CITATION: Findings in the death of Johnno Johnson Wurramarba [2001] NTMC 84

TITLE OF COURT: CORONER'S COURT

JURISDICTION: Darwin

FILE NO(s): D0019/2000

DELIVERED ON: 19 December 2001

DELIVERED AT: Darwin

HEARING DATE(s): 11 September 2000 Alyangula

12 – 15 September 2000 Darwin

22 – 24 January 2001 Darwin

FINDING OF: Mr R Wallace SM

CATCHWORDS:

Coroners Inquest
Death in Custody
Don Dale Juvenile Detention Centre

REPRESENTATION:

Counsel:

Assisting: Ms E Morris

Family and Angurugu Community: Mr J Lawrence & Mr S O'Connell

NT Dept. Correctional Services: Mr M Grant

Judgment category classification: A

Judgment ID number: [2001] NTMC 84

Number of paragraphs: 205

Number of pages: 121

IN THE CORONERS COURT

AT DARWIN IN THE

NORTHERN TERRITORY

OF AUSTRALIA

No. D0019/2000

In the Matter of an Inquest into the death of

JOHNNO JOHNSON WURRAMARRBA

AT THE INTENSIVE CARE UNIT – ROYAL DARWIN HOSPITAL

ON 10 FEBRUARY 2000

FINDINGS

NATURE AND SCOPE OF THE INQUEST

1. On 10 February 2000 at 0312 hrs Johnno Johnson Wurramarrba ("the Deceased") died in the Intensive Care Unit of the Royal Darwin Hospital. The previous evening at about 1830 hrs he had been found in his assigned room at the Don Dale Juvenile Detention Centre ("Don Dale") with a sheet tied around his neck. The Deceased has been sentenced on 18 January 2000 by the Juvenile Court sitting at Alyangula to serve a period of 28 days detention under the Juvenile Justice Act. The Deceased's death is properly categorised as a death in custody as he was a "person held in custody" within the definition in s 12(1)(a), (b) and (c) of the Coroners Act 1993 (NT) ("the Act").

2. The death is a “reportable death” which is required to be investigated by the Coroner pursuant to s 14(2) of the Act. Also, as a consequence of the Deceased dying in custody, a mandatory public inquest was held pursuant to s 15(1)(c) of the Act. A further consequence is that the scope of the inquest is governed by the provisions of s 26 and s 27 as well as a s 34 and s 35 of the Coroners Act:

“26. Report on additional matters by coroner

(1) Where a coroner holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody, the coroner –

(a) shall investigate and report on the care, supervision and treatment of the person while being held in custody or caused or contributed to by injuries sustained while being held in custody; and

(b) may investigate and report on a matter connected with public health or safety or the administration of justice that is relevant to the death.

(2) A coroner who holds an inquest into the death of a person held in custody or caused or contributed to by injuries sustained while being held in custody shall make such recommendations with respect to the prevention of future deaths in similar circumstances as the coroner considers to be relevant.

27. Coroner to send report, &c., to Attorney-General

(1) The coroner shall cause a copy of each report and recommendation made in pursuance of section 26 to be sent without delay to the Attorney-General.

(2) Where the Attorney-General receives under subsection (1) a report or recommendation that contains comment relating to –

(a) an Agency, within the meaning of the Public Sector Employment and Management Act, the Attorney-General shall, without delay, give to the Minister a copy of the report or recommendation; or

(b) a Commonwealth department or agency, the Attorney-General shall, without delay, give to the Commonwealth Minister who has the responsibility for the department or agency, a copy of the report or recommendation.

(3) The Attorney-General shall present a copy of each report or recommendation referred to in subsection (1) to the Legislative Assembly within 6 sitting days of the Assembly after receipt by the Attorney-General of the report or recommendation.

34. Coroners' findings and comments

(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; and

(v) any relevant circumstances concerning the death; or

(a) a disaster shall, if possible, find –

(i) the cause and origin of the disaster; and

(ii) the circumstances in which the disaster occurred.

(2) 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.

(3) A coroner shall not, in an investigation, include in a finding or comment a statement that a person is or may be guilty of an offence.

(4) A coroner shall ensure that the particulars referred to in subsection (1)(a)(iv) are provided to the Registrar, within the meaning of the Births, Deaths and Marriages Registration Act.

35. Coroners' reports

(1) A coroner may report to the Attorney-General on a death or disaster investigated by the coroner.

(2) A coroner may make recommendations to the Attorney-General on a matter, including public health or safety or the administration of justice connected with a death or disaster investigated by the coroner.

(3) A coroner shall report to the Commissioner of Police and the Director of Public Prosecutions appointed under the Director of Public Prosecutions Act if the coroner believes that a crime may have been committed in connection with a death or disaster investigated by the coroner."

3. The Inquest began 11 September 2000 with the Coroner's Court sitting at Alyangula on Groote Eylandt. It continued on 12-15 September 2000 in Darwin. Further evidence was taken when the Inquest resumed between 22-24 January 2001. There was an application to admit further evidence (I refused leave) on 18 May 2001. Ms Elizabeth Morris, Deputy Coroner, was counsel assisting. Mr John Lawrence and Mr Stewart O'Connell appeared by leave to represent both the family of the Deceased and the

Angurugu Community, and Mr Michael Grant appeared by leave to represent the NT Department of Correctional Services.

FORMAL FINDINGS

4. The formal findings required by s 34(4) of the Act are:

(1) The Deceased was Johnno Johnson Wurramarrba, a male Aboriginal born 17 May 1984.

(2) The Deceased died at 3.12am on 10 February 2000 at Royal Darwin Hospital.

(3) The cause of death was compression of the neck by hanging.

(4) The particulars required to register the death are that:

(i) The Deceased was a male.

(ii) The Deceased has resided all his life in Australia.

(iii) The Deceased was of Australian Aboriginal origin.

(iv) The cause of death was compression of the neck by hanging.

(v) The death was reported to the Coroner.

(vi) The Cause of death was confirmed by post-mortem examination by Dr Michael Zillman, forensic pathologist.

(vii) Benjamin Nilarremidjyanga Wurramarrba was the father, and Josephine Daninggagiyagwa Wurrawilya the mother of the Deceased.

(viii) The Deceased normally resided at Umbakumba and Angurugu, on Groote Eylandt, in the Northern Territory of Australia.

(ix) The Deceased had never been employed.

(x) The Deceased was not retired.

(xi) The deceased was not a pensioner.

THE HEARING AND THE ISSUES

5. At the various sittings, twenty-eight witnesses were called and forty-one exhibits were tendered.

6. The issues which arose from the material and which were canvassed throughout the Inquest, were primarily these:

a) The background of the Deceased.

b) The circumstances of his sentencing that resulted in his incarceration.

c) The systems of the Don Dale Centre, and the management and supervision of the Deceased during his incarceration.

d) The state of mind of the Deceased during his incarceration.

e) The response by staff of the Don Dale Centre and others to be emergency presented by the discovery of the Deceased with the sheet around his neck.

f) The investigation of the death as a death in custody.

THE BACKGROUND OF THE DECEASED

7. The evidence showed that the Deceased, although raised on Groote Eylandt in a close-knit Aboriginal community, with widespread family and clan ties, was a lonely, neglected boy. He was an orphan. His mother died of natural causes on 27 April 1986 when he was not quite 2 years old. His father was killed on 26 April 1995, knocked down by a motor vehicle in Darwin. The evidence does not permit me any solid appreciation of what role the Deceased's father had played in his upbringing till then, but the indications are: not much.

8. Mr Roderick Mamarika was the Aboriginal Community Corrections Officer (ACCO) on Groote Eylandt at the time of the Deceased's sentencing and his death. Mr Mamarika made a statement on 18 February 2000 to investigating police: the statement is folio 24 of Vol 5 of Ex 1. Mr Mamarika was a relation of the Deceased, calling him "…brother, step-brother." It appears that their mothers were sisters, but whether in the European sense or Aboriginal sense is not clear. Mr Mamarika, at p 2 of his statement gave this account of the Deceased's upbringing:

"Well he was look after by his grandmother when he was young, since his mother pass away, and his grandmother pass him to his auntie but his auntie pass away. So he was floating around the Community, and see he was looking around for a new family but couldn't find any new family because family ….. auntie and tell him to find families. So he find this other family, outside family. So he was staying at Umbakumba and Angurugu. He was staying at Angurugu with is father's family, and when he went back to

Umbakumba he was staying there with another family, you know. Hazel LALARA. Well down there he was trouble like mess, messing up the ……here."

9. Mr Mamarika was aware that the Deceased had been a cannabis smoker and petrol sniffer (see p3). At the time of the death of the Deceased, Mr Mamarika was engaged, at the request of Don Dale staff, in enquiries to find a family with whom the Deceased might live after his impending release from detention. (A place had apparently been found with Ms Susie Wurrawilya and her brother Ronald, at Umbakumba. Susie Wurrawilya in her statement (folio 25 of Vol 5 of Ex 1) describes the Deceased as "my sister's son" (p 4). Mr Mamarika, in the course of his liaison with Don Dale staff, had heard that the Deceased did not want to return to Groote Eylandt. There is one known and uncontroversial reason for that. The Deceased was undoubtedly greatly attached to and fond of his grandmother, Ms Marianne Bara. Ms Bara was living in Darwin, in order to receive kidney dialysis treatment. The Deceased would have preferred to live with her, and seems to have wanted to help care for her – Ms Bara is wheelchair-bound – but that placement was apparently impracticable. There may have been other reasons, for the Deceased's reluctance to return to Groote Eylandt: if so it, or they, are much less clear on the evidence.

10. Ms Hazel Lalara made a statement to police on 18 February 2000 (folio 23 of Vol 5 of Ex 1) and was called as a witness on 15 September 2000. Ms Lalara is a fairly prominent member of the Groote Eylandt Community. During the early 1990s she and her husband ran an outstation at Marble Point, a place to which numbers of young offenders were sent. She left that outstation and went to live at Umbakumba after winning a place on the committee of the Groote Eylandt Aboriginal Trust, in about 1994, and lived there till some time in 2000, when she went to live mainly in Darwin. Of the upbringing of the Deceased, Ms Lalara said in her statement (p2):

"Yes, I helped brought that little boy up when his mother died, so I was a full grandmother acting like a full grandmother to him and when his other grandmother was sick she went out and lived in Darwin and I have brought these children up, look after them and then his father die when his mother died, in a car accident in Darwin, happened in Parap.

NIXON: Uh huh.

LALARA: I took control of the kids, him and his other brothers"

11. That paragraph may give the impression that Ms Lalara became the principal care-giver for the Deceased, but that impression is misleading – I assume accidentally so. Later in the statement Ms Lalara makes it clear that the Deceased resided with others: an auntie (unnamed because she had died in, it seems, December 1999), one Lucy Bara, one Marianne Wurramarrba, of Angurugu (his aunt), one Mike Wurramarrba, of Umbakumba (his uncle), and apparently others.

12. In her evidence, Ms Lalara made it still clearer that hers had not been the principal care-giving role. In answer to questions from Ms Morris, counsel assisting (transcript p451):

"And who mostly grew him up?---His grand mother, Mary Anne, and his aunties and his uncle. But I helped the families, too.

Did he ever live with you?---When he grew up, yes, sometimes.

Did he live with you over this last Christmas?---Yes.

Was that at Umbakumba?---Yes.

And was he staying at your house all the time, or sometimes did he go and stay somewhere else?---Sometimes stayed with some families at Angurugu, with is aunty and uncle."

13. And in answer to questions from me (transcript p454-455):

"Miss Lalara, when the boy was growing up, did he spend nearly all his time on Groote Eylandt or did he come in to live in Darwin some time?---He lived in Darwin sometimes when his grandmother was living in Darwin.

And are you able to say how long ago that was and how long he lived in Darwin?---No.

Did he come to Darwin for a month here and there, or a year, or what?---He used to stay about a couple of months with his grandmother.

And how long is it that his grandmother, that's Maryanne(?), been living in Darwin?---She has lived in Darwin for four years now.

There's also some – I think Murabuda told the police that at one time the boy was living on Bickerton, is that true?---Yes, he used to live at Bickerton before and Numbulwar a couple of times.

Did you know how long he stayed on Bickerton?---No, I don't know.

Do you know how old he was when he went to live on Bickerton?---No.

Did he go to Bickerton because he was getting into trouble or did he go there just because there was some family there to go to?---No, just to stay with some families.

And what about Numbulwar, do you know if he went there once or more than once?---No.

You don't know? And do you know who he lived with there?---No.

Do you know how long he went for?---No.

And how old he was then he went? I think the story is that mostly when he was growing up, he was living at Umbakumba, is that right?---Oh, he seems to be staying with some of the families, like Bickerton, Numbulwar and sometimes Angurugu and sometimes with me."

14. Mr Murabuda Wurramarrba, mentioned in the passage above, is a senior elder. He was the grandfather of the Deceased. He made a statement to the investigating police on 10 March 2000, and was called as a witness. If I understand his evidence correctly, he had been living mostly on Bickerton Island for the last three years or so, and the Deceased had come to live there for some of that time. Mr Wurramarrba was aware that the Deceased had been a petrol sniffer, and that he smoked cannabis. (An advantage of life on Bickerton is that petrol sniffing is pretty well unknown - there is no petrol - and cannabis use by children can be more effectively discouraged by adults, than on Groote Eylandt. A disadvantage is that life on Bickerton is somewhat wanting in excitement.)

15. Sketchy though the evidence may be, the indications are that no particular person had stood in loco parentis to the Deceased for some years, at least since his father was killed, when the Deceased was nearly eleven years of age. During the next few years, he had lived in at least four communities – Umbakumba, Angurugu, Bickerton Island and Numbulwar, and Darwin (as well as the Don Dale Centre and the Wildman Wilderness Camp) – being cared for, from time to time, by what seems to have been at least six households, probably more. At least two of his carers, Hazel Lalara and Murabuda Wurramarrba have been accustomed to looking after dislocated children: Ms Lalara particularly in her days at Marble Point: Mr Wurramarrba on Bickerton Island, but elsewhere too, in his earlier days. Both of them, however, are busy people with important responsibilities within the Groote Eylandt community. There is sometimes an assumption that wide kinship ties in traditional Aboriginal communities provide a safety net in that some family member will come forward to take in a child orphaned, or whose parents have been lost to the urban long grass. In the case of the Deceased, this assumption seems to have been borne out only in part. There were many relations who would give the Deceased a meal, or put a roof over his head for a while but, as far as I can see, none able to take him in for the long term and bring him up as one of their own. If I am right about this, it is not surprising that the Deceased seemed towards the end of his sentence at Don Dale, less keen than one would expect at the prospect of returning to Groote Eylandt. Likewise his preference to reside with his grandmother, Ms Marianne Bara – an old, infirm woman residing in Darwin, rather than with, among others, his cousins and peers on Groote Eylandt – on the face of it an unusual preference – becomes more easily explicable. It seems quite likely that she was the person by whom he believed himself to be most valued.

16. My grasp of the Deceased's circumstances growing up on Groote Eylandt is incomplete. The investigation into his death was not in any way focussed on these matters. My conclusions involve a degree of speculation, and the evidence upon which

they are based comes from statements made after his death when, in the nature of things, a witness is likely to blame or excuse himself, herself or others to an unjustified degree. As far as I know, during the lifetime of the Deceased, the Child Welfare authorities did not look into his circumstances or report on them. (I cannot fairly say whether and I do not wish to suggest that they should have: that issue has simply not been explored at the Inquest.) It is certainly the case that his counsel never suggested, and the Juvenile Court never called for, and no one ever compiled anything in the nature of a pre-sentence report for that Court. That lack can be laid, fairly confidently, at the door of the "mandatory sentencing" regime, to be discussed later.

17. The Deceased appears to have been a fit and usually healthy boy. His medical record from the clinic at Angurugu is part of the evidence, folio 23 of Volume 1 of Ex 1. This shows his attending that clinic only 3 times: in 1997, with some sort of chest infection and twice in December 1999 (i.e. between his two sentences in Don Dale) with persistent headaches. He was to suffer headache again in Don Dale, a matter to be discussed later. The only material before me from Royal Darwin Hospital relates to his admission on the night of his death. By far the greatest portion of medical notes before me arises from examinations upon his receptions and during his stays at Don Dale.

18. Don Dale's medical file for the Deceased became Ex 21. The earliest entry was made on 28 June 1999, when the Deceased came to Don Dale not under sentence but remanded in detention. A Dr King recorded a history of "no medical problems", usage by the Deceased of cigarettes and alcohol (and not cannabis or petrol), summarised his mental state as "quiet" and him overall as "Fit – normal health."

19. On 20 October 1999 he was again examined on reception having been sentenced at Alyangula the previous day to 28 days detention. The examining doctor, whose note bears neither name nor signature, but whose writing resembles closely Dr King's, notes briefly, "No new findings. No sickness whilst at home. Wants to see Dentist." He did see a dentist on 28 October 1999 and had no other medical attention until an examination on 12 November 1999 to precede his discharge due on 15 November 1999. He still had a toothache then.

20. The day after his last reception, on 18 January 2000 having been sentenced at Alyangula that same day to 28 days detention, he was examined by Dr Poliness. On this occasion the history given turned up an account of a broken humerus in 1994 (which, if it really happened, has left no record of its treatment on any of the material before me) but no other medical problems. Dr Poliness recorded the Deceased's use of cigarettes, alcohol and cannabis (but not petrol) and, under "current withdrawal symptoms": "Headaches with stopping gunja," (if I read that note correctly).

21. To record the results of his examination, Dr Poliness used a different form than Dr King had in June 1999. Poliness's form, unlike King's, had a page entitled "Risk Assessment". Six of the questions to be asked according to that form have YES/NO to be circled according to the answer: 6 out of 6 are circled "NO". Three of the questions do not include the YES/NO format. To the last of these "How do you feel now?" The answer

is recorded “O.K.” To the other 2, no answer is recorded: the questions being “Do you have a history of violence?” and “Have you thought about hurting yourself or killing yourself now you are in prison?” Dr Poliness’s summary of the Deceased’s mental state seems to be that it was normal. Dr Poliness advised that the Deceased should take Panadol for his headache and return after a week if pain persisted. Dr Poliness’s statement was admitted as Exhibit 25. In it he was able to expand somewhat upon the admission form:

“From the initial conversation I have noted that Johno usually lived with his paternal grandmother, who spent a fair amount of time in Darwin at the hospital for renal problems, and that he had told a friend that he was coming to Don Dale who would alert his family as to his where-abouts.

Johno stated that he drank alcohol, smoked gunga every day and smoked cigarettes when he could get them. He denied any previous problems when stopping recreational drugs other than a headache when stopping gunga, he now had, and usually went away over a few days.

We spoke about the broken arm he had had when he was younger and his “prolonged holiday” from school.

I also noted markings on Johno’s left arm which were self inflicted in a pattern. He spoke of them as a tattoo he had done in the week before he came to Done Dale. The scratches and markings were small abrasions of the skin and he said that if he had had some ink he would have used it to make a permanent tattoo as he like the pattern. He denied that he had done this to harm himself. This led into a discussion on self harm. Johno denied ever harming himself in the past or ever attempting suicide and said that he felt “OK” now while in prison.

From the basis of these conversations, I assessed Johno’s mental state, noting that his appearance and presentation were slow and quiet, yet appropriate to the circumstances.

His affect was stable with normal thought form and content. I saw no reason to suspect he was at risk to himself while in detention.

Physical examination was unremarkable and we spoke about using Panadol, which was available from the staff at Don Dale, should the headache be a problem.”

22. A note from a, I think, nurse called Hunt, also dated 19 January 2000 shows the Don Dale health staff contacting the Angurugu Clinic to obtain further information and records that “staff also advise me that John sniffs petrol which he did not tell doctor on reception. To be discussed with doctor tomorrow.”

23. There is no further mention of his headaches apart from the resulting report from Angurugu. There is a toothache (on 21 January 2000), an infection (on 24 January 2000) and pain in a shoulder on 31 January 2000, which in the last entry had gone by the

following day. So much for observations of his physical and mental state made by health professionals before his death.

24. The Deceased had not entirely missed out on schooling. Mr Christopher Wrigley, the Principal of the school within Don Dale said (on p 230 of the transcript, questioned by Ms Morris):

"Can you recall of the deceased what his needs were or what his levels of education were?---He actually had a better level – I can't be specific, but he had a better level of reading ability than many of the community kids that come in, and I do remember – because I'm not in the classroom all of the time, but I do remember working with him in maths. There was nothing particularly out of the ordinary about that boy in, you know, what he could or couldn't do.

In relation to his education?---That's right.

Could he read English?---As I recall, yes.

And what about his writing skills in English?---Well, a little bit scribbly, but he could write in English, yes."

25. I don't know whether he ever played much, or any, sport. He had a girlfriend, the question of whose constancy to him may have been causing him a certain amount of worry, according to Mr Murabuda Wurramarrba (see p7 of folio 26 of Ex 5).

26. In all of this – his domestic circumstances perhaps excepted – the Deceased would appear to be a fairly normal young male to come from the Groote Eylandt Aboriginal community. Similarly, his offending against the criminal law, which brought him to Don Dale, was normal, almost to be expected.

OFFENDING ON GROOTE EYLANDT

27. In 1997, I made findings in an Inquest into the death of MB, who died, aged 20, from head injuries sustained when a stolen car, in which he was a passenger, crashed near the Groote Eylandt airport. As background to my findings I wrote (Case No. 9614331, Coronial File 97/96, Findings published 14/8/97 p 2-6):

"Groote Eylandt in the Gulf of Carpentaria is, as the Dutch navigators recognised in their imaginative naming of it, a large island. In shape, it is roughly rectangular (with protrusions), about 50kms x 60kms. There are three main settlements. Alyangula which lies almost on the north west corner of the island, was established by the Groote Eylandt Mining Company (GEMCO), a subsidiary of BHP, in connection with the mining of

manganese ore. This mining is the principal economic activity on the island. Alyangula is the port for the export of the ore, and a township where most of the mine workers live. It is also the island's centre for such services as health, police, emergency services etc. There are two licensed premises there – the Alyangula Recreation Club and the Golf Club. The inhabitants are well off, well housed. Many of them own well maintained vehicles and keep in their houses refrigerators that may at any time have some liquor in them. The unemployment rate among residents of Alyangula is approximately 0.00%. It is a well, not to say oppressively well, controlled company town."

And:

"Angurugu and Umbakumba are the other two principal settlements. Their populations and predominantly Aboriginal. Neither has any licensed premises: they are "dry areas" under the Liquor Act (although there once was and may still be a practice of permitting the distribution of a beer ration once a fortnight or so at Umbakumba). Neither community is well endowed with housing or any other material goods. There are comparatively few vehicles, and a good proportion of those few are community property. Unemployment rates are high. Social problems – petrol sniffing, alcohol abuse, domestic violence – are rife. School attendance is low – I have heard figures of 10% or thereabouts – third-world health problems are common. For many years royalties from GEMCO's mine were largely distributed among the people in lump sums once or twice a year, "clan money". In those days it could have been argued that, in terms of dollar incomes, the Aboriginal population of Groote Eylandt were better off than the average Australian citizen. The passage of this wealth through Angurugu and Umbakumba has left little trace. A reinterpretation of the Trust under which the royalties are collected has put a stop to that distribution.

I include these general impressions of the social circumstances on Groote Eylandt by way of background. Apart from the ending of the "clan money" system, nothing much seems to have changed in the 15 years I have had contact with the island. Neither the passing of the years nor the end of "clan money" seems to have made any difference at all to the quality or quantity of the kind of offending which led to the death of the deceased.

Time out of mind, which is to say for more than 20 years, the young aboriginal males – boys, adolescents and men – from Umbakumba and Angurugu have descended upon Alyangula and committed crimes there. The pattern of the crimes has never changed. The offending proceeds as follows –

1) Travel from Angurugu or Umbakumba to Alyangula. From Umbakumba it is too far to walk: a vehicle must be stolen for the trip. Angurugu is within walking distance, just. Often, however, a vehicle will be stolen for that trip too, either from Angurugu or from the mining complex, or (rarely) the airport car park.

2) On arrival at Alyangula, the aim of the criminals is to steal alcohol. The main targets are the two licensed clubs. Both of these premises have been broken into scores – probably hundreds – of times. Successive fortification/strengthening of the premises have

been defeated by the use of greater force by the offenders, eg by driving trucks through reinforced doors.

3) Alcohol, cigarettes, crisps etc are swiftly stolen, then the thieves scatter. Management of the clubs respond quickly to alarms, police are called, searches are conducted.

4) Meanwhile, the offenders, drinking as they go, seek a vehicle to drive home. Or, running out of liquor, they may unlawfully enter a house or two in search of more. Eventually a vehicle or vehicles are taken and the offenders drive back to Angurugu or Umbakumba, drinking as they go.

5) If they arrive there with a working vehicle, they drive the vehicle wildly around whichever community, more usually Angurugu. In the course of this driving it is likely that some of the original offenders will be let off the vehicle and other, previously uninvolved young males from the community will get on. The driving tends to go on for a while, until the vehicle heads out onto bush tracks, or until it crashes, or runs out of fuel.

Such general sequence of events has usually been termed an “escapade” in the Court of Summary Jurisdiction, and the charges arising from such escapades are the staple fare of the Court of Summary Jurisdiction sitting at Alyangula. Ordinarily a participant can find himself charged with, say, unlawful entry (of the Club), stealing (from the Club), unlawful use (of the return vehicle). Liquor Act offences (bring, possess and consume liquor in a dry area), Traffic Act offences (driving unlicensed, under the influence in a manner and at a speed dangerous etc). An escapade typically involves four or five offenders at the beginning; by its end, it is quite common for a dozen or more to get involved as passengers in the stolen car and as receivers/drinkers of the stolen liquor. Hardly a month passes without at least one such escapade. In some months there are two or three. Given that one escapade can give rise to 50 or 60 individual charges against say 8 or 10 offenders, the Alyangula Court of Summary Jurisdiction is a busy court.

It will, I think, be hard for anyone not acquainted with this pattern of behaviour to accept how utterly routine these escapades have become not only in the minds of the police and the offenders, but in the minds of the victims of the property crimes (in the three communities, and at the mine site) and those afeared of the traffic offences in the communities.

It needs also to be said, by way of background, that, one way or another, the police “solve” virtually every crime of this kind. Quite often one or two offenders are actually arrested in Alyangula. As a rule, those arrested both confess as to their own involvement, and inform fully and reliably as to the identities of their co-offenders. Failing that sort of a lead, the police can confidently await information from community elders at Angurugu and Umbakumba as to the identities of those involved. Apprehension of the named offenders is not usually difficult. Nearly all confess.”

28. Anyone interested in the antiquity of this pattern of behaviour may refer to the literature on Groote Eylandt offenders, e.g. to an article by Colin McDonald published in 1984 "Australia's Most Jailed Citizens, published in Australian Society 1 February 1984, at about the time, as it happened, of my first visits to the island. Mr McDonald's article was based in part on a report by David Biles "Groote Eylandt Prisoners" (1983) published by the Australian Institute of Criminology, of which Dr Biles was then Acting Director. In the Introduction to that Report, Dr Biles wrote (p1):

"The writer's interest in this subject goes back almost ten years when he visited the old Fannie Bay prison in Darwin and was shown the prison records which indicated a disproportionately high number of prisoners coming from Groote Eylandt. It was not possible at that time to undertake any research on the subject, but it was clearly the belief of many of the prison staff at that time that Groote Eylandters saw coming to prison as something of a holiday. It was claimed that, notwithstanding the poor conditions in Fannie Bay, the experience of flying to Darwin, having regular meals and re-establishing contact with friends and relatives in prison made imprisonment a not unattractive prospect for many Groote Eylandters."

And (p3):

"With this background in mind and considering the imprisonment statistics taken from the national prison censuses, the hypothesis being put to the test in this study may be expressed in fairly stark terms. It is:

The operation of criminal justice services on Groote Eylandt, not only fail to deter criminal behaviour but, actively reinforce and reward such behaviour.

To the extent that any support can be found for such a startling and radical hypothesis, it is clear that changes in criminal justice practices on Groote Eylandt are required as a matter of urgency."

29. And Dr Biles cited and quoted from an article "Youthful Offenders at Groote Eylandt" in the Legal Service Bulletin, December 1976, p124, by Michael Gilroy, a sergeant of police who had served on the island. Dr Biles wrote (p2):

"Gilroy's article is still widely discussed and is the subject of some controversy. He claimed that it is most unusual for a male Aboriginal to reach 20 years of age and never face a criminal charge, and he explained that Aboriginal offenders:

…boast about their imprisonment and with bravado talk about 'the free jet trip'. Their only criticism of Fannie Bay appears to be the lack of grog but 'there is good tucker and easy work' and many of their mates are there. In letters to their brothers and mates, they exhort them to 'get to Fannie Bay' as it's a 'real good place'."

30. In the conclusions to his report, Dr Biles wrote that he had found (p17):

"substantial support for the hypothesis that criminal justice services, in particular the use of imprisonment in the mainland, reinforces and rewards the criminal behaviour of some Groote Eylandters…"

31. Nothing much has changed in the pattern of offending between 1997 and now. I might have then mentioned, but did not, that there has always been a certain amount of crime directed against not only vehicles, but also other property situated in Angurugu and Umbakumba, such as the schools and community stores, and occasionally the houses of teachers, resident tradesmen etc. There is one noticeable social change occurring. The aboriginal population of Alyangula has slowly increased as GEMCO's island-based work force has shrunk, leaving an amount of housing surplus to its requirements.

SENTENCING PRACTICES ON GROOTE EYLANDT

32. For many years until his retirement in 1996, Mr Bruce McCormack SM was the magistrate who presided over the Alyangula Court of Summary Jurisdiction. After extensive discussions with Aboriginal elders, Correctional Services personnel, Police and anyone else with any expertise to offer, Mr McCormack concluded that ordinary sentencing practices needed to be changed in order usefully to met the patterns of offending, and the attitude of offenders on Groote Eylandt. In essence, he concluded that bonds and suspended sentences were very rarely of any use, being almost invariably breached. Home detention was hardly ever a practicable option. Few defendants had any capacity to pay fines. In most cases, the useful options on sentence numbered two only: community service orders and actual imprisonment. Any other form of sentence became quite rare in the Court of Summary Jurisdiction. These conclusions and the resulting practice, were carried through, less generally, to the Juvenile Court. Mr McCormack's practice was followed, more or less, by other magistrates (including me) visiting the island when Mr McCormack, for one reason or another, could not attend one of the (monthly) circuit courts, and were continued by them after his retirement.

33. Mr McCormack delivered a paper at the 1993 conference of the NT Criminal Lawyers Association at Sanur, Bali, in which he recorded his sentencing practice, the reasons for it, and the results then apparent. The results at that time seemed to give grounds for optimism. Optimism dwindled somewhat over the next few years. Mr McCormack's paper can still be located among library collections of the papers of that conference but, lest it be lost, I have attached a copy of it to the file copy of these Findings.

34. Most interested observers accepted that this sentencing practice achieved some useful results. The majority, ordered to perform community service, did the work with, it was assumed, the usual desirable effects on both the worker and his community. The imprisonment of the minority took them out of circulation and for some periods this apparently effected a substantial reduction in the crime rate, especially at times when all the "ringleaders" were imprisoned. A ringleader was credited with a capacity to inspire fairly inert offenders ("followers") to join with him on an escapade.

35. Despite these measures of success, it was still the case that large numbers of young males became involved in the usual sorts of crime. It remained the case that the threat of imprisonment seemed to fail to deter anyone from offending, and an impression remained that some offenders were actually intent on being imprisoned. Others seemed hardly to care if they were. Gaol was still referred to by observers, rightly or wrongly, as being in the nature of a "rite of passage" Elders intermittently made known their views that gaol was "too soft" – this was especially the case in respect of the Gunn Point Prison Farm (closed in mid 1996) – urging that offenders who "wanted" to go to Darwin Prison should be sent to Alice Springs to teach them a lesson. (The same Elders, at other times - or the same time – argued that too many young men were being sent to gaol.)

36. Thus, during her evidence at this Inquest, Ms Elspeth Braham, Senior Youth Worker at Don Dale said, matter of factly (transcript p361 – 362):

"Okay. Now, did you know the deceased when he was in detention in Don Dale about October last year?---Yes, I did.

And you knew him when he was in detention again in January/February this year?---Yes, I did.

Do you think he seemed to change from the boy he was in detention in October to what he was this year?---I don't know that he changed all that much. I think that this time, the second time he was in – the first time he was in, it was all new to him and all of the boys that come to us all know us long before they come in.

How do they do that? Do you know? How do they ---?---Well, I'm garkul (?) – I'm grandmother. You know, 'We're going to see Grandmother Braham'. They talk about us, and ---

So can I just clarify, so boys who've been in will go and tell other boys ---"---They'll go and tell.

---'When you go to Don Dale, there'll be that granma'?---Mm.

Yes?---Old grandmother. Old woman, and so they all really know a lot about us before they come in…"

And (p372):

"Would you agree that for a – you've obviously in your time at Don Dale dealt with a lot of young Aboriginal men from communities outside of Darwin; would you agree that for those kids being taken away from their community and brought into the Don Dale Centre, that the risk of suicide increases?---No, not really. I don't think so.

But you took a long time to answer that, is that because you're not quite sure?---No, I was just thinking about – I'm trying to align it with – quite positively trying to think of what our worst boy has been, you know. They – no, they love to come in to Don Dale Centre. They tell us on Friday they'll see us again on Monday or Tuesday, after the weekend.

Is that normally when they're in there as a group?---No, not always. No, if they love you, they love you, and that's it.

Did the deceased tell you that he loved being there?---They all love garkul. One minute they're going to – they love you like crazy, and the next minute they're going to tell their big brother on you, or tell uncle on you or that, because you're not doing the right thing by them, as far as they're concerned. That's---

But did he ever say to you that he loved being there?---I can't remember that. I mean, this is day-to-day, kid-by-kid. We get too many kids to remember everything they say." (Questions in both cases by Mr O'Connell for the Deceased's family).

And (questioned by me p378):

"Ms Braham, I've been looking through this fines and comments book again and it seems to me that there are very, very few Groote Eylandt names in the book?---No, that would probable be right.

I mean there's a Port Keats name on every page?---And we have more – the Groote boys love us. I – That is no understatement. The Groote boys are extremely fond of the Don Dale Centre staff. It's family. We don't treat them any differently from the others but there's a great deal of affection there. I know that – that detention is supposed to be a deterrent and sometimes I shake my head at the affection that goes on, because we're all supposed to be seen as – I think the way the general public would like to see us all as great deterrents all the rest of it to committing crime, but sometimes I think we're so nice to them they come back. Commit crimes to come back just to be with us.

I can say I don't think I've inquired - - -?---And I don't apologise for that. It works well and we do change a lot of kids' lives."

37. Mr McCormack's practices could not be followed in the long term, and in effect, the experiment was abandoned before its results could be known because on 8 March 1997 there commenced the "mandatory sentencing" provisions amending the Sentencing Act and the Juvenile Justice Act.

MANDATORY SENTENCING IN THE N.T.

38. The mandatory sentencing provisions required minimum sentences of actual imprisonment to be passed on persons found guilty of "a property offence". Property offences, as defined, included most of the offences customarily committed by Groote Eylandt offenders – unlawful entry, stealing, unlawful use of motor vehicle, unlawful damage, receiving. The original amendment to the Sentencing Act, for adult offenders, mandated such imprisonment for all such offenders. Later amendment ameliorated that, in narrowly defined circumstances which seldom applied to a Groote Eylandt offender. In the case of juvenile offenders, i.e. offenders under the age of 17 until 1 June 2000, (under 18 after that date), a sentence of detention was mandated in the circumstances defined by s 53AE of the Juvenile Justice Act. The original rigours of that section were ameliorated by amendment in 1999, and from 1/3/99 (the two important sentencing dates relevant to the Deceased came after that) read:

"Division 3 – Repeat Property Offenders

53AE. Sentencing of repeat property offenders who have attained the age of 15 years

(1) In this section, "juvenile" means a juvenile who has attained the age of 15 years.

(2) Where –

(a) a juvenile who has been found guilty of one or more property offences is before the Court to be sentenced in respect of those offences; and

(b) the Court has on a previous day dealt with the juvenile under section 53(1) in respect of one or more property offences,

the Court must do one of the following:

(c) order the juvenile to participate in a program approved under subsection (3) and adjourn the matter for that purpose;

(d) record a conviction and order the juvenile to serve one period of detention of not less than 28 days in respect of all of the offences referred to in paragraph (a).

(3) The Minister may, by notice in the Gazette, approve a program for the purposes of subsection (2)(c)."

(There were a further seven sub sections).

39. There was an ambiguity in s 53 AE(2), in that it was not clearly stated whether "a juvenile who has been found guilty of one or more property offences" meant:

(a) a juvenile aged 15 or more who had been found guilty of one or more property offences committed when that juvenile was aged 15 or more, or

(b) a juvenile aged 15 or more who had been found guilty of one or more property offences committed when that juvenile was any age.

40. As far as I know there never was a Supreme Court ruling to resolve that ambiguity. As far as I know the general view and practice of magistrates when sentencing was to adhere to interpretation (a) above, the more favourable to defendants. The absence of Supreme Court authority is in its way evidence that such was the practice, because it would be expected that, if interpretation (b) above had been followed, defendants would have been advised by their lawyers, who were not, on the whole, happy with mandatory sentencing in general or in particular, to appeal against any sentence arising from that interpretation. (For what it may be worth, the sentencing history of the appellant in Fergusson v Setter & Gokel (1997) 7 NTLR 118 shows the Juvenile Court having proceeded with him in accordance with interpretation (a), which is not the subject of any comment by Kearney J, nor, apparently, any argument on the appeal.)

41. Mandatory sentencing for property offences came to an end on 22 October 2001, when Acts Nos 53 and 55 of 2001 came into force amending respectively the Juvenile Justice Act and Sentencing Act. So far as the law affecting juveniles is concerned, the mandatory sentencing provisions have left two traces in current statute law. The first "approved diversionary programmes", which appeared to ameliorate the original strictness of the scheme; see S 53AE quoted above – remains in the Juvenile Justice Act as an ordinary sentencing option. The other, "Police diversions," has its statutory basis in Division 2B of Part VII of the Police Administration Act. The scheme there created does not involve the Juvenile Court at all. It enables the police and the juvenile suspect to agree to a course of action (hopefully rehabilitative) before changes are laid. All going well, charges are never laid. Only if the terms of the diversion are not met by the juvenile will the matter proceed to court. Those commentators who are in the habit of expressing mistrust in the Police Service have, expectably, attacked the scheme on the basis that it places undue power in the hands of the police, and removes cases from the judicial sphere. I find these arguments hard to follow. The Police (together with the DPP) have always had a discretion whether to prosecute. The amendments to the Police Administration Act create a statutory basis to make the exercise of that discretion accountable and consistent. If a juvenile wants his or her day in court, he or she need only refuse the offered diversion.

42. Police diversions, so far, appear to have had greater effects in the cities than out bush, but even on circuit courts the length of lists in the Juvenile Court have lately began to shrink in response to diversions. Whatever the ideal philosophical position may be in town, it seems to me that anything is worth trying on Groote Eylandt, given that the process of crime and punishment has been so evidently futile for so long. As Cacambo (whose advice, Voltaire wrote, was consistently good) said to Candide (Ch 17):

"We can't go any further, we have walked far enough. I see an empty boat tied to the bank; let's fill it with coconuts, step on board and drift downstream with the current. A river always leads to some inhabited place, and if we find nothing good, at least we shall find something new."

THE CIRCUMSTANCES OF THE DECEASED SENTENCING.

43. The Deceased was sentenced by the Juvenile Court 3 times, each time at Alyangula:

1) On 17 March 1998, for property offences committed on 18 and 25 January 1998. He was 13 years old at the time of his offending, and his sentencing. The Court, without proceeding to conviction on the 6 offences, placed him on a bond to be of good behaviour for 12 months.

2) On 19 October 1999 for (mainly) property offences committed on 8, 22 and 25 August; 12 – 13 September; 19 and 26 December 1998; and 6 April and 26 June 1999. He was 15 when sentenced, and 15 on 26 June 1999: all the other offences were committed when he was 14. I will return to this collection of offending later.

3) On 18 January 2000, for property offences committed on 27 November, and 6 December 1999.

44. As to the sentences imposed on those three occasions, and the sentences that were required, or not required, to be imposed by the s 53AE of the Juvenile Justice Act, I adopt the following from the written submissions of Ms Morris, counsel assisting. (I might point that Ms Morris, before taking up the position of Deputy Coroner, was a lawyer employed by the NT Legal Aid Commission. She practised extensively and with distinction in the Juvenile Court at Darwin.) I quote paragraphs 23-30 of her submissions:

"The deceased had a history of offending and court appearances. For your convenience, I have attached a summary of this history prepared by myself to these submissions. He had been sentenced by the Juvenile Court only three times. The first sentence he received was on the 17th March 1998 when the deceased was 13 years old. He received a no conviction good behaviour bond for 12 months. Despite numerous appearances in court and a series of minor offences and contact with the police, the deceased was not sentenced again until the 19th of October 1999, some 19 months after the commission of his first offence committed after receiving the good behaviour bond. On the 19th of October the deceased received a sentence of 28 days detention pursuant to the mandatory sentencing provisions of the Juvenile Justice Act.

It is my submission, and I do not believe that it is disputed by other counsel appearing in this matter, that the Court was not required to impose such a sentence on that day. All of the offences, bar one set, were committed prior to the deceased turning 15 years of age. The offences that occurred on the 26th of June 1999 after the deceased's 15th birthday, were his "first strike" under the legislation.

The deceased's served the 28-day period to which he was sentenced on the 19th of October. He was released on the 15th of November 1999 and flew back to Groote Eylandt that day.

On the 27th November and again on the 5th of December 1999 the deceased committed a further unlawful entry and theft, the second set of offences also including criminal damage. He spoke to police in a record of interview about these matters on the 29th of November and 7th of December respectively.

The deceased appeared in court on the 21st of December. His case was adjourned until the 18th of January 2000, when he pleaded guilty to the 5 charges.

On this sentencing, in January 2000, the deceased was a second striker and therefore was to be sentenced under the mandatory sentencing provisions. However on the 1st of August 1999 the Juvenile Justice Act was amended to include an option of diversionary programs, where the Court had the alternative to 28 day detention, by ordering that the juvenile attend a diversionary program.

Mr William Munro, an officer with the Department of Correctional Services, gave evidence in relation to the introduction of diversionary programs across the Northern Territory. (T: 422-433). His evidence was that the only program available on Groote Eylandt at the time of the deceased's sentencing was the victim-offender conference program.

This option then was law on both occasions that the deceased was sentenced. It was never discussed or considered in either court appearance. None of the options available to the Juvenile Court when sentencing young people were used. There was no other pre-sentence report ordered, the deceased was deemed ineligible for community service and supervision was not raised in court as an option."

45. Ms Morris had made the same points in her opening. Mr Lawrence, counsel for the Deceased's family, another very experienced criminal lawyer, was of the same view in his opening remarks.

46. On 14 September 2000, I wrote to the Director of Public Prosecutions, Mr Rex Wild QC, apropos of the same concerns. I quote from that letter:

"The deceased died while in custody serving a sentence at the Don Dale Centre. I may, pursuant to s 26(1) of the Cornoner's Act ,'…investigate and report on a matter connected with…the administration of justice that is relevant to the death.'

Such matter, it seems to me, is the court process that led to the sentence. The material before me suggests that no fewer than three flaws are evident in the court history of the deceased, being:

i. On 19 October 1999 he was sentenced to 28 days detention. The court did not backdate the sentence to take account of time spent in custody, namely the period from 27 June 1999 until 6 July 1999 (10 days). Neither the prosecutor, Mr Jones (?), nor the deceased's counsel, Ms Collins, brought that matter to the attention of the court.

ii. That same 28 day sentence related to 4 property offences committed by the deceased on 26 June 2000. These were the first, and, at 19 October the only property offences committed by the deceased after he attained the age of 15 years. The court, imposing the sentence of 28 days, purported to be acting pursuant to s 53AE of the Juvenile Justice Act ("mandatory sentencing"). My interpretation of that section is that it did not apply to the deceased at that time. Mr Jones appears to have begun to contest the court's interpretation (see p 21 of the transcript of proceedings of 198/10/99) as did Ms Collins (a little later on p 21), but neither persisted with their submission.

iii. On 18 January 2000 he was sentenced to 28 days' detention for property offences committed on 27 November and 5 December 1999, the deceased on those dates being still aged 15. Again, the court purported to be acting pursuant to s 53AE, and this time my interpretation of that section is that it did apply. Further, my interpretation is that, the deceased being a "second striker", s 53AE permitted a disposition pursuant to sub section (c) "diversionary programmes" There is no indication that the court considered that option, and it is certainly the case that neither the deceased's counsel, Mr Hausman, nor the prosector, Sgt McCallum, alerted the court to that option. One approved diversionary programme, "victim-offender conferencing" was available for use. It is apparent from the evidence already heard in the case that neither Mr Hausman, nor Sgt McCallum knew on 18 January that that programme was available: that that sentencing option existed. It was while serving that perhaps unnecessary 28 days, that the deceased died.

I enclose copies of the following:

· Transcript of proceedings in the Alyangula CSJ on 19 October 1999;

· Transcript of proceedings in the Alyangula CSJ on 18 January 2000;

· Transcript of the evidence of Sgt Martin McCallum at the Inquest on 11 September 2000. I draw your attention particularly to his evidence as it bears upon (a) his training to perform the role of prosecutor, and (b) the dissemination of information about changes in the law etc.

On the evidence before me, I would expect to be making comments in my findings critical of the performance of the individual prosecutors in these proceedings and of the standard of training and support of the prosecutors at bush stations. Should you wish to submit material relevant to these matters, or to appear at the Inquest to make submissions, please contact the Deputy Coroner, my counsel assisting Ms Elizabeth Morris. Ms Morris can arrange for you to have access to any other of the Inquest's evidence which you may wish to see."

47. Sgt McCallum's evidence, referred to in my letter, included these items:

"How long have you been in Alyangula for, sergeant?---Since 21 November last year.

And are you the officer in charge of prosecution duties at Alyangula?---Yes, I am.

And how long have you had that position for?---Since 21 November last year.

And have you been a prosecutor prior to coming to Alyangula?---No, I haven't.

And what training have you had within the police force as a police prosecutor?---No training." (Transcript p79, questions by Ms Morris)

and:

"Never seen it. Perhaps you'll accept from me that you make no mention of the sentencing provisions of juveniles in that plea?---That'd be correct.

If the – sorry, I withdraw that. Do you see it as part of your duty to inform the court as to what the appropriate sentencing provisions are?---No, I don't think so. No.

So if a magistrate, for example, was saying, well, the maximum penalty for this offence is 5 years, and you for a fact knew that it was 2, would you see it as your duty to stand up and tell the court, 'no, I'm sorry, Your Worship, the maximum penalty for that is 2'?---Yes, I probably would do that." (Transcript p80: questions by Ms Morris)

and:

"For if you were, as a prosector, it would've been incumbent on you to mention that to the bench, that there was an alternative to detention, namely the availing yourself of the other ---?---As I said, I was unaware of that, and I had a look and there was nothing in our paperwork that says that we had to bring that to the magistrate's attention.

Can you remember this as being perhaps your understanding back then, that you knew about diversionary programs but you didn't think any existed up here?---Yes, at that time I didn't think there was any diversionary programs on Groote Eylandt at all." (Transcript p82, questions by Mr Lawrence)

and:

"MS MORRIS: Sorry, sergeant, I'm just clarifying again (inaudible). At the time in January, did you know that the law had changed in relation to juveniles? So that there was the 28 days or the diversion?---I knew there was diversionary programs but I wasn't probably full-bottle on what the actual changes were.

Do you get any support from Police Prosecutions in Darwin, or Prosecutions in Darwin in relation to changes in the law?---No.

They don't send out a circular or ---?—No.

So for example, if there's a major amendment to the Criminal Code, how would you hear about that?---Basically, you just sort of hear through the – you know, like the paper sometimes has it, but we don't get notified at all of any---

Paper as in the NT News?---Yes, people like that." (Transcript p83).

48. Mr Wild took up the invitation and made a submission in writing by letter dated 19 January 2001. He wrote:

I refer to your letter of 14 September 2000 and my reply of 21 September 2000. You will recall that I then provided you with a copy of the Memorandum of Understanding between the Commissioner of Police and the Director of Public Prosecutions. I drew your attention specifically to clauses 1.6 and 7.1 of that document which seemed to have some bearing on the matters you are now considering. (I provide you with a further copy of the MOU with this letter).

I then noted that discussions have taken place between this Office and that of the Commissioner of Police to review the respective responsibilities for the prosecution of matters in bush courts. Since my letter to you, I have had further discussions with Deputy Commissioner John Valentin and I have provided him with a copy of this letter. I understand he adopts, insofar as they are relevant, the comments made dealing with the relationship between the two offices and the provision of prosecutorial services in, particularly, the bush courts.

Your letter, and the subsequent discussions with the Deputy Coroner, invited (or offered at least) the opportunity to make (written) submissions. Please treat this letter as those submissions. If you require further elaboration or detail on any aspect of it would you please let me know.

You have indicated at least a tentative view that you will be making findings critical of the performance of the individual prosecutors in (these) proceedings and of the standard and support of the prosecutors at bush stations. It is those comments to which these submissions are directed.

The proceedings of 19 October 1999

You have criticised the proceedings on 19 October 1999 on two grounds. Firstly, there was the failure to take into account time spent in custody. Clearly enough either the prosecutor or the defence counsel should have informed the magistrate that any sentence that was to be imposed should have been backdated to take into account that time spent in custody. In my experience, prosecutors (whether police or professionally qualified)

almost invariably do pass that information on to the magistrate or judge. Sometimes it may be apparent from the court file by reason of the bail papers or lack of them. The second point was the interpretation that the defendant was subject to mandatory detention. That was wrong and all parties to the subsequent sentencing disposition must bear some of the blame for that.

It is interesting to note (see pg 19 of the transcript of those proceedings) that the magistrate was, at a preliminary stage at least, thinking of sending (the defendant) to Don Dale Centre to gaol. The defence counsel made submissions in relation to that and the matter was in fact stood down to have the defendant assessed for a community service order. There appears to have been no error made at that point and it was not until the sentencing itself took place later that the apparent error, as to the defendant's liability to mandatory sentencing, was made.

Incidentally, the police prosecutor identified variously in the transcript as Jones or James was in fact Acting Sergeant Rob James then of Groote Eylandt (now at Casuarina). I am unable to provide any information as to Mr James' training for prosecution duties. It may safety be assumed that it was limited.

Proceedings of 18 January 2000

With respect, your summary of what appears to have occurred on 19 January 2000 seems to be correct. There was some discussion, of course, about setting up programs (see comments of Mr Hausman at pg 6 of the transcript) but this did not raise any alarm bells with the parties it seems.

I draw the following matters to your attention in respect of Sergeant Martin McCallum who was prosecuting in court on that day. He had been in Groote since 21 November 1999 but this was in fact the first occasion on which he had prosecuted. It seems to have escaped his memory, when he gave evidence before you in this Inquest, that he spent the period between 5-12 January 2000 attached to Summary Prosecutions in Darwin as part of the prosecutor's development programme designed specially to assist bush court prosecutors. I will address further remarks to that programme below. Otherwise, it appears he has had no prosecutorial training.

On the face of the transcript, apart from tendering the prior convictions, Sergeant McCallum played no part at all in the sentencing process.

Incidentally, Poppi Gatis, described by the Deputy Coroner as a police prosecutor from Darwin (see pg 80 of inquest transcript) was not at Groote Eylandt on 18 January. She was on that day prosecuting a matter before Mr Lowndes in the Darwin Magistrates Court.

General Comments

I make the following points in respect of the events at the two hearings involving Johnno Wurramarrba. The prosecutor should have assisted the magistrate, and defence counsel, to get it right on both occasions. The respective prosecutors should have advised the court of the ten days served in custody, of his view that mandatory sentencing did not apply at the first hearing and of the diversion available by the time of the second hearing. It does appear that the assistance of the prosecutor was not actively sought by the court on either occasion. This may be because it is appreciated that the bush court prosecutor will not be as experienced as his town counterpart or for some other reason. However, from my point of view, I accept that the aim should be that the standard of service expected and provided by the prosecutor in the bush court should not be less than that available elsewhere. It is with this in mind, and with the implicit cooperation of the Commissioner of Police, that the preliminary discussions have already taken place with regard to a bigger participation of this Office and Summary Prosecutions Darwin (SPD) in the bush courts.

I repeat the references to the applicable portions of the Memorandum of Understanding as to the responsibility thus far taken by this Office for prosecutions in the Territory. You will be familiar with the provisions of the Director of Public Prosecutions Act and the functions of the Director. They include the summary prosecution of offences but, of course, the Act does not mandate the performance of that function by the Director's Office. The Director is able to be represented in court by a police officer (see s.22(2) of the Act).

Interestingly enough, the Northern Territory is the only Australian jurisdiction where the Office of the Director takes such a substantial role in the summary prosecution of offences.

It is also fair to comment that on both occasions Johnno was represented by a qualified legal practitioner and appeared in front of a legally qualified magistrate (not for instance an unqualified Justice of the Peace when greater input from a prosecutor might reasonably be expected).

Training for Police Prosecutors

Formal police prosecutors' courses have been conducted on two occasions in comparatively recent years to my knowledge. One of these was in 1988, well before my time. The other course was held in 1996. It was prepared and presented by Sergeants Gill Hayward and Len Pryce with the assistance of my Office and its staff. I think something like 20-30 police officers attended that course but unfortunately very few of them have ever come into the ranks of the prosecutors either in the Darwin or Alice Springs office or in the bush courts.

Since October 1995, this Office has held three separate in-service training conferences of three days' duration each. These were in March of 1996, 1998 and 2000. These have involved all professional staff of the ODPP and all members of the Summary Prosecutions offices in both Darwin and Alice Springs. This has included the contract

prosecutors (that is, those professionally qualified) in the Darwin office. Prosecution police officers from Katherine also attended the 1998 and 2000 conferences. Senior Sergeant Peter Thomas (the officer-in-charge of SPD) was part of the planning committee for last year's conference. A separate session was held for police and summary prosecutors. Matters relevant to summary prosecutors are, of course, discussed at such conferences. I would expect that none of the errors identified in the Wurramarrba proceedings would have occurred hand any of the relevant prosecutors attending these conferences been involved. Senior Sergeant Thomas has urged me over recent months to conduct the biennial conference on an annual basis. A question of resources intrudes.

In addition to these biennial conferences, I conduct a programme of regular lunchtime and evening seminars. The area of mandatory sentencing has caused a great deal of concern to this Office, as it has done to the defence bar and the magistracy, and each new series of amendments has been the subject of a seminar presentation for all the prosecutors within both my Offices. These are attended by the summary prosecutors.

Chambers' Prosecutor

Each week a senior crown prosecutor, in rotation, carries out the duties of Chambers' Prosecutor. This prosecutor is then available to junior prosecutors and police prosecutors and members of the police force generally for urgent advice and enquiries. It is intended that this person be available to give advice to prosecutors at all levels and throughout the Territory. In practice, he or she is used by enquirers in the Top End. Access is also available to the Alice Springs Office for enquiries in that region.

The availability of this service has been notified to police in the Police Gazette. It is a useful and much used resource.

Prosecutors' Development Programme

This is a comparatively recent project initiated by the police. Local police prosecutors spend some time in Summary Prosecutions, Darwin (a week or two). The goals of this exercise are to familiarise the relevant police officers with file management, file checking and presentation in court (but only at the plea and mention level). It also serves to introduce members to the staff of SPD and also to the professional staff of the ODPP. It also encourages appropriate professional networking and the use by the bush prosecutors of the Chambers' Prosecutor system.

Support of Bush Prosecutors and Courts

You will be familiar, from your own experience, with the operation over the years of what was formerly titled Police Prosecutions. It was renamed Summary Prosecutions Darwin (and Alice Springs) by virtue of the Memorandum of Understanding in 1998. Throughout the period commencing in the eighties, SPD has routinely serviced Maningrida, the Tiwi Islands, Port Keats and Daly River. The remaining Darwin-based circuits, namely Jabiru, Oenpelli, Nhulunbuy, Galiwinku and Groote Eylandt have only

ever been served on a request basis. The local police have been expected to provide a prosecutor from within their own ranks and have done so for many years. From time to time a request has been made for assistance where the local prosecutor has been unavailable or because a particular base has demanded a special level of expertise.

As you will also be aware, when a case is set for a committal it is normal for this Office to provide the prosecutor. That has been the case through most of the nineties. On such occasions, that is when a Crown prosecutor is visiting a bush court, it is quite common for him or her to also conduct some summary hearings, but not the entire list. The opportunity is always given to the local prosecutor to obtain any assistance required with difficult cases and for any enquiries which he or she has.

There has however, during the latter part of the year 2000, been some change in the level of provision of services from Darwin. NAALAS, who attend the circuits referred to above (except those covered by Miwatj which, as you know, services Nhulunbuy and Groote Eylandt), have been sending two solicitors and one or two field officers to circuits. This has increased the demand for prosecutorial input at these particular circuits. During the latter part of the year an attempt has been made to provide from SPD at least one police officer (being an experienced police prosecutor) together with one of the contract practitioners. This mirrored the effort put into the circuits at Port Keats earlier in the year at which you presided. You will also be aware of increased allocation of resources in respect of victim support at that, and other bush circuits.

The intention is to continue this allocation of resources, as long as it is possible given the ever competing demand made and limitations on those available resources, into the future. It is expected that each local station will continue to have a designated prosecutor who will be responsible for file management between circuits. That member will attend court and effectively assist the prosecutor sent from Darwin. This member will be encouraged to undergo the Prosecutor's Development Programme, to use the Chambers' Prosecutor and seek assistance from SPD (or SPAS) when necessary.

Conclusion

Ultimately, the real question in these matters is whether the time is now right to have legally qualified prosecutors servicing each and every court of summary jurisdiction in the Northern Territory. You will appreciate the significant resource implications that flow from this, although it is probably fair to say that over a period of years, this is what will inevitably occur.

In the meantime it is likely that there will be a continued presence of police officers as prosecutors within SPD (and also in Alice Springs) and in the bush courts. The effort therefore should be to ensure that all such prosecutors have, as a minimum, some participation in the prosecutor development programme and preferably attendance at a prosecutors' course of the kind conducted most recently in 1996.

It is hoped that the discussions initiated between my Office and that of the Commissioner during 2000 will lead to a more consistent performance by the prosecutors in bush courts in the future.

Yours sincerely

Sgd

REX WILD"

49. (I might point out that when Mr Wild wrote "You will be familiar, from your own experience…", I think he was alluding to my experience as a Crown Prosecutor for about 10 years as well as my time since 1993 as a magistrate, and occasional Coroner.)

50. I received another response to my letter of 14 September 2000. Deputy Commissioner John Valentin of the NT police wrote a letter, dated 24 January 2001 which became Ex 41. Some of the material in that letter repeats matters in Mr Wild's but, the Police being as it were the primary source of the material, it will do no harm if there is some repetition in these Findings. Mr Valentin wrote:

"As is apparent from the Director's reply of 19 January 2001, the responsibility for summary prosecutions is one shared with this Office. The Northern Territory Police adopt his submissions in so far as they are relevant to that relationship.

The Inquest also raises issues relating to the education and training of Police prosectors. I understand that you have given the Commissioner leave to make submissions in relation to these matters and they are addressed below.

(a) What prosecutions training is given to members in recruit training, and as they are promoted?

Trainee Constables undergo an initial sex months of intensive recruit training at the NTPFES College during which time the basic requirements in respect of criminal law and Police practice and procedure are learned. Upon completion Constables remain in a probationary period for an additional 18 months during which time competencies are acquired 'on the job' and under the direction and supervision of work place trainers. Trainee and Probationary Constables are not required to obtain competencies in respect of Prosecution Duties and therefore receive no training in that regard.

Prosecutor's Courses have been specifically provided to train members in the roles, duties and responsibilities of a prosecutor. These courses have to date been conducted through the NTPFES College. The NTPFES College is currently redeveloping the Prosecutor's Course with a view to defining two clear areas of competency:

· Prosecutions for Small Stations, and

· Prosecutions for Larger Centres.

It is not an essential requirement for a member to have completed a 'Prosecutor's Course' for promotion to the rank of Sergeant. Likewise, it is not an essential requirement that a member undergo a 'Prosecutor's Course' prior to transfer for a position in Police Prosecutions or other position where the prosecution function forms a major part of the member's duties. It is, however, a feature of the merit based system that aptitude for the discharge of duty is a fundamental requisite for both promotion and transfer.

(b) What education is provided by the DPP? (including Summary Prosecutions)

Since May 1997 the Office of the Director of Public Prosecutions has conducted a variety of in-service training opportunities, the most notable being two intensive 3–day training seminars conducted in early 1998 and March 2000. All available prosecutors from Darwin Summary prosecutions attended these seminars, as did a number of Police Prosecutors from other locations. Components of these seminars dealt specifically with issues affecting Police and Summary prosecutors, and included an examination of legislative changes in respect of Mandatory Sentencing. On both occasions, the Attorney-General opened the training seminars.

Other training opportunities have included lunch-time seminars where judicial topics are discussed and explored. These are conducted in an ad hoc manner, generally following a change in legislation or judicial procedure affecting the administration of justice. There was one such information seminar in respect of Mandatory Sentencing conducted in 1998. The seminar included members attached to Alice Springs Summary Prosecutions through the use of tele-conference facilities.

The Prosecutor's Development program is another avenue by which education is provided by the DPP through the resources of Summary Prosecutions, Darwin. The scheme operates on an informal basis and grew out of a recognition that members involved in prosecutions at bush stations require exposure to the practice and procedure associated with file management, file checking and presentation in court (plea and mention). The scheme also has the benefit of introducing members to DPP staff and establishing a basis for future networking and use of the Chamber Prosecutor System.

(c) What prosecutions training had been given to Sergeant McCallum in particular?

Amendments to the Sentencing Act, providing a mandatory term of imprisonment for property offenders, became law in the Northern Territory in March 1997. At that time the Commissioner provided advice in respect of these changes to all members of the NT Police Force, by way of the following NT Police Gazette Notices:

· N60/G11/1997 – "Important Notice to All Members Carrying out Prosecution Duties".

· N122/G18/1997 – "Mandatory Sentencing"

Amendments to both the Sentencing Act and the Juvenile Justice Act, providing alternatives for the sentencing of young offenders (aged 15 and 16 years) who appear in court for their second property offence, became law in July and August 1999. Since that time the Commissioner has provided advice in respect of these changes to all members of the NT Police Force, by way of the following NT Police Gazette Notices:-

· N132/G17/1999 – "Diversionary Programs"

· N37/G4/2000 – "Amended Arrangements – Police Responsibilities – Diversionary Programs – Victim/Offender Conferencing"

The introduction of the Sentencing of Juveniles (Miscellaneous Provisions) Act, which altered the upper age limit of juveniles for the purposes of criminal law so that all 17 year olds would be treated as juveniles and not as adults, became law in the Northern Territory in June 2000. Prior to its introduction the Commissioner provided advice in respect of the proposed changes to all members of the NT Police Force, by NT Police Gazette Notice:-

· N91/G11/2000 – "Sentencing of Juveniles (Miscellaneous Provisions) Act 2000"

Copies of these Gazette Notices are attached. The NT Police Gazette is circulated to all stations throughout the Territory.

(d) What steps have NT Police (and the Office of the DPP and other Agencies involved) now taken to remedy the situation to avoid future problems?

A training program specific to Victim-Offender Conferencing has been jointly developed by a private education provider and the Northern Territory Police. This program commenced on 4 December 2000 as part of the operations of the Juvenile Diversion Division within the Department of Police, Fire and Emergency Services. The program comprises a two day course in victim offender conference facilitation. To date there have been five such courses, which have been conducted in Darwin, Alice Springs and Tennant Creek, involving members of the NT Police from throughout the Territory. A further 3 courses are planned for early February 2001. By the end of February 2001, over 200 police officers will have completed the course.

These officers will be able to use knowledge gained from these courses when acting in their capacity as Police Prosecutions, and the Officer in Charge of Summary Prosecutions, to assist at remote sittings where contested, complex or sensitive matters are to be heard.

The Officer in Charge, Summary Prosecutions, Darwin has further extended this commitment, through the following development strategies:-

· The provision of a Darwin-based prosecutor for "Top End" circuits as an on-the-job training resource to remote stations (Darwin Summary Prosecution caseloads permitting).

· The provision of training opportunities whereby "Bush Prosecutors" are invited to attend DPP in-service training programs.

· The encouragement of "Bush Prosecutors" to use the offices of Summary Prosecutions at both Darwin and Alice Springs as a conduit to the resources of the DPP.

· The initiation of an "Extended Prosecutor Development Program" whereby members performing prosecution duties are the subject of ongoing mentoring with a view to advancing merit in respect of future selection to positions within the Office of Summary Prosecutions.

· An information Package to prosecutors performing duty in remote localities is to be produced jointly by the Offices of Summary Prosecutions. The package will include:

(i) Examinations of the Sentencing Act, with particular reference to Division 6 and its application to assault and property offences. Primarily, attention will be drawn to the Courts' interpretations of what constitutes a trivial offence, a prior conviction, a term of actual imprisonment and exceptional circumstances.

(ii) An exploration of Post Court Diversionary Programs, the circumstances in which Diversion can be appropriate and there availability of Programs, together with the associated applications of the Juvenile Justice Act.

(iii) The applications of General Orders, particularly from a prosecution perspective, as they relate to juvenile offenders, suspect interviews and the use of interpreters.

I trust that this information will be of some assistance to you in the conduct of the inquest.

Yours faithfully

Sgd.

J G VALENTIN

DEPUTY COMMISSIONER

24 January 2000"

51. During 2000-2001 the bush courts where I have sat (Port Keats and Daly River often; Alyangula, Nhulunbuy and Maningrida once or twice) have been attended by prosecutors travelling from Darwin, and it has just about never been the case – it was once common - that the local police prosecutor has been left to carry the list on his or her own. On occasion, I assume when the DPP's personnel are stretched, private practitioners

possessed of an amount of prosecuting experience have been retained to do the work. (I do not know what has been happening in this respect on the circuits out of Alice Springs and Katherine.) As long as this allocation of prosecutions resources continues, it is to be expected that the travelling prosecutor will be sufficiently learned and, it to be hoped, sufficiently bold, to inform a magistrate on the brink of falling into errors of the sort made about the law applicable to the sentencing of the Deceased.

52. We all know that courts make errors, and those who have participated in bush courts would probably agree that errors are more likely there than in town because of, for one thing, the quantity of cases dealt with and, for another, the lack of an informed audience of idle lawyers each waiting for his or her case to come on and capable of alerting those at the bar table that something may be going wrong. All the same it almost beggars belief that any defendant, let alone a legally represented defendant, should have been subjected to 3 errors in two appearances. In respect of everyone's failure to take into account, on 19 October 1999, that the Deceased has spent time in custody on account of the charges than being dealt with, I note that the Juvenile Justice Act had been amended (Act No. 51 of 1998) on 21/10/98 to permit backdating of sentences to take account of such time. I would expect anyone entrusted with the office of prosecutor to know the importance of informing the court of any such time spent – the prosecutor's file is often the best source of exact detail as to the number of days. Whether Acting Sgt James had that knowledge I cannot say. I do not think I can be very critical of his failure to stick to his guns on the "first strike/second strike" issue - he raised the point and was overruled by the magistrate: it would be unreasonable to expect a part-time prosecutor to do much more. The same cannot be said of Ms Collins, who also seems to have felt that something was going wrong with the process, but was soon dissuaded from pursuing the point. Similarly, she should have raised the matter of the time in custody. There is a matter extenuating the failure of both Ms Collins and Sgt James. After the plea in mitigation, the matter was stood down for a report on the suitability of the Deceased for community service work. It was when the matter resumed that the court began to stray into error. Perhaps neither prosecutor nor defence lawyer would have been expecting a sentence of detention to emerge: they may have been caught on the hop.

53. Even so, one would hope that any lawyer would be more resolute in arguing against a perceived or suspected error. Ms Collin's client, the Deceased was, after all, a very young defendant labouring under the usual linguistic and cultural disadvantages in coping with the criminal process. He was hardly in a position to look after himself. Similarly, it is difficult to understand why, if Ms Collins did have these suspicions, she did not seek instructions from the Deceased to appeal against the sentence.

54. I should note that there is some potential for unfairness in my expressing these criticisms of Ms Collins, and Sgt James, without her or his having given evidence or being asked to make a statement.

55. It seems to me that this uncorrected error on the first strike/ second strike issue, made in the sentencing on 19 October 1999 was historically the crucial one: it having been made, the further error on 18 January 2000 was almost bound to follow. It is ultimately

futile to speculate what the sentence would have been on 19 October 1999 had the error not been made, but people will want to speculate, so I add the following material, a short account of the Deceased's offending for which he was sentenced that day. He begins on a bond (from 17 March 1988) to be of good behaviour until 16 March 1989. He breaches that bond fairly quickly. I glean these details from Folio 9 of Ex 5, a collection of prosecution precis of offences, Ex 7, the complete collection of his Juvenile Court files and Folio 31 of Vol 5, Ex 1, the transcript of proceedings on 18/10/99.

1) 8 August 1998 – Unlawful Damage.

Deceased and one other threw rocks at parked vehicle, smashing windscreen at airport carpark.

2) 22 August 1998 – Unlawful Damage et al.

Deceased and five others try to steal a vehicle at Umbakumba.

3) 25 August 1998 – Unlawful use.

Deceased and two others at Angurugu accept a lift in an already-stolen vehicle.

The Deceased was arrested and bailed on 1/9/98 for those offences. (File 9818347). A warrant issued on 15/9/98 when he failed to answer his bail. Next:

4) 12-13 September 1998 – Unlawful entry.

Deceased and two others break into the Angurugu Council office, intending to steal.

5) 19 December 1998 – Unlawful entry.

Deceased entered the Angurugu Council office (after it had been opened up by other offenders), intending to steal.

The Deceased was arrested on 22 December 1998 for those offences (file 9827807) and again bailed. (I cannot find any reference to the warrant from 15/9/98, the existence of which may have been overlooked.) He would ultimately fail to appear in answer to that bail on 19/1/98. But first:

6) 26 December 1998 – Unlawful entry and Stealing

The Deceased recruited 2 friends to help him break into the Angurugu Store, and steal some coke, cake, cashew nuts, cigarettes and tobacco.

The Deceased was arrested and charged on 29 December 1995 for those offences (file 9828202) and remanded in detention to appear in Darwin where he was bailed the net day. The Deceased failed to appear in answer to his bail. Next:

7) 6 April 1999 – Unlawful Damage, Unlawful Entry, Stealing.

The Deceased and two others broke into the Angurugu School, he and one other entering, and stole $187.65 cash and a jerry can of petrol, which they later sniffed. The money was recovered.

The Deceased was arrested and charged on 6 April for these offences (file 9907577) and once again bailed again with, as far as I can see, no reference to the existing warrant. Yet another warrant issued on 24/4/99. Then:

8) 26 June 1999 – Unlawful entry x 2, Unlawful Damage, Stealing.

The Defendant and six others broke into the Angurugu School, which they (but not the Deceased) vandalised. Later they broke into the Angurugu Store, stole $7,850 cash an amount of food, drinks, cigarettes etc. Some cash and some goods recovered.

The Deceased was arrested and charged on 27/6/99 (file 9914692) and remanded in detention until bailed on 6/7/99. On 9/7/99 the Deceased answered his bail, which was continued. On 17/8/99 he failed to appear and another warrant issued. On 19 October he appeared in court, apparently of his own volition, and pleaded guilty to all charges.

56. The deceased thus offended on 8 separate dates altogether, 6 of them while on the bond to be of good behaviour. He offended on 5 dates after first being admitted to bail. In the course of the offending he seems to have moved from being a follower to being, at least once, the instigator in respect of offences. He turned 15 on 17 May 1999.

57. Had I been the magistrate sentencing the Deceased on those charges, undistracted by considerations of mandatory sentencing, I am sure I would have been at least considering a sentence involving actual detention, notwithstanding the Deceased's youth and nugatory record of previous offences. No one acquainted with sentencing standards in the Juvenile Court, be it sitting at Alyangula or anywhere else in the Territory, could confidently expect such an offender not to be sentenced to detention. On the other hand, a non-custodial sentence was possible, quite likely at the height of Mr McCormack's regime. What I hope I would have done is to order a report pursuant to s 44 of the Juvenile Justice Act before deciding. If I did that, it is quite likely that I would have remanded the Deceased in detention while the pre sentence report ("PSR") was prepared. It usually takes 6 weeks to prepare a PSR, but, when the offender is in custody, it can often be completed in 4 (so if that course were followed, the Deceased would have done 28 days detention anyhow). As at 19/10/99, the date of the Deceased's sentencing, it was entirely a matter for the Court's discretion whether a PSR was ordered. S 44(1) then read:

"44. POWERS OF COURT IN RESPECT OF REPORTS

(1) A court dealing under this Act with a juvenile may require the Minister or such other person as it thinks fit to furnish to it a report relating to the juvenile and the Minister or that other person shall comply with the requirement.

Penalty: $500"

58. Section 44 was amended (by Act No. 12 of 1999) and from 22 December 1999 relevantly provided:

"44. POWERS OF COURTS IN RESPECT OF REPORTS

(1) If the Court dealing under this Act with a juvenile finds a charge proven against the juvenile and is considering imposing a sentence of detention or imprisonment in respect of the offence charged, the Court must, except in a case to which subsection (1A) applies, require the Minister or such other person as it thinks fit to provide to it a report on the circumstances of the juvenile.

(1A) If the offence charged is a property offence, the Court may, but need not, require a report to be provided under subsection (1)."

59. It is possible that the legislature was moved, eventually, to make that amendment by the remarks of Martin CJ in Nelson v Chute (1985) 72 A Crim R 85. [If so, it has answered the mischief as intended, in respect of cases where the court is considering imposing a sentence of actual detention; and created another mischief, in the form of sometimes pointless delay of 6 weeks or so, in respect of cases where the most the court is considering imposing is a suspended sentence of detention.]

60. The provenance of the new s 44(1A) (which, though left in existence when the mandatory sentencing provisions were generally repealed recently, appears to be now meaningless) is less obvious, but it may be fair to attribute to the legislature a sentiment to the effect that, if an offender is going into detention anyhow by virtue of mandatory sentencing, there will be little point, in many cases, in calling for a PSR. Speaking only for myself, as a sentencing magistrate, the existence of the mandatory sentencing regime had at least sometimes tended to create that sentiment in me, (my thinking being that the procedures at Don Dale during custody and prior to release would probably uncover the most pertinent problems and evolve a plan to deal with them) so that the creation of s 48(1A) seemed to be a concession by the legislature to both practicality and practice. These are the considerations which led me, earlier in these Findings to attribute there having been no PSR ever completed on the Deceased to the existence of the mandatory sentencing regime.

61. There is no knowing what a PSR would have revealed about the Deceased and his then circumstances, nor whether, as a side effect of the preparation of the PSR, others – community members or government authorities – might have been led to do something to alter his circumstances. A chance – a small chance I think – was missed.

The Sentencing on 18 January 2000.

62. The Deceased was discharged from Don Dale, after serving 28 days, on 15 November. His Don Dale file, Ex 3, records on page A22 "15/11 1700 OUT Discharge from Airport," from which I infer that he was that same day repatriated to Groote Eylandt. He re-offended twice before being sentenced on 15 January. Again, I summarise his offending, basing the summary on the court files, part of Ex 7, and in the prosecution precis, and transcript of proceedings on 18/1/00, Folios 9 and 30 respectively of Vol 5, Ex 1.

1) 27 November 1999 – Unlawful Entry, Stealing.

The Deceased and two others broke into the Angurugu Council offices in search of money. Finding none, he stole pens, texta colours and liquid paper.

The Deceased was arrested and charged and bailed for these 2 offences on 29/11/99. (p 46): It might in my opinion be reasonable to suspect that the Deceased, by offending again to soon after his release from Don Dale, was evidencing a desire to go back there or indifference as to whether he did or not. There is no indication that anyone in the subsequent court process formed that suspicion.

2) 5-6 December 1999. Unlawful Entry. Stealing, Unlawful Damage.

The Deceased was approached one night by a friend who told him a workshop at the Angurugu school was open. The Deceased and friends entered, some oil and paint was stolen. A co-offender smashed 5 louvres.

The Deceased was arrested, charged and bailed for these offences on 7 December 1999. He answered his bail on both cases by appearing at Court on 21 December when his bail was continued.

63. He answered his bail again on 18 January and entered pleas of guilty to all the charges. No one in the Court appears to have considered any disposition apart from detention of at least the mandatory minimum of 28 days. I heard evidence from both Sgt McCallum, the prosecutor that day, and Mr Selwyn Hausman, the Deceased's lawyer that day. Neither, it seems, was then aware that "victim – offender conferencing" a programme approved under s 53AE(3) of the Juvenile Justice Act, was available on Groote Eylandt. Its availability meant that, the Deceased having once before been found guilty of a property offence (committed when he was more than 15 years of age) the Court could lawfully dispose of his case without necessarily sentencing him to detention.

64. Mr Hausman had been employed by Miwatj and practising in the Territory only a few weeks, since November 1999, but all the same should have been up to speed on all aspects of the mandatory sentencing legislation, omnipresent in Miwatj's criminal practice both in the East Arnhem region and on Groote Eylandt. Sgt McCallum had been

designated police prosecutor at Alyangula for about the same time. The January 2000 court would have been his second, at most (Mr Wild's letter has it that it was his first) apart from his 5 days training in the Darwin Court. His ignorance, at that time, of the availability of victim-offender conferencing, seems understandable to me.

65. It should also be appreciated that the sentence of 28 days detention passed in October 1999 would be expected to affect the thinking of prosecutor, defence lawyer and magistrate during the process on 18 January 2000. Each had before him a copy of the record of previous convictions. Each, seeing the previous sentence, among a long dozen previous property offences, is likely to have assumed that the 28 days sentence in October was (a) a mandatory sentence, and (b) arrived at by valid reasoning. If it were a valid, mandatory sentence, then, as the mandatory sentencing scheme worked, the court would have no option this time: a sentence of a least 25 days actual detention would be mandated. Consequently each would be dissuaded from careful consideration of the Deceased's date of birth (which was correctly printed on the list of previous convictions tendered, and now part of Ex 7) and of the dates of the previous offences (which were not printed at all on the list). The October error thus probably infected the January process, which is why I described the October error as "the crucial one" earlier in these Findings.

66. Mr Lawrence, counsel for the Deceased's family, draws attention in his written submissions to the considerable role played by the magistrate in bringing about the errors on both sentencing dates. This is indisputable. He goes on to write, in paragraph 60 of his submissions:

"The establishment may consider targeting the defence lawyer that day [18 January 2000] but there are many parties and aspects which are responsible for the incorrect sentence that day."

67. Establishment or not, I am indeed inclined to "target" Mr Hausman, the defence lawyer that day. Again, I adopt Ms Morris's submissions:

"It goes without saying that those with the least understanding of the system should have adequate and well informed representation. The quality of representation of the deceased by either of his counsel was insufficient to be able to properly advise him and present a plea in mitigation in the Juvenile Court.

Mr Hausman blames this on the lack of resources at his disposal to deal with the number of clients that he had to deal with on that day. The court list indicates that there were 5 juveniles and 34 adults listed for mention that day. However, it was his duty, when representing the deceased to put to the Court all matters pertinent to his client regarding sentencing options and the law. He was the only one who could speak to and speak for the deceased in court.

It is my submission that he failed to do this. Though one can see the difficulties for a lone solicitor, in a remote area court, with clients for whom English is not a first language, in

picking through a maze of new legislation and dates of offences, with the pressure of an imminent court appearance."

68. I should add that my colleague Mr Lowndes SM, who has been the magistrate conducting the Groote Eylandt circuits since early 2001, has informed me that, in recent months, there have attended two, and sometimes three lawyers for the defence: Mr Carr, of Miwatj, and one or two counsel briefed from Darwin. With such resources, it is obvious that there is far less chance that mistakes like those made over the Deceased, will recur. I am not informed whether Miwatj is equally well supported at its other main court, in Nhulunbuy. Magistrates travelling to circuits where the defendants are served by NAALAS, KRALAS or CAALAS might well envy Mr Lowndes his wealth of assistance.

69. I have made recommendations (to be found at the end of these Findings) in respect of prosecution and defence resources at bush courts. The situation spoken of by Mr Lowndes sounds entirely satisfactory, on the defence side, and the greater provision of prosecutors mentioned above, has likewise improved the bush courts' proceedings. Even so no one could pretend that the service provided is equal to that provided in the major centres. And there is no doubt that it is the defendants from remote communities who have the least understanding of the process, and the greatest disadvantages – educational, linguistic, cultural – in dealing with it.

THE SYSTEMS ETC OF THE DON DALE CENTRE

70. The Don Dale Centre, at Berrimah between Darwin and Palmerston, has been the main Juvenile Detention Centre in the Northern Territory since it opened 10 or 12 years ago. There is a second Centre, the Wildman River Wilderness Camp, also in the Top End, near the western border of Kakadu National Park. A third Centre, Aranda House, in the Alice Springs has been more recently approved: it is used only for remands of a few days. Sentenced detainees throughout the Territory are sent to Don Dale, and perhaps, after assessment from there to Wildman River. Prior to Don Dale's opening, juveniles could be sent to Malak House (in suburban Darwin) or Giles House (in Alice Springs – the premises now named Aranda House), or Wildman River.

71. Mr Steven Parker was, at the time of the death of the Deceased, employed as a Superintendent by the Department of Correctional Services, and was responsible for all three Detention Centres. Mr Parker worked his way up to that position. He had had some experience as a prison officer in Victoria, and other experience in business and as a fireman, but as far as Correctional Services in the Northern Territory are concerned his career seems to have begun when he was recruited in about 1989 to sort out problems that had arisen at the Wildman River Centre. Neither then nor later did Mr Parker have any formal qualifications in management or administration, or in youth work or social work (see transcript p574), but he took on that job and ran that Centre for about 3 years to the evident satisfaction of the Department, which proceeded to put him in charge of Don Dale as well, in about 1994. The Centre in Alice Springs has since been added to his

responsibilities. Mr Parker gave evidence at the Inquest on 23 – 24 January 2001. He had also provided two long statements to Detective Sergeant Nixon on 10 and 14 February 2000. [There recently appeared an article in the NT News noting Mr Parker's retirement.]

72. The Don Dale Centre, its staff, its policies and its operations were, at the time of the death of the Deceased, very much Mr Parker's creation. In respect of his approach to the employment of staff he said (transcript p603 – 604 questions by Mr Grant, for the Department):

"Now in terms of the discharge of your responsibilities as superintendent, particularly of the Don Dale Centre, what sort of people do you recruit to assist you in the particular task?---They need certain qualities. (a) they need to have had some experience working with juveniles, and that – they don't necessarily have to have worked with juveniles but if they've brought up a family, as an example, that's very helpful. I'm very interested in their recreational skills. I'm also interested – they need to have a good sense of humour because, let's face it: you can't work in a place like that and take everything to heart. I look very closely – you're probably aware that I put on casuals first up and I watch them very closely for the first few months to see – well, I know when people first, you know, start any job they do their best, you know, they're at their best behaviour, etcetera, but after a few months, if they're racist, if they've got problems – they don't like working with kids, that sort of thing, that becomes obvious and you're able to sort them out fairly simply.

Now, you're speaking there of the youth workers that you engage?---Yep.

Now, what about functions that require professional staff such as counselling and medical treatment and those sorts of things. How does the facility make those sorts of services available to detainees?---Well, I suppose – it was interesting, before the last adjournment I was reading one of the articles – I think it was in The Age – where they made or they were trying to make something out of the fact that the three people that were on the stand that day – one was a shop-keeper, one was a hairdresser and I think the other one was a butcher and sort of intimated that they should all have tertiary qualifications when in fact the hair dresser is also a seamstress and she's one of the most popular people there because she – they love her cutting their hair and she actually helps them make things to take home with them. The shopkeeper referred to is actually – his father owned the shop. It was actually a fishing tackle shop, so he's one guy that shows them how to make lures, how to make flies and takes them out fishing on his own time. And, of course, the butcher, he's handy. He shows them this is how you cut up meat, this is how you – you know, whatever butchers do. And that's the sort of people I'm looking for because through the day, all day, they've got professional people in their ear. They've started off by going – they're off to school. They've got the school teachers. Then they've got the lawyers, then the psychologists, then the psychiatrists, then the medical people and they've forever got people in their ear. When 3 o'clock comes, they need to relax with people they can relate to. And that's what I do at the Don Dale Centre.

All right. So in terms of people acquiring professional qualifications to provide care and treatment to these kids, do you employ them in-house, or do you use people from outside or is it a combination of both?---Our professional person in our case is Sue Jipp was on earlier. She's our senior case worker. We have people – we have some people that work for us that do have tertiary qualifications, but that's not why they were picked. Now, if I need professional help, then we get it from outside. I mean that's what they're there for.

All right. And could you give His Worship examples of the sort of professional assistance you get from outside?---Well, we've got mental health, for example, the psychologists, psychiatrists. We'll have – Danila Dilba will bring people that'll go through the different programs that they run which will be Aboriginal health, alcohol abuse, all those sorts of things. Whatever's required, we'll supply."

73. As to the question what Don Dale is supposed to do, to achieve, he said (p604 – 605):

"Now, in terms of your management regime there, how do you perceive the purpose of the Don Dale centre and how, in your view, is that purpose best achieved?---The purpose of the Don Dale Centre?

Mm?---Well, obviously we're – our job is to keep these kids off the streets, out of the community because the courts have sent them to us. But if you're asking me what – are you asking me what we actually do when they first come up, what our purpose is once they get there?

I'm talking about your general purpose in terms of dealing with these detainees?---My general purpose is – well, first of all, we start off – all my staff know it – that in my opinion – and the staff are all the same – these aren't – these kids aren't crims. Not yet. At this stage of the game, there's a chance. We know we can't change all of them, but we can give it one hell of a good try. But at least we can give them all the options, and we have so many outside agencies that help us do that, that if you get off the crime, if you get off the booze, if you get off the drugs, these are the many things that can open to you. That's something they have no choice but to learn.

Now, whether they take it up once they get out, that's where they have to (inaudible).

All right. What's the purpose of the educational facility within the Don Dale Centre?---That's a very interesting one, really, because I'm still amazed at the number of kids who've never been to school or who have been chucked out of every school in Darwin actually take to it and do quite well. One kid, I would have put money on that he wouldn't – but he's – all of a sudden he's just passed Year 11. He hasn't been to school in three years. So that's the idea of that. There's also another thing – here's another thing: go to school; this is going to help you in later life."

74. Mr Parker was quite plainly proud of the results. At p605 he said:

"All right. Now, in terms of the operation of a juvenile detention centre, what do you consider to be the benchmarks of success in that sort of operation?---Okay. I think if you look at any institution – and I've been asked to look at a couple – the first thing you look at, I suppose – there are benchmarks or indicators, if you like. You go for – we'll talk (inaudible) about juvenile detention centres. You look at – okay, what's the escape rate? How much violence is there amongst detainees? How much violence is there between staff and detainees? What's the sick leave rate of staff? How many people are on workers compensation? These types of things. You get those and it's a very good indicator of whether it's a good or bad institution.

All right. If I could just deal with those things. What sort of rates of violence do you have amongst detainees and between staff and detainees in the Don Dale Centre?---It's very rare. I think I had one last year where I think one of the kids hit a staff member, and then apologised profusely. Then we had the – the ones – with a kid it's very rare (inaudible) a flat-out punch up when someone's been seriously hurt. It's usually the old school yard sort of a bit of a scuffle. One will throw a hit and the other one will turn around and run away. Having said that, I mean, I had a kid a couple of years ago who had four teeth knocked out but that was still only like the one single punch and it was dealt with.

So - - - ?---Quite rare, in other words."

and (p605 – 606):

"Right. Just going back now to the benchmarks of success in the operation of a detention centre, you spoke of rates of escape. What sort of escape rates do you have at Don Dale?---I think we had one escape last year. The other one was a young fellow who actually absconded when – he was in a work vehicle and he went to see mum and then mum brought him back after an hour. But it's quite rare. I mean, when you compare the fact that you're talking about in the 40s and 50s in the old days now it would be around about maybe one a year.

How do you maintain the balance between having a secure institution where you don't have that many escapes and maintaining and institution that doesn't alienate the detainees?---That's all on good staff. That's down to having good staff. I mean, they know what they're doing. They negotiate with the kids, they relate to the kids, they look after the kids. The kids know they're looked after. The kids know that the people care.

All right. What about the built, physical environment in which are?---Well, the Don Dale Centre is obviously a secure – I mean, the whole building is actually the secure part. But Wildman River, obviously it has no fences, they don't actually escape from there. They walk out."

and (606):

"All right. Just moving now to your staff and the benchmarks relevant to staff you were speaking of earlier. What sort of workers compensation absences do you have there?---

Currently, I have one and that, unfortunately, is to do with this particular coronial where he's very badly traumatised, but before that I can't – it's very rare. I can't remember the last person that was on worker's comp.

All right. And what about sick leave rates?---Very low. I think we're the lowest in Australia. The last meeting I went to, we talked about sick – how we deal with sick leave and things like that. We don't have any problems. For example, in the last – I think it was in Melbourne – 20% of that day's staff were on sick leave.

Okay. In terms of your staff turnover, how would you describe that? Is it a low turnover or regular turnover?---Very low turnover in permanent staff. A higher turnover in – well, casual staff, if you like, but then again, I also stress that the casuals are there to be watched and then when a permanent position comes up, they will then go for that position and of course the best one will win it, and we know what we're getting."

75. As to the physical structure of the place, he said (p606):

"And in terms of the building of Don Dale, are there any features incorporated there to I suppose soften its character and function as a secure custodial institution?---Yeah, well it's also a little bit different to others where you have the bedrooms open straight out on to the recreation area. The whole place is carpeted. At the night, the kids aren't locked in. Their doors are left open for them unless – you know, if one's playing up or something, we lock him up. But generally speaking, the doors are left open so it gives the atmosphere of it being one big dormitory if you like so that they don't have to press buttons or whatever. If they want someone, they merely go to the door and someone will come to them because we've got staff there, you know, on duty all the time."

76. He had said earlier, (questioned by Ms Morris), at p600:

"And so minimise places where someone can cause themselves harm. As part of general security audit, is that looked at?---Absolutely. If I may just – we do look at that, and what we're saying, we're trying to make that place a more homely place. One of the biggest differences I've found between our centre, for example, and many others interstate was they still – they're still designed on the old prison system where you have these small, single cells, glass doors, absolutely no privacy and they were very stark sort of places and had very, very few hanging points. The same places have a lot of problems. I mean, if you go over the last year or two – no, last year, there's four or five different states that had riots – in my opinion for that reason. So I try and keep this place, yes, they have – they have the nice rooms, they've got the carpet, they got – well, what can I say? Someone described it as a boarding school.

You'd agree with me, though, it's a balance between your duty of care to look after the detainees and between creating as homely an environment as possible?---Absolutely, and it's a very difficult one."

77. As to the outcomes of all of this, up to the death of the Deceased, (p606, question from Mr Grant):

"Now, relatively speaking, and I'm asking you here now to relate this to the experience in other institutions within Australia particularly. What is the incidence of self-harm and suicide amongst detainees at Don Dale?---The last one I can remember is Nathan and that would have been six years ago. That was self-harm. And - - - ?---And six years before that. Mind you, I have to say when I first started that it was quite a prevalent thing and that's because the kids were all trying to get out of there – especially Wildman. They wanted to get out of the place, away from that regime.

Right. And during the course of your time at the Don Dale Centre, is this the only suicide that's taken place?---Yes.

And the incident of self-harm that you alluded to some six years ago or so, what did that involve?---He pulled his toe nails out of his foot."

78. Another way of putting this would be to say that Mr Parker had a preference for recruiting staff who were made, in a way, in his own image, and according to their observed aptitude for the practical work. He seems to have recruited well. I heard evidence from, I think 10 Youth Workers (ie. Warders), 3 teachers and from Ms Jipp, the Senior Case Worker (ie. Social Worker) from the Don Dale Centre. The evidence of those witnesses and the way they gave it persuaded me that all of them saw it as their duty to care for the detainees, that is to guard their health and well being, in the best way that they possibly could. I have also read their statements to police, and the statements of about 30 other Don Dale staff, which give me the same impression. Further, it is my inexpert opinion, for what it is worth, that Mr Parker was probably correct in his belief that the varied backgrounds of the Youth Workers – the butcher, the hairdresser, the star footballer (Mr AhMat, not called as a witness; his statement is folio 6 of Vol 3 of Ex 1) etc – were of at least as much use to them in their jobs as Youth Workers than any amount of academic training would be.

79. The official published collection of Procedures and Instructions for staff at Don Dale was contained in a Manual which became Ex 9. This is a loose-leaf folder in 18 sections, with about 200 pages of text. According to Mr Parker all staff were expected to be familiar with the contents of the Manual. The evidence in the Inquest establishes that staff were not systematically taught these contents, nor were they tested on their knowledge of them.

80. In any event, day to day operations at Don Dale did not always accord with the requirements of the Manual. To take one example, the Manual mandated a debriefing within 24 hours after the occurrence of any emergency, in order that planning could be updated and amended as necessary. No such debriefing occurred within 24 hours (nor, apparently later) of the emergency created by the death of the Deceased. To take another example, the Manual required that for each juvenile detainee a "plan of action" was to be formulated within 3 days of the detainees admission. The formulation of such plans was

one of the responsibilities of Ms Jipp, the Senior Case Worker. In the case of the Deceased there was no documented plan. Ms Jipp's evidence was that they had such a plan, but that it was not written down. Her evidence was that the period of 3 days spoken of by the Manual was too short. On p524 of the transcript, questioned by Mr Lawrence, she said:

"Was a plan of action drawn up in relation to the deceased here within three days?---No and this is actually going to be all amended this section as we find that three days is not very good length of time especially for someone coming into detention who's in shock or might be withdrawing from drugs. Three days doesn't give enough settling down period to actually draw up a workable case plan.

Is that because of their state of mind?---Yeah, their state of mind and just how they settle into a place where (inaudible) a lot of different personalities (inaudible) kids are (inaudible) so it takes a lot of settling down these kids.

And did you say something about amending it?---Apparently it's going to be amended and that it doesn't have to necessarily be three days."

81. A few questions later, he said:

"So you say there was a plan of action?---Yes.

And what was that plan of action?---It was to help him settle into the Don Dale routine again, it was to make sure he had appropriate drug and alcohol counselling, it was to look at or provide him with a safe environment to de-tox in. We only had 28 days so there wasn't really much else we could do other than try and find him somewhere appropriate live when he got out. We just look after the day to day needs (inaudible)."

82. I accept Ms Jipp's evidence that she did have a plan, a fairly exiguous one, but appropriately so in view of the relatively short time the deceased would be in Don Dale. For present purposes my reference to this part of the evidence is directed to its demonstration of a divorce between what the Manual prescribed, and what Don Dale's practice was.

83. The divorce between prescript and practice was no doubt sometimes unwitting – as when some of the staff may not have grasped totally the contents of the Manual – but at other times not, as in the example of Ms Jipp and the 3 day case plan requirement. Plainly she, in some cases, knowing the requirement, and believing it to be impractical, disregarded it. It is obvious that the staff of an institution like Don Dale must have an amount of discretion in dealing with the detainees under their care. It seems to me that Mr Parker, trusting his staff as he did, entrusted them with a great deal of discretion, to the point where compliance with some of the prescriptions of the Manual was seen as discretionary. A few examples of discretionary non-compliance have a bearing on questions arising from the death of the Deceased (in my opinion the two examples outlined above do not).

THE SUPERVISION AND TREATMENT OF THE DECEASED WHILE HE WAS IN CUSTODY, AND HIS STATE OF MIND.

84. The Deceased spent the night of 29 December 1998 in detention at Don Dale, arriving there at 21:35 hours. He was bailed by the Darwin Juvenile Court the next day, so that period of detention, his first, gave little scope for staff to observe and assess him. The admission form has him "apprehensive". A case note by Senior Youth worker Ingham reads (from Ex 3, the Deceased's personal file at Don Dale):

"On arrival Johno was very nervous but after talking to him and calming him down he soon relaxed.

After the general admission he was calm and we [?] again reassured him that he would be okay he was placed in mainstream.

He was not hungry and so was put to a bedroom after making his bed he went to bed."

85. He next came to Don Dale on remand on 28 June 1999. The admission form this time has him "nervous and uncooperative", and a case note from one McGinn (presumably Andrew Reilly McGinn, Youth Worker (statement Folio 10 Vol 3 Ex1) reads:

"Johnno was received from NT Police at 1800hrs today, although initially compliant with staff and admission procedure, he refused to complete the admission procedure with staff.

Staff talked to him about this at length. Johnno still refused to comply, staff then told Johnno to go to cell 3 shown to him by staff, which he did.

Johnno was maintained on constant camera/video surveillance for 35 mins after which he agreed to proceed with the rest of admission, taken through to mainstream at 1900hrs, appeared to settle quickly, staff offered and gave some reassurance.

Behaviour for remainder of shift was cheerful and appropriate."

86. Otherwise that period, a remand of 10 days, left nothing of interest on his personal file, and apparently next to nothing in the memory of any of the staff who have made statements.

87. His next admission was on 19 October 1999, sentenced earlier that day to 28 days detention. There is an amount of evidence suggesting that his demeanour and behaviour during the serving of this sentence differed from that during his (final) sentence that commenced on 18 January 2000. The difference is not evident from the two sets of admission papers. On 19 October 1999, the admission form has him "cheerful and cooperative" and a case note, by Mr McGinn says"

"Johnno was cooperative and cheerful throughout the admission, details documented given an evening meal, allocated a bedroom. He retired to bed at approx 22:30 hours."

88. Similarly, on 18 January 2000 the admission form has him "compliant, cheerful", and the case note, by Mr AhMat says:

"Johnno was cheerful and compliant during advice on procedure. Johnno keep [sic] pointing to the right side of his head near the temple saying it was hurting. Asked if he would like a Panadol but declined. Johnno said he had medication at home. Johnno was given a meal and placed in Room 4 for the night.

89. Not much of a change there, apart from the headache. One difference, undeniably important, is not evident from the notes. In October 1999 the Deceased was not alone in being sentenced from Groote Eylandt. He arrived at Don Dale in the company of another young prisoner, his cousin, friend, co-offender and coeval. In January 2000 he was the only juvenile sentenced on Groote Eylandt and, as it happened, no other Groote Eylandters were then serving sentences of detention, and no other was sentenced during his last period in custody. Don Dale staff are unanimously of the opinion that a detainee from a remote Aboriginal community will be much happier and much more comfortable if he has the company of one or more of his "countrymen". All staff seem to have been conscious of the fact that in January / February 2000 the deceased did not have this support. The staff therefore made extra efforts to support the Deceased themselves, first by paying more attention to him, and secondly by efforts to keep him in touch with the Groote Eylandt community. He had telephone contact with his grandmother Marianne Bara, and staff took him to visit her in hospital on 1 February. That visit went well, by all accounts. The Deceased seemed happy. He seemed to be looking forward to his release. As for Don Dale, according to Ms Bara (p15 – 16 folio 20 Vol 5 Ex 1):

"… he was saying good there in that place … because the police look after him proper way."

90. The deceased also had the opportunity to telephone people on Groote Eylandt. It is not clear whether he made much use of that opportunity. Hazel Lalara did not telephone him, her experience being that such calls often make inmates homesick and upset, so her practice was to ring them when they had about a week of their sentence to go. Ms Lalara was aware of some others talking to the Deceased by telephone, "some girls". She was also aware of one less formal contact happening. Her brother-in-law, Mr Jimmy Bara Bara was driving past Don Dale one weekend. He caught sight of the Deceased playing basketball, and stopped to say hello. According to Ms Lalara's statement the deceased (p13-14, Folio 23 Vol 5 Ex1):

"Said he was happy playing, he was calling out to them and he told them that he was being released the week after … he was very happy for coming out."

91. Mr Hausman visited the Deceased on 3 February. It seems that the Deceased had told Ms Jipp, the Senior Case Worker, that he wished to speak to his lawyer, and Ms Jipp

managed, after several attempts, to contact Mr Hausman and informed him of this. By chance, Mr Hausman was coming to Darwin (in connection with a Senate Inquiry, perhaps the one into mandatory sentencing) and was thus able, as he would otherwise not have been, to attend at Don Dale. Both Mr Hausman (transcript p66 – 67) and Ms Jipp (transcript p528) have it that her contact with him was about a week into the Deceased's sentence. Mr Hausman attended about a week after that. The Deceased had some issues to agitate. Mr Hausman's evidence given 11 September 2000 (p67 – 68), questions by Ms Morris) was:

"When did you get to Don Dale and speak to him, did you make any notes of that visit, any file notes?---No. No.

And what were the concerns that the deceased raised with you?---Well, the thing which sticks predominantly – mainly in my mind is that he didn't want to go back to Groote and by that – and by that, he was saying 'I want to be with my grandmother'. The thing which stuck in my mind was a young person. I was concerned what he would be doing when he came out and he had expressed the wish to be with his grandmother and he was quite firm in that and I was feeling rather touched emotionally by that which perhaps not professional but that's the way it goes when you get close with young clients whether you know them or not.

Did he express any concerns to you that he wasn't guilty of the offence?---Yes, yes. He expressed that, I think, when he left the court. I – I believe I saw him in the cells afterwards from memory and at that time also – when he said not guilty, yeah, I don't know if those were the exact words, and that's not an uncommon thing with clients also. In fact, it's quite a common thing with clients, particularly if they get a penalty which is perhaps making them feel uncomfortable.

Did he express concerns about the penalty with you?---Yes, which is also not uncommon. I believe he may have said to me in court – I'm not sure – but I believe – because it's happened a few times to me – after somebody's received a gaol sentence or a detention order – well, very few detention orders. I think I've only had two people go in for detention, but 'I want a bond' or 'I want a community service order', and this problem – it's very often expressed by clients that don't think the concept of mandatory sentencing gets through to them, and, in fact, I have great difficulty because I have people who are making confessions being told by the police in mandatory sentencing matters, and very often have voir dire hearings over it, that an option to penalty is a community service order or a bond. So, I mean, they're even being told at that level there's confusion and I'm not surprised that I often get that said to me by clients.

What advice did you give the deceased when he told you that he wasn't guilty of the offence?---Well, I said – as I recollect, at least, at Don Dale, that there were only a few days to go. There was very little we could do about it that time. I mean the practicalities were that lodging an appeal by the time it came on, he would have done his time, there would have been problems - - -

Did you tell him that?---I – look, I don't explain the legalities to my clients because it's very hard, you know, for them to comprehend, the same as – although I try to explain mandatory sentencing to people, most times I don't believe conceptually understand what I'm talking about. I basically would have said, 'There's nothing we can do about it at this stage. You'll be out shortly', and my main concerns were as to where he would go afterwards, and, in fact, that's where – that was, I believe, the content of my discussion with Sue afterwards, and I believe I was concerned whether he had things while he was in the detention centre…"

And (p69):

"You'd agree with me though that you weren't able to assist him with anything that he requested of you?---Well, I can agree that I couldn't get him transferred to another institution, I agree that I couldn't get him out of the institution, and I agree that I couldn't provide any answers to where he was going to go out afterwards. Yes, I would agree with those things.

And it was obvious to you that even at that stage, he still didn't understand why he had to be in detention?---Well, it seemed to me that – I wouldn't say it was obvious. I'd say it seemed to me that he had some problems grasping – I had – I wasn't satisfied that he completely comprehended the concept of why he was in detention, but I – I can only say what I was feeling. It's – as I say, his main concern were that – that he didn't want to be in that institution and, of course, that's not unusual because anybody – any person who you see in any institution, whether it be a gaol or a juvenile detention centre, most instances when they're distressed or they want to talk to somebody, that means they don't want to be there, and the main – I think the main thing which was of concern to him, from what I assess, was his granny. I thinks that's what he was really worrying about most of all, his granny."

92. Mr Lawrence's cross examination (p77) elicited one more thing; that the Deceased had asked about being transferred to the Wilderness Camp. Mr Hausman followed that up with Ms Jipp; it seems that the transfer was unpractical given the short time the Deceased had left to serve.

93. Ms Morris in her submissions has suggested that the Deceased would not have derived any comfort from Mr Hausman's advice on this attendance. I suppose she is probably correct about that, but I can't see that any lawyer could have expected to provide any comfort. Mr Hausman appears to have taken with a grain of salt the Deceased's statements that he was not guilty, and Mr Hausman had his reasons for that.

94. Mr Hausman's statement, folio 22 of Vol 5 of Ex 1) made on 17 February 2000 is in similar terms, but there is a slight difference of emphasis. At p32 – 33:

"Alright. Then aft, then, then you spoke to the deceased?

Yes. She said “look you can see him in the office here, that might be comfortable”. And, and it was quite a pleasant environment; she showed me through the place. And I subsequently sat down there. He to me seemed not that comfortable but then I was not really know to him that well, I was just his lawyer and I wasn’t family or anything. And I, he at that time, he said to me “look”..the essence. I, I can’t say exactly what it was but the essence of the discussion was that he wanted to get out. He said, oh at that time again he said to me he wanted some type of penalty. I think it was Community Service or a bond; he wanted to get out. He said, he was very, very insistent that he wanted to get out. And he raised with me, he started talking about other institutions. I think Sue also told me there was no, and I can’t remember when, but there was nobody from Groote there. And that was part of her concern too.

Was it a part of his concern do you know or?

Well I I I, I have a recollection that I did raise that with him and I don’t think it went any further than me raising it with him. And he just kept focussing, from my memory, on the issue that he wanted to either get out or. And when I explained as I usually do, and I said to him before, and I always say to my clients, “I’m sorry I can’t help you, it’s impossible, that’s the”.. And that, you go through trying to explain then, I said “it’s an agreement”, reasons why he can’t get out and trying to make him feel good that you’re gonna be due to get out in, in, I think it was 10 or 11 days at the time. I said, and then Sue corrected me when I said “10”; I think she said “11 days he’s due out”. And I said “it’s not that long to go”, and I think, it may well be again at that time, that there was, that she’s raised that, so that, I think Sue’s mentioned that she was the one whose had contact with him all the time. But he was very concerned about not going back to Groote, he wanted to go to his granny. And he mentioned some other institution that he wanted to go to, and – I think it was Shady Camp, ……. …….

Oh Wildman River maybe.

It may well be. And I seem to recollect, on the news that, I said to Sue “that’s not possible is it at short notice like this”. And I think there was also some, some discussion about some other program which was not regarded as being a detention. With some other program was going. Anyway there were, there was some discussion as to alternatives and that, and that it wasn’t possible and in, or the way that I explained to him. I sat down, spoke with him and told him about that.”

95. The implication there that the deceased was unhappy at Don Dale, that he had a grievance with the process that had put him there was diminished by Mr Hausman’s viva voce evidence. After hearing that, I am satisfied that, on the day of his attendance, the Deceased’s main area of concern was the question where he would go after his release, and his main area of dissatisfaction was with his not being able to go to live with his grandmother. It is further worth noting, in the passage quoted from Mr Hausman’s statement, the evidence of Ms Jipp’s consciousness of the Deceased being the lone Groote Eylandter then detained. Mr Hausman appears to have shared the view of the Don

Dale staff that his solitariness might account for a certain amount of his observed dissatisfaction.

96. So much then for the evidence, from Groote Eylandt people, that the Deceased was happy, or equable during his time in custody, and from Mr Hausman that he was about as one would expect. (I can make nothing certain of the evidence of Mr Gary Meyerhoff, whose recollections of the Deceased may well pertain, in truth, to another detainee, the Deceased's room-mate Gordon Dulla.)

97. The evidence that he was unhappy, or less happy, comes from Don Dale staff. Leanne Joy Densley, Senior Youth Worker said (transcript p93):

"… what I can recall, he was a lot more lonelier … because he was the only boy from Groote Eylandt in the centre at that time. … So he was feeling sad and homesick. … He would tell me."

98. In cross-examination by Mr Lawrence she said much the same thing (p121):

"He told me he was, said he was homesick. He was the only one there. Of course they're all depressed when they come in."

99. Ms Densley's evidence was that the Deceased was looking forward happily to his release and his return to Groote Eylandt. Ms Densley, at the time she gave her evidence (12 September 2000) had been a Youth Worker at Don Dale for about 7 years. Her previous experience included work as a governess / nanny on properties in Queensland. It was she who found the Deceased with the sheet around his neck on 9 February 2000. She was badly shocked by it, and was still very affected by the experience at the time she gave her evidence.

100. Christopher Gavin Wrigley, is principal of "a small school called the Don Dale Education Unit" (Transcript p227), employed by the Department of Education, not Corrections. Mr Wrigley had vague memories of the Deceased from October 1999, and clear memories of him from January 2000. (It will be recalled that the Deceased spent much of his 1999 sentence at Wildman River Wilderness Camp, so Mr Wrigley's comparative lack of memory may reflect less contact with him during that sentence, as well as the effluxion of time.) He said (transcript p228):

"I don't recall being overly concerned about the Deceased on the previous time. But there was some concern expressed about his behaviour this last time."

101. And in cross-examination by Mr Lawrence (p237):

"Yes, I think from the moment that he came in he was slightly – he was – what we saw in front of us was different to – seemed different to the boy who was in previously."

102. Mr Wrigley also noticed a change in the Deceased during the January – February 2000 sentence. In his statement to police made 15 February 2000 (folio 23 of Vol 3 of Ex 1, p11 – 12) he said:

"Did you notice any change from when he first arrived here until, until he, he died?

Yeah I can say that I think there was a change. I can't substantiate it with very clear pictures. But I, my perception is that he moved from being a, a pretty shiny kid to very much a darker one. During that three weeks, what ever it was.

Darker, how, how do you mean by that?

Un, more unhappy, more tortured."

103. He elaborated on his choice of the word for "tortured" in cross-examination (p239):

"Yes, a sort of internal struggle. An internal torture, not an externally imposed one."

104. Mr Wrigley was glad as the Deceased's sentence was coming to its end. He said (transcript p236):

"And, I think I could certainly be said to be relieved that he was going because he was obviously not particularly happy and it didn't seem that there was any way we could help him, if you like, with that."

105. Mr Wrigley had been a teacher for about 15 years. He had taught at Don Dale for about 5 years. He had attended at least one of "the cross-cultural training courses that the education Department insists on everyone taking" (p233). He has also worked for Crisis Line, and received training for that work on suicide issues. He never thought the Deceased was at risk of self-harm (p234).

106. Mr Wrigley was a witness to one incident ("the chanting incident") of odd behaviour on the part of the Deceased. (transcript p232):

"What occurred? Could you tell the court more about that?---In the mornings we'll often try and orient the kids as to what's going to happen that day, give them some news – you know, world news or whatever. And I think I was doing that that day and there was a larger table than this and the deceased was sitting near that corner and it's not unusual for kids not to want to listen to me, I can tell you that, he did just sort of bend over, put his head near his knees, put his hands over his ears and start to do a sort of – best of I can describe it is like a kind of chanting or a noise.

As a repetitive noise?---Yes. It didn't last for long. I remember Jane Thompson, the teacher aid, just went up – it's one of those situations where immediately, all the kids are looking at that and the situation has to be diffused. So she went up and chatted to him and I tried to get the focus back of the other kids. I mean, that's pretty much all I remember of

it. And I have to say that that sort of thing, kids saying 'oh, shut up and let's get on with it' and stuff like this is not unusual. Not that he said that, but it's another way of just blocking out.

So that's what you assumed he was doing, blocking out what was going on around him?---Well, if I made an assumption – you know, you're asking me to do that, it is literally an assumption as to how he was reacting. It was 'oh, no, more talk, more talk'. That's sort of stuff."

107. On p233 Mr Wrigley made it quite clear that, at the time that incident happened, he did not think it significant of anything in particular, nor, after the death of the Deceased, had he changed his mind about its insignificance. He said:

"We get a lot of bizarre behaviour. If that's bizarre behaviour then we have a lot of it from a lot of the kids."

108. Mr Wrigley made it clear that the chanting incident was not among the behaviours he had observed of the deceased to characterise him as "darker", "tortured" etc.

109. Sandra Mary Hudspith was the Assistant Principal at the Don Dale school. She remembered the Deceased from both his sentences and noticed a change. (transcript p248):

"Did you notice any change in his demeanour or behaviour from the first time in October to January/February?---Yes, I did. In the previous occasion that he was in, he was a delightful happy, very co-operative and hard working student. The time he was in this year, there was – there were several incidents of – well, two incidents that I recall of intense anger on his behalf which resulted in swearing at me. He was quite unco-operative – and this is not – for the period that he was in – not unco-operative all the time. I also remember occasions where he was as he was before. He seemed troubled about some things, yes.

Did he ever confide in you as to what was troubling him or was causing his anger?---He said to me when he first – it would have been earlier the first day or the second day that he was in that "It's not me, Miss. I'm not here. I'm not here because of what I did. It's – my brother did it'. I assume the alleged crime. He said: 'He didn't talk me true, he didn't sound me true'. And I said 'Well, it's really hard' but that was the most that he said about that.

And was he angry when he said that, or sad, or just - - -?---He seemed angry.

Is it an unusual thing for a child in Don Dale to tell you he didn't do it, he was innocent, or that she didn't do it, they were innocent?---There have been other students who have said you know 'My girlfriend led me into this and it's all of my friends', yes, that has happened.

110. Dr Hudspith was able to describe in some detail the incidents when the Deceased lost his temper. She went on to describe his apologies after these incidents.

111. Dr Hudspith had been teaching for about 30 years in Darwin. Before going to work at the Don Dale school she had extensive experience in Special Education and has been for two years an advisory teacher for children presenting problems of behavioural management. He doctorate is in the area of the sociology of education, concerned with the difficulties of aboriginal children's schooling. She had not, as it happened, been put through the Education Department's cross-cultural training courses.

112. She witnessed an incident of odd behaviour in the past of the deceased (the "I'm mad" incident). (transcript p250 – 251):

"And apart from those incidents you've just told us about where he gets angry quickly, was there anything else that you can recall?---It – I think it was possibly the first day he came into school that he was sitting down at a group table and again, it would have been, yes, maths, and he just put his head – arms down like that and head on the table. And so I go around and touch him on the shoulders and say, you know, come on. And he said: 'I'm mad, Miss. I'm mad. I belong in the mad house'. So I said down and said again, you know, 'You're not mad. You're good. Come on, let's get into some work' and as I recall, that was the end of it. He got into work and we didn't have an incident at that time.

And he didn't refer to that again?---No.

He didn't say it again?---No.

113. Dr Hudspith did not interpret this as any sort of attempt by the Deceased to indicate that he had some sort of mental health problem. "Mad" may have meant "angry", or may have meant "dumb or stupid", or something more vague. In cross-examination by Mr Grant, she suggested the comment might have gone (p263):

"… Even to the fact of 'oh, I can't do this maths because I'm mad. My brains are kind of upset at the moment! That sort of thing."

114. Mr Lawrence also cross-examined on the issue, see p258 – 259.

115. As far as Dr Hudspith could say, she had never thought that the Deceased was at any risk of self-harm. However, she, like Mr Wrigley, was evidently worried about his moods, so much so that, arriving for work on the morning after his death, and seeing the amount of police activity etc. at Don Dale, she immediately thought of the Deceased, wondering, according to her very convincing evidence at p251 – 252, whether he had smashed something up overnight. The overall effect of her evidence was that she was dismissive of any significance for the "I'm mad" incident, but seriously concerned about the swift anger displayed by the Deceased on those occasions when he suddenly and with very little provocation lost his temper.

116. Hans George Sohn, Youth Worker (Acting Senior 1/00 at the time of the death of the Deceased) was on leave in late 1999 and did not remember the Deceased at all from his first sentence, perhaps never met him then. He did notice some odd things about the Deceased's behaviour during the January-February 2000 sentence. From his interview with police on 10 February 2000 (Folio I Vol 3 Ex 1, p11):

"And how has he been, how would you describe him?

He has ups, ups and down. In general he was quite well behaved. He had a bit of a problem with female officers. Like taking orders from female officers. And I believe it's his where he come from, from the community. But in general for male staff he responded quite well. He has downs, but he sit down we talk with him, and you give him five minutes/ten minutes space and he's fine again. In general, he was quite good, yeah."

And (p12 –13):

"And you haven't noticed him acting strangely or?

He was a strange kid from, from day one. Just the way he speak. …… he talks in his lingo and nobody can understand him, you know. And he stares ……. some times. Cos if you talk to him he doesn't respond. And you say "Johnno, what's up" you know, and he snaps out of it. "Well, what's up", you know. Some, I don't think he realised some time."

But then again (p12):

"And how has Johnno seemed lately?

He was really good. I was really surprised myself the way he worked. You know like I said he has his ups, ups and downs a few, for a few times but he calmed down very quick. And the last few days on my shift he was really looking forward to going home on Monday. He kept joking "I can go home now". Every day …….. he asked me what day it is, you know "what day, how many more days". He was, he was on a count down really. That's what it seemed to me."

However (p14):

"Alright I think that's about it. Is there anything else you can think of, anything that I've missed that might be important, or?

Well some times there's a problem when he speaks his lingo, you don't know what he's talking about. You know. And he stares at you, and he talks in his lingo, and like as nobody, nobody's there. Something strange. Being talked to even, there's nothing there that registers, you know. Which is very strange. But some times he snaps out very quick and he'll say "what happened". Like he doesn't know you're talking to him. But then he starts talking in his, in his own lingo. What he's talking about I don't know. But in general he's, you know, I, I can't, I can't work this out. I just can't."

117. In his evidence (on 13/09/2000) Mr Sohn gave me the impression that, though he indeed found this behaviour inexplicable, he had not thought and did not think it betokened anything of note: just another one of the odd things that detainees do.

118. Mr Sohn, was a truck driver before being employed as a Youth Worker. (The account of his how he came to be Youth Worker, which emerged in cross-examination by Mr O'Connell at p271, is a classic vignette of the 1980s NT Public Service). He had done some cross-cultural training. He may have had some training in recognition of suicide risks. If so it was once, part of his initial training course in 1989. The Deceased had told Mr Sohn that he was petrol sniffer. Perhaps Mr Sohn attributed some of the strangeness he observed to the effects of petrol.

119. The evidence of Jennifer Ann Nielson, Youth Worker, is similar to Mr Sohn's. She too was on leave in 1999, and has no memory of the Deceased from his first sentence. During the January-February 2000 sentence she spoke to him sometimes. He told her of worries that he had. From the transcript (p283):

"And how did he come across to you? What sort of young fellow was he?---He was a very likeable young man. Quiet until he sort of got to know you and you got his confidence.

And did that happen? Did he get to know you and you got his confidence?---I think so, yeah.

Did he talk to you sometimes?---Yes, he did.

Did he ever tell you about things that he was worried about?---Yes.

What sort of things did he tell you that he was worried about?---About going home to Groote Eylandt.

And did he say why he was worried about that?---Yep.

What did he say that he was worried about?---He said that there was big trouble on Groote Eylandt and a lot of people were dying.

And did he elaborate? Was he worried about him dying or he was just - - -?---No, he didn't say.

What did you say to him?---Well, being a – an Aboriginal boy, you don't ask too many questions. You sort of leave it for them, because it's very hard. Like there's some things that you just can't ask because of the difference in the cultures."

And (p285):

"When you talked to the police about this, you mentioned that he sometimes had behaviour that was a bit paranoid. He'd think people were talking about him?---Yep.

Can you tell us a little bit about that?---The boy was a petrol sniffer and sometimes he would see – could see a group of boys talking and he'd think that they were talking about him when they weren't. It was just a matter of reassuring him that, no, they weren't talking about him, and he was fine.

And so that 'people are talking about me' feeling, you took that to be a result of his petrol sniffing?---Yeah.

Did those incidents happen right throughout his time in Don Dale?---Yeah.

So it wasn't as though it was just something that happened at the beginning and didn't happen throughout? It was - - -?---It was actually not happening as much towards the end of his time with us.

But it was still happening?---Now and then he'd still say it, yeah."

120. Ms Nielson found none of this unusual or strange, and never considered the Deceased to be at risk of self-harm. At the time she gave her evidence (13/09/2000) she had been a Youth Worker at Don Dale for about 5 years. Prior to that she had worked at Casey House (a youth refuge in Darwin), at Kormilda College, at St Mary's children's village in Alice Springs and at a youth refuge in Brisbane. Altogether, she had worked about 23 years with young people. She seems to have had little formal training in youth work as such, but had, in previous jobs, attended two separate courses in cross-cultural training, one day each. She had also had two one-day courses in recognising suicide risks, both in earlier employments.

121. Ms Nielson spoke to the Deceased during his last day at Don Dale. Her evidence (eg at p 291) is that he was happy and looking forward to returning to Groote Eylandt.

122. Josephine Sheehan, Youth Worker, remembered the Deceased from both October 1999 and January 2000. She noticed a difference during his second sentence: he was more disruptive, more erratic, and more attention seeking (see p303 of the transcript). She was a witness to some odd behaviour by the Deceased. First (transcript p306):

"Did you know about an incident where he attacked a boy for seemingly no reason and said that voices made him do it or voices told him to do it?---No, I wasn't aware of that particular incident, but I have sat next to him in the dining table on several occasions and he'll say, 'They're looking at me'. You know, there's no apparent – nobody is looking at him, you know, that I can see. I mean, I'm sitting there eating with him.

So sort of paranoid?---Yeah, very paranoid."

123. This was followed up by Mr Lawrence in cross-examination (transcript p309-310):

“Right. Now I wonder if I could ask you about the aspect of his behaviour that you noticed concerning him believing that other people were staring at him. You told Ms Morris about how you observed that?---Yes.

That was new with what you saw the deceased - - -?---I hadn’t observed it, but in October I’d sort of took some leave through that time, so I – I didn’t find – but I did notice a big difference and you do notice a big difference in the kids that come back in after they’ve been away for a month or so. They come back in and sometimes they’re very erratic.

Right. And that’s what you noticed about the deceased?---I noticed that with him, yes.

What I’m just trying to discover - - -?---Right.

Is that one of the things you noticed that was different was this business of sitting down and apparently believing people were staring at him?---Yes. Well, I hadn’t noticed it prior.

Thank you. You noticed it to the extent in fact that I understand that you’d sit beside him and give him comfort?---Mm mm. I got on well with him.

And you gave him comfort because you could see he was quite distressed by the fact that he believed people were staring at him?---Mm mm.

And you were sitting beside him, reassuring him?---Mm mm.

From your own observations where you were?---Yes.

Of he people that were in – was it the dining room?---Mm mm.

The dining room, that nobody was staring at him?---That’s right.

It was all something that was in his mind?---Yes, it appeared to be.

And he was quite wrong about it and you tried to - - -?---Mm mm.

- - - ease his trauma?---Yes, I did.

And did you notice that on several occasions during that last week?---Yes. I made a habit of sitting with him most of the time in the dining room. He – he and I got on extremely well, so it’s often – it’s not always you that a kid gets on with, it might be somebody else, but I mean this particular kid I felt like I was helping him through that time. They often come back in from petrol really like that.

You were aware that he was a petrol sniffer?---Mm mm.

And did you believe that this kind of behaviour was caused by him withdrawing from the substance?---I would say so.

That was your belief as to what you saw?---My opinion, mm mm."

124. Secondly, Josephine Sheehan was present when an odd incident ("the under-the-bed incident") occurred. At p303 she said:

"Did he show any behaviour to you which caused you some concern or - - -?---Yes, the night he got under the bed, but it's not – let me clarify that. It's not an unusual thing for kids to do that. They hop under their mattress and sort of appear to hide. It's a general thing that sometimes happens with working with the kids, but he got under the bed, he stripped his clothes off and just, you know, was under there with his sheets pulled down. And I went in – or I was alerted by staff to go in and have a look and I talked to him and asked him what was the problem. He said he had a very bad headache. And I asked him if there was anything else I could help him with, you know, and so with that behaviour I thought I'd go further, so I called the senior case worker on shift and she came down and she was talking with him under the bed. Sort of she was – she pulled the sheets back and she was talking to him and it must've been 20 – between 20 and 40 minutes, I think she was discussing issues.

Did you stay in the room?---No, but the room was directly opposite and I went to the youth workers' office and – and generally watched her.

So you could see but you couldn't hear what they were talking about?---No, couldn't hear what they were talking about.

And when you asked him about his problems, the only thing he talked about was his headache?---His headache and the light hurt his eyes."

125. The Deceased was seen to be apparently well and in good humour later that shift. Ms Sheehan though no more about the incident. She did not consider his behaviour especially odd. She gave some examples of things inmates – not the deceased – had said from time to time (transcript p315-316), cross-examination by Mr Lawrence):

"Right. You also said before that you didn't consider that particularly unusual?---No.

Would that be in the context of him?---No, in the context of the running of the centre.

Right. So, what, would you often have detainees doing this kind of thing?---Mm mm. I had one particular one that asked me if I could get one of the bosses because he was very good with vehicles and his Toyota was bogged in his room.

Right?---Another one wanted his dog's claws clipped.

His dog's?---Claw clipped. They don't have dogs in Don Dale. I mean, it's erratic behaviour, I know, but you just watch them."

126. At the time she gave her evidence (14/09/2000) Ms Sheehan had been a Youth Worker for about 6 years. It was she who had previously been a hairdresser, as mentioned in the evidence of Mr Parker quoted above.

127. Bruce Michael Munro, Youth Worker was the butcher mentioned in the same context. Apart from working as "a boner in the meatworks" (p328) he had been in the cattle industry, working with young ringers and Aboriginal children from various communities in Queensland and the Territory, and had been a fencing contractor as well. Mr Munro remembered the Deceased from both his sentences – Munro had been working at the Wilderness Camp in October 1999 - and thought that the Deceased had changed the second time round. At p329 Mr Munro said:

"… the first time he was a happier – a happier kid. Mainly I think because he had other detainees from the island."

128. Mr Munro went on to speak of his observations indicative of the comparative unhappiness of the Deceased during his second sentence. From p329-330:

"That's all right?---Yeah, he just wasn't a happy – you know, he wasn't a happy person as before.

And was there something about him that made you think that, or something he did or something he said?---No, he just spent a lot of time – you know, more time on his own.

So did he appear not to mix with the other detainees as much as he did last time?---Yes.

Did he have any behaviours that you thought were a bit strange or a bit odd, in this second time he was in, in January/February?---He did – he – he had a volatile nature, where he would take dislikes to – dislike to other detainees.

And was that for a reason that you could see?---No.

And did he every say things that you knew weren't true?---No.

Did he sometimes say that people were looking at him or talking about him?---Yes.

And to your knowledge was that in fact the case, on those occasions?---No.

So he would think people were looking at him and they weren't; is that right?---Yes.

Yes. Can you remember any occasions when that actually happened, that you saw?---Only one occasion.

And can you tell us about that?---He'd punched one detainee and come – and just come back – I – I didn't actually see the incident, I'd come out just straight after it.

Yes?----And I said to him, 'what's going on' and he said, 'he's looking at me'.

And did he say anything else?---Only that he thought he heard voices.

And did he tell you what those voices said or who they were?---No.

And was that at the same time as this – this incident where he punched the other detainee, that he told you he heard voices?---Yes.

And did you tell anybody about that?---Yes.

Who did you tell?---I told – immediately told my senior case – sorry, senior youth worker and we put him down on the board to see the doctor.

And who was that – who was the senior youth worker; do you remember?---It was either senior youth worker Braham or – or Sheehan."

And p333:

"Did he – he said to you, I think – you've told the police earlier, he said to you at one time, 'they pick on me 'cause they know I'm sick'. Do you remember telling the police that?---Yes.

Yes. And do you remember him saying that to you?---Yes.

Do you know – can you remember why he said that to you, what had happened that - - -?---That was – we were on our way to the doctor's that morning, after the – that incident where he said he'd heard voices."

And p331:

"Did the deceased ever say to you that he was going to kill himself?---Yes.

Tell us about that – about that – give us the background to what happened?---We were in the kitchen that day, it was a lunch time. All the - - -

Do you remember approximately when it was?---No. All the – the other detainees had been released from the kitchen. I asked the deceased would he clean the floors for me and he replied, 'no, I'll kill myself'.

And what did you say?---I said, 'we don't do that here' and at the time – because there was no – it come out of blue, there was no anger, anxiety before he said it, there was no depression after he said it, I thought – I believed it was a good way of negotiating with

me, because he got more money on his token economy and he got to go into the – the games room to play games after, which he did.

Okay. So how did – how did that happen – so you said, 'we don't do that here' and then what – what did you say after that?---I said, 'come on, we'll – you know I'll look after you and that I'll, you know' – he asked me for more money on the token economy and I said 'no worries' and - - -

In order – if he did the floor?---Yes.

Mm mm?---And that I would put him in – to the games room after and he could play computer games.

Okay. And so did he do the floor?---Yes.

And p333-334:

"Can you tell us about the time where you found him and he was upset and wailing; can you remember that?---Yes.

Tell us about that time?---I'd just come on shift, on the afternoon shift. I was checking all the detainees in their rooms. When I checked on him, he was laying on the floor, wailing. I couldn't get – make any sense – he – I tried talking to him and it was, you know – I couldn't get any sense out of him, he – like, he wouldn't talk to me, all he was – would – just laid there and wailed.

How was he laying on the floor; was he sitting or just - - -?---No, just - - -

- - - flat on his back?---Laying down with his face down.

Sort of – on his tummy?---Yes.

Sort of – with his head in his heads, sort of - - -?---Hands, yes.

And - - -

THE CORONER: Sorry, Ms Morris.

When you say, 'wailing', Mr Munro, is he crying, weeping or just making a noise or what?---It's hard to explain. It's – yeah, he's not crying and he's – you know, he's just, 'er, er, er', but – yeah, in a – you have to have seen it, to know what I mean. I'm sorry, but yeah.

MS MORRIS: So it wasn't sobbing?---It's like – I don't know – it's like an Aboriginal cry, it's – I don't know if you've ever seen them after – during – you know – funerals or whatever, it's – there's no tears or whatever, but there's just a loud cry and - - -

So it was - - -?---It's - - -

- - - similar to the wailing after a funeral or a - - -?---Yes.

- - - after a death. Did you ask him whether someone had died or if he was upset about someone dying?---No. No.

So what did you do then?---I immediately went back and reported it – reported it to the senior youth worker and to the senior case worker. I – I then returned with both or with the senior case worker, to the room.

That's Ms Jipp?---Yes.

Yes. And what – what did you see when you went back to the room?---At that time he had taken off his clothes and was in his underpants and was under the bed, quiet. Pretending to be asleep."

129. As will be seen Dr Robert Parker (no relation of Mr Steven Parker) attaches considerable significance to two of these incidents, the "voices incident" and the "I'll kill myself incident". The "wailing incident" segues into the under-the-bed incident previously mentioned by Ms Sheehan. (The voices incident has another witness, Ms Stephanie Sheehan, Josephine Sheehan's daughter-in-law).

130. Apropos of the voices incident, it happened to be Mr Munro who escorted the Deceased to the doctor next morning, and Munro thought – but was not sure – that he told the doctor of the Deceased's having mentioned the voices (see transcript p330). It would have been a bit odd if Mr Munro had not, seeing that the voices had occasioned the appointment, but, on the other hand, none of the doctors' notes in Ex 21 give the slightest hint of any interest in the mental, as opposed to the physical, health of the Deceased on any of his medical examinations on 21, 24, 25, 28 and 31 January and 1 February 2000. Nor does the statement of Dr Poliness (Ex 25). And Mr Munro appeared to have serious regard to medical confidentiality. He said, during Mr Lawrence's cross-examination (at p337):

"All right, and were you present when he attended on the deceased?---No, I shut the door because of the nature of – you know – the privacy that they needed, so he could find out what was wrong."

131. Mr Munro's regard in this respect is entirely in accordance with the letter and spirit of the Procedures and Instruction Manual, Ex 9, and in particular with section 13.3.2. Mr Munro's treatment of the Deceased's words "I'll kill myself" was, however quite contrary to the Manual, in particular section 11.4, which provides:

"11.4 DETAINEES AT RISK

1. All threats of self harm or suicide by detainees are to be taken seriously

2. On every occasion that a detainee makes statements relating to harming themselves the YW is to notify the SYW and Management immediately and then write a Case Note prior to going off shift.

3. The SYW is to place the detainee in the identified at risk room. All clothing apart from underwear will be removed, however, if a female is placed in the at risk room minimum clothes are permitted to be worn.

4. When placing a detainee in the at-risk room YW are to endeavour to calm the detainee and inform him/her regarding the as risk procedure. YW should ask the detainee if they require anything. Staff should spend as much time as possible comforting the detainee depending on the needs of the detainee and the needs of the shift.

5. All detainees placed in the at risk room are to be observed visually every 15 minutes and if not asleep spoken to every half hour.

6. Corrections Medical Service to be notified that a detainee has been placed in the at risk room and requested to attend the Detention Centre within two hours of notification to assess the detainee.

7. All written reports and relevant information regarding the detainee will be presented to the Medical Officer at the time of the assessment.

8. All persons at risk must be reviewed by the Medical Officer at least every 24 hours. The Medical Officer will refer to mental health services as appropriate.

9. When not actually in the at risk room, all detainees at risk must be closely monitored, e.g. – when attending to ablutions.

10. The Superintendent, in consultation with the Medical Officer, will have exclusive authority to alter a detainee's at risk status or move the detainee into the mainstream system."

132. Not much scope for discretion there. Mr Munro was plainly in breach of that instruction when he assessed the words of the Deceased as being some sort of a game. He has been disciplined, by some sort of lecture or counselling from Mr Parker, for that breach. Mr Munro had another opportunity to explain his reasons during Mr Lawrence's cross-examination. (transcript p342):

"And I gather the reason that you decided not to follow the procedures – what was the reason why you didn't follow the procedures?---The detainee at the time, like I said, had – didn't display any violence or anger before he said it and didn't display any depression or anger after he'd said it. And was quite happy to – that he – I – I believed he – he got

what he'd – he wanted by negotiating – he used that as a tool to negotiate with me, which he'd done successfully.

Who – I take it, you were just a regular youth worker on that shift?---Yes.

Can you remember what shift it would have been?---It was the morning shift.

Morning shift?---Mm.

Can you remember who your senior was that day?---I think it was senior – senior youth worker Braham.

Did you inform her about what he had said to you?---No.

Did you write it down anywhere?---No.

Why didn't you tell your senior?---I believed I – I – I took it upon myself – because I – for exactly that, it – you know. He was using it as a tool to gain what he wanted."

133. Stephanie North Sheehan, previously mentioned, had been a Youth Worker for not much more than a year when the Deceased died. She qualified as a nurse in the early 80s, and went to do specialised training as a psychiatric nurse. She worked in that capacity for about 6 months in the mid 80s as I understand her evidence, then gave up nursing and did various other things, some paid, some voluntary, many of them involving work with children until she finally came to work for Corrections as a Youth Worker.

134. Perhaps because she had started not all that long before she gave her evidence, Stephanie Sheehan was better able to describe the training she had received when starting as a Youth Worker. (from p348):

"When you started at Don Dale, did they give you an induction or a training?---Yes, they did. There's about a – oh, gee, how long would it have been? I don't know. About a week, I guess, where you go in, you sit up in the head office with Mr Parker and Mr O'Leary, and I don't think Dave Ferguson was in from Wildman, but I did see a bit of him. They just take you through everything. They take you through the manual. They discussed a lot of, you know, the cultural kids, things to be wary about, especially like Port Keats and Groote Eylandters that, you know, might be a bit scared to be in isolation or away from their communities. We're taught the awareness of – that you have to be on the ball all the time and watching these kids all the time because – because they're all together in such an isolated area, their mood swings just happen like that. Somebody can be best friends one minute and then all of a sudden, they're screaming blue murder at each other, 'I'm going to kill you' and then there's a big fight and you have to be prepared to jump on it before it begins."

135. Stephanie Sheehan observed the Deceased during both of his sentences and saw a marked difference. (from p349):

"Do you have an impression of whether or not his behaviour was different, or he changed from the time he was in, in October, to when he was in in January/February?---It was quite noticeable, the changes in Johno the second time.

The deceased?---The deceased, sorry.

That's all right. What were those changes that you noticed?---Well, he just didn't seem to be himself. He was very moody, he was aggressive. He was just happy one minute and sad the next, yeah."

136. She took her concerns to Ms Jipp. At p350 she said:

"And I think you – you talked to police earlier this year about this and about the deceased, and you said to the police at one stage this: 'He was up and down to the point of being manic'?---Oh, that's – manic-depression is – it's a nursing (inaudible) psychology. I talk like that, like -–you know, about myself like that sometimes. It's just something I picked up when I was nursing.

So did you mean - - -?---But no - - -

- - - did you mean it in a technical sense?---No, I didn't mean it about the deceased, definitely not.

But you did – how did you mean it then, in relation to 'manic'?---Just like a teenager, he was up and down like a yo-yo. But as the senior case worker, Sue Jipp, pointed out to me that it was quite obvious that he was coming down off the effects of his habit.

So you had discussions about the deceased with Sue Jipp?---Yes.

And did you bring up those discussions because you were worried about his behaviour?---I questioned his behaviour because he was so different from the time that he was in before, and she explained to me that's because of the effects of his habit.

That habit was petrol?---Petrol."

137. And she was a witness, to the voices incident, seeing more of it than Mr Munro. At p350-351 she said:

"Now, can you tell the court about a time where the deceased – I'll just – said – an incident happened where the deceased was out and you were playing basketball, and a younger fellow called Junior Croker was involved; can you tell the court about that?---The incident I was watching – we'd just come out from having dinner – this is from memory – and Teddy Croker was standing up near the office and I was standing near the pool fence because I had been playing basketball with all the boys. The deceased had been playing basketball but he dropped his bundle because he'd missed a goal or

something, and Teddy Croker was just looking at John – the deceased, and the deceased went up to the wall near where the wall – like the fence finishes and the wall begins, and he just sat there, staring at Teddy Croker, and I'd noticed Teddy Croker was staring back at him, and it just started this staring match between the two of them and I knew something was going to happen, so I started slowly walking up towards Teddy because he was much bigger than the deceased, and it would be a lot easier to stop the deceased from coming near him if I was standing in front of Mr Croker. As it turned out, the deceased did make a run for Mr Croker and there was a verbal altercation, and I can't remember what was said - - -

In English or language?---In English. I can't remember what it was said, but there was plenty of swearing and 'I'm going to hit you' or something. I managed to keep those two separated, and the deceased was taken into his room and, you know, I said to him, 'What happened? Why did you do that?'

Did you take him into his room?---Yes, I think I did. Oh – yes – no – oh, I can't remember. It's a very – you know, it's a pretty stressful situation. I did – I had a talk to him in his room when he was in his room placement, purely for himself only, until he'd settled down and then they're allowed to come out. And I said, 'Why did you do that?' I said, 'That's so unlike you,' and he said, 'Oh, the voices in my head told me do it,' and I said to him, 'Voices,' I said, 'do you hear these very often?' and he just looked at the ground and was non-committal after that. He didn't want to talk about it. I said – I said to him, 'If you'd like to talk about it, I'll bring Sue Jipp in for you,' which I did, I went and discussed it with the case worker, and she said to me, she said, 'Yeah, the deceased is up for assessment. We are watching all these signs and that's why he is due for psychiatric assessment,' and I said, 'So you don't want the case note that?' she said 'No,' because she said, 'it's under assessment as we talk now'.

And so that's why you didn't do a case note?---That's right.

Would you have done a case note if – in other circumstances, if - - -?---If I hadn't known that he was under assessment, I don't think it was that much of an issue. When you work at Don Dale Centre, you see things like this happen all the time, it's just part of your job that you have to be aware and be on top of it before it happens, so I would've case-noted this one because he did say he had voices in his head and that's why I directly went to Sue Jipp and said, you know, this, and she said no, it's being taken care of, because he's under psychiatric observation and assessment."

138. Stephanie Sheehan was able fairly convincingly to date the incident to between one and two weeks before the death of the Deceased. In cross-examination she made the point (p355) that the behaviour of the Deceased was becoming less erratic during the course of his second sentence. Such a pattern was in her experience, normal, and a further indication to her that drugs or substance abuse, and coming off drugs etc, probably lay at the root of the behaviour. It also emerged in cross-examination that the Deceased denied ever having told her that he had heard voices. This item too was of interest to Dr Parker.

139. Stephanie Sheehan at no time considered the Deceased to be at risk of self harm (see p359).

140. Elspeth Braham, Senior Youth Worker, previously quoted on the subject of the willingness of detainees to come to Don Dale, noticed very little change in the Deceased as between his two sentences (see p361). He was "moody" and "temperamental" during the second sentence:

"… but then to my way of thinking he was a little bit more affected by the petrol. And you expect that. This is something we live with and work with and breathe with every day in there …" (transcript p364).

141. Ms Braham had been a Youth Worker for more than 10 years. Her evidence was that she had attended many training courses in many areas including part of a course on the recognition of suicide risks. (Quite a number of Youth Workers attended this part of a course. It was apparently not completed at the time because of lack of resources in the Department providing the instructor. That was about 2 year earlier.) Ms Braham seemed to have a ready grasp of at least some of the factors known to increase the risk of suicide. As to the risk presented by the Deceased, she said she had thought him (p364):

"Not any more than any other boy is".

142. (This is perhaps an appropriate place for me to note that the Youth Workers who gave evidence, whether they had or had not been attended formal cross-cultural training, all seemed to have a firm and adequate grasp of those cultural issues that might affect their dealings with detainees originating from remote Aboriginal communities. In the light of their apparent cross-cultural competence, I see no reason to recommend more cross-cultural training. In any event, it seems reasonable to suppose that the detainees emerge from communities where traditional culture, with its disciplines and generational respect, has to some degree broken down. Corrections and the Court probably need more urgently to grasp how frayed a traditional culture has become, than to understand how it works at its best which is what cross-cultural training seems mostly to offer. The appropriate knowledge, it seems to me, would be more sociological, or criminological, than anthropological.)

143. John Anthony Drummond is a teacher with 23 years experience at the time he gave his evidence. He had been teaching at the Don Dale school since April 1998, working mostly at the Wilderness Camp. He knew the Deceased there in October-November 1999, where he witnessed an incident (transcript p388-389):

"And what was that incident?---The deceased, I think, had been on domestic duties. He came over to the school a little bit later than the other two students. He walked in the classroom, walked over to one of the students and struck him firmly on the head. I immediately reported the matter to the officers. He was removed from the classroom and it was out of my hands then.

As far as you know he was transferred back to Don Dale?---He was transferred back to Don Dale, yeah.

Did you talk to him about why he did that at all?---No.

And did you see why the incident arose?---Well, I – these sort of things happen. I mean, there's a pecking order that gets organised out there at Wildman amongst the kids and – I don't know. I can't comment on why he did it. I mean, just observed it, that's all.

So you didn't see the other boy do anything to him or not do anything to him or - - -?---No"

144. He also witnessed the chanting incident at the school at Don Dale, in February 2000. His evidence about it was (p357):

"Now, when you had some contact with him in February on those two days, do you recall an incident where the deceased was chanting?---Well, as has been mentioned, the principal was at the front of the classroom talking. He just put his head down on the table and mumbled. He could've been chanting or just mumbling. Some of the boys, lack of sleep, they were just – you know, they put their head down or they're not interested in what's going on. I didn't see anything unusual about it.

Do you recall what it was he was saying?---No.

Do you know if he was talking in his language or wailing or not saying anything?---He was – in the classroom the principal was talking up the front. I was with a group of boys. It was just noticeable he was sitting down there with his head down and he was – I couldn't say whether he was chanting, just mumbling or he was just singing to himself or what the situation was. He was just - - -

And you didn't see that as being unusual at all?---Not really, no.

Is that something that commonly occurs with some of the other boys?---Well, the boys sometimes will, if they're not interested in what's going on, if they're tired, just put their head down and, you know, ignore what's going on. Boys have been known to pray or do other things or – you know, nothing special as far as I was concerned."

145. Mr Drummond's evidence was to the effect that, like these two incidents, the Deceased himself had not made much of an individual impression on him. I must count Mr Drummond among those who noticed no, or no great change in him from one sentence to the next.

146. Another such was Edmund Ignatius Flint, Youth Worker. At the time he gave his evidence (12/09/2000) he had been a Youth Worker for 5 ½ years. He had previously worked for the Wool Corporation training shed hands (aged 15-18) in Queensland, as

well as some volunteer youth work. Mr Flint had been trained in one thing and another, but recognition of at-risk behaviours was not one of them.

147. Mr Flint met the Deceased at Wildman River during his 1999 sentence, and at Don Dale during his 2000 sentence. He did not notice any difference in the Deceased (see p152).

148. Mr Flint was one of those principally concerned in providing artificial respiration to the Deceased after he was found with the sheet around his neck. Mr Flint gave his evidence in a controlled manner: he was obviously very deeply affected by the incident, and holding himself together by an effort of will. His evidence was that he got along pretty well with the Deceased. He had escorted the Deceased to the hospital to visit his grandmother.

149. Susanne Debra Jipp, Senior Case Worker, saw little of the Deceased during his first sentence (he being at Wildman River for most of it) and more of him during his second sentence. The largest difference she noticed between the first sentence and the second was his suffering from serious headaches on the second. He having told Ms Jipp that he had been smoking a lot of cannabis before being sentenced, she attributed changes to withdrawal from the use of that drug.

150. Ms Jipp was called in to attend the under-the-bed incident, as has been seen. She concluded that the Deceased was then suffering a migraine. While talking to him (having joined him lying under the bed) she was told of his dissatisfaction with being in Don Dale – that he had been pressured to admit his guilt. It was this disclosure that caused Ms Jipp to get in touch with Mr Hausman, eventually occasioning his attendance on the Deceased. Ms Jipp was also told by the Deceased that things were bad on Groote Eylandt, that lots of people were dying, and that the Deceased attributed that to "black magic".

151. Ms Jipp was also called in by Stephanie Sheehan after the "voices" incident. Her evidence as to that was (p481):

"Did any of the staff, during his second lot of 28 days, express any concerns to you at any time about his behaviour?---(inaudible) another young guy, where he was on the basketball court and the deceased went up to this kid and went to assault him and the staff member at the time, which was Stephanie Sheehan, was (inaudible) and she came up to me and said that the deceased had said that he had heard a voice was the reason why he (inaudible). So I went out and had a word with the deceased and he told me he was only joking. But I also talked to him about why he was in trouble to try and get an idea as to whether or not he might be hearing voices a lot and (inaudible). I didn't write that down and I didn't take that as being of concern, no."

152. Ms Jipp worked for 3 years or so, from 1987 to 1990 as a Juvenile Justice Officer (the job later relabelled Youth Worker) at Malak House, one of Don Dale's precursors. At the time of the death of the Deceased she had been working as Senior Case Worker at Don Dale for about 2 years. In between those two periods she had lived for some time in

Tasmania, had obtained a degree in Social Work in 1996 (to add to her BA of 1986) and had worked as a social worker at the Tamarind Centre, which is Darwin's community-based Mental Health facility. Both by training (some of her academic studies were in Psychology) and recent experience the she was somewhat better equipped than the Youth Workers to detect signs of mental illness, but she was not, of course, in any way formally qualified to do so.

153. So much for the evidence pertaining to changes observed in the demeanour of the Deceased. These witnesses who noticed a change had spoken of their observations in their statements to Police. Ms Morris and I, when deciding which witnesses ought to be called to give viva voce evidence, decided to call all those who had said they had noticed a marked change, and those who had observed one or more possibly significant incidents. It is fair to say that, in the main, the effect of their viva voce evidence, by comparison with their statements, was to diminish the apparent significance of a number of the incidents, and to leave a much less stark impression of the differences seen in the demeanour of the Deceased. I conclude that, soon after the death, when speaking to investigating police, each of them was straining to bring out any scrap of information he or she had that might go to help to explain the shocking, saddening and unprecedented event of the Deceased's death. I conclude that some of these scraps, intriguing as they then appeared, were really nothing out of the ordinary, as the witnesses themselves said in their evidence. The "chanting incident", the "I'm mad" incident and the "under-the-bed" incident individually and collectively are in my opinion very unlikely to have signified any turmoil in the mind of the Deceased connected with what led to his death. These incidents were, in my opinion, rightly treated by those who saw them as transient problems typical of the troubled young people who form the detainee population of Don Dale, to be dealt with on the spot, and of no lasting interest. The "voices incident", the "I'll kill myself incident" and some of the "staring" incidents are not so obviously insignificant.

154. Dr Robert Michaelis Parker, psychiatrist, at the request of the Coroner's Office prepared a report on the Deceased entitled "Psychological Autopsy". The report became Ex 39. It was dated 14 August 2000, and in its compilation Dr Parker drew upon the statements and other documents put together by the police during this investigation. Dr Parker was the last witness called in the Inquest, and made during the course of his evidence, a couple of amendments to the text of Ex 39, in response to evidence given by earlier witnesses which had not been apparent from their statements.

155. Dr Parker is also the author of a dissertation entitled "An Audit of Coronial Records for the 'Top End' of the Northern Territory comparing factors in Aboriginal suicide against other suicides in the region". A copy of the dissertation forms Folio 36 of Vol 1 of Ex 1. Dr Parker wrote it to fulfil one of the final requirements to obtain his psychiatry qualification. It is dated 31 July 1999. As far as I know no other professional in any discipline has studied the topic of Aboriginal suicides in the Top End in such detail : Dr Parker is the world's expert in the area (although I doubt that he would so describe himself). His expertise has previously been drawn on by Coroners, most notably, perhaps,

in the Inquests conducted by Mr Cavenagh, SM, Territory Coroner, into four deaths on the Tiwi Islands (Findings of 24/11/99, Nos 9817541, 9817544, 9823271 and 9825948).

156. Dr Parker in Ex 39 and in his evidence listed a number of stressors operating on the Deceased during his time in detention in January-February 2000. These have been touched on already in these Findings, but I list them briefly (see p4 of Ex 39 for a more extensive explanation):

a) A belief that he should not be in prison.

b) Beliefs related to his social environment back on Groote Eylandt (i.e. lack of family support, and jealous worries about his girlfriend.

c) Grief over the recent death of one of his aunts. (The Deceased had cried over the death of his "mother", most likely this aunt, in his bedroom one night, according to his roommate Gordon Dulla. Gorden Dulla had, however, not passed that on to Don Dale staff.)

d) Issues in respect to placement after release (i.e. his preference, which had been frustrated, to live with his grandmother, and an occasionally expressed reluctance to return to Groote, which might derive from (b) above, or concerns about deaths and illness there, and "black magic").

e) Social isolation in prison – no other Groote Eylandt prisoners.

f) Medical illness i.e. the severe headaches, perhaps relating to "black magic".

157. While I doubt that any of the Don Dale Youth Workers would have known enough about the Deceased to compile this list (and even Ms Jipp did not know of his crying in his bedroom witnessed by Gordon Dulla) I am persuaded by the evidence of each and all of them that their approach to the care of the children in their charge assumed, in effect, that a number of stressors would be operating on all of the children. Hence their vigilance, often spoken of in the evidence, which most of the Youth Workers spoke of as the first and indispensable task in their work. Hence also their responses to the needs each of them saw in the Deceased, arising from his isolation etc. Their response – essentially to talk to the Deceased, find out what the matter was when he was troubled, reassure him when they could – and also the individual resolve of several of the Youth Workers to keep a special eye on the Deceased, seem entirely appropriate. These parts of their evidence and statements also went to reveal to me the high level of concern all the Youth Workers felt for the children under their care. So did the evidence pertaining to their shocked and horrified reactions to the death of the Deceased.

158. Dr Parker's report, Ex 29, also contained his conclusion that there were numerous indications, from the reported statements and behaviour of the Deceased that he may have been suffering from mental illness during the time of his January 2000 sentence. The evidence (as opposed to the statements) of the witnesses led him in his evidence to

downgrade some of these indications, but the "voices" incident and the "I'll kill myself" incident maintained their importance in his opinion, which was (Ex 29at p7):

"Prior to his imprisonment in January 2000, Johno had a number of areas of emotional disadvantage which would have made him vulnerable to suicide. As well, he appeared to be experiencing a number of significant stressors that are reported above. These may have further reduced his ability to perceive any optimism for his future. The suicide, therefore, could be consistent with an impulsive act in relation to a severe mood swing of anger or depression in the context of grief related to a number of stressors in a person who had limited ability to cope with emotional stress. It is more likely, however, that Johno was suffering from the major mental illnesses of depression and psychosis which were not sufficiently recognized by others around him and which led him to take his life in a moment of stress."

159. Dr Parker was also of the view that the Deceased probably intended to take his own life, a conclusion plainly linked to his diagnosis of depression (given depression, an earnest attempt at suicide is likely: where there is an earnest attempt of suicide, depression is likely to be involved). His diagnosis depended not only on the "voices" incident, and the "I'll kill myself" incident, but also on other observations of the Deceased. Dr Parker very sensibly recognised that many of these observations – the staring, the apparently unprovoked assaults, the stating that others were staring at him – were weak indications of anything of a psychiatric nature, being equally explicable by reference to the sort of things that go on between adolescent males in institutions like Don Dale. Dr Parker was very conscious of the fewness of what he thought significant indication of mental illness, and scrupulous to discount observations for the following reason (transcript p692, question by Mr Grant in cross-examination):

"Now doctor, in your experience, or are you able to say whether when people are interviewed in the context of a suicide, that is after a suicide, they're more prone to look for and focus on behaviour that might serve to explain the incident, or be consistent with the incident?---That can happen. There's a phenomenon called 'Effort after meaning', where a particular event has occurred and people are looking for an explanation of why, so they tend to focus more on issues like that."

160. The saddest example of this on the material before me are comments, apropos of nothing in particular, by Marianne Bara during her statement to police, for example (Ex 1 Vol 5 folio 20 p13-14):

"Yeah. And he said goodbye grandma, I must go. I … what's wrong with him? He's got something missing inside him.

You thought that he's got something missing inside him?

Yeah. I, I just saying.

What made you think that, Marianne?

I don't know. When the, somebody like that, they got the black magic inside.

Yeah.

Well that's why the people die.

And what's the black magic, can you tell me.

Black magic must be somebody murder him, that's the way the people die.

Mmm. And how do they get that black magic?

Oh they kill them.

Hmm. Who puts the black magic inside?

I don't know.

Okay.

Maybe somebody put the poison in him.

Mmm. And what made you think that, Marianne? What did he say or what did he do that made you think that?

Hey?

What did he say or what did Benjamin [ie. the Deceased] do that made you think he had that black magic inside?

No, he didn't tell me.

Yeah.

But I'm just talking."

161. Dr Parker was also able to confirm that there had been no known case of suicide by an Aboriginal from Groote Eylandt in recent years. (No-one from the Coroners Office can remember a case.) This is despite there being an amount of mental illness among the population. On the other hand, the evidence of Mr Murabuda Wurramarrba went to show that, though actual suicide might be unknown on the island, threats of it were not (transcript p43):

"I mean, he's a person talking to you the same – or the nasty word or the not proper word with the – used and the person, you upset them and will be saying, 'I'm mad, I'm mad, I'm mad. That what – that what they – they do. You see, even the kids here. You know, if I talk really rough things and – and – to that person, he will be saying, 'I'm mad, I'm mad, I'm going to hang myself or drowned myself', that what they kids say too."

162. Dr Parker also gave evidence of the procedure of examination and observation which would ideally precede the arrival at a diagnosis of a person possibly suffering a mental illness. It would take some days, much detailed observation and an amount of expert questioning. At the end of all that, if a mental illness were found, the naming of the illness might still be uncertain.

163. The quantity and quality of information known about the Deceased is pathetically small compared to the amount this ideal procedure would produce. The quality of information – coming as it does from witnesses none of whom was qualified as hospital staff would be, and all of whom, though observant enough, were not concentrating their observations to the pertinent questions – is likewise inferior. Consequently Dr Parker's post mortem diagnosis of mental illness is not certain; of depression less certain; and of major depression, I suppose still less certain. All the same, I accord his opinion considerable respect, and accept his evidence that, with regard to some of the behaviours of the Deceased, an explanation in terms of a major depressive disorder is more likely to be right, than in terms of other known possible causes (loneliness, cultural isolation, substance withdrawal, etc). There are, I presume, many other things that none of us know or ever will know about the Deceased. I do not conclude – I think Dr Parker does – that the Deceased was probably suffering from a major depression, or depression at all; not in the lawyer's sense of "more likely than not". I can only say that there is a fair chance that he was, a strong possibility.

164. I move on now to outline the relevant course of events on 9 February 2000. In fact, I simply reproduce a summary drawn up by Ms Morris in her written submissions. (paragraphs 7-11):

"That on Wednesday the 9th February 2000 the deceased, who was a detainee at the Don Dale Juvenile Detention Centre was rostered on domestic duties for the day. At about 6.15pm the deceased after completing his domestic duties was routinely searched. Shortly after this the deceased and other detainees were instructed to take their nightly shower. The deceased at first was reluctant to have a shower. After a short discussion with him by two of the afternoon Youth Worker's, Mr Bowering and Mr Flint, he complied, even though he appeared upset at having to take a shower.

As he entered one of the cubicles he was heard to say something in his own Aboriginal language, which none of the Youth Workers or other detainees understood. To lighten the situation Youth Worker Flint made a comment to the deceased in his language, which translated, as "Pussyeating Bird". The deceased apparently said a few comments in his own language.

Once he had completed having his shower the deceased returned to the recreation area where the other detainee's were. He and another detainee, Gordon Dulla, were rolling cue balls about on the pool table when they and the other detainee's were told that no one could play pool until all the chores were completed. The deceased was asked by Mr Flint to help take one of the bins outside. He refused and stated that it was not his turn. When he still refused after being requested a second time he was told that he would have to go to his room. The deceased repeated that it was not his turn. He was angry about having to do something when he was not rostered to do it. Senior Youth Worker Ms Densley was informed of the situation and she told the deceased that he had to go to his room for a short period of time until he "cooled" down. Gordon Dulla also received "room placement", but in another room.

As Mr Bowering escorted him to his room (no. 4) the deceased again commented in his own language. Once he was placed in his room, the door was locked. The sound of something being kicked was heard after the door was closed. The deceased was placed in his room at about 6.30pm.

About five minutes to ten minutes later (the time was not recorded or specifically noted by any of the witnesses) Ms Densley went to Room 4 to check on the deceased. As she entered the room she observed the deceased "sort" of sitting on the floor at the head of the bed with a pink bed sheet tied around his neck with his head leaning backwards. The sheet lead from his neck, horizontally along the bed with the end tied around the other end of the bed."

165. That this was the sequence of events is not in dispute. Mr Bowering's action in placing the Deceased in his room calls for some comment. Instruction 10.2 from the Don Dale Manual (Ex 9) reads:

"10.2 SEPARATE CONFINEMENT – TIME OUT

10.2.1 Time out Placements

At all times these procedures are to be performed within the legislative requirements of the Juvenile Justice Act, section 66 part (2) which states:

"Where the Superintendent of a detention centre is of the opinion that a detainee should be isolated from other detainees for their protection or for the protection of employees in or visitors to the detention centre or for the good order of the detention centre, the Superintendent may do so for a period not exceeding 24 hours or, with the approval of the Director, not exceeding 72 hours".

1. Where a juvenile is in need of personal space due to minor non-compliance, the bedroom may be used for time-out.

2. However, if the juvenile is in need of a more restrictive environment, the Security Unit may be considered if the following criteria is met:

(a) The detainee refuses to follow directions.

(b) The detainee verbally abuses staff and refuses to desist when requested.

(c) The detainee's behaviour is such that it is considered likely that he will incite others around him.

(d) The detainee presents as a real physical threat to themselves or others.

(e) The detainee is damaging property and refuses to desist.

(f) In the opinion of the SYW, the detainee's behaviour is likely to escalate to a point where a situation is likely to develop where there is real risk to personal safety or property.

Separate confinement is not to be utilised as a punishment."

166. Room placement was a management technique frequently used. Instruction 10.2 leaves open a number of questions. Ought the door to be closed or open? If closed, locked or unlocked? How long should a room placement last? How frequently should a detainee under room placement be checked?

167. The statements and evidence of the Youth Workers show that there was no general policy in answer to these questions. Some Youth Workers, including Mr Bowering, say that they always locked the door. Others, never, or only in rare cases where the behaviour of the detainee necessitated it. All agreed that the detainee should be checked soon after placement – 5, 10 or 15 minutes – and thereafter, although times varied. Ms Braham's evidence seemed to me to be a fair summary of the normal variables, with some examples of the sort of thing that caused the variation (transcript p380):

"Room placements; you were asked about room placements. How often do you check the kids when they're put on a room placement?---It depends on the length of the room placement. You check them about every couple of minutes if you can. That's if it's a room placement with the door shut. You – a room placement with the door shut, you usually are in and out about every two or three minutes. Five minutes sometimes. It depends on how angry they are. If they're on a room placement and they're going right off and you've shut the door, if they're really going right off you'll be there right away because the door will get the biggest kick. And I usually stand outside the door and wait for the door to be kicked, then I unlock it and say to them, 'Please don't kick the door. I will be back in a minute'.

What's the longest you'd leave one on room placement without checking the room?---You wouldn't want to leave a kid unless he went to sleep straight away. Because sometimes when they get angry and they've had a real rage with a boy, the first thing they'll do will be fall asleep. Right? And then I open the door. Right? We check them –

you don't leave that to chance. You check about every five minutes, every 10 minutes at the most. Sometimes it might go a little more if you're called to the phone or something and short-staffed. Sometimes we're short-staffed. Sometimes there might be another incident happening up at the school. And we have various places we've got to shunt to. So it might not be dead on the 5 or 10 minutes. But we're not too bad with our hot-footing around the joint.

168. (Instruction 10.2 has been amended since the death of the Deceased by inserting 10.2.1 (1)(a) : "While in a room, on time out, a detainee must be checked, face to face, every 10 to 15 minutes" see Ex 35).

169. The bedroom door was a solid wooden door. Since the death of the Deceased doors have been altered by the insertion of a small glass window, so that it is possible now, as it was not then, to check on the well-being of a room's occupant without necessarily opening the door. I had an impression, the source for which I cannot locate in the evidence, that Mr Parker had preferred the solid doors believing the resulting sense of privacy to be important to the detainees, but that he had come to accept that the diminution of that privacy by the installation of the windows was necessary in the light of the death of the Deceased. (A passage on p600 of the transcript may be part of the source of my impression, but I feel sure Mr Parker said more somewhere.)

170. Of room placements generally, Mr Lawrence submitted (par 461, p94 of his original submissions).

"there is no apparent delegation of authority to make decisions to separately isolate detainees. While it is clear that this is common practice at Don Dale, it is, nevertheless in breach of the mandatory rules in the Don Dale Manual and in breach of Juvenile Justice Act, section 66."

171. I must say I have difficulty seeing how a room placement, of a single detainee, with his door locked, could be, as Instruction 10.2.1 has it "… performed within the legislative requirements of the Juvenile Justice Act section 66 part (2) …". The only decision I know of on a similar question is one I made in the case of Police v SJS (A Juvenile), No. 9909365) earlier this year, when I held, in the course of a criminal hearing, that the placement of SJS in the separation dormitory at Wildman River, was lawful. That, however, was a very different case, notably in that SJS was not locked in there alone, but rather with another misbehaving detainee. In the case of the Deceased, alone in his room at Don Dale, it may be that the Instruction (which was accompanied by Directives from the Commissioner for Correctional Services) operates as some sort of delegation of power, although I can't quite see it. Or it may be – the evidence is unclear either way – that Mr Parker was able to delegate his power as Superintendent to all Youth Workers, and Mr Bowering in particular, and that he had done to. Or it may be that this common and useful practice was unlawful wherever it led to a detainee becoming "isolated", whatever that word might mean exactly. (I think it must include the detainee being alone, but also something more: perhaps in a room; perhaps in a room with the door closed so that he cannot see out or be seen; perhaps in a locked room; perhaps more again.)

172. Ms Morris in her submissions wrote (para 52):

"The time out/room placement method of behaviour modification has not been largely criticised throughout the evidence of the Inquest. It would appear to be an appropriate method of dealing safely with difficult and unruly behaviour that does not require complete secure isolation from staff and other detainees. It is a cooling down or cooling off period for tempestuous young people. According to the manual it is not a method of punishment. (Although Mr Parker's evidence appears to suggest that he considers it is appropriate for minor infringements.) From the evidence the deceased was sent to his room to "cool off", ie, regain control of his temper and feelings. It was intended that a youth worker would come and talk to him about what had occurred shortly. In my submission this was an appropriate use of this tool of managing adolescent behaviour."

173. On the evidence before me I agree. Room placement seems to be a necessary, humane, effective and usually swift way of calming down detainees to the point where talking and counselling may begin. If there be any doubt whether the practice is lawful, Corrections ought to give some thought as to how it might be made lawful.

174. Mr Lawrence went on to submit (para 465 p95) that I should find that the Deceased was further upset by the fact that the door was locked behind him. There is absolutely no evidence that he was: Mr Bowering's evidence was that his placement of the deceased proceeded smoothly and without any unusual incident; the evidence of other Youth Workers established that there was nothing unusual about Mr Bowering's experience and standards. There is simply no knowing what was going through the Deceased's mind after the door was shut behind him. Nothing can be ruled out, for that reason. I do not believe events would have gone differently had the door been shut, not locked.

DID THE DECEASED INTEND TO END HIS LIFE?

175. I have already mentioned Dr Parker's opinion that he thought the Deceased did intend to kill himself. Leaving aside the psychiatric diagnosis of depression, there are other, more concrete indications that he did. First, obviously, his actions, alone in the room, in tying the sheet to his bed head, and round his neck, then kneeling so that his breath was cut off as he leaned forward. The mechanism of the process towards death was explained by Dr Michael Anthony Zillman, forensic pathologist, who performed the (physical) autopsy on the Deceased. Dr Zillman gave his evidence on 11 September 2000 at Alyangula on Groote Eylandt. Dr Zillman said (at p46 – 47):

"There are a number of ways in which compression of the neck can cause death. The compression may actually obstruct the airway, so that air can't pass from the environment into the lungs, providing oxygen to the body. Or the compression of the neck may obstruct the blood flow to and from the brain, in that it may obstruct the large veins, taking blood away from the brain, so interfering with the circulation. Or it may obstruct the large arteries taking blood to the brain, so interfering with the circulation's supply of oxygen to the brain itself. There are compression of the neck situations that may in fact

injure the spinal column and perhaps the spinal cord. Or there can be a combination of these that may occur. In this particular case, in my opinion after examining the body and the circumstances of the case, it was my conclusion that the mode of death involved what's called cerebral hypoxia that is a reduction in the level of oxygen actually in the brain tissues. This may have come about in a number of ways. In this particular case, it is my opinion that the obstruction of the airway was a major factor. I have brought with me today to court, a diagram which I would like to make reference to, to explain what I mean.

I'll just hand a copy of that up to Your Worship.

THE CORONER: Thanks Ms Morris

THE WITNESS: This is a diagram of the human head [Ex 4.] to illustrate some of the internal structures. It's as if the human head has been cut in half and we're looking at the inner half. The front of the diagram, that is the left side of the page as you look at it, shows the front of the head. You can see the projection for the nose, the position of the lips, the chin and so forth. If we look where the lips are, behind them you see the teeth, the shape of the tongue which is attached to the floor of the mouth and if we go up over the tongue we find ourselves in an air passage at the back of the throat. And this extends down into the trachea or windpipe and it's in that way that air carrying oxygen finds its way into the lungs. There is also the ability of air to get into the nose, through the nasal passages and down into the back of the throat again and down into the lungs. In a situation where there is a ligature, particularly a broad ligature about the upper neck, this ligature in compressing the neck, because of the weight of the person's body, causes the floor of the mouth and the back of the tongue, to move backwards, thereby closing off this airway at the back of the throat. That prevents air from the mouth or the nose finding its way into the windpipe and into the lungs. And in that way, the body is deprived of this air containing oxygen, and the brain relies on this oxygen getting from the lungs, in the blood stream, to the brain and the brain will lose consciousness. And if the deprivation of oxygen continues for long enough, the brain will commence to die.

And how long after – how long enough is long enough for that to happen?---For loss of consciousness, less then 10 seconds. For the actual brain tissue to start to die, we're looking at a few minutes of the order of 3 to 5 minutes of sustained compression of the neck. It depends on the age of the person involved, it depends on how much activity – physical activity – has preceded this event. The younger the person, the more active they've been at the time of the incident, the more demand for oxygen from the brain and therefore the more rapid will be the damage done to the brain if that oxygen is cut off in any way."

176. Secondly, there is a writing made by the Deceased and found in his room after his death. This became Ex 13.

177. Youth Workers had searched the room of the Deceased, in routine fashion, earlier in the day. Ms Nielson's search occurred at about 9:30am. Her evidence was to the effect

that, if Ex 13 had then been present, she would have expected to notice it during her search. She said (transcript p286):

"THE CORONER: Ms Nielson, if in the search of a boy's room, a routine search of a boy's room, you came across that piece of paper, the one in the plastic bag there, exhibit 13, and it was the side upwards on which most of the writing is crossed out, how closely would you examine a piece of paper like that?---Well, I'd read what was on it, if it was sitting on top of his bench, out, just to sort of get an idea of what it said.

And do you think in the ordinary course of events you'd take the trouble to turn it over and see if there's anything on the other side?---Pardon, sir?

Would you turn it over and see if there's anything on the other side?---Yes, definitely.

And what about if it wasn't on top and something else was on top of the piece of paper?---I'd still have a look at it. It's my job.

MS MORRIS: And with writing like that, you'd be looking for something which indicated something was wrong?---Yes, definitely.

You'd be skimming over it looking for- - -?---Skimming over it, look - - -

- - - marijuana leaf, pictures, or - - -?---Yeah, or maybe sometimes you – you'd find something where they've written something about another boy because they're angry with them, you know? That can be a pointer to you to keep a bit of an eye out, you know? Those are all the things you're looking for."

178. Ms Densley conducted her search in the afternoon. In the Statutory Declaration of 2 May 2000, supplementary to her tape recorded statement to police (Folio 1 of Vol 2 of Ex 1) she wrote:

"Yes I searched the detainees rooms looking for any contraband as per policy and procedure manual instructions. We don't always read any scraps of paper in the detainees rooms."

179. And in her evidence (transcript p99 – 100):

"Do you know when the last time was that the deceased's room was searched?---I did a room search some time in the afternoon, what I can recall, and documented that in the – in the journal.

Did you find anything, any contraband or unusual in the deceased's room when you searched it?---No.

Is it normal, when you do room search, to look at paper or work that might be on their bench or desk?---If it's got a gunga leaf or something like that you normally take that, but just general things written down you don't really read them anyway. It's private to them.

Is maintaining the privacy of the detainees something that's important?---Yeah.

Why do you see that as important?---Oh, well, they've been to the courts and, you know, that's enough for them to sort of cope with, so when they're at the don Dale Centre you try and make their stay as pleasant as possible.

Do you remember when you did the search of the deceased's room that afternoon finding a note that the deceased may have written?---No, I don't."

180. She had not seen Ex 13 that day. I see no reason to disbelieve either of them, although I should note that Ms Nielson's opinion – that she would have looked closely at the writing, might be wrong. The writing is far from clear.

181. Ex 13 seems to have started out as a piece of A4 paper, computer printed as a "Transaction Report", and then condemned as scrap paper. The computer printing occupies about 5 centimetres at the top of one side. On the rest of that side (the "A" side) there appear writing by the deceased, almost all crossed out – indeed, semi-obliterated. The medium is pencil. The writing is fairly dark. I think I can discern, under the crossings out, some words apparently related to the text on the other side (the "B" side) which is the most pertinent text. From the A side: "my Land"; "crys about"; "Families"; "my fauther and"; "Too of my aunties"; "sorry"; "I'm sorry".

182. On the B side, written more faintly, and at an angle of about 45° to the sheet, descending in short lines to the bottom left corner (or top left corner as side A is laid out) there appear some words crossed out "I didn't [then one unreadable word] first becaues." Then clear text, not crossed out, reading:

"I didn't want too die becaues I was too young. But now I'm growing up and I'll come soon, meet my people in heaven. My land be there anytime."

183. The marks that make up that text show the writer revising his thoughts as he went along. The words "want too" appear in the second line, with arrows leading from each of them to indicate their place in the text. The word "now" appears in the line below "But I'm", with an arrow to show it belongs between those two words. There are two false starts crossed out – what looks like "me" before the word "meet", and an indecipherable squiggle, perhaps a single letter between the words "my" and "land".

184. If I could be at all sure that the Deceased wrote that text after being locked in his room by Mr Bowering, and before tying the sheet around his neck, then I could not see it as anything but a suicide note. If, on the other hand, I could be at all sure that he wrote that text some hours earlier, or (pace Ms Nielsen) even on an earlier day, then I could not see it as a suicide note at all, and would regard it as no more than another piece of

evidence going to show that the Deceased had sad thoughts about his family, deaths, and his land, Groote Eylandt. This was, after all, within a few days of his release date. All the evidence has him thinking a lot about that, and about returning to Groote Eylandt; sometimes happily, sometimes not.

185. Dr Hudspith (transcript p252) gave her opinion that the Deceased could write as quickly as any of us when he was of a mind to. Mr Wrigley gave a similar impression in his evidence at p230. The text on side B is printed, in the main, with some words – increasingly so towards its end – in joined' up writing.

186. All the evidence is that the Deceased was left alone in his room for no more than 10 minutes, and the preponderance of the evidence is that he was there for 5, or not much more than 5. I am quite sure that he was not alone long enough to kick the door, or whatever it was, to write and cross out sides A and B of Ex 13, and to tie up the sheet, and advance his own asphyxiation to the point of which he was found by Ms Densley when she opened the door (which alone would have taken at least 3 minutes – see below). I very much doubt whether he had enough time to write the marks on side B alone, and tie the sheet etc. I think it is more likely than not that all the writings on Ex 13 were made earlier, probably after Ms Nielsen's search. I therefore do not regard the writing as a suicide note. It is possible that he dashed off the writing on side B while he was locked in his room: it may be a suicide note, but I think not.

187. There are two circumstances about the actions of the Deceased which suggest that he was perhaps not intending to end his life, but rather had some other intention in tying the sheet around his neck. The first is his choice of means – the sheet tied to the bed-head to lead horizontally to his throat, where the other end was tied. This is very, very life threatening, but not obviously so. Dr Parker was aware of one case – whether of suicide or an attempt is not clear from his evidence on p691 – where a similar means had been chosen, by a patient in the psychiatric section of the hospital, a number of years ago. Nobody else in the case could recall any other precedent. I am very confident that the deceased would not have had the medical knowledge of the process spoken of above by Dr Zillman, and which was also mentioned by Dr Parker (p691):

"… unfortunately with that method of suicide, once the airway – the problem is if the body's leaning forward and the airway is obstructed, once the person loses consciousness, the brain can exist for another minute or two, but then without air- the person's really got no control over what happens further."

188. There were in the Deceased's room a number of fairly apparent points from which he could have hanged himself in a more obvious way, that is, with the sheet (or fan cord) tied to a point (say, the louvres) above his head.

189. The second circumstance is that the Deceased had every reason to believe that he would not be left alone in the room for long. Ms Densley, in her statement (p11 of Folio 1 of Vol 2 of Ex 1):

"So I said to Johno, I said 'well you'll', he said 'I'm not going to my room'. I said 'well you're on a room placement Johno, you know you have to go to your room for a short period of time'. I said 'so if you walk you your room I'll come and see you very soon and we'll have a talk about it'. And also one of the detainees that's in here, Michael BATES, actually heard me say that. So they I left the, the doorway."

190. This in indeed confirmed by that detainee, Michael Bates, whose statement says (p3 Folio 2 Vol 4 Ex 1):

"Alright. And who was locking the door?

Miss DENSLEY

Sorry?

Miss DENSLEY

And how do you know Johno was inside there?

Cause I heard him in there.

What did you hear?

Like him talking as he was going through the door, like he was in the room when she shut the door, when she said that she would come and speak to him in, in minute when she found out what was going on."

191. (Mr Bates was mistaken, on all the evidence, in thinking that it was Ms Densley who put the Deceased in the room. In his evidence on 14 September 2000 he said that he "didn't take that much notice.")

192. Taken together, the circumstances of his expecting Ms Densley to attend soon, of his ignorance of the deadly dangers of what he was doing, and his choice of a means apparently less life threatening than others at his disposal, it seems strongly possible that the Deceased had in mind a demonstration to whoever opened the door that he was seriously upset by something, or some combination of things. It might be a perceived injustice in being put on room placement after the immediate incident. It might be that, plus his thwarted preference to live with his grandmother after his release. Or it might be a combination of those and others.

193. In the end I cannot decide which is more probable; whether he meant to kill himself, or whether his death occurred by misadventure.

THE RESPONSE OF DON DALE STAFF TO THE EMERGENCY.

194. I shall quote again from the submissions of Ms Morris, paragraphs 12 – 18, which I adopt:

"Ms Densley immediately removed the sheet from around his neck and lay him on his back on the floor. As she was checking for signs of like she summoned help. Youth Worker Nelson come to her assistance. They shook the deceased in an attempt to get a response but were unsuccessful. They could not detect a pulse either. Youth Worker's Flint and Bowering also assisted. Whilst Ms Densley returned to the Youth Workers Control room, Mr Flint and Mr Nelson commenced initial first aid. They detected that the deceased had a pulse and he was breathing, however he was in an unconscious state. They placed him in the coma position. During this time the deceased stopped breathing and they were unable to locate a pulse. After a short period of performing CPR his breathing and circulation returned. Mr Bowering placed the other detainee's in their respective rooms whilst the others performed first aid treatment.

Ms Densley attempted to phone "000" but she was unable to get through (there was apparently a change to the phone system, requiring the dialling of "0" to obtain an external line) so she phoned the Prison, and spoke to Prison Officer Hicks who in turn called St John Ambulance and notified the Prison Nursing Sister who was still on duty. Sister Kotsias contacted the Don Dale Centre and she was informed that the deceased had tried to hang himself and he was experiencing breathing difficulties. Based on this information she told the staff to administer oxygen. The sister called St John to confirm that they had received the call for assistance from Don Dale.

Mr Bowering collected on oxy viva from the Medical Examination Room and gave it to Mr Flint and Mr Nelson. The mask was placed on the face of the deceased and the oxygen was administered.

Soon after Sister Kotsias arrived and commenced further treatment. At one point she believed she had located a pulse, however she was not sure. Prior to the arrival of St John she performed CPR with the assistance of Mr Bowering.

The St John Officers, Graden, Ingham and McKay arrived soon after and commenced advanced first aid treatment. Upon their arrival the Sister informed them that she had earlier detected a weak pulse. They replaced the Don Dale oxy viva mask with one of their own and continued CPR. They placed the deceased on a monitor but no signs of life were detected. The deceased was then defibrillated however this had no effect. Once the deceased received certain drugs a sinus rhythm was detected on the monitor, which indicated that he now had a pulse.

Whilst the St John officers were attempting to locate a pulse Senior Constable Horrocks and her partner, Senior Constable Whittington arrived. About 15 minutes after their arrival when the sinus rhythm was detected St John decided that it was an appropriate time to transport the deceased to the Royal Darwin Hospital.

Once the deceased was removed from his room Horrocks and Whittington immediately made the scene secure, pending the arrival of Forensic and CIB members. Whilst securing the scene Horrocks noticed a hand written note in the cabinet next to the bed. It appeared to be a suicide note."

195. There was unquestionably a degree of panic following the discovery of the Deceased in his room. Ms Densley's troubles with the telephone were the first symptom of that. The communication to Sister Kotsias failed to alert her to how gravely the life of the Deceased was threatened, and Ms Kotsias accordingly brought less equipment with her to Don Dale than she might have. No one thought to man the entrance to the Centre to speed through Ms Kotsias, or the ambulance. Reading all the statements, and hearing all the evidence about the resuscitation attempts (by Youth Workers Flint and Kenneth Nelson primarily), I did not gain an impression of an operation run with a cool mind in command.

196. For all that, I am quite convinced that none of the episodes of this panic had any effect either way on the outcome. The statements of Flint, Nelson Densley and Kotsias, and the evidence of Flint, Densley, Kotsias and Dr Zillman were reviewed by Dr Yip, in his statement (Ex 29). He made no criticism of what Flint and Nelson had done when they attempted cardio-pulmonary resuscitation. It was, according to Dr Yip (statement p2):

"… within a reasonable degree of medical certainty that there is not more that could have been done."

197. Dr Zillman was of the view that the fatal damage was done before the discovery of the Deceased in his room. At p48 – 49 of the transcript, questioned by Ms Morris, he said:

"I believe that the irreversible damage to the brain was already in place at the time of initial discovery. And that the subsequent medical treatment prolonged the life of the deceased but would not have been able to cause recovery. The reason I say that is that when the oxygen is cut off from the brain for the – this period of 3 to 5 minutes and the brain tissues start to die, the brain actually starts to swell and it's the swelling of the brain that later on, perhaps some hours later in an instance such as this, where the blood supply to the brain can be further compromised and then death can ensue. It's important that the vital centres in the so-called brain stem are kept intact for the person to stay alive. If I refer again to the first diagram, the main part of the brain can die within the first few minutes. As long as the part of the brain that joins the main part of the brain to the spinal cord is still nourished and has oxygen, then that is where the vital centres for control of breathing and the heart rate are found and so there will be some breathing and some attempt at a heart beat while those centres remain intact. Now, if subsequent swelling of the rest of the brain, because of the damage caused by lack of oxygen, then causes reduction or loss of the blood supply to the rest of that brain stem and its vital centres, then we will find that they will die and ten there'll be the loss of the ability to breathe and to have a heart rate. So it is possible that at the time of initial discovery, in my opinion,

likely that the major part of the brain had already passed beyond the point of correction and recovery and that the brain stem was still functioning, but unlikely to have allowed recovery to occur."

198. Thus the efforts first of Mr Flint and Mr Nelson, then of Ms Kotsias, then of the St John's Ambulance personnel, then of the staff at Royal Darwin Hospital, all availed naught.

199. Consideration of the panic led Ms Morris in her submission to suggest recommendation about emergency procedures and training. I agree with her suggestions and those recommendations appear (with others) at the end of these Findings.

THE SYSTEMS OF THE DON DALE CENTRE

200. I refer again to the evidence given by Mr Steven Parker, quoted above at paragraphs 72 to 77 of these Findings. Mr Lawrence's submissions were scathing in their condemnation of Mr Parker's evidence, and of his administration of Don Dale. In his submissions in reply Mr Lawrence wrote (p4):

"…. what would appear to be an ethos of self satisfied torpor from management and in particular Superintendent Parker.

'Everything in the garden is lovely' seems to be the message given by Don Dale's Superintendent throughout his evidence. His evidence was full of self serving claims as regards the Centre's Management including hearsay compliments from dignitaries and the like who had been shown around the Centre by the same witness. It stooped to lamentable at times. His evidence became a sell. Indeed, a hard sell.

He claimed their system of recording things were "better than elsewhere". He also claimed, "there's a lot of training going on". At times his evidence defied belief.

The very fact that in this Inquest the Superintendent saw fit to try and tender in evidence a statement from an ex colleague and friend as regards claimed compliance re Deaths in Custody Recommendations was typically indicative of "the sell".

One answer to a question as to why there was no compliance with the basic requirement was, "We've run this place for years very successfully". In other words, classic institutional lethargy.

This torpor led to the lack of effective communication between staff: the lack of a really effective communication system, there being too many documents in existence but not enough actual compliance with any. Such failure ultimately left to the child not being properly understood and thereby assessed.

The evidence reveals a lethargic piecemeal approach by management. The non recording of the deceased telling Youth Worker Munro that "he would kill himself" is indicative of the same. The piecemeal counselling given to YW Munro was a result likewise.

It is just not good enough to harp on about how the staff are sincere, dedicated and possessing a multiplicity of skills and knowledge from the University of life to assist them in their job. They have very important responsibilities and should be thereby fully and properly trained."

201. As for Mr Parker's evidence, I agree up to a point with Mr Lawrence's criticism. Mr Parker was certainly reluctant, unwilling to acknowledge a number of imperfections in his administration, many of them relating to issues of staff training. These imperfections perhaps appeared more glaring than they should have, because the records kept in relation to staff training were, like other records, patchy, inconsistent and unreliable. Mr Parker was unwilling to admit to any significant defects in the record keeping systems either.

202. But having agreed so far with Mr Lawrence, and accepting his adjective "self-satisfied" about the Parker regime, it is nevertheless the case that Mr Parker had a lot to be self-satisfied about. When I concentrate on the evidence in relation to the training of staff, or in relation to record keeping, as those subjects bear on the care of the Deceased during his time in custody, there is, as far as I can see only one undeniable failure in training – lack of concentration upon teaching staff all that can be taught in relation to recognising behaviours and knowing factors suggestive of increased risk of self harm or suicide. Likewise, as far as I can see, there was one datum and one only which failed to find its way through the scattered, paper-based, reporting system. This was the deceased's "I'll kill myself" statement to Mr Munro, and Munro's failure to pass on that item was occasioned not by the cumbersome system, but by his own decision not to, following his judgment that the threat was not ever meant seriously. That is, that instance too would seem to resolve into a training issue.

203. Mr Lawrence also made numerous, though less swingeing criticisms of Ms Jipp's evidence, and of her actions when supervising the Deceased's progress while in detention. In respect of her evidence I disagree with Mr Lawrence in that I believe it was less illuminating than it might have been not because Ms Jipp was not being frank, but because she was, even in January 2001 still seriously upset when thinking and talking about the Deceased. In respect of her contribution to looking after the welfare and development of the Deceased while he was in Don Dale, I am satisfied that she did indeed become aware of all the important behaviours exhibited to other staff by the Deceased, with the exception of the one Mr Munro kept to himself. It is certainly the case that she liaised closely and often with the teaching staff, thus becoming aware of the teachers' concerns with the Deceased. It is certain that she had many communications with persons on Groote Eylandt, in relation to Mr Hausman's attendance, and in relation to where the Deceased should go on release. It is certain that she witnessed some of the Deceased's behaviours (eg. the under the bed incident) and was told of others (eg. the voices incident). If she misjudged the significance of one or more of these – perhaps she

did, perhaps not – I have no reason to believe that such a misjudgment arose from any self-satisfied overconfidence in her own powers of, say, mental health diagnosis.

204. Ms Jipp may have been remiss in not committing to writing a case plan for the Deceased. I accept that she had one. She may have been remiss in drawing up only 3 of the reports which, ought to have documented the Deceased's progress every 4 days during the 25 days he was in Don Dale on his second sentence. Be that as it may, there is no reason to believe that those missing pieces of paperwork would, if filled in, have affected the treatment of the Deceased by one iota. However, those departures from the prescribed standards, together with various items of evidence suggesting that other staff apart from Mr Munro and Ms Jipp regarded record keeping as discretionary in some instances, have given me reason to make other recommendations, also to be found at the end of these Findings.

THE INVESTIGATION OF THE DEATH IN CUSTODY

205. From the time the first police officers, Horrocks and Whittington, arrived at the Don Dale Centre on 9 February 2000, and secured the scene for investigation, the conduct of the police charged with investigating the death was, as far as I can discern, exemplary. I can find no indication of favour to anyone in the way of investigation was pursued, nor is there any sign of obstruction by any of the many persons interviewed. The staff of Don Dale, from Mr Parker down, seem to have willingly handed over any and all relevant documentation asked for. Those police charged with the delicate duty of speaking to relatives of the Deceased appear to have done so with tact and sympathy.

RECOMMENDATIONS

A. In respect of proceedings in bush court.

1. That the DPP and Commissioner of Police continue the development strategies outlined in Deputy Commissioner Valentin's letter, Ex 41, and Mr Wild's letter of 19 January 2001, part of Ex 26, and in any event jointly ensure that bush courts be served by capable prosecutors.

NB. It does not seem to me that a capable prosecutor need be legally qualified – experienced police prosecutors are in some respects better, in others, less good than lawyers.

2. That sufficient resources be allocated to Aboriginal Legal Aid organisations and that those organisations allocate their resources so that their clientele at bush courts receive a quality of service comparable to the clientele in major centres.

B. In respect of training of staff at Don Dale (and other Juvenile Detention Centres).

3. That all staff receive formal training in the recognition of risk factors and behaviours of young people which may indicate an increased likelihood of self-harm, or suicide, and that such training be regularly reinforced.

4. That all staff receive formal training in order that they be better able to recognise signs in young people of possible mental illness, and that such training be regularly reinforced.

5. That there be held regular practice sessions to familiarise staff with emergency procedures and the equipment available for use in all imaginable emergencies. This training should include training to permit access without delay by emergency personnel and vehicles from outside the detention centre, while maintaining security and the safety of detainees.

6. That all staff receive recognised training and pass recognised tests in the provision of emergency first aid, and that such training be kept up to date so that the resulting qualifications not be permitted to lapse.

7. That all staff receive training as to the uniform recording of incidents, including training as to the kind of incidents which must be recorded.

8. That all staff receive adequate training in any new system of recording (a single electronic system may be in place already. If not, one should be installed: see 11 below) in order to be able to record information and to comprehend the information recorded by others.

C. As to practices and procedures at Don Dale.

9. That legislative or regulatory change be considered in order to establish room placement validly among the disciplinary tools available to Don Dale (and other detention centre) staff.

10. That during room placement periods, either the door should be left ajar or the detainee should be very frequently observed through the (new) glass panel in the door.

11. That, (if it has not already happened) the methods of record keeping and recorded communications between staff be reviewed with a view to establishing a single, centralised system at each detention centre, in place of the multitude of books, diaries, notes, etc presently maintained.

12. That the Procedure and Instruction Manual be amended to reflect the changes in sections B and C above.

Dated this 19th day of December 2001.

MR R WALLACE

STIPENDIARY MAGISTRATE

top of page

Last Updated: 11/02/03