

INQUEST INTO THE DEATH OF KUMANJAYI WALKER

**ADDITIONAL SUBMISSIONS OF MR ROLFE IN RELATION TO APPLICATION
FILED ON 6 OCTOBER 2023**

Filed on behalf of: Mr Zachary Rolfe

Date of filing: 13 October 2023

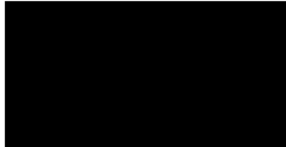
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A Should the Coroner determine the 16 August application?

1. These submissions address the question of whether the application for documents ought to be resolved prior to her Honour's resolution of the recusal application. Although Mr Rolfe will file a substantive reply to the responsive submissions of the parties in due course, this question necessitates an immediate response.
2. Mr Rolfe respectfully submits that the Coroner must not resolve his application for documents at all. By virtue of the claim for legal professional privilege over communications identified within that application, Her Honour has a clear interest in the resolution of that application – she is a party to it.
3. If that is not accepted, as NAAJA observes in its written submissions, the question of recusal goes to jurisdiction. That question should, as a matter of course, be resolved first.
4. As to Mr Rolfe's submissions concerning disclosure: if there is any material that *her Honour* considers will seriously weigh on the question of apprehended bias, judicial prudence would suggest that the material should be disclosed to *all* parties. That is not limited to materials identified within the 16 August application – it is for Her Honour to evaluate what does, or does not, as a matter of prudence, necessitate disclosure.¹
5. Mr Rolfe's submissions at [139] of his written outline ought to be understood as not seeking the discretionary consideration of disclosure pursuant to the *Coroner's Act* prior to the resolution of the application for recusal, but by reference to her Honour's own evaluation of *any* materials bearing on the issue of bias.
6. The provision of such materials is not something that the parties can seek to compel; it is a matter for her Honour to consider as a matter of fairness to all parties. However, in terms of the extent of any disclosure, that is entirely a matter for her Honour's assessment

¹ *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63, [66] – [73].

7. *Finally*, it is important to observe that Mr Rolfe's previous submissions as to his entitlement to materials pursuant to the *Coroner's Act* arises in the context where the Coroner has previously required Mr Rolfe to meet a threshold for access to inquest documents and records, which in his respectful submission is novel and contrary to the *Coroners Act*. That is a concern that goes to the question of apprehended bias.



Tindall Gask Bentley
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