



## **FINDING OF INQUEST**

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 1<sup>st</sup> day of December 2010 and the 6<sup>th</sup> day of October 2011, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Kunmanara Brown.*

*The said Court finds that Kunmanara Brown aged 18 years, late of 14 Aroona Road, Kilkenny, South Australia died at the Queen Elizabeth Hospital, Woodville Road, Woodville South, South Australia on the 7<sup>th</sup> day of April 2009 as a result of hypoxic brain injury following cardiac arrest due to neck compression due to hanging. The said Court finds that the circumstances of his death were as follows:*

### **1. Introduction and reason for Inquest**

- 1.1. Kunmanara Brown was an aboriginal man aged 18 years. He died in the Queen Elizabeth Hospital on 7 April 2009. Kunmanara Brown had been admitted to the hospital following an incident on 1 April 2009 in which he had hanged himself from a structure situated at the rear of premises at 14 Aroona Road, Kilkenny where he had recently been staying. The act of hanging was a deliberate act on the part of Kunmanara Brown. There was no other person directly involved in that act. The hanging took place following an incident in which Kunmanara Brown had caused a serious breach of the peace which attracted the attention of police. In the streets surrounding the premises where the hanging would take place, he had threatened to stab his mother and his mother's partner with a knife. At the time of the incident Kunmanara Brown was under the influence of petrol in respect of which he had a long standing sniffing habit.

- 1.2. Members of the South Australia Police were tasked to attend the incident. They had been alerted to the incident by a member of the public and also by Kunmanara Brown's mother, both of whom had made separate telephone calls to police<sup>1</sup>.
- 1.3. Following the incident in the street, Kunmanara Brown made his way back to the premises at 14 Aroona Street. Shortly thereafter police arrived on the scene and took position outside the premises. To begin with it was believed that Kunmanara Brown and his girlfriend were both inside the premises but it was soon established that the girlfriend was not inside the premises and that it was therefore likely that Kunmanara Brown was inside the house alone. Police remained outside the house for a period of approximately 17 minutes before noises were heard to emanate from the rear. When police went to the backyard of the premises to investigate they found Kunmanara Brown hanging by the neck from a structure at the rear of the house. Kunmanara Brown had fashioned a ligature from a length of cable. Police quickly cut Kunmanara Brown down. He was unresponsive. Police immediately attempted to resuscitate him by way of CPR. An ambulance crew arrived on the scene and were able to re-establish a cardiac output and spontaneous circulation and respirations. Kunmanara Brown was conveyed to hospital. He would not regain consciousness. Unfortunately as the result of the initial cardiac arrest caused by his hanging, and the consequent 'downtime' in oxygen deprivation from his brain, he had suffered an irreversible hypoxic brain injury from which he succumbed in hospital on 7 April 2009.
- 1.4. An external post mortem examination, together with a review of Kunmanara Brown's clinical case notes was conducted by Dr Karen Heath who is a forensic pathologist at Forensic science South Australia. Dr Heath concluded that the cause of Kunmanara's death was hypoxic brain injury following cardiac arrest due to neck compression due to hanging. I accept that evidence and I find that to have been the cause of his death.
- 1.5. The premises at 14 Aroona Road, Kilkenny was occupied by a Ms Emily Jako who was an aunt of Ms Carol Brown, the deceased's mother. In early 2009 Ms Brown had moved into the Aroona Road residence so that she could receive medical treatment in Adelaide. Kunmanara Brown and his girlfriend had recently moved into that same premises having come down from Alice Springs in the Northern Territory.

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<sup>1</sup> Exhibit C80x and Exhibit C80y

1.6. This matter was investigated as a death in custody. Section 21(1)(a) of the Coroners Act 2003 mandates this Court to conduct an Inquest into the cause and circumstances of a death in custody. Although no apprehension of Kunmanara Brown had taken place on the day in question, and although he was not in custody in the strict sense at the time of his death on 7 April 2009, by operation of law if the cause of his death, in this case the hanging, occurred while Kunmanara Brown was in custody as defined in the Coroners Act 2003, his was a death in custody. In this regard I agree with the analysis of investigating police that Kunmanara Brown had been confined by police to the premises at 14 Aroona Road, either within the house itself or at least on the premises as a whole and that for this reason he was effectively in custody. Accordingly, this Inquest was mandatory.

## 2. **Background**

2.1. Kunmanara Brown was born in Alice Springs in the Northern Territory in November 1990. His mother was Carol Brown, and his father was Phillip Minor. Kunmanara for the most part went by the name of Brown but he occasionally utilised the name Minor. This was to cause some confusion in respect of his identity when attempts were made in 2008 by Northern Territory welfare authorities to locate him in connection with his chronic petrol sniffing.

2.2. An aunt of Kunmanara Brown, Ms Leonie Roberts, states that Kunmanara Brown and both of his parents lived in Fregon and Ernabella in the far north of South Australia until Kunmanara Brown was about 4 years of age at which time they moved to Adelaide. While living in Adelaide, Kunmanara Brown and his parents would return to Fregon and Ernabella from time to time. During this time Kunmanara Brown's mother and father separated. Kunmanara Brown continued to live with his mother in South Australia. Later, Kunmanara Brown went to live with his father but at the end of 2005 he was returned to Adelaide where he was admitted to the Women's and Children's Hospital to undergo ear surgery. Following this, Kunmanara Brown travelled to Alice Springs. According to the comprehensive investigation report<sup>2</sup> of the principal investigating officer, Detective Brevet Sergeant Mark Hubbard of the SAPOL Executive Support Branch, Kunmanara Brown moved between remote aboriginal communities in South Australia and the Northern Territory.

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<sup>2</sup> Exhibit C80a

2.3. It is believed that Kunmanara Brown started sniffing petrol at the age of 9. This assertion is contained within the statement of Kunmanara Brown's mother, Carol Brown<sup>3</sup>. Efforts on the part of Kunmanara Brown's family to curtail his habit were unsuccessful. Ms Carol Brown states that when Kunmanara Brown sniffed petrol he went crazy, shouted and laughed for no apparent reason. However, there does not appear to have been reported cases of actual physical violence under the influence of petrol. Although Police records contain descriptions of four instances of his possessing petrol for the purposes of inhalation on the APY Lands on various dates in 2005 and 2006, Kunmanara Brown's very brief criminal history does not evince any propensity towards violence. Kunmanara Brown's partner at the time of his death, Ms Rochelle O'Toole, suggests that when she and Kunmanara Brown lived together in Alice Springs and Ernabella, he did exhibit some aggressive behaviour. According to Ms O'Toole:

'When *Kunmanara* sniffs petrol he goes crazy, screaming and sometimes he yells at me. Since I have been with *Kunmanara* he has been sniffing petrol and he sometimes gets angry.'<sup>4</sup> (the Christian name of the deceased has been altered from the original text.)

Kunmanara Brown's petrol sniffing habit was quite deeply entrenched. He was sniffing petrol in the several days before his eventual death in April 2009. According to Ms Jako she believed that he obtained it by siphoning it from cars parked nearby. He would use various containers from which to sniff petrol and he would place those containers under his shirt. It is clear that petrol sniffing engendered erratic and unpredictable behaviour in Kunmanara Brown, and his recent behaviour including that on the day of his death exemplifies this. According to Ms O'Toole, Kunmanara Brown often smoked cannabis but had not been smoking it on the day of his death. She said that she and Kunmanara smoked cannabis in the bedroom of the premises at 14 Aroona Road in the days prior to his death. There is a suggestion in the evidence that cannabis was purchased for Kunmanara Brown in an attempt to provide him with a substitute for petrol. I note that at post-mortem the metabolite of THC, which is the active component of cannabis, was found in Kunmanara Brown's bloodstream along with volatile organic compounds consistent with petrol that was present in the headspace above the ante-mortem blood<sup>5</sup>.

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<sup>3</sup> Exhibit C10a

<sup>4</sup> Exhibit C11a

<sup>5</sup> Exhibit C4a

- 2.4. As already alluded to, the police investigation revealed that Kunmanara Brown had connections with both Northern Territory and South Australia. Throughout his life he came to the attention of a number of government agencies in both jurisdictions. These agencies attempted various interventions to address social, medical and substance abuse issues. The Northern Territory has on its statute books the Volatile Substance Abuse Prevention Act 2005. This piece of legislation has among its objects the need to support child, family and social welfare and improve the health of people in the Northern Territory by providing a legislative framework for the prevention of volatile substance abuse and the protection of persons, particularly children, from harm resulting from volatile substance abuse. Among other things the Act allows police or other authorised persons to apprehend persons who are reasonably believed to have inhaled a volatile substance and who should be apprehended in order to protect the health or safety of that person or other persons. It also allows for the seizure and disposal of volatile substances (including petrol), the relocating of at risk individuals to places of safety and the making of orders that at risk people participate in treatment programs and the making of management plans<sup>6</sup>. The Act enables police, health practitioners and family members to make requests to the relevant Northern Territory Minister to apply for treatment orders in respect of people who are reasonably believed to be at risk of severe harm<sup>7</sup>. I observe that there is no equivalent legislation in South Australia that is of general operation. In South Australia the Public Intoxication Act 1984 provides for the apprehension of a person under the influence of a drug or alcohol who is in a public place and who is unable to take proper care of him or herself. This piece of legislation does not enable the apprehension of persons under the influence of a drug, alcohol or other substance who are on private property.
- 2.5. In January 2008 a request for assessment and treatment at an approved facility, made by virtue of the Northern Territory Volatile Substance Abuse Prevention Act, was completed by Kunmanara Brown's grandfather. Kunmanara Brown was identified at that time as having the alias 'Clive Minor' and it is in respect of this name that efforts to locate him were made. The request alleged that Kunmanara Brown had been sniffing petrol in Alice Springs. A supporting request for assessment was in due course also completed by Kunmanara Brown's mother. In this request she indicated a

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<sup>6</sup> Section 3

<sup>7</sup> Section 33

desire for Kunmanara Brown to go to Adelaide to stay with an aunt as it was asserted that he does not sniff petrol when he stays with the aunt. In February 2008 the relevant Northern Territory Minister signed a recommendation that an assessment for treatment at an approved facility be conducted with respect to Kunmanara Brown under the Volatile Substance Abuse Prevention Act. In the event, Kunmanara Brown could not be located. It is believed that he returned to Ernabella in South Australia which was outside Northern Territory jurisdiction. In the event he was not located there. There was a misunderstanding as to the name which he was using while in Ernabella. Most enquiries were directed towards endeavouring to locate a Clive Minor throughout the APY Lands in South Australia. Unfortunately that name was either not recognised or not associated with Kunmanara Brown. There were various attempts to locate Kunmanara Brown throughout 2008 and some of those involved the Northern Territory Police. All were unsuccessful. In September 2008 the file was closed in accordance with Department of Health and Department of Justice protocols that dictated that if after 6 months a client could not be located, the file could be closed and no further application for a treatment order would be recommended.

- 2.6. Kunmanara Brown does not appear again to have come to the attention of the authorities in a relevant sense until March 2009. Kunmanara Brown was by then in a relationship with Ms O'Toole.
- 2.7. On 17 March 2009 Kunmanara Brown presented at the NPY Women's Council in Alice Springs in company with his aunt, Lilla Brown, and his partner Ms O'Toole. Kunmanara Brown requested financial assistance for a bus fare to Adelaide as he wanted to go there to live with his mother, Ms Carol Brown. On this day they were seen by an NPY project officer, Mr Christopher Warren<sup>8</sup>. Ms Lilla Brown and Kunmanara Brown informed Mr Warren that Kunmanara had been sniffing petrol and that they wanted him to go to Adelaide to live with his mother away from the petrol sniffing that was occurring in Alice Springs. Mr Warren consulted Ms Susan Cragg, the youth program manager<sup>9</sup>, and discussion then ensued concerning whether the transport of Kunmanara Brown was a viable option which would require a solid case plan including contact with his mother. It is evident from the statement of Ms Jacinta Dalton, a welfare worker at NPY<sup>10</sup> to whom the case was also referred, that

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<sup>8</sup> Exhibit C24a

<sup>9</sup> Exhibit C25a

<sup>10</sup> Exhibit C23a

Kunmanara Brown told her that he had been sniffing petrol that day, although he did not appear intoxicated and did not smell of petrol or alcohol. He appeared bright in effect and appearance and was cooperative. Ms Dalton completed an assessment of his request and took into account Ms Lilla Brown's concern that Kunmanara Brown would return to the Todd River bed in Alice Springs and continue sniffing if he did not go to Adelaide. Ms Cragg expressed the view at the time that Kunmanara Brown's family had provided strong and appropriate care for him previously so that the current request should be considered. She advised that Ms Carol Brown should be contacted to ensure her involvement in a safe plan for Kunmanara Brown once in Adelaide. The following day, 18 March 2009, Ms Lilla Brown, Kunmanara Brown and Ms O'Toole again presented at the NPY Women's Council 30 minutes before they were scheduled to depart Alice Springs from the bus terminal. In the event, the necessary funding was made available for Kunmanara Brown to catch the bus to Adelaide. Police investigation has revealed that no contact was made with Ms Carol Brown prior to Kunmanara Brown's departure as per Ms Cragg's instructions. In the event it does not appear that any safe plan was put in place about Kunmanara Brown's residence in Adelaide.

- 2.8. Kunmanara Brown took up residence at the premises at 14 Aroona Road, Kilkenny with Ms O'Toole and I have already alluded to the fact that he habitually sniffed petrol and smoked cannabis at that premises. Some effort was made to contact Kunmanara Brown by the NPY Women's Council workers but without success.

### **3. The incident on 29 March 2009**

- 3.1. According to the statement of Ms Brown's partner Mr Gregory Rigney<sup>11</sup>, during the course of Sunday 29 March 2009 Kunmanara Brown had been sniffing petrol at the side of the house at 14 Aroona Road. When he eventually came inside he smelt of petrol and was aggressive. That evening Ms O'Toole was in bed. When Kunmanara Brown went into the room, screaming was heard to emanate from it. According to Mr Rigney, Kunmanara Brown was trying to kick Ms O'Toole in the head. Mr Rigney grabbed him and pulled him away. Kunmanara Brown was aggressive towards Mr Rigney. The police were called at 7:17pm. The tasking was not dispatched to a police patrol until 9:17pm. By then Kunmanara Brown had left the premises. I was told in the course of the Inquest that the reason for the delay was that the tasking had

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<sup>11</sup> Exhibit C12a

been accorded a priority B1 and that there had been a number of other police taskings of greater priority that evening. In the event, police arrived at the premises at about 9:21pm. The information in the possession of the officers who attended was that Kunmanara Brown had been causing a disturbance and had possibly been sniffing petrol. On arrival the officers had a brief conversation with Ms Carol Brown and it was indicated that Kunmanara Brown may have caught a train into the city from the Kilkenny station. Police conducted a search of the railway station and environs but were unable to locate Kunmanara Brown. Kunmanara Brown's alleged violent behaviour towards Ms O'Toole was not mentioned to the officers who attended 14 Aroona Road on this occasion.

- 3.2. According to Mr Rigney, Kunmanara Brown returned to the house approximately half an hour after the police had left. When he returned he again allegedly made threats towards his girlfriend and mother. Mr Rigney rang the police and on this occasion police responded quickly. Constable Ford and Probationary Constable Byrnes attended at the premises at 14 Aroona Road at 11:30pm. Ms Brown and Mr Rigney were both seen by police to be grossly intoxicated. Police received information that Kunmanara Brown was becoming violent and out of control. There was also further information imparted to the effect that Kunmanara Brown could not be controlled due to his constant petrol sniffing. There was an allegation made by Ms Brown that Kunmanara Brown had been sniffing petrol and had kicked her in the stomach and had ripped her clothes. It was noted that Ms Brown's T-shirt was ripped. However, Ms Brown was adamant that she did not want charges laid against her son but wanted the police to talk to him to calm him down.
- 3.3. Kunmanara Brown was located in the shower of the premises. The shower was running and Kunmanara Brown was fully clothed. He was persuaded to come outside where Constable Ford had a conversation with him. She could smell petrol on him. He had bloodshot eyes and was crying. He would not make eye contact with the officers and offered little by way of response to their questions and statements. Constable Ford received the impression that although Kunmanara Brown could understand English clearly enough, she thought he was uncomfortable talking to her, possibly because she was female. She did not believe Kunmanara Brown to be in need of immediate medical attention. By this time Sergeant John Southon<sup>12</sup> had

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<sup>12</sup> Exhibit C65a

arrived at the premises. Ms Brown asserted to him that she had been assaulted by Kunmanara Brown but did not want any formal police action taken, just that he be 'spoken to'<sup>13</sup>. When Sergeant Southon posed the obvious question as to what would stop Kunmanara Brown from assaulting her again, Ms Brown asserted that he would go to sleep, that he was frightened of police and that once they told him off he would stop.

- 3.4. Sergeant Southon then had a conversation with Kunmanara Brown. Sergeant Southon also detected a strong smell of petrol emanating from him. Sergeant Southon was aware that Kunmanara Brown had been visiting from the AP Lands and knew from his own experience having served there that petrol sniffing had there been prevalent. Kunmanara Brown's current presentation was in keeping with all of that. Kunmanara Brown was reticent in providing any information to Sergeant Southon. However, Sergeant Southon observed that he was moody, angry and petulant in nature, but was responding to questions in an appropriate manner and indicated he understood what was happening and what was being asked of him. He did not regard Kunmanara Brown at that time as being seriously affected by petrol. Sergeant Southon spoke to Kunmanara Brown in such a manner as to convey to him that assaulting his mother was entirely inappropriate and should not be repeated.
- 3.5. As far as Ms O'Toole was concerned, she did not make any allegation that she had personally been assaulted by Kunmanara Brown. However, Sergeant Southon gained the impression that she was clearly afraid of him in his current state. Sergeant Southon asked her if there was somewhere else in the city where she could stay and she advised of an address in Rosewater where one of her relatives lived. She accepted an offer from police to be driven to that premises and she was in due course taken there. The purpose of that was to ensure her safety. When discussion about Ms O'Toole being removed from the premises to the Rosewater address was taking place, Kunmanara Brown came into the room and began talking aggressively to his girlfriend. In the event Mr Rigney was also taken to another address.
- 3.6. Ms Brown was most insistent that her son not be arrested. She went so far as to sign a SAPOL document to the clear effect that no police action be taken against her son<sup>14</sup>. While one would normally regard the wishes of a person in an intoxicated state, as Ms

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<sup>13</sup> Exhibit C65a, page 2

<sup>14</sup> PD207a

Brown was, as having limited weight, Sergeant Southon's explanation of the ultimate police course of action needs to be taken into consideration. He said:

'Whilst the assault occurred within a family unit the definition of family violence within the regulations is that an assault must be committed by one married partner against another partner, or by a parent against a child. An assault, in this instance, by son against mother, is simply an assault and not aggravated by virtue of the fact of the son/mother relationship.

As previously stated the offender Kunmanara Brown was visiting the city from the Anangu Pitjantjatjara (AP) Lands in the far north-west of the state and enquiries on the evening ascertained he had nowhere else in the city to stay. His mother did not want any formal action taken against him regarding the assault on her and appeared to be in no further danger from him. His girlfriend Rosa Lewis (Rochelle O'Toole) was clearly frightened of him and did have another address in the city at which she could stay thus it was decided to move her to an address in Rosewater.

This course of action achieved two things. Firstly the girlfriend of Kunmanara Brown was removed by police from any possible danger to her and secondly, Brown was allowed to stay at the residence, thereby ensuring he had a roof over his head whilst visiting the city from the country.' <sup>15</sup>

One might add to Sergeant Southon's analysis that an arrest of Kunmanara Brown for the purposes of a prosecution involving alleged violence, be it against a family member or otherwise, would have involved an element of futility having regard to the quality of any evidence that would have been available to advance any such prosecution. Constable Ford stated that witnesses to the alleged assault were not forthcoming with detail and repeatedly insisted that they did not want Kunmanara Brown arrested. She did not believe that there was enough information necessary to sustain a charge. It is not difficult to see why the officer should have taken that view. Kunmanara Brown probably would have been bailed in any event, and it may not have been seen as reasonable to impose a condition that he not associate with persons at the 14 Aroona Road address having when it is borne in mind that this premises appears to have been his sole suitable source of accommodation in Adelaide. It is evident from the police statements tendered to the Court that there was a reasonable belief on their part that arrest was not required in order to prevent further breaches of the peace that night, and it also has to be considered that arrest is an option of last, not first, resort.

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<sup>15</sup> Exhibit C80a, page 33 (the christian name of the deceased has been substituted in this passage with the reference Kunmanara)

3.7. The position may well have been different if a legislative regime was in place that might have enabled police to apprehend Kunmanara Brown in respect of his intoxication from petrol and his resultant behaviour. The Public Intoxication Act would not have assisted police in this regard due to the fact that Kunmanara Brown's intoxication was not occurring on public property and that his detention under that legislation would probably only have been temporary in any case. I do not know whether any specific consideration was given to apprehending Kunmanara Brown pursuant to the then section 23 of the Mental Health Act 1993<sup>16</sup>. This provision empowered police to apprehend a person in respect of whom there was reasonable cause to believe that the person had a mental illness and that the conduct of the person was or had recently been such as to cause danger to himself or to others. The duty of police in those circumstances was to take the person apprehended to a medical practitioner for examination. It is evident from the police statements relating to this incident that they did not believe Kunmanara Brown required medical treatment. Detective Inspector Denise Gray, who is the Operations Inspector at the Major Crime Investigation Branch, gave evidence in the Inquest. She opined that from a police operational perspective, invoking the Mental Health Act in these circumstances would have had its difficulties. She told the Court that Police experience is that when people with substance abuse issues are taken for mental health assessment, quite often the response will be that it is a substance abuse issue and an anti-social issue and is not viewed as a mental health issue<sup>17</sup>. I return to these matters later.

#### **4. The incident on 1 April 2009**

4.1. In his statement<sup>18</sup> Mr Rigney asserts that on the morning in question he observed Kunmanara Brown sniffing petrol at the side of the house. He approached Kunmanara Brown and attempted to speak to him about his petrol sniffing habit and how it would kill him. Kunmanara Brown did not seem to take any notice.

4.2. Later that morning Mr Rigney and Ms Brown left the house on foot to walk to the Arndale Shopping Centre. Kunmanara Brown followed them and yelled out at them 'you're not my father' in an aboriginal language. This tirade was accompanied by door banging and kicking of the fence. Mr Rigney and Ms Brown were walking along Aroona Road when Kunmanara Brown emerged from the house and started

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<sup>16</sup> Since replicated in section 57 of the Mental Health Act 2009

<sup>17</sup> Transcript, page 39

<sup>18</sup> Exhibit C12a

running at Mr Rigney, holding what Mr Rigney describes as a 'big kitchen knife'<sup>19</sup>. At about this time two men on pushbikes arrived on the scene. They witnessed Mr Rigney come around the corner from Aroona Road with Kunmanara Brown following closely behind. Mr Rigney asked them to ring the police. Kunmanara Brown was heard to yell out words that included a threat to stab someone. One of the men, a Mr Ian Whitford, says in his statement<sup>20</sup> that he observed Kunmanara Brown waving his hands in a wild manner, holding what appeared to be a knife. The other man, a Mr Jason Deruwe, called the police from his mobile phone. Kunmanara Brown continued to shout at Mr Rigney and at about that point the two men, Messrs Whitford and Deruwe, decided to separate from Mr Rigney. According to Mr Whitford, at this point Kunmanara Brown appeared very angry, although he appeared coordinated and was moving freely. He was running and then walking as he chased Mr Rigney. It appeared that Mr Rigney was in fear and was shaking. Other witnesses heard various utterances including threats to stab.

- 4.3. In the telephone call made by Mr Deruwe, of which there is a transcript<sup>21</sup>, police were told by him that the man with the knife, whom we know to be Kunmanara Brown, was described as 'fuckin crazy', that he had a 'big knife' and that he tried to stab three people already. The tone of Mr Deruwe's phone call was that police needed to attend very quickly. The other point made by Mr Deruwe in the phone call was that if the man came near Mr Deruwe, Mr Deruwe himself might need to use force towards that man. Mr Deruwe also made it plain that there was 'something very wrong with him'. The other salient feature of the telephone call is that Mr Deruwe indicated to police communications that he believed that the man with the knife knew that Mr Deruwe was ringing the police and that that explained why he had then taken off. It is known that Kunmanara Brown did indeed make his way back to 14 Aroona Road and that by the time of the arrival of police he was ensconced inside.
- 4.4. Meanwhile, Ms Carol Brown had approached a resident at the corner of Myponga Terrace and Aroona Road and asked that person to call the police as her son had a knife. The resident rang 000 and then handed the phone to Ms Brown. At some point it is apparent that Ms Brown indicated to police that Kunmanara Brown had been sniffing petrol, had tried to stab her and that he and that he was going to stab himself.

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<sup>19</sup> Exhibit C12a, page 6

<sup>20</sup> Exhibit C14a

<sup>21</sup> Exhibit C80aa

This is evident from a transcript of the radio transmissions relating to the police tasking<sup>22</sup>.

- 4.5. The SAPOL Communications Centre incident history report<sup>23</sup> reveals that Mr Deruwe's phone call to police had occurred at 11:49am. A uniform police patrol consisting of Constable Minge and Probationary Constable Smith responded to the tasking. A number of other police officers also responded, including Probationary Constable Dawson and Constable Koch. The officers arrived at the general location at about 11:53am. Acting Sergeant Burford became the forward commander. He arrived on the scene at about 11:58am. A cordon was setup surrounding the premises at 14 Aroona Road. Acting Sergeant Burford setup his forward command post about 50 metres west of Aroona Road.
- 4.6. At the intersection of Myponga Terrance and Aroona Road police encountered Ms Brown who was waving her hands attempting to attract their attention. Ms Brown informed police that her son had chased her with a knife and was trying to stab her. She indicated that Kunmanara Brown was now at 14 Aroona Road. Constables Minge, Smith and Dawson went to the front of that premises and took up position there. The time was approximately 11:58am. The information that came from Ms Brown to the effect that Kunmanara Brown had said he was going to stab himself was apparently available to be known at 11:55am according to the SAPOL Communications Centre incident history report<sup>24</sup>. It is not known whether the four officers whose names I have mentioned knew of that assertion. This was a piece of information that was of some relevance, but it is difficult to see what practical difference it would have made in relation to what was to transpire regarding Kunmanara Brown and the premises at 14 Aroona Road.
- 4.7. Upon the arrival of the officers at the front of the premises the front door was observed at first to be wide open. Blood spots on the footpath at the front of the house leading to the driveway were also observed. Constable Koch took up a position at the driveway entrance on the south-western corner of the premises. Constable Smith stood close by. Constable Minge stood on the north-western corner of the footpath at the front of the premises from where he had a full view of the front of the premises as well as down the northern boundary fence line. Constable Dawson was

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<sup>22</sup> Exhibit C80z, item 35

<sup>23</sup> Exhibit C67c, page 2

<sup>24</sup> Exhibit C67c, page 2

with Constable Minge. Ms Brown by that time was standing near Constable Minge. Constable Minge led her to the corner of Aroona Road and Alfred Street where he spoke briefly to her. At that point she indicated to Constable Minge that Kunmanara Brown's girlfriend was in the house with him. In the meantime, movement could be seen coming from within the house but police were unable to identify who or what was moving, but it was considered as a possibility that the movement may have been made by Kunmanara Brown's girlfriend. While waiting at the front of the property, police heard a number of noises emanating from within the premises. The front door was observed to slam shut at around 12:01pm, confirming that at least one person was inside the house. There remained some continuing uncertainty as to whether or not the girlfriend, Ms O'Toole, was also in the house. A few minutes later, a sighting was made of Ms O'Toole by an occupant of a passing Mobile Assistance Patrol which is a service provided by the Aboriginal Sobriety Group. At 12:07pm a police officer located Ms O'Toole in Cavendish Avenue, a short distance east of Aroona Road. Constable Minge was advised that Ms O'Toole was safe.

- 4.8. Shortly afterwards, Constables Koch and Smith entered the front garden through the front gate. At one point Constable Koch removed his firearm from his holster and held it with both hands pointed to the ground. He did this due to his possible position of vulnerability in respect of the potential offender and the information received about the knife. It is not known whether Kunmanara Brown witnessed Constable Koch in possession of the firearm. Constable Koch does not believe that Kunmanara Brown would have seen him with his firearm drawn. This belief is supported by the opinion of Constable Smith who observed that all of the shutters on the windows were either fully or almost fully down and that the main door by that time was shut. No-one was seen to be making any observations from within the house through the front windows.
- 4.9. A number of attempts were made by officers to communicate with Kunmanara Brown, addressing him by his first name and indicating that they wanted to speak to him. It is evident that none of these efforts at communication were in any sense threatening.
- 4.10. At about 12:15pm police heard a series of noises emanating from the rear yard of the premises. Constable Smith led Constable Koch around the side of the premises in order to investigate. As Constable Koch approached the rear corner of the house he re-holstered his firearm. Upon entering the rear yard of the premises Kunmanara

Brown at first appeared to be kneeling on the ground near an awning but on closer inspection it immediately became apparent to the officers that a rope or cable was tied around Kunmanara Brown's neck and that the other end was fixed to the awning. Kunmanara Brown was immediately cut down. Unfortunately Kunmanara Brown's face landed on the ground heavily when he was released. An ambulance was called for and immediately dispatched.

- 4.11. Police turned Kunmanara Brown onto his back and commenced CPR. A knife was found secreted in Kunmanara Brown's underwear by police. Ambulance personnel arrived at approximately 12:17pm. When they arrived two officers were continuing to perform CPR. The efforts of the police officers in performing CPR have been praised in a letter from Mr Paul Lemmer, Manager, Patient Services, of the South Australian Ambulance Service (SAAS) to the Commissioner of Police. The letter recognises that their efforts at CPR resulted in a return of spontaneous circulation and respirations after which the SAAS commenced their resuscitation efforts. It has been observed that if not for the prompt action of police and the quality of their CPR, the patient would have had no chance of survival and probably would have died at the scene. Unfortunately Kunmanara Brown had suffered an hypoxic event through his cardiac arrest and the resulting brain damage proved, in the event, to be fatal several days later.
- 4.12. There is no certain means by which the time at which Kunmanara Brown hanged himself from the structure at the rear of the premises can be determined. What is known is that at approximately 12:01pm the front door was slammed shut. It is now known that at that time the only person inside the premises was Kunmanara Brown and that this action must have been his. Kunmanara Brown did not respond to any of the attempts by police to communicate with him. For the next few minutes police believed that Ms O'Toole was also inside the premises and that she was also in danger. Constable Dawson at one point yelled out specifically to the girlfriend by using her name, Rochelle. There was no response to that, but this would not have necessarily meant that she was not inside the premises. At the point at which Constable Koch entered the front yard and walked to the carport at the side of the house and withdrew his firearm there, he heard movement from inside the house that must have been caused by Kunmanara Brown at that point in time. Constable Koch maintained his position at the front of the premises, about 3 metres from the front

door. He was there when Kunmanara Brown's girlfriend, Ms O'Toole, was identified as being in the street.

- 4.13. During the Inquest Mr Christopher Charles, counsel for Kunmanara Brown's mother Ms Carol Brown, raised a number of matters concerning the actions of police in respect of the period of time between the arrival of the four officers at the front of the premises and discovering Kunmanara Brown at the rear. Mr Charles expressed concern as to whether or not police had adequately taken into account the assertions made at the time by Ms Brown to the effect that Kunmanara Brown might harm himself and, associated with this, there was a suggestion by Mr Charles that police may have better handled the matter if they had utilised Ms Brown to endeavour to persuade her son to cooperate with police. He also suggests that the incident controller was too remote from the scene. It has to be said that these criticisms were somewhat muted. Detective Inspector Gray in her evidence before the Court did not agree with those criticisms and pointed out that it is not standard practice to utilise someone in Ms Brown's position as a type of negotiator. Inspector Gray's evidence, which I accept, is that it is a dangerous practice to introduce a third person in these circumstances to perform negotiations. She pointed out that in this case in particular Kunmanara Brown was obviously agitated and that a lot of his anger had been directed towards his mother in the first instance and that this had been the original catalyst for the incident in question. The other point that Inspector Gray made is that police would in these circumstances lose control of the situation, especially if Ms Brown were to have conversed with her son in a language that police did not understand. I agree with Inspector Gray in this regard. As far as not taking into account assertions that Kunmanara Brown might harm himself are concerned, in my view the point needs to be made that in any incident of this nature the possibility that a person might turn a weapon on him or herself is an issue that is very often present. The point in this case, however, was that Kunmanara Brown had made threats towards other persons and, regardless of whether or not he intended to perform self-harm with the knife, he still presented as a danger to those who might be minded to disarm or arrest him. There was also the perceived possibility for a significant period that Mrs O'Toole was also inside the premises and the possibility that she was in danger, irrespective of Kunmanara Brown's intent to self-harm, needed to be seriously taken into account. I agree with Inspector Gray that, although the mother's assertions as to the possibility of Kunmanara Brown stabbing himself would have

been useful information for police to have, it could not have altered the outcome in this particular case. The position of the incident controller relative to the scene at 14 Aroona Road could also have made no difference to the outcome. There is no warrant for the suggestion that police ought to have acted differently or with any more rapidity.

## **5. Conclusions**

- 5.1. In respect of the incident on 29 March 2009 there is no question but that police acted appropriately. Police had a discretion as to whether or not Kunmanara Brown should have been apprehended in respect of an alleged assault. For the reasons that I have already identified, their discretion was exercised appropriately having regard to the powers that they possessed and the responsibilities that were imposed by law upon them. That said, if there was to have been an occasion for intervention that might have interrupted the course of events that led to Kunmanara Brown's death three days later, this would have been that occasion. It was less than a year since the Northern Territory authorities had been endeavouring to activate the operation of the Volatile Substances Abuse Prevention Act in respect of Kunmanara Brown and it was not as if the question of his petrol sniffing had gone away. In saying this I do not imply any criticism of police. I deal with this issue again shortly.
- 5.2. In respect of the incident on 1 April 2009, I find that police at all times acted appropriately and with appropriate haste in respect of the incident to which they had been tasked. As is pointed out in the statement of Acting Sergeant Burford<sup>25</sup>, on the information that had been received by police from Police Communications it was identified that the offences police may have needed to investigate were those of carrying an offensive weapon and possibly aggravated assault. It would have been lawful for police to have apprehended Kunmanara Brown in those circumstances. Police officers had to consider their own safety and, to begin with, needed to take into account the possibility that Kunmanara Brown's partner Ms O'Toole was with him in the house. There was no undue delay between the time of the arrival of police and the actions of the two officers entering the rear yard and finding the deceased at that location.

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<sup>25</sup> Exhibit C33b

- 5.3. The behaviour of Kunmanara Brown, both in respect of the incident in which he threatened others with a knife and in respect of the taking of his own life, was probably due to the effects of petrol inhalation, either chronically or acutely on that particular morning.
- 5.4. The efforts made by police to resuscitate Kunmanara Brown were appropriate and laudable.
- 5.5. The report prepared by the investigating officer, Detective Brevet Sergeant Mark Hubbard<sup>26</sup>, expresses the view that the intervention by the various authorities in respect of Kunmanara Brown's petrol sniffing could have been more effective in the circumstances. He has identified what, in his assessment, was a breakdown in proper communication between the authorities in the Northern Territory and the authorities in South Australia in respect of Kunmanara Brown's identity. An oversight on the part of the Northern Territory authorities to properly identify the deceased by the name of Brown had meant that authorities in South Australia were endeavouring to locate a Clive Minor. The police investigation has noted that there was a failure to relay Clive Minor's alias of Brown to the South Australian authorities. Kunmanara Brown's transient lifestyle also made him difficult to locate. As far as the attempted intervention in March 2009 is concerned, the findings of the police investigation were that Kunmanara Brown had been sent to Adelaide and provided with the necessary means to do so without a proper case plan having been put in place. It has been beyond the scope of this enquiry to investigate those matters to a sufficient level to enable the Court to make positive findings of its own. As indicated during the Inquest, what this Court appropriately can do is to draw these matters to the attention of the relevant authorities for their consideration. The recommendation contained within the report of investigating police is as follows:

'Consideration be given for a review of Northern Territory and South Australian Drug and Alcohol Services arrangements/protocols for

- the exchange of information and
- provision of treatment to provide better intervention opportunities

for remote indigenous communities and in particular for transient individuals.'<sup>27</sup>

I draw that recommendation to the attention of those appropriate authorities.

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<sup>26</sup> Exhibit C80a

<sup>27</sup> Exhibit C80a, page 64

## 6. **Recommendations of the Court**

- 6.1. By virtue of section 25(2) of the Coroners Act 2003 the Court may add to its findings any recommendation that might, in the opinion of the Court, prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest.
- 6.2. It is well known that the problem of petrol sniffing in Aboriginal communities has excited the attention of this Court in the past. This has occurred in the context of petrol sniffing that has taken place in remote communities such as Yalata and the APY Lands in the far north of the State. The case of Kunmanara Brown can be distinguished in the sense that although he had a connection with the APY Lands and Aboriginal communities in the Northern Territory, it is evident from the material that was placed before this Court that he was habitually sniffing petrol in the Adelaide metropolitan area in the days proceeding his death and in particular on the day of the 29<sup>th</sup> March 2009 which was the occasion that police first attended at the premises at 14 Aroona Road in connection with him. For reasons that I have already identified, I conclude that Kunmanara Brown's behaviour both on the night of the 29<sup>th</sup> March 2009 and on the morning of the day of his death being the 1<sup>st</sup> of April 2009 he was under the influence of petrol and that his behaviour is explicable on that basis.
- 6.3. The evidence is clear that the Northern Territory authorities had been endeavouring to locate Kunmanara Brown during much of 2008. Their intention, as far as would be appropriate, was to apply the rigours of the Northern Territory Volatile Substances Abuse Prevention Act in respect of him. In the event they were unable to locate Kunmanara Brown for this purpose and the process was deemed to have lapsed after a period of six months. Kunmanara Brown did come to the attention of the Northern Territory authorities in March of 2009. This was at a time after the attempt to apply the Volatile Substance Abuse Prevention Act had lapsed and there does not appear to have been any further application made in respect of that process at that point in time. As things transpired, the Northern Territory authorities facilitated Kunmanara Brown's travel to South Australia.
- 6.4. I received into evidence the statement verified by affidavit of Assistant Commissioner Graeme Barton of SAPOL dated 22 December 2009<sup>28</sup>. In that very detailed statement

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<sup>28</sup> Exhibit C79a

Assistant Commissioner Barton has by way of background described the current situation regarding petrol sniffing and volatile substance misuse in places such as Yalata and the APY Lands in South Australia. In his statement Assistant Commissioner Barton refers to the application of the Public Intoxication Act 1984 which has general application, and as far as the APY Lands and Yalata Reserve are concerned, draws the Court's attention to the Pitjantjatjara Lands Rights (Control of Petrol) Bylaws 1987 and the Aboriginal Lands Trust (Yalata Reserve) Regulations 2005. The Pitjantjatjara bylaws regulate the possession of petrol for the purposes of inhalation. The bylaws impose penalties for the possession of petrol for the purposes of inhalation and for the sale or supply of petrol for that purpose. There have been a number of apprehensions under this legislation within the APY Lands. Persons detected inhaling petrol in the APY Lands are referred for assessment and treatment to a mobile outreach service operated by Drug and Alcohol Services South Australia (DASSA). Within Yalata, the Yalata regulations made under the Aboriginal Lands Trust Act 1966 prohibit the inhalation and the possession, sale or supply of petrol for the purpose of inhalation within Yalata Reserve. Persons so detected are dealt with by the Magistrates Court. As at the writing of Assistant Commissioner Barton's report, DASSA's diversion facilities were not available at Yalata. There have been a number of apprehensions under this legislation within the Yalata area.

- 6.5. It therefore appears that measures that are in place to control the incidence of petrol sniffing in identified indigenous communities are confined in their operation to the geographical locations of those communities. There is no generally operative legislation that deals specifically with petrol sniffing within the South Australia community at large. In particular, there is no equivalent to the Northern Territory Volatile Substances Abuse Prevention Act 2005. In a general community setting, police have to rely upon the application of the Public Intoxication Act 1984, which only applies in respect of public property, and the Mental Health Act 2009 in order to affect any apprehension of a person who appears to be affected by an inhalant such as petrol.
- 6.6. The Mental Health Act, as it applied in April of 2009, has since been repealed. There is now in existence the Mental Health Act 2009 which came into effect on 1 July 2010. The currently operating Mental Health Act has among its objects the need to ensure that persons with serious mental illness receive a comprehensive range of

services of the highest standard for their treatment, care and rehabilitation with a goal of bringing about their recovery as far as is possible while retaining their freedom, rights, dignity and self respect as far as is consistent with their protection, the protection of the public and the proper delivery of the services. For those purposes the Act confers appropriately limited powers to make orders for community treatment, or detention and treatment, of such persons where required. Schedule 1 to the Act identifies certain conduct that should not be regarded in law as a mental illness. Included is the stipulation that a person does not have a mental illness merely because the person takes or has taken alcohol or any other drug. However, the Schedule goes on to state that nothing prevents, in relation to a person who takes or has taken alcohol or any other drug, the serious or permanent physiological, biochemical or psychological effects of drug taking from being regarded as an indication that a person is suffering from mental illness<sup>29</sup>. Thus there would appear to be no reason why the serious or permanent physiological, biochemical or psychological effects of petrol sniffing should not be regarded as an indication that the person is suffering from a mental illness.

- 6.7. Section 57 of the Mental Health Act 2009 enables a police officer who believes that a person has a mental illness and that the person has caused, or there is a significant risk of the person causing, harm to himself or herself or others or property and that the person requires medical examination, to take that person into his or her care and control and then as soon as practicable transport the person or arrange for the person to be transported by another police officer or authorised officer to a treatment centre or other place for medical examination<sup>30</sup>. Section 57(3) stipulates that a police officer is not required to exercise any medical expertise in order to form an opinion about a person who exhibits a possible mental illness and may form such an opinion based on the officer's observations of the person's behaviour or appearance or reports about the person's behaviour, appearance or history which may include reports about matters occurring outside of South Australia.
- 6.8. Mr Charles of counsel for Kunmanara Brown's family, and a man who has vast experience in respect of indigenous affairs, particularly in relation to the administration of justice in that context, strongly urged the Court to make a recommendation that the South Australian legislature enact legislation equivalent to

<sup>29</sup> Mental Health Act 2009, Schedule 1 – Certain Conduct May Not Indicate Mental Illness, paragraph (k)

<sup>30</sup> Section 57(1)(c),(4)(a)&(5)(c)

the Northern Territory Volatile Substances Abuse Prevention Act 2005. He does so subject to a number of qualifications, the most significant being that a need for local drug and alcohol authorities, such as Drug and Alcohol Services South Australia, to be able to facilitate the necessary neuropsychological assessment and treatment should be addressed. Mr Charles points out that there is a significant cross border element between Northern Territory and South Australia as far as petrol sniffing activities in Aboriginal communities either side of the border are concerned. This case is in fact a very good illustration of what Mr Charles has in mind. Kunmanara Brown was itinerant between the two jurisdictions and it was for that reason, among others, that the Northern Territory volatile substances abuse legislation was not able to be applied in relation to him. Mr Charles makes the point that as far as Anangu people in Adelaide are concerned, the Public Intoxication Act 1984 is of limited utility in respect of petrol sniffing because most Anangu who live in Adelaide reside in houses and that petrol sniffing is by and large confined to private property, whereas on the APY Lands there is much more open space and sniffing openly takes place in circumstances where the Public Intoxication Act can have more appropriate impact. Mr Charles suggests that this provides a further reason why legislation specifically targeted towards volatile substance abuse within the wider South Australian community would be worthy of consideration by the South Australian legislature. Mr Charles also invites me to conclude that the powers that would be provided by legislation similar to the Northern Territory legislation would be of enormous value to policing in Adelaide.

- 6.9. The application of the new Mental Health Act 2009 to the problem of petrol sniffing, the apprehension of persons either chronically affected by it and their subsequent treatment is not entirely certain. There is no reason to suppose that the current version of the Mental Health legislation in South Australia would have been of any greater assistance to police on the 29<sup>th</sup> of March 2009 above and beyond those powers that existed under the then legislation. There might still be a reluctance on the part of police to utilise this legislation unless the subject person was acutely affected and obviously so. It is not for this Court to make any determination about that issue in a context such as this. That is a matter for the legislature and the relevant authorities to consider. In the opinion of the Court there is a case for concluding that had the equivalent of the Northern Territory volatile substance abuse legislation been in place in March of 2009, its rigours could have been applied to Kunmanara Brown and

conceivably with some with beneficial effect. After all, the Northern Territory authorities had apparently taken that view the year before. I agree with Mr Charles that the implementation in South Australia of legislation akin to the Northern Territory legislation that is specifically targeted towards volatile substance abuse is a matter worthy of consideration.

6.10. Accordingly I make the following recommendation:

- 1) That the Minister for Health consider introducing legislation before the South Australian Parliament similar to that encompassed within the Northern Territory Volatile Substance Abuse Prevention Act 2005, that has general application within the entire South Australian jurisdiction and which is specifically targeted towards volatile substance abuse.

*Key Words: Death in Custody; Suicide*

*In witness whereof the said Coroner has hereunto set and subscribed his hand and*

*Seal the 6<sup>th</sup> day of October, 2011.*

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*Deputy State Coroner*