IN THE CORONERS COURT
OF THE NORTHERN TERRITORY
AT ALICE SPRINGS

INQUEST INTO THE DEATH OF KUMANJAYI WALKER

COUNSEL ASSISTING'S SUBMISSIONS ON ROLFE SUBMISSIONS OF 15 FEBRUARY 2024

1. **In respect of the contention at RS [1](a),** Counsel Assisting agree that the Coroner must ensure that the cross-examination of Mr Rolfe is not unduly repetitive or oppressive. However:

   (1) that aspiration should not be translated into an inflexible rule, whereby no degree of overlap between the questions asked by the interested parties is permitted;

   (2) it may be accepted that there are points at which the parties' interests converge; sometimes substantially so. But the areas of convergence and divergence cannot be neatly plotted. Hence, within reasonable limits, a degree of overlap is to be expected, even between two examinations directed at different ends. Within those limits, a degree of overlap is neither 'undue' nor 'oppressive'; and,

   (3) it is neither necessary nor appropriate to require the parties to provide a 'list of topics on the issues in respect of which [the party] intends to cross-examine':

      (a) it is not *necessary* because the parties can be trusted to discuss amongst themselves the topics on which they will examine, or to adjust their examination if a topic is covered during the examination of another party.

      (b) it is not *appropriate* because to do so would be to single Mr Rolfe out for special treatment: to confer on him an advantage not enjoyed by other parties; and to burden the interested parties unnecessarily.

2. **In respect of the contention at RS [1](b)**, Counsel Assisting agree that the Coroner must ensure that the cross-examination of Mr Rolfe is not confusing or misleading. However:

   (1) it is commonplace for an examiner to examine a witness on prior statements by the witness without 'signposting' the examination, or providing the witness with a copy of a document purporting to record the prior statement;

(2) whether and when it may become necessary for an examiner to identify a document cannot be determined in the abstract. If there are genuinely messages about which there is a concern as to incrimination, Mr Rolfe should identify them.

3. **In respect of the contention at RS [1](c)**, Counsel Assisting submits that it is neither necessary nor appropriate to determine the application at this time:

(1) Section 38(1) of the *Coroners Act 1993* (**Act**) permits a Coroner to tell a witness that if the person answers a 'question and other questions that may be put to him or her' the Coroner will grant the person a direct use immunity certificate under s 38(3) of the Act. That power arises where two conditions are satisfied:

(a) first, a person summoned to attend the inquest as a witness must 'decline' to answer 'a question' on the ground that his or her answer will criminate or tend to criminate him or her: s 38(1)(a); and,

(b) second, it must appear to the Coroner expedient for the purposes of justice that the person be compelled to answer the question.

(2) Mr Rolfe's submissions make much of the second condition, but nothing of the first. That is significant because:

(a) the objections Mr Rolfe purports to make are both pre-emptive and global; and,

(b) questions arise as to whether s 38 permits the Coroner to determine a relevant objection pre-emptively and/or globally: see *Rich v Attorney General of New South Wales & Ors* [2013] NSWCA 419, [45]-[46].

(3) Ultimately, it is unnecessary for the Coroner to resolve either question: whether or not it is permissible as a matter of law to determine s 38 objections pre-emptively and/or globally, 'it is easy to see how [such objections] may give rise to difficulties in assessing the overall 'interests of justice': *Rich v Attorney General of New South Wales & Ors* [2013] NSWCA 419. That is reason enough for the Coroner to decline, in the exercise of her discretion, to determine the objections until they are made.

19 February 2024

P DWYER SC
P D COLERIDGE