August 2005 the Acting State Coroner Christine Clements began hearing evidence in the second¹⁷ Inquest into the death of Mulrunji. On 27 September 2006, she delivered her findings, in which she was critical of many aspects of policing on Palm Island and of the initial investigation by the QPS.

Section 48 [Reporting offences or misconduct] of the *Coroners Act 2003* provided:

- (2) If, from information obtained while investigating a death, a coroner reasonably suspects a person has committed an offence, the coroner must give the information to—
 - (a) for an indictable offence—the director of public prosecutions; ...
- (3) A coroner may give information about official misconduct or police misconduct under the *Crime and Misconduct Act 2001* to the Crime and Misconduct Commission.

The Acting State Coroner did not give any information to the DPP or to the CMC.

QPS response to the Acting State Coroner's findings

In response to the Acting State Coroner's comments, the Commissioner of Police formed an Investigation Review Team (IRT) in December 2006 to examine in detail any criticisms of the QPS or its members arising from the Inquest and the Acting State Coroner's findings relevant to the initial QPS investigation¹⁸. The IRT consisted of an Acting Superintendent and an Inspector. The Commissioner requested the CMC to review the resulting report of the IRT.

16 A detailed chronology of significant events just prior to and following the death of Mulrunji is in Chapter 5 of this report.

17 The State Coroner ceased to conduct the first inquest into the death to avoid a perception of bias on his part. Subsequently, the Deputy State Coroner was appointed, as Acting State Coroner, to conduct the second Inquest.

18 After the findings of the Inquest were released, the Commissioner of Police established a QPS Steering Committee to address the broad range of issues relating to Palm Island set out in the Acting State Coroner's findings. The IRT was to examine the issues that had not been dealt with by that Steering Committee.

Complaints re the initial QPS investigation received by the CMC

Subsequently, in May 2007 and May 2008, the CMC received complaints about the conduct of the initial QPS investigation. Both complaints, which involved allegations of misconduct¹⁹, were based on the evidence before the second Inquest and the findings of the Acting State Coroner. As the IRT's review was already well under way at that time, the CMC referred the complaints to the QPS to deal with, subject to monitoring by the CMC. The CMC requested that the QPS provide a report of their review for the CMC to review prior to the finalisation of the matter.

The *Palm Island Review* report received by the CMC

On 24 November 2008 the QPS forwarded to the CMC a three-volume report entitled *Palm Island Review*.

Though no specific mention is made in the report of the two complaints concerning the initial QPS investigation, it appears that it is intended to deal with those complaints as well as examine the Acting State Coroner's criticisms.

The QPS variously refers to the *Palm Island Review* as a 'review', an 'investigation' and an 'examination'. However, at the beginning of each interview of a QPS member the IRT said they were conducting 'a disciplinary investigation' and that the Commissioner 'has directed that all members of the QPS truthfully, completely and promptly answer all questions directed to them by a member responsible for conducting an enquiry or investigation on behalf of the Commissioner'²⁰. We will refer to the process undertaken by the IRT as an investigation.

¹⁹ See definition on page 18.

²⁰ The officers were advised that this direction was given under section 4.9 of the *Police Service Administration Act 1990* and section 18.2.4.4.9 of the QPS Human Resource Management Manual. During the interviews, the appropriate warning was given that failure to comply with the Commissioner's direction was a breach of section 9(1)(c) of the *Police Service (Discipline) Regulations 1990* and would provide grounds for disciplinary action.

THE ROLE OF THE CMC

Jurisdiction: misconduct functions of the CMC

The CMC's misconduct functions are:

- to raise standards of integrity and conduct in the Queensland public sector, including the QPS
- to ensure that a complaint, information or matter which involves or may involve 'misconduct' is dealt with in an appropriate way, having regard to the principles set out in section 34 of the *Crime and Misconduct Act 2001* (the CM Act).

Misconduct under the CM Act means 'official misconduct' or 'police misconduct', which in effect equates to 'misconduct' as defined by the *Police Service Administration Act 1990*.

'Misconduct' means conduct that is disgraceful, improper or unbecoming a police officer; or shows unfitness to be or continue as a police officer; or does not meet the standard of conduct the community reasonably expects of a police officer.

Misconduct definitions

Official misconduct is conduct that could, if proved, be—

- a criminal offence; or
- a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.

Conduct means ... conduct, or a conspiracy or attempt to engage in conduct, of or by the person that is or involves—

- the performance of the person's functions or the exercise of the person's powers, as the holder of the appointment, in a way that is not honest or is not impartial; or
- a breach of the trust placed in the person as the holder of the appointment; or
- a misuse of information or material acquired in or in connection with the performance of the person's functions as the holder of the appointment, whether the misuse is for the person's benefit or the benefit of someone else.

hold an appointment means hold an appointment in a unit of public administration.

Sections 14 and 15 of the CM Act

Principles which guide the CMC's misconduct functions

One of the important misconduct principles which guide the CMC's performance of its functions is that of 'public interest'. It provides, among other things, that the CMC has an overriding responsibility to promote public confidence in the integrity of units of public administration (in this case the QPS).

A second principle is that of devolution, which recognises the responsibility of a chief executive to set and maintain proper standards of conduct for their employees and maintain public confidence in the agency. The application of this principle means that many complaints are referred to the chief executive officer of the subject agency to deal with, subject to the CMC's monitoring role.

When a complaint is dealt with by the chief executive or a delegate, the CMC holds the agency accountable to the public through its monitoring role.

Section 34 [Principles for performing misconduct functions] of the CM Act

It is the Parliament's intention that the commission apply the following principles when performing its misconduct functions—

(a) **Cooperation**

- to the greatest extent practicable, the commission and units of public administration should work cooperatively to prevent misconduct
- the commission and units of public administration should work cooperatively to deal with misconduct

(b) **Capacity building**

- the commission has a lead role in building the capacity of units of public administration to prevent and deal with cases of misconduct effectively and appropriately

(c) **Devolution**

- subject to the cooperation and public interest principles and the capacity of the unit of public administration, action to prevent and deal with misconduct in a unit of public administration should generally happen within the unit

(d) **Public interest**

- the commission has an overriding responsibility to promote public confidence—
 - in the integrity of units of public administration and
 - if misconduct does happen within a unit of public administration, in the way it is dealt with
- the commission should exercise its power to deal with particular cases of misconduct when it is appropriate having primary regard to the following—
 - the capacity of, and the resources available to, a unit of public administration to effectively deal with the misconduct
 - the nature and seriousness of the misconduct, particularly if there is reason to believe that misconduct is prevalent or systemic within a unit of public administration
 - any likely increase in public confidence in having the misconduct dealt with by the commission directly.

One of the ways in which the CMC monitors is to review the manner in which the agency deals with a complaint. There are a number of ways in which the CMC conducts a review including, as in this case, conducting a 'review-before'.

Monitoring role: review-before

In a 'review-before' the CMC requires the agency to provide a completed investigation report prior to the final determination by the agency about what action to take, if any, to respond to the issues raised by the complaint and the investigation. This review gives the CMC an opportunity to form a view about the appropriateness of the agency's investigation and any proposed action before the matter is finalised.

Detailed examination of the report and source material

The agency is required to provide a detailed report attaching all supporting source material. This material includes any documents and interviews with witnesses relied upon by the investigator in making findings and recommendations. The report will usually summarise the source material and the evidence.

The CMC will conduct a comprehensive examination of the agency's report. The extent to which the CMC independently examines the source material, rather than rely solely on any summaries in the report, depends upon a number of things including:

- whether a preliminary consideration of the report and source material raises a substantial concern about:
 - the integrity of the investigation
 - compliance with relevant standards
- the seriousness of the alleged conduct
- the public interest in the matter.

In practice, this generally means that all source material is examined in the majority of review-before cases.

Consideration of the integrity of the investigation and appropriateness of recommendations

In conducting a review, the CMC focuses on:

- the agency's compliance with policies and procedures, relevant standards or guidelines; and
- the integrity of the manner in which the complaint has been investigated, including consideration of:
 - the adequacy, impartiality and transparency of any investigation
 - the appropriateness of the conclusions and any recommendations made as a result of the investigation
 - the appropriateness of any decision whether to consider disciplinary action.

Consideration of agency capacity to deal with or prevent misconduct

The CMC also considers:

- the sufficiency of the investigation report and
- the prevention issues, that is:
 - any emerging trend or issue revealed by the investigation that impacts upon raising standards of integrity and conduct in the agency
 - whether the agency has taken any action to identify and address any systemic concerns or control failures, any deficiencies in policy or procedures or any relevant workplace issues revealed by the investigation, and the appropriateness of any recommendations made to remedy these issues
 - any apparent deficiencies in the capacity of the agency to deal with or prevent misconduct.

In considering the question of appropriateness of an agency's investigation and proposed action, the CMC acknowledges that there may be a range of courses of action available to the agency. The CMC will not seek to assert a contrary view unless it considers the conclusions and recommendations are unsound or unreasonable or the discretion of the decision-maker in some way miscarried or the exercise of the discretion was unsound or unreasonable. The CMC review will look at whether the agency's decisions and proposed actions are transparent, justifiable and accountable and within the range.

The CMC may require the agency to undertake such further inquiries as may be considered necessary to bring the complaint to its proper conclusion but only if such further inquiries are likely to have an impact upon the outcome.

CMC may appeal agency decision about disciplinary action

On the basis of its review, the CMC may form the view that disciplinary proceedings proposed by an agency are appropriate and refer the matter back to the agency to progress the matter.

If the CMC is not satisfied with the outcome of disciplinary proceedings for misconduct it can appeal the decision to the Queensland Civil and Administrative Tribunal (QCAT).

Queensland Civil and Administrative Tribunal

The Queensland Civil and Administrative Tribunal (QCAT) began its operations on 1 December 2009. It replaces the Misconduct Tribunals which previously had sole jurisdiction to hear disciplinary proceedings for official misconduct.

QCAT is an independent body. It is led by a President (a Supreme Court judge) assisted by a Deputy President (a District Court judge) and is made up of a number of members, adjudicators and the registry.

The members are the people who conduct hearings and make decisions for QCAT matters. Members can either be lawyers or other people who have knowledge, expertise or experience about the matter being heard.

The hearings are open to the public.

Assumption of responsibility by the CMC²¹

The CMC has no power to direct an agency about what action to take if the CMC does not agree with the agency's position. However, if the CMC feels strongly about the inadequacy or inappropriateness of the agency's proposed course of action, and discussions with the agency do not resolve the issue, the CMC may assume responsibility for, and complete, the investigation²².

Following the assumption of responsibility, the CMC must decide if consideration of disciplinary, or other, proceedings is warranted.

If the CMC:

- reports to the chief executive of an agency that a matter may involve official misconduct on the part of an employee, and
- it considers that there is evidence supporting disciplinary proceedings for official misconduct,

it may make application to the Queensland Civil and Administrative Tribunal to commence disciplinary proceedings to hear and decide upon an allegation of official misconduct.

Section 219A of the CM Act provides that the purposes of providing for such disciplinary proceedings are:

- to protect the public; and
- to uphold ethical standards within public sector agencies and the police service; and
- to promote and maintain public confidence in the public sector.

21 Sections 48, 49 and 50 of the CM Act

22 In the CM Act 'investigate' includes examine and consider.

QCAT may, on finding an allegation of official misconduct proved against a person, order that the person—

- (a) be dismissed; or
- (b) be reduced in rank or salary level; or
- (c) forfeit, or have deferred, a salary increment or increase to which the prescribed person would ordinarily be entitled; or
- (d) be fined a stated amount that is to be deducted from—
 - (i) the person's periodic salary payment in an amount not more than an amount equal to the value of 2 penalty units per payment; or
 - (ii) the person's monetary entitlements, other than superannuation entitlements, on termination of the person's service.

THIS CMC REVIEW

Purpose of this review

The purpose of this review was to consider:

- the IRT’s compliance with the QPS policies and procedures, and standards or guidelines relevant to their investigation of the initial QPS investigation
- the integrity of the manner in which the IRT dealt with the matter
- the sufficiency of the *Palm Island Review* report
- the misconduct prevention issues for the QPS.

Consideration of these issues necessitated the CMC forming a view not only about the IRT and the *Palm Island Review*, but also about the initial QPS investigation and the conduct of the officers involved in that investigation.

Scope of this review

The CMC review dealt with:

1. the circumstances of the initial investigation on Palm Island, and the conduct of the individual officers involved in it
2. the IRT’s investigation of that investigation, and the conduct of the members of the IRT
3. the actions and capacity of the QPS in dealing with any disciplinary and prevention issues.

The CMC review did not concern:

- the circumstances of Mulrunji’s death — these have been the subject of the three inquests, or
- issues relating to Hurley, including complaints made to the CMC about Hurley, and the resolution of those complaints.

Specifically, this report did not re-examine the conduct of Senior Sergeant Hurley. The *Palm Island Review* report noted that ‘The several matters relating to Senior Sergeant Hurley are not finalised and cannot be finalised until the result of the current review by S/Sgt Hurley to the District Court in respect of the findings of the [Acting] State Coroner’. The CMC concurred with this view.

Following the findings and recommendations of the third inquest, the CMC will now conduct the investigation of the remaining matters relating to Hurley and others concerning their actions following the death of Mulrunji²³.

23 The remaining matters are those that were raised in the second and third inquests.

Review of Inquest findings

Hurley sought to review the findings made by the Acting State Coroner in the second Inquest about the cause of Mulrunji's death.

On 16 June 2009 on appeal from the decision of the District Court, the Court of Appeal concluded that the finding of the Coroner about the cause of death was not reasonably open on the evidence. The Court found that the decision to set aside this finding was correct and ordered that the State Coroner direct another coroner to re-open the Inquest to re-examine the finding.

On 2 October 2009 Brian Hine, Deputy Chief Magistrate, was appointed to be the coroner to re-open the Inquest and re-examine the findings [the third inquest]. He commenced hearing evidence in the third inquest on 8 March 2010.

On 14 May 2010, the Deputy Chief Magistrate published the findings and recommendations of the third inquest <www.courts.qld.gov.au/doomadgee-mulrunji-20100514.pdf>.

Methodology of this review

The methodology followed that outlined in Chapter 2.

Standards applied

In conducting the review, the CMC had regard to:

- section 18 of the QPS Human Resource Management Manual (HRMM) which outlines the standards with which the QPS must comply in investigating, or otherwise dealing with a complaint
- the QPS Code of Conduct.

The standards and obligations imposed by these will be discussed in Chapter 7 (Background to the IRT investigation: policy requirements, oversight and the QPS discipline regime).

Material examined

After an initial detailed reading of the *Palm Island Review* report, the CMC was not satisfied with the adequacy, impartiality and transparency of the IRT's investigation process, or the conclusions or recommendations about the initial investigation on Palm Island in November 2004. We therefore, in effect, went back to the beginning and undertook our own detailed examination of the initial QPS investigation, and closely scrutinised the IRT process, conclusions and recommendations.

In undertaking this review, the CMC has examined an extensive range of material, which is detailed in Appendix 1, including:

- the QPS report titled *Palm Island Review*, which included:
 - a 15-page 'executive summary'
 - five discrete sections each dealing with the conduct of an individual officer
 - transcripts of the interviews conducted by the IRT
 - the video re-enactment interviews conducted at the Palm Island Police Station on 20 November 2004
 - the watch-house surveillance video from 19 November 2004
 - the Memorandum of Advice of Senior Counsel obtained by the QPS
- some of the statements prepared for the (second) Inquest into the death of Mulrunji
- the transcript of the Inquest
- the Finding of Inquest into the death of Mulrunji
- relevant sections of the police Operational Procedures Manual (OPM) in place at the time of Mulrunji's death and relevant sections of the current version of the OPM

- the report of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (1991), particularly its recommendations
- various interviews conducted by the QPS and the CMC²⁴.

Not all the material relied upon by the CMC in this review was provided with the *Palm Island Review* report. However it was all available to the IRT. It has been necessary for us to identify and obtain, from various sources, a significant part of this already existing material. No additional inquiries were made by the CMC; for example, the CMC did not conduct any interviews.

Responsibility for investigation not assumed by the CMC

While the CMC may in certain cases assume responsibility for an investigation and complete it, the CMC did not do so in this case.

The CMC is firmly of the view that it is for the Commissioner of Police to take responsibility, and take action and be seen to take action to deal appropriately with this matter. In doing so, the Commissioner of Police may restore public confidence in the Service and re-enforce the high standards of conduct expected of members of the QPS.

In any event, in the CMC's view, in all the circumstances, any further investigation of the matter was unlikely to significantly change the outcome.

Procedural fairness

The CMC is satisfied it has complied with procedural fairness requirements.

All at risk of being viewed in an adverse light because of the publication of this report were given a draft and invited to make submissions.

The Commissioner of Police made submissions on behalf of the Queensland Police Service. Individual submissions were made by each of the police officers involved in the initial QPS investigation. Only one of the two senior officers now retired from the QPS Northern Region made submissions²⁵. Joint submissions were made by the members of the IRT.

All of the issues raised in those submissions have been taken into account and, where appropriate, the CMC has acceded to their requests and amended content in the report.

The affected persons have variously:

- rejected any suggestion of wrongdoing or conduct warranting consideration of disciplinary action
- suggested that, in forming its view about the initial QPS investigation, the CMC has failed to give adequate weight to the challenges presented to the investigation, such as the lack of resources and the geographic location
- argued that the report should not be published because, inter alia:
 - the CMC had not allowed sufficient time for proper consideration and comment upon the draft report
 - the publication of the report is premature as the individuals affected have not been afforded sufficient opportunity to fully respond
 - it may well be counterproductive to the maintenance of confidence in the discipline system and the promotion of public confidence.

²⁴ We reviewed the transcripts of numerous interviews conducted by the IRT, the QPS and the CMC about this and other related matters. We also listened to a number of interviews and read the detailed summaries of interviews which were not transcribed.

²⁵ The retired Acting Chief Superintendent made submissions but the retired Acting Assistant Commissioner did not.

The CMC rejects these arguments.

In the case of the members of the initial QPS investigation team, the relevant issues have either been explored with, or otherwise identified to, the individuals concerned. The evidence contained in this report relating to them comes from their own evidence contained in statements prepared for the second Inquest, in giving evidence before the second Inquest, in interviews with the CMC in the course of its investigation of complaints against Hurley and Robinson and / or in disciplinary interviews conducted by the IRT.

While some aspects of the evidence in relation to the members of the initial QPS investigation team and the two retired senior officers remain untested by cross-examination, the report makes it clear where they have accepted or denied the allegations.

In relation to the members of the IRT, the CMC relies upon their own words and the report created by them. The procedural fairness process has identified the issues relating to them and provided an opportunity to respond. We have included relevant submissions made by them in Chapter 12 of the report.

Four of the officers at risk of being viewed in an adverse light, who were members of the initial QPS investigation, have been named in this report. This is because they have already been publicly named in the Inquests into the death of Mulrunji, and the issues concerning them, which are dealt with in this report, have been raised in those Inquests.

Complaint received about the conduct of the IRT

In his procedural fairness submission, the retired Superintendent (the Acting Chief Superintendent) made a formal complaint about the IRT to the CMC. The Acting Chief Superintendent's complaint will in effect be dealt with by the recommendations made by the CMC²⁶.

Structure of the report

This report is structured into five parts.

Part 1: *Background to the CMC Review* provides the necessary context to the CMC review:

- The events that led to this report — an overview of Mulrunji's death in custody, the QPS response to the Acting State Coroner's findings, complaints received by the CMC, the *Palm Island Review*
- The CMC's role — its jurisdiction, dealing with a complaint and monitoring
- This CMC review — its purpose, scope, methodology and structure.

Part 2: *The Palm Island death in custody* outlines:

- the legislative and policy requirements for investigations of deaths in custody, and the procedures and conduct expected of QPS officers faced with such circumstances
- a narrative chronology of circumstances surrounding the investigation inot death in custody of Mulrunji on Palm Island on 19 November 2004, reconstructing the events that took place there on 19–29 November 2004
- the Acting State Coroner's criticisms of the QPS initial investigation
- the complaints received by the CMC.

26 See Chapter 13: Conclusions and recommendations.

Part 3: *The QPS Response — The Palm Island Review* outlines:

- the legislative and policy requirements for the IRT investigation, and the procedures and conduct expected of the members of the IRT, and the QPS disciplinary regime
- the IRT's investigation process, including their identification of officers whose conduct in relation warranted examination and the allegations formulated by them

Part 4: *CMC assessment of the initial QPS investigation and of the IRT's investigation* deals with:

- a discussion of the allegations distilled by the IRT — the evidence, the IRT's findings and the CMC's comments in relation to each allegation
- areas of concern about the initial QPS investigation team not covered by the IRT
- the concluding statements made to the IRT by the members of the initial QPS investigation team
- procedural fairness submissions made to the CMC.

Part 5 outlines the CMC's conclusions and recommendations:

- the CMC's view of the initial investigation into Mulrunji's death in police custody and the conduct of the members of the initial QPS investigation team and recommendations for disciplinary and other action
- the CMC's view of the *Palm Island Review* and the conduct of the members of the IRT and recommendations for disciplinary action
- a discussion of the broader implications for the QPS.

Part 2:

The Palm Island death in custody

BACKGROUND TO THE INITIAL QPS INVESTIGATION: REQUIREMENTS FOR INVESTIGATIONS INTO DEATHS IN CUSTODY

When Mulrunji died in police custody, there were QPS ethical obligations and procedures in place and two sets of external guidelines that could and should have governed the actions of the police officers involved in the investigation:

- the QPS Operational Procedures Manual (OPM)²⁷ and the QPS Code of Conduct
- the 1991 RCIADIC recommendations which the Queensland Government and QPS said that they had implemented²⁸ and
- the State Coroner's Guidelines.

In principle, the intention of all is to achieve a thorough and impartial investigation.

We will look first at the external guidelines and then at the provisions of the OPM and the Code of Conduct, with which the officers should have been familiar.

State Coroner's Guidelines

Section 14(1)(b) of the *Coroners Act 2003* provides that the State Coroner must issue guidelines to all coroners about the performance of their functions in relation to investigations generally and, pursuant to section 14(3)(a), the guidelines must deal with the investigation of deaths in custody. Although the guidelines apply strictly to coroners, as the police are obliged to help the coroner, the coroner could in a particular investigation apply any part of those guidelines to a police officer as a reasonable and lawful request or direction under section 794(2) of the *Police Powers and Responsibilities Act 2000*.

QPS procedures for responding to deaths in custody: the OPM

From the time of the discovery of Mulrunji's death, the provisions of the OPM concerning the requirements for a police investigation of a death in custody immediately applied.

In the introduction to the OPM (July 2004) the Police Commissioner stated:

The Operational Procedures Manual is issued pursuant to the provisions of section 4.9 of the *Police Service Administration Act 1990*. The aim of the manual is to provide guidance and instructions in all aspects of operational policing. *To this end, members are to comply with the contents of the manual so that their duties are discharged lawfully, ethically and efficiently. Failure to comply with the contents of this manual may constitute grounds for disciplinary action.* [emphasis added]

27 The QPS *First Response Handbook* also contains a section on deaths in custody which refers to section 16.24.2 of the OPM. The handbook contains brief details about what to do when an officer finds someone who appears to be deceased in police custody, and what information the responsible officer should obtain. The provisions of the handbook are of little relevance to this matter.

28 In December 1997 the Queensland Government Progress Report on Implementation of the Recommendations of the RCIADIC stated that the QPS Operational Procedures Manual (OPM) provided policy, orders and procedures which addressed the requirements of the RCIADIC recommendations where practicable.

Failure to comply with the OPM is a ground for disciplinary action²⁹.

RCIADIC recommendations

Recommendation 35 (a) provided:

That police standing orders or instructions provide specific directions as to the conduct of investigations into the circumstances of a death in custody. As a matter of guidance and without limiting the scope of such directions as may be determined, it is the view of the Commission that such directions should require, inter alia, that:

a. Investigations should be approached on the basis that the death may be a homicide. Suicide should never be presumed.

Changes were made to the OPM, in part, to give effect to the recommendations of the RCIADIC, in particular section 35(a). However, despite the publicly stated adoption of that recommendation on at least three occasions prior to Mulrunji's death³⁰ there was not at that time an explicit statement in any QPS policy or procedure document, including the OPM, to that effect³¹. Rather the OPM relevant at the time of Mulrunji's death required that:

- Investigating officers should 'not presume suicide or natural death regardless of whether it may appear likely' (section 16.24.3).

The procedures relevant to the investigation of deaths in custody were contained in several sections of the OPM, namely:

- 1.17 Fatalities or serious injuries resulting from incidents involving members (Police related incidents)
- 2.13 Statements
- 2.14 Interviews
- Chapter 6 Special Needs
- Chapter 8 Coronial Matters
- 16.24 Deaths in custody.

29 Section 9(1) (c) of the Police Service (Discipline) Regulations 1990. A ground for disciplinary action is a contravention of, or failure to comply with, an instruction or order given by, or caused to be issued by, the Commissioner.

30 The Queensland Government and the QPS have publicly stated on a number of occasions that they have implemented recommendation 35:

- In June 1995 the Hon. A. M. Warner, Minister for Family Services and Aboriginal and Islander Affairs tabled in the Queensland Parliament the Queensland Government Progress Report on Implementation of the Recommendations of the RCIADIC to December 1994. This second progress report stated that recommendation 35 had been implemented in part (Hansard – Register of Tabled Papers – First Session – Forty-Seventh Parliament, page 262).
- In December 1997 the Queensland Government Progress Report on Implementation of the Recommendations of the RCIADIC October 1997 was tabled in the Queensland Parliament. This report stated that the RCIADIC recommendation 35 had been implemented and included in Chapters 2, 8 and 16 of the OPM (Hansard - Register of Tabled Papers – Second Session – Forty-Eighth Parliament, page 231).
- In January 1999 the Queensland Government Progress Report on Implementation of the Recommendations of the RCIADIC 1996 - 1997 was tabled in the Queensland Parliament. This report stated that the RCIADIC recommendation 35 had been implemented and included in Chapters 2, 8 and 16 of the OPM (Hansard – Legislative Assembly – Papers – 2 March 1999, page 13).

31 The changes to the OPM in April 2009 include the statement in section 16.24.3(ii) that investigating officers should 'treat the death in custody as a homicide until otherwise determined and are not to presume suicide or natural death regardless of whether it may appear likely'.

Officers' obligations under the OPM

The OPM clearly articulated the need for the investigation of a death in custody to be impartial and required the investigation to be thorough. The relevant sections of the OPM in that regard stated that:

- an investigation of a death in custody is to be conducted expeditiously and impartially (section 1.17)
- the regional crime coordinator is directly responsible for the investigation (section 1.17)
- a death in custody is to be investigated by a senior or experienced investigator with sufficient criminal investigation background (section 8.5.19)
- members directly involved in the incident or who are witnesses to the incident should be interviewed separately and as soon as practicable following the incident (section 1.17)
- members directly involved in the incident or who are witnesses to the incident should not discuss the incident amongst themselves prior to being interviewed (section 1.17)
- when investigating a coronial matter, statements should be obtained from all persons having any significant knowledge concerning the cause or circumstances of the death (section 8.4.21)
- statements from witnesses should be as comprehensive as possible and be obtained at the earliest practicable opportunity (section 2.13.1)
- members who may be required to give evidence of conversations, events or occurrences should compile relevant notes at a time during the conversation, event or occurrence, or as soon as practicable thereafter while details are still fresh in their mind (section 2.13.8)
- people of Aboriginal or Torres Strait Islander descent are considered people with special needs and officers intending to interview Aboriginal or Torres Strait Islander people, whether as witnesses or suspects, are to assume a special need exists until the contrary is clearly established using certain criteria (section 6.3.6).

In addition to the above general requirements, the OPM set out specific requirements, in the event of a death in custody, for the following officers:

- the regional crime coordinator
- the commissioned officer responsible for the investigation
- the representative of the Ethical Standards Command (ESC)
- the investigating officer.

Role of the Regional Crime Coordinator

In terms of the Regional Crime Coordinator (RCC), the OPM stated that:

- all deaths in custody be investigated by or under the control of the RCC unless otherwise directed by the ESC or the CMC (section 1.17)
- the RCC should conduct the investigation or appoint an independent senior investigator who:
 - has sufficient criminal investigation background; and
 - is from a police establishment other than where the incident occurred, or where the officers or members directly involved in the incident are stationed (section 1.17)
- the RCC is to be directly responsible for the investigation (section 1.17)
- where the CMC or ESC overviews the investigation, the RCC retains responsibility for the investigation (section 1.17)
- the RCC is to:
 - ensure the integrity of independent versions of members involved in the incident or witness to the incident is preserved as far as practicable
 - ensure members directly involved in the incident or who are witnesses to the incident are interviewed as soon as practicable
 - ensure sections 16.24 to 16.24.5 of the OPM are complied with (section 1.17)

Role of the commissioned officer responsible for the investigation

In terms of the commissioned officer responsible for the investigation, the OPM provided that as part of the investigation, the officer should, among other things:

- not presume suicide or natural death, regardless of whether it may appear likely
- obtain statements from all witnesses as soon as practicable after the incident
- include investigations into the general care, treatment and supervision of the deceased immediately before the death
- inquire fully into the circumstances of the arrest
- immediately arrange for the next of kin to be notified (section 16.24.3).

Role of the representative of the Ethical Standards Command

In terms of the representative of the ESC, the OPM provided that:

- where the CMC or ESC overviews the investigation, the RCC retains responsibility for the investigation (section 1.17)
- the role of the officer representing the ESC is to:
 - liaise with the RCC and CMC
 - immediately assess the incident in conjunction with the RCC and CMC
 - with CMC officers, overview the investigation and provide appropriate advice and assistance to the RCC³² (section 1.17)
- if the ESC representative is of the opinion proper investigational or procedural matters are not being adhered to, or there are matters which may adversely affect an impartial investigation, the representative should confer with the RCC and CMC to endeavour to resolve the issue (section 1.17)

Role of the Investigating Officer

In terms of the Investigating Officer, the OPM provided that:

- the investigating officer is responsible for, among other things:
 - advising relatives
 - completing a Form 1³³
 - forwarding a copy of the Form 1 to their respective Officer in Charge so that it is checked (section 8.4.3)
- where additional or relevant information comes to hand that may assist the pathologist in determining the cause of death prior to the autopsy being conducted, investigating officers are to contact the pathologist as a matter of urgency and provide that information on a Supplementary Form 1 (section 8.4.3)
- where an officer has additional information that could not be included on the Form 1 at the time of submission, they should provide this information on a Supplementary Form 1 (section 8.4.8).

Roles not specified under the OPM

The CMC is not aware of any section of the OPM which placed a specific obligation on an Assistant Commissioner, Operations Coordinator (or Chief Superintendent) or District Officer in relation to a death in custody investigation.

32 In this case, the CMC received an Executive Briefing Note outlining background and issues in relation to the investigation dated 22 November 2004 and assumed responsibility for the investigation on 24 November 2004.

33 A Form 1 is a QPS form required by section 8.4.3 of the OPM called: Form 1 QUEENSLAND *Coroners Act 2003* Section 7(3), Police Report of Death to a Coroner.

Code of Conduct

The QPS Code of Conduct³⁴ in force at the time of Mulrunji's death provided guidance to the members of the initial QPS investigation team about their ethical obligations in discharging their responsibilities.

Specifically, section 2 stated that in the provision of policing services, the public are entitled to expect that members will:

- conduct themselves and discharge their responsibilities with professionalism and integrity
- ...
- comply with, and be seen to act within the spirit and letter of the law
- act in the public interest and give priority to official duties and obligations.

Further, at all times members were expected to conduct themselves in a manner that did not discredit the individual member or the reputation of the QPS.

The SELF test

Section 7 of the Code required members assessing the appropriateness of their conduct to apply the SELF test, which includes the questions:

- Would your decision withstand scrutiny by the community or the Service?
- Is your decision fair to the community, your family and colleagues and others?

SELF stands for:

Scrutiny
Ensures compliance
Is **L**awful and
Fair.

Public trust

Other sections of the Code required members to:

- carry out official public sector decisions and policies faithfully and impartially (Respect for the Law and System of Government)³⁵
- act responsively in performing official duties (Respect for Persons)³⁶
- in recognition that public office involves a public trust ... seek to maintain and enhance public confidence in the integrity of public administration and advance the common good of the community the official serves (Integrity)³⁷
- exercise proper diligence, care and attention (Diligence)³⁸
- act in good faith³⁹
- in the performance of official duties⁴⁰ ...:
 - demonstrate high standards of professional integrity and honesty
 - perform any duties ... diligently and to the best of their ability, in a manner that bears the closest public scrutiny and meets all legislative, Government and Service standards.

34 Version 29, August 2003

35 Section 9.1

36 Section 9.2

37 Section 9.3

38 Section 9.4

39 Section 10.1

40 Section 10.15

Conflict of interest

Section 10.6 dealt with Conflict of Interests and required officers to avoid both actual and apparent conflicts of interests and disclose details of any conflict to their supervising executive officer⁴¹.

Failure to comply

Failure to comply with the Code of Conduct is a ground for disciplinary action in section 9(1)(c) of the Police Service (Discipline) Regulations 1990.

41 Section 10.6, Code of Conduct. The term 'supervising executive officer' is not defined in the OPM. 'Executive officer' is defined in the *Police Service Administration Act 1990* as a person who holds a position in the police force as an executive officer.

PALM ISLAND, 19–29 NOVEMBER 2004: CHRONOLOGY⁴²

This describes the circumstances surrounding the death in custody of Mulrunji on Palm Island on 19 November 2004, by reconstructing the events that took place there from 19 to 29 November 2004.

Friday 19 November 2004

On Friday 19 November 2004 the following police officers were rostered for duty at the Palm Island police station⁴³: officers Hurley, Leafé and the Police Liaison Officer (PLO) from 8.00 am until 4.00 pm, and officers Tonges and Steadman from 4.00 pm until midnight. The Senior Constable, although on a rest day, was also present on the Island; two other officers were on rest days from Thursday 18 November until Sunday 21 November 2004, but the available evidence does not disclose whether they were on the Island on this day.

Early in the morning Palm Island resident Gladys Nugent and her two sisters were seriously assaulted by Gladys' partner Roy Bramwell⁴⁴, and one sister was taken by medivac to Townsville for treatment.

At about 9.30 am Hurley spoke to Gladys Nugent at the hospital. Ms Nugent and her other sister then went to the police station to make statements. Hurley asked them to return on Saturday to make their statements. Gladys Nugent was concerned for her safety, and asked Hurley to drive her to the Bramwell house so she could collect her medication. The PLO went with Hurley and Gladys Nugent in the police vehicle.

At about 10.15 am, while Gladys Nugent was at the house, Hurley arrested resident Patrick Bramwell, for drunkenness. About five minutes later, just down the road from the Bramwell house, Hurley arrested Mulrunji for public nuisance⁴⁵.

When the police vehicle, containing Hurley, the PLO, Patrick Bramwell and Mulrunji, arrived at the station, there were a number of people around the police station, including Alfred Bonner and Penny Sibley. Leafé and Roy Bramwell were also standing outside the police station when the police vehicle arrived, as Leafé had brought Bramwell to the station to be questioned about the earlier assaults.

While Hurley was taking Mulrunji from the police vehicle to the watch-house cell, Mulrunji punched Hurley, the two men struggled and fell through the door way, onto the floor of the police station.

42 The chronology has been prepared using various sources of material, including the *Palm Island Review* report, various CMC reports, documents from the QPS, CMC files, and material from the Inquest. We are not able to attest to the absolute accuracy of this chronology, however we believe this to be as accurate as possible based on the material available to us.

43 Appendix 2 contains a plan of part of Palm Island Township. It shows the proximity of the Court House and Police Station to the Police residences, Dee Street and the only road from the township to the airport.

44 Readers should note that there are two Bramwells in this narrative: Roy Bramwell, partner of Gladys Nugent, and Patrick Bramwell, also known as Patrick Nugent, who was arrested by Hurley shortly before Mulrunji's arrest and later held in the watch-house.

45 The circumstances of Mulrunji's arrest have been explored in two CMC reports: *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities* (2009) and *Policing public order: a review of the public nuisance offence* (2008).

By 10.26 am Mulrunji was in the cell at the Palm Island watch-house. Patrick Bramwell was also placed in the same cell.

Roy Bramwell left the police station some time after Mulrunji had been placed in the cell⁴⁶.

At about 10.55 am Hurley entered the cell to do a 'cell check' on Mulrunji and Patrick Bramwell and observed that Mulrunji was 'snoring'. Some twenty minutes later, between 11.15 am and 11.19 am Leafe entered the cell to do another 'cell check'. He was unable to detect that Mulrunji had a pulse rate and immediately told Hurley.

At about 11.19 am Hurley phoned for the Queensland Ambulance Service (QAS) to attend an emergency at the watch-house. Shortly after, at about 11.23 am, Hurley phoned Senior Sergeant Jenkins, officer in charge of the Townsville District Police Communications Centre, and advised that Mulrunji might be deceased.

At about 11.24 am QAS officer Bolton arrived at Palm Island Police Station. When Bolton confirmed that Mulrunji had died Hurley phoned his supervisor in Townsville, Inspector Strohfeldt, at about 11.30 am, and informed him of the death in custody. At about 11.33 am Jenkins also phoned Strohfeldt, confirming the death in custody of Mulrunji and advising him of the circumstances surrounding the arrest and detention of Mulrunji. Jenkins then phoned District Officer Acting Superintendent Neal Wilson and provided him with a similar briefing. At about 11.36 am, ambulance officer Bolton advised QAS Townsville that Mulrunji had died.

Some time after about 11.30 am, while the ambulance was at the police station, Mulrunji's partner, Tracey Twaddle, and her niece approached the police station. The niece asked at the police station who the ambulance was for and was told that it was for Chris Hurley⁴⁷.

By about 11.40 am Detective Inspector Webber, Regional Crime Coordinator for the Townsville District, was advised of the death by Strohfeldt. Webber subsequently advised the Acting Assistant Commissioner and the Acting Chief Superintendent of the death.

At about 11.45 am Detective Sergeant Robinson of the Palm Island CIB, who was in Townsville that morning, was phoned by Hurley who told him that Mulrunji had died in custody and that he was the arresting officer. After he concluded his conversation with Hurley, Robinson phoned his supervisor, Detective Senior Sergeant Kitching, at about 11.50 am, and then phoned Webber at about 11.55 am. After that conversation Robinson went to the Townsville CIB office and spoke to Kitching.

By about 11.50 am Webber had appointed Detective Senior Sergeant Kitching of the Townsville CIB as primary investigator (that is, Investigating Officer under the OPM).

At about 12.10 pm, Inspector Kachel, Northern Regional Complaints Manager, was asked to advise the ESC and the CMC of the death. Advice of Mulrunji's death was also forwarded to forensic service officer Senior Sergeant Arthy of the Northern Region.

At about 12.20 pm Webber notified Detective Inspector Aspinall, the Officer in Charge of the Coronial Support Unit in Brisbane of Mulrunji's death and the State Coroner was immediately notified.

After about 1.00 pm Tracey Twaddle and Mulrunji's sisters went to the police station. The front door was locked. On knocking on the back door and asking when Mulrunji was going to get out, she was told by Hurley to come back at 3.00 pm.

46 Roy Bramwell left the station before the QPS investigation team arrived. This issue will be discussed in Chapter 10.

47 At the Inquest, Tracey Twaddle said 'they' told her the ambulance was for Chris Hurley. It is not clear who 'they' are, and the matter was not pursued with Ms Twaddle.

At 1.04 pm Jenkins sent a Significant Event, Computer Message number 584, on the police computer system to SIGNOR⁴⁸, attention ALL, which noted Webber as the 'Investigation Officer' and Strohfeltdt as the 'RDO/Commissioned Officer Attending/Responsible'. Under the heading 'Particulars of Incident' it stated that:

The deceased and Patrick Nugent were arrested in the Palm Island Community, for creating public nuisance and drunk respectively, by Snr. Sgt. Chris Hurley who was assisted by [the PLO], at 1026 hrs. On arrival at the Watch-house the deceased was uncooperative and violent — he punched S/Sgt. Hurley in the jaw as they were being removed from the police vehicle. They were placed in the cells and checked a couple of times before about 1120 hrs, the deceased was noticed to be pale and possibly have a weak pulse. QAS advised and responded whereupon he was found to be life extinct. Palm Island police presently making arrangement for notification of the NOK. Contingency plan being implemented in respect to policing at Palm Island in case there is an increase in public disorder.

At about 2.20 pm Webber, Kitching and Robinson left Townsville by charter aircraft to travel to Palm Island. They were accompanied by Forensic Services Officer Arthy, Scenes of Crime Officer Tibbey, Scientific Section Officer Bartulovich, two Constables and a Human Services Officer.

At about 2.55 pm the investigation team arrived at Palm Island airport. Hurley was there to meet them and he drove Webber and Kitching from the airport to the police station.

By about 3.10 pm forensic officers commenced examination of the cell, including a Polilight⁴⁹ examination.

At about 3.10 pm Webber advised Andrea Kyle and Owen Marpoondin of the Aboriginal and Torres Strait Islander Legal Service of the death of Mulrunji. Webber also contacted Kevin Rose, a solicitor for the Townsville Aboriginal Legal Service and informed him of the death.

At 3.40 pm Webber, accompanied by Leafe and Marpoondin, notified Tracey Twaddle of Mulrunji's death and at about 3.55 pm notified Mulrunji's mother and other family members.

Interviews were conducted and audio-tape-recorded at Palm Island Police Station by Kitching and Robinson later that afternoon, evening and night.

- Their first interview was with Hurley, from 4.04 pm to 4.36 pm. It was about the arrest of Mulrunji, the circumstances leading up to his death, and the presence near the police station that day of Penny Sibley and the presence near and in the police station of Roy Bramwell.
- The second was with the PLO from 4.50 pm to 5.10 pm, about the arrest of Mulrunji and the circumstances leading up to his death.
- The next person to be interviewed was Gladys Nugent, from 5.34 pm to 5.45 pm, about what she saw of the arrest of Mulrunji by Hurley that morning.
- The interview of Patrick Bramwell took place between 6.58 pm and 7.07 pm, about what he could remember about what happened that morning.

At 7.25 pm Kitching phoned the on-call Townsville Magistrate, Brian Smith, advised him of Mulrunji's death and obtained permission to arrange for Morley's Funeral Parlour to remove his body from Palm Island.

Kitching, by himself, interviewed Leafe between 7.50 pm to 8.12 pm about the arrest and death of Mulrunji in the watch-house cell.

48 This was what was in the 'To' field of the email and appears to be an email group. It is not known who actually received the message.

49 A Polilight examination is a forensic process using a light source to detect fingerprints, bodily fluids and other evidence in crime scenes.

At about 8.00 pm the Acting Assistant Commissioner was provided with an update about the matter.

The final interview of the day conducted by Kitching and Robinson was with Palm Island resident Edna Coolburra from 8.22 pm to 8.35 pm about what she saw of the arrest of Mulrunji by Hurley that morning.

By about 9.00 pm Kitching had completed the *Coroners Act 2003* Form 1 — Police report of death to a coroner.

Some time after 10.00 pm that night Hurley, Webber, Kitching and Robinson ate a meal at Hurley's residence which Robinson had prepared at that residence.

Saturday 20 November 2004

The next morning, at about 8.00 am, Kitching and Robinson drove to the Bramwell house in Dee Street to bring Roy Bramwell back to the police station to be interviewed. Kitching told Roy Bramwell that he would like to conduct a quick interview with him in relation to Mulrunji's arrest the day before, that he believed that Bramwell was at the police station about the time Mulrunji was brought into the police station and that he wanted Bramwell to tell them what he saw and what his knowledge was of the matter yesterday. Kitching and Robinson conducted an audio tape-recorded interview with Roy Bramwell at the police station from 8.15 am to 8.27 am. Robinson then prepared a typed statement for Roy Bramwell.

Later that morning Kitching, by himself, conducted an audio-tape-recorded interview with Gerald Kidner from 9.16 am to 9.25 am about Mulrunji drinking on Friday morning and what he saw of the arrest of Mulrunji.

Throughout the morning further interviews were conducted and statements obtained.

Sometime during the morning, Inspector Williams of the ESC arrived on Palm Island to overview the initial QPS investigation. Upon arrival he was briefed by Webber, Kitching and Robinson and he examined the statements and interviews taken to that time.

Subsequently Webber and Williams conducted four audio-tape-recorded re-enactment interviews where the relevant events of 19 November 2004 were described. Tibbey also video recorded the re-enactment interviews and the videos were provided to Kitching for exhibit purposes.

The first of these interviews was with Roy Bramwell from 10.52 am to 11.02 am. He was asked by Webber to re-enact, from his perspective, exactly what he saw and exactly what happened when Hurley came into the police station with Mulrunji the previous morning.

At about 11.20 am, Hurley drove Webber, Williams, Kitching and Tibbey to the scene of Mulrunji's arrest.

The next re-enactment interview was with Hurley from 11.53 am to 12.07 pm. Hurley was told by Williams that what they wanted him to do was to re-enact how he dealt with Mulrunji once they came back to the police station, explain Mulrunji's demeanour, Hurley's actions, what was happening and who Hurley saw around him at the time.

The third re-enactment interview was with the PLO. He was told by Williams that they wanted to do a re-enactment of what happened when Hurley and the PLO arrived back at the police station after arresting Mulrunji and Patrick Bramwell. This interview took place between 12.10 pm and 12.22 pm. During the re-enactment both Webber and Williams questioned the PLO.

The last re-enactment interview was with Leafe from 12.50 pm to 1.12 pm. Williams told Leafe that they were going to get him to do a re-enactment, explain his movements when Hurley arrived in the police paddy wagon, how he dealt with Mulrunji, any conversations Leafe may have had, what happened and where he was.

Kitching and Williams then conducted a further audio-tape-recorded interview with Hurley. Kitching said at the beginning of the interview that they just wanted to cover further issues and ask a few questions. According to this interview it took place between 1.10 pm and 1.22 pm.

Sunday 21 November 2004

Williams and Kitching travelled to Ingham to interview and take a statement from Penny Sibley. Kitching conducted an audio-tape-recorded interview from 7.50 am to 8.05 am at Ingham Police Station with Penny Sibley about what she saw at the police station on Friday morning. After returning to Townsville Kitching briefed Webber in relation to the outcome of his inquiries with Penny Sibley.

Monday 22 November 2004

At the request of Kitching, at about 10.40 am Constable Paul Harvie of the Townsville QPS faxed the Form 1 (which Kitching had completed on Friday 19 November) to the Coroner's Office in Townsville.

Williams returned to Brisbane pending the outcome of the autopsy examination.

At 10.56 am information regarding the death in police custody of Mulrunji, set out in a three-page Executive Briefing Note, was faxed to the CMC by ESC. Later that day at 3.55 pm the CMC faxed a Matters Assessed Report⁵⁰ to the ESC noting that the CMC would review the police investigation report.

At Kitching's request, Robinson attended the Palm Island hospital and received a verbal briefing from Dr Clinton Leahy about Mulrunji's medical history. Robinson provided Kitching with this information and advised Kitching of information he received from someone in the community about Mulrunji drinking bleach.

Hurley and the PLO left Palm Island on the afternoon flight.

Tuesday 23 November 2004

Kitching travelled from Townsville to Cairns and met Dr Guy Lampe, forensic pathologist, who performed an autopsy. Dr Lampe then issued an Autopsy Certificate which concluded that the cause of death was intra-abdominal haemorrhage, due to ruptured liver and portal vein.

Kitching took possession of the Autopsy Certificate, called the Acting Assistant Commissioner and Webber and advised them of the results of the autopsy, and then faxed a copy of the certificate to the Acting Assistant Commissioner at the Northern Police Regional Office in Townsville.

Wednesday 24 November 2004

The Commissioner of Police requested the CMC to take over the investigation due to the circumstances surrounding the matter.

Having returned to Townsville in the morning, Kitching received a phone call from Dr Lampe who asked him not to lodge the Autopsy Certificate issued in Cairns as he was to make inquiries with the State Coroner about changing the Autopsy Certificate by having the word 'fall' deleted from section 1(c) of the Autopsy Certificate. Dr Lampe stated his superiors thought that having the word 'fall' on the Autopsy Certificate could result in the pathologist being seen to be assisting police with a cover-up with respect to the death of Mulrunji.

At about 1.00 pm Kitching received another phone call from Dr Lampe who advised him that the State Coroner was happy for the Autopsy Certificate to be changed. Dr Lampe later faxed a copy of the new Autopsy Certificate to Kitching at the Townsville CIB.

⁵⁰ This is a CMC document by which an agency is advised of the CMC's decision about how to deal with a matter.

Inspector Ken Beml and Indigenous Complaints Officer Lisa Florence of the CMC and Williams travelled from Brisbane to Townsville and in the afternoon attended a briefing with Webber and Kitching at the Northern Police Regional Office in Townsville. Kitching provided the CMC officers with an outline of the investigation that he had conducted and then handed all the statements, records of interview, documents and exhibits to Beml.

Thursday 25 November 2004

Williams assisted Beml with a review of the investigation. Kitching again met with Williams, Beml and Florence and delivered a copy of the video tapes of the deceased in situ at the Palm Island Police Station and the re-enactments of events by witnesses Bramwell, Hurley, the PLO and Leafe.

Friday 26 November 2004

Beml, Florence and Williams travelled to Palm Island. Beml and Williams conducted audio-tape-recorded interviews with Alfred Bonner, Roy Bramwell, Gordon Johnson, Edna Coolburra and Nobie Clay and prepared typed statements as required. However, because of unrest the CMC officers withdrew from Palm Island, departing at about 12.30 pm to travel back to Townsville.

Riots commenced on Palm Island and the police station was burnt down.

Monday 29 November 2004

CMC investigators travelled to Palm Island to resume the investigation there.

CRITICISMS OF THE INITIAL QPS INVESTIGATION

Criticisms made by the Acting State Coroner

In her findings, the Acting State Coroner was critical of various aspects of policing on Palm Island and of the initial QPS investigation into the death of Mulrunji.

The Acting State Coroner noted that the starting point for consideration of her comments⁵¹ must be reference to the recommendations of the RCIADIC. At page 28 of her findings, she said:

It is reprehensible that the detailed recommendations of the Royal Commission into Aboriginal Deaths in Custody should have to be referred to, so many years after the Royal Commission. The evidence is clear however that these recommendations are still apt and still ignored.

The Acting State Coroner's comments are made under the headings:

- Arrest and Policing
- Diversionary Centres and Community Patrols
- Supervision, Monitoring and Care in Custody⁵²
- Investigation of Mulrunji's Death.

Fourteen comments (numbers 27–40) appear under the heading 'Investigation of Mulrunji's Death':

27. The involvement in the investigation of Mulrunji's death of officers from Townsville and Palm Island was inappropriate and undermined the integrity of the investigation.
28. In all deaths in custody, officers investigating the death should be selected from a region other than that in which the death occurred. The OPM should be amended to require this.
29. The OPM should be amended to require the appointment of the officer in charge of an investigation into a death in custody by the Chief Commissioner, a Deputy Commissioner or Assistant Commissioner.
30. The OPM should be amended to make explicit the need to consider, when selecting officers for involvement in an investigation of a death in custody, the impartiality and the appearance of impartiality in the conduct of the investigation.
31. The involvement in the investigation of Mulrunji's death of officers who knew Senior Sergeant Hurley personally, or were friends with him, was inappropriate and compromised the integrity of the investigation.
32. The OPM should be amended to explicitly require officers involved in an investigation into a death in custody to disclose any relationship with an officer involved in, or a witness to, that death.
33. The investigation's appearance of impartiality was further undermined by the following conduct:-
 - It was inappropriate for Hurley to meet the investigating officers at the airport upon their arrival;

51 Section 46 of the *Coroners Act 2003* provides that a coroner may, whenever appropriate, comment on anything connected with a death investigated at an inquest that relates to public health or safety, or the administration of justice, or ways to prevent deaths from happening in similar circumstances in the future.

52 The CMC report *Restoring order: crime prevention, policing and local justice in Queensland's Indigenous communities* (November 2009) deals with the section 46 comments that concern 'Arrest and Policing', 'Diversionary Centres and Community Patrols', 'Supervision, Monitoring and Care in Custody'.

- It was inappropriate for Hurley to drive the investigators to the scene of Mulrunji's arrest; and
 - It was completely unacceptable for investigators to eat dinner at Hurley's house while the investigation was being conducted.
34. The OPM should be amended to more clearly state the need for officers involved in an investigation to consider the impartiality and the perception of impartiality in the conduct of the investigation at all times.
 35. The discussion by Senior Sergeant Hurley of the death of Mulrunji with Sergeant Leafe and (the) Police Liaison Officer prior to being interviewed was inappropriate and contrary to the OPM. It had the potential to undermine the integrity of the investigation and undermine the appearance of integrity of the investigation.
 36. The OPM should be amended to require the officer in charge of an investigation of a death in custody to instruct officers involved in, or witness to, the death not to discuss the matter with other witnesses prior to being interviewed.
 37. Consideration should be given by the Police Commissioner to the training officers receive to ensure they are aware of their obligations under the OPM if involved in deaths in custody. In particular the Commissioner should ensure that officers strictly comply with section 16.24 (vi) to (viii) of the OPM and **immediately** arrange for the next of kin to be notified where a death in custody occurs.
 38. The CMC should be actively involved in all investigations into deaths in custody from the outset. Consideration should be given to having a senior officer of the CMC involved in all investigations into deaths in custody.
 39. Difficulties in cross-cultural communication between police and Aboriginal witnesses may have impaired the effectiveness of the investigation of this matter by police. Significant attention should be given by the Police Commissioner to the training of officers, particularly those who are working in or near large Indigenous communities such as Palm Island in relation to communication with Indigenous people and the use of support persons and interpreters. This is a matter that is fundamental to the effective and fair administration of justice in Queensland.
 40. The OPM should be amended to include, as an appendix, Chapter 9 of the Supreme Court of Queensland Equal Treatment Benchbook on 'Indigenous Language and Communication'. The OPM should direct officers to follow and apply the contents of that chapter to the greatest extent possible.⁵³

Many of these comments, in effect, repeated the recommendations of the RCIADIC.

In addition, in the general course of discussing the evidence the Acting State Coroner also made a number of criticisms of the initial QPS investigation.

Under the heading 'The Investigation', the Acting State Coroner made reference to the *State Coroner's guidelines* which point out that a thorough and impartial investigation of a death in custody is not only necessary to ensure public confidence, but is also in the best interests of the 'custodial officers'⁵⁴. She also referenced a passage from the National Report of the RCIADIC which provides:

A death in custody is a public matter. Police and prison officers perform their services on behalf of the community. They must be accountable for the proper performance of the duties. Justice requires that both the individual interest of the deceased's family and the general interest of the community be served by the conduct of thorough, competent and impartial investigations into all deaths in custody.

The Acting State Coroner said the 'investigation into Mulrunji's death failed to meet those standards'⁵⁵.

53 Finding of Inquest, page 3132

54 State Coroner's Guidelines, section 7.5

55 Finding of Inquest, page 9

Complaints based on the Acting State Coroner's comments received by the CMC

In late May 2007 the CMC received a complaint about the conduct of the initial QPS investigation based on the evidence before the second Inquest and the comments and findings of the Acting State Coroner.

The complaint alleged conduct which could constitute misconduct.

The complainant also asserted that the police officers involved in the investigation should be prosecuted for the criminal offences of conspiring to defeat justice and/or attempting to pervert the course of justice. In that regard the CMC noted that the Acting State Coroner had not formed any reasonable suspicion that any person had committed a criminal offence and that no referral had been made to the Director of Public Prosecutions⁵⁶.

As the IRT's investigation was already well under way at that time, the CMC referred the complaint to the QPS to deal with by investigation⁵⁷, subject to the CMC's monitoring role by way of a review-before⁵⁸.

In the referral the CMC noted the 'allegations' in general terms as involving 'inadequate investigation / lack of impartiality — conducted a deficient investigation into death in custody on Palm Island' and that they were currently the subject of investigation by the IRT. The CMC expected that the IRT would identify and address all the relevant issues arising from the findings and criticisms of the Acting State Coroner.

In a letter dated 20 November 2007, the Commissioner of Police noted that the complaint had been made, that it was based on the criticisms made by the Acting State Coroner and that the IRT had commenced work on the examination of those criticisms.

In late May 2008, the CMC received another complaint also based on the criticisms made by the Acting State Coroner. This complaint was also referred to the QPS to deal with on the same basis as the May 2007 complaint.

The CMC formally requested that the QPS provide a report for the CMC to review prior to finalisation.

During the time that the IRT was conducting its investigation, the CMC provided material to the IRT to assist in their examination of the relevant issues. Meetings were also held on a number of occasions between the members of the IRT and various CMC officers.

Finalisation of complaints

The complaints cannot be finalised until the QPS responds to the CMC's review of the *Palm Island Review* and ultimately makes its final determination about the action, if any, to take in relation to the conduct of the members of the initial QPS investigation team.

Under the *Crime and Misconduct Act 2001*, the QPS is required to provide to the complainants:

- information about the action taken in relation to their complaint
- the reason the action is considered to be appropriate in the circumstances
- any results of the action that are known at the time of the response⁵⁹.

The following part of the report deals with the QPS response to the Acting State Coroner's criticisms and comments.

56 Section 48(2) *Coroners Act 2003* provided: 'If, from information obtained while investigating a death, a coroner reasonably suspects a person has committed an offence, the coroner must give the information to— (a) for an indictable offence—the director of public prosecutions.

57 It is not unusual, as occurred in this case, for an investigation to reveal additional and / or more specific allegations.

58 Section 46(2)(b) *CM Act*

59 Section 42(7)

Part 3:

The QPS response: The Palm Island Review

BACKGROUND TO THE IRT INVESTIGATION: POLICY REQUIREMENTS, OVERSIGHT AND THE QPS DISCIPLINE REGIME

On 19 December 2006 the Commissioner of Police formed the Investigation Review Team (IRT) to 'examine' in detail any criticisms of the QPS or its members arising from the Inquest and the Acting State Coroner's findings. The IRT consisted of an Acting Superintendent and an Inspector, with support from the ESC if and as required⁶⁰, and resourced through the QPS Solicitor's Office.

On 24 November 2008 a three-volume report entitled the *Palm Island Review* was forwarded to the CMC.

Though no specific mention is made in the report of the two complaints concerning the initial QPS investigation, it appears that the report is intended to deal with those complaints as well as examine the Acting State Coroner's criticisms.

Acting Superintendent

The Acting Superintendent joined the QPS in 1973. He was appointed as an Inspector in the Internal Investigations Branch (IIB) of the Ethical Standards Command in 1999, after a long career as an experienced detective and officer in charge. He worked in the ESC for 6 years in a range of roles, including acting Superintendent in the IIB. He has worked with the CMC on a range of matters.

Inspector

The Inspector joined the QPS in 1986. He has held various positions with the Ethical Standards Command — his first appointment to that Command being in 1998 — more recently including that of acting Chief Superintendent. Since 1996, he has worked on many occasions with the CMC and other agencies on issues concerning police ethics and accountability and in relation to national and state operations.

Oversight of the IRT

While the IRT conducted the investigation of the initial QPS investigation and authored the *Palm Island Review* report, they were subject to overview by the then QPS Solicitor. They also provided detailed briefings over an extended period of time to the Commissioner of Police.

In addition, an Assistant Commissioner took part in the interviews conducted by the IRT with the two most senior officers, the Acting Assistant Commissioner and the Acting Chief Superintendent. The IRT say that he strongly supported the IRT's view about the issues of command and control and the role of the Regional Chief Superintendent (Operations Coordinator). However it seems that he did not play a role in the final decision-making about the *Palm Island Review* findings and recommendations.

⁶⁰ The then Assistant Commissioner of the ESC conducted the interviews with the Acting Assistant Commissioner and the Acting Chief Superintendent on 18 October 2007. Another Inspector was part of the IRT as at January 2007.

The Commissioner of Police states that the Service supports the IRT review process, including the spirit and intent of the officer's findings. The letter conveying the *Palm Island Review* report is under his hand.

The Commissioner of Police has the ultimate responsibility for the *Palm Island Review* and its findings and recommendations.

Advice from Senior Counsel

The QPS considered that it 'should seek an independent legal opinion in respect of its conclusions'. The *Palm Island Review* 'report, transcripts and other evidence were reviewed by a Senior Counsel independent of both the QPS and the CMC'. The QPS state 'At the request of Senior Counsel, the QPS does not propose to publicly identify the Senior Counsel it has sought advice from'; nor did QPS seek Senior Counsel's permission to publish that advice.

The IRT say that seeking advice from Senior Counsel demonstrated a commitment to fairness, thoroughness, impartiality and critical analysis. They inform the CMC that Senior Counsel was chosen based on experience, expertise and reputation as being forthright. He was selected 'so that someone could apply a reasonable person test; so that someone with requisite skills and time could analyse the approach, method, findings and conclusions of the IRT'.

The CMC does not understand why this was thought to be appropriate or necessary, as in its oversight role the CMC must perform the same function and would not be bound by the view of Senior Counsel.

The IRT say that Senior Counsel was provided with all the material in the *Palm Island Review*, apart from the executive summary. Therefore Counsel clearly did not have all the material the CMC has relied upon in conducting its comprehensive review. This was a disadvantage to Counsel.

For example, Counsel uncritically adopts the view, echoing the *Palm Island Review*, that the essential failing of the initial QPS investigation was 'a lack of appropriate oversight and direction (against some established operating procedures)' by the since retired senior officers. Senior Counsel does not indicate that he is aware that there were no relevant 'established operating procedures' for those senior officers and the OPM made the Regional Crime Coordinator and the representative of the ESC the officers responsible for providing the oversight and direction to the investigation.

In the CMC's view, reliance upon the advice of Senior Counsel has proven not to be an appropriate method to ensure acceptance of this QPS investigation and report.

***Palm Island Review* — a disciplinary investigation**

The *Palm Island Review* report revealed that the IRT had conducted a disciplinary investigation⁶¹.

One of the purposes for a disciplinary investigation is to identify whether there are any grounds to take disciplinary action against a member of the QPS.

In conducting their investigation the IRT were obliged to comply with the provisions of the QPS Code of Conduct and Section 18 of the QPS Human Resource Management Manual.

61 The IRT indicated this at the beginning of each interview of a QPS member they conducted.

QPS disciplinary regime

The purpose of discipline is, among other things, to maintain public confidence in the QPS, to maintain proper standards of conduct for members of the QPS, to protect the reputation of the QPS and to maintain the self esteem of QPS members.

The Commissioner of Police is responsible for discipline of members of the QPS⁶². The Commissioner may delegate some of that responsibility.

Process

There are a number of steps in the discipline process concerning police officers. First there is an investigation to discover whether there are possible grounds for taking disciplinary action against a police officer (the subject officer). Then an authorised commissioned officer⁶³ considers the report of the disciplinary investigation and decides whether to commence proceedings against the subject officer. A disciplinary charge, which outlines the grounds for disciplinary action, is laid. The prescribed officer then conducts a hearing of the charge, and considers all the evidence, and any material provided by the officer, and decides whether the grounds for discipline are established. Finally, if the grounds are established, the prescribed officer determines the appropriate sanction to impose.

Grounds for disciplinary action

Disciplinary action may be taken against a police officer for a number of reasons. These grounds for disciplinary action cover a wide range of conduct of varying degrees of seriousness, including:-

- unfitness, incompetence or inefficiency
- negligence, carelessness or indolence
- a contravention of, or failure to comply with, the code of conduct, or any direction, instruction or order of the police commissioner
- a contravention of, or failure to comply with, a direction, instruction or order given by any superior officer or any other person who has authority over the officer concerned
- misconduct⁶⁴.

Range of sanctions

One of a range of disciplinary sanctions may be imposed upon a police officer once the grounds are established. The range includes a caution or reprimand; a deduction from, or reduction in, the officer's salary or wages; reduction in rank; and dismissal.

Nothing in the Discipline Regulations means that an officer's manager or supervisor cannot deal with less serious inappropriate acts, omissions or failures in the performance of the officers' duty by providing guidance to the officer. This is called 'managerial guidance'.

62 Section 4.8 *Police Service Administration Act 1990*

63 The Police Service (Discipline) Regulations 1990 state which ranks of police officer may make decisions about disciplinary action. They include Inspectors, Superintendents, Assistant Commissioners, Deputy Commissioners and the Commissioner.

64 Section 9, Police Service (Discipline) Regulations 1990

QPS Code of Conduct

The provisions of the QPS Code of Conduct in force at the time of the IRT's investigation⁶⁵ provided guidance to the members of the IRT about their ethical obligations in discharging their responsibilities.

Specifically, section 2 stated that in the provision of policing services, the public are entitled to expect that members will:

- conduct themselves and discharge their responsibilities with professionalism and integrity
- ...
- comply with, and be seen to act within the spirit and letter of the law
- act in the public interest and give priority to official duties and obligations.

Further, at all times members were expected to conduct themselves in a manner that did not discredit the individual member or the reputation of the QPS.

Section 7 of the Code required members assessing the appropriateness of their conduct to apply the SELF test, which includes the questions:

- Would your decision withstand scrutiny by the community or the Service?
- Is your decision fair to the community, your family and colleagues and others?

Other sections of the Code required members to:

- carry out official public sector decisions and policies faithfully and impartially (Respect for the Law and System of Government)⁶⁶
- act responsively in performing official duties (Respect for Persons)⁶⁷
- in recognition that public office involves a public trust ... seek to maintain and enhance public confidence in the integrity of public administration and advance the common good of the community the official serves (Integrity)⁶⁸
- exercise proper diligence, care and attention (Diligence)⁶⁹
- act in good faith⁷⁰
- in the performance of official duties ...:
 - demonstrate high standards of professional integrity and honesty⁷¹
 - perform any duties ... diligently and to the best of their ability, in a manner that bears the closest public scrutiny and meets all legislative, Government and Service standards⁷².

65 Version 6, October 2006

66 Section 9.1

67 Section 9.2

68 Section 9.3

69 Section 9.4

70 Section 10.1

71 Section 10.14(i)

72 Section 10.14(iii)

QPS Human Resource Management Manual Section 18

At the relevant time Section 18 of the QPS Human Resource Management Manual (HRMM) outlined the policy and expected standards that applied to disciplinary investigations.

Criteria for a disciplinary investigation

A disciplinary investigation was only to be conducted in cases considered to be serious, and in which, the purpose of discipline — including maintaining public confidence and maintaining proper standards of conduct of QPS members — was an important concern⁷³.

An investigating officer was to decide the extent of the investigation based on a number of things, and in particular the alleged conduct under investigation and the public interest. These considerations meant that the more serious the alleged conduct and its consequences, the greater the degree of thoroughness, care, attention to detail and accuracy required⁷⁴.

Investigation report

Section 18 also required that the more significant the investigation, the more comprehensive and detailed the investigation report.

The report had to outline all the relevant evidence and the investigator's findings and recommendations about any grounds for disciplinary action. All the relevant source material was required to be attached to the report.

73 Section 18.2.4 Internal Investigations QPS HRMM provided that a disciplinary investigation 'is only to be undertaken when managerial resolution is inappropriate to respond to conduct and is required to achieve a purpose of discipline'.

74 Section 18.2.4.3, Extent of the investigation

IRT INVESTIGATION PROCESS

In articulating the IRT's process, the *Palm Island Review* report states that the team:

- considered the transcripts of the Coronial Inquest, the transcripts of the criminal proceedings and other evidence and submissions placed before these courts
- developed a list of issues that were critical of either the QPS, QPS policies or the actions of any member of the QPS made from the Acting State Coroner's general critical comments and the section 46 'Investigation' comments
- initially identified six, and subsequently a further five, officers who needed to be interviewed
- identified officers whose conduct warranted examination
- from the list of comments and criticisms made by the Acting State Coroner, identified or distilled a number of specific allegations in relation to each officer
- also identified a range of related issues (for example, forensic processes) as lines of inquiry, and stated that these issues are addressed in the report or in the interviews of the subject officers.

IRT identification of officers whose conduct warranted examination

The *Palm Island Review* does not deal with the conduct of all the officers criticised by the Acting State Coroner as previously mentioned⁷⁵.

The report states that six officers — Webber, Williams, Kitching, Hurley, Leafe and Steadman — were identified as having criticisms or allegations against them⁷⁶, or were witnesses to or involved in events and therefore needed to be interviewed.

Further 'The second part of this investigation will deal with S/Sgt Hurley, Sgt Michael Leafe and Constable Steadman. These officers are yet to be interviewed by the Investigation Review Team'. Following the findings and recommendations of the third inquest, the CMC will now conduct the investigation of the remaining matters relating to Hurley and others concerning their actions following the death of Mulrunji.

Kitching, Webber and Williams were interviewed on 1, 2 and 8 August 2007 respectively, after Hurley's trial. From these interviews and other inquiries, the IRT determined that another five officers — the Acting Assistant Commissioner, the Acting Chief Superintendent, Strohfeltd, Wilson and Arthy — needed to be interviewed as they could provide relevant information or were directly involved in the events surrounding the investigation or management of the death in custody. Four of those interviews were conducted on 18 October and one on 19 October 2007.

In writing the *Palm Island Review*, the IRT focused on the conduct of the following officers: Detective Inspector Webber (Regional Crime Coordinator), Detective Senior Sergeant Kitching (Investigating Officer), Inspector Williams (the Ethical Standards Command representative), the Acting Assistant Commissioner (Assistant Commissioner, Northern Region) and the Acting Chief Superintendent, (Acting Operations Coordinator, Northern Region)⁷⁷. Details of each officer's experience are outlined below.

⁷⁵ See Chapter 3: This CMC Review, Scope of this review, page 11.

⁷⁶ The summary did not make clear whether it was referring to criticisms or allegations by the Acting State Coroner, the IRT or both.

⁷⁷ The other officers interviewed were not the subject of criticism by the Acting State Coroner or allegations formulated by the IRT.

Detective Inspector Warren Webber

Detective Inspector Webber was appointed as the Regional Crime Coordinator in Townsville on 29 March 2004. He told the Inquest he had come to the Northern Police Region about two and a half years earlier⁷⁸, and at that time he had over 30 years policing experience. At the time of Mulrunji's death, he had not been previously involved in an investigation of a death in custody⁷⁹. However, he had been a member of the Criminal Investigation Branch (CIB) in Brisbane, Caboolture and Redcliffe, and had previously served at the Criminal Justice Commission and the ESC⁸⁰.

While at Mount Isa, Webber said he dealt with Aboriginal people as victims and offenders, and spent time relieving and performing duties in Aboriginal communities. Webber says that he received compliments from the local member in relation to his interaction with the Aboriginal community at Dajarra⁸¹.

Detective Senior Sergeant Raymond Kitching

Detective Senior Sergeant Kitching was appointed as Officer in Charge, Townsville CIB on 23 September 2002. At the Inquest, Kitching said he had 20 years service and, at that time, had been in Townsville for five and a half years. He said he had been in the CIB for about 15 years and prior to Mulrunji's death had been involved in about 20 or more investigations into deaths⁸².

Inspector Mark Williams

Inspector Williams was appointed an Inspector in the ESC in Brisbane on 11 June 2002. At the Inquest, Williams said he was sworn in the police since 1982 and served in uniform until 1985 when he joined the CIB where he stayed until being promoted to Inspector in about 2001⁸³. Williams said he spent two and a half years in the Homicide Squad and some time in the Corrective Services Investigation Unit dealing with similar incidents, and during this time he investigated deaths in custody.

Acting Assistant Commissioner

The Acting Assistant Commissioner was appointed as Chief Superintendent and Operations Coordinator for the Northern Region on 10 October 2003. He was the Acting Assistant Commissioner, Northern Region for some months prior to November 2004, by which time he had almost 37 years service. He had about 23 years experience in the CIB and had worked in regions throughout the State including South Brisbane and Cairns. The Acting Assistant Commissioner left the Service in March 2008.

Acting Chief Superintendent

The Acting Chief Superintendent had been appointed as Superintendent, Northern Region on 12 October 2001. He was the Acting Operations Coordinator (second-in-command to the Acting Assistant Commissioner) for some months prior to November 2004, by which time he had over 33 years service. He had been the Inspector at Mount Isa and the District Officer in Townsville for about 12 years. He had been the officer-in charge at Woorabinda and had also served at Redcliffe, Longreach and Bedouri and relieved at Doomadgee, Mornington Island and Burketown. In its report, the IRT state that the Acting Chief Superintendent has retired from the QPS⁸⁴.

78 Inquest transcript, page 718

79 IRT transcript, Webber, tape 3, page 1

80 Inquest transcript, page 718

81 IRT transcript, Webber, tape 2, pp. 21–22

82 Inquest transcript, page 768. It is not clear how many, if any, of these involved investigations of deaths in custody.

83 Inquest transcript, page 451

84 The IRT does not state when the Acting Chief Superintendent retired.

CMC's identification of additional officers whose conduct warranted examination

After its initial review of the relevant evidence in the *Palm Island Review*, the CMC formed the view that, in addition to the five officers on whom the IRT focused, the conduct of Detective Sergeant Darren Robinson, as an officer involved in the investigation, and Inspector Gregory Strohfeldt, the Regional Duty Officer⁸⁵, also warranted examination.

As a result of our consideration of the evidence and the procedural fairness submissions, we determined that no action against Strohfeldt was warranted.

Detective Sergeant Darren Robinson

Robinson was sworn in as a police officer in 1991. After four and a half years at the Whitsunday police station, he commenced as a plainclothes investigator in the Toowoomba CIB. Robinson was there for about four and a half years, and obtained his detective classification. He then went to another CIB for about two years before going to Palm Island⁸⁶. Prior to Mulrunji's death, he had been involved in investigations into approximately six homicides⁸⁷. At the time of Mulrunji's death, Robinson was the Officer in Charge, CIB, on Palm Island and had been since 14 November 2002.

In relation to Robinson, the Acting State Coroner said it was unwise and inappropriate for an officer serving on Palm Island, who was known to be a friend of Senior Sergeant Hurley to be involved in the investigation, but it was not his fault that this occurred — it was the responsibility of those appointing the investigators to recognise the perception of collusion that this might create. The CMC considered that the question of Robinson's conduct went beyond this issue.

Robinson's conduct is not dealt with in the *Palm Island Review*. The report states that Robinson remained a person of interest, but that the IRT had determined there were no direct allegations or criticisms of Robinson and no new evidence that Robinson could provide that had not been previously canvassed with him during his evidence to the Inquest.

The Commissioner of Police was aware that investigations being conducted by the CMC may have had an impact on the work of the IRT⁸⁸.

By letter dated 8 April 2008, the CMC referred to the Assistant Commissioner, Ethical Standards Command advice about the outcome of its investigation of complaints concerning Robinson. It recommended action only in relation to one matter, but indicated that the investigation had also highlighted a number of issues relating to the initial QPS investigation that may require further action by the IRT which were detailed in the letter. In the accompanying detailed investigation report a number of issues that impacted on the IRT's investigation were outlined.

Allegations formulated by the IRT concerning the initial QPS investigation

The IRT formulated 12 allegations based on the comments and criticisms in the Inquest and its findings, as follows⁸⁹:

1. Officers serving on PI involved in investigation
2. Hurley transporting investigators
3. Dinner at Hurley's residence
4. Discussions between witnesses

85 While the IRT did not identify the regional duty officer, we presume this was Strohfeldt as he is identified as the duty officer.

86 Inquest transcript, page 783

87 Inquest transcript, page 784

88 Letter from the Commissioner to the CMC Chairperson of 20 November 2007

89 These are the allegation headings used by the IRT.

5. Off the record discussion between Webber, Williams and Hurley
6. Lack of vigour in questioning of the PLO
7. The Form 1
8. Lack of support to Indigenous witnesses
9. Notification of the deceased's family
10. Forensic processes
11. Investigative Process
12. Control of the incident.

CMC process for review of allegations formulated by the IRT

In assessing the IRT's conclusions about each of the allegations, the CMC has considered not only the information in the *Palm Island Review* but also all other evidence available to it, and to the IRT (as detailed in Appendix 1).

For Allegations 1–9, we consider:

1. The background and key issues in the allegation
2. The IRT's findings about the allegation
3. The CMC's comment on the initial investigation and the IRT's conclusions.

The last three allegations (10–12) are dealt with differently because of their nature, the lack of clarity in what the IRT was actually considering and the lack of evidence provided by the IRT.

The report notes that the IRT was 'to examine in detail all adverse comments made by the Acting State Coroner [that had not been dealt with by the Steering Committee]'. In doing so, the IRT did not restrict its investigation purely to the matters of concern specifically expressed by the Acting State Coroner. It identified and formulated three new allegations (Allegations 10–12 as previously discussed).

The CMC considers that the IRT did not identify all the issues that warranted inquiry.

CMC identification of issues not covered by the investigations

The CMC considers that it was appropriate for the *Palm Island Review* to go beyond the Acting State Coroner's comments and criticisms, which were not an exhaustive list, but indicators of the deficiencies and failures of the initial QPS investigation.

During its review of the *Palm Island Review*, the CMC identified other issues concerning the initial investigation which were not dealt with in that report, but which the CMC believes the IRT should have examined. These are discussed in Chapter 10. They include:

- initial QPS investigation team failures in relation to:
 - questioning Hurley
 - Roy Bramwell
 - pursuing other lines of questioning
- inaccurate and incomplete information provided by the QPS.

Part 4:

***CMC assessment of the initial QPS investigation
and of the IRT's investigation***

DISCUSSION OF ALLEGATIONS DISTILLED BY THE IRT

ALLEGATION 1: OFFICERS SERVING ON PALM ISLAND INVOLVED IN INVESTIGATION

Background

The Acting State Coroner was concerned that the involvement in the investigation of officers from Townsville and Palm Island who knew Hurley personally or who were friends with him was inappropriate and undermined the integrity of the investigation⁹⁰. In particular she was concerned about the involvement of Detective Sergeant Darren Robinson⁹¹, the officer in charge of the CIB on Palm Island who was known to be a friend of Hurley's. In her view it was not Robinson's fault that he was involved, and it was the responsibility of those appointing the investigators to recognise the perception of collusion that this might create.⁹²

In terms of official police procedure, the OPM at the time provided the following.

- A death in custody should be investigated by the regional crime coordinator or an independent senior investigator from a police establishment other than where the incident occurred, or where the officers or members directly involved in the incident are stationed⁹³. However the OPM did not specifically extend this requirement (that the investigator must come from another police establishment) to any other officers involved in, or assisting, the investigation.
- The regional crime coordinator is directly responsible for the investigation⁹⁴.
- If the officer representing the ESC considers there are any matters which may adversely affect an impartial investigation, the officer should confer with the regional crime coordinator and CMC to resolve the issue⁹⁵.

The OPM did not expressly provide that any officer called upon to have involvement in an investigation of a death in custody should disclose any relationship which may give rise to an actual or apparent conflict of interest. However, the QPS Code of Conduct required officers to avoid both actual and apparent conflicts of interests and disclose details of any conflict to their supervising executive officer.⁹⁶

The IRT formulated the allegation 'Officers serving on PI involved in investigation' and considered Robinson's involvement in the investigation.

90 Finding of Inquest, section 46 comments, numbers 27 and 31

91 The Acting State Coroner was also concerned about the involvement of Kitching. The CMC addresses this issue at the end of this chapter.

92 Finding of Inquest, page 10

93 Section 1.17 OPM. There was some inconsistency in the OPM at the time. Section 8.5.19 also provided that a death in custody is to be investigated by a senior or experienced investigator with sufficient criminal background; the officer in charge of the station where the person died is to ensure a suitable officer is assigned to investigate the death; and a death in custody must be investigated by the State Coroner or Deputy State Coroner.

94 Section 1.17 OPM

95 Section 1.17 OPM

96 Section 10.6 Code of Conduct. The term 'supervising executive officer' is not defined in the OPM. 'Executive officer' is defined in the *Police Service Administration Act 1990* as a person who holds a position in the police force as an executive officer.

Key issues

In the CMC's view, Robinson's involvement in the investigation raises the following issues:

- Robinson's conflict of interest given his friendship with Hurley and any management of his conflict of interest
- the nature and extent of Robinson's involvement and any alternative to his involvement
- the responsibilities of Webber and Kitching in relation to Robinson's involvement in the investigation when they knew about his friendship and history with Hurley
- the responsibility of Williams to satisfy himself that none of the officers involved in the investigation had any conflict of interest that would impact adversely on the impartiality of the investigation.

Robinson's conflict of interest as a friend of Hurley's⁹⁷

What the police said⁹⁸

Robinson⁹⁹

Evidence to Inquest

Robinson told the Inquest after working with Hurley for a couple of years, they developed a friendship¹⁰⁰ but that he saw no need to speak up and say that he should not be part of the team due to their friendship¹⁰¹. Robinson said that he did not raise the issue with his superiors, because the senior police knew they had a friendship as he and Hurley were both stationed in a remote location¹⁰².

Robinson said he didn't feel compromised in undertaking this investigation, and he had previously conducted investigations involving police, including Hurley¹⁰³. Robinson said he had discussed one such matter (allegations made by Barbara Pilot against Hurley¹⁰⁴: see text box on page 47) with Webber, and was not sure whether it was at that time he told Webber he thought it was inappropriate that he investigate Hurley¹⁰⁵. Robinson said he didn't know whether he expressed his view on that particular occasion, but that he had expressed it on a couple of occasions in relation to other matters in the past¹⁰⁶, but 'ultimately the correspondence ... came to myself and I had to do it. I'm directed to do it'¹⁰⁷.

97 A further discussion of evidence relevant to this issue can be found in the published findings of the third inquest including concerning references to complaints about Hurley by Palm Island residents Barbara Pilot and Douglas Clay.

98 When we have not directly quoted the officers' evidence, we have paraphrased the officers' evidence using words which are as similar to the words used by the officers as possible.

99 The IRT did not consider it necessary to interview Robinson in relation to his involvement in the investigation. Accordingly, we have relied on the transcripts of the interviews conducted in the course of the initial QPS investigation, Robinson's evidence in his statement prepared for the Inquest, his evidence given during the Inquest and his interviews with CMC officers in relation to other matters.

100 Inquest transcript, page 784

101 Inquest transcript, page 1304

102 Inquest transcript, page 784

103 Inquest transcript, page 784

104 Inquest transcript, page 1310

105 Inquest transcript, pp. 1310–1311

106 Inquest transcript, page 1311

107 Inquest transcript, pp. 1311–1312

Robinson was also asked during the Inquest about a 'lecture' he gave to CMC investigators during their interview with him on 21 October 2005 about a complaint against Hurley made by Douglas Clay that he had investigated. It was put to Robinson in the Inquest that it was apparent that he did not know what he was talking about and that he had relied upon prompting from a union representative to pronounce one of the words.

During the lengthy 'lecture', which was given from a prepared statement Robinson commented upon different types of memory, the effect of alcohol on memory, and the reliability of witnesses affected by alcohol consumption. He then went on to make a lengthy statement, about his personal opinion of Hurley:

I now wish to discuss Senior Sergeant Christopher Hurley. Until my posting to Palm Island I hadn't ... met or heard of this person. For the brief time that I'd come to know him I would, use words such as committed ... enthusiastic towards his vision of running a successful establishment. He got on well, extremely well with the community, and was endorsed by a letter that he had received from the Palm Island Community Justice Group. This letter addressed the dramatic decline of complaints against the local police establishment.

I'd always known him to act professionally and in the best interests of fellow ... colleagues and members of the community, till the unfortunate death of [Mulrunji], which has demanded much attention and scrutiny of his behaviour, he ... held in high regard by stakeholders within the community. I regularly fielded support — including, yesterday from members of the Palm Island Community and these per-persons support him without publicly stating for fear of retribution. Senior Sergeant Hurley is a good and valued police officer, ... and the witnesses who we ... have, discussed today who I do know are, most certainly chronic, alcoholic abusers. Ah those are the, matters that I'd just wish to address today.

Robinson told the Inquest he felt that he could conduct a fair investigation, and that although the position he was in could be compromising, he could do his job and overcome the desire to protect a police colleague¹⁰⁸. Robinson accepted that he should not be put in the position where he was directed to investigate Hurley, but said 'that's a luxury afforded to people in major centres'¹⁰⁹.

*Other evidence*¹¹⁰

In an interview with the CMC on 8 December 2005, Robinson was questioned in relation to his investigation of the Pilot matter (see text box), which he completed the month before Mulrunji's death. When discussing this matter, Robinson said he realised that it was not correct for him, a junior officer, to be investigating Hurley, a senior officer. Robinson said he'd had discussions with Kitching and Webber about the matter, and raised his concerns about investigating Hurley. Robinson also said that he had sought guidance from Kitching about how to conduct the investigation and advised Kitching that he was not comfortable investigating Hurley.

108 Inquest transcript, page 1321

109 Inquest transcript, page 1321. It is not clear from the Inquest transcript whether Robinson's comments outlined in this paragraph relate to the investigation of the Pilot matter or Mulrunji's death. Both matters were discussed prior to the relevant comment being made by Robinson, and the issue was not clarified during the Inquest.

110 The CMC investigated a number of complaints made about Robinson, which involved conducting a number of interviews with him. During the investigation of a complaint made by Roy Bramwell, CMC investigators questioned Robinson about his involvement in the investigation of Mulrunji's death. In the CMC's final investigation report dated 14 March 2008 dealing with the complaints about Robinson, one of the recommendations was

To ensure there are 'no gaps' between the current CMC Investigation into Detective Sergeant Robinson and the 'initial police investigation' by the QPS Investigation Review Team, it is recommended the analysis of the record of interview conducted with Detective Senior [sic] Sergeant Robinson as identified in this investigation report, be disclosed in some form to Acting Superintendent [...] and Inspector [...] of the QPS Investigation Review Team before the completion of their investigation.

A copy of the investigation report was provided to the QPS.

Procedural fairness submission to the CMC

In his procedural fairness submission to the CMC, Robinson asserts that he saw absolutely no point in making a declaration as to his association and friendship with Hurley. He says that not only was this 'indisputable common knowledge', he had raised the fact of the friendship to superior officers on multiple occasions when undertaking investigations about complaints against Hurley. Robinson inferred from these occasions that the response would be on this occasion that he 'should professionally go about his job as best he could in the sub-optimal circumstances of remote policing'.

The Barbara Pilot matter

Barbara Ann Pilot, an Indigenous person living on Palm Island, had alleged that Hurley had run over her foot in his police vehicle. Pilot was taken to hospital with a significant injury to her foot. Hurley's notification of the incident included the statement that Pilot 'was treated by the hospital Doctor who believed that it was highly unlikely her injury was caused by a motor vehicle.'

Webber appointed Robinson to investigate the matter. Robinson's investigation report dated 1 September 2004 concluded that the comments made by Barbara Pilot were 'fictitious', largely it seems because Ms Pilot was unwilling to talk with local police about the matter. Webber reviewed Robinson's report and recommended that, for the matter to be fully completed, some additional inquiries were required.

In the second investigation report provided by Robinson on 14 October 2004, which included three additional witness interviews, Robinson maintained that the comments made by Barbara Pilot were 'fictitious'.

In the CMC's view in conducting the investigation and reaching his conclusion, among other things, Robinson failed to conduct a thorough and impartial investigation. Among other things, he did not obtain Ms Pilot's medical records, did not locate relevant witnesses and did not appropriately interview Ms Pilot and her partner about the complaint. Robinson failed to ask the doctor whether he had told Hurley that he believed that it was 'highly unlikely [Ms Pilot's] injury was caused by a motor vehicle'. [The doctor's evidence to the Inquest is that he did not tell Hurley this.] To support his conclusion, Robinson relied upon his own speculation about the cause of the injury to Barbara Pilot's foot and his disagreement with the opinion of the doctor whom he referred to as a 'junior medical practitioner' who is 'neither appropriately qualified or experienced to provide an opinion'.

The CMC was advised by the QPS that Robinson's reports in this matter had been forwarded to the ESC through, among others the Officer in Charge, Townsville CIB (Kitching) and the Regional Crime Coordinator (Webber).

Kitching

Kitching told the Inquest he was aware that Hurley and Robinson were friendly¹¹¹.

Webber, the Acting Assistant Commissioner, the Acting Chief Superintendent and Williams

There is no evidence from any of these officers about their knowledge of Robinson's friendship with Hurley¹¹².

While Webber was not directly asked at the Inquest or by the IRT about whether he knew Robinson and Hurley were friends, the issue is raised with him at both the Inquest and in discussions with the IRT, and Webber at no time asserts that he was unaware of the friendship.

¹¹¹ Inquest transcript, page 772

¹¹² None of these officers were asked during the Inquest or by the IRT about their knowledge of Robinson's friendship with Hurley.

Robinson's involvement in the investigation

What the police said

Webber

Evidence to Inquest

Webber told the Inquest that Robinson was allowed to be involved in the investigation firstly because he's a 'fairly experienced officer', and secondly because he had local knowledge¹¹³.

Evidence to IRT

Webber told the IRT that both the Acting Assistant Commissioner¹¹⁴ and the Acting Chief Superintendent knew Robinson was going to Palm Island with the investigation team to assist the team¹¹⁵.

Webber said that Robinson was never appointed as a member of the investigation team; he was there to assist by providing information about the island and its occupants¹¹⁶. Webber said it is very common for residents of the island to have a number of names or nicknames and to use different terminology¹¹⁷. Webber said that in this instance, the people they would normally use to provide local knowledge, such as the Police Liaison Officer, were all involved in the matter under investigation¹¹⁸. He said without access to someone with that local knowledge, it would have been impossible to progress the investigation¹¹⁹. He said 'it was necessary to involve someone that had some local knowledge and ... the determination was made that ... Robinson was the best person to do that'¹²⁰. Webber did not state who made that determination¹²¹.

Webber said that Robinson sat in on the interviews conducted by Kitching and subsequently took statements based on the information given in those interviews. He said that Robinson took on a more active role than originally intended, which was 'simply forced more by circumstances ... than anything else'¹²².

Webber said in hindsight, knowing what subsequently occurred, they probably would have 'ditched one of the other people on the plane and put another investigator on the plane' to assist Kitching¹²³. However, he went on to say he did not consider there was anyone else they could have taken to Palm Island and, while in hindsight they could have reduced the role Robinson played, they could not have eliminated him completely and effectively investigated the incident¹²⁴. Webber said the investigation could have been delayed if Robinson's role had been reduced¹²⁵.

113 Inquest transcript, page 750

114 This is inconsistent with the Acting Assistant Commissioner's evidence.

115 IRT transcript, Webber, tape 1, pp. 13–14

116 IRT transcript, Webber, tape 1, page 16

117 IRT transcript, Webber, tape 1, page 16

118 IRT transcript, Webber, tape 1, page 16

119 IRT transcript, Webber, tape 1, page 16

120 IRT transcript, Webber, tape 1, pp. 16–17

121 The IRT did not pursue the issue of who determined that Robinson was the best person to assist the investigation.

122 IRT transcript, Webber, tape 1, page 17

123 IRT transcript, Webber, tape 1, page 19

124 IRT transcript, Webber, tape 1, page 20

125 IRT transcript, Webber, tape 1, page 20

Kitching

Evidence to IRT

Kitching said that Robinson was not appointed to the investigation. He said that Robinson was serving on Palm Island at the time, and assisted him with his investigation.¹²⁶

Kitching said he asked Robinson to assist with community liaison, finding witnesses and other people and obtaining statements after Kitching conducted interviews with various people¹²⁷. Kitching considered there was no-one else but Robinson who could have provided this assistance, as the PLO, Hurley and Leafe had all been involved in the incident¹²⁸. Kitching said that Robinson was the only police officer who was removed from the incident as he wasn't on the island at the time, and was therefore the most appropriate person to assist the investigation¹²⁹.

Kitching told the IRT that Robinson sat in on the interviews he conducted with all the civilian and police witnesses and at Kitching's request, obtained statements from these witnesses for the sake of obtaining their versions while they were there at the police station.¹³⁰ He said that the purpose of having Robinson present during the interviews was so that he understood the versions given by the witnesses and was able to then prepare the typewritten statements. Kitching said it would be 'ludicrous' to think that he could conduct an interview and then expect someone with no knowledge of what evidence was given, to be able to prepare a statement reflecting that evidence¹³¹.

The IRT asked Kitching whether he would be 'hamstrung' if he didn't use Robinson in the investigation. Kitching replied that not using Robinson would have had a massive effect, and that he wouldn't have had any local knowledge or understanding about the community and where to find people¹³².

Kitching said to the IRT that Webber was aware that Robinson was providing assistance during the investigation, and did not express any reservations to Kitching¹³³.

When asked whether if he'd known the cause of death at the time, he would still have requested Robinson to be a part of the investigation, Kitching said 'at that time yes ... in hindsight no'¹³⁴. Kitching said when talking about perceptions in hindsight, in an ideal world, it would probably be advantageous not to have Robinson there, however at the time there was no alternative¹³⁵.

Procedural fairness submission to the CMC

Kitching says that though Robinson did ask some questions this was for the purposes of assisting the primary interviewer in clearing up ambiguities and dealing with omissions — a common practice. He insists that Robinson was not an investigator in the matter; he played 'no principal role' and assisted the principal investigator as directed.

Kitching concedes that the use of Robinson was less than optimal from the perspective of bias, transparency and perception. However, Kitching justifies his use in the context of the 'scramble upon the news of the death in custody, the relatively fast moving pace of a distressing

126 IRT transcript, Kitching, tape 1, page 43

127 IRT transcript, Kitching, tape 2, pp. 2–3

128 IRT transcript, Kitching, tape 2, page 5

129 IRT transcript, Kitching, tape 2, page 2

130 IRT transcript, Kitching, tape 1, page 43

131 IRT transcript, Kitching, tape 2, page 5

132 IRT transcript, Kitching, tape 2, page 2

133 IRT transcript, Kitching, tape 2, page 3

134 IRT transcript, Kitching, tape 3, page 36

135 IRT transcript, Kitching, tape 3, page 36

investigation ... in a local [sic] that was grossly under-resourced in every way, including suitably qualified police manpower' and Kitching applying his experience 'to accumulate every piece of evidence available'.

Williams

Williams told the IRT he took no part in selecting the investigation team, as it had all been done prior to his arrival on Palm Island on 20 November 2004¹³⁶.

In his statement dated 29 November 2004 prepared for the Inquest, Williams said once he arrived on Palm Island, he was briefed by Webber and Kitching, and examined the statements and interviews which had been conducted.

Procedural fairness submission to the CMC

Williams notes that Robinson was not involved in the investigation from the time that he (Williams) arrived on the Island on 20 November 2004 and commenced his inquiries. Robinson did not take part in any of the re-enactments or the 'drive around the scene' — only Webber and Kitching were involved in those investigative activities, in which Williams took part. Williams says that Robinson was excluded from the examination of major witnesses.

Acting Assistant Commissioner

Evidence to IRT

The Acting Assistant Commissioner told the IRT he probably wasn't initially aware that Webber took Robinson to Palm Island with the investigation team but, now knowing that, he supported the decision one hundred percent¹³⁷.

The Acting Assistant Commissioner said Robinson was taken due to his currency of local knowledge of the island and the people, and he was 'reasonably well accepted by the majority of residents at Palm Island'¹³⁸. He said he was not aware of anyone else readily available in Townsville that could have fulfilled the role Robinson played¹³⁹. However the Acting Assistant Commissioner also told the IRT if there was someone else who was independent and had the local knowledge it would have been helpful to use them to support the investigators, instead of Robinson¹⁴⁰.

The Acting Assistant Commissioner did not discuss the need for independence with Webber or Robinson, and is not aware whether anyone else did¹⁴¹. The Acting Assistant Commissioner said he didn't think it would be necessary to discuss the need for independence with Webber as 'he's an experienced man and he would know that'¹⁴².

The Acting Chief Superintendent

Evidence to IRT

The Acting Chief Superintendent told the IRT Robinson was involved in the investigation as he had extensive local knowledge¹⁴³ which could be used in locating people and travelling to locations¹⁴⁴. In response to the IRT's question about alternative people who could have been used to provide local knowledge, the Acting Chief Superintendent discussed the potential

136 IRT transcript, Williams, tape 1, page 12

137 IRT transcript, the Acting Assistant Commissioner, tape 1, page 20

138 IRT transcript, the Acting Assistant Commissioner, tape 1, page 21

139 IRT transcript, the Acting Assistant Commissioner, tape 1, page 21

140 IRT transcript, the Acting Assistant Commissioner, tape 2, page 27

141 IRT transcript, the Acting Assistant Commissioner, tape 1, pp. 21–22

142 IRT transcript, the Acting Assistant Commissioner, tape 1, page 21

143 IRT transcript, the Acting Chief Superintendent, tape 1, page 13

144 IRT transcript, the Acting Chief Superintendent, tape 1, page 13

problems which may arise in using someone else. The Acting Chief Superintendent said someone resident on Palm Island may have some connection to the events giving rise to the death¹⁴⁵, there could be a conflict if 'Aboriginal Legal Aid' was used, or there could be conflict between Palm Islanders and an Indigenous person from another background¹⁴⁶.

The Acting Chief Superintendent said in hindsight, while it could be said Robinson had a link to the police station, he could not think of any other alternatives available for the immediate response that was required¹⁴⁷. The Acting Chief Superintendent said while Robinson was stationed on Palm Island, his independence was assured as he was in Townsville when the incident occurred¹⁴⁸. He maintained that Robinson was the best choice¹⁴⁹.

The Acting Chief Superintendent said Robinson's role was managed by Webber¹⁵⁰ but he did not recall any discussion with Webber about Robinson's role and how he would be managed¹⁵¹. The Acting Chief Superintendent said his understanding was although Robinson was part of the investigative team in order to provide local knowledge and he did obtain statements, he didn't do any of the interviews¹⁵². When told by the IRT that Robinson was present during Kitching's interviews with Hurley, the PLO and other witnesses, the Acting Chief Superintendent said that there could be reasons for Robinson being present¹⁵³.

Procedural fairness submission to the CMC

The Acting Chief Superintendent suggests that the Acting Assistant Commissioner, who held the permanent appointment as operations coordinator¹⁵⁴, continued to undertake the responsibilities of that role during the investigation. In that regard he points to the Acting Assistant Commissioner's own response to the IRT about his responsibilities — the Acting Assistant Commissioner 'considered his role ... was to keep the Deputy Commissioner and Commissioner briefed on the progress of the investigation **and to ensure all resources and facilities were provided to the investigators** [emphasis added by the Acting Chief Superintendent]'.¹⁵⁴

The Acting Chief Superintendent says that the Acting Assistant Commissioner did not require him to overview the initial investigation team.

He further says that he and the Acting Assistant Commissioner were satisfied with Webber's competence to address his (Webber's) requirements under the OPM.

The Acting Chief Superintendent states that this shared view, together with the role undertaken by the Acting Assistant Commissioner, removed the need for his contact with Webber.

The Acting Chief Superintendent acknowledges that he was party to activities associated with the investigation — for example, presence at briefings — but this did not include any direct supervision of the investigation team.

145 IRT transcript, the Acting Chief Superintendent, tape 1, page 15

146 IRT transcript, the Acting Chief Superintendent, tape 1, page 16

147 IRT transcript, the Acting Chief Superintendent, tape 1, page 13

148 IRT transcript, the Acting Chief Superintendent, tape 1, page 13

149 IRT transcript, the Acting Chief Superintendent, tape 1, page 17

150 IRT transcript, the Acting Chief Superintendent, tape 1, page 14

151 IRT transcript, the Acting Chief Superintendent, tape 1, page 17

152 IRT transcript, the Acting Chief Superintendent, tape 1, page 13

153 IRT transcript, the Acting Chief Superintendent, tape 1, page 17

154 The Acting Chief Superintendent was acting in the position of operations coordinator while the Acting Assistant Commissioner was acting as Assistant Commissioner.

The Acting Chief Superintendent advises that he did not indicate to the IRT that Robinson's role was to take statements. He is adamant that Robinson's inclusion on the team was for his local knowledge and ability to locate people and identify locations. The Acting Chief Superintendent acknowledges that he said to the IRT that it was his understanding Robinson obtained statements. However the Acting Chief Superintendent says that this was not a statement about his understanding of Robinson's intended role at the time but a reference to his later knowledge that Robinson had done this.

Robinson

Evidence to Inquest

Robinson told the Inquest he was appointed to the investigation team¹⁵⁵, but was not asked and did not say by whom. He also agreed he was part of the team investigating the death¹⁵⁶.

Robinson's statement

In his statement dated 7 February 2005 prepared for the Inquest, Robinson said on 19 November 2004 he was in Townsville as a result of being on a prisoner escort from Palm Island the previous day. Robinson said he received a phone call from Hurley at about 11.45 am, advising him of Mulrunji's death. Robinson said he called Kitching at about 11.50 am and Webber at 11.55 am to advise them of Mulrunji's death. [Neither Webber nor Kitching mention receiving these calls.]

Robinson said after making the telephone calls, he attended the Townsville CIB and spoke to Kitching. Robinson said he was provided with travel details for a contingent of police officers to travel to Palm Island to commence investigations.

Robinson said he undertook the following investigative steps:

On 19 November 2004:

- assisted with interviews conducted by Kitching with Hurley, the PLO, Patrick Bramwell, Edna Coolburra, and Gladys Nugent
- obtained statements from Gladys Nugent, Patrick Bramwell and Edna Coolburra.

On 20 November 2004:

- attended the Bramwell residence with Kitching to bring Roy Bramwell to the police station
- corroborated Kitching's interview with Roy Bramwell and then obtained a statement from Roy Bramwell
- obtained a statement from QAS paramedic Matthew Bolton
- attended Palm Island hospital and spoke to Matthew Bolton and travelled to the airport and assisted Bolton placing the deceased onto a chartered aircraft
- he was present at the briefing Webber and Kitching gave Williams¹⁵⁷, and provided Williams with his knowledge of the family and gave an overview of policing strategies on Palm Island.

On 22 November 2004:

- attended the hospital on Kitching's request and spoke to Dr Clinton Leahy and received a verbal briefing on Mulrunji's medical history, which was then communicated to Kitching
- advised Kitching of information he received from someone in the community about Mulrunji drinking bleach.

155 Inquest transcript, page 1304

156 Inquest transcript, page 1305

157 Williams does not mention that Robinson attended the briefing.

Interviews conducted by Robinson

It is apparent from the audio-tape-recorded interviews that Robinson's role in the interviews was not just to corroborate Kitching. He asked questions in those interviews. A few examples of Robinson's questions are as follows:

To Hurley:

Q. *And you didn't land on top of him*

Q. *Did he ever complain of any medical injuries*

To the PLO:

Q. *Does he suffer from any medical conditions or anything that you're aware of*

To Gladys Nugent:

Q. *Alright. So the two of them were sitting in the back of the car and they were fine*

Q. *So at no time was Chris or [the PLO] aggressive with putting them in the back*

To Edna Coolburra

Q. *Is [Mulrunji] a big drinker*

Other evidence¹⁵⁸

During an interview with the CMC on 21 January 2008, Robinson was asked about the phone call he received from Hurley on 19 November 2004. Robinson said he did not make a record of the telephone conversation but remembered that Hurley said he'd arrested someone and that person had died at the watch-house. Robinson said he believed Hurley called him as he was the Officer in Charge of the Palm Island CIB. Robinson said he then called Kitching and Webber, and got Kitching to call Hurley. Robinson was not sure whether Hurley contacted anyone else.

During that interview with the CMC, Robinson also said that after speaking to Kitching a few times, Kitching told him when the plane was leaving and to come over. When asked whether he made a specific request to be involved in the investigation, Robinson said he did not recall making a specific request, but just assumed his role would be to assist with the investigation. Robinson said he was selected by senior management to go to Palm Island, but did not say who specifically selected him. Robinson said there was no discussion of his role or of his close working relationship or friendship with Hurley. Robinson considered his role was to attend to jobs as tasked and he was basically there to assist the senior investigators. Robinson also mentioned he was there to corroborate the interviews until other investigators arrived and to provide local knowledge. Robinson said he did not get any specific instructions about his role in the investigation.

During a further interview with the CMC on 22 January 2008, Robinson said he was detailed to assist in the preparation of a report for the Coroner, which was completed by Kitching.

Procedural fairness submission to the CMC

In his procedural fairness submission Robinson says he was made aware of Kitching's choice to use him. He believes he was chosen for the benefit of his experience as a detective, his knowledge of Palm Island, his good rapport with the community and because he had received a reference from the Community Justice Group for the 'significant decline of complaints against police reported to their office'.

Robinson says that he was not to be used as an investigator but to assist Kitching 'in the accumulation of as much intelligence as possible in the investigation'. In the latter regard he points, for example, to his assistance in locating people given that there is a total absence of

158 These interviews were conducted in the course of investigating other complaints about Robinson's conduct.

street signage and house numbering on Palm Island. He says that no-one had his level of local knowledge. Robinson asserts that had he not been assisting, it would have been impossible for Kitching to locate the required community witnesses in the necessary short period of time.

Robinson acknowledges that 'things are done differently know' [sic]. He suggests, for example, this might mean that Kitching might try 'to use (by remote)' his community knowledge and use other suitably experienced investigators to assist in the investigation.

Robinson points to 'the emergent *organised chaos* of preparation for the departure of the investigation team to Palm Island and the context of the 'relatively fast moving pace of a distressing investigation' to explain the choice to use him.

In relation to his involvement in interviews, Robinson asserts that it is 'commonplace, if not normal practice' for an officer assisting the primary interviewer to, for example, clear up any ambiguities or deal with matters that may have been missed.

Robinson also points out that it was only after the passing of significant time — during which the destruction of the interview tape-recordings in the fire at the police station became public knowledge — that complaints were lodged alleging impropriety on the part of Robinson in the interviews. He suggests that it is absurd that he would stand over witnesses knowing the interviews were being recorded.

IRT findings

General findings

The IRT made the following general findings and comments about Robinson's involvement in the investigation:

Given D/Sgt Robinson's association with S/Sgt Hurley it would have clearly been a preferred course to exclude him from the investigation but to have him assist with local knowledge only ...

Investigators were placed in an unenviable position. It was crucial to obtain as much information as quickly as possible and to do so required local knowledge. Anyone with this local knowledge also had a relationship, in some form or another, with S/Sgt Hurley ...

The Service has reviewed its practices with respect to this type of incident. Even after this review, any investigator whether from the QPS or the CMC, and even if assisted with ATSI or other suitable support persons, will require the assistance of someone with local knowledge if an investigation is to be thorough. This then infers that the test for investigators is how to manage the use of local resources to ensure the investigations remain, and are seen to remain, independent ...

Investigators were also faced with the logistical problem of resourcing investigations and the taking of statements. In this instance D/Sgt Robinson was used as there were little or no other practical solutions available to D/S/Sgt Kitching. Had another officer been available to assist with investigations, and D/Sgt Robinson used solely to assist with local knowledge, increased confidence in the integrity of the process would have followed. Having said this, only a limited number of officers could be sent to Palm Island quickly and D/Inspector Webber was liaising with the family of the deceased while D/S/Sgt Kitching took primary responsibility for the investigation ...

Competing interests faced investigators and police managers: the need for timely response and timely evidence gathering verse the need for the process to be seen to be as independent as possible.

Recommendations re individual officers

The IRT recommended that Webber and Kitching both receive guidance and that no action against Williams is warranted.

The IRT recommended that the Acting Chief Superintendent be chastised and receive guidance in relation to a number of specific issues, including his failure to give directions or advice to Webber or Kitching about the role of Robinson or how Robinson was to be managed. The IRT note that the Acting Chief Superintendent has retired from the QPS.

The IRT made no specific recommendations in relation to the Acting Assistant Commissioner and no findings or recommendations were made in relation to Robinson.

These findings will be discussed in Part 5.

CMC comment

Robinson's conflict of interest as a friend of Hurley's

In the CMC's view, the evidence supports the conclusion that Robinson's friendship with Hurley created a conflict of interest, which he failed to declare as he was obliged to do by the Code of Conduct.

Robinson asserted that he felt he could conduct a fair and impartial investigation of Hurley. In the CMC's view, an examination of Robinson's investigation in the Pilot matter and his statements in relation to the Clay investigation suggest, at the least, a clear perceived conflict of interest.

Robinson had an obligation to formally disclose the conflict even though he said that 'senior police' knew of the friendship and that he had previously expressed reservations to Webber and Kitching about investigating Hurley.

Robinson's failure to raise the issue of his conflict of interests formally again with Webber and/ or Kitching, along with the fact that he called both Webber and Kitching and attended the Townsville CIB shortly after Hurley advised him of Mulrunji's death, is inconsistent with his claim that he previously raised concerns with Webber and Kitching about investigating Hurley and that he thought he should not be put in a position where he has to investigate Hurley. It is noted that Robinson has also claimed that he was chosen by Kitching and had no capacity to refuse.

The evidence also suggests that Webber, and certainly Kitching, knew that Robinson and Hurley were personal friends and that they also should have been aware that Robinson had recently failed to properly investigate a complaint against Hurley¹⁵⁹. Even if Webber and Kitching were unaware of Robinson's friendship with Hurley, the evidence indicates they knew he was from the same police establishment as Hurley and should have taken steps to satisfy themselves about any possible actual or perceived conflict of interest on the part of Robinson that might have impacted adversely on the integrity of the investigation.

The evidence suggests that Robinson's conflict of interest was such that it should have prevented him from any involvement whatsoever in the investigation. In other words the CMC's view is that the integrity of the investigation could not have been preserved by judicious management of Robinson's involvement.

159 Robinson's initial investigation report was sent back to him by Webber to conduct further inquiries. Kitching was aware of the fact that further inquiries had been requested.

We also note a letter from the ESC dated 4 December 2008 responding to our recommendation that consideration be given to taking disciplinary action against Robinson in relation to the Pilot investigation. The Assistant Commissioner of the ESC states:

While not mentioned in your letters, what is more concerning from the QPS perspective is that none of these issues were identified by overseeing officers. D/Sgt Robinson's reports were forwarded through the Officer in Charge, Townsville CIB, the District Officer, Townsville District, the Regional Crime Coordinator, Northern Region, the Acting Assistant Commissioner, Northern Region.

It is not clear from the information we have been provided whose decision it was to involve Robinson in the investigation. In any event Webber and Kitching had a responsibility to ensure the impartiality of the investigation.

Williams also had a responsibility to identify whether there were any matters that might adversely affect an impartial investigation¹⁶⁰. In the CMC's view, once Williams knew that Robinson was from the same police establishment as Hurley and found out that Robinson had been involved in the investigation¹⁶¹, he should have taken steps to satisfy himself about any possible conflict of interest on the part of Robinson and its impact and then deal with the situation.

There is no evidence that any of the officers — Webber as officer in charge, Kitching as primary investigator or Williams representing the ESC — gave any consideration to Robinson's conflict of interest or the impact of any involvement by Robinson upon the impartiality of the investigation.

Robinson's involvement in the investigation

Though it is not clear how he became involved in the investigation, the evidence indicates that it was Robinson who made initial contact with Kitching and Webber, at first by telephone and then by attending the CIB office in Townsville where he took up with both of them.

The IRT rely upon the need to obtain information as quickly as possible and the need for local knowledge to do that, as well as logistical problems in relation to investigative support for Kitching, to justify Robinson's involvement in the investigation.

In their evidence to the IRT, Webber and Kitching argued that Robinson was not appointed to the investigation team. We note that this assertion was not made at the Inquest, and is contrary to Robinson's evidence to the Inquest that he was appointed to the team.

The objective evidence supports, contrary to the evidence of both Webber and Kitching, that Robinson was part of the investigation team and his involvement in the investigation was more than providing local knowledge or simply acting as a corroborator and taking statements.

Other options for local knowledge and investigative support

The IRT comments not only that it would have been appropriate for Robinson to assist with local knowledge, but that Webber and Kitching had no alternative but to use Robinson because there were little or no other practical alternative solutions available. Yet, if it is accepted that such was the case, the IRT did not consider what steps should have been taken by Webber and Kitching to carefully manage Robinson's involvement in the investigation.

In the CMC's view, there were sources of local knowledge other than Robinson available to the investigation team, and finding one would not have delayed the investigation as has been argued. There is no information that suggests that the investigation team (or the IRT) gave any real consideration to alternative sources of local knowledge, such as:

- Acting Senior Constable Tonges, who was on Palm Island at the time and had been stationed there since April 2003

¹⁶⁰ Section 1.17 OPM

¹⁶¹ Williams would have become aware of Robinson's role in the investigation through the briefing he received from Webber, Kitching and Robinson upon his arrival, and after reviewing the interviews and statements which had been conducted at that point.

- the list of local ATSILS contacts¹⁶², support persons and interpreters which must be maintained under sections 6.3.6 and 6.3.4 of the OPM¹⁶³
- the Community Justice Group (who Robinson said were present when witnesses signed their statements¹⁶⁴)
- Senior Sergeant Dave Dini, a cross-cultural liaison officer also was identified by the Acting Assistant Commissioner as someone who may have been able to identify appropriate support people¹⁶⁵, and may have been able to also identify appropriate sources of local knowledge.

As an officer stationed on Palm Island, Robinson himself would have been aware of alternative sources of local knowledge available on Palm Island, and could have advised Webber and Kitching accordingly.

The IRT states that anyone (other than Robinson) with the required local knowledge also had a relationship, in some form or another, with Hurley. We accept that someone with current local knowledge may have had some relationship with, or at least know, Hurley as a result of living or working on Palm Island. However, there is a significant difference between someone who merely has a working relationship with Hurley or someone who knows Hurley from living on Palm Island and someone with a personal friendship.

It was also argued that Robinson was the most appropriate person to provide local knowledge, as he was not present on Palm Island at the time of Mulrunji's death, and therefore was the only police officer who was completely independent¹⁶⁶. However, other officers on the island at the time were not on duty and there is no suggestion that they were in any way involved with the circumstances of Mulrunji's death. Nor is there any suggestion that they were close friends with Hurley. It would have been preferable to use, for example, Tonges¹⁶⁷ rather than Robinson (or indeed another source of local knowledge independent of the QPS).

In the CMC's view, the mere fact that Robinson was not present on Palm Island at the time of Mulrunji's death is insufficient to justify his involvement in the investigation. The conflict of interest created by Robinson's friendship with Hurley is the overriding consideration, as was highlighted by his investigation of Barbara Pilot's complaint¹⁶⁸.

162 While the IRT state that 'ATSI Legal Aid field officers were involved in the process from the outset', no information has been provided about how the officers were used, apart from providing assistance in notifying Mulrunji's family of his death. Webber told the IRT that 'Legal Aid' was advised of the matter and had the opportunity to participate but the Legal Aid representative was the daughter of the Mayor and her brother died in jail, so she was unable to provide any assistance. Presumably, if ATSILS were involved in the process from the outset, those officers would be in a position to provide local knowledge, with the advantage of being independent of the QPS.

163 Although at the Inquest (page 1279), Hurley said he did not maintain these lists and said they mainly used the Community Justice Group, he said it would be impractical to maintain such lists as on Palm Island you could basically list the whole community. He said it was not difficult to find support persons. If they had been in existence, these lists could have been consulted to quickly locate people who could provide the required local knowledge, with the advantage of being independent of police. However, none of the members of the investigation team seem to have turned their mind to the issue and inquired about whether Hurley maintained such lists.

164 Robinson's statement to the CMC indicates that he arranged for members of the Community Justice Group to be present when a number of witnesses were signing their statements. Presumably, as members of the Community Justice Group were available to witness the signing of statements, they would also be in a position to provide local knowledge, with the advantage of being independent of the QPS.

165 IRT transcript, the Acting Assistant Commissioner, tape 2, page 7

166 IRT transcript, Kitching, tape 2, page 2; IRT transcript, the Acting Chief Superintendent, tape 1, page 13

167 While we cannot be certain of Tonges' relationship with Hurley, there is no evidence to suggest they shared a close personal friendship, like Hurley and Robinson, and he'd had no involvement in the arrest or detention of Mulrunji.

168 See text box relating to Robinson's investigation of Barbara Pilot's complaint against Hurley.

Further, while Webber said that Robinson was used by the investigation team as he understood local terminology and nicknames¹⁶⁹, Robinson stated in evidence to the Inquest that he still experienced communication difficulties with Aboriginal witnesses and sometimes misunderstood them.¹⁷⁰ This is a candid but concerning admission from an officer stationed on Palm Island. It also calls into question the usefulness of Robinson to the investigation team, if, as was indicated, Robinson was involved due to his 'local knowledge'.

The evidence suggests that if Webber and Kitching, who were both experienced investigators, had gone through a thorough process of planning the investigation and given proper consideration to the various sources of local knowledge already available on the Island, it would have been appropriate to use one of those sources and to assign an officer from Townsville with appropriate investigative experience — for example, one of Kitching's officers from the CIB, to assist Kitching. Webber himself acknowledges in hindsight that someone else should have been on the plane to assist Kitching.

Summary of CMC assessment

Initial police investigation

Robinson's friendship with Hurley created a conflict of interest which he should have declared. In the CMC's view, Robinson clearly should not have been involved in the investigation in any way.

Both Webber and Kitching should have realised that Robinson had a conflict of interest that, at the very least, would adversely impact upon the perception of impartiality of the investigation.

Robinson's alleged experience and local knowledge should not have been the overriding consideration in the minds of Webber and Kitching. In any event there were alternatives — both for an experienced investigator and to provide local knowledge. Yet the evidence suggests that Webber or Kitching did not consider using anyone else to assist the investigation team but simply used Robinson as he was a convenient resource. Williams also had an obligation to identify whether there were any matters that might adversely affect an impartial investigation, but did not do so.

First and foremost in the minds of Webber, Kitching and Williams should have been the need to conduct an impartial investigation and to be seen to do so.

IRT findings

The IRT acknowledged that Robinson's friendship with Hurley made it unsuitable for him to have actively participated in the investigation — that is, they implicitly acknowledge that it represented a conflict of interest for Robinson, which reduced confidence in the integrity of the investigation.

However, they justify Robinson's involvement in the investigation by accepting uncritically the investigators' statements about the need for local knowledge and the lack of other practical alternatives. They don't explore what other options were available or who made the decision to involve Robinson in the investigation.

This uncritical acceptance of evidence without testing it leads the IRT into factual error — as noted above, other sources of local knowledge were available. Even if there had, in fact, been no other options, the IRT did not consider what steps should have been taken to carefully manage Robinson's involvement in the investigation. Their use of leading questions further strengthens the impression that they are justifying Robinson's involvement.

In acknowledging the conflict of interest issue but not holding the investigators accountable for ensuring the impartiality of the investigation, the IRT has failed to investigate this allegation thoroughly and impartially.

169 IRT transcript, Webber, tape 1, page 16

170 Inquest transcript, pp. 1325–1326

Kitching's appointment as investigator

While the IRT asked the individual officers some questions in relation to Kitching's appointment, they did not consider the issue in detail or make any findings in relation to the appropriateness of Kitching's appointment. It is not clear why the IRT did not consider the issue. For the sake of completeness the CMC has done so.

Evidence

Webber appointed Kitching to investigate Mulrunji's death. Webber said Kitching was a senior officer he felt could appropriately and properly carry out the investigation. He said Kitching was the most senior and experienced officer available to conduct the investigation, and was the same rank as Hurley. Webber said he believed Kitching had met Hurley, but did not ask Kitching whether he knew Hurley before he made the appointment. Webber said he had faith in Kitching's professionalism and if Kitching thought his relationship with Hurley was one of friendship rather than on a sound professional basis, Kitching would inform him accordingly. Webber said 'I believe if Senior Sergeant Kitching was uncomfortable with conducting the investigation I'd have every faith that he would advise me that he considered that it was a conflict of interest'.

Kitching said he knew Hurley reasonably well in a professional sense, but did not consider Hurley a personal friend. He did not disclose the relationship when he was appointed to investigate the matter, because he didn't think it would be relevant as he conducted a fair investigation.

IRT comment

The IRT commented that Webber selected Kitching as the primary investigator and Kitching indicated at the Inquest that he knew Hurley but that they were not friends. The IRT also noted that Kitching agreed he was one of the very few officers that could have been selected from Townsville to undertake the role, otherwise an officer from another area would have to undertake the investigation.

The IRT does not make any further comments or findings in relation to the appropriateness of the appointment of Kitching.

CMC comment

The CMC is of the view that under the circumstances, it was acceptable for Kitching to be appointed to investigate the circumstances surrounding the death of Mulrunji. In that regard we note the following:

- Kitching was an officer of sufficient experience, with sufficient criminal investigation background; in particular, as Webber describes it, in 'homicide-related offences'. Though Kitching had not investigated deaths in custody he had over-viewed a lot of 'injury in custody investigations' and investigated many suspicious deaths.
- Kitching was of appropriate rank and was not from the same police establishment as the officers involved in the incident.
- The situation required the investigating officer to attend the scene that day. It would have been difficult to appoint any other officer with appropriate rank and experience who would be able to get to Palm Island that day.
- Kitching's prior involvement with Hurley was a professional one and did not involve any personal relationship.

Any perceived conflict of interest could have been appropriately managed, including through the oversight by an Inspector from the ESC. The fact that this did not occur does not negate that it was acceptable to appoint Kitching.

While in the circumstances Kitching was an appropriate appointment, Webber seems not to have recognised his responsibility for ensuring the appointment of an independent senior investigator, but, in effect, relied upon Kitching.

ALLEGATION 2: HURLEY TRANSPORTING INVESTIGATORS

Background

The Acting State Coroner was concerned that the investigation's appearance of impartiality was undermined by Hurley, the officer most likely to be under investigation, meeting the investigating officers at the airport on their arrival and transporting them to the police station, and driving the investigators to the scene of Mulrunji's arrest the following day¹⁷¹.

In terms of official police procedure, in addition to the general obligations previously outlined¹⁷², the OPM at the time:

- specified that the regional crime coordinator was directly responsible for the investigation
- did not specifically require investigators to record conversations with witnesses, but did require that interviews with suspects for indictable offences be electronically recorded where practicable¹⁷³
- provided that members who may be required to give evidence of conversations, events or occurrences should compile relevant notes at the time of the conversation, event or occurrence or as soon as practicable thereafter¹⁷⁴
- provided that statements from witnesses should be as comprehensive as possible and be obtained at the earliest practicable opportunity¹⁷⁵.

The IRT formulated the allegation 'Hurley transporting investigators' which deals with Hurley meeting the investigators at the airport, and Hurley driving the investigators to the scene of Mulrunji's arrest.

Transfer from airport

Context

On 19 November 2004, Hurley and Leafe met the investigation team at the airport, and transported the nine officers who made up the team to the police station. Two vehicles were apparently used to transport the investigation team, a four-wheel drive (or dual-cab vehicle) and a mini bus. From the information available to the CMC, we cannot be certain who was transported in which vehicle, but it appears that Hurley drove the four-wheel drive containing Webber, Kitching and possibly Robinson¹⁷⁶, and Leafe drove the mini bus containing the other six officers.

A photocopier technician, Mr David Murray, who arrived on Palm Island earlier that day says he was picked up at the airport by two young constables.

171 Finding of Inquest, page 10; section 46 comments, number 33

172 See Chapter 4: Background to the initial QPS investigation: requirements for investigations into deaths in custody.

173 Section 2.14.2 OPM

174 Section 2.13.8 OPM

175 Section 2.13.1 OPM

176 Due to the lack of record about the trip and the fact that Robinson was not interviewed by the IRT, we cannot be sure whether Robinson travelled in the vehicle with Hurley. Kitching said he was pretty sure Hurley drove him, Webber, Robinson and the forensic coordinator. Robinson said he did not know if Hurley picked him up and believes he was driven by another person as he had the most baggage.

Key issues

In the CMC's view, Hurley transporting the investigating officers from the airport raises the following issues:

- What action, if any, did Webber or Kitching take to ensure that appropriate transport arrangements were made for the investigation team?
- Was it appropriate for Webber as the regional crime coordinator and Kitching as the primary investigator to allow Hurley — the person most likely to be under investigation — to transport members of the investigation team, particularly the senior officers? Was there any alternative?
- Did Webber and Kitching consider how Hurley driving them might impact on community perceptions of the investigation and its impartiality?
- What action did Webber and Kitching take to minimise the impact of Hurley transporting them?

What the police officers said

Webber

Evidence to Inquest

At the Inquest, Webber said he could not recall if Hurley picked him up from the airport, but that 'If he did, I don't really have a problem per se with it, in the sense that there are only a limited number of officers there'¹⁷⁷. Webber said 'in one sense, it actually took him away from the scene' and Hurley 'was going to be interviewed anyway'¹⁷⁸.

Webber agreed that Hurley picking up the investigation team from the airport would 'possibly' cause some sense of distrust in the community about the independence of the investigation¹⁷⁹.

Evidence to IRT

Webber told the IRT he had no conversation with Hurley prior to his arrival on Palm Island on 19 November 2004¹⁸⁰. Webber said to his understanding, no instruction was given to Hurley to pick up the investigation team and he assumed that Hurley made the decision himself¹⁸¹. Webber confirmed that he travelled in a vehicle with Hurley, he thinks Kitching was also there, but was not sure who else was in the vehicle¹⁸².

Webber said he didn't think they spoke much on the drive from the airport to the police station, but there was some conversation about what the investigation team was going to do. They discussed the role of the Tactical Crime Squad in taking over the general policing functions and safety concerns once it became known that there had been a death in the watch-house¹⁸³.

Webber said that if they had not travelled with Hurley, someone would have had to make two or more trips and in any event, they would either have to use one of the officers that were implicated in the investigation, or go outside the QPS and attempt to have someone from another government agency assist¹⁸⁴.

177 Inquest transcript, page 743

178 Inquest transcript, page 743

179 Inquest transcript, page 743

180 IRT transcript, Webber, tape 1, page 23

181 IRT transcript, Webber, tape 1, pp. 23–24

182 IRT transcript, Webber, tape 1, page 26

183 IRT transcript, Webber, tape 1, pp. 26–27

184 IRT transcript, Webber, tape 1, pp. 24–25

Webber said he rejects the implication there is something necessarily improper about Hurley attending the airport. He said people can make whatever they want of a particular situation, but the investigation team had to get to the police station as quickly as they could, and there were no taxis or other public transport available¹⁸⁵. Webber said when they arrived on Palm Island, they had no preconceptions about the circumstances of the death and they were not there to investigate Hurley¹⁸⁶.

Webber said he does not agree with the Acting State Coroner's comment that Hurley meeting the investigation team at the airport undermined the investigation's appearance of impartiality, as they had to meet sometime¹⁸⁷. Webber said 'I believe it would have been considerably even more problematic subsequently if we'd actually left ... Senior Sergeant Hurley alone at the ... scene'¹⁸⁸.

Kitching

Evidence to IRT

Kitching told the IRT he hadn't had any discussions with Hurley prior to arriving on the Island and he didn't make any logistical arrangement in relation to transport¹⁸⁹.

Kitching said he was 'pretty sure' Hurley drove him, Webber, Robinson and the forensic coordinator from the airport to the police station¹⁹⁰ which took five to ten minutes¹⁹¹. Kitching said there certainly would have been discussions during the car trip, but that to his memory the discussions did not involve the death itself or the circumstances surrounding it¹⁹². Kitching did not make any notes of the conversation¹⁹³.

Kitching said he 'didn't even think about' the appropriateness of Hurley picking them up from the airport and it was just a means of getting from one place to another¹⁹⁴. When asked about whether it was appropriate in hindsight, Kitching said that in an ideal world, someone else would have picked them up, but they were on Palm Island and 'you cannot get resources to Palm Island promptly'¹⁹⁵.

Procedural fairness submission to the CMC

Kitching says that during the 'scramble' neither he or Webber turned their minds to transport on the island which had not suggested itself as a priority.

Robinson

Other evidence

In an interview with the CMC on 21 January 2008, Robinson said he did not know if Hurley picked him up from the airport and claimed Hurley may have transported the other officers to the police station. Robinson believes he was driven by another person, as he had the most baggage on the plane.

185 IRT transcript, Webber, tape 1, page 24

186 IRT transcript, Webber, tape 1, page 23

187 IRT transcript, Webber, tape 1, page 25

188 IRT transcript, Webber, tape 1, page 23

189 IRT transcript, Kitching, tape 2, pp. 8–9

190 IRT transcript, Kitching, tape 2, page 12

191 IRT transcript, Kitching, tape 2, page 16

192 IRT transcript, Kitching, tape 2, pp. 11–12

193 IRT transcript, Kitching, tape 2, page 15

194 IRT transcript, Kitching, tape 2, page 13

195 IRT transcript, Kitching, tape 2, pp. 13–14

During Lex Wotton’s trial in 2008, Robinson said he made no arrangements in relation to any of the transport relating to the investigation team arriving on Palm Island. Robinson said he didn’t organise for Hurley to pick up the investigation team from the airport and he didn’t know what arrangements were made. Robinson agreed he took no steps to prevent Hurley from picking up the investigation team.

Arthy

Evidence to IRT

Arthy told the IRT he does not remember who picked him up from the airport, but that there were two vehicles, a four wheel drive driven by Hurley and a mini bus¹⁹⁶. Arthy thought that Webber and Kitching travelled with Hurley and the others, including himself, travelled in the mini bus.

Acting Assistant Commissioner

Evidence to IRT

The Acting Assistant Commissioner told the IRT he gave no directions and had no role in organising the transport for the investigators on Palm Island¹⁹⁷. The Acting Assistant Commissioner said the airport is some kilometres from the police station and while one of the other officers could have gone to pick up the investigators, all the officers at the station were somehow involved¹⁹⁸ in the incident¹⁹⁹.

The Acting Assistant Commissioner said the only alternative to having a police officer pick up the investigators from the airport would be to ask some other government employee, but that would be unusual²⁰⁰.

Acting Chief Superintendent

Evidence to IRT

The Acting Chief Superintendent said the police station is a considerable distance from the airport. He said there is no public transport or taxi service on Palm Island and the normal process when arriving on Palm Island is to contact the police²⁰¹. The Acting Chief Superintendent noted that there were few police on Palm Island at the time and they were all involved in the incident, so through necessity one of the officers had to pick up the investigators from the airport²⁰². The Acting Chief Superintendent said the investigation team had to be expeditious and it was necessary to get from the airport to the station quickly to commence the investigation²⁰³.

196 IRT transcript, Arthy, page 9

197 IRT transcript, the Acting Assistant Commissioner, tape 1, page 28

198 The Significant Event message identified Hurley, the PLO and Leafe as being involved in the circumstances surrounding the death of Mulrunji, but made no mention of the involvement of any other officers, who were not on duty at the time.

199 IRT transcript, the Acting Assistant Commissioner, tape 1, pp. 30–31

200 IRT transcript, the Acting Assistant Commissioner, tape 1, page 29

201 IRT transcript, the Acting Chief Superintendent, tape 1, pp. 27–28

202 IRT transcript, the Acting Chief Superintendent, tape 1, pp. 28–29

203 IRT transcript, the Acting Chief Superintendent, tape 1, page 30

What the independent witness said

David Murray

Interview with CMC

Mr David Murray is a photocopier technician who was present in the Palm Island police station on 19 November 2004. In an interview with the CMC on 12 December 2006, Mr Murray told the CMC he arrived on Palm Island on the morning of 19 November 2004 sometime around 10:30 and was picked up at the airport by two young constables.

Mr Murray said after he had conducted his repairs, he waited at the airport for a plane for some time. He said the plane he caught back to Townsville was the plane which brought the investigators over to Palm Island.

IRT findings

The IRT found that there did not appear to be any reasonable alternative for transporting the investigation team. They also found:

Palm Island did not have any infrastructure available that the QPS could have reasonably used in the circumstances in terms of transporting nine officers and their equipment.

In normal circumstances, investigators would have little or no contact with officers involved in similar incidents until such time as they were ready to interview or record conversations. However, at remote or rural communities like Palm Island, the logistical reality is that officers involved in the incident may need to be used ...

Although S/Sgt Hurley was clearly a person of interest, in practical terms no investigation had commenced when he met officers at the airport. D/Insp Webber or S/Sgt Kitching could have tape-recorded any conversation with S/Sgt Hurley, but this type of safeguard would require tape recording of all conversations from first point of contact with all possible persons of interest and would present a considerable logistical problem. This type of safeguard also has limits: it does not stop collusion in totality.

From a practical perspective, a local officer was best suited to providing transport. Resources on the Island were limited and this presented a specific problem where officers involved in the incident were required to assist investigators with logistical matters.

CMC comment

In the CMC's view, the integrity of the investigation was compromised when Hurley, the officer most likely to be under investigation, met the investigation team at the airport and transported them to the police station.

The IRT itself endorses the essential principle that 'in normal circumstances, investigators would have little or no contact with officers involved in similar incidents until such time as they were ready to interview or record conversations' but argue that in remote places such as Palm Island officers involved in the incident may need to be used. In fact, other more appropriate options were available.

The evidence does not suggest that any consideration was given to how the investigation team would be transported once they arrived on Palm Island, and when Hurley met the team at the airport, whether it was appropriate for Hurley to transport the investigation team.

The IRT makes reference to the failure of any senior officer to take charge of, or make arrangements for logistical components of this investigation. However, the problem here was that there were alternatives available, but it seems that Webber and Kitching simply did not consider them.

Other options for transporting the team

Officers Tonges and Steadman were present on the island on 19 November 2004 and had not been on duty at the time of the incident. They could have picked up the investigation team in the two police vehicles, or one of them could have made two trips if necessary. We also note the evidence of Mr David Murray, who was picked up by Tonges and Steadman²⁰⁴. Clearly, if two off-duty officers were able to pick up Mr Murray from the airport, they could have picked up the investigation team. We note that neither the individual officers nor the IRT make any mention of the fact that Tonges and Steadman were present on the island on 19 November 2004.

At the very least, it would have been preferable for the officers responsible for the investigation, Webber, Kitching, and Robinson²⁰⁵ to have travelled in the vehicle with Leafe rather than with Hurley.

The IRT's finding 'There does not appear to be any reasonable alternate method that could have been used to transport the Townsville investigation team' is not supported by the evidence.

Recording of conversation

The investigation's appearance of impartiality was further compromised by the failure of any officer to make a record of the conversation which occurred during this trip.

The conversation could have been electronically recorded, notes could have been taken by Webber or Kitching in their police note books either while they were in the car or once the team arrived at the station, or during an interview Hurley could have asked for and stated for the record, what was discussed during the trip. The IRT itself acknowledged 'questioning of officers to clearly outline the nature of any conversations that were had at a later record of interview is another means of ensuring an investigation is seen to be independent'.

'In practical terms no investigation had commenced'

While the team may not have physically started 'investigating' the matter when they arrived at the airport in terms of inspecting the scene and interviewing witnesses, investigators had been appointed, a team had been assembled, and the team had travelled to Palm Island. It is not clear when the IRT considers the investigation would have actually 'commenced', whether it was when the team arrived at the police station or when the first interview was conducted. In any event, the IRT's finding ignores the issue of the perception arising from Hurley transporting the officers.

The IRT's comments about the 'considerable logistical problem' presented by the need to tape-record 'all conversations from first point of contact with all possible persons of interest' does not pay heed to the focus given to recording conversations by the OPM — particularly since Hurley was not just one of 'all possible persons of interest' but was clearly of particular interest. The reference to tape-recording the conversation also ignores that a record could have been made in their police note books or during a subsequent recorded interview with Hurley.

204 See Steadman's evidence at the re-opened Inquest on 10 March 2010.

205 It is not clear whether Robinson travelled in the vehicle with Hurley.

Failure to consider community feeling

It appears that Webber and Kitching did not consider what impact that Hurley transporting the investigators might have on community perceptions of the impartiality of the investigation — despite their awareness of likely safety concerns once the death in the watch-house became known²⁰⁶. Webber did acknowledge at the Inquest the possibility that Hurley picking up the investigation team from the airport could cause some distrust in the community about the independence of the investigation but appears to step back from this in his evidence to the IRT.

Driving to the scene of the arrest

Context

On 20 November 2004 Hurley drove Kitching, Webber, Williams and Tibbey to the scene of Mulrunji's arrest. The purpose was so that Hurley could give evidence to the investigators about the events that occurred surrounding his arrest of Mulrunji and during the trip to the police station, and Tibbey could take photographs of the scene.

Key issues

In the CMC's view, Hurley transporting the investigators to the scene raises the following issues:

- Was it appropriate for Webber, Williams or Kitching to allow Hurley to drive them to the scene and was there any alternative?
- Did Webber, Williams and Kitching consider how Hurley driving them to the scene might impact on community perceptions of the investigation and its impartiality? Did they take any action to minimise the impact of Hurley being seen with the investigators?
- Weren't any notes taken of conversations during this time?

A separate but related question is:

- Why wasn't the PLO also taken back to the scene of Mulrunji's arrest?

What the police said

Webber

Evidence to Inquest

At the Inquest, Webber stated that he, Williams, Kitching and Hurley went to the scene of the arrest on 20 November 2004, and he did not recall whether the trip was recorded²⁰⁷.

Evidence to IRT

Webber told the IRT he was 'completely bemused' by the Acting State Coroner's comment²⁰⁸. He said he was not sure how they could conduct an investigation without actually taking people to the scene, and Hurley was the person who could show them exactly where everything occurred and where the arrest was made²⁰⁹. Webber agreed that the PLO could

206 Webber told the IRT he was concerned about the potential for unrest on the island (IRT transcript, Webber, tape 2, page 21). He also told the IRT that on the drive from the airport to the police station, there was some conversation about what the investigation team was going to do. Webber said they discussed the role of the Tactical Crime Squad in taking over the general policing functions and safety concerns once it became known that there had been a death in the watch-house (IRT transcript, Webber, tape 1, pp. 26–27).

207 Inquest transcript, page 751

208 He was referring to the Acting State Coroner's comment about Hurley driving the investigators to the scene undermining the appearance of impartiality of the investigation.

209 IRT transcript, Webber, tape 1, page 27

also have shown them where the arrest took place, but he was similarly involved and there were difficulties in conversing with the PLO²¹⁰. Webber said he believed Hurley was the best person to show them where the arrest occurred²¹¹.

Webber said he could not recall whether Kitching recorded Hurley taking them to the scene and recounting his story, but he doesn't think Kitching did²¹².

Kitching

Evidence to IRT

Kitching initially told the IRT he didn't think Webber and Williams accompanied him on the trip to the scene of the arrest, but after looking at his statement Kitching indicated that Webber, Williams, Tibbey and Hurley were all present²¹³. Kitching said the purpose of the trip was to enable him to identify everything he possibly could from the moment Mulrunji came into police custody until the time of his death. Kitching said at that time, there was absolutely no indication of what caused Mulrunji's death, so he had to try to identify as best he could all the circumstances leading up to that²¹⁴.

Kitching said he certainly remembered having a conversation in the vehicle but he did not tape record the conversation because he'd already obtained a full version from Hurley on tape²¹⁵.

Kitching also said he did not make any notes of the actual conversations and agreed with the IRT's comment that he just recorded times and places²¹⁶.

Williams

Evidence to Inquest

Williams told the Inquest he didn't speak to Hurley during the drive to the scene of the arrest. He said the purpose of the drive was to see the actual route taken, where the incidents occurred and for Kitching to obtain photographic evidence along the way²¹⁷. Williams said 'there was conversation of course' and Hurley pointed out where the incidents occurred, where the arrest occurred, where the van was parked and where Mulrunji had come from²¹⁸.

Evidence to IRT

Williams told the IRT the idea of the trip was for Kitching to obtain photographic evidence of where every step happened from the time Mulrunji was arrested, to when he arrived at the watch-house. Williams said the only way you can possibly re-enact such a route, is for the person who took the route to take you through it and identify where incidents occurred²¹⁹.

Williams said he did not take any notes or record the trip as his purpose for going was just to familiarise himself with where they had been²²⁰. Williams said the purpose was for Kitching and the photographer to take photos and agreed with the IRT's comment that he would have expected that Kitching would have taken notes or recorded the conversation²²¹.

210 IRT transcript, Webber, tape 1, page 27

211 IRT transcript, Webber, tape 1, page 27

212 IRT transcript, Webber, tape 1, page 28

213 IRT transcript, Kitching, tape 3, page 12

214 IRT transcript, Kitching, tape 3, page 13

215 IRT transcript, Kitching, tape 3, page 13

216 IRT transcript, Kitching, tape 3, page 14

217 Inquest transcript, page 462

218 Inquest transcript, pp. 462–463

219 IRT transcript, Williams, tape 1, page 14

220 IRT transcript, Williams, tape 1, page 14

221 IRT transcript, Williams, tape 1, pp. 14–15

Acting Assistant Commissioner

Evidence to IRT

The Acting Assistant Commissioner told the IRT that the Acting State Coroner's suggestion that it was inappropriate for Hurley to transport the investigators to the scene of the arrest was 'rubbish'²²². He said it was common sense and appropriate practice for investigators to take someone involved in such an incident back to the scene²²³. The Acting Assistant Commissioner said 'if they wanted to visit the scene of the arrest the only people that could show them that would be either Hurley or [the PLO]. So there was no alternative'²²⁴.

Acting Chief Superintendent

Evidence to IRT

In his interview with the IRT, the Acting Chief Superintendent wonders who else could have taken the investigators to the scene as Hurley and the PLO were the only two people who knew what occurred²²⁵. The Acting Chief Superintendent agreed with the IRT's comment that it is standard practice for an investigator to visit a crime scene with a witness, and said 'you'd be criticised if you didn't take him back to the scene'²²⁶.

The Acting Chief Superintendent agreed with the IRT's comment that the investigators would need some local knowledge of Palm Island to be able to pinpoint the exact location where the events took place²²⁷.

What the IRT found

The IRT found:

This approach is a standard method of investigation, irrespective of whether a police officer is involved in an incident. S/Sgt Hurley had already been interviewed by D/S/Sgt Kitching and his version of events obtained. This interview had canvassed matters related to the initial arrest scene.

As well, normal investigation process would involve a witness/person of interest attending a scene to inform investigating officers. In the IRT's opinion, not to revisit a scene at some stage with a witness in these circumstances would have bordered on the incompetent. In effect, taking S/Sgt Hurley to the scene was an essential part of the investigation process.

In the IRT's opinion, taking S/Sgt Hurley to the scene at that time was appropriate given the progress of the investigation; i.e. his version and the version of other initial witnesses had been obtained through electronically recorded interviews and the initial crime scene examination at the police station had commenced.

CMC comment

The CMC does not dispute the fact that Hurley should have been taken by the investigators to the scene of the arrest (though to minimise any adverse perception it probably would have been preferable for the investigators or someone else to have driven the vehicle). We are concerned that none of the officers present thought to electronically record or take detailed notes of the interview which occurred during the trip.

222 IRT transcript, the Acting Assistant Commissioner, tape 1, page 31

223 IRT transcript, the Acting Assistant Commissioner, tape 1, page 32

224 IRT transcript, the Acting Assistant Commissioner, tape 1, page 31

225 IRT transcript, the Acting Chief Superintendent, tape 1, page 31

226 IRT transcript, the Acting Chief Superintendent, tape 1, page 32

227 IRT transcript, the Acting Chief Superintendent, tape 1, page 33

Failure to take the PLO to the scene

More importantly, we consider that the PLO should also have been taken to the scene (separately to Hurley), as he too was involved in Mulrunji's arrest and could have provided further evidence to add to or compare with what had already been provided through the formal interviews. It is difficult to see why in a serious investigation such as this, the investigators would not take this opportunity to obtain further or corroborating evidence. The IRT itself states 'not to revisit a scene at some stage with a witness in these circumstances would have bordered on the incompetent'.

The OPM emphasised the importance of obtaining comprehensive statements from witnesses at the earliest practicable opportunity. Webber's comment about Hurley being the best person to take them to the scene due to the communication difficulties with the PLO highlights, at the very least, a deficiency in the investigation in that suitable steps were not taken to solve any communication problem. It also raises a question of whether the PLO's evidence was regarded as equally important as Hurley's.

Obtaining and properly recording the accounts of both witnesses at the scene of the arrest would also have contributed to the perception of impartiality.

Failure to record interview appropriately

Section 436 of the *Police Powers and Responsibilities Act 2000* provides that the questioning of a relevant person²²⁸ must, if practicable, be electronically recorded. As this matter should have been investigated as if a homicide, Hurley should have been treated as if a suspect²²⁹. The evidence does not suggest there was any reason that recording the interview with Hurley would not have been practicable.

Further, the OPM provided that members, who may be required to give evidence of conversations, events or occurrences, should compile relevant notes at the time of the conversation, event or occurrence or as soon as practicable thereafter. The officers would have been aware that they may have been required to give evidence in relation to this conversation, yet they failed to take appropriate notes, as required by the OPM.

If the purpose of the trip was, as stated by Kitching, to attempt to identify all the circumstances leading up to Mulrunji's death, one would expect that some kind of record would need to be made of what was discussed. While photographs were apparently taken and Kitching said he made notes of times and places, it is difficult to understand how the investigators purported to identify the relevance of the photographs without making a detailed record of the explanation given by Hurley. Further, it is unclear how the investigators thought they would be able to rely on any evidence Hurley provided during this trip, without making a record of the conversation.

The IRT put to Williams in his interview that he 'would have expected that Kitching would have taken notes or recorded the conversation' but they do not seem to support this important principle in their own findings. In the context that the death could not be presumed to be suicide or natural death, this omission is disturbing.

228 A 'relevant person' for the purposes of this section is defined in section 415(1) of the *Police Powers and Responsibilities Act 2000* as a person in the company of a police officer for the purpose of being questioned as a suspect about their involvement in the commission of an indictable offence.

229 At the Inquest, Webber said he was aware of the obligation to investigate the matter as if it was a homicide (page 723), said they were investigating the matter as a homicide investigation (page 724), and later talked about it being a 'homicide-type' investigation (pp. 729–730).

General findings by the IRT

In addition to the findings about the trip from the airport to the police station, and to the scene, the IRT found:

The process used in this instance could have been strengthened by a tape recording of any conversation between investigating officers and S/Sgt Hurley. However, at that initial stage investigators were undertaking a fact finding exercise so that the investigation could focus on any relevant issue. The investigators did not electronically record any initial conversations with any of the witnesses, leaving electronic recording until the formal interview and statement stage.

There does not appear to be any direct allegation or evidence that anything occurred during these journeys that had any direct bearing on the investigation into the cause of death or police custody of the deceased, other than suggestions that police investigators could have had conversations with a person of interest/witness that was not recorded. Other opportunities existed for investigators to have conversations with any person of interest/witness and at some point a practical decision needs to be made about when conversations are electronically recorded.

The issue of S/Sgt Hurley actually driving the mode of transport for investigators had no direct impact on the collection of any evidence other than being seen as an example, particularly when viewed with other matters, of lack of transparency and the investigation process not being seen to be independent. Logistical support should be considered as a primary component of the planning and investigative process ...

Where officers involved in a serious police related incident are used to assist with logistical exercises, tape recording of conversations with officers directly involved in the incident, or accurate note taking, is one means of ensuring an investigation is seen to be independent. Alternately, questioning of officers to clearly outline the nature of any conversations that were had at a later record of interview is another means of ensuring an investigation is seen to be independent.

Findings regarding individual officers

The IRT found that Webber was in charge of the investigation team, and was generally responsible for the role given to each officer. The IRT found that neither Webber nor Kitching organised transport on the Island.

The IRT recommended that Webber and Kitching receive guidance. No action was recommended in relation to Williams or the Acting Assistant Commissioner.

The IRT recommended that the Acting Chief Superintendent be chastised and receive guidance in relation to a number of specific issues, including his failure to give directions or advice to the investigation team with respect to logistical support, in particular transport. The IRT note that the Acting Chief Superintendent has retired from the QPS.

These findings will be discussed in Part 5.

Summary of CMC assessment

Initial QPS investigation

In the CMC's view, Hurley's transporting of the senior investigators, both from the airport to the police station and to the scene of the arrest, compromised the investigation's appearance of impartiality. Clearly, Webber and Kitching failed to consider the potential impact of this conduct on community perceptions of the impartiality of the investigation, despite the fact that they were well aware that community feelings would run high once Mulrunji's death in the watch-house was known.

Webber, Kitching and Robinson focus heavily on 'logistical limitations' and the lack of alternative transport on Palm Island as a reason for their actions. However, on both occasions there were other options which they failed to explore. And even if there had not been, they still

should have been mindful in this situation of the need to carry out their duties with the utmost care and circumspection — for example, by recording any conversations with Hurley, or having someone else drive the senior investigators.

The CMC also considers that the failure of the investigators to ask the PLO, as well as Hurley, to recount events at the scene of the arrest, and to appropriately record the information from both, detracted from the comprehensiveness and impartiality of the investigation, as required under the OPM. The fact that Webber cites communication problems on the part of the PLO as the reason for taking Hurley but does nothing to solve them, further emphasises the lack of professionalism.

It is difficult to see, despite Webber's contrary evidence to the Inquest, that Webber and Kitching demonstrated an awareness of the seriousness of the investigation and of the fact that they could not presume suicide or natural death.

IRT findings

The IRT acknowledge the impact of Hurley's driving on these occasions on the perceived impartiality of the investigation but again, as in Allegation 1, they do not hold the senior investigators accountable for this situation.

While they acknowledge that in normal circumstances investigators would have little or no contact with officers involved in such incidents until they were ready to interview, they accept uncritically the officers' explanations — for example, that in places such as Palm Island 'officers involved in the incident may have to be used' — and fail to explore alternatives. In fact, not all officers were involved in the incident, and other options were available. Again, their failure to test the evidence of the investigators has led to factual error.

The CMC also considers that other IRT findings create a perception of an attempt to justify the actions of the investigating officers, particularly in relation to the investigator's failure to record conversations with Hurley. For example, the IRT find that no allegation was made that anything improper was discussed during these trips, which is irrelevant to the obligation identified in the OPM. Other findings about recording in relation to the stage of the investigation appear contradictory.

The IRT also find that 'tape-recording of all conversations from first point of contact with all possible persons of interest' would present a considerable logistical problem, and that investigators at some point would need to make 'practical decisions' as to when to electronically record conversations. Such generalisations are irrelevant in this particular situation where the officers were investigating a death in police custody and the conversations in question were with the central witness. They also undermine the OPM requirement itself.

The CMC considers that the IRT's investigation of this allegation is not thorough or impartial, and is therefore unsatisfactory.

ALLEGATION 3: DINNER AT HURLEY'S RESIDENCE

Background

The Acting State Coroner was concerned that the investigation's appearance of impartiality was undermined by the investigation team eating dinner at Hurley's residence while the investigation was being conducted²³⁰.

In terms of official police procedure, in addition to the general requirement to conduct the investigation impartially, the OPM at the time specified that the regional crime coordinator was directly responsible for the investigation. The Code of Conduct also required that the members of the investigation team acted in a manner that withstood scrutiny by the community.

The IRT formulated the allegation 'Dinner at Hurley's residence'.

Context

On 19 November 2004, Kitching and Robinson conducted one relatively short²³¹ interview with Hurley in the afternoon. They also interviewed the PLO, Patrick Bramwell, Edna Coolburra and Gladys Nugent, and Kitching interviewed Leafe.

That night Robinson cooked dinner for himself, Webber, Kitching and Hurley at Hurley's residence. The officers spent about an hour at Hurley's residence, eating dinner and drinking beer.

Key issues

In the CMC's view, the issues arising from the dinner at Hurley's residence are:

- What action, if any, did Webber or Kitching take to ensure that appropriate arrangements for meals were made for the investigation team?
- Whose decision was it to eat at Hurley's residence? Did Webber, Kitching and Robinson consider the available alternatives?
- Did Webber or Kitching, as officer in charge and senior investigator respectively, consider the impact of such behaviour on the impartiality of the investigation and on likely community perceptions of that issue?

What the police said

Webber

Evidence to IRT

Webber told the IRT that Robinson invited him and Kitching to Robinson's place for a meal²³². Webber said Robinson left to prepare the meal and at about 10.30 pm, when Webber and Kitching left the station, they found out that Robinson had cooked the meal at Hurley's residence²³³. Webber confirmed that Kitching, Robinson, Hurley and he were all present at Hurley's residence²³⁴ and that Leafe and his wife may have stopped in at some point²³⁵.

Webber said if he recalls correctly, the meal was just something thrown together in a frypan²³⁶. Webber said he's not sure whether you would actually phrase it as 'dinner', which carries the

230 Finding of Inquest, page 10; section 46 comments, number 33

231 The interview commenced at 4.04 pm and finished at 4.36 pm.

232 IRT transcript, Webber, tape 1, page 28

233 IRT transcript, Webber, tape 1, pp. 28–29

234 IRT transcript, Webber, tape 1, pp. 34–35

235 IRT transcript, Webber, tape 1, page 34

236 IRT transcript, Webber, tape 1, pp. 28–29

connotation that they were sitting down to a three or four course meal with bottles of wine²³⁷. He thought he'd had one beer²³⁸ and they were at Hurley's residence for 'maybe an hour'²³⁹.

Webber said to his knowledge, it has not been suggested that they actually discussed anything improper with Hurley²⁴⁰. Webber noted by that time, Hurley and the PLO had both been interviewed, as had the majority of the other witnesses²⁴¹.

Webber said there are no food establishments or restaurants or places you could purchase a meal on Palm Island²⁴², and they had no time to prepare resources before they left Townsville²⁴³.

When asked about the criticism that a senior officer in charge of an investigation was drinking alcohol at Hurley's residence, Webber said:

Um I accept that from a, from a, ah from a perception-wise if you want to be very um, I suppose ah very clinical about it and say alright well, this shouldn't have happened and all the rest of it but you have to look at it both in the logistical sense ah of the logistics and all the rest of it but you also have to look at it in, in the sense that the criticism, ah the, the Coroner made some length to, to criticise us in relation to the establishment of a rapport, a rapport etcetera with the community and she said that she didn't believe we'd done that and all the rest of it and I'll comment on that subsequently and I, I reject that. But I don't think she seemed to accept the fact there is a need during an investigation to actually establish a rapport with the people sometimes that are under investigation. And I note that um, ah as we've, as we've said here at the out, at the UI placed on the record, um I think ah I've probably had a beer with ah investigators etcetera, um I've had a beer, I've had a beer with the Commissioner, I've had, I've had a, had a meal with the Commissioner. Now that does not in any way indicate to me or suggest to me that the Commissioner is not going to ah make a fair judgment and assessment on the evidence that he gives. He does that, he does that and I don't expect any favouritism as a result of that. If that were the case we would simply be saying that senior managers should never - can never ever consume alcohol, have a um relationship or, or fellowship ah with their subordinates. It would simply make a mockery of the whole process²⁴⁴.

Kitching

Evidence to IRT

Kitching told the IRT that, at about 10 pm on 19 November 2004, Robinson indicated that he would prepare a meal for Kitching and Webber²⁴⁵. Kitching said they later got a call advising that the meal was at Hurley's residence, and Robinson had either prepared the meal at Hurley's residence or taken it there²⁴⁶. Kitching said he was not sure why that occurred, but said Robinson later told him that he was preparing his grocery order in Townsville to bring back to Palm Island, but did not get a chance to do this as he travelled back with the investigation team. Kitching said he assumed Robinson had no groceries in his house²⁴⁷. He said that Webber, Robinson, Hurley and he were present at Hurley's residence for the meal, and Leafe and his wife came over for a short period of time²⁴⁸.

237 IRT transcript, Webber, tape 1, page 28

238 IRT transcript, Webber, tape 1, page 33

239 IRT transcript, Webber, tape 1, page 35

240 IRT transcript, Webber, tape 1, page 29

241 IRT transcript, Webber, tape 1, page 30

242 IRT transcript, Webber, tape 2, page 4

243 IRT transcript, Webber, tape 1, page 29

244 IRT transcript, Webber, tape 1, pp. 35–36

245 IRT transcript, Kitching, tape 2, pp. 18–19

246 IRT transcript, Kitching, tape 2, page 19

247 IRT transcript, Kitching, tape 2, page 19

248 IRT transcript, Kitching, tape 2, page 20

Kitching said it was a 'small slap-up meal' to get them through the night²⁴⁹. They ate in the lounge room of Hurley's residence and took about an hour²⁵⁰. Kitching said he had a beer and believed that everyone there consumed alcohol²⁵¹.

Kitching said he did not recall any conversations at Hurley's residence about the incident or the death itself and said by that time he had already conducted a full record of interview with Hurley and obtained a full version of the incident²⁵².

Kitching said there was no other option available, and there is absolutely nowhere on Palm Island to get a meal outside business hours²⁵³.

Though the IRT raised the question of Robinson's residence with Kitching, Kitching went on to discuss the set-up of the police barracks and did not answer the IRT's question²⁵⁴. The IRT did not pursue the matter with Kitching.

Procedural fairness submission to the CMC

Kitching says that working under the pressure of the emergent situation he did not turn his mind to food rations even though he knew Palm Island resources were very limited.

He says that he took up the offer of the meal in the context of a day which had been long and arduous even before his appointment to investigate the death in custody. His 'first priority in respect of the meal on offer was simply to eat the meal and the second priority was to stay awake long enough to eat' it.

Kitching points to the facts that Hurley had already participated in an electronically recorded interview, and the issue of assault by police had not been raised, at the time.

Robinson

Evidence to Inquest

At the Inquest, Robinson confirmed that he cooked dinner on the night of 19 November 2004 in Hurley's residence for Kitching, Webber, Hurley and himself²⁵⁵. Robinson said they all ate together, drank beer together and Leafe may have also called in for a beer²⁵⁶.

Robinson agreed that he was aware that Webber and Kitching were involved in a serious investigation in relation to Hurley at the time he provided hospitality to the investigators²⁵⁷. In response to a question about whether the community would become distressed when they learned about this incident, Robinson said he didn't think the officers had 'much to bargain with'. He said they just got on a plane and came over, and they needed to be fed, clothed and accommodated²⁵⁸.

Robinson agreed they could have gone to his accommodation but did not accept that cooking the meal at Hurley's residence was a wholly inappropriate thing to do²⁵⁹.

249 IRT transcript, Kitching, tape 2, page 20

250 IRT transcript, Kitching, tape 2, page 21

251 IRT transcript, Kitching, tape 2, pp. 27–28

252 IRT transcript, Kitching, tape 2, page 26

253 IRT transcript, Kitching, tape 2, page 22

254 IRT transcript, Kitching, tape 2, page 27

255 Inquest transcript, pp. 788, 1307

256 Inquest transcript, pp. 788, 1307–1308

257 Inquest transcript, page 1324

258 Inquest transcript, page 1324

259 Inquest transcript, page 1324

Other evidence

During an interview with the CMC on 21 January 2008, Robinson said when coming back to Palm Island on 19 November 2004 with the investigation team, he had his own personal grocery bags, which is inconsistent with Kitching's statement that Robinson said he did not have time to collect his grocery order from Townsville before returning to Palm Island with the investigation team.

Procedural fairness submission to the CMC

Robinson does not accept that Hurley should have been treated as a person of interest, or that at the time there was an investigation of 'something sinister or suspicious'.

He says that, at the time he made the decision to prepare a meal, it had been a long day, everyone was clearly tired and hungry and he had to adapt and improvise in an environment of a chronic lack of resources and facilities. Robinson says that with generosity and compassion he took it upon himself to prepare a meal and elected to do so at Hurley's accommodation because, unlike his, it was suitable to accommodate feeding a group of men. He supplied the food.

Robinson states that 'it is with regret he admits that he did not give matters of perception of bias and sensitivity a second thought'.

Acting Assistant Commissioner

Evidence to IRT

The Acting Assistant Commissioner agreed with the IRT's comment that he was not aware of any logistical arrangements that Webber or Kitching did or didn't make²⁶⁰ and agreed with the IRT's comment that the food issue was not raised with him in any of the briefings²⁶¹. He said he was not aware that the investigation team had no provisions, but said he would have assumed they weren't taking food across as they were endeavouring to get to Palm Island as soon as possible²⁶².

The Acting Assistant Commissioner told the IRT it was common practice for police to provide meals for other police when they are visiting places like Palm Island or other communities as the communities don't generally have restaurants or places where you can get a meal, particularly after hours²⁶³.

Acting Chief Superintendent

Evidence to IRT

The Acting Chief Superintendent told the IRT that he did not recall any discussion with Webber about logistical arrangements in relation to food²⁶⁴ and told the IRT he didn't give any thought to the issue of how the investigation team would be fed²⁶⁵. He said Webber and Kitching would have been aware of what was and wasn't available on Palm Island, as they had probably been there more often than he had²⁶⁶.

260 IRT transcript, the Acting Assistant Commissioner, tape 1, pp. 35–36

261 IRT transcript, the Acting Assistant Commissioner, tape 1, page 36

262 IRT transcript, the Acting Assistant Commissioner, tape 1, pp. 32–33

263 IRT transcript, the Acting Assistant Commissioner, tape 1, pp. 34–35

264 IRT transcript, the Acting Chief Superintendent, tape 1, page 35

265 IRT transcript, the Acting Chief Superintendent, tape 1, page 35

266 IRT transcript, the Acting Chief Superintendent, tape 1, page 35

The Acting Chief Superintendent said he thought it was tolerable and acceptable under the circumstances for the officers to eat dinner at Hurley's residence, and commented that he was told it wasn't eating dinner as we would know it, the dinner was 'some snack or something out of the fridge'²⁶⁷.

The Acting Chief Superintendent said he didn't think the officers knew how long the investigation would take²⁶⁸ and he didn't think there was any expectation they would be there overnight²⁶⁹.

Arthy

Arthy told the IRT he, Tibbey and Bartulovich ate dinner, a frozen pizza, on 19 November 2004 with Leafe and his wife at their residence²⁷⁰. Arthy said he was not aware that Webber, Kitching and Robinson were going to eat at Hurley's residence that night²⁷¹.

Arthy said he certainly knew he would be on Palm Island overnight²⁷².

General findings by the IRT

The IRT found:

S/Sgt Kitching and D/Inspector Webber were left with little or no support in terms of accommodation and meals. It is clear that the Service had an obligation to ensure that adequate accommodation and meals were provided to the other officers attending the Island ...

D/Inspector Webber was in charge of this operation and had a responsibility to ensure logistical matters were attended to. Having said this, it is clear from the amount of investigative work completed and the time that it would have taken to liaise with the deceased's family, that both D/S/Sgt Kitching and D/Inspector Webber prioritised the gathering of evidence, crime scene examination and management of the investigation ahead of logistical issues. Given that considerable evidence was obtained that evening that may have been either lost or been tainted because of the time taken to gather it (e.g. versions of witnesses involved), it is understandable that neither of these officers had time to organise logistical issues such as meals and accommodation, and in the case of D/Inspector Webber, clothing, for themselves ...

It appears no senior officer took charge of, or made arrangements for logistical components of this investigation. It appears that every senior officer assumed another senior officer was ensuring appropriate support for the investigation team. Most, if not all, assumed that Webber was managing all logistical components ...

Webber indicated that to attempt to arrange meals and other logistical issues prior to departing Townsville would have taken some time. Webber indicated that time was critically important in terms of investigative process and in the Investigation Review Team's view, it would have been extremely difficult, if not impossible, to arrange this type of support without delaying the flight. Having said this, other senior officers could have attempted to take some action that may have provided better support in terms of meals and accommodation for these officers once they arrived on the Island. Likewise, D/Inspector Webber could have asked other officers to make these arrangements or could have asked senior officers for support ...

In the Investigation Review Team's view these officers having a meal and consuming alcohol at S/Sgt Hurley's residence did not ensure that the investigative process remained to be seen as independent. D/S/Sgt Kitching and D/Inspector Webber could have made arrangements for the meal to be consumed elsewhere ...

267 IRT transcript, the Acting Chief Superintendent, tape 1, page 34

268 IRT transcript, the Acting Chief Superintendent, tape 1, page 33

269 IRT transcript, the Acting Chief Superintendent, tape 1, pp. 35–36

270 IRT transcript, Arthy, pp. 12, 15

271 IRT transcript, Arthy, page 15

272 IRT transcript, Arthy, page 7

The only alternatives left to S/Sgt Kitching and D/Inspector Webber were:

- to go without a meal. This would have been unreasonable; or
- ask D/Sgt Robinson to bring the meal to the station. This would have been an inconvenience for D/Sgt Robinson who had already gone out of his way to provide a meal for these officers. As well, D/Inspector Webber did not find out that the meal was at Hurley's residence until such time as he got there.

The IRT focuses on a lack of logistical support for the investigation team as providing an acceptable reason for Webber and Kitching eating their meal at Hurley's residence. They seem to lay the blame for this largely at the feet of 'senior officers', particularly the Acting Chief Superintendent, though they acknowledge that Webber could have asked others to make the arrangements.

Findings and recommendations by the IRT about individual officers

The IRT recommend that guidance be given to Webber and Kitching.

The IRT recommended that the Acting Chief Superintendent be chastised and receive guidance in relation to a number of specific issues, including his failure to give directions or advice to the investigation team with respect to logistical support, in particular transport. The IRT note that the Acting Chief Superintendent has retired from the QPS. No specific recommendations are made in relation to the Acting Assistant Commissioner and Robinson.

These recommendations will be discussed in Part 5 of this report.

CMC comment

All of the officers interviewed on the subject of the dinner at Hurley's residence miss the main issue of concern — that it was inappropriate for the investigating officers to be associating informally with someone who should have been treated as if a suspect, and that such association would be likely to impact on the perceived impartiality of the investigation.

Logistical issues overstated

The evidence supports the view that Webber and Kitching would have known, or at least been aware, of the possibility of encountering problems providing meals for the team on Palm Island, and should have taken steps to ensure there was appropriate logistical support for the team. As noted in Allegation 1, since Webber and Kitching were both experienced investigators, it could be expected that they went through a process of planning the investigation and considering the available resources.

As an officer stationed on Palm Island, Robinson also would have been aware of the logistical issues associated with providing meals for the investigation team, and he could have raised the issue with Webber or Kitching earlier and made appropriate arrangements.

Contrary to the IRT's statement that every senior officer thought another was arranging logistical support, in the CMC's view the evidence suggests that none of the officers gave any thought to the logistical arrangements in relation to meals.

While clearly the planning was inadequate, the CMC believes that this was far less important than the officers' actions in associating informally with Hurley. If, for whatever reason, they had found themselves with practical arrangements that were less than ideal, it was still Webber's responsibility, as the officer responsible for the investigation, to ensure that such circumstances did not impact on the impartiality of the investigation.

Other options available to investigation team

Webber, Kitching and Robinson all imply that the situation of eating at Hurley's house was somehow dictated by the lack of normal resources on Palm Island, particularly at 10 pm.

In fact, a number of options were available to the investigation team. We note that other members of the investigation team were able to make arrangements for meals. As suggested by the IRT, 'Webber could have asked other officers to make these arrangements or could have asked senior officers for support'. Meals could have been arranged by Tonges, Steadman or any of the officers present on Palm Island not involved in the investigation. Robinson himself had food available that he had brought from Townsville that day, which he could have cooked at his own house and arranged for Webber and Kitching to eat elsewhere than at Hurley's residence.

From the evidence it would appear that Robinson made the decision to take his food to Hurley's house to cook and arrange for the senior officers to go there to eat. Webber and Kitching seem to have fallen in with this plan and not questioned its appropriateness.

Clearly Webber, Kitching and Robinson could have taken the plates of food and drinks, and eaten their meals in Robinson's residence or the police station.

Other issues

Robinson made the decision to cook, and serve a meal for members of the investigation team, at Hurley's residence.

It is unfortunate that the IRT did not interview Robinson about his decision to prepare the meal at Hurley's residence and ask him whether Hurley was present while Robinson prepared the meal. If Hurley was present, it is concerning that Robinson, a friend of Hurley's and a member of the investigation team involved in conducting interviews with witnesses and who was privy to a large amount of evidence that had been gathered that day²⁷³, put himself in a situation where he was alone with Hurley. Clearly that would impact upon the perception of impartiality.

Webber and Kitching give reasons why they were not concerned about eating at Hurley's house: Webber said it had not been suggested that anything improper had been discussed, and both Webber and Kitching said that by that time Hurley had been interviewed. Kitching said he'd already obtained a full version of the incident from Hurley. In the CMC's view, these reasons lack merit.

As already discussed, the informal association compromised the impartiality of the investigation, regardless of what was discussed.

The reasoning about Hurley having already provided a full version is similarly irrelevant, but it also contradicts the argument put forward elsewhere²⁷⁴ in relation to the investigators' failure to pursue certain lines of questioning. On one hand it is argued that the investigators were merely 'obtaining a version' of events in the initial interviews, and after reviewing the evidence, they would go back and conduct further interviews if necessary. On the other hand, it is argued here that it was not inappropriate for the investigators to eat dinner at Hurley's residence, as Hurley had already been interviewed and provided a full version.

273 In his Statement Robinson says that during that afternoon and evening he corroborated Kitching conducting interviews with Hurley, the PLO, Patrick Bramwell, Edna Coolburra and Gladys Nugent and obtained statements from Gladys Nugent, Patrick Bramwell and Edna Coolburra.

274 It is argued in relation to the following allegations that the investigators were simply obtaining a version of events from the witnesses, they were not conducting a cross-examination and they intended to come back and ask further questions of the witnesses if necessary: Allegation 6, when discussing the failure to pursue the PLO's comment; Allegation 8 regarding the lack of support provided to Indigenous witnesses; and in Chapter 7 in relation to the failure of the investigators to ask Hurley whether he hit Mulrunji.

It is noted that Hurley was interviewed by the investigation team twice after the initial interview of 19 November 2004, including a video re-enactment the following day during which Hurley revealed further significant evidence which was not in his initial interview.

Clearly, Webber, Kitching and Robinson should have been alive to the consequences of their actions in eating a meal at Hurley's residence. It is concerning that even with the benefit of hindsight, the officers failed to recognise the impact this had on the way the community perceived the investigation.

Comment on IRT findings

The IRT rightly state that the officers having a meal and consuming alcohol at Hurley's residence did not ensure that the investigative process remained to be seen as independent.

However, it is concerning that, like the officers themselves, the IRT focuses on logistical issues as the cause of the situation and fails to call attention to the real failure of Webber and Kitching to comply with their obligation to act in a way that withstood the scrutiny of the community and did not impact on the perceived impartiality of the investigation.

The IRT ignores other available options as discussed above and fails to pursue with Kitching why Robinson's residence was not used as a venue.

The IRT considered the only alternatives available to Kitching and Webber were:

- to go without a meal — but this would have been unreasonable, or
- ask D/Sgt Robinson to bring the meal to the station — but this would have been an inconvenience for D/Sgt Robinson who had already gone out of his way to provide a meal for these officers.

In fact, the station was across the road from Hurley's residence (see Appendix 2). The explanation that it would have been an inconvenience for Robinson to take the meal elsewhere is not offered by Webber or Kitching, and on its face has no reasonable basis.

The IRT's comment that 'D/Inspector Webber did not find out that the meal was at Hurley's residence until such time as he got there' is completely irrelevant. At whatever stage on 19 November 2004 Webber became aware that Robinson prepared and intended to serve the meal at Hurley's residence, Webber should have made arrangements for the meal to be consumed elsewhere.

Robinson was part of the investigation team. Yet, the IRT also did not consider Robinson's decision to spend time preparing a meal at Hurley's residence, rather than at his own.

The IRT's focus on the lack of 'logistical support' for the investigators is surprising. They comment that: 'No senior officer took charge of, or made arrangements for logistical components of this investigation ...'. Webber was the officer in charge of the investigation and ultimately responsible for ensuring that appropriate arrangements were made and for ensuring the integrity of the investigation. What was done was, in effect, to delegate responsibility for preparation of a meal to one person (Robinson). That would be a fairly normal approach and we cannot see any difficulty in such an approach.

In any event, the problem was that the meal was prepared at Hurley's residence and the investigation team members ended up eating and drinking with Hurley at his residence. Webber, Kitching and Robinson (to varying degrees) were responsible for that, not a 'senior officer' in Townsville.

Summary of CMC assessment

The main issues here are similar to those identified in Allegations 1 and 2.

Initial QPS investigation

Webber, Kitching and Robinson justify eating at Hurley's house because of the lack of facilities to have a meal on Palm Island in the evening. However, other options were available, which they did not consider.

The officers also justify it by saying that there had been no allegation of improper conversation, and that the investigators had already obtained a full record of Hurley's evidence. Both statements are irrelevant to the main issue, which is the inappropriateness of the informal association with the person most likely to be under investigation. The impartiality, and the appearance of impartiality, of the investigation was thereby compromised.

It was further compromised by the fact that Robinson, who was privy to much of the evidence gathered that day, may have been alone with Hurley during the time he prepared the meal.

The officers failed to consider how this informal association would be seen by the local community and the consequences for community trust and confidence in the independence of the investigation.

IRT findings

The IRT acknowledge the impact on the perception of impartiality but do not hold the investigators accountable for this situation. Rather, they focus on the lack of logistical support, attributing most of the blame for this to senior officers, particularly the Acting Chief Superintendent. Again, they don't explore other available alternatives, and seem to justify what happened by false reasoning — for example, that having to take the food across the road to the police station would have been an inconvenience for Robinson.

In this, as in the previous two allegations, the IRT shows not simply a lack of thoroughness in investigation but a failure to consider the importance of community feeling and perceptions in this difficult situation. In doing this, they neglect one of the cornerstones of their Code of Conduct, the strong obligation of police to maintain and foster public trust and confidence in the operations of the Service.

The CMC considers their investigation of this allegation to be unsatisfactory.

ALLEGATION 4: DISCUSSIONS BETWEEN WITNESSES

Background

The Acting State Coroner was critical of the fact that Hurley, Leafe and the PLO had discussions about Mulrunji's death before the investigation team arrived on Palm Island²⁷⁵. She was also concerned that Hurley was able to further discuss the matter with Leafe before his second interview, after the investigation team arrived and commenced the investigation²⁷⁶.

In terms of official police procedure, the OPM at the time:

- provided that the regional crime coordinator²⁷⁷ should ensure the integrity of the independent versions of members is preserved as far as practicable²⁷⁸
- clearly stated that officers directly involved in the incident or who are witnesses to the incident, should not discuss the incident among themselves prior to being interviewed²⁷⁹
- did not prohibit officers from discussing the incident after they had been interviewed.

The IRT considered the allegation 'Discussions between witnesses'.

Context

Hurley, Leafe and the PLO had discussed the circumstances surrounding Mulrunji's death before the investigation team arrived on Palm Island. In the re-enactment interviews conducted by Webber and Williams on 20 November 2004 and in a further interview with Kitching and Williams later that day, it was also apparent that Hurley had discussed the matter with others after his initial interview with Kitching and Robinson on 19 November 2004.

Key issues

The CMC considers that examination of this allegation should have dealt with two separate issues:

1. The discussions between Hurley, Leafe and the PLO between the time of Mulrunji's death and the time the investigation team arrived
2. The discussions Hurley had with others between the time of his interview on 19 November 2004 and the two interviews held on 20 November 2004.

The IRT dealt with the matter as a single allegation, and has not discussed both issues with all officers. The IRT's findings focus on the second issue though some comments are also made in relation to the first.

The discussions between witnesses raise the following issues:

- what action did Webber take to fulfil his obligations to ensure the integrity of the witnesses' versions
- what action did Williams take to ensure the integrity of the investigation
- what responsibility did Kitching, as the senior officer leading the investigation, have to ensure the integrity of the investigation and what action did he take
- having discovered that the witnesses had spoken with each other, what action was taken.

275 Finding of Inquest, page 10; section 46 comment, number 35

276 Finding of Inquest, page 16

277 Section 1.17 also places this obligation on the first response officer; presumably this is Hurley, but this is not specified in the *Palm Island Review*.

278 Section 1.17 OPM

279 Section 1.17 OPM

What the police said

Hurley

Evidence to Inquest

During the Inquest, Hurley admitted he had breached the OPM by discussing the incident with Leafe and the PLO²⁸⁰.

Other evidence

During his re-enactment interview, Hurley referred to the following discussions with other witnesses

I tried to lift him a couple of occasions. Like this I'm going get up [Mulrunji] get up, I said don't start it again you know. Anyway he was down there and ... he refused to get up. Now I can't I can't remember, I just asked Michael before ... when did he come through²⁸¹ ... nobody to tell you the truth ... only from hindsight and from speaking to the people found out that [the PLO] was the one that opened the door²⁸²

During a further interview with Williams and Kitching on 20 November 2004, Hurley said:

only through speaking with ... Sergeant Leafe, I now know that ... Steadman tried to assist ... LEAFE and he gave a suggestion about ... looking for life basically, the life signs, the vital signs.

Leafe

Evidence to Inquest

Leafe said on the morning on 19 November 2004, he and Hurley discussed Hurley's version of events, and that they had discussed it on other occasions 'spasmodically' since then²⁸³. Leafe also said in the hours after Mulrunji's death, he and Hurley sat down together and discussed the events surrounding the death — 'running things past ourselves'. Leafe said Hurley told him that he and Mulrunji had tripped up the step going into the watch house and they had fallen down²⁸⁴.

Leafe said he did not recall any conversation with the PLO, and he did not speak to Constable Steadman about the matter²⁸⁵.

Webber

Evidence to Inquest

At the Inquest, Webber said he considered it would be pointless to tell Hurley, Leafe and the PLO to stay in separate parts of the station and not talk to each other before the investigation team arrived. Webber said there was no one else present for two and a half or three hours until the investigation team arrived, and he didn't think it would be possible for them to manage a response to policing services without actually talking to each other or anyone else²⁸⁶.

280 Inquest transcript, page 1278

281 Transcript of re-enactment interview with Hurley 20/11/04, page 4

282 Transcript of re-enactment interview with Hurley 20/11/04, page 6

283 Inquest transcript, page 689

284 Inquest transcript, page 697

285 Inquest transcript, page 697

286 Inquest transcript, page 730

Webber said the requirement for witnesses not to discuss the incident with each other is outlined in the OPM, therefore there is no requirement for him to remind them not to talk to each other²⁸⁷; all he would be doing would be reinforcing the OPM. Webber said these are experienced officers and he considered it was obvious in any investigation that the witnesses should not discuss the finer detail²⁸⁸.

Webber said he did not issue the officers with a directive not to talk to each other about the incident, as he didn't think it was practical, and then said it was not impractical but unnecessary²⁸⁹. When asked if he did not give the officers a directive because it was unnecessary and because 'we trust them', Webber responded 'If you like'²⁹⁰. Webber said 'I don't believe my saying to them, "Don't talk about it", is actually going to achieve much'²⁹¹.

Webber said he felt if they had discussed the matter prior to the investigation team arriving, it would be disclosed in subsequent events²⁹².

Webber said that he believed Leafé and Hurley had some conversation prior to the investigation team arriving, but that he did not ask them how many conversations the officers had²⁹³.

Evidence to IRT

The IRT asked Webber whether the investigation team had any strategies in place to ensure the integrity of the investigation, in particular in relation to the isolation of Hurley. Webber said Hurley was immediately subjected to an electronic record of interview, to put on record what had occurred²⁹⁴.

Webber said he considered the OPM meant that witnesses should be kept separate as 'far as practical up until such time as the interview'²⁹⁵. He said the officers had been interviewed at the time the discussions took place²⁹⁶, and they had to continue to converse about the everyday policing activities that occurred on the island²⁹⁷. Webber said they couldn't prevent them from conversing²⁹⁸.

When asked whether in hindsight it would have been a wise decision to advise the parties involved not to discuss the matters under investigation, Webber replied if the purpose is to 'cover my arse' then he could have given a direction, but that he didn't think giving such a direction was going to achieve anything²⁹⁹. Webber said the fact was that they had interviewed all the parties as quickly as possible, but 'they' had already had an opportunity to converse³⁰⁰. He said there was naturally going to be some conversation given that it was such a traumatic

287 Inquest transcript, page 746

288 Inquest transcript, page 746

289 Inquest transcript, pp. 730–731

290 Inquest transcript, page 731

291 Inquest transcript, page 731

292 Inquest transcript, page 731

293 Inquest transcript, page 731

294 IRT transcript, Webber, tape 2, pp. 6–7

295 IRT transcript, Webber, tape 2, page 13

296 Webber appears to be referring to the conversations which occurred after the initial interview on 19 November 2004 but before the re-enactment interview on 20 November 2004, although this is not clarified with Webber by the IRT.

297 IRT transcript, Webber, tape 2, page 13

298 IRT transcript, Webber, tape 2, page 13

299 IRT transcript, Webber, tape 2, page 11

300 IRT transcript, Webber, tape 2, pp. 11–12

event³⁰¹. Webber said there is some implication that there was some sort of conspiracy to lie, but that the reverse was true as the officers were all fully forthcoming about what was discussed.³⁰²

Williams

Evidence to Inquest

At the Inquest, Williams said he did not inquire about whether Hurley, Leafe and the PLO had the opportunity to speak to each other. Williams said he understood that the night before he arrived on the island, Hurley, Leafe and the PLO had all been interviewed and provided their versions of events³⁰³.

When the relevant excerpts of the transcript of the re-enactment interview with Hurley were put to Williams, he said he did not do anything in relation to the issue and did not tell Hurley that he shouldn't be having such conversations.³⁰⁴

Evidence to IRT

Williams told the IRT the Acting State Coroner's criticism was 'sort of misleading' as the officers had been interviewed the day before the discussions³⁰⁵ took place³⁰⁶. Williams said the OPM provided that as far as practicable, witnesses should not talk to each other prior to being interviewed, and that as far as he was aware, they had not spoken prior to their first interview³⁰⁷.

The IRT asked whether in hindsight, Williams should have asked questions about when the witnesses had spoken to each other and what had been said. Williams said he did not particularly recall it. He said these matters probably would have been further explored if he'd remained part of the investigation³⁰⁸.

Kitching

Evidence to IRT

Kitching told the IRT that he did not know that Hurley, Leafe and the PLO had discussed the events of the morning of 19 November 2004 before he interviewed them³⁰⁹ but said as they work in the same environment he would assume that they would have discussed the issues as they had a person deceased in their custody and they had to make arrangements³¹⁰. Kitching did not recall questioning Hurley, Leafe or the PLO about the conversations they had earlier in the day and he was not sure whether they recorded their discussions³¹¹.

Kitching said that during the trial, Hurley was 'quite open that he did have conversations in relation to those issues'³¹².

301 IRT transcript, Webber, tape 2, page 12

302 IRT transcript, Webber, tape 2, page 12

303 Inquest transcript, page 464

304 Inquest transcript, page 484

305 Williams seems to be referring to the conversations which occurred after the initial interview on 19 November 2004 but before the re-enactment interview on 20 November 2004, although this is not clarified with Williams by the IRT.

306 IRT transcript, Williams, tape 1, page 17

307 IRT transcript, Williams, tape 1, page 17

308 IRT transcript, Williams, tape 1, pp. 18–19

309 IRT transcript, Kitching, tape 2, page 29

310 IRT transcript, Kitching, tape 2, pp. 29–30

311 IRT transcript, Kitching, tape 2, page 30

312 IRT transcript, Kitching, tape 2, page 30

Acting Assistant Commissioner

Evidence to IRT

The Acting Assistant Commissioner told the IRT it is obviously desirable in any investigation to prevent the opportunity for collusion but he was 'at a loss to know what you could put into place in the interim between when the death occurred and when the investigators arrived on the island, a lapse of probably a couple of hours' to prevent collusion between the officers involved, if they were so inclined³¹³. The Acting Assistant Commissioner was not aware of any direction given to Hurley to ensure the officers did not discuss the incident³¹⁴. The Acting Assistant Commissioner considered that the officers having discussions was a 'natural thing' and to expect them to all remain mute for two hours is 'beyond expectation'³¹⁵.

The Acting Assistant Commissioner agreed with the IRT's comment that it would be difficult for the officers to brief anyone on the issue if they were not able to discuss what happened³¹⁶.

Acting Chief Superintendent

Evidence to IRT

The Acting Chief Superintendent says he did not give any directions or ask for any briefings about the management of Palm Island from the time of the incident until the time the investigators arrived³¹⁷.

Procedural fairness submission to the CMC

The Acting Chief Superintendent notes that to suggest he should have briefed the investigation team in relation to the control and examination of the scene or about the investigation fails to recognise the investigation team possessed greater knowledge and more recent experience and specific training on the relevant requirements. He asserts that the need to micro manage did not exist.

Strohfeldt

Evidence to IRT

Strohfeldt, the officer responsible for Palm Island, told the IRT that when Hurley spoke to him, he didn't give any directions or advice in relation to Hurley's obligations under section 1.17 of the OPM³¹⁸. When asked whether in future he would give such direction, Strohfeldt said he probably would, but also said he 'thought that would have been handled with the ... overview from the RCC'³¹⁹.

General findings by the IRT

The IRT found:

Senior officers could have given a direction to S/Sgt Hurley regarding the preservation of the crime scene, separation of witnesses and the intent of section 1.17 of the OPM. None was given.

S/Sgt Hurley, Sgt Leafe and (the) PLO had provided versions, or been interviewed on the afternoon of 19 November 2004. Any discussions they had after this interview did not, on a technical reading, breach section 1.17 of the OPM. None of these officers knew that they would be reinterviewed or asked to participate in re-enactment interviews as

313 IRT transcript, the Acting Assistant Commissioner, tape 1, page 42

314 IRT transcript, the Acting Assistant Commissioner, tape 1, page 42

315 IRT transcript, the Acting Assistant Commissioner, tape 2, page 1

316 IRT transcript, the Acting Assistant Commissioner, tape 1, page 42; tape 2, page 1

317 IRT transcript, the Acting Chief Superintendent, tape 2, pp. 9–10

318 IRT transcript, Strohfeldt, pp. 22–23

319 IRT transcript, Strohfeldt, page 23

D/Inspector Williams had not arrived on the Island and was responsible for instigating the re-enactment interviews. An experienced officer who had dealt with internal investigations, homicides, or serious police related incidents would have suspected that follow up interviews would occur, and one would assume understood the intent of section 1.17 was to require officers not to discuss serious police related incidents until such time as an investigation was complete ...

The intent of section 1.17 of the OPM is to attempt to have officers be able to give an independent recollection that has not been tainted by discussions with other witnesses or persons. In a practical sense, once an initial version is obtained, it is unlikely and perhaps unreasonable to expect that witnesses that know each other will not discuss an event. Rather, the test that should be applied in terms of ethical and professional conduct, is that officers should openly admit and not conceal the fact that they have discussed a matter. As well, it should be remembered that the officers involved in the incident had to manage the scene and continue to provide policing services until such time as the Investigation Team and relief arrived. One would reasonably expect that officers would have discussions for this purpose and might also view the video evidence to brief their superior officers about what had occurred. One might also expect that considerable stress was placed on the officers involved in the incident ...

Hurley and other officers involved in the care and death in custody of (Mulrunji) were given few if any directions or advice concerning the management of the crime scene, operational management of Palm Island from the time of the incident, or the investigation proper ...

Individual officers

The IRT found that Webber and Kitching 'did not have line control of these officers and did not take charge of the scene and investigation until [they] arrived on the Island'.

The IRT recommended no further action be taken in relation to Webber and Williams' conduct.

The IRT recommended that the Acting Chief Superintendent be chastised and receive guidance in relation to a number of specific issues, including his failure to give directions or advice to Hurley about the management of the Palm Island Police Station and the death in custody from the time of death.

These recommendations will be discussed in Part 5.

CMC comment

We accept that:

- there was no requirement for any of the individual officers to give a direction to the witnesses not to discuss the incident
- the OPM clearly outlines that witnesses to such an event are not to discuss the incident prior to being interviewed
- the OPM does not prohibit witnesses from discussing the event after their initial interview.

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

Discussions before investigation team arrived on island

In the situation that existed on Palm Island, it was not safe to assume the officers would know or follow the relevant section of the OPM. The officers were in a distressing situation, had little support, were isolated and were in the station together for several hours until the investigation team arrived. The CMC is of the view that a reasonable person, and certainly an experienced officer such as Webber, should expect there would be some conversation between Hurley and the others about the matter. Kitching himself said he assumed the witnesses discussed the matter.

It should also be remembered that Tonges and Steadman were present on the island. Strohfeldt and other officers were contactable by telephone. If the officers needed to discuss the matter before the investigation team arrived, it would have been preferable to talk to one of these officers instead of each other. If any risk management measures were to be taken, Tonges or Steadman could have been directed to take appropriate action.

A direction could have been given to Hurley, in effect reminding him of his obligation not to discuss the incident, yet acknowledging the stress of the situation and advising how to manage it.

Ideally, Hurley, Leafe and the PLO should have made some record of what they discussed before the investigation team arrived on the island. A direction could have reinforced the need to make a record of any conversation or reminded them that they would be asked to disclose any discussion. One would have thought that discussion with a senior officer would have been helpful, both professionally and personally, for the officers on Palm Island at that time.

Discussions after initial interview

The witnesses should not have discussed the incident after their initial interviews were conducted. Though it could be argued that Hurley, Leafe and the PLO may not have known they would be interviewed again, in the CMC's view, Webber and Kitching, as experienced officers would have known that subsequent interviews were very likely.

The CMC considers that Webber and Kitching should have given an instruction to the witnesses not to discuss the incident — particularly as the investigators admitted that the initial interviews were for the purpose of getting a version only, and they planned to review the interviews and then put any inconsistencies back to the officers if necessary.

Failure to ascertain what had been discussed

It is concerning that neither Webber, the Regional Crime Coordinator who was responsible for the investigation, Williams, who was from the ESC and there to ensure the integrity of the investigation or Kitching, the primary investigator, took any steps to find out what the witnesses had discussed before the investigation team arrived on Palm Island or to prevent further discussions.

This is particularly concerning as Kitching said he assumed the witnesses did have some discussions, and Webber said that giving the witnesses a direction not to discuss the matter would not achieve much. If these officers thought it was possible the witnesses discussed the incident, it was important for them to ascertain exactly what was, or may have been, discussed before the investigation team arrived on Palm Island.

Further, no attempt was made to find out what the witnesses discussed after their initial interviews, despite the fact that Hurley mentioned, twice during his re-enactment interview with Webber and Williams and a third time later that day during an interview with Williams and Kitching, that he'd had conversations with other witnesses.

None of the investigators seem to be particularly concerned that these conversations took place, even in hindsight. They fail to give due attention to the intent of the OPM requirements and their importance in ensuring as far as possible the integrity of every investigation. This is further illustrated by the failure of the investigation team to pursue with Hurley the fact that his version of events changed significantly after his initial interview was conducted and he'd had discussions with the other witnesses. This will be discussed further in Chapter 10 of this report.

Comment re the IRT findings

The IRT state that one would assume that:

... an experienced officer who had dealt with internal investigations, homicides, or serious police related incidents would ... understood the intent of section 1.17 was to require officers not to discuss serious police related incidents until such time as an investigation was complete.

However, Webber³²⁰ and Williams³²¹ both considered that the OPM provided that as far as practicable, witnesses should not discuss relevant events until the time they are interviewed. In the final analysis, the IRT falls short of applying its own standard, as stated above, in this situation, saying that:

The intent of section 1.17 of the OPM is to attempt to have officers be able to give an independent recollection ... In a practical sense, once an initial version is obtained, it is unlikely and perhaps unreasonable to expect that witnesses that know each other will not discuss an event. Rather, the test that should be applied in terms of ethical and professional conduct, is that officers should openly admit and not conceal the fact that they have discussed a matter.

We are also concerned about some of the IRT's other findings; for example, that Webber and Kitching did not have line control of the witnesses. Though Webber and Kitching did not have line control of the witnesses, they could still have provided direction and advice or, if necessary, have the officers who were in line control do so.

We acknowledge the stress placed on the officers involved in the incident but consider that appropriate direction and advice from the senior investigators would, in fact, have been of some support and assistance in that situation.

Summary of CMC assessment

Initial QPS investigation

Although there was no formal requirement for Webber, Williams or Kitching to have given a direction to the witnesses not to discuss the incident with each other, each of these officers still had an obligation under the OPM to ensure the overall integrity of the investigation, including ensuring the integrity of the independent versions was preserved as far as practicable.

Despite this, none of these officers took action at any stage to do so, even after it came to light that such discussions had taken place. Even in hindsight they did not acknowledge the importance of this issue, despite the fact that Hurley's version of events changed after his discussions with the other witnesses. In the CMC's view, the officers gave no consideration to the intent and importance of the OPM requirement, as well as to the Code of Conduct's instruction to comply with both the spirit and letter of the law.

320 IRT transcript, Webber, tape 2, page 12

321 IRT transcript, Williams, tape 1, page 17

IRT findings

In their statements concerning the lack of direction from senior officers to Hurley regarding the preservation of the crime scene, separation of witnesses and the intent of the OPM requirement concerning discussion between witnesses, the IRT appear to acknowledge the importance of these principles.

At the same time, they undermine their importance by accepting the officers' justifications that the police involved still had to maintain policing services on the island (though there were other ways to achieve this), and that the senior officers did not have line control over Hurley. They also suggest to the Acting Assistant Commissioner, through a leading question, that it would be difficult for the officers to brief anyone on the issue if they were not able to discuss what happened.

Similarly, after stating the intent of the OPM requirement was to obtain independent recollections, they then reinterpret and dilute it by saying that the 'practical' test of ethical and professional conduct that should be applied is that officers should openly admit to such discussion. Such findings undermine the importance of compliance with the OPM.

In the CMC's view, inconsistencies on the part of the IRT in their application of the OPM provisions, as noted above, diminish the integrity and thoroughness of its investigation of this allegation.

ALLEGATION 5: OFF THE RECORD DISCUSSIONS BETWEEN WEBBER, WILLIAMS AND HURLEY

Background

The Acting State Coroner was critical of the failure to record the 'off the record' discussion which occurred between Hurley and the investigators about discrepancies in time³²².

In terms of official police procedure, the OPM at the time provided that members who may be required to give evidence of conversations, events or occurrences should compile relevant notes at the time of the conversation, event or occurrence or as soon as practicable thereafter³²³.

The IRT considered the allegation 'Off the record discussions between Webber, Williams and Hurley'.

Context

The times on the surveillance video-recorder in the Palm Island watch-house were not synchronised with the actual time, apparently due to the unreliability of Palm Island's electricity supply. This time discrepancy was discussed between Hurley and some members of the investigation team, but no record was made of the discussion.

Key issue

The 'off the record' discussion raises the issue of what action Webber, Williams, Kitching and Robinson should have taken to fulfil their obligation to ensure the integrity of the investigation when engaging in discussion with Hurley or any other witness about an issue relevant to the investigation.

What the police said

Hurley

CMC interview

In his interview with CMC officer Detective Inspector Webster on 8 December 2004, Hurley said he brought the time discrepancy in the watch-house surveillance tape to the attention of Webber, Williams, Kitching and Robinson on Saturday, 20 November 2004. Hurley said he asked permission to view the tape and they all viewed the tape together in the day room at the police station.

Hurley stated that, during the viewing, it was noted that the times on the tapes were 15–20 minutes different to the actual time. Hurley said the only explanation for this was that the power at Palm Island was unreliable and it makes the clocks go slower. Hurley said this conversation took place on Saturday 20 November 2004 after the re-enactments were conducted, and the conversation wasn't recorded, it was 'off the record'³²⁴.

322 Finding of Inquest, page 10

323 Section 2.13.8 OPM

324 CMC interview with Hurley, page 12

Webber

Evidence to Inquest

Webber told the Inquest he thought he, Williams and Kitching watched the video on the Saturday morning³²⁵. Webber did not recall Leafe watching the video³²⁶. Webber gave inconsistent evidence about Hurley's movements while the video was being watched — Webber initially said he was aware that Hurley was watching the video, but then said he thought Hurley went into his office³²⁷. He also said Hurley turned the video on and then left the room³²⁸.

Webber did not mention any discussion with Hurley about the time discrepancy at the Inquest.

Evidence to IRT

The IRT put to Webber 'it came to light that Hurley and ... Kitching ... there had been conversations because there was the discrepancies in the time clocks'. Webber said he understood the conversation took place on the Friday (19 November 2004) and Kitching³²⁹ was quite open about it and mentioned it in his statement³³⁰. The IRT then referred to Kitching, Robinson and Hurley discussing the time discrepancy and Webber said, to his knowledge the discussion was just a straight out question and answer about the time discrepancy³³¹.

The IRT did not ask Webber whether he was present during that conversation nor otherwise pursue this matter further. They simply moved on to questioning Webber about crime scene management.

Williams

Evidence to Inquest

Williams told the Inquest 'they showed me the tape, they supplied the tape-recorder' and put the tape on for him. It appears the 'they' Williams is referring to is Hurley and Leafe, although this was not clarified with Williams.

Williams said 'they' may have been there when he watched it³³², but that he was not party to any agreement or arrangement whereby Hurley got to see the tape³³³.

Williams did not mention any discussion with Hurley about the time discrepancy at the Inquest.

Evidence to IRT

Williams told the IRT that he asked to see the watch-house surveillance tape and 'they' put the tape on for him. He said while they³³⁴ were watching the tape, there was a conversation about the tape running either ten minutes fast or ten minutes slow. Williams said that was the extent of the conversation³³⁵.

325 Inquest transcript, page 732

326 Inquest transcript, page 732

327 Inquest transcript, page 732

328 Inquest transcript, page 732

329 IRT transcript, Webber, tape 2, page 13

330 IRT transcript, Webber, tape 2, page 14

331 IRT transcript, Webber, tape 2, page 14

332 Inquest transcript, page 465

333 Inquest transcript, page 465

334 Williams does not specify who 'they' are, and the matter is not pursued by the IRT.

335 IRT transcript, Williams, tape 1, page 16

Williams agreed with the IRT's comment that he did not consider that the discussion about the station time clocks had any bearing whatsoever on the investigation³³⁶. Williams said that any conversations to do with the death of Mulrunji were recorded³³⁷.

Kitching

Evidence to IRT

Kitching told the IRT that while watching the surveillance footage, he noticed there was a discrepancy in time on the equipment, as compared to real time³³⁸. Kitching said he addressed the issue with Hurley and then took possession of the footage at 3.45 pm on 19 November 2004³³⁹.

Kitching said Hurley was there because he asked Hurley to show him the footage and Hurley was the most appropriate person to ask as he was the officer in charge of the station, knew how the machine operated and had knowledge of the system³⁴⁰. Kitching later said he assumed Robinson would probably also have known how to operate the system³⁴¹.

Kitching said Williams was not present during the conversation as he did not arrive on Palm Island until the next day³⁴², Webber was not present as he was meeting with the Aboriginal Legal Service, and he didn't think Leafe was present during the conversation³⁴³. Kitching said he was not sure whether Robinson was there while he watched the footage³⁴⁴.

The IRT put to Kitching

The conversation you had at that time, was it related to administration and maintenance of timepieces at Palm Island Station generally and not related to specific issues concerning an investigation, is that what you're telling me?

Kitching said this was correct³⁴⁵.

Kitching said he made a note of the fact that he took possession of the tape at 3.45 pm, but he didn't make any notes about the discussions he had in relation to the time discrepancy³⁴⁶. Kitching said 'as far as that recording, I recorded that and it's ... in paragraph eleven on page two of my statement that indicates that I did have those conversations with him'³⁴⁷.

General findings of the IRT

The IRT found:

D/S/Sgt Kitching noticed what was an obvious discrepancy in time between the video recorded image of the deceased in police custody in the watch-house cell, and the real time when he first took possession of the video footage at about 1545 hours on the day of the death, only about an hour after arriving on the Island. D/S/Sgt Kitching made some notes about his conversation with S/Sgt Hurley at this time which he said related only to this time discrepancy and basic details about the deceased such as name, date of birth, custody index reference number, etc.

336 IRT transcript, Williams, tape 1, page 41

337 IRT transcript, Williams, tape 1, page 41

338 IRT transcript, Kitching, tape 2, page 31

339 IRT transcript, Kitching, tape 2, page 31

340 IRT transcript, Kitching, tape 2, page 33

341 IRT transcript, Kitching, tape 2, page 36

342 IRT transcript, Kitching, tape 2, page 31

343 IRT transcript, Kitching, tape 2, page 34

344 IRT transcript, Kitching, tape 2, page 36

345 IRT transcript, Kitching, tape 2, page 34

346 IRT transcript, Kitching, tape 2, page 32

347 IRT transcript, Kitching, tape 2, page 33

D/Inspector Williams indicated that the conversation was very short and similar to that described by D/Inspector Webber. D/Inspector Webber indicated that the conversation was very short and similar to that described by D/Inspector Williams.

At the Inquest S/Sgt Hurley provided evidence indicating that this time discrepancy was a result of power failures that occurred frequently on the Island.

Had this conversation been tape recorded, or had the conversation been adopted in a later record of interview, there would have been less cause for criticism that the investigation was not seen to be independent.

The IRT also points out that the Acting State Coroner incorrectly identified Webber as being from the ESC.

Individual officers

The IRT recommended no further action be taken in relation to this matter.

This recommendation is considered in Part 5.

CMC comments

In the CMC's view, this allegation has not been adequately considered and conflicting evidence has not been addressed.

Neither the original investigators nor the IRT pay sufficient attention to the OPM requirement for police to make some appropriate record of conversations about which they may be required to give evidence. Given the importance of video footage to any investigation, any discussion with a witness about time discrepancies should have been recorded, in the interests of accuracy about the timing of events, any potential concern about the integrity of the evidence, and overall thoroughness and impartiality (and perception of impartiality) in the investigation.

Based on the evidence, it appears that there were two conversations about the time discrepancies: one which occurred between Kitching, Hurley and possibly Robinson on 19 November 2004, and one which occurred between Webber, Williams, Robinson, Hurley and possibly Kitching on 20 November 2004. The evidence is that:

- Hurley said that he, Webber, Williams, Kitching and Robinson all watched the tape on 20 November 2004.
- Kitching said that he, and possibly Robinson, viewed the tape with Hurley on Friday 19 November 2004, sometime between arriving at the police station at 3.05 pm and before he took possession of the tape at 3.45 pm. He said that Williams and Webber were not present.
- Webber thought he, Williams and Kitching watched the video on Saturday morning, 20 November 2004. He gave inconsistent evidence about whether Hurley was present or in his office, and says that he thinks Leafe was not present. Webber told the IRT he understood the conversation took place on the Friday between Kitching, Robinson and Hurley.
- Williams said that 'they' showed him the tape and that 'they' may have been present while the tape was playing. 'They' are not identified by Williams or the IRT. Williams said he was not party to any agreement whereby Hurley was allowed to watch the tape.

Although conflicting evidence had been provided by the officers about when discussion took place and who was present, the IRT did not establish what actually occurred, and dealt with the two conversations on the subject as one. Although they note that had the conversation been recorded there would have been less cause for criticism, they fail to link this to the obvious corollary — that the discussions should have been recorded.

We also note that the IRT found:

D/S/Sgt Kitching made some notes about his conversation with S/Sgt Hurley at this time which he said related only to this time discrepancy and basic details about the deceased such as name, date of birth, custody index reference number, etc.

This is inconsistent with the version given by Kitching. His evidence is that he made notes about the fact that he took possession of the tape, but not of the conversation about the time discrepancies in the tape.

Summary of CMC assessment

In dismissing this issue as ‘merely administrative’, the investigators seem to assume that their failure to record discussions about the time discrepancy in the video footage was obviously irrelevant to the investigation into Mulrunji’s death. This is an offhand attitude towards a basic OPM requirement, and disregards the critical role that video footage plays in many police investigations.

The IRT are similarly dismissive. They make no attempt to ascertain what actually occurred and put to Williams and Kitching — through leading questions — that the discussion about the time discrepancy had no bearing whatsoever on the investigation.

While they note that recording the discussions would have lessened criticism about the lack of independence of the investigation, they do not find that the discussions should have been recorded. These various statements seem inherently contradictory.

The CMC considers the IRT’s investigation of this allegation to be unsatisfactory.

ALLEGATION 6: LACK OF VIGOUR IN QUESTIONING THE PLO

Background

During one of the re-enactment interviews conducted by Webber and Williams on 20 November 2004, the PLO made a statement which was clearly relevant to the investigation. The Acting State Coroner was critical of the failure of both Webber and Williams to ask the PLO to clarify what he meant by that statement³⁴⁸.

The OPM required that:

- when investigating a coronial matter, statements should be obtained from all persons having any significant knowledge concerning the cause or circumstances of the death³⁴⁹
- statements from witnesses should be as comprehensive as possible and be obtained at the earliest practicable opportunity³⁵⁰.

The IRT formulated the allegation 'Lack of vigour in questioning [the PLO]'.

Context

After being de-briefed about the inquiries conducted by the investigation team, Williams decided to conduct re-enactment interviews with a number of witnesses, including the PLO. Williams and Webber conducted this interview with the PLO on 20 November 2004. At the time they were aware that Roy Bramwell had alleged he saw Hurley assault Mulrunji after the fall in the station.

During the re-enactment interview, Webber asked the PLO whether he was watching what happened after Hurley and Mulrunji fell in the station. The PLO said he wasn't. Williams asked the PLO 'What were you doing? What, how come you were standing there?' to which the PLO replied :

I can't remember. I just stood there because I was thinking, um, if I see something I might get into trouble myself or something. The family might harass me or something you know.

Williams then replied 'Oh, OK' and Webber went on to ask the PLO another question.

Key issues

Webber and Williams' questioning of the PLO raises issues about the actions taken by Webber and Williams to ensure:

- that the re-enactment was thorough and all the relevant evidence was obtained as soon as practicable
- that all necessary action was taken to overcome any communication difficulties.

What the police said

Webber

Evidence to Inquest

Webber maintained in evidence at the Inquest that he thought the PLO had said, 'if I do something I might get myself trouble', rather than 'if I see something'³⁵¹, but said he may have misheard the PLO or interpreted what the PLO said incorrectly³⁵².

348 Finding of Inquest, page 5

349 Section 8.4.21, OPM

350 Section 2.13.1, OPM

351 Inquest transcript, pp. 720–721

352 Inquest transcript, page 721

Evidence to IRT

In his interview with the IRT, Webber said his interpretation of what the PLO said was if 'I get involved in the arrest or anything ... I can expect or I might get ... into trouble with family members'³⁵³. Webber explained this further by saying he considered the PLO thought if he did something and actually got involved in assisting Hurley and put his hands on Mulrunji, then he would be potentially liable to retribution from the family members³⁵⁴. Webber said the PLO just did not want to know anything about it, so he stayed out of it. Webber said it wasn't that the PLO was necessarily seeing anything improper or doing anything improper, he just didn't want to know about it³⁵⁵. Webber noted that his experience of Aboriginal communities would suggest 'if they get directly involved in things they can expect repercussions'³⁵⁶.

In his interview with the IRT, Webber made the observation that the PLO was at times extremely difficult to understand and comprehend³⁵⁷. He also stated, referring to the PLO, if challenged 'they simply go into a shell' and you get nothing further from them³⁵⁸. Webber told the IRT the PLO was a 'very reluctant witness ... difficult to talk to ... and just did not want to be there'³⁵⁹ but that he wouldn't say the PLO was apprehensive when he was being interviewed³⁶⁰. Webber did say that given he was a senior officer and the PLO was a police liaison officer, he was not sure what the PLO's normal demeanour was, but that he was certainly reluctant³⁶¹.

Webber also asserted that at that stage, he and Williams had no idea about the actual cause of death, and they were adopting a 'broad brush' approach and attempting to obtain as much information as they possibly could. Webber said after receiving some guidance and direction from the outcome of the autopsy, they would have been able to narrow in on particular aspects and ask further questions, and if necessary they would have gone back and asked further questions of the PLO and the others³⁶².

Webber states 'in hindsight having read the transcripts and all the rest of it, knowing all the other evidence and all the rest of it, obviously ... we would ask additional ... questions'³⁶³.

Williams

Evidence to Inquest

At the Inquest, Williams said he accepted that the PLO spoke the relevant words, agreed that he heard the words and said he was not saying that he heard something different³⁶⁴.

Williams said he believed the PLO was concerned about harassment from his family³⁶⁵. Williams said he did not ask the PLO to explain the concern about harassment because he was concerned if he pursued the issue, the PLO may not say anything³⁶⁶. He stated that the PLO was a very difficult person to interview, getting information from him was not particularly easy

353 IRT transcript, Webber, tape 2, page 25

354 IRT transcript, Webber, tape 2, page 29

355 IRT transcript, Webber, tape 2, page 26

356 IRT transcript, Webber, tape 2, pp. 25–26

357 IRT transcript, Webber, tape 2, page 25

358 IRT transcript, Webber, tape 2, page 25

359 IRT transcript, Webber, tape 2, page 26

360 IRT transcript, Webber, tape 2, page 28

361 IRT transcript, Webber, tape 2, page 28

362 IRT transcript, Webber, tape 2, page 27

363 IRT transcript, Webber, tape 2, page 27

364 Inquest transcript, page 471

365 Inquest transcript, page 454

366 Inquest transcript, page 454

and he had difficulty understanding the PLO³⁶⁷. Williams said the PLO ‘was a very nervous man at the time. I didn’t want to make that any worse than it was’³⁶⁸. He said the PLO had ‘been through a fairly emotional incident and ... I didn’t want him to stop talking to us’³⁶⁹.

Williams agreed that he found it difficult to talk to the PLO but that he did not take any steps to alleviate or reduce the difficulties³⁷⁰.

During the Inquest, Williams agreed in hindsight that he and Webber perhaps should have come back to the issue at the end of the interview with the PLO. Williams said this was something that would have come up in a review of the investigation, but they did not have the chance to do this, as the CMC took over the investigation.³⁷¹

Evidence to IRT

Williams told the IRT that Bramwell’s allegation that he saw Hurley assault Mulrunji was one of the reasons that spurred him to conduct the re-enactments³⁷².

In his interview with the IRT, Williams said his answer in relation to the PLO’s interview was more than covered by his evidence before the Inquest³⁷³. The only thing he wanted to add was to note the conditions under which the conversation with the PLO took place.

Williams described the PLO as a very difficult person to interview. He said the PLO was very quietly spoken, and ‘for want of a better word terrified’³⁷⁴.

Williams said the PLO had a microphone attached to his collar which was relayed back to the video recording and Williams also recorded the interview on a C-90 cassette recorder which was held in front of the PLO. Williams said the PLO basically cannot be heard on the C-90 recording, but he and Webber can be clearly understood. Williams said although the PLO’s evidence in the video recording is clear, during the interview he wasn’t very clear and was very difficult to understand.³⁷⁵

Williams said ‘without being harsh to [the PLO] I don’t think he’s the smartest man and I know it was a pretty ... traumatic event’³⁷⁶.

Williams suggested that ‘absolutely nobody else, the CMC, the Coroner, the support people ... could get any more information out of [the PLO] than what we did’³⁷⁷. Williams did not think he and Webber were negligent in not asking further questions of the PLO, and said that’s why they work in teams and review the things they do³⁷⁸.

Procedural fairness submission to the CMC

Williams says that the interview with the PLO was conducted with the view of obtaining as much information as possible from him, and notes that further interviews and questioning of the PLO did not elicit any other information which assisted with inquiries into the death of Mulrunji.

367 Inquest transcript, page 454

368 Inquest transcript, page 455

369 Inquest transcript, page 456

370 Inquest transcript, page 478

371 Inquest transcript, page 474

372 IRT transcript, Williams, tape 1, page 33

373 IRT transcript, Williams, tape 1, page 6

374 IRT transcript, Williams, tape 1, page 7

375 IRT transcript, Williams, tape 1, page 7

376 IRT transcript, Williams, tape 1, page 26

377 IRT transcript, Williams, tape 2, page 9

378 IRT transcript, Williams, tape 2, page 9

General findings by the IRT

The IRT pointed out an error made by the Acting State Coroner, saying that the transcript and the video-recording of the re-enactment revealed that Williams, not Webber, used the words 'Oh. OK', after which Webber asked 'While, while [Mulrunji] was on the ground did you see Senior Sergeant Hurley do anything?'

The IRT added that further interviews and questioning of the PLO at the Inquest had not elicited any other information that assisted with inquiries into the death.

The IRT also commented:

A timing of the answer and questioning during the re-enactment [sic] interview shows that [the PLO] provides his answer and less than 8 seconds transpires while he says the words 'I was thinking, um, if I see something I might get into trouble myself or something. The family might harass me or something you know' and Webber moves straight into his questions about what Hurley was doing. The [PLO] re-enactment interview went for approximately 12 minutes and was one of four re-enactment interviews that were conducted by D/Inspector Webber and Williams that day. Williams and Webber also overiewed several other interviews or statements that day.

IRT findings regarding individual officers

The IRT found

... on any reading of the transcript, or viewing of the re-enactment interview, it is clear that the investigators should have, and were obliged to ask follow up questions of (the) PLO about what he meant when he said 'he might see something'. Initially it seems clear that grounds for disciplinary action exist.

However, a prescribed officer would need to consider the transcript and this 'lack of vigour or follow up' in context. That is, a reading of the transcript or viewing of the re-enactment interview needs to be placed in context. When doing this, the reader or observer is not involved in the interview process, and is not attempting to obtain a version from what could best be described as a reluctant and inarticulate witness that appeared to be under some stress. This interview was one interview in a series of interviews undertaken on that day, with each interview taking some time ...

In the Investigation Review Team's opinion, immediately after (the PLO) finishes his response, it appears as if Webber has moved straight into what he sees as an important line of questioning, that is, whether (the PLO) saw Hurley do anything. It appears as though [sic] both Webber and Williams have missed what (the PLO) has said.

D/Inspector Webber is obviously mistaken, but maintains that he thought (the PLO) said or at least meant 'he might do something', in the context that (the PLO) was reluctant to take any part in the process as he feared retribution or harassment from the local community.

D/Inspector Webber's view that (the PLO) would believe he might be harassed or be the subject of retribution is supported by Webber's experience of policing in Aboriginal communities. In the Investigation Review Team's opinion, Webber's belief is reasonable ...

Both investigators described their investigative method as one of obtaining versions and as much information as quickly as possible. This would then be followed by analysis of each interview or piece of information, and if necessary further interviews or investigations would be carried out. Both officers argued that the investigation was taken from them before they could review this particular interview.

In the Investigation Review Team's opinion, for a disciplinary charge to be substantiated, a prescribed officer would need to be satisfied, on balance, that D/Inspector Williams and/or Webber were either negligent or deliberately failed in their duty. To be satisfied of either of these charges, a prescribed officer would need to be satisfied that both these officers

- have been untruthful; and/or
- their view that (the PLO) was less likely to provide information if challenged was entirely without merit; and/or

- their claim that they would have followed up this issue on review of the interview is untrue³⁷⁹.

There is no other evidence that suggests D/Inspector Williams has been untruthful, and no other allegation against him. Williams was not given the opportunity to review his initial work and complete an overview as the matter was handed to the CMC. The Investigation Review Team believe that the CMC did not complete any investigation report, but assisted the Coroner by obtaining statements.

D/Inspector Webber has no allegations of untruthfulness against him and has never been shown to be untruthful over the course of his service. The other allegations against D/Inspector Webber in this instance centre on issues of judgement.

Neither officer was given the opportunity to review their work and complete their investigation as the matter was handed to the CMC.

The IRT reached the conclusion that both officers made a mistake but sufficient grounds for disciplinary action do not exist.

These findings will be discussed in Part 5.

CMC comment

The evidence suggests that the whole point of conducting the re-enactment interviews was to gather evidence in relation to Roy Bramwell's allegation and about what occurred when Hurley brought Mulrunji into the police station. The PLO's answer: *I can't remember. I just stood there because I was thinking, um, if I see something I might get into trouble myself or something. The family might harass me or something you know* related to a question which was central to that point, yet neither Webber nor Williams pursued it.

In the CMC's view it is concerning, particularly if the PLO was difficult to interview, that Webber and Williams did not take steps to ensure that they were able to elicit information from the PLO and understand what he said.

Investigation's approach at that stage

In his evidence to the IRT, Webber said that he and Williams at that stage were adopting a 'broad brush' approach and attempting to obtain as much information as they possibly could — so they could later 'narrow in' on some aspects and go back and ask further questions as necessary. In the CMC's view, this only underlines the fact that if they were trying to obtain as much information as possible, they missed an important opportunity to explore further the PLO's response to a critical question.

Lack of response to the 'difficulties' in interviewing the PLO

Both Webber and Williams respond to the criticism of their questioning by focusing on the perceived difficulties in interviewing the PLO.

Webber and Williams do not ask the PLO to repeat or clarify his answers. Williams even said that he accepted that the PLO spoke the relevant words, agreed that he heard the words and did not say that he heard the PLO say anything different.

If Webber and Williams found the PLO difficult to understand and if they were concerned about not being able to understand him or about him being so nervous, they should have taken some steps to overcome the communication difficulties, for example offering to have a support person for the PLO.

³⁷⁹ In relation to Webber, the IRT found that the prescribed officer would also have to find, on balance, that Webber has been untruthful about what he thought he heard, or what he interpreted (the PLO) as saying.

We note that Webber and Williams did not complete their investigation, and it is possible they would have reviewed the interview and asked additional questions about this issue in a further interview with the PLO. However, in the CMC's view it was important to obtain all the information from the PLO at the time, and not rely on the possibility of re-visiting the interview at a later date. Any number of things can prevent an investigator from conducting further interviews, therefore it is important to pursue all lines of questioning at the time.

IRT's findings and statement re timeframes

We disagree with the IRT's assertion about the findings necessary to sustain a disciplinary charge against Webber and Williams.

Webber and Williams had an obligation to obtain a comprehensive statement from the PLO as soon as practicable. They failed to do so.

We are not sure what point the IRT is trying to make in its statement:

A timing of the answer and questioning during the re-enactment interview shows that [the PLO] provides his answer and less than 8 seconds transpires while he says the words I was thinking, um, if I see something I might get into trouble myself or something. The family might harass me or something you know and Webber moves straight into his questions about what Hurley was doing. The [PLO] re-enactment interview went for approximately 12 minutes and was one of four re-enactment interviews that were conducted by D/Inspector Webber and Williams that day. Williams and Webber also overviewed several other interviews or statements that day.

In any event, these comments were not put to Webber or Williams in their respective interviews with the IRT, neither were they offered as explanation by either officer.

Summary of CMC assessment

Initial QPS investigation

In the re-enactment interview with the PLO, Webber and Williams clearly miss an important opportunity. The officers respond to this criticism by focusing on the perceived difficulties in interviewing the PLO. Despite this declared difficulty, they do not think to provide support to the PLO, although police are required under the OPM to meet the special needs of Aboriginal witnesses.

IRT findings

The IRT agree that both officers made a mistake but found there were not sufficient grounds for disciplinary action. They also give an appearance of justifying the officers' situation by saying that further interviews and questioning of the PLO at the Inquest had not elicited any other information that assisted with inquiries into Mulrunji's death — this is irrelevant to the fact that an opportunity was lost in this particular situation.

It is not clear what the IRT intended in its detailed statement about timing in the interview. However, since these comments were not put to Webber or Williams in their interviews, nor offered as explanations by either officer, they seem to have been formulated by the IRT to explain the officers' actions.

The IRT described the officers' task as 'attempting to obtain a version from what could best be described as a reluctant and inarticulate witness that appeared to be under some stress', but failed to ask the obvious question — why, in such a situation, the officers did not provide support for the PLO.

The IRT's investigation of this allegation is unsatisfactory.

ALLEGATION 7: THE FORM 1

Background

The Acting State Coroner was concerned that the Form 1, a QPS form for reporting a death to the Coroner under the *Coroner's Act 2003*, did not include Roy Bramwell's allegation that he saw Hurley assault Mulrunji, which meant the information was not available to the pathologist at the time of the first autopsy³⁸⁰.

In terms of official police procedure, the OPM at the time provided that:

- where an inquest is to be held, the investigating officer is responsible for ensuring that the Form 1 is completed as fully as possible³⁸¹
- the investigating officer is responsible for completing the Form 1 and forwarding a copy to the coroner, the Government Pathologist performing the autopsy and to the investigator's officer in charge so that it is checked³⁸²
- the purpose of the Form 1 is to assist the Coroner in deciding whether an autopsy should be ordered and to assist the pathologist performing the autopsy to establish the cause of death³⁸³
- the investigating officer is responsible for completing a Supplementary Form 1 where additional information comes to hand that may assist in determining the cause of death at a time prior to the autopsy³⁸⁴
- the regional crime coordinator (RCC) is directly responsible for the investigation
- the ESC representative is of the opinion proper ... procedural matters are not being adhered to ... should confer with the RCC and CMC to endeavour to resolve the issue.

The IRT considered the allegation, 'The Form 1'.

Context

Kitching prepared a Form 1 on the night of 19 November 2004, but the form was not sent to the local Coroner until Monday 22 November 2004.

On 20 November 2004, Roy Bramwell alleged that he saw Hurley assault Mulrunji in the police station³⁸⁵ and on 21 November 2004, Ms Penny Sibley alleged that she saw Hurley punch Mulrunji outside the police station on 19 November 2004³⁸⁶. The Form 1 was not updated by Kitching to include the assault allegations of Roy Bramwell or Ms Sibley before it was submitted, nor was a Supplementary Form 1 detailing the assault allegations prepared by him.

On 23 November 2004, Kitching attended the autopsy conducted by Dr Lampe in Cairns, but the evidence suggests that Kitching did not tell him about either of the assault allegations made against Hurley.

380 Finding of Inquest, page 10

381 Section 8.4.3(ix) OPM

382 Section 8.4.3(v)(a), (b), (d) OPM

383 Section 8.4.8 OPM

384 Section 8.4.3(vi) OPM

385 Bramwell made this allegation in his interview with Kitching and Robinson, and in the re-enactment interview with Webber and Williams. The allegation is not included in the statement prepared by Robinson, and our concerns with Robinson's failure to include this important information in Bramwell's statement is discussed in Chapter 10 of this report.

386 This interview was conducted by Kitching.

Key issues

The failure to include the assault allegations in the Form 1 raises the following issues:

- what actions Kitching took to fulfil his obligation to complete and provide a Form 1 and a Supplementary Form 1
- what responsibility did Webber and Williams have to ensure a complete Form 1 was provided, and what action did they take in that regard
- what reasons were given by Kitching for his failure to include the information about the assault allegations of Bramwell and Sibley in the Form 1 and were those reasons appropriate
- why didn't Kitching complete and submit a Supplementary Form 1
- what information did Kitching orally provide to the pathologist performing the autopsy and did it include the allegations.

The IRT seems to have considered the failure to include Bramwell's assault allegation in the Form 1 and Kitching's failure to brief Dr Lampe about the allegation during the autopsy, but not Kitching's failure to include Sibley's allegation or to submit a Supplementary Form 1.

What was said

Kitching included the following information in the 'Summary of incident' section of the Form 1:

... At that time the deceased [sic] was aggressive and was restrained and placed in the rear of a caged police vehicle. The deceased was then transported to the Palm Island Police Station where he again became aggressive ... At that time the deceased is alleged to have assaulted Senior Sergeant Hurley. The deceased was then physically restrained and placed in Cell 2 of the Palm Island Police Watch-house and charged at 10.26 am. At that time the deceased laid [sic] on the floor of the cell and went to sleep immediately ...

Kitching included the following information in the 'Précis of statements' section of the Form 1:

... At that time the deceased was aggressive [sic] and abusive towards police and was physically placed in the rear of a caged police vehicle. Hurley states that upon arrival at the police station he opened the door on the cage of the police vehicle and at that time the deceased became aggressive and punched Hurley in the side of the face. Hurley then physically restrained the deceased and struggled with him to the rear door of the police station where they both fell to the ground. Another police officer Sergeant Michael Leafé then assisted Senior Sergeant Hurley place the deceased into the watch-house cell by dragging him with both arms ...

Dr Lampe

Evidence to Inquest

In his evidence at the Inquest, Dr Lampe said during the autopsy he and Kitching discussed matters, but his record of the autopsy did not indicate that Kitching gave any oral instruction in relation to an allegation of intentional assault³⁸⁷.

Dr Lampe confirmed that when performing an autopsy he is usually provided with a Form 1 and some history that is known at the time. Dr Lampe also agreed that having the history does help in excluding or including various scenarios from the cause of death, and that it is difficult to exclude something that is not put to you³⁸⁸.

387 Inquest transcript, page 633

388 Inquest transcript, page 632

Kitching

Evidence to Inquest

At the Inquest, Kitching was asked whether he briefed Dr Lampe about Roy Bramwell's allegation. Kitching said he couldn't be one hundred percent sure whether he told Dr Lampe about the allegation or not. Kitching said he ran through the witnesses' evidence, but he didn't know whether he particularly told Dr Lampe about Bramwell's allegation³⁸⁹. Kitching then said he ran through all the information he knew at the time, and possibly told Dr Lampe about the allegation³⁹⁰.

Kitching later said if Dr Lampe said he did not recall being told about the assault allegation, Kitching was prepared to accept that he didn't advise Dr Lampe of it³⁹¹.

When asked whether he intentionally did not advise Dr Lampe of Bramwell's allegation or if it was an oversight, Kitching said 'No. It'd be an oversight, most definitely'³⁹².

Evidence to IRT

Kitching said he drafted the Form 1 on the night of 19 November 2004, and provided evidence to the IRT that the Form 1 was last updated at 8.58 pm that night³⁹³. The Form 1 was prepared with the information from witnesses which had been collected up to that time³⁹⁴.

Kitching said he spoke to the on-call Magistrate in Townsville at about 7.25 pm that night, and advised him of the death. Kitching said the information he passed on to the on-call Magistrate was included in the Form 1³⁹⁵.

The following morning at about 8.15 am, Kitching and Robinson conducted an electronically recorded interview with Roy Bramwell³⁹⁶, in which Bramwell made the assault allegation. At about 10.52 am that day, Inspectors Webber and Williams conducted a video re-enactment with Roy Bramwell which Kitching said was conducted due to the allegation made by Roy Bramwell and the concerns about Bramwell's credibility³⁹⁷.

Kitching advised the IRT that the Form 1 was faxed to the Townsville Coroner at about 10.40 am on Monday 22 November 2004³⁹⁸. Kitching said the Form 1 was printed out the night he completed it, placed on his file and was not taken out again until it was faxed to the Coroner's office on 22 November 2004³⁹⁹. Kitching told the IRT at the time the Form 1 was sent to the Coroner, he'd not had the opportunity to go back and modify it⁴⁰⁰.

In response to the IRT's question about whether any senior officer expressly asked to see the Form 1, Kitching replied 'No ... Not at all'⁴⁰¹.

389 Inquest transcript, pp. 770–771

390 Inquest transcript, pp. 770–771

391 Inquest transcript, pp. 774–775

392 Inquest transcript, page 778

393 IRT transcript, Kitching, tape 1, page 10

394 IRT transcript, Kitching, tape 1, page 7

395 IRT transcript, Kitching, tape 1, page 12

396 IRT transcript, Kitching, tape 1, page 5

397 IRT transcript, Kitching, tape 1, pp. 19–20

398 IRT transcript, Kitching, tape 1, page 14

399 IRT transcript, Kitching, tape 1, page 17

400 IRT transcript, Kitching, tape 1, page 32

401 IRT transcript, Kitching, tape 1, page 18

Kitching told the IRT that on 23 November 2004 he picked Dr Lampe up from the Supreme Court in Cairns and gave him a brief outline of the circumstances of the investigation during the short trip to the morgue⁴⁰². Kitching was present during the autopsy conducted that day, and says that he provided Dr Lampe with continual briefings about what had happened when Dr Lampe asked questions⁴⁰³. Kitching said he spoke to Dr Lampe about the arrest, the incident at the rear of the police vehicle, the subsequent scuffle going into the police station and the fact that there was no movement after the fall.⁴⁰⁴ Kitching said he advised Dr Lampe of information received from the Palm Island community that Mulrunji had been drinking bleach the day or night before he died⁴⁰⁵.

Kitching said he certainly intended to brief Dr Lampe about all the incidents and on all the information he'd gathered up to that point in the investigation. He said the mere fact that Bramwell couldn't have possibly seen what he said he saw, coupled with the fact that there was no evidence of physical injury on Mulrunji's body to support an allegation of assault, meant that the information 'may have drifted' from his mind.⁴⁰⁶

Kitching then told the IRT the reason he hadn't briefed Dr Lampe in relation to the assault allegation was due to the serious doubt he had in relation to Bramwell's version of events and the fact that his allegations were not supported by physical evidence on Mulrunji's body. Kitching said if Dr Lampe noted any evidence of trauma during his examination, then this would have 'triggered the need for advice in respect of the allegations raised by Bramwell'. Kitching said he did not intentionally withhold information from Dr Lampe and that he exhausted all his knowledge from the investigation to that time which was consistent with the known circumstances and the condition of the deceased⁴⁰⁷.

The IRT put to Kitching 'To paraphrase it are you trying to tell me that ... in your experience you only have proffered information to pathologists that you thought was reliable and relevant?' to which Kitching replied 'That's correct'⁴⁰⁸.

Kitching said he made some notes of his discussions with Dr Lampe, particularly in relation to the clothing that was taken from the deceased and the cause of death identified during the autopsy⁴⁰⁹.

Kitching said in hindsight, in an ideal world, it would be great for all the information to be included then and there but there are policies and procedures in place which allow further information to be provided in a supplementary Form 1⁴¹⁰.

In relation to his failure to submit a supplementary Form 1 which included the assault allegation, Kitching told the IRT once the information was obtained in relation to the cause of death, at the first opportunity he intended to provide a supplementary Form 1 to the Coroner. Kitching said the supplementary Form 1 would include a précis of all statements from the interviews conducted and if necessary a full copy of all the statements. Kitching said this was the normal process and he does this in any investigation. Kitching said it was his intention to lodge the supplementary Form 1, but the investigation was taken away from him and handed to the CMC⁴¹¹.

402 IRT transcript, Kitching, tape 1, page 22

403 IRT transcript, Kitching, tape 1, page 23

404 IRT transcript, Kitching, tape 1, page 28

405 IRT transcript, Kitching, tape 1, page 29

406 IRT transcript, Kitching, tape 1, pp. 24–25

407 IRT transcript, Kitching, tape 1, page 28

408 IRT transcript, Kitching, tape 1, page 25

409 IRT transcript, Kitching, tape 1, page 24

410 IRT transcript, Kitching, tape 1, pp. 32–33

411 IRT transcript, Kitching, tape 1, page 31

When asked by the IRT about whether his protocols for advising Coroners have now changed, Kitching said there is policy and procedure that shows they can provide further information that might be of interest or benefit to the Coroner in a Supplementary Form 1⁴¹². Kitching said once the deceased's injuries were identified in the autopsy, it was an appropriate time to have those statements forwarded to the Coroner. Kitching said this was his intention, but the night he returned from Cairns he was advised that the Commissioner instructed that the matter be handed to the CMC. Kitching believed that it was then a matter for the CMC to proceed with the statements he had taken⁴¹³.

Other evidence

In his statement dated 19 January 2005, Kitching said he advised Dr Lampe of information including:

- Inquiries at the time did not identify any fights or altercations involving the deceased prior to him being taken into police custody on the day of his death
- Police were involved in a scuffle with the deceased on taking the deceased from the police vehicle to the watch-house
- During the scuffle police had fallen with the deceased into the police station
- The deceased has a small injury above his right eye
- Unconfirmed information had been received that the deceased may have been drinking bleach prior to his arrest on 19 November 2004.

Procedural fairness submission to the CMC

Kitching notes that the assault allegation was 'completely inconsistent' with his observations; 'completely at odds with the primary, real evidence — the condition of Mulrunji's body'.

He points to the irony in that it was the conflict between Roy Bramwell's allegations and the 'real evidence' that lead to the re-enactment with Bramwell.

He considered that Ms Sibley's allegation was also inconsistent with the real evidence.

Kitching relies on his years of policing experience, seeing hundreds of assault matters and 'not one ... where the person has died from punches to the body'. He notes that where an assault has been serious there was always an indication on the body that there had been an assault.

Kitching advises of an established police protocol in relation to a Form 1. 'The procedure adopted by police is that the Form 1 contains as much information as the investigator knows at the time. There is provision to submit a Supplementary Form 1.' He says that it was always his intention to forward all the information, including a full complement of statements from witnesses would be forwarded to the Coroner with a Supplementary Form 1.

Webber

Evidence to IRT

Webber told the IRT he had examined the Form 1 on the evening of 19 November 2004, before he was aware of the Bramwell allegation⁴¹⁴. Webber said it was his understanding that the form was going to be lodged immediately with the Townsville Coroner and he only subsequently became aware that it was not sent until Monday 22 November 2004⁴¹⁵.

412 IRT transcript, Kitching, tape 1, pp. 32–33

413 IRT transcript, Kitching, tape 1, page 33

414 IRT transcript, Webber, page 6, tape 1

415 IRT transcript, Webber, page 7, tape 1

Webber said once he became aware of the allegation, he did not think to have it included on the Form 1⁴¹⁶. Webber didn't consider the allegation had any significant effect on the investigation⁴¹⁷. When questioned by the IRT about the credibility of Bramwell's allegations, Webber said that after Roy Bramwell's allegation was recorded and the re-enactment had taken place, he had 'absolutely no belief that those allegations are in any way credible'⁴¹⁸.

Webber said he briefed the Acting Assistant Commissioner and the Acting Chief Superintendent sometime on Saturday 20 November 2004 about the Bramwell allegations, and advised them of his concerns about the credibility of the allegations⁴¹⁹.

Webber said the Acting State Coroner's comment about the pathologist not having all the crucial information was incorrect. He said Kitching attended the autopsy, and Webber believed Kitching would have informed the pathologist about what had occurred during the investigation, after the Form 1 was completed⁴²⁰.

Webber also commented 'I also know that on some occasions some Pathologists actually prefer not to know too many details of a Police investigation as they believe it might actually cloud their ... findings'⁴²¹.

When asked by the IRT whether he thought Kitching intentionally omitted to include the Bramwell allegations or if was an oversight, Webber said 'I don't have any doubt in my mind that it was simply an oversight'⁴²².

Williams

Evidence to IRT

Williams advised the IRT he did not read the Form 1 before it was submitted⁴²³ and did not consider he should have viewed the form or taken an interest in it prior to the form being sent to the Coroner⁴²⁴. Williams said the form is usually sent at the very start of an investigation, and the Coroner would have been constantly updated about the facts of the matter as they were uncovered⁴²⁵.

Procedural fairness submission to the CMC

Williams says that the responsibility for the Form 1 and Supplementary Form 1 is with the investigating officer; Kitching in this case. He says that he was not the supervisor, nor had line control over Kitching.

Acting Assistant Commissioner

Evidence to IRT

The Acting Assistant Commissioner told the IRT he did not remember seeing a copy of the Form 1 prior to the autopsy⁴²⁶. The Acting Assistant Commissioner said any allegation of an incident which might have caused an injury would have been useful to the pathologist, but he didn't think that the failure to provide the information would change the result as the pathologist

416 IRT transcript, Webber, page 6, tape 1

417 IRT transcript, Webber, page 7, tape 1

418 IRT transcript, Webber, page 8, tape 1

419 IRT transcript, Webber, tape 1, page 12

420 IRT transcript, Webber, tape 1, page 7

421 IRT transcript, Webber, tape 1, page 7

422 IRT transcript, Webber, tape 3, page 8

423 IRT transcript, Williams, tape 2, page 7

424 IRT transcript, Williams, tape 2, page 7

425 IRT transcript, Williams, tape 2, page 7

426 IRT transcript, the Acting Assistant Commissioner, tape 2, page 22

conducts a thorough examination anyway⁴²⁷. The Acting Assistant Commissioner said the information certainly would have been helpful⁴²⁸ because it would allow the pathologist to agree or disagree with whether a certain injury or incident was the cause of death or not⁴²⁹.

Acting Chief Superintendent

Evidence to IRT

The Acting Chief Superintendent told the IRT he did not remember seeing a copy of the Form 1⁴³⁰. The Acting Chief Superintendent said clearly the circumstances relating to the death should be as detailed as possible, and if the allegation was one of the circumstances relating to the death, it needs to be put in the form⁴³¹.

Robinson

Other evidence

In his statement provided to the CMC, Robinson said on 22 November 2004 he advised Kitching of information he had heard that Mulrunji had been consuming bleach. Robinson stated that he did not recall which persons in the community gave him this information, and his working diary was destroyed when the Palm Island police station burnt down.

In his interview with the CMC on 22 January 2008, Robinson said that he couldn't remember who told him this information, but he believed it was third or fifth hand.

General findings by the IRT

The IRT found

Dr Lampe does not say that D/S/Sgt Kitching did not tell him about the Roy Bramwell allegations, however, Dr Lampe did not make any mention of the allegations in his notes and does not remember being told about them ...

D/S/Sgt Kitching was initially of the view that he would have told Dr Lampe about the allegations, but later conceded that he may not have. He indicated that the Form 1 had been completed prior to the allegations being made, that the allegations had little if any credibility, and that had anything occurred during the post-mortem examination he would have told the pathologist about the findings ...

D/S/Sgt Kitching knew that the Ethical Standards Command and the Coroner, and possibly the Crime and Misconduct Commission would review this matter. He also knew that these agencies knew, or would have been informed about the allegations as a matter of routine. Given this, it would seem illogical that D/S/Sgt Kitching would attempt to deceive Dr Lampe by not providing the information ...

This then leaves [this allegation] at either duty failure or negligence, or if not this, an issue related to judgement and/or experience.

On balance, it is the view of the Investigation Review Team that D/S/Sgt Kitching should have made mention of the Bramwell allegations, even if only to the extent that they were untested or uncorroborated. This would have allowed the pathologist to comment more specifically on those allegations at the time of post-mortem examination if he wished ...

The investigating officers were faced with an unknown cause of death that could have been related to a myriad of possibilities (e.g. natural causes, poisoning) ...

427 IRT transcript, the Acting Assistant Commissioner, tape 2, page 23

428 IRT transcript, the Acting Assistant Commissioner, tape 2, page 23

429 IRT transcript, the Acting Assistant Commissioner, tape 2, page 24

430 IRT transcript, the Acting Chief Superintendent, tape 2, page 42

431 IRT transcript, the Acting Chief Superintendent, tape 2, page 45

The unavailability of a pathologist caused a delay in investigators being provided with information as quickly as would have been desirable. There were 4 days between the time of death and the initial post-mortem examination ...

It is clear from the evidence that Dr Lampe did thoroughly and independently address the issue of assault as a cause of injury or death and that a significant amount of history was provided to Dr Lampe by D/S/Sgt Kitching ...

It is also clear that Roy Bramwell was not a credible witness and that, in the Investigation Review Team's view, the re-enactment interview (video recorded) clearly demonstrates that Roy Bramwell could not have seen what he alleged. ...

No other senior officer thought to ask specific questions directly related to the Roy Bramwell allegations being included on the Form 1 ...

Criticism of police would not have occurred had a senior officer thought to remind or direct Kitching to mention the Bramwell allegations in the Form 1 or during the post-mortem examination.

IRT findings on individual officers

The IRT found:

for a disciplinary sanction to be imposed, a prescribed officer would need to be satisfied that Kitching failed to provide enough detail in the Form 1 to allow the pathologist to make sufficient examinations ...

On balance, it is the view of the Investigation Review Team that D/S/Sgt Kitching should have made mention of the Bramwell allegations, even if only to the extent that they were untested or uncorroborated. This would have allowed the pathologist to comment more specifically on those allegations at the time of post-mortem examination if he wished.

The IRT recommended that Kitching be provided with guidance.

The IRT found it was understandable that neither Webber nor Williams thought to check the Form 1 before it was submitted for a number of reasons, and recommended no further action be taken in relation to their conduct.

The IRT found the Acting Assistant Commissioner and the Acting Chief Superintendent were Webber's supervisors and failed to ask questions about the Form 1 or whether the allegation was put to the pathologist, but made no recommendations about their conduct.

These findings will be discussed in Part 5.

CMC comments

Kitching failed to provide all relevant information for the pathologist in the Form 1 submitted on 22 November 2004, and did not submit a Supplementary Form 1; nor did he provide all relevant information to the pathologist during the autopsy on 23 November. His explanations for this are inconsistent.

Neither Webber nor Williams took any action to ensure that the Form 1 was appropriately and fully completed despite their responsibilities.

Misleading information in the Form 1

In the CMC's view, the way Kitching completed the Form 1 is concerning. His description that Mulrunji 'laid [sic] on the floor of the cell and went to sleep immediately' is misleading. Kitching states on a number of occasions in the Form 1 that Mulrunji was aggressive and had to be restrained and twice states that Mulrunji assaulted Hurley, yet did not include either of the assault allegations made against Hurley.

Inconsistency in Kitching's evidence

In explaining why he did not include Bramwell's assault allegations in the Form 1 or inform the pathologist personally, Kitching says, variously:

- he didn't have the opportunity to go back and modify the Form 1 after the assault allegations were made and before it was sent to the Coroner
- he couldn't be one hundred percent sure whether he told Dr Lampe about the allegation or not
- he ran through all the information he knew at the time, and possibly told Dr Lampe about the allegation
- he certainly intended to brief Dr Lampe about all the incidents and on all the information he'd gathered up to that point in the investigation
- the information may have 'drifted from his mind' because of his doubts about Bramwell's credibility and the fact there was no evidence of physical injury on Mulrunji's body
- he did not intentionally not advise Dr Lampe about the allegation, it was 'most definitely' an oversight
- the reason he had not briefed Dr Lampe in relation to the assault allegation was because of his serious doubt about Bramwell's version and the lack of supporting physical evidence on Mulrunji's body
- if Dr Lampe noted any evidence of trauma during his examination, then this would have 'triggered the need for advice in respect of the allegations raised by Bramwell'.

It is not clear whether Kitching actually turned his mind to the assault allegations and decided not to tell Dr Lampe as he did not consider the information to be 'reliable and relevant', or whether the information merely 'drifted from his mind'.

Kitching's endorsement of the IRT's comment that he only offered information to pathologists that he considered reliable and relevant seems in stark contradiction to both his inclusion of hearsay evidence about Mulrunji drinking bleach and his exclusion of Penny Sibley's allegation of assault (of which the credibility had not been questioned). In effect, Kitching seems to have informed the pathologist of information adverse to Mulrunji but excluded allegations adverse to Hurley.

Purpose of preparing a Form 1

If an allegation of an assault upon a deceased is made to an investigating officer, it should be provided to the pathologist performing the autopsy, so that the pathologist can form a view about whether the alleged assault is a possible cause of death, and if appropriate exclude it as such. The investigating officer's view about the reliability or credibility of the evidence concerning such an allegation is irrelevant for the purpose of the autopsy. It is the autopsy which can better inform in relation to the reliability of the evidence.

In the CMC's view the assault allegations made by Roy Bramwell and Ms Sibley should have been included by Kitching in the Form 1 or in a Supplementary Form 1. In any event, Dr Lampe should have been provided with this information during the autopsy. This would have enabled Dr Lampe to specifically confirm, exclude or leave open the possibility of assault as the cause of death.

It is fortunate that Dr Lampe did consider the possibility of the death being caused by an assault. By Kitching's own admission, he would only have raised Bramwell's allegation of assault if Dr Lampe had identified any evidence of trauma which would have 'triggered the need for advice'⁴³².

432 IRT transcript, Kitching, tape 1, page 28

Intention to submit a Supplementary Form 1

Kitching said that once the information was obtained in relation to the cause of death, at the first opportunity he intended to provide a supplementary Form 1 to the Coroner⁴³³. He also said once the deceased's injuries were identified in the autopsy, it was an appropriate time to have those statements forwarded to the Coroner⁴³⁴.

The purpose of providing a Supplementary Form 1, as clearly outlined in the OPM, is to provide information that may assist a government pathologist in determining a cause of death prior to the autopsy, not once injuries have been identified during the autopsy.

Kitching provides inconsistent evidence in relation to his intention to submit a Supplementary Form 1. On one hand, Kitching argues that he didn't mention the allegation to Dr Lampe as he thought it was not reliable and relevant, and on the other hand, he states that he intended to provide the coroner with information about the assault allegation, but he didn't have the opportunity as the CMC took over the investigation. If Kitching only intended to provide Dr Lampe with information that was 'reliable and relevant', and he already formed a view about the reliability of Bramwell's evidence, then it is not clear why he would include this information in a Supplementary Form 1.

Comment on the IRT's findings

In the CMC's view the IRT has failed to adequately consider this allegation.

As well as not considering Kitching's failure to complete a Supplementary Form 1, or the inconsistency in Kitching's account, the IRT also did not address the omission of Ms Sibley's allegation from the Form 1.

This is presumably because the Acting State Coroner only specifically mentioned the issue of Bramwell's allegation not appearing in the Form 1⁴³⁵. However, if not as a separate issue, the omission of Ms Sibley's allegation should have been treated by the IRT as a relevant fact in forming a view about Kitching's conduct in relation to the Bramwell allegation.

Instead, the IRT provided reasons to justify Kitching's failure to make this information available to Dr Lampe, such as Kitching knew the ESC and possibly the CMC would review the matter and it would be 'illogical' for Kitching to attempt to deceive Dr Lampe; that while Kitching was an experienced detective, he had never worked at the Homicide Squad, ESC or investigated a police related serious injury in custody; and that at the time of the investigation, Kitching had to continue to manage the Townsville CIB.

The IRT found it was understandable that Webber and Williams did not check the Form 1 for a number of reasons; for example Bramwell was not a credible witness and the fact that Dr Lampe's examination did consider assault as a possible cause of death. We have concerns with the IRT's reasoning in relation to this.

The IRT do not refer to important parts of the OPM⁴³⁶ that are inconsistent with Kitching's actions and explanations. As a consequence the IRT does not adequately examine the conduct of the investigators and, for example, allows the principal investigator to claim that he intended, sometime after the autopsy, to complete a Supplementary Form 1 containing all the relevant information and give it to the pathologist, as if that course of action was somehow acceptable or reasonable.

433 IRT transcript, Kitching, tape 1, page 31

434 IRT transcript, Kitching, tape 1, page 33

435 During a meeting on 16 January 2007, the CMC and IRT discussed a number of issues of concern, including the fact that there was no disclosure of any assault associated with Mulrunji's death in the Form 1 completed by Kitching.

436 Principally the obligation to prepare a Supplementary Form 1 setting out any new information received before the autopsy and the obligation to contact the pathologist 'as a matter of urgency' and before the autopsy is performed.

Question of credibility of evidence

The IRT considered it was clear that Bramwell was not a credible witness and that the re-enactment interview clearly demonstrates that Bramwell could not have seen what he alleged. While Bramwell's credibility is damaged by his claim that he could actually see Hurley punching Mulrunji's face, this does not necessarily mean that he did not see the elbow going up and down, which could be consistent with Hurley punching Mulrunji.

We are not concerned here with whether Bramwell and his evidence were ultimately found to be credible or not. The relevant issue is that it was inappropriate for the investigators to completely dismiss Bramwell's evidence at that point in the investigation and to decide to withhold that information from Dr Lampe.

As will be discussed later in this report, in the video re-enactment on 20 November 2004, Hurley changed his version of events and included information which was not in his initial interview on 19 November 2004. However, this did not seem to have any impact on his credibility in the mind of the investigation team, unlike that of Mr Bramwell.

Summary of CMC assessment

Initial QPS investigation

Under the OPM, Kitching as the investigating officer was responsible for ensuring that the Form 1 — intended to assist the pathologist determine the cause of death — was completed as fully as possible.

Kitching cannot be said to have complied with this requirement since he did not include on the Form 1 sworn allegations by Roy Bramwell and Penny Sibley that Hurley had assaulted Mulrunji. Neither did he provide this information by completing a Supplementary Form 1, which is intended as a means of getting additional information to the pathologist as urgently as possible.

Kitching was inconsistent in his various explanations as to why he had not included Bramwell's allegations, although his statements included that he did not believe that Bramwell's evidence was reliable, and he eventually agreed when the IRT asked him if he was saying that he only provided reliable and relevant information to pathologists. However, this rationale fails to explain why he excluded Penny Sibley's sworn evidence (the credibility of which had not been questioned) but included hearsay evidence against Mulrunji. This gives rise to a perception of bias towards Hurley on his part.

Webber also said that, once aware of Bramwell's allegation, he did not think to have it included on the Form 1 because he did not think that it had any significant effect on the investigation. Clearly, neither Webber or Kitching appear to properly understand the function of a Form 1, since the reliability or credibility of the evidence concerning such an allegation is irrelevant for the purpose of the autopsy.

Williams who had responsibility for ensuring procedural matters were being adhered to, did nothing to satisfy himself that the Form 1 was appropriately completed.

IRT findings

The IRT find that Kitching should have made mention of the Bramwell allegations; however, they then provide a number of dubious reasons to extenuate Kitching's failure to give the information to Dr Lampe — for example, the delay of four days between the time of death and the initial post-mortem examination, that Dr Lampe did consider assault, that a senior officer had not thought to remind or direct Kitching, that Bramwell was not credible, etc. The CMC considers these factors irrelevant, and questions the validity of the IRT's reasoning.

The IRT also show a lack of thoroughness in their failure to address some clearly important areas — for example, they do not consider Kitching’s failure to complete a Supplementary Form 1, the inconsistencies in Kitching’s account, or the omission of Ms Sibley’s allegation from the Form 1.

The IRT also ignore important parts of the OPM⁴³⁷ that are inconsistent with the investigators’ actions and explanations — for example, that the investigating officer was required to supply additional information urgently to the pathologist in order that the pathologist could consider it in identifying the cause of death. As a result, the IRT has not adequately examined the conduct of the investigators.

In the CMC’s view, the IRT has failed to satisfactorily investigate this allegation.

437 Principally the obligation to prepare a Supplementary Form 1 setting out any new information received before the autopsy and the obligation to contact the pathologist ‘as a matter of urgency’ and before the autopsy is performed.

ALLEGATION 8: LACK OF SUPPORT TO INDIGENOUS WITNESSES

Background

The Acting State Coroner was critical of the lack of support provided to the Indigenous witnesses by the investigation team⁴³⁸.

In terms of official police procedure, the OPM at the time provided that:

- persons of Aboriginal and Torres Strait Islander descent are to be considered people with special needs because of certain cultural and sociological conditions⁴³⁹
- when questioning people of Aboriginal and Torres Strait Islander descent, whether as a witness or a suspect, the existence of a special need should be assumed until the contrary is clearly established using certain criteria⁴⁴⁰
- the officer in charge of a station is to compile and maintain a list of local Aboriginal and Torres Strait Islander Legal Service contacts⁴⁴¹ and a list of interpreters and support persons appropriate for their area of responsibility⁴⁴²
- when an officer intends to question someone with a special need, the officer should take whatever action is necessary⁴⁴³ to compensate for that special need⁴⁴⁴.

The IRT considered the allegation 'Lack of Support to Indigenous Witnesses'.

Context

According to the QPS running sheet, the investigation team interviewed seven Indigenous witnesses; the PLO, Roy Bramwell, Patrick Bramwell, Penny Sibley, Gladys Nugent, Edna Coolburra and Gerald Kidner. There is no evidence to suggest any action was taken to consider, or compensate for, the witnesses' special needs.

Key issues

The actions of the investigation team in interviewing a number of Indigenous witnesses without any support raises the following issues:

- What action, if any, was taken by Kitching, Webber, Williams and Robinson to comply with the OPM requirements?
- What reasons, if any, were given to explain the lack of support persons offered and provided to the Indigenous witnesses?
- What difficulties, if any, were experienced by Kitching, Webber, Williams and Robinson in understanding the Indigenous witnesses?

438 Finding of Inquest, page 10; section 46 comment, number 39

439 Section 6.3.6 OPM. Section 6.3.1 of the OPM also outlines a number of circumstances, including Aboriginal and Torres Strait Islander persons (Section 6.3.1(xii)), that should be considered as creating a special need until the contrary becomes apparent.

440 Section 6.3.6 OPM

441 Section 6.3.6 OPM

442 Section 6.3.4 OPM

443 Examples of action compensating for special needs are: arranging for an interpreter to overcome language difficulties, allowing an independent person to overcome any feeling of intimidation in a person, and phrasing questions in a manner which compensates for a lack of education (Section 6.3.3 OPM).

444 Section 6.3.3 OPM

What the police said

Webber

Evidence to IRT

Webber told the IRT he did not think at any stage a support person was required for any witness⁴⁴⁵. Webber said the witnesses were only being asked to give a version of what they saw and what they knew. He said there was no apparent involvement in any criminal offence by any of the witnesses, it was just a straight forward collection of evidence process⁴⁴⁶.

Webber said he believed the witnesses were quite comfortable talking to the police and at that stage it was more important to actually get an explanation from them as to what had occurred⁴⁴⁷. Webber said if any of the people had expressed any concern or asked for a support person, they would have provided someone, but agreed with the IRT's comment that it would have taken some time to organise support persons and said that would have slowed down the process⁴⁴⁸.

Webber also said Robinson was there and he had a relationship with the people on the island and had dealt with them as witnesses and victims of crime⁴⁴⁹.

Webber said they advised 'Legal Aid Services' and that they had the opportunity to participate, but that the legal aid representative was the daughter of the Mayor and her brother died in jail so she was unable to provide any assistance and didn't want to have any further part in it⁴⁵⁰.

Webber further said the people on Palm Island are very much involved in the community, so whatever transpires is immediately going to go back into that community and have the potential to contaminate the evidence⁴⁵¹.

Webber said he doesn't believe the Coroner wanted to acknowledge that members of the Northern Region and the QPS as a whole conduct investigations every day with Indigenous people and witnesses. He said numerous Indigenous persons are interviewed, statements taken and charges laid, so they are extremely conscious of, and able to, establish a rapport with those witnesses⁴⁵².

Williams

Evidence to Inquest

Williams told the Inquest he had trouble understanding the means of communication used by Palm Islanders⁴⁵³. Williams was aware that during the course of the investigation there would be the need to speak to Indigenous people from Palm Island, but admitted he did not take steps to alleviate the problems he has in communicating with them⁴⁵⁴.

Williams admitted he even found it difficult to talk to the PLO, who was from the Palm Island community⁴⁵⁵, but he did not seek any assistance when he was having difficulty communicating

445 IRT transcript, Webber, tape 2, page 22

446 IRT transcript, Webber, tape 2, page 23

447 IRT transcript, Webber, tape 2, page 22

448 IRT transcript, Webber, tape 2, page 23

449 IRT transcript, Webber, tape 2, pp. 18–19

450 IRT transcript, Webber, tape 2, pp. 9, 22

451 IRT transcript, Webber, tape 2, page 22

452 IRT transcript, Webber, tape 2, page 18

453 Inquest transcript, page 478

454 Inquest transcript, page 478

455 Inquest transcript, page 478

with the PLO⁴⁵⁶. Williams said he tried to understand what the PLO was saying as best as he possibly could, and tried to make it as clear as possible⁴⁵⁷.

When asked why he took no steps to alleviate the communication difficulties, Williams said 'the local detectives from Townsville were here and they appear to have a good rapport with the local people'⁴⁵⁸. Williams said he did not ask whether the local detectives from Townsville were effective cross-cultural communicators, but they seemed to have no trouble communicating with people on the island⁴⁵⁹.

Evidence to IRT

Williams told the IRT he doesn't have a problem dealing with Indigenous people in general⁴⁶⁰. In response to the IRT's question 'As a result of any ... and all of those interviews that you conducted ... with Indigenous persons on the island were any complaints received about your demeanour or the way that you dealt with them?' Williams replied, 'Not that I'm aware of'⁴⁶¹.

When asked by the IRT 'logistically how would you have gone about obtaining a support person if one was required? Or would you have left that to the ... R-C-C?' Williams replied that it would have taken days to arrange a support person, if at all⁴⁶². He said there was a risk that if you left Bramwell he would start to forget things and by the time you got a support person there he may have forgotten everything⁴⁶³.

Procedural fairness submission to the CMC

Williams says that the CMC has failed to take into account that the PLO is a trained member of the QPS, employed to fill the role of a police liaison officer and, as such, was not a person with a special need.

He also states that Roy Bramwell was not a person with special needs and points to the transcript of Bramwell's interview as proof — Bramwell did not establish himself in that interview as such a person.

Kitching

Evidence to IRT

Kitching told the IRT that through his experience policing in remote and isolated communities, he had developed a very good communication style for dealing with Indigenous people. Kitching said he has easily dealt with hundreds of Indigenous persons throughout his career⁴⁶⁴. In response to the IRT's question about whether there have been any complaints from people of Aboriginal background against him, Kitching said he is not aware of any complaints⁴⁶⁵ and he's had no problems whatsoever in dealing with Indigenous people throughout his career⁴⁶⁶. He said he has spoken to many Indigenous persons over the years and he still has no issues with obtaining an accurate version from them, it's just a matter of going over the issues to try to get the truth or meaning out of what they're trying to say⁴⁶⁷.

456 Inquest transcript, page 479

457 Inquest transcript, page 479

458 Inquest transcript, page 478

459 Inquest transcript, page 478

460 IRT transcript, Williams, tape 1, page 22

461 IRT transcript, Williams, tape 1, page 25

462 IRT transcript, Williams, tape 1, page 23

463 IRT transcript, Williams, tape 1, pp. 23–24

464 IRT transcript, Kitching, tape 2, page 38

465 IRT transcript, Kitching, tape 2, page 39

466 IRT transcript, Kitching, tape 2, page 38

467 IRT transcript, Kitching, tape 2, page 42

Kitching did not think that a support person was required for any witness at that stage⁴⁶⁸. Kitching said the reason for speaking to the witnesses was to gain information in relation to the circumstances surrounding the death. He said it was simply an open question for the witnesses to tell him what they knew about the incident and there was certainly no pressure placed on the witnesses or any cross-examination of the witnesses, in any way, shape or form⁴⁶⁹.

When asked by the IRT whether there was any reticence by anyone he wanted to talk to, Kitching replied 'None whatsoever'⁴⁷⁰. He said that the witnesses seemed 'quite fine', they certainly weren't hesitant or backward and they were certainly there of their own free will and were willing participants in the interviews⁴⁷¹.

When the IRT asked how he would have logistically gone about obtaining a support person if one was required, Kitching said to his knowledge there were no support persons available on Palm Island but the 'Justice Group' and 'Aboriginal and Torres Strait Island Legal Aid field officers' were included in the process from the start⁴⁷².

Procedural fairness submission to the CMC

In addition to reiterating his evidence to the IRT, Kitching relies upon the fact that none of the witnesses exhibited any fear or reticence, and ventures the explanation that this was because they were not in jeopardy of arrest themselves; they were aware of what had occurred and that 'their special assistance and input was being sought'. He says no witness requested support.

Kitching also points to the fact that the Supreme Court had no criticism to make of the evidence he obtained from the Indigenous witnesses.

Robinson

Evidence to Inquest

At the Inquest, Robinson admitted although interviewing Aboriginal witnesses was his 'bread and butter' on Palm Island, he still experienced communication difficulties with Aboriginal witnesses⁴⁷³ and sometimes he has misunderstood what is being said or what is going on⁴⁷⁴. Robinson said if he misunderstood a witness, then he will ask them what they mean, but agreed 'there are unknown unknowns' and sometimes he may not realise that he doesn't know what is going on⁴⁷⁵.

Robinson agreed there may be a range of factors apart from simply comprehension difficulties that create problems in communicating with a witness⁴⁷⁶.

Robinson confirmed he had not received training in relation to overcoming communication difficulties, and had not asked for any training, despite the fact that questioning almost exclusively Indigenous witnesses on Palm Island was the essence of his job⁴⁷⁷.

468 IRT transcript, Kitching, tape 2, page 39

469 IRT transcript, Kitching, tape 2, page 39

470 IRT transcript, Kitching, tape 2, pp. 40–41

471 IRT transcript, Kitching, tape 2, page 43

472 IRT transcript, Kitching, tape 2, pp. 39–40

473 Inquest transcript, page 1325

474 Inquest transcript, page 1325

475 Inquest transcript, pp. 1325–1326

476 Inquest transcript, page 1326

477 Inquest transcript, page 1326

Procedural fairness submission to the CMC

Robinson suggests that he developed a very good communication style with Indigenous persons and consistently demonstrates empathy and support for them. He notes he was a recipient of a 'reference' from the Palm Island Community Justice Group concerning the significant decline in complaints against police reported to their office since he became the complaints officer.

Robinson says he saw no need to override Kitching's decision that support persons were not necessary, in light of Kitching's significant experience in working with Indigenous people and in the 'emergent and already demanding circumstances of the investigation'. He points to the fact that his very presence would have represented a familiar face to all the witnesses.

Robinson observed that Kitching's interview style did not involve cross-examining. He relies upon exactly the same points as Kitching in his procedural fairness submission about the situation the witnesses were in, and further that no witness requested support.

Acting Assistant Commissioner

Evidence to IRT

The Acting Assistant Commissioner did not recall any discussion with the Acting Chief Superintendent or Webber about providing support for the Indigenous witnesses and said no request was made to him for such support to be provided⁴⁷⁸. The Acting Assistant Commissioner said 'if it was considered necessary and I'll repeat that, if it was considered necessary', S/Sgt Dave Dini, a cross cultural liaison officer, would have been able to identify suitable people to provide support⁴⁷⁹.

The Acting Assistant Commissioner said he was 'not too sure why in this particular case those witnesses needed extra special support⁴⁸⁰. The Acting Assistant Commissioner said the Indigenous witnesses were simply people who were near the police station at the time of the arrest, or at the scene of the arrest, not witnesses to the death⁴⁸¹.

The Acting Assistant Commissioner said had the issue arisen, rather than organise someone from the mainland as commented by the IRT they probably would have looked for a support person from the Community Justice Group on Palm Island⁴⁸². The Acting Assistant Commissioner said this would be better because while there would be no impediment to flying additional people to the island to provide support, it would have been another logistical problem locating someone and preparing them to fly, when there was the need to carry out the investigation expeditiously⁴⁸³.

The Acting Assistant Commissioner said both Kitching and Robinson are experienced in dealing with and talking to Indigenous people, and 'to a large extent Robinson would have been a support to those witnesses⁴⁸⁴. The Acting Assistant Commissioner said his understanding was that Robinson was doing an excellent job on Palm Island, and he had the confidence of the vast majority of the community⁴⁸⁵.

The Acting Assistant Commissioner said he assumed the Human Services Officer was sent to Palm Island primarily to support the police officers, but she was also available to support any private individuals if the need arose⁴⁸⁶.

478 IRT transcript, the Acting Assistant Commissioner, tape 2, page 7

479 IRT transcript, the Acting Assistant Commissioner, tape 2, pp. 7–8

480 IRT transcript, the Acting Assistant Commissioner, tape 2, page 8

481 IRT transcript, the Acting Assistant Commissioner, tape 2, page 8

482 IRT transcript, the Acting Assistant Commissioner, tape 2, page 10

483 IRT transcript, the Acting Assistant Commissioner, tape 2, pp. 10–11

484 IRT transcript, the Acting Assistant Commissioner, tape 2, page 9

485 IRT transcript, the Acting Assistant Commissioner, tape 2, page 10

486 IRT transcript, the Acting Assistant Commissioner, tape 2, page 11

Acting Chief Superintendent

Evidence to IRT

The Acting Chief Superintendent said 'I don't think there was any criticism by any of the witnesses at any time about the way they were treated by police⁴⁸⁷'. He said no-one ever said the police weren't supportive or didn't take an interest, and there's no reason why the Human Services Officer couldn't also be used as a support person for the community⁴⁸⁸. The Acting Chief Superintendent also said Williams arrived on the island on the 20 November 2004, and he did not identify the need for any support persons⁴⁸⁹.

General findings by the IRT

The IRT found that 'no specific obligation from a policy perspective was placed on the investigators to use a support person unless they were of the view that one was needed'.

The IRT said it is not aware of any specific complaints by witnesses about their treatment by the investigators and that 'ATSI Legal Aid field officers' were involved in the process from the outset.

The IRT noted that logistically the investigators sought to identify as many witnesses as possible and obtain versions from them, and the witnesses were not cross-examined to any great extent during these initial interviews.

IRT findings regarding individual officers

The IRT noted that

D/Inspector Webber and D/S/Sgt Kitching have dealt with hundreds of Aboriginal persons as witnesses and have never been the subject of a complaint about the way they have dealt with those persons, by the witnesses themselves or by way of judicial criticism.

The IRT recommended no further action be taken in relation to any officer.

This finding will be discussed in Part 5.

CMC comment

In the CMC's view the original investigating officers did not comply with their obligations under the OPM with respect to dealing with Indigenous witnesses.

In addition to its overall provision for Indigenous persons to be considered as having special needs, whether witnesses or suspects, the OPM clearly stated that when questioning Indigenous persons the existence of a special need should be assumed until the contrary was clearly established.

There is simply no evidence that the question of special need was considered at any point.

Although seven Indigenous witnesses were interviewed, there is no evidence of any action being taken to compensate for the special need such as providing a support person. There is no evidence of the witnesses being offered the opportunity to have a support person. Questioned about this in retrospect, Webber and Kitching both asserted that at no time did they consider that a support person was required.

This matter involved a death in custody of an Indigenous man in a small and predominantly Indigenous community. The investigation involved interviewing Indigenous witnesses about a serious, highly emotive issue in a stressful and potentially intimidating situation. In the CMC's view, clearly consideration should have been given to the question of special need.

487 IRT transcript, the Acting Chief Superintendent, tape 1, page 24

488 IRT transcript, the Acting Chief Superintendent, tape 2, page 24

489 IRT transcript, the Acting Chief Superintendent, tape 2, page 24

In retrospect, Williams described the situation being ‘a pretty ... traumatic event⁴⁹⁰ and a ‘fairly emotional incident⁴⁹¹ for the PLO. It does not appear that the investigation team considered whether it would be traumatic or emotional for the PLO or the other witnesses to be interviewed about Mulrunji’s death, particularly any of those who were not experienced in dealing with police.

The problems associated with questioning Indigenous witnesses have been well documented. Apart from the obvious language comprehension issues, there are a number of other well recognised communication issues, including a history of distrust of police and the criminal justice system, intimidation and a reluctance to speak about certain issues⁴⁹².

This was clearly a situation where the investigation team should have assumed that when conducting interviews with witnesses support persons would be appropriate, or at the very least that they would be offered.

Awareness of issues in relation to Indigenous witnesses

Webber and Kitching’s statements show a significant lack of understanding of what might be involved for an Indigenous person in being interviewed.

Webber said the witnesses were only being asked to give a version of what they saw and what they knew; it was just a straight forward collection of evidence process and the witnesses were quite comfortable talking to the police. Kitching said the reason for speaking to the witnesses was to gain information in relation to the circumstances surrounding the death; it was simply an open question for the witnesses to tell him what they knew about the incident; and there was certainly no pressure placed on the witnesses or any cross-examination. Such views failed to recognise that the PLO at least would be placed in a conflict situation (his role within the police establishment versus his family and cultural loyalties) simply through the very fact of a death in custody. His obvious conflict was expressed by his response when he was asked by Williams in the re-enactment interview what he saw after Hurley and Mulrunji fell in the station:

I can’t remember ... I was thinking, um, if I see something I might get into trouble myself. The family might harass me or something you know⁴⁹³.

Robinson, to whom interviewing Aboriginal witnesses on Palm Island was his ‘bread and butter’, was perhaps more realistic when he acknowledged to the Inquest that he still sometimes encountered communication difficulties with Aboriginal witnesses and that a range of factors apart from simply comprehension difficulties could create problems in communicating with a witness.

The re-enactment interview with the PLO

The alleged difficulty encountered by Webber and Williams during their interview with the PLO is a good example of where engaging a support person may have been useful. In relation to the PLO, the Acting State Coroner said ‘As with many other witnesses, he had difficulty in giving his evidence in court and in making statements to investigating officers⁴⁹⁴’.

490 IRT interview transcript, tape 1, page 26

491 Inquest transcript, page 456

492 In June 1996, the CMC released a report ‘Aboriginal witnesses in Queensland’s criminal courts’ which dealt with the barriers faced by Aboriginal people who are called to give evidence as witnesses in criminal proceedings. The report includes a chapter outlining various socio-cultural and linguistic issues which affect interaction between Aboriginal people and the court system which may lead to misunderstanding. While the report is focussed on Aboriginal witnesses in the court system, the comments which are made are also relevant to the general problems which can be encountered interviewing Indigenous witnesses.

493 The investigators’ failure to pursue this comment with the PLO is discussed in detail in Allegation 6.

494 Finding of Inquest, page 5

Webber⁴⁹⁵, Williams⁴⁹⁶ and Kitching⁴⁹⁷ all admitted they had trouble communicating with the PLO. Despite this, they did not take any steps to alleviate the difficulties or to ensure that they could effectively communicate with him.

Availability of support persons

It was argued that appropriate support persons were not available and that to locate support persons would have delayed the investigation.

The Acting Assistant Commissioner told the IRT that Dave Dini, a cross cultural liaison officer, would have been able to identify suitable support persons, if it was considered necessary⁴⁹⁸, but the investigation team did not contact Dave Dini to request such advice.

While Hurley did not maintain the list of support persons as required under the OPM as he said it was impractical⁴⁹⁹, he said they would usually use the Community Justice Group and he considered it was easy to find a witness assistant if one was needed⁵⁰⁰. Representatives of the Community Justice Group were in fact used to witness the signing of a number of witness statements.

As someone with local knowledge of Palm Island, Robinson should have been able to identify and locate appropriate support persons without delaying the investigation.

There is no evidence to support the assertion by the investigators that it would have been too difficult or time-consuming to locate suitable support persons.

Police officers as support persons

It was suggested that Robinson was used during the investigation as he had a relationship and rapport with the local people; the Acting Assistant Commissioner even said 'to a large extent Robinson would have been a support to those witnesses'⁵⁰¹. It was also suggested that the Human Services Officer could have acted as a support person for the Indigenous witnesses as well as to the police witnesses.

However, it is clearly problematic for a police officer to act as a support person to an Indigenous witness being interviewed in relation to an Indigenous death in custody.

Reliance on Robinson's communication skills

Robinson admitted although interviewing Aboriginal witnesses was his 'bread and butter' on Palm Island, he still experienced communication difficulties with Aboriginal witnesses⁵⁰² and sometimes he has misunderstood what is being said or what is going on⁵⁰³. Robinson said if he misunderstood a witness, then he will ask them what they mean, but agreed 'there

495 Webber told the IRT that the PLO was a 'very reluctant witness...difficult to talk to'. (IRT transcript, Webber, tape 2, page 26). However, Webber also states during the same interview that he believed all witnesses were 'quite comfortable' and that support persons were not required (IRT transcript, Webber, tape 2, page 22).

496 In his interview with the IRT, Williams acknowledged that it was a 'traumatic event' for the PLO (IRT transcript, Williams, tape 1, page 26).

497 Kitching told the IRT that the PLO was quiet, quite shy, quite withdrawn and reasonably hard to understand (IRT transcript, Kitching, tape 2, page 41). Kitching says that the PLO was not difficult to talk to but was difficult to understand as he speaks quietly and is not very articulate (IRT transcript, Kitching, tape 2, page 42).

498 IRT transcript, the Acting Assistant Commissioner, tape 2, pp. 7-8

499 Inquest transcript, page 1279

500 Inquest transcript, page 1279

501 IRT transcript, the Acting Assistant Commissioner, tape 2, page 9

502 Inquest transcript, page 1325

503 Inquest transcript, page 1325

are unknown unknowns' and sometimes he may not realise that he doesn't know what is going on⁵⁰⁴. It is concerning that Webber and Williams made no assessment of Robinson's ability to effectively communicate with the Indigenous witnesses.

The IRT should also have been aware of the CMC's concerns about Robinson's ability to communicate effectively with Indigenous witnesses. After investigating a number of complaints about Robinson's conduct, the CMC advised the QPS⁵⁰⁵ that we consider Robinson's investigation of Hurley in relation to Barbara Pilot's allegation demonstrated Robinson's inability of communicate effectively with Indigenous witnesses and a lack of cultural awareness.

Comments on IRT

In reviewing this allegation, the IRT failed to identify or refer to the obligations under the OPM in relation to interviewing Indigenous witnesses. While its finding that 'there was no specific obligation to use a support person, unless the investigators considered one was required' is technically correct, it ignores the fact that the OPM stated that when questioning people of Aboriginal and Torres Strait Islander descent, whether as a witness or a suspect, the existence of a special need should be assumed until the contrary is clearly established using certain criteria.

We are also concerned about the following findings made by the IRT.

'The Investigation Review Team is not aware of any specific complaints by witnesses about their treatment by police investigators'

The absence of any complaint from an Indigenous witness or expression of concern is hardly conclusive of the fact that the witnesses were comfortable or that support persons were not needed.

Further, Roy Bramwell lodged a complaint with the CMC about the way Robinson dealt with him during his interview. In his complaint, Bramwell alleged that during his interview Robinson threatened him, threw away Bramwell's initial statement and made Bramwell sign an amended statement which did not include the full particulars of Bramwell's evidence. The IRT were aware of this complaint. While this complaint was found to be unsubstantiated, the IRT's assertion that no complaints were lodged by witnesses is incorrect

Given the level of mistrust and tension on Palm Island, we consider it was unlikely that any of the witnesses would lodge a complaint, even if they were not satisfied with the way they were treated. Bramwell did not lodge his complaint about Robinson until some time later. He said he was frightened and concerned for his safety after what Robinson had said to him.

ATSI Legal Aid field officers on Palm Island were involved in the process from the outset

No information has been provided about how 'ATSI Legal Aid officers'⁵⁰⁶ were actually involved in the investigation.

The assistance provided in notifying Mulrunji's family of his death is the only evidence of any ATSILS involvement in this matter. Webber told the IRT that 'Legal Aid' was advised of the matter and had the opportunity to participate but the Legal Aid representative was the daughter of the Mayor and her brother died in jail, so she was unable to provide any assistance⁵⁰⁷.

504 Inquest transcript, pp. 1325–1326

505 CMC letter dated 8 April 2008. We recommended Robinson receive managerial guidance and training in relation to, among other things, the taking of witness statements and communicating with Indigenous persons.

506 It is not clear whether the individual officers are referring to Legal Aid, the Aboriginal and Torres Strait Islander Legal Service or another agency.

507 IRT transcript, Webber, tape 2, pp. 9, 22

Apart from the above, there is no evidence to suggest that any legal service or the Community Justice Group⁵⁰⁸ had any role in providing support to any Indigenous witnesses, or had any role in addressing and overcoming the obvious communication issues. The IRT's reliance upon Webber and Kitching's statements about ATSI Legal Aid officers being involved in the investigation is not sustainable.

'Cross examination of witnesses during these initial interviews was not undertaken to any great extent'

This is not relevant to whether the witnesses have a special need.

Regardless of whether the witnesses were being cross examined, one would think that the investigators would want to get the most detailed and accurate evidence possible in the initial interviews. In order to get this information, the CMC considers that a reasonable person would have anticipated the possibility of communication difficulties and taken steps to address this issue.

Further, section 6.3.6 of the OPM at the time clearly stated:

When an officer intends to question an Aborigine or Torres Strait Islander, **whether as a witness or a suspect**, the existence of a need should be assumed until the contrary is clearly established using the criteria set out in section 6.3.1: 'Circumstances which constitute a special need' of this chapter. [emphasis added]

No specific obligation from a policy perspective was placed on the investigators to use a support person unless they were of the view that one was needed

While the OPM did not impose an express obligation on an investigator to use a support person, section 6.3 of the OPM clearly stated that an officer interviewing a person with a special need was required to establish whether a special need existed and take whatever action is necessary to compensate for that special need. The OPM also stated that being a person of Aboriginal or Torres Strait Island descent creates a special need until the contrary becomes apparent. There is no evidence to suggest that the officers recognised that the witnesses had special needs, let alone considered how to deal with those special needs or took any steps to compensate for the special needs.

Webber and Kitching have never been the subject of a complaint about the way they have dealt with those persons, by the witnesses themselves or by way of judicial criticism

This is completely irrelevant to the issue of whether support persons should have been provided to the Indigenous witnesses in this case.

The potential insufficiency of cross-cultural communication skills within the investigation team highlights the need for clear guidelines and a policy to identify when support persons are needed. It is problematic to leave the decision to engage a support person to the discretion of the investigating officer.

Summary of CMC assessment

Initial QPS investigation

In the CMC's view, the original investigating officers did not comply with their obligations under the OPM with respect to dealing with Aboriginal witnesses. Although the OPM clearly stated that when questioning such witnesses the existence of a special need should be assumed until the contrary was clearly established, there is no evidence that the question of special need was considered at any point.

508 The Community Justice Group was used when the statements of witnesses were read to the witnesses before the statements were signed.

Webber in particular is inconsistent in his statements about communicating with Aboriginal witnesses. In relation to this allegation he told the IRT that he did not think at any stage that a support person was required for any witness. This seems to contradict his claims in relation to the re-enactment interview that the PLO was a very reluctant witness and difficult to talk to and, in relation to taking Hurley to the scene of the arrest, that Hurley was the best person to give an account of the arrest because there were communication problems with the PLO.

It was also argued by Webber and other officers that to locate support persons would have delayed the investigation. As noted in the detailed discussion above, there is no evidence that it would have been too difficult or time-consuming to locate suitable support persons.

Despite their claimed experience in interviewing Aboriginal informants, the statements of Webber and Kitching about 'a straightforward collection of evidence' reveal their lack of real understanding or empathy for the potential difficulties for an Aboriginal witness in giving evidence, particularly in the case of an Aboriginal death in police custody.

IRT findings

In reviewing this allegation, the IRT failed to identify or refer to the obligations under the OPM, already noted, in relation to interviewing Indigenous witnesses. It is difficult to see how the conduct of the officers can be appropriately investigated without reference to the priority given to this issue by the OPM.

The CMC also considers that several of the IRT's findings create the impression of trying to justify the failure of the officers to provide adequate support on the basis of dubious reasons.

For example, a supposed lack of complaints by Aboriginal witnesses cannot be regarded as relevant to whether witnesses were comfortable or that support persons were needed. The fact that Webber and Kitching had not been the subject of a complaint is also irrelevant to whether support persons should have been provided to the Indigenous witnesses in this case. The statement that ATSI Legal Aid field officers were involved from the outset is misleading as they had no involvement in helping with communication problems.

In the CMC's view, this allegation also illustrates the way in which the IRT largely deal with the various criticisms in isolation, rather than considering the totality of the conduct of the officers. For example, they seem to accept Webber's statement that he believed the witnesses were quite comfortable talking to the police without questioning him about his contrary statements on two occasions about the PLO (noted above).

In the CMC's view, the IRT has shown little understanding of the provisions specifically established by the QPS to help ensure that investigators of a death in custody are able to obtain the best evidence from Aboriginal witnesses.

ALLEGATION 9: NOTIFICATION OF THE DECEASED'S FAMILY

Background

The Acting State Coroner was critical of the fact that Mulrunji's family were not immediately notified of his death and that family members were sent away from the police station, including by Hurley, without being notified of Mulrunji's death⁵⁰⁹.

In terms of official police procedure, the OPM at the time provided that where responsibility for the investigation reverts to a commissioned officer pursuant to section 1.17, that commissioned officer should immediately arrange for the deceased's next of kin to be notified⁵¹⁰.

RCIADIC's recommendation in relation to notification of a death provided:

19. That immediate notification of death of an Aboriginal person be given to the family of the deceased and, if others were nominated by the deceased as persons to be contacted in the event of emergency, to such persons so nominated. Notification should be the responsibility of the custodial institution in which the death occurred; notification, wherever possible, should be made in person, preferably by an Aboriginal person known to those being so notified. At all times notification should be given in a sensitive manner respecting the culture and interests of the persons being notified and the entitlement of such persons to full and frank reporting of such circumstances of the death as are known

The IRT considered the allegation 'Notification of the deceased's family'.

Context

Some time after 11.30 am on 19 November 2004, Mulrunji's partner, Tracey Twaddle, and her niece approached the police station, where an ambulance was in attendance. Her niece asked at the police station who the ambulance was for and was told it was for Chris Hurley. Tracey Twaddle returned to the police station sometime after 1 pm to ask when Mulrunji would be released. Hurley told her to come back at three o'clock and did not advise her of Mulrunji's death⁵¹¹.

Mulrunji's family was notified of his death by Detective Inspector Webber, accompanied by Sergeant Leafe and Owen Marpoondin of the Aboriginal and Torres Strait Islander Legal Service (ATSILS). Ms Twaddle was notified at about 3:40 pm and Mulrunji's mother, and other family members were notified at about 3.55 pm.

Key issues

The failure to immediately arrange for Mulrunji's next of kin to be notified of his death raises the following issues:

- As the officer responsible for the investigation, what was Webber's key responsibility in relation to notifying the next-of-kin in the event of a death in custody?
- Did he clearly communicate his decision to those involved?

509 Finding of Inquest page 27

510 Section 16.24.3(vi). We note that section 8.4.3 of the OPM also provided that the investigating officer is responsible for 'advising relatives'. While there is an inconsistency in the OPM about who is responsible for notification, as the evidence will show, Webber took responsibility for notifying the family.

511 We assume the QPS will deal with this issue when considering Hurley's conduct in the second part of its investigation, as described in the executive summary of the QPS report as 'the matters relating to Senior Sergeant Hurley'.

What the police said

Webber

Evidence to Inquest

At the Inquest, Webber said he made no arrangements for the family to be notified before he arrived on the island, as he expected the notification to be his responsibility⁵¹². He believed, under the circumstances, it was appropriate for a senior police officer to notify the family and reassure the mother of the deceased that a proper investigation would be conducted into the death⁵¹³.

Webber stated that where the officer in charge of the station and the police liaison officer were actually involved in the incident, they simply could not be used to notify the family⁵¹⁴. He told the Inquest that under other circumstances, he would have been comfortable with the officer in charge notifying the next of kin, but he did not believe it was appropriate in this case⁵¹⁵.

Webber said he was concerned that they weren't able to notify the family as promptly as would be desirable, but he didn't think it was appropriate to have a junior officer or one of the people actually involved in the incident to notify the family⁵¹⁶. Webber thought both parties, the family and the officer, would ultimately be uncomfortable with the situation⁵¹⁷. Webber said once he arrived on Palm Island, he treated notifying the family as a priority⁵¹⁸.

It was noted at the Inquest that although Webber had referred to the difficulties and the appropriateness of police involved in the incident informing the family, he took Leafe with him to notify the family⁵¹⁹. Webber said Leafe was there 'simply as an observer to show me where to go, and to drive' but also admitted that Leafe was present when he spoke to the family⁵²⁰.

Evidence to IRT

Webber told the IRT when he met with members of Mulrunji's family he gave them his condolences and assured them about the future of the investigation. Webber said he considered it was the role of a senior officer, and someone who was more senior than Hurley, to express the viewpoint that the QPS would investigate the matter thoroughly⁵²¹.

Webber said he indicated that he was going to contact and advise the family and that message may have gotten back to Palm Island through Strohfeldt, as he did not speak to Hurley on the Friday before he arrived on Palm Island⁵²².

512 Inquest transcript, page 719

513 Inquest transcript, pp. 719, 726

514 Inquest transcript, page 726

515 Inquest transcript, page 726

516 Inquest transcript, page 725

517 Inquest transcript, page 725

518 Inquest transcript, page 719

519 Inquest transcript, page 748

520 Inquest transcript, page 748

521 IRT transcript, Webber, tape 2, page 19

522 IRT transcript, Webber, tape 2, pp. 20–21

Webber also said:

We were also concerned about the potential ... for unrest on the island and the situation in relation to the crime scene where we potentially had the ... the family members and everything turning up at the station etcetera and basically ... confronting ... the police there⁵²³. So ... I was more...than comfortable that ... Senior Sergeant HURLEY and the police at Palm Island ... did not and... shouldn't have ... advised the ... family what was going on until we arrived.⁵²⁴.

Wilson

Evidence to IRT

Wilson⁵²⁵ was advised of the death by Hurley at about 1 pm on 19 November 2004, on his day off⁵²⁶. Wilson said during that conversation, he instructed Hurley that Mulrunji's relatives were to be notified at the earliest possible opportunity⁵²⁷.

Wilson said he did not have an expectation that Hurley would advise the relatives⁵²⁸, but that he didn't give any thought to who would notify the family⁵²⁹. Wilson said he would expect that if the family or next of kin were on Palm Island, one of the police there would notify them at the earliest opportunity, whether that be Hurley, one of the other officers, or whoever went over to do the investigation⁵³⁰.

When the IRT questioned Wilson further about the situation where all the police on the island were involved in the arrest, and whether they should still notify the family, Wilson said he didn't think he could answer the IRT's question with a 'yes' or a 'no'. He said you've got to look at what the important issue is, that is whether the family should be notified and when they should be notified. He said if the circumstances were such that the officers on the island should notify the family, or they were the most suitable or practical to tell them, they should do it⁵³¹.

Acting Assistant Commissioner

Evidence to IRT

The Acting Assistant Commissioner was not aware of who eventually notified the family of Mulrunji's death⁵³² but considered it was the responsibility of the investigators to ensure that it was done⁵³³. The Acting Assistant Commissioner said he knew there was some delay here, but he couldn't give any reasons about why⁵³⁴. He said it is obviously desirable that the family is notified as soon as practical⁵³⁵.

In answer to a question about what processes he would put in place if a similar situation occurred tomorrow, the Acting Assistant Commissioner said it would be desirable to appoint a person to liaise with the family⁵³⁶.

523 It is not clear whether Webber meant he was aware that family members had attended the station and been turned away, or was concerned about the possibility of family members attending the station after they were advised of Mulrunji's death. The matter is not pursued by the IRT.

524 IRT transcript, Webber, tape 2, page 21

525 At the time of Mulrunji's death, Wilson was the Acting Superintendent, District Officer, Townsville District.

526 IRT transcript, Wilson, page 4

527 IRT transcript, Wilson, page 5

528 IRT transcript, Wilson, page 6

529 IRT transcript, Wilson, page 8

530 IRT transcript, Wilson, page 8

531 RT transcript, Wilson, page 8

532 IRT transcript, the Acting Assistant Commissioner, tape 2, page 13

533 IRT transcript, the Acting Assistant Commissioner, tape 2, page 14

534 IRT transcript, the Acting Assistant Commissioner, tape 2, page 13

535 IRT transcript, the Acting Assistant Commissioner, tape 2, page 13

536 IRT transcript, the Acting Assistant Commissioner, tape 2, page 15

Acting Chief Superintendent

Evidence to IRT

The Acting Chief Superintendent told the IRT he had no role in the issue of when the family was notified and was not aware of what processes were put in place to advise the family of Mulrunji's death⁵³⁷.

The Acting Chief Superintendent considered the notification was a matter for the investigation team to determine when and how the family would be notified, and he would expect the notification to be done by someone within that team⁵³⁸. He suggested the notification could be done by the Human Services Officer accompanied by someone like Robinson, due to his local knowledge⁵³⁹. After further questioning by the IRT, the Acting Chief Superintendent said he expected that Webber would arrange for the family to be notified⁵⁴⁰. The Acting Chief Superintendent did not give Webber any direction in relation to the issue and had no prior knowledge of Hurley turning the family away from the station before they were notified of Mulrunji's death⁵⁴¹.

The IRT then put to the Acting Chief Superintendent 'Just ... so I'm clear ... you wouldn't have expected Senior Sergeant Hurley to advise the family would you given that he was the arresting officer involved in the death in custody?', to which the Acting Chief Superintendent replied 'I had the expectation that the family would have been advised as soon as possible. Alright, that's my expectation'⁵⁴². He continued:

Now when I say as soon as possible is that HURLEY or WEBBER or somebody should have advised ... the family as soon as possible but they would have other issues and there might be reasons why they advised the family when they did ... Now whether HURLEY waited for some reason or other for the people, for the other police to come over so he had other support there when he advised the family I can understand why he would do it, I'm not saying it was right, but I can understand why he did it. Whether Warren WEBBER delayed it for some other reasons for different things ... there would be reasons for it. But ... as a matter of course ... the family ... should have been advised as soon as possible.

The Acting Chief Superintendent said in future, he would take a more active role in notifying the family⁵⁴³.

Significant event message

At 1.04 pm Senior Sergeant Jenkins sent a Significant Event (SIGEV), Computer Message number 584 on the police computer system to SIGNOR which relevantly stated under the heading 'Particulars of Incident': 'Palm Island police presently making arrangement for notification of the NOK.'

Jenkins

At the Inquest, Jenkins said he prepared the Significant Event message and the majority of the information in the message was from Hurley. Jenkins said Hurley probably gave him the information about the arrangements for notifying the next of kin, but he could not be one hundred percent sure⁵⁴⁴.

537 IRT transcript, the Acting Chief Superintendent, tape 2, page 30

538 IRT transcript, the Acting Chief Superintendent, tape 2, pp. 30–31

539 IRT transcript, the Acting Chief Superintendent, tape 2, page 31

540 IRT transcript, the Acting Chief Superintendent, tape 2, page 31

541 IRT transcript, the Acting Chief Superintendent, tape 2, page 31

542 IRT transcript, the Acting Chief Superintendent, tape 2, pp. 34–35

543 IRT transcript, the Acting Chief Superintendent, tape 2, page 34

544 Inquest transcript, page 781

General findings by the IRT

The IRT supports Webber's decision to personally notify Mulrunji's family, given that the two most senior officers on the island had been directly involved in the incident.

The IRT found that:

S/Sgt Hurley and Sgt Leafe had been directly involved in the care of Mulrunji prior to his death in custody. A crime scene had been established at the Palm Island Station. There were no other senior officers available. Prior to the arrival of the investigation team, the only police available that were not involved in the care of Mulrunji were Constables.

D/Inspector Webber had taken control of the incident. In the absence of any direction to the contrary, S/Sgt Hurley was required to make a judgement call as to notification of the deceased's next of kin ...

Given that the two most senior officers on Palm Island had been directly involved in the incident and the fact that senior officers who had not been involved in the incident were on their way to Palm Island directly, it was appropriate that S/Sgt Hurley did not take it upon himself to inform the family, or direct Sgt Leafe or other officers to do so. No matter how distressing for the family, it can be plainly seen that it could be just as distressing, if not more distressing, for them to be advised of the death by the officers directly involved in same. Given he was the arresting and then custody officer, had S/Sgt Hurley informed the family prior to the investigation team arriving, he could have been criticised for being at best, unsympathetic to the family.

IRT findings about individual officers

The IRT found that 'Webber correctly assumed that officers on the Island would wait for him to make a decision as to notification of next of kin' and that 'Webber's decision to take responsibility for notification was appropriate. His reasoning, as outlined at the Inquest, was logical and should be supported'.

The IRT recommended no further action be taken in relation to Webber's conduct.

The IRT recommended that the Acting Chief Superintendent be chastised and receive guidance in relation to a number of specific issues, including his failure to give directions or advice to Hurley or the investigation team about notification of Mulrunji's death. The IRT note that the Acting Chief Superintendent has retired from the QPS.

These recommendations are considered in Part 5.

CMC comment

In the CMC's view, the delay in notifying the family of Mulrunji's death was not acceptable. It was more important for the family to be notified without delay than it was to be notified by a senior officer. Another officer, such as Leafe⁵⁴⁵ or Tonges⁵⁴⁶, could have respectfully and sensitively carried out this responsibility, probably with the support of a member of ATSILS⁵⁴⁷. They could also have assured the family that the senior officer responsible for the investigation would visit them as soon as he arrived on Palm Island.

545 It is noted that Leafe accompanied Webber when the family was notified and there does not seem to have been any objection from the family about Leafe's presence. Leafe had no involvement in Mulrunji's arrest and while he had some involvement in his custody, it would have been appropriate for Leafe to have advised the family of Mulrunji's death.

546 While Tonges, an Acting Senior Constable, was a relatively junior officer, he had been stationed on Palm Island since April 2003. It is reasonable to assume that during this time Tonges established a relationship with the community, and would have been capable of notifying the family of Mulrunji's death. As he had no involvement in Mulrunji's arrest or detention, it would have been appropriate for Tonges to have notified Mulrunji's family.

547 When Webber notified Mulrunji's family, he was accompanied by a members of ATSILS.

We agree with Webber that it was important for the senior officer to talk personally to the family but we do not believe that the notification of Mulrunji's death should have been significantly delayed on this account. The distress caused by this was only exacerbated by family members inquiring about him having been turned away from the station earlier in the day⁵⁴⁸.

Webber's key responsibility in relation to notifying family

As the officer responsible for the investigation, it was Webber's responsibility to 'immediately arrange' for notification of the deceased's family — that is, attend to this matter immediately or arrange to have it done promptly, but not necessarily do it himself.

Webber said that notifying the family was best done by a senior officer and that it was not appropriate for this to be done by officers involved in the incident. He does not seem to have considered other reasonable and much more timely alternatives, as outlined above. He was also concerned about the need to keep 'the crime scene intact' and that upset family members might turn up at the police station and put pressure on the police.

While these are all significant issues, the OPM required Webber to immediately arrange for Mulrunji's next of kin to be notified. In countenancing a substantial delay for this, Webber made an error of judgment.

Priorities of other senior officers

In exploring this allegation, the IRT pressed senior officers Wilson and the Acting Chief Superintendent about what they would have done in such a situation. In each case, while they appear reluctant to criticise the actions of Webber or Hurley when they don't know all the circumstances, they do express the same priority — the need to advise the family as soon as possible.

Unclear communication on this issue

From the available evidence, it is unclear whether Webber clearly communicated his decision and, if so, to whom. Though Webber said he indicated he intended to advise the family, and thought that this message may have gone back to Palm Island via Strohfeldt, the evidence does not give a clear picture. Wilson said that he instructed Hurley around 1.00 pm that Mulrunji's relatives were to be notified at the earliest possible opportunity, and the SIGEV sent out around this time also stated that Palm Island police were 'presently making arrangements for notification of the NOK', with the information Jenkins said he probably received from Hurley.

The IRT makes a similarly contradictory finding that:

D/Inspector Webber had taken control of the incident. In the absence of any direction to the contrary, S/Sgt Hurley was required to make a judgement call as to notification of the deceased's next of kin ...

... it was appropriate that S/Sgt Hurley did not take it upon himself to inform the family, or direct Sgt Leafe or other officers to do so.

Obviously, it is essential that in such situations the responsible officer should make an immediate decision about who should notify the family, and that this should be communicated promptly and clearly to all officers involved.

548 There is no evidence to suggest that when making his decision to personally notify the family, Webber was aware that Tracey Twaddle had been turned away from the station without being notified of Mulrunji's death.

Comment on IRT review

The IRT findings are puzzling. They support Detective Inspector Webber's decision to personally notify the family of the death, expressing the view that the distress of the family caused from hearing of Mulrunji's death from officers directly involved in the incident would be greater than that caused from a lengthy delay in being informed of the death. This is stated with the benefit of hindsight and the knowledge of how significant an issue the late notification of the family became for the Palm Island community.

The IRT supports Webber's decision, yet recommended that the Acting Chief Superintendent be chastised and receive guidance for failing to advise Webber. They also appear, like Webber, not to have considered the other options. They seem inconsistent in their views about the involvement of officers in the incident — for example, sometimes referring to the 'only police not involved' being constables, yet pressing Wilson as to whether they should still notify the family in 'the situation where all the police on the island were involved in the arrest', when that was simply not the case.

Summary of CMC assessment

Initial QPS investigation

In the CMC's view, the delay in notifying the family of Mulrunji's death was not acceptable.

The OPM required Webber, as the officer responsible for the investigation, to immediately arrange for Mulrunji's next of kin to be notified — that is, to ensure that this was carried out promptly but not necessarily do it himself. In countenancing a substantial delay and not considering other reasonable and more timely alternatives — such as Leafe or Tonges, with the support of a member of ATSILS — Webber made an error of judgment.

From the available evidence, it is uncertain whether Webber clearly communicated his decision and, if so, to whom. Obviously, in such situations it is essential that the responsible officer should make an immediate decision about who should notify the family, and that this should be communicated promptly and clearly to all officers involved.

IRT findings

The IRT findings support Detective Inspector Webber's decision to personally notify the family of the death. This is puzzling given the strong emphasis given to immediate notification in both the OPM and the RCIADIC recommendations.

In believing that notification by officers involved in the arrest would be even more distressing for the family, the IRT seem not to have considered the other available options mentioned above; Leafe's involvement was clearly far less than Hurley's and Tonges was also available.

In asking other senior officers how they would have responded in such a situation, the IRT engage in hypothetical questions which do not reflect the actual situation that faced the officers at the time — for example, asking Wilson if all the police on the island were all involved in the arrest whether they should still notify the family. Since this was clearly not the case, it conveys the impression that the IRT are trying to justify Webber's decision. Similarly, while they imply that Hurley was not given sufficient direction, they fail to state the obvious corollary — that since Webber 'had taken control of the incident', he should have communicated clearly with Hurley on a number of issues, including who should notify the family.

In the CMC's view, the IRT's investigation of this allegation is unsatisfactory.

ALLEGATIONS 10, 11 & 12: FORENSIC PROCESSES, INVESTIGATIVE PROCESS, CONTROL OF THE INCIDENT

The *Palm Island Review* states the IRT identified a range of related issues as lines of inquiry, which are addressed in the report or in the interviews of the subject officers. These related issues appear to be those discussed in the following three allegations.

Allegation 10: Forensic processes

The IRT raises a number of perceived deficiencies in the investigation of Mulrunji's death, and suggests that these occurred as no responsible officer had an opportunity to review the investigation prior to its hand over to the CMC.

The only evidence referred to in this allegation by the IRT concerns the failure to seize Hurley's uniform for examination, and the fact that management of the crime scene and other officers prior to the investigation team's arrival appears to have been left to Hurley.

The IRT also seems to be suggesting that the forensic team was not appropriately supervised or given appropriate direction. However, this is not clear and no findings or recommendations are made in relation to Arthy or any of the officers responsible for conducting the forensic inquiries.

Finally the IRT particularly notes that no detailed plan or crime scene reconstruction was prepared, but has not indicated how they addressed this issue.

Hurley's management of the crime scene

The CMC is of the view that the only issue raised in this allegation that warranted consideration relates to Hurley's management of the crime scene until the investigation team arrived.

The issue of what, if any, instructions were given to Hurley about the management of the crime scene until the investigation team arrived is an important one. The issue was canvassed by the IRT during interviews with a number of the officers, but no findings or recommendations are made about the failure to provide Hurley with advice or directions, except in relation to the Acting Chief Superintendent.

Section 1.17 of the OPM at the time provided that the regional duty officer who is notified or who becomes aware of such an incident is to among other things:

- (ii) assume command and control of the situation pending the arrival or involvement of the regional crime coordinator...
- (v) wherever practicable, ensure that members who are involved in the incident, or who are witnesses to the incident, do not undertake, or continue to perform duties associated with the investigative process, or other duties at the scene...

What the police said

Strohfeldt

The IRT asked whether Strohfeldt had given Hurley any general advice about the crime scene or managing the station, Strohfeldt said 'I may have, I can't remember'⁵⁴⁹. The IRT asked

Did you assume ... that either the Acting Chief or the Detective Inspector would've given some direction about how the general duties policing was to continue on the ... island until the team got there?

To which Strohfeldt replied 'I would have thought so ... I don't know whether they did or not but I would have thought so'⁵⁵⁰.

549 IRT transcript, Strohfeldt, page 6

550 IRT transcript, Strohfeldt, page 29

Webber

When asked whether he gave Hurley any instructions about the management of the crime scene until he arrived on Palm Island, Webber said he did not actually speak to Hurley before he arrived⁵⁵¹.

Webber told the IRT Hurley was in charge of the crime scene and he was not aware whether Hurley was given any instructions, advice or directions about what to do with the crime scene⁵⁵². Webber went on to say that giving Hurley any advice or instructions would be

a double-edged sword too in the sense that if something improper had occurred and I'm not saying ... there was, but if something improper had occurred ... to actually go down and highlight the sort of issues that you were going to... be investigating ... given that you're leaving that person in charge of the scene, it's like telling a person that's rung up to ... say I've found the body of my ... wife in blood in the bedroom and then given that person a direction as ... to what you're gonna do ... The forensic examination is going to be conducted in the bedroom, we're going to have this done and that done etcetera. I mean what they're gonna do, clean the place up ... So you can be too specific⁵⁵³.

Kitching

When asked whether he would assume that Hurley would remain in charge of the crime scene until the investigation team arrived, Kitching replied 'he would've, yes'⁵⁵⁴, and was not asked any further questions about the issue.

Wilson

The IRT asked Wilson whether he gave Hurley any directions about the ongoing operational management of the station. Wilson said 'I don't have a recollection of whether I did or I didn't'⁵⁵⁵.

Acting Chief Superintendent

The Acting Chief Superintendent did not give any instructions about how the crime scene was to be managed between the time of death and the time the investigation team arrived, and said he expected that Webber would manage that⁵⁵⁶.

Acting Assistant Commissioner

The Acting Assistant Commissioner gave no instructions or directions about the crime scene. He considered it was Webber's responsibility, but was not aware of whether Webber gave any instructions⁵⁵⁷.

CMC comment

It is not clear why the IRT canvassed this issue during the interviews, mentions in the evidence section of the report that management of the crime scene was left to Hurley until the investigators arrived, but then makes no findings or recommendations about the issue.

We consider Hurley should have been given some advice or instructions about the management of the crime scene. It would have been appropriate for Webber, as the officer in charge of the investigation, or the regional duty officer, to have provided such advice to Hurley.

551 IRT transcript, Webber, tape 1, page 23; tape 2, page 15

552 IRT transcript, Webber, tape 2, page 17

553 IRT transcript, Webber, tape 2, pp. 17–18

554 IRT transcript, Kitching, tape 2, page 30

555 IRT transcript, Wilson, pp. 14–15

556 IRT transcript, the Acting Chief Superintendent, tape 2, pp. 11, 15–16

557 IRT transcript, the Acting Assistant Commissioner, tape 2, pp. 1–2

The IRT recommended that the Acting Chief Superintendent be chastised and receive guidance about his failure to give directions or advice about a number of issues including his failure to give directions or advice to:

- Hurley about the management of the Palm Island Police Station and the death in custody from the time of death; and
- all of the investigation team about control of the scene and its examination or about the investigation.

We are concerned that the IRT has only identified the Acting Chief Superintendent as someone who should have provided advice or directions to Hurley about the management of the crime scene and to the investigation team about control of the scene.

Crime scene reconstruction

The IRT states 'Of particular note in the Investigation Review Team's view was the need for a detailed plan or crime scene reconstruction.' The CMC has not been provided with a copy of the reconstruction or with any details of what was actually involved in the IRT coordinating the development of a more detailed plan or crime scene reconstruction.

The IRT further states 'In its first week of inquiries it appeared to the Investigation Review Team that a physical reconstruction would assist in understanding what may have occurred.'

The IRT noted that a question was asked by a juror during Hurley's criminal trial about how wide the doorway was that Hurley and Mulrunji fell through. On 18 January 2007⁵⁵⁸, the CMC provided the IRT with a copy of a scale floor plan of the Palm Island police station and court house, as it was in November 2004⁵⁵⁹. The width of the doorway clearly could have been established from the sketch plan of the Palm Island police station, and in any event has no relevance to the matter the IRT was investigating.

Allegation 11: Investigative process

Under this allegation the IRT appears to have considered three issues: the fact a witness had not been identified prior to coming forward to the DPP, the need for investigations to be independent and be seen to be independent, and the inference that Hurley could see and hear witness interviews. The report does not contain any excerpts or refer to any specific parts of the interview transcripts in support of its findings.

Witness not been identified

The IRT considers it would seem unreasonable to hold one investigator responsible for not identifying the additional witness. They do not identify who this person is⁵⁶⁰. As the witness has not been identified by the IRT, the CMC cannot make any further comment in relation to this issue.

Need for independent investigation

The IRT comments that '(t)he need for investigations to be seen to be independent has in part been strengthened by the Service's decision to ensure all like incidents are investigated by the ESC or the CMC.' It is interesting to note that the IRT commented:

Clear controls and strategies need to be put in place by the officer in charge of the investigation to ensure that investigations remain independent and are seen to be independent. The issue of separation of witnesses would form part of this process

558 Hurley's criminal trial ran from 12 June 2007 to 20 June 2007.

559 We also provided a scale plan of the scene of Mulrunji's arrest. Sketch plans were attached to a number of witness interview transcripts conducted by CMC officers, identifying where relevant events took place.

560 The additional witness referred to may be David Murray, the photocopier technician, who was identified by Leafe during discussions with the DPP in December 2006.

yet it did not hold Webber, the officer in charge of the investigation, to this standard. It is not entirely clear why the IRT decided to specifically comment on this issue as part of this allegation.

Hurley could see and hear witness interviews

The IRT says that it was inferred during questioning at the Inquest that Hurley was capable of seeing and hearing interviews conducted with witnesses. Information had been provided by Roy Bramwell, Leafe and Robinson which indicated there may have been a mirror in the police station. Subsequently the CMC received and passed on to the IRT information about the presence of a mirror between Hurley's office and the front counter.

The IRT said it found no direct evidence that Hurley could have heard or seen any interviews with witnesses conducted by police.

What the police said

Webber

Webber told the IRT Hurley was not capable of seeing or hearing any of the interviews he conducted or was involved in while on Palm Island⁵⁶¹. He said the interviews with police and witnesses on the Friday night took place in the CIB office and Hurley certainly was not there⁵⁶². Webber said Bramwell's interview on Saturday morning also took place in the CIB office. During the re-enactments, Webber said Hurley was in his office and the door was definitely closed⁵⁶³.

Kitching

Kitching told the IRT Hurley was not capable of hearing or seeing any of the interviews he conducted on Palm Island⁵⁶⁴. Kitching said he didn't know where Hurley was while he was conducting interviews and said Hurley was going about his normal duties as he had to maintain the management of the police station⁵⁶⁵. Kitching said he conducted his interviews in a closed room, and while he wouldn't know if someone was standing outside the room, you couldn't hear the interview from outside the room⁵⁶⁶.

Williams

When asked by the IRT whether Hurley was capable of hearing or seeing any of the interviews he conducted on Palm Island, Williams replied 'Not that I'm aware of, no.'⁵⁶⁷ He said Hurley was nowhere near where the interviews or re-enactments were being conducted⁵⁶⁸.

Other evidence

Information had been provided by Bramwell, Leafe and Robinson which indicates there may have been a mirror in the police station. While Bramwell discussed a mirror in the corridor which allowed him to see down the hallway of the police station⁵⁶⁹, Leafe and Robinson spoke about a mirror in Hurley's office.

561 IRT transcript, Webber, tape 2, page 33

562 IRT transcript, Webber, tape 2, pp. 33–34

563 IRT transcript, Webber, tape 2, pp. 34–35

564 IRT transcript, Kitching, tape 3, page 17

565 IRT transcript, Kitching, tape 3, pp. 17–18

566 IRT transcript, Kitching, tape 3, pp. 18–19

567 IRT transcript, Williams, tape 1, page 39

568 IRT transcript, Williams, tape 1, pp. 39–40

569 Bramwell provided information to the CMC about a mirror in the Palm Island police station during interviews conducted in October 2006.

In December 2006, the CMC received information from the DPP that, during a discussion with Leafe, he revealed there was a small mirror in Hurley's office or thereabouts but did not know about a mirror in the corridor.

Hurley denied there was a mirror in the corridor and said the windows at the front counter had mirror strips, but there were no other mirrors in the station apart from in the bathrooms⁵⁷⁰.

On 21 and 22 January 2008, Robinson was questioned by the CMC about the possible existence of a mirror. Initially, he denied the existence of any mirror of the nature described by Bramwell. Upon further questioning, Robinson said after the burning of the police station he became aware of a two way mirror between Hurley's office and the front counter. Robinson claimed the mirror was covered by a whiteboard or something similar⁵⁷¹. He said this mirror was positioned so that while sitting in the day room, you could look in the mirror and see the counter.

CMC comment

Conflicting evidence is provided by Webber and Kitching about where Hurley was while the interviews were being conducted. If, as stated by Kitching, Hurley was going about his usual duties while interviews were being conducted, it may have been possible for him to hear or see the re-enactment interviews being conducted.

Webber said Hurley was in his office with the door closed during the re-enactment interviews. From viewing the videos, it can be seen that the door to what appears to be Hurley's office is closed during Bramwell's interview but open during Leafe and the PLO's interviews.

Further, part of the re-enactment with Bramwell takes place right outside the door to Hurley's office. Unfortunately as the police station was destroyed in the riots, it cannot be determined whether someone inside that office would be able to hear conversations which took place outside the office.

The CMC raised the possible existence of a mirror with the IRT on a number of occasions⁵⁷². The CMC advised the QPS that we believed the IRT needed to consider this issue as they were going to interview Leafe and Hurley, and as the IRT had the capacity to access past records of the Palm Island police station to determine whether a mirror did exist.

The issue was canvassed in the third inquest during which evidence was called from a number of witnesses.

In considering this issue, the IRT appeared to have simply asked Webber, Williams and Kitching where Hurley was while the interviews were being conducted, and whether he would have been able to see or hear the interviews.

In their later procedural fairness submission to the CMC, the IRT advised that they considered the video re-enactments and photographs and came to the view that it is 'clear from this material that there is no mirror in the corridor that allows Bramwell to see down the corridor'. In relation to a mirror in Hurley's office, the IRT stated they examined the plans of the Palm Island Police station, and based on this, the re-enactments and photographs, they concluded

570 During questioning on 30 August 2007

571 During the re-enactment interview with Leafe, the door to what appears to be Hurley's office is open and it appears there is a notice board on the wall.

572 During a conversation with a member of the IRT, the CMC raised Bramwell's claim of a mirror on 22 June 2007. During another conversation on 2 November 2007, the CMC raised the issue of interviewing Robinson about the positioning of a mirror. In a letter to the QPS dated 8 April 2008, the CMC noted a number of matters of relevance to the IRT, including the possible existence of a mirror in the corridor of the police station, and advised that full details were in the CMC Investigation Report provided to the QPS at that time.

that even if a mirror did exist, ‘what may have been seen were glimpses of Bramwell and others walking a distance of one or two metres from where he was seated during the interview to an area that is clearly out of sight over a period of a few seconds’.

Allegation 12: Control of the incident

The IRT states ‘The above allegations⁵⁷³ and matters raised during this investigation demonstrated the importance of command and control of the incident.’ Apart from the comment ‘the Acting Assistant Commissioner ... provided the following with respect to matters related to command and control’, followed by extracts from the IRT interview with the Acting Assistant Commissioner, there are no findings, conclusions or recommendations in relation to this allegation.

CMC comment on allegations 10, 11 and 12

The inclusion of these allegations in the IRT report is confusing. The allegations themselves are vague, and the evidence, findings and recommendations provide little further detail.

The CMC is of the view there are two issues identified in these three allegations which warranted consideration by the IRT — Hurley’s management of the crime scene and whether Hurley could see or hear witness interviews, but they are not comprehensively dealt with.

As the IRT obviously decided to consider issues other than those raised by the Acting State Coroner in her findings, in the CMC’s view there were numerous other, more significant, issues which could have been investigated. In Chapter 10, we will outline some further issues that we believe should have been considered by the IRT.

⁵⁷³ Appears to be a reference to all the previous Allegations 1–11.

AREAS OF THE INITIAL QPS INVESTIGATION NOT COVERED BY THE *PALM ISLAND REVIEW*

In Chapter 9 we outlined a number of serious concerns about the way the initial QPS investigation was conducted, and the manner in which the IRT considered the main allegations. In this chapter we will briefly outline other issues which in the CMC's view should have been investigated but were not; in some cases, by the initial investigation and in others by the IRT in the *Palm Island Review*.

These issues are:

1. the provision of inaccurate or incomplete information to senior officers and decision-makers
2. failures in the questioning of Senior Sergeant Hurley
3. issues relating to Roy Bramwell, and
4. failure to pursue other lines of questioning.

Some of these issues were raised during questioning at the Inquest, the transcript of which the IRT states they considered. Others would also have been evident from the extensive information and material, relevant to consideration of the initial QPS investigation, provided by the CMC to the IRT⁵⁷⁴.

While these additional issues reinforce our concerns, we do not consider examining the issues in great detail will add sufficient value to this report to justify the amount of time necessary to do so. We consider it is more important to identify these issues and bring them to the attention of the QPS, to ensure future investigations of deaths in custody are thorough, competent and impartial.

We also note that this information was provided to Mr Brian Hine, the Coroner appointed to the third inquest.

1. Provision of inaccurate or incomplete information

One of the important concerns in responding to a death in custody is that accurate information be provided to decision-makers and senior officers within the QPS and the CMC immediately following the death and at various stages during its investigation and, of course, to the Coroner.

It appears from the evidence that, during the course of this matter, inaccurate or incomplete information was provided on a number of occasions.

574 Prior to the establishment of the IRT, in response to the request of the QPS, the CMC provided access to the extensive information and material that it had gathered as a result of its investigation of Mulrunji's death and other matters concerning Senior Sergeant Hurley. The CMC continued to provide the IRT with further related information and material during the course of the IRT investigation.

The evidence

Significant event message

At 1.04 pm Jenkins sent a Significant Event (SIGEV), Computer Message number 584 on the police computer system to SIGNOR, attention ALL, which noted Webber as the 'Investigation Officer' and Strohfeltd as the 'RDO/Commissioned Officer Attending/Responsible'. Under the heading 'Particulars of Incident' it stated:

The deceased and Patrick Nugent were arrested in the Palm Island Community, for creating public nuisance and drunk respectively, by Snr. Sgt. Chris Hurley who was assisted by [the PLO] at 1026hrs. On arrival at the Watchhouse the deceased was uncooperative and violent — he punched S/Sgt. Hurley in the jaw as they were being removed from the police vehicle. They were placed in the cells and checked a couple of times before about 1120 hrs, the deceased was noticed to be pale and possibly have a weak pulse. QAS advised and responded whereupon he was found to be life extinct. Palm Island police presently making arrangement for notification of the NOK. Contingency plan being implemented in respect to policing at Palm Island in case there is an increase in public disorder.

There is no mention in the message about Hurley and Mulrunji falling in the watch-house. The message also stated 'Palm Island police presently making arrangement for notification of NOK.' Jenkins said this information probably came from Hurley, but he could not be sure⁵⁷⁵.

Email sent to the Deputy Commissioner's office

During his interview with the IRT, the Acting Chief Superintendent read out an email sent to the Deputy Commissioner's office at 1.47 pm on 19 November 2004. The email contains no mention of Hurley and Mulrunji falling in the station and includes information about 'unconfirmed reports' of seizures as a result of alcoholism. It stated:

ACS: I suppose that could best be reflected um in the email that was sent to the Deputy Commissioner's office that he was arrested, there was a scuffle, um and ah he, he later um, he was later found in the cell and passed on. I think this email by Glen DOYLE dated 19 November 2004, 1:47pm, do you have a copy of that?

INSP: No. Get a copy of it after the ah interview if we can.

ACS: It says here, do you want me to read it?

IRT: Yeah. Read it on to the record John if you wouldn't mind.

ACS: It's, it's got here sir as requested. Um and this would be generally the understanding that um Mr [the Acting Assistant Commissioner], myself and, and others here had. At 10:20am, 19 November 2004 Senior Sergeant Chris HURLEY and (the PLO) were on patrol in Dee Street, Palm Island where they arrested Patrick NUGENT drunk. At the scene another male person, [Mulrunji], 23-8-68 of Dormitory Lane, Palm Island commenced to shout and yell abuse at, at the P-L-O and after this continued for some time, continues for some time [Mulrunji] was arrested by HURLEY for public nuisance and was placed in the police vehicle with, with NUGENT for transport back to the Palm Island watchhouse. Upon arrival at the watchhouse the police vehicle was placed in the vehicle lockup and Sergeant Michael LEITH was present. [Mulrunji] exited the vehicle and whilst doing so punched Senior Sergeant HURLEY to the head. A short scuffle occurred between HURLEY and [Mulrunji] with LEITH assisting. (The PLO) opened the watchhouse and [Mulrunji] was escorted into the watchhouse. Because he was aggressive and violent he was taken straight through to the cell. HURLEY and LEITH then returned to the police vehicle and carried NUGENT into the cell. NUGENT was extremely drunk and was carried by the legs and arms and placed in the cell. The video tape in the cell was then activated and a short time later the video depicts HURLEY walking into the cell and checking on the welfare of both

575 This issue is mentioned in Part 2 of the report in relation to the allegation about the delay in notifying Mulrunji's next of kin of his death.

[Mulrunji] and NUGENT. HURLEY states that both persons were snoring and appeared to be asleep. There is, there is no other video recording of this incident apart from that taken inside the cell. Sometime later Sergeant LEITH entered the cell and again checked on the welfare of the prisoners. At this stage LEITH could, could find no pulse on the person [Mulrunji] and also noted that [Mulrunji] felt cool. V-K-R were contacted with the Q-A-S attending and finding that [Mulrunji] was deceased. A small amount of blood was visible above the right eye of the deceased, [Mulrunji]. **Unconfirmed reports from the Q-A-S indicate that [Mulrunji] suffers from seizures as a result of alcoholism.** The deceased [Mulrunji] has a criminal history for a number of offences including criminal matters, simple offences and public nuisance offences. These offences had been committed in Palm Island and Townsville. Regional crime coordinator, O-I-C Townsville C-I-B, H-S-O, SOCO will arrive by plane at, at the island at approximately 2:30pm and further information to be compiled into an E-B-N at that point. Glen DOYLE, Acting Inspector, Staff Officer, Northern Region. So basically that would outline the information that I was aware of⁵⁷⁶. [Emphasis added]

Our concern about this information about Mulrunji suffering seizures will be discussed shortly.

Form 1

The misleading and incomplete information in the Form 1 prepared by Kitching has already been discussed in detail in Chapter 9 of this report (see pages 101–12).

Executive briefing note

At 10.56 am on 22 November 2004 the QPS faxed an Executive Briefing note to the CMC.

Based on the preliminary verbal information provided to it and the information in that note, the CMC made its assessment of how to deal with this matter.

The briefing note contained no reference to the two assault allegations, although both were made before it was submitted⁵⁷⁷.

It stated that the interview, re-enactments and statements were all consistent with the version outlined in it, which contained no reference to the allegations that Hurley assaulted Mulrunji.

It also stated that there was no evidence of misconduct or a breach of discipline, despite the fact that at the time it was sent to the CMC, two assault allegations had been made against Hurley.

However, it does include the comment that unconfirmed reports were received from the QAS that Mulrunji suffered seizures as a result of alcoholism.

The briefing note stated, among other things:

BACKGROUND

5. As the prisoner [Mulrunji] was exiting the caged area of the police vehicle he swung a closed fist which connected with the side of Hurley's head. Hurley and [Mulrunji] then commenced a short scuffle prior to entering the station area. A brief scuffle has occurred during which they both ended up on the floor of the station. Sergeant Leafe had opened the watchhouse door and [Mulrunji] was then escorted into the cells. During the scuffle the shirt worn by [Mulrunji] was torn and Hurley sustained a scratch to his forearm.

576 IRT transcript with the Acting Chief Superintendent, tape 1, pp. 36–38.

577 Bramwell's assault allegations was made on 20 November 2004, both in an interview with Kitching and Robinson and during his re-enactment with Webber and Williams. Sibley's assault allegation was made to Kitching on 21 November 2004. If the briefing note was prepared on 20 November 2004, Sibley's allegation had not yet been made, but she made the allegation before the briefing note was submitted to the CMC.

6. [Mulrunji] continued to struggle and was taken straight into the watchhouse cell. Hurley and Leafe. [sic] They then returned to the police vehicle where they removed Nugent. Because of his level of intoxication Nugent was carried to the cell by his arms and legs. Nugent was placed in the same cell as [Mulrunji].

14. Further audio and video taped interviews, re-enactments and statements were obtained from relevant witnesses. The versions supplied are consistent with the version as outlined in this briefing note. All forensic examinations of the scene have been completed.

16. At this stage of the investigation there does not appear to be any evidence of misconduct of a breach of discipline by any of the officers involved. Further investigations are continuing.

ISSUES

17. A small amount of blood was visible above the right eye of the deceased when examined by the members of the QAS. It is unknown whether this blood was present prior to the arrest or appeared as a result of the earlier scuffle with Hurley. There are no other apparent injuries to [Mulrunji].

19. Unconfirmed reports from the QAS indicate that [Mulrunji] suffers from seizures as a result of alcoholism.

The briefing note is not signed or dated, but Williams is identified as the contact officer and 20 November 2004 is noted under his name. It appears Williams prepared the briefing note on behalf of ID Stewart, Acting Assistant Commissioner, Northern Region.

Unconfirmed reports received from Queensland Ambulance Service (QAS) about seizures

The 'unconfirmed reports' received from QAS officers that Mulrunji suffered seizures as a result of alcoholism are mentioned at two critical points at the start of the investigation:

- In the email from Glen Doyle sent at 1.47 pm on 19 November 2004, apparently to the Deputy Commissioner's office; and
- In the QPS Executive Briefing note faxed to the CMC at 10.36 am on 22 November 2004, as discussed above.

These unconfirmed reports are also relied upon by the Acting Chief Superintendent and the Acting Assistant Commissioner in their interviews with the IRT.

The Acting Assistant Commissioner said:

As I understand it but um that's, that's exactly right there could have been ah - we, we didn't know, simply didn't know at that stage what the likely cause of death was. Um from the **early indications we got from the hospital regarding his ah medical record** that it, it seemed **likely** that he had ah at that stage, that his **death was due to natural causes** from ah his **abuse of alcohol** because he suffered from a number of um **fairly serious ailments** um which were **probably were mainly ah related to his abuse of alcohol**.⁵⁷⁸

And I know that ah early in the piece the **ambulance officer indicated to the investigators that um they believed that he suffered from alcoholic induced fits**.⁵⁷⁹

So you know the **general suspicion was that he'd died of some, some cause like that**⁵⁸⁰.
[Emphasis added]

578 IRT interview transcript, tape 2, page 4

579 IRT interview transcript, tape 2, page 5

580 IRT interview transcript, tape 2, page 6

The Acting Chief Superintendent said:

ACS: For instance I think even at the start she says the person who was a fit and healthy person like **there was evidence there that he was, he suffered from seizures and this is the information that we got, that [Mulrunji] suffered from seizures and, and, and other illnesses** so it could have been - you know the suggestion was his death could have been by natural causes or because of his protracted illnesses.
Um -

IRT: So, so just clarify that. When, when it occurred what you're saying that [Mulrunji] was in poor health.

ACS: It says here unconfirmed reports but this is **what we were told from the Q-A-S indicate that [Mulrunji] suffers from seizures as a result of alcoholism**. Right. So there was an indication you know obviously but just an indication, like any other indication that he suffered from seizures and poor health. Ah I know that the, the Coroner makes the statement um here that [Mulrunji] was a person of I think it's right at the start of the um UI [Mulrunji] was a person ah fit and of good health I think that she says in, in the initial, in the initial opening of the findings⁵⁸¹.
[Emphasis added]

It is not clear which ambulance officer is alleged to have provided this information, and who the ambulance officer provided it to. In any event, Glen Doyle had received the unconfirmed information at some point before 1.47 pm, when the information was included in his email.

The PLO's evidence

In his interview with Kitching and Robinson on 19 November 2004, the PLO was asked by Robinson (about Mulrunji) 'Does he suffer from any medical conditions or anything that you're aware of?' The PLO replied 'No, the ambulance man (UI) he was taking fits (UI)'. Robinson said 'Alright, so that the [sic] ambulance telling you, but were you aware of any conditions that he suffers from' to which the PLO replied 'No'.

When interviewed by the CMC on 8 December 2004, the PLO was asked about his comment in the interview with Kitching and Robinson. The PLO said

I was trying to say what the ambo' [sic] said when they checked him over and they went away. After that they came back and I just was sitting on the vehicle at the station when one of the ambulance said he checked his medical records said he had ah chest pains before and seen the doctor and he use [sic] to take fits.

The PLO confirmed this information was from one of the ambulance officers.

Medical records

Mulrunji's medical records from the Palm Island hospital indicate that he suffered from one seizure in 1994, 10 years before his death.

The information that Mulrunji suffers seizures as a result of alcoholism is not consistent with Mulrunji's medical records.

Ambulance officers

The two QAS officers who attended the Palm Island police station upon Mulrunji's death were Matthew Bolton (paramedic) and William (Billy) Landers (assistant).

Bolton provided a statement to Kitching and also gave evidence to the Inquest. In his statement Bolton said he has been relieving at Palm Island on and off since May 2004. Bolton mentioned he'd had discussions with Hurley at the scene, but could not recall exactly what was said. He said he asked Hurley for a bit more of the history, whether the body had been moved and

581 IRT interview transcript, tape 3, page 9

discussed what had to happen with the body now as it was a crime scene⁵⁸². While he was not directly asked the question, Bolton made no mention of Mulrunji suffering seizures as a result of alcoholism or of giving such advice to any QPS officer.

2. Failures in the questioning of Senior Sergeant Hurley

We have identified several relevant lines of questioning which the initial investigation team failed to pursue with Hurley.

The failure to ask Hurley whether he hit Mulrunji

During the initial QPS investigation, it does not appear that any officer actually asked Hurley whether he assaulted Mulrunji.

In the initial interview Kitching and Robinson conducted with Hurley on 19 November 2004, the following exchange took place:

- K Now when you first um, first saw [Mulrunji] umm — did he have any injuries or anything like that on him (U/I)
- H I didn't see any injuries on him
- K Did he make any complaints of any injuries
- H No
- K Okay, when you ahh — eventually placed him in the watchhouse after you had a struggle with him um what injuries did you observe on him then
- H I observed that he had a small amount of blood that was ahh — coming from a very small ahh injury above his right eye
- K How did he receive that injury
- H I don't know

Kitching did not ask Hurley directly whether he hit Mulrunji.

What the police said

Webber

Webber told the Inquest that at the time of the re-enactment he was aware that Mulrunji had a visible injury above his right eye and that Hurley said Mulrunji had punched him⁵⁸³. Webber admitted he 'may have been' curious about whether Hurley struck Mulrunji, a man with an observable head injury who had earlier struck Hurley, but said he did not ask Hurley about the matter⁵⁸⁴. Webber said the purpose of the interviews and the re-enactments was to get the witnesses' versions of events, not to cross-examine them or ask questions about what other people saw or did⁵⁸⁵.

Webber maintained that his failure to ask Hurley whether he hit Mulrunji was not a deliberate omission and he treated Hurley no different than he would a civilian witness⁵⁸⁶.

582 Inquest transcript, pp. 508–509

583 Inquest transcript, page 734

584 Inquest transcript, page 734

585 Inquest transcript, page 734

586 Inquest transcript, page 765

Kitching

In his procedural fairness submission Kitching says that in his very first interview with Hurley he enquired as to how Mulrunji received the injury above the right eye, to which Hurley replied he did not know.

Williams

At the Inquest, Williams said he was told that Mulrunji had a head injury and agreed that there was nothing in Hurley's account that explained how he got the injury⁵⁸⁷. Williams said while he may not have asked Hurley the direct question, he probably asked it in different ways⁵⁸⁸. Williams said he didn't ask Hurley the question because they had obtained Hurley's version in detail and it was not time for cross-examination⁵⁸⁹. Williams felt that he did not need to take the questioning any further at that point⁵⁹⁰.

CMC comment

In the CMC's view, given the purpose of their investigation, and as experienced investigators, Webber, Williams or Kitching should have asked Hurley whether he assaulted Mulrunji. The investigators were aware that Mulrunji had a head injury, that Mulrunji had assaulted Hurley, that there had been a struggle and a fall, and that Hurley said the head injury was not present when he first saw Mulrunji but was present after the struggle. By the time of the second interview with Hurley, the re-enactment, the investigators were aware of Bramwell's assault allegation.

If faced with a similar situation involving a civilian witness, it seems likely that the investigating officers would have asked the civilian if they assaulted the deceased person.

The failure to ask Hurley why he released Roy Bramwell on 19 November 2004 without questioning him

During the initial QPS investigation, it does not appear that anyone asked Hurley why he allowed Bramwell to leave the station without being questioned when Bramwell, a man wanted for questioning in relation to serious, violent assaults, was the only civilian eyewitness to the fall and to Mulrunji being taken towards the cells. (A detailed discussion of the issues relating to Bramwell appears on pages 146–150.)

While considering the admissibility of certain evidence during the Inquest, the Acting State Coroner commented:

Witness the extraordinary situation of Roy Bramwell being allowed to leave the police station without charge on the morning of Mulrunji's death. He allegedly had seriously assaulted three women and to then become involved in further argument whilst intoxicated. One woman required medical evacuation from the island to Townsville. This was in stark contrast to the decision to arrest Mulrunji after a minor verbal incident⁵⁹¹.

587 Inquest transcript, page 467

588 Inquest transcript, page 467

589 Inquest transcript, page 467

590 Inquest transcript, page 474

591 Inquest transcript, page 819

What the police said

Hurley

Hurley told the Inquest that when he arrived at the station with Mulrunji and Patrick Bramwell on 19 November 2004, Leafe was standing in the vehicle bay with Roy Bramwell and Penny Sibley. Hurley said he knew Roy Bramwell was involved in the incident earlier that morning and asked Leafe to take Roy into the police station as he intended to interview him⁵⁹². He was aware that Bramwell was the subject of a serious complaint, involving violence⁵⁹³. Hurley said that due to Bramwell's state of intoxication, he did not interview him that day and sent Bramwell home to sleep off the intoxication. He said he advised Bramwell that police would be in contact with him, but did not set another date to discuss the incident⁵⁹⁴.

Leafe

Leafe told the Inquest he asked Hurley whether he wanted to speak to Bramwell at that time about certain matters, and Hurley said he did⁵⁹⁵. Once Mulrunji and Patrick Bramwell were lodged in the watch-house, Leafe said he saw Hurley speak to Bramwell⁵⁹⁶. Leafe could not recall whether he heard the conversation and he did not think he spoke to Bramwell himself⁵⁹⁷. Leafe confirmed that Hurley told Bramwell to leave the station⁵⁹⁸. Leafe said he was not curious about why Hurley told Bramwell to go, and that he was not concerned about the fact that Hurley let Bramwell go⁵⁹⁹.

Williams

At the Inquest, Williams was asked whether Hurley releasing Bramwell, a man accused of being involved in some fairly serious assaults, was of concern to him or at least cause for some future investigations. Williams said that was not his role and was a matter for the local detectives⁶⁰⁰. When it was put to him that Hurley released Bramwell in circumstances which might have raised a suspicion or that there was a concern about why Hurley may have done that, Williams replied 'I wasn't there at that time so I really ... can't comment on that'⁶⁰¹.

CMC comment

There is no evidence to suggest the investigation team asked Hurley why he released Bramwell on 19 November 2004.

Based on the interviews conducted on 19 and 20 November 2004, the investigators were aware that Bramwell:

- had been brought to the station so Hurley could discuss serious assault allegations which had been made against Bramwell
- was present outside the police station when Hurley and the PLO arrived in the police vehicle with Mulrunji
- said he witnessed:
 - Mulrunji assault Hurley
 - Hurley and Mulrunji fall in the police station

592 Inquest transcript, page 601

593 Inquest transcript, page 1227

594 Inquest transcript, page 619

595 Inquest transcript, page 681

596 Inquest transcript, page 685

597 Inquest transcript, page 685

598 Inquest transcript, page 700

599 Inquest transcript, pp. 700–701

600 Inquest transcript, pp. 479–480

601 Inquest transcript, page 480

- Mulrunji being taken towards the cells
- Hurley assault Mulrunji.

Despite knowing all this information, none of the investigators thought to ask Hurley why he released Bramwell without questioning him.

In the CMC's view the IRT should have pursued this matter with Webber, Williams and Kitching.

The failure to ask Hurley about his version of events changing after his initial interview on 19 November 2004

It is noted that in the video re-enactment conducted on 20 November 2004, Hurley changed his version of events and included information which was not in his initial interview.

In the re-enactment interview, Hurley said after he and Mulrunji fell to the floor, he tried to pick Mulrunji up off the floor a number of times by his shirt, but Mulrunji's shirt repeatedly ripped and he fell back to the floor. Hurley also said that while he was doing this, he said to Mulrunji words to the effect of 'get up [Mulrunji], get up...don't start this again'⁶⁰². Hurley did not provide this information to Kitching and Robinson in his interview of 19 November 2004.

What the police said

Webber told the IRT that at no time did they permit Hurley to hear the interview with Bramwell⁶⁰³. He said he didn't know how Hurley would have become aware of Bramwell's allegation but that Hurley obviously would have been aware they were looking for Bramwell and that he was going to be interviewed⁶⁰⁴. Webber told the IRT 'I don't know that if subsequently having had the night to sleep on things and all the rest of it he ... recalled different things'⁶⁰⁵.

CMC comment

No officer asked Hurley why his version of events changed so significantly on 20 November 2004, after Bramwell made the allegation of assault.

It does not appear that any member of the investigation team was concerned about the fact that shortly after Bramwell made the allegation of Hurley assaulting Mulrunji, Hurley's version of events changed significantly to include evidence addressing Bramwell's allegation. The fact that Hurley didn't mention this information in his initial interview did not seem to have had any impact on the investigation team's view of Hurley's credibility, unlike their view of Roy Bramwell who seems to have been deemed completely unreliable by the investigation team because of inconsistencies in his evidence⁶⁰⁶. This creates a perception of bias on the part of the investigation team.

We have previously discussed the possibility of Hurley being able to hear or see the re-enactment interviews, and the fact that the IRT did not pursue this issue. Whether or not Hurley was able to hear Bramwell's evidence, the investigation team should have been aware of the perception of bias which would be created when Hurley changed his version so significantly shortly after Bramwell made his allegation, after Hurley discussed the matter with other witnesses and after the investigation team took Hurley to the scene of arrest without recording what was discussed.

602 Transcript of re-enactment interview with Hurley, 20 November 2004, page 4

603 IRT transcript, Webber, tape 1, page 32

604 IRT transcript, Webber, tape 1, page 32

605 IRT transcript, Webber, tape 1, page 32

606 Again, we are not concerned with whether Bramwell's evidence was ultimately found to be credible or with Bramwell's credibility as a witness.

The IRT briefly discussed this issue with Webber but did not pursue this line of questioning with Williams or Kitching. When discussing the matter with Webber, the IRT did not ask why he failed to ask Hurley about the significant change in his version of events.

The IRT also briefly discussed with Webber the problem of witnesses having the chance to talk to other people, be influenced and change their opinion.

Webber spoke about Bramwell having the opportunity to talk to other people and then make, what Webber considers, are false allegations⁶⁰⁷. The IRT note Webber's comments about Bramwell talking to other people, being influenced and then changing his opinion and ask whether he thinks the same could also be said about police. Webber says that this is correct, but that the officers had been interviewed at that point in time, they had to continue to police the island and that they couldn't prevent them talking⁶⁰⁸. Webber completely misses the point, which is that Hurley's evidence did change significantly after having spoken to other people. The IRT did not pursue the matter any further.

3. Issues relating to Roy Bramwell

The Acting State Coroner specifically referred to the investigators' failure to pursue an important line of questioning with the PLO. During our review of this matter, we identified a number of other relevant lines of questioning in relation to Roy Bramwell that were not pursued either by the initial investigation team or by the IRT.

Roy Bramwell was the only civilian eyewitness to Hurley and Mulrunji's fall in the police station and to Hurley and Leafe taking Mulrunji towards the cells.

The investigation team's failure to interview Roy Bramwell on 19 November 2004

Section 8.4.21 of the OPM required statements to be obtained from all persons having any significant knowledge about the cause or circumstances of the death. Section 16.24.3 of the OPM placed a specific obligation on the regional crime coordinator to obtain statements from all witnesses as soon as practicable after the incident.

Roy Bramwell was a person who potentially had significant knowledge of the circumstances of the death, yet the initial QPS investigation team did not interview him until the morning of 20 November 2004.

What the police said

Webber

Webber told the IRT they were unable to locate Bramwell on the Friday night, 19 November 2004⁶⁰⁹. He said:

I believe that if we'd been able to locate him that Friday night and get a complete version from him on that night I don't believe ... he would have made the allegations that he subsequently made which ... may well have ... put a completely different perspective on things ... I believe that he was ... influenced ... by subsequent events and... what occurs on the island and the grapevine etcetera ... he was obviously a person ... who'd been arrested for serious assaults, ... he ...certainly ... had his own grievances in relation to

607 IRT transcript Webber, tape 2, page 12

608 IRT transcript Webber, tape 2, page 13

609 IRT transcript, Webber, tape 1, page 21

the Police ... alcohol was a factor ... and I believe that ...if he'd been located then on that ... Friday before he had the opportunity to ... go and speak to other people, be influenced by what they may have said ... consumed more alcohol himself that he may well have ... given a different version of events⁶¹⁰.

In relation to the interview with Bramwell on 20 November 2004, he also said:

I've ... inferred the problem is that by that stage Bramwell had had the opportunity to ... talk to other people and ... the rumour mill, the gossips etcetera ... and I believe that he thought it was advantageous to him for some reason to ... make false ... allegations⁶¹¹.

Webber told the IRT:

time is critically important in my view particularly in relation to investigations in relation to ... these sorts of aboriginal communities which have a extremely high ... alcohol consumption is that, and I suppose the ... community gossip etcetera that goes around, it's critical that you get on... the scene at the ... earliest possible time, interview as many of ... the ... relevant witnesses as possible⁶¹².

Robinson

In his interview with the CMC on 22 January 2008, Robinson said he was not aware of any attempts to locate Bramwell on 19 November 2004. Robinson said either Webber or Kitching decided to interview Bramwell first thing the next morning.

In his statement, Robinson said that on the morning of 20 November 2004, he and Kitching attended 'the Bramwell house' and 'located' Roy Bramwell.

Kitching

In his statement Kitching said he travelled to Dee Street, Palm Island with Robinson where he 'located' Bramwell.

In response to the IRT's question 'Who ... for want of a better term tracked down Roy Bramwell?', Kitching told the IRT that he didn't know who actually 'located' Bramwell but that he had enquiries made through the local police and had Bramwell brought to the police station⁶¹³.

CMC comment

It is not clear why the investigation team did not treat interviewing Bramwell on 19 November 2004 as a priority. As he was the only non-police witness to the fall and to Mulrunji being taken towards the cells, we consider the investigation team should have ensured that they interviewed him as soon as possible.

The investigators were aware, from the interviews conducted with Hurley and Leafe on the afternoon of 19 November 2004, that Roy Bramwell was outside the police station when Hurley arrived with Mulrunji⁶¹⁴ and in the police station when Hurley took Mulrunji into the watch-house⁶¹⁵. Hurley even said Bramwell made a comment about seeing Mulrunji assault Hurley⁶¹⁶.

610 IRT transcript, Webber, tape 1, page 21

611 IRT transcript, Webber, tape 2, page 12

612 IRT transcript, Webber, tape 2, page 6

613 IRT transcript, Kitching, tape 1, page 11. The IRT does not clarify or pursue this inconsistency in Kitching's evidence.

614 Interview with Hurley, 19 November 2004

615 Interview with Leafe, 19 November 2004

616 Interview with Hurley, 19 November 2004

There is no evidence to suggest that any attempt was made by the investigators to interview Bramwell on 19 November 2004 or to support Webber's assertion that Bramwell could not be located that day. Robinson said he was not aware of any attempt to locate Bramwell on 19 November 2004 and said the decision to interview him on 20 November 2004 was made by either Webber or Kitching. As the person involved in the investigation for his 'local knowledge' and ability to find people on Palm Island, Robinson should have been aware of any attempt to locate Bramwell.

There is also no evidence to suggest that it was difficult for Kitching and Robinson to locate Bramwell. At about 8.00am on 20 November 2004, Roy Bramwell was brought by Kitching and Robinson from 'the Bramwell House' to the police station. In the statement he made to Kitching that morning, Bramwell said 'I live at the Bramwell house, Dee Street, Palm Island. I have lived at the house all my life.'⁶¹⁷ Presumably Robinson, as the source of local knowledge, would have known this. Further, Kitching and Robinson had interviewed his de facto partner Gladys Nugent on 19 November 2004, who told them she lived with Roy Bramwell. There is no evidence to suggest the investigators attended the Bramwell house looking for Roy Bramwell or asked his de facto where he was on 19 November 2004.

When discussing the problems with locating suitable support persons for witnesses who needed to be interviewed quickly, Williams told the IRT 'If you left Mr Bramwell for more than fifteen minutes he'd start to forget things'⁶¹⁸. If, as suggested by Williams, there was a concern about the reliability of Bramwell's memory, the investigation team should have made it a priority to interview him. Robinson, as someone with local knowledge about Roy Bramwell, and who has strong views about memory problems associated with alcohol consumption⁶¹⁹, would have been aware of this issue and could have advised Webber and Kitching of the need to immediately interview him.

Webber also tells the IRT that when investigating matters in Indigenous communities where there is 'extremely high alcohol consumption' and community gossip, it is critical to interview all relevant witnesses at the earliest possible time. If he was so concerned about the delay in interviewing relevant witnesses, Webber should have made arrangements for Bramwell to be interviewed as a priority.

Had Bramwell been interviewed on 19 November 2004, any allegation of assault made by him may have been viewed in a different light. There would have been no basis upon which, as Webber did, to claim that Bramwell only made the allegation of assault after drinking more alcohol and having the opportunity to be influenced by people in the community.

The investigation team's failure to interview Bramwell on 19 November 2004 creates a perception of a lack of thoroughness and impartiality.

It is concerning that the IRT did not identify this as an important matter and ask Webber, Kitching and Robinson about their failure to immediately find and interview Roy Bramwell.

In his interview with the IRT, Webber only mentions the fact that they were unable to locate Bramwell on the Friday night in order to discredit Bramwell's evidence. The IRT did not ask Webber what attempts were made on the Friday to locate Bramwell, or why he, as the commissioned officer responsible for the investigation, failed to obtain statements from all witnesses as soon as practicable after the incident, as required by the OPM⁶²⁰.

617 The transcribed interview with Roy Bramwell conducted on 20 November 2004 by Kitching and Robinson refers to Bramwell living on 'East Street'. Presumably this is a transcription error, as the information available to us does not suggest Bramwell lived anywhere apart from Dee Street.

618 IRT transcript, Williams, tape 1, pp. 23–24

619 See Allegation 1 about Douglas Clay.

620 Section 16.24.3(iii) OPM

The IRT did not ask Kitching, as the primary investigator, why he failed to interview Roy Bramwell on 19 November 2004.

The statement obtained from Roy Bramwell by Robinson

Section 2.13.2 of the OPM required that statements from witnesses should include the witness' full version of the circumstances of the incident.

On 20 November 2004 at 8.15 am Roy Bramwell was interviewed by Kitching and Robinson. Shortly after the interview, Robinson obtained a statement from Bramwell. While the signing of the statement was recorded⁶²¹, Robinson did not record himself taking the statement from Bramwell. There are a number of concerning inconsistencies between Bramwell's interview and the statement taken by Robinson.

In Bramwell's tape-recorded interview with Kitching and Robinson the following is said:

K: Alright and he punched him and what happened after, what happened after [Mulrunji] punched Chris

B: They dragged him in

K: They dragged him in, dragged him into where

B: Chris started punchin' him just in the hall there, Chris started punchin' him, you want more [Mulrunji], (ui). You want more [Mulrunji] hey that's enough for ya, just kept on going like that, Chris (ui) sat down and (ui) I seen [Mulrunji] legs sticking out

Roy Bramwell's statement contained no mention of Hurley punching Mulrunji and instead said:

I was sitting here and saw the side door open and Chris drag [Mulrunji] threw [sic] and up the hallway. Chris was dragging him by the top of his shirt. From where I was sitting I could see [Mulrunji's] feet and I could hear Chris saying 'you want more [Mulrunji], you want more'. I could not see what Chris was doing, I could see his elbow going up and down into the air.

Later in his statement Roy Bramwell said:-

It was either Chris or Sergeant Leafé that when they came back from the cells, they put the TV on where you can see the cells. I saw both TVs on and could see them both lying in the cell together.

They were both quite drunk and looked like they were sleeping. Chris spoke with me and told me that they will come and look for me tomorrow and I was allowed to leave. I was not drunk when this was going on and only had a six pack of VB in the morning.

The six pack was mentioned in the earlier tape-recorded interview. The other matters referred to in those two paragraphs of the statement were not mentioned in the earlier interview.

The interview also contains the following exchange:

K: Did you see either of them fall over, Chris or [Mulrunji] did they fall over

B: No

K: They didn't fall over

B: Only [Mulrunji] did this

K: Only [Mulrunji] fell over

B: Yeah

621 There is not a copy of the tape of the adoption and signing of Bramwell's statement as Robinson failed to hand over the tapes to the ESC investigators when all information was being handed over. There was no record of these tapes on the tapes index. The police station later burnt down.

The statement contains no reference to Mulrunji falling over and contains no reference to whether Hurley fell.

Three paragraphs of Roy Bramwell's statement concerned the assaults he committed on three women. This information was irrelevant but damaging to his credibility.

What the police said

Robinson

During an interview with the CMC in relation to another matter, Robinson was questioned in relation to the inconsistencies between Bramwell's interview and his statement. Robinson's explanations for these inconsistencies were as follows.

- In relation to the omission of the punching allegation, Robinson said 'perhaps he (Bramwell) didn't want it there'; 'Well maybe he said to take it out'.
- In relation to the failure to mention the fall, Robinson said 'Ah probably it would be good to have it there but I think this is how he told it to myself'.

Asked whether he raised the discrepancies with the witness, Robinson said 'I can't remember', but said he later mentioned the differences to Kitching and Webber.

CMC comment

Robinson did not tape-record the taking of the statement. To have recorded the taking of the statement would have ensured that the process was transparent and protected him against any suggestion that he had inappropriately influenced Bramwell's statement. This is particularly so when it is apparent that there were discrepancies between the statement and the interview on key issues.

The CMC considered these inconsistencies in the context of its investigation of Bramwell's later allegation that Robinson had destroyed the first statement he prepared on 20 November 2004. While that allegation could not be substantiated, we considered the evidence supported that the statement signed by Bramwell was less damaging to Hurley than the contents of Bramwell's recorded interview. On 8 April 2008 we advised the QPS of our view and that we considered Robinson would benefit from managerial guidance in relation to the taking of witness statements, particularly from Indigenous witnesses.

This matter was brought to the attention of the IRT by the CMC. It raised concerns about Robinson's role, as well as the integrity of the manner in which the investigation of Mulrunji's death was conducted. It, among other things outlined in this report, suggests that the conduct of Robinson should have been dealt with in the *Palm Island Review* by the IRT.

4. Failure to pursue other lines of questioning

In addition to the above failures in relation to Hurley and Roy Bramwell, the initial QPS investigation team also failed to interview Steadman, a relevant witness, and failed to establish whether Hurley, Leafe and the PLO watched the watch-house surveillance tape before the investigation team arrived on Palm Island.

The failure to interview Steadman

The Acting State Coroner noted that Steadman was interviewed by the CMC on 8 December 2004, but had not been interviewed by any of the investigating police officers⁶²².

In terms of official police procedures, the OPM at the time provided that:

- the regional crime coordinator is to ensure all members who are witnesses to an incident are interviewed 'as soon as practicable' (section 1.17)
- statements should be obtained from all persons having any significant knowledge about the cause or circumstances of the death (section 8.4.21)
- the regional crime coordinator should obtain statements from all witnesses, including police officers, as soon as practicable after the incident (section 16.24.3).

Constable Kristopher Steadman arrived on Palm Island on 18 November 2004 and worked the 4.00 pm to midnight shift that day. Steadman was rostered for duty from 4.00 pm to midnight on 19 November 2004.

On the morning of 19 November 2004, Steadman was off duty and went to the police station to make some phone calls about the delivery of his furniture. Steadman was in the vehicle bay of the station at the time Hurley arrived with Mulrunji and Patrick Bramwell. He saw Hurley and Mulrunji fall through the door of the police station. Steadman then heard Hurley say something to Mulrunji ('yelled at him') and saw Mulrunji being dragged into the watch-house cell. After making some phone calls, Steadman had a short conversation with Roy Bramwell and then left the station. Steadman returned to the station some time later and said Hurley and Leafe were talking about one of the people in the cells not having a pulse. Steadman suggested they check the man's pupils, and went into the cell with Leafe to do so. Shortly after this the ambulance arrived⁶²³.

CMC comment

Steadman was not interviewed by the investigation team⁶²⁴ and it is not clear what role, if any, he played in the initial QPS investigation.

It is not clear why the investigation team failed to interview Steadman, a relevant witness.

It is also not clear whether the investigation team was aware that Steadman was present when Hurley brought Mulrunji into the station, as Leafe told Webber and Williams in the re-enactment interview on 20 November 2004 that Steadman had not been in the station before Mulrunji was found to be deceased⁶²⁵.

However the investigators were aware that Steadman was in the station when Mulrunji was found to be deceased, as both Hurley and Leafe had mentioned this in their interviews on 19 and 20 November 2004 and Steadman appeared on the watch-house surveillance video. Further they knew:

- Hurley got 'one of the Constables who was off duty in the station at the time' to print out the OPM for a death in custody⁶²⁶
- 'there was another officer in the station at the time who wasn't working'⁶²⁷

622 Finding of Inquest, page 5

623 Information from Steadman's interview with the CMC, 8 December 2004

624 Inquest transcript, page 658

625 Re-enactment interview with Leafe, 20 November 2004

626 Interview with Hurley, 19 November 2004

627 Interview with Leafe, 19 November 2004

- Steadman suggested they look at Mulrunji's pupils with a torch to check his vital signs⁶²⁸
- Steadman and Leafe went into the cell and flashed a torch in Mulrunji's eyes to see if there was any movement⁶²⁹.

Based on this information, the investigation team should have realised it was necessary to interview Steadman.

It was also argued that Steadman could not provide any assistance to the investigation team as he was involved in the incident⁶³⁰. We would assume that if Steadman was so involved in the incident that he couldn't be used to provide logistical support, then he would need to be interviewed about his involvement in the incident.

The IRT failed to pursue this issue with Webber, Williams and Kitching and also failed to interview Steadman.

The failure to ascertain whether Hurley, Leafe and the PLO viewed the watch-house surveillance tape before the investigation team arrived

There was some suggestion that Hurley, Leafe and the PLO may have viewed the watch-house video before the investigation team arrived on Palm Island.

What the police said

Hurley

At the Inquest, Hurley admitted to watching the video before he was interviewed⁶³¹. During his re-enactment interview with Webber and Williams, Hurley described putting Mulrunji in the cell saying 'Backwards like that and put him straight in the cell and we put him on the left hand side of the cell where um he is on the video'⁶³².

Williams

At the Inquest, Williams said when he arrived on Palm Island he was not aware whether Hurley had watched the tape⁶³³. When questioned further about whether he allowed the officers to view the tape, the following exchange took place, indicating that Williams was not concerned that Hurley had watched the tape:

... I think you've said that Senior Sergeant Hurley might have been there when the video was being watched. In fact, in response to a question from Inspector Williams, he's describing how the deceased was dragged into the cells and Senior Sergeant Hurley says, 'Backwards like that and put him straight in the cell and we put him on the left-hand side of the cell where, um, he is on the video.' So that would suggest that Senior Sergeant Hurley has reviewed the video prior to discussing this with you; would you agree?-- Possibly, yes, yeah, most likely.

And yet you don't know - you wouldn't have had a problem with that; is that what----?-- With him looking at the video?

No, prior - while you were investigating the matter and taking a statement from him?-- Well, the video is not going to change. The video is the video.

628 Interview with Leafe, 19 November 2004; Re-enactment interview with Leafe, 20 November 2004; Interview with Hurley, 20 November 2004

629 Interview with Leafe, 19 November 2004; Re-enactment interview with Leafe, 20 November 2004

630 This is particularly in relation to the issue of Hurley picking up the investigation team from the airport. It was argued that all the available officers were somehow involved in the incident.

631 Inquest transcript, page 1278

632 Transcript of re-enactment interview with Hurley, 20 November 2004, page 5

633 Inquest transcript, page 464

Okay. But you agree that that could change the way in which a witness chooses to give their side of the story, wouldn't you?-- What, make it more accurate?

And it may choose the way in which they choose to tell their story; wouldn't you agree with that?-- The video evidence is - is unchangeable. Their - their version, um, is their version whether it agrees with the video or not.

The video remains unchanged but what I'm putting to you is that the evidence of a witness may change having reviewed another part of the evidence; wouldn't you agree with that, as a general rule?-- It would only make their evidence better or more accurate⁶³⁴.

Williams told the IRT he thinks 'they'⁶³⁵ said they had watched the video after they found out that Mulrunji had died, and probably before Webber arrived⁶³⁶. Williams said he thought they should have watched the video, and if they had not watched the video, the officers would have been criticised⁶³⁷. The IRT asked Williams whether he's saying that they should have watched the video, in terms of control, as there was a three or four hour period from the time of death until the investigation team arrived during which Hurley was in charge of the crime scene⁶³⁸. Williams agreed and commented that Hurley was still in charge of Mulrunji, and if something happened or could have happened in the cell, they've got to watch the video, otherwise how else will they know what happened⁶³⁹.

CMC comment

While, from the information we have been provided, it is not clear when Hurley watched the video and whether Leafe and the PLO watched the video, this should have been established by the initial QPS investigation.

The CMC recognises that the appropriateness of the officers watching the video is a difficult issue. On one hand, it could be argued that the officers had an obligation to watch the video, to see if there was any immediate danger or obvious cause of death that had to be dealt with immediately. On the other hand, it could be argued that watching the video would give the officers the opportunity to ensure that their version of events was consistent with the evidence of the video. It may have been preferable for a third party to view the video, instead of one of the officers involved in the arrest and detention of Mulrunji. Tonges or Steadman could have watched the video and advised whether there was any immediate threat which had to be dealt with.

This line of questioning was not pursued further by the IRT. The IRT did not establish whether any of the investigating officers asked Hurley, Leafe and the PLO if they had watched the video before the investigation team arrived on the island.

CMC comment

In the CMC's view the evidence in this case creates the perception that, at the least, insufficient care and attention was paid to ensuring that either reliable, complete and accurate information was provided or appropriate qualifications were attached to the information provided where necessary.

634 Inquest transcript, page 484

635 It is not clear who Williams is referring to when he says 'they' watched the tape — presumably he is referring to Hurley, Leafe and the PLO. The IRT does not clarify this issue with Williams.

636 IRT transcript, Williams, tape 2, page 14

637 IRT transcript, Williams, tape 2, pp. 14–16

638 IRT transcript, Williams, tape 2, page 15

639 IRT transcript, Williams, tape 2, page 15

This is an issue that warranted consideration by the IRT not only in relation to the conduct of various officers involved in the investigation of the death in custody, but also in relation to any recommendations for changes to police procedure.

Summary and conclusion

In the CMC's view, the failure to pursue the issues outlined above compromised the appearance of impartiality and thoroughness of both the initial QPS investigation and the IRT investigation.

INITIAL QPS INVESTIGATION TEAM MEMBERS' FURTHER STATEMENTS

At the conclusion of their interviews with the IRT — and in the case of Webber and Williams in their procedural fairness submissions to the CMC — the members of the initial QPS investigation team made general statements about their view of the investigation.

Webber

To the IRT

The IRT states that Webber 'acknowledged that he would have done some things differently'. However, the concessions made by Webber are followed by lengthy statements justifying his actions.

Webber says in hindsight that they would have taken another investigator to assist Kitching. However he follows this with a long statement about the fact that he did not believe there was anyone else they could have taken to Palm Island⁶⁴⁰.

Webber conditionally concedes that 'if you want to be very clinical about it', they should not have eaten dinner at Hurley's house. Again he follows this with another long statement in which he talks about senior officers associating with subordinates, and the importance of sometimes establishing rapport with those people who are under investigation⁶⁴¹.

When asked whether in hindsight it would have been a wise decision to advise the parties involved not to discuss the matters under investigation, Webber replied if the purpose is to 'cover my arse' then he could have given a direction, but that he didn't think giving such a direction was going to achieve anything. Webber then went on to discuss the fact that the officers already had the opportunity to converse, there was naturally going to be some conversation and that the officers were all fully forthcoming about what was discussed⁶⁴².

At the end of his interview, the IRT invited Webber to make any further statement. Webber had prepared a statement in writing to read into the record at the conclusion of his interview with the IRT.

Webber took the opportunity to criticise the QPS for abandoning him, the Acting State Coroner for her failure to understand, the CMC for the failures of its investigation and the community for its self-interest.

Further, Webber stated to the IRT:

I do not accept the criticism made by the Deputy Coroner, Christine Clements concerning the Police investigation into the death of [Mulrunji]. In my opinion a thorough, competent and professional investigation was conducted concerning this death up until such time as the investigation was taken over by the Crime and Misconduct Commission⁶⁴³.

I do not acknowledge that the investigation was in any way deficient. In my opinion the investigation was conducted professionally and thoroughly. The reality is that certain members of the community will never accept the outcome of the investigation or the subsequent ... prosecution ... for that matter⁶⁴⁴

640 IRT transcript, Webber, tape 1, page 19

641 IRT transcript, Webber, tape 1, pp. 35–36

642 IRT transcript, Webber, tape 2, pp. 11–12

643 IRT transcript, Webber, tape 1, page 4

644 IRT transcript, Webber, tape 3, page 13

Webber also made, among others, the following criticisms of the Acting State Coroner:

the whole thing to ... a large extent is actually ... based on opinion. The ... Coroner's findings are in more a sense ... an opinion by her⁶⁴⁵.

I believe that the Coroner gave no consideration to the various recommendations by the Royal Commission into aboriginal deaths in custody which have already been implemented by the ... QPS and the Government⁶⁴⁶.

Webber went on to blame the 'failures' in the investigation on the Coroner and the CMC:

I believe there were failures during the investigation into this death and unfortunately a number of those lessons have not been learnt. Those failures were not from the initial investigators but the responsibility of the Coroner and the CMC⁶⁴⁷.

In concluding, Webber said:

As I said I led a professional and dedicated investigation into the death up until such time as the investigation was [unintelligible] by the CMC. Since that time we have been avoided by management of the QPS, prosecutors, counsel assisting, defence counsel and any persons involved because any apparent familiarity might lead to self-interest groups claiming bias or impartiality. For the same reason legal advice had to be sought prior to speaking with the Crown prosecutor or defence counsel during the trial. I fear for the future of any organisation where the appeasement of self-interest critics is considered more important to the organisation than the loyalty and dedication of their members to the community they serve. And that'll do me.⁶⁴⁸

Procedural fairness submission to the CMC

Webber accepts responsibility as the Northern Region Crime Coordinator for the conduct of the initial investigation into the death of Mulrunji, and that 'some errors or mistakes may have been made' which could provide opportunity for himself and others to learn. Webber notes that there are few significant investigations which do not provide such an opportunity.

Webber states that the investigation of Mulrunji's death presented many unique challenges to the investigation team, including separation from resources, the direct involvement of senior officers on the island in the incident, as well as issues peculiar to Indigenous communities.

Kitching

To the IRT

The IRT states that Kitching has learnt from this matter, however the basis of this statement is unclear. While Kitching makes comments which initially indicate that he may have learnt from this matter, he follows these comments with lengthy statements justifying his actions.

During his interview with the IRT, Kitching made the following concessions about things that could have been done differently.

Kitching admitted that in hindsight, in an ideal world, it would have been ideal to have included all the information in the Form 1, including Bramwell's allegation of assault. However, he followed this admission with a lengthy comment about why he didn't include the information and about the fact that he intended to lodge a Supplementary Form 1, but that the CMC took over the investigation⁶⁴⁹.

645 IRT transcript, Webber, tape 3, page 8

646 IRT transcript, Webber, tape 3, page 17

647 IRT transcript, Webber, tape 3, page 19

648 IRT transcript, Webber, tape 3, pp. 23–24

649 IRT transcript, Kitching, tape 1, pp. 30–31

The IRT asked whether it would be correct to say that Kitching's 'protocols' for advising Coroners have now changed, to which Kitching replied 'Certainly that information could be provided to the Coroner', and then goes on describe how busy they were, that the policy says that a Supplementary Form 1 can be provided and that it was his intention to lodge a Supplementary Form 1, but that the investigation was taken over⁶⁵⁰.

When asked by the IRT if he knew the cause of Mulrunji's death at the time, whether he would have still used Robinson in the investigation, Kitching replied 'at the time yes, in hindsight no⁶⁵¹'. Kitching then went on to say that in hindsight it would probably be advantageous not to have Robinson there, but that at the time there was no alternative, and then discussed the logistical problems faced by the investigation team⁶⁵².

Kitching does not acknowledge any shortcomings in the original investigation. He, like Webber, chooses to reassert that the investigation could not have been done better and that the real concerns arose from the conduct of others including the State Coroner and the CMC. He has not accepted the findings of the Inquest.

Kitching told the IRT:

in my opinion the investigation that was conducted by Detective Inspector Webber, Williams and myself was fair, comprehensive, transparent, impartial and appropriate considering all the circumstances that were known to us at that time. This investigation met with enormous challenges that I have never met before during my career as a criminal investigator. These challenges did not relate to the investigation itself but included issues relating to administrative process and investigation management⁶⁵³.

That investigation was conducted in the best possible way that we could conduct it at that time⁶⁵⁴.

Kitching was critical of the way the investigation was dealt with after the CMC assumed responsibility for it and told the IRT that he considers the actions of the CMC led to the riots:

The manner in which the investigation unfolded once I handed the investigation to the members of the CMC as directed by the Commissioner of Police ... defines [*sic*] logic. From my understanding there was no immediate communication with the members of the family by the original investigation from the CMC to provide advice on the cause of the death and a strategy to continue the investigation. This in my opinion created angst and hostility in the Palm Island community and led directly to the subsequent riots and serious criminal offences that were, were committed on Palm Island the week after the death⁶⁵⁵ ... I believe if this course of action had of been undertaken by me personally or by ... those officers at the CMC immediately the investigation was handed over the subsequent riot and associate tragic events may not have occurred⁶⁵⁶.

650 IRT transcript, Kitching, tape 1, pp. 32–33

651 IRT transcript, Kitching, tape 3, page 36

652 IRT transcript, Kitching, tape 3, page 36

653 IRT transcript, Kitching, tape 3, page 28

654 IRT transcript, Kitching, tape 3, pp. 37–38

655 The CMC took responsibility for assisting the Coroner's investigation into Mulrunji's death on 24 November 2004. CMC officers travelled to Townsville that afternoon, and attended a briefing with Webber and Kitching. Further meetings were held between CMC officers, Williams and Kitching on 25 November 2004. On 26 November 2004, the CMC officers travelled to Palm Island and conducted interviews. That same day, the Chairwoman of the Community Council released the findings of the autopsy. After it was announced that Mulrunji's death was accidental, caused by internal bleeding, the riots commenced. The fact that the riots began immediately after the results of the autopsy were released to the residents of Palm Island suggests that this was the cause of the riots, not the CMC's involvement in the matter as suggested by Kitching.

656 IRT transcript, Kitching, tape 3, pp. 33–34

Williams

To the IRT

Williams continues to maintain that the investigation was the best that he could possibly do in the circumstances.

He stated to the IRT:

I think the Coroner's comments were quite um, quite unfair. The um, the factual inaccuracies um they're [unintelligible] and just the way we were generally treated ah in the Coroner's ah inquest by Counsel assisting ah they just didn't want to listen to ah the explanations that we were prepared to give⁶⁵⁷

Williams asserts that he would not do anything differently.

When asked by the IRT: 'In hindsight would you do things differently?', he answered 'I wouldn't have gone to Palm Island'⁶⁵⁸.

Procedural fairness submission to the CMC

Williams states that in forming its view about his conduct the CMC has failed to give due and proper consideration to the 'adverse conditions in a remote geographical location' and to his workload on 20 November 2004 while he was on Palm Island. He also says that the CMC has not taken into account that on 20 November the cause of death was not known, and that the CMC did not provide him with a further opportunity to review or continue the investigation, for example, by reviewing the witness statements and re-enactments.

Acting Assistant Commissioner

To the IRT

In his interview with the IRT, the Acting Assistant Commissioner made a long statement critical of the Deputy State Coroner and her findings and indicated that he did not consider he would do things in a vastly different way if faced with a similar situation.

He ends by making the statement that 'if a similar thing happened tomorrow um I don't think there's anything that we would do vastly different'⁶⁵⁹.

Acting Chief Superintendent

To the IRT

The Acting Chief Superintendent commented to the IRT that 'we have learnt from the experience and ... we will improve our response next time ... and will continue to improve our response'⁶⁶⁰, yet in the CMC's view his comments do not indicate that he recognises the problems with the investigation. He makes criticisms of the State Coroner and the Acting State Coroner. He also blames many of the criticisms of the investigation on the Acting State Coroner's lack of understanding of the logistical problems of Palm Island, and findings inconsistent with the evidence.

657 IRT transcript, Williams, tape 2, page 21

658 IRT transcript, Williams, tape 2, page 20

659 IRT transcript, the Acting Assistant Commissioner, tape 2, page 30

660 IRT transcript, the Acting Chief Superintendent, tape 3, page 8

PROCEDURAL FAIRNESS SUBMISSIONS — IRT

As mentioned in Chapter 3, the procedural fairness process identified the issues relating to the IRT and provided an opportunity to respond. The CMC received joint submissions from the members of the IRT.

We have amended the content in other parts of this report, where appropriate, in response to a number of their specific submissions.

In addition, we outline below further relevant submissions from the IRT made in response to the issues raised.

Issues of inadequacies and inappropriateness of the IRT investigation

Generally in relation to the concerns expressed by the CMC about, in its view, the inadequacies and inappropriateness of the IRT investigation, the members of the IRT say the following.

The IRT state that they agree with the intent of the CMC report in terms of the need for police to recognise the importance for deaths in custody to be treated as a homicide and for subsequent processes to be seen as independent as possible.

They say they were always of the view that any body of work as complex as the matters related to the Palm Island death in custody would be the subject of critical analysis and expected that there could be a need for improvements or further inquiries to the work they conducted.

The IRT also state they took notice of the issues raised by the CMC and accept that in hindsight, the IRT could have asked some questions or examined some matters differently. However, the IRT point out that any complex body of work that results in a report of over 233 pages (plus hundreds of pages of appendices)⁶⁶¹ and considers thousands of pages of evidence would generally have matters raised which would be expected to involve debate.

The IRT note that they have been involved in so many misconduct and related policy matters that they were fully aware that the CMC may have a different perspective, identify matters that should have been examined, or find weaknesses in their work. The IRT anticipated progressing these matters with the CMC or responding to them.

They state that the level of overview of the work of the IRT, and the IRT members' previous work with the CMC, lends weight to the IRT's position that they have always strived to present a fair product. However the IRT say, if challenged with a reasonable request or position different to that which they have presented, they were always willing to undertake further work and to accept that their work could be improved.

The IRT submit that, taken holistically, the IRT report essentially agrees with the CMC report in that the initial response to the investigation into the death in custody could have been improved and that policy changes needed to be made.

The IRT are concerned about the CMC's 'lack of engagement', are certain that appropriate consultation and discussion still could resolve many of the issues raised by the CMC in its report, and say that they have not been provided with the opportunity to conduct further investigations or even asked a single question to bring this matter to its proper conclusion.

661 This is a reference to the *Palm Island Review* report.

The IRT express the concern that they have been denied the opportunity of the well established process between the CMC and the QPS of having issues of disagreement, clarification or process discussed either in writing or in person.

Issue of command and control of the initial QPS investigation team

In relation to the concerns raised by the CMC about the focus of the *Palm Island Review* on the role of the Acting Assistant Commissioner and the Acting Chief Superintendent, the IRT state that after discussion with senior officers they increased their focus on the issue of command and control of the investigation into the death in custody. They assert that they agreed at least 10 months before the retirement of the Acting Chief Superintendent that, while Webber was technically responsible for command and control, it was unreasonable and certainly not practicable for Webber to be able to undertake every task without the support from other senior officers.

Part 5:

The CMC review: conclusions and recommendations

CMC CONCLUSIONS AND RECOMMENDATIONS

As a result of its review, the CMC formed the view that the *Palm Island Review* is fundamentally flawed. We saw no purpose in providing to the QPS any prior opportunity to conduct further inquiries or to respond to the issues identified – other than through the procedural fairness process - before making this report public. The CMC's conclusions and recommendations contained in this report provide the QPS with the opportunity to take action to bring the matter to its proper conclusion.

The CMC makes this report public in the interests of transparency and accountability and to promote public confidence.

In Chapter 3 we stated that the purpose of the CMC review was to review:

1. the initial QPS investigation conducted on Palm Island in November 2004, and the conduct of the officers involved in that investigation
2. the *Palm Island Review* and the conduct of the members of the IRT and
3. the actions of the QPS in dealing with any disciplinary and prevention or systemic issues.

We have set out:

- the policy requirements for investigations into deaths in custody (Chapter 4)
- the policy requirements for the IRT investigation (Chapter 7).

These establish that the CMC has assessed the initial QPS investigation and the subsequent review of that investigation against standards imposed by:

- the QPS Code of Conduct
- the relevant sections of the OPM
- in the case of the officers of the IRT, section 18.2 of the QPS HRMM.

The evidence upon which the CMC relies to support its views was detailed as follows:

- Chapter 9 examined the initial investigation and the conduct of the investigating officers, the conduct of the IRT in so far as it relates to the allegations, and the CMC's view of these allegations.
- Chapter 10 identified and detailed important areas of the investigation that in the CMC's view should have been but were not considered either by the initial investigating officers or by the IRT even though these included issues raised during the second Inquest.
- Chapter 11 outlined relevant statements made by the members of the initial QPS investigation team
- Chapter 12 detailed procedural fairness submissions of the IRT.

In reaching our conclusions and recommendations, we have asked ourselves two questions:

- Does the evidence support grounds for disciplinary action?
- If so, who should consider the appropriate disciplinary action?

In answering these questions we took into account the material outlined above, the purposes of discipline and the responsibility of the Commissioner of Police, and the Service, 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.

The CMC sets out below its conclusions and recommendations about disciplinary proceedings and discusses the broader implications for the QPS.

The CMC acknowledges that considerable time has passed since the events on Palm Island, and is aware of the need to bring these matters to an end as soon as possible. However, in the CMC's view the desire for swift resolution of these matters should not take precedence over the need for justice to be seen to be done. The over-riding concern is to maintain proper standards of conduct of members of the QPS and ensure that the public can have confidence in the QPS.

Decisions concerning disciplinary proceedings

Decisions must be made about:

- which grounds for disciplinary action to rely upon in commencing disciplinary proceedings, and
- which body should deal with the appropriate disciplinary proceedings and decide upon the sanction.

There are a number of grounds for disciplinary action upon which disciplinary proceedings may be commenced, which include the following:

- under the *Police Service Administration Act 1990* and Police Service (Discipline) Regulations 1990:
 - negligence, carelessness or indolence in the discharge of the duties of an officers' position,
 - a contravention of, or failure to comply with, a provision of the Code of Conduct or any direction, instruction or order given by, or caused to be issued by the Police Commissioner, such as the OPM and Section 18 of the QPS HRMM
 - misconduct, and
- under the *Crime and Misconduct Act 2001* and the *Queensland Civil and Administrative Tribunal Act 2009*
 - official misconduct.

In any one case, the evidence available may support disciplinary action on one or more of these grounds.

For example, as in this case, the same evidence is sufficient to support disciplinary proceedings:

- conducted by a QPS prescribed officer for 'misconduct' under the *Police Service Administration Act 1990* and Police Service (Discipline) Regulations 1990
- or
- commenced by the CMC⁶⁶² before the QCAT for 'official misconduct' under the *Crime and Misconduct Act 2001* and the *Queensland Civil and Administrative Tribunal Act 2009*.

The range of available sanctions is similar. On a finding of misconduct, a QPS prescribed officer may impose a sanction ranging from dismissal to a reprimand. On a finding of official misconduct the QCAT may impose a sanction ranging from dismissal to a fine.

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.

In cases in which this approach is not appropriate, the CMC may make an application to the QCAT for disciplinary proceedings to hear an allegation of official misconduct.

662 The Commissioner of Police may also commence proceedings before the QCAT.

1. The initial QPS investigation and the conduct of the officers involved

In the CMC's view the investigation into the death of Mulrunji was seriously flawed, its integrity gravely compromised in the eyes of the very community it was meant to serve. The way in which the investigation was conducted destroyed the Palm Island community's confidence that there would be an impartial investigation of the death.

The Acting State Coroner commented in the second Inquest that the initial QPS investigation was compromised due to compounding errors of judgement. The Coroner in the third inquest recorded his agreement with the section 46 comments made by the Acting State Coroner in relation to the initial QPS investigation. He made some additional comments, noting that there has been extensive evidence and much said about the flaws of the investigation in terms of transparency, independence and thoroughness.

There is evidence to suggest that the investigation was conducted in a manner that paid no heed to QPS' own policies and procedures, let alone its Code of Conduct, and ran counter to the spirit of the RCIADIC recommendations.

The investigation failed the people of Palm Island, the broader Indigenous community, and the public generally. Furthermore, it called into question the reputation of the Service and damaged public confidence in the integrity of the Queensland Police Service and its members.

The officers, by their method of dealing with fellow officer Hurley, have left themselves open to the perception that they are guilty of the very sort of conduct described by the Royal Commission:

The essential problem of the expertise of specialist, operational police investigators being employed in post-death investigations derives from the possibility of bias. In blunt terms, they may wish to protect other police from blame. They may wish to protect them from exacting scrutiny. More subtly, they may sympathetically project themselves into the position of the custodial officers and regard their explanations as having a credibility which they do not deserve.⁶⁶³

However, as we will discuss later in this chapter, in the CMC's view this problem of over-identification is not confined simply to the investigators on Palm Island.

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 Prosecutions for consideration of criminal proceedings.

However, contrary to the view of the QPS expressed in the *Palm Island Review*, the CMC considers the conduct of the officers involved in the initial QPS investigation is serious enough to warrant consideration of disciplinary proceedings.

Consideration of disciplinary proceedings against officers involved

In considering the conduct of the individual officers and whether it warrants consideration of any disciplinary action and/or management action, the CMC has taken into account:

- the obligations and requirements of each officer under the QPS Code of Conduct and the OPM, outlined in Chapter 4
- each officer's experience in the QPS, outlined in Chapter 8
- the evidence of the allegations outlined in Chapters 9 and 10
- the officers' continuing attitude, as outlined in Chapter 11.

663 Johnston 1991, vol. 1, 4.2.28

The basis upon which the CMC suggests the evidence is capable of establishing grounds for discipline in relation to each officer is outlined briefly below. Not all the relevant evidence outlined in this report in relation to each officer is restated.

The provisions of the OPM and the Code of Conduct required the officers to conduct a thorough and impartial investigation in the public interest which could withstand scrutiny by the community. In the CMC's view each of the officers failed in their responsibilities to do so by acting in the following manner.

Detective Inspector Webber

Detective Inspector Webber was the Regional Crime Coordinator. As an experienced senior officer and the officer in charge of the investigation, Webber was obliged to know and comply with the requirements of the OPM and the Code of Conduct.

The Code of Conduct required Webber to conduct himself and discharge his responsibilities with professionalism and integrity and to exercise proper diligence, care and attention and perform his duties to the best of his ability, in a manner that bears the closest public scrutiny and meets all standards. The evidence provides a basis to conclude that he failed to do so.

Section 1.17 of the OPM gave Webber direct responsibility for the investigation of the death in custody and required him to ensure that the investigation was conducted impartially.

In the CMC's view, Webber failed to do so when he allowed Robinson, who was a friend of Hurley⁶⁶⁴ and who he knew had previously failed to properly investigate an allegation against Hurley, to be involved in the initial QPS investigation, justifying his use by his local knowledge and failing to consider any other options.

Webber did not consider at the time, or even acknowledge later, that it was inappropriate for Hurley to collect members of the investigation team from the airport and drive them to the police station.

Webber gave no thought to — and did not accept — the inappropriateness of the investigators' socialising with Hurley by having dinner at Hurley's residence, which clearly damaged the perception of impartiality of the investigation. He failed to take any of the available alternatives.

Sections 1.17 and 16.24.3 required Webber not to presume suicide or natural death, regardless of whether it may appear likely. Webber acknowledged during the Inquest that he was aware of the obligation to investigate this matter as if it were a homicide. He also knew this was a serious matter⁶⁶⁵ and there was the potential for unrest in the community once the death became known⁶⁶⁶. Despite this, he consistently failed to ensure the requirements of the OPM were complied with so that this obligation was met.

Section 1.17 of the OPM also required Webber to ensure the integrity of independent versions of members involved in the incident or witness to the incident was preserved as far as practicable.

Webber said he considered the OPM meant that witnesses should be kept separate as 'far as practical up until such time as the interview', but stated that the investigation team couldn't prevent them from conversing. When asked whether in hindsight it would have been a wise decision to advise the parties involved not to discuss the matters under investigation, Webber replied if the purpose was to 'cover my arse' then he could have given a direction, but that he didn't think giving such a direction would have achieved anything.

664 The IRT failed to ask Webber whether he knew that Robinson and Hurley were friends.

665 IRT transcript, Webber, tape 2, page 21

666 The Significant Event message sent by Jenkins which states 'Contingency plan being implemented in respect to policing at Palm Island in case there is an increase in public disorder' should have also heightened Webber's awareness of the seriousness of the matter. As the officer in charge of the investigation, it is not unsafe to assume that Webber received this message. He also told the IRT he was concerned about the potential for unrest on the island.

Section 2.13.1 required comprehensive statements to be taken from witnesses as soon as practicable. Webber failed to ensure that all relevant lines of questioning were pursued with the PLO and to obtain a full statement from the PLO as soon as practicable. He took no steps to address the communication problem with the PLO.

Section 1.17 required Webber to ensure members directly involved in the incident or who are witnesses to the incident are interviewed as soon as practicable. Section 8.4.21 also required that, when investigating a coronial matter, statements should be obtained from all persons having any significant knowledge concerning the cause or circumstances of the death.

Webber failed to do so when he did not ensure that Roy Bramwell, a key witness, was interviewed as soon as possible on 19 November 2004. He also failed to ensure that relevant lines of questioning were pursued by the investigation team.

Despite the requirements of Section 16.24 of the OPM, Webber failed to immediately arrange for the next of kin to be notified of Mulrunji's death.

Section 6.3.6 of the OPM required investigators to assume a special need exists when interviewing an Aboriginal person as a witness. Webber did not take any action to comply with the requirements of section 6.3.6 to take whatever action was necessary to meet the special needs of the Indigenous witnesses.

The CMC is of the view that:

- there is evidence which, if accepted by a prescribed officer, is sufficient to support consideration of disciplinary action for misconduct against Webber
- AND
- the conduct of Webber may involve official misconduct and there is evidence supporting disciplinary proceedings for official misconduct.

For the reasons outlined above, the CMC makes the following recommendation.

Recommendation

The CMC recommends that consideration be given to commencing disciplinary proceedings for misconduct against Webber.

Detective Senior Sergeant Kitching

Detective Senior Sergeant Kitching was the Officer in Charge, Townsville CIB who had been in the CIB for about 15 years and prior to Mulrunji's death had been involved in about 20 or more investigations into deaths. As an experienced senior officer and the officer investigating he had the same general responsibilities as outlined in the OPM in relation to the investigation as Webber. He was obliged to know and comply with the requirements of the OPM and the Code of Conduct.

The Code of Conduct required Kitching to conduct himself and discharge his responsibilities with professionalism and integrity and to exercise proper diligence, care and attention and perform his duties to the best of his ability, in a manner that bears the closest public scrutiny and meets all standards. The evidence provides a basis to conclude that he failed to do so.

Section 1.17 of the OPM required Kitching to conduct the investigation expeditiously and impartially.

In the CMC's view, Kitching failed to do so when he allowed Robinson, a friend of Hurley's, to be actively involved in interviews and, among other things, to ask questions.

Kitching 'didn't even think about' the appropriateness of Hurley picking up the investigation team from the airport, and suggested that there was no alternative which patently was not correct. He failed to make any record of the conversations during the car trip from the airport or subsequently address the issue in his interview with Hurley.

Kitching suggested that there was no problem with his attendance at Hurley's residence to eat a meal. He failed to recognise the damage to the perception of impartiality of the investigation. He also failed to take any of the available alternatives.

As the investigating officer Kitching had the specific responsibility to complete a Form 1 and where appropriate a Supplementary Form 1.

Kitching failed to include in the Form 1, or a Supplementary Form 1, the allegations of Roy Bramwell and of Ms Sibley about Hurley's assault of Mulrunji. He also failed to brief Dr Lampe about the allegations during the autopsy.

However he did include in the Form 1 information that Mulrunji was aggressive and abusive towards police and that he punched Hurley and did inform Dr Lampe about unconfirmed information he received from Robinson that Mulrunji had been drinking bleach prior to his arrest. His actions in this regard give rise to a perception of bias.

Section 1.17 also required Kitching to ensure members directly involved in the incident or who were witnesses to the incident were interviewed as soon as practicable. Section 8.4.21 also required when investigating a coronial matter, that statements should be obtained from all persons having any significant knowledge concerning the cause or circumstances of the death.

Kitching failed to interview Roy Bramwell as soon as possible on 19 November 2004.

He also failed to ensure that relevant lines of questioning were pursued.

Section 6.3.6 of the OPM required investigators to assume a special need exists when interviewing an Aboriginal person as a witness. Kitching did not take any action to comply with the requirements of section 6.3.6 to take whatever action was necessary to meet the special needs of the Indigenous witnesses.

The CMC is of the view that:

- there is evidence which, if accepted by a prescribed officer, is sufficient to support consideration of disciplinary action for misconduct against Kitching

AND

- the conduct of Kitching may involve official misconduct and there is evidence supporting disciplinary proceedings for official misconduct.

For the reasons outlined above, the CMC makes the following recommendation.

Recommendation

The CMC recommends that consideration be given to commencing disciplinary proceedings for misconduct against Kitching.

Detective Sergeant Robinson

Detective Sergeant Robinson was the Officer in Charge, CIB, on Palm Island and had been since 14 November 2002. He had experience as a detective and, prior to Mulrunji's death, had been involved in investigations into approximately six homicides. He was obliged to know and comply with the requirements of the OPM and the Code of Conduct.

The Code of Conduct obliged Robinson to conduct himself and discharge his responsibilities with professionalism and integrity. In particular he was obliged to avoid both actual and apparent conflicts of interests and disclose details of any conflict to his supervising executive officer.

Robinson was a friend of Hurley, and known to be so. His prior investigation of Barbara Pilot's allegation against Hurley had already created a perception of bias in favour of Hurley. In the case of Mulrunji's death he did not raise, let alone formally declare, his conflict of interest before joining the investigation team and taking an active part in the investigation. Robinson asked questions during witness interviews which give rise to a perception of favourable bias towards Hurley.

Although he knew that Hurley was the principal person of interest in the investigation and he had participated in the investigation, Robinson cooked a meal at Hurley's residence and together with the senior members of the investigation team had dinner there with Hurley on the night of 19 November 2004.

Robinson was also required to comply with the general provisions of section 1.17 of the OPM in relation to conducting the investigation impartially and ensuring statements from witnesses were comprehensive, and with the requirements of Section 6.3.6 concerning the special needs of Indigenous witnesses.

Robinson prepared a statement by Roy Bramwell which was inconsistent with Bramwell's interview and more favourable to Hurley. He also made no provision for the special needs of Bramwell, an Indigenous witness.

The CMC is of the view that:

- there is evidence which, if accepted by a prescribed officer, is sufficient to support consideration of disciplinary action for misconduct against Robinson

AND

- the conduct of Robinson may involve official misconduct and there is evidence supporting disciplinary proceedings for official misconduct.

For the reasons outlined above, the CMC makes the following recommendation.

Recommendation

The CMC recommends that consideration be given to commencing disciplinary proceedings for misconduct against Robinson.

Inspector Williams

Inspector Williams was the ESC officer responsible for overseeing the initial QPS investigation. Prior to 2004, he had spent many years with the CIB, two and a half years with the Homicide Squad and some time in the Corrective Services Investigation Unit and during this time had investigated deaths in custody. He was obliged to know and comply with the requirements of the OPM and the Code of Conduct.

Like the other officers involved, Williams was required to comply with his obligations under the Code of Conduct to conduct himself and discharge his responsibilities with professionalism and integrity and to exercise proper diligence, care and attention and perform his duties to the best of his ability, in a manner that bears the closest public scrutiny and meets all standards.

Pursuant to section 1.17, as the ESC officer overseeing the investigation, among other things, Williams was required to liaise and immediately assess the incident in conjunction with Webber and to provide appropriate advice and assistance to Webber. Williams was also required, if of the opinion proper investigational or procedural matters were not being adhered to, or there were matters which may have adversely affected an impartial investigation, to confer with Webber and the CMC to endeavour to resolve the issue.

Williams was also equally obliged to comply with the general requirements of section 1.17 and the other relevant provisions of the OPM that governed the roles of Webber and Kitching.

The OPM imposed certain obligations on Williams as the ESC officer overseeing the investigation of a death in custody. He was aware of the RCIADIC recommendation that ‘the aspect of homicide should never be ruled out’⁶⁶⁷ in a death in custody investigation, and understood the OPM required that a police officer conducting a death in custody investigation should ‘never rule out the fact that it could possibly be homicide’⁶⁶⁸.

Williams failed to ensure the requirements of the OPM were met. While Williams arrived on Palm Island on 20 November 2004, once he became aware of the issues which compromised the investigation, he should have taken steps to manage the impact on the investigation’s integrity

Williams did not satisfy himself that the officers involved in the investigation had no conflict of interest. Once Williams found out the extent to which Robinson had been involved in the investigation, he did not take any steps to manage Robinson’s involvement.

Williams did not make any inquiries about any conversation between Hurley, Leafe and the PLO before the investigation team arrived on the island and failed to clarify with Hurley exactly what was discussed when Hurley mentioned, on two occasions in his re-enactment interview, that he’d discussed the matter with the other witnesses. Further he failed to give Hurley a direction not to discuss the matter further once he became aware that Hurley had discussed the matter with other witnesses.

Section 2.13.1 required comprehensive statements to be taken from witnesses as soon as practicable. Having involved himself directly in the investigation, Williams failed to ensure that all relevant lines of questioning were pursued with the PLO and to obtain a full statement from the PLO as soon as practicable. He took no steps to address the communication problem with the PLO.

Williams also failed to take any action to satisfy himself that all relevant lines of inquiry were being pursued by the investigation team.

Williams did not take any action to ensure that the Form 1 was accurate and contained all relevant information. We note Williams’ comment made in his procedural fairness submissions that he has not breached any requirement in the OPM in relation to the Form 1.

Section 6.3.6 of the OPM required investigators to assume a special need exists when interviewing an Aboriginal person as a witness. Williams did not take any action to comply with the requirements of section 6.3.6 to take whatever action was necessary to meet the special needs of the Indigenous witnesses.

The CMC is of the view that:

- there is evidence which, if accepted by a prescribed officer, is sufficient to support consideration of disciplinary action for misconduct against Williams

AND

- the conduct of Williams may involve official misconduct and there is evidence supporting disciplinary proceedings for official misconduct.

For the reasons outlined above, the CMC makes the following recommendation.

Recommendation

The CMC recommends that the QPS give consideration to commencing disciplinary proceedings for misconduct against Williams.

667 Inquest transcript, page 476

668 Inquest transcript, pp. 485–486

Acting Assistant Commissioner

The OPM placed no obligations on the role of Assistant Commissioner in relation to the investigation of a death in custody.

The Acting Assistant Commissioner considered his role was to keep the Deputy Commissioner and Commissioner briefed on the progress of the investigation and to ensure all the resources and facilities were provided to the investigators.

The CMC is of the view that no disciplinary proceedings against the Acting Assistant Commissioner would have been warranted in relation to the conduct of the initial QPS investigation.

However, the CMC also notes that in his interview with the IRT the Acting Assistant Commissioner did not display a great deal of insight into the shortcomings of the investigation. He failed to recognise any of the shortcomings outlined above.

The Acting Assistant Commissioner also demonstrated an inappropriate attitude towards an officer of the Court, the Acting State Coroner. In the CMC's view, had the Acting Assistant Commissioner not retired, it would have been appropriate for the QPS to consider guidance or some other managerial action with respect to these aspects.

Acting Chief Superintendent

The OPM placed no obligations on the role of Operations Coordinator in relation to the investigation of a death in custody.

The CMC is of the view that disciplinary proceedings against the Acting Chief Superintendent would not have been warranted in relation to the conduct of the initial QPS investigation.

The CMC disagrees with the IRT's view that the Acting Chief Superintendent's alleged failure with respect to command and control, and effective planning was in some way responsible for the poor outcomes of the investigation.

However, had the Acting Chief Superintendent remained with the QPS, the CMC would have recommended the QPS give consideration to management action to address his response to the issues arising from the initial QPS investigation.

Considerations of management action

The CMC concludes that Webber, Williams, Kitching and Robinson all failed to comply with the provisions of the OPM and the RCIADIC recommendations about investigating an Indigenous death in custody. They have not demonstrated any insight into their failings, claiming that they acted appropriately and seeking, in some cases, to blame others for the adverse impact of their investigation.

For that reason, the CMC is also of the view that, as well as consideration of disciplinary proceedings, consideration should be given to performance management of the officers. Any such management action needs to be more than mere guidance simply pointing out in general terms the failure to comply with policy and procedures. In the light of some of the officers' responses to the IRT such an approach is unlikely to be effective.

Specific performance objectives which address the identified deficiencies, performance measures and targets need to be set and monitored.

Recommendation

The CMC recommends that the QPS initiate management action to address the performance of Webber, Kitching, Williams and Robinson.

2. The *Palm Island Review* and the conduct of the members of the IRT

Given the public interest in the QPS response to the criticisms of the Acting State Coroner, the Commissioner of Police quite appropriately requested that the CMC conduct a review of the *Palm Island Review*.

This was a case in which it should have been clear to the QPS that it was necessary for them to act in the public interest and conduct a thorough, competent and impartial investigation of the initial QPS investigation. Yet, in the CMC's view, the QPS failed to do so.

In the CMC's view, the *Palm Island Review* did not do justice to the seriousness of the event: the death of an Indigenous man in police custody.

In the CMC's view, the Acting State Coroner's comments and criticisms were merely examples of her overall concern with the lack of impartiality and thoroughness of the initial investigation. Rather than consider the total import of her comments, it seems that the QPS instead chose simply to focus on, and deal with, each individual comment or criticism as a separate issue, as we have seen in their consideration of the allegations. They did not consider the conduct of the officers as a whole.

The *Palm Island Review* creates the impression that the QPS failed to acknowledge the context of the initial QPS investigation and to appreciate the seriousness of the investigators' conduct. In the CMC's view, the evidence creates the perception that the IRT's investigation was focused on simply allowing the officers concerned to provide largely unchallenged explanations for their conduct in response to the Acting State Coroner's criticisms, rather than finding out what actually happened and pursuing the reasons why any identified failures or deficiencies in the initial QPS investigation occurred.

For all the reasons outlined, the CMC can have no confidence in the integrity of the conclusions and recommendations in the *Palm Island Review* report.

Contrary to the view expressed by the Commissioner of Police, the CMC considers that the conduct of the members of the IRT is sufficiently serious to warrant consideration of disciplinary proceedings.

Consideration of disciplinary proceedings in relation to the *Palm Island Review* — IRT members

In considering the conduct of the members of the IRT the CMC has taken into account:

- the obligations and requirements of the IRT under the QPS Code of Conduct and Section 18 of the HRMM, outlined in Chapter 7
- the experience of the members of the IRT in the QPS, outlined in Chapter 7
- the evidence of the IRT's investigation, their findings and recommendations, outlined in Chapters 9 and 10.

It must also be recognised they did not act in isolation. In relation to some aspects of the investigation and their findings, the IRT received assistance and advice from an Assistant Commissioner. Their investigation was overseen by the QPS Solicitor. Further, the IRT gave detailed regular briefings about the investigation to the Commissioner of Police, who fully supports the findings of the IRT.

The members of the IRT also conducted their investigation within the context of the QPS culture, aspects of which we discuss below.

None the less, the members of the IRT were obliged to perform their function in accordance with the prescribed standards and their ethical obligations.

The basis upon which the CMC suggests the evidence supports consideration of disciplinary proceedings is outlined briefly below. Not all the relevant evidence outlined in this report is restated.

The provisions of Section 18 of the HRMM required the IRT to conduct an impartial and thorough investigation. They were obliged by the Code of Conduct to act in a way that maintained and enhanced public confidence in the integrity of public administration. In the CMC's view, they failed to do so by acting in the following manner.

Failing to hold officers accountable

The IRT failed to hold the officers involved in the initial QPS investigation accountable for their conduct. The IRT implicitly acknowledge that Robinson's involvement compromised the integrity of the initial QPS investigation, but failed to hold anyone responsible for the decision to involve him⁶⁶⁹ [Allegation 1: Officers serving on Palm Island involved in investigation].

They focused on the irrelevant issue of the credibility of Bramwell's evidence rather than the purpose of the Form 1 and failed to hold Kitching responsible for his non-compliance with his obligations as the investigating officer [Allegation 7: Form 1].

The IRT saved their harshest criticism for the Acting Chief Superintendent; they recommended that he be chastised and given guidance on five grounds in relation to a number of the allegations. Yet the Acting Chief Superintendent was not present on Palm Island during the initial QPS investigation. He had no specific obligation under the OPM in relation to the investigation of a death in custody, in fact the IRT states it could 'find no policy, order, procedure or instruction that the Acting Chief Superintendent has failed to comply with'. The IRT relies on the Acting Chief Superintendent's job description as the basis for recommending that he be chastised and receive guidance⁶⁷⁰. By contrast, Webber, Williams, Kitching and Robinson were all present on Palm Island and had clear obligations under the OPM in relation to investigating a death in custody and interviewing Indigenous witnesses. We also note that the IRT does not refer to the job descriptions of any of these officers. It is not made clear by the IRT why they considered the Acting Chief Superintendent's failure to give advice or directions was more serious than the failures of officers who were present on Palm Island and had specific responsibilities under the OPM.

Justifying inappropriate conduct

The IRT justified the conduct of the initial QPS investigation team on doubtful grounds. They made statements — for example, that anybody with local knowledge had a relationship with Hurley — which obscure the issues and misrepresent the actual situation faced by the officers [Allegation 1: Officers serving on Palm Island involved in investigation].

To justify the conduct of the investigation team, the IRT made a finding that 'in practical terms no investigation had commenced' in relation to the failure to record the conversation between Hurley and the investigators on the trip from the airport to the police station, which is irrelevant to the issue [Allegation 2: Hurley transporting investigators].

The IRT made comments blaming senior officers for failing to provide appropriate logistical support, including that Webber did not find out the meal was at Hurley's until he got there and that it would have been an inconvenience for Robinson to serve the meal somewhere other than Hurley's residence. Once again these issues are irrelevant [Allegation 3: Dinner at Hurley's].

669 We note that the IRT recommended the Acting Chief Superintendent be chastised and receive guidance in relation to a number of specific issues, including his failure to give directions or advice to Webber or Kitching about the role of Robinson or how Robinson was to be managed.

670 We note that the IRT does not put the specifics of the job description to the Acting Chief Superintendent during his interview.

The IRT proffered a number of spurious reasons why in their view it was ‘understandable’ Webber and Williams did not check the Form 1 — for example, a variety of causes of death were examined by the investigators, Dr Lampe’s examination did consider assault [Allegation 7: The Form 1].

Suggesting explanations for the officers conduct not advanced by the officers themselves

The IRT offered an explanation for Webber failing to follow up, or missing, the PLO’s response to a question during the re-enactment⁶⁷¹. The IRT noted ‘it appears as if Webber has moved straight into what he sees as an important line of questioning’. They also made comments about the time involved in the PLO giving his answer, the length of the interview and the fact it was one of four re-enactments conducted that day. None of these comments were put to Webber or Williams in their respective interviews with the IRT, neither were they offered as explanation by either of them for failing to pursue the PLO’s answer. [Allegation 6: Lack of vigour in questioning the PLO]

Asking a series of questions intended to elicit a specific desired response

The IRT questioned Wilson about the use of Robinson during the investigation [Allegation 1: Officers serving on Palm Island involved in investigation].

Wilson initially told the IRT ‘you’d have to be very careful how you used him ... for example, there’s no way that you would ... interview Hurley and have Robinson as your corroborator.’ The IRT then asked whether Wilson was saying that Kitching should have used someone other than Robinson during the interview with Hurley, if someone else was available. Wilson replied if they were available. The IRT then asked what if there was no-one else available, to which Wilson replied

... if there’s no-one else available there’s no reason why you couldn’t use ... Robinson. Obviously there’d be questions asked about ... how ethical that might be or whatever, and at the end of the day someone might ... be critical of it or ... suggest that there could be a reason why it couldn’t be done but it doesn’t mean in any case that it was wrong.

The IRT then asked ‘If that was the case would Kitching have been better off interviewing Hurley by himself without Robinson?’, to which Wilson replied in most cases it’s better to have a corroborator, depending on the role the corroborator took and whether they asked many questions or influenced the interview (IRT transcript, Wilson, pp10-11).

Asking questions which create a perception of bias

In the questioning of Strohfeldt, in reference to Hurley, the IRT asked: ‘Have you seen a better officer in terms of interaction with a community, Aboriginal community in your twenty-five, thirty years?’ despite the fact that Strohfeldt said earlier in the interview that he had not been to Palm Island between the time he gained line control of Palm Island on 29 March 2004 and the time of Mulrunji’s death.

Accepting evidence without testing it

The IRT accepted that there was no option other than Robinson to provide local knowledge or assist Kitching when clearly there were alternatives. [Allegation 1: Officers serving on Palm Island involved in investigation].

They accepted that there was no alternative to Hurley driving the vehicle in which the investigators travelled from the airport to the station, without exploring the existence of any options [Allegation 2: Hurley transporting investigators].

They also accepted Webber’s assertion that Bramwell could not be ‘located’ on 19 November 2004.

671 ‘I was thinking, um, if I see something I might get myself into trouble or something. The family might harass me or something you know’.

Lack of thoroughness

Further, in light of the degree of seriousness of alleged conduct and the public interest, Section 18.2 of the HRMM required the IRT to conduct an extensive investigation. Yet the IRT failed to identify and consider all the relevant QPS policies, procedures and other requirements for the investigation of a death in custody or to ascertain all the facts relevant to the investigation.

The IRT did not identify and investigate important issues concerning the initial QPS investigation not specifically mentioned by the Acting State Coroner. For example, they failed to explore why Bramwell was not interviewed by the initial QPS investigation team on 19 November 2004 (Chapter 10).

The IRT did not address all the relevant issues raised by the allegations they distilled from the Acting State Coroner's comments and criticisms. For example, the IRT did not address the failure of the investigation team to take the PLO to the scene. [Allegation 2: Hurley transporting investigators: Driving to the scene of the arrest]. They also did not address the omission of Ms Sibley's allegation from the Form 1 [Allegation 7: Form 1].

When in the course of their interviews the officers provided explanations not previously mentioned by them in their statements for, or evidence given to, the Inquest, the IRT did not pursue these.

Lack of diligence

In conducting their investigation, the IRT was obliged by the Code of Conduct to exercise proper diligence, care and attention; and to perform their duties diligently and to the best of their ability, and in a manner that bears the closest public scrutiny and meets all legislative and QPS standards.

The IRT failed to put the requirements of the OPM to the officers involved in the initial QPS investigation and obtain the officer's explanation for failing to meet their obligations. The IRT also failed to interview all the relevant witnesses.

Section 18 of the HRMM also required the IRT to provide a detailed comprehensive report attaching all documents (including interview transcripts, statements, synopses, video and audio tapes, photographs, etc.) relevant to the investigation. They did not do so. Among other things, the report does not specifically identify or clearly reference or set out in totality or contain copies of the relevant legislation or QPS policies and procedures.

Explanations provided by the officers in their interviews with the IRT, but not previously mentioned in their statements made for the Inquest or given in evidence before the Inquest, were not pursued.

During the interviews, the IRT are sometimes presented with conflicting versions by the officers, but they did not put the inconsistencies to the officers and therefore failed to ascertain what actually occurred. For example, Kitching gives inconsistent evidence about his intention to lodge a Supplementary Form 1 and his reasons for not disclosing the assault allegations to Dr Lampe during the autopsy [Allegation 7: The Form 1]. The IRT does not address these inconsistencies.

Inadequacy of their findings in relation to the conduct of the investigating officers

The CMC considers for all the reasons stated above that the IRT's recommendations in relation to Kitching and Webber are inappropriate and inadequate to address their conduct. In summary, the IRT:

- did not consider that disciplinary proceedings were warranted against any of the investigating officers for any of the allegations
- recommended managerial guidance for Kitching in relation to four allegations
- recommended managerial guidance for Webber in relation to three allegations
- made no recommendations in relation to Robinson, Williams or the Acting Assistant Commissioner.

The CMC notes that the IRT, in making recommendations for disciplinary action, failed to consider the totality of the investigating officers' conduct, dealing with each allegation separately, rather than looking for patterns of behaviour and coming to an overall conclusion.

The CMC is of the view that:

- there is evidence which, if accepted by a prescribed officer, is sufficient to support consideration of disciplinary proceedings against the members of the IRT

AND

- the conduct of the members of the IRT may involve official misconduct and there is evidence supporting disciplinary proceedings for official misconduct.

For the reasons outlined above, the CMC makes the following recommendation.

Recommendation

The CMC recommends that the QPS give consideration to disciplinary proceedings against the members of the IRT.

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.

4. Prevention and systemic issues

An important focus for the QPS in investigating a matter (and for the CMC in reviewing a QPS investigation) is:

- the identification of any systemic concerns, deficiencies in policy or procedures, opportunities for individual or agency learnings and any issues concerning workplace behaviour or organisational cultural and
- the development of strategies to address any identified issues.

Policies and procedures

The Acting State Coroner in the second Inquest made a number of recommendations about the procedures for the investigation of deaths in custody. The *Palm Island Review* also suggested further changes to the OPM. Following these sets of recommendations the QPS made amendments to its OPM.

Since Mulrunji's death and the subsequent events on Palm Island, the QPS has developed and implemented new operational procedures for investigations of deaths in custody.

Ongoing changes have been made to the OPM by the QPS to reflect the new procedures and the provisions of the MOU between the QPS, the CMC and the State Coroner. The changes include a provision stating that investigating officers should treat a death in custody as a homicide until otherwise determined.

The CMC considered, and made recommendations about, the changes made to the OPM. We also made a number of additional recommendations flowing from our consideration of other procedural issues identified in this matter. These are discussed in Appendix 3.

However, further consideration of the relevant policy and procedures is now necessary following the recommendations made by Mr Hine, the Coroner in the third inquest, about the investigation of deaths in custody.

The State Coroner, who has primary responsibility for effectively investigating deaths in custody, is currently in discussion with the Commissioner of Police and the Chairperson of the CMC to consider any necessary changes in arrangements for the investigations following the recommendations made by Mr Hine.

Learning opportunities

In addition to procedural changes to the OPM, several general operational changes, to be incorporated into planning investigations and future training, were recommended by the IRT in the *Palm Island Review* report.

The QPS has delivered education and training sessions based on the 'learnings' gleaned from the criticism of the initial QPS investigation. These sessions have been for QPS members from recruits to commissioned officers. The QPS has apparently also given a presentation at a meeting of Australian policing jurisdictions about the learnings.

Adherence to obligations

However, it seems that the implementation of new operational procedures and education and training sessions alone is not the answer.

At the time of the initial QPS investigation, the QPS already had provisions in place in the OPM which would have ensured an impartial investigation; provisions that the officers simply failed to follow. It would seem that officers need more than just education and training if they are to appreciate the reasons for policy and procedures and why adherence to them is so important. They must honour both the letter and the spirit of the OPM if they are to appropriately carry out their responsibilities.

The QPS stated that it accepted the RCIADIC recommendations and had implemented policies and procedures to give effect to them, yet the investigation of Mulrunji's death, and the treatment of his family and community, ran directly counter to the spirit of the Royal Commission.

If the members of the initial QPS investigation team and the IRT had simply complied with the relevant provisions of the Code of Conduct, OPM and Section 18.2 of the HRMM, history would have been decidedly different.

5. Organisational issues — implications for the QPS

The actions of the Service in responding to the events on Palm Island lead us to several observations on the QPS and its culture.

In a statement we have already cited in this report the Acting State Coroner quoted RCIADIC:

A death in custody is a public matter. Police and prison officers perform their services on behalf of the community. They must be accountable for the proper performance of the duties. Justice requires that both the individual interest of the deceased's family and the general interest of the community be served by the conduct of thorough, competent and impartial investigations into all deaths in custody.

The RCIADIC report noted⁶⁷²:

The essential problem of the expertise of specialist, operational police investigators being employed in post-death investigations derives from the possibility of bias. In blunt terms, they may wish to protect other police from blame. They may wish to protect them from exacting scrutiny. More subtly, they may sympathetically project themselves into the position of the custodial officers and regard their explanations as having a credibility which they do not deserve.

This is the context in which the QPS conducted its investigation of the death of Mulrunji.

Once the Acting State Coroner had made the criticisms of the investigation of Mulrunji's death, it was imperative that the QPS did not compound the identified failings of that investigation, if public confidence in the Service, and the self-esteem of members of the Service, were to be restored.

Both the investigation of Mulrunji's death and the IRT investigation should have been impartial and thorough. Unfortunately, in the CMC's view, neither was. In the CMC's view, the initial QPS investigation and the *Palm Island Review* are characterised by over-identification, double-standards and an unwillingness to publicly acknowledge failings on the part of police.

In the CMC's view, both the officers investigating Mulrunji's death and the authors of the *Palm Island Review* were handicapped in the performance of their professional duties by their over-identification with fellow officers who were under examination, as described in the quote above from the Royal Commission.

Tensions in the relationship between the police and the Palm Island community have shown that communities will not tolerate the application of a double standard by the police service, whereby its own officers are investigated less rigorously than an ordinary citizen would be.

The QPS and its officers must recognise the need to be thorough and impartial, and be seen to be thorough and impartial, *particularly* when investigating their own officers. The Service must ensure that the decisions of police officers will withstand public scrutiny in these instances.

Accountability is essential to public confidence in the police service

In the CMC's view, the *Palm Island Review* indicates that there is a belief within QPS that the best way to protect the reputation of the Service is not to expose its shortcomings. This erroneous belief about what is best for the organisation can only ultimately be self-destructive and will erode public confidence and debilitate the morale of good officers and tarnish them unfairly.

High-profile cases such as the Palm Island matter set the public perceptions of the QPS. If the QPS wants the public to be confident that matters involving its own officers can be investigated rigorously and impartially, then it cannot perpetuate a culture that countenances failure to meet expected standards without consequence.

672 Johnston 1991, vol. 1, page 121

The CMC is strongly of the view that one of the most effective ways in which the QPS can engender public confidence, protect its reputation, and maintain high standards and the self-esteem of its members is to be seen to take certain, timely, responsive and decisive action when there is a failure to meet these standards and obligations.

The CMC has communicated its concern in this regard to the Commissioner of Police.

Commissioner's responsibilities

The Commissioner sets the standards against which the members of the QPS are measured. It is his responsibility to maintain the standards and promote public confidence.

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 judgement, [through] misconduct, ... [to] at the more serious end official misconduct and acts that amount to statutory offences'.

However in this case, while he has 'always publicly acknowledged that the initial investigation on Palm Island should have been different and undertaken better than it was', the Commissioner fails to acknowledge or understand the seriousness of the essential failings of that investigation.

The Commissioner also appears unable to recognise the failings of the IRT's investigation.

Conclusion

In September 2006, the Acting State Coroner stated at page 11 of her Inquest findings:

The response by senior police officers to this inquest should be cause for some reflection. There was little acknowledgement that the investigation by the police was deficient. Clear directives from the Police Commissioner and a commitment to ensure proper standards of investigation are required to restore public confidence.

More than three years later, based on the CMC's analysis of the *Palm Island Review*, it appears little has changed.

The Commissioner of Police is responsible for the culture in which the flawed *Palm Island Review* was produced, and hence he must be held accountable for it.

The Commissioner asserts that he is well aware of his responsibilities as Commissioner of the Queensland Police Service, has always accepted those responsibilities and will continue to do so.

The CMC looks to the Commissioner of Police to acknowledge the unacceptable conduct of the members of the initial QPS investigation team and the flawed *Palm Island Review* and now take appropriate action to restore the confidence of the public, and of its own members, in the Service.

APPENDIX 1: MATERIAL CONSIDERED BY THE CMC

In conducting our review, the CMC considered a significant amount of material as outlined below.

Documents relevant to the second Inquest

- the transcript of the Inquest of over 1300 pages
- some of the statements of police officers and witnesses prepared for the Inquest into the death of Mulrunji
- the Finding of Inquest into the death of Mulrunji
- the submission to the Inquest of the Commissioner of the QPS
- CMC report prepared for the Inquest at the Coroner's request

Documents relevant to the third inquest⁶⁷³

- part of the transcript of the pre-Inquest hearings
- all of the transcript of the Inquest hearing of over 500 pages
- the submission to the Inquest of Counsel Assisting the Coroner
- the Finding of Inquest into the death of Mulrunji

QPS documents relating to initial QPS investigation

- Significant Event message from 19 November 2004
- Executive Briefing Note
- Running sheet
- Statement index
- Form 1 prepared by Kitching
- Palm Island station roster for period 13 November to 26 November 2004

IRT report

- the QPS Report, which included:
 - an Executive Summary
 - a schedule of QPS policy changes
 - the watch-house surveillance video from 19 November 2004
 - the video re-enactment interviews with Bramwell, Hurley, the PLO and Leafé conducted on 20 November 2004
 - preliminary research work into blunt force trauma
 - the Memorandum of Advice of Senior Counsel obtained by the QPS
 - the report itself of over 200 pages
 - transcripts of interviews of over 550 pages

QPS material

- Relevant sections of the police OPM: Versions in operation November 2004, October 2007, 24 April 2009, and the latest amendments in the Commissioner's Circular dated 30 October 2009 (No. 19/2009)
- Chapter 18 Human Resources Management Manual

673 This material was not in existence at the time the IRT prepared their report.

- Code of Conduct
- Extract from First Response Handbook, 5th Edition, August 2002, relating to 'Deaths in custody'
- Various media releases
- QPS training materials, including:
 - Competency Acquisition Program materials
 - Cultural Appreciation Project materials
 - Presentation by A/Supt McKay to the inter-jurisdictional forum
 - SEC presentation and draft notes for A/C Davey relating to 'Police related incidents'

CMC material

- CMC reports relating to:
 - Complaints against Hurley
 - Complaints against Robinson
- CMC files relating to:
 - Complaints against Hurley
 - Complaints against Robinson
 - CMC investigation of Mulrunji's death
- CMC running sheets
- Various correspondence between CMC and QPS
- Various media releases
- CMC/CJC reports, including:
 - 'Aboriginal witnesses in Queensland's criminal courts, June 1996
 - 'A report of an investigation into the arrest and death of Daniel Alfred Yock'

Interviews

- Transcripts of numerous QPS and CMC interviews
- Audio tapes of various QPS and CMC interviews

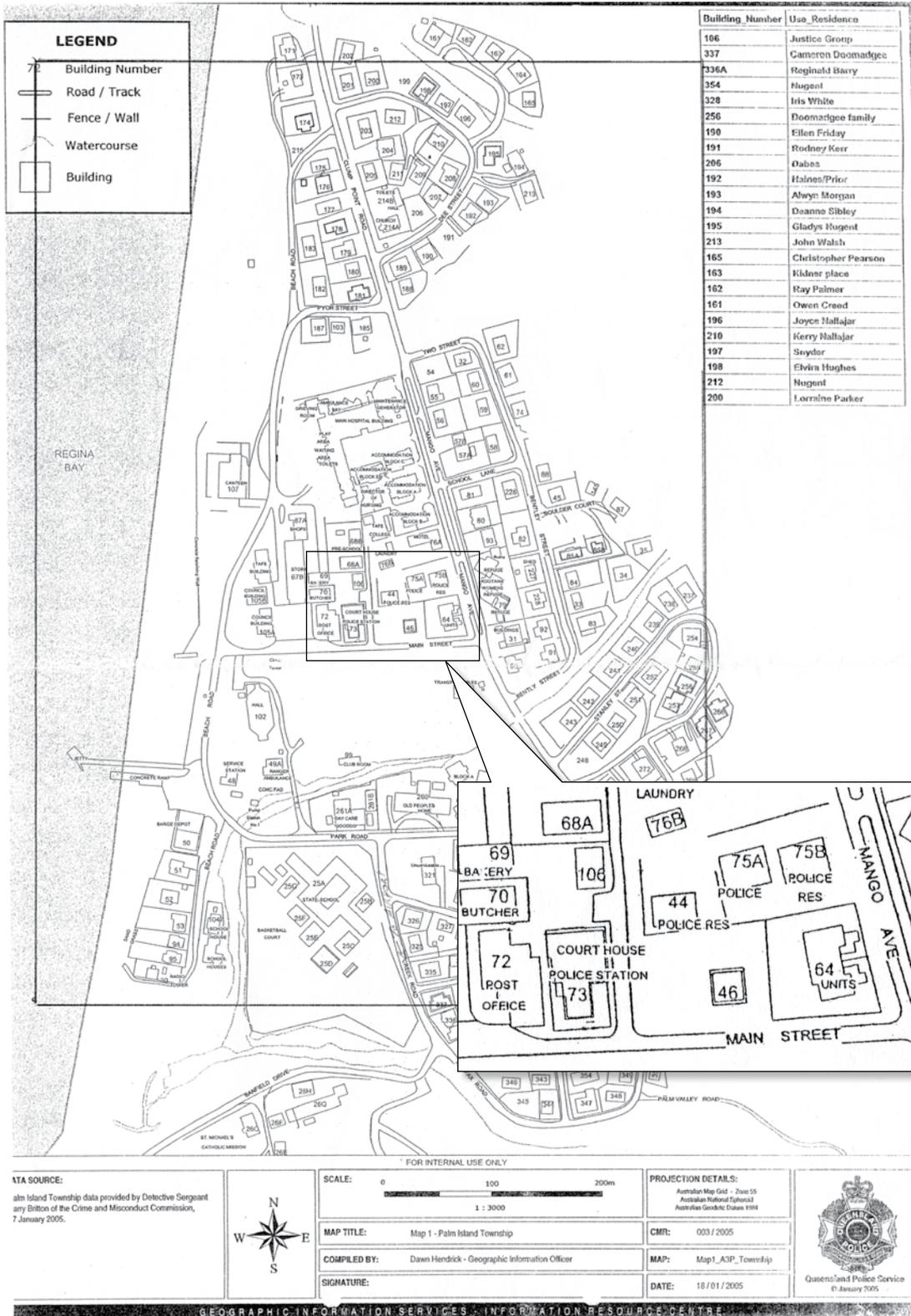
Judgments

- District Court judgement Judge Pack
- Court of Appeal judgment
- Extracts from transcripts of Wotton and Hurley trials

Other

- Memorandums of Understanding between Coroner, QPS, CMC
 - Version 28 April 2006
 - Version 1 July 2008
- the State Coroner's guidelines
- the recommendations of the Royal Commission into Aboriginal Deaths in Custody (1991)
- Queensland Government and QPS statements referring to the implementation of RCIADIC Recommendation 35
- Coronial findings from November 2004 to present relating to Indigenous deaths in custody
- Acts of Parliament
 - *Police Powers and Responsibilities Act 2000*
 - *Police Service Administration Act 1990*
 - Police Service (Discipline) Regulations 1990
 - *Coroners Act 2003*
- Various Parliamentary reports and Hansard reports on progress of implementation of RCIADIC recommendations
- Supreme Court of Queensland 'Equal treatment benchbook'

APPENDIX 2: PLAN OF PART OF PALM ISLAND TOWNSHIP



APPENDIX 3: CHANGES TO POLICE PROCEDURE ARISING OUT OF THE EVENTS ON PALM ISLAND

The Acting State Coroner in the second Inquest made a number of recommendations about the procedures for the investigation of deaths in custody. The Palm Island Review also suggested further changes to the OPM. Following these sets of recommendations the QPS made amendments to its OPM.

Still further changes have been made to the OPM by the QPS in recent times. These include changes made in April 2009 to reflect the provisions of the MOU between the QPS, the CMC and the State Coroner to include the statement that investigating officers should treat a death in custody as a homicide until otherwise determined.

The Coroner in the third inquest has also made recommendations about the investigation of deaths in custody. These are currently the subject of discussion between the CMC, the State Coroner and the Commissioner of Police.

In addition to procedural changes to the OPM, several general operational changes, to be incorporated into planning investigations and future training, were recommended by the IRT in the Review report.

The CMC has considered, and made recommendations about, the changes made to the OPM by the QPS and the general recommendations made by the IRT.

Finally the CMC makes a number of additional recommendations flowing from our consideration of other procedural issues identified in this matter.

Changes to the OPM in response to Acting State Coroner's comments

Since the second Inquest the QPS amended its OPM in response to the Acting State Coroner's comments numbers 28, 29, 30, 32, 34, 36 and 40.

In the CMC's view, the amended OPM properly addressed the Acting State Coroner's concerns in comments numbers 29 and 30 about the appointment of the officer in charge of an investigation and the need to consider the issue of impartiality when selecting the investigating officers.

The CMC is of the view that further amendments should have been made to more precisely address the Acting State Coroner's concerns in relation to the other comments. It had intended to make recommendations to the QPS in that regard. However these have been put on hold pending the settling of the new arrangements for investigation of deaths in custody.

General recommendations by the IRT

The IRT made a number of general recommendations arising from their consideration of the investigation of Mulrunji's death. Generally the CMC notes that the QPS has modified its training and awareness sessions and presentations to QPS members and other stakeholders with a view to including lessons learnt from this matter.

Logistical support

In considering three of the allegations the IRT made recommendations concerning the issue of 'logistical support'.

Arising out of Allegation 1: *Officers serving on PI involved in investigation*, Allegation 2: *Hurley transporting investigators* and Allegation 3: *Dinner at Hurley's residence* the IRT recommended:

... that future training and management of operations of this nature, consider the need for logistical support to be considered as a primary component of the planning and investigative process.

Arising out of Allegation 3 and in the executive summary of the *Palm Island Review* the IRT recommended:

The Service / Senior Executive should consider requiring /ensure all regions and commands review their policy and capacity to provide logistical support to members that are required to travel to remote or isolated areas or to other incidents where the provision of meals, accommodation and like support may be required⁶⁷⁴.

In Allegation 3, the IRT also recommended:

From a Service perspective, it is recommended that all regions and commands review the need for logistical support kits to be made available to members that might be required to attend remote or isolated areas or other incidents where the provision of meals/accommodation and like support might be required.

Arising out of Allegation 1 the IRT also noted:

... any investigator whether from the QPS or the CMC, and even if assisted with ATSI or other suitable support persons, will require the assistance of someone with local knowledge if an investigation is to be thorough. This then infers that the test for investigators is how to manage the use of local resources to ensure the investigations remain, and are seen to remain, independent.

Competing interests faced investigators and police managers: the need for timely response and timely evidence gathering verse the need for the process to be seen to be as independent as possible. The Service has acknowledged this problem in its policy review so that future investigations of this kind maintain as much independence as possible, with future incidents to be managed by the ESC.

CMC comments

The CMC notes that the issues raised in these recommendations have been addressed in the training sessions and presentations which the ESC now arrange for, or present to QPS members, from recruits to commissioned officers.

The recommendations go some way to dealing more adequately with the issue of logistics. However, the CMC suggests that the OPM be amended to specify which officer has the responsibility for making logistical arrangements for an investigation team.

674 In relation to Allegation 3, the IRT then gave the following example:

a container with provisions such as food, water, cooking equipment, etc. could be held at each major centre where it was likely that immediate despatch to an incident might occur. This type of resource would cost relatively little, but would require regular checks to ensure the contents were fit for use.

Obligations with respect to serious police-related incidents

Discussions between witnesses

The IRT made the following recommendations:

The ESC, as part of its education and training role, develop a means of educating, informing or reminding all members, on a regular basis, of their obligations with respect to serious police related incidents.

The ESC ensure that as part of normal operations with respect to incidents of a like nature, that clear instructions and processes are put in place to ensure that as far as practicable, police witnesses are separated and not placed in a position where they have access to investigative information (e.g. the contents of records of interviews or statements).

The IRT also referred to the issue of separation of police witnesses under the heading Investigative processes.

CMC Comments

The CMC notes that these recommendations have also been addressed through the training sessions and presentations which the ESC now arrange for or present to QPS members — from recruits to commissioned officers.

Some of the instructions and procedures about separation of witnesses in place in November 2004, and some of those which are now in place, are referred to in this chapter and elsewhere in our report. QPS must ensure that not only are such instructions and procedures in place, but also that the senior officers responsible for their application ensure that they are in fact applied.

Lack of support to Indigenous witnesses

The IRT recommended that ‘the ESC review the need for the use of support persons for witnesses in serious incidents involving police’. They stated that:

This issue is one that requires a policy review at a Service wide level, although it is the Investigation Review Team’s opinion that the use of support persons should remain at the discretion of investigating officers as:

- the Service has reviewed its policy of dealing with matters of this nature (i.e. deaths in custody)
- there are significant practical, logistical, resourcing and cost-benefit issues associated with the use of support persons. As well, identification of independent support persons can be difficult.

In the executive summary of its report, the IRT also recommended that the use of support persons be at the discretion of investigating officers as ‘sufficient general policy that reflects legislative requirements and community expectations is now provided in Chapter 6, Special Needs, of the OPM’.

CMC Comments

The CMC does not consider the use of a support person for Indigenous witnesses should be at the discretion of the investigating officer. Our suggested amendment to the OPM about support for Indigenous witnesses is outlined below in this chapter.

Forensic processes

The IRT stated that:

The Service had reviewed its processes and the major incident room approach for all future similar incidents should provide the opportunity for senior or experienced officers to canvass detailed parts of like investigations so that all reasonable courses of inquiry are considered in detail.

They then recommended that:

The ESC ensure that future training and development for members involved in these types of incidents canvasses crime scene preservation and investigative process, particularly in terms of treating like scenarios as major incidents.

CMC Comments

The CMC agrees that the 'major incident room approach' should assist in ensuring the thoroughness and impartiality of an investigation into a death in custody, and notes that training addresses the issues identified.

Issues raised by the CMC recommendations for further changes to the OPM

The CMC was of the view that the following recommendations would assist in the future management of investigations of deaths in custody. However, any need to give consideration to them will depend upon the arrangements and any new policy, procedures or guidelines put in place by the State Coroner.

A new OPM section for investigating a death in custody

The OPM should be amended to provide for an entirely separate section which includes all policies, procedures and orders in relation to the investigation of a death in police custody.

The obligations and responsibilities of all QPS members involved in the investigation of a death in police custody, including those who appoint others, are extremely important. A clear statement of those obligations and responsibilities should be immediately accessible to an officer involved in any aspect of dealing with a death in custody.

A discrete section of the OPM dealing exclusively with all aspects of the investigation of a death in custody would address this issue, even if it results in some duplication with other sections of the OPM which deal with responsibilities in relation to the investigation of other police-related incidents or investigations generally. While in theory on-line access to the OPM negates the need for one separate section as by following links an officer can move through the relevant sections, such approach can become confusing when the relevant information is spread across at five discrete sections of the OPM.

Greater rigour in completing and checking the Form 1

The OPM should be further amended to make clear to officers that all information or allegations which may be relevant to the cause of death or the circumstances surrounding the death should be included in the Form 1, despite any concerns about the reliability or credibility of the information.

If there are concerns about the reliability or credibility of the information, this can be noted. However, it is important that the pathologist performing the autopsy and the Coroner are provided with all information which may be relevant.

The OPM should be further amended to require that the Form 1 be checked by the Ethical Standards Command Officer who is overseeing the investigation, which is being conducted by the senior investigator.

We consider that the amendments to section 8.4 of the OPM since the Inquest address a number of the issues relevant to the allegation concerning the Form 1, in that they clarify the responsibilities of the investigating officer and shift supervisor/district duty officer.

The OPM currently requires that the Form 1 be checked by 'a shift supervisor or district duty officer or officer in charge'. The ESC officer will be aware of the progress and details of the investigation and is the most appropriate person to check the Form 1.

Immediate notification of the deceased's family

The OPM should be further amended:

**to make clear that it is not necessary for an investigating officer to notify the next of kin personally, and
to require the O-I-C of each police station in a remote Indigenous community to develop in consultation with members of the community their procedures for notifying the next of kin of a death in custody.**

The delay in notifying Mulrunji's family was unacceptable; particularly the turning away of his partner and family from the police station without informing them of what had happened.

It will not always be possible for an investigating officer to attend the scene immediately; at times there may be a significant delay, particularly in remote areas. It should be clear that in these cases, it is more important that the family be notified immediately, than that the notification be made by an investigating officer. In such circumstances the initial notification could be made by a local officer. It will still be important for the senior investigator to communicate with the family to reassure them about the process and explain what will occur.

Provision of support to Indigenous witnesses

The OPM should be further amended to require that when investigating a death in custody an independent support person be provided during all interviews of an Indigenous person.

Although the CMC considers the amendments to the OPM appropriate, the CMC is of the view that it is essential for the purpose of ensuring a thorough and impartial investigation that all Indigenous people are provided with a support witness whenever they are interviewed in an investigation of a death in custody.

As already required by section 6.3.4 of the OPM, officers in charge of stations should maintain a list of support persons and interpreters and these lists could be used to identify an appropriate person to provide support.

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**CRIME AND
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