IN THE CORONERS COURT
OF NORTHERN TERRITORY
AT ALICE SPRINGS

INQUEST INTO THE DEATH OF KUMANJAYI WALKER

Submissions on behalf of the Brown Family
re cross-examination of Zachary Rolfe

1. These submissions respond to Mr Rolfe's submissions seeking rulings in advance of him being called as a witness in this Inquest a second time:
   1.1. imposing limits on and requirements for his cross-examination by interested parties; and
   1.2. declining to compel him to answer questions on topics he has foreshadowed making claims for privilege against self-incrimination about.

2. Neither issue should be determined in the abstract. The rulings sought are premature. Like the obligation to afford natural justice, what fairness to a witness requires in any particular instance will be flexible and responsive to the circumstances, including the witness' subjective circumstances, and the nature of the testimony, as well as the necessity to ensure, overall, a fair and effective hearing.

3. Similarly, whether it might appear *"expedient for the purposes of justice"* for the person to be compelled *"to answer question"* under s 38(1)(b) *Coroners Act 1993* (NT) (**the Act**), can only be determined by reference to the question posed, and its apparent relevance to the issues under examination by the Coroner.

4. Both matters will also be shaped by the nature of these proceedings. The authorities relied upon by Mr Rolfe (at [9]) to suggest that only one counsel from those with (presumed) shared interests should cross-examine on each topic, pertain to traditional adversarial private law proceedings before a Court. However, *"Coronial inquests are proceedings which by their very design and purpose eschew the ordinary rules of procedure and evidence in favour of a system directed to discovering the causes, both direct and systemic, of a death or disaster."*[1]

5. There being no pleadings and no parties (in the traditional sense), identification of shared interests would be necessarily imprecise, resting on *a priori* assumptions.

6. Furthermore, it can be expected that counsel for the interested parties would operate as they have to date, in a complementary, rather than supplementary or repetitive way. If not, the Coroner can intervene at that point.

[1] *Rolfe v Territory Coroner* [2023] NTCA 8 at [53].

7. Fairness to a witness does not equate with prior notice of questions to be asked, or documents to be taken to. Spontaneous responses are far more likely to be of use to the Coroner in her task, than rehearsed ones.

8. For Mr Rolfe to be afforded additional protective procedural measures to that provided to every other witness who has been called, would be incongruous and difficult to justify.

9. If Mr Rolfe considers his answers may incriminate him, he has the protections available to him of a certificate given under s 38. Such protections have been inserted by Parliaments into coronial statutes throughout the country to ensure that the purposes of coronial proceedings are not *"hampered"* or "*stultified*", but rather, *"to permit a full investigation into deaths and disasters, including making reports and recommendations directed to public health and safety and the administration of justice."*[2]

10. When the questions are known, the value, or expediency, for the purposes of justice, of requiring Mr Rolfe to answer them can be properly assessed. Contrary to Mr Rolfe's submissions at [33], there need not be a strict link between the subject-matter of the question and one or more findings required to be made by the Coroner. Rather, the phrase used in s 38(1)(b) is a broad and flexible one,[3] not easily susceptible to limits by way of examples or categories of operation.

11. The Brown family respectfully agrees with and adopts Counsel Assisting's and the WLR Families' submissions already circulated.

Gerard Mullins KC
Paula Morreau

Counsel for Brown family
20 February 2024

[2] Ibid, [56], [74].
[3] *Cureton v Blackshaw Services Pty Ltd* [2002] NSWCA 187 at [37], *Herron v Attorney General (NSW)* (1987) 8 NSWLR 601, 613. See I Freckleton KC, *"The privilege against self-incrimination in Coroners Inquests"* (2015) 22 JLM 491, 497 & 500.