



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY
12th Assembly

Petition

Registration No.	14
Title	Second inquest into death of Dwayne Berto
Presented on	Thursday 28 March 2013
Presented by	Member for Daly (Mr Higgins)
Referred to	ATTORNEY-GENERAL MINISTER FOR JUSTICE (Hon. John Elferink)
Date referred	28 March 2013
Response due	9 October 2013
Response received	7 June 2013
Response to be presented	27 June 2013

Petition

TO THE HONOURABLE THE SPEAKER AND MEMBERS OF THE LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY:

WE THE UNDERSIGNED RESPECTFULLY SHOWETH that we are supportive of the Berto and Young Family and their desire to have a second inquest held into the death of their son, Dwayne Berto on 25th August 2010 in Darwin. Dwayne attended a nightclub and was severely assaulted, transported home by police, and then was found hours later deceased.

1. The police did not properly inspect the crime scene or collected all available evidence.
2. The investigation proceeded as if police were trying to prove that Dwayne had committed suicide rather than to investigate how he had died and why.
3. The post-mortem report was sparse on detail and the forensic Pathologist was led through his evidence by the coroner, with answers suggested to him.
4. The post-mortem report did not describe injuries which could be visibly seen being afflicted upon Dwayne on CCTV, within a matter of hours prior to his death.
5. Some material witnesses were not called, while other material witnesses, who were called, were not cross-examined with forensic rigour.
6. Vital evidence was not presented, including recordings made minutes before Dwayne's death.

YOUR PETITIONERS THEREFORE HUMBLY PRAY that the Northern Territory Government supports a second inquest being held into the death of Dwayne Berto such that all the facts and evidence can be considered and that the Berto and the Young Family can gain final peace over the loss of their son.

AND YOUR PETITIONERS, AS IN DUTY BOUND, WILL EVER PRAY.

Response

My response to the Petition is as follows:

1. the death of Mr Dwayne Joseph Berto (the Deceased) was a reportable death to the Coroner as it was unexpected and not of natural causes (section 12 of the *Coroners Act* refers);
2. the Northern Territory Coroner, Mr Greg Cavanagh SM, found the Deceased was not a person held in the care or custody of police immediately prior to his death pursuant to section 15(1) of the *Coroners Act*, and the holding of an inquest was not mandatory;
3. the Coroner did exercise his discretion to hold an inquest into this matter under section 15(1A) and 15(2) of the *Coroners Act*;
4. an inquest was held on 27, 28 and 31 January 2011;
5. the Coroner was assisted at the inquest by Ms Elisabeth Armitage of Counsel (now Her Honour Magistrate Elisabeth Armitage SM), and a brief of evidence for the inquest was provided by Detective Senior Constable David Hamlyn. The brief of evidence included statements from persons nominated as relevant witnesses by the Deceased's family;
6. the Deceased's family were granted leave by the Coroner to be represented by Counsel pursuant to section 40(3) of the *Coroners Act*. Counsel appeared on behalf of the family at this inquest;
7. Counsel Assisting the Coroner called eighteen witnesses and tendered a number of exhibits. The witnesses were all available for cross examination. Counsel for the Deceased's family called a further 7 witnesses and tendered a number of exhibits, including items referred to as the 'drug phone' and telephone recordings;
8. the Northern Territory Coroner carefully considered all the evidence and handed down detailed written findings regarding the Deceased's death on 15 March 2011. The Coroner found the Deceased had committed suicide by hanging and found no evidence the Deceased had been murdered. No recommendations were made;
9. neither the Government, the Legislative Assembly nor any member of the Legislative Assembly, including the Attorney-General, can order the Northern Territory Coroner or the Supreme Court of the Northern Territory to review or re-open an inquest;
10. the Parliament of the Northern Territory has included provisions for the review and re-opening of inquests at sections 44 and 44A of the *Coroners Act*. Section 44(3) of the Act states the Supreme Court of the Northern Territory may order an inquest be re-opened if it finds certain facts or circumstances exist. It is incumbent upon the applicant to put forward any evidence in support. The Deceased's family have not availed themselves of their legal rights under section 44; and
11. section 44A(2) of the *Coroners Act* states the Coroner may re-open an inquest if he or she is satisfied that new facts or evidence exists that make it necessary or desirable to re-open the matter. The deceased's family have not provided any new facts or evidence to the Coroner that would necessitate the re-opening of the inquest pursuant to section 44A.