

## CORONERS COURT OF THE AUSTRALIAN CAPITAL TERRITORY

**Case Title:** AN INQUEST INTO THE DEATH OF CHRISTIAAN ADRIAAN ROODT

**Citation:** [2023] ACTCD 5

**Hearing Date(s):** 28 January 2022, 12 April 2022

**Decision Date:** 17 March 2023

**Before:** Coroner Stewart

**Decision:** [3], [124], [127], [132], [139], [146], [151], [160], [164] – [167], [186], [189], [195], [198] – [207]

**Catchwords:** **CORONIAL LAW** — cause and matter of death —student safety – activities conducted in bushland – adequacy of supervision – risk assessment processes - matter of public safety

**Legislation Cited:** *Coroners Act 1997* (ACT) s52, s55, s58  
*Work Health & Safety Act 2011* (ACT), s155

**Cases cited:** *Inquest into the death of OD*  
*Inquest into the death of XB*  
*Inquest into the death of SI*  
*Inquest into the death of IS*  
*Inquest into the death of LD*  
*Inquest into the deaths of IU & BN*  
*Inquest into the death of Kyle VASSIL* [2014] VicCorC 188  
*Inquest into the death of Jethro Ngalarra Dhamarrandji-Baker* [2016] NTLC 021

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**File Number(s):** CD 258 of 2018

## CORONER STEWART

### A. INTRODUCTION

1. Master Christiaan Adriaan Roodt died in the Canberra Hospital on 18 October 2018. I will respectfully refer to him as Adriaan throughout these reasons – Adriaan is his preferred name.
2. The timing and manner of Adriaan’s death was tragic and unnecessary. It has caused much grief to Adriaan’s loving family and the many people who also loved and knew Adriaan.
3. **There is no dispute in relation to the formal findings that I must make pursuant to s52 of the *Coroners Act (ACT) 1997*:**
  - (a) **The identity of the deceased was Christiaan Adriaan Roodt aged 17 years (DOB 17/09/2001);**
  - (b) **Adriaan died at the Canberra Hospital at 2.56 pm 18 October 2018; and**
  - (c) **The cause and manner of death was circulatory failure caused by traumatic brain injury from being struck by a log during a physical education activity.**

### B. FACTS

4. The following facts are largely agreed between the parties. In this decision names of students (except for Adriaan), staff and witnesses have been anonymised for publication. I have also made an order suppressing their names today.
5. Adriaan resided in Yass, New South Wales (“NSW”) with his family, where they had been residing since 2009. Between 2007 and 2009, the family resided in the Australian Capital Territory (“ACT”) after having moved to Australia from South Africa.<sup>1</sup>
6. Other than moving between nations, Adriaan had an unremarkable upbringing, with no major medical, social or education problems.<sup>2</sup> Adriaan was an enthusiastic boxer and capable sportsman. He was well liked by his peers. He was seen as “*kind of just a good guy, I guess. He liked his boxing, and he was pretty good at soccer.*”<sup>3</sup>

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<sup>1</sup> Exhibit A.20 (AFP brief), TROC Christiaan Roodt, p345-6

<sup>2</sup> Exhibit A.20 (AFP brief), TROC Christiaan Roodt, p346

<sup>3</sup> Exhibit A.31 (AFP brief), TROC MQ, p440 at A400

7. In 2018 Adriaan was enrolled in Year 10 at Campbell High School. He had been attending the school since Year 7.<sup>4</sup>

### **Campbell High School**

8. Campbell High School is an ACT public school for Year 7 to Year 10 students.<sup>5</sup> It is located on Treloar Crescent, Campbell ACT.<sup>6</sup>
9. Campbell High School regularly used the Mount Ainslie area as a learning and resource space.<sup>7</sup> Remembrance Memorial Park is a dense bushland area accessible to the public and is located at the base of Mount Ainslie.<sup>8</sup> The park is about a 12 minute walk from Campbell High School.<sup>9</sup>

### **Excursion Consent**

10. It is Campbell High School's standard practice that at the start of the year an excursion approval letter is requested from each parent.<sup>10</sup> It is in the following terms:

*"I hereby consent to [my] child attending supervised school activities approved by the principal. This consent covers all occasions during the time that [my] child is enrolled at this school, unless otherwise indicated in writing.*

*NOTE: This consent for your child's attendance at school supervised excursions is for those excursions which occur in the immediate vicinity of the school and generally involve movement on foot or bicycle. Specific consent will be sought for all other excursions."*

11. The most recent hard copy Student Information Check Sheet containing the General Consent on Campbell High School records for Adriaan was dated 18 December 2016.<sup>11</sup>

### **The Morning of 18 October 2018**

12. At about 7:20am on Thursday 18 October 2018 Adriaan departed his residence and attended Campbell High School.<sup>12</sup>

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<sup>4</sup> Exhibit B.13 & B.14 (WorkSafe brief), Student files for Christiaan Adriaan Roodt

<sup>5</sup> Exhibit A.2, Statement of F/C James, p2

<sup>6</sup> Exhibit A.2, Statement of F/C James, p2

<sup>7</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2411

<sup>8</sup> Exhibit A.2, Statement of F/C James, p2

<sup>9</sup> Exhibit A.2, Statement of F/C James, p2

<sup>10</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2413 L40-p2414 L3

<sup>11</sup> Exhibit B.13 (WorkSafe brief), Student files for Christiaan Adriaan Roodt, p1433

<sup>12</sup> Exhibit A.20 (AFP brief), TROC Christiaan Roodt, p345, A35

13. At about 10:00am Adriaan attended the gymnasium for Physical Education (“PE”) class in accordance with the school curriculum. The PE class was scheduled in period 2 and for about one hour.<sup>13</sup>
14. A decision was made for five classes of Year 9 and 10 students to play ‘Capture The Flag’ at the base of Mount Ainslie. It is unclear who specifically decided to play the game, but the idea was raised that morning amongst the teaching staff.<sup>14</sup>
15. Five classes totalling about 112 students of students between Year 9 and Year 10 attended the gymnasium.<sup>15</sup>
16. Five teachers were involved in supervising the students. For the purposes of publication of these findings they will be referred to as being Educator 1<sup>16</sup>, Educator 2<sup>17</sup>, Educator 3<sup>18</sup>, Educator 4<sup>19</sup> and Educator 5.<sup>20</sup>

### **The Game**

17. ‘Capture The Flag’ is a game that has been played at a number of schools throughout the ACT Schools System for more than ten years.<sup>21</sup> It is a game where students are divided into teams and compete on an outdoor field to capture the opposing team’s ‘flags’.<sup>22</sup>
18. Campbell High School has been running the game for over 10 years on at least a once a term, if not, monthly basis.<sup>23</sup> The game was described as part of Campbell High School culture.<sup>24</sup> A minimum of two classes are required to play with up to six classes playing at times.<sup>25</sup>
19. The students who participated in the game on 18 October 2018 would have played it at the school previously.<sup>26</sup>

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<sup>13</sup> Exhibit A.27 (AFP brief), Timetable for Adriaan Roodt, p371

<sup>14</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2287 L33-44

<sup>15</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2287 L33-44 & p2322 L28-41

<sup>16</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2282-2326

<sup>17</sup> Exhibit A.16 (AFP brief), TROC Educator 2, p301-322

<sup>18</sup> Exhibit A.12 (AFP brief), TROC Educator 3, p220-252

<sup>19</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2224-2281

<sup>20</sup> Exhibit A.17 (AFP brief), TROC Educator 5, p301-322

<sup>21</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2331 L17-20; Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2294 L33-35; Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2410 L23-37 & p2414 L14-20; Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2379 L9-26, p2390 L33-36, p2393 L24-27

<sup>22</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2282-2326

<sup>23</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2375 L35-p2376 L2

<sup>24</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2411 L23-29 & p2413 L3-16

<sup>25</sup> Exhibit B.2 (WorkSafe brief), Inspector Majer’s summary, p4, [4]

<sup>26</sup> Exhibit A.12 Educator 3 ROC p228 Q66

20. Campbell High School students most often played this game off the school grounds at the Remembrance Memorial Park at the base of Mount Ainslie. However, it was also played at times on the school or the Reid ovals.<sup>27</sup>
21. When it was played at Remembrance Memorial Park, the game was played on an established area of play that has been used over many years. The game field used in the area was approximately 400 metres long by 150 metres wide in size, and natural borders were used to delineate the zone. Specifically, the borders were constituted by a fire trail and main walking trail indicating external field boundaries, and power lines delineating the field halves.<sup>28</sup>
22. There are no written rules for 'Capture The Flag'. The game is played in an area of two halves. There are two teams, one occupying each half. Each team has a 'base' within their territory which contains 'flags'. The aim of the game is for players to run into the opposing team's territory, grab a 'flag' and return the 'flag' to the 'base' within their own territory without being tagged by the opposing team's players. If a player is tagged in the opposing team's territory, then that player must sit in the opposing team's 'gaol' and wait to be rescued. Another member of a team can rescue a member of their own team from their opponent's gaol by tagging them and escorting them back to their own team's territory, in which case the rescued team member is back in the game.<sup>29</sup> The team which gets all of the opposing team's 'flags' within its own 'base' wins. The duration of the game depends on the number of 'flags' involved. Two 'flags' can be used for a short game with a lengthier game involving up to eight 'flags'.<sup>30</sup>
23. The natural environment within Remembrance Memorial Park provided trees, rocks and flora located within the game field. They were used tactically by players to provide cover and hide from their opponents.<sup>31</sup>
24. The following occurred each time the game was played:

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<sup>27</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2240 L16-20, p2258 L19-21, p2265 L19-24

<sup>28</sup> Exhibit B.2 (WorkSafe brief), Inspector Majer's summary, p4, [4]; also Educator 1's maps, Exhibit B.27 (WorkSafe brief), p2325-6

<sup>29</sup> Exhibit .26 Educator 4 TROI, p2231 L15-20

<sup>30</sup> Exhibit B.2 (WorkSafe brief), Inspector Majer's summary, p4, [1]-[3] – also as described by the various students who were interviewed by the AFP and by the teachers interviewed by the AFP & WorkSafe.

<sup>31</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2301 L28-29

*'[Teachers] do a risk analysis of the playing area each time that we go up there and the activity will be cancelled if wet, long grass etc. Anything that [the teachers] deem to be an unsafe environment to play in, the game is cancelled, and we will head to our adjacent oval to play'.<sup>32</sup>*

25. The teachers supervising the game would bring a first aid kit as well as their mobile phones.<sup>33</sup>
26. The teachers regarded the game as popular with the students<sup>34</sup> who would often ask to play it.<sup>35</sup>
27. There had never been a significant incident during the activity.<sup>36</sup> For the period in which Educator 4 had been conducting the activity, the only incident he could recall was when a student had seen a snake. The extent of the injuries had been a grazed leg.<sup>37</sup> Educator 4 could not recall any supervision issues that had arisen during the game other than students complaining of cheating.<sup>38</sup> Educator 1 said that he had not encountered any stupid or silly behaviour on previous occasions on which the game had been conducted. He said that the students were "quite responsible and mature" in the area.<sup>39</sup> There had never been any serious injuries.<sup>40</sup>

### **The Safety Briefings**

28. In the gymnasium, Educator 1 conducted a verbal safety briefing to the students, which is standard practice. This briefing included the following:
  - (a) explaining rules of the game;
  - (b) how to play;

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<sup>32</sup> Exhibit B.26, 2281, Educator 4's document Capture The Flag – Safety briefing'; See also Exhibit B.26, Educator 4 TROI, 2240 (lines 15-20 and 35 - 40).

<sup>33</sup> Exhibit B.26, 2281, Educator 4's document Capture The Flag – Safety briefing'; See also Exhibit B.26, Educator 4 TROI, 2232 (lines 35 - 40).

<sup>34</sup> Exhibit A.7, Educator 1 ROC,72 (answer to question 36), 87 (answer to question 222); Exhibit B.26, Educator 4 TROI, 2229 (line 35).

<sup>35</sup> Exhibit A.16, Educator 2 ROC, 307 (answer to question 78).

<sup>36</sup> Exhibit A.10, Educator 4 ROC, 205 (answer to question 99).

<sup>37</sup> Exhibit A.7, Educator 1 ROC, 83, (answer to question 174) and 85 (answer to questions 189 - 192).

<sup>38</sup> Exhibit B.26, TROI Educator 4, 2244, lines 35 - 40.

<sup>39</sup> Exhibit B.27 TROI Educator 1, 2301 (lines 40-45).

<sup>40</sup> Exhibit A.7, Educator 1 ROC, 85 (answer to questions 188 - 192); Exhibit A.10, Educator 4 ROC, 205 (answers to questions 99 – 103).

- (c) safety rules which include no running fast through bushland, don't pick up rocks or sticks, don't pick up anything off the ground, leave the environment as it is, be aware of surroundings and notify teachers of any wildlife located;<sup>41</sup> and
  - (d) that any silly behaviour is to be reported and students will be "sat out" with the teacher.<sup>42</sup>
29. It was usual practice for the teacher providing the briefing to seek confirmation from other teachers that all relevant matters had been covered.<sup>43</sup>
30. After conducting the briefing, the five teachers escorted the students, on foot, to the Remembrance Memorial Park area.<sup>44</sup>
31. Educator 1 provided a second safety briefing before he and Educator 3 carried out a sweep of the play area. Instructions were also provided about the setting up of the 'bases' and 'goals'. The students then selected their 'bases' and 'goals' and the game commenced.<sup>45</sup>
32. I note the contrary evidence from Educator 5 who was asked if a briefing was given. She said '*...we didn't today. We just gave them their stuff and sent them off*'.<sup>46</sup>
33. Commencement of the game was signalled by one of the teachers blowing by a whistle.<sup>47</sup>

### **Game Supervision**

34. The five teachers monitored the game as it progressed. From time to time the teachers were involved in dealing with particular students or incidents rather than supervising the game generally.<sup>48</sup>
35. The five teachers moved within the game field during the game but were generally located at particular observation points so as to try to provide coverage and monitoring of the whole area.<sup>49</sup> Specifically:
- (a) By the time of the accident, Educator 5 and Educator 4 were located on the northern boundary of the 'Capture The Flag' area, being the high track at the

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<sup>41</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2289-90 generally; also Exhibit B.26 (WorkSafe brief), Educator 4's minute at p2281

<sup>42</sup> Exhibit B.26, 2281, Educator 4's document 'Capture The Flag – Safety briefing'.

<sup>43</sup> Exhibit A.12, Educator 3 ROC, 229 (answer to question 75).

<sup>44</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2290 L20-29

<sup>45</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2290-1 generally; also Exhibit B.26 (WorkSafe brief), Educator 4's minute at p2281

<sup>46</sup> Exhibit A.6 ROC Educator 5 p8

<sup>47</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2290 L42-45

<sup>48</sup> For example Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2291 L12-19

<sup>49</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1 p2293 generally, also p2301 L34-37:

*"I thought it for a long time and I think we all have and I think we've discussed different issues and we've also tried to alleviate those issues by moving around and being actively supervising those areas and stopping any stupid or silly behaviour as soon as we see it."*

point where it intersects with the powerline mowed area.<sup>50</sup> Educator 4 had been at the bottom of the area at the beginning of the game and later made his way up the field to join Educator 5.<sup>51</sup>

(b) Educator 2 was located on the southern boundary of the 'Capture The Flag' area, being the lower track at the point where it intersects with the powerline mowed area;<sup>52</sup>

(c) Educator 3 was in the powerline mowed area in between the northern and southern boundaries, somewhere in the middle and perhaps closer to the southern boundary;<sup>53</sup> and

(d) Educator 1 was in bushland to one side of the powerline mowed area towards the southern boundary.<sup>54</sup>

36. The 'gaol' area was not within sight of the supervising teachers due to the incline of the hill<sup>55</sup> and the dense bushland.<sup>56</sup> The terrain and natural environment of the game area meant that it was not possible for the teachers to have 'eyes on' all students at all times.<sup>57</sup> There was no constant supervision or monitoring of the 'bases' and in particular no specific monitoring of the 'gaol' areas.<sup>58</sup> Students took advantage of the

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<sup>50</sup> Educator 1's maps, Exhibit B.27 (WorkSafe brief), p2325-6; Exhibit A.17 (AFP brief), TROC Educator 5, p324 at A11:

*"I was standing up, sort of further up the hill within the boundaries that we set. But yeah, further up the hill looking down."*

Also Exhibit B.26 (WorkSafe brief), TROC Educator 4 at p2229 L45-2230 L3 & maps at p2279-80:

*"Towards the end of the lesson I was up the top supervising with my colleague Educator 5. I saw Educator 3 jogging up towards one of the extremities of the game, like I can have direct line of the teachers down the bottom of the field, so I started walking down."*

<sup>51</sup> Exhibit A.10, Educator 4 ROC, 198 (answer to question 22); Exhibit B.26, Educator 4 TROI, 2229-2230 (lines 44 to 1).

<sup>52</sup> Educator 1's maps, Exhibit B.27 (WorkSafe brief), p2325-6; Exhibit A.16 (AFP brief), TROC Educator 2, p313 at A151-3:

*"Um, so, um, as I kind of stated before, I was standing there with Educator 1 and Educator 3. Um, they were probably just a tiny bit closer to the side that the incident happened. Um, and I think that's probably why when the – the kids kind of came jogging, and were, like – basically said, "Oh, a student's been hurt. Um, you need to come and have a look."*

<sup>53</sup> Exhibit A.12 (AFP brief), TROC Educator 3, p222 at A16:

*"We have a couple of teachers up the top of the course. Um a few teachers were down the bottom, and I was about midway."*

<sup>54</sup> Educator 1's maps, Exhibit B.27 (WorkSafe brief), p2325-6

<sup>55</sup> Exhibit A.7 (AFP brief), TROC Educator 1, p84 at A179-80

<sup>56</sup> Exhibit A.7 (AFP brief), TROC Educator 1, p72 at A38

<sup>57</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2301 L26-29

<sup>58</sup> Exhibit A (AFP brief), Item 16, Annexure M, TROC Educator 2 at p311 A132:

*"You can see fairly far into the field of play. But definitely it's restricted enough so that we couldn't see the – what the incident that happened or wouldn't have, um – if a student didn't come over or we didn't hear something, we wouldn't have seen it basically."*

environment to hide from other students as part of the game.<sup>59</sup> A mitigation strategy adopted by the teachers was to move around and actively supervise the area.<sup>60</sup>

37. Educator 5 saw Adriaan and another boy who was involved in the incident, TC, together sitting on a rock before the accident. She approached them and told them to get involved in the game.<sup>61</sup>
38. No teacher directly observed the incident which caused Adriaan's injuries, although Educator 1 speaks of hearing a "scream" and that a bunch of boys came running.<sup>62</sup> No teacher gives evidence of having witnessed any attempts to pick up the log. Had any teacher observed students picking up a log, or attempting to pick up a log, they would have intervened to stop the students.<sup>63</sup>

## The Incident

39. At about 10:45am, during play but towards the end of the game, Adriaan was in a 'gaol' area on the north-eastern side of the game field near the main walking trail. He was 'in 'gaol'' along with students TC (16 years old) and SC (16 years old).<sup>64</sup>
40. Around that time, they noticed a dead tree on the ground nearby within or just outside the 'gaol' area, described as a log.<sup>65</sup> At all times the log was within or close to the

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<sup>59</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1 at p2323 L23-28:

*"What you need to understand is that those boys I believe were trying to evade our sight, if that makes sense, because they were doing – they were – if you can see where they are – this would be the hardest – this would be one of the hardest places in the whole area to be seen, if that makes sense. So, they've actually started here, where it's clear, moved around, looked around and then found a log out of sight and that's what they've done."*

<sup>60</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2301 L34-37

<sup>61</sup> Exhibit A.17, Educator 5 ROC, 335 (answer to question 119).

<sup>62</sup> Exhibit A.7 (AFP brief), TROC Educator 1, p70 A14

<sup>63</sup> For example: Exhibit B.27 (WorkSafe brief), TROC Educator 1 at p2301 L42-44:

*"I have seen kids pick up a stick, for example, and I've said, "Put the stick down" straight away."*

<sup>64</sup> Exhibit A.13 (AFP brief), TROC SC (Part 1), p255 at A19:

*"Um, so we were all up on the mountain playing 'Capture The Flag' with school, and we'd all been captured and put in the jail ..."*

Also at p259, A 61 & 63. See also Exhibit A.30 (AFP brief), TROC SC (Part 2) at p394 A9-10. See also Exhibit A.32 (AFP brief), TROC EM at p445 (A25-26), p449 (A75), p464 (A276), p467 (A320-321, 330-331), p469 (A356-357), p470 (A361-363), p474 (A427) as well as contemporaneous (1.5-2 hours later) handwritten statement at p480-2. See also Exhibit A.11 (AFP brief), TROC KN at p209 (A11), p212 (A50-59), p213 (A62-63). See also Exhibit A.15 (AFP brief), TROC SS at p285 (A15-17), p288 (A52-55).

<sup>65</sup> Exhibit A.32 (AFP brief), TROC EM at p464:

*"Q276 So where was the – so this log you described. Can you mark that on here for me?*

*A This was here in, like, the jail where we were.*

*Q277 Okay. So inside the cones. Yeah.*

*A It was inside the -it was- yeah. Relatively....."*

See also Exhibit A.6 (AFP brief), TROC TC at p51:

*"Q36. Can you describe this tree for me?*

*A It was probably just – it was, like – just, like, a dead tree on the ground. I don't know how big it was, but."*

See also Exhibit A.11 (AFP brief), TROC KN at p213:

playing boundaries of the game, and the 'gaol' area was inside the playing boundaries of the game.<sup>66</sup>

41. The log was later measured by Police to be 6.03 metres long and 188.5 kilograms in weight.<sup>67</sup>
42. TC reported that he and SC first picked up the log, but he is not sure whose idea it was between them.<sup>68</sup> SC reported that TC was encouraging everyone to pick up the log, but that they all voluntarily picked it up.<sup>69</sup>
43. Sometime after the first attempts, students EM (15 years old), KN (16 years old) and OP (16 years old) arrived and met with the other students at the log in or near the 'gaol' area.
44. Several students gave evidence of multiple attempts to pick up the log. The timing of these attempts and the time over which this occurred is not clear from the evidence.
45. TC told Police that the incident occurred on the third or fourth attempt at lifting the tree.<sup>70</sup> He said:

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*"Q62. Okay. So where was this log that you described in relation to - - -*

*A KN: It was, like, lying in the jail area.*

*Q63. Okay. Can you describe how – what the log looks like?*

*A KN: Ah, the log was probably just five metres long. It's – it's kind of like a dead tree, just on the ground. It wasn't really heavy. It was just awkward weight."*

See also Exhibit A.31 (AFP brief), TROC MQ at p436:

*"Q355. Okay. Okay, and this log, like, where was that in relation to the jail area?*

*A Um, it was pretty close to the jail."*

See also Exhibit A.15 (AFP brief), TROC SS at p298:

*Q204. Yep. So you were about two metres away and you saw everything.*

*A Yeah*

*Q205. Do you know what prompted them to lift the log?*

*A No.*

*Q206. No. Were they still playing in the game, per se? Or - - -*

*A Yeah. In the prison, you can't move outside of it.*

*Q207. Gotcha.*

*A So you just have to wait there. . (cont.)*

*Q208. Do you mind putting the cones around where you sort of remember? So I take the understanding is that the log is outside that bounds.*

*A Yeah.*

*Q209. And you said there was some bushes in front of the log.*

*A Yeah."*

<sup>66</sup> Educator 1' s maps, Exhibit B.27 (WorkSafe brief), p2325-6

<sup>67</sup> Exhibit A (AFP brief):

- A.8, Images taken by Fallon, specifically p149 & p191-193
- A.9, Case Note Entry by Trebilcock, specifically p195

<sup>68</sup> Exhibit A.6 (AFP brief), TROC TC, p52 at A49

<sup>69</sup> Exhibit A.13 (AFP brief), TROC SC (Part 1), p255 at A19

<sup>70</sup> See Exhibit A.6 (AFP brief), TROC TC, p56, referring to the incident occurring on the third or fourth attempt to lift the tree, at A102-103

*“So, at first, me and SC started lifting it, and then Adriaan started helping us ... and then we put it down, and that’s when OP and that turned up and we all did it together.”<sup>71</sup>*

46. SC told Police:

*“... me and TC saw this branch that we – he thought we could lift up. And then we tried it individually and that didn’t work out. Um so then – I don’t know – we all just sat down and said, “What’s the point of this? There’s just no point in doing it.” And then TC kept bugging us to do it. So we all just jumped on and decided to try and lift up and flip over this branch that was pretty big.”<sup>72</sup>*

47. EM wrote a handwritten account of the incident later that same day. In that document he referenced four attempts at picking up the log.<sup>73</sup> He said that beforehand he, SC, TC and Adriaan were:

*“... waiting in the jail. TC was making jokes and he began lifting the log by himself.... SC then began trying to lift it by himself.... afterwards they both began trying to flip it so they asked Adriaan ...then asked me... Adriaan started lifting so I began too...they shouted letting me know to get out of the way as they dropped down almost getting my foot... soon after that EM, OP and MQ came they were asked to come and the other guys felt confident that they would be able to flip it if the other guys joined (maybe excluding one) and began to lift it the log.”<sup>74</sup>*

48. EM also stated to Police:

*“TC... went to go, um – found this log and he was, like, trying to just lift it up above and see how high he could lift the log ... then he was like ‘Oh yeah, um, pretty heavy’ and stuff. Just laughing and stuff. Having a fun time. And then SC tried to lift it. And he got it, ah, above – I think above his shoulders, but he wanted to get it higher and stuff. And then TC was like “Yeah, do you boys want to come and see how high we can lift it?” and so Adriaan and SC went to go lift it. And then I joined in shortly after at the front. And then we just tried to lift it up and then it dropped down after we were getting a bit tired ... then ... OP, MQ and JX came. And um they’ve just came in and the boys were like “Yeah, um, go and see, ah, if you can lift the, ah – lift the log up” and so they all came in. Started talking, you know, having a laugh. And then we all – we were all up*

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<sup>71</sup> Exhibit A.6 (AFP brief), TROC TC, p53 at A58-59

<sup>72</sup> Exhibit A.13 (AFP brief), TROC SC (Part 1), p255 at A19

<sup>73</sup> Exhibit A.32 (AFP brief), TROC EM contemporaneous (1.5-2 hours later) handwritten statement which refers to 4 attempts before the fatal incident at p480-2.

<sup>74</sup> Exhibit A.32 (AFP brief), TROC EM contemporaneous (1.5-2 hours later) handwritten statement at p480-2.

*there, um, trying to push the log up. Just to try and, um, flip it, I think, was – was the purpose.*<sup>75</sup>

49. TC, SC, OP, EM, and Adriaan then stood at one end of the log and began to lift it up, extending their hands above their heads. As they pushed the log up at an angle greater than 45 degrees to the ground, the log began to slip. TC, EM, and SC moved to the right of the log, as EM and OP moved to the left. Adriaan did not move from his position underneath the log. The log fell and struck Adriaan on the left side of his head above his ear, which caused Adriaan to be knocked unconscious.

50. TC told Police:

*“We all sort of lifted it up above our heads, just moving down – just sort of sat it up straight. And then it started tilting, so we said, “Get out of the way.” And they went away, and Adriaan was starting the other way, so I pulled him because he wasn’t moving. And it sorts of clipped the side of his head – top of his head and then he fell on the ground and started bleeding out his ear ...”*<sup>76</sup>

*“So we lifted it and we all sort of just edged against one of the trees so it could topple over, and we all lifted it. All of us were there. And then, um, it started angling off to the side and starting to fall, so I think someone hopped away, and it started falling, so we said, “Get out of way,” and we all hopped out of the way. And Adriaan didn’t move so I pushed – I pulled him towards me just to the right side of us.*

*And it – the tree fell and hit Adriaan on the side of the head, coming down, and then he sort of fell on the ground ...”*<sup>77</sup>

*“... we were all under [the tree] at one point, and I think EM and OP hopped out to the left and I hopped out to the right with Rob, and that’s where I pulled Adriaan from ... so we were facing down the mountain and the tree was here, and so we all hopped under it, and we all had our hands above our head, the same as before. I think maybe Adriaan was in in the middle. I was at the back ... [SC was in front of me] and then I moved to the middle ... as I couldn’t reach it any more I moved in front of SC [and Adriaan was in front of me] ...”*<sup>78</sup>

51. SC told Police:

*“So we all just jumped on and decided to try and lift up and flip over this branch that was pretty big. Um, and then we got it – I don’t know, pretty high. Like almost*

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<sup>75</sup> Exhibit A.32 (AFP brief), TROC EM p44-46 at A33-42

<sup>76</sup> Exhibit A.6 (AFP brief), TROC TC, p47-48 at A15

<sup>77</sup> Exhibit A.6 (AFP brief), TROC TC, p56 at A100

<sup>78</sup> Exhibit A.6 (AFP brief), TROC TC, p57 at A105-11

*standing straight. And then we couldn't move it any higher. And then it just – we all just said, "Move out of the way," And then everyone jumped out of the way and I think TC tried to push Adriaan out of the way but he didn't get – move fast enough and it just – the branch fell on his head and knocked him out."*<sup>79</sup>

52. EM's handwritten account records:

*"the other guys felt confident that they would be able to flip it if the other guys joined (maybe excluding one) and began to lift it the log.... this wasn't working ....I heard the guys grunting and .... people moving away .... jumped out of the way .... dropped the log as I did just split seconds later I looked back and then saw Adriaan there by himself ..."*<sup>80</sup>

53. Adriaan fell sideways toward the ground as the log continued to fall to the ground. In the process it struck Adriaan again across his head. SC told Police:

*"And then [Adriaan] fell under the tree and it crushed his head or, like, bounced off his head. And we all thought he was just unconscious ..."*<sup>81</sup>

54. EM's handwritten account records:

*"... the log landed on Adriaan I don't know if he slipped or wasn't fully aware ..."*<sup>82</sup>

55. After being struck by the log Adriaan had blood coming from his ears, nose and mouth; his eyes were closed, he made no sound and he was not moving. SC told Police:

*"... we all thought [Adriaan] he was just unconscious ... the blood just started spraying out of his nose ... and then I held Adriaan's nose, um, to stop the bleeding and put him in the recovery position. And then opened his mouth to let him breathe and he – and then the blood just started pouring – like, flowing – pretty much started flowing out of this mouth ... and then it started coming out of his ears as well. Out of the top – the ear that was facing up. And it was just flowing out."*<sup>83</sup>

56. Another student LP (14 years old) arrived at the incident scene shortly after the incident. He was about 15 to 20 metres away from the 'gaol' and observed the boys lifting a log but didn't take much notice.<sup>84</sup> LP told Police:

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<sup>79</sup> Exhibit A.13 (AFP brief), TROC SC (Part 1), p255 at A19

<sup>80</sup> Exhibit A.32 (AFP brief), TROC EM contemporaneous (1.5-2 hours later) handwritten statement at p480-2.

<sup>81</sup> Exhibit A.13 (AFP brief), TROC SC (Part 1), p255 at A19

<sup>82</sup> Exhibit A.32 (AFP brief), TROC EM contemporaneous (1.5-2 hours later) handwritten statement at p480-2.

<sup>83</sup> Exhibit A.13 (AFP brief), TROC SC (Part 1), p255 at A19

<sup>84</sup> Exhibit A.5 (AFP brief), TROC LP, p40 generally

*“... I heard it fall. I didn’t actually see it fall. I heard it crash and then crack on the ground. And then, um, oh, the – the guys up there were like, “Someone get a teacher.” I think one of them said, “His mouth’s foaming”, but I’m not confident with that. And, ah, um, so at this point, I’ve gotten up and I’m walking up to see what’s happened, And then I see, ah, Adriaan on the ground – this is the kid who got hit. He got – he’d been whacked on the head apparently. And um, ah, he’s just been knocked out completely. Blood was coming out of his ears, nose and mouth.”<sup>85</sup>*

57. EM’s handwritten account recorded:

*“... I then saw blood and started sprinting instantly to get the teacher. Educator 3 began sprinting to the guys and Adriaan ... SC is calling an ambulance...”<sup>86</sup>*

58. Immediately appreciating the seriousness of the incident, SC asked another student to call the ambulance and took over the call from her.<sup>87</sup> SC put the telephone on loudspeaker before transferring the call to Educator 1 when teachers arrived at the incident scene.<sup>88</sup>

59. From the 000 call it appears that contact was made with first responders at 10:50:40 am.<sup>89</sup> Teachers were likely to have been at Adriaan’s side within 90 seconds, probably at 10:52:28 and definitely by 10:53:57, although this is not able to be determined with absolute precision.<sup>90</sup>

60. TC told Police that he ran to teachers to seek help from Educator 4, Educator 3 and Educator 1 who he stated were “about fifteen metres”<sup>91</sup> away at that time. He said it took him ‘not even fifteen seconds’ to reach the teachers.<sup>92</sup>

61. LP told Police:

*“I saw SC, who was there, holding [Adriaan’s] nose and calling the ambulance. Ah, then not too long after that – almost immediately – ah, the teachers –Educator 3*

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<sup>85</sup> Exhibit A.5 (AFP brief), TROC LP, p42 at A15-17

<sup>86</sup> Exhibit A.32 (AFP brief), TROC EM contemporaneous (1.5-2 hours later) handwritten statement at p480-2.

<sup>87</sup> Exhibit A.13 (AFP brief), TROC SC (Part 1), p255 at A19

<sup>88</sup> Exhibit A.33 (AFP brief), 000 call transcript, p487-488

<sup>89</sup> Exhibit A.33 (AFP brief), 000 call transcript, p485-492

<sup>90</sup> The talking in the background on the recording is indistinct. However:

- SC states that pressure is being applied to the bleeding spots at Q15, which is 1:57 of the recording minus 9 seconds for the time stamp, this equates to 10:52:28
- SC confirms to 000 that Adriaan is in the recovery position at Q27, which is 3:26 minus 9 seconds for the time stamp, this equates to 10:53:57
- Teacher comes on the line at Q41, which is 4:53 of the recording minus 9 seconds for the time stamp, unequivocally puts a teacher (Educator 1) at Adriaan’s side at 10:55:24

<sup>91</sup> Exhibit A.6 (AFP brief), TROC TC, p50-1 at A23-27

<sup>92</sup> Exhibit A.6 (AFP brief), TROC TC, p61 at A165

*runs up and, ah, checks out – checks out Adriaan, grabs his nose ... so that Rob can continue talking to the, ah, you know, medical staff.”<sup>93</sup>*

62. Educator 3 told Police that EM came running towards him to advise him of Adriaan’s injury.<sup>94</sup> He said that when running up the hill to where Adriaan was, he could not see Adriaan, because Adriaan and the other students were behind some low bushes that came up to about waist height.<sup>95</sup> Educator 3 said:

*“I actually sprinted up the hill to where they were, which was about, oh, fifty metres or so away, um, but its, because its bushland, you can’t exactly see what’s happening all the time ... I ran up there, blood, ah – Adriaan was lying on his back, with blood coming out his ears, nose, ah, and mouth. Ah, wasn’t looking well at all. He was unconscious, um, because I called for his name, ah, just to see if there was any response. ... a lot of blood was just literally running out his nose like a tap. Um, so I pinched his nose to try and stop that. Um, realised that he had a heap of blood in his mouth, so I turned him over to his side,<sup>96</sup> ah, while pinching his nose, to make sure I could have the blood running out of his mouth, um, and his nose at that stage, and hopefully his lower ear.”<sup>97</sup>*

63. Educator 1 told Police that after being told of the incident he and Educator 3 ran up as quick as they could get to Adriaan.<sup>98</sup> He described the distance involved as roughly ‘twenty paces, it wasn’t that far’.<sup>99</sup> Educator 1 said:

*“... I’ve looked down and I’ve seen Adriaan with his arm stuck underneath the log that he’d – the kid said he’d lifted up. Um and then I’ve looked down and I saw blood coming out of his ears, blood coming – a – a gush behind both of his ears. Um, blood coming out of his – his mouth and his nose as well. Like, profusely. Um, a really – a – a – a large amount of blood. Um really alarmingly amount. So the – the boy was on the phone to the – the ambulance at that point...”<sup>100</sup>*

64. Educator 1 and Educator 3 lifted and moved the log off Adriaan. Educator 1 said it required them both to lift it<sup>101</sup> and described the process as follows:

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<sup>93</sup> Exhibit A.5 (AFP brief), TROC LP, p42 at A17-19

<sup>94</sup> Exhibit A.12 (AFP brief), TROC Educator 3, p222 at A16

<sup>95</sup> Exhibit A.12 (AFP brief), TROC Educator 3, p236 at A158 & p238 at A171-2

<sup>96</sup> This action appear to occur by at least 10:53:27 and is possibly 10:52:28, having regard to the 000 call transcript.

<sup>97</sup> Exhibit A.12 (AFP brief), TROC Educator 3, p222 at A16

<sup>98</sup> Exhibit A.7 (AFP brief), TROC Educator 1, p70 at A14

<sup>99</sup> Exhibit A.7 (AFP brief), TROC Educator 1, p74 at A56-8

<sup>100</sup> Exhibit A.7 (AFP brief), TROC Educator 1, p74 at A52-3

<sup>101</sup> Exhibit A.7 (AFP brief), TROC Educator 1, p76 at A85-86

“... it was quite a heavy log... we were under quite a bit of strain to move that log...”<sup>102</sup>

65. It was unclear to Educator 1 and Educator 3 whether Adriaan was breathing.<sup>103</sup>
66. LP, TC, OP and EM all went down the hill to the road to meet emergency services,<sup>104</sup> while Educator 2 and Educator 5 began collecting the remaining students in the field and returning them to the school.<sup>105</sup>
67. Shortly after Educator 3’s arrival at Adriaan’s side.<sup>106</sup> BC, a Registered Nurse, was walking along the walking trail. She observed a number of students running to the incident location and decided to attend to see if she could lend assistance. BC observed Adriaan laying on his left side with a large amount of blood coming from his head. BC checked his pulse, which she described as a ‘good radial pulse’. She observed Adriaan’s skin started to change colour and realised he was no longer breathing.<sup>107</sup>
68. Educator 1 took the phone from SC and started talking to the ACT Ambulance Service (“ACTAS”) dispatcher.<sup>108</sup> The dispatcher gave advice over the phone to commence cardiopulmonary resuscitation (“CPR”).<sup>109</sup>
69. Educator 3 began doing chest compressions on Adriaan while BC assisted by removing blood from Adriaan’s mouth to keep his airway clear while waiting for ACTAS to arrive.<sup>110</sup>

### **First Responders**

70. About 10 to 15 minutes after the incident, at 10:59am, ACTAS paramedics arrived at Mount Ainslie.<sup>111</sup> They were escorted by teachers and students up to the incident location.<sup>112</sup>

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<sup>102</sup> Exhibit A.7 (AFP brief), TROC Educator 1, p74 at A63-64

<sup>103</sup> Exhibit A.7 (AFP brief), TROC Educator 1, p71 at A17, p76-77 at A91-94; Exhibit A.12 (AFP brief), TROC Educator 3, p223 at A16

<sup>104</sup> Exhibit A.5 (AFP brief), TROC LP, p34 at A20

<sup>105</sup> Exhibit A.12 (AFP brief), TROC Educator 3, p250-1 at A310-4

<sup>106</sup> Exhibit A.12 (AFP brief), TROC Educator 3, p222 at A16 – he says:

*“Within, I don’t know, timewise, time’s just – it was out there, it was happening, I suppose, timewise, so I can’t be exact on those things, but within about thirty seconds or so of me doing that quick assessment [of Adriaan], turning him onto his side and, ah, then starting to check for his breathing, a lady came down the ... walking path that goes up Mount Ainslie...”*

<sup>107</sup> Exhibit A.34 (AFP brief), Statement of BC, p505-508

<sup>108</sup> Exhibit A.7 (AFP brief), TROC Educator 1, p77 at A95-98

<sup>109</sup> Exhibit A.33 (AFP brief), 000 call transcript, p487-488

<sup>110</sup> Exhibit A.12 (AFP brief), TROC Educator 3, p223 at A16, Exhibit A.34 (AFP brief), Statement of BC, p506 at [13]

<sup>111</sup> Exhibit A.34 (AFP brief), ACTAS Incident Log, p503-4

<sup>112</sup> Exhibit A.36 (AFP brief), Statement of Daniel Keyte, p509

71. The paramedics attended the scene and took over First Aid from Educator 3. ACT Fire and Rescue (“ACTFR”) also arrived and assisted ACTAS in conducting chest compressions.<sup>113</sup>
72. About 15 minutes after ACTAS arrival, and after continuous chest compressions and a shot of adrenaline, Adriaan’s circulation spontaneously returned. ACTAS paramedics then placed Adriaan onto a stretcher and, with the assistance of ACTFR officers, conveyed him into the ambulance before departing the location for hospital.<sup>114</sup>
73. Adriaan’s heart again stopped beating during that journey to hospital. Compressions were recommenced and a further adrenaline shot was administered. This treatment had the effect of returning spontaneous circulation.<sup>115</sup>

### **Adriaan’s Death**

74. ACTAS began transporting Adriaan to The Canberra Hospital (“TCH”) at about 11.31 am.<sup>116</sup> They arrived at about 11:47am.<sup>117</sup>
75. On arrival at hospital, Adriaan underwent vascular access intubation and fluid resuscitation. He was transported for a Computed Tomography (“CT”) scan with ongoing resuscitation due to gross instability in his circulation.<sup>118</sup>
76. The CT scan showed severe brain and skull injury, a severe spinal cord injury and a fractured mandible.<sup>119</sup>
77. A discussion was held amongst Adriaan’s treating doctor. They concluded that there was no appropriate surgical intervention available and that Adriaan’s injuries were not survivable. Adriaan’s family were informed of this clinical opinion and made the decision to provide pain relief and cease life support to Adriaan.<sup>120</sup>
78. At about 2.56pm, with his family present, Adriaan was formally pronounced life extinct in hospital.<sup>121</sup>

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<sup>113</sup> Exhibit A.36 (AFP brief), Statement of Daniel Keyte, p510 generally

<sup>114</sup> Exhibit A.37 (AFP brief), Statement of Hilary Dingjan, p516-7 generally

<sup>115</sup> Exhibit A.37 (AFP brief), Statement of Hilary Dingjan, p517 generally

<sup>116</sup> Exhibit A.34 (AFP brief), ACTAS Incident Log, p503-4

<sup>117</sup> Exhibit A.34 (AFP brief), ACTAS Incident Log, p503-4; see also Exhibit A.24 (AFP brief), Statement of Dr Hall, p359 at [4]

<sup>118</sup> Exhibit A.24 (AFP brief), Statement of Dr Hall, p359 generally

<sup>119</sup> Exhibit A.24 (AFP brief), Statement of Dr Hall, p359 generally

<sup>120</sup> Exhibit A.24 (AFP brief), Statement of Dr Hall, p359 generally

<sup>121</sup> Exhibit A.19 (AFP brief), Statement of Life Extinct, p339

79. Dr Hall, the primary ED doctor who treated Adriaan, considered that the cause of Adriaan's death was circulatory failure, secondary to traumatic brain injury consistent with blunt force trauma to the head.<sup>122</sup>
80. Adriaan did not regain consciousness at any point following the incident.<sup>123</sup>
81. Adriaan's death was reported to the ACT Coroner in accordance with section 13(1)(k) of the *Coroners Act 1997*, as apparently being the result of an accident.<sup>124</sup>
82. At about 5:58pm, Police were advised that the Chief Coroner was satisfied that there was no need for a post-mortem examination in the circumstances and released Adriaan's body to his family.<sup>125</sup>

### **The Investigation**

83. ACT Policing commenced an investigation of the circumstances of Adriaan's death on behalf of the Coroner.
84. WorkSafe ACT, in their role as the relevant work health safety regulator, conducted its own investigation and also assisted with the coronial investigation.
85. Police Forensics officers attended TCH and obtained imagery of Adriaan and the Resuscitation department where he was treated.<sup>126</sup> Police Forensics attended the scene at Remembrance Memorial Park where the log was located and photographed, measured, and weighed it.<sup>127</sup>
86. As a result of their investigation, Police concluded that there were no suspicious circumstances in Adriaan's death.<sup>128</sup>
87. After being provided with the evidence obtained during the WorkSafe ACT investigation, on 9 October 2020, the Office of the Director of Public Prosecutions (ACT) formally advised WorkSafe ACT they would not be instituting proceedings in this matter due to insufficient prospects of conviction.<sup>129</sup>

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<sup>122</sup> Exhibit A.24 (AFP brief), Statement of Dr Hall, p360 at [13]

<sup>123</sup> Exhibit B.2 (WorkSafe brief), Inspector Majer's summary, p5 at [10]

<sup>124</sup> Exhibit A.40 (AFP brief), Police Coronial Report, p531-540

<sup>125</sup> Exhibit A.2, Statement of F/C James, p6

<sup>126</sup> Exhibit A (AFP brief):

- A.21, Images taken by Scott (separately included in brief due to distressing content)
- A.22. Case Note Entry by Wensing, p353-356

<sup>127</sup> Exhibit A (AFP brief):

- A.8, Images taken by Fallon, p89-193
- A.9, Case Note Entry by Trebilcock, p194-195

<sup>128</sup> Exhibit A.2, Statement of F/C James, p2

<sup>129</sup> Exhibit B.2 (WorkSafe brief), Volume 1, Item 2, Inspector Majer's summary, p21 at [109]

88. Thereafter, briefs of evidence was submitted to the Coroner. Additional material was also submitted on behalf of the Roodt family.

### **The Aftermath**

89. Since Adriaan's tragic death the activity 'Capture The Flag' is no longer played on the Mount Ainslie site. Since the incident no other games or activities of this nature are undertaken by Campbell High School on Mount Ainslie in the area which 'Capture The Flag' was played on 18 October 2018. All invasion fitness games such as 'Capture The Flag' are now played on the school grounds in areas such as the oval, gym or outdoor courts.<sup>130</sup>

### **Relevant Directorate Policies and Procedures in place in 2018**

90. The ACT Education Directorate Physical Education and Sport Policy<sup>131</sup> defined 'sport' as:

*'The collective term for all physical activity formalised by a set of rules, usually competition based. In a school environment, sport can occur within the physical education curriculum and as an extracurricular activity.'*

91. The Physical Education and Sport Procedures<sup>132</sup> defined 'a physical activity' as *'being all movements in everyday life which accelerates the heart rate'*.

92. The Excursions Policy<sup>133</sup> defined an 'excursion' as:

*'a school related activity by students, under the supervision of a teacher/s, directly related to the curriculum of the school. An excursion is a variation to normal activity and is not predominately recreational.'*

93. There were four types of categories of excursions defined in the Excursions Procedures.<sup>134</sup> Category A excursions are described as *'movement, generally on foot or by bicycle in the vicinity of the school or a variation to normal activity'*. The minimum supervision ratio is one teacher per class group.

94. Part 3.1 of the Physical Education and Sports Procedures stated:

*'A comprehensive list of physical education activities and sports activities approved for ACT public schools is provided in the 'Physical Education and Sport: Activity-Specific Mandatory Guidelines'.*

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<sup>130</sup> Exhibit D.1, Statement of Educator 8, p1-2

<sup>131</sup> Exhibit B.21 (WorkSafe brief), p2093-2096

<sup>132</sup> Exhibit B.22 (WorkSafe brief), p2097-2104

<sup>133</sup> Exhibit B.19 (WorkSafe brief), p2083-2085

<sup>134</sup> Exhibit B.20 (WorkSafe brief), p2086-2092

95. The Physical Education and Sport: Activity-Specific Mandatory Guidelines<sup>135</sup> did not list 'Capture The Flag' as an approved activity.
96. Part 3.3 of the Physical Education and Sports Procedures stated:  
*'Additional procedures and revisions are issued from time to time, either on request or because new activities are recognised. Schools will be advised of changes through appropriate communication channels. The Directorate's Learning and Teaching Branch will consult with Governance and Community Liaison Branch prior to granting approval.'*
97. Section 2.8 of the Physical Education and Sports Policy stated:  
*'Teachers planning to conduct any activities not listed as approved physical education or sport activities must submit a proposal to the Learning and Teaching Branch for consideration to be included as an approved activity. The Directorate will notify schools of additional approved activities.'*
98. Prior to this incident, the game of 'Capture The Flag' had not been formally approved or recognised by the Directorate as a physical activity.<sup>136</sup>
99. The Physical Education and Sport: Activity-Specific Mandatory Guidelines included a category of activity described as "minor games". The introduction to that section of the guidelines stated:  
*'All activities and personnel must be approved by the principal.*  
*Minor games are frequently used to reinforce basic skills and lead-up games to major sports. Care is needed in the conduct of such games and teachers should be familiar with the safety requirements of the major game for which the lead-up game is designed.*  
*Where a minor game is used as a lead up to or replacement for the full game, teachers must follow safety guidelines which remain applicable to the game in its modified form.'*
100. Prior to this incident, there was no specific list of minor games approved by the principal of Campbell High School.
101. Section 5(1) of the Physical Education and Sports Policy stated:  
*The principal is responsible for a number of things including:*  
*(a) Verifying appropriate safety measures are in place in accordance with risk assessment and management plans.*

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<sup>135</sup> Exhibit B.25 (WorkSafe brief), p2118-2223

<sup>136</sup> Exhibit B.2 (WorkSafe brief), Inspector Majer's summary, p7 at [15]

(b) *Ensuring all the physical education and sport activities meet the requirements of relevant Directorate policies.'*

102. Part 3.4 of the Physical Education and Sports Procedures stated:

*'The principal is responsible for a number of things including;*

*(a) ensure that all teachers delivering physical education activities and sporting events are aware of their responsibilities.*

*(b) ensure where appropriate Risk Assessment and Management Plan is completed for physical education activities and sporting events.*

*(c) ensure the planning and delivery of all physical education and sporting events meet the requirements of relevant Directorate policies and procedures.'*

103. Part 3.5 of the Physical Education and Sports Procedures stated:

*'Teachers delivering physical education and sporting activities will:*

*(a) be familiar with the Physical Education and Sports Policy, Physical Education and Sport: Activity-Specific Mandatory Guidelines and implement all requirements for individual sports.'*

104. Part 3.23 of the Physical Education and Sports Procedures stated:

*'Part of the planning process for each physical education activity and sporting event is the requirement to complete a Risk Assessment and Management Plan. This is a careful examination of what could cause harm to participants during the course of the activity and a plan of practical risk control measures that the teacher in charge of the physical activity and sporting event will put in place to minimise (to an acceptable level) the risk of harm occurring.'*

105. Part 3.24 of the Physical Education and Sports Procedures stated:

*Physical education sport or activities conducted on the school site as part of the core physical education curriculum do not require a risk assessment or management plan. Inclusive strategies for maximising student participation and safe guarding student safety and wellbeing must be evident in the curriculum program.'*

106. Part 3.25 of the Physical Education and Sports Procedures stated:

*'All physical education or sport activities/events conducted off the school site (e.g. athletics or cross-country events) require a Risk Assessment and Management Plan and adherence to the Physical Education and Sport: Activity-Specific Mandatory Guidelines.'*

107. There was no specific risk assessment or planning documentation created or otherwise in existence at Campbell High School relating to the 'Capture The Flag' game for 18 October 2018.

108. There were no risk assessment or planning documentation created or otherwise in existence at Campbell High School relating to the 'Capture The Flag' game at Campbell High School generally (irrespective of playing location) prior to this incident.
109. There were no risk assessment or planning documentation created or otherwise in existence at Campbell High School relating to school activities occurring at Remembrance Memorial Park prior to this incident
110. The game of 'Capture The Flag' had not been formally approved or recognised by the principal of Campbell High School as an approved physical activity prior to this incident. There was an undated list of games played at Campbell High School from an unknown author in which 'Capture The Flag' was mentioned as being played on Reid Oval, with no mention of any activity being played on Mount Ainslie.<sup>137</sup>

**C. A FEW COMMENTS ON WHAT FOLLOWS**

111. It is important for the parties to know that I have read all of their counsel's submissions and submissions in reply on the issues. I have agreed and disagreed with counsel's very helpful submissions at various points. This does not mean that I have disregarded any submission or not given it full weight – I have indeed done so. I thank counsel for their depth of analysis of the materials and great level of detail that is evident in their submissions. Those submissions have been of great assistance to my consideration and re-consideration of this matter.
112. I have highlighted comments, findings and recommendations in bold text along the way from this point on and made some further ones at the end of the document.

**D. ISSUES**

113. The following issues for consideration were developed by counsel assisting, provided to the parties, and approved by me. They represent what I understand to be an agreed distillation of the issues that are central to my findings under s 52 of the *Coroners Act 1997*:
1. Whether the game of 'Capture The Flag', specifically when conducted at Remembrance Memorial Park in 2018, was to be properly characterised (within the meaning of these terms in ACT Education Directorate policies and procedures) as: a. Taking place on the school site; b. Taking place off the school site; c. Physical activity; d. Sport activity; e. A classroom activity; f. A recreational activity; g. A physical education activity; h. An excursion; i. A

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<sup>137</sup> Exhibit B.2 (WorkSafe brief), Inspector Majer's summary, p18 at [103]

- minor game; j. An outdoor education activity; or k. Some combination of the above.
2. Whether the game of 'Capture The Flag' conducted at Remembrance Memorial Park on the day of the incident was conducted in accordance with the relevant guidance material (including policies and procedures) in force at that time.
  3. The appropriateness of that guidance material.
  4. Whether there was appropriate supervision of the game on that day in all the circumstances of the incident.
  5. Whether there was appropriate training and guidance given to the teachers who conducted the game on that day.
  6. Potential recommendations in relation to matters of public safety or other matters.
  7. Any other relevant issue that arises during the course of the inquest.

### **What was the activity**

114. The ACT Education Directorate ("the Directorate") has many documented policies and procedures that relate to physical education and off school activities. Campbell High School also has its own internal documentation about physical education ("PE") and off-school activities. In 2018 these policies and procedures were tiered depending on the specific nature of the activity in question, with different requirements depending upon the activity's location, character, inherent risk, and other relevant factors.
115. It became clear during the WorkSafe ACT investigation that there were differing opinions held by Campbell High School teachers as to how the game of 'Capture The Flag', specifically when conducted at Remembrance Memorial Park in 2018, was to be properly characterised. Even after looking at the policies and procedures, some teachers remained unsure of the correct categorisation.
116. At the time of this incident Educator 4 was a teacher and a senior staff member at the school.<sup>138</sup> He described 'Capture The Flag' as a fitness activity that was very popular and one that the children loved playing.<sup>139</sup> Educator 4 repeatedly characterised 'Capture The Flag' as 'a normal classroom activity'<sup>140</sup> but acknowledged difficulty in how to

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<sup>138</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2227 L21-33

<sup>139</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2232 L19-20

<sup>140</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2254 L26-27, p2258 L19-21, p2259 L10-13, p2260 L7-16

properly characterise the activity as a class activity, an approved class activity or an outdoor education activity.<sup>141</sup> He acknowledged that 'Capture The Flag' could also be classified as an excursion<sup>142</sup> and also an outdoor adventure activity<sup>143</sup> under the Directorate's policies.

117. Educator 7 was in a senior position at Campbell High School. Prior to taking up that position Educator 7 was a senior teacher at the school.<sup>144</sup> Educator 7 claimed in PE it was a strongly held belief that 'Capture The Flag' was probably the most popular activity they conducted and it received the highest levels of engagement of students engaging in the fitness lessons of any sport or fitness activity. The PE faculty saw it as being a very positive and beneficial activity.<sup>145</sup> She felt 'Capture The Flag' may have been a classroom activity,<sup>146</sup> or a modified game as detailed in the mandatory PE policy.<sup>147</sup> When asked if the game on Mount Ainslie fitted in to the Excursion Policy Educator 7 stated that before the incident she did not believe so; since the incident they had looked at in the policies but believed it was still a grey area.<sup>148</sup> She stated that she did not think it was an excursion because there was an understanding that excursions to areas immediately adjacent to the school do not require specific excursion proposals every time and that they are included in the general consent that parents give for their children at the start of the year.<sup>149</sup> Educator 7 agreed that 'Capture The Flag' was a sporting physical activity and that it would need to be an approved activity.<sup>150</sup> She stated it would have been in the PE and Sport Activity-Specific Mandatory Guidelines, but acknowledged when shown the relevant document that it was not included.<sup>151</sup>
118. Educator 1 was a teacher at Campbell High School.<sup>152</sup> He was of the opinion the game was an approved game within the Directorate,<sup>153</sup> and would have been approved by the principal.<sup>154</sup> Educator 1 said that he considered 'Capture The Flag' was a normal classroom activity but acknowledged that it also fitted into the excursion classification.<sup>155</sup>

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<sup>141</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2256 L14-23

<sup>142</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2261 L12-25

<sup>143</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2264 L36-2265 L41

<sup>144</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2331 L8-18

<sup>145</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2338 L31-35

<sup>146</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2340 L31-32

<sup>147</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2341 L3-5

<sup>148</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2344 L1-9

<sup>149</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2344 L28-p2345 L16

<sup>150</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2349 L15-32

<sup>151</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2349 L25-39

<sup>152</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2286 L39-42

<sup>153</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2294 L27-31

<sup>154</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2301 L6-9

<sup>155</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2306 L3-16 &13-22

He said that when conducted on Mount Ainslie it was an excursion and when conducted on the oval it was within the sport and physical activity area.<sup>156</sup>

119. Educator 8 held a senior position at Campbell High School.<sup>157</sup> He had been acting in the position for the 10 weeks prior.<sup>158</sup> Educator 8 was aware of 'Capture The Flag' and was aware it had been played on Mount Ainslie for some time, although he was unaware that it was being played on the day of the incident.<sup>159</sup> He had played it before in 2006 and believed it to be a physical education activity.<sup>160</sup> Educator 8 was unaware if the game had been formally recognised by the Directorate.<sup>161</sup> He was unaware of the possible application of the Excursions Policy to the game.<sup>162</sup>
120. Educator 9 was a senior staff member of Campbell High School and had previously occupied the same position as Educator 8.<sup>163</sup> She stated 'Capture The Flag' was played at Campbell High School on Mount Ainslie and agreed it was part of PE curriculum.<sup>164</sup> She stated Mount Ainslie, the War Memorial and Reid Oval have, as a matter of culture, been considered an extension of the school grounds for many years.<sup>165</sup> She added that parents gave their consent for children to use those particular learning spaces when they start at the school.<sup>166</sup> She assumed 'Capture The Flag' was an approved activity because it was played in a lot of schools.<sup>167</sup>
121. In response to a Section 155 Notice issued by WorkSafe ACT under the *Work Health and Safety Act 2011*, the Directorate stated that 'Capture The Flag' was a minor game, that the lower slopes of Mount Ainslie were part of the Campbell High School site and accordingly, a risk assessment plan was not required for this PE class.
122. **I find that the relocation of the game to Remembrance Memorial Park both changed the nature of the game and how it was to be played. Accordingly, different guidance material and requirements beyond those for mere classroom activities were applicable.**
123. The classification by some teachers as 'a classroom activity' appears tied up in the fact that parents of students at Campbell High School gave enduring consent for certain

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<sup>156</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2317 L40-42

<sup>157</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2369 L25-39

<sup>158</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2370 L8-14

<sup>159</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2375 L35-41

<sup>160</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2375 L35-p2376 L2

<sup>161</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2378 L19-22

<sup>162</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2380 generally

<sup>163</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2398 L21

<sup>164</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2410 L23-37

<sup>165</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2411 L23-29 & p2413 L3-16

<sup>166</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2413 L40-p2414 L3

<sup>167</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2414 L14-20

supervised activities approved by the principal to take place off school grounds and therefore no specific, additional excursion permission was required.<sup>168</sup> The close vicinity of Mount Ainslie to the school grounds seems also to have been a relevant factor in this classification.<sup>169</sup> However, this does not denigrate from the fact that leaving the school grounds always constituted an excursion and fell under the Excursions Procedures, given particularly the definition of Category A excursions as “movement generally on foot or by bicycle in the vicinity of the school or a variation to your normal activity”.<sup>170</sup>

124. The parental consent on file at Campbell High School for Adriaan was dated 18 February 2016. The form of that consent was in terms of activities approved by the principal, and the evidence discussed below suggests that at no time was ‘Capture The Flag’ officially approved by a principal of Campbell High School.
125. **I find that the game of ‘Capture The Flag’, specifically when conducted at Remembrance Memorial Park in 2018, was very obviously a physical education activity and it was not conducted on the school site. It could also have been characterised under Directorate policies and procedures in force at the relevant time as each of:**
- (a) Taking place off the school site;**
  - (b) A physical activity;**
  - (c) A sport activity;**
  - (d) A recreational activity;**
  - (e) A physical education activity;**
  - (f) An excursion;**
  - (g) A minor game; and**
  - (h) An outdoor adventure activity.**

#### **What was the relevant Guidance Material, and was it complied with**

126. As ‘Capture The Flag’ could be characterised under Directorate policies and procedures as multiple types of activities, it follows that there were an amalgamation of multiple and differing requirements:

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<sup>168</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2413 L40-p2414 L3

<sup>169</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2311 L9-10; Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2412 L14-27

<sup>170</sup> Exhibit B.20 (WorkSafe Brief), ACT Education Directorate Excursion Procedures, p2088 at [3.4]

- (a) For a physical activity, there was a general requirement that the school principal should develop a risk assessment and management plan;<sup>171</sup>
- (b) As it took place off, but close, to the school site, the activity could be considered a Category A excursion. In those circumstances the venue had to be approved by the principal;<sup>172</sup>
- (c) If predominantly a recreational activity, the Excursions Policy did not apply;<sup>173</sup>
- (d) For a Category A excursion, the completion of a risk assessment proforma was recommended but not mandatory.<sup>174</sup> Notification of a category A excursion must have been sent to parents;<sup>175</sup>
- (e) For a physical education or sport activity conducted off the school site, a risk assessment and management plan was required to be completed.<sup>176</sup> Informed consent and current medical information was required from each student's parents, unless exempted in the Excursion Procedures;<sup>177</sup>
- (f) If the activity was not a formally approved activity, a proposal for its approval must have been submitted to the Directorate for consideration to be included as an approved activity;<sup>178</sup>
- (g) If a minor game was being conducted in the school's immediate environs, a risk assessment was not required, but the activity must have been approved by the principal;<sup>179</sup> and
- (h) For an outdoor adventure activity a risk assessment is mandatory.<sup>180</sup>

127. A former Campbell High School teacher, Educator 6, was asked by investigators to work out where 'Capture The Flag' when played on Mount Ainslie fitted in relation to the

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<sup>171</sup> Exhibit B.21, ACT Education Directorate Physical Education and Sport Policy, p2094 at [5.1]

<sup>172</sup> Exhibit B.22, ACT Education Directorate Physical Education and Sport Procedures, p2100 at [3.19]

<sup>173</sup> Exhibit B.19 (WorkSafe Brief), ACT Education Directorate Excursion Policy, p2084 at [10.1] (definitions)

<sup>174</sup> Exhibit B.20 (WorkSafe Brief), ACT Education Directorate Excursion Procedures, p2087 at [3.1]

<sup>175</sup> Exhibit B.20 (WorkSafe Brief), ACT Education Directorate Excursion Procedures, p2089 at [3.7]

<sup>176</sup> Exhibit B.22, ACT Education Directorate Physical Education and Sport Procedures, p2101 at [3.23]-[3.25]

<sup>177</sup> Exhibit B.21, ACT Education Directorate Physical Education and Sport Policy, p2093 at [2.7]

<sup>178</sup> Exhibit B.21, ACT Education Directorate Physical Education and Sport Policy, p2093 at [2.8] & Exhibit B.22, ACT Education Directorate Physical Education and Sport Procedures, p2098 at [3.3]

<sup>179</sup> Exhibit B.25, ACT Education Directorate Physical Education and Sport Activity-Specific Mandatory Guidelines, p3013-4 at [22]

<sup>180</sup> Exhibit B.24, ACT Education Directorate Outdoor Adventure Activities Procedures, p2113 at [3.27]-[3.30]

policies. He replied *"I would need to be given substantial time off work to make that happen...it's not an easy task"*.<sup>181</sup>

128. The expert report of Dr Dallat and Professor Salmon (Dallat/Salmon) confirms that any of the relevant policies could relate to the 'Capture The Flag' activity.<sup>182</sup>
129. An expert report by John Leyshon (Leyshon), a retired teacher and acting principal of some 40 years' experience including in the ACT, includes an opinion<sup>183</sup> that paragraph 3.25 of the Physical Education and Sports Procedures applied as the location of the activity was not on the school grounds and mandated a risk assessment and management plan.<sup>184</sup>
130. **It was submitted that it was a grey area<sup>185</sup> as to whether a risk assessment and management plan was formally required to be undertaken under the relevant policies and guidelines in place at the time. However, I find that a risk assessment and management plan should have been completed as the activity was very obviously a physical education activity and it was not conducted on the school site.**
131. As Mr Leyshon said "even without the directions of the procedures document an experienced teacher should have intuitively prepared a risk assessment for this type of activity on this site".<sup>186</sup>
132. My finding is fortified by the evidence given by Educator 1 to investigators when asked about risk assessments:
- "I do remember about four or five years ago [Educator 6] said, "I want risk assessments for all activities that we do offsite," I wasn't a part of that because I wasn't in that faculty at that time but I do vaguely remember that PE staff were going to go through the process of writing those but then he left the school and moved to a new school before that process maybe was carried out if that makes sense. I haven't actually looked to see if there is a risk assessment."*<sup>187</sup>
133. Dallat/Salmon say that this specific incident could reasonably have been foreseen, but that complacency and long-term delivery of 'Capture The Flag' without serious incident or injury made it very unlikely that the incident was foreseeable by the staff. They

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<sup>181</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 6, p2672 L8-36

<sup>182</sup> Exhibit E.1, p17 at [8]-10]

<sup>183</sup> Exhibit E.2, p28

<sup>185</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2344 L7

<sup>186</sup> Exhibit E.2, p28

<sup>187</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2300 L39-45

suggest challenging boundaries and actions, such as attempting to move logs, are reasonably foreseeable where young people are placed in 'gaol' for an extended period of time without adult supervision.<sup>188</sup>

134. Leyshon qualified his opinion on this point, saying that the specific instance of a very heavy tree branch being lifted into an upright position may not have been foreseen "*even by the best risk assessment*", but that it was reasonable to predict that adolescent boys may engage in mischief and misbehaviour, particularly if left bored and unattended, or in small groups.<sup>189</sup>
135. There were in existence at Campbell High School risk assessment and management plans for "Bushwalking, Hiking and Orienteering" (for Morton National Park, Namadgi National Park and Canberra Nature Park)<sup>190</sup> and for the 2017 cross-country carnival which was held at the base of Mount Ainslie.<sup>191</sup> In the latter document completed for the cross-country carnival, there were 20 supervising staff designated for 400 students (a ratio of 1:20).
136. A number of risks were identified including medical emergency through non-incident (i.e. severe chest pains, asthma attack), medical emergency through incident (i.e. slip and fall, penetrating wounds, hit by vehicle), separation from group, unacceptable student behaviour, walking to/from venue (hit by vehicle) and incident/injury. For "unacceptable student behaviour", the likelihood of this occurring was assessed as "possible" and the consequence was assessed as "moderate"; the stated control measure used to address this risk was to brief the students on expectations prior to the departure to the cross-country carnival.
137. **I find that the risk of injury to a student from the natural environment at Remembrance Memorial Park while playing 'Capture The Flag' was not known to staff at Campbell High as they had not been provided with or conducted a risk assessment and management plan. The risk assessments that had been completed were cursory and unwritten and failed to properly assess and appreciate all foreseeable risks including the risk of mischief and misbehaviour associated with bored teenage boys.**

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<sup>188</sup> Exhibit E.1, p18-19 at {18}-[22]

<sup>189</sup> Exhibit E.2, p28

<sup>190</sup> Exhibit A.28, p373-386

<sup>191</sup> Exhibit A.29, p387-392

138. When shown by investigators a number of the policies and procedures including the PE and Sport Policy, the PE and Sport Procedures and the Outdoor Adventure Activities Policy, and asked if they had any relationship to 'Capture The Flag', Educator 8 replied:
- "I don't think they - I can confidently say they haven't been used in relation to Capture The Flag."*<sup>192</sup>
139. Educator 8 said he was not asked to approve Mount Ainslie as a venue for 'Capture The Flag', or the game itself.<sup>193</sup>
140. Educator 9 did not think a risk assessment for 'Capture The Flag' existed but knew the PE staff would have carried out a briefing with the students and undertaken a dynamic risk assessment which is part of their work which they have to do for every activity.<sup>194</sup> She stated:
- "... there's a really strong application of professional judgement that happens there, but I have not ever really thought that it would have fallen into requiring a risk assessment. But I can see now of course that we would like to have one."*<sup>195</sup>
141. Educator 1 said that he did not personally foresee that a risk assessment was needed for 'Capture The Flag'.<sup>196</sup> He also told investigators that after the incident he offered to draw up a risk assessment for 'Capture The Flag' but was directed not to prepare one.<sup>197</sup>
142. The uncertain nature of how the game was defined created an almost impossible maze of policy for the teachers to navigate. There was no approval in place for Capture The Flag at school principal or Directorate level. One of the reasons for that is that an assessment of the proper categorisation for the activity had never been conducted despite the many years that the activity had been conducted over
143. Whilst the game can be most easily categorised as a physical education activity conducted off site, that does not mean that it was not also properly categorised as an excursion. The fact that an assessment of categorisation had not been conducted does not mean that the requirements of multiple categories of activity did not require compliance. It also does not void a basic requirement for the Directorate and principals to approve school-led activities at their schools.

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<sup>192</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2381 L41-42

<sup>193</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2386 L9-12

<sup>194</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2418 L41-p2419 L4

<sup>195</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2419 L8-11

<sup>196</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2306 L36-37

<sup>197</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2320 L9-26

144. I find that the requirements dictated by the Directorate and applicable to the game of 'Capture The Flag' played on 18 October 2018, were not complied with in relation to this incident. This is in regard both to the lack of a risk assessment and management plan and the fact that Adriaan's parents were not notified of the intended game. Further, and regardless of how the policies at the time might have been interpreted one possible way or another, the game was an activity conducted by the school that was not approved by the school principal or the Directorate at all.

**Was (and is) the guidance material appropriate**

145. The Dallat/Salmon report opines that neither the 'Capture The Flag' activity per se, nor the environment at Remembrance Memorial Park where it was played in 2018, was unsuitable for the age group and previous experience of the students present on 18 October, but qualify their statement with the proviso "*with appropriate risk assessment, supervision and structure*".<sup>198</sup>
146. Leyshon disagreed with this assessment, saying that in addition to the supervision aspect (discussed below) the site at Remembrance Memorial Park was always unsuitable, because of environmental damage and the risks to personal safety posed to students on the site was far too great.<sup>199</sup>
147. I prefer the conclusion and reasoning of Dallat/Salmon, that the activity might well have been appropriately and safely conducted at Remembrance Memorial Park under different game rules and arrangements (particularly in relation to levels of supervision and supervision ratios).
148. The Territory has submitted that my comment in the next paragraph about the inadequacy of the guidance material is "not warranted by the evidence".<sup>200</sup> The evidence speaks for itself and I reject that submission.
149. **The fact that 'Capture The Flag' as an activity was so difficult to categorise and was capable of falling into multiple categories meant that there was an obvious inadequacy in the guidance material. Because there were differing requirements under each activity's relevant policy or procedure, without knowing how the activity fitted into this policy maze, the teachers were not able to define what**

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<sup>198</sup> Exhibit E.1 p15 at [1]

<sup>199</sup> Exhibit E.2 p28-29. Leyshon comments further that he finds the reports of no serious injuries from the game when played on Mount Ainslie surprising, and attributes this to good fortune rather than good management: see Exhibit E.2, p27-8

<sup>200</sup> Submissions by the Australian Capital Territory in response to s55 notice, provided to the Court on 10 February 2023, paragraph 65.

**requirements were to be followed. This demonstrates, prima facie, the inadequacy of the guidance material that was in place in 2018.**

150. Educator 6, a former Campbell High School teacher interviewed by Worksafe ACT, said in reference to the PE and Sport Activity-Specific Mandatory Guidelines:

*“... [this is the] one that I have the least amount of faith in at all because the, because the requirements that it lists to run some of these activities are just absolute preposterous.”<sup>201</sup>*

151. Dallat/Salmon stated that the ‘Capture The Flag’ activity on 18 October 2018 was not planned in a manner to support appropriate risk assessment and management.<sup>202</sup> They also say that the policies were difficult to understand, interpret and apply,<sup>203</sup> and that the risk management systems designed to support the ACT Education Directorate were inadequate.<sup>204</sup> They suggested the implementation of strategies to reduce the likelihood of such an incident, including developing clear policies, procedures and processes conducting these activities, adequate communication and training about those policies, procedures and processes, improved IT system to locate and review those policies, improved principal induction and support which enables principals to understand risk management requirements, communication of changes to policies and procedures, provision of adequate risk assessment methods, adequate and formal communication and training of risk assessment methods, improved reporting and sharing of knowledge, feedback mechanism over policies and procedures, and formal networks for sport, PE and outdoor adventures.<sup>205</sup>

152. Following Adriaan's death, the Director-General of the ACT Education Directorate commissioned an internal review of the management of all Health and Physical Education (“HPE”) activities in ACT public schools.<sup>206</sup> The review examined:

- (a) All relevant policies, procedures and guidelines;
- (b) Three other jurisdictions’ policies, procedures and guidelines;
- (c) Workplace health and safety;
- (d) Risk management;
- (e) First aid;

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<sup>201</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 6, p2673 L42-45

<sup>202</sup> Exhibit E.1 p15 at [3]

<sup>203</sup> Exhibit E.1 p17 at [8]

<sup>204</sup> Exhibit E.1 p18 at [20]

<sup>205</sup> Exhibit E.1 p20 at [26]-[37]

<sup>206</sup> Exhibit D.2A, Review Draft Report (p20-61); Exhibit D.2, Statement of Jason Borton, p5 at [15]

- (f) Responding to incidents and incidents;
- (g) Supervision and ratios;
- (h) Role of school leaders in implementing HPE planning, preparation and approval;
- (i) Qualifications and professional learning; and
- (j) The role of the Education Support Office (“ESO”).<sup>207</sup>

153. The review did not make specific recommendations but identified areas of strength and opportunities for enhancement.<sup>208</sup>

154. During the course of the review, the Director-General of the ACT Education Directorate decided to establish a Taskforce to implement the agreed findings from this review including opportunities for enhancing existing practice. The Taskforce was also able to propose additional enhancements to areas not covered by this review.<sup>209</sup>

155. The Taskforce commenced its work on 4 February 2019 and completed a report in May 2019.<sup>210</sup> According to Jason Borton, the executive lead on the Taskforce, the Taskforce:

- (a) conducted a systematic review of the policies, procedures and guidelines applicable in the space, including an analysis of the relationship between each of these documents;
- (b) conducted a rigorous review of Health and Physical Education (HPE) activities planned by schools for Term 1, 2019 including risk assessment and management plans;
- (c) consulted with HPE leaders (that is, the most senior HPE teacher leading the HPE faculty for each High and Senior Secondary College) regarding their professional learning requirements;
- (d) collected exemplars of high quality HPE risk assessments and management plans to share with other schools to promote quality practices;
- (e) convened a secondary principals’ forum, incorporating an induction package, in March 2019; and

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<sup>207</sup> Exhibit D.2A, Review Draft Report, p22

<sup>208</sup> Exhibit D.2A, Review Draft Report, p22

<sup>209</sup> Exhibit D.2A, Review Draft Report, p22

<sup>210</sup> Exhibit D.2B, Health and Physical Education in Public Schools Taskforce Report dated May 2019, p62-184

- (f) convened in March 2019 a Health and PE Leaders Workshop incorporating an induction package.<sup>211</sup>

156. Substantive changes implemented by the Taskforce include:

- (a) Schools were required to define their boundaries and school site, having regard to advice that areas of public land and bushland which were outside the school boundaries and or were separated from the school by a road could not form part of the school site.<sup>212</sup> Following the completion of this task the Directorate formally approved school sites for the purpose of excursions.<sup>213</sup> It is of particular relevance to this incident that the Taskforce has decided that neither Reid Oval nor the public land adjacent to the school that forms part of Mount Ainslie are approved school sites for the purpose of excursions for Campbell High School;<sup>214</sup>
- (b) Schools were required to prepare risk assessments and management plans for particular activities, with the assistance of example templates and tools provided by the Taskforce;<sup>215</sup>
- (c) The multiple, overlapping policies and procedures that existed in the PE, sport and outdoor education space were replaced with two comprehensive and simplified policies and procedures for physical activities and excursions. These documents<sup>216</sup> had been prepared in consultation with internal stakeholders, external sporting organisations and peak bodies and by having regard to policies and procedures from other Australian jurisdictions;<sup>217</sup>
- (d) A communications plan was developed to ensure that Taskforce findings were communicated to school leaders and staff. Work was also done to increase accessibility to policies and procedures;<sup>218</sup> and
- (e) There is now ongoing review of HPE and excursion policies and procedures.<sup>219</sup>

157. Mr Borton advised that under the new procedures, the game of 'Capture The Flag' would be considered a 'common physical activity', and as such, when conducted within the

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<sup>211</sup> Exhibit D.2, Statement of Jason Borton, p6 at [18] & [21]

<sup>212</sup> Exhibit D.2, Statement of Jason Borton, p9-10 at [32]-[38]

<sup>213</sup> Exhibit D.2C, Approved School Sites for the Purpose of Excursions dated November 2020, p185-295

<sup>214</sup> Exhibit D.2, Statement of Jason Borton, p10 at [36]

<sup>215</sup> Exhibit D.2, Statement of Jason Borton, p8 at [24]

<sup>216</sup> Exhibit D.2D, Physical Activities Policy Suite (Identifier - 00045), p296-411 & Exhibit D.2E, Excursions Policy Suite (Identifier - 00046), p412-429

<sup>217</sup> Exhibit D.2, Statement of Jason Borton, p10-11 at [39]-[43]

<sup>218</sup> Exhibit D.2, Statement of Jason Borton, p8 at [27]-[28]

<sup>219</sup> Exhibit D.2, Statement of Jason Borton, p17 at [62]-[63]

approved school site,<sup>220</sup> requires a dynamic risk assessment but not formal risk assessment.<sup>221</sup> If the game were to be conducted outside of the approved school site, then the mandatory procedures of the new Excursions Policy would apply, requiring advance approval of the principal and completion of a formal risk assessment.<sup>222</sup> If the activity is a regular outing (an example given is use of Mount Ainslie fire trails by Campbell High School for fitness runs), staff are required to obtain authorisation from the principal (which includes a documented risk assessment and management plan) and permission from the student's parent or carer once in a 12 month period.<sup>223</sup>

158. **I agree with CA's submission that the fact that the Directorate has self-identified and rectified issues with the relevance guidance material is powerful evidence of the inadequacy of the materials that were in place in 2018. That said, I commend the Directorate for the proactive<sup>224</sup> work it has undertaken on policy since Adriaan's death.**

159. The new policies and procedures were published by the Directorate in April 2021.

#### **Was there appropriate supervision of the activity?**

160. All of the teachers interviewed were of the opinion before the incident that one teacher per class was sufficient or adequate to supervise the game of 'Capture The Flag', even when conducted on Mount Ainslie.<sup>225</sup> A class size could be up to a maximum of 32 students.<sup>226</sup>

161. If considered in light of categorisation of the activity as a Category A excursion, under the procedures as they were at the time, 'Capture The Flag' was able to be conducted under the supervision of one teacher per class.<sup>227</sup>

162. The Dallat/Salmon report suggests that the supervisory strategy was inadequate having regard to the nature of the game, the environment, the number of students who were participating and the number and placement of supervisors. **They observed that a group of students who are left unsupervised are more likely to behave in a manner that can create risks to their health and wellbeing. They noted that there was no evidence that the behaviour of the supervising teachers was inadequate or that**

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<sup>220</sup> Which no longer includes Reid Oval or Mount Ainslie – see subpara 156a above.

<sup>221</sup> Exhibit D.2, Statement of Jason Borton, p12 at [49]

<sup>222</sup> Exhibit D.2, Statement of Jason Borton, p12 at [52] & p15 at [55]

<sup>223</sup> Exhibit D.2, Statement of Jason Borton, p15 at [57]-[58]

<sup>224</sup> Before the finalisation of the inquest.

<sup>225</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2252 L42-p2253 L1; Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2339 L6-10; Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2301 L19-22 & p2323 generally; Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2377 L1-8

<sup>226</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2339 L16-28

<sup>227</sup> Exhibit B.20 (WorkSafe Brief), ACT Education Directorate Excursion Procedures, p2088 at [3.4]

the teachers were acting contrary to good practice or stated procedures.<sup>228</sup> I agree and so find with the caveat of my further finding about teacher student ratios below.

163. Mr Leyshon stated that the inability of the site to permit continuous observation of the students was one factor underlying his opinion that the Mount Ainslie site was not appropriate for the conduct of 'Capture The Flag'.<sup>229</sup> I agree and so find with the exception of finding that reduced supervision ratios (i.e. more supervisors) could have overcome this.
164. It is accepted that the students were not 'unsupervised' during the game. I find that the supervision strategy of using existing teachers without additional support was inadequate when the game was being played on Mount Ainslie. One teacher per class may well have been sufficient when the game was being played on an oval where the terrain is more or less flat, there are few visual obstructions, and all areas of the game field can be visualised easily. This was not the case for the game when it was played at Remembrance Memorial Park.
165. In light of what has been discussed above in relation to the state of policies and guidance, I agree with the submission and find that this was a failing of Campbell High School and the Directorate, not any of the individual teachers involved.
166. The Directorate's new procedures say that for any excursion there must be at a minimum of at least one teacher in charge per class group. However, the procedures also expressly reference the integral role of risk management in facilitating excursions and highlight the need for dynamic risk assessments to constantly evaluate risk.<sup>230</sup>

#### **Did the teachers conducting the activity have appropriate training and guidance?**

167. The Dallat/Salmon report suggests that the Directorate provided limited training in the access, interpretation of application of the relevant policies.<sup>231</sup> Importantly, the authors expressly opined that the level of training provided to the teachers on risk assessment and management was inadequate.<sup>232</sup>
168. Regardless of where 'Capture The Flag' specifically was conducted, teachers were generally unaware of the detail of Directorate policies and procedures. Some teachers had some knowledge of their existence but were unfamiliar with their content.

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<sup>228</sup> Exhibit E.1 p16 at [4]-[7]

<sup>229</sup> Exhibit E.2, p28

<sup>230</sup> Exhibit D.2E, Excursions Policy Suite (Identifier - 00046), p424-5, particularly [5] & [6]

<sup>231</sup> Exhibit E.1 p17 at [12]

<sup>232</sup> Exhibit E.1 p18 at [16]

169. Educator 4 told investigators he had not seen the Physical Education and Sport Policy prior to the incident,<sup>233</sup> but had a feeling he had previously seen the Physical Education and Sports Procedures when planning a school trip to the Gold Coast.<sup>234</sup> Educator 4 stated the Directorate had never provided him with any training in relation to the relevant policies, he was never notified of the existence of the policies nor had the principal drawn his attention to them.<sup>235</sup> Educator 4 said that he had read and searched for information on policies after the incident for peace of mind and googled health and physical education procedures.<sup>236</sup> Educator 4 was aware of the existence of a list of approved activities under the Directorate's Physical Education and Sports Policy but was unaware in any detail of the content of the list.<sup>237</sup>
170. Educator 1 told investigators that he knew how to conduct the activity by observing other teachers over the past six years.<sup>238</sup> He had not seen any guidelines, risk assessment or management plans for the game.<sup>239</sup> While aware of the existence of the excursion policy,<sup>240</sup> Educator 1 stated none of the PE policies and procedures had been brought to his attention until Educator 4 did so after the incident.<sup>241</sup> He said that none of the principals at the school had made him aware of the policies.<sup>242</sup>
171. Educator 7 told investigators she had never seen any written documentation, risk assessment or management plan in relation to the activity 'Capture The Flag' in any of her previous positions.<sup>243</sup> She was not aware of any policies or any guidelines that may have detailed a game such as 'Capture The Flag' generally.<sup>244</sup> After being shown a series of policies and guidelines Educator 7 stated she had not received any explicit or formal training or guidance from the Directorate or anyone else around these policies.<sup>245</sup>
172. The current and previous principals of Campbell High School had not formally approved the activity and could not say whether a risk assessment was required at the time or that they had knowledge of the relevant policies:

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<sup>233</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2260 L43-2261 L1

<sup>234</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2256 L31-42

<sup>235</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2256 L31-42, 2267-8

<sup>236</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2255-8 generally

<sup>237</sup> Exhibit B.26 (WorkSafe brief), TROC Educator 4, p2262

<sup>238</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2299 L39-43

<sup>239</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2295 L1-13, p2299 L28-31, p2300 L22-34

<sup>240</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2302 L36-p2303 K34

<sup>241</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p22315 L35-p2316 L29

<sup>242</sup> Exhibit B.27 (WorkSafe brief), TROC Educator 1, p2306 L23-26 & p2313 L17-21

<sup>243</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2338 L10-24

<sup>244</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2340 L39-43

<sup>245</sup> Exhibit B.28 (WorkSafe brief), TROC Educator 7, p2340-52 generally

173. Educator 8 told investigators he had never seen any written documentation or a risk assessment in relation to the game, whether at Campbell High School or at the other schools he had taught at in the ACT.<sup>246</sup> Educator 8 stated he had very limited familiarity with the PE policies and procedures.<sup>247</sup> He was aware of their existence, did not necessarily know there were so many, but had no formal training or instruction in regard to the policies or procedures.<sup>248</sup>
174. Educator 9 was asked roughly how many policies a principal was responsible for administering; she said she did not know the number and agreed it would be 'lots'.<sup>249</sup> She admitted she did not know of the existence of the Physical Education and Sport Activity-Specific Mandatory Guidelines.<sup>250</sup>
175. The educators' evidence supports a further contention that the lack of knowledge of Directorate policies and procedures by Campbell High School teachers was not unique to that school, but a historic and systemic issue across the public outdoor education sector in the ACT.
176. As part of their investigation WorkSafe ACT conducted a series of interviews with a group of PE and outdoor education specialist teachers, as well as a number of new principals to the Directorate. During the course of these interviews, investigators established that there was minimal training and instruction in relation to policy and procedures provided to past teachers and principals taking up positions within the Directorate.<sup>251</sup> New recruits to the ACT education system told investigators they would not conduct an activity off the school grounds without conducting a risk assessment beforehand.<sup>252</sup>
177. One ACT teacher interviewed by Worksafe ACT investigators was Educator 10. He was an experienced teacher in the ACT public school system.<sup>253</sup> He told investigators:

*"I haven't been provided any instruction. You rely on the guidance, and you use often, you often use previous risk assessments as a guide, or even an initial template that you might refine for the next activity that you're doing, and that would be either signed by a SLC or a deputy principal, and they would look at it, and then they might*

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<sup>246</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2379 L9-26, p2390 L33-36, p2393 L24-27

<sup>247</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2387 L11-21

<sup>248</sup> Exhibit B.29 (WorkSafe brief), TROC Educator 8, p2380 L41-45 & p2388 generally

<sup>249</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2406 L18-26

<sup>250</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2409 L24-43

<sup>251</sup> Exhibit B.2 (WorkSafe brief), Inspector Majer's summary, p17 at [92]

<sup>252</sup> Exhibit B.2 (WorkSafe brief), Inspector Majer's summary, p17 at [97]

<sup>253</sup> Exhibit B.39 (WorkSafe brief), TROC Educator 10, p2681-2 generally

*provide feedback for you to make adjustments, and then you would send it back. That's the guidance you receive, but no formal training.”*<sup>254</sup>

178. For teachers who had been in the system for a period of time, their knowledge of policies and procedures was restricted to outdoor adventure activities only. All those interviewed possessed very little knowledge of the PE related policies and procedures. These documents were rarely referred to with methodology being passed from teacher to teacher and school to school. Schools had various interpretations of what was allowed in relation to activities off the school site. There was mention of a one kilometre and two kilometre rule from the school where activities could be conducted. No evidence was found to support these varying school rules.<sup>255</sup>

179. Many of those interviewed knew where to find the policies and procedures on the internal Index System, however, this system was difficult to navigate and use.<sup>256</sup> During his interview with Worksafe ACT investigators, Educator 10 was given access to WiFi and his computer and was asked to find a list of banned sports that he had referred to in his evidence. After 22 minutes of searching, he stated he could not find it in that time frame and could not find anything related to physical education.<sup>257</sup> He claimed:

*“... it's difficult to navigate through the website to find what you need. And I feel when you are time poor, when you are time poor, which many teachers are, that you're unable to spend the time required to navigate and find the information that you need to find.”*<sup>258</sup>

180. The outdoor education teachers stated in previous years there had been a person within the Directorate to whom they could go to get answers in relation to this particular area of the curriculum, however, some years ago, this position became redundant and now they relied upon one another.<sup>259</sup>

181. Relevant changes implemented by the Taskforce include:

- (a) In April 2019, the Directorate engaged a HPE project officer to assist in the implementation of the work of the Taskforce and to strengthen the HPE functions within schools. This is now an ongoing permanent role within the Learning and Teaching branch of the Directorate. The officer is a direct support and contact for schools to assist with policies and procedures, attends

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<sup>254</sup> Exhibit B.39 (WorkSafe brief), TROC Educator 10, p2694 L6-12

<sup>255</sup> Exhibit B.2 (WorkSafe brief), Inspector Majer's summary, p17 at [94]

<sup>256</sup> Exhibit B.2 (WorkSafe brief), Inspector Majer's summary, p18 at [99]

<sup>257</sup> Exhibit B.39 (WorkSafe brief), TROC Educator 10, p2687-9 generally

<sup>258</sup> Exhibit B.39 (WorkSafe brief), TROC Educator 10, p2701 L1-5

<sup>259</sup> Exhibit B.2 (WorkSafe brief), Inspector Majer's summary, p18 at [100]

professional network meetings for sport and HPE leaders, and coordinates professional development in these areas.<sup>260</sup>

- (b) Regular professional learning sessions and workshops are now being held for school staff to address risk assessment requirements, risk management, and safe practice for HPE.<sup>261</sup>

182. **Again, the Directorate is to be commended for the proactive work it has undertaken in this space.**

183. I acknowledge the recent efforts made by the Directorate to communicate the changes to processes and assist teachers with risk assessment processes. There appears to be no way of confirming the efficacy of these efforts.

184. **In light of the evidence in this inquest suggesting that the knowledge and training deficient was primarily with teachers who have been in the system for some length of time, rather than new graduates, I make the following recommendations:**

**(a) That separate cohorts of teachers be prioritised for professional development in respect of risk assessment generally, as well as on relevant policies and procedures and the expectations of them; and**

**(b) That the ACT Education Directorate take steps to evaluate the success of the implementation of the Taskforce's recommendations, particularly in relation to enhancing risk assessment capability within the teaching ranks, and publish the outcome of that evaluation within twelve months of the date of these findings.**

#### **Does or Did a Matter of Public Safety Arise?**

185. The National Coronial Information Service has reported<sup>262</sup> that between July 2001 and November 2021 there have been at least<sup>263</sup> twenty-five deaths of young persons under the age of 18 years who died due to an incident while under educational supervision in Australia.

186. Adriaan's death is another death in which issues surrounding educational supervision were related to or contributory to the death of a student, or guidance material in relation

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<sup>260</sup> Exhibit D.2, Statement of Jason Borton, p8-9 at [30]-[31]

<sup>261</sup> Exhibit D.2, Statement of Jason Borton, p18-19 at [64]-[66]

<sup>262</sup> NCIS Coronial Report *CR21-36 Deaths of children under educations supervision* (November 2021), provided to the Coroner. Unreported cases referred to in these findings have been anonymised for publication.

<sup>263</sup> This number relates to investigations completed by the Coroner – it does not include cases that remained open and under investigation as at the date of the report, such as the Victorian death in which the prosecution has recently been completed: see Annexure B, p50.

to school activities was found to be insufficient and/or not complied with. There are a number of coronial findings which are prescient of Adriaan's death:

- (a) In the *Inquest into the death of OD* (unreported, NSW Coroner's Court, Senior Deputy State Coroner Stevenson, 28 September 2001) the Coroner investigated the death of a 15-year old boy while on a school-organised weekend hike. In addition to specific recommendations made to the school about the conduct of future hikes, the Coroner recommended that the Minister for Community Services audit the risk management strategies of independent schools to ensure they are of a standard at least as sought by the New South Wales Department of Education;
- (b) In the *Inquest into the death of XB* (unreported, WA Coroner's Court, State Coroner Hope, 12 July 2002) the Coroner investigated the death of a 10-year-old boy from drowning while on a school excursion at a pool. Among other things, the Coroner recommended that the WA Education Department review its approach to professional development with a view to ensuring that teachers who will be expected to plan and conduct school excursions, particularly aquatic excursions, have received training on the practical application of relevant procedures and guidelines;
- (c) In the *Inquest into the death of SI* (unreported, WA Coroner's Court, State Coroner Hope, February 2004) the Coroner investigated the death of a 12-year boy from drowning in a school pool. The Coroner noted with approval that both the Department of Education and the school involved had taken a number of initiatives to improve guidance material and safety measures;
- (d) In the *Inquest into the death of IS* (unreported, NSW Coroner's Court, Senior Deputy State Coroner Milledge, 9 September 2005) the Coroner investigated the death of a 13-year old boy on a school excusing from anaphylaxis from a peanut allergy. Among other things the Coroner recommended that all schools and childcare facilities undertake 'risk assessment' for all educational or recreational activities;
- (e) In the *Inquest into the death of LD* (unreported, NSW Coroner's Court, Coroner Guy, 22 March 2007) the Coroner investigated the death of a 10-year-old girl who died from head injuries when struck by a falling tree while on a school hike. Among other things, the Coroner recommended that a summit be held comprising at least the Department of Sport and Tourism, ORIC, the Department of Education, the Outdoor Council of Australia, National Parks and

Wildlife and Work Cover to give urgent consideration to the creation and implementation of Adventure Activity Standards;

- (f) In the *Inquest into the deaths of IU and BN* (unreported, NSW Coroner's Court, Coroner van Zuylen, 8 April 2011) the Coroner jointly investigated the unrelated deaths of two 16-year-old girls who died in ski incidents on school excursions weeks apart at two different NSW ski resorts. Among other things, the Coroner recommended that all students on school ski excursions be closely and directly supervised by either teachers capable of skiing with them on the ski run they are skiing on, or by qualified ski instructors; and failing that, if schools conducting ski excursions take the view that students may ski without close and direct supervision by teachers or appropriately qualified persons, the Coroner recommended that additional requirements be adhered to including a requirement for written and informed parental consent. The Coroner also recommended that the Minister for NSW Department of Education and Training consider his recommendations into the applicable State-wide guidelines;
- (g) In the *Inquest into the death of SM* (unreported, Tasmanian Coroner's Court, Coroner Chandler, 7 May 2012) the Coroner investigated the death of a 15-year-old boy who drowned in a river while on a school excursion. The Coroner found that the activity had been mischaracterised as a minor rather than a major excursion, and incorrect guidance material followed in that respect; further there was no formal risk assessment conducted and any risk management process that had been applied was informal, ad hoc and seriously inadequate. The Coroner noted with approval that both the Department of Education and the school involved had taken a number of initiatives to improve guidance material and safety measures, but found the Department's failure to ensure that staff were aware of and fully understood the relevant guidelines as a factor which contributed to the death. The Coroner also found that the supervising teacher failed to properly supervise the activity and this was a factor which was contributory to the death;
- (h) In the *Inquest into the death of Kyle VASSIL* [2014] VicCorC 188 Coroner White investigated the death of a 12-year-old boy who drowned while on a school camp. The Coroner found that there had been no risk assessment conducted and the guidance material and training for teachers was inadequate, but these things were self-rectified by the school prior to the inquest hearing. Among other things, the Coroner recommended that Education Department guidelines on water-based school activity (which were described as 'first rate') be

commended to independent schools, and that potentially compliance with those guidelines be a condition of registration for all schools in the State; and

- (i) In the *Inquest into the death of Jethro Ngalarra Dhamarrandji-Baker* [2016] NTLC 021 Coroner (and Judge) Cavanagh investigated the death of a 12-year-old boy who was run over by a vehicle being pulled by rope during an activity at a school carnival. The Coroner found that there was no written risk assessment of the activity, and an incomplete understanding of the hazard detection and mitigation processes required by the Work Health and Safety Legislation.

187. **In light of this extensive history and the failures of training, process, policies and procedures detailed above, I find that the inadequate processes and procedures at Campbell High School and the ACT Education Directorate as at October 2018 constitute a matter of public safety.**

**E. A CONSIDERATION OF SECTION 58**

188. At paragraph 9 of her most recent statement<sup>264</sup> Sandra Roodt stated “*We are also hopeful that the coronial process will help us to understand the decision of the Department of Public Prosecutions and WorkSafe not to pursue a prosecution of the director it for breaches of the Work Health and Safety Act. The process involved in the investigations leading to that decision took two years and the decision was so different to what we had expected that we think the findings from this inquiry should be looked at when it is all done to see if that decision should be reconsidered.*”

189. Section 58 of the Act relevantly provides:

- (1) *Subsection (3) applies if, during an inquest or inquiry, a coroner has reasonable grounds for believing that, having regard to the evidence given at the inquest or inquiry, a person mentioned at the inquest or inquiry has committed an indictable offence.*
- (2) *For subsection (1), the coroner must have regard to—*
  - (a) *the admissibility at trial of the evidence given at the inquest or inquiry; and*
  - (b) *whether the director of public prosecutions, or a person who may be affected by the referral to the director of public prosecutions of evidence relevant to the alleged offence, is, or has been, given the opportunity to present or give evidence in connection with the alleged offence.*
- (3) *The coroner—*
  - (a) *must, by written notice, tell the director of public prosecutions about the coroner’s belief; and*

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<sup>264</sup> Exhibit C.4

- (b) *for a related indictable offence—must not proceed further with the inquest or inquiry until the day worked out under section 58A, other than to establish the following facts:*
  - (i) *for an inquest—the death of a person, the person’s identity and the date and place of the person’s death;*
  - (ii) *for an inquiry—the date and place of a fire or disaster.*
- (4) *A coroner must not continue holding an inquest or inquiry if satisfied that the inquest or inquiry should not be continued.*
- (5) *In this section:*
  - related indictable offence***, *in relation to an inquest or inquiry, means an indictable offence that raises the issue of whether a person caused a death, suspected death, fire or disaster the subject of the inquest or inquiry.*

190. While the Act provides that a Coroner must stop an inquest if the Coroner believes a related indictable offence has been committed, it is a matter of discretion as to whether the inquest should be stopped in the case of forming a belief about the commission of summary offences.
191. The WorkSafe brief was previously submitted to the Office of the ACT Director of Public Prosecutions (“ODPP”) for consideration of bringing charges in relation to Adriaan’s death. On 9 October 2020, the ODPP formally advised WorkSafe ACT they would not be instituting proceedings in this matter due to insufficient prospects of conviction: see Exhibit B.2, p20. I do not know the Director’s specific reasons for declining to proceed.
192. I acknowledge the Roodt family’s concerns about the lack of a prosecution in relation to Adriaan’s death.
193. **It is a matter for the Attorney-General whether he chooses to follow up the decision not to proceed with a prosecution, but it should be noted that the Roodt family seeks a reconsideration of that decision.**

**F. SECTION 55**

194. Subsection 55(1) of the Act provides as follows:
- A coroner must not include in a finding or report under this Act (including an annual report) a comment adverse to a person identifiable from the finding or report unless the coroner has, making the finding or report, taken all reasonable steps to give to the person a copy of the proposed comment and a written notice advising the person that, within a specified period (being not more than 28 days and not less than 14 days after the date of the notice), the person may—*
- (a) *make a submission to the coroner in relation to the proposed comment; or*
  - (b) *give to the coroner a written statement in relation to it.*

195. The Territory has invited me to serve notices on the school staff, but I do not find that this is necessary.
196. **I find that the evidence does not rise to a level that would properly support an adverse comment or finding against any of the staff at Campbell High School. I served a s 55 on the Australian Capital Territory and submissions were received. I have taken those submissions into account when making my findings.**

**G. FINAL COMMENTS**

197. **The Directorate failed to correctly administer their policies for excursions and activities at the time of Adriaan's death. There was insufficient clarity about policy that existed, the policies were difficult for teachers to access, insufficient training was provided for leaders and teachers about those policies and insufficient compliance checking was conducted by or on behalf of the Directorate.**
198. **The failure to have conducted an adequate risk assessment or risk assessment and management plan represents a lost opportunity to have conducted the 'Capture The Flag' activity in a different way. An adequately conducted risk assessment or risk assessment and management plan should have resulted in a different outcome for Adriaan and his family. That is a reasonable expectation of policy by parents who place their children in the care of the Directorate.**
199. **Once the decision was made to conduct an activity at Remembrance Memorial Park, the only way in which the incident causing Adriaan's injuries would have absolutely been prevented is by an activity different to 'Capture The Flag' having been conducted, or a different location chosen, or if there had been closer supervision of each student.**
200. **I find that with greater supervision Adriaan's death was preventable. Within the field of play and near to a goal - an obvious and important geographical place within the game - the schoolboys became mischievous and misbehaved. They made multiple attempts to lift the log. That whole log lifting activity cannot have been only confined to mere seconds. Adequate supervision should have swiftly resolved this behaviour and ensured a very different outcome for Adriaan. However, as I have noted, this is not intended to be a criticism of the individual teachers. I have found that the deficient risk assessment processes that were in place at the time did not produce an outcome that had sufficient staff on the ground to ensure that appropriate supervision took place.**

## H. RECOMMENDATIONS

201. At paragraph 8 of her most recent statement<sup>265</sup> Adriaan's mother Sandra Roodt said:

*"We are hopeful that the outcome of the Coronial process will be recommendations which will result in the improvement of processes within the educational directorate to prevent another child sustaining an injury during a supervised outdoor education session."*

202. Educator 9 also told investigators during her interview:

*"... I mean, I hope that some really nice, strong, clear directions can come out of this around future policy because you know your worst nightmare ... is to have a child die in your school and it's certainly been an incredible effect on that team at Campbell."*<sup>266</sup>

203. It is clear to me that major policy changes that serve to honour those hopes have been put in place by the Directorate.

204. **I make the following recommendations that flow from my comments:**

**(a) That cohorts of teachers be prioritised for professional development in respect of risk assessment generally, as well as on relevant policies and procedures and the expectations of them.**

**(b) That the ACT Education Directorate take steps to evaluate the success of the implementation of the Taskforce's recommendations, particularly in relation to enhancing risk assessment capability within the teaching ranks, and publish the outcome of that evaluation within twelve months of the date of these findings.**

**(c) That the Attorney-General review the operation and application of WHS law to the ACT Education Directorate to ensure that children and staff are kept safe.**

## I. RECOMMENDATIONS SOUGHT BY THE ROODT FAMILY

205. **Adriaan's family has asked that I make the following further recommendations. The Territory has received advance notice of them and, in submissions, did not object to them. They flow from my earlier comments and observations about the *Work Health and Safety Act 2011* above and I endorse them:**

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<sup>265</sup> Exhibit C.4

<sup>266</sup> Exhibit B.30 (WorkSafe brief), TROC Educator 9, p2425 L5-8

- (a) That the Directorate review its policies on physical activities and excursions with a view to compliance with the *Safe Work Australia How to Manage Work Health Safety Risks Code of Practice* and report to the Attorney General about whether their policies comply with the Model Code that has been adopted by the ACT Government<sup>267</sup>.**
- (b) That the Directorate develop policies that foster ongoing work health and safety training and report to the minister on the development of those policies within 12 months; and**
- (c) That the Directorate develop policies that foster ongoing work health and safety compliance responsibility and auditing within the Directorate and report to the minister on the development of those policies within 12 months.**

**J. OTHER MATTERS**

206. I wish to make an observation. During the conduct of this matter, I have had the opportunity to watch, read and consider the Roodt family's responses to COVID interruptions and other delays, their terrible individual stories of overwhelming grief and loss and the manner and poise with which they have conducted themselves throughout their navigation of these proceedings. There is nothing that would make me think other than Adriaan was cut from that same cloth as his parents. He was dearly loved and liked by many. I can only conclude that the ACT and Yass communities have lost a bright young person with a bright future ahead of him and that Adriaan was quite a man in the making.
207. I express my sincere condolences to the Roodt family and to Adriaan's loved ones and friends.

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<sup>267</sup>Adopted in ACT law by the *Work Health and Safety (How to manage Work Health and Safety Risks Code of Practice) Approval 2020*.

I certify that the preceding two hundred and seven  
[207] numbered paragraphs are a true copy  
of the Reasons for Decision of his Honour  
Coroner Stewart.

Associate Rebecca Hunter

Date: 17 March 2023

**SCHEDULE OF ACRONYMS**

ACT – Australian Capital Territory

ACTAS - ACT Ambulance Service

ACTFR - ACT Fire and Rescue

CA – counsel assisting

CPR – cardiopulmonary resuscitation

PE – physical education

WHS – work health and safety