CITATION: *Inquest into the death of Jodie Palipuaminni* [2006] NTMC 083

TITLE OF COURT:	Coroner's Court
JURISDICTION:	Darwin
FILE NO(s):	D0091/2005
DELIVERED ON:	23 October 2006
DELIVERED AT:	Darwin
HEARING DATE(s):	18, 19, 20, 21, 22 September 2006
FINDING OF:	Mr Greg Cavanagh SM

CATCHWORDS:

Violent death, domestic violence, parole supervision of violent offenders.

REPRESENTATION:

Counsel:

Assisting:	Mr Jon Tippett Q.C.
Commissioner of Police & Dept. of Justice:	Mr Michael Grant
Department of Health:	Mr Kelvin Currie

Judgment category classification:	B
Judgement ID number:	[2006] NTMC 083
Number of paragraphs:	73
Number of pages:	30

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

No. D0091/2005

In the matter of an Inquest into the death of

JODIE PALIPUAMINNI
ON 25 MAY 2005
AT ARARU COMMUNITY

FINDINGS

(Delivered 23 October 2006)

Mr Greg Cavanagh SM:

REASONS FOR DECISION

INTRODUCTION

1. On 25 March 2003 Justice Mildren sentenced Trenton Cunningham in the Supreme Court on one count of aggravated dangerous act and one count of unlawful aggravated assault. The first count dealt with an incident that occurred on 3 October 2001 in which Mr Cunningham poured boiling water over his wife. She suffered 20 percent burns to her body and was required to undergo significant painful skin grafts that left her with permanent cosmetic deformities. The second count related to an earlier incident on 25 June 2001 when Mr Cunningham hit his wife on the right forearm and body with a steel bar. She received a broken arm and bruising to the body. In each case the victim was Jodie Palipuaminni ("the deceased").

2. In his sentencing remarks Justice Mildren referred to a psychologist's presentence report authored by Peter Mals on 20 March 2003 in which Mr Mals predicted the fatal future of the relationship between Mr Cunningham and Ms Palipuaminni when he observed:

> "If the relationship continues, the end result might well be, (a) a fatal injury to Mrs Palipuaminni, either deliberate or accidental in nature, or (b) a fatal injury to Mr Cunningham should Mrs Palipuaminni reach the point where she decides to retaliate."

3. Mr Cunningham was sentenced to imprisonment for three years. A non-parole period of eighteen months was set.

4. On 25 December 2003 Mr Cunningham was released on parole with a condition that he not contact his wife. The release of a prisoner "on parole" is a decision made to allow a prisoner to serve the balance of his sentence living in the community. Such release is usually made subject to conditions intended to prevent re-offending and, where relevant, to protect victims or the wider community. In violation of a parole condition in late 2004, the relationship between Mr Cunningham and the deceased was re-established. On Wednesday 25 May 2005 while still on parole Mr Cunningham beat his wife to death with his hands and feet at remote Araru Outstation on the Coburg Peninsula. She was twenty seven years old and in the early stages of pregnancy. Over many years prior to her death she was the victim of sustained serious and well documented "domestic violence" from Mr Cunningham. For many months prior to killing his wife Mr Cunningham's parole supervision and the enforcement of parole conditions designed to protect his wife from further violence by Community Corrections, as the following findings indicate, was at best perfunctory.

THE NATURE AND SCOPE OF THE INQUEST

5. In a telephone call to his mother Enid Cunningham on the morning of 25 May 2005 Trenton Cunningham told her '*We (he and his wife) had a fight all night and she was screaming for help but no-one came, no-one tried to stop us'*. Enid Cunningham said she wanted to talk to the deceased but he told her '*She's sleeping mum.'* About half an hour later he, Cunningham, rang his mother again, this time he said '*Mum I think she's gone. She's dead.'*

6. The precise time of death is not known. It is clear however that it was in the morning. The first police officer to get to Araru Outstation was Allan James Teague. He travelled there from Oenpelli and arrived at 7.20pm. He viewed the body and then contacted the Police Communications Supervisor and told her the death looked suspicious. He then established a crime scene.

7. Section 12(1) of the *Coroners Act* ("the Act") defines a "reportable death" to include a death that:

> "Appears to have been unexpected, unnatural or violent, or to have resulted directly or indirectly from an accident or injury."

8. For reasons that appear in the body of these findings, the death fell within the ambit of that definition and this Inquest is held as a matter of discretion pursuant to s15(2) of the Act.

9. Section 34(1) of the Act details the matters that an investigating Coroner is required to find during the course of an Inquest into a death. That section provides:

> "(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
>
> (v) any relevant circumstances concerning the death"

10. 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."

11. The public Inquest in this matter was heard at the Darwin Magistrates Court on 18, 19, 20 and 21 September 2006. Counsel Assisting me was Mr Jon Tippett QC of Myilly Point Chambers (with Helen Roberts, the Deputy Coroner). Mr Michael Grant sought leave to appear on behalf of the Commissioner of Police and the Department of Justice, Community Corrections. Mr Kelvin Currie sought leave to appear for the Department of Health. I granted leave to each of the parties pursuant to s40(3) of the Act. I wish to place on record my appreciation of the work carried out by Mr Tippett Q.C. in particular.

12. This evidence enables me to make the following formal findings as required by the Act:

FORMAL FINDINGS

13. The identity of the deceased was Jodie Palipuaminni, an Aboriginal female born on the 21st October 1977 at Darwin in the Northern Territory.

14. The time of death could not be established with precision however the death occurred on the morning of 25 May 2005 at Araru Outstation on the Coburg Peninsula.

15. The cause of death was intracranial haemorrhage with associated blunt head, chest and abdominal trauma.

16. The particulars required to register the death are:

    a. The deceased was a female
    b. The deceased was of Aboriginal Australian origin
    c. The cause of death was reported to the Coroner
    d. The cause of death was confirmed by post mortem examination
    e. The intracranial haemorrhage caused the death
    f. The Pathologist viewed the body

g. The Pathologist was Terence John Sinton of Royal Darwin Hospital

h. The mother of the deceased was Maria Agatha Palipuaminni

i. The usual address of the deceased was Nguiu Bathurst Island Northern Territory

j. The deceased at the time of her death did not have an occupation

17. This Inquest was held to inquire into the circumstances surrounding the death of Jodie Palipuaminni. The focus of the Inquest was to consider whether the death of Jodie Palipuaminni was preventable and, if so, how that might have been achieved. In particular, the Inquest examined the role of Community Corrections and the Northern Territory Police in the enforcement of the deceased's husbands strict parole conditions. The parole conditions were designed to prevent the deceased from suffering further injury at her husband's hands while he was on parole for the crime of pouring boiling water over her during a domestic argument.

18. The inquiry has had the benefit of the cooperation of witnesses attesting to the direct circumstances surrounding the death as well as a number of Community Corrections Officers and others. In particular the inquiry has been greatly assisted by the comprehensive statement of Assistant Commissioner Grahame Kelly of the Northern Territory Police, Fire and Emergency Services and the statement and supplementary statement of Mr Peter Curwen-Walker, Acting General Manager of Community Corrections Northern Territory Correctional Services. The evidence provided to the inquiry as set out in those documents was candid and comprehensive thus enabling the length of the hearing to be considerably shortened.

RELEVANT CIRCUMSTANCES

Background Facts

19. From a very young age the deceased and Trenton Cunningham had been "promised" to each other in accordance with Aboriginal tradition and law. The actual relationship between them commenced when they were in their teens in 1993. Trenton was two years younger than his wife having been born on 25 May 1979. At the beginning the relationship was harmonious. Mr Cunningham was still going to school. However when the deceased fell pregnant with their first child Trina Cunningham (born 3 February 1994) the relationship began to deteriorate. By the time their third child Richard was born (23/03/99) the tensions in the relationship had escalated markedly to the point where the deceased would often disappear abruptly, often in the middle of the night, and might be absent for several days at a time. The couple had two other children, Frank who was born on 17 January 1997 and Judy born 28 February 2001. Judy was not believed to be the biological child of Trenton although the deceased contended otherwise. Cunningham told Community Corrections Officer Marguerite Fawcett that he did not want to care for the child and that he resented having to do so. That fact together with a constellation of other grievances meant the relationship lurched from one violent incident to another.

20. There are many instances of recorded assaults by Mr Cunningham upon the deceased in the Nguiu Clinic notes. The notes were made an exhibit at the inquest. It would be cumbersome and unnecessary to set out in these reasons the nature and circumstances of each assault or attendance at the clinic that occasioned a complaint of assault by the deceased. Nor is it contended that the deceased's visits to the Nguiu Clinic or the Royal Darwin Hospital reflect the extent of the violence suffered by the deceased. The medical records merely indicate that on the occasions recorded a complaint of domestic violence was made. As is so often the case in such situations

many instances of assault went unrecorded or were discovered by health workers by chance or upon inquiry. The nature and seriousness of the violence in the relationship can be illustrated accurately by referring to some examples;

i) 18/01/94 – Deceased presented at Nguiu Clinic pregnant and complaining "she was hit by her boyfriend".

ii) 19/03/94 – Deceased presented at the Nguiu Clinic complaining she had been hit by her boyfriend "with a hammer all over her body" and said that this had happened before.

iii) 18/02/99 – Deceased complained she had been pushed to the ground by her partner. She was pregnant at the time.

iv) 20/02/99 – Deceased complained to Nguiu Clinic staff that she had been hit about the body with a garden implement by Trenton. She was very upset. She had a swollen lip and injuries to her left upper back. She was pregnant at the time.

v) 8/10/99 – Deceased complained she was assaulted by her defacto with a knife and punched in the jaw. She remained with the police aid on Nguiu that night for safety.

vi) 3/01/2000 – Deceased was beaten and dragged by the hair by her boyfriend.

vii) 5/01/2000 – Deceased's boyfriend threatened to kill her and beat her with his fists and a fan to the back of the head and legs. Cunningham was charged and convicted of assault. He was sentenced on 23 February 2000 to 80 hrs community work.

viii) 5/04/2000 – Deceased punched and kicked by Cunningham before being choked and then whipped with wire. As a result of that event Cunningham was charged with assault and at the same time charged with "Fail to Comply with Restraining Order". He was sentenced on 7 June 2000 to a total of 4 months imprisonment suspended on condition that he be of good behaviour for a period of 18 months.

ix) 20/12/2000 – Deceased told staff at the Nguiu Clinic that she had been punched by her boyfriend in the abdomen.

x) 23/5/2001 – Deceased told police that she had been punched by Trenton.

xi) 25/06/2001 – Deceased hit with steel bar which resulted in a broken right arm. She also received bruising to her body. Cunningham was sentenced to nine months imprisonment by the Supreme Court on 25/03/2003.

xi) 23/07/2001 – Deceased presented at Nguiu Clinic suffering pain as a result of being hit with a stick by her boyfriend.

xii) 22/09/2001 – Deceased presented at the Nguiu Clinic having been stabbed all over the body with scissors by Trenton. This event caused Family and Community Services to evacuate the deceased to Darwin so she could reside with safety at the woman's shelter, Dawn House.

xiii) 4 October 2001 – Deceased presented at Nguiu Clinic after Trenton poured boiling water over her. That assault resulted in the deceased being flown to the Burns Unit of the Royal Adelaide Hospital to undergo treatment that included extensive skin grafts. The deceased carried visible scaring from the grafting to the date of her death. Cunningham pleaded guilty to doing a dangerous act with the aggravating circumstance that he caused grievous harm to the deceased. He was sentenced to 2 years and 3 months imprisonment in the Supreme Court on 25 /03/2003. On that date Cunningham had the sentence of 9 months for the June 2001 assault made cumulative upon the dangerous act sentence giving him a total period of imprisonment of 3 years. A non parole period of 18 months was fixed by the sentencing court and deemed to commence from 25 June 2002 the date Cunningham was remanded in custody.

21. Once Trenton Cunningham was imprisoned the deceased started work at the Nguiu Child Care Centre. She lived with her mother Maresa Palipuaminni.

The two daughters lived with her while the boys resided with their paternal grandparents. The deceased apparently coped well during this period and the arrangements for the care of the children were satisfactory. Family and Community Services (FACS) personnel during their involvement with the family found that the deceased did not speak a lot about the violence experienced by her. In discussions with the immediate family members FACS personal found that there seemed to be agreement that it would be best for the couple to separate permanently. However they concluded that the family appeared to feel impotent in stopping the ongoing domestic violence, although the brother of the deceased did give evidence before me of at least one serious effort to separate the couple.

22. Whilst in prison Cunningham undertook courses in anger management and Aboriginal family violence. Community Corrections file notes made in October 2003 state that:

> "Cunningham appears to have taken steps whilst in custody to address his offending behaviour by attending appropriate programs. He clearly recognises his relationship with his ex-partner has in the past been problematic and now seeks to end it and remove himself from the environment she is located in. He has the support of his family and a desire to return to a more traditional lifestyle, which enhance his prospects of completing a period of parole supervision."

23. On 25 December 2003 Trenton Cunningham was released on parole. His parole conditions were stringent. They reflect a concern by the Parole Board that a danger lay in the fact that the relationship between Mr Cunningham and his wife put her at a physical risk of future serious injury or worse. The parole conditions that attract the consideration of this inquiry are:

> "i) the parolee shall be subject to the supervision on parole of a parole officer appointed in accordance with this parole order and shall obey all reasonable directions of the parole officer appointed;

ii) the parolee shall on 27 December 2003 hire a charter plane with Air Ngukurr to Cape Don and proceed to Araru Outstation;

iii) the parolee shall not contact or approach the victim (ex-partner), any arrangements regarding access to his children shall be arranged through his parents or the victims family members;

iv) the parolee shall not go to the Tiwi Islands, except to attend funerals or ceremonies and prior to travel he must obtain permission from his parole officer."

24. Should those parole orders have been enforced or obeyed the tragedy of Ms Palipuaminni's death, in every likelihood, could have been avoided. The responsibility for enforcing the orders lay with Community Corrections officers. In the course of enforcing such orders it is as much common sense, as it is sound practice, to put in place simple mechanisms to ensure that any information given by the parolee regarding his or her compliance with such orders is able to be checked for its reliability. In the instance of Mr Cunningham it appears from the evidence that there was a complete absence of any system of checking that would have been capable of alerting Community Corrections Officers to the fact that he was not complying with his parole conditions. It should go without saying that to rely entirely upon a parolee's assertions that he is in compliance with his parole, particularly where the victim of the crime in relation to which parole was granted remains at risk of physical harm, is not only naive but negligent. It appears however that it was not uncommon for Community Corrections Officers to accept without demur, information provided to them by parolees in determining whether the parolee was fully compliant with his or her parole conditions. It may be trite, however, it should be stated that uncorroborated evidence from convicted criminals about themselves may very likely be incorrect.

25. Mr Cunningham did fly to Araru Outstation as his parole conditions required and it appears, on the available evidence, he remained out of contact with his wife for a period of approximately twelve months. The evidence of his father Ronald Cunningham suggests that he had been residing at Araru with the deceased prior to Christmas 2004. During that period Mr Cunningham was supervised by Ms Madeline Trentham. Ms Trentham is a Community Corrections Officer who, during this period was based at the Casuarina Community Corrections Office. The Casuarina Office was in charge of parolees in regional areas of the Top End of the Northern Territory. Ms Trentham had been a Community Corrections Officer for approximately ten years when she was charged with the responsibility of supervising Mr Cunningham who in the idiom of Community Corrections became her "client". At the time of the deceased's death the actual supervision of Mr Cunningham had been transferred to another Community Corrections Officer Mr Gavin Johns.

26. Supervision of Mr Cunningham entailed him contacting the Casuarina Corrections Office each week by telephone to make a report. The report was then reduced to writing by the Corrections Officer and placed on Mr Cunningham's file. One such typical report read inter alia:

> "Trenton reported today. I asked why he had not reported since 15/6/04. He claims he was at Smith Point on 22/6/04 with his grandfather, who had to attend a meeting and completely forgot to ring. Last Tuesday, Trenton said they went fishing at Black Point, and due to some mechanical problem with the outboard they were stranded and did not get back to Araru on that day. Writer accepted his apology, but still reminded him about his obligations towards his order. Trenton reported no change in his current circumstances, still living at Araru and now has all his children with him. He claims he has no contact with his ex-partner and any arrangements for child access is arrange(sic) through family members. No issues of concern to report, I directed Trenton to report again next Tuesday."

27. The evidence supports the conclusion that the system of reporting in the instance of parolees residing in regional areas relied entirely on the veracity

of the information imparted to the Community Corrections Officer by the parolee. Ms Trentham carried out her supervision of Mr Cunningham in a fashion in which it was customary not to seek confirmation of where the parolee was reporting from or to make any checks in order to corroborate any of the information provided by the parolee. It is, of course, true that remote locations in the Territory do provide a logistical and resources challenge to Corrections Officers, however simple mechanisms such as speaking to other family members or persons with whom the parolee is expected to reside or requiring the parolee to be at a particular telephone number and contacting him or her instead of relying entirely on the parolee to report in could be beneficial. Obtaining the contact numbers of other persons where the parolee is residing and contacting that person or persons during reporting intervals could also provide information independent of the parolee as to whether he or she is complying with parole conditions. However the culture of supervision as it prevailed at the time in the Casuarina office did not extend to the making of such enquiries. Ms Trentham had charge of six or seven parolees during the period of Mr Cunningham's parole.

28. The deceased's mother, Marissa Palipuaminni, told the Inquest that although she tried to dissuade her daughter from resuming the relationship with Trenton, the deceased travelled to Araru with her children for a "bush holiday" approximately two months prior to Cyclone Ingrid hitting the Tiwi Islands (that event occurred on 13/14 March 2005). Corrections Officers at Casuarina had not been in contact with Mr Cunningham in the period 16 November 2004 to 22 March 2005. On 22 March 2005 Mr Gary Larkins of the Jabiru office made the following case note:

> "I spoke to rangers from East Alligator and asked if they knew Trenton. They stated they knew him however he had not resided at Cahills Crossing for about three months. They believe he is either in Darwin or on an island north of Darwin they call TI. They stated they knew his family at Cahills Crossing and would pass a message for him to call Corrections.

If he does not contact us soon, I suggest further investigation and letter to Parole Board."

29. Ms Trentham told the Inquest that in the period 16 November 2004 to 22 March 2005 no attempts were made by the Community Corrections Regions Office to contact Mr Cunningham. Throughout that period it is clear that Cunningham was in breach of his parole conditions not only for failure to report weekly as required but from at least January 2005 for failure to not approach or contact the victim of his offending the deceased.

30. Ms Trentham explained the failure of Corrections to supervise Trenton over such an extended period as possibly due to a number of factors including the wet season, Cyclone Ingrid and a heavy work load. While that may have been the case there are no case notes on file to indicate that attempts had been made to contact Mr Cunningham but the attempts had been unsuccessful because of the factors she mentioned.

31. The case note of 24 March 2005 made by Ms Trentham discloses that Trenton arrived at Bathurst Island on 19 March 2005. He had had an accident at Cape Don in which a stick speared his left leg. The accident had occurred just prior to Cyclone Ingrid but the leg had become infected and he had travelled to Bathurst Island for medical treatment by charter aircraft arranged by his parents. The case note goes on to say that he *intends leaving (the island) next Thursday on 31 March, his pay day*. Travel to the Island was forbidden by his parole conditions except for attending funerals and ceremonial occasions and only with the prior consent of his parole officer. Asked why he did not contact Corrections to advise his parole officer of his intended travel he explained that the telephone at the outstation was out due to the cyclone. His explanation for not reporting since 16 November 2004 was that he was under a lot of pressure and at times was unable to access a telephone. That excuse was accepted by his parole officer as "genuine". Cunningham was informed that condition 9 of his parole order required him to stay away for his ex-partner and that should he

go near her he would be in breach of his parole order. He was also told that he had approximately two months of parole to complete and that his failure to report in the future would result in his order being breached. It is clear that the warning regarding his partner was made as Community Corrections believed, in accordance with material that had been place before the Parole Board that the deceased resided on the island.

32. What Mr Cunningham did not tell his parole officer was that he had travelled to Bathurst Island from Araru in company with his wife in direct contravention of his parole conditions. Mr Ronald Cunningham confirmed in his evidence that his son had travelled to Nguiu after the cyclone. At that time Mr Cunningham senior was residing on the island. He told the inquest that Trenton had been living with his uncle Charlie at the outstation before the trip.

33. Community Corrections Officer Madeline Trentham obtained knowledge that Trenton Cunningham was on Bathurst Island by contacting Mr Luke Tipuamantumirri the probation officer for the Tiwi Islands. Shortly after her request he "spotted Trenton at Sammy's house". He then returned Trentham's telephone call to say he had located Trenton. Trentham told Mr Tipuamantumirri to bring Cunningham to the telephone so she could speak to him. Arrangements were then made for Trenton's departure from the island.

34. In the file note of 24 March it is recorded that Mr Tipuamantumirri was told to '*monitor Trenton on Bathurst and to reiterate to him in language about condition 9 (the condition precluding contact with the deceased) of the order'*. In his evidence, Mr Tipuamantumirri said he had not been made aware in March 2005 that Mr Cunningham was not supposed to be with his wife. He had only been made aware of that fact after the deceased's death. I accept Mr Tipuamantumirri as an honest and reliable witness. He carried out all requests made of him by Corrections Officers on the mainland even

to the extent of adding an additional paragraph to a case note by way of correction of case note he completed dated 31 March 2005. The amended case note reads:

> "Spoke to Ronald Cunningham and he told me about his son Trenton not to come for funeral here at Nguiu
>
> Ronald told me when Trenton where here in March, Trenton came on the Grand Final week 14 to 21 March and left Nguiu on Monday 21 of March with his Girlfriend and the kids. In that week when Gary Larkins was out here on the Tiwi Island Gary spoke to Trenton and told him to return back to his outstation on the mainland."

35. An explanatory memorandum compiled by Mr Tipuamantumirri with the assistance of Acting General Manager Community Corrections Mr Peter Curwen-Walker dated 23 August 2006 was received into evidence. That document sets out that Mr Tipuamantumirri was with Community Corrections Officer Gary Larkins on 31 March 2005 when a "Permission to Travel" form was completed and signed by Trenton directing him to travel to Darwin that day. Importantly that memorandum states inter alia:

> "I was not aware that there was a specific condition of Trenton Cunningham's parole order prohibiting his contact with Jodie. I can not remember advising Larkins or any other supervising officer from Community Corrections that Jodie had followed Trenton. I had not been aware that this would be important to them"

36. I accept that contrary to the contents of Case Note 24 March 2005 that Mr Tipuamantumirri was not advised *to reiterate to him (Trenton) in language about condition 9 of the order.* I am confident that Mr Tipuamantumirri would have carried out that task and remembered it should he have been asked to carry it out. I am also confident that if Mr Tipuamantumirri had been advised of the fact that Mr Cunningham was in breach of his parole if he associated with his wife he would have passed that information on and counselled Cunningham about it.

37. On 31 March 2005 Trenton Cunningham and the deceased flew to Darwin. Marissa Palipuaminni told the inquiry that the deceased did not tell her where she was going, she "did sneak away". Precisely how the couple made their way from Darwin to Araru is unclear but most likely a charter flight was arranged for them through family connections.

38. On 25 May 2005 Ms Palipuaminni died a brutal death as the result of a sustained and vicious assault perpetrated upon her by her husband. The numerous injuries she suffered in the immediate period prior to her death included intracranial haemorrhage that lead directly to her death, blunt head trauma, blunt chest trauma, and blunt abdominal trauma.

39. Precisely what happened in the hours that lead to the death of Jodie Palipuaminni on 25 May 2005 is unknown. The police spoke to a number of witnesses. They recounted the story of a dog that needed to buried by Mr Cunningham in the afternoon beforehand. Apparently he asked the deceased to bring him some water while he carried out that task which she did not do. Upon his return home at about 6pm an argument between them started. Ms Dulcie Cunningham heard the deceased screaming and crying. Her father went to the house and told the parties to be quiet. Later the deceased arrived at Dulcie's house to get a cup of water. Shortly afterwards she and her husband went to sleep and did not awake until about 8.00am the following morning. Not long after 12.00pm that day Dulcie Cunningham was visited by the deceased's daughter Judy who told her "*My mum's dead, my mum's finish".*

40. David Cunningham told police that the deceased had been living in the green house at Araru with their little girl Judy. He said he did not see Trenton beating his wife, he just heard the noises and talking. He heard Mr Robert Cunningham telling the couple to be quiet. He said he knew that Trenton was not meant to live with his wife. He confirmed to police that neither the deceased nor Trenton had been drinking or smoking marijuana while at the

Outstation. This death then falls outside the tragically common experience in the Northern Territory of Aboriginal men who kill their wives or loved ones while heavily affected by alcohol or drugs or both.

41. David Cunningham also told police that violent arguments between the two were not unusual. He described those violent events as:

> "love arguments. He said they fight when she doesn't do anything for Trenton. He gets cranky and fights with her. She doesn't argue or fight back. He just beats her."

42. The evidence before Justice Thomas was that over the evening of 24 and the morning of 25 May 2006, Trenton continually assaulted the deceased by kicking and punching her to her head limbs and torso. During the assault he said to the deceased:

> "You don't do anything for me and I'm going to kill you".

43. In his record of interview taken by police in the course of the investigation of the death when asked how he felt during the deceased's ordeal Mr Cunningham replied:

> " "Oh I just feel like, you know what I mean I was feeling angry like just wanted to kill someone like that". He went on to say, "I was feeling angry, like I just wanted to kill someone like that, yeah, like all of a sudden I just went off. Like my head just went upside down or something. I just wanted to fight with her all night and the old man tried to talk me to stop. Like I said I wanted to kill someone, but no-one didn't care about like someone going to get hurt. No-one didn't want to stop me or care about me. Something came over me and took over my feeling."

44. The fact that Ms Palapuaminni died at the hands of her husband is not surprising. It was an event that was entirely predictable and had been predicted. In a relationship that spanned the years 1993 to 2005 the deceased had been the subject of ever escalating physical abuse. She had been punched, kicked, choked, whipped with wire, dragged by the hair, beaten with a garden implement and kicked in the stomach while pregnant,

stabbed all over the body with scissors, threatened with death, assaulted with a fan, suffered lacerations to the head and broken teeth, beaten with sticks, assaulted with a steel star picket that resulted in a broken arm in two places, and had boiling water poured over 20 percent of her body that put her in immediate risk of her life and required her to have extensive skin graft surgery.

45. I have already referred to the fateful report of Psychologist Peter Mals dated 20 March 2003 in these Reasons wherein he predicted that the relationship would most likely end in tragedy.

46. Senior Probation and Parole Officer Marguerite Fawcett in an earlier presentence report prepared for the Supreme Court on 2 February 2003 made the following pertinent observation:

> "Cunninghams record shows a history of serious violence inflicted on the victim, an inability to explain the extreme levels of anger he feels towards her, even in minor actions, and an inability to control himself. Future behaviour b based on past performance suggests the offender may be a serious danger to the victim. The underlaying reasons for the victim's behaviour may also need to be considered, in order to emphasize to her that she places herself at extreme risk of further injury when having contact with Cunningham."

47. In an interview conducted with Trenton during a prison visit on 6 January 2003 Ms Fawcett told Cunningham she was concerned at the fact that all his assault convictions were on Jodie and further that if this continued he could end up killing her.

48. The supervising Community Corrections Officers had the views of psychologist Mals and Senior Probation and Parole Officer Fawcett's conclusions available to them on Mr Cunningham's file. I find that they were aware of the importance of ensuring that order 9 of Mr Cunningham's conditions of parole was complied with but that the system of supervision as it applied at the time did not demand a satisfactory level of attention to ensuring that the condition was in fact complied with.

PROBATION AND PAROLE

49. In his statement to this Inquest, Mr Peter Curwen-Walker, Acting General Manager of Community Corrections, a division of Northern Territory Correctional Services reviewed the management of Mr Cunningham's parole. He found:

> "i) the management of the parolee's parole by Community Corrections was inadequate;
>
> ii) that management did not comply with the standard expected by Northern Territory Community Services; and
>
> iii) that management was not undertaken in a manner that ensured compliance with the parole order."

50. He summarised the inadequacies in the following manner:

> "i. Measures were not taken by Community Corrections officers to ensure compliance with the parolee's reporting obligations.
>
> ii. Whilst the parolee maintained regular contact with Community Corrections until about 16 November 2004, that contact was largely initiated by the parolee. From 24 November 2004 until 24 March 2005, the parolee had no contact with Community Corrections
>
> iii. All the contact with the parolee occurred by way of telephone and no steps were taken by Community Corrections officers to confirm or corroborate information provided by the parolee at to his whereabouts and his compliance with the conditions of his parole order.
>
> iv. Community Corrections officers failed to appreciate that the parolee was at risk of re-offending
>
> v. Although the previous comment is acknowledged to have been made with the benefit of hindsight. Information was available on the Community Corrections file alerting officers to this risk.
>
> vi. The parolee's failure to comply with his parole conditions, and in particular express provisions of the parole order, was not brought to the attention of the Parole Board for its consideration as to the appropriate action.

vii. Although Community Corrections have some degree of discretion in the management of parole conditions, when the parolee was located at Bathurst Island, in direct contravention of condition 12 of his parole order, that matter should have been reported to the Parole Board.

viii. There was inadequate supervision and review by the management of Community Corrections officers to ensure that officers supervised the parole appropriately."

51. In his statement Mr Curwen-Walker also considered the question of whether the staffing level within Community Corrections was adequate to meet the level of service expected by Northern Territory Community Services. He concluded that staffing levels and resourcing did not contribute to the inadequacies he identified.

52. It cannot be a matter of controversy that it is of critical importance that the Probation and Parole Service is properly equipped and managed to supervise parolees who may be a risk to the safety of other members of the community particularly when that risk has been clearly identified as it was in the case of Ms Palipuaminni. All of the Community Corrections Officers who gave evidence agreed that the features that set Mr Cunningham's parole apart from the usual cases they handled made it an exceptional case. Ms Marguerite Fawcett, who had been an officer with Community Corrections since 1994, told the inquiry she had not had a case like it before or since. However instead of receiving the level of supervision such a case as Mr Cunningham's required in the period November 2004 to 25 May 2005 he was for the most part left to his own devises and when supervision did take place it was of a superficial nature. Mr Cunningham was given extraordinary latitude in the area of compliance with his parole conditions.

53. That being said, I find that the witnesses who gave evidence before me did so frankly and honestly. They have been co-operative with officers of the Coroners Office during the preparation of these Coronial proceedings. They

have not sought refuge in attempts to minimise their involvement in the events leading up to the death. I congratulate them for their candour.

54. In my opinion the reason for the failure to effectively and properly supervise Mr Cunningham during the period of his parole can be found in the manner in which Community Corrections as an organization applied itself to enforcing his parole conditions. There does not seem to have been effective oversight of the work carried out by Community Corrections Officers. There was inadequate follow up in the instances of non reporting and lengthy periods of time passed before enquiries, designed to establish Mr Cunningham's whereabouts, were initiated. It seems as if a culture of lax behaviour in attending to such matters may have been allowed to develop in Community Corrections which resulted in staff being less attentive than they should have been to correct work practices. I am assured by Mr Curwen-Walker that the culture has changed. He told the inquiry that procedures had been put in place to address the issues specifically identified in this matter. They include:

> "1. For parolees in remote communities, the minimum contact requirements must include monthly contact by Community Corrections officers with a significant other person who can confirm parolees whereabouts and conduct.
>
> 2. For parolees that report by phone, Community Corrections officers have been directed to call offenders back and to make further inquiries where there is any suspicion that an offender is not calling from where they report they are calling from.
>
> 3. Procedures relating to the confirmation of compliance with conditions that offenders have no contact with victims have been developed. These require supervising officers to confirm compliance, including liaising with victims using the services of the Witness Protection Scheme where appropriate.
>
> 4. The procedures and guidelines to assist managers with the action(s) to be taken in respect of non-compliance are more clearly defined.

5. Procedures have been amended to require file reviews by managers, or their delegate, six weeks from allocation of the file and every four months thereafter.

6. AQ program has been developed within Community Corrections file management software, TRIM Context to provide reports regarding parolees who have not reported when scheduled. This will assist managers to monitor the caseloads of individual officers, identify problems and ensure an appropriate response is taken within a reasonable timeframe."

55. At a more general level, I am told by Mr Curwen-Walker that the following steps have been taken:

"k. A Darwin Senior Management Forum has been established. An aim of the forum will be to improve the supervision skills of senior management and reinforce standards expected of them. In addition, the forum is aimed at strengthening communication between the Executive and Senior management at a time when the Northern Territory Community Corrections is focused on implementing changes required to improve its performance.

l. Improved procedures which require Community Corrections to advise Northern Territory Police in writing of the parolee's release, intended address and parole order conditions.

m. Improvement in the procedures through the requirement for community Corrections to use the Witness Assistance Scheme to advise victims of the parolee's release and parole order conditions, particularly if the order contains a condition that the offender is not to approach or associate with the victim."

56. Mr Curwen-Walker told me in evidence that no review, either general or specific, into the matter of Mr Cunningham's parole, had been undertaken by Community Corrections prior to the announcement that this death would be the subject of a public Coronial Inquiry. In my view, the extensive work carried out by Community Corrections which was received into evidence was prompted by that announcement. One of the important aspects of work conducted by the office of the Coroner is to highlight the need for, in particular government instrumentalities, to respond to events that expose systemic failures. The work of the Coroners Office is carried out under the

public gaze. In this matter it is gratifying that the instrumentalities have taken it upon themselves to reassess their procedures and rectify operational faults that could have been the progenitors of future tragedy. However in the absence of a public enquiry I am not convinced that the response would have been so swift.

57. One matter that troubled me throughout the hearing of the inquiry was the apparent failure of Community Corrections officers to travel to Araru Outstation to assess Mr Cunningham's progress during the period of their supervision of him. I was impressed by the fact that officers of Family and Community Services ("FACS") felt that it was important to travel to the outstation to counsel the family regarding the necessity that the relationship between the deceased and her husband remain at an end. The primary responsibility of FACS officers is of course the welfare of the children and they took the view that the ongoing welfare of the children of the couple depended on an appreciation by members of the deceased's extended family that violence in the home was seriously detrimental to the well being of the children. I could not agree more. I was surprised therefore to find that Corrections officers had not taken a similar approach. In my view this case warranted such attention by Community Corrections. In order to evaluate information provided to them by Mr Cunningham regarding his compliance with parole conditions it seems only sensible to have first hand knowledge of the environment in which he is expected to maintain those conditions. One would think it would also have been valuable to meet members of the parolee's extended family and impress upon them the importance of Mr Cunningham complying with his parole obligations particularly the obligation not to contact the deceased.

58. I raised my concerns regarding the apparent failure of Community Corrections officers attending at the outstation with Mr Curwen-Walker. He told me, and I accept, that supervision of parolees does not always require a visit to the place where the parolee is bound to reside during the period of

parole. In remote areas he said the time and expense associated with such an activity did not always justify the result such visits might be designed to achieve. He said spot checks were problematic because the parolee might not be at home when officers attended. He went on to say that the advantage to be gained by unannounced checks to catch the parolee if conditions are being breached or to keep the parolee acutely aware that if he or she breaches parole conditions they will be caught, with the result that a notification of breach of parole could be made to the Parole Board, is not reflected in the costs involved or the effort required to carry out such activity. Mr Curwen-Walker made the point that the necessary level of supervision of a given parolee will vary and spot checks are not always required nor are they invariably sound practice in every situation to ensure that satisfactory supervision is maintained. I accept Mr Curwen-Walker's observations and opinion in that regard however it seems to me that the benefit to be gained by such visits is not confined to enforcement but they would also provide Corrections officers with a more thorough appreciation of the particular environmental and social circumstances as they apply to an offender.

59. One of the real deficiencies in the supervision of Mr Cunningham was the failure to use the services of Mr Luke Tipuamantumirri. I have referred to Mr Tipuamantumirri's attributes as a Community Corrections officer earlier in these reasons. He is a Tiwi man intimately acquainted with the social mores, lifestyle and relationships within his community. There are only about two and a half thousand Tiwi people in the Northern Territory and most of them are interrelated. He had the experience and was in the ideal situation to make enquiries as to whether or not Mr Cunningham was complying with his parole conditions. I appreciate that there was somewhat of a demarcation line in place that may have had the effect of him being under utilized. I am referring to the fact that he was the Community Corrections officer for the Tiwi Islands and his jurisdiction did not extend to

the Coburg Peninsula, where Mr Cunningham was required to reside, but his connections were a likely source of information as to whether Mr Cunningham was compliant. The deceased's family resided at Nguiu where Mr Tipuamantumirri also resided. When his assistance was finally sought it took little time for it to produce results.

60. While it might be said that the future of the relationship between the deceased and Mr Cunningham was always likely to end in tragedy and that it was only a matter time before it did so if the couple continued to live with one another that does not lessen the responsibility of Northern Territory Community Corrections to ensure that the tragedy did not occur "on its watch". Adequate supervision of Mr Cunningham in the knowledge that tragedy was just around the corner is likely to have prevented the death occurring at the time it did. The deceased it might be said chose to be with her husband and thereby exposed herself to the risk of serious injury or death. However the continuation of the relationship became the province of Community Corrections when that body was charged with the responsibility of ensuring that Mr Cunningham met his parole condition that he have no contact with the person he had previously so grievously offended against. I find that if due enquiry had been made by Corrections officers it is likely that the resumed relationship would have been discovered. Once that had occurred it is reasonable to assume that the risks associated with the relationship continuing would have been significantly reduced.

THE NORTHERN TERRITORY POLICE RESPONSE

61. The first recorded instance of the deceased making a formal complaint of domestic violence can be found in the Nguiu Clinic notes in an entry dated 19 March 1994. On that occasion Ms Palipuaminni complained of having been hit by her boyfriend "with a hammer all over her body". She asserted on that occasion that such behaviour had happened before.

62. In April 2000 Cunningham was charged with assault. He was also charged with "Failing to comply with Restraining Order" that had earlier been put in place. He was sentenced to 4 months imprisonment suspended for a period of 18 months over which he was to be of good behaviour. The domestic violence order remained in place.

63. In May 2001 the deceased reported to police that Cunningham had split her lip. She said she did not want charges laid against him, only that Cunningham be spoken to by police. Nguiu police cautioned Cunningham about a domestic violence order they thought had been put in place however no order had been made at that time. No inquiries were ever made by police to determine whether a domestic violence order was in fact in place

64. In a detailed statement to this inquiry, Assistant Commissioner Grahame Kelly of Northern Territory Police, Fire and Emergency Services (NTPF) reviewed the police response to the incidents of domestic violence that involved the deceased and her husband and which came to the attention of the police. He found;

> "i) Six of the fourteen domestic violence incidents had been dealt with appropriately in accordance with Northern Territory Police Force General Orders.
> ii) Eight of the incidents had not been dealt with in accordance with and the nature of the non-compliance he identifies in an annexure to his statement.
> iii) That the non-compliance could be broadly stated as a failure to comply with the minimum response required under General; Order D7, a failure by attending members to record comprehensive reasons as to why no domestic violence restraining order was taken out and or a failure by members to arrest Mr Cunningham for breach of his bail conditions."

65. Assistant Commissioner Kelly goes on to say that although his review indicates an unacceptable level of non-compliance with the Northern Territory Police (NTP) General Orders and policy in force at the time, since those dealings, NTP have taken active measures to address and improve the response of police to domestic violence incidents.

66. One of the issues identified by Assistant Commissioner Kelly as needing attention was that parole conditions for people on parole are not currently recorded on "IJIS". That computer system is used by police to ascertain the antecedents of possible offenders and to determine amongst other things whether the possible offender is subject to bail conditions, a domestic violence order or is wanted on a warrant. The result being that police accessing the system to apprise themselves of a possible offenders prior history had no means of knowing that the person was on parole (and what parole conditions existed). That anomaly is now being rectified by police in conjunction with Northern Territory Correctional Services. I have already referred to the alterations made in protocol in that regard when I discussed the evidence of Mr Curwen-Walker.

67. However a number of disturbing entries can be found in the computerised case notes made by police. On 19 March 2002, while Mr Cunningham is on bail for throwing boiling water over his wife and required to comply with a condition that he not approach her, police observe:

> "The main issue here is that both the father and mother are constantly breaching orders by living together… It would be best to breach both of them, put the matter before the court, and let the Magistrate make an informed decision. However the Court date is 20/03 and the mother is in Darwin with the child at this time so that it is not possible and a further date is not for another month. This really does appear to be a no win situation but I believe the members have done everything they can at this point. I do not think any further action can be taken unless the mother returns with the child to Nguiu and then we will have to look at breaches of orders and getting FACS (Family and Community Services) involved over there to care for the kids whilst the parents are in our custody."

68. Another entry reads; *The police and courts intervention in this matter by issuing a DVO has not assisted in the separation and cessation of domestic related incidents between these two people*.

69. The fact remains that at the time these entries were made police were aware that Mr Cunningham was on bail for a serious life threatening assault upon his wife and clearly in breach of his bail conditions. He could have, and should have, been taken into custody and brought before a Court.

70. I am satisfied that the new regime that has been put in place to rectify past failures by police would in the future ensure that offenders like Mr Cunningham will be dealt with more swiftly and firmly than hitherto had been the case. The new regime allows for less discretion to be exercised by the individual police officer in dealing with domestic violence cases. It particularises the steps that must be taken when police officers are called upon to react to situations of domestic violence. It has come to my attention as a result of the many coronial inquiries I have unfortunately been required to hold that have involved issues of domestic violence that the Northern Territory Police have been the first government instrumentality to respond to the community's demand that domestic violence be reduced in a determined and concerted manner. I think I am able to say that it is now recognised by the overwhelming majority of people in this community that there is a pressing need to recognise that domestic violence is an issue of the utmost seriousness, and it concerns every member of the community. No longer is it appropriate to view violence in the family or in a relationship as something personal or private. Like any other crime it must be regarded as a threat to the strength and cohesion of community life. It has serious and long term consequences for the health and development of children who become exposed to it, and to avoid taking responsibility for the fact that it is occurring in our midst is to allow ourselves to become inured to violence.

FAMILY AND COMMUNITY SERVICES

71. The officers of FACS discharged their responsibilities to this very troubled family in a professional and concerned manner. They took the trouble to travel to the family's outstation and counsel the family regarding the imminent release of Mr Cunningham from prison and the effect that may have should he and his wife resume their relationship. FACS officers liaised with the police and PROMIS records show the level of concern they expressed both for the children and the parents. The FACS file shows closure at the point when the deceased appeared to be doing well. She was working at the Child Care Centre at Nguiu and her children were being properly cared for. She was then living with her mother. It is pleasing to observe that FACS officers were prepared to make an effort in relation to this family. It is clear from the counselling they gave the family they perceived a real danger to the family if the relationship between father and mother resumed. They were not informed that it had until advised of the death of the deceased.

CONCLUSION

72. During the course of the Inquest one question that attracted my attention was whether a system of mandatory reporting should be introduced requiring health professionals to notify police of incidents of domestic violence that come to their attention in the course of their professional responsibilities. I discussed the matter with various witnesses during the hearing. I have concluded however that I do not have sufficient material before me to embark upon making recommendations to the effect that there should be a system of mandatory reporting of domestic violence incidents by health professionals. I am conscious also that my function is to inquire into the circumstances of this particular death and I feel I would be ranging too far outside the nature and scope of this inquest to do so. However I commend to government the system that now exists for the mandatory reporting of

sexual offences by health professionals and RECOMMEND that a similar such system relating to circumstances of domestic violence be made the subject of discussion and review by government. After all, the fact is that Aboriginal women living in remote communities in the Northern Territory are frequently subjected to very violent abuse, and they live far from the protections and resources available to women living in most of the towns and cities of Australia. In my view, the Government and its agencies must endeavour to protect such women with measures that overcome this tyranny of distance.

73. Many recommendations that were open to be made by me when this Inquest was first mooted have been overtaken by events. The response of Community Corrections and the Northern Territory Police has been such that I am satisfied that there is no need to pass on to government my views other than to RECOMMEND that the measures outlined by Mr Curwen-Walker are carried out. Furthermore, evidence from relevant probation and parole officers during the Inquest revealed the poor state of morale at and around the period of Cunningham's supervision. Apparently this poor morale was exacerbated by staff shortages and poor training (vide Trentham's evidence).. I RECOMMEND that a review take place concerning the training needs of officers and appropriate levels of qualifications.

74. Finally, there is much to appreciate and respect in the way Aboriginal people live their lives in remote communities in the Northern Territory. However, the present day gross violence perpetrated on some women in such communities by some men must be recognised and something done about it. The criminal courts of the Northern Territory are replete with examples of shocking violence inflicted upon Aboriginal women in remote communities. I am reminded of the words of Mr Ted Egan A.O. (the Administrator of the Northern Territory) in his autobiography ("Sitdown Up North") reminiscing about his time in the remote Groote Eylandt communities (page 227):

> "Criticism of the traditional Aboriginal way of life is treated with suspicion in these sensitive times where political correctness is much valued. That lifestyle is often hopelessly romanticised. It's dangerous to generalise and my comments are made with specific reference to Groote Eylandt. But if there's an upside to male Groote aggression, I fail to see it."

I have just returned from the court circuit in Groote Eylandt and the level of violent offending continues to shock.

Dated this 23 day of October 2006.

GREG CAVANAGH
CORONER