

**INQUEST INTO THE DEATH OF MULRUNJI<sup>1</sup>  
ON PALM ISLAND ON 19 NOVEMBER 2004**

**Final submissions on behalf of the Palm Island Aboriginal Council**

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<sup>1</sup> Some members of this man's family have asked that he be referred to as 'Mulrunji'. The Deputy State Coroner has directed that this be respected. This request was sought to be in line with traditional practices in the Gulf. Anthropologist David Trigger observes: “The best spelling for the term in Gulf languages, used instead of a person's name for a period following the death, is probably 'moordinyi'. Inserting the 'r' means Australians are likely to pronounce it as sounding like 'sure' ('moordinyi') which is correct, rather than like 'zoo' (which is not correct). The reason the 'u' is used in technical work ('murdinyi') rather than 'oo' is that this is the linguistics usage.”

## Introduction

1. The findings and comments the Palm Island Aboriginal Council ('the Council') submits should be made as a result of this investigation, are set out at the end of each section addressed in these submissions, as indexed above. For ease of reference, a précis of the findings and comments sought comprises **Attachment A**.

## The Deputy State Coroner's powers

2. The Council has advanced several submissions during the course of this inquest as to the scope of a coroner's powers. Some of these are noted below.
3. A coroner has wide powers under the *Coroners Act 2003* ('the Act').<sup>2</sup> This inquest should "seek out and record as many of the facts concerning death as the public interest requires":<sup>3</sup>

It is the duty of the coroner as the public official responsible for the conduct of inquests... to ensure that the relevant facts are fully, fairly and fearlessly investigated. He is bound to recognise the acute public concern rightly aroused where deaths occur in custody. He must ensure that the relevant facts are exposed to public scrutiny, particularly if there is evidence of foul play, abuse or inhumanity. He fails in his duty if his investigation is superficial, slipshod or perfunctory.<sup>4</sup>
4. That a particular finding might lead to subsequent determination of civil or criminal liability does not preclude a coroner from making it.<sup>5</sup>
5. The Deputy State Coroner has already found that she "is not necessarily barred from the use of" any particular word in describing these events "provided that the context does not prima facie determine the issue of guilt of committing an offence."<sup>6</sup>
6. See also the State Coroner's Guidelines in this respect:
 

Accordingly, there is no impediment to coroners providing a full and complete narrative of the circumstances of death nor stating their conclusions as to the responsibility of individuals or organisations for the death provided they refrain from using language that is applicable to decisions made by criminal and civil courts when they adjudicate upon the same issues.<sup>7</sup>

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<sup>2</sup> *Doomadgee & Anor v Deputy State Coroner Clements; Hurley v Deputy State Coroner Clements* [2005] QSC 392 per Muir J at par [18], [28]-[33] and [52] where his Honour favoured a liberal construction of ss 45 and 46.

<sup>3</sup> *R v South London Coroner; Ex parte Thompson* (1982) 126 Sol J 625 (QC), per Lord Lane CJ at 628, cited in *Annetts v McCann* (1990) 170 CLR 596 per Toohey J at 616.

<sup>4</sup> See Sir Thomas Bingham MR in *R v Coroner for North Humberside and Scunthorpe; Ex parte Jamieson* [1994] QC 1 at 26; *R v South London Coroner; Ex parte Thompson* (ibid).

<sup>5</sup> *Perre v Chivell* (2000) 77 SASR 282 per Nyland J at [55].

<sup>6</sup> Preliminary Orders of Deputy State Coroner, order 3, 6 April 2005.

<sup>7</sup> State Coroner's Guidelines at 8.7.5.

7. The fact that Mulrunji's death was a "death in custody"<sup>8</sup> requires particular attention:
- Deaths in custody warrant particular attention because of the responsibility of the State to protect and care for people it incarcerates, the vulnerability of people deprived of the ability to care for themselves, the need to ensure the natural suspicion of the deceased's family is allayed, and public confidence in State institutions is maintained.<sup>9</sup>
8. The death was reported to the State Coroner<sup>10</sup> and has been investigated by the Deputy State Coroner.<sup>11</sup> As required by the Act,<sup>12</sup> the State Coroner's Guidelines refer to the *National Report* of the Royal Commission into Aboriginal Deaths in Custody ('RCIADIC'):<sup>13</sup>
- ... 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 by the conduct of thorough, competent and impartial investigations into all deaths in custody.
9. The circumstances which led to Mulrunji being arrested and taken into custody bear detailed examination:<sup>14</sup>
- In all cases investigations should extend beyond the immediate cause of death and whether it occurred as a result of criminal behaviour. It should commence with a consideration of the circumstances under which the deceased came to be in custody and the legality of that detention. The general care, treatment and supervision of the deceased should be scrutinised... Only by ensuring the investigation has such a broad focus as to identify systemic failures will a Coroner be given a sufficient evidentiary basis to discharge his/her obligation to devise preventative recommendations.

### Conditions on Palm Island

10. The Palm Island community is predominantly indigenous, with a population of approximately 3000. It is geographically, economically and socially isolated from mainland Australia. Even from a brief visit, the stark difference in living standards on the island from that enjoyed in say, Townsville, is obvious.
11. Whilst this inquest has not formally taken evidence on the historical, statistical and empirical features of life and therefore policing on Palm Island, some general observations are unlikely to be contentious and might otherwise be a matter for judicial notice:

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<sup>8</sup> Section 10(1)(a) of the Act.

<sup>9</sup> State Coroner's Guidelines at p 7.5.

<sup>10</sup> Section 8(3)(g) of the Act.

<sup>11</sup> Pursuant to ss 11(2)(a); 11(7) and 27(1)(a)(i) of the Act

<sup>12</sup> Section 14(2) of the Act.

<sup>13</sup> Guidelines at p7.5; Royal Commission into Aboriginal Deaths in Custody, *National Report*, E Johnston QC, AGPS, Canberra 1991, Vol 1 p109; accessible online via [www.austlii.edu.au](http://www.austlii.edu.au).

<sup>14</sup> State Coroner's Guidelines at p7.7.

- 11.1. There are significant manifestations of poverty including:<sup>15</sup>
- Very high unemployment and limited paid employment opportunities;
  - Low levels of education;
  - Over-crowding in dwelling houses;
  - High levels of alcohol abuse;
- 11.2. No public transport;<sup>16</sup>
- 11.3. No public taxi service;
- 11.4. No functional public timepiece and low levels of private ownership of watches;
- 11.5. Low levels of private ownership of motor vehicles;
- 11.6. No established drug/alcohol diversion programmes;
- 11.7. No independent or private agencies, such as to provide legal services;
- 11.8. It is a transient community with a complex and at times, traumatic history.<sup>17</sup>
12. Further, it must be acknowledged that there is considerable distrust of police and government agencies by a significant proportion of the community.<sup>18</sup> The matters investigated by the CMC in 2004-2005 *inter alia* concerning the alleged bribery affair, the usage and deployment of police SERT teams after the declaration of a State of Emergency and the criminal proceedings associated with the alleged riot are still matters about which community members feel aggrieved. The relationship between the community and the government agencies, including police, which purport to ‘manage’ it, remains poor. These issues of distrust should not be easily discounted.<sup>19</sup>
13. It is not contended that this inquest should examine the detail or causes of these issues. However, there is a need, in discharging fact finding functions and in formulating preventative comments, to take into proper account these manifestations within the community in the context of its history.

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<sup>15</sup> See the history and statistics recited as to the context and causative features of drug and alcohol abuse and law and order issues on Palm Island, set out in the *Report*, Palm Island Select Committee, Legislative Assembly of Queensland, August 2005, accessible via <http://www.parliament.qld.gov.au/PISC> (‘the Select Committee report’) pp1-2, 29-32, 96. Hurley: R1249-1250. Leafe: R702 L8-10.

<sup>16</sup> Hurley: R1249-1250.

<sup>17</sup> See references to the history of Palm Island in RCIADIC *National Report*, Vol 2 Ch 10: ‘The Legacy of History’; and the *Regional Report – Queensland*, App 1(b).

<sup>18</sup> Select Committee report, p89; *Palm Island: Future Directions*, Resource Officer Report, State of Queensland, January 2006 (‘the Resource Officer Report’), pp38-39.

<sup>19</sup> Select Committee report, p89-90; Resource Officer Report, p39. See the comments in this regard in RCIADIC, *National Report*, Vol 2 Ch 13.1-13.4: ‘The Criminal Justice System Relations with Police’.

14. Special considerations should therefore attend this investigation.<sup>20</sup>
15. For example, any assessment of “community standards” and “expectations” or issues such as “reasonableness” or “timeliness” in this community must have regard to local considerations. There have been clear instances in this inquest of cross-cultural communication breakdowns. Assessing the evidence of some members of the community by reference to first world standards of ‘sophistication’, precision and communication would be most unfair.
16. See generally in this context *Gerhardy v Brown* (1985) 159 CLR 70 at 128 per Brennan J:  
 As Mathew J. said in the Supreme Court of India in *State of Kerala v. N.M. Thomas* (1976) 1 SCR 906, at p 951, quoting from a joint judgment of Chandrachud J. and himself:  
 "It is obvious that equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of differential treatment in order to attain a result which establishes an equilibrium between different situations."  
 In the same case, Ray C.J. pithily observed (at p.933):  
 "Equality of opportunity for unequals can only mean aggravation of inequality."  
 26. The validity of these observations is manifest. Human rights and fundamental freedoms may be nullified or impaired by political, economic, social, cultural or religious influences in a society as well as by the formal operation of its laws. Formal equality before the law is an engine of oppression destructive of human dignity if the law entrenches inequalities “in the political, economic, social, cultural or any other field of public life”.
17. Additionally, the relevant personal circumstances of Mulrunji which might be taken into account include:
- Mulrunji lived and worked on this island most of his life. He was 36 years old at the time he died.
  - He was regarded as a happy-go-lucky, law-abiding family man who worked and provided well for his family. He was a renowned hunter and fisherman.
  - He had no significant criminal history.
  - He died after being taken into police custody for a “public nuisance” offence; for speaking “disrespectfully” and critically about the role of an indigenous police liaison officer in the arrest of another member of the community for a similar offence.

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<sup>20</sup> “The history of strict authoritarian control over the people of Palm Island and the resistance of the community to such control distinguishes police relations on Palm Island to that of most other communities in Queensland”: Resource Officer Report, p39.

### Section 45 findings

18. Some of the findings pursuant to s 45 are somewhat obvious and indisputable, viz:
- (1) **A death has occurred:**<sup>21</sup> s 45(1).
  - (2) **The person who died was Cameron Francis Doomadgee, referred to in these proceedings as Mulrunji:** s 45(2)(a).
  - (3) **The time of death was between 10.26am and 12.00pm on 19 November 2004:**<sup>22</sup> s 45(2)(c).
  - (4) **Mulrunji died whilst in police custody, on the cement floor of Cell 2 of the former Palm Island watch house which was contained within the Palm Island police station:** s 45(2)(d).
19. The issues of how and what caused Mulrunji to die (sub-s 45(2)(b) and (e)) require more detailed consideration.

### Medical/pathological

20. The medical explanation for what caused Mulrunji's death is not in any real dispute. Each of the medical experts seemingly agree that the death was the direct result of haemorrhaging into the abdominal cavity, which was a secondary consequence of a rupture of the liver ("the liver was virtually cleaved in two") and a hole in the portal vein.<sup>23</sup>
21. Further, they variously state that the fatal injuries were caused by the application of severe localised force in the abdominal region. Each expert expressed the view that those injuries could not have been caused merely by a fall onto a flat surface, but could have been caused by a fall with someone else on top of the deceased in a particular fashion which focussed the point of contact.<sup>24</sup>
22. Dr Lampe stated:
- 22.1. This kind of injury is usually associated with an application of "very severe force" such as in high speed motor vehicle trauma.<sup>25</sup>

<sup>21</sup> Life extinct certificate, Exhibit B1.

<sup>22</sup> Mulrunji was pronounced dead at 12.00pm by Dr Ibe: statement of Ibe, para 3; Life extinct certificate, Exhibit B1. He appears to have been placed into the cell at approximately 10.26am and to have died at some point after that, and before Sergeant Leafe's inspection, at 11.23am: watch house surveillance tape 19/11/04, Exhibit I1. Dr Lampe opined that the appropriate reference of the timeframe of death was from lock-up to death: R630 L8-11.

<sup>23</sup> R625 L48-52; R643 L23-26; Exhibit B6 at p7; Exhibit B11 at p3; R650 L40-42; Exhibit B8 at p3.

<sup>24</sup> R625 L47-49; R628 L1-5 (Dr Lampe); R647 L31-33 (Dr Lynch); R652 L2-3 (Dr Ranson).

<sup>25</sup> R626 L1-5.

- 22.2. A compressive force applied to the body whilst it was immobilised against a surface could cause the injuries seen,<sup>26</sup> in particular a torso, punch, knee or elbow to the body whilst it was immobilised against the floor (although he favoured contact with the broader of those surface areas).<sup>27</sup>
- 22.3. The injuries could have been caused by one application of force or more than one.<sup>28</sup>
- 22.4. Although the injuries to the eye and the ribs could have been caused by a fall onto a flat surface, the ruptured liver and hole in the portal vein could not have.<sup>29</sup>
23. Dr Lynch stated:
- 23.1. The force involved must have been of considerable magnitude and there had to be something in the nature of a ‘confined surface area’ through which the pressure was channelled.<sup>30</sup>
- 23.2. A broader surface such as a torso was “less likely” to cause the injuries.<sup>31</sup>
- 23.3. Such injuries could be caused by the application of a knee or a punch with sufficient force.<sup>32</sup>
24. Dr Ranson, whose opinion was commissioned by Senior Sergeant Hurley, opined:
- 24.1. The injuries were caused by pressure applied to the upper abdomen whilst the body was fixed against a hard surface.<sup>33</sup>
- 24.2. The force would really need to be applied by something able to deliver force over a small area, rather than a broader area.<sup>34</sup>
25. There is no pathological/medical basis to either prefer or rebut a deliberate or accidental application of force.<sup>35</sup>
26. From this evidence it is submitted that the s 45(2)(e) findings that should to be made are:
- **(5) The death was the result of an intra-abdominal haemorrhage, which was a secondary consequence of a ruptured liver and hole in the portal vein.**

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<sup>26</sup> R635 L 35-40; R626 L20-28.

<sup>27</sup> R627 L1-20; R640 L5-8.

<sup>28</sup> R635 L10-30.

<sup>29</sup> R625 L47-49; R628 L1-5.

<sup>30</sup> R647 L38-41.

<sup>31</sup> R647 L44-50.

<sup>32</sup> R646 L20-30; R646 L 53 - R647 L13.

<sup>33</sup> R650 L50-52.

<sup>34</sup> R654 L33-35. R650 L55-651 L15.

<sup>35</sup> R642 L40-44 (Dr Lampe); R646 L30-53 (Dr Lynch).

- **(6) The fatal injuries were caused by a severe compressive and localised force applied to Mulrunji’s abdomen whilst he was immobilised against a hard surface. They could not have been caused simply by a fall onto a flat surface.**

### **Mechanism of infliction of injuries**

27. The person who caused the fatal injuries to Mulrunji was Senior Sergeant Chris Hurley (‘Hurley’). This is now accepted by him<sup>36</sup> and conceded through his counsel.<sup>37</sup>
28. There are a number of witnesses to aspects of the physical interaction between Hurley and Mulrunji. Regard to their evidence is useful in order to assess the actions and motivations surrounding the application of force upon Mulrunji.

### Police evidence

29. Hurley gave the following evidence at the inquest:
  - 29.1. He asked Mulrunji to get out of the paddy wagon and in doing so “placed a hand on his leg or his arm”. Whilst Mulrunji was getting out he (Hurley) “was punched...by Mulrunji, it was a backhand type punch across the face.”<sup>38</sup>
  - 29.2. Hurley reacted by “grabbing him on the vee of...the shirt and pulling him quickly” towards him.<sup>39</sup>
  - 29.3. “A tussle” between Hurley and Mulrunji ensued, from the police vehicle to the inside of the station. Hurley stated he “couldn’t get a restraining hold on him, whether it be the fact of the...confined area, whether it be the fact of being older and unfitter.”<sup>40</sup>
  - 29.4. Upon moving the three or four metres to the doorway of the police station, Hurley and Mulrunji “both fell through the doorway”. The floor of the police station is a raised concrete slab.<sup>41</sup>
  - 29.5. Mulrunji “fell down” to the floor of the police station and Hurley “fell to his left”.<sup>42</sup> He states he then “tried to pick him up a number of times...initially by his shirt”.<sup>43</sup> Hurley and Sergeant Leafé then dragged Mulrunji to the cells.<sup>44</sup>
  - 29.6. Hurley denied the propositions put to him by counsel assisting<sup>45</sup> and in cross-examination by counsel for the Doomadgee family<sup>46</sup> that he had intentionally struck

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<sup>36</sup> R1237 L38-56.

<sup>37</sup> R788 L5-15.

<sup>38</sup> R603 L8-14.

<sup>39</sup> R603 L53-54.

<sup>40</sup> R604 L21-23, 39-41.

<sup>41</sup> R605 L20-24.

<sup>42</sup> R605 L9-13, 31-37.

<sup>43</sup> R612 L17-21.

<sup>44</sup> R611 L46-47.

Mulrunji at all, specifically that he neither punched nor kned him such as to cause the documented injuries to the abdomen and the eye.

30. It is also useful to consider the developments in Hurley's versions over time, and following the release of further independent information in respect of the death:

30.1. In the interview conducted on 19 November 2004, several hours after the death, Hurley stated that he "fell to the left of [Mulrunji] and he was to the right of me" and that he could "only presume that we fell over the step because when we were at the station I can remember that we were on the ground."<sup>47</sup> When asked again by the investigating police whether he had landed on top of Mulrunji, Hurley stated "No, I landed beside him on the...lino".<sup>48</sup>

30.2. In a further interview with police on 8 December 2004,<sup>49</sup> Hurley stated:

"I had hold of [Mulrunji] and we both came through over the step and through the door at the same time and I recall I fell to the left and he was to the right, but I had hold of him the whole way down until we hit the floor... his head went close to hitting near a... filing cabinet and the door frame but I noted that it didn't".<sup>50</sup>

30.3. However, this account did not assist him in explaining the injuries:

"What plausible – what explanation can you give for that injury then? – Well, I don't know. It may have occurred during the tussle, I don't know, sir. May have occurred during the fall."<sup>51</sup>

"If I didn't know the medical evidence, I'd tell you that I fell to the left of him. The medical evidence would suggest that that wasn't the case."<sup>52</sup>

"Sir, if I'd struck some blow with a very forceful nature to Mulrunji, I would've had the time to think about that before the investigators arrived. They flew from Townsville. I would've had time in my mind to get to – to get together a story. And in that first interview, it would've been practical and made sense to me to say to the investigators that I did fall upon him.

Well, that – that may well be so if you had known what the nature of the injury was and what the cause of death was. But you didn't know that then, did you? – I didn't know that. But I would've been if it – had I dropped down with an elbow and knee flopped on Mulrunji and then he's found dead later, I would've been thinking to myself, oh, well, this must have something to do with, you know, this act that I've done. So, I better say that I've fallen on him and I remember my knee going into him or my elbow or something. That would make – that would make sense to me that, you know, you'd say something like that. I gave the recollection as best I – as best I could. And it's truthful, that I'd fallen beside him, I thought."<sup>53</sup>

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<sup>45</sup> R611 L10-23, 40-41.

<sup>46</sup> R1226 L2-9, R1225 L42-50.

<sup>47</sup> ROI (Exhibit D17.1) L188; L326-327.

<sup>48</sup> ROI (Exhibit D17.1) L419.

<sup>49</sup> At which interview he was legally represented.

<sup>50</sup> ROI (Exhibit D17.5) L940.

<sup>51</sup> R1238 L1-3.

<sup>52</sup> R606 L11-13.

<sup>53</sup> R607 L26-48.

- 30.4. In his interview on 19 November, closest in time to the death, Hurley stated that he then “stood up” and Sergeant Leafe came over and assisted him “to drag him into the cell.”<sup>54</sup>
- 30.5. However, in his next interview, at 11.53am on 20 November 2004, Hurley performed a re-enactment of the event and relevantly states: “I ended up on my knees beside him”.<sup>55</sup> He then adds, for the first time, that he “tried to lift him a couple of occasions...picked him up...but his shirt kept ripping”, and he was saying “get up Mr Doomadgee”.<sup>56</sup>
31. Indigenous police liaison officer (“PLO”) Lloyd Bengaroo (‘Bengaroo’), gave the following accounts in interviews and at the hearing:
- 31.1. In his interview of 19 November 2004 and in his evidence, Bengaroo states he heard Hurley say “he punched me in the face” and then saw Hurley lead Mulrunji by the arm in through the front door.<sup>57</sup>
- 31.2. When asked if anything happened near the front door, he said “No I didn’t see”.<sup>58</sup>
- 31.3. During the re-enactment of events at 12.10pm on 20 November 2004 he said that he remained outside the door of the police station: “I just stood here because I was thinking... if I see something I might get into trouble myself or something... the family might harass me or something, you know”.<sup>59</sup> When pressed about it in evidence, he couldn’t remember saying this; and would not accept it was because he was concerned about something happening to Mulrunji.<sup>60</sup> At one point he offered that there might have been a picture in his mind.<sup>61</sup> He also suggested he had said that because of shock over the death, although in the passage referred to, he was describing events occurring before the death.
- 31.4. He said Mulrunji was “probably just flopping down” and Hurley just “dragged him past...just picked him up...helped him into the...cells”.<sup>62</sup>
- 31.5. During the re-enactment of events, Bengaroo stated that Mulrunji “flopped against the floor and Chris fell on him...they fell down...Chris was...trying to pick him up”.<sup>63</sup> However, in evidence at the inquest, Bengaroo stated that Hurley and Mulrunji fell side by side.<sup>64</sup> He demonstrated that Hurley fell to his knees.<sup>65</sup>

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<sup>54</sup> ROI (Exhibit D17.1) L331-332.

<sup>55</sup> ROI (Exhibit D17.2) L93.

<sup>56</sup> ROI (Exhibit D17.2) L95-96; L117.

<sup>57</sup> ROI (Exhibit D4.1) L282-283. R517 L16; R575 L20-21.

<sup>58</sup> ROI (unmodified Exhibit D4.1) L303.

<sup>59</sup> ROI (Exhibit D4.2) L257-259.

<sup>60</sup> Apart from a reference to the police officers ‘dragging’ Mulrunji into the cell: R527-532; R551-556.

<sup>61</sup> R533 L13.

<sup>62</sup> ROI (Exhibit D4.1) L303, 316-321.

<sup>63</sup> ROI (Exhibit D4.2) L137-139.

<sup>64</sup> R547 L31-32; R548.

<sup>65</sup> R549.

32. Sergeant Michael Leafé ('Leafé') described the interactions as follows:
- 32.1. In his interview on 19 November 2004 Leafé states that "Hurley was removing [Mulrunji] from the back of the van" and he heard Hurley say "words to the effect of 'oh shit he's hit me'"<sup>66</sup>.
  - 32.2. He then said that Hurley was "scuffling" with Mulrunji and was "trying to push him through into the back door" whilst Mulrunji was resisting. Leafé started to help Hurley but realised the back door of the police van was open so went and closed it to prevent Patrick Nugent from wandering out.<sup>67</sup>
  - 32.3. Leafé then proceeded through the watchhouse to open the cell door. Upon returning from the cell area, he observed Mulrunji to be "on the ground in the police corridor just inside the back door."<sup>68</sup>
  - 32.4. Leafé and Hurley then "tried to lift up [Mulrunji]...from behind in the shoulder areas to carry him into the cell but...he felt like a dead weight" so they both "grabbed an arm" and "dragged him into the cell."<sup>69</sup>
  - 32.5. During the re-enactment on 20 November 2004 Leafé then stated that before he provided assistance, Hurley was trying to pick Mulrunji up "by the shirt".<sup>70</sup> He gave evidence that Hurley "was on his feet to one side and trying to pick him up by the shirt".<sup>71</sup> Leafé observed that Mulrunji's shirt buttons had been "popped out ripped out."<sup>72</sup>
33. Constable Kristopher Steadman is a police officer who was not on duty but happened to arrive at the police station as Mulrunji was being taken from the paddy wagon into the station. It was his first day on the island. He was standing in the vehicle bay.
- 33.1. Steadman saw Mulrunji struggling and then saw both Hurley and Mulrunji fall. However, in notes he took on the day, he stated that Hurley dragged Mulrunji into the station and then slipped.<sup>73</sup>
  - 33.2. It was his opinion that the position of their feet was such that Hurley had fallen in some way onto Mulrunji.<sup>74</sup>
  - 33.3. He then saw Hurley get up and heard him yell at Mulrunji in a raised and abusive voice. He assumed this was because Hurley was angry about the fall.<sup>75</sup>

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<sup>66</sup> ROI (Exhibit D27.1) L82-83.

<sup>67</sup> ROI (Exhibit D27.1) L84-89.

<sup>68</sup> ROI (Exhibit D27.1) L104-105.

<sup>69</sup> ROI (Exhibit D27.1) L110-114.

<sup>70</sup> ROI (Exhibit D27.2) L57.

<sup>71</sup> R683 L3-4.

<sup>72</sup> ROI (Exhibit D27.2) L166-167.

<sup>73</sup> R667 L49-52.

<sup>74</sup> R675 L49-51.

<sup>75</sup> R660 L35-36; R664 L2-4.

33.4. He then saw Mulrunji's feet (which were still lying on the ground) dragged away.<sup>76</sup>

33.5. He noted that Hurley, Leafe and Bengaroo were all "on edge" after this point.<sup>77</sup>

#### Community residents' evidence

34. A member of the local community, Roy Bramwell, was in the police station at the relevant time. He has given the following accounts:

34.1. In his interview at 8.15am on 20 November 2004, Bramwell told Robinson and Kitching:

"Chris started punchin' him just in the hall there, Chris started punchin' him, 'you want more Mr Doomadgee', and he went like that. 'You want more Mr Doomadgee hey that's enough for ya', just kept on going like that, Chris I just sat down and kept to myself I seen Mr Doomadgee legs sticking out."<sup>78</sup>

"just see the elbow going up and him down like that you know, must have punched him pretty hard, didn't he, well he was a sober man and he was a drunken man".<sup>79</sup>

34.2. Robinson took Bramwell's statement following the interview. It includes this assertion.

34.3. In his re-enactment of events on 20 November 2004, Bramwell states that Mulrunji must have hit Hurley outside, who then "dragged him in and he laid him down here and started hitting him". As Bramwell's view was partly obscured by a filing cabinet, all he could see was "the elbow gone down, up and down" and hear Hurley saying "do you want more Mister, Mister Doomadgee, do you want more of these eh, do you want more? You had enough?"<sup>80</sup>

34.4. Bramwell stated he saw Hurley's arm "come up three times".<sup>81</sup>

34.5. Bramwell gave evidence that he saw Hurley hitting Mulrunji "when he was on the ground...his elbow was going up and down and he yelled, 'More? You want more, Mr Doomadgee? You want more?' He replied that around about three times".<sup>82</sup>

34.6. Bramwell also stated that Hurley "went down on his knees" and "he had his knees on" Mulrunji, one on him and one on the ground.<sup>83</sup>

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<sup>76</sup> R659-661; R667-668.

<sup>77</sup> R670.

<sup>78</sup> ROI (Exhibit D8.3) p7 L249-252.

<sup>79</sup> ROI (Exhibit D8.3) p8 L281-283.

<sup>80</sup> ROI (Exhibit D8.4) L18-22.

<sup>81</sup> ROI (Exhibit D8.4) L226.

<sup>82</sup> R131 L1-7; R408 L27.

<sup>83</sup> R131 L50; R 132 L10; R442 L12-23.

35. Another community resident, Penny Sibley, was outside the police station:
- 35.1. In her statement made on 21 November 2004, Sibley says she saw Mulrunji punch Hurley “in the face” and then Hurley grabbed Mulrunji and “pulled him out of the car.”<sup>84</sup>
  - 35.2. Sibley then states that Hurley punched Mulrunji “one in the side near his hip area. The punch hit [Mulrunji] on his right side near his hip.”
  - 35.3. Sibley gave a similar account in her interview on the same day: “[Mulrunji] made a swing at [Hurley] and punched him in the face and then they got him outside... [Hurley] hit him back and they roughed him up into the side door.”<sup>85</sup>
  - 35.4. In evidence, Sibley stated: “They pulled [Mulrunji] out first, he was abusive, so they dragged him out by the foot of the police van... [Mulrunji] punched [Hurley] in the face and then when they got him down that’s when I saw [Hurley] hit [Mulrunji] on the side, or the rib, and then they dragged him into the side of the door and I didn’t see nothing after that.”<sup>86</sup>
36. Alfred ‘Tiny’ Bonner was also in the vicinity of the police station on 19 November 2004:
- 36.1. In his statement dated 26 November 2004, Bonner says he “heard some yelling” and “saw Hurley dragging [Mulrunji] out of the back of the police van.” He then said “it looked like Hurley then threw a punch at [Mulrunji]. I could see his arm go over. I didn’t actually see the punch but that is what it looked like to me. I could not see [Mulrunji] or where Hurley’s arm went.”<sup>87</sup>
  - 36.2. Bonner gave evidence that Hurley grabbed Mulrunji “out of the back of the car and pushed him towards the door.” He then stated he saw what “looked like a punch” on Mulrunji. Because of the position of the wall, Bonner didn’t actually see the punch connect, but saw Hurley’s “fist coming out” and that it “looked like his fist was closed”.<sup>88</sup>

#### Resolving factual conflicts

37. There are some factual conflicts that remain. It is submitted that the following features are relevant in resolving them:
- 37.1. The stark limitations of and the shifts and changes in Hurley’s accounts. First, there is a distinct possibility that someone – and it is most likely to have been Detective Robinson – informed Senior Sergeant Hurley of matters found out during the course of the investigation, which affected the developments and variations in the accounts given by Hurley to investigators. Bramwell was first interviewed by Robinson and Kitching at 8.15am on 20 November. There is a significant change in Hurley’s account from his first interview at 4.04pm on 19 November, to his second at 11.53am on 20 November, from just picking Mulrunji up after the fall, to

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<sup>84</sup> Statement (Exhibit D33.1) p1.

<sup>85</sup> ROI (Exhibit D33.3) L127-129.

<sup>86</sup> R396 L32-38.

<sup>87</sup> Statement (Exhibit D6.1) paras [5], [13].

<sup>88</sup> R382 L42-43, 51-54; R383 L17.

attempting to lift him and speak to him in the manner described. All police officers denied providing this information to Hurley,<sup>89</sup> but they cannot dispute the opportunity to do so.

- 37.2. Second, it is readily apparent that the incident could not have occurred as recalled by Hurley in his initial interviews with police. The fatal injury could not have been inflicted merely by Mulrunji falling as then described by Hurley. It is unsurprising that this version has now been dismissed by him and his legal representatives. Nevertheless it is telling that the final concessions made by Hurley, were only forthcoming after his recognition that the independent medical evidence against him was irrefutable.
- 37.3. The other police officers say that they did not see anything. Bengaroo says that he did not look. Leafe suggests he was in the watch house. Steadman was further outside than Bengaroo and had obscured vision. It seems odd, if not quite unlikely, that a violent confrontation including punches between the Officer-in-Charge and an aggressive arrestee in a police station did not attract attention from these police.
- 37.4. In this context, Bengaroo's comments about not wanting to look to see what was happening in the interaction with Mulrunji, and earlier, at the roadside, that he told Mulrunji to keep walking in order to be safe, loom into significance. Bengaroo's purported explanations for his comment, "I didn't look", are wholly unconvincing.
- 37.5. After the death, officers Hurley, Leafe and Bengaroo stayed within the police station. Both Bengaroo and Leafe were told by Hurley to stay there and not tell anyone.<sup>90</sup>
- 37.6. The officers discussed their recollections of events, before investigating police arrived, at 4.00pm.<sup>91</sup>
- 37.7. There was an extended delay in reporting the death to the family, despite an inquiry being made by them at 1.00pm,<sup>92</sup> which was met with collective dishonesty.
- 37.8. The effect of the role of Detective Darren Robinson in the investigation at an early stage and the other limitations to the investigation proceeding in a thorough and impartial way (as enlarged upon below).
- 37.9. The difference in treatment by Hurley of Bramwell and Mulrunji. Whilst Bramwell was at the police station due to his being suspected of committing a serious violent indictable offence, this offence was not investigated. Indeed, he was asked to leave the station, for enquiries to be made at a later time.<sup>93</sup> Contrast Mulrunji's having been taken into and detained in custody for a verbal stoush with police.

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<sup>89</sup> R722-723; R737 (Webber); R770 L20 (Kitching); R785 L30 (Robinson).

<sup>90</sup> R687 L38-42 (Leafe); R565 L26-27 (Bengaroo).

<sup>91</sup> Leafe: R689 L15-25; Hurley: ROI (Exhibit D17.2) L97-98; 205-206; R1278 L24-29.

<sup>92</sup> Twaddle: R302 L49.

<sup>93</sup> Hurley ROI (Exhibit D17.4), p13. "Roy was never in custody. He came in and soon after I came out from placing the two prisoners in the cell, I spoke to Roy very briefly about the incident of the morning that he was involved in – the assault and the three women and he left shortly there afterwards because I had to make further inquiries."

- 37.10. It is significant that Bramwell's version was given without knowledge of the medical evidence as to the cause of Mulrunji's death. Further, it is wholly consistent with that evidence.
38. The Council submits that this body of evidence permits the following findings, pursuant to s 45(2)(b) and (e):
- **(7) At approximately 10.20am the police vehicle reached the police station. Hurley moved Mulrunji from the paddy wagon into the station. Mulrunji resisted being taken into custody and continued to protest his arrest. Each struck at the other violently.**
  - **(8) Once Hurley got Mulrunji into the station there were further assaults inflicted upon Mulrunji by Hurley. During this interaction Mulrunji received the fatal injury in his abdominal region. The most likely explanation for such an injury is that a knee, elbow or a closed fist was used with considerable deliberate force by Hurley whilst Mulrunji was on the ground.**
  - **(9) Following this altercation, Mulrunji appeared lifeless and was unconscious.**
  - **(10) Hurley was the only person who had been involved in any physical interaction with Mulrunji from the point of arrest to when he was rendered unconscious.**

#### **Use of prior complaints evidence**

39. Some further information which assists in assessing the nature of the interaction between Hurley and Mulrunji on 19 November 2004, and assessing the veracity of the accounts provided, has been made available in evidence of investigations into how Hurley had previously interacted with people from Palm Island in similar situations.
40. In *Doomadgee & Anor v Deputy State Coroner Clements & Ors* [2005] QSC 392, Muir J, in the context of s 45 findings, held at [50]-[51], [55]:
- “[50] It may well be the case that when the totality of the evidence available to the Coroner is considered she will find the Propensity Evidence of little or no weight in comparison with the eyewitness accounts and other more direct evidence...
- [51] The Propensity Evidence, if accepted, is “logically probative” of the fact or one of the facts in issue.<sup>94</sup> It is thus relevant and potentially available for use by the Coroner together with all the other evidence before her...
- [55] In summary ... (b) The Propensity Evidence is relevant and logically probative of a fact to be determined, namely whether the death was caused by the deliberate application of force... “

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<sup>94</sup> See *Harriman v The Queen* (1981) 167 CLR 590 at 597; *Pfennig v The Queen* (1995) 182 CLR 461 at 487-488 at 153, 532; *KRM v The Queen* (2000) 206 CLR 221 at 228-232 and *R v O'Keefe* [2000] 1 Qd R 564 at 571.

41. The relevant evidence relating to previous complaints by Palm Island residents of mistreatment by Hurley has been summarised in **Attachment B** to these submissions. Some parts of the evidence are briefly discussed below.

Barbara Pilot complaint

42. It cannot be doubted that:
- 42.1. The vehicle Hurley was driving did run over Pilot's right foot and cause serious injuries falling within the definition of "grievous bodily harm" under the *Criminal Code*.
  - 42.2. Pilot made an immediate complaint to Hurley, which he acknowledged but did not accept. His failure to properly investigate the complaint shows a disregard or indifference unworthy of a senior police officer.
  - 42.3. It is open to find that Hurley knew or at least suspected that the person who claimed he had run over her foot was Barbara Pilot; that is, the complainant in the domestic violence matter they were investigating.
  - 42.4. Hurley requested the doctor treating this injury to look for explanations other than the possibility that his police vehicle had run over the foot.
  - 42.5. He was told by this doctor that the injuries presented by Pilot were in fact quite consistent with having been run over by a motor vehicle.
  - 42.6. Hurley immediately contacted his superiors and communicated the converse. This included positively misrepresenting the true nature of the injury in his notations about the incident as well as in his communications with senior officers.
  - 42.7. The investigation into the incident was conducted by Robinson who was then already known to be a friend of Hurley. The senior hierarchy in the QPS were told by Robinson that he felt compromised having to investigate the matter, yet he was directed to proceed.
  - 42.8. Hurley's relationship with other police officers was such that they were biased in his favour in their recollections and discharge of duties – exhibiting some sort of loyalty or "brotherhood"<sup>95</sup> mentality, when a complaint against police is made. For example, Constable Fuller's sworn certainty that the closest that Ms Pilot got to the vehicle was 2-3 metres seems to manifest misplaced loyalty sufficient to make an intentional misstatement.
  - 42.9. The investigation was conducted in a fashion that could only be described as grossly inadequate, biased and unprofessional.

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<sup>95</sup> As documented by Justice Fitzgerald in the *Report of a Commission of Inquiry pursuant to Orders in Council*, 3 July 1989 at Ch 7.3 p202: "... to reduce, if not almost to eliminate, concern at possible apprehension and punishment as a deterrent to police misconduct. The [police] code exaggerates the need for, and the benefits derived from, mutual loyalty and support".

- 42.10. The police hierarchy has done little, to this day, to attempt to conduct an independent investigation into the matter, paying mere 'lip service' to issues of independence in investigations into allegations of police misconduct on Palm Island.
- 42.11. Hurley left Arthur Murray unsupervised and unmonitored in the watch house alone for up to an hour whilst he and Fuller drank tea with nurses at the hospital. Murray was grossly intoxicated.
43. Whilst there is little to suggest that the driving incident was intentional, Hurley's conduct which followed was grossly unsatisfactory for a police officer, particularly in his role as the Officer-in-Charge. Hurley and Robinson almost succeeded, but for the steps taken by the CMC in this inquest, in their attempt to conceal Hurley's role in the incident and thus pervert the course of justice.
44. The course of conduct employed by Hurley not only demonstrates a consciousness of guilt,<sup>96</sup> it also indicates a preparedness and capacity on his part to go to considerable lengths to seek to cover his tracks in terms of the evidentiary trail associated with a complaint against his conduct. Robinson's conduct reveals at least a blind loyalty to Hurley which affected the discharge of his duties as a policeman.

#### Douglas Clay complaint

45. It is not necessary, for present purposes, to determine whether to prefer Clay's version or that of Hurley in respect of this incident. Both versions show that Hurley is quite prepared to resort to significant physical violence against an intoxicated indigenous resident of Palm Island in a situation of conflict.
46. If Clay's version is accepted then it is very concerning that the other police officers condoned the assault. Not only did they each elect to not record or note the incident; they also spoke with each other in advance of their interviews, to "check" their accounts, in the course of the investigation directed by this Court.
47. The continuing theme of collective defensiveness that police seem to acquire when one of them is accused is suggestive of a significant degree of collegiate support for each other's

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<sup>96</sup> *Edwards* (1993) 178 CLR 193 and *Zoneff* (2000) 200 CLR 234.

actions, which might exceed their public duty to protect citizens from unlawful or improper actions by one of them.

#### Noel Cannon complaint

48. This complaint is denied by Hurley. No other police officer or witness is said to have witnessed these events. If Cannon's account is accepted, it provides another instance of physical force resorted to against an intoxicated indigenous resident of Palm Island whilst in police custody. Interestingly, the alleged application of force in Cannon's case, was a knee to the stomach, cf. the mechanism of injury in Mulrinji's death.
49. Further, and again, Hurley's laxity in independently recording the incident, particularly of Cannon's release from incarceration in the watch house, bears notice.

#### Overall picture

50. The picture that emerges from the evidence surrounding these earlier complaints includes:
  - 50.1. Hurley has no compunction about using considerable force in arrest/confrontation circumstances involving intoxicated residents of the island.
  - 50.2. Hurley's size and the fact that his combatant is often intoxicated means that he is usually able to overpower him.
  - 50.3. Hurley sees nothing wrong in using summary detention as a direct consequence for citizens insulting police or for them not doing what he directs them to do.
  - 50.4. He is prepared to take steps to seek to avoid or at least deflect investigation, if any complaint is made about his conduct, approaching dishonesty. His credit is severely questioned.
  - 50.5. He is aware that any police witnesses or police investigations into complaints against him (which are likely to be undertaken by close colleagues), will have a bias in his favour.
  - 50.6. Robinson lacks integrity and professionalism when conducting an investigation into allegations of police misconduct. He is willing to turn a blind eye in favour of Hurley. He has a very poor regard for indigenous people on Palm Island. His cynical use of the power differential in an interview situation to make a complaint go away was appalling. His disregard for indigenous people generally, as revealed in his interviews over the Clay incident, certify him as being quite unfit to be policing on Palm Island or at all.
51. It is submitted however, that even without recourse to the prior complaint evidence, the features within the evidence of events on 19 November 2004 set out above, are sufficient to

raise significant doubts about Hurley's accounts of his actions and the attempts by other officers to support him. In the context of the prior complaints, however, this does promote a sense of 'déjà vu'.

#### **Other causative features**

52. Physical mechanisms aside, there are a number of other factors that contributed to the death, which need to be examined, namely:
  - 52.1. Whether Mulrunji had committed a public nuisance offence;
  - 52.2. Whether he was lawfully arrested;
  - 52.3. Whether he should have been placed in police custody.
  
53. Detailed consideration of these matters is required by both ss 45 and 46. The arrest and the surrounding circumstances directly contributed to Mulrunji's resistance to being arrested, which then led to a physical interaction culminating in his death.
  
54. The Council seeks following findings, pursuant to s 45(2)(e):
  - **(11) Mulrunji's conduct leading up to his arrest did not constitute a public nuisance offence.**
  - **(12) Mulrunji's arrest was not lawful (i.e. does not fall within s 198 of the *Police Powers and Responsibilities Act 2000* ('PPRA')).**
  - **(13) Mulrunji's arrest was also inappropriate, in all of the circumstances. He should not have been taken into police custody. Hurley should have pursued one of the several available alternatives to arrest, even if he did hold the view that a public nuisance offence had been committed.**
  - **(14) Hurley forcibly placed Mulrunji into a caged section in the rear of a police vehicle and transported him to the police station.**
  - **(15) Mulrunji protested against and resisted being arrested.**
  
55. These matters also provide the framework for comments pursuant to s 46.

## Section 46 comments

### Mulrunji's alleged offence – “public nuisance”

#### The offence

56. Mulrunji was, on Hurley's evidence, arrested for committing a public nuisance offence. The provision in operation at the time of his death was s 7AA of the *Vagrants Gaming and Other Offences Act 1931*, which relevantly reads:

#### **Public nuisance**

**7AA.** (1) A person must not commit a public nuisance offence. Maximum penalty – 10 penalty units or 6 months imprisonment.

(2) A person commits a public nuisance offence if –

(a) the person behaves in –

- (i) a disorderly way; or
- (ii) an offensive way; or
- (iii) a threatening way; or
- (iv) a violent way; and

(b) the person's behaviour interferes, or is likely to interfere, with the peaceful passage through, or enjoyment of, a public place by a member of the public.

(3) Without limiting subsection (2) –

(a) a person behaves in an offensive way if the person uses offensive, obscene, indecent or abusive language; and

(b) a person behaves in a threatening way if the person uses threatening language.

(4) It is not necessary for a person to make a complaint about the behaviour of another person before a police officer may start a proceeding against the person for a public nuisance offence.

(5) Also, in a proceeding for a public nuisance offence, more than 1 matter mentioned in subsection (2)(a) may be relied on to prove a single public nuisance offence.

57. That provision has now been repealed, however it has been re-enacted in the exact terms as s 6 of the *Summary Offences Act 2005*.

#### Evidence of the offence

##### *Police*

58. The arresting officer, Hurley, has given the following version:

58.1. Mulrunji was walking from Palmer Crescent into Dee Street, and going to walk down toward Clumpoint Road, when he first spoke to Bengaroo. Hurley and Bengaroo had arrested Patrick Nugent for public nuisance. Hurley and Bengaroo were standing at the rear of the police vehicle with the rear cage door open preparing to put Nugent inside. Mulrunji said words to the effect of “Bengaroo, you shouldn't be locking him up, you're a black fellow yourself, you shouldn't be locking up black people.” Mulrunji was a couple of metres away, and he stood there for a short time.<sup>97</sup>

58.2. Lloyd told him to “move on, else you'll get arrested yourself”. Mulrunji then kept walking down the road.<sup>98</sup>

<sup>97</sup> R591 L43-55; R592 L1-6.

<sup>98</sup> R592 L 15-21.

- 58.3. Whilst Hurley was getting into the vehicle, Mulrunji turned back and said “you fucking cunts” or something similar to that. He was about 30 metres down the road.<sup>99</sup> Mulrunji turned again and said something, but Hurley didn’t hear, because by that stage he was in the vehicle.<sup>100</sup> Mulrunji kept walking.
- 58.4. Hurley ultimately stated in cross-examination that the offence was committed, in his view, due to Mulrunji saying “you fucking cunts” to him and Bengaroo, before walking away.<sup>101</sup> However, when first asked about the issue by counsel assisting, he suggested that he had arrested Mulrunji because Bengaroo’s “pride was hurt”. Bengaroo had said “he shouldn’t speak to me like that”. Hurley told Bengaroo in response, that “he’d be going in.”<sup>102</sup>
- 58.5. He expressed the view that the offence of public nuisance was the same as the previous disorderly or offensive manner charge under the *Vagrants Gaming and Other Offences Act 1931*.<sup>103</sup> In the circumstances of this case, he considered a public nuisance to have been committed if there is offensive behaviour which “impedes the path of the public”. When asked how Mulrunji’s saying “you fucking cunts” impedes the path of the public, he answered: “Because that’s offensive to people who are in the general public area.”<sup>104</sup> He didn’t always find the words particularly offensive himself, but “knew” Bengaroo was offended.<sup>105</sup>
- 58.6. When arrested, Mulrunji then said things like “I’m not drunk” “I’ve done nothing wrong” and “why are you arresting me?” but was “not overly” struggling or resisting.<sup>106</sup>
59. It is notable that Hurley first suggested that the words “you fucking cunts” were used when he gave evidence at the inquest. It had not been raised in his several police interviews.<sup>107</sup>
60. Police liaison officer Bengaroo has also given varying recollections of these events:
- 60.1. He was with Hurley, opening the back door for Patrick Bramwell to be put in the back of the police paddy wagon by Hurley, when Mulrunji walked towards him and said “Bengaroo, you black like me. Can’t you help us?”<sup>108</sup> or “Ah, you’re a black man, like me... what do you lock him up for?”<sup>109</sup> or “You’re black like me, what are you doing this for?”<sup>110</sup>

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<sup>99</sup> R592 L23-36.

<sup>100</sup> R592 L38-41.

<sup>101</sup> R1218 L38-45.

<sup>102</sup> R592 L41 – R593 L4; R594 L31-51.

<sup>103</sup> R591 L15-23.

<sup>104</sup> R1218 L49 – R1219 L10.

<sup>105</sup> R1220 L40-43.

<sup>106</sup> R598 L1-25.

<sup>107</sup> Held on 19 November, 20 November (x 2) and 8 December 2004 (Exhibits D17.1-17.5). (Hurley was legally represented at his last interview and required a direction to answer questions, under compulsion.)

<sup>108</sup> R511 L44.

<sup>109</sup> ROI (Exhibit D4.1) p5 L123.

<sup>110</sup> R539 L36-37.

- 60.2. Bengaroo was upset by this. However he has heard these types of comments “plenty of times”, in fact “most times” he has been involved in arresting people, over a total of 25 years.<sup>111</sup> It was nothing new.<sup>112</sup> Whilst it upset him it wasn’t the sort of thing that would really distress him.<sup>113</sup>
- 60.3. Bengaroo told him to “just walk down the road otherwise he’d get locked up”.<sup>114</sup> This was “for his own safety”, so he wouldn’t get locked up.<sup>115</sup>
- 60.4. As to a further verbal interaction with Mulrunji, Bengaroo has given several versions. His ultimate evidence appeared to be that he hadn’t personally heard the words particularised by Hurley.<sup>116</sup>
- 60.5. He had told Hurley about his own interaction with Mulrunji.<sup>117</sup> “All of a sudden Chris said to me who was that? We pulled up and – next to Cameron and Chris said to me “I’m going to grab him – lock him up” so both of us jumped out of the police vehicle and I went down to the rear end of the police vehicle to the cage part and I opened the door for Chris – and Chris grabbed Cameron and put him in the back of the vehicle.”<sup>118</sup> Bengaroo heard Mulrunji ask “what are you locking me up for?” And Hurley told him “just disturbing the peace.”<sup>119</sup>
- 60.6. He has not received any training as to the meaning of the offence of “public nuisance”.<sup>120</sup> He would not know whether or not someone had committed the offence.<sup>121</sup> He states that he understands public nuisance to involve “creating a disturbance” and that himself and Hurley were the ones disturbed by Mulrunji’s comments.<sup>122</sup>
- 60.7. On Palm Island, people swear a lot. It happens everywhere. In his 4 years as a PLO, he cannot recall anyone being arrested for swearing at anyone other than at police. It possibly occurred a few times when he was a community police officer.<sup>123</sup> Police swear on the Island. He has never heard of a police officer being arrested for swearing.<sup>124</sup>

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<sup>111</sup> R539 L43-57.

<sup>112</sup> R540 L6-7.

<sup>113</sup> R539 L40 – R540 L15.

<sup>114</sup> ROI (Exhibit D4.1) p5.

<sup>115</sup> R511 L50-55.

<sup>116</sup> ROI (Exhibit D4.1) p5; R512 L18-55; R513 L5; R514 L10-15; R541 L13-15; R542 L55 – R543 L4; R541 L15-35; R515 L9.

<sup>117</sup> R540 L25-40.

<sup>118</sup> ROI (Exhibit D4.1) p5.

<sup>119</sup> R515 L20-25.

<sup>120</sup> R571 L40-55.

<sup>121</sup> R572 L1-5, 40-50.

<sup>122</sup> R542 L20-28

<sup>123</sup> R573 L30 – R574 L20.

<sup>124</sup> R574 L35-45.

*Community residents*

61. Several community residents saw Mulrunji at or about the time of his arrest. The evidence suggests that Mulrunji was “drunk” and had been drinking alcohol that morning and the night before. He was apparently known as “a happy drunk” and seen to be so on that day:
- 61.1. His de facto Tracey Twaddle states that Mulrunji had never hit her during their relationship, and had the police brought him home that morning he would have been welcome into her home.<sup>125</sup>
- 61.2. Noby Clay was asked whether Mulrunji was drunk. She stated “Yeah. But he wasn’t drunk and disorderly. He wasn’t disturbing the peace. He was a happy drunk. He was just walking past minding his own business.”<sup>126</sup>
- 61.3. Edna Coolburra describes Mulrunji as having come into her home and that he was “in a happy mood”<sup>127</sup> and that later that morning, prior to his arrest “he was drunk, but he was in a happy sort of way, you know, not walking around the road, swearing and cursing or singing out.”<sup>128</sup> She states that “there are two kinds of drunk” in the old way of speaking “You can be an abusive one”<sup>129</sup> or, as she describes Mulrunji, you can be “a happy-go-lucky fellow, just walking along, minding your own business, singing and laughing”<sup>130</sup>
- 61.4. Gerald Kidner states he had seen Mulrunji in the same state he was on the date in question “many times” namely just walking along peacefully and singing; he stated that he was a “happy drunk.”<sup>131</sup>
62. A number of local residents say that they also saw and heard Mulrunji walking along Dee Street singing out words to a then popular song, “Who let the dogs out?”<sup>132</sup> None of them heard him say anything like “fuck you cunts” to Hurley and Bengaroo.<sup>133</sup>

The law

63. Conduct required to amount to an offence of this kind involves:
- ...a substantial breach of decorum which tends to disturb the peace or to interfere with the comfort of other people who may be in, or in the vicinity of, the street or public place.<sup>134</sup>
- Disorderly conduct is conduct which is disorderly; it is conduct which, while sufficiently ill-mannered, or in bad taste, to meet with the disapproval of well-conducted and reasonable men and

<sup>125</sup> R62 L49-55

<sup>126</sup> R118 L10-13.

<sup>127</sup> R84 L52-53.

<sup>128</sup> R91 L9-13.

<sup>129</sup> R89 L33-35.

<sup>130</sup> R90 L41 – R91 L13.

<sup>131</sup> R326 L16-30.

<sup>132</sup> R120 L3-6, R121 L2-8 (Noby Clay); Statement p1 of Cooper Kerr (Exhibit D23.1); R311 1258-29, R318 L19-21, R325 L56 – R326 (Gerald Kidner).

<sup>133</sup> R106, 317 (G Kidner); R91, 341 (Coolburra); R94, 367 (Nugent); R377 (Clay).

<sup>134</sup> *Barrington v. Austin & Oths* [1939] S.A.S.R 130 at 132 per Napier J.

women, is also something more – it must in my opinion, tend to annoy or insult such persons as are faced with it – and sufficiently deeply or seriously to warrant the interference of the criminal law.<sup>135</sup>

64. This feature – particularly in the context of police officers as complainants – was also recently referred to in the High Court decision of *Coleman v Power* (2004) 220 CLR 1; 78 ALJR 1166. See per Gleeson CJ:

[12] Concepts of what is disorderly, or indecent, or offensive, vary with time and place, and may be affected by the circumstances in which the relevant conduct occurs. The same is true of insulting behaviour or speech. In the context of legislation imposing criminal sanctions for breaches of public order, which potentially impairs freedom of speech and expression, it would be wrong to attribute to Parliament an intention that any words or conduct that could wound a person's feelings should involve a criminal offence...

[15] It is impossible to state comprehensively and precisely the circumstances in which the use of defamatory language in a public place will involve such a disturbance of public order, or such an affront to contemporary standards of behaviour, as to constitute the offence of using insulting words to a person. An intention, or likelihood, of provoking violence may be one such circumstance. The deliberate inflicting of serious and public offence or humiliation may be another. Intimidation and bullying may constitute forms of disorder just as serious as the provocation of physical violence. But where there is no threat to the peace, and no victimisation, then the use of personally offensive language in the course of a public statement of opinions on political and governmental issues would not of itself contravene the statute. However, the degree of personal affront involved in the language, and the circumstances, may be significant.

[16] The fact that the person to whom the words in question were used is a police officer may also be relevant, although not necessarily decisive. It may eliminate, for practical purposes, any likelihood of a breach of the peace. It may also negate a context of victimisation. As Glidewell LJ pointed out in *Director of Public Prosecutions v Orum*, it will often happen that “words and behaviour with which police officers will be wearily familiar will have little emotional impact on them save that of boredom.” But police officers are not required to be completely impervious to insult...

Per Gummow and Hayne JJ:

[193] Again, as indicated earlier, “abusive” and “insulting” words can be understood as anything that is intended to hurt the hearer. But in the context of this provision “abusive” and “insulting” should be understood as those words which, in the circumstances in which they are used, are so hurtful as either they are intended to, or they are reasonably likely to provoke unlawful physical retaliation. Only if “abusive” and “insulting” are read in this way is there a public purpose to the regulation of what is said to a person in public...

[200] Section 7(1)(d) is not invalid. It does, however, have a more limited operation than it was understood to have in the courts below. In particular, it does not suffice for the person to whom the words were used to assert that he or she was insulted by what was said. And it does not suffice to show that the words used were calculated to hurt the self-esteem of the hearer. Where, as here, the words were used to a police officer, then unless more is shown, it can be expected that the police officer will not physically retaliate. It follows that unless there is something in the surrounding circumstances (as, for example, the presence of other civilians who are affected by what is said) the bare use of words to a police officer which the user intends should hurt that officer will not constitute an offence. By their training and temperament police officers must be expected to resist

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<sup>135</sup> *Dillon v Byrne* (1972) 66 QJPR 112 at 133. See also *Ball v McIntyre* (1966) 9 FLR 237 and *Donnelly v McDonald* (1989) 12 Qld Lawyer Reps 111.

the sting of insults directed to them. The use of such words would constitute no offence unless others who hear what is said are reasonably likely to be provoked to physical retaliation.

Per Kirby J:

[224] Obviously, if “insulting” is given its dictionary meaning, it would extend to a wide ambit, such as “to offer indignity to”, or “to treat insolently”. An analysis of the history of the section may also be invoked to support a wide interpretation. The absence of express words requiring a likelihood or intention of violence (or breach of the peace) may suggest that there is no such requirement. So might a construction relying on the deletion by the Queensland legislature in 1931 of the express reference to breaches of the peace that formerly appeared. However, the fact that the section imposes a criminal sanction, together with the public purposes of the section, suggest a need to adopt a more restrictive reading. Further, the situation of the word “insulting” in a concatenation of words that include “abusive” and “threatening” together with the use of the preposition “to”, also suggest the narrow interpretation...

[226] Together, the principles convince me that “insulting” should not be given its widest meaning in the context of s 7(1)(d) of the Act. Specifically, the word should be read so that it does not infringe the implied constitutional freedom of political communication. Thus, words are not “insulting” within s 7(1)(d) of the Act if they appear in, or form part of, a communication about government or political matters. It follows that the construction explained in the joint reasons should be preferred. Thus, “insulting” means words which are intended to provoke unlawful physical retaliation, or are reasonably likely to provoke unlawful physical retaliation.

[258] It also follows that the paragraph has been misinterpreted by the courts below. It has therefore been misapplied in the appellant’s case. There was no prospect that the respondent police officers would be provoked to unlawful physical violence by the words used. At least the law would not impute that possibility to police officers who, like other public officials, are expected to be thick skinned and broad shouldered in the performance of their duties. Nor would others nearby be so provoked to unlawful violence or the risk thereof against the appellant by words of the kind that he uttered.

65. The authorities suggest that the use of words such as “fuck” and “cunt” in public places, of itself, is not necessarily sufficient to bring culpability, although it can do. The behaviour must be assessed in the circumstances and context, in accordance with community expectations.<sup>136</sup> This element goes both to contemporary community standards and the requirement in s 7AA(2)(b), that the conduct must be such that it either has interfered with or because of its nature would be likely to interfere with people who were in the public place at the relevant time.<sup>137</sup> Further, *Coleman v Power* (ibid) suggests that the conduct must be intended to or otherwise likely to provoke violence or a similar reaction.

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<sup>136</sup> *E (A Child)* (1994) 76 A Crim R 343; *Crowe v Graham* per Windeyer J, generally at 387-400. *Hortin v Rowbottom* (1993) 61 SASR 313; *Dalton v Bartlett* [1972] 3 SASR 549; *Bradbury v Staines*; *Ex parte Staines* [1970] Qd R 76; *Butterworth v Geddes* [2005] QDC 333 (per Forde DCJ at [8] and [11]); *Bryant v Stone* (unreported, Wylie DCJ) 26.10.90; *Edbrook v Hartman & Bindon v Hartman* (unreported, Wylie DCJ, 24 July 1991) at [11]; *Poulton v Daher* [2001] QDC 1289 (Samios DCJ); *Couchy v Del Vecchio* [2002] QCA 9; *Couchy v Birchley* [2005] QDC 4692 (McGill DCJ) at [37] and [42].

<sup>137</sup> *Butterworth v Geddes* [2005] QDC 48.

66. Applying these principles, it is beyond doubt that Mulrunji did not, even on Hurley's account (which must be viewed with considerable circumspection, given the delay in providing it, and that he is the only one to assert hearing those words), commit any public nuisance offence. It is therefore not necessary to resolve what words were in fact said.
67. The comment in this regard, sought by the Council pursuant to s 46(1)(b) and (c) is:
- **(11) Mulrunji's conduct leading up to his arrest did not constitute a public nuisance offence.**

## **Mulrunji's Arrest**

### The Law

68. The powers of arrest and other discretionary matters surrounding instituting charges are contained in the *Police Powers and Responsibilities Act 2000* ('PPRA'):

#### **198 Arrest without warrant**

(1) It is lawful for a police officer, without warrant, to arrest an adult the police officer reasonably suspects has committed or is committing an offence if it is reasonably necessary for 1 or more of the following reasons—

- (a) to prevent the continuation or repetition of an offence or the commission of another offence;
- (b) to make inquiries to establish the person's identity;
- (c) to ensure the person's appearance before a court;
- (d) to obtain or preserve evidence relating to the offence;
- (e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;
- (f) to prevent the fabrication of evidence;
- (g) to preserve the safety or welfare of any person, including the person arrested;
- (h) to prevent a person fleeing from a police officer or the location of an offence;
- (i) because the offence is an offence against section 444 or 445;
- (j) because the offence is an offence against the *Domestic and Family Violence Protection Act 1989*, section 80;
- (k) because of the nature and seriousness of the offence;
- (l) because the offence is—
  - (i) an offence against the *Corrective Services Act 2000*, section 103(3); or
  - (ii) an offence to which the *Corrective Services Act 2000*, section 104 applies.

(2) Also, it is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects has committed or is committing an indictable offence, for questioning the person about the offence, or investigating the offence, under chapter 7.

#### **209 Additional case when arrest of adult may be discontinued**

- (1) This section applies to an arrested person who is an adult.
- (2) It is the duty of a police officer to release the person at the earliest reasonable opportunity if—
  - (a) the reason for arresting the person no longer exists or is unlikely to happen again if the person is released; and
  - (b) either—
    - (i) if the person is arrested for an offence that is an infringement notice offence—it is more appropriate to serve an infringement notice on the person for the offence and the infringement notice has been served on the person; or
    - (ii) it is more appropriate to take the person before a court by notice to appear or summons and the notice to appear or summons has been served on the person.
- (3) Subsection (2) does not apply to an adult who is arrested—

(a) to prevent the person fleeing from a police officer or the location of an offence; or  
 (b) if, because of the nature or seriousness of an offence for which the person is a suspect, it is inappropriate to release the person.

(4) Also, a police officer must release the person at the earliest reasonable opportunity if—

(a) the police officer reasonably considers it is more appropriate for the arrested person to be dealt with other than by charging the person with an offence; and

(b) the person and any victim of the offence agree to the person being dealt with in that way.

*Example for subsection (4)—*

1 A person arrested for a minor assault involving pushing a person during a heated argument with a neighbour may agree to attend alternative dispute resolution.

2 A person may be released under a scheme developed by the commissioner for cautioning elderly first offenders.

(5) In this section—

***infringement notice*** see the State Penalties Enforcement Act 1999, schedule 2.60

***infringement notice offence*** see the *State Penalties Enforcement Act 1999*, schedule 2.

## **210 Additional case when arrest for being drunk in a public place may be discontinued**

(1) This section applies if—

(a) a person is arrested for being drunk in a public place; and

(b) a police officer is satisfied it is more appropriate for the person to be taken to a place, other than a watch-house, the police officer considers is a place at which the person can receive the treatment or care necessary to enable the person to recover safely from the effects of being drunk (a ***place of safety***).

*Examples of a place of safety—*

1 A hospital may be a place of safety for a person who needs medical attention.

2 A place other than a hospital that provides care for persons who are drunk may be a place of safety.

3 A vehicle used to transport persons to a place of safety and under the control of someone other than a police officer may be a place of safety.

4 The person's home, or the home of a relative or friend, may be a place of safety if there is no likelihood of domestic violence or associated domestic violence happening at the place because of the person's condition or the person is not subject to a domestic violence order preventing the person from entering or remaining at the place.

(2) It is the duty of the police officer, at the earliest reasonable opportunity—

(a) to take the person to the place of safety; and

(b) to release the person at the place of safety.

*Example—*

The place of safety may be a vehicle under the control of someone other than a police officer that is used to transport persons to another place of safety.

(3) Subsection (2) does not apply if the police officer is satisfied—

(a) a person at the place of safety is unable to provide care for the person; or

(b) the person's behaviour may pose a risk of harm, including, but not limited to, an act of domestic violence or associated domestic violence, to other persons at the place of safety.

(4) Before the police officer releases the person, the police officer must ensure the person apparently in possession or in charge of the relevant place of safety gives a police officer a signed undertaking in the approved form to provide care for the relevant person.

(5) A person taken to a place of safety can not be compelled to stay there.

(6) If the place of safety is not the person's home, the person apparently in possession or in charge of the place of safety may lawfully provide care for the person until the person voluntarily leaves the place.

## **Part 5 Alternative to arrest**

### **214 Notice to appear may be issued for offence**

(1) The object of this section is to provide an alternative way for a police officer to start or continue a proceeding against a person that reduces the need for custody associated with arrest and

does not involve the delay associated with issuing a complaint and summons under the *Justices Act 1886*.

(2) If a police officer reasonably suspects that a person has committed or is committing an offence, the police officer may issue and serve a notice (*notice to appear*) on the person.

(3) A notice to appear must be personally served on a person.

(4) If a person is alleged to have committed offences as a child and as an adult, a separate notice to appear must be issued for the offences committed as a child.

#### **42 Dealing with breach of the peace**

(1) This section applies if a police officer reasonably suspects—

(a) a breach of the peace is happening or has happened; or

(b) there is an imminent likelihood of a breach of the peace; or

(c) there is a threatened breach of the peace.

(2) It is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the breach of the peace happening or continuing, or the conduct that is the breach of the peace again happening, even though the conduct prevented might otherwise be lawful.

*Examples for subsection (2)—*

1 The police officer may detain a person until the need for the detention no longer exists.

2 A person who pushes in to the front of a queue may be directed to go to the end of the queue.

3 Property that may be used in or for breaching the peace may be seized to prevent the breach.

(3) It is lawful for a police officer—

(a) to receive into custody from a person the police officer reasonably believes has witnessed a breach of the peace, a person who has been lawfully detained under the Criminal Code, section 260; and

(b) to detain the person in custody for a reasonable time.

#### The evidence

69. Hurley was questioned about his understanding and use of arrest powers. When asked why he considered that an arrest was “reasonably necessary” and didn’t consider pursuing alternatives to arrest such as issuing a Notice to Appear either on the spot or the next day, or taking Mulrunji home, he suggested as follows:

69.1. His first response was that he arrested Mulrunji “in support of Lloyd” and because “If Lloyd had the power, he would have arrested him.”<sup>138</sup> However, that is not a feature of the s 198 power.

69.2. He suggested he wanted to treat Mulrunji the same way he had treated Patrick Nugent.<sup>139</sup> However, Nugent had had several warnings that morning and his conduct was, on any version, much more excessive, and the subject of complaint by a community member. This basis should be rejected as nonsense.

69.3. He accepted that taking Mulrunji home instead was “one option under drunk diversion, however, he wasn’t arrested for that... but if he was, history has shown that there was a great many times that police were called again, to pick up that person.”<sup>140</sup>

<sup>138</sup> R592 L41 – R593 L4; R594 L31-51.

<sup>139</sup> R597 L10-33.

<sup>140</sup> R595 L23-30.

- 69.4. While taking him into the police paddy wagon, Hurley told Mulrunji he was “going in for a sleep”, “because you’re drunk and you were calling us fucking cunts”.<sup>141</sup> Hurley asserts that it would have been “meaningless” to specify that Mulrunji was being arrested for public nuisance due to his intoxication.<sup>142</sup> However, when he formed the decision to arrest, he had not had the opportunity to assess his level of intoxication:

“You have not even spoken to him to determine whether or not he would have understood it?-- He'd come past us.

Yes, and he'd mouthed off at you?-- Yes.

Well, you don't need to be very drunk to mouth off, do you?-- Well, I don't know whether you need to be very drunk or not, but it was obvious that he was clearly affected by liquor.

And you're saying he was so affected by liquor that he would not have understood a notice to appear?-- Correct.

But you could have served it on him the next day?-- That's your opinion. I wouldn't have.”<sup>143</sup>

- 69.5. Further, this does not answer why he did not ascertain the information from Bengaroo in order to consider issuing a charge, if necessary, the following day.
- 69.6. Hurley in fact did not consider issuing a Notice to Appear at all.
- 69.7. Hurley knows that Bengaroo would likely have known who Mulrunji was, and who his family are, and whether or not he was ‘troublesome’.<sup>144</sup> Hurley himself knew he was not in the ‘troublesome’ category, given that he hadn’t previously had any adverse dealings with Mulrunji in the 2 years he had been stationed at Palm Island.<sup>145</sup> He agreed that Mulrunji was reasonably likely to appear in court.<sup>146</sup>
- 69.8. It was not reasonably necessary for Mulrunji to be arrested to ‘have a sleep’ when he could have easily been taken or directed to go home.
- 69.9. Hurley accepted that the words spoken by Mulrunji were to him and Bengaroo, not to anyone else, that he had finished his piece and was walking away.<sup>147</sup> Hurley suggested that there was a potential risk of repetition of the offence perhaps when they were driving past. Whilst he may now seek to rely upon s 198(1)(a) as a basis for arrest, he could not suggest on what basis he formed this view.<sup>148</sup> That assertion should be rejected, due to the lack of evidence of any circumstances to bring that consideration into relevance. It seems really to be grasping at straws.
- 69.10. Ultimately, he thought incarceration (generally of 4 hours) was necessary to check his criminal history, and whether there were any warrants.<sup>149</sup> However, he accepted that Bengaroo could have told him most of these matters, and that ultimately, given

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<sup>141</sup> R597 L45-52.

<sup>142</sup> R597 L53-57.

<sup>143</sup> R1266 L15 – R1267 L30.

<sup>144</sup> R596 L10-20.

<sup>145</sup> R595 L8-18; R596 L30-35.

<sup>146</sup> R1264 L1-45.

<sup>147</sup> R1263 L5-30.

<sup>148</sup> R1265 L18-23.

<sup>149</sup> R595 L45.

his personal antecedents, Mulrunji was reasonably likely to be locatable.<sup>150</sup> A warrant check is not a basis authorised in s 198.

69.11. Of great significance is the fact that Hurley did not at any stage consider any alternative measure.<sup>151</sup> He concluded that it was “standard practice to go to the station.”<sup>152</sup> He had no appreciation or application of the principles espoused by the report of the RCIADIC or QPS policy, of arrest being a last resort. The application of such principles should have resulted in Mulrunji not being arrested at all.

69.12. As to relevant issues in exercising his discretion, the following passages of Hurley’s evidence are revealing:

“What circumstances do you think impact upon your discretion?-- Well, you've given the example of walking home from the cricket. If you've got some yobbos beside a family that are carrying on with, you know obscene language, and there's kids and there's the family, those yobbos deserve to go in, you know, they should be arrested for that.

You use the word "deserve", do you know what is the usual sort of punishment imposed for obscene language?-- No.

What sort of penalties are imposed?-- A fine - a fine. I haven't - I haven't been to Court for obscene language for some time.

You would-----?-- I don't know.

You would think generally a fine would be an appropriate disposition of that sort of conduct, wouldn't you?-- Correct.

You wouldn't think incarceration would ever be warranted, would you?-- Are you saying from the Court itself?

No - for the conduct?-- For the conduct?

Yes?-- Well, that's what we do on the Gold Coast.

Well do you think it's appropriate?-- I do think it's appropriate.

To lock people up for using bad language?-- It stops the offence.

Well you say it's appropriate?-- I do.”<sup>153</sup>

“Do you think it's not a significant problem that the officer-in-charge of an indigenous community does not know what are the elements of an offence such as public nuisance?-- Sir, what I meant by that was if I had to sit here and name the elements per se as they're written into the legislation, I couldn't say them like that but I know that it's an offence to use the offence of - offensive language, obscene language, in public.

So you think that that's all you need to arrest somebody and lawfully convict them of this offence, don't you?-- Yes.

And you think that because those criteria were met, that justifies you incarcerating them at least for the night, don't you?-- They were never incarcerated for the night on a - on an offence of public nuisance.

At least for several hours?-- At least for several hours. Never for the night, sir.”<sup>154</sup>

“At any stage you didn't consider giving him a direction. Your only - the only thing you considered doing was arresting him. Isn't that right?-- Correct.

Okay. But there is an obligation on you as a police officer, isn't there, to commence proceedings wherever practicable by way of a notice to appear?-- No.

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<sup>150</sup> R1264 L1-45.

<sup>151</sup> R1266 L35.

<sup>152</sup> R596 L45.

<sup>153</sup> R1251 L25-60.

<sup>154</sup> R1254 L1-20.

Okay. What I'm referring to is the Operation Procedures Manual at 3.5, and I'll read it to you. You accept that that imposes obligations on you as a police officer, don't you?-- The OPMs?

Yes?-- Yes, sir.

Yes. And I'll read it to you. "Instituting proceedings wherever practicable should be by means of a notice to appear"-- Yes, and it says "wherever practicable."

Yes. So, there's an obligation on you-----?-- That would mean that you give a notice to appear to someone who understands it-----

Yes?-- -----and in this case, in my opinion, he would never have understood it from his level of intoxication."<sup>155</sup>

70. Bengaroo was also questioned on his experience of policing of such offences and the exercise of the power to arrest on Palm Island:

70.1. He had known Mulrunji all his life.<sup>156</sup> He knew where he lived, he knew his wife, and he knew where he worked.<sup>157</sup> He was aware that Mulrunji had lived in the same house for 5 years.<sup>158</sup> If he had wanted to find him again, to go to Court or to speak to, he could have found him easily.<sup>159</sup> He knew Mulrunji was not a troublemaker.<sup>160</sup>

70.2. Hurley didn't ask, and so he didn't tell him, these things.<sup>161</sup>

70.3. He was aware that there is a discretion as to whether or not an arrest should be made, but would not have proactively offered any information to assist a police officer in this task.<sup>162</sup>

70.4. He knew about the existence of a Notice to Appear procedure, but had received no training about it in his 4 years as a PLO and did not know the circumstances for when it should be utilised (as opposed to arrest).<sup>163</sup> He stated that he had been shown PLO booklets, but that he didn't know whether in every case someone committed public nuisance they should be arrested.<sup>164</sup> He had heard of the OPMs, but did not know the content.<sup>165</sup>

70.5. He agreed that putting someone in a cell for swearing was an extreme measure, but he didn't consider any alternatives when Mulrunji was being arrested.<sup>166</sup>

70.6. As to diversionary processes (i.e. taking drunk people home or to a safe place), when he was a community policeman, this had been done a few times, when

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<sup>155</sup> R1266 L33-60.

<sup>156</sup> ROI (Exhibit D4.1) p13.

<sup>157</sup> R574 L51- R575 L6.

<sup>158</sup> R574 L57.

<sup>159</sup> R575 L4-6.

<sup>160</sup> R574 L53 – R575 L10.

<sup>161</sup> R575 L13-16.

<sup>162</sup> R576 L1-11.

<sup>163</sup> R566-567.

<sup>164</sup> R 567 L1-18.

<sup>165</sup> R575 L18-30.

<sup>166</sup> R567 L35– 47.

community police suggested it; but that had never occurred during his time as a PLO.<sup>167</sup>

70.7. "...they usually just put drunks in there for 4 hours and let them go"<sup>168</sup>

70.8. He did not see anything wrong in Mulrunji being "locked up" on 19 November.<sup>169</sup>

71. Sergeant Leafe repeated Hurley's sentiment that diversion was only available for charges of being drunk.<sup>170</sup>

72. The police officers' evidence reveals:

72.1. an utter lack of awareness of factors to be taken into account in exercising the arrest discretion;

72.2. in particular, a lack of awareness of the special issues surrounding minor charges brought against intoxicated persons; and

72.3. a stubborn non-preparedness to consider available alternatives to arrest.

73. The evidence also reveals that there is currently no community-supported/government funded drunk diversion program in operation on Palm Island. There has been no evidence yet obtained as to why there is no diversionary centre or shelter on Palm Island. The Council's position is that such a program is necessary.<sup>171</sup> However, the community does not have the physical and personnel resources or funding to firstly facilitate discussion within the community and with the police to formulate such a program and then maintain the program. The Government Response to the Select Committee report recommending such a program was non-committal (it is excerpted below).

74. In this regard, HREOC's submissions at paragraphs 40 to 46 are respectfully adopted.

#### Submissions as to comments

75. Police do not have the power, outside s 198, to arrest without a warrant for a summary offence of public nuisance. If there is no purpose outlined in s 198 for which arrest is "reasonably necessary", the arrest is unlawful: *Couchy v Birchley* [2005] QDC 334 (McGill

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<sup>167</sup> R568-569.

<sup>168</sup> R569 L36-39.

<sup>169</sup> R542 L55.

<sup>170</sup> R702-703.

<sup>171</sup> Palm Island Aboriginal (Shire) Council Submission to the Queensland Parliamentary Select Committee July 2005, p38.

DCJ). The power of arrest – particularly with respect to public order offences – is in effect a sentence imposed prior to determination of guilt, in a situation where detention would never be imposed by a court. The reference by HREOC, in its submissions, to *DPP v Carr* (2002) 127 A Crim R 151 is apt and worth repetition:

“This Court in its appellate and trial divisions has been emphasising for many years that it is inappropriate for powers of arrest to be used for minor offences where the defendant’s name and address are known, there is no risk of him departing and there is no reason to believe that a summons will not be effective. Arrest is an additional punishment involving deprivation of freedom and frequently ignominy and fear. The consequences of the employment of the power of arrest unnecessarily and inappropriately and instead of issuing a summons are often anger on the part of the person arrested and an escalation of the situation leading to the person resisting arrest and assaulting the police. The pattern in this case is all too familiar. It is time the statements of this Court were heeded.”<sup>172</sup>

76. Reference is also made to *Robinett v Police* (2000) 116 A Crim R 492 per Bleby J at 507:

“People arrested and in custody, even when intoxicated, are completely disempowered in their ability to command the services or even the respect that others in the community may be able to. They are likely to react to that disempowerment, and to any physical needs that may arise, in a variety of unpredictable ways. The situation is exacerbated when the person concerned is a member of an already socially disempowered section of the community, such as the Aboriginal community. The consequences of ignoring requests of that nature can be catastrophic.

So much is clear from a brief perusal of the Report of the Royal Commission Into Aboriginal Deaths in Custody (1991). Whilst the recommendations of the Royal Commission cannot be binding on this Court as prescribing essential standards of police conduct towards Aboriginal people, recommendations 122 - 167 of the Report provide a wide range of recommendations concerning desirable measures to be implemented in respect of the health and safety of persons in police custody. Whilst they are obviously not prescriptive, they are indicative of changing community standards and expectations of conduct to be exhibited by police custodians, in particular in respect of Aboriginal people.”

77. Here, no sub-provision of s 198(1) applies. The closest provisions can be easily dealt with:

- 77.1. sub-s (a) to prevent continuation of the offence – this is unsupported by the evidence;
- 77.2. sub-s (b) for the purpose of making inquiries as to Mulrunji’s identity – Hurley was not inquiring as to identity. That information was available through Bengaroo. He was seeking information as to warrants. This is not a lawful basis for arrest.
- 77.3. sub-s (c) to ensure appearance before the court – this was not in real issue.
- 77.4. sub-s (g) to ensure the safety and well-being of others – the evidence is that Mulrunji was not a violent drunk; and not known to police as a trouble-maker.

78. Arrest could not have been, in all the circumstances, “reasonably necessary”.

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<sup>172</sup> At 159. Smart AJ considered *Deamar v Corporate Affairs Commission* (unreported, NSWCCA, 4 September 1990); *Lake v Dobson* (unreported, NSWCA, 19 December 1980); and *Dumbell v Roberts* (1994) 1 All ER 326.

79. In *Couchy v Birchley* (supra), McGill DCJ queried but did not decide whether or not it is required that a police officer have a reasonable belief in the necessity for arrest to meet one or more of those objectives, or the objective existence of one or more of those reasons. His Honour noted that the Court of Appeal in *Coleman v Kinbacher* [2003] QCA 575 at [30] seemed to suggest the former, whilst in *R v Conway* [2005] QCA 194 at [19], [33], seemed to suggest the latter.
80. On either test – whether the police officer’s belief has to be reasonable, or on the objective evidence there is a reasonable basis for arrest – the evidence here includes:
- 80.1. Mulrunji was not known by Hurley to be a “trouble-maker” on the island (he had no significant criminal history);
  - 80.2. There was nothing in Mulrunji’s behaviour which suggested a real risk of any further offence;
  - 80.3. Mulrunji had continued to walk down the road away from the police;
  - 80.4. Bengaroo knew Mulrunji, including his history, his family, and where he lived;
  - 80.5. Bengaroo’s role (known to both he and Hurley) was to provide this type of information to police;
  - 80.6. In truth, neither officer even considered alternatives to arrest.
81. Even if it is thought arguable that an offence was committed by Mulrunji, a finding ought to be made that such an offence should have been dealt with, without resort to a physical arrest. Hurley failed to consider alternatives to arresting Mulrunji and taking him into custody, which were clearly available. Hurley should have either ignored the behaviour, left it alone for the issue of a notice to appear later, issued a notice to appear on the spot, or taken Mulrunji home. Informal diversionary measures were available.
82. The comments which are sought pursuant to s 46(1)(a), (b) and (c), in respect of Mulrunji’s arrest are:
- **(12) Mulrunji’s arrest was not lawful (i.e. does not fall within s 198 of the *Police Powers and Responsibilities Act 2000* (‘PPRA’)).**
  - **(13) Mulrunji’s arrest was also inappropriate, in all of the circumstances. He should not have been taken into police custody. Senior Sergeant Hurley should have pursued one of the several available alternatives to arrest, even if he did hold the view that a public nuisance offence had been committed.**

- (14) Hurley forcibly placed Mulrunji into a caged section in the rear of a police vehicle and transported him to the police station.
- (15) Mulrunji protested against and resisted being arrested.
- (16) Senior Sergeant Hurley and other police officers on Palm Island were clearly not aware of the elements of a public nuisance offence nor did they have any proper regard for prosecutorial discretion or the statutory requirements for an arrest to be lawful.
- (17) It is recommended that the Queensland legislature and the QPS look at legislative, guideline, or educational-based ways to address this.
- (18) The relevant PPRA provisions (ss 198, 210, 214) are not sufficient. Section 198 in particular, does not sufficiently direct the arrest discretion. To prevent deaths from happening in similar circumstances in the future (particularly to prevent future deaths in custody in indigenous communities where alternatives to arrest are available) the Queensland legislature ought to review and amend the PPRA:
  - To require police officers to first consider alternatives to arrest. HREOC's suggested amendment to s 198 to require the officer to reasonably believe that no action other than arrest would be appropriate in the circumstances, is one measure to be taken.
  - To enshrine the principle of arrest as a last resort. The Council again supports HREOC's suggestion that the PPRA Act be amended to include a specific statutory duty to consider and utilise alternatives to arrest and detention. The Council would submit that legislative provisions similar to those contained within the *Juvenile Justice Act* might be considered.
  - Such amendments should have regard to relevant RCIADIC findings.
- (19) The amendments should be coupled with relevant additions to the QPS OPMs.
- (20) The QPS Commissioner should consider how to ensure that police officers are fully informed about the availability and intent of legislated diversionary strategies, and should encourage the appropriate exercise of that discretion through further training, particularly for officers working in indigenous communities.<sup>173</sup>
- (21) The comments urged by HREOC numbered from C11 to C14 regarding the consideration and consultation with the Palm Island community regarding an appropriate and community-based diversionary centre, and funding and training for the establishment and maintenance of such a centre are respectfully adopted by the Council.

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<sup>173</sup> It is noted that this was recommended in the *Cape York Justice Study*, November 2001, V2 p147.

## Care in Custody

### Medical checks

83. Hurley stated in evidence that after the so-called “tussle”, he noticed that Mulrunji went from struggling and objecting to his arrest, to being “limp” on the ground.<sup>174</sup> He said he “thought he (Mulrunji) was foxing and didn’t want to get up and walk into the cell”<sup>175</sup> and that he had been drinking and was intoxicated.<sup>176</sup> Sergeant Leafe described Mulrunji, upon returning to find him on the floor, as feeling like a “dead weight”.<sup>177</sup> Both officers dragged him into the cell. He was lodged in the cell at about 10.26am.<sup>178</sup>
84. Hurley was responsible for performing watch house keeper duties at that time.<sup>179</sup> The QPS OPMs set out the obligations of watch house keepers in such situations, recognising the duty of care owed to persons held in State custody:<sup>180</sup>

Appendix 16.1 "Officers should be aware when assessing persons that a person who is apparently intoxicated may, in fact, be displaying symptoms of a more serious injury or condition."

Chapter 16.9.1: an officer “should not accept into custody a prisoner who is (i) unconscious or apparently unconscious” or (ii) in need of or apparently in need of urgent or immediate medical treatment”

16.9.1: Where a person has been taken into custody, the responsible officer is to:

- (i) inspect and assess the prisoner as soon as practicable;
- (ii) determine how frequently the prisoner needs to be inspected and assessed (the higher the risk, the more frequent the need for inspection and assessment);
- (iii) arrange, where it is considered necessary, medical advice, assessment or treatment for the prisoner; and
- (iv) continue to inspect and assess the prisoner at regular intervals until the prisoner is transferred into the custody of another person, or released.

16.9.4 Where a prisoner has been accepted into custody at the watch house, the charging officer should assess the prisoner to determine:

- (i) whether the prisoner is apparently in need of medical treatment;
- (ii) whether the prisoner should be confined alone or with other prisoners; and
- (iii) the frequency of prisoner inspections....

16.9.5 provides considerations for determining the frequency of searches, to include inspections no later than one hour apart, and consistent with the prisoner’s risk assessment level.

16.13.1 Assessment of Prisoners

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<sup>174</sup> R1227 L6-16.

<sup>175</sup> R612 L14-15.

<sup>176</sup> R595 L20.

<sup>177</sup> ROI (Exhibit D27.1) L12.

<sup>178</sup> Watch house register, Exhibit F1. The cell surveillance has a different time, which is said to be in error.

<sup>179</sup> R1237 L19.

<sup>180</sup> OPM 16.1.1; 16.13.

Where the responsible officer is unsure whether medical assistance or a medical assessment is required for that prisoner, medical advice, assessment or treatment is to be obtained.

The responsible officer who finds a prisoner who is:

- (i) unconscious or apparently unconscious; or
  - (ii) in need of or apparently in need of urgent or immediate medical treatment;
- is to arrange for that person to receive medical treatment as soon as possible.

An officer assessing a prisoner should:

- (i) observe the prisoner's physical appearance and demeanour
- (ii) seek from the prisoner, police or other persons ... information that will assist in the management of the prisoner;
- (iii) determine the health requirements of the prisoner, including the provision of medication, obtaining of medical assistance ...
- (iv) determine whether the prisoner is fit to be held in the watch house or should be transported for medical attention...
- (vi) where possible, if the prisoner is unable or refuses to sign the Watch house Custody Register, ask the health questions again in the presence of another officer and record the procedure against the relevant Watchhouse Custody Register entry.

16.13.3 The inspection officer/independent inspection officer should:

- ... (ii) observe the prisoner's physical appearance or demeanour...
- (iv) pay particular attention to any prisoner apparently intoxicated to ensure that intoxication is not masking symptoms of a serious medical condition;
- (v) ensure that a sleeping prisoner is breathing comfortably and appears well;
- (vi) wake a sleeping prisoner when the officer is unsure or is concerned about the condition of that prisoner.

85. No proper assessment of Mulrunji's state of health was undertaken at *any* stage at the watch house until after he had died. The following passage of cross-examination of Hurley by counsel for HREOC is revealing:<sup>181</sup>

"I want now to look at what happened when you returned to the watch-house with Mulrunji. You didn't make any attempt to ask him any questions about his health, did you?-- No.

So, in fact, you didn't make any assessment of his health at all?-- We make an assessment. We didn't ask the questions.

All right. What did you - what - what assessment did you make of Mulrunji?-- It would have been recorded in the custody register...

Okay. My copy is somewhat obscured. I think it looks like it would be in the bottom right-hand corner, 7 - there's something for the prisoner there?-- Yes.

I take it that's unsigned, is it?-- Correct.

Okay. So, I'm just asking that because my copy is not clear. Well, let me start here. In "Brief Comments" you say, "Assaulted Hurley. Too aggressive to answer questions", in brackets, "health"?-- Yes.

You didn't actually try to ask him any questions, did you?-- Well, when they come in and they're too aggressive like that-----

Sure. He wasn't aggressive when you put him in the cell, was he?-- No, he wasn't then.

Okay. And you didn't try to ask him any questions even through the cell door?-- No.

Would you agree that's a significant fail?-- No, I don't.

Well, you're the officer in charge-----?-- What you-----

-----aren't you?-- What you do is, you speak to them when you go back for the first check, because by that stage they might have calmed down, and that's when you ask them.

You didn't do that, did you?-- They were asleep...

<sup>181</sup> R1269 L9 – R1272 L45.

Yes. But you didn't attempt to ask him at any stage questions about his health?-- No.  
 And you had that opportunity. You just didn't do it?-- I did not have the opportunity.  
 Well, what stopped you doing it?-- Because I then had to deal with the other prisoner.  
 Right. And once you'd dealt with the other prisoner what stopped you doing it?-- On the - on the - on the next check is when I would've done it.  
But you - but you didn't do it, did you?-- No, I didn't...  
Can't you see that it makes it even more important for you to check him on the - on the second occasion when you've got an opportunity where he's not aggressive?-- Yes, and that's when he was - as I said, at that time I thought he appeared to be asleep.  
And you didn't think it was appropriate to wake him up to ask him a question?--No...

It's number 5, prisoner assessment. (1) the question is, In need of medical treatment or assessment, and you've - have you - did you fill this out?-- Yes.  
You've circled "No," haven't you?-- Yes.  
 More - and go down to (3) More frequent inspections required, you've circled "No," haven't you?-- Correct.  
 They're both clearly wrong, aren't they?-- No, not at the time.  
 Well, on what basis did you form the view that Mulrunji was not in need of medical treatment or assessment?-- He didn't appear to be in need of any when I saw him.  
 But he was, wasn't he?-- I know that now.  
 And you don't accept that it was a failing to have not made any inquiries about his health?-- No, I don't.

A man that was struggling and that as we've heard goes - I think you quibbled with the term, "limp," but in whatever term you wish, he goes from struggling to requiring to be dragged to the cell?-- Yes...

Yes. I'm talking about how - how to - well, the - the watch-house custody register has a section, prisoner assessment, and you've got things about mental health and - and you're required to fill out these forms. Did you get any training on how to do this?-- No.  
 Okay?-- No, not - not particularly that I can recall. There may have been but I mean, this is just from years of - years of service.  
 Yes. But are you aware of the - well, did you receive any training as to factors that may put people in your custody at risk of, for example, self harm?-- Well, this - this is probably where you find that out. That's why it's got about the drug and alcohol and mental health questions.  
 Okay. But you didn't receive any training in relation to that?-- Not that I can particularly recall.  
 Okay. You are aware, aren't you, that people who are intoxicated, that intoxication may mask a more serious injury or condition?-- Yes, yes.  
 Okay. And, in fact, your attention is drawn to that in the OPM, isn't it?-- Yes, I think so, and may I correct something when - in relation to the training?  
 Yes?-- I had some, you know, competency acquisition books in regards to the training of watch-house, I think. I just can't recall. There is training by the service.  
 All right. You see - and I'll read to you from appendix 16.1 in the OPM. It says, "Officers should be aware when assessing persons that a person who is apparently intoxicated may, in fact, be displaying symptoms of a more serious injury or condition." Are you familiar with that?-- I have - I have - now, I'm familiar with the concept.  
 You've read that. How did you make the assessment in the case of Mulrunji that he wasn't suffering from a more serious injury or condition when you put him in the cell or any time thereafter?-- Well, I just thought he was foxing at that time.  
Okay. So despite this warning, if you like, or caution you didn't do anything to determine whether or not he was simply intoxicated?-- That warning - that warning, that, I believe, it relates more to when they first come into your custody.  
Yes, okay. Well, but you didn't do anything at any time to figure out whether or not he was just drunk or whether or not he had a serious injury. He could've, for example, had schizophrenia and manic depression psychosis?-- Yes, he could've, yeah.  
 Okay. And he could've been - he could've been previously abusing some other drug or substance, mightn't he not, might-----?-- He could've.

Okay. I'm not suggesting he was. I'm just suggesting you wouldn't know because you didn't make any effort to find out?-- Well, I didn't have the opportunity to.

Well, okay. Now, Senior Sergeant Hurley, you clearly had the opportunity. You just didn't do it?-- No, I don't think I did have the opportunity.

All right?-- If he was awake when I went in for the - for the check that's when I would've done it, sir.

Why didn't you try to wake him up?-- Because I don't wake up prisoners.

Well, but if you hadn't done a basic thing which you are required to do as a part of your duty of care, don't you think it's appropriate that you at least wake up a prisoner to ask them the questions that you have purported to answer on this form?-- No, I don't. I - I believed my observations were enough.

Well, they were wrong, weren't they? They were very wrong?-- Well, I know that now."

86. It is clear, therefore, that not only was no inspection or assessment undertaken, but there was no following of OPMs which would provide further mechanisms for otherwise discovering whether observations of drunkenness are in fact veiling a serious medical condition eg. waking the prisoner up; asking the questions with another officer there; obtaining medical treatment if these matters cannot be assessed.

87. This conduct breached the OPMs in several respects.

#### Safety search

88. Hurley accepts,<sup>182</sup> given the location of a cigarette lighter in Mulrunji's clothes,<sup>183</sup> that no safety search was undertaken upon admission to the watch house, or as soon as practicable whilst he was in custody. This breaches OPM 16.10.1.<sup>184</sup>

#### Monitoring in the cell

89. Whilst Mulrunji was in the cell, Hurley viewed him on the video monitor, and says that he thought there were no "obvious signs" that he was in a bad medical condition, because he did "not call out".<sup>185</sup> He thought Mulrunji's movements on the cell video were a drunk's movements, which suggested he was alive.<sup>186</sup>

90. Mulrunji's demeanour and bodily composure whilst in the cell, is captured on the cell surveillance video. This video bears careful, sober viewing about how a human being can

<sup>182</sup> R617 L30-31.

<sup>183</sup> R628 L55-56 (Dr Lampe).

<sup>184</sup> "Generally, all persons detained or arrested should be subjected to at least a pat-down search on initial arrival at a watch house. Where a person cannot be searched prior to being locked in a cell, the watch house manager should arrange for that person to be segregated from other prisoners and subjected to more frequent inspections."

<sup>185</sup> R613 L32-33.

<sup>186</sup> R613 L51-53.

end up, for swearing at a police officer on Palm Island. He was left to lie on the cement floor (there are no beds or mattresses). The nature of the injury was such that he died in severe pain.<sup>187</sup> He rolls around in non-purposeful movements, intermittently bumping into Nugent. In the opinion of Dr David Wells:<sup>188</sup>

“No specific conclusion can be drawn from these observations; they may be due to intoxication, ‘fitful sleeping’ or a range of medical conditions. These movements do not allow a conclusion as to his conscious state at that time.”

91. The court has heard the audio recording from the cell. There is calling out by Mulrunji, of what sounds like “Help, I’m dying”. Hurley has given evidence that he did not hear these cries for help.<sup>189</sup>
92. An engineer whose department was responsible for designing and installing the monitoring system, opined that the system may have been faulty.<sup>190</sup> However, he says that at worst, the sound in the police station would have been that which can be heard on the video presented to the Court:

“If the intercom was working correctly, they should have been able to monitor audio from the cell with no trouble. Someone yelling out should have been obvious. If the intercom system was not working correctly then it’s possible they would have heard very little (or nothing...)... If the system is faulty and you do not have the benefit of the electronics you have to rely on hearing the person yell out. This would be affected by the physical set up (i.e. cell doors closed etc), other noise in the vicinity (eg other conversations) and other distractions (eg answering the telephone).”<sup>191</sup>

Upon seeing and hearing the enhanced cell surveillance, he was satisfied that a microphone in or near the cell picked up some sounds, in particular, one of the occupants yelling out.<sup>192</sup> “There certainly appears to be yelling... so if the system is operating correctly, then that information should have been coming out of the speaker on the intercom master yes.”<sup>193</sup>

“If the static-y noise that’s on the tape is coming from the VCR itself, then there is a possibility that the audio presented to the officers through the intercom system was perfectly clear. However, if that problem is a problem with the intercom channel itself, then that noise would have been evident at the intercom master. So they would have heard, at the intercom master, what we – what we hear on the tape.”<sup>194</sup>

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<sup>187</sup> R646 L4, 20 (Dr Lynch).

<sup>188</sup> Forensic medical practitioner, Victorian Institute of Forensic Medicine, whose opinion on the medical treatment provided to Mulrunji whilst in custody, was procured by the coroner’s court (Exhibit B10), p5 pa 4 of his report.

<sup>189</sup> R1175 L40.

<sup>190</sup> Statements of Stephen John Bournes (Exhibits B16 and B17).

<sup>191</sup> Addendum Statement (Exhibit B17), p4.

<sup>192</sup> R493 L40-50.

<sup>193</sup> R494 L25-28.

<sup>194</sup> R492 L15-23.

It didn't matter which channel was open (1 way or 2 way). On both functions, there's going to be audio from the cell going into the police station.<sup>195</sup>

93. Further, Mr Lea, an engineer from Q-Build, serviced the system just over 2 weeks before Mulrunji's death:<sup>196</sup>

"Sounds from within the watch house are automatically auditable (sic) at the control consul. This would mean that if anyone makes a noise within the cell, it should be heard from within the police station."<sup>197</sup>

His checking, cleaning and testing of the equipment revealed "Intercom system to Cell 1 was not working. The remainder of the test is satisfactory."<sup>198</sup>

94. Even if the cell monitoring system (both audio and visual) were in working order, Hurley states that he had not received sufficient training in the use of it. He was of the belief (as was Sergeant Leafe<sup>199</sup>) that either police or a person in the cell can press a button to open the channel for communications, however, he says that he was not aware that the monitoring system could monitor continuous audio from the cell.<sup>200</sup>

95. Police performed two 'checks' of Mulrunji in the cell, which are revealed on the cell surveillance video (said to have occurred at 10.55am, and 11.20am).<sup>201</sup> Hurley still does not accept that his inspection of Mulrunji (which involved checking that he was breathing by standing beside him and looking at him for approximately 3 seconds) was inadequate.<sup>202</sup> Nugent, who hadn't moved at all, was checked in the same way, involving Hurley standing over him for about 2 seconds. No physical contact was made with either. In Dr Wells' view:<sup>203</sup>

"Despite this brief period observation, [Hurley] states that he was able to observe and hear both men snoring. Such observations are difficult to reconcile with the OPM directions. For instance 16.13.1 directs that an officer who finds a prisoner unconscious or apparently unconscious should arrange for immediate medical treatment. It is not possible to ascertain whether a person is unconscious or apparently unconscious by merely observing their breathing. The fact that an individual is breathing provides little information other than they are alive. People who are critically ill (as was the subject at this time) may show audible and visual evidence of breathing. In short, the fact that a person is breathing is a poor discriminator of their medical condition."

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<sup>195</sup> R503.

<sup>196</sup> On 4 November 2004: Statement (Exhibit B12) p2 para11.

<sup>197</sup> Statement (Exhibit B12) p2 para6.

<sup>198</sup> Statement (Exhibit B12) p3 para13.

<sup>199</sup> R703 L53 – R704 L5.

<sup>200</sup> R614 L5-6.

<sup>201</sup> Prisoner/Watch house Inspection Register, Exhibit F2.

<sup>202</sup> R1273 L15-25; R1275 L1-13.

<sup>203</sup> Report (Exhibit B10) p5 para5.

96. Dr Wells also questions whether in fact Mulrunji had been alive when Hurley undertook his cell check.<sup>204</sup>

“In the climate and conditions in which the subject was found, it is difficult to conceive that he could have become cold if he had been dead less than half an hour. It raises the distinct possibility that he had been dead for longer than this period.”

97. On the second occasion, Sergeant Leafé noted Mulrunji’s eyes to be partially opened, and his face felt cold. He unsuccessfully tried to wake him up (using what he called an “arousal technique”, namely, kicking him<sup>205</sup>). He then left the cell to inform Hurley before returning to attempt to locate a pulse. He could not find one.<sup>206</sup> Hurley entered the cell and thought he could feel a slight pulse, but upon later reflection, was uncertain about this.<sup>207</sup> Neither initiated any emergency medical response. Hurley, because he had been trained only in First Aid theory, not the practical application, and he “totally panicked”.<sup>208</sup> Leafé declined because he thought there was no point.<sup>209</sup> Arrangements were made for an ambulance to attend.

98. Whilst it is possible that even if Mulrunji’s medical state was identified upon his entry to the cells, the outcome would not have changed,<sup>210</sup> Dr Wells also concludes:

“Under the circumstances, it would have been appropriate to commence resuscitation pending the arrival of the ambulance... Ideally, anyone who is responsible for the health of individuals in their care should be trained in resuscitation procedures.”<sup>211</sup>

“... the document headed Townsville Police District, Palm Island Station, Standing Order, Watch house runs to 48 pages. A total of 7 lines are given over to prisoner inspections... These 7 lines make no mention of how supervision and monitoring are to be conducted.”<sup>212</sup>

“The OPM – Custody (16.13) deals with the health of prisoners. There are a number of references to the responsibilities of officers should they detect serious health or injury problems in prisoners. Direction is made that prisoners are to be checked at intervals of no greater than one hour but there is no specific directions as to how to check for the conscious state of individuals. Section 16.13.3 talks of asking awake prisoners if they are well but only to ensure that a sleeping prisoner is “breathing comfortably and appears well.” There is a further direction that officers should wake a sleeping prisoner if there is any concern about the condition but the directions do not give any parameters on how that concern might be raised.”<sup>213</sup>

<sup>204</sup> Report (Exhibit B10) p5 para6.

<sup>205</sup> R696 L18-24.

<sup>206</sup> R686 L41.

<sup>207</sup> R621 L13-14, 47-48.

<sup>208</sup> R621 L46.

<sup>209</sup> R697 L13-14.

<sup>210</sup> Report (Exhibit B10) p6 para10.

<sup>211</sup> Report (Exhibit B10) p6 para7-8.

<sup>212</sup> Report (Exhibit B10) p6 para 9.

<sup>213</sup> Report (Exhibit B10) p6 para 9.

“There is a strong argument ... that all individuals who are intoxicated and placed in police custody should be required to provide a verbal response every half-hour... individuals who are unable to provide a verbal response or who appear confused are directed towards immediate medical attention.”<sup>214</sup>

“The supervision of [Mulrunji’s] health and welfare whilst in police custody was manifestly suboptimal.”<sup>215</sup>

99. Whilst it has been opined that immediate medical intervention would not have saved Mulrunji’s life, it is likely that if he had been taken to the hospital immediately he would have avoided the painful lonely death he endured on the cement floor of a police cell.

#### Submissions as to comments

100. As opined by Dr Wells, “the supervision of [Mulrunji’s] health and welfare whilst in police custody was manifestly suboptimal”<sup>216</sup>:
- 100.1. No examination was made as to his state of health when he was placed into the cell.
- 100.2. This was despite observations that he was intoxicated and went immediately “limp” after a physical interaction at least involving a fall, and was apparently unconscious.
- 100.3. No search was undertaken as to whether he held any item that might have been dangerous to him or other persons.
- 100.4. Perusal of the cell video shows that the physical conditions inside the cell are barely if at all fit for human habitation. Hurley agrees with this observation.<sup>217</sup>
- 100.5. The medical ‘checks’ performed upon him were in fact not effective.
- 100.6. The police who have worked in the station and were working on that day, have indicated that they had little appreciation of the technology which was in place in the building to monitor and communicate with people in the cells, whether due to inadequate systems<sup>218</sup> or insufficient training.
- 100.7. Mulrunji cried for help. The evidence as to why these cries were not heard from within the police station, will involve findings of credit. Whether or not the system is found to have had faults, the evidence does not exclude a finding that police officers heard the cries and ignored them.

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<sup>214</sup> Report (Exhibit B10) p6 para 9.

<sup>215</sup> Report (Exhibit B10) p7.

<sup>216</sup> Report (Exhibit B10) p7.

<sup>217</sup> R1258 L10-14: What - in what way?-- Well, we could have had better cells for the prisoners.

In what sense?-- Well, there was no beds in the cells. You had to put the mattress on the floor.”

<sup>218</sup> As suggested by Hurley: R1259 L24-40.

- 100.8. There was no capacity (due to the physical make-up of the Palm Island police station at that time) for people outside the watch house to communicate with Mulrunji. Further there was no cell-visitation scheme in place at the time.
- 100.9. Once it was ascertained that Mulrunji was seriously ill and in medical distress, no proper medical attention was provided to him by those charged with responsibility for his care.
- 100.10. The Officer-in-Charge was inadequately trained in respect of basic First Aid.
101. When this issue is looked at in the context of the evidence of the prior complaints: the fact that Arthur Murray was left in a cell, intoxicated and alone for an hour (Pilot incident), Hurley's evidence that this regularly occurs, and the failure to record standard matters in Noel Cannon's case,<sup>219</sup> it becomes clear that the standards of care for persons in the cells at Palm Island have been grossly inadequate and failed to meet the recommendations set out in the report of the RCIADIC.<sup>220</sup>
102. That this is permitted to occur in a police station servicing one of the most vulnerable communities in the State is appalling. The lack of effective monitoring of this by the QPS bears examination.
103. The comments sought on behalf of the Council pursuant to s 46(1)(a),(b) and (c) in respect of Mulrunji's care in custody are:
- **(22) Mulrunji's body was dragged by Hurley and another police officer Sergeant Leafe into Cell 2 and left lying on the cement floor. Another unconscious person was placed into the cell and the cell door was locked.**
  - **(23) Mulrunji was not medically examined or assessed or physically searched prior to being placed in the cell, contrary to the OPMs. There was no reasonable excuse for this.**
  - **(24) Once lodged in the cell, Mulrunji's health and well-being were effectively ignored. The monitoring that did take place was grossly inadequate. Again, there was no valid explanation for this.**
  - **(25) Mulrunji called out for 'help' whilst in the cell but this was either unheard or unheeded by the police in the station.**
  - **(26) Mulrunji died, enduring considerable pain, within an hour or so of being placed in the cell.**

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<sup>219</sup> See Attachment B p3 para 9-11; p9 para 28.

<sup>220</sup> Recommendation 133.

- **(27) It is recommended that the QPS Commissioner/Police Minister consider allocation of resources, amendments to the OPMs and policy (including in line with those recommended by Dr Wells), and improved medical training for police officers with watch house duties, with a view to improving the care and assessment of the health needs of intoxicated or apparently unconscious persons in police custody. In particular, for example:**
  - **To require mandatory minimum standards of medical training and as to the use of monitoring technologies for officers with watch house duties.**
  - **To provide education as to the particular issues pertaining to indigenous incarceration.**
  - **To strengthen the direction that health must be properly assessed, and if not possible, mandatory requirements to seek and obtain medical assistance immediately.**
  - **To provide practical assistance as to the features required to be assessed in order to distinguish between intoxication and the effects of more serious medical conditions.**
  - **To require that checks be made at least at half-hourly intervals, but with a preference for continuous monitoring capacity.**
  - **To ensure that no person is left unattended in the watch house for any period of time.**
- **(28) The conditions under which Mulrunji was detained and died were appalling. The design of cells in all future watch houses ought to include beds and basic facilities. The QPS should audit all existing watch houses and retrofit beds and basic facilities across the State.**
- **(29) It is recommended that the QPS Commissioner ensure that the design, structure and technology used in the new Palm Island watch house (and indeed all new watch houses in indigenous communities) be such as to increase monitoring capabilities. In particular:**
  - **Audio and video surveillance which cannot be interfered with by operators such as to be rendered useless.**
  - **To permit communication between persons inside the cells and community and family members outside.<sup>221</sup>**

## **Investigation of the death**

### Applicable law and policy

104. Since the RCIADIC, the issues surrounding indigenous deaths in custody have meant that the QPS has, at least in its guidelines, sought to focus on independence and transparency in investigating the conduct of police responsible for the care of persons at the time of the death.

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<sup>221</sup> The QPS Commissioner's representative in this inquest, Mr Strofield, has informally indicated to the Council's representatives that some of these measures are being considered and planned to be put into place, however evidence on this may be useful, for the coroner, in formulating comments surrounding this issue.

105. Any community in which this sort of event has occurred is entitled to justice not only being done, but it being shown to be done. That this has occurred in a community with Palm Island’s history, requires that it be done with transparency and integrity.
106. The relevant RCIADIC recommendations were in respect of:
- 106.1. The importance of the appointment of appropriate investigators, such that it be made by police at Commissioner level.<sup>222</sup>
  - 106.2. The need for independent investigation.<sup>223</sup>
  - 106.3. That police ought to issue specific guidelines for a death in custody, which “should require *inter alia* that: a. Investigations should be approached on the basis that the death may be a homicide.”
107. In response, the QPS issued OPMs relevant to the investigation of a death in custody:
- 107.1. A death in custody should be treated as a significant event, which must be fully investigated.<sup>224</sup>
  - 107.2. As to appointment of investigators:<sup>225</sup>
    - 107.2.1. Investigations ought to be under the direction of the regional crime co-ordinator, Ethical Standards or the CMC.
    - 107.2.2. Either the regional crime co-ordinator or an independent senior investigator appointed by the regional crime co-ordinator ought to conduct the investigation.
    - 107.2.3. Any investigator appointed by the regional crime co-ordinator must be experienced in criminal investigation, and from a “police establishment other than from where the incident occurred, or where the officers or members directly involved in the incident are stationed”. Considerations “should include the gravity of the incident, the rank of the officers or the level of seniority of the members who are directly involved in the incident (as opposed to witnesses), and the establishment at which those officers or member directly involved in the incident are stationed.”
  - 107.3. Investigations:<sup>226</sup>
    - 107.3.1. Are to be conducted expeditiously and impartially and the psychological welfare of individuals considered.

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<sup>222</sup> Recommendation 32.

<sup>223</sup> Recommendation 33.

<sup>224</sup> OPM 16.24.

<sup>225</sup> OPM 1.17.

<sup>226</sup> OPM 16.24 & 1.17.

- 107.3.2. "...should ensure that the integrity of independent versions of members directly involved and members who are witnesses to a police related incident is preserved as far as practicable... Members directly involved in the incident or who are witnesses to the incident should not discuss the incident amongst themselves prior to being interviewed".<sup>227</sup>
- 107.3.3. Ought "not presume suicide or natural death regardless of whether it may appear likely."
- 107.3.4. Should include investigation into "the circumstances of the arrest or apprehension including any relevant activities of the deceased beforehand" and into "the general care, treatment and supervision of the deceased immediately before the death in line with Service policy, orders and procedures".
- 107.3.5. Should "immediately arrange for the next of kin or person previously nominated by the deceased to be notified." "Cultural interests of the person being notified should be respected by using the cross-cultural liaison officer, if practicable... notification should preferably be assisted by an Aboriginal or Torres Strait Islander person known to those being notified... advise the Aboriginal and Torres Strait Islander Legal Service or other ... community organisation... as soon as possible, whether or not the relatives have been located."

### The evidence

#### *Informing the family*

108. Mulrunji was found to be deceased at approximately 11.20am on 19 November 2004. None of his family were notified of the death until Inspector Webber arrived on the Island, after 4.00pm that day. Further, at about 1.00pm when some of the family attended at the police station to see Mulrunji, they were lied to by the police (Hurley) about the state of his health.
109. The explanation for the delay on such a small island is not satisfactorily explained. It was not occasioned by any logistical difficulties, but rather, was due to deliberate decisions by police.
110. Inspector Webber attempts to explain it away. He "wouldn't have expected" anyone to notify the family before this. He hadn't directed it. Because the Officer-in-Charge and the indigenous PLO had been involved in the incident, he prioritised having a senior member

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<sup>227</sup> OPM 1.17.

of the police force notify the family.<sup>228</sup> Whilst he accepted the notification did not occur “as promptly as desirable,” he did not think it would be appropriate for anyone else to have notified the family. He thought it would be “uncomfortable” for a junior officer to have to convey the news.<sup>229</sup>

111. After initially denying it,<sup>230</sup> Senior Sergeant Hurley has now accepted that the family came to see Mulrunji at about 1.00pm. They did not know, and were not then told, that he was already dead. Hurley lied and told them he was asleep, such that they ought to come back at 3.00pm. In evidence he apologised for lying to the family, explaining that he was “in shock” together with Leafe and Bengaroo in the station. However he later suggested that he would do the same thing again.<sup>231</sup> He wasn’t aware of any guideline or recommendation that the deceased’s family be notified immediately.<sup>232</sup>
112. Neither Bengaroo nor Leafe informed the family. Bengaroo had been told by Hurley to stay in the station and keep quiet.<sup>233</sup> That Bengaroo, as a police liaison officer, complied with this approach, reveals that he gave greater regard to protecting police interests than in discharging his role as a liaison between police and the local community. Leafe had also been told by Hurley not to speak to anyone.<sup>234</sup> However, this evidence can be contrasted with what Hurley told police communications. Constable Jenkin’s significant event message reads “Palm Island Police presently making arrangement for notification of the next-of-kin”. The time of that message was 1.04pm.<sup>235</sup>

#### *Appointment of investigators*

113. The police officers first involved in this investigation included the regional crime co-ordinator Inspector Warren Webber (based in Townsville), Detective Kitching, whom he appointed to be in charge of the investigation (also based in Townsville),<sup>236</sup> and Detective Darren Robinson (based on Palm Island).

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<sup>228</sup> R719.

<sup>229</sup> R725-726.

<sup>230</sup> ROI (Exhibit D17.4) p13 L507-510.

<sup>231</sup> R1232 L9-11.

<sup>232</sup> R1237 L18.

<sup>233</sup> R565 L26-27.

<sup>234</sup> R687 L41-42.

<sup>235</sup> Significant Event Message (Exhibit R42); R781 L30-60.

<sup>236</sup> R726 L25.

114. Much has already been said about Detective Robinson's make up and existing relationship with Hurley. It was clearly a close friendship.<sup>237</sup> In appointing Detective Robinson, Inspector Webber cited that he was a senior investigative officer with local knowledge.<sup>238</sup> He permitted, if not directed, Robinson to take Roy Bramwell's statement.<sup>239</sup>
115. Detective Kitching, the primary investigator, also knew Hurley as a close professional colleague.<sup>240</sup> He conceded he was "well-disposed" to Hurley.<sup>241</sup> In appointing Detective Kitching, Inspector Webber did not see fit, even given the possibility of Detective Kitching knowing Hurley as they were from the same region, to enquire of Kitching about his relationship with Hurley. He presumed Kitching would alert him to any conflict of interest.<sup>242</sup> Detective Kitching did not see any.<sup>243</sup> Inspector Webber's evidence is that he thought Townsville would be sufficiently separate from Palm Island, in the choice of personnel to investigate.<sup>244</sup> He agreed that these matters should be independently investigated, ideally, but just did not think it was practical.<sup>245</sup>
116. Inspector Webber also knew Hurley.<sup>246</sup>
117. Hurley now accepts that all of this was highly inappropriate.<sup>247</sup> Robinson, when he first gave evidence, disputed this,<sup>248</sup> but then later concurred as well.<sup>249</sup> However neither Inspector Webber nor Detective Kitching accept that there was anything inappropriate about these appointments. It is concerning that Webber still believes that "we could adequately investigate" the death.<sup>250</sup>

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<sup>237</sup> Robinson: R784.

<sup>238</sup> R750 L5-10.

<sup>239</sup> R750.

<sup>240</sup> Hurley: R1260 L40-46. Kitching: R768 L40-50: "How well did you know him? – Reasonably well, I was at Cloncurry when he was the officer-in-charge of Burketown Police Station, and then I had very little to do with him when he was on Palm Island, but obviously I knew him from beforehand and spoke about a number of investigations with my detectives over on Palm Island, well whatever length of time he was there before this death."

<sup>241</sup> R772 L35.

<sup>242</sup> R727.

<sup>243</sup> R768 L50-60; R774 L10-15.

<sup>244</sup> R741 L23. It is noted that this is difficult to sustain, given the geographical proximity and the fact that the chain of command from Palm Island is Townsville.

<sup>245</sup> R741-742.

<sup>246</sup> R762.

<sup>247</sup> R1259 L42-49.

<sup>248</sup> R784 L30-40.

<sup>249</sup> R1320 L2-8.

<sup>250</sup> R723 L45-53.

118. These three remained on the investigative team until 24 November, 6 days after the death, when the CMC took over the investigation.<sup>251</sup> By then some significant steps had been taken and opportunities missed in the investigation.

### *Investigation*

119. Inspectors Williams and Webber say that they were aware of and at the outset, accepted as a guideline, the RCIADIC recommendation to treat the investigation as a homicide investigation.<sup>252</sup> However, Inspector Webber then suggests the investigation was a ‘homicide-type investigation’, with no suspects.<sup>253</sup> In fact, Inspector Webber paid no special attention to the fact that this was a death in custody:

“What is the difference between approaching a matter as a homicide investigation, or not approaching it as a homicide investigation, and you can put in, "Type" in there if you want to?-- I don't think - the differences is simply, we look at it as an investigation into a death, and to my mind that ensures that a thorough investigation is conducted, that senior investigators are appointed, that forensic examinations are done, and that a complete and thorough investigation is done, and that is the case in relation to - to all deaths.

Is there no difference, or from a death in custody-----?-- Probably only in the sense of the complexity and sensitivities and also the degree that one might go into it.”<sup>254</sup>

120. In truth, the QPS OPMs do not require a homicide investigation. Instead, they suggest that officers ought “not presume suicide or natural death regardless of whether it may appear likely” and treat the investigation as one into a “significant event”. Inspector Webber’s course clearly demonstrates that these guidelines are insufficient.
121. The CMC and coronial investigations since have revealed numerous flaws in the investigation undertaken by the QPS into Mulrunji’s death:
- An unsatisfactory approach was taken to preserving the crime scene and documenting witnesses’ accounts. The entry area was not treated as a crime scene until it was too late; there was no investigation for blood etc on the floor there. People trampled through there unrestrained.<sup>255</sup>
  - It is open on the evidence to find, that not only had Hurley, Leafe and Bengaroo had sufficient opportunity to speak to each other about what accounts they would give to investigators, *before* investigators arrived, but that they had done so, in considerable

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<sup>251</sup> Williams: R451 L53.

<sup>252</sup> Williams: R476 L43-56. Webber: R723 L25.

<sup>253</sup> R729-730.

<sup>254</sup> R748 L1-20.

<sup>255</sup> Hurley: R620 L12-13, 19-20.

detail.<sup>256</sup> This is contrary to the OPMs and clearly unacceptable. Hurley accepts having breached the OPM.<sup>257</sup> However, this aspect was not investigated by the investigators, despite it having been quite obvious, from the interviews held.<sup>258</sup> Webber cannot recall whether he knew of any discussions between the officers prior.<sup>259</sup> He did not see fit to tell them to keep separate or not talk about the incident. He thought it impractical to separate them<sup>260</sup> and “certainly unnecessary” because they could be trusted to follow procedure.<sup>261</sup>

- Kitching and Robinson, both close colleagues of Hurley, conducted the first two interviews of note, with Hurley (on 19 November) and Bramwell (on 20 November).<sup>262</sup> Kitching didn’t see any problem with this.<sup>263</sup> Robinson also participated in interviews with witnesses to the arrest.<sup>264</sup>
- Inspector Williams from the Internal Investigation unit at the Commissioner’s office, saw his role as “to overview the investigation and ensure the integrity of it and to offer assistance to the Regional Crime Co-ordinator.” He agreed he was to be an independent monitor for the investigation.<sup>265</sup> Yet even he did not review steps taken up to the point of his arrival, to ensure that they were in line with the OPMs.<sup>266</sup> He did not in fact add any independence to the investigation at all, given his failure to address several issues of concern to that point and beyond. Inspector Webber’s evidence reveals that no inquiry was made by him either.
- Interviewing techniques showed a lack of desire to inquire into further aspects raised by witnesses, that could have crucially impacted upon Hurley’s credibility and failed to comply with OPM requirements:
  - In the course of the interview with Roy Bramwell at 11.02am on 20 November 2004 by Detective Inspectors Webber and Williams, he was not further questioned when he said he hadn’t stood up and intervened because if he did, Hurley would have locked him up too.<sup>267</sup>
  - In the course of the interview of Lloyd Bengaroo at 12.10pm on 20 November 2004 by Williams and Webber, which occurred after they had interviewed Roy Bramwell, Lloyd says “I can’t remember, I just stood here 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”, but this issue was not pursued.<sup>268</sup>

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<sup>256</sup> Hurley: R1277-1278.

<sup>257</sup> R1278 L35-60.

<sup>258</sup> Williams: R483 L40-45; R483 L45 – R484 L56. Webber: R730-731; R753 L1.

<sup>259</sup> R746 L25.

<sup>260</sup> R730-731.

<sup>261</sup> R731 L10, R745-746.

<sup>262</sup> R769 L20-30.

<sup>263</sup> R772 L23.

<sup>264</sup> Gladys Nugent and Edna Coolburra.

<sup>265</sup> Williams: R457 L49-56.

<sup>266</sup> R482.

<sup>267</sup> Williams: R474 L30 – R475 L12; R737.

<sup>268</sup> Williams: R454 L15. R456 L42 – R457 L3: “Inspector, if Lloyd Bengaroo was staying at the door because he was worried about something that he might see, would you not, as an investigator, think that there are two possibilities; one is that he’s already seen something untoward and that something more might

- Officers did not enquire as required, into the arrest and the obligations for care and custody of Mulrunji whilst in the watch house.<sup>269</sup>
- Some conversations with Hurley were not recorded.<sup>270</sup> No police officer was required to sign a sworn statement.
- Whilst all of this was occurring, the person of interest was effectively being left away from scrutiny and indeed was being supported socially and emotionally by the investigative team, including: Hurley drove to the airport to collect the investigators, took investigators on a drive-by view of the arrest scene; Robinson cooked a meal for all the investigators at Hurley's home on the first night of the investigation, with Hurley present, and at least some of them consumed alcohol.<sup>271</sup>
- After all of the re-enactments (including Bramwell's), Hurley was still not considered a suspect, he was a "person of interest" just like Leafe and Bengaroo etc.<sup>272</sup> He was not asked whether he had hit Mulrunji.<sup>273</sup> Inspector Webber did not see Bramwell's account of Hurley's assault as evidence of any commission of an offence.<sup>274</sup>
- Hurley is said to have been quarantined in his office whilst the interviews were proceeding the next day, on 20 November.<sup>275</sup> However, Hurley did have contact with the other officers.<sup>276</sup> He took them on a drive along Dee Street, after the re-enactment with Bramwell, and before his re-enactment.<sup>277</sup> And, Robinson suggests that the interviews and statements taken by him of other witnesses were undertaken in Hurley's office.<sup>278</sup>
- It is also open to find that Hurley was impermissibly informed of the content of Roy Bramwell's account, in between his first and second interviews.<sup>279</sup> In any event, his office was only a few steps away from where Bramwell did his re-enactment.<sup>280</sup>

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happen; or alternatively, he has seen something in the past that would suggest to him that something may happen. Can you think of any other possibilities as a result of what he said to you?-- He just didn't want to be involved in the incident.

Inspector, why didn't you ask him to clarify what he meant by those words?-- I've answered that already. I didn't want him to stop talking to us. I didn't want to go into the family harassment issue with him. The family harassment issue was connected with his concern that he might see something.

Wouldn't you be interested in knowing what he was worried about seeing?-- Mr Bengaroo throughout his whole interview, had trouble remembering, he was very nervous. He just did not want to be there, I don't think."

R458 L13-16: "Nobody asks the question as to why Mr Bengaroo would be worrying so that he would stay at the doorway when Mulrunji was dragged away, is that correct?-- That's correct."

Webber: R719-721, R723, R735-737.

<sup>269</sup> Williams: R474 L30 – R475 L12; R480-481. Webber: R727-728, R733 L1-25.

<sup>270</sup> Webber: R729 L5.

<sup>271</sup> Robinson: R788. Hurley: R1260 L53 – R1261 L20.

<sup>272</sup> Williams: R463 L44 – R464 L20. Webber: R729 L17-25.

<sup>273</sup> Williams: R466 L34-36; R474 L30 – R475 L12. Webber: R734.

<sup>274</sup> R743.

<sup>275</sup> Webber: R722 L10-14. Hurley: R1230 L24-36. Kitching: R776 L28.

<sup>276</sup> Hurley: R1230 L24-36.

<sup>277</sup> Webber: R721-722; R751.

<sup>278</sup> R788; R1309 L8-16. Cf. Kitching, who says this occurred in the CIB office: R776 L43.

<sup>279</sup> See evidence set out above at pp8-15 (Mechanism of infliction of injuries).

<sup>280</sup> R732 L35.

- The information provided to the pathologists – in the form of Form 1 and an oral brief by Detective Kitching – was devoid of any allegation of an intentional assault upon Mulrunji.<sup>281</sup> This is absolutely staggering. Whilst Detective Kitching asserts that this was completely inadvertent, that account is difficult to believe. The allegations were at hand and extraordinary – that a police officer intentionally assaulted the man an hour or so before his death. The autopsy was crucial. The information provided to pathologists is very important in terms of excluding or including potential causes of death.<sup>282</sup>
122. The combination of these features of the investigation show that not only did the investigation fail to meet the dictates of ensuring objective impartiality, but it was in fact a biased and inadequate investigation by any standard.
123. And yet, Inspector Webber still feels the investigation was professionally undertaken:
- “All right. And you still maintain that you conducted this investigation in a completely unbiased and impartial manner in the same way that you would with a civilian as opposed to a police officer?-- I do, yes. And I think the entire notion that we somehow covered this up is ridiculous. The simple fact is we went over there, we conducted investigation to the best of our ability. We certainly didn’t find anything to collude with them about. We certainly found no evidence of any wrongdoing to collude with them about, so we had no reason to collude with them. The fact is we would, on your position, actually have been committing serious criminal offences by doing so, and we certainly did not do so. To suggest that we were going to collaborate between a number of people that had no prior knowledge of each other, is simply ridiculous. I’d certainly never met Leafe, I’d certainly never met Bengaroo prior to that day. To suggest that we’re somehow going to concoct a story, as a group, between Williams, myself - Williams wasn’t even there at the time, is ridiculous.”<sup>283</sup>
124. Kitching believes he conducted a “fair investigation”.<sup>284</sup> Inspector Williams saw nothing about which to raise any matter of concern with Inspector Webber.<sup>285</sup> Both miss the point, namely, that the family and the community are entitled to see that justice will be done and not rely upon self-assessment by senior police officers.

#### Submissions as to comments

125. The failure to promptly if not immediately notify the family of the death was in breach of OPMs and the RCIADIC recommendations, but moreover demonstrated a callous indifference to the sensitivities of the family and the local community. There was a

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<sup>281</sup> Form 1 (Exhibit A1). Lampe: R635 L50 - R633 L13. Kitching was “not sure” whether he told Dr Lampe of this; but is prepared to defer to Dr Lampe’s recollection, it was certainly not noted down on anything: R770 L45; R774-775.

<sup>282</sup> Lampe: R635 L50-60. Ranson: R655 L48-55.

<sup>283</sup> R765 L48 – R766 L8.

<sup>284</sup> R774 L15.

<sup>285</sup> R461 L30-40; R462 L1-6.

significant and unacceptable delay in the reporting of this death, to the family and to the Aboriginal Legal Service.

126. This responsibility fell upon Hurley as the Officer-in-Charge of the institution in which Mulrunji died. Not only did he not discharge that obligation, but he dishonestly misled family members who were making enquiries as to the welfare of their relative. This conduct breaches rules and regulations within the police service following recommendations of RCIADIC and falls short of the expectations of decency that the community are entitled to have in the police service.
127. The decision to permit this investigation to proceed as it did, with critical steps in the investigation being undertaken by Detectives Kitching and Robinson, and Hurley largely being treated – despite his lame protestations that he was treated as a “leper”<sup>286</sup> – in police “kid gloves” as distinct from being the primary suspect in respect of a death, this court is entitled to entertain considerable doubts about the credibility and integrity of the police officers involved.
128. In their evidence they were defensive when questioned about issues of bias and quite unmindful of the need to not only be independent but be seen to be independent. They were investigating a police officer they knew, some very well. If, during the course of this “tussle”, it was Hurley who was fatally injured and died, it is unlikely that Mulrunji would have waited long before a major murder investigation started and he was charged with murder and refused bail. There would not have been much delay in Hurley’s loved ones being informed and before significant allegations about Mulrunji emerged in the local media. A very different standard was applied.
129. The progress of the QPS investigation into Mulrunji’s death, and the police attitudes revealed throughout this coronial investigation, are most disturbing. This coronial investigation has been given a snapshot into a very deep and pervasive police culture of blind support of fellow officers, callous disregard for the interests of vulnerable indigenous persons or communities, and complete ignorance on the ground of many of the features emphasised in the comprehensive RCIADIC reports.

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<sup>286</sup> R1230 L42-44.

130. When this evidence is coupled with the deceptive course of the investigation into Barbara Pilot's complaint, and the fact that senior officers have not to this point indicated any concern, it permits a comment to be made that there is widespread lack of appreciation within the QPS for this aspect of indigenous deaths in custody. There seems to be almost no respect, other than superficial acknowledgement, shown by some of the police – including senior officers – for these important principles.
131. The QPS appears to merely pay lip service to these matters in its literature and policy publications but almost no attention to meeting these goals in practice. There seems to be no mechanism to check that these policy goals are achieved or even implemented.
132. There was no regard for the need to not only be impartial, but also appear to be impartial. Commissioner Johnson's comments in the RCIADIC, referred to by HREOC in its submissions, are worthy of repetition:
- “It is a question of establishing and maintaining a system which will evoke trust. It is not only a question of justice but of justice being seen to be done.”<sup>287</sup>
133. Some of these broader issues are dealt with, under the heading of ‘Policing on Palm Island’ below. The comments sought by the Council, pursuant to s 46(1)(b), surrounding the investigation into this death are as follows.

#### **Notification of the family**

- **(30) The protection of police interests determined the decisions made regarding notification of the family of the death over and above the dictates of RCIADIC recommendations, the OPMs or even the obligation to show basic decency to the family.**
- **(31) Hurley's actions in misleading the family were unethical and capable of amounting to misconduct. Webber's responsibility for ensuring that notification to the family occurred in a timely way was not discharged.**
- **(32) A formal apology ought to be made to the family by the QPS.**
- **(33) It is recommended that the QPS Commissioner investigate how this issue might be addressed in the future, via reinforcement of the OPMs and education of officers.**

#### **Appointment of investigators**

- **(34) The involvement of officers from Townsville and Palm Island in this investigation was wrong. It was not logistically necessary. The involvement of close friends and colleagues of Hurley in this investigation was completely unacceptable. In the result,**

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<sup>287</sup> *National Report*, Vol 1 p75 para 4.2.22.

important principles of independence and transparency required to meet community expectations of investigations into police conduct and deaths in custody, were not met.

- (35) To the extent that it might be argued that the appointment of these investigators was made in compliance with the OPMs; those requirements are insufficient. The OPMs ought to be amended as follows:
  - To implement the RCIADIC recommendation that officers of a Commissioner or Assistant Commissioner level appoint the investigators for deaths in custody investigations.
  - To require that investigators be from a separate “region” from that of the officers who are involved in any death in custody, rather than the current requirement that they be from another “police establishment”.
  - To explicitly require that when considering appointments of investigators into deaths in custody, impartiality and the appearance of impartiality of the investigation must be given priority.
  - To require disclosure of any relationship between investigators and police officers involved in, or a witness to, the death.<sup>288</sup>
- (36) The Minister for Justice and Attorney General, as minister responsible for the CMC should consider legislative changes requiring the QPS to inform the CMC, and for the CMC to be actively involved and directing all investigations into deaths in custody from the outset.

#### The investigation

- (37) The Police Minister and QPS Commissioner ought to consider amending the OPMs to include the RCIADIC recommendation that all deaths in custody be considered and investigated as homicides. The ‘sliding scale’ currently set out in the OPMs – including that officers ought “not presume suicide or natural death regardless of whether it may appear likely” – is clearly not sufficient and easily worked around. QPS investigators did not in fact treat this matter as a serious investigation at all.
- (38) The steps taken in the QPS investigation into Mulrunji’s death up until the point of CMC involvement did not meet the standards required of them. There were a number of decisions made in the course of the investigation which were unacceptable and favoured and sought to protect the interests of Hurley over the integrity of the investigation.
- (39) Not only was the investigation therefore objectively unable to be perceived by the community as impartial, but the evidence discovered and the flaws in the investigation undertaken permit a finding that it in fact was a biased and inadequate investigation by any standard.
- (40) The OPMs should be amended to explicitly require, in the conduct of investigations, that impartiality and the appearance of impartiality must be given paramount regard.

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<sup>288</sup> HREOC’s suggested comment in this regard is adopted.

- (41) The QPS Commissioner should review what further training or education is necessary to ensure compliance with the OPMs in the investigation of deaths in custody and consider what effective sanctions are necessary to ensure compliance.
- (42) Police witnesses to the death of Mulrunji impermissibly spoke with each other about their accounts before their interviews with investigators. This was contrary to the OPMs. However this was not investigated or of any real concern to the investigators or their superiors.
- (43) The OPM should be amended to ensure the integrity of accounts given by directing that no witness in respect of a death in custody discuss the matter with any other witness before providing an account to investigators.
- (44) Police witnesses, including Hurley, unacceptably communicated and socialised with the investigators whilst: at the airport, driving around the community and on the evening of the death, which included the consumption of food and alcohol together. This was clearly unacceptable and capable of leading to reasonable perceptions of bias.
- (45) It is open to find that Hurley was informed by one of the investigators of the content of Roy Bramwell's account, before he participated in his second interview. This is clearly unacceptable and ought to be further investigated by the CMC.
- (46) Detective Kitching's conduct in not informing the pathologist conducting the autopsy of the allegation of an intentional assault was unreasonable and probably intentional. It is capable of amounting to professional misconduct.
- (47) The Minister for Police and the QPS Commissioner should consider amendments to the current Form 1 procedure and OPMs, perhaps in line with the suggested forms being developed by Dr Ranson's institution, to ensure that *all* relevant information is provided to pathologists in the investigation of a death, particularly, a death in custody.
- (48) There is a widespread lack of appreciation within the QPS surrounding the need for independent and effective investigations into indigenous deaths in custody.
- (49) It is recommended that the CMC should undertake research, pursuant to its functions in section 52 of the *Crime and Misconduct Act 2001* (and particularly in the interests of achieving continuous improvement of the police service), into the culture of self protection, protection of other police and police interests, which has been demonstrated in this investigation, to establish whether it is an indication of a return to the pre-Fitzgerald culture within the police service and if so, what should be done to halt this trend.

### **Policing on Palm Island**

134. From the evidence received by this inquest, it is clear that policing on Palm Island is still not at an acceptable or appropriate standard, and there is almost no acceptance of this, at the senior levels. The unique features of life and policing on Palm Island noted above,

have apparently not been embraced by the QPS through the issuing of effective guidelines as to policing practices that might be tailored to meet the Palm Island conditions.<sup>289</sup>

135. Where there are guidelines, compliance with them is not monitored and non-compliance is largely ignored or excused.
136. QPS policy documents<sup>290</sup> identify and set out several useful principles surrounding the policing of indigenous people. However, despite these commendable mission statements, the evidence reveals that there remain aspects of police culture and policing at the street level which have not improved post-RCIADIC.<sup>291</sup>
- Public nuisance, public drunkenness, begging and similar offences remain criminalised.
  - Police have not utilised diversionary options nor exercised the arrest discretion appropriately.
  - Appointment of police to the island: police are generally appointed via short-term mandatory transfers;
  - Lack of training, education and awareness of police as to the special requirements and rationales behind such requirements for policing in indigenous communities generally or Palm Island specifically;
  - Divergence between published policy objectives and expectations held by senior police personnel, and the practices of officers on the ground.

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<sup>289</sup> The applicable guidelines would appear to be the OPMs and the Palm Island Standing Orders, neither of which cover practical policing strategies for Palm Island.

<sup>290</sup> For example, *Strategic Directions for Policing with Aboriginal and Torres Strait Islander Peoples and Communities*, Cultural Advisory Unit, Office of the Commissioner, QPS, October 2002. The report sets out:

A number of broad principles said to promote equality and improve relations with indigenous communities, significantly drawing upon the report and recommendations of the RCIADIC (pp1, 3).

'Milestones' already achieved; including reviews already conducted into policing in other remote indigenous communities; several initiatives to promote consultation and education within communities; training of police officers in cross-cultural issues; recruitment of indigenous police officers; under the heading "Arrest and Custody" milestones are said to include the training of police officers in use of force obligations, first aid and care and supervision of persons in custody, and enhanced cell visitation, monitoring and documentation processes (pp4-9).

Future strategies, including: maximising, monitoring and reporting the appropriate use of alternative action to arrest; monitoring and evaluating the PLO scheme; maintaining implementation of RCIADIC recommendations; maximising efficiency in complaints mechanisms; specialist training for police in isolated indigenous communities; performance indicators and plans compiled and updated, in consultation with community members.

<sup>291</sup> It is interesting to note that the *Strategic Directions* report lists the following 'milestones' having already been achieved: training of officers in remote indigenous communities as to cross-cultural issues, and increased training in first aid and care in custody issues.

- Lack of appropriate supervision and accountability measures.
- Lack of trust and integration between police and the community: limited community involvement in policing on the island, limited or no social engagement between police and residents, limited ability for cross-cultural communications, lack of understanding of the rationale behind RCIADIC findings and recommendations so as to inform upon the special considerations attending to policing on Palm Island;
- The failure of the PLO program to meet its objectives.
- Pervasive tendencies on the part of police to assist and support each other when faced with conduct by one member that may not have been exemplary or is the subject of review, over and above any other considerations.
- A lack of independence in the investigation of complaints brought against police conduct.

137. The prior complaint evidence has served to highlight the re-occurring themes in this regard.

#### Appointment and training of police officers

138. Inspector Strohfeldt is next in command to the Palm Island Officer-in-Charge. He is a senior and experienced police officer. He seemingly recognised the need for special considerations in respect of policing of indigenous communities and pointed to a number of policy initiatives within the QPS. For example, he gave evidence that he believed there was a mandatory induction program for all new police officers to Palm Island.<sup>292</sup>

139. However these views do not seem to have filtered much, if at all, into how appointments and induction in fact take place on the island. The Officer-in-Charge at the time of Mulrunji's death, Hurley, did not know of any formal induction process, but had an informal routine where he would provide an induction book and take the new officer to different places around the island, to make introductions. This was not undertaken with every officer arriving upon the island, but he believed it occurred with a majority.<sup>293</sup> He himself had not received any training on policing in indigenous communities, apart from his experience, and a one week workshop held "some years ago". He could not recall what it encompassed exactly, but it included "cultural beliefs" and "having respect."<sup>294</sup>

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<sup>292</sup> R1097 L53-60 - R1098 L1-2, 21-28.

<sup>293</sup> R1196 L11-19.

<sup>294</sup> R1247 L18-43.

140. Several other serving police officers gave evidence about their appointment to and training for Palm Island. Constable Steadman had just arrived at Palm Island the day before Mulrunji's death. It was his first posting in an indigenous community. He had not transferred voluntarily, and was there to commence a 6-month rotation.<sup>295</sup> Prior to going there, he had not received *any* information about policing issues on Palm Island, save that police lived behind barbed wire and large fences.<sup>296</sup>
141. Sergeant Michael Leafe had been on the island for 3 months.<sup>297</sup> He had not previously served in a remote indigenous community. Although he was aware that the relationship between the community and police was not a good one before he arrived,<sup>298</sup> he had not received any training and no specific policies had been raised with him.<sup>299</sup>
142. Constable Kylie Fuller had been stationed on Palm Island for about 17 months.<sup>300</sup> She had not received any post-academy training in policing of indigenous communities generally or Palm Island specifically.<sup>301</sup> She was aware that some such issues were addressed in a 'CAPS' book issued by the QPS, although she had not had regard to it herself.<sup>302</sup>
143. Constable Antoinette Daigle had taken up a posting on Palm Island because her partner Senior Constable Greg Brennan had been transferred there involuntarily.<sup>303</sup> She had received training on cross-cultural communication, but not any specific training about policing in indigenous communities.<sup>304</sup>
144. In sum, none of those officers had received sufficient, if any, training. None other than Hurley had wanted to go to Palm. It would also appear that the officers who have given evidence at this inquest have not fully embraced cross-cultural liaison and awareness issues.

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<sup>295</sup> R672 L30-35.

<sup>296</sup> R672 L38-50. He was specifically asked whether there was any information about how local conditions might affect policing, how street offences were dealt with and about diversionary issues. He indicated that nothing of this nature had been raised with him.

<sup>297</sup> R688 L33.

<sup>298</sup> R701 L33-35.

<sup>299</sup> Other than the "adopt-a-cop" scheme: R701 L54.

<sup>300</sup> R1015 L33.

<sup>301</sup> R1015 L38-47; R1024 L11-12.

<sup>302</sup> R1024 L10-25.

<sup>303</sup> R1037 L55 – 1038 L3.

<sup>304</sup> R1037 L21-46.

### Supervision and accountability

145. Inspector Strohfeldt holds a supervisory role as next in the chain of command. He has given evidence that he received information via provision of the Palm Island Station occurrence sheet to him on a daily basis.<sup>305</sup> However this arrangement does not work, e.g. he is really only informed of what the Officer-in-Charge wants him to know, and the medium for communication is apt to be manipulated.
146. Further, Inspector Strohfeldt's evidence revealed his overall lack of concern about independence and impartiality in the investigation of complaints against police.<sup>306</sup> Even after all of the Pilot matter was canvassed by this inquest, he still was not aware of any of the detail and seemed unmotivated to examine it.<sup>307</sup>
147. The actions of an Officer-in-Charge on Palm Island are, in truth, largely unchecked by the senior hierarchy in any real sense.

### Role of police liaison officers/community policing options

148. Mr Bengaroo was the only PLO on Palm Island at the time of Mulrunji's death. There are apparently now two new PLOs who have been recruited, but who currently remain working administratively within the Palm Island Police and Citizens Youth Club complex.<sup>308</sup>
149. The role of a PLO is succinctly set out in a recent QPS *Police Bulletin*<sup>309</sup> as follows:
- To establish and maintain a positive rapport between indigenous and multicultural communities and police.
  - To promote trust and understanding by helping the community and police to ... divert indigenous and ethnic people from the criminal justice system... advise and inform police officers on such things as cultural customs, traditions and languages... improve community knowledge about policing services and issues of law and order.
  - They do not have the powers of a police officer.

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<sup>305</sup> R1082 L87-88.

<sup>306</sup> R1096 L27-35; R1097 L16-24.

<sup>307</sup> R1094 L17-30; R1111 L15-28.

<sup>308</sup> R990 L19-20 (Blackley).

<sup>309</sup> *Police Bulletin* Issue no 303, QPS, April 2003 at p8.

150. However, it is clear from Bengaroo's evidence, and from the police officers who have served with him, that this has not occurred on Palm Island. To look at some examples, whilst asserting that he would intervene if police officers were doing the wrong thing, Bengaroo could not cite any examples of that.<sup>310</sup> His evidence was that when Mulrunji was arrested for public nuisance, he "waited" to be asked to provide information as to his background, but was not asked and therefore did not.<sup>311</sup> He had no training or knowledge of what amounted to public nuisance or features of the arrest discretion and deferred to the opinions of police officers with whom he worked.<sup>312</sup> Hurley does not believe it works either.<sup>313</sup> None of the police officers who gave evidence appeared to value the role, or even know what it entailed.<sup>314</sup>
151. Bengaroo had been a community policeman for 21 years, prior to becoming a PLO.<sup>315</sup> Councillor Blackley and Hurley both gave evidence that funding ceased being provided to the Council for the position, despite a community desire that the role continue, and its apparent effectiveness.<sup>316</sup>
152. The Council, in its submission to the Palm Island Select Committee (see further below), has sought consideration and implementation of a community-policing model.<sup>317</sup> A key issue from its perspective is the involvement of community leaders in deciding issues surrounding the scope, personnel, powers and functions of such a model. Such considerations were embraced as being necessary for the effective functioning of a community-based police force, in the RCIADIC report.<sup>318</sup> The benefits and features recited by HREOC at paras 106-111 of its submissions are respectfully adopted.
153. However, it is noted that such measures will of course only be effective if there is government support including adequate funding for the community's participation in the planning stages, as well as in the long-term.

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<sup>310</sup> R579 L30 – R580 L30.

<sup>311</sup> R576 L1-10.

<sup>312</sup> R571 L40 – R572 L6.

<sup>313</sup> R1256 L48 – R1257 L28.

<sup>314</sup> Leafe: R705 L35-45. Steadman: R673 L2-5.

<sup>315</sup> R538 L1-6.

<sup>316</sup> Blackley: R990 L13-14. Hurley: R1268 L50 – 1269 L10.

<sup>317</sup> Palm Island Aboriginal (Shire) Council Submission to the Queensland Parliamentary Select Committee, July 2005, p17.

<sup>318</sup> *National Report*, Vol 3 pp16-17.

### Community Justice Group

154. The submissions of HREOC at paras 77-83 regarding the need to explore involvement of the community in justice issues through the establishment and funding of a Community Justice Group are supported in principle.
155. Similar to that noted above in respect of community policing initiatives, the Council would seek to emphasise that such initiatives will only be effective with participation by the community in deciding upon such matters as the persons involved, the structure and roles of the group, which participation needs to be fully supported through the provision of information and funding by government in the planning stages, as well as in the long-term.

### Further investigation required

156. It would appear that the issues addressed in these submissions are merely ‘the tip of the iceberg’ in terms of matters for consideration and reform, in order to improve the effectiveness and conditions of policing on Palm Island.
157. As a result of the facts surrounding Mulrunji’s death and the subsequent riot, the Queensland Government appointed a bi-partisan Palm Island Select Committee, to investigate, consult and make recommendations to improve government service-delivery on the island. Its July 2005 recommendations relevantly included the following:<sup>319</sup>

#### **RECOMMENDATION 54**

*The Minister for Police should examine:*

- arrangements to enable the posting of police officers to Palm Island on a permanent basis as far as possible;
- the adequacy of cultural awareness training for police officers serving on Palm Island; and
- avenues for involvement by Aboriginal and Torres Strait Islander police officers on Palm Island.

The Committee believes that the temporary posting of officers to Palm Island, through a rotation of officers from various mainland police districts (sometimes for periods of only one month) has contributed to a feeling of a lack of integration of the police officers into the community. The Council also submitted that police are rotated in and out of the community very quickly which does not enable relationships and community confidence to be built.

#### **RECOMMENDATION 55**

*The Minister for Aboriginal and Torres Strait Islander Policy and the Minister for Police should, as a matter of urgency:*

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<sup>319</sup> Report, Palm Island Select Committee, Legislative Assembly of Queensland, August 2005, accessible via <http://www.parliament.qld.gov.au/PISC> p90-92.

- *collaborate with the Palm Island Indigenous Community/Police Consultative Group (ICPCG) to implement a diversion from custody option for Palm Island; and*
- *investigate with the community the establishment of a Murri watch program on Palm Island.*

Currently, there is no diversion from custody option on Palm Island for simple offences such as public drunkenness. The Council supports such a facility. A diversion from custody model is now being developed by DATSIP and the QPS, in conjunction with the ICPCG.

The Committee also believes that consideration should be given to establishing a ‘Murri watch’ program on Palm Island. This program was established as a result of the Royal Commission into Aboriginal Deaths in Custody. Under this program, residents who are taken into custody for relatively minor offences are released into the care of a community elder.

#### **RECOMMENDATION 56**

*The Minister for Police should:*

- *ensure that the membership of the Indigenous Community/Police Consultative Group (ICPCG) includes a representative of young people on Palm Island (possibly a member of the youth council which the Committee recommends in section 5.4); and*
- *examine the merits of introducing the Queensland Aboriginal and Torres Strait Islander Police (QATSIP) project on Palm Island.*

There are no community police employed on Palm Island. The Committee was advised, however, that negotiations are underway for the Queensland Aboriginal and Torres Strait Islander Police (QATSIP) project to be established on Palm Island. The project has already been implemented in Yarrabah, Badu Island and Woorabinda. The principal responsibility of QATSIP officers is to enforce Council by-laws, help in the preservation of law and order in the community, and liaise between the QPS and the community. QATSIP officers are employed by the QPS and complete a pre-service training course before being appointed with limited powers in the community.

158. It is noted that the proposal for QATSIP officers does not meet the needs and benefits of a civilian/community patrol.

159. Further, the Committee’s terms of reference did not include matters the subject of this inquest.<sup>320</sup> And, as noted by the Government-appointed Resource Officer in response:

“However, perhaps as result of the narrow terms of reference, and a desire not to pre-empt any of the findings of the inquest, the Committee’s Report contains relatively few recommendations and, with the greatest respect, these are unlikely to lead to any significant improvements in law and order and policing on Palm Island.”<sup>321</sup>

160. Also, the Queensland Government has not supported all of the recommendations.<sup>322</sup>

Recommendation 54 is supported:

Cultural awareness training has been developed and delivered to police currently on Palm Island. All new police officers assigned to Palm Island are required to undertake cultural

<sup>320</sup> Select Committee report, p3.

<sup>321</sup> Resource Officer report, p38.

<sup>322</sup> Queensland Government Response to the Palm Island Select Committee, Queensland Government, November 2005 (“the Response”), p35.

awareness training. Options are being developed regarding recruiting Aboriginal Police Officers on Palm Island.

161. Recommendation 55 is supported “in principle”:

The Government has held initial discussions with the Palm Island Indigenous Community/Police Consultative Group (ICPCG), however further research needs to occur regarding the question of establishing a diversion from custody centre on Palm Island, the need for a stand-alone centre, and availability of a suitable site and funding.

Instead, the State Government has agreed to fund a cell visitor scheme.

162. It is noted that whilst a cell-visitor scheme may be useful, the Council would submit that diversionary measures would be more effective. Cell visitation measures depend upon the goodwill of police, in disclosing the fact of someone in custody, and the availability of volunteers. These features are not reliable. The economic conditions on Palm Island are such that relying upon unpaid positions to meet these needs is not going to be sufficient.

163. The Resource Officer reported back to the State Government with further recommendations in January 2006, including:<sup>323</sup>

**Recommendation 24**

*The Attorney-General and Minister for Justice refer responsibility for the mediation of a community policing plan and development of an indigenous community policing training module to the Crime and Misconduct Commission to deliver within a timeframe consistent with the Palm Island Future Directions Negotiation Process.*

**Recommendation 25**

*Convene a community policing summit on Palm Island to:*

- *Announce a joint commitment to work with the assistance of the Crime and Misconduct Commission and Palm Island community to develop a community policing plan;*
- *Provide a commitment to fully implement any recommendations of the inquest into the death of Mulrunji;*
- *Discuss expectations of what are acceptable standards of behaviour; and*
- *Discuss expectations of appropriate standards of service to be delivered by Queensland Police Service.*

**Recommendation 26**

*The Attorney-General and Minister for Justice refer responsibility for the mediation of a*

*Convene a community policing summit on Palm Island to:*

*Establish a target number of indigenous police on Palm Island as an agreed outcome of the Palm Island Future Directions Negotiation Process.*

**Recommendation 27**

*Implement any recommendations from the inquest into the death of Mulrunji without delay as a demonstration of good faith on the part of the Queensland Police Service and the Queensland Government.*

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<sup>323</sup> *Palm Island: Future Directions*, Resource Officer Report, State of Queensland, January 2006 (“the Resource Officer Report”), p 39.

**Recommendation 28**

*Queensland Police Service attend the quarterly meetings of the Community Resources Committee.*

**Recommendation 29**

*Consider establishment of a police cadet training facility on Palm Island with a view to conducting comprehensive indigenous issues training modules to all police cadets in Queensland.*

164. The Resource Officer also made some relevant comments:<sup>324</sup>

“There is little utility in increasing police numbers if police are unable to effectively police within the community, for example, being unprepared to attend calls for assistance after nightfall or more genuinely integrate into community life. Increasing the quality of community policing in collaboration with the community will deliver better outcomes than merely relying on the force of numbers to deliver control. Increasing the number of indigenous police officers, as distinct from the failed policy of community liaison officers, will require specific increases in government funding and attitudinal shifts in the policing culture. Doubling the numbers of police also absorbs valuable resources which would be better directed toward the costs of implementing effective community policing.

Also, whilst in normal circumstances the management of a sporting facility for a community would form an important bridge between the community and police, the insistence that the PCYWA manage the community centre in the face of opposition from the Council and members of the community, only serves to exacerbate the tension between the community and police...

The need for a significant display of leadership from the QPS and the Queensland Government about policing on Palm Island should be considered within the context of the Aboriginal Justice Agreement, which was executed in December 2000. The Aboriginal Justice Agreement commits the Queensland Government to achieving a reduction in indigenous incarceration by 50% by the year 2011. An independent progress report on the implementation of the agreement was due to be released by 2004, but has not yet been made available to the public. There is no sign that the halving of indigenous incarceration will be achieved by 2011, given that the rate of incarceration has in fact increased since the signing of the agreement.

Given the present state of police relations, there is a good case for mediation between the Palm Island community and the QPS rather than bringing the parties together unassisted at the Negotiation Table, or by relying on a consultation approach which presently is not working.

The Research function of the CMC would have developed a body of knowledge and expertise about community policing and may be a suitable honest broker in developing a trial framework for specially adapted community policing in an indigenous community. It should include adaptations of QPS policy and procedure to be most workable within the Palm Island community, for example, in areas from diversion from custody to how to appropriately and successfully respond to domestic violence situations.

In the short term, consideration should be given to jointly convening a community summit by the QPS and the Palm Island community leadership. Young people in particular could be encouraged to attend the summit at which QPS and community leaders could:

- announce a joint commitment to work with the assistance of the CMC and Palm Island community to develop a community policing plan;
- provide a commitment to fully implement any recommendations of the inquest;
- discuss expectations of what are acceptable standards of behaviour; and

<sup>324</sup> Resource Officer report, pp39-40.

- discuss expectations of appropriate standards of service to be delivered by QPS.

In the longer term, one initiative for QPS and the Palm Island community to consider would be the development of a compulsory five day training module for police cadets which involved their attendance at a Palm Island training facility and camp. Such an initiative could include specialist practice based training in indigenous issues, beyond the basic cultural awareness training offered under existing programs, including:

- gaining and maintaining respect in indigenous communities;
- addressing conflict in indigenous communities;
- domestic and family violence;
- elder abuse;
- child abuse;
- sexual violence;
- alcohol management;
- indigenous shire councils' local law enforcement;
- diversion from custody;
- death in custody recommendations;
- community involvement in sentencing and rehabilitation of victims and offenders;
- initiatives aimed at decreasing indigenous incarceration;
- cultural heritage/indigenous natural resource management tours;
- recreational community based initiatives, e.g. bush tucker tours, fishing and camping.”

165. This inquest does not have the resources or terms of reference to adequately comment upon and address all of the issues raised. It is the Palm Island Aboriginal Council's submission that the Deputy State Coroner ought to recommend two further avenues to permit this. Firstly, a larger scale and independent commission of inquiry, perhaps conducted by the CMC, to be held into policing on Palm Island. It is difficult to see how anything will change, without a public and independent Inquiry.
166. Such an inquiry could *inter alia* examine:
- 166.1. The practical implementation of government policy objectives on Palm Island and the failures in that regard to this point.
  - 166.2. Training quality and recruitment systems to ensure that police specifically suited and trained to meet the policing needs on the Island is achieved.
  - 166.3. How a greater number of indigenous police officers can be trained, including from the Palm Island community.
  - 166.4. The application of police discretion and approaches to policing of street offences on the island.
  - 166.5. Exploration and implementation of diversion from custody strategies.
  - 166.6. Exploration and implementation of community-policing models and higher levels of community involvement in policing.

- 166.7. The documentation and accountability of police officers taking steps in the arrest, detention and prosecution of people for street offences.
  - 166.8. The accountability of police officers when accusations of police misconduct are made.
  - 166.9. The physical and financial resources to support policing outcomes.
  - 166.10. Consultation and effective allocation of resources to address the broader socio-economic needs of the island.
167. Second, there would be considerable benefit for the Palm Island community and the police who work there if a specific task force comprised of representatives of the police working on the Island, the Commissioner's office, the CMC, State and Federal governments and the community was formed, at a level taken seriously by Treasury officials and Cabinet, to structure plans on each of those issues.:
- 167.1. Improve the training quality and make up of police who are permitted to work there.
  - 167.2. Set the recruitment and remuneration levels of police officers who work there so that it attracts the best qualified, experienced and culturally sensitive personnel.
  - 167.3. Address the issues that presently limit indigenous participation in the QPS.
  - 167.4. Devise conditions and protocols in which members of the community who are on the streets whilst intoxicated are handled more safely.
  - 167.5. Increase the availability of safe transportation for intoxicated persons.
  - 167.6. Improve the conditions in watch houses.
  - 167.7. Set up a workable drug/alcohol diversion program.
  - 167.8. Set appropriate measures for accountability and review of implementations of policy.
168. A key requirement would be that the participation of community personnel should be adequately funded and sensitively conducted to ensure actual community understanding and if possible consensus in respect of any measures put into place. This would be a short-term cost to seek to address a generation of conflict which will continue if left unaddressed.

Submissions as to comments

169. Comments which might be made under s 46(1)(b) and (c) as to policing generally on Palm Island, as sought by the Council, are as follows:

- (50) The Council would respectfully join in with HREOC's suggested comment C9, that particular attention ought to be given by the Police Commissioner to the training requirements of officers working in remote indigenous communities, and its reference to the type of experiential/recreational training utilised in the Kowanyama trial considered by the *Cape York Justice Study*.
- (51) The Council also supports a comment that community policing models most suitable for the Palm Island community ought to be explored and funded.
- (52) However, such initiatives need to be coupled with a broader practical review of policing on Palm Island. It is recommended that a task force be established, for 'negotiation' to occur between the QPS and the Palm Island community in this regard, involving the CMC, senior police, serving police officers on the Island, community and State and Federal Government representatives. Such an initiative must provide for the effective participation and involvement of Palm Island community leaders. Specific matters for this taskforce to negotiate include:
  - The recruitment and induction processes for police
  - The content of required training initiatives
  - The prosecution of street and language offences
  - Alternatives to arrest and watch house detention
  - The establishment and operation of drug and alcohol diversion and rehabilitation programs
  - Conditions in and monitoring of people in watch house detention
  - The role if any of police liaison officers from the community
  - The role if any of a Community Justice Group
  - The training and appointment of indigenous police officers from the Palm Island community
  - Increasing civilian community involvement in diversion from criminal prosecution via community-policing or patrol models
  - Community relations programs to seek to improve police/community relations
  - Complaint and investigation procedures in respect of alleged police misconduct on the Island.
  - Access to legal advice by community residents

These negotiations and consultations may require the investment of significant financial resources by government agencies.

- (53) Any initiatives put into place should only be done after effective community consultation and with commitment, through the provision of information, funding, training and resources by government for the establishment and maintenance of agreed programs.
- (54) It is recommended that the QPS Commissioner and Police Minister put into place a transparent, independent process of investigation in respect of any serious allegation of police misconduct on Palm Island. The CMC should be asked to assist in the formulation of this system and in the education of police and the community as to how the system will operate.

- **(55) It is further recommended that the QPS Commissioner should review measures of supervision and accountability for police officers serving on Palm Island.**
- **(56) There is a significant hiatus between published QPS policy objectives and what in fact is implemented on Palm Island. These matters bear further examination.**
- **(57) It is recommended that the Minister for Justice and Attorney-General Justice commission a broader-scale and independent Commission of Inquiry to be held into policing on Palm Island.**

170. Further, if necessary for the formulation of s 46 comments, the Coroner has the power to seek further evidence from the State and Federal Government departments responsible for the various matters raised in the inquest

#### **Section 48 referrals**

171. The Council is conscious of the Deputy State Coroner's ruling of 6 April in this regard.

172. Notwithstanding this ruling, the Council has prepared some brief submissions as to referrals which might be made under s 48(2)(a) and (3) of the Act in respect of matters identified in the evidence including instances of police misconduct as well as the commission of indictable offences. If it would assist the Court in receiving them, they can be supplied.

173. It is submitted that if any such referrals are made, the parties should be informed of them.

#### **Conclusion**

174. Mulrunji's death has had a significant impact upon the Palm Island community. The sequelae, including the so-called riots, the declaration of a State of Emergency, the two separate CMC investigations and the inquest itself, has heightened emotions throughout the community. The delay and the lack of any real outcomes to this point have done nothing to disturb the high level of distrust of police and government still held by many community members.

175. It would involve ignoring reality to find anything but that policing on this island<sup>325</sup> has been grossly inadequate to meet the standards that are expected in a first world country. This death is an indirect consequence of this gross inadequacy. To tolerate such a standard because it is an isolated indigenous community would be unworthy of our State and Federal governments.
176. The importance of cogent findings and detailed considered comments cannot be overstated.
177. The family of this man and indeed this entire community are entitled to a more decent level of human existence than that which they have had to endure to date.

A Boe

P Morreau

**BOELAWYERS**<sup>326</sup>

4 July 2006

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<sup>325</sup> And for that matter, service delivery generally.

<sup>326</sup> These submissions are the result of a collective effort of several other lawyers including Nikola Lusk and Louisa Pink. Some of the submissions as to the law have been formulated with the assistance of Dr Sarah Pritchard and Bret Walker SC of the Sydney Bar. However, overall responsibility for the submissions remains with the primary authors.