

CITATION: *Inquest into the death of Danny Gumana* [2009] NTMC 044

TITLE OF COURT: Coroner's Court

JURISDICTION: Nhulunbuy

FILE NO(s): D199/08

DELIVERED ON: Monday 28 September 2009

DELIVERED AT: Nhulunbuy

HEARING DATE(s): 12 – 14 August 2009

FINDING OF: Dr Celia Kemp, Deputy Coroner

CATCHWORDS: **Intentional self-inflicted hanging, police conveyances, suicide in East Arnhem**

REPRESENTATION:

Counsel:

Assisting:	Ms Jodi Truman
Northern Territory Police:	Mr Jack Lewis
Family of deceased:	Ms Michelle Swift

Judgment category classification:	B
Judgement ID number:	[2009] NTMC 044
Number of paragraphs:	141
Number of pages:	39

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

No. D199/08

In the matter of an Inquest into the death of

**DANNY BORRAK DAYMADHUNA
GUMANA
ON 4 OCTOBER 2008
AT LOTU ROAD, YIRRKALA**

FINDINGS

Delivered 28 September 2009

I INTRODUCTION

1. Danny Borrak Daymadhuna Gumana was born on 4 April 1989 at the Gove District Hospital, Nhulunbuy. He was referred to as ‘the late Mr Gumana’ during the inquest in accordance with his family’s request and I will continue to do this in these findings. His body was found hanging from a tree at the rear of his residence at Number 7 Lotu Road, Yirrkala by his traditional Aboriginal wife, Shandi Mununggurr, shortly before 5.50am on 4 October 2008.
2. Earlier that night, police had conveyed the late Mr Gumana from outside the Jam Nightclub (‘the Jam’) at the Walkabout Hotel in Westal Street, Nhulunbuy to Yirrkala in the cage at the back of the police vehicle. This death was reportable to me because it was unexpected. As a result of the police involvement in the lead up to his death, it was investigated as a death in custody.
3. It became apparent that the death did not occur at a time when the late Mr Gumana was in custody, and thus this was not a ‘death in custody’ according to the *Coroner’s Act* and an inquest was not mandatory. However I exercised my discretion to hold an inquest because of the residual concerns held by the family in relation to the death.

4. Pursuant to section 34 of the *Coroners Act*, I am required to make the following findings:

“(1) A coroner investigating –

(a) a death shall, if possible, find –

- (i) the identity of the deceased person;
- (ii) the time and place of death;
- (iii) the cause of death;
- (iv) the particulars needed to register the death under the Births, Deaths and Marriages Registration Act;

5. Section 34(2) of the Act operates to extend my function as follows:

“A Coroner may comment on a matter, including public health or safety or the administration of justice, connected with the death or disaster being investigated.”

6. Additionally, I may make recommendations pursuant to section 35(1), (2) & (3):

“(1) A coroner may report to the Attorney-General on a death or disaster investigated by the coroner.

(2) A coroner may make recommendations to the Attorney-General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the coroner.

(3) A coroner shall report to the Commissioner of Police and Director of Public Prosecutions appointed under the Director of Public Prosecutions Act if the coroner believes that a crime may have been committed in connection with a death or disaster investigated by the coroner.”

7. Ms Jodi Truman appeared as Counsel assisting me. Mr Jack Lewis was granted leave to appear as Counsel for the Northern Territory Police and Ms Michelle Swift (instructed by Mr Ben Grimes from the North Australian Aboriginal Justice Agency) was granted leave to appear as Counsel for the family of the deceased. I thank each Counsel for their extremely helpful assistance in this matter.

II THE CONDUCT OF THE INQUEST

8. Detective Sergeant David Richardson investigated this death. I have before me a Coronial Brief in relation to the investigation compiled by Sergeant Richardson and a number of additional exhibits. I heard oral evidence at the inquest from Detective Sergeant David Richardson (the officer in charge of the investigation), Anthony Doyle, Gerald Mogridge, Shandi Larrina Mununggurr, Sharon Gurruwiwi, Angela Marika, Brendan Marika, Jamie Djarr Gumana, Grace Mununguritj, Priscilla Marrpalawuy Marika, David Dhangatji Mununggurr, Dr Joe Gawirrin Gumana, Mandy Paradise, Constable Patrick Carson, ACPO Debra Carter, Senior Constable Brendan Shepherd, Senior Sergeant Travis Wurst, Professor Rob Parker and Acting Superintendent Scott Pollock. I was assisted by Murphy Yunupingu who interpreted for a number of the witnesses.
9. The extended family of the late Mr Gumana were in court throughout the inquest, including Brendan Makungun Marika, Angela Burungan Marika, Harry Waturr Gumana, Paul Gutjapin Gumana, Dr Joe Gawirrin Gumana, Max Yimnuthu Gumana, Lucille Napatj Marawili, Dorothy Dhawuthuwalawuy Guygla, Maxine Neiipu Gumana, Samantha Dalparri, Brenden Gyngpun Gumana, Wilson Mirrirri Gumana, Angie Rarrpatjun Gumana and Yvonne Gawumala Gumana. I am aware that this was particularly difficult for them given their grief in relation to the death and the heightened concern and blame that still surrounds it. They sat through evidence that was extremely upsetting for them. I commend the family for

the respect they have shown to this process and thank them for the assistance they gave to me. The family raised concerns about whether a third party caused the death and about the actions of the police on the evening and I will address those matters in detail in these findings.

III BACKGROUND OF THE LATE MR GUMANA

10. The late Mr Gumana was 19 when he died. He was raised at Gan Gan, a homeland community in the East Arnhem region. He learned the traditional ways of his family and ancestors. Gan Gan is a very important place to the late Mr Gumana's family and it is a place for creation and symbolism. Dr Gumana explained that *it is as important to the Yolngu people as Parliament House in Canberra is to the white man*. The late Mr Gumana would eventually have gone on to be a traditional leader at Gan Gan, just as Dr Joe Gawirrin Gumana, his grandfather, is now.
11. The late Mr Gumana upheld the traditional culture of his area and was a tribal dancer. He had been employed as a contractor at the Laynhapuy Homelands Association. He had one daughter, Maxine, with Samantha Dalparri. He was married to Shandi Mununggurr. The couple had no children together. They lived at Number 7 (lot Number 57) Lotu Road in Yirrkala with Ms Mununggurr's aunt and uncle, her son, her three brothers and her little sister. They had been living at Yirrkala, where his wife's family were located, for some months prior to his death. Previously they had lived at Gan Gan.
12. The late Mr Gumana finished primary school but did not go to high school. He was a good sportsman who played centre half back for the Djarrak Football Team. It was very clear to me that the late Mr Gumana was held in high regard in the community.
13. The late Mr Gumana was a regular drinker and also smoked cannabis on occasion. I was told by the father of the late Mr Gumana that his son started

to drink alcohol at the age of 16 years. He said that without alcohol the late Mr Gumana was a very, very good young man, but on the grog it was *no good*. However he explained that *his behaviour to alcohol was not to act badly or to harm anyone and he was not in any way mentally ill*. The late Mr Gumana had no previous recorded dealings with police at all. In a community where there is a relatively high rate of interactions with police, this is an impressive testament to his character and behaviour.

14. I received a very honest and heartfelt letter written by his father where he describes his son as a *bright happy person with a lot of humors in him* and *we would love his presence when he was with us but now, we miss him but we will never forget him*. Ms Mununggurr, the late Mr Gumana's wife, said *that he used to make me laugh...he was a really funny guy... he makes me happy all the time* and described that she felt her *whole heart just got ripped out of her chest* when he died.

IV CIRCUMSTANCES SURROUNDING THE DEATH

1. The month leading up to the death

15. The late Mr Gumana's grandfather had passed away about a month before his own death. The late Mr Gumana told his wife that he missed his grandfather *so much* and that he was really sad. He said he had only one grandfather left and was worried about losing him also.
16. In the weeks leading up to his death the late Mr Gumana had made two threats to commit suicide. The first time was about three weeks before his death. He came back home from town, he argued with Ms Mununggurr, and he said he would go out. She said not too because it was late and she was worried about black magic. He walked outside and she followed him and saw him at the same location where he later died, rolling the hose and he told her that *I wanna suicide myself*. She comforted him and he didn't continue, and went back inside and went to sleep. A week later he came

home late, he argued with Ms Mununggurr, she saw him leave the room and followed him and found him about to climb a tree with a rope. She grabbed his leg and pulled him down. On both occasions he had been drinking. He had never done anything like that before.

17. Ms Mununggurr says she told the late Mr Gumana's aunt, Priscilla Marrpalawuy Marika, who works for drug and alcohol services, that she was worried about him and that he had tried to hurt himself. She says she also told his mother, and that the late Mr Gumana spoke to her and it appeared to help. She also asked her husband about seeing mental health services and said he growled at her saying *I'm not mental. I don't want to be seen by anyone else.*
18. Priscilla Marrpalawuy Marika is an Aboriginal Mental Health worker, who was the late Mr Gumana's aunt, and she gave a statement and gave evidence before me. She says that before the late Mr Gumana died on one occasion he came around to her house and said he was having an argument with Ms Mununggurr and she talked to him about that. She said she was worried about his drinking and she talked to him about safe drinking but she didn't think he agreed with it. She said she wasn't told about him trying to hurt himself. She was away at one of the homelands at the time of his death. She said that her nephew was very quiet, she was very close to him, but he didn't share things that worried him.
19. It is apparent that Ms Mununggurr spoke to Priscilla Marrpalawuy Marika about the late Mr Gumana. Exactly what was said is not particularly important for this inquest and I consider there is an honest difference of recollection on the issue. More importantly it is apparent that sadly, like many people, the late Mr Gumana was resistant to the idea of talking to others about his troubles, and in particular to seeking treatment from mental health services.

20. In the days leading up to his death the late Mr Gumana was acting in a way that was unusual for him. He had been drinking much more than normal and did not go to work for the four days before his death.

2. The night of the death

21. On the evening of Friday October 3 2008 the late Mr Gumana was out. He returned home at about 8 pm and wanted to go to the Jam. The Jam is open to the public on Friday and Saturday evenings from about 11.30pm to 3am. Ms Mununggurr and her sister drove into town to drop him off at the Arnhem Club in Nhulunbuy. Ms Mununggurr drove back home, and the late Mr Gumana began consuming alcohol at the Club. Angie Marika remembers him looking upset at the Club.

22. He continued on to the Jam when it opened later that evening and stayed there until it closed. Gerald Mogridge and Anthony Doyle were working as security at the Jam that night. Mr Mogridge didn't remember the late Mr Gumana having any problems inside the Jam. Mr Doyle knew the late Mr Gumana well and said he thought he had a good night overall inside the Jam. He was drinking alcohol but not an excessive amount.

23. Ms Mununggurr arrived at the Jam at about 11:45 pm. She came in because she was worried that the late Mr Gumana would drink too much and get into a fight. Ms Mununggurr first saw her husband around midnight, she said he seemed really happy and was dancing with people but she thought something wasn't right. Ms Mununggurr and the late Mr Gumana had a verbal argument inside the Jam. There is some evidence that it may have been in relation to another woman but not sufficient evidence for me to make a definitive finding on this point.

24. Last drinks were called at about 2:30 pm on 4 October 2008. The Jam closed and the 80 to 100 patrons remaining, including the late Mr Gumana, were ushered out on to the street.

25. The late Mr Gumana was angry, frustrated and emotional outside the Jam. He became involved in a number of disputes. He had an argument with his wife. He also had an argument with his cousin, Jamie Djarr Gumana about cultural issues. There was a lot of shouting, some pushing and some air punches thrown between the two but overall the evidence is that no punches were landed. Other people, including two aunts, Tina and Kerry Wunungmurra, became involved. Angie Marika tried to break it up and the late Mr Gumana tried to push her but didn't actually hit her.
26. The two security guards went over to the fight, and a few other males become involved. The security guards became concerned for the safety of the late Mr Gumana as much of the aggression seemed directed at him, and they were concerned that the situation would escalate. This was a very real concern given the large number of people who were affected by alcohol in the area.
27. The security guards called police. They also got the late Mr Gumana to step aside and asked Jamie Djarr Gumana to move on. This stopped the physical fighting but the two groups were still arguing verbally. It looked like the late Mr Gumana was about to hit one of the aunts so Mr Doyle grabbed him to stop it. Mr Doyle also talked to the late Mr Gumana to try to calm him down.
28. There were three Nhulunbuy police members on duty from 6pm on 3 October 2008 to 4am on 4 October 2008; Senior Constable Brendan Shepherd, Constable Patrick Carson and Aboriginal Community Police Officer [ACPO] Debra Carter.
29. At around 2:45 am they received the phone call requesting police assistance in relation to a disturbance in front of the Walkabout Tavern. All 3 officers left the police station and travelled to that location. Senior Constable Shepherd explained that they all went because of the expected large number

of people (due to the fact it was closing time) and the advantage a larger police presence gave them in that situation.

30. On their arrival they saw 80 to 100 persons in the area. It appeared that there were no taxis available. It is important in terms of what happened next to set out the difficulties with transport. Many patrons live in communities a considerable distance away from Nhulunbuy. There are 16 to 20 taxis available for use in Nhulunbuy. The length of a round trip from Nhulunbuy to Yirrkala is approximately 40 minutes, meaning that once a taxi is gone, it is gone for a substantial period of time. The cost of an average fare is about \$50 and many people do not have this at the end of a night out. On this particular evening the East Arnhem Night Patrol was not operating. Even if it had been operating, it was only present from 6.30 pm until midnight. Because it had not been operating that evening there were more people than usual in town. All this means that after closing time the street is filled with large numbers of people, who have had alcohol, and who have no ready means of getting home. This is clearly a recipe for trouble. Senior Sergeant Wurst states that *for police, as well as for the public, this creates a very difficult and potentially dangerous situation. When a disturbance commences, it can be difficult to resolve safely without spiralling out of control due to the level of intoxication of people and the total disregard intoxicated people seem to have for the safety of others.*
31. Constable Carson spoke with security staff who told him about the argument involving the late Mr Gumana. At that time police observed the late Mr Gumana had taken off his shirt and was arguing, loudly, with a group consisting of several males and a few females.
32. I have carefully considered the evidence as to what happened next as one of the issues at the inquest was whether the late Mr Gumana chose to go home with police, or whether he thought he was under arrest and was taken against

his will. The police officers, security guards and civilian witnesses were all asked about this in detail in the statements and then at the inquest.

3. How the late Mr Gumana ended up in the police vehicle

3.1 Evidence of the police

3.1.1 Constable Carson

33. Constable Carson said that although the persons in the area were creating a disturbance, he did not consider it enough to justify arresting anyone. There wasn't anyone who appeared intoxicated to the point where they should be taken into protective custody. As a result he attempted to deal with the situation by talking to people in the area.
34. The late Mr Gumana appeared to be a central character so Constable Carson focussed his attentions upon him and approached him and asked him what was going on. He said the late Mr Gumana seemed agitated and was making animated arm and hand movements. Constable Carson noticed that an older female who was with the man was trying to persuade him to go home.
35. Constable Carson recalled thinking the situation would resolve if the late Mr Gumana went home, and remembers hoping that a taxi would come around the corner so that the late Mr Gumana could jump into it. Constable Carson described in great detail his considerations about the best way to deal with the situation and the various options he went through, before deciding that persuading the late Mr Gumana to go home was the best option.
36. When police give a voluntary passenger a lift, this is called a 'conveyance' in police terminology. Constable Carson thought, given the lack of alternative means of the man getting home, that this would be the best way of achieving this. So he said words to the effect of *Mate you should come with us, we'll get you out of here*. This appeared to have a conciliatory effect upon the late Mr Gumana and he appeared to calm down a little.

37. Constable Carson and the late Mr Gumana began to move away from the others, Constable Carson hoped this would end the arguing. The late Mr Gumana said words to the effect of *Look I want to just get out of here. I just want to go home.* As a result Constable Carson said to the late Mr Gumana words to the effect of *we'll give you a lift* and Mr Gumana agreed as long as it was not with the people he was with.
38. Constable Carson then walked with the late Mr Gumana to the police vehicle. The Constable gave evidence that he probably had some physical contact with the late Mr Gumana either by a hand on his back, or a hand on his arm to guide him. He said he had a hand on his back from very early on in a friendly sort of fashion when he was trying to calm him down. As he was approaching the vehicle he remembers Mr Doyle came over and taking the late Mr Gumana by the elbow to assist. Constable Carson says that he was concerned about this because he thought it might make the late Mr Gumana agitated, and also because he wasn't trying to arrest the late Mr Gumana, and he gave the security officer a 'look' and Mr Doyle backed off a little.
39. Constable Carson stated that the late Mr Gumana walked willingly to the back of the vehicle. ACPO Carter said something like *you'll have to travel in the back if you want to come with us* and he replied *yep, I want to get out of here, I'll jump in* then got straight into the back of the cage. Constable Carson gave evidence that he recalled speaking at some stage with the late Mr Gumana and asking him where he lived. The late Mr Gumana advised that he lived in Lotu Street, Yirrkala. Constable Carson said that it was a consensus reached between himself, ACPO Carter and Senior Constable Shepherd that they would leave the area with the late Mr Gumana in the hope that the remainder of the group would then calm down once the late Mr Gumana was gone.

3.1.2 ACPO Carter

40. ACPO Carter recalled seeing Constable Carson speaking with the late Mr Gumana and saying things like *come on, settle down, it's all right*. She heard the late Mr Gumana say *oh yeah, take me home*. She says Constable Carson placed his hand on the late Mr Gumana's upper back and said *come on mate, let's go home and we'll take you home*. She remembers a female who seemed to be agitating him being told to leave, and then says she and Constable Carson proceeded with the late Mr Gumana to the vehicle. She doesn't remember where the security guards were at that time. Her perception of the situation is that the late Mr Gumana felt like they were doing him a favour by taking him home. She remembers the late Mr Gumana sitting in the back of the cage with his legs out, and he asked where his shoes were and they got some shoes that were nearby for him.

3.1.3 Senior Constable Shepherd

41. Senior Constable Shepherd said he saw Constable Carson talking with the late Mr Gumana who he appeared to be walking across the road towards the van. Constable Carson appeared to be guiding the man across the road. He said *I don't recall any holding of arms or anything like that but there may have been like a hand on his back to escort him across the road*. He saw a security officer with Constable Carson but didn't see whether he had any physical contact with him. He says as they came to the police van they had a conversation, he asked the man where he lived and the man told him Lotu Road. As he understood it, the late Mr Gumana had asked for a lift home, so they were giving him one. He says the late Mr Gumana seemed cooperative.

3.2 Evidence of the security Guards

42. Mr Mogridge said that Mr Doyle grabbed the late Mr Gumana to stop him hitting his auntie. He saw Mr Doyle walk with the late Mr Gumana to the police vehicle. The late Mr Gumana seemed content to go and was quite composed. He couldn't remember if Mr Doyle was holding one arm or just

walking with him. When he saw the police going over to the vehicle with the late Mr Gumana, he was under the impression that the late Mr Gumana might have been in the process of being taken to be locked up. Mr Mogridge was not close enough to hear any of the conversations between the late Mr Gumana and the police.

43. Mr Doyle says when police arrived he was with the late Mr Gumana and had managed to calm him down a bit. Mr Doyle went to talk to police, while he was doing this he saw the late Mr Gumana with his hands in the air, yelling out if anyone wanted to fight him, and his aunty standing in front of him trying to calm him down. The late Mr Gumana got upset and using his open arms and chest pushed his aunt. As a result Mr Doyle put his arm on the late Mr Gumana's arm, got him to put his hands down, and held onto his right wrist. The late Mr Gumana was *upset, crying, confused*.
44. He says a police officer held onto his other arm and they casually walked him over towards the paddy wagon. He said neither himself, nor the police officer, were holding the late Mr Gumana with any force. The late Mr Gumana went without any resistance. He can't remember talking to police about this. Police said they would take him home. He remembers police saying that he wasn't being arrested and that they were just removing him out of harm's way. Mr Doyle told the late Mr Gumana that it was for his own safety.
45. Mr Doyle said the late Mr Gumana willingly hopped into the back of the paddy wagon. He was calm and didn't argue. After getting in the door was closed. The late Mr Gumana asked for his shirt and thongs and Mr Doyle grabbed them and took them back to him. Mr Doyle said he thought they were defusing the situation. He said that he thought the late Mr Gumana was free to get out of the van if he wanted to.

3.3 Civilian evidence

46. Ms Mununggurr saw police talking to the late Mr Gumana, but couldn't hear what they said. She said they settled him down. She said *the police grabbed him and took him to the car*. She thought he was being taken to the police station. She said no one was holding him when he got into the car. Angie Marika remembers police *locking him up*. She said *they grab him and just put him in the police van*. She remembers him sitting in the van and yelling out abusive words about his wife and swearing at her. Fabian Marika says *then the police came around, took my nephew away, I dunno' where to, maybe home or Police Station*.

3.4 Conclusions

47. I find all the witnesses were truthful about their memories of what occurred outside the Jam, the differences between their evidence are what I would expect of honest witnesses who had not conferred to make their evidence fit, and who were giving a truthful account of events from their different perspectives. I found that the key elements of the evidence of police were corroborated by the security officers and by civilian witnesses. As I will describe later, I considered that each police officer was extremely frank and thoughtful; they had all reflected on the events and freely admitted where they thought they could have done things differently.

48. It is clear to me that police did not intend to take the late Mr Gumana into custody that evening. They were of the opinion that they were 'conveying' him home with his consent, as a low key solution to the evolving problem outside the Jam. This was something that was frequently done by police. The late Mr Gumana was never told that he was under arrest, or that he was being taken into protective custody.

49. I find that Constable Carson suggested to the late Mr Gumana that he go home and that they give him a lift, and it wasn't until the late Mr Gumana verbally agreed to this that they approached the police van and the late Mr

Gumana got into the cage. I am satisfied that the late Mr Gumana wanted to go home with police, that he told police that he wanted to go home with them and that he was content to travel there in the police cage. I find that he was taken home by police with his consent.

50. However the fact that the late Mr Gumana was walked to the cage of the police car with a security guard on one side holding him by the arm and a police officer on the other side with a hand on his back, certainly gave some other people who did not hear the conversations that took place the impression that he had no choice but to go with police. I consider that this is not a good way to proceed with a conveyance as it risks giving the impression to the potential passenger that they have no choice but to go with police. I note that Constable Carson did not ask the security guard to do this, and the security guard was not privy to the intentions of Constable Carson as regards the conveyance and was merely endeavouring to help police.

4. How the late Mr Gumana ended up in the cage of the vehicle

51. I find that the reason that the officers on the evening drove with the late Mr Gumana in the cage was that conveyances in these circumstances (taking people home at night from Nhulunbuy when they had had some alcohol) were always done with the person in the cage. Thus no consideration was given on that night to any other way of doing this.

5. The late Mr Gumana's state of intoxication

52. This was of significant concern to the family as some members believed the late Mr Gumana was so drunk that he should have been taken into protective custody. I have carefully considered this issue.
53. The security officers on duty that evening gave evidence that although the late Mr Gumana had been drinking steadily he was not, in their opinion, overly intoxicated. Mr Doyle said he had been drinking but was not drunk. He said he wasn't highly intoxicated, he had had a few beers but was still

pretty responsive, pretty steady on his feet. Mr Mogridge said that he'd had a few drinks but he had a good head on his shoulders, he had paced his drinks and had soft drinks and water.

54. ACPO Carter she would put him *just below moderately intoxicated* on a scale of mildly affected, moderately affected and seriously affected. He had no problems standing and was not slurring his words. She said he was sober enough to look after himself in her opinion. Senior Constable Shepherd said that you could tell that he had been drinking but he didn't appear overly intoxicated, he looked in control of himself. Constable Carson said it was clear he'd been drinking but he didn't think he was intoxicated enough to justify being taken into protective custody. He didn't think he was severely affected by alcohol, he just thought that he'd had a few drinks. He wasn't falling down, he wasn't stumbling and his speech wasn't slurred.
55. I heard evidence from a number of civilians describing the late Mr Gumana's level of intoxication. Some said that the late Mr Gumana was not very drunk, others that he was full drunk. I consider this to be honest evidence but place less weight on it on the basis that all these witnesses were themselves affected by alcohol on this particular night. I put particular weight on the evidence of the security guards because they both knew the late Mr Gumana, and part of their job was assessing the level of intoxication of patrons.
56. The late Mr Gumana had a blood alcohol reading of 0.160%. It doesn't seem likely that he drunk alcohol back at Yirrkala. There was a break in time between finishing drinking and his death which means the level may well have been slightly higher than this outside the Jam. Even so, this is not a particularly high level for a regular drinker and is further evidence that he was not intoxicated enough to warrant taking him into protective custody.
57. I find that the late Mr Gumana was moderately affected by alcohol, but not affected enough to warrant being taken into protective custody.

6. Journey to Yirrkala

58. The police vehicle has five seats in the main body of the vehicle and a cage with metal seats at the back which is shut and then held in place by a latch, which means it can't be opened from the inside. It takes 15-20 minutes to drive to Yirrkala.
59. The car set off with the late Mr Gumana in the cage. As it approached the intersection with Melville Bay Road the late Mr Gumana banged on the back of the cage to get police attention. Police pulled over, got out of the vehicle and spoke with him. He told police that he was concerned about how his wife would get home. Police told him that they would take him home, that they wouldn't take him back into town, but then the officers would go and have a look for his wife. This seemed to satisfy him and they continued home.
60. When they got close to 7 Lotu Road, Yirrkala, the late Mr Gumana again banged on the car and said *this is it*. Police stopped the car, and opened the cage. The late Mr Gumana again asked about his wife and Constable Carson and ACPO Carter told him go home, and that they would go back and look for her. ACPO Carter says he was calm, he wasn't angry, he just wanted his wife. The late Mr Gumana said *all right then* and he walked towards his house.
61. The police then attended a noise disturbance in Nhulunbuy. ACPO Carter recalled looking at the clock when this call came through and it was around 3.20am. She said this was shortly after they left Lotu St. Police then received a call reporting a disturbance at the Walkabout, which they attended. There were very few people left in Westal Street.
62. Police then drove around Nhulunbuy, but did not see Ms Mununggurr. People had dispersed and it appeared that either a number of taxis had come back into town, or that people had just got sick of waiting and had walked

home or elsewhere. The officers then returned to the station for the completion of their shift.

63. The door access log to the police station records that the police returned there at 4.03am. Senior Constable Shepherd, who was the most senior police officer on, and therefore in charge, gave evidence that because it was late, the shift had ended, everyone was tired and because nothing had occurred that he considered to be an emergency, he told Constable Carson and ACPO Carter not to worry about placing their attendance at the Walkabout Hotel disturbance, their involvement with the late Mr Gumana or the noise complaint onto the PROMIS system (the police computer system). Instead he told his officers to go home and to update the job when they got in during the next shift.

7. The late Mr Gumana's encounters with people at Yirrkala

64. After being dropped off by the police, the late Mr Gumana was seen by a number of people at Yirrkala. It is difficult to determine exactly which order these encounters occurred in as the witnesses, not surprisingly, are not certain about times.
65. Angela Barugan Marika (described to me as a cousin of the late Mr Gumana) and Brendan Makungua Marika (described to me as a brother-in-law of the later Mr Gumana) were staying at 4 Gurrumul Road, Yirrkala. They were in bed asleep in the early hours of the morning of 4 October 2008 when they heard noises outside their room that sounded like someone punching the wall. Mr Marika remained in bed but Mrs Marika got up to investigate. She left her room and went towards the noise and she heard the late Mr Gumana asking Amos Marwili for car keys and being refused. She heard the late Mr Gumana saying that he wanted to go into town. She told him to go home. The late Mr Gumana did not speak directly with her and after she told him to go home he left. Mrs Marika was not sure of the time that this occurred but said it was still dark. This was unusual behaviour for the late Mr Gumana.

66. Grace Mununguritj, Ms Mununggurr's aunt, also saw the late Mr Gumana. She told me that after coming back to Yirrkala with Ms Mununggurr she went to various places and she saw the late Mr Gumana walking out near the graveyard. He was about 6 metres away from her. She told him that his wife was looking for him and that he should go home. The late Mr Gumana ignored her and just walked past, heading towards Lotu Road. She continued on to where she was going.
67. David Dhangatji Mununggurr gave evidence that saw the late Mr Gumana early that morning, sitting in a chair near the tree where he was later found hanging. Mr Mununggurr gave evidence that he did not speak to the late Mr Gumana when he went past and that the late Mr Gumana did not speak to him. He made no particular note of anything else about the late Mr Gumana at that time.
68. I note in reference to this that Mathew Djamika Ganambarr wrote a letter to police on 12 November 2008 saying that between 5 am and 6 am on 4 October 2008 he was walking in Yirrkala and he saw a white troopie with the Laynhapuy Homelands logo on it travelling from Tuffin Road and along Gulpu Road. It was being driven by David Dhangatji Mununggurr, Sebastian Maymuru was in the front passenger seat and three people were in the back. He then saw it parked outside Ronald Yalangarra Mununggurr's house; there were two other cars outside and a group of people inside talking.
69. David Mununggurr was subsequently interviewed by police in relation to this and denied having the troop carrier, saying that employees are not allowed to use it on weekends. He said he had caught a taxi home at about 10 pm and then woke up at 2 or 3 am and went looking for gambling. Sebastian Maymuru was interviewed by police and said he was at an outstation that night.

70. I find later on in these findings that no one else was physically involved with the death of the late Mr Gumana. The issue of the troop carrier is not one that I need to resolve for this inquest as I do not consider that there is any evidence that David Mununggurr was involved in the death of the late Mr Gumana.

8. The finding of the late Mr Gumana's body

71. Ms Mununggurr said that when the police left with the late Mr Gumana, she was unsure as to what was going on. She remained in Nhulunbuy with friends, including Grace Mununguritj. She walked past the police station because she thought the late Mr Gumana may be in the lock up. She yelled out to him but there was no answer. She then thought it most likely that he had been taken by police to the sobering up shelter.

72. As a result she went home, thinking that the police would bring the late Mr Gumana back to Yirrkala the next morning. It took her a long time to get a taxi. The taxi driver dropped her off at 1 Lotu Road. Ms Mununggurr walked around to a number of locations in Yirrkala to see various people. She was calling out the late Mr Gumana's name and went to both her own house, and the oval, to see if he was there.

73. She didn't see him so she assumed he wasn't in Yirrkala and she sat and talked with her grandmother at House 60 and had some cigarettes. She was waiting for the time when she thought the late Mr Gumana would be coming home.

74. Later as it was beginning to get light, she thought the police might drop her husband off so she told her grandmother that she was going to go home to wait for his return. As she approached her home, she could see the late Mr Gumana in the distance and thought he was *just standing there*. Shortly thereafter she noticed that he was not moving and she realised he was hanging by a rope from a tree that was situated between lot no 57 and 58

(that is between house numbers 5 and 7 on Lotu Rd). She yelled at her grandmother to call police, ran inside, grabbed a small knife, cut her husband down and tried to resuscitate him. She saw a photo of herself and him at the football grand final on the ground, and a broken wooden chair in pieces on the ground. She recognised the chair as a second hand one that wasn't very good.

75. I find that Ms Mununggurr did all that she could that morning to try and revive the late Mr Gumana, but by the time that she discovered him it was too late. Her requests for help were responded to by various other people who came to assist.
76. Ambulance Officer Mandy Paradise received a call from her communications operator at 5.52am telling her that there was a male hanging from a tree and it was a 'Code 1'; that is a life threatening situation that required urgent attendance. She collected her partner, Karl Visser, before proceeding to Yirrkala with lights and sirens.
77. They arrived at 6.17am. There was a man lying flat on his back on the ground and a distraught female, who identified herself as the man's wife, beside him. The female said that she had cut the rope. Ms Paradise did all the usual checks and noted there were no signs of life, that the body was still warm to the touch and there was no rigor mortis. I find that the late Mr Gumana was dead at the time the ambulance arrived.
78. Ms Paradise observed an obvious ligature mark around the neck consistent with the size of a thin nylon type rope that she saw tied around the tree just above where the body lay. There was also a hose on the tree, further away from the body. There was a knife on the ground. Ms Paradise checked the body of the late Mr Gumana, including rolling it over (with police permission) and looking at the back, but found no other signs of injury. There was a photograph on the ground. There was nothing that she saw that caused her to suspect that this was anything other than a suicide. She placed

the body of the late Mr Gumana into an Ambulance and left the scene at 7.05am.

79. Police attended the scene at about 6:20 am. They took photos which show the deceased. Constable Jason Machacek says the body was directly under the rope. It was looped multiple times over the branch. I have looked at the photographs and there are eight loops of rope around the branch. Constable Adrian Morris describes a garden hose also tied up on the tree, but only with one half of a knot. Attending police asked for a PROMIS check to be done but because the officers who had transported the late Mr Gumana home earlier had not placed this on the PROMIS system there was no record of any involvement with police.
80. A few hours later it was confirmed that police had in fact taken him home. At that stage it was not clear if there was any connection between the earlier involvement with police and the death and so it warranted a much more comprehensive investigation and Major Crime members were tasked to attend. The area was designated a crime scene and at about midday police were sent out to guard it. However by that stage the initial attending police had already taken photographs and then removed exhibits and there had been a smoking ceremony and the chair had been burnt.
81. Dr Terence Sinton performed an autopsy (that is a full external and internal examination) on the body on 7 October 2008. He wrote a detailed written report and it describes how he conducted a physical examination of the body of the late Mr Gumana. He found no significant injury other than the ligature mark around the neck. He found a blood alcohol level of 0.160% and cannabis metabolites in the late Mr Gumana's blood.

V CAUSE OF DEATH

82. I have very carefully considered the cause of death. Some members of the family of the late Mr Gumana are concerned that someone else caused his

death and do not consider that he could have taken his own life. It was submitted to me that their experience of the late Mr Gumana was of a happy, healthy, handsome man with no diagnosed mental illness and no objective reason to take his own life. I accept that this was the experience of many of those who knew and loved the late Mr Gumana.

83. Dr Sinton, the forensic pathologist who looked at the body, concluded that *there was no autopsy evidence for the direct involvement of another party in this man's death* and that *he died from hanging*.
84. Dr Sinton thoroughly looked at his body and did not find any injuries to suggest that he had been stabbed or hit and that had caused his death. Instead he found that he died by hanging. That means the late Mr Gumana was not killed by another method and then hung up in the tree after he was already dead, rather that he was killed because of the pressure of the ligature around his neck.
85. I have considered whether someone could have hung him against his will, which I am aware is a particular concern of some family members. The late Mr Gumana was a strong adult man. There was no evidence of anything that would have made him unconscious to allow him to be hung against his will. He was not intoxicated to a level that would make him unconscious or affect his ability to fight. There were no incapacitating drugs found in his system. He had no head injuries to suggest that someone had knocked him out. It would be extremely difficult to hang a conscious man against his will without him struggling, and this would leave evidence of the struggle on his body and possibly also in the immediate vicinity of the death. There was nothing found at autopsy or at the scene, and no evidence that anyone had heard anything, to suggest that there had been a struggle.
86. In addition there is strong evidence to suggest that the late Mr Gumana was in a frame of mind where he wanted to take his own life. He had already taken steps towards doing this twice in the weeks before his death. Both

attempts were in a similar location, using the same method, late at night and when affected by alcohol. He only ceased the previous attempts when he was stopped by his wife. This shows me that had suicide on his mind.

87. It is also significant that the late Mr Gumana was not behaving as he usually did in the days leading up to his death; he was not going to work and was drinking more than usual. He was affected by alcohol and cannabis when he died. Someone he loved had recently died and this was upsetting him. He had had two arguments with people in the lead up to his death and he was angry and upset that evening. Everyone who knew him said this was very out of character as he was not a person who usually got into trouble.
88. I was particularly well assisted in this inquest by evidence from witnesses who have spent some time looking at the vexed issue of suicide in Top End Aboriginal Communities. Professor Robert Parker is currently the Director of Psychiatry with the Top End Mental Health Services in the Northern Territory, and is a doctor who is very experienced with suicide in Aboriginal Communities. He provided me with 3 papers he had written on the topic, reviewed the brief of evidence and gave evidence before me. He said the circumstances of this death, that is a hanging in the context of two previous episodes of self harm, alcohol intoxication and a significant argument with his wife and another man, are *very consistent with other Aboriginal people who have killed themselves*. He considered the two previous attempted suicides to be *particularly significant*. He said that hanging was the most common method of suicide in Aboriginal Australians and particularly in the Northern Territory. He said that the fact that the late Mr Gumana's grandfather had died in the weeks before his death was also a risk factor for suicide.
89. Senior Sergeant Travis Wurst, the Officer in Charge of the Nhulunbuy Police Station, has written a paper entitled 'Suicide in North East Arnhem Land; An overview of suicide trends amongst the population of East Arnhem

Land from January 1st 2007 to December 31st 2008' which was also before me. He looked at 143 reported threatened, attempted or completed suicides contained in police records over that period. He found that alcohol was associated with all completed suicides, that males were at greater risk than females, that the 16-26 year old age group was the highest risk group, that hanging was by far the preferred method and that most completed suicides occurred on Saturday. Tragically, the circumstances of the late Mr Gumana's death are all too typical for suicides in the area.

90. The family were concerned that the tree branch was not high enough for the late Mr Gumana to be able to hang himself. It was approximately 2 metres above the ground. I have made findings in many suicides and am aware that someone can hang themselves from a very low height. I heard evidence from police witnesses who have extensive experience in attending suicides and who described situations where people had successfully taken their own life with a ligature tied to a hanging point as low as 30 cm. The paramedic involved in this matter, Mandy Paradise, also gave evidence she had attended a suicide by hanging where the person was seated on the ground. I find that the tree branch was high enough for someone to hang themselves from.
91. The family also informed me that when they conducted the funeral in relation to the late Mr Gumana that his body became very swollen and they considered that he must have been beaten or assaulted to cause this swelling. Mr Gumana's body was seen by the ambulance officer shortly after death, and then examined thoroughly by an experienced forensic pathologist, and there were no significant injuries found. If he had been seriously beaten or assaulted then the resulting injuries and marks would have been found by Dr Sinton, the pathologist. It was 27 days before the body was returned to the family following the autopsy. I consider that the changes observed by the family are likely to be the normal result of decomposition over time.

92. Some members of the family expressed particular concern that either Jamie Djarr Gumana or Ms Mununggurr may have contributed to the late Mr Gumana taking his own life. They were the two people that the late Mr Gumana argued with some hours before his death. In addition there was some history of conflict between the late Mr Gumana and Jamie Djarr Gumana, and of him arguing with his wife.
93. There is absolutely no evidence whatsoever to suggest any direct third party involvement in this death. It is possible that arguing with family and loved ones may have made the late Mr Gumana even more upset than he already was. However the late Mr Gumana had already threatened suicide twice and he had changed his behaviour as regards attending work and drinking. I therefore consider that whatever was weighing on his mind was already present well before the fights at the Jam that evening. I do not consider that Shandi Mununggurr and Jamie Gumana are in any way responsible for his death.
94. Some of his family wonder if he was missing his family and his homeland and that was the reason he was unhappy. Sadly because he did not leave a note and we cannot now ask him, we will never know why the late Mr Gumana chose to end his own life.
95. Rather than blaming her, I commend Ms Mununggurr for doing everything she could to save her husband's life when she was faced with the terrible situation of seeing him hanging from the rope. I am aware from my experience in making findings in relation to suicides in East Arnhem that it is not uncommon for those who find someone hanging to seek help elsewhere and not to cut them down, for fear of being blamed for the death. I consider Ms Mununggurr's very quick and sensible actions and her sustained efforts to assist her husband, despite her own anguish, particularly praiseworthy. It was too late by the time she saw him on this occasion but in similar situations such quick action by bystanders could save a life.

96. The family are concerned about the contradictory evidence from David Mununggurr and Matthew Gunumbarr described above, and are worried that even if someone else did not cause the death, someone may have seen the late Mr Gumana hanging and failed to assist him.
97. It is possible that someone saw the late Mr Gumana hanging before he was found by Ms Mununggurr and that person did not do anything at the time and did not subsequently tell anyone about this. I am aware of other suicides in the region where bystanders have failed to assist. There is no evidence to suggest that this occurred on this occasion, or to pinpoint any particular individual in relation to this, but it remains a possibility that I cannot exclude.
98. The family raised concerns about the broken chair found nearby. Unfortunately it was burnt and I do not have evidence about it apart from the photographs taken by the initial investigating police. The rope that the late Mr Gumana hung from had been tied with considerable care and it was looped a large number of times over the branch. The chair in the photograph is some distance away from the place where the rope is tied over the branch. It may be that the late Mr Gumana used the chair to prepare and it broke at some stage but it does not seem likely that he was not intending to kill himself, stood on the chair with the rope around his neck in the hope of gaining attention and the chair broke, accidentally causing his death. The position of the chair is not consistent with this and it does not seem a likely explanation in all the circumstances.
99. I am aware that in East Arnhem, untimely deaths are widely believed to have been caused by galka or sorcery/black magic. Dr Joe Gawirrin Gumana, a very senior and eminent man whose achievements include an Order of Australia for his work in the arts, qualifications as a minister in the Uniting Church and significant success in fighting for land rights and the homeland

movement, gave evidence before me on behalf of the family and expressed their concerns about galka.

100. I am aware that some family members were seeking coronial findings in relation to who was responsible for the galka that they believe caused the death of the late Mr Gumana and also that some family members do not accept that 'suicide' in the way this court would understand it, exists, rather they believe that such deaths are always as a result of galka.

101. I explained during the inquest, and again in these findings, that the question of galka is not one that I can allow witnesses to be cross-examined about because it is not an area that I can make findings about. I consider it outside the ability of the Coroner's court to make a determination in this area. This is not something that only applies to aboriginal beliefs; I would take the same approach to a request to make a finding about whether God did or didn't cause a death. I consider that there are some questions that are outside the realm of factual findings. This does not mean they are not important, it just means that answers need to be found in other ways.

102. I am very grateful that the family honestly raised their concerns before me. I consider the coronial system is very successful at answering many of the questions that family members have. However, as in many coronial deaths, some of the questions families have remain unanswered by the coronial system. In this case questions of galka remain in the hands of the Yolngu people. I do not make any findings in relation to the role of galka in this death.

103. I find that in the early hours of the morning on 4 October 2008 the late Mr Gumana intentionally took his own life by hanging whilst under the influence of alcohol and cannabis.

VI EVALUATION OF THE CONDUCT OF POLICE

1. Whether the late Mr Gumana was ‘in custody’

104. The actions of police on that evening were investigated by a Detective Sergeant from the Major Crime Unit, and I heard evidence from each of the police officers involved. I have carefully considered what occurred.
105. Each police officer was of the opinion that what they were doing when they drove the late Mr Gumana home was a ‘conveyance’. This word is used by police to indicate taking a person from one location to another with that person’s consent. This is quite separate from taking someone somewhere because they are in custody, either because they are under arrest or have been taken into protective custody. Police regularly convey all kinds of people, including witnesses and victims. Senior Sergeant Wurst gave as examples a domestic violence situation where the aggrieved party needs to be taken to a safe place and a situation where someone is walking home along a road in the dark where they may be hit and police take them home. In Nhulunbuy people were often ‘conveyed’ from the township to their communities, ACPO Carter told me this would happen every Thursday, Friday and Saturday night. There are no police policies or procedures about ‘conveyances’.
106. Even if police do not intend to take someone into custody, it may be that someone is in fact in custody if that person reasonably forms the view that they are not free to leave if they wish to do so. The question of whether the late Mr Gumana, although he had consented to go home with police, was in fact in custody when he was in the locked police cage was ventilated at the inquest. Placing someone in a locked police cage can imply that they are not free to leave, and it certainly gave that impression to others on the night. However it is also possible to be in a locked police cage (or a child-locked police passenger compartment) without being in custody, it depends on the

state of mind of a person and whether they reasonably form the view that they are not free to leave.

107. If the late Mr Gumana had been in custody then the Police Custody manual would have applied. This would have required police to do two things that were not in fact done.
108. Firstly, a PROMIS (police computer system) check for the existence of alerts or warnings about the late Mr Gumana would have been required. If the check had been done this would have made no difference whatsoever as the late Mr Gumana had no previous involvement with the police and there was no record of him at all on PROMIS.
109. Secondly, details of the person and the circumstances of the custody are required to be recorded in a police note book. However it was frankly conceded by senior police and the officers involved that even if it had been merely a conveyance, it would be good practice to record details of who was transferred. I strongly endorse this. I do not consider that the failure to record information at the time had any connection to the late Mr Gumana's death.
110. In this matter the failure to record the interactions with the late Mr Gumana had the unfortunate effect that it took some hours to confirm that the police had been involved with him prior to his death. This prevented a crime scene being maintained immediately until Major Crime investigators arrived, and the police involved being immediately separated as would occur in a 'death in custody' investigation. This is not ideal, but I consider that in this particular case the investigation and inquest were sufficient for me to make the required findings.
111. I note that in this case there is no evidence that the late Mr Gumana in fact wanted to leave the car when he was in it and it does not seem likely, on all

the evidence, that he would have wanted to get out anywhere along the deserted road from Nhulunbuy to Yirrkala.

112. Overall, given the above and having heard all the evidence, I do not consider that the question of whether the late Mr Gumana was in custody or not for the period of the drive home has any connection to his death. I therefore do not need to resolve it for the purposes of this inquest.

2. Whether the late Mr Gumana should have been left alone

113. I gave particular consideration as to whether the police should have left the late Mr Gumana in the care of another person rather than by himself, given the circumstances of the death and concerns raised by family.

114. If the late Mr Gumana had been taken into protective custody then there is a requirement to leave him with a responsible family member who has accepted his care. Strictly speaking there was no requirement to leave him with anyone in this case, whether it was a conveyance or whether he was in fact in custody during his time in the cage.

115. However Senior Sergeant Wurst gave evidence that in circumstances where police are conveying someone and that:

(a) that person has been drinking and is intoxicated, but not to the extent to be placed under protective custody;

(b) that person has been involved in a disturbance; and

(c) it is late at night or in the early hours of the morning;

then it is not best practice for that person simply to be left on their own.

116. He emphasised that it may not always be possible to leave them with someone as police may not be able to find someone willing to care for them, or there may be other demands on police for operational reasons.

117. Acting Superintendent Scott Pollock also gave evidence before me and said that in his opinion the best practice in these circumstances would be to leave the conveyed person with family.

118. In the circumstances of this case I cannot find that dropping the late Mr Gumana off by himself made any difference as the late Mr Gumana did, in fact, interact with a number of family members between the time he was dropped off and the time he ended his life.

3. Conveyances in the back of a caged police vehicle

119. It was clear on the evidence that conveyances in situations such as this, that is the taking home of a person who had drunk some alcohol but who was not intoxicated enough to warrant protective custody, were usually done with the person in the locked cage.

120. There are some obvious concerns about this, not least of which is that it implies the person is not free to leave, as once in the cage with the door closed they are unable to open it again from the inside. Acting Superintendent Pollock described it as the *least preferred of the options available to members* for this reason.

121. I can understand why police may be concerned about taking someone who they don't know, and who is intoxicated, in the passenger compartment of the vehicle in circumstances where they are driving at speed the distance from Nhulunbuy to Yirrkala. Senior Sergeant Wurst gave examples of situations where placing someone in the rear of the cage might be required, such as when a person is agitated, when there is no room in the back of the car or when police don't feel safe with the person in the car even though they are a victim of violence who is being moved to a place of safety. As is often the case there are competing and difficult considerations for remote police.

122. There is no evidence whatsoever that the late Mr Gumana was in any way upset by travelling in the cage or that it added to his agitation that night. Given the common nature of the practice I find that he would have accepted it as the usual way police gave people lifts. I do not consider the method of taking him home had any connection to the death. I therefore did not proceed to hear detailed evidence in relation to this practice with a view to making findings in relation to the problems raised above.

4. Taking the late Mr Gumana home alone and not informing others where he was going

123. It was put to me on behalf of the family that they were concerned that the late Mr Gumana was taken home by himself, and that being alone when someone is already feeling low can make the situation worse.

124. The police were attempting to take the late Mr Gumana away from a hostile situation so there was an operational imperative to get him out of there as quickly as possible. The evidence is that he said he would go but only if he was not taken with the people he was with. He appeared to be having trouble with his wife; the evidence is that he was swearing at her from the back of the cage, so it would not have been a reasonable to take her with him. Given all these considerations I cannot find that the police should have taken someone else in the vehicle. I note also that police had absolutely no way of knowing that the late Mr Gumana was feeling low.

125. The family were also concerned that no one knew where police were taking the late Mr Gumana. This would have been helpful in this particular situation. However I cannot criticise police for not doing this as it was intended to be a voluntary conveyance, that is they intended to give an adult male a lift to a place he would like to go with his consent. This cannot mean that police assume the responsibility of informing others where he has asked them to go.

5. Whether the late Mr Gumana should have been treated as a ‘person at risk’

126. Each officer was clearly very surprised, and deeply saddened, by the death of the late Mr Gumana. At no stage did they consider that the late Mr Gumana was a danger to himself or to others. Similarly most members of the late Mr Gumana’s family did not know that he was contemplating suicide, or that he had made previous threats. No one expected that the late Mr Gumana would take his life on this occasion. There is no way the police could have known that this would occur. I find that there were no indications, verbal or otherwise to the police, to indicate that this was even a remote risk and so do not consider they should have treated him as a ‘person at risk’ and sought medical help.

6. Conclusions and proposed amendments to the General Orders

127. I was impressed by the three officers who were working that night. I found their evidence to be truthful, and I was particularly impressed by their honest reflections on what had occurred. I consider that on that evening they were trying to resolve a potentially violent situation in the least intrusive way possible and they were simply participating in what was a well established practice of taking people home in the back of a caged vehicle.

128. Family members sat through the evidence of the police officers and gave instructions through Ms Swift that *the family believed that the police involved were trying to help and that there were not bad intentions that those three police officers had towards the late Mr Gumana.*

129. It would have been better practice if the late Mr Gumana had not been physically guided to the car with a security officer on one side and a policeman on the other, had the officers recorded that they had taken the late Mr Gumana home at the time, and if they had left him in the care of a family member. However I do not consider any of these things are likely to have

altered the tragic outcome, or that they represent major failings in practice. I have no individual criticism of the three officers involved as I consider that was a lack of clear direction as to what is required when a conveyance is undertaken, and things look out for to prevent a conveyance becoming, in fact, the taking of someone into custody. I agree with Acting Superintendent Pollock that *there needs to be clearer direction to members when they consider [taking] a conveyance.*

130. Steps have been taken to remedy this. Soon after the death Senior Sergeant Wurst, the Officer in Charge of the Nhulunbuy Police Station, sent out an e-mail to all his officers on October 17 which reminded them of the definition of a person in custody, set out the duty of care responsibilities to persons in custody contained within the General orders and reminded officers to add all incidents to PROMIS by the end of the shift.

131. Acting Superintendent Scott Pollock gave evidence before me and informed me that there is a review presently under way of the police General Orders and the Custody Manual designed to give better directions to police members in regard to conveyances.

132. I am impressed that rather than waiting for the outcome of this process, police both locally and centrally have taken their own initiative to produce better directions for their members.

133. Acting Superintendent Pollock outlined to me 3 particular amendments to the General Orders that are being proposed, which would better clarify the duties and obligations upon members. These are as follows:

1. That “General Order N1 Notebooks and Diaries” be updated to instruct members to record details in their notebook of any persons that are conveyed in a police vehicle (including marine vessel or aircraft). This would include the circumstances where police members conveyed a person in circumstances where:

- a. A PROMIS case does not exist and is not required; or
 - b. The PROMIS case related to the conveyance is ‘auto-finalised’ without persons being added to the same, ie. case result being ‘PCH’ [Protective Custody Home] being ‘auto-finalised’ by JESCC.
2. That ‘General Order – Transport of Persons in Custody’ be reworded to ‘Transport of Persons in Custody or otherwise conveyed’.
 3. That a general broadcast and/or gazettal notice be issued advising of the following:
 - a. That persons are only to be conveyed when they are detained under a legislative authority such as s123 or s128 of the *Police Administration Act* or s84 of the *Domestic and Family Violence Act*, or with the voluntary consent of the individual.
 - b. That in all cases involving voluntary consent, a person’s explicit consent must be obtained prior to conveying that person.
 - c. In regards to caged vehicles – the conveyance of a person in the cage portion of a vehicle will usually imply that a legislative authority to detain the person is being relied upon (ie. the conveyance would not generally be regarded as voluntary).

134. I consider these proposed amendments a very sensible and reasoned response to the issues raised by the situation involving the late Mr Gumana. I consider they will assist members to understand their duty of care to persons that they convey. I endorse the changes proposed by Acting Superintendent Pollock and encourage the Commissioner of Police to implement these amendments as quickly as possible.

VII SUICIDE IN EAST ARNHEM

135. Sergeant Travis Wurst's paper was very helpful to me and I commend him for his initiative in producing it and the detailed work that has gone into it. It documents an extremely high rate of threatened, attempted or completed suicide in the North East Arnhem region. He recorded 143 incidents (for indigenous and non-indigenous people, although there is a much higher rate for indigenous people) over two years for a total population of 9, 500 and he talks about the *devastating impact* this has on the wider community.
136. Priscilla Marrpalawuy Marika gave a very moving statement, and I was greatly assisted by it and by her oral evidence before me. She told me that there is an East Arnhem Mental Health Service that her nephew could have seen. She said that she thought that ways needed to be found to be able to talk about suicide, saying *It should be something that the whole community and the leadership of the community should be talking more on that. Because many of these indigenous young men and women, they don't speak or they don't talk when they have problems.* She said it was important for people to be able to talk in their own language, to have more indigenous mental health workers and to have more materials in the Yolngu language. She said the words 'mental health' are not readily understood and said she thought changing it to 'healthy living' or 'safer living' would assist. In her statement she said *I know...the problems of suicidal and the gunja and the alcohol it won't go away...this problem with alcohol and drugs is a huge problem.*
137. Professor Parker considered the two key underlying issues were alcohol policy in Aboriginal Communities and the governance and leadership in Aboriginal Communities.
138. I was provided with a copy of the Gove Peninsula Suicide Mitigation 'Working Strategy' 2009 which has been developed as part of the Yuta Walanga – Suicide Safer Communities Project, Delivered by Anglicare NT.

This project was carried out from January to June 2009 with the aim of tackling the issue of suicide in the region. There were very wide consultations carried out as part of this. The reports conclusion includes the following *It must be highlighted that after 6 months of discussions the point that is continually referred to is the need for open communication and dialogue amongst the community regarding suicide.*

139. I do not seek to try to recreate the large amount of work that has been done by this Working Strategy. I consider it more helpful to commend the serious efforts that have been made, to endorse the report and to encourage funding bodies to respond favourably to requests to enable the recommendations to become a reality.

VIII ISSUE WITH LARGE CONGREGATIONS OF PEOPLE OUTSIDE THE JAM

140. The issue is extremely complex and too peripheral to the death to warrant detailed commentary in these findings. I comment on it only to say that it would obviously be better, and avoid some of the difficult issues in relation to conveyances and custody, if some other method of people getting home from the Jam existed so police did not have to act as a de facto taxi service and could use their resources elsewhere.

IX FORMAL FINDINGS

141. Pursuant to section 34 of the *Coroners Act* I find, as a result of evidence adduced at the public inquest as follows:

- i. The identity of the deceased person was Danny Borrak Daymadhuna Gumana born on 4 April 1989 at Gove District Hospital, Nhulunbuy in the Northern Territory of Australia.
- ii. The time and place of death was between 3:45 am and 5.45 am on 4 October 2008 at a tree between numbers 5 and 7 Lotu Road, Yirrkala in the Northern Territory of Australia.

- iii. The cause of death was intentional self-inflicted hanging.
- iv. Particulars required to register the death:
 - a. The deceased was male.
 - b. The deceased's name was Danny Borrak Daymadhuna Gumana.
 - c. The deceased was of Aboriginal descent.
 - d. The cause of death was reported to the Coroner.
 - e. The cause of death was confirmed by post mortem examination carried out by Dr Terence Sinton on 7 October 2008.
 - f. The deceased lived at Number 7 Lotu Road (lot Number 57), Yirrkala in the Northern Territory of Australia.
 - g. The deceased was employed as a contractor at the Laynhapuy Homelands Association.
 - h. The deceased was married in the traditional way to Shandi Larrina Mununggurr.
 - i. The deceased's parents were Dorothy Dhawuthuwalawuy Guygla and Paul Gutjapin Gumana.

Dated this 28th day of September 2009

DR CELIA KEMP
DEPUTY CORONER