

CITATION: *Inquest into the death of Kumanjayi Walker (Ruling No 1)*
[2022] NTLC 016

TITLE OF COURT: Coroners Court

JURISDICTION: Alice Springs

FILE NO(s): A0051/2019

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FINDING OF: Judge Elisabeth Armitage

CATCHWORDS: **Application for leave to appear; sufficient interest; police association**

Coroner's Act 1993 (NT) s 40(3)

Annetts v McCann (1990) 170 CLR 596

Attorney-General v Copper Mines of Tasmania Pty Ltd (2019) 368 ALR 315

Barci v Heffey [1995] VSC 13

Ruling on applications to be granted leave to participate as Interested Parties: Inquest into the death of Tyler Cassidy, Coroner's Court of Victoria, No 5542 of 2008, 4 March 2010 (Judge Coate)

Inquest into the Deaths of Anthony William Young et al., Coroner's Court of Queensland, Nos 2988 of 2013 and 3598, 4321, 4239 and 4357 of 2014, 20 October 2017 (Mr Ryan)

Stanford v Regional Coroner Eastern Ontario (1989) 38 Admin LR 141 (Ont Div Vt)

REPRESENTATION:

Counsel Assisting: Dr P Dwyer with Mr P Coleridge

For Zachary Rolfe: Mr L Officer

For the Brown Family: Ms P Morreau

For the Walker, Lane and
Robertson families: Mr A Boe

For the Northern Territory Police Force: Mr I Freckelton AO QC

For the Department of Health:	Mr M McCarthy
For NAAJA:	Mr J Murphy
For the Parampurru Committee:	Mr J McMahon AC SC.
For the Northern Territory Police Association on its application to be represented at the inquest:	Ms S Ozolins.
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IN THE CORONERS COURT
AT ALICE SPRINGS IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. A0051/2019

In the matter of an inquest into the death of

KUMANJAYI WALKER
ON: 9 NOVEMBER 2019
AT: YUENDUMU COMMUNITY

Judge Elisabeth Armitage

Background

1. On 9 November 2019 police members from the Alice Springs Immediate Response Team (**IRT**) travelled to Yuendumu. Following a briefing with local police, IRT members encountered Kumanjayi Walker in House 511 Yuendumu. During an incident inside the house, one of the IRT members, Constable Zachary Rolfe, shot Kumanjayi Walker three times. Kumanjayi Walker was taken to the local police station where he passed away. This inquest will inquire into the circumstances of Kumanjayi Walker's death.
2. At a directions hearing on 29 March 2022, seven parties applied for leave to appear at the inquest under s 40(3) of the *Coroner's Act 1993* (NT). For the reasons articulated by Counsel Assisting, I formed the opinion that each party had a sufficient interest to justify their representation at the inquest. Those parties are the Brown family and the Walker, Lane and Robertson families (**Families**), Zachary Rolfe, the Northern Territory Police Force (**Police Force**), the Department of Health, the Parampurru Committee of Yuendumu and the North Australian Aboriginal Justice Agency (NAAJA).
3. Work has been done to identify what are likely to be the real issues in the inquest. The draft list of issues provides significant guidance as to the anticipated issues for consideration in, but is not determinative of the scope of, the inquest.¹ Further, the list of issues is designed to encourage discussion

¹ Transcript of Proceedings on 26 May 2022 at 13.

among the Coronial team and the parties with a view to refining the issues and identifying any additional issues. As I noted at the directions hearing on 26 May 2022, given the size and complexity of the inquest brief, the identification of the real issues is essential to “give some structure to the inquest.”²

4. The actions of certain police members, and the adequacy and appropriateness of relevant Police Force policies, procedures and training, are identified as issues for the inquest. Specifically, the inquest will consider the nature of the IRT and its involvement in the arrest and shooting of Kumanjayi Walker; the adequacy of Police Force policies and training in relation to the use of force, use of firearms and drug use by members; recruitment and disciplinary processes within the Police Force; and whether there is evidence of racism or systemic bias within the Police Force.

The Application

5. On 26 May 2022, the Northern Territory Police Association (**Association**) sought leave to appear at the inquest pursuant to s 40(3) of the *Coroner’s Act 1993* (NT).
6. In support of its application, the Association submitted that it is “the peak representative body for all members of the Northern Territory Police Force”³ and that its relevant interest for the purpose of s 40(3) is its “interest in [the] conditions, welfare and working environment of its members.”⁴ In its written outline of 25 May 2022, the Association identified the following issues as of particular interest to it:

² Transcript of Proceedings on 26 May 2022 at 13.

³ Outline of Submissions on behalf of the Northern Territory Police Association on Application for Leave to Appear at Inquest dated 25 May 2022 at [1] (**Association’s Written Submissions**).

⁴ Email from Sally Ozolins to Counsel Assisting, 23 June 2022.

- “(i) What police were doing in Yuendumu in the days immediately following the death (Issue 20)
- (ii) Policies and procedures, including risk assessments governing the recruitment and training of members, particularly those in specialist units such as the IRT (Issues 23, 25)
- (iii) Cross cultural and conflict resolution training and support for police members (Issues 33-36)
- (iv) Processes and procedures governing disciplinary processes for police members (Issue 39)
- (v) Policies and procedures governing and guiding the investigation of deaths in custody (Issue 42)
- (vi) Policies and guidelines in relation to police members carrying guns in communities (Issue 47)
- (vii) Drug and alcohol testing of police members (Issue 48)”.⁵

7. It was not disputed, that the Association is the peak representative body for all members of the Police Force⁶ and 97% of sworn members of the Police Force are members of the Association.⁷ The objects and purposes of the Association are to perform all and any acts, and to do all and any things, as may be necessary for the welfare of, or of benefit to its members and the dependents of its members.⁸ This includes legislated roles on the Northern Territory Police Arbitral Tribunal,⁹ the Promotions Appeal Board¹⁰ and the Discipline and Inability Appeal Board,¹¹ and voting membership on the Training and Assessment Advisory Committee.¹² The Association is also the

⁵ Association’s Written Submissions at [6].

⁶ I accept the Police Force’s submission that among the membership of the Association there is likely to be a “diverse set of perspectives that match the diversity of the perspectives of all members of the [Police Force]”.

⁷ Further Outline of Submissions on behalf of the Northern Territory Police Association on Application for Leave to Appear at Inquest dated 17 June 2022 at [5] (**Association’s Supplementary Written Submissions**)

⁸ Association’s Supplementary Written Submissions at [6].

⁹ *Police Administration Act 1978* (NT), s 36(1)(c).

¹⁰ *Police Administration Act*, s 93(2)(b).

¹¹ *Police Administration Act*, s 94(2)(b).

¹² Association’s Supplementary Written Submissions at [6].

member representative for the Northern Territory in the Police Federation of Australia.

8. Even so, the Police Force opposed the application submitting that the Association did not have a “sufficient interest” in the proceedings, as required by s 40(3) of the *Coroner’s Act*. Alternatively, to the extent that I may conclude that the Association does have a sufficient interest, the Police Force submitted that I should limit the Association’s participation to making submissions only. Two Families joined with the Police Force in opposing the application. No other party sought to be heard on the application.
9. The Police Force submitted that there is a difference between a party being interested in an inquest in an informal sense and a party having a “sufficient interest” within the meaning of s 40(3). In order to have a “sufficient interest”, the Police Force submitted that the interest should “be so acute that the interest may be said to be not only substantial but also direct.”¹³ The operative words – “substantial” and “direct” – were drawn from a series of Canadian authorities¹⁴ considering Canadian Coronial legislation.¹⁵
10. The Police Force submitted that it is the Police Force, and not the Association, “that formulates policies and procedures”,¹⁶ “conducts training for police”,¹⁷ “determines from time to time the content of such training”,¹⁸ and “makes the relevant decisions and bears the responsibility for ... matters” such as “resources and conditions”.¹⁹ While the Association may be a “relevant stakeholder” with whom the Police Force consults, “[u]pon such policies and procedures being duly promulgated ... all members of the [Police Force] are

¹³ Reply Submissions on behalf of the Northern Territory Police Force dated 24 June 2022 at [5] (**Police Force’s Written Submissions**).

¹⁴ See, eg, *Stanford v Regional Coroner Eastern Ontario* (1989) 38 Admin LR 141 (Ont Div Vt) at 175.

¹⁵ See eg, *Coroner’s Act 1990* (Ontario), s 41(1).

¹⁶ Police Force’s Written Submissions at [16], [18].

¹⁷ Police Force’s Written Submissions at [17].

¹⁸ Police Force’s Written Submissions at [17].

¹⁹ Police Force’s Written Submissions at [19]

obliged to conform to them, irrespective of whether the [Association] agrees with them or ... not.”²⁰

11. Accordingly, the Police Force submitted that it was the Police Force, and not the Association, that was best placed to inform the inquest as to the nature of, and rationale for, those policies, procedures and decisions.²¹ While the Association may have views about those matters, it would not provide a “fresh and distinctive perspective on the matters canvassed during the inquest”.²²
12. Ultimately, the Police Force submitted that such interest as the Association might have is not sufficient to justify its participation in the inquest when regard is had to the need to ensure that the inquest proceeds in an “orderly and efficient manner, without duplication or distraction”.²³

What is a “sufficient interest”?

13. Section 40(3) of the *Coroner’s Act* provides as follows:

40 Rights of interested persons

[...]

- (3) A person who, in the opinion of the coroner, has a sufficient interest may, at an inquest, appear or be represented, call and examine or cross-examine witnesses, and make submissions.

14. The expression “sufficient interest” is not defined in the *Coroner’s Act*, nor referred to in extrinsic materials.
15. Cases considering cognate legislation in other Australian jurisdictions suggest that the word “interest” in s 40(3) is used broadly and informally. A person may have a relevant “interest” even if the Coronial process will not affect the person’s legal rights, duties or liabilities.²⁴ Instead, “whether a person has a

²⁰ Police Force’s Written Submissions at [16]

²¹ Transcript of Proceedings on 26 May 2022 at 6-7.

²² Police Force’s Written Submissions at [11]; see also at [21].

²³ Police Force’s Written Submissions at [20].

²⁴ *Annetts v McCann* (1990) 170 CLR 596 at 605 (Brennan J).

sufficient interest in an inquest or the outcome of an inquest is a question of fact”.²⁵ That factual inquiry calls for “consideration of the circumstances surrounding the death of the deceased”²⁶ having regard to both the Coroner’s investigative and preventative functions, which include the making of recommendations about matters such as “public health or safety or the administration of justice connected with [the] death”.²⁷

16. In addition to persons whose conduct is likely to be the subject of adverse comment,²⁸ it is well recognised that a family member or a de facto partner of a deceased has a “sufficient interest” in an inquest.²⁹ That interest arises even where the only concern of the family member is to “safeguard the reputation of the deceased.”³⁰ Public interest groups have been held to have a sufficient interest where they have a distinctive capacity and expertise to assist a Coroner to understand the “public health and safety issues or administration of justice issues that may arise” during a given inquest.³¹ I agree that “[m]ere concern about issues to be canvassed at the inquest, however deep and genuine” will not constitute a “sufficient interest”.³²
17. I consider that the Association’s interest cannot be dismissed as one of “mere concern” about the issues to be canvassed at the inquest. At the conclusion of the inquest, I anticipate hearing submissions that recommendations should be made that, if implemented, would directly affect police members in the

²⁵ *Barci v Heffey* [1995] VSC 13 at [17], quoted with approval in *Somerville v Coroners Court of Victoria* [2016] VSC 543 at [61].

²⁶ *Ibid.*

²⁷ *Coroner’s Act*, s 35(2).

²⁸ As to which see, *Attorney-General v Copper Mines of Tasmania Pty Ltd* (2019) 368 ALR 315 at [30].

²⁹ *Barci v Heffey* [1995] VSC 13, [17], quoted with approval in *Somerville v Coroners Court of Victoria* [2016] VSC 543, [61].

³⁰ *Annetts v McCann* (1990) 170 CLR 596 at 612 (Brennan J).

³¹ See, eg, *Ruling on applications to be granted leave to participate as Interested Parties: Inquest into the death of Tyler Cassidy*, Coroner’s Court of Victoria, No 5542 of 2008, 4 March 2010 (Judge Coate).

³² See, *Stanford v Regional Coroner Eastern Ontario* (1989) 38 Admin LR 141 (Ont Div Vt) at 175.

Northern Territory. For example, it appears likely that one or more parties might submit³³ that disciplinary processes for police members should be more robust,³⁴ or that existing protections or immunities for police members from civil or criminal liability should be reviewed,³⁵ or that drug testing of police members should be more widespread,³⁶ or that the police members should not use or display firearms, in particular ways or at all, while performing their functions in remote communities such as Yuendumu.³⁷

18. I accept that it is the Police Force, and not the Association, that formulates police policies and procedures, designs and delivers training, and is responsible for making decisions about resourcing and conditions. But irrespective of the entity that bears ultimate responsibility for these matters, it is to police members that these policies, procedures, decisions and laws apply. The police members likely have views on the efficacy of Police Force policy, procedures and other decisions that apply to and affect members.
19. For that reason, in my opinion the Association has a sufficient interest in the inquest: namely, its interest in the “conditions, welfare and working environment of its members”. To the extent that such language may be apt under s 40(3) of the *Coroner’s Act*, I find that the Association’s interest is both “substantial” and “direct”.³⁸ In addition, I note that this is not the first

³³ I express no view about the merits of any such submissions.

³⁴ See, for example, NAAJA’s Submissions on the Proposed Issues List dated 9 May 2022 at 2.

³⁵ Ibid.

³⁶ I am informed by the Police Force that that the “limited facility” for drug testing may well have been the subject of legislative or regulatory change by the time the inquest commences in September: Transcript of Proceedings dated 26 May 2022 at 6.

³⁷ See, for example, the Brown family’s Submissions on the Proposed Issues List dated 23 May 2022 at [22](d).

³⁸ At least in the sense in which that latter word is used by the Police Force, which is to say, not “theoretical”: see, Police Force’s Written Submissions at [8].

time that a union of police members will be permitted to be represented in an inquest following a police shooting.³⁹

20. I am mindful that the evidence at the inquest “ought to be adduced in an orderly and efficient manner, without duplication or distraction” and that the inquest is already “scheduled to take many weeks”.⁴⁰ Two matters persuade me that the Association’s representation at the inquest will not give rise to significant inefficiencies or delay.
21. First, the basis for the Association’s representation is limited to its interest in the “conditions, welfare and working environment of its members”. As the High Court held in *Annetts v McCann*, those issues “can be isolated and, once isolated, counsel for the [represented party] is not entitled to address the Coroner on matters which are not relevant to those issues.”⁴¹ The Association’s participation will not be permitted to stray beyond the subject matter of its interest. For example, I am yet to be persuaded that the Association’s interest extends to the question of “what police were doing in Yuendumu in the days immediately following the death”.⁴²
22. Second, I am informed by the Association that it does not presently intend to call evidence. And, to the extent that the Association does apply to cross-examine witnesses, I am also informed that this will be limited to certain witnesses. I consider it premature to determine whether, and, if so, to what extent, the Association will be permitted to cross-examine witnesses. The Association, like each represented party, will need to justify any contemplated examination according to its interest in the inquest. Examination will not be permitted beyond the subject matter of the respective interest. Moreover, it is

³⁹ See eg, *Inquest into the Deaths of Anthony William Young et al.*, Coroner’s Court of Queensland, Nos 2988 of 2013 and 3598, 4321, 4239 and 4357 of 2014, 20 October 2017 (Mr Ryan).

⁴⁰ Police Force’s Written Submissions at [20].

⁴¹ *Annetts v McCann* (1990) 170 CLR 596 at [8] (Mason CJ, Deane and McHugh JJ).

⁴² Cf, Association’s Written Submissions at [6]

unlikely that parties will be permitted to traverse ground already covered by other parties where interests genuinely overlap.

Conclusion

23. I am satisfied the Association has a sufficient interest in the inquest and I give the Association leave to appear.
24. As a party with leave to appear in the inquest, the Association is entitled to disclosure of the inquest brief by order 2(i) of 11 April 2022.

Dated this 19th day of July 2022.

ELISABETH ARMITAGE
TERRITORY CORONER