

12 March 2018

The Coroner

Darwin

Dear Sir

Re: (1) Unanswered Questions Concerning the death of Fredrick Stewart Fogarty on the Kulaluk Lease and Transfer of his Body to Queensland in March-April 1985;
(2) Unanswered Questions Concerning a Fatal House Fire at Kulaluk community in 2014.

No doubt your office has heard of the “Black lives matter” movement in the United States of America. Similarly, in the Northern Territory, the two cases represented in this letter suggest that the suspicious deaths of Aboriginal people are often not treated with the same seriousness and sensitivity as for non-Aboriginal people.

My discussions with the surviving family members of the deceased in both the above listed cases raise many questions pertaining to:

- (a) the circumstances of the deaths of the above mentioned four persons;
- (b) the thoroughness of inquiries into these circumstances by police and/or coroner (or lack of);
- (c) communication with next of kin by police and/or coroner;
- (d) any subsequent recommendations made following a coronal report (or lack of);
- (c) safe keeping of possessions of the deceased;
- (d) protection of a possible crime scene;
- (e) identification of deceased, burial arrangements and transport of bodies; and
- (f) any compensation owing to relatives of the deceased.

Although these events occurred 33 years ago, in the case of Frederick Stewart Fogarty, and 3.4 years ago in the case of the fatal Kulaluk house fire, the above list of unanswered questions have been communicated to me by families of the deceased in traumatic terms as recently as February 2018. For closure to their grief, surely they are entitled to a response?

Below, on the family's behalf, are outlined the facts of the two tragedies as far as the facts are known. Further pictorial evidence is available but not included in this letter:

THE MYSTERIOUS DEATH OF FRED FOGARTY AND SUBSEQUENT DESTRUCTION OF HIS HOUSE.

Fred Fogarty was born on 19 April, 1931 in Roma Queensland. After an active life in Queensland, including working as an agricultural worker and in boxing troupes, he moved to Darwin in late 1971 where he became involved in the land rights struggle of the Larrakia people. On 6 July 1973 he was arrested with two others from the Kulaluk land claim after a confrontation with developers working on a Coconut Grove subdivision. He subsequently was sentenced to 6 months in Fannie Bay Gaol but was released after Cyclone Tracy. He returned to live on the Kulaluk lease, building a substantial residence in an area known as Fish Camp, behind what was then the Ludmilla land fill where much of the old Darwin was buried after the cyclone. Fred was one of the founders of the Gwalwa Daraniki Association which was granted a 301 hectare lease over an area of land and mangroves between Ludmilla Creek and Nightcliff. He was vehemently opposed to unconstitutional secret deals made with developers such as Roche Bros in 1978 and Redco Real Estate in 1981. Meanwhile he had continued the construction of his house, installing tap water, generators and establishing garden and reforestation projects while continuing his casual employment with a Winnellie steelworks fabricator. These events, including the construction and design of the house are all well-documented.

The track winding through the mangroves leading to Fred Fogarty's house was regularly used by Aboriginal people from the Bagot Community to access the tidal Ludmilla Creek for fishing and crabbing, or the Kulaluk forest and beaches for yams or shellfish. As you are aware, in Darwin the tide rises and falls up to 8 metres, and anything above 7 metres floods the track to shoulder height; however, on Sunday, 31st March 1985, tide charts show that there was a neap tide of 5.18 metres in the early afternoon, which would not have reached the said track, although in March, 1985, the monsoon had set in and the rain would have made the track muddy.

In the 1980s, on most Sunday mornings, ladies from Groote Eylandt used the track passing Fred's house before the sun heated up. I meant there was no shortage of water on the lease. It was Palm Sunday, and few people were around after the excitement of the Grand Final the day before, when the ladies from Bagot Community were confronted by Fred's lifeless body lying before them in the mud on the narrow track. The death certificate (attached) of Frederick Stewart Fogarty gives his date of death as 31 March, 1985, which was a Sunday.

Fred's death was reported on page 2 in the Monday morning edition of the Northern Territory News,

April 1, 1985. The newspaper reported: “Fogarty dies at his home in Kulaluk: Mr Frederick Fogarty, 53, was found dead on the beach 30 metres from Fish Camp on Sunday. Darwin Police believe he died of natural causes... Mr Fogarty, a Queensland-born Aborigine, became a public figure in the early 1970s during a battle to save Kulaluk from urban subdivision.”

For the death to have occurred on Sunday 31 March as recorded on the death certificate, and for it to be reported next day in some detail, it is unlikely that his body was undetected for more than 12 hours, and most likely less than that. Presumably, statements were taken from those who found the body.

The death certificate only states that, “Inquest deemed unnecessary, A.J. Cavit, Coroner, 10 July 1985.” It is not clear if an autopsy was performed; however this appears unlikely, because the death certificate records that death was caused by “Natural causes, namely Hepatic failure”. There is no name entered on the death certificate under the heading “Medical practitioner,” or a date given under the heading “When deceased was last seen.” medical opinion in 2018 questions whether “Hepatic failure” would be a cause of sudden death in an apparently healthy male, and there appears to be no supporting evidence offered for such a diagnosis and the statement that “inquest deemed unnecessary.”

The demolition of Fred’s house began while his body lay in the Darwin morgue. Assuming that a funeral would be held in Darwin, I painted a large sign at the door of the vandalised building stating, “Come to Fred’s funeral and protest at this terrible act” (photograph available). It has recently been revealed that while plans were begun to organise a politicised funeral in Darwin, authorities were making arrangements to transfer the deceased to his next of kin in Dalby, Queensland (however, depending on his relationship at the time, whether they would be next of kin is questionable). Furthermore, as one of his closest friends since 1971, I am unaware of any attempt to identify the body in Darwin.

Because of its location and the fact that he was often at work or in town, Fred had built his house like a fortress. The sturdy wood and iron window shutters could be lowered and bolted shut from the inside and the solid doors locked by chains and heavy padlocks. Over the years, Fred had accumulated tools, generators, at least one TV set, and other moveable property. A self-educated man, he had gathered shelves of books and reports documenting his involvement in the land rights struggle. Following news of the death, one would expect that the police, Public Trustee, or at least the management of the lease would lock down the house. Most likely, as a result of the sudden nature of the death, the house was unlocked. Many also wondered if it was a crime scene. The Kulaluk management excused the destruction by claiming the house was infested by white ants, which was demonstrably untrue.

As a neighbouring resident on the lease, I was concerned by the lack of security around the house and death scene. Apart from taking photographs, out of respect for the deceased I did not feel entitled to touch anything. However, in early April 1985, I did complain to the Public Trustee, and was told by a surprised official, “Aborigines don't usually have possessions.” (Note: this attitude was not unique - according to The Australian [1 March 2017, p.8], in 1983 the NT Public Trustee, John Flynn, negotiated away the rights to the late Albert Namatjira's artworks to Legend Press for \$8,500).

The demolition of Fred's house continued unabated until the building lay in a pile of twisted iron and shattered timber. It is not known what happened to the possessions inside and around the yard. As mourners waited for a funeral date, an “In Memoriam” notice inserted by myself appeared in the NT News on 10th April, 1985, page 37, stating: “Fred Fogarty Lives! Iron may bend and wood may break, but memories they cannot take. Always, Bill”.

Apart from contacting the Public Trustee, I do not recall any communication with me from the coroner or police. At the time, my own relationship with the leaseholders was not good, after being involved in a two-year legal conflict over eviction attempts. I was told that the lease management wanted to insure that no-one else moved into Fred's house (an unlikely possibility because of Aboriginal cultural beliefs). Much of the above information therefore did not come to light until thirty years after the death, in 2015, which was the earliest date in which I could purchase a copy of the death certificate. I did not know any of Fred's immediate family in Queensland, until, through social media in January, 2018, I was put in contact with the nephew who identified Fred's body after it was transported to Dalby. His name is Melroy Morrison.

THE SCANDALOUS TREATMENT OF FRED'S BODY

On 2nd April, 2015, the earliest date possible for non-family members, a copy of Fred's death certificate was purchased from the Darwin registrar, informing Darwin friends that Fred's funeral had been conducted by the funeral director Ian Robert Lees, and a Roman Catholic Minister “Father Murphy” in Old Dalby Cemetery, Queensland, on 12th April, 1985.

The details were confirmed in January, 2018, when social media facilitated contact with Melroy “Mel” Morrison who was able to fill in many details of his uncle's life before Fred moved to Darwin in the early 1970s. Of all the large Fogarty clan, in April 1985, Mel had been adjudged the appropriate person

to identify the body, as required by law. He was ill-prepared for the horror that unfolded.

In cases of sudden death amongst Aboriginal people in the Northern Territory it is not uncommon for an extended delay in arrangements for burial. In Fred's case, the removal and transportation of the body appear to have been expedited, certainly without consultation with his friends in Darwin. Melroy Morrison has memories of a phone call to the Fogarty family from authorities in Darwin offering to transport the body to Queensland and that "there were problems over funeral arrangements" in Darwin. The facts as far as related by Mel Morrison are that the body of the late Fredrick Stewart Fogarty apparently arrived at the Dalby morgue a few days before the funeral held on 12th April.

In hindsight, why couldn't identification of the body have been made in Darwin, even if it meant flying a relative from Queensland? Instead the NT made arrangements to transport the body to Dalby. At this time, it is not known what arrangements were made, except that the identification in Dalby took place at most, nine days after the death of Fred Fogarty. According to Mr Morrison, on about 10th April 1985, the young man was ushered into the Dalby morgue, given a pair of scissors and pointed towards a battered pine box, "like a fruit case box", as Mel describes the casket, obviously damaged in the transporting from Darwin. The morgue attendant commented casually, "He's been off the ice" and then left the room.

Inside the battered box was a blue body bag, fastened by a zip, with an inner heavy duty clear plastic sealed bag. Mel Morrison says, "I cut open the bag with the scissors because it wasn't possible to see through it." Fred had at least two distinctive tattoos – a snake head on one arm and an eagle on his chest. Typically, in years gone by, Fred had often joked with his young nephew, "It started as a sparrow, and now it has turned into an eagle."

On cutting open the inner body bag, Mel was overpowered by the stench that flooded the room and traumatised when he saw the state of the body inside the sealed body bag. The eagle tattoo on the chest could not be distinguished because of the advanced decomposition of the body. Beyond bloated, the corpse had "melted" as was graphically described in a telephone interview with Mel in January 2018. The only hope for certain identification was the snake head tattoo on one arm of the deceased. When Mel attempted to turn the arm to see the snake's head tattoo, he says it felt as though the arm would come out of its socket; however, surprisingly, he detected the multi-colours of the tattoo glowing more brightly than he ever remembered it. (Note: This may have been one result of the decomposition).

As a shocked Mel Morrison left the morgue after identifying the body, the morgue manager offered him a job – Mel says there was no counselling, despite the trauma he still feels 33 years later. Perhaps the morgue manager felt if the nephew could handle the identification of a decomposed corpse, he could handle anything.

If Fred’s death was reported in a newspaper article on the morning of 1st April, and his death was recorded as being on 31st March, his body must have been found no later than 12 hours after his death. As described, the remains were identified in Queensland on 10th April and buried on 12th. This raises the question as to where was the deceased's body in the meantime? Was it loaded onto an unrefrigerated truck and sent to Queensland? This appears to be one explanation. Tropical Cyclone Tanya was off the coast of North Queensland at the time, raising questions about road access. However, despatch records must have been kept by authorities in Darwin. What was the reason for the hurried and undignified removal the body from the Northern Territory, in particular the means of transport? What was the state of the body when it left Darwin? Judging by the advanced decomposition, such a state of decay would be unlikely to have occurred in a maximum of 12 hours. Who is responsible for the horrific experience suffered by the Fogarty family, and the secretive exclusion of grieving friends in Darwin.

THE UNEXPLAINED FATAL HOUSE FIRE IN THE KULALUK COMMUNITY THAT CLAIMED THREE LIVES AND LEFT ONE MAN SCARRED AND DISFIGURED FOR LIFE, 1 NOVEMBER 2014.

There are many unanswered questions concerning the deaths of three people in a house fire on the Kulaluk community and the terrible disfigurement of another man, not the least of which is the apparent lack of a full and public coroner's investigation into the cause of the fire, the reasons for its intensity, and the response from Fire and Emergency, who appeared to be unaware of a third person trapped in the blaze until the next day. The fire was so intense that three people were trapped in a small building. How did one man escape? Were there smoke detectors? Was the building suitable for habitation? What fire drills existed in the community? Who were the people seen running from the scene? What were the explosions as the house burned, heard by at least one witness? Why was an evidence bag containing three burnt rings removed from a deceased labelled “Serious Crime Squad.” What recommendations could the coroner have made to prevent a reoccurrence of a similar tragedy? Are the families of the deceased and the surviving man entitled to compensation due to any negligence?

Newspaper reports of the house fire and interviews with family and the survivor raise many unanswered questions. The only information from the police is that the fire was caused by “an electrical fault.” Even if this is so, the bland police explanation does not explain to families, friends and the concerned public exactly how the fire resulted in the deaths of three occupants and the near death of another.

We do not know if the sole survivor, Mr Tim Thurtell, was interviewed after he returned from the Adelaide Hospital. We only have an interview with him reported in *The Sunday Territorian*, on 28 February 2016, on page 5, headed “Darwin will be home for me always.”

Phillippa Butt writes, 'He lost three family members in a house fire, suffered burns to 40 per cent of his body, and was in Royal Adelaide Hospital for more than a year, but Tim Thurtell is determined to keep Darwin his home.

The 35-year-old was sleeping in a house in the Kulaluk community in Coconut Grove when it caught fire in late 2014. Three other people in the house, a 29-year-old man, a 48-year-old woman and a 50-year-old woman were killed. Two of these people were Mr Thurtell's partner and little brother from the Tiwi Islands.

His physical scars are obvious – all of his fingers were amputated, he's had to have ongoing reconstructive surgery, he has plugs stitched into his nose to help him breathe, he has no ears, and all of his teeth were pulled out to stop the risk of infection. The burns have left him with no sweat glands, which means he's unable to regulate the heat in his body, making Darwin a very hot place to be.

But what lies beneath the surface is the real struggle.

“I get angry all the time, especially when I think about the fire and why wasn't there any help,” Mr Thurtell said. “They (other people in the community) were too f..... busy sitting around drinking to do anything. I really miss the people I lost in that fire. And I want to know why I'm here, why aren't they?” Now rebuilding his life, Mr Thurtell has had the help of the Julian Burton Burns Trust and National Australian Bank.

Last week NAB rebuilt his backyard, providing him with a table and chairs, pot plants, and a lawnmower. Inside, the bank also provided a portable airconditioner to help with the Darwin heat. Although he has a stable home to himself in [the Palmerston suburb of] Gray, he finds it difficult to get to and from the hospital.

“I hate the hospital, and I hate the bus,” he said. “I'd rather be at home relaxing in my own castle, and

drinking beer.”

When he's not at home, Mr Thurtell finds solace in spending time with family members.'

The fire began late on Saturday, 1 November, 2014. As photographs show, by the time the fire brigade arrived the interior of the flimsy building was ablaze. On 2 November, 2014, *The Sunday Territorian* reported on page 1: “Two dead, in Kululuk house fire.” The heading on page 6 was, “Two dead, one hurt in Kululuk house fire.” The report continued, 'Two people are dead and another is in hospital after a fire engulfed a home in the Kululuk community in Darwin's north. NT Fire and Rescue's acting watch commander Eric Koomen said crews responded to a call about 6.30pm [on Saturday night].

He said when they arrived the house was fully engulfed.

“Due to the intensity of the fire, firefighters were unable to enter,” acting watch commander Koomen said. “Due to the damage the fire has caused the building is structurally unstable. Investigations are continuing into the cause of the fire.”

Kululuk is an indigenous community straddling Coconut Grove and Nightcliff off Dick Ward Drive. No more information was available at the time of going to print last night.'

On the next day *The Northern Territory News* reported “Third body in burnt out house,” with a quote used as a sub-heading, “Unfortunately we haven't been able to identify people who were seen running from the house.”

The NT News report by Megan Palin (3 November 2014, page 3) continued: 'A third person had been found dead after a fire engulfed a home in the Kululuk community in Coconut Grove on Saturday night.

Two people – one aged 29 and the other 50 – were pronounced dead at the site on Saturday night with a third body found yesterday morning, according to police.

Another person, 33, is critically injured and had been transported to Royal Adelaide Hospital for treatment. Superintendent Bob Burgoyne said it was too early to determine the cause of the fire. Supt Burgoyne said a group of people were seen running from the blaze but it was not known if they were involved.

“Unfortunately we haven't been able to identify people who were seen running from the house,” Supt Burgoyne said. “The bloke who is quite badly burnt is not able to speak at this stage.”

NT Fire and Rescue responded to a call about 6.30pm on Saturday. The intensity of the fire prevented firefighters from immediately entering the house.

NT Fire and Rescue's acting watch commander Eric Koomen said on Saturday that when firefighters

arrived the house was fully engulfed. “Due to the intensity of the fire, firefighters were unable to enter,” Mr Koonen said. “Due to damage from the fire, the building is structurally unstable.”

Kululuk [Kulaluk] is a community straddling Coconut Grove and Nightcliff off Dick Ward Drive.'

Subsequently, two letters from Bill Day were published in *The NT News*. The first on Friday, January 22, 2016, page 48, was headed, “Silence deafening” and commented, “Despite the lack of media curiosity, one would think that such a tragic loss of life would warrant a full and open coronal investigation at a later date. How did these people die? Were there smoke detectors? Was the fire deliberately lit or preventable? Who were the people running from the scene? Or is it that Aboriginal lives are not valued by the authorities? Due to the lack of information available, the public must assume the latter.”

My letter received support from Mr Howard Young of Tiwi, who wrote on 14 March, 2016: “I write to support my mate Bill Day with his letter (NT News, 22/01/16) on the lack of information/reports on the house fire at Kulaluk community. The questions that Bill raises in his letter do demand more answers and proper reports, despite the apparent views of the Police Minister.”

Howard Young was referring to a reply to my enquiries to the Minister for Police, Fire and Emergency Services, Peter Chandler on 30 November 2015, which stated in part: “Thank you for your letter dated 1 November 2015, concerning a house fire in the Kulaluk Community in November 2014... I assure you that the lives of every Territorian are important to this Government, and while it would be inappropriate for me to comment on Coronial matters, I have been advised by the Chief Executive Officer of Fire and Emergency Services that a thorough fire and police investigation was carried out into this unfortunate event in the Kulaluk Community.”

On Thursday, 17 March, 2016, the *NT News* published my letter, headed “Answers needed.” In the letter I wrote: “Following the publication of my letter (NT News, 22/01/16), I received a heartfelt plea for help from a grieving family. Until recently they knew little more than their mother's rings were returned by police forensics in a sealed plastic bag labelled 'Biological hazard – Serious Crime Squad.' Lately, as a result of further questioning, police informed them that the cause was 'an electrical fault.' This does not explain how three people were trapped in the fire.

Newspaper reports add to the mystery, mentioning people running away from the scene and/or 'too busy sitting around drinking to do anything' (Sunday Territorian, 28/02/16). The man who barely survived is

quoted as asking, 'Why wasn't there any help?' Photos show a structure made of apparently highly inflammable materials burning so intensely that the third body was reportedly not found until the next day. Is it any wonder that the family want answers?"

One of those who died in the fire was Tim Thurtell's partner, Mrs Pope, the mother of Helen, Matthew, Karina, Kerry, Jessica, Ian, Clifford, Shianka and Samantha and grandmother of 22 children. Karina Pope told me by telephone, "My mother was not a nobody. She was well known and respected across the Territory and Australia." After the remains were returned to the family, Karina's mother was buried in her country at Sandy Bore, out from Alice Springs, Northern Territory. The grieving family, along with many of the 22 grandchildren attended the funeral. They still do not know how their mother and two other people were trapped and died in the house fire at Kulaluk on 1st November 2014. Apart from their mother's remains, all they have received is the sealed plastic packet marked "Biological Hazard – Serious Crime Squad" containing three badly charred rings taken from their deceased mother's fingers.

The Pope family have also expressed to me their dissatisfaction with responses from the Gwalwa Daraniki Association Incorporated (GDA) who are the operators of the community village where the fire occurred. The Gwalwa Daraniki Association also hold the 301 hectare Kulaluk Crown Lease on which the house was situated. The GDA has signed subleases and/or caveats with Jape's Citiland P/L, McDonalds Restaurants and Arafura Harbour (Gwelo) P/L, and business arrangements with developers, Dragon Lady P/L and Halikos Construction, amongst others. The Pope family say that no-one from the GDA has offered a sympathetic explanation for the death of their mother.

Surely the little information that has been reported warrants a full and open inquiry by the NT Coroner? Without a Coroner's report, the families cannot proceed with possible further legal action. Most importantly, they are denied closure. I have spoken to the Pope family and to the Fogarty family whose concerns are expressed in my letter to the NT Coroner. By his own admission, Mr Tim Thurtell wants answers. Mr Melroy Morrison has been seeking answers to questions about the death of his uncle and the shocking treatment of the body for 33 years now. They look forward to a response from the Coroner's office.

Yours sincerely,

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