

Coroner's Court of Western Australia
Coroners Act 1996
[Section 26(1)]



RECORD OF INVESTIGATION INTO DEATH

Ref: 30/18

I, Rosalinda Vincenza Clorinda Fogliani, State Coroner, having investigated the death of **Brendan John LINDSAY** with an inquest held at the Perth Coroner's Court, Court 51, Central Law Courts, 501 Hay Street, Perth between 10-13 September 2018 find that the identity of the deceased person was **Brendan John LINDSAY** and that death occurred on **8 November 2014** at **corner Oats Street and Harris Street Carlisle** as a result of **multiple gunshot wounds** in the following circumstances:

Counsel Appearing:

Mr T Bishop assisted the State Coroner.

Ms Robyn Hartley (State Solicitors Office) appeared on behalf of WAPol including the following police officers, Scott Mason, Owen Killip, Andrew Malland, Tom Gryta, Christopher McCormack, Bryce Parsons, Dylan Stringer, Paul McMurtrie, Lawrence Panaia, Ceri Skamp and Peter Clements.

Ms Judith Fordham (instructed by Carlo Primerano & Associates) appeared on behalf of Ms Amy Bastian as Administrator of the Estate of the deceased and Mr John Lindsay, father of the deceased.

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INTRODUCTION

1. Brendan John Lindsay (the deceased) died in Carlisle on 8 November 2014 at the age of 38 years as a result of multiple gunshot wounds. The deceased had been shot by police officers who had responded to a callout for urgent back-up after the police constable at the scene reported a hostage situation, relaying that the deceased was holding a female with a knife to the throat in the street. Four of the attending police officers, including the police constable who reported the hostage situation discharged their firearms. Despite resuscitative efforts, the deceased was unable to be revived and was pronounced dead at the scene.
2. In the days and hours leading up to his death, the deceased had become increasingly agitated and erratic. It was not unusual for him to experience episodes of volatility and aggression, especially after taking illicit drugs. He had been in a relationship with his partner for approximately twenty years and they had a young child together. They had plans for the future, but the relationship had recently been strained, resulting in the deceased residing temporarily with other friends and family. The deceased and his partner had been together since their teens and were committed to trying to make their relationship work.
3. Unfortunately, the deceased had used illicit drugs, intermittently, since his teens. His partner did not approve of this behaviour. When under the influence of the illicit drugs, the deceased was prone to behaving in an aggressive and destructive manner, and his relationship with his partner would deteriorate. Shortly before his death the deceased's partner had formed the view that he had been using illicit drugs, and he made unwarranted accusations about her behaviour. She asked him to leave the house.
4. The deceased stayed on with his friends and family. On the morning of his death, the deceased was with his father, who had collected him from his partner's house after another confrontation. He was still aggressive and volatile, and his father also suspected he had taken drugs. At one point while he and his father were outside the Lunch Club in Carlisle, his father motioned to a passing police vehicle, for assistance. The constable responded and the sequence of events that led to the deceased taking the Lunch Club employee hostage, threatening her with a knife, and that resulted in the shooting, are addressed in this finding.

THE INQUEST

5. The deceased's death was a reportable death within the meaning of section 3 of the *Coroners Act 1996* (the Coroners Act). It was reported to the coroner as required. By reason of s 19(1) of the Coroners Act I have jurisdiction to investigate the death.
6. The death occurred following a police shooting. Therefore, pursuant to s 22(1)(b) of the Coroners Act an inquest into the death was mandated

because it appeared that the death was caused, or contributed to, by an action of a member of the Police Force (the police).

7. Section 22(1)(b) is enlivened when the issue of causation or contribution in relation to a death arises as a question of fact, irrespective of whether there is fault or error on the part of the police.
8. My primary function is to investigate the death. It is a fact-finding function. Pursuant to s 25(1)(b) and (c) of the Coroners Act, I must find, if possible, how the death occurred and the cause of the death. Pursuant to s 25(2) of the Coroners Act, in this finding I may comment on any matter connected with the death including public health, safety or the administration of justice. This is the ancillary function.
9. The deceased was not a “*person held in care*” within the meaning of s 3 of the Coroners Act. He was not at any stage under the control, care or custody of the police, because the police officers had attempted to free the hostage and arrest him but had not gained control, he was not within their care, and they had not established a custodial relationship. It follows that the deceased was not escaping from their control, care or custody immediately before death.
10. I am therefore not required, under section 25(3) of the Coroners Act, to comment on the quality of the police’s supervision, treatment and care of the deceased.
11. My role is to scrutinise the police actions leading to the shooting, and the first aid and other assistance given by police after the shooting and to comment on those matters in furtherance of the principles of open justice and transparency, having regard to the community’s concern about any exercise of a police power or function that results in a death.
12. Section 25(5) of the Coroners Act prohibits me from framing 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 an offence. It is not my role to assess the evidence for civil or criminal liability, and I am not bound by the rules of evidence.
13. In making my findings I have applied the standard of proof as set out in *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J at 361 - 362 which requires a consideration of the nature and gravity of the conduct when deciding whether a matter has been proved on the balance of probabilities.
14. The focus of the inquest was upon the actions of police from the time assistance was first sought, up to and including the shooting and its immediate aftermath. This included an assessment of whether those actions were taken in the course of carrying out a legitimate law enforcement activity.

15. I held an inquest at Perth on 10 to 13 September 2018. I heard from eighteen witnesses and received four volumes of exhibits into evidence, containing a total of 102 tabs.
16. Between 27 September and 17 October 2018 I received written submissions from the legal representatives of the interested persons.
17. My findings appear below.

THE DECEASED

18. The deceased had been in a relationship with his partner for approximately twenty years, and they had known each other since high school. She, along with the deceased's father and the rest of his family retain positive and loving memories of him. The deceased was a doting father to his daughter, and together with his partner, was planning to have another child. They were in the process of renovating their new home and had a lot to look forward to.
19. The deceased worked hard, kept fit at the gym, and was described by his partner as having a huge personality, and a great capacity for empathy. It is clear that he was sociable and well-liked by family and friends.
20. There was a generous side to him and he willingly helped family members and those around him with tasks when he discerned that his efforts would be of assistance.
21. Unfortunately the deceased had, intermittently, taken illicit drugs over many years. Despite valiant attempts on the part of his partner and father to encourage him, repeatedly, to desist and to seek help, he continued to turn to drugs when faced with difficult life events, with disastrous consequences.
22. His long history of illicit drug use was compounded by his criminal history, which reflects multiple driving offences and instances of stealing, burglary, damage to property, assault and drug related offences.¹
23. When the deceased took amphetamines, he became aggressive and showed signs of paranoia. Some of his paranoid delusions threatened the safety of close family members. He had a number of hospital admissions from the age of 18 onwards, as a consequence of his excessive drug use.
24. In 2008 after an assessment at Perth Watch House, he was admitted to Royal Perth Hospital where he was diagnosed with drug related issues. Once settled he was discharged into police custody with a recommendation that he attend drug and alcohol counselling.

¹ Exhibit 3, tab 13.

25. The deceased began presenting to Holyoake in 2011, and attended on numerous occasions up until the time of his death, with the aim of engaging with drug and alcohol programs on offer there. He did show a commitment to counselling and made an effort to maintain gains that he had made. He was supported in these endeavours by his family. Unfortunately he was unable to achieve a long term cessation in his drug use.
26. On 12 July 2013 he presented to Bentley Mental Health with his father, after using illicit drugs. He settled quite quickly after he was treated with an anti-anxiolytic and he declined admission to hospital. He was allowed home the same day into the care of his family, and again advised to seek assistance through drug and alcohol services.
27. Several days later on 17 July 2013 he attended Graylands Hospital, displaying paranoid behaviour after recent drug abuse. His family expressed concerns about his aggression and he was reported to have been carrying weapons. He was detained under the *Mental Health Act 2006* and diagnosed with a drug induced psychosis, secondary to amphetamine use. His psychotic symptoms settled soon after admission. In discussion with clinicians he showed insight into the effects of his drug usage on his mental state. He appeared to be aware that the drugs made him paranoid, and of the consequential disruption to his life and the lives of those close to him. He was discharged on 19 July 2013, and again advised to seek assistance through drug and alcohol services.
28. Just over two weeks later on 4 August 2013 he presented to Graylands Hospital again in the company of his father, seeking assistance for another drug-induced psychosis. On this occasion his behaviour was particularly aggressive and erratic, and he had to be restrained. His drug usage, whilst intermittent, was nonetheless resulting in an escalation of violent behaviour.
29. On 7 November 2014, the day before his death, he presented to Holyoake accompanied by family members, and he was expressing concerns about interpersonal relationships. He was agitated, but became calm after discussion that focussed on addressing his concerns. He left Holyoake with the aim of making a further appointment the following week. Tragically he died the next day.
30. It is clear that the deceased's partner, his father and family members spent many years trying to help him overcome his problems with his illicit drug usage.
31. The deceased did engage in multiple drug and alcohol programs but he was unable to cease his drug usage. He tried to get better in order to focus on his family and his future with them, but he could not manage it. He was aware that under the influence of drugs he risked behaving in an aggressive and destructive manner. Unfortunately he continued to use illicit drugs.

32. There is no evidence that the deceased suffered from a diagnosed chronic mental health condition when not taking drugs, and there was no requirement for him to receive ongoing mental health treatment or supervision. Sadly, he leaves behind a family who are grieving for him, and who understandably seek answers about the circumstances surrounding his death.

EVENTS LEADING TO REQUEST FOR POLICE ASSISTANCE

33. Shortly before his death, the deceased's partner felt he had reverted to using illicit drugs because he suddenly became angry and accusatory towards her, a pattern she had observed over the years. He confronted her with his suspicions and they argued. She confronted him about his drug use, and he denied it. She asked him to leave the house and urged him to avoid the drugs and seek professional help, an advice she repeated over the telephone to him over a number of days.²
34. The deceased left his partner's house on 4 November 2014 and went to stay with friends and then with his father, who returned from interstate on 7 November 2014. On the morning of 8 November 2014, the deceased's partner saw him in her house after she awoke. He began to make unfounded accusations towards her and they argued and she again asked him to leave. The deceased contacted his father, who arrived within minutes and collected him.³
35. In the days prior, the deceased's father had also observed that he had become increasingly agitated. He noted an escalation in his son's erratic thinking and had accompanied him to Holyoake on the day before his death. The deceased had appeared excessively preoccupied with concerns about his relationship, and was jumping to unfounded conclusions about his partner's behaviour.⁴
36. After the deceased's father collected him, they travelled together to the father's family business premises. The deceased was still highly agitated. A number of employees were present and they observed the deceased arguing with his father. Their argument escalated and threatened to become physical. The deceased's father became concerned for his safety. He asked one of the employees to call the police, and records reflect that at 7.27 am on 8 November 2014, a Computer Aided Dispatch (CAD) job was entered at the Police Assistance Centre following a contact by an employee.⁵
37. In the meantime, the deceased's father sought to distract him and remove him from the business premises by travelling with him to the Lunch Club at the corner of Oats and Harris Streets, Carlisle, to place the breakfast order for the business. It was approximately one kilometre away. The deceased's behaviour towards his father as they travelled by vehicle to

² Exhibit 1, tab 4.

³ Exhibit 1, tabs 4 and 6.

⁴ Exhibit 1, tab 6; ts 20.

⁵ Exhibit 1, tabs 6, 9 and 10; Exhibit 3, tab 1.

the Lunch Club was threatening, and by the time they got out of the vehicle, outside the lunch bar, his father feared for his safety.⁶

38. As father and son sat outside the Lunch Club awaiting the breakfast order, their argument continued. The shouting prompted a neighbour across the road to telephone the Lunch Club at 7.34 am to ask if all was OK, and he was informed by staff that the deceased and his father were arguing and that it was thought that it would be OK. The deceased appeared to be alternately shouting at his father and then embracing his father and apologising.⁷
39. As they waited outside for the breakfast order, the deceased's father became increasingly fearful for his safety, and upon seeing a police vehicle driving past, he managed to catch the attention of the police officer and signal for his help. Records reflect that this occurred shortly before 7.38 am. The father thought he had managed to do so discreetly, but the deceased also saw the police vehicle and accused his father of calling the police on him. The deceased became angrier still and ran into the Lunch Club, swiftly followed by his father.⁸
40. The father had signalled to the marked police vehicle TK108 that was being driven by Constable Tom Gyrta, who was on duty but not attached to a specific task. Constable Gyrta is a dog handler and worked alone with his dog. His attendance at the scene was purely by coincidence, as he was driving past along Oats Street towards Victoria Park and saw the deceased's father hold up his hands, as if he were waving him down, or merely waving. Apprehending that it may have been a signal for assistance, he executed a U-turn and drove back towards the Lunch Club.⁹
41. As Constable Gyrta made to return, he was able to see the deceased peering around the corner. Constable Gyrta executed a second U-turn and parked partially on the road and partially on the footpath on Oats Street, near the Harris Street intersection, next to the Lunch Club, and with the front of his vehicle facing in a westerly direction along Oats Street. As Constable Gyrta parked his vehicle, he saw the deceased running into the Lunch Club. When Constable Gyrta got out, the deceased's father motioned for him to hurry up saying "*be quick*", and pointed towards the entrance of the Lunch Club.¹⁰

EVENTS IN THE LUNCH CLUB

42. When Constable Gyrta entered the Lunch Club at approximately 7.38 am, he saw two female staff members behind the delicatessen counter, who indicated that the deceased had gone towards the kitchen area. Upon approaching that entryway, he saw the deceased come out of

⁶ Exhibit 1, tab 6.

⁷ Exhibit 1, tabs 6 and 14.

⁸ Exhibit 1, tab 6; ts 30.

⁹ Exhibit 2, tab 66.

¹⁰ Exhibit 2, tab 66; Exhibit 3, tab 7; Exhibit 4, tab 8; ts 158 to 159.

the kitchen area holding a large kitchen knife, which he described as having a silver blade, with the knife itself comparable to a thirty centimetre ruler. Constable Gyrta immediately stepped backwards towards the doorway to the Lunch Club, and in that same instant, the deceased immediately put the knife to his own throat and began yelling.¹¹

43. Constable Gyrta believed the deceased was about to harm himself, he drew his Taser and instructed the deceased to drop the knife. A matter of seconds elapsed and the deceased moved suddenly towards the female staff members who dropped towards the floor in a corner of the Lunch Club's counter area. The deceased immediately bent down, picked up one of the staff members (the hostage), lifted her in front of him and put the knife that he was holding towards her throat, still yelling.¹²
44. Constable Gyrta transitioned from his Taser to drawing his firearm, and commanded the deceased to put the knife down and let the female hostage go. Having regard to the change in circumstances, namely the taking of the hostage, Constable Gyrta no longer considered the Taser to be an effective option. Constable Gyrta was strong with his commands and essentially yelling at the deceased. The deceased did not accede to either command. Constable Gyrta drew his firearm because he thought the deceased was about to kill the hostage.¹³
45. Constable Gyrta kept his firearm drawn and trained to the right of the deceased and the hostage, and he described being conscious about not pointing it directly at them. He ushered the remaining persons out of the Lunch Club for their safety, including the deceased's father, who had entered the Lunch Club. As Constable Gyrta was doing this he also used his police radio to call for urgent back up. Records reflect that a (CAD) job was entered at the Police Assistance Centre at 7.39 am.¹⁴
46. Constable Gyrta remained in the doorway, his aim being to avoid a situation where the hostage was left alone with the deceased, and secured by him inside the Lunch Club. Constable Gyrta maintained his position at the doorway until the last possible moment with his firearm drawn, as the deceased moved towards him alternating between holding the knife to the hostage's throat and stomach, and his own throat. They were approximately six metres apart. As Constable Gyrta exited the Lunch Club moving backwards the deceased followed him out, still holding onto the hostage, and still moving the knife about. They all moved towards the intersection of Oats Street and Harris Street.¹⁵
47. The above events in the Lunch Club occurred over a matter of one or two minutes.
48. Records reflect that at 7.41 am a CAD update was entered: "*Hostage situation POI holding female with knife to throat in the street*" and a request

¹¹ Exhibit 2, tab 66; Exhibit 3, tabs 7 and 8; ts 159 to 160.

¹² Exhibit 2, tab 66; Exhibit 3, tabs 7 and 8; ts 161 to 162.

¹³ Exhibit 2, tab 66; Exhibit 3, tabs 7 and 8; ts 161 to 162; ts 169.

¹⁴ Exhibit 2, tab 66; Exhibit 3, tabs 3, 7 and 8; ts 161 to 162; ts 169

¹⁵ Ibid.

for urgent back up was recorded at the same time. I am satisfied that by this stage, Constable Gyrta made a radio call for assistance from outside the Lunch Club, in the street.¹⁶

THE SHOOTING

49. As they came out of the Lunch Club, the deceased continued to restrain the hostage, initially with her back to his front, so that she was facing Constable Gyrta. He restrained her in this position with his arms and leg, and with his own back against Constable Gyrta's parked police vehicle TK108. As Constable Gyrta shouted to him, he continued to move the knife between the hostage and himself. The hostage was understandably very distressed, and was heard to be crying out and pleading for her life on multiple occasions.¹⁷
50. The deceased made a number of demands of Constable Gyrta, that included a demand for the keys to Constable Gyrta's police vehicle TK108. The deceased also became agitated when he observed what he believed to be a member of the public attempting to release Constable Gyrta's dog. As it transpired, this did not occur as the person was unable to unlatch the door.¹⁸
51. Constable Gyrta changed his tactics and instead of commanding the deceased to drop the knife, began to ask the deceased what he wanted, and how the situation could be resolved. The deceased made some further demands that included the attendance at the scene of specified persons (involved in the administration of the criminal justice system) and the provision of a helicopter. Constable Gyrta endeavoured to negotiate with the deceased in order to reduce the threat. On at least two occasions he saw the deceased raise the knife above his head level, holding it in the air, and whilst holding the hostage drove the knife in a downwards motion towards the hostage, but stopped short of causing injury to her.¹⁹
52. On the two occasions when the deceased drove the knife in a downwards motion, he had restrained the hostage in a face to face position next to him. The hostage continued to wriggle and squirm so as to move away from him, but he kept restraining her with his arms and legs so as to contain her close to his body. With her moving they were sometimes face to face and other times side to side.²⁰
53. Another member of the public urged Constable Gyrta to shoot the deceased, and the deceased heard this comment, and redoubled his efforts to pull the hostage up and in front of him, in the line of fire, to avoid a shooting. Constable Gyrta had considered shooting at that stage,

¹⁶ Exhibit 2, tab 56; Exhibit 3, tab 3.

¹⁷ ts 163; Exhibit 1, tabs 21, 24,

¹⁸ ts 163.

¹⁹ ts 163 to 164.

²⁰ Ibid.

but decided the risk of missing or shooting the hostage was too great, and he went back to negotiating.²¹

54. The deceased's father was standing close by. Constable Gyrta noted the business name on the father's shirt and at that point made the connection with the earlier CAD job concerning a verbal argument between a father and son at a building supply premises. This caused him to be more conscious of the deceased's father. He instructed the father to step back, because he formed the view that the earlier dispute between father and son was a source of agitation for the deceased. He also thought the deceased's father may be at risk of being harmed by the deceased, given that occasionally the deceased shouted in the direction of his father. The father was reluctant to step back, but did so.²²
55. Constable Gyrta dealt with the situation on his own for approximately four minutes. He was flagged by the deceased's father shortly before 7.38 am, and the first police back up vehicle arrived at approximately 7.42 am. During this time Constable Gyrta tried to de-escalate the situation, whilst also considering tactical options for resolving it. He began by commanding the deceased to drop the knife, and then moved to attempting to negotiate with him. After the deceased took the hostage, Constable Gyrta considered his firearm to be his only real option, because in his view a non-lethal use of force, if it failed, would have significantly escalated the situation. He maintained his firearm raised for most of that four minute period.²³
56. When police back up arrived, the police officers commenced to form a loose cordon around the deceased, in the shape of a semi-circle, and drew their firearms. Of that cordon, four police officers formed an arc facing the deceased: Constable Gyrta, and Constables Dylan Stringer, Bryce Parsons and Christopher McCormack. The deceased was near Constable Gyrta's police vehicle TK108, and on occasion he was positioned towards the rear of that vehicle, with his back pressed against that vehicle. Constable Gyrta did not recall a point when the hostage was not directly between the deceased and himself.²⁴
57. The arrival of the other officers provided Constable Gytra with an opportunity to get onto his police radio again and call for the assistance of the Tactical Response Group and a negotiator. Records reflect the Tactical Response Group assessment team was advised of the situation at 7.44 am.²⁵
58. Noting that the other officers had their firearms drawn, Constable Gyrta took the option to lower his firearm and again endeavoured to communicate with the deceased. He still considered the situation to be unpredictable, given that the deceased kept making motions with the

²¹ ts 165.

²² ts 165 to 166.

²³ ts 167 to 168.

²⁴ Exhibit 1, tab 24; ts 167 to 171.

²⁵ ts 170.

knife, and on occasion appeared to press the knife more firmly against the hostage.²⁶

59. The back-up police officers who arrived began commanding the deceased to put the knife down, in much the same manner as Constable Gyrtta had initially done. They were yelling and Constable Gyrtta put his hand up to indicate to them to be quiet, because when he had adopted a similar approach earlier, it did not have an impact upon the deceased's behaviour. The cordon of police officers stopped issuing their commands, and from that point, Constable Gytra became the only officer communicating with the deceased. Eventually, there were seven police officers in total around the deceased at the intersection of Oats Street and Harris Street, and one police officer standing further back along Harris Street.²⁷
60. Constable Gyrtta still believed the deceased could at any time kill the hostage, and he was trying to delay that event and improve their options. The deceased remained agitated, repeating his demands for a helicopter and making threats towards the hostage. At one point he called out "*one, two...*" with the knife raised, and the police shouted "*don't do it.*" The hostage was crying out for him to stop. The situation remained volatile and dangerous.²⁸
61. Constable Gyrtta kept trying to engage the deceased in conversation, asking him what he wanted and telling him he would endeavour to do it for him. The deceased was not engaging and shouted at the hostage to get on her knees. He physically tried to push her onto her knees. She was resistant and crying out for help. They both sat on the ground, half falling as he pulled her down, and then he pulled her up again.²⁹
62. Soon afterwards Constable Gyrtta observed the deceased and the hostage having a conversation, in a whispering tone, and that the threat appeared to have thereby reduced. The deceased was still restraining the hostage with her facing him, and holding the knife, but he appeared to be calmer while talking to her. Constable Gyrtta remained quiet to allow that conversation to continue, and he thought he heard the deceased tell the hostage he was not going to hurt her. As it transpired, the hostage later recounted the deceased telling her at this stage that he would not kill her.³⁰
63. Then the deceased appeared to have heard someone moving behind him, his aggression suddenly increased, and the situation escalated again. During this time, the deceased with the hostage had been up against or near Constable Gyrtta's parked police vehicle. The deceased thought a person was coming up the side of the police vehicle, and became suspicious. He raised the knife up in the air and said that he would kill the hostage, and repeated the threat. It was a sudden change in his

²⁶ ts 168 to 169.

²⁷ Exhibit 4, tab 8; ts 169 to 170.

²⁸ ts 170.

²⁹ Exhibit 1, tabs 17 and 33.

³⁰ Exhibit 1, tabs 12, 17, 30 and 33; ts 171 to 172.

demeanour. Constable Gyrtta tried to reassure him to the effect that no-one was sneaking up behind him on the other side of the vehicle, and again asked him what he needed, and told him to stay calm. The deceased kept yelling at the police to move away from him, and the hostage joined him in asking for people to move away, to “*let him cool down.*” Police had retreated from a distance of approximately five metres, to a distance of approximately eight to ten metres.³¹

64. The deceased remained highly agitated and started to shout “*I’ll kill her*” in response to his belief that someone was approaching him from behind, or that police were too close. The deceased called out for neighbours, and then again shouted for the helicopter. Police continued exhorting him to stay calm. Very shortly afterwards the deceased shouted for police to bring the helicopter or he would start stabbing the hostage. Constable Gyrtta was still trying to speak with him.³²
65. Then with the hostage restrained by his body and face to face with him, the deceased said that was it, and he raised the knife up in the air, this time with both hands, and brought it down sharply and towards the hostage’s back. Constable Gyrtta thought it had gone into the hostage’s back, meaning he was actually stabbing her. The hostage recounted the deceased pushing the knife into her back, holding her tight and tied up in his legs. She felt pain in her upper right shoulder and yelled because it hurt, and she thought the deceased was going to kill her. This is when the first shot was fired.³³
66. Records reflect that the entry: “*shots fired*” was recorded on the CAD job system at 7.49 am and I am satisfied that this goes to show the time when the shooting started. One minute later CAD entries were made regarding the bullet wound and stab wound sustained by the hostage and the shooting of the deceased.³⁴
67. A total of thirteen shots were fired by police in quick succession, over approximately nine seconds. The deceased sustained multiple gunshot wounds to his torso, both arms and right leg. At the post mortem examination there was injury noted to those limbs, and injury to the ribcage, vertebral column, pelvis, anterior chest and abdominal walls. Eight bullets were recovered.
68. The hostage sustained gunshot wounds to her shoulder and leg, and at the Royal Perth Hospital was also found to have a jagged wounds on her back, that I am satisfied were caused by the deceased when he stabbed her with the knife. She underwent surgery for her injuries.³⁵
69. The jagged wounds to the hostage’s back were reported to be as follows, by the examining medical practitioner at Royal Perth Hospital, and I am

³¹ Exhibit 1, tabs 12, 17, 30 and 33; ts 171 to 172; ts 280 to 281.

³² Exhibit 1, tab 17; ts 173.

³³ Exhibit 1, tab 17; ts 173; ts 244.

³⁴ Exhibit 2, tab 56; Exhibit 3, tab 3.

³⁵ Exhibit 1, tab 13; Exhibit 2, tab 66; Exhibit 3, tab 5.

satisfied they were inflicted upon her by the deceased, with the knife, and that one or other of those wounds precipitated the shooting:

- (a) jagged wound at the back on upper aspect of right scapula region measuring three centimetres;
- (b) jagged wound at the back on lower aspect of right scapula region measuring four centimetres.

THE NUMBER OF SHOTS FIRED

- 70. Constables Parsons and Stringer each fired three shots, Constable Gyrtta fired two shots and Constable McCormack fired five shots. Eight shots landed on the deceased, two shots landed on the hostage, and three shots landed on or about the police vehicle. The shooting started at approximately 7.49 am on Saturday 8 November 2014 and the timeframe between the first shot and the thirteenth shot was approximately nine seconds.³⁶
- 71. It is not possible to forensically match each individual expended cartridge (and the projectile) to the firearm they were discharged from with absolute certainty. After the incident the police from Major Crime as part of their investigations, produced a summary of expended rounds, following a review of the available recorded footage and with the assistance of the Computer Crime Squad. Detective Peter Clements gave evidence at the inquest, outlining the processes used to form an opinion as to which police officer fired each shot.³⁷
- 72. After the incident police from Internal Affairs as part of their investigations, also reviewed the recorded footage and still images. Detective Ceri Skamp gave evidence at the inquest, outlining their processes for arriving at an opinion as to which police officer fired each shot.³⁸
- 73. There were some differences in outcome as between the analyses by Major Crime and Internal Affairs, with Detective Skamp noting the greater experience that resides with Major Crime in computer based analyses, but noting that Internal Affairs had access to the police officers' compelled interviews.³⁹
- 74. Both analyses have assisted me, and on my review of all of the available evidence I am satisfied that the provenance, sequence and trajectory of shots is as described below, and that it satisfies the requisite standard of proof in *Briginshaw* as described earlier in this finding.
- 75. The first shot was fired by Constable Parsons and appears to have landed on the deceased's upper left arm, and caused an in and out injury

³⁶ Exhibit 3, tab 5; ts 419.

³⁷ Exhibit 1, tab A; Exhibit 2, tabs 57 and 57A; ts 405 to 419.

³⁸ Exhibit 3, tab 12A; ts 419 to 434.

³⁹ Ibid.

through the bone. The deceased was holding the knife in his right hand and remained upright after this shot landed. The injury would not necessarily have been apparent to police officers observing him during the incident. At the post mortem examination, an apparent gunshot entrance wound to the posterolateral aspect of the left upper arm was noted, and an apparent gunshot exit wound to the front/inner aspect of the left upper arm was noted. This wound track passed through the distal upper arm causing comminuted humeral fracturing and extensive soft tissue disruption before exiting on the front of the arm.⁴⁰

76. The second shot was fired by Constable Stringer and appears to have landed under the police vehicle's right hand bumper, hitting the exhaust pipe and spare tyre.⁴¹
77. The third shot was likely fired by Constable Parsons or Constable Stringer and appears to have landed on the deceased's left lower flank, causing internal injuries. At the post mortem examination, an apparent gunshot entrance wound to the left side of the lower back was noted, and the wound track was noted to be apparently heading medially towards the abdominal cavity, with extensive fragmented bone in that region. After passing through the abdominal wall musculature and hitting the left hemi-pelvis, the wound track is shown to pass upwards through the left kidney, the left hemidiaphragm, the left lung lower lobe, and then ending in the left lower chest wall between the 10th and 11th ribs laterally.⁴²
78. The fourth shot was likely fired by Constable Gyrtta and appears to have landed on the hostage's right shoulder, causing an injury to her shoulder. This is consistent with damage to the hostage's clothing and a medical report concerning her shoulder injury, that noted a gunshot entry wound at the anterolateral aspect of the right shoulder with associated fracture of the right humerus and right brachial plexus injury, with metal fragments being noted in her wound.⁴³
79. The fifth shot was likely fired by Constable Parsons or Constable Stringer and appears to have landed on the deceased's back. At the post mortem examination, an apparent gunshot wound to the right side of the deceased's mid-back was noted. The wound track entered the body at this point, before entering the right chest cavity through the 9th and 10th ribs, then likely passing through the right lung lower lobe and then entering the thoracic spine. The track passes from back to front and right to left.⁴⁴
80. The sixth shot was likely fired by Constable Parsons or Constable Stringer and appears to have landed on the tailgate area of the police vehicle TK108, in the area of the badge.⁴⁵

⁴⁰ Exhibit 1, tab 3; Exhibit 2, tabs 57 and 57A; Exhibit 3, tab 12A; ts 409; ts 416.

⁴¹ Exhibit 2, tabs 57 and 57A; Exhibit 3, tab 12A; ts 410; ts 416.

⁴² Ibid.

⁴³ Exhibit 1, tab 13; Exhibit 2, tabs 57 and 57A; Exhibit 3, tab 12A; ts 411; ts 416.

⁴⁴ Ibid.

⁴⁵ Exhibit 2, tabs 57 and 57A; Exhibit 3, tab 12A; ts 411; ts 416 to 417.

81. The seventh shot was likely fired by Constable Parsons or Constable Stringer and appears to have landed on the right hand side of the tailgate area of the police vehicle TK108, at a side angle.⁴⁶
82. Constables Parsons and Stringer did not discharge their firearms after this point.⁴⁷
83. At or about this point the deceased, still restraining the hostage, fell over as did the hostage, and he rolled partially on top of her.⁴⁸
84. The eighth shot was fired by Constable McCormack, by reason of the trajectory of the shell casing.⁴⁹
85. The ninth shot was fired by Constable Gyrtta and appears to have landed on the hostage's right calf. At this point, the hostage was lying on her back on the road, and the deceased was lying on his left side, with his right hand side over the hostage. He was holding the knife in his right hand. The medical report concerning the hostage's injuries noted a gunshot entry and exit wound at the lateral and medial aspect of her right leg with associated right tibia fracture and tibio-peroneal trunk (leg artery) transected.⁵⁰
86. Constable Gyrtta did not discharge his firearm after this point.⁵¹
87. The final four shots (tenth to thirteenth) were fired by Constable McCormack, and appear to have landed in the area of the right side of the deceased's body, and his elbow. Over this period, the deceased, having fallen to the ground with the hostage, was seen to have rolled away from the hostage, with his right arm still close to her body. He continued to hold the knife in his right hand and the images reflect that the knife is held with purpose, and that it is moving close to the region of the hostage's upper body and neck. Three wound tracks that were noted at the post mortem examination appear to be connected with this series of shots:
 - (a) There was an apparent gunshot entrance wound to the right side of the front of the chest. This wound track entered the body in the right anterior chest wall, passing through the right pectoralis muscle, the right chest wall, the back of the sternum, the left chest wall, the left pectoralis muscle and the left deltoid muscle, where it ended. The direction of the track was from left to right, slightly upwards and very slightly backwards. There was no exit wound.
 - (b) There was an apparent gunshot entrance wound to the right side of the chest. This wound track entered the body through the right lateral chest wall, passing through the right lung and the T1

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Exhibit 1, tab 17.

⁴⁹ Exhibit 1, tab 17; Exhibit 2, tabs 57 and 57A; Exhibit 3, tab 12A; ts 411 to 412; ts 417.

⁵⁰ Exhibit 1, tab 13; Exhibit 2, tabs 57 and 57A; Exhibit 3, tab 12A; ts 412 to 413; ts 417 to 418.

⁵¹ Ibid.

vertebra, with the bullet present within the spinal canal at this level. The direction of the track is from left to right, upwards and slightly backwards. There is no exit wound.

- (c) There was an apparent gunshot wound to the right side of the abdomen. This wound track entered the body in the right lower abdomen, with the wound track passing through mesentery, the anterior surface of L2, small bowel and mesentery and then ending in the anterior abdominal wall. The track initially passed from right to left, before changing direction, presumably as a result of deflection off L2, to become posterior to anterior. There is a partial exit wound.⁵²

88. The following further gunshot injuries to the deceased were as a result of the shooting, but the evidence does not establish a sufficient connection with a particular shot fired:

- (a) There were three apparent gunshot wounds to the right flank (one of the three to the right lower flank). One was just below the costal margin, the other above the level of the umbilicus approximately in the posterior axillary line, and the other approximately in the mid axillary line approximately in line with the umbilicus. As the tracks from these three wounds converged in the subcutaneous tissues, it was not possible to be certain as to which of these caused the identified internal damage, associated with the ongoing wound track. An apparent wound track extending into the abdominal cavity was noted. This wound track entered the body to the right side of the abdomen, passing through the abdominal wall, the liver, the lower thoracic spine and the left lung lower lobe, where it terminated with the bullet present having partially exited from the lung. It is likely that the two skin wounds not associated with the internal wound track represented a paired entrance and exit wound.
- (b) There was an apparent gunshot wound to the inner aspect of the right thigh. The wound track passed inferoposteriorly through the thigh musculature to end posterolaterally in the thigh, where the bullet was recovered. There was no exit wound.
- (c) There was an apparent gunshot wound to the back of the right distal upper arm. The wound track passed through the elbow region causing extensive comminuted fracturing of the distal humerus and the proximal radius and ulna, as well as disruption to the surrounding soft tissues. The bullet was recovered from the medial aspect of the proximal forearm. There was no exit wound.

89. An initial review of the available video files had indicated that 11 gunshots may have been fired, instead of 13 gunshots. The fourth and fifth gunshots and the tenth and eleventh gunshots referred to above were identified as potentially simultaneous gunshots. The distinct shots

⁵² Exhibit 2, tabs 57 and 57A; Exhibit 3, tab 12A; ts 413 to 416; ts 418 to 419.

were analysed and represented on a spectrogram, and the maximum decibel/amplitude was plotted on a graph. The further analysis of the potentially simultaneous shots showed that, when compared to other shots, they were of greater initial duration and amplitude intensity, indicating that there were possibly two gunshots occurring in close proximity to each other. Taking account of the Western Australia Police Force Computer Crime Squad Analysis Report, I am satisfied that a total of thirteen gunshots were fired.⁵³

90. The thirteen shots were fired over a very short time period, variously identified as 9.027 seconds, and 9.117 seconds. The timing between each of them was minimal, and in the seconds or milliseconds. The time between when the knife was last seen to be moving close to the hostage, and the final shot, was less than one second.⁵⁴
91. The thirteen expended cartridges were all located:
 - (a) Eight within the deceased;
 - (b) One within the hostage (a fragment was recovered);
 - (c) One within the loose clothing of the hostage;
 - (d) One under the police vehicle TK108;
 - (e) One in the tail gate of the police vehicle TK108;
 - (f) One in the tray of police vehicle TK108 (having penetrated the tail gate).⁵⁵
92. One expended Taser cartridge was recovered, consistent with the evidence of the Taser being deployed.⁵⁶
93. The Western Australia Police Forensic Division examined the function of the Police issue pistols involved, as to their mechanical condition and operation. The purpose of the examination is to determine if all safety features are operable and/or if the firearm is capable of firing a cartridge. The pistols were found to function correctly as self-loading pistols, there were no signs of damage or excessive wear, the average trigger pressure of each were within the normal range. I am satisfied that the officers' pistols functioned correctly.⁵⁷
94. Ballistics testing established that the pistol assignment and expended rounds were as follows:
 - (a) Constable Parson's pistol – three cartridges expended;

⁵³ Exhibit 2, tab 58.

⁵⁴ ts 419.

⁵⁵ Exhibit 3, tab 5.

⁵⁶ Ibid.

⁵⁷ Exhibit 2, tab 61.

- (b) Constable Gyrta's pistol – two cartridges expended;
- (c) Constable Stringer's pistol – three cartridges expended; and
- (d) Constable McCormack's pistol – five cartridges expended.

95. The results of this testing is consistent with the above analysis of the individual shots fired, and the recovery of the thirteen cartridge cases.⁵⁸

COMMENTS ON THE SHOOTING

96. A number of matters regarding the shooting arise for my consideration given the evidence I heard in the course of the inquest:

- (a) The lack of an overall supervisor and whether this impacted upon the manner in which police formed a cordon around the deceased;
- (b) Whether there was a missed opportunity to negotiate with the deceased through his father;
- (c) The decision to use lethal force; and
- (d) The firing of the final four shots by Constable McCormack after the deceased had fallen towards the ground.

97. These are addressed below.

Supervision and Negotiation

98. The events continued to escalate quickly after police attended, and the aggression displayed by the deceased towards the hostage was characterised by a high degree of volatility and unpredictability. All attending police officers were constables. Given the absence of a clear supervisor, Constable Gytra, who had been first on the scene, assumed a supervisory role, as described above.⁵⁹

99. However, it is to be borne in mind that Constable Gyrta had at this point re-holstered his firearm and was focussed on attempting to negotiate with the deceased, and there was no actual supervisor present to consider whether or not to re-position the police officers who formed the cordon around the deceased. Constable Gyrta was not in a position to start adjusting police positions or give orders to them.⁶⁰

100. The attending police officers were all acting independently. They were also focussing on the deceased, as well as the need to reduce egress options for him, in light of the potential danger to members of the public

⁵⁸ Exhibit 1, tab 4.

⁵⁹ Exhibit 2, tab 66.

⁶⁰ Ibid.

gathering nearby. Constable Gyrtá's retained the assumed supervisory role. It is to be borne in mind that the police officers present were not trained to deal with situations where they have to act as a group when dealing with an armed threat.⁶¹

101. The attending police officers were not senior police officers within the context of the chain of command. The first substantive sergeant arrived at the scene at 7.58 am, after the shooting ended. I am satisfied that in the short period of time between Constable Gyrtá entering the Lunch Club (at approximately 7.38 am) and the commencement of the shooting at approximately 7.49 am, there were limited opportunities for the involvement of the Tactical Response Group and/or a negotiator. As outlined previously, records reflect that Constable Gyrtá had sought this back up at 7.41 am and that the Tactical Response Group assessment team were advised at 7.44 am. The shooting started approximately five minutes later, while the Tactical Response Group were preparing themselves to be deployed.⁶²
102. The Tactical Response Group have the expertise in dealing with armed hostage negotiation, and had they attended, they would have immediately taken over supervision and accountability for the incident scene. Realistically, there was no time for them to get ready and attend.⁶³
103. After police back-up arrived starting from approximately 7.42 am, there were at varying stages four police officers standing in front of the deceased and the hostage. Another two police officers were to their right, along the northern section on Harris Street, and another two police officers were to their left, along the southern section of Harris Street (one further back than the other). They formed a loose cordon in front of the deceased, and to his left and right, and this was the configuration immediately prior to the first shot being fired. It was clear throughout the incident that the deceased would not be able to escape unless he surrendered.⁶⁴
104. The deceased at one point appeared to have become calmer, then suddenly and vigorously re-escalated when he formed the suspicion that someone was coming for him from behind. Constable Gyrtá tried to reassure him, but to no avail. There was no police officer attempting to approach the deceased from behind. Constable Scott Mason, who was working with Constable McCormack on the day of the incident, had instructed some bystanders to get inside the Lunch Club and lock the door, for their safety. He closed the flyscreen door, which likely made an unexpected noise, and it is at this point that the deceased appears to have suspected that someone was behind him, which raised his ire.⁶⁵
105. When the deceased shouted for police to get away from him, they did move backwards. They retreated from a distance of approximately five

⁶¹ Ibid.

⁶² Exhibit 2, tab 56; Exhibit 3, Tab 3.

⁶³ Exhibit 1, tab A.

⁶⁴ Exhibit 2, tab 66; Exhibit 4, tab 8; ts 307.

⁶⁵ ts 336 to 338.

metres, to a distance of approximately eight to ten metres. However, they were also obliged to consider the range and capacity of their weapons, and the hostage's safety. I am satisfied that, having regard to the hostage's safety, police were not in a position to retreat in the manner that the deceased sought of them.

- 106.** As noted previously, during the incident, the deceased's father had wished to become involved, to assist in calming his son and de-escalating the situation. On the day of the incident, at the intersection, he informed a number of police officers that he was the deceased's father, but he was instructed to move back. The deceased's father had previous experience of the deceased having escalated to the point of risk of harm with a knife, and then de-escalated, without the deceased having ever having previously stabbed anyone.⁶⁶
- 107.** At the inquest the deceased's father referred to an earlier incident where he described the deceased as having bailed himself and his partner in a boardroom with a knife and having just slightly cut himself across the chest. The deceased's father explained that after approximately ten minutes, imploring his son to think of his family, he talked him down, and the deceased threw the knife across the table and took off. He believed that with the father and son trust between them, he may have been able to assist in de-escalating the situation on the day of this incident.⁶⁷
- 108.** The deceased's father had wanted to again implore the deceased to think of his partner and child, but given the heightened state of the incident, was only able to convey to police that he was the father. At the inquest, Constable Gyrta's evidence was that he was aware the incident had evolved from what was initially a dispute between father and son, that had resulted in the CAD job earlier that morning. Accordingly Constable Gyrta decided to try and remove that aspect, and asked the deceased's father to step back a few times. That was followed by Constable Gyrta pushing the deceased's father away, with an admonition to the effect: "*I need you to get back, if it's not her, it's going to be you.*"⁶⁸
- 109.** Constable Gyrta was concerned that the deceased would do harm to his father. He discerned tension between father and son. When the deceased was not engaging with Constable Gyrta, he was observed to be shouting something at his father, or in the direction of his father. Constable Gyrta believed he could hopefully get the deceased to calm down if he removed his father from the vicinity. He had formed the view that the father's presence was a source of agitation for the deceased.⁶⁹
- 110.** At the inquest Constable Gyrta testified that looking back, he did not think he would have included the father in the negotiations with the deceased, because of the level of emotion involved, a lack of information as to what the father may have said, an inability to control what the father

⁶⁶ ts 24 to 25; ts 120 to 122; ts 241 to 242; ts 253 to 254.

⁶⁷ ts 24 to 25; ts 40 to 45.

⁶⁸ ts 43; ts 104 to 105.

⁶⁹ ts 165 to 167.

might say, and his need to focus on preserving the life of the hostage. In his view the risk of the unknown factors if he had taken this course would have been too high. He would not have included a family member in the negotiations when another person's life was so imminently in danger.⁷⁰

111. Having regard to the earlier CAD job created as a result of a report of the events at the business premises, and the observed dynamics between father and son at the scene of the incident, that was not an unreasonable position for Constable Gyrta to take.
112. The deceased's father has been left feeling that he could have succeeded in de-escalating the situation if he had been given an opportunity to do so by police. Unfortunately the situation on 8 November 2014 was too dire and too volatile. Whilst he had been able to talk his son down during that earlier incident in the boardroom, there was now an imminent threat to the life and safety of the hostage, and the two situations cannot be compared.
113. The interactions between the police and the deceased were had in highly stressful circumstances, and the persons present were for the most part shouting. Expert training consultant and former police officer and trained negotiator Mr John O'Neill has conducted courses in police negotiation, and attended numerous critical incidents as primary negotiator or team leader, including hostage sieges, and he prepared a report for the coroner.⁷¹
114. Mr O'Neill opined that there was insufficient time for the deployment of an expert police negotiator, within the ten minute incident time, a matter that is borne out by the evidence before me concerning the timing. Mr O'Neill referred to the highly volatile situation with a high degree of threat, that required continuous communication and engagement between the police contact officer (Constable Gyrta) and the deceased. He also had regard to the other police present also being engaged in the incident at the inner perimeter, providing containment of the situation.⁷²
115. Mr O'Neill also opined that due to the lack of available time and the confronting and dynamic nature of the incident, there was no role for the use of an expert police negotiator in a remote or off-site capacity. In his view Constable Gyrta maintained an engagement with the deceased, and such maintenance requires that the line of communication not be broken, so that the contact officer (Constable Gyrta) can continue to acquire and re-acquire the deceased's focus and attention, in an attempt to reassure, to put at ease, and to provide alternative and peaceful options for resolution.⁷³
116. In Mr O'Neill's experience, the most effective way to change behaviour through negotiation is for one person, the same person, to maintain

⁷⁰ ts 197.

⁷¹ Exhibit 4, tab 11.

⁷² Ibid.

⁷³ Ibid.

engagement. In his opinion, Constable Gyrtta communicated in a way very similar to that of a trained negotiator in the circumstances.⁷⁴

117. At the inquest Commander Lawrence Panaia's opinion, upon his review of the incident, was that Constable Gyrtta's conversation with the deceased was how he would imagine one should do it, and given his understanding of the negotiation training, exactly how it should be approached. The Commander's assessment was that Constable Gyrtta kept trying to engage with the deceased and saying that they could work it out.⁷⁵
118. The Commander's evidence was that the arrangement of the police officers in the arc formation was consistent with his expectations of what should happen to achieve containment, and noted that the police officers would have been concerned about getting into a line of fire themselves, and keeping people such as bystanders outside an arc so they would not get caught in cross fire.⁷⁶
119. The Commander referred to the training that is available for the specialist unit that deals with negotiations in similar circumstances. It is different and more specialised than the skills required for containing a scene. The Commander was questioned as to whether specialised negotiation training should be more generally available to all police officers. He outlined that there may be risks involved in providing information in an expert field (such as specialised negotiation) to the broader cohort, who are not tasked with specialist skills. It may risk a situation flaring up instead of calming down. He explained that care must be taken as to how much information is given at recruit level.⁷⁷
120. The Commander referred to the important difference between the police's first response, in getting to a scene and trying to calm the situation and gain control on the one hand, and the expertise of trained negotiators on the other hand. Training is provided to all police as first responders, to contain a scene pending the arrival of expert negotiators, through the Tactical Response Group, or the Regional Operations Group. The training provided to all police officers includes scenario training at the Academy. It involves the use of a scenario village, with exercises involving different situations, with dummy force options, and is used as a learning exercise in escalating and de-escalating a hostile situation, followed by a de-briefing.⁷⁸
121. The Commander also referred to the "*active shooter*" training that all police officers have received since 2014. One of the police officers also referred to this new training package for recruits, for dealing with armed offenders. He recalled being advised to take care when exhorting armed offenders to think of family members because essentially, it cannot be

⁷⁴ Exhibit 4, tab 11.

⁷⁵ ts 404.

⁷⁶ ts 393.

⁷⁷ ts 388 to 389.

⁷⁸ ts 353; ts 366.

assumed that the reference to the family relationship will always have a calming effect on an armed and volatile offender.⁷⁹

122. The Commander was asked for his opinion on whether the police conduct on the day of the incident (prior to the shooting) was consistent with his expectations for containment of a scene under similar circumstances. In responding in the affirmative, he gave the following reasons:

- (a) When Constable Gyrta first observed the deceased with the knife in the Lunch Bar, he thought it was a self-harm incident, and he drew his Taser;
- (b) As soon as the deceased took the hostage, Constable Gyrta re-holstered the Taser and drew his firearm, that would be in line with his training;
- (c) Constable Gyrta kept a safe distance from the deceased that he would have been trained to do;
- (d) Constable Gyrta took steps to avoid the deceased being left alone in the Lunch Bar with the hostage;
- (e) When back up police arrived outside the Lunch Bar, Constable Gyrta organised a cordon of police officers, again in line with his training;
- (f) Police officers present took steps to keep bystanders outside of the arc or cordon of containment, so they would not get caught in the cross-fire if there was going to be shooting.⁸⁰

123. I am satisfied that in forming the cordon around the deceased and attempting to negotiate with him, whilst keeping a close watch upon the hostage's safety, the attending police officers acted in accordance with their training, under difficult and volatile circumstances.

The use of lethal force

124. Under the Use of Force Policy of the Western Australia Police Force, that applied at the material time, and still applies:

- (a) a firearm can be drawn to reduce a threat and gain control of a subject where the member reasonably suspects that there is a risk of grievous bodily harm or death to any person; and
- (b) a firearm can be discharged to reduce a threat and gain control of a subject where the member reasonably believes there is an imminent risk of grievous bodily harm or death to any person.⁸¹

⁷⁹ ts 353; ts 389 to 391.

⁸⁰ ts 393.

⁸¹ Exhibit 3, tab 15; ts 387 to 392.

- 125.** There is no hierarchy in the use of force policy for police officers. Each police officer acted autonomously and made their own decision based upon their individual perceptions. It allows for an ability to escalate or de-escalate as required, and depends on the situation that the police officer is facing. Police officers act independently and exercise their own discretion as to which force option is appropriate. In this instance, they needed to have regard to the obvious risk that bladed weapons can present to victims, police and bystanders.⁸²
- 126.** The police officers who discharged their weapons all believed that the deceased was at that point in the act of stabbing the hostage. They were of the belief that they had the legal authority to cause death or grievous bodily harm to the deceased if they formed the belief that he was in the act of causing death or grievous bodily harm to the hostage. They had an adequate understanding of the relevant policy. This information forms part of their annual use of force re-qualification.⁸³
- 127.** The evidence shows that during the ten minutes when the deceased restrained the hostage next to him, at the intersection, with the knife in close proximity to her, and with the police opposite him with firearms drawn at various stages:
- (a) the deceased repeatedly threatened to kill and/or stab the hostage;
 - (b) the deceased repeatedly demanded that police get back, away from him and the hostage;
 - (c) the deceased repeatedly made demands for a helicopter, and for the presence of certain persons (involved in the administration of the criminal justice system);
 - (d) the police repeatedly instructed the deceased to drop the knife and to let the hostage go;
 - (e) the deceased gave no indication of an intention to comply with the police's instructions;
 - (f) the deceased's father attempted to get involved to help police speak with his son, but police instructed him not to do so; and
 - (g) Constable Gyrta repeatedly urged the deceased to stay calm, and asked what he could do for him.⁸⁴
- 128.** At the inquest, the police officers who discharged their firearms were questioned as to their reasons for doing so:
- (a) Constable Parsons fired the first shot and may have fired the third and fifth shots, all in quick succession. The events leading up to his decision to discharge his firearm were as follows: on the day of the

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Exhibit 1, tabs 17 and 33.

incident, he drew his firearm when he saw the deceased with the hostage restrained and facing the deceased, standing against the back of the police vehicle. When he arrived, it was towards the end of the incident. The deceased was holding a knife against the hostage's back and speaking with Constable Gyrtá.

Constable Parsons also saw the deceased hold the knife against the hostage's throat, and he heard the deceased make threats to kill the hostage. He observed the deceased moving the knife between the hostage's neck and back. Constable Parsons drew his firearm because he was concerned for the hostage's safety. He observed the hostage squirming and sounding scared. He heard Constable Gyrtá telling the deceased to drop the knife, and in his view it was not registering with the deceased, who continued to make demands of police. Constable Parsons was thinking about how they could get the hostage away from the deceased safely, and without getting harmed, or how he could get the deceased to drop the knife. The deceased appeared to him to be drug affected and erratic.

Just before he discharged his firearm, Constable Parsons recalled two distinct movements by the deceased, one where he pressed the knife into the hostage's back and plunged it into her back, with the blade disappearing, and then being removed (with the blade being drawn in the direction of his chest, as she was facing him), and one where he lifted his right arm and plunged the knife into her. As the deceased did one of those actions, he moved the hostage slightly lower, so instead of her covering his entire chest, a portion of his chest was revealed. Constable Parsons thought his Taser would be ineffective, because one probe might hit the deceased's shoulder, and another probe might hit the hostage.

Constable Parsons thought the hostage was going to die, and though reluctant due to the risk of hitting the hostage, he took the first shot in the small portion of the deceased's body that was exposed. He thought there was no effect initially and paused momentarily, but observed that the knife continued to pose a threat to the hostage, because it was in the same position. He immediately fired a second shot but there was no reaction and the deceased made further stabbing motions, and he fired a third shot. After his third shot he observed the deceased appear to lower to his knees, still holding onto the hostage, who also appeared to be falling to the ground, and still making stabbing motions to her back and around her side area. He did not discharge his firearm after that because he heard other shots being fired and he reassessed the risk, and perceived the threat to start being reduced. Whilst the deceased was still holding onto the knife, Constable Parsons perceived his grip to have loosened and there was not a strong stabbing motion. These factors contributed to his decision to holster his firearm at that point.

At the time Constable Parsons understood he was authorised to draw his firearm if he reasonably suspected that someone would receive injuries of grievous bodily harm, or death. He thought the

deceased was going to stab the hostage or slit her throat, having regard to the way he was holding the knife to her throat and back. From the commencement of his involvement in the incident, he believed the hostage was at imminent risk of receiving those injuries, or death, and that he was therefore authorised to discharge his firearm.⁸⁵

- (b) Constable Gyrta likely fired the fourth shot and fired the ninth shot. His attempts to de-escalate the situation, and his observations of the deceased's behaviour towards the hostage have been addressed previously in this finding. The below analysis concerns his actions after they have exited the Lunch Club. Constable Gyrta's evidence was that the discharge of his firearm was the only tactical option, and that to have attempted to deploy non-lethal use of force and have it fail, would have escalated the situation ten-fold. If he had had a clear shot before the other police officers arrived, he might have taken it.

During the incident Constable Gyrta had twice seen the deceased raise his knife above his head, and bring it down, but he stopped short of stabbing the hostage. On the third and final occasion, Constable Gyrta saw the deceased push the knife into the hostage and he formed the view that the deceased was actually stabbing the hostage, and that the knife was going into her. As recounted earlier in this finding, Constable Gyrta saw the deceased raise the knife up in the air, with both hands, and brought it down sharply and towards the hostage's back, while restraining the hostage in a face to face hold. Constable Gyrta thought the knife had gone into the hostage's back. Constable Gyrta first heard what he thought were six or seven shots fired by other police. Then he saw the hostage fall to the ground with the deceased holding onto her, and with the deceased following her to the ground, with the knife in his hand.

As the deceased was falling, Constable Gyrta saw the deceased with the knife swing at what he believed was the hostage's chest area or right side. He fired two shots, the first one whilst the deceased was still almost on his feet, and the second one as the deceased began to fall further. At the time he discharged his firearm, Constable Gyrta believed the deceased was still stabbing the hostage and still trying to kill her.

He fired his first shot when he could see the deceased's full body, as the hostage had fallen to the side. It did not appear to have any effect on the deceased. He fired his second shot because he observed the deceased was still swinging the knife at the hostage, when the hostage was on the ground and the deceased was partially on the ground. After the second shot he thought the deceased had stopped stabbing the hostage and he ran forward with the aim of grabbing the hostage.

⁸⁵ ts 213 to 220; ts 224 to 225; ts 227; ts 230 to 232; ts 235 to 236.

Constable Gyrta's understanding at the time was that he could draw his firearm if he had a reasonable belief that there is a person at risk of grievous bodily harm or death, and he held that belief because the deceased had a knife immediately to a hostage, shouting that he was going to kill her. He believed he was authorised to discharge his firearm if that risk became imminent, and he held the belief that the risk was imminent for the entirety of the incident.⁸⁶

- (c) Constable Stringer fired the second shot and may have fired the third and fifth shots. The events leading up to his decision to discharge his firearm were as follows: on the day of the incident when he arrived, he initially saw Constable Gyrta on the far side of his vehicle with his firearm drawn. He drew his firearm as he was running down Oats Street, being aware of the call for back-up, and that the deceased was alleged to have a knife. As he got closer, he saw the deceased holding the hostage to his body and a large knife in his hand, at the passenger side rear corner of the police vehicle. Constable Stringer pointed his firearm at the deceased because he believed there was an imminent threat of death or grievous bodily harm, from his observations of the deceased's manner, what he was saying, and the presence of the knife against the hostage. He formed the view that the deceased was threatening to kill the hostage.

Upon arrival at the scene Constable Stringer instructed the deceased to drop the knife, but then saw Constable Gyrta hold his hand up which he took as a sign for him to desist engaging with the deceased, to allow Constable Gyrta to continue. Constable Stringer then remained silent, and let Constable Gyrta continue the engagement. Constable Stringer saw that the deceased had the hostage wrapped up in his arms, holding her tightly against the front of his body, with the knife held in his right hand.

Constable Stringer formed the view that Constable Gyrta's efforts to control and negotiate with the deceased were having no appreciable effect on the deceased's actions. He believed that the only feasible course of action was to fire at the deceased. He believed that if police did not take positive action to stop the deceased, he would kill the hostage. The other tactical options, being the Taser or OC spray, were precluded in his view by reason of distance or risk.

Constable Stringer saw the deceased raise the knife in his right hand, to equal or above his head, and bring it down quickly and forcefully into the back of the hostage, and he discharged his firearm. He was on the left side of the deceased and the right side of the hostage, and was able to see the majority of the deceased's left side of the body. He heard other shots at the same time. He did not know if his first shot hit the deceased, and he saw the deceased continuing to stab the hostage. He re-sighted and fired a second shot, and at that point saw the deceased and the hostage start to stumble or fall in a direction directly away from him, across the rear

⁸⁶ ts 167 to 168; ts 173 to 179; ts 183 to 184; ts 191 to 192.

of the police vehicle. As they fell, they rotated so that Constable Stringer was able to observe the deceased's back shielding the majority of the hostage's body.

Constable Stringer saw the deceased making continued motions with his right arm, in the same way he had previously made when he was observed to stab her. Specifically he saw the deceased's right arm driving back and forth against her back. Although at this point Constable Stringer could not see the knife, it appeared to him that the deceased was making efforts to stab the hostage. They had not yet completely fallen to the ground. He re-sighted and fired a third shot, and then saw them land on the ground, with the deceased on top of the hostage. He believed the deceased was no longer able to hold onto the hostage and manoeuvre her around him. He holstered his firearm with the aim of running towards them, because he believed the threat had lessened.

Constable Stringer's understanding at the time was that he could discharge his firearm if he had a belief that the threat of death or grievous bodily harm becomes imminent, and he held that belief when he discharged his firearm.⁸⁷

- (d) Constable McCormack fired the eighth shot, and he fired the final four shots (shots ten to thirteen). These later shots were the focus of some examination at the inquest and the analysis in respect of them appears under the below heading *The final four shots*. This portion deals primarily with Constable McCormack's decision to proceed to discharging his firearm.

Constable McCormack had initially drawn his firearm when he exited his police vehicle as he was aware of a CAD job concerning an apparent hostage situation, involving a man armed with a knife. As he approached the scene, Constable Gyrtta initially asked him to move some of the bystanders back, so he re-holstered his firearm and performed that task. Then he positioned himself within the arc of police officers facing the deceased, just behind Constable Gyrtta who was to his right, and with Constable Parsons to his left.

At the inquest Constable McCormack was questioned about his observations immediately before the first shot being fired. His evidence was that he saw the deceased holding the hostage, and they were face to face, and the deceased was holding a knife that was placed up against the hostage's shoulder blade, off centre to a degree. He then saw the deceased proceed to push the knife into what he thought was the hostage's back, and she yelled out, and he believed she was yelling out in pain. This was his first observation regarding the knife.

Constable McCormack did not know who fired the first shot, but before he discharged his firearm he heard about half a dozen shots.

⁸⁷ ts 265 to 275; ts 285 to 287.

He began to run forward, in the direction of the deceased and the hostage. As he was running in, he saw a portion of the deceased's body open up to a centre of mass, because the hostage's body moved downwards. He saw the deceased remove the knife, bring it up to approximately head height, and then swing it back down and he believed it went into the hostage's body. This was his second observation regarding the knife. During this time, he was aware shots were being fired.

Constable McCormack saw the deceased and the hostage falling together, dropping to their knees and as they continued to fall (rotating in a clockwise direction) he drew his firearm. At that stage he did not know whether any of the previous shots had hit the deceased. They were still face to face and he was running in from side on, so he could see both of their sides, and the hostage appeared to still be restrained in a bear hug manoeuvre. When they reached the ground, Constable McCormack could see the deceased's right side and part of his back and he was positioned slightly over the hostage. Constable McCormack thought he could see the hostage's left side, though he was mainly focussed on the deceased. Constable McCormack could see the knife in the deceased's hand and as he stopped to get a sight picture, he saw the knife moving towards the hostage, just as they reached the ground. It looked like the knife was moving towards the hostage's back from approximately ten to fifteen centimetres away. This was his third observation of the knife.

Constable McCormack discharged his firearm, and believed he fired four or five shots. He did not see any effect from his first shot, and believed he continued to observe the knife still moving towards the hostage, though having regard to an earlier stage of questioning, at his interview immediately after the event, it may be that he saw the deceased's arm movement (and not the knife itself), and assumed he was continuing to stab the hostage. At the inquest Constable McCormack conceded that the knife may have been covered and not visible to him, and that he saw the stabbing motion of the deceased's arm. He also explained that his recollection may be affected by the fact that afterwards, when he pulled the deceased and the hostage apart, he pulled at the knife, and it was still firmly in the deceased's grip.

In weighing the two accounts, which are not necessarily inconsistent, I have regard to the stressful situation on the day of the event, and his evidence and demeanour at the inquest, where he testified initially as to his belief that he saw the knife after he fired his first shot, and that he believed there to be an imminent threat to the hostage. Later he clarified that he believed the deceased had the knife, without necessarily seeing it, by reason of seeing the motion of stabbing from his arm. I therefore reach no positive conclusion as to a fourth observation of the knife (after he fired the first shot), but I am satisfied that Constable McCormack did at the least observe the deceased's arm continue to move towards the hostage in a manner that caused him to believe, reasonably, that he was still

stabbing her or attempting to stab her, and that in response, he discharged his firearm another three times.

At or about the time that Constable McCormack was shooting, he was aware that one of the other police officers present attempted to deploy his Taser, but Constable McCormack did not observe any effect on the deceased. As it transpired, the Taser probes were later found not to have connected, supporting that observation.

Constable McCormack's understanding at the time was that he could draw his firearm if he believed or reasonably suspected that there was a risk of grievous bodily harm or death. At the inquest he testified that he held that belief by reason of the contents of the radio call made by the officer at the scene, and drew it on arrival. He then re-holstered his firearm and went to stand with the police officers. He drew it again as he was running in after shots had been fired, and he discharged his firearm. He held a belief that there was risk of grievous bodily harm or death because of the deceased's stabbing actions as described above, and having regard to the earlier circumstances, where he heard the deceased telling police to stay back or he would kill the hostage, and had the knife to her throat.⁸⁸

The final four shots

- 129.** Constable McCormack was approximately one and a half metres away from the deceased when he fired the final four shots and by that stage, the other police officers had ceased firing. As described above, he had run towards the deceased and the hostage as they were falling to the ground, because he believed the deceased was stabbing or attempting to stab the hostage.
- 130.** At the inquest Constable McCormack was questioned on whether the threat to the hostage was lessened as she and the deceased were falling to the ground, ending up on the ground. Constable McCormack testified that, when he discharged his firearm, he still believed there was an imminent risk to the hostage, and at that stage, he did not know where the prior shots had landed. His aim was to shoot until there was no threat to the hostage. He observed stabbing motions and struggling motions, and continued to shoot at the deceased until that movement ceased.⁸⁹
- 131.** Constable Parsons was present and able to observe the deceased and the hostage as they fell to the ground, as he was in front of them and had discharged his firearm. He saw the deceased fall to knee height and the hostage below that, also appearing to fall to the ground. He heard more

⁸⁸ ts 307 to 322; ts 326 to 327; Exhibit 3, tab 7.

⁸⁹ ts 325 to 336.

shots and observed the deceased continuing to make stabbing motions towards the hostage.⁹⁰

- 132.** When Constable Parsons saw the continued stabbing motions, he considered taking another shot, but hearing shots being fired by other police, and seeing the deceased starting to move further down, he reassessed. He observed that the deceased's grip on the knife was loosening, and formed the view that the threat was being reduced. He therefore re-holstered his firearm.⁹¹
- 133.** At the inquest Constable Parsons was questioned as to his observations of the final shots. He recalled they occurred as the deceased and the hostage were still falling towards the ground, with the deceased having the knife in his hand, still making stabbing movements with his right arm, towards the hostage's shoulder area, and with the hostage in his left arm grip. The hostage was still facing the deceased. At this point, he observed the knife make contact with the hostage, but unlike his previous observations (immediately before the shooting) he was unable to observe whether it pierced or not. Constable Parsons did not recall seeing stabbing motions once the deceased and hostage were completely on the ground. At that point he ran in, potentially as shots were still being fired, and this may have affected his observations of the deceased's final actions. He recalled asking Constable McCormack to take the knife out of the deceased's hand.⁹²
- 134.** Constable Stringer was present and able to observe the deceased and the hostage as they fell to the ground, as he was in front of them and had discharged his firearm. From his position he was unable to see whether there was any further stabbing or stabbing motions once the deceased and hostage were on the ground. At that point he was holstering his firearm and also running in.⁹³
- 135.** Constable Hemsley was partnered with Constable Parsons on the day of the incident, and he was also involved in moving bystanders out of the way, for their safety and in light of the deceased's agitation, elevated by the suspicion of someone coming for him from behind, or the side. His observations of the deceased's actions and statements are consistent with the evidence already cited regarding the threats to the hostage up to the time the first shots were fired.⁹⁴
- 136.** When Constable Hemsley heard the shots being fired, he could not tell where they were coming from, and he ran in towards the area. He could not see if any of the shots had been effective, but testified that he saw the deceased and the hostage appear to stumble to the floor (by which he meant the ground), towards his direction. He observed the knife still in the deceased's hand. The deceased ended up on top of the hostage in a

⁹⁰ ts 218.

⁹¹ Ibid.

⁹² ts 218 to 219; ts 228 to 231; ts 235; ts 238.

⁹³ ts 287.

⁹⁴ ts 241 to 244.

hunched position. It was probable at this stage that shots were ringing out, when he deployed his Taser towards the deceased.⁹⁵

- 137.** Constable Hemsley testified that he deployed his Taser to reduce the threat of death or grievous bodily harm. He observed the deceased still had hold of the knife, and he was on top of the hostage on an all fours type position. He believed that the deceased could have been driving the knife into her while she was on the floor. To him it seemed that the deceased was still making a stabbing motion. He observed the deceased at this point to have a positive grip on the knife, it had not been dropped or come out of his hand, and even though he was coming down to a more level position on the ground, it was still in a raised position, pointing down. At the inquest he conceded he could not be certain the deceased had not just fallen in that position, and that the knife was coming down because of gravity. However, at the material time, he believed the deceased was still stabbing the hostage, and that it was a positive action by the deceased as they were stumbling to the ground.⁹⁶
- 138.** Constable Hemsley's Taser did not successfully discharge as both probes did not attach to the deceased. He may not have been close enough, or there may have been too much movement. He believed the last few shots may have been going off at the same time as his Taser. At this point other police officers rushed in to separate the deceased and the hostage, and to render first aid to both.⁹⁷
- 139.** Constable Mason was partnered with Constable McCormack on the day of the incident. He was primarily moving around and getting bystanders out of the way. His observations of the deceased's actions and statements are consistent with the evidence already cited regarding the threats to the hostage up to the time the first shots were fired. He was also able to observe the deceased and the hostage as they fell. He believed the deceased was still actively stabbing the hostage as they were going to the ground. He described it as the motion of arm and the knife with the blade protruding down, which he believed were the deceased's last efforts to continue to stab the hostage.⁹⁸
- 140.** Constable Owen Killip was partnered with Constable Stringer on the day of the incident. His observations of the deceased's actions and statements are consistent with the evidence already cited regarding the threats to the hostage up to the time the first shots were fired, but by reason of his position relative to Constable Gyrtta's vehicle, he was only able to see parts of their bodies. His view of the deceased and hostage after they fell was obstructed by the vehicle.⁹⁹
- 141.** Constable Andrew Malland was present and able to observe the deceased and the hostage as they fell to the ground, as he was approximately ten to twenty metres away, and his view was unobstructed. He was on the

⁹⁵ ts 245 to 246; ts 251.

⁹⁶ ts 246 to 249; ts 255 to 256.

⁹⁷ ts 246 to 248.

⁹⁸ ts 342 to 344.

⁹⁹ ts 293 to 305.

telephone in connection with back-up assistance, and turned to face them as he heard the first shots fired.¹⁰⁰

- 142.** Constable Malland recalled that as the deceased and the hostage were falling towards the ground, the deceased was still moving his right arm across his body and in towards her torso. When they were almost completely lying down on the ground, entangled, he observed that once again the deceased's right arm came across, up from the ground side in an arcing motion up over and back towards the hostage's torso, and that was when he heard the last of the shots. He did not recall whether he saw the knife in the deceased's hand. By reason of the movement of the deceased's arm when they were on the ground, he believed the risk was still the same, and that it had not lessened.¹⁰¹
- 143.** At the inquest, I heard evidence from the forensic pathologist Dr D. Moss, directed to the question of whether any particular shot or set of shots was more likely to have caused the deceased's death. Specifically the question arose as to whether the final four shots fired by Constable McCormack caused the death, or had a greater role in causing the death.¹⁰²
- 144.** In Dr Moss' opinion, the gunshot wound to the inner aspect of the right thigh (referred to as wound number 7) was the least likely to be fatal (though it retained that potentiality), because there was no definite described vascular injury. This was one of the wounds where the evidence did not establish a sufficient connection with a particular shot fired.¹⁰³
- 145.** In Dr Moss' opinion, all of the other gunshot wounds have gone into the chest or the abdomen, save for one to the left upper arm. Many of the wounds that went into the chest or abdomen had hit vital structures such as liver, lung and bowel in the abdomen, and also parts of the spine, and they were all potentially fatal. The wound that went into the left upper arm (referred to as wound number 9) did a lot of soft tissue damage and in his view was almost certainly associated with vascular injury, so it was also potentially fatal without rapid medical attention.¹⁰⁴
- 146.** In the case of the wounds that caused internal injury to the chest and abdomen, together or individually, significant injury was caused to significant internal organs. Dr Moss explained that different people react very differently to similar injuries.¹⁰⁵
- 147.** I am satisfied that save for the gunshot wound to the inner aspect of the right thigh, all of the gunshot wounds were potentially fatal. There is no basis for finding that the final four shots fired by Constable McCormack caused the death, or had a greater role in causing the death.

¹⁰⁰ ts 355 to 358; Exhibit 2, tab 38.

¹⁰¹ ts 359 to 366; Exhibit 2, tab 38.

¹⁰² ts 378 to 385.

¹⁰³ ts 379.

¹⁰⁴ Ibid.

¹⁰⁵ ts 384.

FIRST AID

148. As shots were being fired, police ran in towards the deceased and the hostage, separated them and removed the knife from the hand of the deceased. Police commenced to administer first aid to both parties, and called for an ambulance.
149. Records reflect that at 7.43 am on 8 November 2014, St John Ambulance received a call from Police Communications, in connection with “*Hostage situation knife to throat. The offender is with or near the patient.*” The paramedics arrived at the scene at 7.51 am and by that stage, the shooting had taken place, and police had cordoned off the area. Paramedics approached the scene and observed several police officers attending to the deceased and the hostage. Three police officers were attending to each person, and paramedics took over the first aid and resuscitation efforts.¹⁰⁶
150. The second ambulance received a call at 7.51 am concerning a “*hostage situation*”. As paramedics were preparing to attend, the job was updated to reflect that there was “*one stabbing, one shot.*” They arrived at the scene at 7.58 am, and assisted with the first aid and resuscitation efforts.¹⁰⁷
151. When paramedics arrived, a police officer was administering CPR to the deceased with others in attendance. Police showed the paramedics the penetrating wounds to the deceased’s abdomen, informing that they were caused by 40 calibre hollow point rounds of ammunition. Paramedics checked the deceased and could find no pulse or breathing. They took over the compressions, but unfortunately there was continued significant blood loss. The deceased was in asystole and tragically his condition was not conducive with life. The deceased was pronounced dead by the paramedic at the scene at 8.10 am on 8 November 2014.¹⁰⁸
152. Paramedics treated the hostage’s wounds and arranged for her conveyance by ambulance to the Royal Perth Hospital, departing at 8.10 am, arriving there at 8.19 am. She was injured but conscious and breathing independently upon the paramedics’ arrival at the scene.¹⁰⁹

CAUSE AND MANNER OF DEATH

153. The forensic pathologist Dr D. Moss assisted by his then registrar Dr V. Kueppers made a post mortem examination on the body of the deceased at the State Mortuary on 11 and 12 November 2014. Dr Moss noted multiple gunshot injuries to the torso, both arms and the right leg. Eight bullets were recovered. A superficial incised wound was present to the left side of the neck. Microscopic examination of tissues showed

¹⁰⁶ Exhibit 2, tab 51.

¹⁰⁷ Exhibit 2, tab 52.

¹⁰⁸ Exhibit 1, tab 1; Exhibit 2, tab 55.

¹⁰⁹ Exhibit 2, tabs 51 to 55.

haemorrhage within the lungs. There was no evidence of significant natural disease to the internal organs. Mild hardening and narrowing of the blood vessels on the surface of the heart (coronary artery atherosclerosis) was noted.¹¹⁰

154. On 12 November 2014 Dr Moss and Dr Kueppers formed the opinion that the cause of death was multiple gunshot wounds.¹¹¹
155. Toxicological analysis was ordered and became available to the forensic pathologists between December 2014 and January 2015. The analysis showed the presence of methylamphetamine at a level of 0.15 mg/L, with amphetamine present at a level of 0.02 mg/L. The benzodiazepines diazepam, desmethyldiazepam, oxazepam and temazepam were all present at low levels. Alcohol and other common drugs were not detected. The forensic pathologists' opinion on cause of death remained the same.¹¹²
156. I am satisfied that the presence of methylamphetamine at that level reflects that the deceased had taken illicit drugs and was under their intoxicating effects at the time of the incident. That effect increased his aggression and elevated his levels of suspicion. The drugs did not affect the voluntariness of his actions towards the hostage. They were under his voluntary control, and he had the option of desisting.
157. At the post mortem examination, three incised wounds to the deceased's neck area were noted:
- (a) an apparent superficial incised wound to the left side of the deceased's neck, approximately 90 mm in length;
 - (b) a very superficial incised wound to the left side of the deceased's lower neck, approximately 65 mm in length;
 - (c) a superficial incised wound to the left side of the front of the deceased's neck, approximately 24 mm in length.
158. At the inquest Dr Moss explained that an incised wound is due to a sharp edge, and agreed those injuries were consistent with having been made by a knife. I am satisfied that they were self-inflicted by the deceased on the occasions when he drew the knife closer to his neck before the shooting, and most likely with an intent to self-harm, but not with an intent to take his own life. These injuries did not cause or contribute the deceased's death.¹¹³
159. I accept and adopt the opinion of Dr Moss and Dr Kueppers on cause of death. **I find that the cause of the deceased's death was multiple gunshot wounds.**

¹¹⁰ Exhibit 4, tab 2.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ Ts 381 to 382.

160. In considering the manner of the deceased's death, I must assess whether the police officers' actions in shooting the deceased, that caused his death, were a reasonably necessary response to the risks facing the hostage at the material time.
161. Further, whether the police officers shot the deceased intending to protect the hostage against an apprehended attack and whether the shooting was (and was believed by each of them to be) reasonably necessary, as questions of fact, regarding the surrounding circumstances and their states of mind.
162. For the reasons outlined under the headings within *Comments on the shooting*, above, I am satisfied that that the police officers' responses in shooting the deceased were a reasonably necessary response to their individual reasonably held beliefs that the hostage was at imminent risk of death, and at least at imminent risk of grievous bodily harm. Further that the police were in the course of carrying out a legitimate law enforcement activity.
163. The police officers acted to defend the hostage from an imminent attack by the deceased, with the knife. Whilst they were acting to defend the hostage, and not themselves, their acts in shooting are nonetheless described as acts of self-defence.
164. **I find that the manner of the deceased's death was homicide by way of self-defence.**

SUBMISSIONS ON TRAINING AND FIREARMS

Training

165. At the inquest a number of the police officers were questioned in connection with their training, specifically in the area of taking command of an incident scene, and in the area of negotiations. They referred to the scenario training that Commander Panaia also noted (referred to earlier in this finding) and training generally in communication, including with agitated persons.¹¹⁴
166. The tenor of the evidence was that as police officers arrived, they observed Constable Gyrta communicating with the deceased and they treated him as the de facto police command, which he reinforced with hand signals to the other officers. There is no specific training on the question of who amongst first responders takes command. It could be the most senior police officer present, but it could also be the police officer who has commenced the engagement or negotiation with an offender, in order to keep continuity of control.¹¹⁵

¹¹⁴ ts 181 to 182; ts 200 to 201.

¹¹⁵ Exhibit 2, tab 66; ts 279; ts 425.

- 167.** Police were questioned as to whether they observed the deceased calm down slightly after they withdrew back from him, from a distance of approximately five metres to a distance of approximately eight to ten metres. Police observed that the deceased nonetheless continued to loudly make demands and threats, and that whilst at least briefly he calmed down, he remained volatile.¹¹⁶
- 168.** At the inquest Detective Skamp was questioned in connection with the Internal Affairs Unit's subsequent review of the incident, contained in the report to the coroner. Detective Skamp attributed the apparently oppressive positioning of six officers pointing weapons at the deceased to the following factors:
- (a) No supervisor was present to re-position the police officers;
 - (b) All of the police officers were acting independently, and had the ability to decide what level of force appeared appropriate at the time;
 - (c) Constable Gyrta was fully engaged in dealing with the deceased, and was in no position to start adjusting police positions;
 - (d) Police officers were reducing egress options having regard to the level of harm the deceased represented to bystanders; and
 - (e) Those police officers were not trained to deal with situations where they have to act as a group when dealing with an armed threat.¹¹⁷
- 169.** Detective Skamp was questioned as to whether, in hindsight, repositioning the officers in the arc around the deceased may have reduced the tension in the situation. The Detective conceded it may have done that, but it may also have hindered the ability of the officers to respond in a timely manner.
- 170.** I am satisfied that whilst the positioning of the police officers may have had the appearance of being oppressive, it was not a factor that contributed to the deceased's death, and I do not describe it as oppressive taking account of all of the circumstances, including Constable Gyrta's continued efforts to negotiate with him.
- 171.** The deceased's family through their counsel submits to me that consideration ought to be given to specific training in negotiation, at the Academy level, including reassessing a situation and using flexible tactics. They also query whether the presence of a person in command may have reduced the number of shots fired at the deceased.
- 172.** The Western Australia Police Force through their counsel inform me that the Critical Skills Training that is already provided to recruit constables (graduates) at the Academy includes training in tactical communication, negotiation and incident control, essentially also supplemented by

¹¹⁶ ts 280 to 281; ts 324 to 325.

¹¹⁷ Exhibit 2, tab 66.

written information in the manuals, and they draw attention to the following:

- (a) the tactical communication theory session includes management of compliant and non-compliant subjects, and includes a number of demonstrations;
- (b) the incident control training covers several table top incidents, followed by practical scenarios during which recruit constables adopt the role of police forward commander and manage the incident.

173. The Western Australia Police Force also inform me of further relevant training programs completed by in service officers, as part of their mandatory annual requalification. This includes scenario based training incorporating tactical communication, conflict de-escalation and where appropriate, use of tactical options.

174. Having regard to the evidence before me, and noting that training is always evolving, I do not presently recommend that police recruits all receive specialised negotiation training.

Firearms

175. At the inquest a number of the police officers were questioned in connection with the enhanced capability of rifles, being more accurate than pistols over distance, from the perspective of whether it may have reduced the number of shots fired at the deceased.¹¹⁸

176. Commander Panaia agreed that the rifle produces greater accuracy, and gives police the option to be further away from a particular incident but understandably, expressed caution about arming all frontline police officers with rifles as an available force option. It is a concern that I share.¹¹⁹

177. The Western Australia Police Force through their counsel inform me that Patrol Rifles are issued to officers in specific regional operations groups to provide enhanced capability to active armed offender situations, and outline the approvals required to deploy the weapons and the initial user training, followed by the number of requalifications required to maintain proficiency and authority to carry. They submit that patrol rifle capability is available at all times.

178. Having regard to the evidence before me, and noting the desirability of limiting where practicable the general availability of firearms, I do not recommend that front line police officers be issued with patrol rifles, and note in any event that this would not be supported by the Western Australia Police Force.

¹¹⁸ ts 182 to 183; ts 361.

¹¹⁹ ts 391 to 395.

COMMENTS ON BODY WORN CAMERAS FOR POLICE

- 179.** In my finding into the death of Daniel Josef ADWENT delivered on 13 May 2019, I had noted some features of the project for the roll out of body worn cameras for police. Some of that is repeated here, in the context of their usefulness in the area of death investigation.
- 180.** The use of body worn cameras by law enforcement personnel is becoming increasingly prevalent, providing policing agencies with an independent and objective resource to capture incidents, gather real time evidence and record interactions between police and members of the community.¹²⁰
- 181.** The Western Australia Police Force undertook a trial of body worn cameras in 2016 and identified a number of benefits. In July 2018 approval was given for the commencement of a body worn camera procurement process for frontline officers.¹²¹
- 182.** This camera-based technology to be worn by front-line officers allows for a greater transparency within policing. The main focus includes the reduction in use of force, complaints and assaults against police officers. Surveys have reflected that members of the public feel police officers will be more respectful when using body worn cameras, and that members of the public will be more cooperative when they become aware that an officer is wearing a body worn camera. There is every reason to be confident that the very fact of their existence is likely to de-escalate some incidents.¹²²
- 183.** The body worn cameras are allocated to individual users and registered. There is high visibility (meaning they are not used covertly). Features include the following:
- (a) automatic activation of body worn camera if a firearm or Taser is drawn;
 - (b) system integration with current despatch software;
 - (c) tamper-proof security on the devices and software that prevents police officers and account administrators from changing or removing footage; and
 - (d) autonomous uploading and management.¹²³
- 184.** It is known that during high stress scenarios, police and witnesses' memories can be negatively affected. Therefore reviewing recordings in conjunction with statement taking may increase report quality. The availability of the footage from body worn cameras will be of significant

¹²⁰ Exhibit 4, tab 13.

¹²¹ Ibid.

¹²² Exhibit 4, tab 12A.

¹²³ Exhibit 4, tabs 12B and 12C.

assistance to the coroner in inquests such as this one, that are mandated by law.

- 185.** The Western Australia Police Force informs me that the roll out of body worn cameras has commenced. The first devices were rolled out to Perth District in February 2019. The project is well under way and the aim is to deploy body worn cameras to all front line officers across the State.¹²⁴
- 186.** I am confident that body worn cameras will play a role in helping to avoid the escalation of incidents in similar circumstances.

CONCLUSION

- 187.** As I have previously said, self-evidently a police shooting is to be avoided whenever possible and the community is justly concerned by any police shooting, and in particular a shooting that results in death. Where multiple police officers are involved, and multiple shots are fired, it raises the question of whether the use of force was excessive.
- 188.** I have taken account of the serious and imminent threat to the life and/or safety of the hostage, the extended period of time during which the deceased held the knife aggressively, and perilously close to her person, his restraint of her, his stated intentions and all of his actions towards her, and I am satisfied that within that volatile and dangerous period there were minimal opportunities for police to de-escalate the situation. The use of force was not excessive.
- 189.** It is important that I acknowledge the many attempts that the deceased's partner and father had made over the years to encourage him to seek help in connection with his drug usage and his mental state. They stood by him and did their best to support him. It is clear that the deceased was deeply loved by his family.
- 190.** It is also important that the efforts of Constable Gyrta in particular be noted. He was the dog handler who being alert to his environment, noticed the father's subtle signal for help as he drove by, and turned back to offer his assistance. He did try to negotiate with the deceased under very challenging circumstances. Whilst he was unable to achieve his aims of having the deceased drop the knife and release the hostage, it does not diminish the importance of his efforts to negotiate.

R V C FOGLIANI
STATE CORONER

7 November 2019

¹²⁴ Ibid.