

ORIGINAL PAPER

No. 851
Laid on the Table
11 / 5 / 23

Speaker
PAPER TABLED
11 / 05 / 23
CLERK: Busher

Investigation Report

Operation Crimen

Alleged improper conduct by Northern Territory Government ministers in respect of the arrest of Mr Zachary Rolfe.

Section 50(1) of the *Independent Commissioner Against Corruption Act 2017*.

May 2023

Office of the
Independent
Commissioner
Against
Corruption NT



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Introduction

- [1] Last year I decided to commence an investigation into matters relating to the arrest of Mr Zachary Rolfe. Later in this report I will explain why I decided to conduct that investigation.
- [2] This report deals with one aspect of that investigation. That is, the allegation of improper conduct by ministers, and in particular, the former Chief Minister, in relation to the arrest of Mr Rolfe. It follows that this report addresses the conduct of current or former ministers of the Crown.
- [3] There are other aspects to my investigation not covered in this report. That is a consequence of particular provisions of the *Independent Commissioner Against Corruption Act 2017* (ICAC Act) that constrain the subject matter of an investigation report made to the Legislative Assembly.
- [4] A report addressing other matters the subject of investigation will be prepared and distributed in accordance with the ICAC Act. That report will not be published because there is no legislative mechanism to do so. It is premature to express a view as to whether I will make a public statement in respect of the subject matter of that further report. Any such public comment would only occur after the conclusion of the current coronial inquest addressing events relevant to this investigation.
- [5] This is the first investigation report that I have authored and that will be made public. For that reason I have devoted considerable time explaining a number of preliminary and procedural issues. I hope that in doing so the reader will have a better understanding of my approach to these matters.

Some preliminary observations

- [6] At the outset I wish to be clear about my role.
- As far as my investigatory function is concerned, I am empowered to determine whether there has been improper conduct as defined in the ICAC Act, and/or to consider whether I should refer alleged improper conduct to relevant authorities.
- [7] It is not my role to express my personal view as to whether decisions made, actions taken or comments made were, or were not, a good idea, except in so far as those views are relevant to a determination as outlined in the previous paragraph.
- [8] It is also not my role to opine on whether or not I would have made different decisions or acted in a different way.
- [9] I confine myself to my legislative functions.

This Report

[10] I have prepared this report in accordance with section 50 of the ICAC Act. As I have already said, this report does not address all matters about which I have conducted investigations. While I would have preferred to have completed a single report, I do not consider that the ICAC Act permits me to do so.

I come to that conclusion by reference to the words of sub-sections 50(1) and (7).

Sub-section 50(1) provides that:

*The ICAC may make a report (an **investigation report**) on an investigation to a responsible authority for a public body or public officer whose conduct is the subject of the investigation.*

[11] As sub-section (1) makes clear, it is a *responsible authority* to whom an investigation report is provided. A *responsible authority* is defined in sub-section (7) as follows:

- (a) For a public body or public officer other than a minister or an MLA:
 - (i) an entity having authority to deal with one or more matters relating to improper conduct the subject of the investigation to which the report relates; or
 - (ii) an entity whose functions include making future decisions in the public interest that may be better informed by receipt of the investigation report; or
- (b) for a minister or an MLA other than the Speaker – the Speaker; or
- (c) for the Speaker – the Deputy Speaker.

[12] Sub-section (7) establishes a cascading structure that delineates between public bodies and public officers generally on the one hand, and ministers and Members of the Legislative Assembly (MLAs) on the other.

[13] In many cases that presents no difficulty, because an investigation will only focus on one class of public officer. In such circumstances the responsible authority for an investigation report will fit neatly within one of the categories specified in sub-section (7).

But that is not always the case.

[14] In this case, and in other matters, I have had cause to investigate the conduct of ministers concurrently with that of public officers of a different class. In such circumstances the recipient of an investigation report becomes less clear.

[15] On first glance, it may be thought that a report addressing the conduct of both ministers and other classes of public officers can simply be furnished to more than one responsible authority. In other words, an investigation report could be provided to both the Speaker of the Legislative Assembly and an entity of the kind fitting the criteria in sub-section(7)(a)(i) or (ii). In that way, a single report is prepared.

[16] But there are some difficulties with that approach. First, by sub-sections (1), together with (7)(a), (b) and (c) the legislature has clearly intended to delineate between responsible authorities, and has done so by reference to the class of public officer to which the report relates.

- [17] Second, sub-sections 7(a), (b) and (c) are disjunctive in nature.
- [18] Third, the extent to which an investigation report becomes a matter of public record differs between sub-section 7(a) on the one hand, and (b) and (c) on the other. I will expand on that point.
- [19] I am not empowered to publish an investigation report. While there has been recent litigation in respect of a matter determined by my predecessor, that related to the content of a public statement and the extent to which a public statement may well mirror the content of an investigation report. Notwithstanding the decision in that matter, it remains the case that I am not empowered to publish an investigation report.
- [20] If I were to furnish an investigation report to a responsible authority of the kind specified in sub-section 7(a), that report would not be published. Whether or not I publish a public statement in respect of that investigation is a different question.
- [21] On the other hand, if I furnish an investigation report to the Speaker or the Deputy Speaker, in accordance with sub-section 7(b) or (c), the Speaker or Deputy Speaker is obliged to table that report in the Legislative Assembly on the next sitting day after receiving it.¹ That would bring the content of that report to the public's attention.
- [22] In my view, the legislature has determined that investigation reports into politicians will be made public, whereas investigation reports into other classes of public officers (or bodies) will not.
- [23] Moreover, section 59 constrains the inclusion of certain material in an investigation report made to the Speaker or Deputy Speaker, but that constraint does not apply to other investigation reports. In my view the words of section 59 recognise that investigation reports made to the Speaker or Deputy Speaker will be made public, while investigation reports furnished to a different responsible authority will not.
- [24] That view is supported by the Explanatory Statement accompanying the *Independent Commissioner Against Corruption Bill 2017*. In respect of clause 49 of the Bill (which would subsequently become section 50 of the ICAC Act), the following appears:
- [i]f the investigation report is to be delivered to the Speaker or Deputy Speaker (and hence be tabled publically) it is not to contain answers given in coercive interviews but may contain answers given in a voluntary context (see clause 58 and clause 81(2)).*
- [25] The legislature has made it tolerably clear that only investigation reports about the conduct of ministers or MLAs are to be furnished to the Speaker or Deputy Speaker. While I acknowledge that there may be an instance where the relevant responsible authority under sub-section 7(a) may be the Legislative Assembly, it is difficult to conceive of a circumstance where that would

¹ *Independent Commissioner Against Corruption Act 2017* (NT), Section 50(6).

arise. In any event, even if such a circumstance did arise, the obligation on the Speaker (or Deputy Speaker) to table such a report would not be enlivened, because such a report would be made to the Legislative Assembly as an entity, and not to the Speaker specifically.

[26] Accordingly, where I also investigate the conduct of other classes of public officers and, in my discretion, determine to prepare a report on the conduct of those other officers, I must do so in a separate investigation report directed to a responsible authority of a kind contemplated in sub-section 7(a).

[27] Subject to a judicial ruling to the contrary, that will be my approach unless legislative change ensues.

[28] Section 50(3)(a) states that an investigation report may 'contain as much information as the ICAC considers appropriate in relation to the subject matter of the investigation to which the inquiry relates'.

[29] This report is not, and should not be taken to be, a fulsome recital of all of the evidence I have collected. I have included reference to the evidence where I think it is necessary to support my reasoning and conclusions.

[30] An investigation report of the kind contemplated by section 50 may contain recommendations.² While there are recommendations I will make arising from my investigation, they do not relate to the subject matter addressed in this report. Accordingly those recommendations will be addressed elsewhere.

[31] This report deals with allegations of political interference in respect of the decision to arrest Mr Zachary Rolfe, following a shooting incident on 9 November 2019.

[32] Because the report deals with the conduct of the former Chief Minister and former Minister for Police, Fire and Emergency Services, this report has been provided to the Speaker of the Legislative Assembly.

[33] In accordance with sub-section 50(6) of the ICAC Act, the Speaker is obliged to table a copy of the report in the Legislative Assembly on the next sitting day after the Speaker receives it.

Disclosures

[34] I met the former Chief Minister in the months following my appointment. I also met the former Chief Minister in respect of a request for access to certain Cabinet documents. I have also interacted with the former Chief Minister in respect of other investigations I am conducting.

I do not have, nor have I ever had, any social interaction with the former Chief Minister.

² *Independent Commissioner Against Corruption Act 2017 (NT)*, Section 56.

[35] I had never met, nor spoken in person to, Deputy Chief Minister Nicole Manison, until 16 February 2023, when we spoke online about an entirely separate matter. We did not discuss this investigation.

I do not have, nor have I ever had, any social interaction with Minister Manison.

[36] Prior to commencing this investigation I had met the former Police Commissioner on a number of occasions. I had an initial meeting with the former Police Commissioner shortly after I commenced in my position. I met with the former Police Commissioner in respect of a secondment of my then General Manager and during the course of briefings provided to chief executives in respect of the Northern Territory Government's response to COVID-19. I have otherwise had numerous conversations with the former Police Commissioner in respect of a number of different investigations and referrals.

[37] Shortly after Mr Rolfe's acquittal in the Supreme Court of the Northern Territory, the former Police Commissioner called me. He asked that I confirm my office had been overseeing the Northern Territory Police investigation in respect of Mr Rolfe. I told him on that occasion that I was not aware of any such oversight. I will address the role played by my office in a separate report.

[38] I have not discussed the content of this report, or this investigation, with the former Police Commissioner, other than when interviewing him for this investigation, and to seek clarification on one issue relating to the former Chief Minister. I intentionally limited my communication with the former Police Commissioner during this investigation.

[39] On 10 February 2023 I gave a presentation to senior police in Alice Springs. At the conclusion of that presentation the former Police Commissioner spoke to me. We discussed crime issues in Alice Springs and a recent report about impropriety in the Metropolitan Police in London. I did not tell him about my investigation, or any views I had formed. Nor did he ask.

I do not have, nor have I ever had, any social interaction with the former Police Commissioner.

[40] I am satisfied that there is no actual, or perceived, conflict of interest that would impinge upon my ability to bring a fair, impartial and objective mind to the subject matter of this investigation.

Legislative basis for investigation

[41] One of my functions is to 'identify and investigate improper conduct'.³

³ *Independent Commissioner Against Corruption Act 2017* (NT), ss 18(1)(a).

[42] Section 31 of the ICAC Act provides that:

[t]he ICAC may commence an investigation if the ICAC has, or is aware of, information that, if true, would tend to show that improper conduct has occurred, is occurring or is at risk of occurring.

[43] In determining whether to exercise my discretion to conduct an investigation, I am obliged to act in the public interest, 'taking into account the matters set out in Schedule 1 that the ICAC considers relevant and appropriate in any particular case'.⁴

Decision to conduct investigation

[44] On the evening of 9 November 2019 Kumanjayi Walker, an 18 year old Aboriginal man, was shot by Mr Zachary Rolfe (the shooting incident). Mr Walker died from his injuries.

[45] The circumstances that led to the shooting incident have been addressed during the course of Mr Rolfe's criminal trial, and are being considered at length as a part of the ongoing coronial inquest. It is therefore neither necessary nor desirable that I explore those issues further.

[46] Mr Rolfe was arrested on 13 November 2019 and charged with the offence of murder. He was subsequently committed by the Local Court to stand trial in the Supreme Court.

[47] During the course of Mr Rolfe's criminal trial, a number of assertions of impropriety were raised. Those assertions related to events that occurred prior to, and after, Mr Rolfe's arrest.

[48] Upon Mr Rolfe's acquittal in March 2022, various assertions of impropriety intensified. Relevant to this investigation report were assertions of political interference in respect of both the timing and decision to arrest Mr Rolfe. A central feature of those assertions related to comments made by the former Chief Minister in Yuendumu on 12 November 2019.

[49] I considered the allegations of political interference, together with other matters brought to my attention, to be very serious.

[50] If a minister, or a Member of the Legislative Assembly, influenced, or attempted to influence, the decision to arrest Mr Rolfe, such conduct would be most improper and could, at the very least, amount to a serious breach of public trust of a kind that could result in a finding of corrupt conduct, as defined in the ICAC Act.⁵

[51] I took the view that in light of the seriousness of the assertions, and the fact that those assertions did not appear to otherwise be the subject of inquiry, it was in the public interest that I investigate.

⁴ *Independent Commissioner Against Corruption Act 2017* (NT), ss 20(a).

⁵ *Independent Commissioner Against Corruption Act 2017* (NT), ss 10(3).

[52] Accordingly I commenced an investigation. That investigation was, and remained, focussed upon the period between the shooting incident and Mr Rolfe's arrest (the investigation period).

[53] I have not inquired into the myriad of other assertions that have been ventilated about events that followed Mr Rolfe's arrest.

[54] I would not consider doing so until the conclusion of the current coronial inquest and the publication of any findings by the Coroner. Even then I would only consider doing so if it was in the public interest to investigate further.

The Investigation

[55] I engaged an interstate barrister to act as my counsel assisting.

In so far as it relates to the subject matter of this report, I took evidence directly from:

- The Honourable Michael Gunner (former Chief Minister);
- Mr Jamie Chalker (former Commissioner of Police);
- Mr Martin Dole (Assistant Commissioner of Police);
- Mr Michael Murphy (Deputy Commissioner of Police);
- Ms Narelle Beer (former Assistant Commissioner of Police);
- Mr Kirk Pennuto (Commander of Police);
- Mr Zachary Rolfe (former Constable of Police);
- Mr Nick Anticich (former Assistant Commissioner of Police);
- Mr Leith Phillips (former Detective Senior Sergeant of Police).

[56] Statements or answers to written questions were also obtained from:

- The Honourable Nicole Manison MLA (then Deputy Chief Minister and Minister for Police, Fire and Emergency Services);
- Mr Paul McCue (President of the Northern Territory Police Association);
- Mr Michael White APM (Assistant Commissioner of Police)

[57] I also had regard to a significant volume of written material, including statutory declarations, emails, correspondence, memoranda, handwritten notes, media statements, meeting records, briefing papers, text messages and other materials.

[58] Since commencing this investigation a number of individuals referred to in this report have ceased to hold public office, or have changed positions. Accordingly, I have attempted to identify each individual in a way that avoids confusion. I mean no disrespect to any individual for not using their present title.

Procedural fairness and the preparation of this report

[59] There is no question that I must act in a manner that is fair. An essential element of fairness is that I bring an independent, impartial and objective mind to the decisions I make. But there is more.

Sub-section 50(2) of the ICAC Act states that:

[i]f the ICAC proposes to make an adverse finding about a person or body in an investigation report, the ICAC must give the person or body a reasonable opportunity to respond to the adverse material and include a fair representation of the response in the report.

[60] At this juncture I think it prudent to explain how I give effect to sub-section 50(2), because it differs to the approach of my predecessor.

[61] In the past it has been the practice to prepare a draft report that is then circulated to interested parties (to the extent required). Parties are then at liberty to respond to the draft report, by way of submissions and/or the presentation of other evidence.

[62] I do not suggest that that process is inappropriate. Indeed it is the process adopted by at least one other Australian anti-corruption body.

[63] However, I do not consider this to be the most desirable approach. My approach is to ask counsel assisting me to prepare comprehensive submissions about the evidence, the findings that are open on that evidence and, to the extent relevant, propose recommendations. Those submissions are then circulated to relevant parties. I do not direct the content of those submissions. However, when those submissions are circulated I do give notice if I am considering whether to make adverse findings consistent with those submissions.

[64] If I am considering making adverse findings that extend beyond those set out in submissions of counsel assisting, then I will bring that fact, and its basis, to the attention of the relevant parties.

[65] In this way, individuals are put on notice that I am considering making adverse findings and the basis upon which those findings might be made.

[66] Moreover, even if I am not considering making adverse findings, but I do think it would be beneficial to receive submissions from certain parties, I may invite those parties to make submissions.

[67] I have opted for that approach for a number of reasons.

[68] First, it ensures that I have the benefit of comprehensive submissions by my counsel assisting. Those submissions are prepared without any substantial input from me, in order that those submissions are an independent evaluation of the evidence.

[69] Second, the circulation of those submissions allows for interested parties to understand what (if any) findings are proposed and the basis upon which they are proposed. Parties are at liberty to seek and inspect the evidence collected.

Parties can then prepare their own submissions addressing any legal issues, the evidence, the available inferences and the findings that are open. Parties may wish to invite me to consider further evidence or to conduct further investigative steps.

[70] Third, and critically, this process gives me the benefit of all submissions before I come to any conclusions. I also have the opportunity to consider any further evidence that has been proffered and any further investigative steps that have been proposed.

To my mind, there are forensic benefits to that approach.

[71] If I were to prepare a draft report and circulate that report to parties, I must have already considered the evidence, formulated draft findings and committed a significant period of time to the preparation of a report.

[72] I anticipate that parties responding to a draft investigation report would consider themselves at a forensic disadvantage in, what many would consider to be, the task of dissuading a decision maker from a view that has already been taken (albeit a preliminary view).

[73] While I do not suggest that a decision maker should not, and could not, apply the appropriate objective mindset to reconsider the content of a draft report, my preference is to approach the report with the benefit of all submissions and evidence.

[74] I acknowledge that the process I have adopted may take longer than the alternative, but I am satisfied that it is the most appropriate course.

I intend to apply that approach in all but the most straightforward of matters.

[75] In this case, my counsel assisting prepared submissions and parties were invited to receive and consider those submissions. I also raised further issues with the former Chief Minister in order that he have an opportunity to respond. I have had regard to the submissions of counsel assisting together with the submissions of interested parties.

Rules of evidence, standard of proof and *Briginshaw*

[76] In conducting an investigation, I am not bound by the rules of evidence.⁶ But that does not mean that those rules should be lightly disregarded. Questions of relevance and probative value ought to still figure in the evidence that I consider, and the manner in which I weigh that evidence.

[77] In determining facts and making findings I am bound by the civil standard of proof, that being the balance of probabilities. But in making findings on the balance of probabilities, I am obliged to have regard to the principles enunciated in *Briginshaw v Briginshaw*.⁷

⁶ *Independent Commissioner Against Corruption Act 2017* (NT), Section 60.

⁷ (1938) 60 CLR 336.

In that case Dixon J said (at 361):

[b]ut reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences.

[78] *Briginshaw* is premised upon the 'conventional perception that members of society do not ordinarily engage in fraudulent conduct'⁸. Accordingly, I must not make a finding of improper conduct lightly, and I must have careful regard to the cogency of the evidence that would support such a finding.

I have proceeded in accordance with those principles.

Allegations of political interference

[79] As I have already said, a number of assertions have been made of political interference in the decision to arrest and charge Mr Rolfe. A central feature of the assertions related to a statement made by the former Chief Minister while addressing a group in Yuendumu on 12 November 2019. I will return to that statement later.

[80] In order to address the allegations of political interference it is necessary to recite the involvement of the former Chief Minister, Mr Michael Gunner, and the then Minister for Police, Fire and Emergency Services (Minister Manison) in the events that occurred during the investigation period. While other ministers appear to have had some peripheral involvement, I do not regard their involvement as warranting further inquiry or comment.

[81] The evidence I have received, and accept, is that Minister Manison first became aware of the shooting incident while she was present at the inaugural NT Police Legacy Ball, held at a hotel in Darwin on the evening of 9 November 2019. Minister Manison was advised of the shooting incident in person by then Acting Police Commissioner Michael Murphy, who was also present at the Ball. At that stage little was known about the circumstances of the shooting. According to Mr Murphy, nothing was said by Minister Manison that could have been taken to be a direction or instruction in respect of any police investigation. I accept that evidence.

⁸ *Re Day* [2017] HCA 2 (Gordon J, at para [16]).

[82] Minister Manison said that upon being made aware of the shooting incident, she phoned and briefed the former Chief Minister. The former Chief Minister confirmed in his evidence to me that he was advised of the incident by Minister Manison on the evening of 9 November 2019.

[83] The following morning a meeting was held at the Police Headquarters Building in Darwin. The evidence available does not allow me to determine precisely who was at this meeting. However, I am satisfied that those present included:

- The former Chief Minister;
- Minister Manison;
- The then Attorney-General and Minister for Health (The Hon. Natasha Fyles MLA);
- Mr Greg Shanahan (then Chief Executive Officer of the Department of the Attorney-General and Justice);
- Mr Jamie Chalker (who at that time was still the Chief Executive Officer of the Department of Local Government, Housing and Community Development).
- Ms Jodie Ryan (then Chief Executive Officer of the then Department of the Chief Minister);
- Professor Catherine Stoddart (then Chief Executive of the Department of Health).

[84] A number of ministerial advisers were also present at the meeting. Mr Murphy (who was still the Acting Police Commissioner) had by that time arrived in Alice Springs and so joined the meeting via video link. I asked a number of witnesses about this meeting. Having heard their evidence, I find that the meeting held at 10am on Sunday 10 November 2019 was directed toward providing a briefing on what was known about the shooting incident, the current situation in Yuendumu and to develop a coordinated response to the provision of services to that community. There is nothing in the evidence before me to suggest that during the meeting any minister said or did anything that may have been perceived to have had any bearing on the police investigation. Indeed, the evidence before me suggests that there was little discussion about the police investigation, other than the fact that there was an ongoing police investigation and what was understood about the events at that point in time. It appears that this meeting was directed toward governmental responses to the issues that had arisen in Yuendumu. I find accordingly.

[85] There is evidence of several interactions between police and ministerial advisors during the course of 10 November 2019. Those interactions appear to be for the purpose of addressing media inquiries. There is nothing before me to suggest wrongdoing in respect of those interactions.

[86] On Monday 11 November 2019, Mr Chalker was sworn-in as the new Police Commissioner. Mr Murphy reverted to the position of Deputy Commissioner of Police, while Mr White reverted to the position of Assistant Commissioner of Police.

[87] There is no evidence before me of any interactions on 11 November 2019 between the former Chief Minister, or Minister Manison, and NT Police that might give rise to any suspicion of impropriety.

Comments made by the former Chief Minister in Yuendumu on 12 November 2019

[88] On 12 November 2019 the former Chief Minister spoke at a community meeting in Yuendumu. Certain comments made on that occasion became the subject of intense commentary. Assertions were made about the propriety of those statements, what the former Chief Minister intended by those comments and the effect those comments had on the police investigation and, particularly, the arrest of Mr Rolfe.

[89] In order to address those questions, it is first necessary to understand precisely what was said and the context in which the comments were made. It is then necessary to understand any impact that was occasioned by those comments.

The trip to Yuendumu

[90] On 12 November 2019, the former Chief Minister travelled to Yuendumu. Accompanying the former Chief Minister was Minister Manison and Mr Chalker.

[91] On the evidence, the trip was arranged as a consequence of representations made by local MLAs and Traditional Owners.

[92] I asked the former Chief Minister what he understood to be the reason that the Traditional Owners wished for him to attend. He said:

Well, I guess I'm – I'm the leader of the government, so they – they wanted it to be seen as senior, serious, to have a genuine conversation with the chief, and the very first meeting I had when I landed was with the Traditional Owners.

[93] Mr Chalker said he understood that the trip was undertaken at the request of the community.

[94] It has been suggested that it was improper for the former Chief Minister, Minister Manison and Mr Chalker to travel to Yuendumu in the days following the shooting incident. The basis for that assertion is not altogether clear. There is no evidence before me that the trip was organised for an improper reason, nor does it appear to me that such attendance, in all of the circumstances, was improper.

[95] The former Chief Minister, Minister Manison and Mr Chalker travelled to Yuendumu by plane. It appears on the evidence that there may have also been one or more ministerial advisors who travelled on the same aircraft. Mr Chalker does not recall there being any discussion on the flight. Minister Manison recalled some discussion, but that it related to 'safety on the ground, the community picture and what we were doing for the day'.

[96] Mr Chalker told me that he did not recall ever being asked for, or voluntarily providing, a briefing in respect of any police investigation.

[97] To the extent that there was discussion on the plane, there is no evidence before me that any such discussion related to the status or direction of any police investigation.

First meetings in Yuendumu

- [98] On arrival in Yuendumu, two meetings took place. One involved an all-male meeting in a building in Yuendumu. That meeting was attended by both the former Chief Minister and Mr Chalker. A second all-female meeting was attended by Minister Manison.
- [99] Mr Chalker recalled that during the all-male meeting both he and the former Chief Minister expressed sorrow and acknowledged the pain in the community. He recalled there being a reference made to guns in the community. Mr Chalker also recalled community members at the meeting wanting an assurance that an investigation would be undertaken. Mr Chalker said the focus of both he and the former Chief Minister's remarks were directed toward acknowledging grief and committing to community support. What was discussed during that meeting was further illuminated when the former Chief Minister spoke at a larger community meeting, which I will come to in a moment.
- [100] Mr Gunner told me that following the all-male meeting he spent a brief period sitting with an Aboriginal elder, who has since passed away.
- [101] Minister Manison said:

While in the community, I met with the women at the WYDAC building while Mr Chalker and the then Chief Minister spoke with the men. I sat with the women a lot longer than was expected and missed a portion of the community meeting that was held in the basketball court.

The community meeting

- [102] The former Chief Minister told me that after sitting with an elder for a period of time, he was then escorted by that elder to a community meeting, which took place under the cover of a basketball shed.
- [103] A number of members of the Yuendumu community had gathered for the meeting. Minister Manison, the former Chief Minister and Mr Chalker variously described the community meeting as being an emotional environment, with anger being directed particularly towards health staff.
- [104] During the community meeting Mr Chalker and the former Chief Minister spoke.
- [105] I asked Mr Chalker whether there was any discussion between him and the former Chief Minister as to what the former Chief Minister would say at the community meeting. Mr Chalker said that he did not recall having any such conversation, or any notice of what the former Chief Minister would say.
- [106] The former Chief Minister told me that while he had given some thought to what he would say, his comments were largely 'off the cuff'. He told me that he did not have any prepared notes for what he would say.

[107] I have viewed, repeatedly, a video recording of the former Chief Minister's comments at the community meeting. The video shows that the former Chief Minister was speaking without notes. He paused on a number of occasions before continuing with his comments. It appears to me, and I find, that the former Chief Minister's comments were, indeed, off-the-cuff and largely unrehearsed. There is no evidence to support a contrary finding.

[108] As I have said, a particular comment made by the former Chief Minister sparked a great deal of public commentary. Before coming to that remark specifically, it is important to set out his comments in full, in order to understand the context in which any particular comment was made.

[109] His comments were as follows:

I am sorry that I have to be here at such a tragic time. I am here with the Deputy Chief Minister Nicole Manison, she is still in some conversations with some local old ladies.

We've both come because we wanted to be here to listen to you, to pay respect to you, to grieve with you. I was asked before we came here today to the basketball courts to sit down and listen with some of the old men, and some of the old women here in Yuendumu.

They were sad. They were angry. They asked a lot of questions – they asked some very important questions

They asked, Chief Minister, what will you do?

Will you listen? And listening is not something that you can do quickly and neither is grieving.

Saturday night was an awful night and we will be working together for a long time about how we deal with that together but there are some very important things I can say today and I can promise today and one of them that was asked for by the old men and the old ladies was to guarantee that there will be an independent investigation.

The coroner will investigate.

The coroner is a judge. The coroner is thoroughly independent. I was asked if that investigation can be quick, if that investigation can happen here in Yuendumu.

I think those are two very reasonable questions, I think they are questions the coroner will listen to.

But most importantly, because the coroner is independent, even I can't tell the coroner to do that. But I know the coroner will listen to you and the coroner will seek to answer those questions that you have, those questions that I have - what happened that night

and why so that justice can be done which is what you have all been asking of me today – and I can promise you that that investigation will be independent and that consequences will flow as a result of that investigation.

There were some other things that I was asked – I was asked about the kids in the community and what as a government we can do with them. Not just get the school open but how -- we can work with you about all the kids in the community – (inaudible) was mentioned and were more than happy to do that work and we will come back to community to talk more about that.

I was also asked about the health clinic and the health clinic is open again today. It's important that you know that if you need care you can get care, that's something that's important to me. That's something that's important to you. It's something that is important to the staff of the health clinic. They know you. They care about you. They want to be here working with you.

And they have come back to community and they asked just before I got up today to make sure that you all know that they're here back in community because they know you all and want to look after you all.

Harry said I'm based now in Darwin and that is true but I was born in Alice Springs, I grew up in public housing in Tennant Creek. My uncle is a strong man from Utopia, that's his country I care very deeply about the whole Northern Territory and that includes this country we stand on right now. It's always a privilege to be here in Yuendumu but I'm sorry that I have to come today to grieve with you all.

[110] Certain portions of the former Chief Minister's comments became the subject of criticism. In particular the words 'consequences will flow' drew significant focus. I will refer to those words as the 'impugned comments'.

Matters arising

[111] I now set out what, according to the evidence before me, arose as a result of the making of the impugned comments and reporting of them. I note at this juncture that most of the reporting of the former Chief Minister's comments were generally limited to the impugned comments, and the sentence within which they were made.

[112] Mr Chalker was present at the basketball shed when the former Chief Minister made the impugned comments. He was asked about any response to the remarks from individuals at the event. He said that he did not recall any police officers on the ground raising a concern with him.

[113] Mr Paul McCue was at the relevant time the President of the Northern Territory Police Association (NTPA).

[114] Mr McCue stated that on the evening of 12 November 2019 he contacted Mr Chalker and advised him that the NTPA would be putting out a media release the following day calling for the then Chief Minister to withdraw the impugned comments and publicly explain what he meant. Mr McCue said 'this was on the back of significant negative feedback from our members'. Mr McCue said that he was told by the former Chief Minister that the comment was being taken out of context and that the police association was overreacting. Mr McCue said that the former Chief Minister told him that he was attempting to explain the justice system and 'that he wanted those at the meeting to understand that the coronial will be an independent process and there will likely be recommendations made which may include consequences'.

[115] Mr McCue said:

..I advised the Chief Minister that this is not what was said, and the inference was that the police had done something wrong. I also informed him that there were a lot of police upset by the comment and I requested that he publicly withdraw or clarify the comments on Wednesday morning. The Chief Minister said he would not, that it would not be wise after attending the community today and he will not comment on it in the morning.

[116] The former Chief Minister was asked about his recollection of the conversation with Mr McCue. He said:

..I explained to him – I might have just pre-evidently looked at the – the quote. I was talking about the coronial all the way through then, unfortunately, in that very last sentence, I don't use the word "Coroner", but I was talking about the – the coronial. I explained that to him. He – he wanted me to – it was a fairly polite conversation, I felt, to be honest. He said, "I think you should withdraw and apologise." I said, "But withdraw, I wasn't talking about the police investigation. If I were to withdraw that would be me then untruthfully describing what I said. I can't – I can't do that". I remember saying to him, "Look, this thing's pretty hot at the moment. I think if I go out and," the way I saw it, "essentially make unnecessary comment, draw attention to this remark at a community meeting, withdraw and apologise for it, which would be a – essentially an untruthful characterisation of what I even said in the first place," I said, "That will just – that's going to be like a whole flare point. I don't think that's very helpful to everything right now."

[117] Minister Manison said that upon returning to Darwin from Yuendumu, she received a text message from Mr McCue in respect of the impugned comments. Minister Manison said:

The position from the NTPA was that the Chief Ministers [sic] comments were effectively an attack on Police. I believed it was an outrageous accusation, and that Mr McCue was stirring up community unrest. I was quite furious with the animosity by the NTPA attempting to stir up division in the community. I was so disappointed and saw his statement as a grab for popularity. When facing 400 community members, in the circumstances that we were faced with, your language is not always going to be perfect. I believe the NTPA continually took and repeated the Chief Minister's words out of context.

[118] Mr Murphy told me that he was surprised by the statement. He said:

But I think, you know, he said he was talking about the coronial process, but I think when you – “Consequences will flow”, probably not the best choice of words, and it certainly – yeah, I just don’t think it leads to a level of impartiality to a degree.

[119] As to whether the statement had any impact upon policing, Mr Murphy said that he understood that some sick leave had been taken and that there were some officers who were angry at the comments. He said:

There was lots of emotional responses, but I think at the end of the day, it turned out to be a lot of the people just got on with their job and I think they knew the importance of the job they did and they came to work and kept doing it.

[120] I asked Mr Chalker about an increase in sick leave within police following the impugned comments. Mr Chalker said that his understanding was that issues relating to sick leave became an issue following Mr Rolfe’s arrest.

[121] Narelle Beer was the Assistant Commissioner in Alice Springs during the relevant period. Ms Beer could not say whether an increase in the taking of personal leave by police was a consequence of the former Chief Minister’s remarks or the fact of Mr Rolfe’s arrest the following day.

[122] The former Police Commissioner submitted that:

[a]lthough there may have been instances of increased sick leave, safety concerns and disrupted services, these factors do not necessarily appear to be able to be attributed to the former Chief Minister’s comments alone. There were multiple factors at play that may have triggered these outcomes. Two other potential significant reasons could have been the arrest of a colleague and the social unrest.

That submission must be accepted.

[123] Leith Phillips was, at the relevant time, a Detective Senior Sergeant stationed in Alice Springs. He gave evidence that the comments of the former Chief Minister were “morale destroying”.

[124] According to handwritten notes made by Detective Senior Sergeant Phillips, a witness to the shooting incident “declined further statement based on Chief Minister comments in media. Seeking legal advice before any further statement”.

[125] Of course it is difficult now to assess whether the views and concerns expressed by police were a consequence of the totality of the former Chief Minister’s comments, or the limited comments that were largely reported.

[126] In any event, of particular relevance to my inquiry is whether the former Chief Minister’s impugned comments had an impact upon the way in which Mr Rolfe was dealt with. In other

words, did the former Chief Minister's comments have some impact on the decisions made in respect of Mr Rolfe, and the timing of those decisions?

[127] Mr Kirk Pennuto was the lead investigator in respect of the Rolfe criminal investigation. Mr Pennuto was the officer who effected the arrest on Constable Rolfe. I asked him whether the then Chief Minister's impugned comments were the subject of discussion. He said:

No sir, absolutely not. In – actually sir, [REDACTED] is a colleague of mine and [REDACTED] [REDACTED] actually told me about this event, now that I think about it and I've – I generally don't follow the media about this stuff and certainly with this one I didn't – up until after the event. And I remember thinking, oh I said – and was similar to your predecessor sir, when he made some comments, I recall thinking, are you serious, you blokes, like – no, there no discussion about any commentary from outside.

[128] Nick Anticich was, at the relevant time, an Assistant Commissioner of Police. In his evidence Mr Anticich said:

... I can tell you emphatically that the Minister had nothing to do with – the Chief Minister had nothing to do with the decision to charge and arrest Mr Rolfe.

[129] Assistant Commissioner Martin Dole was, at the relevant time, the Commander of Crime Division. He was asked about the former Chief Minister's impugned comments:

Mr Dole: I don't recall when I specifically found out, whether it was that afternoon, next day. I'm – I'm definitely aware of it um because I thought that's very problematic, and quite unhelpful. Um but that's not uncommon for – leaders in the Northern Territory and even our previous leaders to make unhelpful comments that don't actually assist investigators. Um I may have viewed it myself on – on some kind of feed, but I do – I'm well aware of it and do recall it, and think it was unhelpful.

Commissioner: In what way?

Mr Dole: Um – because this was a polarising matter within the police force. Um we have already had investigators that were giving particular views on um what they think should have occurred or shouldn't have occurred. Um we knew there was going to be um difficulty in the Alice Springs Police Station with the general duties population not um – being happy at all because we're charging a - a – a serving police officer, and the fact that he was making comments that may be linked to um – may be seen to be linked to advice provided by an investigative team, it was very unhelpful. And I've been subject to that before from previous leaders, and it's caused us untold issues.

Commissioner: Did that have any – to the best of your recollection – did that have any practical implications for you in the days following the making of the statement?

Mr Dole: None whatsoever.

[130] Assistant Commissioner Dole was asked whether he felt that there was ever any political influence on the investigation. He replied: 'None whatsoever.'

Was there improper conduct?

[131] Having set out the events, I now turn to the question of improper conduct.

Minister Manison

[132] There is no evidence before me that Minister Manison's involvement in the matters that are the subject of this investigation was improper. I have come to that conclusion having had the benefit of receiving and considering a range of documents, including communications authored by, or received by, Minister Manison during the investigation period, together with her own evidence and the evidence of others.

[133] There being no evidence of impropriety, it is unnecessary to comment further.

The former Chief Minister

[134] I have considered the former Chief Minister's involvement during the investigation period. Putting to one side the impugned comments, which I will come to in a moment, there is no evidence of impropriety by the former Chief Minister.

[135] While I will address a rumour of which I became aware during the course of this investigation at the end of this report, what falls to be determined is whether the former Chief Minister's impugned comments amounted to improper conduct as defined in the ICAC Act.

[136] In order to do so I have assessed the impugned comments against each of the relevant forms of improper conduct provided for in the ICAC Act.

[137] I will first address corrupt conduct and misconduct.

[138] Corrupt conduct, as it is defined in the ICAC Act, can arise in a number of different ways. In my view, the only limb of corrupt conduct relevant to this inquiry is that contained within section 10(3).

[139] Corrupt conduct includes 'conduct engaged in by a public body, a minister, an MLA or a local councillor:

(a) *that is connected to public affairs; and*

(b) *that involves a serious breach of public trust by the public body, minister, MLA or councillor.*⁹

Similarly, misconduct can take a variety of forms. Relevantly, misconduct arises if:

it is conduct engaged in by a judicial officer, the Director of Public Prosecutions, a public body, a minister, an MLA or a local councillor:

- (a) *that is connected to public affairs; and*
- (b) *that involves:*
 - (i) *for a judicial officer or the Director of Public Prosecutions – a breach of public trust; or*
 - (ii) *for a public body, minister, MLA or councillor – a breach of public trust not amounting to a serious breach of public trust.*¹⁰

[140] As is evident, both corrupt conduct and misconduct, as their definitions relate to the instant case, require the conduct to be ‘connected to public affairs’ and for the conduct to amount to a *breach of public trust*, or in the case of corrupt conduct, a *serious breach of public trust*.

Was the conduct connected to public affairs?

[141] The term ‘connected to public affairs’ is defined in section 4. It includes conduct ‘in the course of, or closely connected to, the performance of official functions’. When the former Chief Minister made the impugned comments, he did so in his capacity as the Chief Minister. He was, at the time he made the remarks, acting in the performance of his official functions. I come to that conclusion in this way.

[142] Functions given to a minister of the Crown are not neatly encapsulated.

While ministerial responsibility is a long enshrined concept central to the Westminster system of democracy, ministerial responsibility is not the same as the functions of a minister. The former stands for the proposition that a minister is personally responsible to the Parliament for the minister’s actions and for the actions of the agency(s) for which that minister is responsible. The latter relates to the activities engaged in, responsibilities discharged by, and roles given to a minister.

[143] The Chief Minister is, as the title suggests, the lead minister of the government of the day. It follows that the Chief Minister acts as the lead spokesperson for the Northern Territory Government. The Chief Minister is responsible for responding to and addressing publicly the government’s position, and the government’s response, to a broad range of issues. One of the Chief Minister’s official functions is to speak publicly about matters of relevance to the Northern

⁹ ICAC Act, sub-section 10(3).

¹⁰ ICAC Act, section 11(3).

Territory Government and the community. When the impugned comments were made, the former Chief Minister was addressing members of the community in his capacity as the Chief Minister and was performing an official function.

I find that his conduct in making the impugned comments was conduct that was connected to public affairs.

Did the conduct amount to a breach of public trust?

[144] A **breach of public trust** is defined in section 13. It means:

Conduct by a public body or public officer that is intentionally or recklessly inconsistent with the functions of the body or officer, including the duty of the body or officer to act in the public interest.

[145] Whether or not a public officer has engaged in conduct that amounts to a breach of public trust requires an evaluation of the impugned conduct, the state of mind of the officer, and the officer's functions.

[146] As I have already said, I take the view that one of the Chief Minister's functions is to act as the government's most senior spokesperson. The Chief Minister is entrusted to exercise that function in the public interest. The Chief Minister must, as with any minister or indeed any person in a position of authority, exercise great care in the making of public statements.

[147] For example, a public statement that is intentionally false or misleading may well be considered an occasion where there has been a breach of public trust. Of relevance here, particular care must be taken to ensure that statements made do not have the potential to prejudice the administration of justice. Such statements, depending upon the context in which they are made, may well be regarded as being inconsistent with the functions of the speaker. If a statement was made with the intention of causing such prejudice, such conduct would weigh heavily in favour of a finding of a breach of public trust.

[148] I have given this matter a great deal of consideration. I have considered the former Chief Minister's comments at length. I have read, and re-read, his comments. I watched the recording of his comments a number of times. I remain mindful of my own statutory functions and the need to consider the cogency of evidence that might support a finding of wrongdoing.

[149] Taking into account all of the evidence before me, and the helpful submissions of counsel assisting and interested persons, I find that in making the impugned comments, the former Chief Minister did not intend to prejudice the administration of justice, nor to influence the police investigation. Rather, I find that when making the comments, the former Chief Minister was endeavouring to address matters that had been raised with him during the all-male meeting with elders and matters that he understood were of concern in the community.

[150] It follows that I find that the former Chief Minister was not intentionally acting inconsistently with his functions when he made the impugned comments.

[151] There remains the question of whether the conduct of the former Chief Minister was recklessly inconsistent with his functions.

[152] The ICAC Act does not define recklessness. In legal parlance, recklessness is commonly included as an element of criminal offences. In that context, recklessness generally requires some awareness of a risk of an adverse consequence, but nevertheless proceeding notwithstanding that awareness. Of course, I am not adjudicating upon criminal conduct.

[153] In my view, recklessness, in so far as it relates to the definition of breach of public trust in the ICAC Act, ought to be given its ordinary meaning.

The Macquarie Dictionary defines the word *reckless* in the following way:

Utterly careless of the consequences of action; without caution.

I adopt that meaning.

[154] I have been mindful to consider the impugned comments in the context of the whole of the former Chief Minister's comments. During the course of the former Chief Minister's comments at the community meeting, he used the word *coroner* on eight occasions. All of his comments about an investigation were clearly directed towards a coronial investigation. He did not refer to any other form of investigation. He said that the coronial investigation would be independent. He said that even he could not direct the Coroner and that questions asked about the investigation were matters for the Coroner.

[155] The sentence uttered by the former Chief Minister, which included the words 'consequences will flow', was directed toward a coronial inquest.

[156] While some will take the view that the former Chief Minister ought not to have used those words, and should have chosen his words more carefully, I am not persuaded that the former Chief Minister acted in a manner that was so utterly careless as to amount to conduct that was recklessly inconsistent with his official functions.

[157] It follows that the former Chief Minister's comments did not amount to a breach of public trust, such as to give rise to a finding of misconduct.

[158] Because corrupt conduct also relies upon the concept of breach of public trust, it follows that the former Chief Minister's comments do not give rise to a finding of corrupt conduct.

Unsatisfactory conduct

[159] Unsatisfactory conduct is a form of improper conduct. It is defined in section 12 of the ICAC Act as follows:

Conduct is **unsatisfactory conduct** if it is conduct engaged in by a public officer (whether or not the identity of the public officer is known) or by a public body:

- (a) That involves:
 - (i) illegality or impropriety; or
 - (ii) negligence; or

- (iii) incompetence; and
- (b) that is connected to public affairs; and
- (c) that results in:
 - (i) substantial mismanagement of public resources; or
 - (ii) the inappropriate or significantly inefficient use of public resources; or
 - (iii) substantial mismanagement in relation to the performance of official functions; or
 - (iv) substantial detriment to the public interest.

[160] As is clear, unsatisfactory conduct can arise not only by intentional conduct, but through incompetence or negligence.

[161] Some elements of unsatisfactory conduct can be dealt with immediately. First, there is no question that the former Chief Minister was, at the relevant time, a public officer. Second, for reasons I have already explained, the making of the impugned comments were connected to public affairs. Third, sub-sections (1)(c)(i) and (ii) are of no relevance to this matter. Fourth, I do not consider that the former Chief Minister engaged in conduct that involved illegality or impropriety.

[162] What is left is to consider whether the Chief Minister's impugned comments amounted to conduct that involved negligence or incompetence, and which resulted in:

- a) substantial mismanagement in relation to the performance of official functions, or
- b) substantial detriment to the public interest.

[163] As was quite rightly observed in submissions by the former Chief Minister, a finding under section 12(1)(a) is an essential prerequisite to a finding under section 12(1)(c). In other words, I must first find that the former Chief Minister engaged in conduct that involved illegality, impropriety, negligence or incompetence, before considering the result of that conduct.

[164] Negligence is not defined in the ICAC Act. Incompetence is given a statutory definition. I will address incompetence first.

[165] Section 12(2) of the ICAC Act provides that:

For subsection (1)(a)(iii), **incompetence**:

- (a) is conduct that would not be engaged in by a reasonable public officer or public body:
 - (i) having the skills and knowledge reasonably expected of a person or body with the role of the public officer or public body; and
 - (ii) having taken appropriate steps to obtain adequate resources, information and advice; but
- (b) does not include conduct:
 - (i) that is less than best practice; or

- (ii) that is a matter of policy about which reasonable public officers or public bodies may disagree.

[166] I have considered the former Chief Minister's conduct against the definition of incompetence. To the extent that there is merit in the criticisms made of the former Chief Minister for his choice of words, when considered in the context of the whole of his speech, and in the circumstances in which he made his comments, I am not persuaded that his conduct was of a kind that satisfies the definition. I have come to that conclusion having watched and listened to the whole of his comments and considered them in light of the unique circumstances in which they were made.

[167] As I have already said, negligence, in so far as it relates to section 12, is not defined. The orthodox approach to statutory interpretation is to give an undefined word its ordinary meaning unless there is some contextual or express indicator to the contrary. The ordinary meaning of negligence is to fail to take proper care over something, or to have disregard for something. There is no reason to depart from that ordinary meaning.

[168] These are matters over which I have given a great deal of consideration. In my view the question of negligence is more finely balanced. I say that because it is rightly expected that senior public officers will take proper care in the words that they use, and that due consideration ought to be given to the effect that words might have on governmental or community matters.

[169] However, the circumstances in which statements are made, and the totality of the words used, must be considered. It would be inappropriate to focus upon particular words or phrases used in isolation from the context and circumstance in which they were uttered. Such an unduly narrow focus would, with the greatest of respect, expose a great number of public officials to the same scrutiny as has been occasioned here.

[170] The former Chief Minister submitted that:

... to attribute the meaning to the words "that consequences will flow" that they are an invitation or encouragement to others to arrest or charge of[sic] Mr Rolfe (which is the subject matter of the investigation by the Commissioner) would be to ignore the plain meaning of the sentence and the context in which it appears

I agree with that submission.

[171] As I have already explained, during his remarks the former Chief Minister used the word *coroner* on eight occasions. All his remarks about an investigation were directed toward a coronial investigation. When the totality of his comments are considered (as opposed to a portion of those comments), there can be no other conclusion. His remarks were made in difficult circumstances and it appears to me that he took great care to ensure that his remarks were directed toward a coronial inquest. That his words were understood by some to suggest impropriety by police does not mean that he was negligent in his use of those words.

[172] In all the circumstances, I have determined that the former Chief Minister's conduct at the community meeting did not involve negligence. It follows that the former Chief Minister did not engage in unsatisfactory conduct.

[173] In coming to that conclusion, I do not discount the fact that reports about the impugned comments did cause anger and frustration amongst police, although it is clear on the evidence that the former Chief Minister's comments had no impact or influence on the decision to arrest Mr Rolfe.

Substantial mismanagement or substantial detriment to the public interest

[174] Because I have found that the former Chief Minister's conduct did not involve illegality, impropriety, incompetence or negligence, it is unnecessary to turn to the criteria in sub-section 12(1)(c). However, I think it important to do so because, even if I did find that the former Chief Minister's conduct involved incompetence or negligence, I still would not have made a finding of unsatisfactory conduct, because the result did not amount to substantial mismanagement of official functions, or substantial detriment to the public interest.

[175] A finding of unsatisfactory conduct cannot be premised on a finding that conduct resulted in mismanagement of official functions. Parliament has specified that there must be **substantial** mismanagement of official functions. What amounts to mismanagement of official functions is not defined. To mismanage is to manage badly or wrongly. The addition of the word *substantial* must require mismanagement of such gravity or significance as to warrant a finding of unsatisfactory conduct.

[176] The former Chief Minister submitted, quite correctly, that in the course of his comments at the community meeting he made no reference to 'any police investigation, to any possible criminal charges or to any police officers, let alone any reference to Mr Rolfe'.

[177] He further submitted that:

... the making of the determination [that the former Chief Minister engaged in mismanagement of official functions] would entirely ignore the seriousness of the situation at Yuendumu at the time and that the attendance and speech by Mr Gunner and Yuendumu were aimed at calming a very tense community atmosphere.

It must be recalled that:

- (a) The medical staff had been evacuated from Yuendumu prior to the shooting because of risks to their personal safety following night-time break-ins into the staff's residences while they were present and following damage to their vehicles.*
- (b) There had been a police shooting in the community. The absence of the medical staff meant that Mr Walker could not be treated at the health clinic at Yuendumu.*
- (c) Following the shooting, the police made the decision not to inform the community that evening of Mr Walker's passing.*
- (d) The ambulance and a paramedic had been attacked with rocks whilst in the process*

of removing Mr Walker's body from the community.

- [178] The former Chief Minister submitted that the evidence, including the evidence he gave to me, 'make it clear that Mr Gunner's speech was aimed at engendering calm and to prevent civil unrest in Yuendumu.'
- [179] There is force in those submissions. As I have already said, conduct must be considered in its context. In all of the circumstances I would not have found that the former Chief Minister engaged in substantial mismanagement of official functions.
- [180] Public discourse is an essential feature of democracy. It is in the public interest that elected representatives have the freedom to express views about political, community or governmental matters. On occasion the views expressed will cause frustration, anger or resentment amongst particular groups in the community, or in the community generally. But that alone cannot be enough to result in substantial detriment to the public interest. Such a conclusion would, again with great respect, frequently impact upon statements made by senior public officers. Democracy is based on a spectrum of ideas, opinions and approaches that are debated, challenged, supported and criticised publicly. It is against this backdrop that substantial detriment to the public interest, in so far as the discharge of functions connected with speaking publicly are concerned, must be assessed.
- [181] There will, of course, be instances where statements made by elected representatives are detrimental to the public interest. For example, a statement that encourages or incites violence or discrimination may have that character. A statement that has a significant prejudicial effect upon the operations and effectiveness of a government service, may be detrimental to the public interest. Moreover, a statement that has a significant prejudicial effect upon the administration of justice may also be detrimental to the public interest. Such occasions would have to be assessed upon the content of the statement and the circumstances in which it is made.
- [182] In this case, while the impugned comments, as reported, did have some adverse impact upon some members of the Northern Territory Police, the evidence does not support a conclusion that the comments had any effect whatsoever upon the decision to arrest Mr Rolfe. Nor has it been suggested that the comments had any effect on the ensuing prosecution.
- [183] In those circumstances I would not have found that the former Chief Minister's conduct resulted in substantial detriment to the public interest.

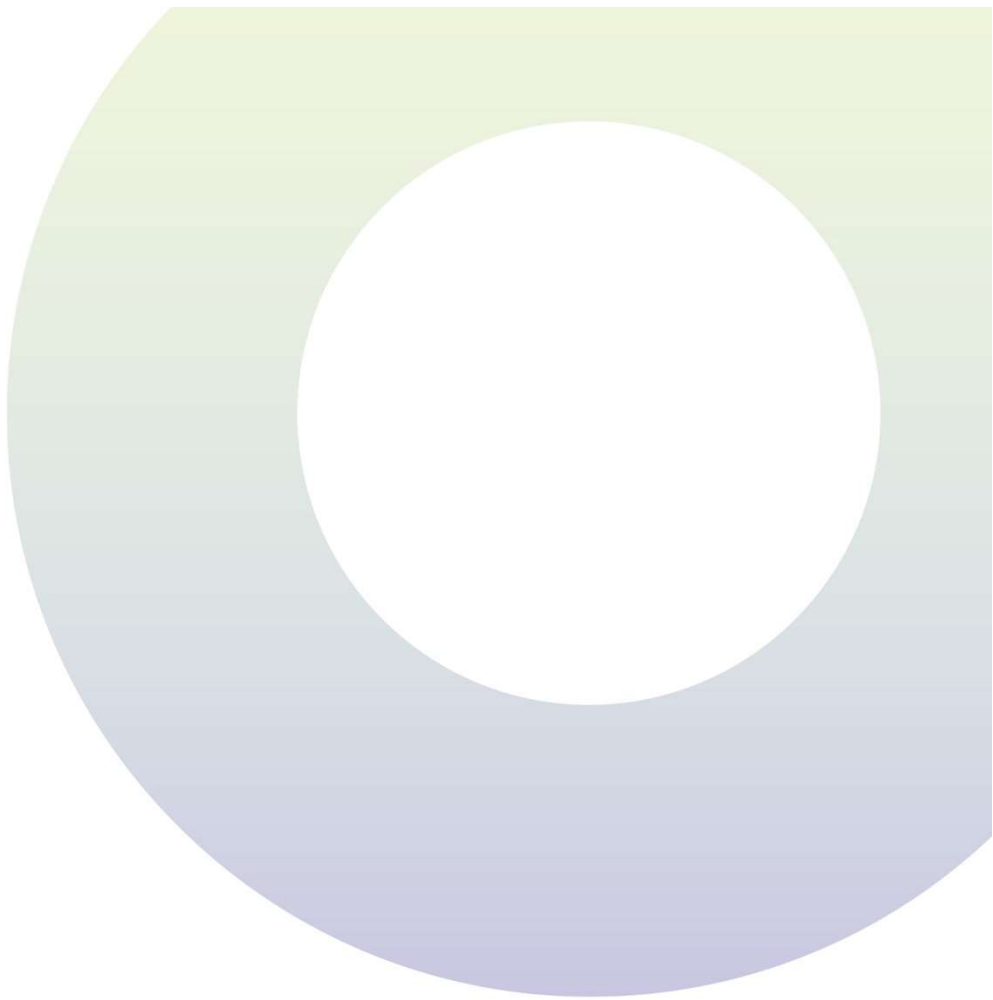
Additional matter

- [184] For completeness, I wish to address a further allegation that was brought to my attention through several sources during the course of this investigation. The allegation was that police facilitated a secret meeting at a hotel between the former Police Commissioner, the former Chief Minister, and Minister Manison, and that that meeting occurred during the investigation period. While the substance of the allegation remained the same, precisely who it was that facilitated the meeting varied between sources.

- [185] In one version, the alleged meeting was facilitated by a senior police officer. In another version, the alleged meeting was facilitated by a member of the NT Police Tactical Response Group.
- [186] I note that none of the sources were directly involved in, or witnessed, any such meeting. Rather, the assertion arose from third hand information.
- [187] Nevertheless I sought further evidence, by way of ascertaining from the identified senior police officer and the identified member of the Tactical Response Group, their knowledge of any such meeting.
- [188] Both the senior police officer and the Tactical Response Group member stated that there was no truth to the assertion.
- [189] In my view, this was a rumour without substance. Being satisfied that no further inquiry was warranted, I find that no such meeting took place.

Conclusion

- [190] For the reasons set out above, I have concluded that there was no improper conduct in respect of the matters addressed in this report.
- [191] While I have concluded that there was no improper conduct, I think these events offer an opportunity to reflect and consider approaches in the future. I think all public officials, when considering whether to comment publicly about any matter that is the subject of investigation and/or judicial process, should consider whether it is appropriate to first take advice from the relevant body as to any prejudicial effect that such comment might have.
- [192] It must not be understood that my findings in this case set a particular precedent or standard in respect of the making of comments by public officials. It should not be assumed that I would come to the same conclusions if the context and circumstances of the conduct were different.



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