

CITATION: *Inquest into the death of Kumanjayi Walker (Ruling No 2)*
[2022] NTLC 017

TITLE OF COURT: Coroners Court

JURISDICTION: Alice Springs

FILE NO(s): A51 of 2019

DELIVERED ON: 13 September 2022

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HEARING DATE(s): 9 and 12 September 2022

FINDING OF: Judge Elisabeth Armitage

CATCHWORDS: **Coronial proceedings; inquests; deaths in custody; inquest following acquittal; objections to evidence; unlawfully obtained evidence; authority to receive evidence under the *Coroner's Act 1993* (NT)**

Coroner's Act 1993 (NT), ss 4A, 4B, 26, 34, 35 and 39

Police Administration Act 1978 (NT), ss 144 and 155

Doomadgee v Clements (2006) 2 Qd R 352

R v Doogan; Ex parte Lucas-Smith (2004) 157 ACTR 1

Inquest into the death of Kumanjayi Walker (Ruling No 1) [2022] NTLC 14

Domaszewicz v State Coroner (2004) 11 VR 237

Thales Australia Limited v Coroner's Court [2011] VSC 133

Johns v Australian Securities Commission (1993) 178 CLR 408

Martin v Medical Complaints Tribunal (2006) 15 Tas R 413

Martin Kennedy and Anti-Doping Rule Violation Panel Chief Executive Officer, Australian Sports Anti-Doping Authority [2014] AATA 967

Priest v West (2012) 40 VR 521

Majindi v Northern Territory (2012) 31 NTLR 150

Re Kumar [2017] VSC 81

Pringle & Ors v Everingham [2006] NSWCA 195

Harvey v Attorney-General for the State of Queensland (2011) 220 A Crim R 186

Purnell v Medical Board (Qld) [1999] 1 Qd R 362

Health Care Complaints Commission v Litchfield (1997) 41 NSWLR 630

That's Entertainment (WA) Pty Ltd v Commissioner of Police (WA) (2013) 228 A Crim R 201

Re Royal Commission into Certain Crown Leaseholds (No 2) [1956] St R Qd 239

R v Carroll (2002) 213 CLR 635

Helton v Allen (1940) 63 CLR 691

Inquest into the Death of Jaidyn Raymond Leskie (Coroners Court, Victoria, Coroner Johnstone, Case No 007/98, 31 July 2006)

Inquests into the Deaths of Christopher Arepa Kahui and Cru Omeka Kahui (Coroners Court, Auckland, Coroner Evans, 2 July 2012)

Inquest into the death of Vlado Micetic (Scope of Inquest Ruling) (Coroner's Court, Victoria, Coroner Jamieson, 19 August 2019)

REPRESENTATION:

Counsel Assisting:	Dr P Dwyer with Mr P Coleridge
For Zachary Rolfe:	Mr D Edwardson KC and Mr F Merenda
For the Brown Family:	Mr G Mullins with Ms P Morreau
For the Walker, Lane and Robertson families:	Mr A Boe with Mr D Fuller and Ms G Boe
For the Northern Territory Police Force:	Mr I Freckelton AO KC with Ms A Burnnard
For the Department of Health:	Mr T Hutton
For NAAJA:	Mr P Boulten SC, with Ms B Wild and Mr J Murphy
For the Parumpurru Committee:	Mr J McMahon SC
For the Northern Territory Police Association:	Ms S Ozolins
Judgment category classification:	A
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IN THE CORONERS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. A51 of 2019

In the matter of an inquest into the death of
Kumanjayi Walker

Introduction

1. On 9 November 2019 police members from the Alice Springs Immediate Response Team (**IRT**) travelled to Yuendumu. The IRT members encountered Kumanjayi Walker in House 511 Yuendumu. During an incident inside the house, one of the IRT members, Constable Zachary Rolfe, shot Kumanjayi Walker three times. Kumanjayi Walker was taken to the local police station where he passed away. This inquest will inquire into the circumstances of Kumanjayi Walker's death.
2. Eight parties have sought and been granted leave to appear at the inquest under s 40(3) of the *Coroner's Act 1993* (NT). Those parties are the Brown family and the Walker, Lane and Robertson families (**WLR families**), Constable Zachary Rolfe, the Northern Territory Police Force, the Department of Health, the Parumpurru Committee of Yuendumu (**the Committee**), the North Australian Aboriginal Justice Agency (**NAAJA**) and the Northern Territory Police Association (**the Association**).
3. Constable Rolfe objects to the receipt of any evidence contained on, or concerning, a download of the data on Constable Rolfe's mobile phone (**phone download**); and, any evidence given by the witness Claudia Campagnaro.
4. Until yesterday, Constable Rolfe also sought a ruling that 13 'issues' or 'questions' that had been identified by Counsel Assisting as anticipated to arise on the evidence were beyond 'the scope of the inquest'. However, it is neither necessary nor appropriate to determine that objection at this stage.

5. For the reasons that follow, I conclude that I am not prohibited from receiving either the phone download or the evidence of Ms Campagnaro, and see fit to receive that evidence at this stage under s 39 of the *Coroner's Act*.

The timing of the application

6. Constable Rolfe is entitled to raise objections and have those objections determined on their merits. However, before turning to the substantive issues, it is appropriate to briefly comment on the timing of this application in light of the express statutory function of the Territory Coroner to 'ensure that the coronial system in the Territory is administered and operates efficiently'.¹
7. In my view, these were objections that could, and should, have been made months ago. The extensive brief was and is being served in a very timely manner. The evidence now the subject of objection has been available to the parties for some time. The purpose of identifying likely issues and holding three directions hearings was to ventilate any matters of concern to the parties and to provide opportunities for any legal issues to be resolved with minimal disruption to the efficient running of the inquest.
8. Over the last week or so, no less than 13 sets of written submissions have been drafted and filed and more than two sitting days have been required for legal argument and this decision.² All of that time – in Court and out – should have been dedicated to the substantive progress of the inquest. As Counsel Assisting noted, the logistical issues that flow from the delay caused by these objections being raised at this time have real consequences. Witnesses take time off work and arrange childcare. The Northern Territory Government and its agencies book scarce accommodation for them so that they can be accommodated in Alice Springs. Flights are booked. Interpreters are accommodated. Backfill is arranged. Remote health clinics and police stations

¹ *Coroner's Act*, ss 4A and 4B.

² I am grateful for the valuable assistance all parties have provided in writing and orally.

– sometimes staffed by only two clinicians or police officers – are now left in a position of real uncertainty. It is undesirable that the timing of the objections has caused such significant disruption to the early days of the inquest.

It is unnecessary, and inappropriate, to rule on the ‘scope of the inquest’

9. Unlike in civil or criminal proceedings³ the only ‘issues’ in an inquest are whether, and, if so, in what terms, a Coroner may or must make a finding, comment or recommendation under ss 26, 34, and/or 35 of the *Coroner’s Act*. The ‘subject matters’ of those provisions have been held to be ‘broad ... with indefinite boundaries’.⁴ This can create practical difficulties in inquests such as this, ‘given the size and complexity of the inquest brief.’⁵
10. As a result, a practice has developed, particularly in large or complex inquests, of Counsel Assisting producing an ‘issues list.’ Although there is no requirement for it, the practice has been held to be ‘entirely appropriate’.⁶ As I noted in an earlier ruling, Counsel Assisting’s ‘issues’ list was ‘designed to encourage discussion among the Coronial team and the parties’ and in that way to ‘give some structure to the inquest’.⁷ It contains ‘indicative questions of a kind that are anticipated [by Counsel Assisting] to arise on the evidence’.⁸ The list has never purported to be ‘determinative of the scope of ... the

³ Where the combination of a cause of action, or offence, together with civil or criminal pleadings, defines the issues between the parties.

⁴ *Doomadgee v Clements* (2006) 2 Qd R 352, [32] (Muir J).

⁵ As at the directions hearing on 26 May 2022, there were estimated to be in excess of 12,000 discrete brief items. Many of those are hundreds of pages long.

⁶ *R v Doogan; Ex parte Lucas-Smith* (2004) 157 ACTR 1, [13] (Higgins CJ, Crispin and Bennett JJ).

⁷ *Inquest into the death of Kumanjayi Walker (Ruling No 1)* [2022] NTLC 14, [3].

⁸ NAAJA (Submissions of 7 September 2022), [5].

inquest’⁹ because an issues list can neither enlarge, nor constrain, the jurisdiction of a Coroner.¹⁰

11. In this case, Counsel Assisting distributed that document early in their preparation for this inquest, in good faith, and as a courtesy to the parties. It was also thought that it would assist in explaining to the family and community of Kumanjayi Walker likely areas of inquiry. In spite of these intentions, given the level of disagreement it has generated, Counsel Assisting ultimately joined a number of the interested parties¹¹ in submitting yesterday that it was inappropriate that I rule in an abstract way on the disputed ‘issues’ or ‘questions’. Instead, Counsel Assisting and these interested parties submitted that I should rule on any objections if and when an objection is actually taken to identified items or classes of evidence. No interested party submitted to the contrary.
12. I accept those submissions. At this early stage of this lengthy and complex inquest, it is impossible to know whether a number of the ‘issues’ or ‘questions’ anticipated to arise on the evidence by my Counsel Assisting team (and the interested parties) will ultimately be relevant to, or connected with, the death, or whether any comment or recommendation about those matters will be necessary under ss 26, 34, and/or 35 of the Act.
13. As the Full Court of the Supreme Court of the Australian Capital Territory noted in *R v Doogan; Ex parte Lucas-Smith*,¹² one difficulty with trying to conclusively determine the scope of an inquest at its outset is that it may ‘become apparent ... that an issue identified in the list *early* in the proceedings

⁹ Ibid. See also, Transcript of Proceedings, *Inquest into the death of Kumanjayi Walker* (Coroner’s Court of the Northern Territory, Alice Springs, 12 September 2022), 227.

¹⁰ *R v Doogan; Ex parte Lucas-Smith* (2004) 157 ACTR 1, [13] (Higgins CJ, Crispin and Bennett JJ).

¹¹ They were, NAAJA (as of 7 September 2022), the WLR families (as of Sunday 11 September 2022) and the Brown family (as of Monday 12 September 2022).

¹² (2004) 157 ACTR 1.

was no longer relevant at the *conclusion* of the evidence.’¹³ Equally, evidence may emerge late in the inquest that may give rise to new issues. In light of the investigative character of an inquest,¹⁴ this is not surprising. In *Doogan*, the Full Court continued,

the mere admission of evidence that appears to canvass a range of issues extending beyond those specified in [the *Coroner’s Act*] does not demonstrate any error of jurisdiction. Indeed, a liberal approach to the potential relevance of evidence may sometimes be appropriate, particularly in the early stages of an inquiry when the Coroner is still seeking to identify what issues are likely to arise.¹⁵

14. Similarly, in *Thales Australia Limited v Coroner’s Court*,¹⁶ Beach J (as his Honour then was) in the Supreme Court of Victoria was critical of objections that required a Coroner to conclusively rule, at an early stage of proceedings, on the nexus between discrete items of evidence and the subject matters of the Coroner’s ultimate powers to make findings, comments and recommendations:

68. In the present case, the inquest has been fragmented as a result of submissions made on behalf of Thales. If the case had been conducted as an ordinary inquest where all of the relevant evidence is called before findings are made, then it would have been open to the Coroner to call as part of his investigation into the circumstances in which the deceased died, evidence of the kind he now wishes to call. The question of what comment or recommendation might be permissible as a result of evidence that has yet to be called is not capable of determination at this stage. The complaints of Thales are premature.

¹³ *R v Doogan; Ex parte Lucas-Smith* (2004) 157 ACTR 1, [13] (Higgins CJ, Crispin and Bennett JJ).

¹⁴ *Domaszewicz v State Coroner* (2004) 11 VR 237, [81]: ‘An inquest is not a proceeding inter partes. It is part of an investigative process which is concerned, inter alia, to set the public mind at rest where there are unanswered questions about a reportable death.’

¹⁵ *R v Doogan; Ex parte Lucas-Smith* (2004) 157 ACTR 1, [34] (Higgins CJ, Crispin and Bennett JJ).

¹⁶ [2011] VSC 133.

[...]

72. It is, at this stage, hypothetical to consider whether the calling of a particular witness or particular evidence might infringe the prohibition on not inquiring for the sole or dominant reason of making a comment or recommendation. Similarly, it would be premature to speculate on whether any particular evidence that might or might not be called might or might not be "connected with the death [of the deceased]". I do not propose to embark on the dangerous course of attempting to chart the metes and bounds of what will be permissible upon any resumption of the inquest.¹⁷

15. Accordingly, except where necessary to determine Constable Rolfe's objections, I will not consider the question of the 'scope of the inquest' at this time.

Constable Rolfe's objections to evidence located on his mobile telephone

16. Constable Rolfe submits that the interrogation of the phone by a police officer for the purpose of the coronial investigation was for an improper, or extraneous, purpose, was therefore unlawful, and 'cannot be used in these proceedings.'¹⁸ Further, it is submitted that the evidence is 'too remote to engage the jurisdiction or function of this court.'¹⁹ Finally, it is submitted that an examination by the Coroner of the facts underlying the offence of which Constable Rolfe was acquitted would 'undermine the jury verdict of acquittal' because the trial 'ventilated and *established*' the 'cause, time, place and circumstance of death'.²⁰

17. The objection was opposed by the Northern Territory Police Force, NAAJA, the Brown Family, the WLR families and the Committee. The Police

¹⁷ *Thales Australia Limited v Coroner's Court* [2011] VSC 133, [68] and [72].

¹⁸ Constable Rolfe (Submissions of 2 September 2022), [45].

¹⁹ Transcript of Proceedings, *Inquest into the death of Kumanjayi Walker* (Coroner's Court of the Northern Territory, Alice Springs, 9 September 2022), 203.

²⁰ Transcript of Proceedings (September 2022), 203, 206, 208, 210.

Association supported the objection, in effect echoing Constable Rolfe's submission regarding the 'remoteness' of the evidence.

18. In my view, the evidence should be received. I consider that the phone was lawfully interrogated. But even if it was not, this would not prohibit me from receiving the evidence under s 39 of the *Coroner's Act*. In addition, I consider the evidence is appropriately directed to, and capable of bearing upon, the issue of what, if any, finding or recommendation I should or must make under ss 26(1), (2) and 34 of the *Coroner's Act*. Finally, I consider that Constable Rolfe's submissions regarding the undermining of the verdict of acquittal are misconceived.

Lawfulness of the interrogation of Constable Rolfe's phone

19. Notwithstanding the ruling in *Rolfe (No 7)*,²¹ Constable Rolfe submits that the phone download cannot be 'retained or used by this Court for the purposes of this inquest.'²² This submission is supported by five inter-related propositions'.²³ They are, *first*, that Constable Rolfe's mobile phone was downloaded for the purposes of a criminal investigation, having been seized pursuant to s 144 of the *Police Administration Act 1978 (NT) (PAA)*. *Second*, that the phone download was 'information' that was confidential information within the meaning of s 155 of the PAA and therefore could not be used, or disclosed, for a purpose that was inconsistent with the administration of the PAA unless it was otherwise validly authorised in accordance with some other statutory power. *Third*, that a police officer interrogated the telephone for the purpose of the *coronial investigation* in the absence of a lawful direction to do so. *Fourth*, that the Police Force subsequently provided the telephone download to the Coroner. *Fifth*, that the initial interrogation of the phone

²¹ [2021] NTSC 65.

²² Constable Rolfe (Submissions of 2 September 2022), [45].

²³ Constable Rolfe (Submissions of 2 September 2022), [3].

download by the police officer, and the later dissemination of the phone download to the Coroner, was unlawful.

20. Section 144 of the PAA provides as follows:

Search of persons in lawful custody

- (1) A member of the Police Force may search a person in lawful custody, including the clothing the person is wearing and any property in the person's immediate possession, and may use the force that is reasonably necessary to conduct the search.
- (2) A member may seize any weapon or other article capable of being used to inflict injury on a person or assist an escape from custody, or anything relating to an offence, found as a result of a search under subsection (1).
- (3) Subsection (1) does not authorise a member to require a person to remove any clothing that he is wearing unless the member has reasonable grounds for believing that the removal and examination and detention of such clothing may afford evidence of the commission of an offence, and the person is provided with adequate clothing to replace the clothing removed.

[...]

21. Section 155 of the PAA provides as follows:

Unauthorised disclosure of confidential information

- (1) A person commits an offence if:
 - (a) the person obtains information in the course of performing functions connected with the administration of this Act; and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct results in the disclosure of the information and the person is reckless in relation to that result.

[...]

- (3) Subsection (1) does not apply if:

- (a) the person discloses the information:
 - (i) for the administration of this Act [...]
- [...]

22. I accept Constable Rolfe’s submission that all statutory powers, and in particular coercive powers, may only be exercised for a proper purpose.²⁴ However, for essentially the reasons expressed orally by Counsel Assisting, and in writing by the Northern Territory Police Force²⁵ and the WLR families,²⁶ I am not persuaded that to interrogate the phone for the purpose of the coronial investigation²⁷ would have been to exercise the power for an improper purpose, or an ‘extraneous’ purpose.
23. Section 144 of the PAA does not expressly provide that the power it confers may only be exercised for the purpose of investigating a criminal offence. That does not mean that the power can be exercised for *any* purpose. But it can be distinguished from other powers under the PAA, including powers of and incidental to search, that expressly *prescribe* the purposes for which they may be exercised.²⁸
24. As the Northern Territory Police Force submitted,
- it is artificial to draw a bright line distinction between criminal and coronial investigations. They are inextricably intertwined. Both are enabled and facilitated by statutory coercive powers. The one contributes to the other. The criminal brief ordinarily constitutes the basis for the coronial brief and what is discovered in the course of a coronial investigation can constitute evidence in a criminal trial or information that prompts the preferring of charges.²⁹
25. Section s 155(3)(i) expressly provides that the offence created by s 155(1) does not apply if the disclosure is made for the purposes of ‘the administration

²⁴ *Johns v Australian Securities Commission* (1993) 178 CLR 408, 423-424 (Brennan J).

²⁵ Northern Territory Police Force (Submissions of 7 September 2022), [22]-[34].

²⁶ WLR families (Submissions of 7 September 2022), [42]-[43].

²⁷ If that was the purpose.

²⁸ See eg, PAA, s 14C, 40A(1)(b), 45(1), 95(4), 120B(2), 126, 126A(1) and (2), 128.

²⁹ Northern Territory Police Force (Submissions of 7 September 2022), [31].

of the PAA'. The broad functions of the Northern Territory Police Force go beyond the detection and prevention of offences, and include upholding the law and maintaining social order. I consider it was consistent with those functions for the police officer to disclose the text messages to the Coroner's Office because, following an inquest into a death in custody, I may make comments and recommendations and report on matters of public health and safety and the administration of justice, and must make recommendations with respect to the prevention of future deaths in similar circumstances.

Receipt of the phone download under s 39 of the *Coroner's Act*

26. If I am wrong, and Constable Rolfe's mobile phone was unlawfully interrogated or disseminated, I am not persuaded that this would prohibit me from receiving the phone download. As NAAJA submitted, Constable Rolfe's submission 'fails to grapple with the independent authority sourced in the *Coroners Act* ... for the Coroner to receive and use evidence notwithstanding that some other person may have provided that evidence to the Coroner in contravention of some other statute.'³⁰
27. A number of authorities demonstrate that the question of whether or not a decision-maker may have regard to unlawfully obtained material depends largely on the statute that confers the power on the decision-maker to receive the evidence.
28. For instance, in *Martin v Medical Complaints Tribunal*,³¹ it was held that a Medical Complaints Tribunal was authorised to receive DNA evidence that had been unlawfully disclosed under the *Forensic Procedures Act 2000* (Tas). Clause cl 3(1)(b) and (c) of Sch 3 of the *Medical Practitioners Registration Act 1996* (Tas) provided that the Tribunal was 'not bound by the rules of evidence' and could 'inform itself on any matter in any way it considers appropriate'. Evans J noted that because the 'tribunal is not bound by the rules

³⁰ NAAJA (Submissions of 7 September 2022), [1.2].

³¹ (2006) 15 Tas R 413.

of evidence [this meant] that it may have regard to evidence that is logically probative regardless of whether it is legally admissible under the rules of evidence'.³² The authority of the Tribunal to receive the unlawfully obtained evidence did not depend on the exercise of a discretion. In that regard, Evans J adopted the following passage from *Cross on Evidence*,

in proceedings where the general exclusionary rules of evidence do not apply, for example in some tribunals, there is no room for an exclusionary discretion. Where statute has sought to extend the range of material available to the tribunal, it is not for the tribunal to cut it down as it chooses by the exercise of any such discretion. *Rosedale Mouldings Ltd v Sibley* [1980] ICR 816 at 822.³³

29. Accordingly, Evans J concluded that the Tribunal was entitled to receive the evidence. Even if it had been appropriate for the Tribunal to do so subject to the exercise of a discretion, Evans J held that the discretion would have favoured admission. See also, *Martin Kennedy and Anti-Doping Rule Violation Panel Chief Executive Officer, Australian Sports Anti-Doping Authority*.³⁴
30. Nothing in the *Coroner's Act* expressly prohibits me from receiving, and considering, evidence that has been unlawfully obtained by another person and s 39 of the *Coroner's Act* expressly provides that a 'Coroner holding an inquest is not bound by the rules of evidence and may be informed, and conduct the inquest, in a manner the Coroner reasonably thinks fit.' In addition, s 34 of the *Coroner's Act* provides that I 'must, if possible, find' the prescribed matters, which include the 'time and place of death', the 'cause of death', and 'any relevant circumstances concerning the death'. In combination, those provisions make it unlikely that parliament intended to

³² (2006) 15 Tas R 413, [14]

³³ (2006) 15 Tas R 413, [15].

³⁴ [2014] AATA 967.

prevent me from receiving potentially relevant and probative evidence, simply because another person had obtained it in contravention of another Act.

31. In *Priest v West*,³⁵ the Court of Appeal of Victoria noted of a cognate Victorian provision,

... the introductory words ... are emphatic: when investigating a death, the Coroner “*must find, if possible*” the identity of the deceased, the cause of death, and the circumstances in which the death occurred. The words “if possible” in s 67 make it obligatory, in our view, for the Coroner investigating a death to pursue all reasonable lines of inquiry.³⁶

32. Later, the Court of Appeal rejected an argument that a Coroner had a discretion to decline to receive propensity evidence, which would not have been admissible at a criminal trial, but was logically probative of the identity of the killer of the deceased. In rejecting that argument, the Court of Appeal said this,

While undoubtedly giving the Coroner (appropriately) broad scope to shape and direct an investigation, these provisions emphasise Parliament’s intention that the Coroner should not be constrained in carrying it out. It is precisely because the Coroner must do everything possible to determine the cause and circumstances of the death that Parliament has removed all inhibitions on the collection and consideration of material which may assist in that task. Parliament has, in particular, exempted the Coroner’s processes from the rules which limit the admissibility of evidence in court proceedings. Far from justifying a narrow view of the scope of an investigation, these provisions oblige the Coroner to take an expansive or inclusive approach, in our view.

33. Accordingly, I am not persuaded that the fact that the evidence might have been unlawfully obtained would prohibit me from receiving it. Nor am I persuaded that the *Coroner’s Act* provides for the discretionary receipt of unlawfully obtained evidence, or at least not in the way s 138 of the *Evidence*

³⁵ (2012) 40 VR 521.

³⁶ (2012) 40 VR 521, [4].

(*National Uniform Legislation*) Act 2008 (NT) might.³⁷ However, to any extent that it might, I would have exercised the discretion to receive the evidence in light of its subject matter and potential significance to the question of what, if any, findings, comments and recommendations I should or must make under ss 26, 34 and 35 of the Act.

‘Remoteness’

34. The Police Association and Constable Rolfe made two broad submissions as to the ‘remoteness’ of the text messages. First, the Police Association submitted that the text messages were ‘open to varying contextual interpretations’. Second, the Police Association and Constable Rolfe submitted that any investigation required a sufficient nexus with the death, and that the text messages, if racist, could not be said to ‘raise on the evidence’ a line of inquiry regarding the death.³⁸
35. For present purposes, it is unnecessary and inappropriate for me to ‘characterise’ the text messages. The question is whether it is appropriate to receive them under s 39 of the *Coroner’s Act* for the purpose of investigating the death, and ultimately for the purpose of determining whether, and if so, in what terms, I may or must make a finding or recommendation under ss 26(1)(a), 26(1)(b), 26(2) or 34(1) of the *Coroner’s Act*.³⁹
36. I would not have investigated this matter if there were not an evidentiary basis to suggest that Constable Rolfe and other police officers with whom he was communicating⁴⁰ held racist views about Aboriginal people. However, I accept the submissions of NAAJA, the Brown family, the WLR families and

³⁷ Although I accept that s 39 of the *Coroner’s Act* may involve a discretionary judgment.

³⁸ NTPA (7 September 2022), [9].

³⁹ I accept that ss 34(2) and 35 of the *Coroner’s Act* are ‘ancillary’ to the balance of the powers to make findings and recommendations and do not provide an independent source of investigative power. In that sense, they are to be contrasted with (at least) ss 34(1) and 26(1)(a) and (b).

⁴⁰ Including the officer in charge of the IRT.

the Committee that an available interpretation of the text messages is that they are prima facie evidence of racism by Constable Rolfe, and within the IRT and the Alice Springs Patrol Group of which he was a member. And, further, I accept NAAJA's submission that it is sufficient that this racism '*may* have played a role – conscious or unconscious – in the immediate acts causing death or in the broader structures concerning the IRT and its deployment'.⁴¹ The inquest will inquire as to whether this is in fact the case.

37. Ultimately, if the text messages are evidence of racism by Constable Rolfe, or a culture of racism within the IRT and/or Constable Rolfe's Patrol Group, and if that racism did play a role – conscious or unconscious – in the immediate acts causing death, the relevant conduct of the IRT while in the community of Yuendumu, or in the decision making of those responsible for deploying the IRT, I am satisfied that this could⁴² amount to a 'relevant circumstance connected with the death' (s 34(1)(v)), or 'a matter connected with public health or safety or the administration of justice that is relevant to the death' (s 26(1)(b)), or bear upon 'the prevention of future deaths in similar circumstances' (s 26(2)).
38. This is the purpose for which Counsel Assisting seeks to adduce the messages. As she noted in her opening:

The purpose of this is not to demonise those who sent the text messages and it's not to publicly criticise them, it is to understand why those negative attitudes have formed, to understand that those negative attitudes do sometimes form and to understand what, if any, impact those attitudes might have on police behaviours when they are arresting people.

And particularly vulnerable people in Kumanjayi's situation and to understand then once we appreciate that some members of the police force have developed those negative attitudes, how do we

⁴¹ Submissions of NAAJA (7 September 2022), [26].

⁴² Not 'would'.

prevent them developing and is there a risk that, if we don't, those attitudes may lead again to deadly confrontation.⁴³

'Incontrovertibility' of a jury verdict of acquittal

39. Mr Edwardson KC submitted in oral argument, that an examination of the facts underlying the offence of which Constable Rolfe was acquitted would 'undermine the jury verdict of acquittal' because the trial 'ventilated and established' the 'cause, time, place and circumstance of death'.⁴⁴ That submission was not supported by authority.
40. Unlike a conviction, an acquittal constitutes no bar or estoppel in subsequent civil,⁴⁵ disciplinary,⁴⁶ or inquisitorial⁴⁷ proceedings. The principle recognised in *R v Carroll*⁴⁸ that verdicts of acquittal are 'incontrovertible' was expressly stated to apply 'for the purposes of the *criminal* law' or in a 'subsequent *criminal* proceeding',⁴⁹ or in proceedings brought by 'the prosecution',⁵⁰ but not otherwise.⁵¹ Accordingly, in light of the differing purpose, standard of proof and available evidence at a coronial inquest, it is not inappropriate for inquests to be held following the acquittal of a person of criminal offence.⁵²

⁴³ Transcript of Proceedings, *Inquest into the death of Kumanjayi Walker* (Coroner's Court of the Northern Territory, Alice Springs, 12 September 2022),

⁴⁴ Transcript of Proceedings, *Inquest into the death of Kumanjayi Walker* (Coroner's Court of the Northern Territory, Alice Springs, 9 September 2022), 203, 206, 208, 210.

⁴⁵ See, *Majindi v The Northern Territory of Australia, Miller and Fitzell* (2012) 31 NTLR 150, [60] (Mildren J); *Re Kumar* [2017] VSC 81, [78]; *Pringle & Ors v Everingham* [2006] NSWCA 195, [34] (Hunt AJA); *Harvey v Attorney-General for the State of Queensland* (2011) 220 A Crim R 186, [10].

⁴⁶ See, *Purnell v Medical Board* (Qld) [1999] 1 Qd R 362; *Health Care Complaints Commission v Litchfield* (1997) 41 NSWLR 630; *That's Entertainment (WA) Pty Ltd v Commissioner of Police* (WA) (2013) 228 A Crim R 201.

⁴⁷ See, *Re Royal Commission into Certain Crown Leaseholds (No 2)* [1956] St R Qd 239 (Townley J, sitting as Commissioner) (2002) 213 CLR 635.

⁴⁸ *R v Carroll* (2002) 213 CLR 635, [138] (McHugh J).

⁴⁹ *R v Carroll* (2002) 213 CLR 635, [45] (Gleeson CJ and Hayne J).

⁵⁰ *R v Carroll* (2002) 213 CLR 635, [45] (Gleeson CJ and Hayne J) and [138] (McHugh J), distinguishing the decision in *Helton v Allen* (1940) 63 CLR 691 and 'civil cases'.

⁵¹ *Domaszewicz v State Coroner* (2004) 11 VR 237.

Indeed, a number of coronial inquests have examined the facts underlying offences of which persons have been acquitted,⁵³ including in cases involving the shooting of civilians by police officers.⁵⁴

41. Ultimately, provided I do not include in a finding or comment a statement that a person is or may be guilty of an offence (s 34(3)), it does not ‘controvert’ an acquittal for a Coroner to inquire into the facts underlying an offence of which the person has been acquitted.⁵⁵ In any event, as Mr Boulten SC submitted in oral argument,⁵⁶ even if the verdict of acquittal somehow set the parameters for fact finding during the inquest, that could only be in respect of the second and third shots fired by Constable Rolfe, because only those shots were the subject of the charges of which Constable Rolfe was acquitted.

Constable Rolfe’s objections to the evidence of Claudia Campagnaro

42. Constable Rolfe objects to the receipt of any evidence from Claudia Campagnaro on the basis that it is ‘not logically probative of any issue relevant to the Coronial Inquiry and should not be received into evidence.’⁵⁷
43. In order to explain why I consider the evidence to be logically probative of a number of issues in the inquest, and why I see fit to receive it under s 39 of the *Coroner’s Act*, it is necessary to set out some of the evidence.
44. The coronial brief presently includes three affirmed statements by Claudia Campagnaro. They are, *first*, an audio-recorded statutory declaration of

⁵³ *Inquest into the Death of Jaidyn Raymond Leskie* (Coroners Court, Victoria, Coroner Johnstone, Case No 007/98, 31 July 2006); *Inquests into the Deaths of Christopher Arepa Kahui and Cru Omeka Kahui* (Coroners Court, Auckland, Coroner Evans, 2 July 2012); *Inquest into the death of Vlado Micetic* (Scope of Inquest Ruling) (Coroner’s Court, Victoria, Coroner Jamieson, 19 August 2019).

⁵⁴ *Inquest into the death of Vlado Micetic* (Scope of Inquest Ruling) (Coroner’s Court, Victoria, Coroner Jamieson, 19 August 2019).

⁵⁵ *Inquest into the death of Vlado Micetic* (Scope of Inquest Ruling) (Coroner’s Court, Victoria, Coroner Jamieson, 19 August 2019), [53].

⁵⁶ Transcript of Proceedings, *Inquest into the death of Kumanjayi Walker* (12 September 2022), 246.

⁵⁷ Submissions of Constable Rolfe (2 September 2022), [13].

Claudia Campagnaro dated 19 August 2020 with one annexure (Brief Ref No 8-7) (**First Campagnaro Statement**); *second*, a written statutory declaration dated 15 October 2020 with five annexures (Brief Ref No 8-8A) (**Second Campagnaro Statement**); *third*, a written statutory declaration dated 10 September 2021 (Brief Ref No 8-8A) (**Third Campagnaro Statement**).

45. The most detailed account given by Claudia Campagnaro concerns Constable Rolfe's involvement in the arrest of a man called Malcolm Ryder in January 2018. The account appears in the First and Second Campagnaro Statements.
46. By way of context only,⁵⁸ on an occasion in January 2018 Constables Rolfe and Breanna Bonney attended 3 Saltwell Street, Alice Springs, in response to a domestic disturbance. Mr Ryder was not one of the 'persons of interest', although he became involved in events once police attended. Ultimately, Constable Rolfe deposed in a statutory declaration that it had been necessary to restrain him:

11. LEHRAIN and I then tackled RYDER to the floor and attempted to ground stabilise him. RYDER then began to scratch my right forearm, causing a laceration. RYDER reached towards my face and started to scratch my face with his fingernails. I was fearful that he was trying to gouge my eyes and in order to defend myself I struck him once on the left side of his face with my closed right fist. This gained subject compliance and RYDER stopped fighting.⁵⁹

47. Mr Ryder was subsequently charged with offences of hindering, and assaulting, Constable Rolfe. At hearing in the Local Court at Alice Springs, Mr Ryder was acquitted after Judge Borchers found that aspects of Constable Rolfe's account were 'untrue', 'wrong' and 'a pure fabrication'.⁶⁰

⁵⁸ I note that Constable Rolfe has foreshadowed an objection to the receipt of this evidence in the substantive coronial proceedings.

⁵⁹ Statutory Declaration of Constable Zachary Rolfe (11 January 2018), [11].

⁶⁰ I express no view as to whether these comments were justified. I note it only for context. I also note that Constable Rolfe has foreshadowed an objection to the receipt of this evidence in the substantive coronial proceedings. I finally note that,

48. In the Third Campagnaro Statement,⁶¹ Ms Campagnaro stated,

3. On the day of the Malcom RYDER incident, which I have been advised was the 11th of January 2018 I was at the Alice Springs Police Station. I was on the arvo shift and Zak and his crew were on the dayshift. This wasn't too long after I started at Alice Springs Police Station in December 2017.
4. Zak had pulled me aside and he was telling me what had happened, he said, "Everyone had been sprayed with OC, the whole team" and "they had been sprayed by Brett", the Detective now in Darwin. Zak he spoke to me in the corner bit near the front counter area.
5. I don't remember if Zak had a scratch on his face at that time but I remember he was covered in OC spray and was all sweaty. Zak told me about what happened, and I'm not sure if my partner was there at this time. Zak was talking hush hush, quietly like he didn't want anyone else to hear. He said, "Malcolm had a gash on his eyebrow" and I remember seeing this guy with this gash on his head.
6. My partner and I we were the ones who had to interview RYDER. I don't remember my partner's name, I only remember him as FISHER or FISH. I remember Fish saying words of the effect of, "the PG [Patrol Group] had done a bit of a dodgy". That PG was just always known to be one of those PG's that were always in these jobs where someone was having to justify use of force.
7. Fish and I had to interview this guy Malcolm, he could barely understand English, I don't think he understood the preamble to the interview. Malcolm he just kept saying to Fish and I, "The police office just had the devil in his eyes", "I was punched in the head", and "I have not done anything wrong". His English was so poor I don't even know how we interviewed him. The eroi was really short because he didn't understand any of it.

after consideration, the Northern Territory Police Force determined not to charge Constable Rolfe for an offence of perjury arising out of this incident.

⁶¹ I have quoted from the Third Campagnaro Statement for the simple reason that it was a written statement and is, therefore, easier to follow than the earlier recorded statement. To the extent that there are inconsistencies between the accounts given in the First and Third Campagnaro Statements, this should not be interpreted as a preference for the accuracy of one over the other.

8. I don't remember seeing a scratch on Zaks face at the time of talking to him at the front counter. I don't think it was at this point he told me about how he got the scratch because he didn't really know me at this point he was just talking to me. I do remember at some point I was told about how he got the scratch to his face that was at a later time after we started dating.
9. This conversation about how Zak got the scratch came up after we started dating. Zak and I lived together afterwards so we talked about things. We started dating not long after Valentine's Day 2018 and we got engaged on the 29th of March 2018.
10. When Zak did tell me about how he got the scratch to his face he said words to the effect, "A female detective upstairs scratched me", "She did it on the same day" and "She did it to help me to have justification for why I gave Malcolm RYDER the gash above his eye". Zak told me the female detective scratched him but he didn't say how.

[...]

14. Zak has told me in conversation, words to the effect of, "I punched RYDER while he was on the floor" and I punched him in the face a few times" but I can't remember if he said why he did it. Zak basically told me, "RYDER run in with a phone in his hand and he was yelling" that he "ran into the room they were in", I don't know what room it was. There was a lot of officers involved because it was a DV case.
 15. Zak has told me, "Thank god my body worn wasn't on because everyone would have seen I was punching RYDER on the floor". From what Zak told me I think Brett was the only one with his body worn on. That conversation was before I went to Adelaide on 8th of September 2018.
49. Further passages from Ms Campagnaro's evidence *might* be said to undermine Constable Rolfe's credibility concerning his use of force. For example,
29. Zak has discussed with me about him not turning his body worn on, he told me he had been emailed a number of times by Acting Superintendent Vicary, I think legislation had been brought in about it and she had said to him that he had to start turning it on. When talking about this Zak has told me, "I'm not going to turn it on because I don't want everyone seeing what I'm doing" or words to that effect. Because after every

shift you have to put it in the dock and it gets uploaded and everyone can see your footage.

50. And later,

24. In my previous statement I mention that Zak suffered some injuries including the one to his wrist. Zak told me that happened in the Alice Springs creek, river or whatever it's called on a job one night. When talking about how he injured his wrist he told me words to the effect, "I pretended that it happened closing the cage door" and "I did it in the river punching someone".

25. I don't know much about that job, Zak told me he was working with an older partner at the time, they were chasing this guy through the dark in the creek when they caught up with him and Zak told me, "I punched him". After this they were not allowed to work together, so the Watchie sort of knew about what happened. I can't remember that older partner's name.

51. Other aspects of Ms Campagnaro's evidence *might* be said to suggest an over-preparedness on the part of Constable Rolfe to draw and/or use a firearm in situations that may call for the use of force. Ms Campagnaro states,

17. As stated in my previous statement Zak has told me, "I always get my gun out first". I don't remember when he told me this but I just remember him telling me when we were at out place. He just thought it was funny in the context he was saying it, that he is always the first to get his gun out."

18. We would be just talking about going on a holiday and he would just off the cuff say words to the effect of, "If I shot someone, I could go on a six-month holiday". Again this was during conversation at home and he would have said it several times. This was closer to the end of our relationship because I remember saying to him that you're not a nice person and I started to realise that we are just not compatible. I remember this conversation because it's like the opposite to me."

52. And later,

28. Zak has previously spoken about getting into the SAS and said to me, "I like being a soldier, it was good money and they could go out and kill people". He said this to me a few times because when we first got together he was trying to get into

the SAS. I don't know what I thought in the beginning, it should have been a red flag, but I think he was serious. I think a lot of the people in the SAS want to shoot people like that's their job so I think he was serious.

53. Other passages of the statement *might* be said to suggest a concerning culture within the Alice Springs Police Station. For example, Ms Campagnaro states,

21. Further to my previous comments about the Cops of Alice Springs covering up Zaks use of force, this was something that Zak had told me. I remember him saying words to the effect of, "The Watchies constantly fix up my jobs". I'm not sure of the process of how it works but when someone reports you, as in Zak, they would constantly get rid of it for him, being the unjustified use of force reports. I'm not sure how they would do this for him.

54. I do not express any view on whether the evidence of Ms Campagnaro should be accepted as credible or reliable. There may well be significant issues with her credibility and/or her reliability as a witness, or the interpretation of her evidence. However, at this stage, the evidence is rationally capable of acceptance, the interpretations are seemingly open, and the accounts are relevant to the inquiries I am undertaking.

55. To any extent that it is necessary, I have considered the cost, delay and any hardship or prejudice to Constable Rolfe that may be occasioned by adducing this evidence.

56. I note that Constable Rolfe has not been charged with an offence arising out of these events and that, when he gives evidence, he may, pursuant to s 38 of the *Coroner's Act*,⁶² claim the privilege against self-incrimination.⁶³

⁶² If Constable Rolfe is compelled to give evidence over his objection, the practical effect of the decision is to confer a direct (but not derivative) use immunity in criminal, civil and disciplinary proceedings.

⁶³ Whether or not Constable Rolfe would be compelled to give evidence about those matters is better left until the time such an application is made.

Conclusion

57. Accordingly, I conclude that I am not prohibited from receiving the evidence and see fit to receive the evidence at this stage under s 39 of the *Coroner's Act*.

Dated this 13th day of September 2022.

ELISABETH ARMITAGE
TERRITORY CORONER