

CITATION: *Inquest into the death of Randil Nuparunya* [2003] NTMC 031

TITLE OF COURT: CORONERS COURT

JURISDICTION: Coronial

FILE NO(s): D0043/2002

DELIVERED ON: 20 June 2003

DELIVERED AT: Darwin

HEARING DATE(s): 28 and 29 October 2002

JUDGMENT OF: Mr Greg Cavanagh SM

**CATCHWORDS:**

CORONERS, Inquest, death in custody, attempted apprehension

**REPRESENTATION:**

*Counsel:*

Counsel assisting the Coroner: Ms Elizabeth Morris

Counsel for Northern Territory

Police Commissioner: Mr Greg McDonald

Counsel for the Family: Mr Jack Lewis

Counsel for the Aboriginal Justice

Advocacy Committee: Mr Chris Howse

Judgment category classification: B

Judgment ID number: [2002] NTMC 31

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IN THE CORONERS COURT  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. D0043/2002

In the Matter of an Inquest into the death of

**RANDIL NUPARUNYA**  
**ON 28 FEBRUARY 2002**  
**AT BEAGLE GULF – OPPOSITE**  
**CASUARINA DRIVE, NIGHTCLIFF**

**FINDINGS**

**MR GREG CAVANAGH SM**

**THE NATURE AND SCOPE OF THE INQUEST**

27. On the 1<sup>st</sup> of March 2002 at about 7.00pm the deceased's body was found floating in the tidal mudflats opposite the area of 152 Casuarina Drive, Nightcliff. The discovery was reported to the Police. The attending police members recognised the deceased from the previous evening as being a person who had fled from the scene of an assault and entered the ocean to evade them. A post mortem examination confirmed that the deceased had drowned.
28. This death is properly categorised as a death in custody. The deceased was a "person held in custody" within the definition of s 12 (1)(c) of the *Coroners Act* 1993 (NT) ("the Act"), ie., a person in the process of being taken into or escaping from the custody or control of a member of the police.
29. Further, the death is a "reportable death" which is required to be investigated by the Coroner pursuant to s14 (2) of the Act. As a consequence of the deceased dying in custody, a public inquest must be held pursuant to s15 (1)(c) of the Act. The scope of such an inquest is governed by the

provisions of sections 26 and 27 as well as sections 34 and 35 of the *Coroners Act*. It is convenient and appropriate to recite these provisions in full:

**“26. Report on Additional Matters by Coroner**

- (1) Where a coroner holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody, the coroner –
  - (a) shall investigate and report on the care, supervision and treatment of the person while being held in custody or caused or contributed to by injuries sustained while being held in custody; and
  - (b) may investigate and report on a matter connected with public health or safety or the administration of justice that is relevant to the death.
- (2) A coroner who holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody shall make such recommendations with respect to the prevention of future deaths in similar circumstances as the coroner considers to be relevant.

**27. Coroner to send Report, &c, to Attorney-General**

- (1) The coroner shall cause a copy of each report and recommendation made in pursuance of s 26 to be sent without delay to the Attorney-General.

**34. Coroners’ Findings and Comments**

- (1) A coroner investigating –
  - (a) a death shall, if possible, find –
    - (i) the identity of the deceased person;
    - (ii) the time and place of death;
    - (iii) the cause of death;

- (iv) the particulars needed to register the death under the *Births, Deaths and Marriages Registration Act*; and
- (v) any relevant circumstances concerning the death.

- (27) A coroner may comment on a matter, including public health or safety or the administration of justice connected with the death or disaster being investigated.
- (28) A coroner shall not, in an investigation, include in a finding or comment a statement that a person is or may be guilty of an offence.
- (29) A coroner shall ensure that the particulars referred to in subs (1)(a)(iv) are provided to the Registrar, within the meaning of the *Births, Deaths and Marriages Registration Act*.

### **35. Coroners' Reports**

- (1) A coroner may report to the Attorney-General on a death or disaster investigated by the coroner.
- (27) A coroner may make recommendations to the Attorney-General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the coroner.
- (28) A coroner shall report to the Commissioner of Police and the Director of Public Prosecutions appointed under the Director of Public Prosecutions Act if the coroner believes that a crime may have been committed in connection with a death or disaster investigated by the coroner.”

27. The investigation into the death commenced on the 1<sup>st</sup> of March 2002 as a result of police attending the scene. The Deputy Coroner at the time attended the scene and viewed the body of the deceased.

28. An Inquest into the death was duly advertised and the family of the deceased were notified. Present on the first day of the Inquest were the former partner of the deceased, Ruby Blake Jumbilli, and her mother Janet Jilkulu. Mr Jack Lewis, instructed by North Australian Aboriginal Legal Aid

Service (NAALAS) sought and was granted leave to appear throughout the Inquest for the family of the deceased. Counsel assisting me was Ms Elizabeth Morris, seeking and granted leave to appear were Mr Greg MacDonald as Counsel for the Police Commissioner, and Mr Chris Howse on behalf of the Aboriginal Justice Advocacy Committee. At the conclusion of the first day of hearing, Mr Howse sought leave to withdraw (which was granted).

29. The court heard from six witnesses who gave evidence in this inquest.

They were:

1. Detective Sergeant Vince Kelly – the Police Officer in Charge of the investigation of the circumstances surrounding the death of the Deceased.
2. Ruby Blake Jumbilli
3. Janet Jilkaloo
4. Constable 1<sup>st</sup> Class Douglas Nicholson
5. Senior Constable Michael Hickey
6. Acting Sergeant Timothy Nixon.

27. In addition to this evidence, a full brief of evidence was tendered by Detective Sergeant Kelly. This evidence included statements from various witnesses as well as maps, photographs and records of water levels.

### **S34 Particulars**

27. To allow this death to be registered under the *Births, Deaths and Marriages Registration Act* the following particulars are provided to the Registrar:

- (a) The Identity of the Deceased Person

The deceased is Randil Nuparunya, a male Aboriginal Australian who was born on 5 April 1973 at Darwin, Northern Territory. The deceased was also known as Randell, Naweidi, Nabanunja and Williams.

(b) The Time and Place of Death

The deceased died some time between 1900 hours on the 28 February 2002 and 1900 hours on the 1 March 2002, aged 29 years.

(c) The Cause of Death

The cause of death was drowning.

(d) The particulars required to register the death

1. The deceased was a male.
2. The deceased was of Australian Aboriginal origin.
3. The cause of death was drowning.
4. The cause of death was confirmed by a post-mortem examination.
5. The pathologist viewed the body after death.
6. The pathologist was Professor Anthony Joseph Ansford, Forensic Pathologist of Royal Darwin Hospital.
7. No evidence was produced as to the father of the deceased. The mother of the deceased was Connie Midjara of Maningrida.
8. The deceased had no fixed place of address.
9. The deceased was unemployed.

## **CIRCUMSTANCES SURROUNDING THE DEATH**

27. From the evidence presented before me I find the following:

On the afternoon of Thursday 28 February 2002 the deceased and four women travelled to Nightcliff in a taxi. The women were Ruby Blake Jumbili, Janet Blake Jilkulu, Megan Williams and Roslyn Balmana. They also had a small child with them. Prior to going there they had purchased a quantity of alcohol from Parap and there was a cask of wine and a bottle of Bundaberg Rum. At Nightcliff they started to drink this alcohol on the beach, near 152 Casuarina Drive. The women shared the cask wine and the deceased drank straight rum. The drinking continued in the afternoon and the evening.

28. Later in the evening the deceased became abusive and aggressive towards Janet Jilkulu. Ms Jilkulu at that time was in a mother-in-law relationship to the deceased. Ruby Blake Jumbili intervened and the deceased then transferred his anger and attack on her. He assaulted her by punching her and threatening her; She told me in evidence (Transcript P12):

“Do you remember at some stage that day going down to Nightcliff?---Yes.

Were you camping there or just staying there for a short time?---Staying there for a short time.

What happened when you were down there?---He was start abusing me, start beating me up.

Do you know why that was?---Well, he was flogging his auntie, and I told him, ‘Don’t beat your auntie up’, so – and he was drinking straight Bundy.

I told him to mix it with Coke but he wouldn't listen to me. So he start hitting me.

How drunk was he?---Very drunk.

Do you remember how many times he hit you?---Lost of times. I screamed for help.

Did anybody try and stop him or try and hit him back?---No.

Did you end up with some injuries?---Yes.

What were they, can you remember?---Yeah, I was swollen here and really swollen up, so I was bleeding blood.”

And (Transcript P13):

“Did you see the police come?---Yeah and he was still choking me up and they ran down towards him, so he just got up and ran – took off.

Did you see which way he ran?---Yeah, I couldn't see. It was too dark.

Did you see him at all after that?---No.”

29. This assault was of such a nature that people in the area became concerned and rang police. One of those callers was Fatima D'Costa, who lived in the vicinity. She rang the police at around 8.52pm. Police subsequently despatched Senior Constable Michael Hickey and Constable Nicholson to attend, the Officers arriving at 9:15pm.

30. On arrival they heard yelling and screaming on the foreshore near the beach area. As Constable Nicholson found his way onto the beach he saw the

witness, Ruby Blake Jumbili sitting on the ground. She had blood on her face and chest and her chest was exposed. He also saw a male Aboriginal person in red board shorts standing over her. He shone his torch on the pair and immediately the male, (the deceased) ran away from the area. Due to the injuries that were visible, Nicholson formed the view that the male had assaulted the woman. For that reason he gave immediate chase with the intention of apprehending him to establish his involvement in the injuries.

31. Constable Nicholson told me in evidence (Transcript 22):

“Did you form any opinion as to his level of intoxication at that stage?---  
No, not at all.

What about later on?---I formed no opinion of his intoxication at any time.

Did you assume that he may have been intoxicated when you were dealing with him?---No. Intoxication’s not an issue at that time.

THE CORONER: When he ran away, there’s no problems about that in terms of how he ran? He sprinted away. Appeared to be fit enough to do that?---What I recall at the time I was thinking, this guy is very sure-footed and very nimble.

MS MORRIS: You realised that a post mortem/toxicology test put his reading alcohol reading, at .381? Were you aware of that?---I wasn’t aware of that.”

And (Transcript P23):

“After he entered the water, you were at the water’s edge, is that correct?--  
-Yes.

Did you say anything to him?---I can't recall my exact wording. It was along the lines of, 'Mate, can you please come back? We just need to chat to you or talk to you'.

Did he verbally respond to you in any way?---No, he never said a word in any of my dealings with him.

You never heard him say a word at all to anyone else?---No.

It's correct, isn't it, that it appeared to you as though he was evading you when he was in the water?---That's correct.

And how was he doing that?---There were a few times where I shone my torch on him and when my torch beam lit him up he would move away from the torch beam. There were other times when he would – it appeared to me he ducked under water and popped up a few metres away, in whatever direction that may be. At no time did he come closer to us or to the shore.”

And:

“MS MORRIS: Why did you chase him?---The initial report we had was there was persons fighting. When we attended the complainant's address, I think pretty much – or very soon after I exited the police vehicle I heard screams coming from the other side of the road. I went over to those screams. I observed a partially naked Aboriginal female with what appeared blood on her face, and as soon as I saw her, I saw this male immediately run away from what I presume, he was running away from me. Therefore he had knowledge of what had happened. I did not know what the offence, if any, had occurred and I knew if I just let him run away, then chances are we wouldn't get any information from him as to what had actually happened.

So you were chasing him in order to apprehend him?---To speak with him, not to arrest.

THE CORONER: Well, does that mean you were chasing him to detain him to speak to him?---Yes, sir.”

And:

“MS MORRIS: You’ve told us, both in your statement and in court, you didn’t enter the water. What was behind your decision not to enter the water?---My decision at the time was he did not appear to be in any distress. I was thinking if I entered the water, which would have been hazardous to myself to start off with, due to his prior actions he would possibly just swim out further, causing more danger to himself and to me.”

And (Transcript P24):

“That was to assist you in getting him from the water?---That’s correct.

Do you recall approximately how much time it was between you first requesting a Marine Unit and an answer coming that one was not available or that you couldn’t have one?---I was informed one was not available, not attending, by my supervisor, Acting Sergeant Tim Nixon. I can’t exactly say how long that was.

Have you ever been on a job before where you’ve called for a Marine Unit?---Yes, I have.

And was one available in that particular circumstance?---One was eventually called out, yes.

Were you at any stage concerned for the welfare of the deceased?---No, not at all.

Was it that you were calling for a Marine Unit in order to apprehend him or detain him rather than out of any concern that he might be in distress or trouble?---That's correct."

And (Transcript P32):

"All right. Now, just one other topic. In this area of the mangroves where you last saw this fellow, you had it in your mind, did you not, that he might have entered the mangroves and then gone through the mangroves and got back on the shore and gone off somewhere?---After a while that's what I was thinking. If – that he was hiding in the mangroves and if we left the immediate vicinity, he would then exit the mangroves and come back on land, so to speak."

I found Constable Nicholson to be a credible and reliable witness and I accept his evidence.

32. Senior Constable Hickey also saw the woman on the ground, made the same assumptions as have been made by Nicholson, and further saw the Aboriginal male running away from Nicholson. Hickey joined in the foot chase along the beach in the direction of the Nightcliff shops. He told me in evidence

(Transcript P 36):

"Were you able to form any opinion as to his level of intoxication from what you saw?---No, I didn't speak to him. I never got close to him. So - - -

How close - - -?---The way he was moving indicated to me that he was quite fit and able.

I don't know if you are aware but he in fact, on a toxicology testing from blood taken from his body at the post mortem, he had a reading of .381?---  
Yeah.

Does that surprise you?---It's a high – very high reading, yeah. He – he ran and was quite agile, negotiating obstacles such as rocks that were sticking out of sand, going across rocks that were wet and slippery. He didn't – I didn't see him fall or hesitate at any stage.

Were you faster than Nicholson - - -?---No, I wasn't.

Or was he faster than you?---He was faster than me.”

And (Transcript P37):

“Why didn't you go in the water after him?---I didn't deem it safe to do so.

Safe for?---For myself or for him.

Why not?---Okay. He's a person who's already shown that he can be violent or may have been a violent person. He wasn't responding to any encouragement to come out of the water. He was actively trying to evade us by going under the water and swimming away. I had no idea of the depth of the water at that – where that was, and we were both there, at that stage, on our own. One person would – it would only be one person going in to deal with him and I didn't deem that terribly safe at that stage. He wasn't trying to swim away from us, as in swim away from – across the bay there, he was just trying to evade the light.

Did you have at any stage any concerns for his welfare while he was in the water?---No, he seemed quite capable.”

And (Transcript P38):

“Did you then return back to where the victim was?---Yes, two – our Shift Supervisor arrived, Acting Sergeant Nixon, and two ACPOs, ACPO Bradbury and Wright, there were a number of people that were there then. I took ACPO Wright and we went back up to where the victim was.

Did you speak to her?---Yes.

You assessed her injuries?---Had a look at her injuries in the – by torch. She had what appeared to be a broken jaw, there were other ladies there with her. We called up an ambulance, they came. I took details of their names and the victim was taken to – or the lady who’d been hurt was taken to the hospital because of the extent of her injuries. We loaded up the other ladies in the vehicle and took them to the Ibera Hostel.”

Shortly thereafter, Tim Nixon, the Acting Sergeant on the shift arrived. He saw the Officers chasing the deceased, although he didn't actually see the deceased, and he heard Officer Nicholson make a request for a marine unit.

33. The two officers chased the deceased for about 100 metres up the beach, at which time he veered off to the right towards the ocean, running approximately 30 metres towards the water's edge. He then entered the water. He was closely followed by the two police officers. They had their torches on him, but didn't actually enter the water. They stood on the water's edge, with the deceased continually ducking under the water and moving from the torchlight.

34. A hurried request for a police boat was made. Officer Nicholson stated that he made the request not out of concern for the welfare of the deceased, but to assist in his taking into custody. He was never at any stage concerned about

the welfare of the deceased. Communications despatched further road units in order for assistance, and Nicholson repeated his request for a marine unit.

35. The two officers remained at the water's edge for a brief period, asking the deceased on a number of occasions to come out of the water. He continued to avoid them by ducking under the water and then re-emerging somewhere else. He did not show any signs of distress and they assumed he was capable of touching the bottom.

36. Detective Sergeant Kelly told me about the geography of the area (Transcript P10):

“You know the area yourself?---Yes. I do.

And it's so, isn't it?---I mean, there's a lot of slippery rocks and moss-covered areas around - - -?---There's rocks and mangroves.

Yes. That, however, it must be observed that the conditions he described as being something which would cause him a danger to his safety, equally would be a danger to the safety of anyone who entered the water in that area, namely slippery rocks and mangrove roots and so on?---Yes, it would.

Thank you sir.

THE CORONER: Senior Sergeant, my appreciation of the geography, which may or may not be right, is that in that area it's a shallow tidal area, isn't it? There's no big drop-offs into deep water?---Not that I'm aware of, Your Worship. My inquiries with the Marine Fisheries Unit were that it is relatively shallow and a relatively slow moving part of Darwin harbour whereas other parts are quite – the tide's quite dramatic in its movements.

Mr MacDonald, have you got any question?

MR MacDONALD: Senior Sergeant Kelly, you visited the area after the incident, after the body was found?---Yes, I did.

Have you seen the area at low tide?---Yes, I have.

Is it fair to say that the terrain there is varied, so there's rocks and mangroves?---There's rocks and mangroves.

Is there anything else there?---When the tide's out it's – it becomes a sandbar type thing, typical of Darwin.

Of mudflats, would that be a fair description?---Yes, that would be a description, yes.”

37. Sergeant Nixon came down to the water's edge. At about this time, Hickey decided to return to the victim to check on her welfare. As Nixon approached, Hickey left, and Nicholson turned briefly from the water and upon returning his attention to the water, did not see the deceased again. He provided a briefing to Nixon about where he'd last seen him and they both looked for him with their torches. Nixon then went along the mangroves and shoreline in the direction of the Nightcliff shops and Aboriginal Community Police Officers, who had arrived, also attended and checked in the mangroves and shore line in the other direction.

38. Sergeant Nixon told me in evidence and I quote (Transcript P45):

“Now, you were driving down past Casuarina and you saw two of your officers chasing somebody, is that correct?---I knew that the – I was at the job at the Beachfront Hotel, the back carpark. They'd gone mobile from

that job and been despatched to another one at 152 Casuarina Drive. I knew that was at the other end of Casuarina Drive from where we were, and I've just followed along some – probably 400 metres behind because they'd already stopped. I didn't actually see them stop and get out of their car. They'd already stopped, were out of the car by the time I got there and were on the opposite side of the road and running.

Did you at any stage ever see the deceased?---No.

That was neither running nor in the water?---No.

When you got out of your vehicle, you went down to the water's edge, is that correct?---Yes, I positioned the – my – I drove on the wrong side of the road, had spotlights on, I could see Constable Nicholson, Constable Hickey, and I didn't know who they were chasing. Obviously chasing someone, they were running. I could catch glimpses through trees and obviously I could see the torch from Nicholson. They've then turned to their right and gone, I know now, over the rocks. I've then driven up, turned around – done a U-turn, come back and had to position the car, because the spotlights are fixed, and I've had to actually sort of back her up so I could get the spotlight to the correct position so I could see who I now know as Constable Nicholson down on the edge of the rocks on the edge of the water.”

And (Transcript P46):

“THE CORONER: Are you saying to me that the nearest trees and mangroves from where the deceased had last been seen were about 10 metres away?---Yeah, between 5 and 10 metres. From where we were on the rocks, there was probably – the last mangrove was probably another 10 metres away, and the deceased was – was fairly closer though, so it would have been within 5 and 10 metres between – to the closest mangrove tree to the position that Nicholson showed me.”

And (Transcript P47):

“THE CORONER: What was your impression at that time as to what had happened to the deceased?---My impression was that he’d swum away, got into the mangroves - - -

And scampered off?---And – and run away.”

And (Transcript P49):

“Well, now, you’d heard also at one point in your moving towards Nicholson the request for a vessel?---That’s correct.

Did you go along with that? Think that was a good idea from what you’d seen?---Well, it was a request for any Marine Fishery Units and being an evening shift at that time, I knew that there’d be – a chance of being a Marine and Fishery Unit sort of working, operation, would be highly unlikely.

Your resources don’t run to that kind of equipment?---No.

THE CORONER: You don’t have a stand-by Marine Unit in Darwin Harbour, do you?---No. On call.”

39. The request for a Marine and Fisheries Unit was passed to the watch commander, Acting Senior Sergeant Bruce Porter. The duty superintendent, Mark Jeffs, also heard the request and both members attended the communications centre. At about 9:28pm, Acting Sergeant Nixon provided information to communications that the deceased did not appear to have been in any distress and appeared to be avoiding police when he was last seen by the officers. On this basis it was determined by the watch commander and

superintendent that it was not necessary to call out a Marine and Fisheries Unit.

40. After completing a foot search of the shore line, Acting Sergeant Nixon conducted a vehicle patrol of the shops to check if he'd left the water, but that was unsuccessful. Officer Nicholson left the water's edge and returned to where ambulance officers were now treating Ms Jilkulu. Names and details of all those who were present were taken. The police officers present were of the view that the deceased had managed to evade them, was hiding in the mangroves and was unlikely, at that stage, to surrender himself.

41. Ruby Blake Jilkulu was taken to hospital by St John's Ambulance and the Officers Nicholson and Hickey conveyed the other women in the area to a nearby hostel. They then concluded their shift. The next morning the Domestic Violence Unit also became involved and took a statement from Ruby Blake Jilkulu. A domestic violence order was applied for and granted.

42. On the 1<sup>st</sup> of March, (the next day) at about 7:13pm a report was received of a deceased person found floating near the shoreline in that area. Coincidentally Constables Nicholson and Hickey were on duty and attended. They realised that the deceased was the person that they had been chasing the previous evening. They immediately informed appropriate people in the chain of command and the matter was treated as a death in custody from there on.

43. On the 3<sup>rd</sup> March 2002 at Royal Darwin Hospital, Dr Anthony Ansford, a locum Forensic Pathologist, conducted an autopsy on the body of the

deceased. The pathologist opined that the cause of death was drowning.

Other than the blood alcohol level, there did not appear to be anything about the deceased in terms of injury, illness or pathologically that contributed to death.

## **27. CORONIAL INVESTIGATION**

27. The *Coroners Act* requires an independent investigation in these circumstances at the direction of the Coroner. Detective Sergeant Vince Kelly carried out an investigation according to the requirements of Police General Orders D2. That general order specifically relates to the Investigation and Reporting of Deaths in Custody.

28. The investigation was appropriate and thorough, and followed the General Orders. I accept Ms Morris's submissions in this regard and I quote (Transcript P58):

"The final matter that I raised in my opening was, as we look at in all coronial investigations of death in custody, the investigation itself. Appropriate witnesses were interviewed in a relatively prompt manner and no criticism could be made of the investigation.

THE CORONER: It was carried out according to standing orders as a homicide investigation.

MS MORRIS: Yes.

THE CORONER: The resources necessary for that were put into place.

MS MORRIS: Yes they were.

THE CORONER: Interrogations were tape recorded.”

## **CARE, SUPERVISION AND TREATMENT IN CUSTODY**

### **The pursuit of the deceased**

27. Given the evidence I find that it was reasonable, appropriate and proper for the Officers to pursue the deceased. They had received information from the communications section that there was a bleeding woman; they arrive and standing next to or over a lady sitting on the sand, bleeding from head wounds was a man who, as soon as he saw them, ran off. There was sufficient evidence for them to have an apprehension that he may have been involved or may have had important information for them in relation to what appeared to be an assault.
28. I also find that it was appropriate for the Officers not to continue to pursue the deceased into the water. It was night time, there were mud flats, it was also rocky. It would probably push the deceased further out. He appeared to be trying to evade them by his actions of going under, coming up, having a look, and going under again.
29. It would have been unsafe for the Officers, given what they knew at that time, that he may have been involved in an assault on somebody. He was certainly not co-operative with what they were trying to do. To attempt to apprehend or even rescue an uncooperative person in water without equipment would be dangerous. Furthermore, the police were in full uniform carrying all usual accoutrements including radios and weapons.

30. There was no evidence that he was distressed. He didn't sing out, he didn't wave, or indicate to them that he was having trouble in the water at all. Given all of the above factors it was appropriate that the Officers removed themselves from the area, allowing the deceased to leave the water of his own volition.
31. From evidence obtained at autopsy, the deceased had a very high blood alcohol content, with a reading of .381%. Whilst decomposition may account for some of this reading, I do find that the deceased was more than just moderately affected by alcohol at the time of his death. This was not observed by either of the pursuing officers, who saw the deceased quite nimbly travel over various rocky and sandy surfaces.
32. Mr Lewis, Counsel for the family, made the submission that pickets should have been placed in the area, and that the police failed to continue to monitor the area for long enough to be satisfied that he was not there, or not in distress. I reject that submission. The deceased was clearly trying to hide from and avoid the police. A continued police presence could have lengthened the time the deceased spent in the water. Given the water, the darkness and the area, it was a reasonable inference for the police to draw that the deceased had made good his escape.
33. In hindsight, knowing the very high level of intoxication of the deceased, more concern for someone in darkened waters may have been appropriate.

But the officers had no reason to suspect that the deceased would have been that incapacitated.

### **The calling out of a Marine Unit**

34. The other issue raised during the Inquest, was the decision of the police not to call out a marine unit in order to apprehend or assist the deceased. There is not an on-call crewed rescue boat at night-time in Darwin Harbour. To call out and organise a vessel and crew to the area would take some time. In other circumstances that may well be cause for comment, however in this case, where a considered decision was made no criticism or recommendation is apposite.

35. From all the facts and circumstances of the case, it was a reasonable decision not to call out Marine assistance. There was a high probability the deceased had already left the water and there was no indication of distress.

### **COMMENTS AND RECOMMENDATIONS**

36. Considering the above findings and report there are no recommendations under s 26(2) of the Act in relation to the prevention of future deaths in similar circumstances.

Dated this 20<sup>th</sup> day of July 2003

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Greg Cavanagh  
TERRITORY CORONER