

## Coronial Inquest into a death in custody on Palm Island

### Submissions for the Pre-Inquest Conference on 8 February 2005 Made on behalf of Ms Erykah Kyle, as representative for the Palm Island Aboriginal Council

1. These submissions are made by Erykah Florence Kyle, on behalf of the Palm Island Aboriginal Council (“PIAC” or “the council”) as the elected representatives of the Palm Island Aboriginal community (“the community”) that reside on Palm Island.
2. These submissions seek to address the following preliminary issues:
  - 2.1. Right of appearance
  - 2.2. Venue
  - 2.3. Issues for investigation
  - 2.4. Witnesses
  - 2.5. The evidence
  - 2.6. The culturally sensitive and appropriate way of referring to the deceased.

#### Right to Appear

3. Under section 36 of the *Coroners Act 2003* (“the Act”), Ms Kyle, it is submitted, has a right to appear in her representative capacity.
4. On 6 January 2005, the Coroner foreshadowed a preparedness to grant “leave” to Ms Kyle for the purposes of assisting the Coroner in making “remedial recommendations concerning the matters set out in section 46(1) of the Act”.
5. Section 36 only requires Ms Kyle to establish that she has “a sufficient interest in the inquest” to entitle her to “appear, examine witnesses, and make submissions.” Such an interest, it is submitted, is established by Ms Kyle’s position in the Palm Island community if proper regard is given to the following:
  - 5.1. Ms Kyle’s background, position and role in the community:
    - 5.1.1. She was born on Palm Island. Her parents were sent to the island with their parents when they were children in the 1920’s. She has lived on the island most of her life. She is a recognised elder.
    - 5.1.2. In March 2004 Ms Kyle was popularly elected as the Chairperson of PIAC by the indigenous community on the island.

- 5.1.3. As Chairperson Ms Kyle has been closely involved in all council responses and actions as a result of the death under investigation including providing a wide range of support to the family (“the Doomadgee family”).
- 5.2. The list of matters on the “Proposed Issues” drawn by the Coroner sets out many matters which continue to affect many members of the community and which fall within the ambit of the council’s governance responsibilities.
- 5.3. The interaction between police and the community and how community members are arrested, detained and incarcerated is a critical feature of the council’s negotiations with the Queensland Government over a range of matters including “alcohol management plans”<sup>1</sup>, the reconstruction of the court complex and police amenities and the implementation of the new laws concerning community governance and responsibilities.<sup>2</sup>
6. Also, an initial perusal of the brief reveals that in this case, it would be completely artificial to seek to separate the systemic issues attending the police interaction with, arrest of and detention of “Mulrunji”<sup>3</sup> from the facts alleged and opinions held as to the mechanisms alleged to have been associated with his death. Indeed, if proper regard is given to the recommendations following the Royal Commission into Aboriginal Deaths in Custody (“RCADIC”), section 14 of the Act and the Coroner’s own guidelines as to the conduct of inquiries into a death in custody, these issues are in fact inextricably interwoven.
7. It is therefore submitted that having established a “sufficient interest” in the inquiry under the Act, Ms Kyle has a right to appear. Besides the artifice mentioned above, the suggested ‘limit’ to Ms Kyle’s appearance at the inquest, as suggested in the Coroner’s letter of 6 January 2005, does not seem to have a statutory basis. Ms Kyle’s right of appearance in her representative capacity should only be fettered by the normal rules of evidence and as may be necessary to ensure the orderly conduct of the inquest under the Act and in accordance with the Coroner’s guidelines.
8. It is nevertheless recognised that others with personal interests in the inquest are likely to seek and be granted leave to appear. Given this, Ms Kyle does not intend, nor does she see any benefit in her legal representatives being repetitive in the examination of witnesses or in the overall conduct of the inquest. The council has no intention to, and derives no advantage from, unduly elongating or complicating this inquiry. The council has no interest in the issues surrounding the criminal liability of anyone associated with the death.

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<sup>1</sup> Under the *Liquor Act 1992* and the *Liquor Regulation 2002*.

<sup>2</sup> *Local Government (Community Government Areas) Act*

<sup>3</sup> This is the name that the family has requested be used in any reference to the deceased. See further submissions on the issue below.

### **Venue of the Inquest**

9. Ms Kyle and the council, on behalf of the community, submit that the inquest should be held on Palm Island. This position has been reached after close consultation with the family and their legal representatives as well as with members of the wider community.
  
10. By letter dated 6 January 2005, the Coroner has indicated a “preference” for the inquest to be held either as close as possible to the scene of death and/or where those with the greatest interest in the inquiry reside” and a keenness to ensure “that the residents of Palm Island have ready access to the hearing”. This is reflected in the convening of the Pre-Inquest Conference on the island. This preliminary position is, with respect, entirely appropriate. In this context regard should also be had to RCADIC observations and recommendations and the observations frequently and more recently made by heads of jurisdiction including the Chief Justice of the need to bring the justice system into these ‘isolated’ communities.
  
11. Accordingly the starting point must be that the inquest is held where the participation of the immediate and extended family and the rest of this very close-knit community is most likely, in all practical senses, to be achieved.
  
12. However the Coroner has also indicated that “it would seem more practical to convene the inquest in Townsville.” The following matters are cited:
  - 12.1. The added cost
  - 12.2. Matters of comfort and logistics
    - 12.2.1. “The difficulties of ensuring sufficient aeroplane seats on a daily basis.”
    - 12.2.2. “The loss of working time due to travelling.”
    - 12.2.3. “The loss of productivity due to travel fatigue.”
  - 12.3. Security concerns
  
13. These matters have been responded to in correspondence and are augmented below.

### Added Cost

14. The issue of “added costs” must be viewed from two perspectives viz., for the legal representatives and the State Coroner’s Office (“the professional participants”) *and* for the members of the community particularly the family members who reside on the island.

15. Without being unduly dismissive, the added costs to the professional participants of either commuting to the island on a daily basis or in taking accommodation on the island, as distinct from if it were held in Townsville are, in the overall scheme of things, unlikely to be significant. Such costs will, in the main, be met by government and government agencies. This burden must be weighed against the added costs that would be incurred by any member of the community (particularly the family) who would either have to commute to Townsville or attempt to obtain accommodation in Townsville in order to attend the hearing.
16. The cost of commissioning a daily flight to and from Townsville is about \$120.00 per person and will be less if a plane is chartered collectively. There is also some accommodation available on the island that can be utilised by the professional participants who might prefer not to commute.

#### Comfort and logistics

17. It is obvious that there will be, in comparison to conditions in a mainland city, a degree of discomfort experienced by those who may not be accustomed to these conditions. However the following is also evident:
  - 17.1. The flight from Townsville takes less than 20 mins.
  - 17.2. Advance bookings can be made to ensure that people who choose to commute will be able to get on a flight.
  - 17.3. The issues of “travel fatigue” and “loss of working time” must be slight. Some accommodation of these factors can be made by perhaps starting a little later and finishing a little earlier each day, than normal court hours, if necessary.

#### Security

18. The issue of security has two dimensions viz., that in respect of equipment and also in respect of personnel associated with the inquest including witnesses. The issue of equipment safety can be addressed by obtaining the assistance of police if necessary.
19. The Community Hall which will be the venue of the pre-Inquest Conference is a lockable facility. This hall appears to be able to provide security and space to house the Coroner’s Court and the professional personnel to properly conduct the inquest. It may not be air-conditioned but it is well ventilated and would be able to accommodate the many members of the community who are likely to want to attend.
20. The safety and security for personnel requires greater examination and is addressed below. It is not accepted by the council and the community – and there seems to be little if

any evidence in this regard – that there are in fact any security issues facing any of the professional personnel or any of the witnesses.

The community perspective

21. There are however important competing issues to those raised by and on behalf of the Coroner's office to date.
22. Firstly, the death has had and continues to have an immense impact upon the Palm Island community. It is a close-knit, relatively small community (approximately 2000 people). The community interest in an impartial and transparent inquiry is understandably high.<sup>4</sup> Many members of the deceased's family and extended family live on Palm Island and have expressed a desire to attend the inquest. Practical access to the inquest is an important step in the process of community understanding of what happened to a well-known and well-liked member of the community. Having a real and practical opportunity to acquire an accurate understanding of the evidence is pivotal to the ongoing process of mourning, healing and "moving on". The council, in its community consultations, has ascertained that many members of the community wish to attend and observe the conduct of the inquiry and inquest.
23. Secondly, the benefits to the coronial inquiry if the inquest was held on Palm Island – particularly to establish a proper understanding of both the practicalities, circumstances and social conditions of the location in which the arrest, detention and death occurred and the complexities involved in police interaction with members of the indigenous community – are obvious.
24. Thirdly, the circuit courts of the Magistrates and District Courts frequently attend isolated communities and the risks in this regard do not seem much more than when that occurs. Indeed, since the destruction of the police station the Magistrates Court has routinely attended the island, often for two days at a time, and there have been no reported incidents of concern in this respect. An observation by Magistrate Glasgow at one of the bail hearings is apposite:
 

"I have been there (Palm Island) on the 14<sup>th</sup> and 15<sup>th</sup> (December 2004). I've sat in my Courts there. I've been welcomed on the island. Every defendant who should have appeared, appeared before me and no warrants were issued. We proceeded in the normal way. I was not at all under threat. Neither was my staff. We entered that island as guests and were treated with respect as is my my – as my means I always treat the defendants before me similarly."

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<sup>4</sup> For example the funeral was attended by almost every indigenous member of the island community.

25. Fourthly, it has been widely reported that the funeral which was attended by many people in the community was free of any incident of violence or even threatened violence.
26. Fifthly, the extra costs that will be incurred by individual community members (particularly the family) in either commuting to Townsville or finding affordable accommodation will be of a much greater proportional burden than what might be experienced by the government and institutional agencies. It is understood that there are about 20 members of the direct family and a further 40 or so close friends and extended family members who wish to attend the inquest. In addition to the financial burden there are also the logistical difficulties regarding the children of these people and other members of the community who will be attending school in Palm Island and/or for whom it will be difficult to arrange alternative supervision during the inquest period if their parents are in Townsville. There are also some family members who, due to age or illness, would not be able to travel to Townsville for a hearing there.
27. Sixthly, if most of the family members are not able to attend an inquest held in Townsville, then the inquiry will fail to meet a primary objective, namely, to assist the family to understand and come to terms with what occurred. It will also make it extremely difficult to get ongoing instructions for the conduct of the hearing if the family and other community members are not able to be present when the evidence is being adduced.
28. The submissions that are being advanced on behalf of the family on this issue are fully supported by the council and by the general community. If the inquest is to be held on Palm Island, the council and other leaders and elders within the community will be working collectively to ensure that the members of the community co-operate and support the process including by ensuring that there is no disruption to the proceedings.
29. It is submitted that the "practical matters" pointed to by the Coroner's office to move the inquest to Townsville are either not satisfactorily established or are of such lower relevance that no good reason has been established to not convene the inquest on Palm Island.

#### **Issues, evidence and witnesses at the Inquest**

30. On 28 January, 1 February and 4 February 2005, inquest brief was served on Ms Kyle's representatives. On 3 February 2005, a "proposed issues list" was circulated by the Coroner.

31. This list, with respect, provides appropriate 'terms of reference' for this inquiry to meet its statutory obligations. Further, within these broader "issues", it is submitted that the following precise matters should be the subject of evidence and submissions:
- 31.1. Were the watchhouse facilities adequately designed, constructed and resourced to safely imprison people from this community? Did they comply with the relevant minimum standards for such facilities?
  - 31.2. What special facilities are needed in the design and construction of the new facility to reduce the risks of a similar death occurring?
  - 31.3. What accommodation of the RCADIC recommendations has been undertaken by the Police Service since the recommendations were made? What has been the process of implementation? What is necessary to hasten/complete this process?

**RCADIC 13.2.24-13.2.30; 13.4.4; 13.4.18; 13.4.20**

32. A preliminary perusal of the brief however suggests that a requirement of QPS to disclose the following records would assist the further progress of the inquiry:
- 32.1. Police operational/policy records, including of the implementation of RCADIC recommendations in relevant respects.
  - 32.2. Palm Island watch house records, incarceration statistics, including the duration, for what reasons and by which police officer.
  - 32.3. Evidence of the training and complaint history of the relevant officers.
33. Evidence of policing policy on Palm Island should also be given by the Commissioner or his delegate.

**RCADIC 13.2.27- 13.2.30; 13.2.11 – 13.2.14**

34. The lateness of the delivery of the brief has been such that the council's final position as to the proposed witness list has not been reached. Leave to put further submissions before the Coroner in these respects within 7 days or so is sought. The further contingency is that once some of the material in the above paragraphs is produced, it might indicate that specific further evidence from community members may need to be obtained by the coroner.
35. Other government agencies may also need to be approached to provide relevant records.

36. Also Inspector Trevor Adcock, a serving police officer should be called before the inquest to provide evidence touching on these issues, with a specific focus on his extensive experience with the Palm Island community.<sup>5</sup>

**Reference to the deceased**

37. The council has ascertained that the Doomadgee family and indeed the Palm Island community would be greatly offended if the deceased's name is used on any documents or in any proceedings of the inquest. They have asked that he be referred to by his tribal name, which is used for him since his death, Mulrunji. It is understood that the family's counsel will make submissions on this issue. The council supports this request to suppress his name and to refer to him as Mulrunji.

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B O E L A W Y E R S

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<sup>5</sup> He gave evidence before the RCADIC.