

N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Northern Territory, proceedings for infringement will be taken.

---

NORTHERN TERRITORY OF AUSTRALIA

CORONERS COURT

A 51 of 2019

AN INQUEST INTO THE DEATH

OF KUMANJAYI WALKER

ON 9 NOVEMBER 2019

AT YUENDUMU POLICE STATION

JUDGE ARMITAGE, Coroner

TRANSCRIPT OF PROCEEDINGS

AT DARWIN ON 28 APRIL 2023

(Continued from 10/03/2023)

Transcribed by:  
EPIQ

THE CORONER: Yes, so we're, I think, gathered together over many different locations for the purposes of a further directions hearing in the Walker inquest. Just before I go any further, I'll take appearances, so I can understand where everyone is, although I can see many family faces.

But just starting with you, Dr Dwyer. Are you there?

THE ORDERLY: Your Honour, I'm told that they can't - - -

DR DWYER: (Inaudible).

THE CORONER: Can you hear me? Now, I can see you, Dr Dwyer. Thanks for that.

DR DWYER: Sorry about that, your Honour.

THE CORONER: That's all right.

And Mr McMahon, you're on the screen for the Parumpurru Committee?

MR MCMAHON KC: Yes, thank you your Honour, Melbourne.

THE CORONER: Thank you.

And the Brown family?

MS MORREAU: Yes, good afternoon, your Honour; Paula Morreau, instructed by Streeton - - -

THE CORONER: Thank you.

MS MORREAU: - - - from Brisbane.

THE CORONER: And Mr Officer, you're here for Mr Rolfe?

MR OFFICER: Yes, thank you, your Honour.

THE CORONER: And Mr – is it Mr Darcy, Mr Boulten before? No. Sorry, I'm looking at all those names. NAAJA.

MR BOULTEN SC: Your Honour.

THE CORONER: Who's here from NAAJA today? It is.

MR BOULTEN SC: Can you see me? (Inaudible) Boulten. I'm here with Julian McMahon. I'm in Sydney and Mr – sorry, with Mr Murphy. Julian Murphy lives in Melbourne. So that Mr McMahon (inaudible).

THE CORONER: Thank you. Thank you.

DR DWYER: You're a little bit quiet, Mr Boulten.

THE CORONER: And I can't see all the images at one time; they're moving around, so sorry about that.

Then the Lane, Walker and Robertson families? Mr Hearn, thank you.

MR HEARN: Mr Boe.

THE CORONER: Thank you.

And Dr Freckelton there, you're there for NT Police?

DR FRECKELTON KC: Yes, thank you, with Ms Lau. We're both in Melbourne today.

THE CORONER: Thank you.

And Mr Hutton for Health?

MR HUTTON: Yes. Your Honour.

THE CORONER: Thank you.

Ms Ozolins for the Police Association.

MS OZOLINS: Yes, your Honour.

THE CORONER: Have I mentioned all the parties now? I didn't miss anyone?

MS MCNALLY: Coroner?

THE CORONER: Sorry?

THE ORDERLY: Ms McNally. Your on mute.

MS MCNALLY: Ms McNally, your Honour. Ms McNally for Sergeant Bauwens from Perth

THE CORONER: For Sergeant Bauwens, thank you.

Thank you. Yes, just before we go to any of the other issues that might need to be resolved in the directions hearing or raised in the directions hearing, I just want to clarify the reasons that were handed down yesterday in a ruling that I made.

Yesterday, I published my reasons for declining to receive the majority of the report titled "In normal circumstances, understanding structural nature of racial violence in the Northern Territory." Today, the Department of Health wrote to my counsel assisting team, asking that I clarify two issues arising from the ruling.

First, the Department of Health ask that I clarify whether propose to receive the supplementary report. The answer to that is no. My understanding of the supplementary report was that it was intended to address criticisms made of the report. Once I determined not to receive those parts of the report that expressed opinions or conclusions about the facts of the case, it was my intention not to receive the supplementary report.

Second, the Department of Health asked that clarify whether I would receive certain opinions or conclusions of conclusions in s 3.2 of part 3 of the report. Again, the answer to that is no. The first half of the single paragraph in that section expresses opinions or conclusions about the facts of this case that I have determined not to receive. I will, however, receive the second half of that paragraph.

So the words commencing in par 3.2 of that part, "This report seeks," down to the words "Australia settler colonial context" are not admitted, but the remainder of that paragraph is admitted.

And that is for the reasons expressed in par 15 of my ruling. So I hope that clarifies the matter.

MR HUTTON: It does, thank you, your Honour.

THE CORONER: Yes, Dr Dwyer?

DR DWYER: Thank you, your Honour. Your Honour, I appear with Mr Coleridge, he's online and I'm instructed by Ms Walz, who you can see in my – in the background of my room, sitting.

THE CORONER: Thank you.

DR DWYER: Your Honour, a number of matters to cover today. Might I just start firstly by saying, however, that as the court knows, from the outset of this inquest, we have made a considerable effort to try and explain the Coronial process to Kumanjayi's family and community and to make these proceedings as accessible as possible.

An interpreter was present each day in the court in Alice Springs that we sat, and the proceedings have been summarised, usually at the end of each week or fortnight and a summary has been interpreted into Warlpiri and recorded so it can be listened to.

Making these proceedings accessible is not easy in a complex matter like this where the timetable has had to change, but I can reassure those listening today that

we will summarise what's happening in this directions hearing and have it interpreted, and that too will be made available on the website, along with other recordings.

THE CORONER: And the transcripts are also available, aren't they?

DR DWYER: Yes, your Honour. I think they'll be available the same day, but they certainly will be available as soon as possible. We've requested them, and then that will be placed up on their website.

THE CORONER: Thanks.

DR DWYER: Mr Coleridge has just sent a helpful message around, asking if people don't mind muting when they're not talking, just so that we can (inaudible). Thank you.

So we might first start then, your Honour, with the plans for the remainder of the hearing; the hearing is set to resume, as parties know, on 31 July 2023, and it's listed for one week. The plan is to hear from two witnesses; Mr Rolfe and Sergeant Bauwens.

I can imagine, your Honour, that the community, the witnesses and the service providers involved in this inquest are eager to have the Coronial finished, to receive the findings and to absorb your Honour's recommendations. I need to make it clear, however, that we will only be in a position to proceed an inquest once the issue of penalty privilege has been resolved by the Court of Appeal.

The witnesses are, of course, entitled to exercise their right to appeal, and this court must await the determination. We are, of course, in open court, and for the sake of transparency and clarity, I just want to remind everybody (inaudible) what I'm referring to when I refer to penalty privilege. In your Honour's (Ruling No 5) 2022 NTLC 020, this court held that s 38 of the *Coroner's Act* governs claims of penalty privilege.

So that if a witness objects to giving evidence on the grounds that may expose them to disciplinary action, the Coroner can grant a certificate and evidence can be given under the protection of a certificate.

Ms McNally, can I just ask you to go on mute. I'm just trying to minimise the noise that's around.

MS MCNALLY: I understand. It says "mute" on my computer.

DR DWYER: (Inaudible). Thank you very much.

Constable - so there was your Honour's (Ruling No 5) 2022 NTLC 020. Constable Rolfe obviously was there and Sergeant Bauwens appealed that decision,

as is their right. In the Supreme Court – so the first appeal was to the Supreme Court.

In the Supreme Court, Kelly J ruled that penalty privilege did not exist in a context of Coronial proceedings in the Northern Territory, so that there was therefore no impediment to Sergeant Bauwens and Mr Rolfe giving evidence. And if she was wrong about that, in s 38 on the *Coroner's Act*, would in the claims your Honour had held.

On behalf of Constable Rolfe, and appeal against the decision of Kelly J was lodged in the Court of Appeal, as is his right. And arguments in that case were heard on 12 April this year.

Many of those who have leave to appear in this inquest also appeared in that Court of Appeal matter and took an active role in the argument, including NAAJA, Kumanjayi's family, Northern Territory Police and legal representatives for Mr Rolfe.

The Coroner plays no active role in that case, but enters what it known as a submitting appearance, meaning, in effect, that this court waits, respectfully, for the decision of the higher court.

For efficiency at the moment, we need to proceed as if the matter will be resolved by 31 July and to make plans accordingly. So in relation to the hearing time in May, the current plan is for two witnesses in that week of July; Mr Rolfe and Sergeant Bauwens.

However, your Honour, I note that certain material was served on parties yesterday, and parties are asked to notify the court if witnesses related to those events are requested to be called. The evidence broadly falls into two categories. The first is a statement of a friend of Claudia Campagnaro, Mr Rolfe's ex-partner.

I've asked your Honour to grant an interim non-publication order over her name; that is not Claudia Campagnaro but the name of her friend to preserve her right to request a permanent non-publication order.

If she does want a permanent non-publication order, your Honour can then hear from her, receive an affidavit, for example, from her about why she would like a non-publication order, and your Honour will also, of course, hear from other parties before making that ruling.

Those appearing for Mr Rolfe have had that statement, the statement of the friend of Claudia Campagnaro's, I believe, since at least the trial, but it has only just been served on parties to the inquest. It is served on parties at unredacted copies, with portions of that statement highlighted to indicate what we consider to be redacted if the statement is received into evidence.

And the proposal from the counsel assisting is, in effect, that your Honour would only receive the evidence in that statement about what Ms Campagnaro's friend saw

directly and what she heard directly Mr Rolfe say. And also leading evidence that could stay in context or, if in addition, for example, require requested by Mr Rolfe to put her evidence in context.

If parties do require her for cross-examination, so that we can work out how much time we have in the inquest period that remains, parties are asked to notify counsel assisting within seven days, and then we will go about the task of notifying Ms Campagnaro's friend.

The second category of evidence relates to an incident involving Constable Rolfe that came to light from a review of the videos on his phone. So body-worn video footage of the incident appears to have been played by Constable Rolfe on 16 September 2019, with commentary, while he was a serving officer and just a few months before Kumanjayi's death.

That led the counsel assisting team to obtain the original relevant body-worn video footage, which is dated 8 September 2019. It is apparent that there are two other people in that video. That includes a young Aboriginal man, aged 18, and parties are aware of the name of that young Aboriginal male, who was disclosed in a PROMIS entry, but I won't read it onto the record. And the other police officer, and parties are aware of that name of that police officer, because it's also disclosed in a PROMIS record.

Counsel assisting have then asked police to obtain a statement from those persons; the 18-year-old and the police officer, and parties will be again asked to indicate within seven days of us serving those statements whether they wish for those persons to be called.

That means logistically that in the week of 31 July that we have planned as remaining for the evidence, the court would seek to hear from Mr Rolfe, Sergeant Bauwens, potentially the other witnesses that I referred. The friend of Ms Campagnaro and the two people who were involved in the incident captured on body-worn video footage on 8 September 2019, further recorded by Mr Rolfe on 16 September 2019.

While I am on the efficient conduct of the inquest when it needs to resume, a further issue in relation to preparation for that (inaudible) involves how the text messages that were recorded – sorry, how the text messages and recordings that were downloaded from Constable Rolfe's phone which appear in the brief of evidence at 3-161. That is, the text download appears at 3-161 and the videos are being served separately. How that evidence should be presented for the purposes of ensuring a fair examination of Mr Rolfe, fair and efficient.

Your Honour, a table has been prepared by counsel assisting or by others assisting, of all messages that Mr Rolfe might possibly be taken to. That doesn't mean that Mr Rolfe will be taken to all those messages. The purposes of the table is to ensure fairness to Mr Rolfe so that messages are put in context and in proper chronological sequence because it's simply too unwieldy, in my respectful

submission, to try and deal with that using 3-161 where the messages are sometimes set up and back-to-front.

Parties submitted that - - -

THE CORONER: Not only back-to-front but - - -

DR DWYER: - - - let counsel assisting know if they wanted if they want any text messages added. To date Constable Rolfe has not suggested that any messages be added to that table. In an open statement that Mr Rolfe had published in February 2023 he complained that the text messages had been taken out of context by this court. He wrote that in fact he had used rude and racist terms regarding every race, most often his own. He suggested that the Police Commissioner, this court and myself as counsel assisting and every party who agreed the text messages should be released has had access to every single one of his messages and has only just released just a tiny snippet to make him out to be a racist. A few messages out of thousands. That is a quote from his open letter.

Again, I invite those appearing for Mr Rolfe to review the table that has been circulated by those assisting. It's another opportunity for them to tell the counsel assisting team if there are further text messages in that download or perhaps on his current phone that he wants to be released to have those earlier messages put in context. It is intended that those messages are put fairly and in context. And it is intended that Mr Rolfe be given every opportunity for that to be done.

Now, we're still three months out from a possible first opening resumption of the inquest so there is every opportunity for that to be done, and that is invited.

THE CORONER: Well, as I understand it - - -

DR DWYER: (Inaudible).

THE CORONER: Dr Dwyer, can you hear me? No, she can't.

DR DWYER: In order to ensure that we can finish this inquest if possible in the course of that week.

THE CORONER: I'm on mute.

Mr COLERIDGE: There's a sign at the top.

THE CORONER: Right.

DR DWYER: I'm sorry, your Honour, you're on mute.

THE CORONER: Am I off mute now? No. Press zero to unmute.

DR DWYER: Can your Honour hear me?



THE CORONER: Yes.

DR DWYER: Now, we think that the court officer has very kindly put you on mute to cut the sound out so that I can be heard better. But if your Honour wishes to say anything at the moment, we can't hear you.

THE CORONER: Unmute me.

DR DWYER: Would your Honour put thumbs up if you would like me to continue?

#### TECHNICAL ISSUES RE: AUDIO

DR DWYER: Your Honour, in order that we can fit in the course of that week if at all possible, we are making some other arrangements. First, if at all possible we propose to the counsel assisting team that the court sits late and until 5:30 pm each day. That makes for long days and of course it depends on whether the court staff are available and we're waiting to hear from court management about that. So, it may be, for example, that we could have two court officers. But that request has only just been made.

And we received great assistance from Alice Springs Courthouse to date and from our court officer [Edited]. So, we don't want to stretch the friendship but we would be grateful if those arrangements could be made to see if it's at all possible to finish the inquest in a week.

Second, your Honour, it appears that stopwatch orders will be necessary so that if we are to get through that evidence in a week. Once we know what time we have available, which depends of course on how many witnesses we end up with, parties will be advised on what is achievable.

Your Honour, can I pause? That is all I wish to say at this stage about the arrangements. I will go onto the non-publication order shortly.

THE CORONER: All right.

DR DWYER: I wonder if anybody might want to be heard about any of that.

THE CORONER: Sure. Not sure how I am going to communicate this but I think we need to get this resolved before we continue. Can anyone hear me out there?

DR DWYER: Your Honour, we can't hear you.

THE ORDERLY: I will text [Edited].

THE CORONER: Great.

#### TECHNICAL ISSUES RE: AUDIO

DR DWYER: Does your Honour wish me to keep going? No.

TECHNICAL ISSUES RE: AUDIO

THE CORONER: Nothing like the smooth sailing of technology.

TECHNICAL ISSUES RE: AUDIO

ADJOURNED

## RESUMED

THE CORONER: Look, sorry about that glitch but hopefully it will be smooth sailing for the rest of the afternoon. Yes, so, there seems to be about five matters that have been mentioned by counsel assisting. Does anyone wish to respond or say anything in relation to the five matters that have been raised so far?

MR OFFICER(?): Your Honour, I am not sure what is intended for the rest of the afternoon in relation to non-publication orders.

THE CORONER: I think we're coming to them.

MR OFFICER: Yes, your Honour, and in respect of the friend of Ms Campagnaro what is expected in terms of objections that might be taken either to the entirety of it. Parts of it whether we're going to be putting in written submissions or whether I am expected to address that today. Because at one level there is a practical - - -

THE CORONER: No. Well, it was first of all seven days' notice whether or not anyone required the friend to be available for cross-examination. And if there were going to be any objections then in my view we would appreciate notice of that also within seven days.

MR OFFICER: That is convenient, your Honour. I just wasn't sure whether that was going to be expected but I am satisfied with that.

THE CORONER: And if there were objections that we received, we would provide any further timetable for others to respond. Hopefully that would all be done in writing and if need be we would convene another directions hearing if that needed to be dealt with in any way other than in writing.

So, the five matters that I noted were the friend, the car bonnet incident. Any additions to the table of text messages. Any issue in relation to the potential that we sit until 5:30 on the listed week. And any issue in relation to stopwatch orders and further communications around stopwatch orders. Does anyone have anything further to say in relation to those matters? All right. All right.

So, I think all of that is reasonably clear. There was not a timeframe put in relation to text messages, any additional text messages. I think we have heard from all the parties in relation to additional text messages other than the potential for any further to be raised by you.

MR OFFICER: Or objection too, your Honour.

THE CORONER: Sure, the objections are not – the fact that they're included in a table doesn't make them admissible. It makes them the ones that are arguably people wish to take witnesses to. And if there are objections – if there are objections are you able to notify us of those objections.

MR OFFICER: That is what I was going to raise, your Honour.

THE CORONER: So how long do you need?

MR OFFICER: Your Honour, I probably need a couple of weeks in respect of that one for reasons that I am in trial in a couple of weeks in a different state. And then actually taking instructions in relation to all of them. But that was going to my question, your Honour, because in theory that objection should be taken at the time that the witness is taken to the message.

THE CORONER: Sure.

MR OFFICER: But if I can identify in advance.

THE CORONER: It would be appreciated.

MR OFFICER: Yes, your Honour.

THE CORONER: And it might be that it can be resolved. I don't know.

MR OFFICER: Yes.

THE CORONER: But if we have that notice that would be very much appreciated. So, 14 days to identify any additional text messages for inclusion or any objections to any text messages.

MR OFFICER: Thank you, your Honour.

THE CORONER: As there doesn't seem - - -

DR DWYER: Your Honour.

THE CORONER: Sorry.

MR HEARN: Sorry. Finally, in regards to the stopwatch orders I don't know if now is the appropriate time to raise it because I see in counsel assisting, their submission (inaudible) and it also appears further down that list. But we're hoping to have half a day for the Lane/Robertson families for questioning of Constable Rolfe. And one hour toward Officer Bauwens. I thought I would just note that.

THE CORONER: Put your bid in early, Mr Hearn. What I would invite all the parties to do is, as previously been requested, to provide your estimate of time to counsel assisting. Mr Hearn has already done that. But within seven days. And we will do our best to allocate time. It may be that no one gets the full amount of time that they are seeking depending on what is requested. But we will attempt to be fair in relation to the allocation of time.

MR HEARN: Thank you.

THE CORONER: If there is nothing else arising in relation to those five matters, I will return to Dr Dwyer.

DR DWYER: Thank you, your Honour. And, your Honour, the technical glitch this afternoon is a good segue into our thoughts about how we would manage for that week in Alice Springs when the matter resumes. Because we know that people are anxious to listen on the livestream and they will be interested in that week. And the stopwatch orders will be defeated if we have to stop and start all the time because of the livestream. So, we're just trying to think creatively about how we might deal with that.

For example, by way of a camera in court particularly with the evidence so that it can be uploaded subsequently if there is a breakdown before technical support. But we will get back to parties about that.

THE CORONER: Sure. We will not be able to adjourn for livestream issues during the course of that week. As has been the case throughout this inquest, the transcript be available. And previously we have adjourned because there has been significant interest and I expect that there will continue to be significant interest in the public being able to access the proceedings via audiovisual means. But if the livestream goes down, as Dr Dwyer indicated, at this point we're proposing and seeking to be able to implement a backup by way of a video recording which would not obviously be able to be uploaded live. But could be uploaded during the course of breaks or lunch or at the end of the day.

So, if anyone wishes to be heard about that proposal, or if anyone has an alternative and more efficient proposal that they can suggest, that would be appreciated. But is there any objection to that proposal and we go ahead and arrange for that to take place as a backup? No objection? Thanks, well, we'll do our best to arrange it.

MS MCNALLY: Ms McNally. Ms McNally.

THE CORONER: Yes.

MS MCNALLY: Your Honour can hear me?

THE CORONER: Yes, I can.

MS MCNALLY: Thank you. I need to take instructions but I could foreshadow there may be an objection. If the video is simply to supplement a livestream would the suggestion be the video there be deleted permanently after the hearing?

THE CORONER: Look, I'm happy for you to have those sorts of discussions. But it's mainly just for the purpose of facilitating access by members of the public to the sort of live nature of the proceedings which they have got access to during the

livestream. There is no reason to maintain it for any other purpose other than for that.

MS MCNALLY: I might need to take instructions. But if it was deleted so that each witness is treated equally, I would expect I would have no submissions to object.

THE CORONER: Great. Thank you. If there's any issues, just clarify that with counsel assisting. And if you've got any concerns, raise them with counsel assisting.

MS MCNALLY: Thank you.

THE CORONER: Dr Dwyer.

DR DWYER: Thank you, your Honour. And can I come now to the (inaudible) non-publication order as currently in place.

THE CORONER: Yes.

DR DWYER: Your Honour, just by way of background, at the commencement of the inquest, a non-publication order has been in place, as your Honour (inaudible). Your Honour made that non-publication order pursuant to s 43 of the *Crimes Act* as part of the court's implied or incidental powers. And I'll read it onto the record because there has been such interest in it.

It currently reads, "Pursuant to s 43", etcetera, "the court orders that subject to orders 2 and 3, there be no disclosure or other publication, but the contents of the brief of evidence, including audio visual and audio material, as set out in the index to the brief of evidence and to the orders marked as annexure A". Order 1 does not prevent the disclosure of the documents, including the audio visual and audio material listed in annexure A, to and between the following people for the purposes of the Coronial proceedings. 1, the family of Kumanjaya Walker and their legal representatives; 2, the Commissioner of NT Police and his legal representative; 3, persons granted leave to appear because they have sufficient interest in the Coronial proceedings, and their respective legal representatives; 4, those persons assisting the Coroner and her intra-investigation, including legal representatives; 5, persons to whom brief items are provided by those assisting the Coroner for the purposes of enabling them to determine whether they will apply for a grant of leave to appear, because they have sufficient interest in the Coronial proceedings, and their respective legal representative; 6, the legal representatives for the Commissioner of Police and the NT Police Professional Standards Command".

It goes on to say (inaudible) for the purposes of the Coronial proceeding, "By the people identified in order 2A, to any person engaged or proposed to be engaged to provide an expert opinion for the purposes of these Coronial proceedings". So that is any of the persons listed above for the purposes of giving an expert report. "3, order 1 does not prevent a disclosure or other publication of A, any evidence given or other discussion in open court; B, any documents, including audio visual and audio material made publicly available on Coronial website; and C, any material

made publicly available by the Supreme Court of the Northern Territory". That was of course, following the trial and acquittal of Constable Rolfe the material was released.

The purpose of that order when it was initially in place, was to allow witnesses to come and give their evidence without any prepublication of selected portions of their evidence that might be taken out of context or present an incomplete picture. That protects – their work is designed to protect the integrity of the evidence and it was meant to encourage all witnesses to come and give oral evidence freely and frankly, in a way that can be properly understood and not is not intimidated.

As early as the February sittings, those assisting formed a view that the order for non-publication order should be withdrawn. It's confusing with respect to this current wording. So for example, there are thousands now of documents in the brief of evidence, including academic articles and other material that is publicly available but it's not necessarily on the website and not necessarily released by the Supreme Court. And some of that material is in the public domain and has been published by newspapers.

So if counsel assisting team and I meant to raise it at the end of the last proceeding – last sittings and we frankly forgot to do so due to all the other issues we had to attend to. A broad non-publication order is no longer appropriate, in my respectful submission. We now have only two witnesses still to give evidence, potentially a few others, but we are really through the bulk of the evidence in these proceedings.

The principles of open justice which govern this court, favour the removal of that broad non-publication order when it's no longer necessary. In my role as counsel assisting, I've had requests from a number of persons about what a non-publication order means and that cite access to the brief. That included academics who would like to start writing about the inquest and the media who are writing about the current inquest, external independent investigators.

Access to the brief, other than material published on the website, still has to be granted by the Coroner. But the way in which the non-publication order is worded, in my respectful submission, might make that confusing, with the best of intentions. And in any event, the current non-publication order is no longer necessary or appropriate.

So the proposal today, your Honour, is to invite your Honour to withdraw that broad non-publication order. And parties have been given notice of the proposal to do so. They were asked to indicate in what portions of the brief, if any, they still request an interim non-publication order over. And so the proposal then is that once the broad non-publication order is withdrawn, your Honour will make an interim non-publication order at the same time, in effect, over a limited amount of material that in essence – and obviously my learned friends will correct me if I miss anything, and I intend to go through it in some detail shortly – but in essence, falls into two categories.

The first is either sensitive or disturbing images or information that Kumanjayi's family would like not to be the subject of publication. By way of example, there is distressing videos that show Kumanjayi, in efforts of police to save Kumanjayi's life after he was shot.

The second category of evidence concerns the remaining main witnesses, Rolfe and Bauwens. And that is to allow them to have the same comfort that other witnesses have had, before they give evidence. And to allow them the same opportunity that their evidence can be brought in a proper context once they've had an opportunity to give oral evidence about it.

But I need to stress – and I'll come to the removing of the non-publication order shortly and obviously I'll circulate it. I'm still working on the wording today. But I need to stress, your Honour, that a non-publication order in this court shouldn't – is not intended and cannot inadvertently restrict or delay the important investigative roles that other organisations in the Northern Territory have.

I won't name all those investigative bodies. But they include, for example, SafeWork NT, or Police Professional Standards Command. So – perhaps the Ombudsman (inaudible) as well. And there are others. So the non-publication order will, in my respectful submission, or should be drafted in a way that allows those bodies to continue their important work.

And perhaps I'll come to the wording now. The parties might want to write this down, but obviously it will be circulated. Your Honour will shortly hear the submissions from parties as to the continuation of an interim non-publication order. If your Honour grants that interim non-publication order after withdrawing what I've just read out, I would be proposing that it read in these terms.

Pursuant to s 43 of the *Coroners Act* and/or the court's implied powers, the court makes an interim non-publication order over the items listed in table A. And obviously the items in table A are shortly to be determined. They would include the name of the friend of Ms Campagnaro, for example. But pursuant to s 43 of the court's implied powers, the court makes an interim NPO over the items in table A. 1) the order does not prevent the disclosure of the contents of the brief to parties granted leave to appear for the purposes of these Coronial proceedings; 2) the order does not prevent the Police Force of the Northern Territory from using or disclosing material for the purpose of performing its statutory functions; and 3) the order does not prevent disclosure where required by law or where disclosure is to a statutory entity for the purpose of them performing their functions.

Your Honour, to clear up the confusion, I note that while this was being sorted in March, by a review of the existing broad non-publication order and consider a phrase in it should be removed to avoid what I perceive to be the confusion and a perceived way forward. And that was I suggested to your Honour that the phrase, "For the purposes of the Coronial proceedings" was confusing. And that was particularly apparent to me when it was pointed out that the PSC, that is the Northern Territory



Police Professional Standards Command, is specifically listed in an original non-publication order as a party that the NPO doesn't apply to or doesn't prevent access to.

And yet the PSC are not involved in the inquest, or they're not involved for the purposes of the inquest. So if they're specifically listed and yet you look up and see the phrase, "For the purpose of the Coronial proceedings", that didn't make any sense to me. Clearly a reason that a body like the PSC should be able to review the Coronial brief is because if there is any material in the brief of evidence that the PSC is concerned about in relation to any officer in the Northern Territory Police Force, then the interests of justice requires that they be in a position to review that action, or to review that conduct and take action if required.

And it couldn't be the case that the Northern Territory non-publication order of the *Coroners Act* interfered with that work. On 23 March 2023 parties were then sent an email by Ms Walz indicating that the words, "For the purposes of these Coronial proceedings" in 2A had been deleted and proposing that the non-publication order is in its entirety would be revoked at the end of the sittings and a timetable would shortly be sent to parties asking them if they sought a non-publication order over specific items.

There was no formal application to your Honour. It was not the subject of a submissions process. That was my suggestion to clear up the obvious confusion. Your Honour has always intended that parties have procedural fairness and that they're given an opportunity to comment on any change.

On 24 March Mr Officer on behalf of Mr Rolfe, wrote to the solicitor assisting, Ms Walz, noting that they had not received notice of the amendment, wanting to know why the change had been made and wanting an opportunity to comment. After reading that email, within a few hours of it being sent, Mr Officer then received a reply to say the amendment was rescinded and the order would remain the same until he and all other parties had an opportunity to comment on it.

I regret the confusion caused by that, your Honour. My intent was to suggest a clarification, not a change to the non-publication order. And I should have suggested that parties have the opportunity to comment, even if it was a clarification rather than a change. My intention was then and is always to allow procedural fairness to all parties. So that was an administrative error on my part. That was corrected as quickly as humanly possible.

In any event, the order was not published on the website. We are not aware of it affecting any rights or interests. I take full responsibility for it and I'm conscious that your Honour is always, always very mindful in this court it is shown that all parties have procedural fairness.

So in my respectful submission, parties have now been given an ample opportunity to comment on the non-publication order. But in any event, the issue of an amendment to the existing order is now moot, since the whole of that broader

non-publication order would be gone. It would be replaced by a much more restricted order. And if your Honour grants that order, then it would be in the terms that I propose (inaudible).

I just, for the sake of completeness, note that in addition to that broad non-publication order that's been in place since the end of last – I withdraw that – it's been in place since the beginning of the inquest. (inaudible) discrete non-publication orders available to parties in the SharePoint of that. For example, (inaudible) my position it should remain, because they're permanent non-publication orders, the ones I'm about to mention.

For example, there's no – there should be no publication of information or photographs that would identify children depicted in the Facebook live videos at 4-22, et cetera. Secondly, the name of the child who was arrested by Constable Rolfe when he was hiding in the bin, that has been the subject of evidence, his name is subject to a non-publication order.

There are, I believe, still some interim non-publication orders, but for example, the name of a – some are connected with Constable Rolfe, that was the subject of an interim order made on 3 November 2022. Since that interim order, your Honour has received further submissions from parties. And your Honour has not yet ruled on that interim non-publication order and I'm not inviting your Honour to do that now, it may well be that your Honour doesn't want to do that until after Constable Rolfe has given evidence.

(inaudible) to submit any evidence should be the subject of a restricting of a restricting of publication order when the broad one is removed. We've received submissions from only three parties. Two families, or two legal – sorry, I withdraw that. Legal representatives from the families who (inaudible) ostensive legal representatives. And again, that relates to sensitive material, or material relating to Kumanjaya. And no doubt your Honour will hear from them about what that material is. And secondly, Mr Officer on behalf of Mr Rolfe.

I just also need to clarify. There's a difference between a non-publication order, of course, to be in the terms I proposed, and then what material is put on the brief of evidence by way of uploading – sorry, I withdraw that, I misspoke. There's a difference between the materials subject to a non-publication order and then what material is released on the Coronial website, on the Kumanjaya Walker Coronial website.

In my respectful submission, it's a matter for your Honour as the Coroner to determine what part of this enormous brief ultimately gets uploaded. But in an abundance of caution and fairness, Ms Walz has written to parties before things are uploaded to make sure that (inaudible) seeing redactions to sensitive material.

When Mr Officer communicated in relation to the non-publication order, he has (inaudible) his request into first, material that he seeks redactions over. And they include – Mr Officer can speak (inaudible) about this, but they include

Ms Campagnaro– or particular paragraphs of Ms Campagnaro’s evidence; the Proctor report; some of the information in the statements of Officer Porter and Officer Smallpage.

He doesn't seek a non-publication order over that material, he seeks that when it's uploaded to the website it's redacted. And as I understand, his application in relation to other matters in the brief of evidence that will be the subject of examination when Constable Rolfe comes to give evidence – when Mr Rolfe comes to give evidence – he seeks that that be the subject of an interim non-publication order.

And he's listed those items. And he can go through them. But broadly, they relate to some background material about Mr Rolfe, the Spotlight video, and I think that's it. So we can come to that. The Walker, Lane, Robinson family and the Brown family have asked for some information about Kumanjayi, some video material and stills and some specific information to be subject to a non-publication order. And I propose to clarify whether in fact what they seek is a redaction or a non-publication order. So we can come to that.

But I'll just pause.

THE CORONER: Have the other parties - - -

DR DWYER: To receive submissions.

DR DWYER: Yes, your Honour.

THE CORONER: So, everyone knows what the others are seeking?

DR DWYER: Yes, and Ms Walz has just circulated a table that she has prepared based on what everybody's asked for. So, can I just ask the parties to confirm that they have access to that.

THE CORONER: Do you think it's possible to go through this list and identify matters of which there is no disagreement?

DR DWYER: I do, your Honour, and perhaps we could start – or I so. But perhaps we could start with the redactions that Mr Officer needs because, in my respectful – well, there appear to me to be eight so it would be fairly quickly. I don't speak for the parties.

But I just ask, I have printed off Mr Officer's email. There is one thing that I would ask him clarify. The first category was the first line sensitive information about Constable Rolfe that is contained in Ms Campagnaro's interviews that are at 8-7 8-8 an 8-8A. In particular, requests to Constable Rolfe's parents, family and siblings.

I note that Ms Campagnaro took you to some evidence about having met Mr Rolfe's family. It may not be controversial but there are no specific paragraphs or lines nominated and I wonder if Mr Officer might do that.

MR OFFICER: I can deal with that straight away if you like.

THE CORONER: Sure.

MR OFFICER: Your Honour might not have the document in front of you but - - -

THE CORONER: I've only got the summary - - -

MR OFFICER: Summary.

THE CORONER: - - - that Dr Dwyer's referred to.

MR OFFICER: What really is unnecessary for publication starts from the bottom of page 18 when Campagnaro gives an answer over to page 19. And in fact the first five lines of that paragraph on page 19 is quite personal.

THE CORONER: So, what line from the bottom up on page 18?

MR OFFICER: So, on page 18 it's the last paragraph which is Campagnaro's response.

THE CORONER: So, the last paragraph, yes.

MR OFFICER: When she's asked, "Tell me about his friends and family."

THE CORONER: And then the first five lines on page 19.

MR OFFICER: The problem is, your Honour, that page 19, there are more than just the five lines. Then in between it goes into quite some personal details about his siblings, et cetera. And so perhaps I should circulate a copy with redactions. I don't want to read it onto the record, your Honour.

THE CORONER: No, no. So, how much of page 19?

MR OFFICER: It's all of it.

THE CORONER: And all of page 19. So, the last paragraph of page 18 and all of page 19.

MR OFFICER: Yes. It's the one response that Ms Campagnaro gives to a question.

Your Honour, then, and I can again give page numbers because it's scattered and riddled throughout the rest of her transcript interview. But there are references

to a particular name of an individual who I'll just simply call AF. I have no idea who that is and I'm not sure if it is a real person or not. That might be wise that that name is left out of it. They appear on pages 20, 21, 22, 29, 50 and 51. Your Honour, that same name appears in Ms Campagnaro's statutory declaration dated 10 September 2021 at page 3.

And then, your Honour, in terms of other sensitive matters that arise in that same statement there is a paragraph at the bottom of page 79 starting with a question from Mr Newell enquiring as to the relationship with a particular person. Her response begins at the bottom of page 79 and over to page 80.

And quite frankly not only is it an invasive question the response is certainly not something any individual would want published.

THE CORONER: Are you able to provide me a copy of that so I can see precisely -  
--

MR OFFICER: If your Honour's happy to have my highlighted copy.

THE CORONER: If you're happy for me to have it.

MR OFFICER: I am, your Honour. There's no words I've written in pen or anything.

THE CORONER: Sorry, that's just that bit.

MR OFFICER: Would you like the whole statement?

THE CORONER: Well, just in relation to – the first thing was pages 18, the bottom of page 18 to all of page 19. Then you had those references to AF.

MR OFFICER: If I could perhaps ask your Honour for that page back and I'll insert it and I'll hand you up the bundle. It's only highlighted matters.

THE CORONER: Sure.

MR OFFICER: And I've, helpfully to your Honour, tabbed each page with a little orange sticky. That will be your guide. And, your Honour, also have at the back of it the statutory declaration.

THE CORONER: Great. I'll hand it back to you. Just so I can follow. So, I think we just need to take this peace meal. So, in relation to the recorded statement of Ms Campagnaro dated 19 August 2020 the objection is to, firstly, the bottom of page 18 and all of page 19 which appears to contain information, at least according to Mr Officer, of a personal and sensitive nature to Mr Rolfe.

Does anyone wish to address that or have any - - -

DR DWYER: Your Honour, I certainly sympathise with what Mr Officer's saying there in terms of a sensitive nature of that material. The only thing I wanted to note is that from my understanding Ms Campagnaro's statements were released in full following the criminal trial.

So, I think the horse has bolted but on the other hand Mr Officer is not suggesting a nonpublication order over that material. As I understand he's just suggesting that when we upload it in the brief of evidence it's not there. So, if parties are being able to get hold of it elsewhere nevertheless this very private information is not then (inaudible) again or by somebody different.

So, I just wanted to put that. I don't put a particular strong view on it. I certainly empathise with not having irrelevant type information out there.

THE CORONER: So, this is simply – sorry, to clarify that again. This is simply an application that when it comes to a decision by this court as to whether or not Ms Campagnaro's audio statement is uploaded that it be redacted with respect to that material.

MR OFFICER: That's right, your Honour. The statement goes up but everything I've indicated as objectional or personal and sensitive should be redacted much like what was proposed by counsel assisting on the friend.

THE CORONER: Sure.

MR OFFICER: It's just frankly information that shouldn't see the light of day.

DR DWYER: The only point, it already has seen the light of day but I take Mr Officer's point that I wouldn't want to further embarrass or cause any embarrassment that we could avoid that is unnecessary. So, I don't wish to be heard against a redaction. If that makes Mr Rolfe feel more comfortable then I think that sounds sensible.

I did note there's no publication order over that material, no.

DR FRECKELTON: Your Honour, we support this aspect of my learned friend's application.

MR OFFICER: And, your Honour, the way in which - I can't remember if that particular recorded statement was released in its full following the criminal trial. It probably was. It might be that when it goes up it is redacted. The way in which we stop the proverbial horse from bolting any further is that you do make a nonpublication order over those particular passages.

THE CORONER: A nonpublication order though is a very different test to redacting for the purposes of placing it on a website.

MR OFFICER: Of course it is, your Honour, but it would go up with the redactions in any event if it was subjected to a nonpublication order.

THE CORONER: Are you now making a nonpublication order in relation to this as well?

MR OFFICER: Yes, your Honour, I will based on what counsel assisting has said. And it falls fairly and squarely within personal and sensitive information that it should not be released. And then - - -

DR DWYER: It already has been, that's the problem.

MR OFFICER: It might be, counsel assisting, but it can rectified. And it might be, your Honour, in relation to the passages I took you in relation towards the end of it where it mentions individuals and asks those invasive and inappropriate questions. Perhaps they want to be heard.

I think that Dr Freckelton acts for at least one of them from memory. But they might want such personal and sensitive information subjected to a nonpublication order. It fits fair and square within personal and sensitive information.

Now, your Honour, one matter that might arise, take, for example, the top of page 5, sorry page 19, whether or not if that's in fact her belief and true those individuals actually know of that asserted fact. It's quite a personal and sensitive matter as is the part in the middle where it talks about – I'm trying not to be ambiguous so as not to read it.

THE CORONER: Sure.

MR OFFICER: But it's about point 5 of the way down, "And when I knew them they were" – and then on it goes. Your Honour, the rest of it can go up. The redactions can be made and a nonpublication order prevents it being published until its revoked.

THE CORONER: Dr Dwyer, do you wish to say anything further about this as a nonpublication order? I'm mindful of the limitations of my powers in relation to nonpublication orders. However, my power is as follows:

A Coroner must order that a report of an inquest or part of the proceedings or of evidence given at an inquest not be published if the Coroner reasonably believes that to publish the report would involve the disclosure of details of sensitive personal matters.

And it goes on. It doesn't seem to be a limitation that, you know, if it's been released in other proceedings that's somehow a limitation on me forming a reasonable belief in relation to the disclosure for my proceedings.

DR DWYER: I don't wish to be heard further, your Honour. I don't suggest that there's any great public interest in that and it is embarrassing and personal. So, I don't have a difficulty if it requires it.

THE CORONER: Does anyone else wish to be heard in relation to that application?

DR FRECKELTON: Once again, your Honour, we support the application by Mr Officer.

THE CORONER: Yes. So, I am persuaded that I should make a nonpublication order over the last paragraph of page 18 and the full page 19 of Ms Campagnaro's recorded statement dated 19 August 2020. So, when we come to a specific nonpublication order that would be one of the matters in the table.

But returning now to where we started, there was some other issues in relation to just uploading matters on the website.

MR OFFICER: So, you mean context.

THE CORONER: You had some other redactions that you were seeking as I understood it in relation to uploading.

MR OFFICER: Your Honour, the matters to which I refer - - -

THE CORONER: Sorry, sorry. We haven't finished with this one have we?

MR OFFICER: No.

THE CORONER: Because you also mentioned references to AF so I'll just have a quick look at those. In relation to the application concerning the references to AF, the application is that it not be uploaded onto the website?

MR OFFICER: Yes, redacted, your Honour.

THE CORONER: You would ask that it be redacted?

MR OFFICER: Redacted, yes.

THE CORONER: Is there any issue in relation to that application?

DR DWYER: I don't wish to be heard, your Honour.

THE CORONER: And if no one else wishes to be heard I grant would grant the application that that be redacted for the purposes of uploading the document to the website if and when it is uploaded.



DR DWYER: Your Honour, Ms Walz just asked me for clarification because she'll be doing the uploading or trying to assist with the uploading. So, could Mr Officer just specify the lines? (Inaudible) AF and remove the rest of it.

THE CORONER: Yes. So, the reference to AF and F commences in the last paragraph on page 20 and when you see that you'll see the word that begins with A and the word that begins with F and references to those words on pages 21, 22, 29, 50 and 51 are to be redacted if this document is uploaded.

Then the statutory declaration, that word is repeated three times at par 20 on Ms Campagnaro's statutory declaration dated 10 September 2021. And I would make the same order that that be redacted if Ms Campagnaro's statement is uploaded to the website.

The next reference that I made a note of is in relation to par 79. Where am I finding that?

MR OFFICER: In the record of interview of Ms Campagnaro.

THE CORONER: I don't think you handed up the record of interview.

MR OFFICER: The one that you've been handed up, transcript.

THE CORONER: So, not par 79, page 79. Sorry, that was my fault. So page 79. Do you wish to say anything about this aspect of the application to redact for the purposes of uploading?

DR DWYER: No, your Honour. Perhaps if I might try and short-cut the - what I have to say at least. I don't wish to be heard in relation to any of the suggestions about redactions from Mr Officer to go up.

THE CORONER: Does anyone else wish to be heard in relation to redactions - as opposed to non-publication orders? If no-one wishes to be heard then I am happy to make orders that the redactions requested by - on behalf of Constable Rolfe in relation to the matters that have been identified and summarised by Ms Walz be made to any documents before they are uploaded and I will return those documents to you.

Now we come to the actual any further non-publication matters.

DR DWYER: Yes, your Honour, so it might be convenient to continue with Mr Officer in respect of the matters that he has asked to be the subject of an interim non-publication order and my reading of his email is that the terms of the authorities agreed by reference to the consolidated index the following items to prevent subject to an interim non-publication order, all items in folder 3 with the exception as follows, as they are unlikely to feature in his evidence, so I am reading the words from Mr Officer; 3,-9 through 3-24, 3-26 to 3-34, 3-53 through to 3-60 and 3-65 to 3-70, 3-73 to 3-154, 3-155 to 3-158, 3-162 to 3-164. Your Honour, I don't wish to be heard

against that application. I think that makes sense, it did affect background material with respect to Constable Rolfe.

THE CORONER: Doe anyone else wish to be heard in relation to an interim non-publication order of items in folder 3, excluding those identified items?

If no-one wishes to be heard then I will include that request as part of the interim non-publication order, Mr Officer.

MR OFFICER: I am grateful, thank you, your Honour.

DR DWYER: And, your Honour, that doesn't include - as Mr Officer pointing out in his wording, that doesn't include where he got - where for any of these documents that have already been referred to in evidence, but that's - - -

THE CORONER: Sure.

DR DWYER: That - and that's Mr Officer's wording.

THE CORONER: Yes.

DR DWYER: Your Honour, the only other thing remaining matte of Mr Officer's which - that should be subject to an interim non-publication until Constable Rolfe had the opportunity to give evidence. It is 20-50 through 20-55, that's just some material from the Spotlight program. With respect, I agree that that can be subject to a non-publication your Honour. I don't wish to be heard against it

THE CORONER: Yes, and does anyone else wish to be heard? Then I will also grant an interim non-publication order in relation to that material.

MR OFFICER: I'm grateful, thank your Honour.

THE CORONER: And I note that in making that interim non-publication order it is made for the same reasons that similar non-publication orders were made in relation to the brief of evidence, that is so that witnesses can give their evidence freely and fully without having material picked up piecemeal and potentially in some ways misrepresented because it is piecemeal, before they give their evidence. And so in my view it is important that witnesses are afforded that opportunity to give their evidence without aspects of it being picked up and discussed before they have an opportunity to answer questions and provide a full account.

In my view were that not to be the case it would be contrary to the administration of justice and it preserves the administration of justice to provide the non-publication and those opportunities for people to come forward and give a fully explained account before their evidence is aired further.

DR DWYER: Your Honour, just before we return to the terms of the wording of NPO, I note that there are two other parties that have asked for non-publication

orders for material to be in that table of interim NPOs that comes from the Walker, Lane, Robertson and Brown families. They ask for a non-publication order over Kumanjaya Walker's birth name, firstly.

THE CORONER: Does anyone wish to be heard in relation to that? In my view that is a sensitive, personal matter and particularly of the context of Aboriginal culture and tradition and I would grant an interim non-publication order in relation to that.

DR DWYER: Your Honour, the second matter is the Walker, Lane, Robertson families have asked for a non-publication order over references to Kumanjaya's juvenile criminal history.

THE CORONER: Does anyone wish to be heard in relation to that? I am happy to grant an interim order at this stage. There are, of course, legal restrictions in relation to reference to and reporting on a young person's criminal history. That doesn't extend to the age of 18 so there might be some variation at some stage but at this stage I will grant an interim order under - for the entirety of the juvenile criminal history.

DR DWYER: Your Honour, the next one - and it might require some clarification from Mr Hearn. It is a request from the Walker, Lane, Robertson family to the extent permitted in accordance with statutory experience and precedent, and education of domestic violence incidents relating to Kumanjaya.

THE CORONER: Yes?

MR HEARN: Yes, your Honour, (inaudible) of the Walker, Lane, Robertson family (inaudible). I am assuming that there is a statutory provision to operate in respect to some publication of (inaudible) in relation to domestic violence. I am not quite sure whether or not that specific non-publication order would be required. I understand that Ms Morreau may have had some more information to that issue.

THE CORONER: Ms Morreau, are you able to assist?

MS MORREAU: Your Honour, now, I sought a non-publication order in relation to the domestic violence, not in relation to Kumanjaya but in relation to his (inaudible)'s mother. I (inaudible 3.49.09) and that I didn't (inaudible) the mention and the (inaudible 3.49.14) submission about things in relation to Kumanjaya as - if I might be (inaudible) that are in the material (inaudible) of those passages that would refer to identity of individuals in terms of domestic violence that Kumanjaya might have been exposed to as a child as well as (inaudible) Kerrienne Chilvers and I am not sure whether there are other parties who dispute this but clearly (inaudible) Kumanjaya's family. In addition - - -

THE CORONER: Ms Morreau - - -

MS MORREAU: (Inaudible) difficulty hear you?

THE CORONER: Yes, you are breaking up quite a bit and I must say I haven't been able to follow everything. I have been trying.

MS MORREAU: I apologise (inaudible) - - -

THE CORONER: No, no, no, you've been - I am not sure how we can fix it.

MS MORREAU: I could speak slowly, if it assists?

THE CORONER: It might. Can I just break it down a little bit? So in relation to incidents of domestic violence or alleged domestic violence where it is alleged that Kumanjaya is the perpetrator of domestic violence, as I understand it there is, at least on your part, Ms Morreau, an application that the names of the victims or alleged victims, be subject to a suppression order, is that correct?

MS MORREAU: (Inaudible).

THE CORONER: Okay.

MS MORREAU: The application brought by the Brown family relates to the identity of alleged victims and perpetrators of domestic violence that Kumanjaya was exposed to as a child and for those - - -

THE CORONER: All right. All right, I will just stop you there. So references to the names of alleged perpetrators or other victims of domestic - or of alleged domestic violence that Kumanjaya might have been exposed to, is there any objection by any party for a non-publication in relation to those identifying names?

So I grant a non-publication order in relation to the names of alleged perpetrators or victims of domestic violence where it is alleged that Kumanjaya Walker was exposed to that domestic violence.

MS MORREAU: Thank you, your Honour.

THE CORONER: This is not your application. But breaking it down in relation to the application where it is alleged that Kumanjaya Walker is the perpetrator of domestic violence. Just in relation to the victim or alleged victims of that domestic violence, does anyone object to a non-publication order of alleged victims or victims of domestic violence perpetrated or allegedly perpetrated by Kumanjaya Walker?

A PERSON UNKNOWN: Are you talking about the names, your Honour?

THE CORONER: The names of the victims?

A PERSON UNKNOWN: Names is fine (inaudible).

THE CORONER: All right, and I make that order as well. I haven't dealt with the rest of it yet.

A PERSON UNKNOWN: Yes.

THE CORONER: Sorry, go on, Ms Morreau?

MS MORREAU: Your Honour, the matter that was sought and it is sought that there be non-publication orders in relation to this are sensitive images of Kumanjaya in and around the time of his death and following that. Both still images and moving images the brief contains in cut 4 body-worn camera footage, of course, from multiple officers that we have sought to identify those that do depict - only in period of time you can see that that (inaudible) with (inaudible).

THE CORONER: Yes. Does anyone wish to be heard in relation to that application?

Then I would also grant an interim non-publication order over those sensitive images that are recorded in relation to the passing and immediately past the passing of Kumanjaya Walker.

MS MORREAU: Thank you, your Honour. The next matter that the at the Brown family seeks a non-publication order and a redaction from the statements that have been identified in that table if they are published, relates to opinions by principally Sergeant Jolly in her statement about a lack of care for Kumanjaya that she observed. This is a matter of sensitivity to the family, those depictions are disputed and it is distressing for them to be published outside of your Honour's conducting the inquest, in our submission.

THE CORONER: Dr Dwyer?

DR DWYER: That was more difficult, your Honour, because Sergeant Jolly is entitled to express that opinion. I would be very comfortable if that material was redacted before it was ever put on the website but in my respectful submission, I couldn't (inaudible).

THE CORONER: I mean, it might - - -

MS MORREAU: (Inaudible) your Honour - your Honour might - - -

THE CORONER: I just don't consider it to be really, Ms Morreau, a sensitive personal matter. They are observations of a person who was being involved with a number of matters involving the family and in my view they simply aren't personal sensitive matters.

MS MORREAU: They relate to family care for Kumanjaya and in (inaudible) I maintain that they are personal matters but I hear your Honour's comments and I don't have any further submissions to advance on that issue.

THE CORONER: Yes. I am not persuaded that behaviours that have been observed and opinions formed on the basis of things that have been observed by a police officer forming the matter fall within the context of sensitive personal matters as are set out in s 43(1)(c) of the *Coroners Act* and I decline to grant a non-publication order or redactions in relation to those matters.

MS MORREAU: As your Honour please. The final matters raised by the Brown family are for (inaudible) who are named in the attachment - the (inaudible) and in the next (inaudible) exhibit 769 and its attachment to Sergeant Jolly's statement where there is a list of children identified as having been children of interest to police in Yuendumu at that time. Their names should be redacted in our submission and then finally - - -

THE CORONER: And yes, I do - I - not only redacted but there should be a non-publication order in relation to those children's names, so I would make a non-publication order in relation to the list of children of interest in Yuendumu at that time.

MS MORREAU: Thank you, your Honour. And then it is merely a redaction for the address of the family members that are contained - it was uploaded to the website in (inaudible).

THE CORONER: Yes, and I order that family addresses be redacted before any documents be uploaded to the website.

MS MORREAU: Thank you, your Honour. They were all the submissions that we had.

THE CORONER: That means that we return to the Walker, Lane, Robertson family, is that right? Their applications?

DR DWYER: You are on mute, Christian.

MR HEARN: Thank you Dr Dwyer. (Inaudible) via Ms Morreau, the application that we made and the orders that were made. (Inaudible).

THE CORONER: All right. They don't cover quite all of them, Mr Hearn. I think you asked for non-publication of domestic violence incidents relating to Kumanjayi Walker. Are they incidents where it is alleged, he is – has been exposed to domestic violence or incidents where he is alleged to be the perpetrator of domestic violence?

MR HEARN: Well, certainly incidents where he is said to be the victim of domestic violence.

DR DWYER: Can I just check, your Honour, is Mr Hearn happy with the – happy is probably the wrong word. But are you content with the order currently – was made

by her Honour which might subsume that issue which is just to cover the names of persons who might be (inaudible) in the incident?

MR HEARN: Yes.

DR DWYER: So, that might be resolved, your Honour.

THE CORONER: Sure. And what about – are you also asking where it's alleged that Kumanjaya Walker is the perpetrator of violence in violent – of domestic violence, that those be subject to an order? I've made an order that he victim or alleged victims of any domestic violence not be published but I haven't extended that order to the factual background of any alleged domestic violence incidents.

MR HEARN: Well, your Honour, I don't make an application in relation to his names a perpetrator. (Inaudible) the circumstances which could, I suppose, operate to identify perpetrators. We were seeking that be covered by a non-publication order (inaudible). And eventually it would end in that anyway. To cover the identity of the victim.

THE CORONER: Yes. All right. Now, - well, as I understand it, the – in relation to domestic violence matters, any victims of alleged domestic violence by Kumanjaya Walker, their names are subject to non-publication order or anything that would identify them. And then in relation to Kumanjaya Walker being exposed to domestic violence, the names of any alleged perpetrators or other victims of the domestic violence to which he said he has been exposed, those names are subject to a non-publication order.

MR HEARN: Yes.

THE CORONER: Which means, the details of the events are not the subject of a non-publication order, only the names of people who are said to be involved in those events. I think – does that cover everything?

DR FRECKELTON: On non-publication orders, I think.

MR HEARN: I think so, (inaudible).

THE CORONER: All right. Does anyone wish - - -

DR DWYER: Could I just - - -

THE CORONER: Sorry, Ms - Dr Dwyer.

DR DWYER: I'm just thinking – sorry, your Honour. I'm just thinking out loud. I know that these are interim non-publication orders. They can be (inaudible) if they are causing any difficulty when we come back to court to hear evidence. I am just thinking on my feet (inaudible). Now, evidence given previously by the officers as to why they went to – as to why they did certain things. For example, why they went to

arrest Kumanjaya Walker or - I am thinking that Superintendent Nobbs has already given it to me but it's about concerns he had – I don't think - - -

THE CORONER: Look, the orders don't cover anything that has already been published in evidence. It's only in relation to the documents on the brief of evidence.

DR DWYER: May it please the court.

THE CORONER: So, we will attempt to clarify that in an index and we'll make that available initially as a draft as soon as possible just to confirm that it matches the understanding of what has been discussed today. And if it does match the understanding, we'll then go ahead and finalise it in a written form. But I've already given it orally.

Yes. Anything else, Dr Dwyer?

DR DWYER: No, your Honour. That's all that I wish to say about the non-publication order. I note that I read onto the record the wording of the non-publication order. I haven't been asked to do it for a second time. And the transcript is available but if anybody wishes for clarification – obviously, we'll put this in writing and circulate it shortly to parties.

THE CORONER: Yes. I - - -

DR DWYER: In - - -

THE CORONER: Sorry. Go on.

DR DWYER: Your Honour will need to formally revoke the non-publication order in November but it might be prudent to make sure this non-publication order is in place first.

THE CORONER: Yes. So, it will be my intention to revoke the existing, if I can call it, blanket non-publication order once this new, more limited, publication order – interim publication order is formalised in writing. Anything further Dr Dwyer?

DR DWYER: Just finally, your Honour, in relation to a draft timetable for – just again, to ensure the efficiency, I just want to note for the record that a draft timetable for written submissions was circulated. And with the assistance of parties and multiple phone calls, we can come up with something that I think everybody is content with but it is on – it's on the basis of course, that the week of evidence proceeds on 31 July and is finalised that week.

But it's to this effect that counsel assisting would produce written submissions by 28 August, this year. That written submissions would then be made on behalf of the Brown family, the Walker, Lane and Robertson families, the Yuendumu Community and NAAJA by 11 September. There would be the written submissions on behalf of Constable Rolfe – Mr Rolfe, Sergeant Kirby, Constable Kirstenfeldt, Sergeant



Nankivell, Sergeant Bowens, Constable Eberl, Constable Hawkings and the Northern Territory Police Association by 25 September.

There would be written submissions on behalf of the Northern Territory Police, Northern Territory Health, Northern Territory Housing, Families and Community by 9 October. Oral submissions would then be heard in the week, 23 to 27 October at Alice Springs Courthouse. Mr Castleman is not available during that week. So, he's asked to be able to put in submissions that are necessary on behalf of Mr Follick(?) by 13 October. So, that is prior to the oral submission's week.

THE CORONER: Yes. Thank you.

DR DWYER: Of course, your Honour, an alternative – if it turns out that we cannot proceed on the week of 31 July, an alternative timeframe will be proposed and – but with roughly that same configuration in terms of the gap between submissions.

THE CORONER: Yes. Yes. Thank you.

DR FRECKELTON: Your Honour, I should update you on the status of Mr Rolfe.

THE CORONER: Yes. Thanks, Dr Freckelton.

DR FRECKELTON: On 4 April, Constable Rolfe, as he then was, was served a notice of determination, public interest dismissal, pursuant to s 78 of the *Police Administration Act*. And it was dated 28 March. Was signed by a delegate of the Commissioner, Assistant Commissioner Porter. And his dismissal from the Northern Territory Police Force took effect from 8:59 am on 4 April.

What that means, your Honour, is that his status is that he is no longer a member of the Northern Territory Police Force. He has appealed that decision. That does not change his current status. He has exercised his appellant rights and a board will be constituted to hear that appeal as soon as is reasonably practicable.

THE CORONER: Yes. Thank you for that update, Dr Freckelton.

Are there any other matters to be raised, Mr Officer?

MR OFFICER: Your Honour, I have one matter to raise with help from counsel assisting in relation to several requests I have made as to the amendment - as to how the amendment took place of the non-publication order on 24 or 23 March. And it's an important matter for your Honour because it occurred four days after I raised concern with those at Professional Standards Command as to how it came to be that they were in possession of brief items 250 to 255.

Which are the spotlight transcripts that I have proceeded on the apprehension formed their way onto the brief under a summons of your hand. In other words, they were compelled materials from Channel 7. If I'm wrong about that then I'm wrong about that. But the problem is this. It's not the case that the now amendment is a

moot point. Because, your Honour, if I'm right that the documents you received under summons were, in fact, under summons.

And they were then passed to Professional Standards Command, as I understand they were, because they sought to use those, in fact, alleged breaches of discipline against my client. Because of those, twice I enquired as to how they came into possession of those items which were not responded to. And it became apparent when the s 78 dismissal – or intention to dismiss Constable Rolfe was served on him, that they had in fact received those as part of the coronial materials.

And I raised, your Honour, quite properly - and it still hasn't been explained, that there might have been a breach of the Harman undertaking. Now, your Honour, I am not alleging that but it is quite a serious matter because it does constitute a contempt of court.

And so, when the amendment was made, four days later, as I have identified with those at Professional Standards Command who sought to rely on the amended non-publication order in November. But the non-publication order does not obviate the Harman undertaking. It's four days later that that amendment took place and then was withdrawn.

THE CORONER: Yes.

MR OFFICER: And so, it's not the case that it's just a moot point. The fact of the matter is, if that material was received under your hand of the summons, it was then used as it was for the purposes of a breach of discipline against my client. And ultimately, I hasten to add, subsequently, Assistant Commissioner Porter did not proceed to do anything with that discipline matter. And Professional Standards Command wrote to my client advising that it was closed. He said, because of some uncertainty of the source and proper use of the media interviews.

And so, your Honour, it's one thing to have a non-publication order but when documents are compelled for one particular proceeding as they were, I understand it. In this case, they cannot be used in subsequent proceedings without your consent. And that consent, as I understand it, was never sort. I raise that because whilst we might have non-publication orders that does not necessarily obviate the use of material in the manner of which Professional Standards did without prior notice and the consent of the court who subpoenaed any materials.

That is a serious matter and I raise it because it is a matter that relates to your powers. And that is why I have expressly requested time and time again as to how that amendment came about only four days after it was brought to Professional Standards attention, that they can't rely on the non-publication order for the purpose in which they did.

THE CORONER: But so far as the history of the non-publication order in relation to this court, that's perfectly clear. The non-publication order was in force. There was a – Dr Dwyer has already explained a very brief moment of variation for clarification

and when you raised your concerns or expressed a view that you wish to be heard or something of that nature, it was then revoked, that variation. And the order continued as per previously.

So, the order has in fact been in place effectively unamended. Because although there was a clarification involving a variation that was then immediately rescinded on receipt of your query.

MR OFFICER: Yes, your Honour. And I had asked, in excess of four times, as to what happened, via email. And today's the first I learn of it. It's most unsatisfactory. And it's most unsatisfactory because of the Harman issue that existed at the time at which this material sought to be used - - -

THE CORONER: I don't know anything about the Harman issue. And that's not a matter that is relevant to the Inquest proceedings. It might be an issue for you in other matters or for your client.

MR OFFICER: It's relevant to the sense of how your compelled material is being used in other proceedings without your consent, your Honour. And I raise that because that's what seems to have occurred. As I said, I'm not - - -

THE CORONER: You're - - -

DR FRECKELTON: There's also a matter which needs to be very clear, your Honour.

THE CORONER: Yes, Dr Freckelton?

DR FRECKELTON: The basis – the basis upon which Mr Rolfe was dismissed under s 78 was the open essay which he caused to be published. It was not the Spotlight material which is being discussed.

THE CORONER: None of it seems - - -

DR FRECKELTON: (Inaudible) that's taken place.

THE CORONER: None of this seems to be relevant to my Inquest proceedings. I have – and Dr Dwyer has clarified the non-publication order that has been in place. And if anyone wishes to take some other application or measure or something because they view there's been some breach or otherwise of that non-publication order, then, you know, it's a matter for them. Or material can be put before me but at this stage, I note Mr Officer's concerns. But that's all I proposed to do at this stage.

MR OFFICER: Thank you, your Honour.

MS MCNALLY: Your Honour, on behalf of (inaudible), the penalty issue and whether there are potential penalties, is relevant to (inaudible). During (inaudible) and Dr (inaudible) submissions, he noted that the images for the change was that

someone pointed out to her the issue of the PSC. Now, I wasn't aware of a (inaudible) submissions to the court (inaudible) in relation to a query about the PSC misuse of documents. I'm fine with the parties to be provided with a copy of the document and if it's not a document, a summary of the (inaudible) and its contents.

THE CORONER: Why? How is it relevant to this Inquest? There was a clarification or correction attempted to be made because there appeared to be an inconstancy in the terms of the non-publication order and when it was brought to our attention that the parties hadn't been consulted, it was immediately rescinded and now the non-publication order is going to be revoked and replaced. It is not a matter for this Inquest or an issue for this Inquest that there be any further enquires made. An explanation has been given.

MS MCNALLY: Your Honour, I requested a copy of the submissions in the context of the Inquiry, may I take it that you are making a decision that I am not entitled to it?

THE CORONER: It's irrelevant. I don't – how could you be entitled to it?

MS MCNALLY: I've made my request, your Honour.

THE CORONER: Yes. And you've heard the response.

Are there any other matters - - -

MS MCNALLY: (Inaudible).

THE CORONER: Are there any other matters - - -

MS MCNALLY: (Inaudible). Just to make it abundantly clear that I am not concerned about any confusion with current orders as proposed. Because I want to be very clear about this. The order does not prevent the Police Force of the Northern Territory from using or disclosing the material for the purposes of performing its statutory functions. Nor should any order of this court propose to do that or want to do that.

Thirdly, the order does not prevent disclosure when required by law or where disclosure is to a statutory entity for the purposes of them performing their functions. I don't know whether or not any of my colleagues have performed the role of counsel assisting. But it is arduous and you sometimes get 20 calls a day from people trying to understand the court's orders or trying to work out when they're sitting or how are we next sitting.

I want to make sure for the court that there is a very crystal clear order in place that doesn't invoke or interfere on the functions of other investigative bodies that are important for the Northern Territory. And I am satisfied, with respect, that the order as currently proposed, will make sure that that can take place.

There is one other issue that I'm aware of that's been raised and that is that one of my learned friends - and I can't immediately recall who - has asked us to undertake some further work or get some further documents in light of what was served last night. I think it was the Walker, Lane, Robertson family.

MR HEARN: Yes. And we've got - there were two further statements that we were hoping might be able to be obtained by the Coronial team and investigated, one being from the Ombudsman, the office of representatives in relation to what may be material they may have been provided or were provided when considering various complaints that transmitted to them or communicated to them by PFC first. Further, we communicated with the team about it.

The second was, and it was stated from Assistant Commissioner Smallpage, regarding the (inaudible) affected it could there be a change with Commissioner Chalker's position as to the reforms and the up to now stated to the board that the various responses that have been made.

THE CORONER: Sure. So, Dr Dwyer, in relation to any material that the Ombudsman's Office might have in relation to, as I understand it, the incident on 8 September, are you able to ask the OIC to make enquiries and if any material is provided obviously make that available to the parties?

DR DWYER: Certainly, your Honour.

THE CORONER: And in relation to whether or not there might be any change between now and the conclusion of these proceedings in relation to the position or the evidence that's been provided from senior police officers concerning an intended response to certain issues that have been raised, if there's any variation or change in relation to that evidence, Dr Freckleton, do you undertake to provide further statements to clarify if there is any change in position?

DR FRECKLETON: I do, your Honour.

THE CORONER: Thank you. Anything further?

MR MCMAHON: Yes, your Honour, Julian McMahon.

THE CORONER: Yes, Mr McMahon.

MR MCMAHON: I don't wish to make a specific request. I just want to put on the record because of item number 3 of witnesses and my client may seek - and we do this in correspondence to all the parties but just want to flag it now in case it would be of any assistance. My client (inaudible) connected to the Inquest provided concluding comments right at the end of all of the evidence that began perhaps - and I'll discuss that with counsel assisting and I'm not saying that we'll definitely make that request. I'm flagging it now because (inaudible).

THE CORONER: All right. Thanks for flagging that for us, Mr McMahon.

Any other matters that anyone wishes to raise?

MR HEARN: Your Honour, Hearn for the Walker, Lane, Robertson family again, it's our current intention to also put together some material from the Walker, Lane, Robertson families by way of family impact and victim impact over the coming weeks. There's already been some work done in that regard but (inaudible).

THE CORONER: Look, can you please have those discussions about any further material that you might wish to present with counsel assisting. If there is going to be any further material it has to be provided in advance of our final sittings, that is, final evidentiary sittings, not final submission sittings, so that any other parties have an opportunity to respond, object or otherwise deal with that new evidence. But I'm going to allow you to speak to counsel assisting and she might provide a timetable as to the last day that any additional material might be able to be provided.

MR HEARN: Thank you.

THE CORONER: Anything further? Thank you again for attending today and we'll adjourn to next listed sittings.

ADJOURNED