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NORTHERN TERRITORY OF AUSTRALIA

Case No: 9009338

Rel No: 118/90

CORONERS ACT

FORM OF INQUISITION

An Inquisition taken at Galiwin'ku in the Territory on 19 and 20 June, 21 and 22 August and 17 - 19 September 1990 and at Darwin on 12 July, 24 August 1990, 21 - 25, 29 and 31 January, 1 February, 7 - 10 May and 13 - 15 May 1991, before me
ALASDAIR MCGREGOR, one of the Coroners for the Territory,
as to when and by what means GANAMU GARRAWURRA^{*} came to his death and I find as follows :

1. INTRODUCTION

These findings of the Coroner's Court are about a death at Elcho Island which gave great sorrow to the people. As most of the Elcho Island people do not have good English, these findings will be translated so that the large extended family of the deceased and the other islanders may understand. I am told that there is at least one person able to translate quickly between the sort of literary English that Coroners tend to use and Djambarrpuyngu the main language used at Elcho Island, but I am also told that it would not be easy to bring such a person to Galiwin'ku when I speak my findings. My English has to be turned into more basic English and then into Djambarrpuyngu by a team of translators.

To make a good translation as easy as possible, I have written this in as simple English as I could. In some places I have had to use lawyer's language, and for those parts I apologise to the translators.

The findings are in nine parts. They are :

1. The introduction
2. The story of this death as I think the Yolngu think about it

* There is a suppression order in force respecting this and other names of the deceased. See Page 2.

3. The story of this death as I think the police who were there think about it
4. My thoughts about why those stories are different
5. The reasons for my decision about whether a policeman should be charged with an indictable offence
6. My answers to some of the criticisms that have been made
7. My suggestions to try to stop a death like this from happening again
8. The official finding, which will be part of the records of the Coroner's Court and of the Register of Deaths
9. Conclusion.

Early in the hearing I used section 57 of the Evidence Act and section 35 of the Coroners Act to prohibit the publication of the identity of the deceased until further order. I will keep that order in force until there is an application to remove it. After death the name of a Yolngu person becomes very sacred for a couple of years. As I understand Yolngu tradition the time will come when the elders can say that it is safe to use the name of the deceased again. At that time I will hear an application. I believe these findings will be read and heard all over Australia, and people will argue about them. I believe it would be very offensive to the Yolngu people if a picture of the deceased were shown on television or in the newspapers, or if his name were spoken in an argument.

In these findings I have used some words which may be thought unusual. The Aboriginal people of East Arnhemland tend nowadays to call themselves Yolngu, which is also the name of the language which has become the lingua franca of the region. People of European descent they call Balanda, which comes from the Macassan word for a Hollander, a colonist of the former Dutch East Indies. I use these words rather than 'Aboriginal of East Arnhem Land' and 'non-Aboriginal Australian' or other such mouthfuls, and rather than Black and White, which are not helpful. Some of us around the Territory courts are more used to other descriptions of a dead person than "the deceased", but the people of Galiwin'ku made their preference clear to me, and so I have used that word.

It has been necessary to use the name of the deceased twice, to obey the Balanda Law. I have written the names that were told to the police, and the names on the Department of Health files, so that the Government records will be right.

2. THE STORY OF THIS DEATH AS I THINK THE YOLNGU THINK ABOUT IT

I do not try to tell the whole story, for that belongs to the Yolngu.

The deceased lived most of his life on Elcho Island, with his family. Many of the Yolngu there were his close relations, both Yolngu way and by blood as the Balanda understand it. It is important to understanding the story that the two Police Aides were close relatives. Joe Gumbula was in the position of a nephew and Brian Gumbula was uncle of the deceased. The Galiwin'ku Town Clerk, Richard Gandhuwuy Garrawurra, was his brother.

The deceased was a small man, 161 cm tall. When he died he weighed only 40 kg. He was about 48 years old, and was entitled to the respect due to age. He was skilled with a spear, and perhaps the only man left who would support himself in a traditional way. I do not understand that he hunted wild pigs or wallabies, but certainly he lived by fishing.

For most of his life the deceased lived a normal Yolngu lifestyle. He travelled a bit between Milingimbi and Galiwin'ku. I think he sometimes went to other places, perhaps to Nhulunbuy, where alcohol could be bought. There are few non-Yolngu at Galiwin'ku, and there was generally no need for a man like the deceased to use English. The people of Galiwin'ku do not believe he spoke any English. When the deceased was a little boy the Methodist Mission at Galiwin'ku was not very big and the people do not think he learned English there.

On 27 January 1984 we have the first record that something was wrong with the deceased. An entry on his Health Centre card that day says "Apparently schizophrenic. Staying alone in outstation. Is scared of europeans. Complains of some pain in right eye. Does not appear to be malnourished. Feels dizzy in periods. He feels headache when he hears voices etc." Melleril 10 mgs BD was prescribed.

The next entry on the card is for 23 September 1985. "Milingimbi Health Centre received orders to give this man Valium 10 mgs intra-muscularly. Violent behaviour at Outstation: breaking houses, throwing stones, spears etc. For review tomorrow." Over the page, "Evacuated to Gove District Hospital" completes the record on this old card.

These entries are significant. For over six years the community at Galiwin'ku lived with a man who they knew was sick. It was a sign of sickness that he would go away by himself, hunt for his food by himself and eat it by himself, away from his family. It was a sign of his sickness that he would threaten people with spears. Once, he threw two spears at his brother Richard Gandhuwuy who was trying to catch him to bring him to the Health

Centre for medicine. His sickness used to come and go, and some say it went with the moon, so that he became sick when the moon was full and became well again in a few days. Some say it was at the new moon. The important thing is that his illness came and went.

When the deceased was well, he took part in the ordinary life of the people. When he felt the sickness coming on he would go away. Sometimes, he became violent. Once, at Howard Island, which I think is part of his country, the behaviour of the deceased was so bad that his family had to bring him back to Galiwin'ku for medication. Brian and Joe Gumbula, the Police Aides, were there. Brian lay on a verandah roof and jumped onto the deceased as he walked by. Brian and Joe handcuffed the deceased, one pair of cuffs locked onto a wrist and an ankle, and another pair onto the other wrist and ankle. Brian and Joe then put the deceased into the bottom of a small boat and brought him, still struggling, to the Elcho Island Health Centre where the nurse gave him an injection, and then sent him away from the island on an air-medical flight.

At different times the deceased went to Gove Hospital and to the Psychiatric Unit at Royal Darwin Hospital for treatment. The Yolngu knew that the deceased was treated like that by the Balanda. He would be taken away, whether he wanted to go or not. He was frightened of the Balanda. The deceased sometimes received his drugs by injection. He also had tablets to take. The sister at the Health Centre encouraged the immediate family to make him take his tablets. This was a hard thing to do. He had the right to be left alone, if that was what he wanted, and he had the right to refuse the Balanda medicine. (I note that Dr. Wieteska says his tablets were all right taken with orange juice, but I do not suppose the deceased often had orange juice to hide the taste!) The family did not like to make the deceased take his tablets, so for long periods he would not take them.

All the Yolngu could see that the deceased was sometimes very strange. He would walk, and walk. Sometimes he walked all night. He would talk, and say things that a proper Yolngu man should not say. Often when he was taking his medicine he would walk with small steps, very stiffly, and make other odd movements. Then the doctor or the nurse would change his medicine. The Yolngu had no reason to suppose that the deceased thought that Balanda medicine was any good. (I do not know if he ever complained of bad things happening like blurred sight, dry mouth, not being able to sweat. These are other side-effects of his medicine.)

Time went on, and the deceased was sometimes well and sometimes sick. He kept out of the way of the Balanda and was not often seen at the Health Centre. He did no-one any harm.

The deceased was one of a number of Yolngu in East Arnhemland who were sick like this. The Yolngu were used to them in their communities. Sometimes they were seen by a psychiatrist from Darwin, but not often.

On 5 February 1990, a house in Galiwin'ku was burned down. Everyone thought the deceased had set fire to it. He was the nephew of the tenant of the house, a woman called Dhanganbarr Garrawurra. Her son Marcus Bulambula Bukulatjpi went to the house while it was burning and the deceased chased him out of the house with a spear.

On 9 February 1990, Constable Hammersmith from Nhulunbuy was at Galiwin'ku to talk to people about the fire. Marcus Bukulatjpi told him "That man is a mad man." On 24 April 1990, Constable Hutchinson from Nhulunbuy was at Galiwin'ku to talk about the fire. He was mainly there to conduct refresher training for the Aides. Dhanganbarr told him "I was told by Dick (Munungurr) that (the deceased) had lit the fire. When (the deceased) does not take his medicine he gets crazy and I was scared of him." The same day, Alfred Wunbaya, the Galiwin'ku Housing Association Manager, told Constable Hutchinson about the deceased. He said "We are aware that he has a mental problem and at times is not responsible for his actions. The Association would prefer that no action be taken against (the deceased)."

In the afternoon of 26 April 1990, Ian Wurruwul walked past the deceased near the cliffs a couple of kilometres south of Galiwin'ku. Ian was respectful and polite. Then he threw a fishing spear into Ian's back. Ian fell down and his hat fell off. This was picked up by the deceased who walked off with it. The spear's point pierced Ian's lung. The fishing spears the deceased used that I have seen have a single point made from a length of welding rod sharpened to a point. Ian was taken to the Health Centre and flown out to hospital. Constable Hutchinson called for reinforcements and two more police from Nhulunbuy flew in. Constables Hutchinson, Hosking and Majid and the Aides organised a search using local volunteers. It was close to dusk when they were searching the beach area from the cliffs near where Ian was speared. The Yolngu knew that in the dark they would not see the deceased and that he would not see them properly. He might throw a spear and hit someone that he would never want to hurt. They knew that he was frightened of Balanda and frightened of the two Aides. They knew he could throw a spear straight for as far as 40 metres. Some of the Yolngu, including members of the family, helped in the search.

The deceased was seen by one group of searchers among the rocks below the cliff. He waved his spears and woomera at the group. When it got dark, John Stacey, a Balanda working at Galiwin'ku, tried to shine a torch into the eyes of the deceased to dazzle him. A spear came out of the darkness and struck John Stacey's

hand which held the torch. It severely injured his hand. The Yolngu were frightened. About this time Constable Hutchinson fired a round from his revolver. Whether it was just a signal to tell the other search party where they were, or whether he made sure the deceased saw him fire the shot away from the deceased as a warning to him, the Yolngu have no doubt that it meant to the deceased that the Balanda would shoot him. A culture which fights with spears has no use for warning shots in another direction. A culture which uses shot-guns and rifles solely for hunting has no use at all for warning shots.

I believe that the Yolngu do not believe that a public announcement was later made that they should keep clear of the deceased.

On 27 April 1990, five members of Task Force flew in from Darwin. The Yolngu were used to their own Police Aides and the regular visits by Nhulunbuy Police. They were used also to members of Norforce on the island. A number of Yolngu are or have been soldiers in Norforce. They were not used to Police armed with shot-guns, and I think some were nervous.

From the Yolngu point of view, the deceased was sick again. Two people had been speared by him, and both had been taken away to hospital. But neither of them was dead. I do not know if the Yolngu would have been angry with the deceased if Ian Wurruwal had been killed. He would have died without medical help. It seems that most of the Yolngu accepted that Ian was speared because the deceased was sick and Stacey was speared because Balanda and his own people were chasing the deceased again when he wanted to be left alone.

One Yolngu man gave a different story. He told a policeman that the deceased had to be taken away. The policeman assumed this was a sign of support for the police mission, but in fact the speaker was Ian's father. What he said was the right thing for a father to say, but maybe it was not what many felt.

On Thursday night, 26 April, some people saw the deceased walking through Galiwin'ku. The story was soon all over town that the deceased had painted his body and was wearing a rope around his waist and carrying a knife. The paint and the rope meant that he would fight and not give himself up. The police were told this too, only they were told that the knife was a machete.

The Yolngu knew that the police were there to capture the deceased if they could. The Aides had gone out to borrow vehicles. They had arranged the loan of several motor cycles, including one that belonged to the Council President, Keith Djiniyini. The Aides went from house to house, talking to the family of the deceased. On Friday 27 April, a message went over the loudspeaker to the township. It would not have been heard everywhere, and certainly not over at Dhayirri where Old Bob Yillikari Bakumumu was. In the part of town near the loudspeaker the people heard a message that the police had come

to catch the deceased so that he could be given his medicine. They were told he would not be hurt.

The Task Force members, the Aides, Geoffrey Walkundjawuy and James Yitirriy, who are members of the family of the deceased, searched the area of the two spearings but found no-one. The remains of a camp, including some money were found. They then searched Number 2 creek and were told that the deceased had been there that day. They knew that Yillikari Bakamumu had spoken to the deceased. The deceased was his son in Yolngu way.

The Yolngu thought the deceased was hiding in a small patch of thick scrub near Red Cliffs. It was only about 15 metres square. Sergeant Smith fired two shots with his shotgun and an Aide set fire to the scrub. The deceased was not there. Soon after the party stopped the search as night was coming.

Next day, Saturday 28 April 1990, the Task Force, the Aides, Geoffrey Walkundjawuy and James Yitirriy began to search again.

About the same time Yillikari Bakamumu, who was camped at Dhayiri with other people, saw the deceased fishing. Bakamumu had heard about the spearings, but he had not seen the deceased on Thursday or Friday. Often the deceased ate with Bakamumu and some women at Dhayiri camp but he had not been there for a couple of days. When he saw him, the deceased was between the Number Two Creek and the place where he was to die at Wal Wal beach. The deceased was spearing crabs and Bakamumu knew that he must have been hungry to be spearing crabs. Bakamumu took damper and hot tea to him in his dinghy, a distance of two to three kilometres across the water. They talked. Bakamumu said something like -

"Here's your damper and your tea and your tobacco. I'm sorry I haven't got any cigarettes. I am going back home now."

The deceased replied -

"Father, you look after me because people are coming to make trouble for me - chasing me. I feel something bad is going to happen to me."

He complied with custom by telling Bakamumu that he was going back to the waterhole, a small hole about the size of a dinner plate where fresh water could be got. The deceased also said "Bring me some water and some cigarettes later". Clearly the deceased was in fear of the Balanda Police. Yet when he was with Bakamumu he was not painted, nor did he wear rope. Bakamumu says that would be because he was at his own home with his own family.

Bakamumu was returning to Dhayiri when he met up with the police party. They found out that he was going to return later with food. With Bakamumu the police formed a plan to take the

deceased. Geoffrey and James would travel with Bakamumu by boat to Dhayiri, on the pretext of bringing food to the deceased. Constable Hosking of Nhulunbuy, showed Geoffrey how to put handcuffs on, and applied a set. The plan was simple. When the folk at Dhayiri saw the deceased at Wal Wal beach, Constable Hosking would radio to Task Force. Aide Joe Gumbula and Hosking would be at Dhayiri and Aide Brian Gumbula would be with Task Force searching other areas. When Hosking radioed the Task Force, Bakamumu, Geoffrey, James and any other volunteers would set off by boat from Dhayiri across the water to the area of beach where the deceased was. They would overcome him, handcuff him and hold him till Task Force came by land.

The deceased was seen at Wal Wal, about 3 kilometres by boat in a direct line from Dhayiri. Bakamumu was worried about what the deceased had told him. He told Joe that he was not a policeman and that Joe and the other police should catch the deceased themselves. James also thought of better things to do. Later they gave excuses, Bakamumu that he had a sore foot and James that he had to eat some fish. These things were said because it would have been impolite to refuse to help capture the deceased but each felt he should refuse. A boat did set off, but with only Geoffrey Walkundjawuy and Kenny Guniniy Dhamarrundji, the grandson of Yillikari Bakamumu. Geoffrey is a well-built man, but Kenny is only a lad. At about 5.20pm that afternoon Geoffrey and Kenny set off for Wal Wal, and Brian Gumbula and the five Task Force members moved quickly behind the beach to the area where the deceased was.

The deceased came down from the beach towards the boat. Geoffrey stepped out into the shallows and approached the deceased. Kenny stayed with the boat. Geoffrey and the deceased talked. The deceased kept his distance from Geoffrey and I believe he was very suspicious.

On the ridge of the sand-dune at the edge of the beach were some small trees, figs and casuarina. By a small bushy fig tree the deceased had several spears and a woomera. He had lit a small fire there. He had come down from that area to the boat. While he was talking at the boat Task Force and Brian Gumbula arrived and, keeping under cover of the dune they spread themselves along the beach. Senior Constable Grant occupied a central position, alongside the place where the spears were. Brian was on the left of the line as they approached the beach. I do not know if Geoffrey was watching the Task Force members. The best explanation I can think of is that the deceased saw that Geoffrey or Kenny was watching behind the deceased, so that he knew people were behind him to catch him.

Kenny says that the deceased told Geoffrey that this meant trouble for him, the deceased, and that the deceased ran to get his spears. There is a strong suggestion, but with difficulties in translation I will not put it higher than that, that the deceased went for his spears to deal with Geoffrey. Geoffrey, who was a close relative, could be seen as a betrayer. I remind myself that the deceased was not in his right mind and that his reaction may not have been rational.

Kenny could see the knife at the back of the trousers of the deceased. He could see the blue rope that the deceased was wearing tied around his body and afterwards he saw the spears under the tree.

The deceased turned and moved quickly towards the beach. Geoffrey made notions to the deceased to come back, and may have called to him to do so. The police ranged themselves along the beach, each with his shotgun. The Task Force member nearest to Brian was telling him to keep back. Sergeant Smith was telling Geoffrey to keep back. Both men obeyed the Balanda.

Sergeant Smith shouted at the deceased to stop. No-one knows if he could understand Smith even when he was well. He did not stop. He kept coming towards his spears. He took his knife in his hand. Smith fired three shots. The deceased was aware of the shots for he zig-zagged. He kept on up the beach towards his spears, knife in hand. Grant yelled to him to drop the knife. We do not know if he understood "Drop it" either. Brian did nothing. Brian could have shouted to the deceased so that he would understand, but Brian had been ordered back. Behind the deceased Geoffrey and Kenny could do nothing. The deceased kept running towards his spears, until Grant, who was between the spears and the deceased, lowered his shotgun and fired. The deceased fell on the sand. Another Task Force member ran to him and kicked the knife from his hand. Geoffrey and Kenny left. It did not occur to Geoffrey or Kenny that the deceased would throw the knife.

Brian tried to talk to the deceased, but Constable Norman seemed to think he was getting in the way. Brian needed to help his nephew. And when he was dead Brian needed to tell the men quickly. It was wrong to leave the man to die alone in the bush and dangerous for Brian to be alone with his spirit.

Late that night Bakamumu and another man came across the water from Dhayiri to the body. They were not allowed near it. Bakamumu was his father, Yolngu way, and it was very wrong that he could not go to the body.

The Yolngu did not think it was the right thing to leave the deceased lying there all night and then take it straight away on the plane. There are modern ceremonies that accompany a body onto the plane and others which meet the body when it comes back from Darwin. There can be few Balanda who fly in and out of East Arnhemland who have not seen parts of those ceremonies.

The death of this man brought his line to an end. His family would rather he had got away, and believe he could have been caught later when the sickness had left him. His brother Richard Gandhuwuy had been able to handle him in the past without guns, and so had the two Aides. Unfortunately Richard was away from the island, so he could not advise the Task Force, and the Aides were not allowed to use any authority.

I can see the family's point of view, but I think they give too little importance to the facts that the deceased was mentally ill, that he had a knife and that he might have behaved very badly if he had got back to his spears.

3. THE STORY OF THIS DEATH AS I THINK THE POLICE WHO WERE THERE THINK ABOUT IT

Police Aides Brian and Joe Gumbula knew only too well how difficult it was to handle the deceased when his illness was upon him. Constable Hutchinson knew from his dealings with Dr. Ferris that the deceased was mentally ill. He had also spoken to Dean Casey, the new psychiatric nurse for East Arnhem Region, about the deceased. Hutchinson called for reinforcements when Ian Wurruwul was speared. During the search for the deceased, and especially when John Stacey was speared, Hutchinson, Senior Constable Majid and First Class Constable Hosking saw how nervous the young men helping them were. It was plain that the young men were frightened of the deceased and his skill with a spear. Hutchinson, Hosking and Majid saw they could not catch the man, and their call for reinforcements resulted in five members of Task Force under Sergeant Smith being flown to Elcho Island. The requests for Task Force intervention stressed that the deceased was mentally disturbed and dangerous. The Police heard the rumours that the deceased had walked through the town on Thursday night, painted and wearing the rope that signified that he would fight but not surrender. They had heard that he was armed with a machete. They had heard that he could throw a spear accurately over forty metres while lying down. At one stage Brian Gumbula had said to his Police colleagues, in the bravado way that men will sometimes, "Give me a gun and I will shoot him myself".

To prepare themselves Task Force took a selection of weapons. Gas canisters and explosive devices, 'stunnies', were for indoor use. Batons were for riot control. One never knows when a crowd will turn on the police. Handguns, personally owned revolvers, were taken for close-range work, and shotguns, especially modified shortened guns with pistol grip, were for easy use in confined spaces. The modified shotguns were justly considered the best choice of weapon. At close range they could certainly kill, yet the slower exit speed of the charge coupled with the wider spread of shot, meant that from a distance a person shot at had a better chance of surviving. They took the standard 00/SG cartridges designed for large game animals but approved by U.S. Law Enforcement Agencies and most Australian police forces.

As soon as Task Force arrived they were briefed. There was input from the Aides as well as from the Police, but Majid and Hutchinson left soon after. One thing noticeable in the briefing was that the Aides never referred to the deceased by name, but always as "the madman". The Aides told of their previous captures of the deceased. As one said, it was like listening to war-stories.

The effect of the briefing was to reinforce any notions the Task Force may have had that the man they were to catch was a dangerous madman. No-one had spelled it out otherwise. So Task Force were on the Island to remove this dangerous man for the sake of the community. They knew he was only armed with spears, but they had heard that he had caches of spears all over the island. That was probably not true, but we know that besides the spears at the fig tree there was one other collection of unfinished spears that they found.

On Friday 27 April Task Force went searching. They saw how excited Geoffrey, James and the Aides became when they thought the deceased was in the scrub.

Next day Task Force met Yillikari Bakamumu and found out that he had supplied tobacco and that the old man and the deceased had consumed kava together. This must have brought home to them that he was not always violent, but I do not suppose it made them feel any more comfortable.

It is one thing to hunt something which is predictably violent, like a crocodile or a shark, but another thing to hunt a person whose violence is unpredictable, and who is better skilled than oneself in using the land to advantage.

The Task Force made their plans with Bamamumu, Geoffrey and James. They then approached Wal Wal by land, leaving Constable Hosking to instruct Geoffrey Walkundjawuy in the use of handcuffs. They heard by radio that Geoffrey and Kenny were on their way to meet the deceased. Although their own radio would not transmit they seem not to have considered abandoning the plan in the absence of Bakamumu and James. After all, they were five fit armed men, together with Brian Gumbula who knew the country. They should have been a match for the older and much smaller man. They ran the remaining 1.3km from their then position to Wal Wal.

(I digress to say that I do not accept that the deceased was frail. He was wiry and short and light, but one could not say that he was wasting away. Dr. Cummings found no evidence that would justify any suggestion of frailty).

Approaching Wal Wal from the scrub, Task Force saw smoke from the fire of the deceased. Sergeant Smith directed Constables Page and Roberts to the right, and Constable Norman and Aide Brian Gumbula to the left. Smith and Grant approached from behind the fig tree. Smith hoped to have covered all escape routes. At that state of the tide it was not far to the water. The boat was out at a sand bar quite close to the shore and the water between was shallow. The men watched from the cover of grass and bushes. They saw the brief conversation between Geoffrey and the deceased in the water. Geoffrey was about ten metres from the boat and the deceased kept his distance. Geoffrey attempted to entice him closer. The deceased turned, apparently alarmed. As Geoffrey called out to him, the deceased

ran back through the shallows towards his tree. As he did so, the Task Force stood up and showed themselves. They walked forward down the beach. Grant moved about 10 metres down from the spears. Smith called out "Police. Stop". Smith assumed that the inhabitants of Galiwin'ku knew enough English to understand this. The deceased continued, and Smith discharged his shotgun in the air, over his head. The plan was now to bring Task Force into the open to "contain" the deceased. The shot was supposed to be a warning shot. It served to make the deceased change direction. He veered from Smith but then continued towards Grant. Smith ran forward and fired again over his head. The deceased pulled the knife from his trousers. The police could see the silver blade. How much of the handle could be seen I do not know.

The police agree that the deceased looked as if he was about to throw the knife. Against that, the Yolngu say they have no tradition of knife throwing. I do not find that compelling. We can all see plenty of Western movies and learn the basic techniques. I believe Sergeant Smith's evidence that the action he saw was not merely extracting and brandishing the knife but an action preparatory to throwing it.

Smith fired a third shot. Grant was calling "Drop it", as the deceased came closer to him. Other Task Force from the flanks were moving towards the deceased intent on running him down. The deceased was only 7 metres from Grant. If he had thrown the knife accurately and if it had been a sharp knife, or if it had struck Grant in the eye, it would have been very dangerous. I must doubt whether this particular knife would have done much more than bruise, but I know, what Grant did not know, exactly what sort of knife it is.

Grant was holding his shotgun in the "High Port" position across his body. He brought it down and fired once, striking the deceased in the head. Smith had been about to fire on the deceased.

A moment later Norman and Page reached the fallen man. The knife was kicked from his hand and Norman began first aid. He applied a field dressing and attempted to make the man comfortable.

It was about 5.55pm. In the next hour Smith made arrangements. He ruled out transporting the injured man over the rough track in the troop carrier that was all the transport they had. He called for medical assistance, which meant the nurse from Galiwin'ku and a medi-vac plane with a doctor from Gove. He marked out the scene, treating it, as he should, as a 'crime scene'. Norman attended to the deceased, moving him so that he could breathe better. At 6.49pm Norman had not been able to detect a pulse for some minutes and was in no doubt the man had died.

Thereafter, various arrangements were made to get the body and the doctor and aerial ambulance together which do not really concern me. They did not in anyway contribute to death. Those involved know that confusion was caused by imprecise information passed from one person to another. This is basic stuff that I do not need to talk about.

From the Task Force point of view, I understand why they took shotguns to the beach. If a firearm had to be used, a shotgun was the most useful. Rifles would have been unsafe in the confines of Galiwin'ku and revolvers, though carried, are inaccurate beyond about 15 metres. The modified shotgun that Grant carried is a particularly useful weapon as it is short enough to be easily carried in a travelling bag and kept clear and ready for use. The trouble with a shotgun is that if one is holding it in both hands, there is not much one can do by way of self-protection except pull the trigger and fire it. It is very dangerous to use a gun as a club.

One may speculate on the outcome if Grant had held up the spears belonging to the deceased to show him that the Police had his weapons. Perhaps then he would have surrendered. Perhaps he would have run to other spears further along the beach. But one should ask, if Grant was holding a bundle of spears in one hand and a shotgun in the other, what could he have done to protect himself from a mentally deranged person brandishing a knife.

I remind myself that everyone could see that the deceased was wearing his blue rope. At post-mortem a bag of yellow powder was found on the body, presumably ochre for painting himself. Indeed he was apparently dressed to do battle with the Balanda police.

4. MY THOUGHTS ABOUT WHY THOSE STORIES ARE DIFFERENT

4.1 There is no real difference in the eye-witness accounts. Indeed, a great deal of time and effort has been wasted trying to bring together stories that were never more than a little apart. Each of the persons at Wal Wal was focusing his attention on the deceased. The deceased was the natural focus at what we call "the psychological moment". A general misunderstanding of the purpose of marks on the aerial photograph Exhibit 42 caused most of the debate.

4.2 Another reason for the stories seeming different was the difficulty that Yolngu witnesses and counsel had with each other. This case has made very clear the real difficulty we all face without adequate interpretation. An interpreter has to be familiar not only with the bare languages but also with all their nuances, and with the customs and culture of both the languages involved. Despite warnings from Mr. Cooke, who with Mr. Baker ably translated statements and evidence for us, we sometimes fell into the trap of supposing a witness's command of

English was adequate. Despite these mistakes I believe we have the true story.

4.3 The real difference in the stories is that they are told from quite different viewpoints.

4.4 There were certainly false assumptions. The assumption by Smith that the deceased would understand English is only an obvious one. There are many aspects of Yolngu relationships which were a closed book to the men of Task Force. So they did not know the questions to ask, or the way to ask. They took in the obvious, that there was a mad man out there, of whom the people seemed very afraid.

4.5 The difference in point of view is obvious. It seems to me that not so long ago it would not have been so obvious. Not so long ago in Great Britain and Australia the lunatic asylums - so-called because even the Balanda connected madness with phases of the moon - were so bad that things needed to be pretty awful before one would consign a loved one to a 'Bedlam' or, colloquially, a mad-house. People accepted the presence in their villages of simpletons. Hermits and recluses were left superstitiously alone, and in earlier times were sanctified. The Balanda have gone through a period of locking such unfortunates away and are only now accepting that with medication and care they can live in Balanda society. The Balanda still prefer to lock up the "criminally insane".

On Elcho Island the Yolngu still look after their own, with minimal help from officials. They have kept for each person his dignity and respect.

4.6 The Police, for all their undoubted humanity, and who can doubt, for example, the humanity of Constable Norman, have Balanda ways. As well, as policemen they saw the deceased as a target to be removed from his own society so that he could have treatment and be brought to justice and so that no-one else would be hurt by him. Unfortunately and unnecessarily the two view-points remained poles apart and a man died.

5. THE REASONS FOR MY DECISION ABOUT WHETHER A POLICEMAN SHOULD BE CHARGED WITH AN INDICTABLE OFFENCE.

The evidence satisfies me that Sergeant Smith, Senior Constable Grant, and the other members of Task Force with them, all believed on reasonable grounds that the deceased had committed two offences very recently, the spearing of Ian Wurruwul and the spearing of John Stacey. Both were in circumstances that might have led to charges of attempted murder. Arrest of the deceased without warrant was justified under section 123 of the Police Administration Act.

The evidence also satisfies me that immediately prior to the discharge of Grant's shot-gun the deceased was running quickly from the sea towards Grant, and also towards a cache of steel-pointed spears and a woomera which the deceased had placed under a tree on a sand-dune just behind where Grant stood. Grant knew the spears were there.

The deceased had one of his hands raised, and in it was a shiny object which looked like a knife and was, in fact, a blunt fishing knife lacking most of its black haft. As he raised his hand he also raised himself up and he gave the appearance of being about to throw the knife at Grant from about seven metres. Smith had already called on the deceased to stop, and had fired three warning shots which caused the deceased to zig-zag. Grant was shouting to him to drop the knife. Although the last shot was fired over the head of the deceased he did not stop. Sergeant Smith was in the act of aiming his own shot-gun preparatory to himself firing at the deceased to preserve Grant's life, when Grant discharged his shot-gun.

As Grant has called in aid section 33A of the Coroners Act and has declined to be sworn or to answer questions on the ground that the answers may tend to incriminate him, I do not make positive findings about Grant's state of mind on two important aspects. First, I do not decide whether he believed that the killing was necessary for the preservation of his own life or, in the words of section 28(f) of the Criminal Code, whether he apprehended that death or grievous harm would result to him. I note however his statement given to police investigators in which he claims such a belief. Although that statement is totally consistent with the sworn testimony of his colleagues, in the absence of his own evidence I do not go the next step of determining as a fact that he held that belief. Secondly, I do not decide whether, in terms of section 28(a) of the Criminal Code, he believed that the deceased was a person who, unless arrested, might commit an offence punishable with imprisonment for life. What was known by Grant of the recent behaviour of the deceased certainly justified him holding such a belief. Again, Grant's failure to testify has produced this result. (I return to this in part 7, but for the moment assume that section 28(a) can be read broadly, so that the three warning shots by Sergeant Smith were sufficient compliance with the paragraph and that Grant's calling upon the deceased to drop the knife, although the deceased might not have understood the words, was, in the circumstances on the beach that day, sufficient compliance with the requirement to call upon the person to surrender and allow him a reasonable opportunity to do so.) I do not mean that any unfavourable inference should be drawn against Grant for his refusal. He has exercised his right: he remains innocent until proven guilty.

Although I do not make positive findings of innocence because of self defence or other justification, I am firmly of the view that the evidence is insufficient to put Grant or any other person upon his trial for any indictable offence. In

particular, the evidence from his colleagues that Grant was acting in his own reasonable self-defence is cogent credible and compelling, and there is no credible evidence to the contrary, so that, were Grant placed on trial for murder, manslaughter or any other indictable offence arising from the shooting, the evidence for the prosecution would be insufficient to lead to a conviction. A reasonable jury, properly instructed, could not, in my view, convict Grant of any indictable offence.

6. MY ANSWERS TO SOME OF THE CRITICISMS THAT HAVE BEEN MADE.

6.1 I do not have authority as Coroner to make wide-ranging comments in public. It is not my role to investigate police procedures, for example, except where they connected with the death. Thus, it is of no concern of mine that the Police Force modified shot-guns without the Commissioner's prior approval. That is why I do not speak of some of the things that I was told about.

6.2 I do not criticise Brian Gumbula. His evidence was confused because the Court did not understand the proper meaning of the large photograph Exhibit 42. He was in a very difficult position because he had a duty to his own people especially to the deceased, and a duty to the Police. It seemed that his colleagues in the Police Force abandoned him. Brian Gumbula needs lessons in how to answer questions in Court the Balanda way. As there is hardly ever a trial in the Court of Summary Jurisdiction at Galiwin'ku I suppose no-one thought to teach courtroom techniques to the Aides. All Aides should have this training.

6.3 The training and weaponry of Task Force were criticised. It is important to remember that Task Force is not a SWAT team, or a rescue squad, or a special combat unit, or whatever. In a small police force there must be a squad which can turn its hand to any special task. Nothing that has been said in Court makes me think that the five members of Task Force who came to Galiwin'ku acted wrongly in their choice of weapons. The Australian people expect that Constables and Aides will try to make sure that the person they are arresting does not get away, and that they do not get hurt. I used to think that a smaller size of shot might have been better ammunition to use, but in this case it would still have killed the deceased and at a greater distance it might not have stopped him. Nothing tells me that their training was wrong.

6.4 Task Force tried to involve the family in capturing the deceased. That was good, but the plan depended on the full co-operation of Yillikari Bakamumu and James Yitteriy. Politeness prevented their outright refusal. It seems to me that the plan needed Bakamumu, an old friend, and two strong adults, that is Geoffrey and James, in the boat. Bakamumu's absence made the plan difficult. The lack of another grown man to help Geoffrey made it almost impossible. The plan was also hampered by

partial failure of radio contact between the group at Wal Wal and the group at Dhayirri and the group at Dhayirri. When they knew that there were only Geoffrey and Kenny in the boat, Task Force should have been ready for a chase. Some of them plainly were. They improvised as best they could. I emphasise that the family was under no legal or moral duty to help the Police.

6.5 Conduct of Task Force towards Brian Gumbula and Geoffrey Walkundjawuy at Wal Wal. Sergeant Smith was wrong to think the deceased understood English. In fact, the early medical records at Royal Darwin Hospital suggest that he did have some understanding, but if Smith had asked I believe all the Yolngu would have told him they had never known the deceased to communicate in English. Sergeant Smith should have used Brian Gumbula and Geoffrey Walkundjawuy to tell the deceased to stand still. He was disturbed, but he might have obeyed. Task Force should not have kept Brian in the rear.

6.6. Conduct of Task Force towards the body of the deceased. Brian Gumbula was uncle of the deceased and that is a very important relationship. He had a duty to look after him. When he was dead it was Brian's duty to tell the men. Then there would be a ceremony. Brian Gumbula did these things properly, but he had to be a policeman first. Task Force members did not understand the strong relationship between Brian and the deceased. He was not interfering with Constable Norman's efforts to keep the man alive but attempting to do his duty. Brian had also the fear of being left with the body of a madman. The spirit of the deceased might have entered Brian and given him the same terrible sickness. For that reason Brian wanted the body brought back to the town. Later that night Bakamumu and another man went to Wal Wal by boat. Apparently they were turned back. Even in Balanda culture it is sometimes necessary to see or touch a body as part of the grieving process. Where that can be done without undue disturbance of a "crime scene", or of the matters which a pathologist is to investigate, it should be allowed. Bakamumu called this man "my son".

6.7 Criticism of Police for sending Task Force to Elcho Island. This was entirely a matter for the Commissioner of Police and his officers. Everybody must understand Task Force was not sent to collect a mental patient. Task Force was sent to catch a man who had speared two men with no good reason and might spear other people.

6.8 Criticism of the Police for not separating Task Force members until they had been interviewed. It is a counsel of perfection that one keeps witnesses apart. The story told by the men on Elcho Island who were at the shooting is so similar to the stories of Task Force that I have no difficulty in saying that I believe each man was telling the truth as he saw it. Task Force used Sergeant Smith's running sheet. It is not shown to have been wrong. Any collusion to tell lies has been disproved by the evidence of those on the Island.

6.9 Criticism of the interviewing of Senior Constable Grant. It would have been better if it had been done sooner but it was correct to await the post-mortem result. I would sooner criticise the delay until 2 May in conducting the post-mortem, but I do not have the reason for that before me. It may have been a good reason. As to Grant, it must be remembered that the police had a number of witnesses who, one supposes, were ready to say Grant had acted properly. He was hardly a suspect.

6.10 Community leaders have criticised Police discourtesy. I think that the Nhulunbuy Police should have been in close contact with the Council Chairman. It is true that the Chairman knew something of what was happening. Police needed local assistance, and were happy to use volunteers. At least Constable Hutchinson should have gone with an Aide to see the Chairman. He might even have found there was a telephone he could use. At a meeting Constable Hutchinson could have explained that Task Force was to catch the deceased and that Nhulunbuy Police would then question him about the fire and the spearings and take him to hospital and to Court. If the Chairman said that he wanted to meet Sergeant Smith that could have been talked about. There was time for a meeting. The deceased was not believed to be in the town area. No-one was in danger.

I recognise that it is not police practice to call on the Mayor of every town before performing police duties. I think the expectation of an isolated aboriginal community is different. There, life revolves around the Council.

I note that Sergeant Smith has not ever been stationed in a settlement. He may have had little understanding of the local situation. Police should be taught more about Yolngu custom.

6.11 The criticism discussed in 6.10 is connected to criticism that Task Force broke their Aboriginal Land permit conditions by not reporting to Council. This has nothing at all to do with the death. I say that the permits of Grant and Smith (which are the only ones that I have seen) are similar to my own permit. They have no special conditions. The circular from Department of Lands and Housing which says what permit-holders should do does not apply to those permits. If disobedience of the circular can be proved, that is a matter for action within the Police Force. I believe this matter is very important to the Yolngu, but it is of no importance to the Coroner's Court.

6.12 Criticism of the Medical Services.

Hilton Jones, the senior registered nurse, deserves no criticism for not spelling out to Task Force the mental condition of the deceased. Dr. Ferris had given a full statement to Constable Hutchinson in connection with the fire on 18 April 1990. The Police were fully aware of the situation.

Confusion about where and when to collect the body was unfortunate, but is only indirectly connected with the death. The Health Worker's troop carrier was in no condition to take a patient such as the deceased. Task Force were right to keep him still on the beach in the hope that he would live till a more suitable vehicle could be got in. Hilton Jones deserves no criticism for not attending the deceased on the beach. In the circumstances he was entitled to rely on the report of death made to him by Task Force. I would not take that view with some other injuries, in particular a closed head injury where death and coma might be confused.

6.13 Criticism of Mental Health Services.

Again, this is largely outside my jurisdiction. It is, perhaps, logical to say that a significant condition in the deceased, although not the medical cause of death, was his mental illness. The conversation that Kenny reported suggests his illness was still acute. Apart from the evidence that Bakamumu supplied him with some food from time to time, there is no evidence that the deceased was in need of care. He may have been wrongly diagnosed, though I do not see that the difference between a diagnosis of schizophrenia or of a psychosis matters much in this Court. He may very well have been mismedicated in the past, but he had probably had no medication since October 1989. However, I do not see how he could have been taken into custody and held under section 13 of the Mental Health Act, even after the suspicious house fire, because of the lack of evidence that he was incapable of managing himself or his affairs. The only reasons for taking him into custody were the stabbings. While I do not believe that it is generally acceptable to chain a man up and ferry him to the nearest health centre for an injection, I do not believe it is for a Coroner to criticise such an activity if it not only did not have anything to do with the man's death but was instrumental in restoring him to health.

I note with pleasure that there is now a Psychiatric Nurse based in East Arnhemland. The mental health of the region will be better served.

7. MY SUGGESTIONS TO TRY TO STOP A DEATH LIKE THIS FROM HAPPENING AGAIN

7.1 Given the range of mental illnesses, and the unpredictable behaviour of those suffering from them, the only sure way of keeping the police out is to keep the patients properly medicated and monitored. As well as more concentrated Mental Health services, this may require a compromise between Yolngu and Balanda ways. The Yolngu could accept that proper respect for a person sometimes involves making decisions for him over matters like taking tablets. The Government could accept that sometimes it is in order to leave a person on the edge of a community until his acute episode is over, even if he has caused real danger to life. I think that would be a difficult thing

for Government to do, because it would be terrible if the patient hurt more people while the Government stood back. The Balanda know too well that insane criminals released from prisons and mental hospitals have repeated the same terrible crimes. It would be best if the Yolngu accepted that even important people sometimes have to be treated like children.

7.2 If the Police do need to be called in to help the Yolngu, there has to be cooperation. On their own land, the Aides require the respect of both Yolngu and Police. If the Police require assistance from the Yolngu, it should be volunteered but with proper safeguards.

7.3 The safeguards I speak of require changes to Police General Orders and to legislation. At this inquest Geoffrey Walkundjawuy and James Yitirriy have been referred to as "trackers". When the Police Force employs a casual tracker he has to be put on the payroll. As well as allowing him to be paid, that gives him the protection of the Work Health Act if he is hurt. Geoffrey and Kenny could easily have been hurt, but they would have had no protection unless the General Orders were complied with.

As I said in the inquest into the death of Ronald Owen Brooks in February 1991 :

"I do suggest that General Order P8 appears to require revision. There is significantly more concern for the needs of the Personnel Officer at Police Headquarters than for the public. I set out the first 3 paragraphs of P8.

"Employment of Police Trackers

1. A Police Tracker will not be employed in excess of the establishment, except in emergent (sic) circumstances (e.g. search for a missing person) when approval may be obtained to employ an additional Tracker (or Trackers) on a casual basis. A Police Tracker must be of Aboriginal descent.
2. In every case where employment of a replacement Tracker or additional Tracker is necessary, approval must be obtained prior to his commencement of duty.
3. A request for employment of a Tracker is to be directed to the Commissioned Officer in Charge of the Division, then by radio message, telex or telephone, depending on the urgency of the matter, to the Personnel Officer at Police Headquarters. Every such request is to be accompanied by the following information:
 - 3.1 Name of proposed Tracker and date of birth;
 - 3.2 Reason for employment;

- 3.3 Marital status;
- 3.4 Dependants (if any) names and dates of birth;
- 3.5 Whether previously employed as a Police Tracker;
- 3.5 Proposed date of commencement of duty."

Paragraph 3 requires immediate information that could surely wait until after the emergency."

7.4 Of course it is not only Trackers who get hurt, and it is insulting to call a man a Tracker just because he is a volunteer who happens to be Yolngu. John Stacey was not a tracker. John Stacey was seriously injured helping the Police, and the law must be changed so that people in his position may be sure of adequate compensation. He was injured in circumstances which allow him to claim financial assistance as a victim of crime from the Victims' Assistance Fund under the Crimes (Victims Assistance) Act. I should not be surprised if the maximum were found not enough for a serious injury to his dominant hand.

I note that volunteers assisting in emergency services and in volunteer fire brigades are defined as "workers" by section 3(7) and (8) of the Work Health Act. Even criminals performing community service work are deemed by section 18 of the Criminal Law (Conditional Release of Offenders) Act to be employed by the Territory. I recommend that section 3 of the Work Health Act be amended to cover persons assisting police in the ways that John Stacey, Geoffrey Walkundjawuy and Kenny Guniniy were assisting. If it is not convenient to amend the Work Health Act, perhaps the Police Administration Act could be amended. Volunteers would fit logically near Special Constables at section 29 and 30 of that Act.

7.5 I emphasise the respect that is due to the Aides, mentioned at 7.2. The Aides have a special relationship with their community which no Balanda constable can have. If they are to perform liaison duties, let it be understood that there are liaison officers, but no liaison privates. To perform liaison effectively the officer must have enough status to deal more or less equally with the senior men on each side of the alliance. And there has to be an alliance. Unless the two sides are committed to the same objective the liaison officer will find his work as a go-between very difficult. In this case each party misunderstood the other's objective, the Yolngu's being only to care for the deceased, and the Police objectives being to prevent more injury and violence in the community and to take the deceased to a place of care after arrest and possible questioning. They were reconcilable objectives, but only when each was aware of the other's point of view.

7.6 Just as it is useful to be able to give promises to volunteers that they will be compensated for injury, so it is necessary to be able to assure Police of the protection of the Law if they act properly. Paragraphs (a), (b) and (c) of section 28 of the Criminal Code all appear defective in providing that protection to police and prison officers. In each case, the

person who fires the gun must also have fired the warning shot and called on the fugitive to surrender. If Grant had to rely on the literal meaning of section 28(a), and could not rely on section 28(f), these findings would be very different. The section contemplates that in a riot one officer may cause another to fire a shot - paragraph (d) - but is curiously blind to the notion that policemen often go about in pairs. The Queensland Criminal Code, by contrast, has this commonsense provision :

"256. Police officer preventing escape from arrest. When a police officer is proceeding lawfully to arrest, with or without warrant, a person for an offence which is such that the offender may be arrested without warrant, and the person sought to be arrested takes to flight in order to avoid arrest, it is lawful for the police officer, and for any person lawfully assisting him, to use such force as may be reasonably necessary to prevent the escape of the person sought to be arrested.

But this section does not authorise the use of force which is intended or is likely to cause death or grievous bodily harm, except in a case where the person sought to be arrested is reasonably suspected of having committed an offence punishable with imprisonment for life under this Code, nor until the person sought to be arrested has been called upon to surrender."

7.7 Finally, unless we are prepared to ignore the abuse of civil rights, we must make the Mental Health Act workable. I have already referred in these proceedings to 'Mental Health and the Law' by John O'Sullivan, Law Book Company 1981. Hidden within the pages of that book is the memorable advice that one should not let patients rot with their rights on! The present criteria for committal in section 13 of the Mental Health Act require proof not only that the patient requires care but also that he is likely, by act or neglect, to cause death or serious bodily harm to himself or another. (Incidentally, O'Sullivan mis-states this at page 50.) It is well known that there are mentally ill people out in the world who are likely to do harm but who are caring for themselves. No-one could have moved legally against the deceased, except in terms of short committals under section 7, 8 and 9, until he was well into an acute phase of his illness. I believe there are times when magistrates have read section 13 liberally to allow the detention of patients who might not strictly have met the criteria. I recommend the criteria be changed, perhaps by reconciling section 13 with section 7.

8. THE OFFICIAL FINDING

I find that the deceased was GANAMU GARRAWURRA, called in Department of Health files GANAMU LIYAGAWUMIRR and GANAMU NO. 1, and on his Medicare card GUNANU. The deceased was an Aboriginal male person aged about 48 years and was unemployed. Hospital records show that he was born on 1 January 1948 at Galiwin'ku or at Milingimbi, so it may be that he was only 42 years old.

I find that on 28 April 1990 at Wal Wal, a beach near Galiwin'ku on Elcho Island, the deceased died of the effects of a shot-gun wound of the head. The shot was there and then fired by Senior Constable Bruce Malcolm Grant (now Sergeant Grant) of Task Force within the Northern Territory Police Force. I find that Grant, and the Police with him, were acting in the course of their duty in attempting to arrest the deceased. They believed on reasonable grounds that the deceased had committed two offences, the spearing of Ian Wurruwul in the back, and the spearing of John Stacey in the hand, both in circumstances that might have led to charges of attempted murder. Grant fired one shot of 00/SG Winchester ammunition from a shot-gun. The deceased was armed with a broken-handled fishing-knife and was 7 metres in front of him and running towards him. Five of the nine balls in the cartridge struck the deceased in the head, two piercing the skull and entering the brain. They caused brain damage and bleeding. The deceased was given competent first-aid by Constable Mark Norman of Task Force. The deceased died an hour or so later, but no medical help could have saved his life. The cause of death was confirmed by post-mortem examination. Death was not from natural causes.

The evidence is insufficient to put any person upon his trial for any indictable offence.

9. CONCLUSION

Elcho Island is a good place. Between 1500 and 2000 Yolngu live here, in Galiwin'ku or at the twenty or so outstations. I say it is a good place because there is not much trouble here. There is a little trouble with alcohol, and some trouble with petrol-sniffing.

The people, the Council and the Police Aides keep Elcho Island peaceful. But they cannot do it all by themselves, and I hope the Police from Nhulunbuy will soon be able to come again, and that the magistrates will be able to come again.

Now that the inquest is over, I offer, on behalf of the Coroner's Court, sympathy to the family and friends of the deceased. I regret that it took so long to finish the hearing. We can all learn from what has been said, and much time and money and anger will have been wasted if we have not learned a lot already.

Dated the 3rd day of June 1991 at Galiwin'ku



ALASDAIR MCGREGOR SM
Coroner