



Western

Australia

RECORD OF INVESTIGATION INTO DEATH

Ref No: 35/12

*I, Dominic Hugh Mulligan, Coroner, having investigated the death of **Raymond Thomas POOLE**, with an Inquest held at Perth Coroners Court on 8 October 2012 find that the identity of the deceased person was **Raymond Thomas POOLE** and that death occurred on 23 April 2011 at Royal Perth Hospital, Perth, as a result of Gunshot Wound to the Head in the following circumstances -*

Counsel Appearing:

Mr Jeremy Johnston assisting the Coroner

Ms Rabia Siddique for the Commissioner of Police

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INTRODUCTION

1. Just after 6 PM on 23 April 2011, Raymond Thomas Poole (the deceased), died of a single gunshot wound to his head.
2. The deceased shot himself about 2 hours earlier as the siege of 53 Lindsay Street, Perth drew to its conclusion.

PRELIMINARY MATTERS OF LAW

3. The inquest into the death of the deceased was held in accordance with the *Coroners Act 1996* (WA) (the Act). Pursuant to section 25 (1) of the Act the coroner must find, if possible-
 1. The identity of the deceased;
 2. How death occurred;
 3. The cause of death; and
 4. The particulars needed to register the death under the Births, Deaths and Marriages Registration Act 1998.
4. The obligation to determine the manner of death also arises as part of the enquiry as to how the deceased died pursuant to section 25 (1)(b) of the Act. In this context Buss JA noted that "*in my opinion s 25 (1)(b) confers on the coroner the jurisdiction and obligation to find, if possible, the manner in which the deceased*



happened to die." ***Re The State Coroner; Ex Parte the Minister for Health*** [2009] WASCA 165 [42].

5. Pursuant to the *Births, Deaths and Marriages Registration Act 1998* (WA) the coroner must find, if possible, the manner of death. The manner of death is registrable information under section 49 (2) of that Act and is information that is captured on a BDM204 form which a coroner, or delegate, must provide to the Registrar of Births Deaths and Marriages.
6. Section 25 (2) of the Act provides that a coroner may comment on any matter connected with the death including public health or safety or the administration of justice.
7. The deceased was technically in “care” at the time of his death as defined by section 3 (a)(iii) of the Act.
8. The death of the deceased occurred in circumstances described by section 22 (1)(b) of the Act.
9. Because the deceased was in care at the time of his death the coroner must, pursuant to section 25(3) of the Act, comment on the quality of the supervision, treatment and care the deceased received while he was in care.
10. When making findings or comments a coroner needs to be mindful of section 25 (5) of the Act, which places the only statutory limitation upon how a comment or



finding may be framed. Section 25 (5) of the Act provides:

A coroner must not frame a finding or comment in such a way as to appear to determine any question of civil liability or to suggest that any person is guilty of any offence.

11. The analogous provision within the South Australian legislation was considered by the Supreme Court of South Australia in ***Perre v Chivell*** No. SCGRG-99-1218 [2000] SASC 279 (24 August 2000) when considering the appropriateness of a finding that had been made by the South Australian State Coroner in the following terms:

Accordingly, I find, pursuant to section 25 (1) of the Coroners Act 1975, that the circumstances of the death of Detective Sergeant Geoffrey Leigh Bowen were that he died when he opened a parcel bomb, sent to him by Domenic Perre, and the bomb exploded in his hands.

12. After concluding that the finding didn't appear to determine any question of civil or criminal liability, His Honour considered whether or not the finding offended against the Act as “*suggesting*” that Mr Perre was guilty of a criminal offence or liable in a civil context. At paragraph 57 of the judgment His Honour Nyland J stated:

As I have already mentioned, section 26 (3) [*analogous to section 25 (5) of the Western*



Australian Act] refers not only to findings of criminal or civil liability, but also any "suggestion" thereof. The addition of the word "suggestion" is liable to cause confusion as it might be argued that the mere finding of certain facts can, in cases such as the present, suggest or hint at criminal or civil liability and hence breach the section. This is due to the fact that certain acts, such as, in this case, sending a bomb, appear to have no possible legal justification. However, I do not think that section 26 (3) should be read in such a way. The mere recital of relevant facts can not truly be said, of itself, to hint at criminal or civil liability. Even though some acts may not seem to be legally justifiable, they may often turn out to be just that. For example a shooting or stabbing will, in some circumstances, be justified as lawful self-defence. As I have stated, criminal or civil liability can only be determined through the application of the relevant law to the facts, and it is only the legal conclusions as to liability flowing from this process which are prohibited by section 26 (3)¹. Thus, the word "suggestion" in this section should properly be read as prohibiting the coroner from making statements such as "upon the evidence before me X may be guilty of murder" or "X may have an action in tort against Y" or statements such as "it appears that X shot Y without legal justification". In other words, the term "suggestion" in section 26 (3) prohibits speculation by the coroner as to criminal or civil liability. In the present case, the coroner has neither found nor suggested that Perre is criminally or civilly liable for his acts.

13. Section 41 of the Act provides that a coroner holding an inquest is not bound by the rules of evidence and

¹ Analogous to s25 (5) Coroners Act 1996 (WA)



may be informed and conduct an inquest in any manner the coroner reasonably thinks fit. This section provides a coroner with latitude as to the types of evidence that can be considered by the coroner and allows a relaxing of the normal rules of evidence.

14. Section 41 does not allow a coroner to disregard the rules of natural justice or fairness.
15. It is trite to say that the standard of proof in a coronial matter is the civil standard; on the balance of the probabilities.
16. Caution does need to be taken in circumstances where a finding or comment may be adverse to a person involved in the inquest process.
17. Dixon J in ***Briginshaw v Briginshaw*** (1938) 60 CLR 336 at pp 362 - 3 articulated the concern a tribunal of fact should have when dealing with cases, which could potentially have serious consequences for one or more parties involved in the inquest:

Reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from the particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the Tribunal. In such matters reasonable satisfaction should not be produced by inexact



question arises whether a crime has been committed, the standard of persuasion is, according to the better opinion, the same as upon of the civil issues... but consistently with this opinion weight is given to the presumption of innocence and exactness of proof is expected.

18. I take the comments of Dixon J in ***Briginshaw*** to encourage a more cautious approach, than that represented by the normal standard of persuasion, in circumstances where an adverse finding is under consideration
19. It is with that statutory and legal background that the inquest into the death of the deceased was held and this finding delivered.

THE EVENTS OF 23 APRIL 2011

86. During the morning of 23 April 2011, the deceased, was in the property he had known as his home for the previous 3 months.
87. At about 9:45 AM one of the owners of the property; Marco Franulovic and his wife, went to 53 Lindsay Street in order to inspect the premises.
88. In order to gain access to the property Mr Franulovic used a ladder to climb over a side wall to the rear of the property, in order to go into the house through the back door.



89. As Mr Franulovic climbed the ladder and made his way onto the roof of a shed, he noticed that there was a man crouching in the rear doorway of the house.
90. The man crouching in the doorway was the deceased.
91. Mr Franulovic spoke to the deceased and said words to the effect that the deceased was on private property and shouldn't be there.
92. The deceased replied by saying "*I have a gun and I will shoot you*". At this stage the deceased was holding a sawn-off rifle which he was pointing towards Mr Franulovic.



93. Mr Franulovic called out to his wife, who was on the other side of the fence, and asked her to call the police. Mrs Franulovic did as she was asked and called “000”.
94. As Mr Franulovic was speaking to his wife the deceased fired a shot from the sawn-off rifle.
95. Mr Franulovic could not tell whether the shot was aimed at him or not. In any event he quickly went back down the ladder and retreated from the area.
96. Mr and Mrs Franulovic moved into positions from which they see the house and detect whether the deceased tried to leave it.
97. At about 9:50 AM Mr Franulovic also telephoned “000” and spoke to a police emergency operator. Mr Franulovic told the operator what had happened and requested urgent police assistance.
98. Mr Franulovic was still speaking to the emergency operator when the first police officers began arriving on Lindsay Street.
99. A siege developed with the deceased refusing to leave the house at 53 Lindsay Street.
100. The police deployed a number of police officers to the location in order to ensure public safety and in order to resolve the siege. The police sent a negotiator, the Tactical Response Group (TRG) and a number of uniformed police to the area of Lindsay Street.



101. Other emergency service employees including officers from the Saint John Ambulance Service and Fire and Emergency Service Agency (FESA) were also brought to the area and placed on standby.
102. At about 11:07 AM the deceased called his father and spoke to him in an agitated, incoherent and aggressive manner. The deceased concluded the telephone call without explaining the circumstances in which he found himself.
103. By about 11:30 AM the police negotiator, after consultation with her colleagues, had developed an initial strategy for approaching the deceased. At about that time the negotiator made her first attempts to communicate with the deceased.
104. Initial attempts by the negotiator to speak with the deceased were frustrated by the parties inability to hear one another.
105. The police improved communications by placing a two-way microphone/speaker outside the front of the property, which enabled the negotiator and the deceased to talk to one another.
106. The deceased spoke of a number of matters that were troubling him. He spoke about his issues with the police, the fact that he was homeless, unemployed, had medical problems and felt himself to have been



cheated by an insurance company. He also dwelt on sexual abuse he suffered as a child.

107. At one point the deceased spoke about the shot fired earlier that morning. He said that he didn't want to hurt anyone and the firearm was meant for him. He also said words to the effect that he would be going to jail for 10 years for what he had done. The deceased also appeared concerned about what the police would do to him in the event he gave himself up. In that context the deceased referred to the Kevin Spratt incident, which involved the use of a Taser on a suspect.

108. The deceased also manufactured an elaborate fantasy designed to keep the police at a distance and to prevent them from entering the property. The deceased asked the negotiator whether she knew what a shot-firer does. He also said that he couldn't come out of the house and made reference to "*ampho, petrol and dets*". He also spoke of 20 litres or 20 cans of petrol.

109. Unfortunately, the precise details of the negotiator's discussion with the deceased are not known. The device used to enhance conversation between the parties did not have a recording capability. The negotiator's focus was on building a rapport with the deceased rather than on recording all that he said during the course of the negotiations.



110. The deceased's threat's, that he had wired the property with explosives, were taken seriously by the police. His background as a shot-firer together with the details he supplied the police about the way the explosives were rigged, gave the police cause for serious concern for all those in the vicinity of 53 Lindsay Street.
111. The police negotiator asked the deceased on a number of occasions to leave the property peacefully and end the siege.
112. The deceased gave a number of excuses as to why he could not leave, including the assertion that the property was so comprehensively wired, that if he did try to leave it would explode. At one point the deceased said words to the effect that he⁴ *“didn't think that I would be walking out of the house that's why I rigged it both ways. I can't get out and you can't get in. Funny I created this, locked myself in”*.
113. The police negotiator suggested that an explosives expert be allowed to speak to the deceased in order to help him diffuse the explosive situation he was thought to have created.
114. The deceased accepted the offer of help.

⁴ Exhibit 1 Volume 1 Tab 20 – negotiator's notes



115. At about 3:30 PM 2 officers from the police bomb response unit (BRU) arrived at the scene and began speaking to the deceased.
116. The officers from the BRU soon realised that whilst the deceased had a thin veneer of knowledge relating to explosives, he did not have the capacity or capability to make an improvised explosive device or set explosives within 53 Lindsay Street.
117. At about 3:50 PM a meeting was convened by the senior officers involved in the action. These officers were the incident controller, the police tactical commander and the TRG tactical commander.
118. The officers wanted to end the siege before anyone, including the deceased, was hurt. They believed the best method of ensuring a safe conclusion to the siege was to confront the deceased with a new reality which he did not control and then to offer him a face saving method of leaving the property, without harming himself or others.
119. Just before 4:16 PM the negotiator gave the deceased an opportunity to surrender.
120. At about 4:16 PM officers from the TRG commenced an operation to end the siege.
121. At that time an armoured, heavy-vehicle known as a Bearcat was used to knock open the front door of the



property. It was hoped that this action would cause the deceased to see the futility of his position and choose to leave the property of his own volition.

122. The Bearcat was equipped with a long lance capped by a flat triangular piece of steel. It was to be used to knock over a small brick garden fence on the boarder of the property, as well as the front door of the property.

123. I have been provided with extensive recordings of discussions held between various police officers.

124. I listened to the recording of the TRG commander speaking to his colleagues immediately prior to the execution of the plan to enter the property. The commander spoke to his colleagues in a controlled, measured and professional manner, reflecting a determination to conclude matters with the minimum of violence. He articulated a plan that gave the deceased a very good opportunity to surrender.

125. The police also provided video footage of the Bearcat breaching the front door of the property. The vehicle, though armoured and very large, was used in a slow and precise manner to push down the small brick garden fence and then open the fly screen and front door of the property.



126. After the front door was knocked open there was no response from the deceased, or any indication as to where he was within the property.
127. Members of the TRG waited for some minutes before being ordered into the property, in order to try and locate the deceased.
128. At about 4:26 PM one of the TRG officers located the deceased in a bedroom located at the rear of the house. The deceased was lying in a pool of blood, with the sawn off rifle on the ground nearby. It was immediately obvious to the officer that the deceased had shot himself in the head, but was still alive.
129. Ambulance officers from the Saint John Ambulance Service were all ready on standby near 53 Lindsay Street. Ambulance officers were quickly summonsed to the deceased's assistance after he was located in the rear bedroom.
130. The ambulance officers assisted the deceased and then took him, by ambulance, to Royal Perth Hospital.
131. Physicians at Royal Perth Hospital received the deceased in the Emergency Department. They took over his care, from the ambulance officers, and attempted to save his life.
132. Raymond Thomas Poole died despite the best efforts of the staff at Royal Perth Hospital. At 6:08 PM on



Saturday, 23 March 2011, the deceased was certified to be life extinct by a doctor working at the hospital.

133. The Police searched the house after the deceased was taken to hospital. Whilst they found the items I have previously referred to, they did not find any explosives or fuel stock piles.

134. On 2 May 2011, a post mortem examination was performed on the deceased by a forensic pathologist. The forensic pathologist determined the cause of death to be a gunshot wound to the head.

135. A toxicological analysis of the deceased's blood and urine was performed as part of the investigation into the death of the deceased. The analysis of the deceased's blood detected small quantities of alcohol (0.01%), amphetamine (0.01 mg/L) and methylamphetamine (0.05 mg/L). The analysis also detected the active ingredient found in cannabis; tetrahydrocannabinol, at a level of 1.4 µg/L. The quantity of cannabis detected in the deceased's blood suggests that he smoked cannabis in the 7 hours before his death.

136. I find the death arose by way of Suicide.



COMMENTS MADE PURSUANT TO SECTION 25 (3) OF THE ACT

137. The police were faced with a very difficult challenge, in very difficult circumstances. They were dealing with a man who had recurring suicidal thoughts and who, most likely, had considered and planned for a violent confrontation. He was armed with a sawn-off rifle, he had a large quantity of ammunition, he had built what appeared to be an improvised explosives belt and he had taken steps to reinforce the passenger compartment of his van. He also told the police that he had rigged the property with explosives.

138. Notwithstanding the death of the deceased, I believe the police responded to the crisis in a reasonable manner and did their best to minimise the risks to the deceased and other citizens.

139. The police subsequently investigated the death of the deceased with a view to detecting systemic issues that can be improved so as to reduce the incidence of death in future similar circumstances.

140. The police reports relating to those systemic issues seem to be comprehensive and well directed. They largely relate to police procedures and documentation



of a technical and sensitive nature which do not require further analysis here.

141. The only a matter I would emphasise is the need for the police to improve their technology so that the device used to speak from a distance to a person in the position of the deceased, has a recording capability and a capability for the conversation to be monitored by other officers, perhaps located elsewhere. This would allow other officers to review the discussions between the negotiator and the person of interest, in order to ensure that the contents of the conversation are properly understood and acted upon in a timely manner.

142. In this case there appears to have been 2 lines of enquiry mentioned by the deceased to the negotiator, which were either lost in communication or not adequately followed-up. Both lines of enquiry may have helped the police identify the deceased before his death.

143. Knowing who the deceased was, may have provided the police with knowledge about the deceased and a means of persuading him to end the siege without harm being done.

144. Having made that observation it may well be that the deceased would have concluded the siege in the same manner, irrespective of what the police knew.



D H MULLIGAN
Coroner
21 December 2012

