
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : MICHAEL ANDREW GLIDDON JENKIN
HEARD : 21 - 22 SEPTEMBER 2021
DELIVERED : 29 NOVEMBER 2021
FILE NO/S : CORC 1458 of 2018
DECEASED : TONG, LY MINH

Legislation:

Coroners Act 1996 (WA)
Criminal Code (WA)
Criminal Investigation Act 2006 (WA)
Police Force Regulations 1979 (WA)

Counsel Appearing:

Ms S Tyler assisted the Coroner.

Ms N Eagling (State Solicitor's Office) and Ms A Western (WA Police Legal Services) appeared on behalf of the Western Australia Police Force.

Coroners Act 1996
(Section 26(1))

AMENDED RECORD OF INVESTIGATION INTO DEATH

*I, Michael Andrew Gliddon Jenkin, Coroner, having investigated the death of **Li Minh TONG** with an inquest held at Perth Coroners Court, Central Law Courts, Court 51, 501 Hay Street, Perth, on 21 - 22 September 2021, find that the identity of the deceased person was **Li Minh TONG** and that death occurred on 22 November 2018 at 1 Yenisey Crescent, Beechboro, from multiple gunshot wounds in the following circumstances:*

Table of Contents

SUPPRESSION ORDER	4
INTRODUCTION	5
MR TONG.....	6
<i>Background.....</i>	<i>6</i>
<i>Overview of medical and mental health issues.....</i>	<i>7</i>
<i>Contact with mental health services</i>	<i>7</i>
<i>Criminal record and evidence of violent behaviour</i>	<i>9</i>
EVENTS LEADING TO MR TONG’S DEATH	14
<i>Incident at the Tong family home</i>	<i>14</i>
<i>Mr Tong’s father and sister attend Midland Police station</i>	<i>17</i>
<i>Police version of what was said</i>	<i>19</i>
<i>The Tongs’ version of what was said</i>	<i>23</i>
<i>Comments about the information police received from Ms Tong</i>	<i>26</i>
<i>Family members describe police arriving at the Tong family home</i>	<i>28</i>
<i>Police version of attendance at the Tong family home.....</i>	<i>30</i>
<i>The aftermath of Mr Tong’s shooting.....</i>	<i>43</i>
<i>Events back at the Station.....</i>	<i>46</i>
CAUSE AND MANNER OF DEATH	53
<i>Post Mortem Examination</i>	<i>53</i>
<i>Cause and manner of Death</i>	<i>56</i>
INVESTIGATIONS INTO POLICE ACTIONS	57
<i>Homicide Squad investigation</i>	<i>57</i>
<i>Internal Affairs Unit investigation.....</i>	<i>58</i>
COMMENTS ON THE ACTIONS OF OFFICERS.....	59
<i>General</i>	<i>59</i>
<i>Hindsight bias.....</i>	<i>59</i>
<i>Did Officer Dellar cause Mr Tong’s death?</i>	<i>59</i>
<i>Issue 1: Use of interpreters</i>	<i>61</i>
<i>Issue 2: Notifying the Tongs of Mr Tong’s death</i>	<i>66</i>
<i>Issues 3-5: Use of Force</i>	<i>68</i>
<i>Issues 6-7: Manner of entry into the Tong family home.....</i>	<i>70</i>
<i>Issue 8: Family violence incident report</i>	<i>76</i>
<i>One Force Core</i>	<i>76</i>

ISSUES RELATING TO THE TACTICAL RESPONSE GROUP..... 77

General 77

Deployment of the TRG 77

The “sliding doors” moment 78

RECOMMENDATIONS 79

 Recommendation No.1 79

 Recommendation No.2 79

 Recommendation No.3 79

Comments relating to recommendations 79

CONCLUSION 81

SUPPRESSION ORDER

After considering applications from Ms Naomi Eagling (counsel for the Western Australian Police Force) I was persuaded that it would be appropriate to make the following order:

SUPPRESSION ORDER

On the basis that it would be contrary to the public interest I make an Order under section 49(1)(b) of the *Coroners Act 1996* (WA) that:

- 1. There be no reporting or publication of any document or evidence that would reveal police policies and standard operating procedures, tactics, or training methods in relation to the use of force, including, but not limited to, firearms.**
- 2. There be no reporting or publication of details about the decision making criteria, response times, resourcing and any other operational aspects of the Western Australia Police Force Tactical Response Group.**
- 3. There be no reporting or publication of the methodologies, response times or resourcing of the Western Australia Police Force Tactical Response Group.**
- 4. There be no reporting or publication of the details of any of the versions of the WA Police Emergency Driving Policy and guidelines, including, but not limited to, any cap on the speed at which police officers are authorised to drive.**

Order made by: MAG Jenkin, Coroner (21.09.21)

INTRODUCTION

1. Ly Minh Tong (Mr Tong) died on 22 November 2018 in Beechboro from multiple gunshot wounds. He was 38-years of age.¹
2. As a result of information obtained from family members, police believed that Mr Tong was holding his mother hostage at knifepoint at the family home. Police attended and called on Mr Tong to give himself up. Instead, Mr Tong, who was intoxicated with methyamphetamine, ran towards police and was shot and killed.
3. Mr Tong's death was a "*reportable death*"² and in this case, because his death may have been caused by a member of the Western Australian Police Force (the Police), a coronial inquest was mandatory.³ I held an inquest into Mr Tong's death on 21 - 22 September 2021, which members of his family attended. The following witnesses gave oral evidence:⁴
 - i. Ms Thi Bich Phuong Tong (Mr Tong's sister);
 - ii. Constable Darren Maher (Midland Police Station);
 - iii. Senior Constable Simon Briggs (Midland Police Station);
 - iv. Sergeant Lisa Benington (Midland Police Station);
 - v. First Class Constable David McArthur (attending police officer);
 - vi. Sergeant George Bogunovich (attending police officer);
 - vii. Sergeant Thomas Dellar (attending police officer);
 - viii. Detective Acting Senior Sergeant Warren Moore (Homicide Squad);
 - ix. Mr Chris Markham (use of force expert); and
 - x. Superintendent Peter Hatch (Police policy expert).
4. The documentary evidence adduced at the inquest included reports prepared by the Police,^{5,6,7} witness statements, policy documents, medical records and other materials and together, the Brief comprised three volumes. The inquest focused on the circumstances surrounding Mr Tong's death and the question of whether any member of the Police caused or contributed to the death.

¹ Exhibit 1, Vol. 1, Tab 3 - Life Extinct Certification (22.11.18)

² Section 3, *Coroners Act 1996* (WA)

³ Section 22(1)(b), *Coroners Act 1996* (WA)

⁴ The roles shown in this list are those held by the relevant officer at the time of Mr Tong's death.

⁵ Exhibit 1, Vol. 1, Tab 10, Report - Homicide Squad (09.06.20)

⁶ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21)

⁷ Exhibit 1, Vol. 1, Tabs 17.1, 17.2 & 17.3, Reports - Mr C Markham (21.08.19, 21.08.19 & 10.04.20)

MR TONG

Background^{8,9,10,11,12}

5. Mr Tong was born in Vietnam on 2 February 1980, and came to Australia with his family in about 1990. At the time of his death, he was receiving a disability pension and lived in the family home at Beechboro with his parents; twin 18-year old nephews (NH and AH); sister (Ms O Tong), her husband (Mr Tang) and their child (JT).
6. Mr Tang said Mr Tong had a troubled early life, had used illicit drugs and was “*hanging around the wrong people*”. However, he had not been in trouble with police “*for over 10 years*”. In her police statement (obtained with the help of a Vietnamese interpreter),¹³ Mr Tong’s mother (Ms Nguyen), said that Mr Tong and her husband (Mr P Tong) argued a lot and she put this down to the fact that her husband made constant complaints about Mr Tong’s behaviour and he (i.e. Mr P Tong) was “*going a bit mad*”, by which she meant he was forgetting things.
7. Ms Nguyen said because of these constant complaints, Mr Tong did not like his father and that she would always try to calm Mr Tong down when he was angry. Although Mr Tong frequently argued with his father and brothers, she said he rarely argued with either her or his sisters.
8. Mr P Tong said that although Mr Tong asked him and/or Ms O Tong for money at times he “*was not violent*” when he did so. Mr Tong’s requests for money apparently petered out but resumed about six months before his death. Mr P Tong assumed this was because Mr Tong had started using illicit drugs again.
9. Ms Nguyen said that when he wasn’t angry, Mr Tong was “*normal*” and enjoyed playing with his nieces and nephews. She said she loved Mr Tong very much and he loved her, but that in the two years leading up to his death, she had noticed him becoming angry more easily over small issues.

⁸ Exhibit 1, Vol. 1, Tab 10, Report - Homicide Squad (09.06.20), pp1-2

⁹ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp9-10

¹⁰ Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 3-38 & 53-70

¹¹ Exhibit 1, Vol. 2, Tab 1, Statement - Ms T Nguyen (01.12.18), paras 3 & 43-48

¹² Exhibit 1, Vol. 2, Tab 5, Statement - Mr Q Tang (25.11.18), paras 13-15

¹³ Exhibit 1, Vol. 2, Tab 32, Statement - Det. Sen. Const. N Poulsen (01.01.19), paras 4-14

Overview of medical and mental health issues^{14,15,16,17}

10. Mr Tong's medical history included severe chronic insomnia and type-2 diabetes. He had also received treatment for thrombocythaemia (a rare blood disorder caused by high levels of platelets) and Hepatitis C.
11. Mr Tong last saw his GP on 20 November 2018. On that occasion, he complained of insomnia and was prescribed nitrazepam (Mogadon). At the time of his death his medication regime also included: olanzapine, diazepam, quetiapine, temazepam and clonazepam.¹⁸
12. Mr Tong had a well-documented history of polysubstance use including benzodiazepines, heroin and methylamphetamine and in 2002, he received a Naltrexone implant to treat his heroin addiction. Mr Tong had also been diagnosed with emotionally unstable personality disorder, with borderline and antisocial traits.
13. Mr Tong's medical records also show that he experienced recurrent episodes of drug-induced psychosis that were usually associated with methylamphetamine intoxication. These periods of psychosis were characterised by deliberate self-harm attempts and aggressive behaviour and threats directed towards his family. It seems clear that despite earlier periods of abstinence, Mr Tong had resumed using intravenous drugs by July 2018.^{19,20,21}

Contact with mental health services^{22,23,24}

14. Mr Tong's first recorded contact with mental health services occurred on 9 June 2003, when he was admitted to the Mills Street Centre at Bentley Health Service (BHS) as an involuntary patient. On admission, he reported a one-month history of increasing paranoia, apparently related to his intravenous use of methylamphetamine.

¹⁴ Exhibit 1, Vol. 3, Tab 1, Medical Records - Amazon Family Practice

¹⁵ Exhibit 1, Vol. 1, Tab 8, PathWest Microbiology report (24.11.18)

¹⁶ Exhibit 1, Vol. 3, Tab 1, Letter - Dr S Ponnuswamy (17.05.16)

¹⁷ Exhibit 1, Vol. 3, Tab 8, Report - Dr V Pascu (13.09.21), paras 41-51

¹⁸ Exhibit 1, Vol. 3, Tab 7, Report - Prof. D Joyce (28.07.21), p4

¹⁹ Exhibit 1, Vol. 3, Tab 4, Letter - Dr S Ponnuswamy (25.07.18)

²⁰ Exhibit 1, Vol. 3, Tab 1, Medical Records - Amazon Family Practice (02.08.18)

²¹ Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 23-28

²² Exhibit 1, Vol. 3, Tab 2, Medical Records - Swan District Hospital

²³ Exhibit 1, Vol. 3, Tab 2, Medical Records - Mills Street Centre

²⁴ Exhibit 1, Vol. 3, Tab 3, Medical Records - Royal Perth Hospital

15. Mr Tong had reportedly threatened to “*turn the gas on in his house to blow his family member(s) up*”. He also claimed his family were using cameras to “*spy*” on him to see if he was using drugs and had damaged items in the home, including a DVD player, to “*get rid of the cameras*”. He was diagnosed with drug induced psychosis and discharged home on 12 June 2003, with follow up from a community mental health service.²⁵
16. On 28 May 2005, Mr Tong was taken to the emergency department at Swan District Hospital (SDH) by police after reportedly threatening his mother and sister by holding a knife to their necks. He had multiple superficial self-inflicted cuts to his wrist and disclosed heroin and amphetamine use the day before. Following a psychiatric assessment, he was returned to the custody of the police the same day.²⁶
17. On 31 December 2006, Mr Tong presented to the BHS in an agitated state exhibiting paranoid ideation. He disclosed recent amphetamine use and claimed he had injected himself in the neck with Epsom salts and/or soy sauce. He was admitted to the Swan Valley Centre (SVC) where he denied any suicidal ideation and was diagnosed with drug induced psychosis. His history of assaults, especially towards his family, was noted and he was discharged home on 2 January 2007.^{27,28,29}
18. On 18 January 2007, police arrested Mr Tong for allegedly assaulting a friend and took him to Royal Perth Hospital for psychiatric review. Mr Tong disclosed ongoing suicidal ideation and exhibited psychotic symptoms including auditory hallucinations, paranoid thoughts and ideas of reference. He also told staff there was a machine in his head. It appears that after his mental state improved, Mr Tong was discharged back into the custody of police on 22 January 2007.³⁰

²⁵ Exhibit 1, Vol. 3, Tab 2, Discharge Summary - Mills Street Centre (12.06.03)

²⁶ Exhibit 1, Vol. 3, Tab 5, Emergency Department Notes and Discharge Letter (28.05.05)

²⁷ Exhibit 1, Vol. 3, Tab 2, Discharge Summary - Mills Street Centre (31.12.06)

²⁸ Exhibit 1, Vol. 3, Tab 2, Integrated Progress Notes - Swan Districts Hospital (31.12.06)

²⁹ Exhibit 1, Vol. 3, Tab 3, Interim Discharge Letter - Swan Valley Centre (02.01.07)

³⁰ Exhibit 1, Vol. 3, Tab 3, Integrated Progress Notes - Royal Perth Hospital (18-22.01.07)

19. On 8 September 2007, Mr Tong was taken to the emergency department at SDH, after reportedly slashing his neck with a razor blade. He also threatened suicide after his father refused to give him money, which was not uncommon and his sisters reported being scared of him at times. Although Mr Tong's mental state settled and he was discharged home on 9 September 2007, police were asked to conduct welfare checks on his family because of the threats Mr Tong had made.³¹
20. Mr Tong's last reported interaction with mental health services was on 9 October 2007, when he presented to SDH following a self-harm attempt in which he reportedly injected saline and soy sauce into his neck. He was transferred to the SVC and although he denied using alcohol or drugs, he disclosed a recent attempt to hang himself. He was discharged home on 10 October 2007.³²
21. Although at various times Mr Tong was prescribed antipsychotic and sedative medications for symptoms related to episodes of drug-induced psychosis, he appears to have been non-compliant. Although he sometimes engaged with community mental health services and/or his GP, this was usually only at times of crisis related to his illicit drug use.

Criminal record and evidence of violent behaviour^{33,34}

22. By the time of his death, Mr Tong had accumulated numerous convictions for offences including: burglary, stealing, armed robbery, possession of methylamphetamine³⁵ and unlawful wounding. He had also been sentenced to terms of imprisonment in 1999, 2000, 2005 and 2007.
23. On 30 May 2005, Mr Tong was convicted of aggravated common assault after holding a knife to his sister's throat in a "*threatening manner*" after finding her in his bedroom. He was said to have been in an agitated state as a result of lack of sleep and drug use and told police: "*It's not the first time I've done it, they know I'm not going to do anything*".³⁶

³¹ Exhibit 1, Vol. 3, Tab 5, Medical Records - Swan District Hospital

³² Exhibit 1, Vol. 3, Tab 5, Integrated Progress Notes - Swan District Hospital (09-10.09.07)

³³ Exhibit 1, Vol. 1, Tab 31, Mr Tong's Criminal record, pp1-2

³⁴ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p10

³⁵ The statement of facts for this charge refers to Mr Tong possessing a Samurai sword with a 30cm blade.

³⁶ Exhibit 1, Vol. 1, Tab 30.3, Statement of Material Facts (Incident No. 123011703, 28.05.05)

24. On 14 May 2007, Mr Tong was convicted of two counts of aggravated assault occasioning bodily harm following an incident in 2006, involving an elderly couple. Mr Tong had been collecting items from the verge outside the couple's home when a dispute arose. Mr Tong punched the elderly woman and man in the face and head respectively, causing them both to fall to the ground.³⁷ On 15 May 2007, Mr Tong was also convicted of unlawful wounding after attacking a male with an iron bar.³⁸
25. There is other evidence before me in relation to Mr Tong's violent behaviour towards his family. On 28 November 2006, Mr P Tong's eldest daughter (Ms Tong)³⁹ applied for a violence restraining order against Mr Tong in the Midland Magistrate's Court. Although her application was withdrawn on 14 December 2006, the affidavit Ms Tong filed in support of her application included allegations that during 2006:⁴⁰
- a. Mr Tong got angry at Ms Tong, swore at her and said he would kill her;
 - b. Mr Tong had threatened to hit Ms Tong whilst he was arguing with their mother about money;
 - c. Mr Tong threatened to damage Ms Tong's car after he had been using drugs and the next morning the windscreen was smashed;
 - d. Mr Tong had threatened to burn down Ms Tong's house and kill his family when they complained about him; and
 - e. Mr Tong had held a knife to Ms Tong's throat and threatened to kill her if she did not give him money.
26. According to Mr Tong's father (Mr P Tong), Mr Tong had made various threats towards family members. On one occasion, Mr Tong reportedly threatened to "*chop and kill his older brother*" after an argument over Mr Tong's polysubstance use and the fact he was unemployed.⁴¹

³⁷ Exhibit 1, Vol. 1, Tab 30.2, Statement of Material Facts (Charge Nos. PPE 06041863 & PPE 06041863, 24.07.06)

³⁸ Exhibit 1, Vol. 1, Tab 30.1, Statement of Material Facts (Charge No. PMI 07001129, 18.01.07)

³⁹ Mr P Tong's eldest daughter is Thi Bich Phuong Tong, referred to in this finding as "Ms Tong".

⁴⁰ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp126-127

⁴¹ Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), para 69

27. However, with the assistance of an interpreter, Mr Tong's older brother gave a statement to police denying that this incident had occurred. The older brother said he had never seen Mr Tong angry with anyone; had never had arguments with Mr Tong; and that he and his family had never been threatened by Mr Tong.⁴²
28. Mr P Tong also said that in June 2018, Mr Tong had threatened to chop off the heads of another brother and his family following that brother's refusal to assume responsibility for driver's licence demerit points Mr Tong had accrued.⁴³
29. The brother against whom these threats were allegedly made gave a statement to police saying that, although Mr Tong swore at him when he refused to accept the demerit points, he (Mr Tong) had never threatened him or his family and that two weeks after the incident, Mr Tong had apologised for the incident saying he "*had a hot temper*".⁴⁴
30. Mr Tong's nephew (AH) said that Mr Tong sometimes became angry and overreacted "*very easily*". AH said when Mr Tong overreacted he could "*be threatening and say things about killing people*", but AH never thought these threats were directed against any particular person. AH said that Mr Tong's threats to kill people had occurred about three times during the period he (AH) had lived at the Tong family home.⁴⁵
31. In her police statement, Ms Tong said her family were "*a bit scared*" of Mr Tong because of the way he behaved when he took illicit drugs. She said that she last time saw Mr Tong a few months before his death and on that occasion, Mr Tong went "*a bit mental*" by which she meant he was yelling. Ms Tong also said her father had told her that there was no joy in the family home and that Mr Tong "*causes them so much stress*".⁴⁶

⁴² Exhibit 1, Vol. 2, Tab 8, Statement - Mr H Tong (10.12.18), paras 13-27

⁴³ Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 42-52

⁴⁴ Exhibit 1, Vol. 2, Tab 6, Statement - Mr A Tong (06.12.18), paras 60-78

⁴⁵ Exhibit 1, Vol. 2, Tab 9.2, Statement - AH (22.11.18), paras 48-50

⁴⁶ Exhibit 1, Vol. 2, Tab 3.2, Statement - Ms T Tong (27.11.18), para 20

32. Mr P Tong says that as a result of Mr Tong’s behaviour he “*became scared for his family*” and so, with the help of Ms Tong, he applied for a family and violence restraining order (VRO). Ms Tong is said to have completed an affidavit in support of the VRO on behalf of her father. That affidavit detailed an incident on 9 June 2018, when Mr Tong took Mr P Tong’s car without permission and then attempted to stab his brother who had been visiting at the time. Mr Tong was reportedly prevented from doing so by Ms Nguyen, who intervened and struggled with him.⁴⁷
33. The supporting affidavit also referred to Mr Tong’s repeated demands that family members give him money and his threats to kill them if they refused to do so. The affidavit also said that Mr Tong was using illicit drugs, had threatened to burn down the house and had damaged property at the family home. Mr Tong was described as “*violent and very intimidating*” and had threatened family members with a knife and “*slit his own throat after no one gave him money*”.⁴⁸
34. Mr P Tong’s application was successful and the VRO was made in the Midland Magistrate’s Court on 18 June 2018. The VRO was served on Mr Tong on 30 June 2018. Although one of the conditions of the VRO was that Mr Tong was not permitted to live at, or come within 50 metres of the family home, he continued living there.^{49,50}
35. To my surprise, at the inquest Ms Tong denied having helped her father to obtain the VRO although in her police statement, she did refer to a VRO she had sought against Mr Tong 15 years previously (presumably a reference to the application she made in 2006 and subsequently withdrew).
36. In denying she had helped her father with the VRO, Ms Tong appeared to be seeking to distance herself from anything remotely connected to Mr Tong’s death because of her concerns that family members blamed her for his death. I will return to this issue later in this finding.^{51,52}

⁴⁷ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p127

⁴⁸ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp127-128

⁴⁹ Exhibit 1, Vol. 2, Tab 12.3, Statement - Const. D Maher (31.12.18), para 12

⁵⁰ Exhibit 1, Vol. 2, Tab 14.1, Statement - Sen. Const. D Parker (23.12.18), paras 10-11

⁵¹ ts 21.09.21 (Ms Tong), p10

⁵² Exhibit 1, Vol. 2, Tab 3.2, Statement - Ms T Tong (27.11.18), para 18

37. On 30 June 2018, Officer Parker arrested Mr Tong for breaching the VRO. As will be recalled, this was the very day the VRO had been served on Mr Tong. Police had established that Mr Tong had drug issues and Officer Parker said it was clear that Mr Tong was “*hassling his parents for money and causing issues when they refused him*”. After his arrest Mr Tong alternated between being “*very argumentative*”, and “*trying to beg to be released on that day*”. Mr Tong was convicted of breaching the VRO and fined on 1 July 2018.^{53,54,55,56}
38. Although some members of the Tong family appear to have been unaware that the VRO had been granted, Ms O Tong (who lives at and owns the family home), said she begged her father to withdraw the VRO because under its terms, Mr Tong would have nowhere to live. However, despite her pleas, Mr P Tong refused to do so.^{57,58}
39. Mr P Tong said that even after Mr Tong had been convicted and fined for breaching the VRO, he continued to live at the family home. Mr P Tong did not report these further breaches of the VRO to the Police because Mr Tong had “*threatened to chop his brother’s head off and use a knife*”. Ironically, this was one of the reasons why the VRO was obtained in the first place.
40. The preponderance of the evidence before me is that in the period leading up to his death, Mr Tong had resumed using intravenous drugs and had been acting in a violent and aggressive manner towards his family. The evidence of family members actually living at the family home paints a picture of episodic aggression and violent behaviour on Mr Tong’s part which was almost certainly related to his methylamphetamine use, an issue I will deal with later in this finding.

⁵³ Exhibit 1, Vol. 2, Tab 12.3, Statement - Const. D Maher (31.12.18), paras 12-13

⁵⁴ Exhibit 1, Vol. 2, Tab 1, Statement - Mr P Tong (01.12.08), paras 53-58

⁵⁵ Exhibit 1, Vol. 1, Tab 31, Mr Tong’s Criminal record, p1

⁵⁶ Exhibit 1, Vol. 2, Tab 14.1, Statement - Sen. Const. D Parker (23.12.18), paras 12-16

⁵⁷ Exhibit 1, Vol. 2, Tab 7, Statement - Ms O Tong (25.11.18), paras 47-55

⁵⁸ Exhibit 1, Vol. 2, Tab 6, Statement - Mr A Tong (06.12.18), paras 65-89

41. Mr P Tong was clearly frightened of Mr Tong even if some of the difficulties between the pair were caused by Mr P Tong's rigid attitude towards his son. Ms Nguyen and Ms O Tong appear to have been cast in the role of peacemakers and on their own accounts, they were generally able to calm Mr Tong. As I will explain, Ms O Tong says she did so on 22 November 2018, by telling Mr Tong that the neighbours might call the police if he did not moderate his behaviour.⁵⁹
42. Ms Tong says she had very little to do with Mr Tong after seeking a VRO against him in 2006 and did not live at the family home. Nevertheless, her father regularly visited her home and she was clearly concerned about the way Mr Tong treated their parents.

EVENTS LEADING TO MR TONG'S DEATH

Incident at the Tong family home^{60,61,62,63,64,65,66}

43. At about 7.00 am on 22 November 2018, Ms Nguyen saw Mr Tong in the lounge room of the family home. He was disconnecting a small DVD player⁶⁷ and replacing it with a larger one. Apparently Mr Tong owned both DVD players and his mother assumed he was swapping them over so that he could take the smaller DVD player to his bedroom.
44. A short time later, Mr P Tong came into the lounge room and asked Mr Tong what he was doing. Mr Tong replied: "*I didn't do anything wrong, I just replaced a DVD for mummy*". His father told him to leave the DVD player alone saying it had cost \$800 to connect it to a Vietnamese TV service. Mr Tong replied that he owned both DVD players and the pair continued to argue as Mr Tong took the smaller DVD player to his bedroom. Mr P Tong says Mr Tong called him a "*motherfucker*" and used other "*derogatory terms in Vietnamese which are very disrespectful*".⁶⁸

⁵⁹ Exhibit 1, Vol. 2, Tab 7, Statement - Ms O Tong (25.11.18), paras 59-85

⁶⁰ Exhibit 1, Vol. 2, Tab 1, Statement - Ms T Nguyen (01.12.18), paras 6-41, 49-54, 59 & 63-87

⁶¹ Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 3-38 & 71-107

⁶² Exhibit 1, Vol. 2, Tab 4.2, Statement - NH (22.11.18), paras 1-18 & 34-45

⁶³ Exhibit 1, Vol. 2, Tab 9.2, Statement - AH (22.11.18), paras 1-16

⁶⁴ Exhibit 1, Vol. 2, Tab 5, Statement - Mr Q Tang (25.11.18), paras 25-35

⁶⁵ Exhibit 1, Vol. 2, Tab 7, Statement - Ms O Tong (25.11.18), paras 65-96

⁶⁶ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp5-9

⁶⁷ Mr Tong's father says that the device Mr Tong was disassembling was a '*channel decoder*'.

⁶⁸ Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), para 74

45. Mr Tong's nephew (NH) yelled at Mr Tong to "*calm down*" and Mr Tong replied: "*You're not allowed to say those types of things to me*" before pushing NH in the face with his hand. This caused NH's glasses to fall into a basket in the hallway outside the bedroom NH shared with his twin brother (AH). NH says Mr P Tong told him to call the police whilst Ms Nguyen told him to go to his bedroom and lock the door.⁶⁹
46. NH went into his bedroom and locked the door before texting his Aunt (Ms O Tong), who had already left the house to go to work. In his text, NH said that Mr Tong had "*gone crazy*" and was arguing with Mr P Tong and she "*might need to call the police*", but that he had to go to university. Ms O Tong asked for AH's mobile number which NH gave her.
47. NH retrieved his glasses from the basket in the hallway and left the house at about 7.30 am to catch a bus to university. As he was leaving, NH saw Mr Tong in the dining room but didn't see anyone else. A while later Mr Tong came out of his bedroom and Ms Nguyen says he looked very angry. Mr Tong ran towards her and her husband, who were both in the kitchen, yelling: "*Fuck you, fuck you why you keep complaining about me*".⁷⁰
48. Ms Nguyen called out "*Stop, stop, stop*" and put her hands around Mr Tong's waist from behind in a bid to stop him reaching her husband, but Mr Tong elbowed her out of the way. Ms Nguyen says this caused injury to her left arm but denies she stumbled backwards or that she fell to the ground. In contrast, Mr P Tong says that Mr Tong shoved Ms Nguyen to the ground and that "*she hit her head on the wall*".
49. Whichever version of events is correct, it is not in dispute that after breaking free from his mother, Mr Tong ran towards his father before pushing him: "*very hard in the back with both of his hands*" whilst saying "*Fuck you, fuck you, fuck you*". The force of the push caused Mr P Tong to fall to the ground and as he did so, he hit his face on some boxes and scratched his left leg.^{71,72}

⁶⁹ Exhibit 1, Vol. 2, Tab 4.2, Statement - NH (22.11.18), paras 14-15

⁷⁰ Exhibit 1, Vol. 2, Tab 1, Statement - Ms T Nguyen (01.12.18), para 24

⁷¹ Exhibit 1, Vol. 2, Tab 1, Statement - Ms T Nguyen (01.12.18), paras 33-35

⁷² Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 75-81

50. As Ms Nguyen rushed to help her husband, she heard him say to Mr Tong: *“You are a trouble maker, don’t be rude. God can see you. Why did you push me?”* Mr Tong replied: *“Why you keep complaining about me?”* and according to Ms Nguyen, Mr Tong then fetched some salt which he rubbed into her arm, apparently in an attempt to ease her pain. For his part, Mr P Tong says that at some later stage, Ms Nguyen rubbed some salt *“into the wound on her head”*.⁷³
51. Meanwhile, after speaking to NH, Ms O Tong called Mr Tong and asked him why he had been arguing with their father. Mr Tong said the argument related to a DVD player and that his father always blamed him for *“everything that happens”*. Ms O Tong told Mr Tong to go to his room and *“cool down”* saying that if he kept shouting, the neighbours might call police. Ms O Tong then sent a text message to AH asking if things were *“OK”* and AH texted back: *“It’s OK at the moment. No more yelling”*.⁷⁴
52. Following Mr Tong’s assault on his father, Ms Nguyen sent Mr Tong to his bedroom with a cup of coffee. She later spoke to him saying: *“You are so rude, push your father like that. Son don’t be rude to your father”*. Mr Tong replied that he had a *“hot temper”*. At about 8.30 am, Mr P Tong and Ms Nguyen took their grandchild (JT) to school and on their return, Mr Tong appeared to be calm.⁷⁵
53. During the day, Mr Tong mainly stayed in his room and there were no further issues until 3.30 pm, when Mr P Tong and Ms Nguyen returned from collecting JT and IT (another of their grandchildren) from school. Mr Tong asked Mr P Tong if he could borrow his car to go to his sister’s home where he planned to mow the lawn. Mr P Tong refused saying he needed to use the car and Mr Tong angrily responded: *“No worries, no problems”*, before punching some wind chimes on the back patio and returning to his bedroom. Ms Nguyen told him not to do this because it would annoy their neighbours. About five minutes later she went to Mr Tong’s bedroom to check on him and thought he was behaving in a *“normal”* manner.⁷⁶

⁷³ Exhibit 1, Vol. 2, Tab 1, Statement - Ms T Nguyen (01.12.18), paras 34-41

⁷⁴ Exhibit 1, Vol. 2, Tab 7, Statement - Ms O Tong (25.11.18), paras 81-87 & 91-94

⁷⁵ Exhibit 1, Vol. 2, Tab 1, Statement - Ms T Nguyen (01.12.18), paras 50-52

⁷⁶ Exhibit 1, Vol. 2, Tab 1, Statement - Ms T Nguyen (01.12.18), paras 81-84

54. Mr P Tong says he was frightened that Mr Tong would assault him again and so, at about 4.00 pm, Mr P Tong drove himself to Ms Tong's house to ask her to take him to the Midland Police station (the Station) so police "*could mediate with what happened*".⁷⁷

Mr Tong's father and sister attend Midland Police station^{78,79,80,81,82}

55. After Mr P Tong arrived at Ms Tong's home he went inside and she asked if he was "OK". He shook his head and said words to the effect of "*I am now but wasn't before*" and told Ms Tong about the argument between himself and Mr Tong that morning (the Altercation).⁸³

56. Mr P Tong told Ms Tong that Ms Nguyen had tried to intervene and that both he and his wife had fallen to the ground, although he did not say how this had happened. Mr P Tong also told Ms Tong that Ms Nguyen hit her head as she fell and showed Ms Tong a bruise on the outside of his left leg just below the knee, which he said he sustained when he fell.

57. Mr P Tong was unsure how to get to the Station and does not speak English and in her police statement, Ms Tong says her father asked her to take him to the Station so that Mr Tong "*could go to rehab*". She says she readily agreed to do so and noted that although she had not seen her father and Mr Tong argue, her father had told her he "*can't stand (Mr Tong) anymore*".⁸⁴

58. At the inquest, Ms Tong gave a slightly different version of events. She said that when her father came to her house, he told her about the Altercation and asked her to call the police and report the matter. Ms Tong says she told her father that she didn't speak English very well and he replied: "*If you don't speak English that well, please, you come with me to the police station*".⁸⁵

⁷⁷ Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 105-107

⁷⁸ Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 105-136

⁷⁹ Exhibit 1, Vol. 2, Tab 3.2, Statement - Ms T Tong (27.11.18), paras 11-23 and ts 21.09.21 (Ms Tong), pp11-22

⁸⁰ Exhibit 1, Vol. 2, Tab 11.1, Statement - Ms K Benjafield, (06.12.08), paras 5-7 & 9-19

⁸¹ Exhibit 1, Vol. 2, Tab 11.2, Ms K Benjafield's Recollections of Incident (22.11.18)

⁸² Exhibit 1, Vol. 2, Tab 12.3, Statement - Const. D Maher (31.12.18), paras 4-49

⁸³ Exhibit 1, Vol. 2, Tab 3.2, Statement - Ms T Tong (27.11.18), paras 12

⁸⁴ Exhibit 1, Vol. 2, Tab 3.2, Statement - Ms T Tong (27.11.18), para 16

⁸⁵ ts 21.09.21 (Ms Tong), p12

59. In her police statement, Ms Tong says she drove her father to the Station in his car and that during the journey, he told her he wanted the police to arrest Mr Tong and move him away and that he “*didn’t want any more trouble*”, which she took to be a reference to arguments. Ms Tong said that her parents were old and her mother was sick and that they “*don’t need to be unhappy*”. She also said that AH and NH, who were both attending university, “*don’t need the arguments either*”.⁸⁶
60. At the inquest, Ms Tong initially maintained that during the journey to the Station Mr P Tong had not said much more about the Altercation. However, she eventually conceded that her father had told her that he wanted the police to help place Mr Tong in “*rehab*”. She also agreed that he had told her about falling and hurting his leg and that Ms Nguyen had fallen and hit her head.⁸⁷
61. Ms Tong and Mr P Tong (the Tongs) arrived at the Station at 4.09 pm.⁸⁸ They approached the front counter and initially spoke with Ms Benjafield, a customer service officer whose role was to interact with members of the public. Ms Benjafield recalled that Ms Tong spoke with a “*thick Asian accent*” and was “*hard to understand*”, meaning she had to listen carefully to what Ms Tong was saying.⁸⁹
62. Ms Benjafield says Ms Tong told her that Mr Tong was not allowed to go near her father and produced a document which Ms Benjafield recognised as a VRO. Ms Tong asked Mr P Tong questions and appeared to translate his responses into English, although I note that the Internal Affairs Unit (IAU) report suggests that CCTV footage shows Ms Tong mainly speaking on her father’s behalf, as opposed to translating his version of events.⁹⁰ This was also Officer Briggs’ impression during the time he interacted with the Tongs at the Station.⁹¹

⁸⁶ Exhibit 1, Vol. 2, Tab 3.2, Statement - Ms T Tong (27.11.18), para 18

⁸⁷ ts 21.09.21 (Ms Tong), p13

⁸⁸ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p91

⁸⁹ Exhibit 1, Vol. 2, Tab 11.2, Ms K Benjafield’s Recollections of Incident (22.11.18)

⁹⁰ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp134-135

⁹¹ ts 21.09.21 (Briggs), p27

63. Although the Tongs' attendance at the Station is not in dispute, what is hotly contested is exactly what Mr P Tong said to his daughter and importantly, what she told police her father was saying to her. As I will explain, this issue is central to the police response in this matter.

Police version of what was said^{92,93,94,95,96,97,98,99,100}

64. Ms Benjafield says Ms Tong gave her the following details about the Altercation:

- a. Mr Tong had assaulted his father with a knife and had held a knife to her father's throat;
- b. Mr Tong had pushed his mother against a wall causing a head injury which Ms Tong described as a "*big bump*";
- c. Mr Tong had damaged "*things*" in the house and had cut the phone line so his parents could not call the police; and
- d. Mr Tong would not allow his parents to leave the house, but her father had run out of his house and had come to her place.

65. Ms Benjafield says Ms Tong also said that her mother was still at the Tong family home and she repeated back what Ms Tong had said in order to clarify the information. Ms Benjafield clearly appreciated the gravity of the situation because she immediately went to the Duty Sergeant's office where she spoke to Officer Briggs to tell him she needed his help with an urgent matter. Ms Benjafield relayed what Ms Tong had told her and Officer Briggs went straight to the Station's front counter where he spoke to the Tongs in the presence of Ms Benjafield and Officer Maher (who at that time, was a mature-aged probationary constable).

⁹² Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 104-136

⁹³ Exhibit 1, Vol. 2, Tab 11.1, Statement - Ms K Benjafield, (06.12.08), paras 18-89

⁹⁴ Exhibit 1, Vol. 2, Tab 11.2, Ms K Benjafield - Recollections of Incident (22.11.18)

⁹⁵ Exhibit 1, Vol. 2, Tab 10.1, Statement - Officer S Briggs (23.11.18), paras 5-58

⁹⁶ Exhibit 1, Vol. 2, Tab 10.2, Statement - Officer S Briggs (07.12.18), paras 4-58 and ts 21.09.21 (Briggs), pp31-37

⁹⁷ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp33-34

⁹⁸ Exhibit 1, Vol. 2, Tab 12.3, Statement - Officer D Maher (31.12.18), paras 4-49

⁹⁹ Exhibit 1, Vol. 2, Tab 12.4, Notes - Officer D Maher (22.12.18)

¹⁰⁰ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp36-38

66. Ms Benjafield heard Ms Tong give Officer Briggs the same information that she (Ms Tong) had earlier conveyed. At the inquest, both Officer Briggs and Officer Maher said they did not have any issues communicating with Ms Tong and did not think her English was poor or that she had a heavy accent.¹⁰¹
67. Ms Tong told Officer Briggs that Mr Tong had “*cut her dad on his leg in two places with a knife*” and although Mr P Tong showed Officer Briggs a small injury just below the left knee, Officer Briggs did not think this injury was fresh, because it appeared to have a scab. Mr P Tong also indicated another injury to his left upper thigh/hip, although Officer Briggs did not see any blood or cuts on Mr P Tong’s trousers. This second injury was not sighted because Officer Briggs did not want to embarrass Mr P Tong by having him lower his trousers.¹⁰²
68. Officer Briggs asked Ms Tong who was at the Tong family home and says she told him that the only persons there were her mother and Mr Tong. Officer Briggs asked Ms Tong to confirm that it was Mr Tong’s name on the VRO and to again confirm that her mother and brother were the only ones at home, and says Ms Tong did so.¹⁰³ Ms Benjafield heard Ms Tong tell Officer Briggs that Mr Tong had said: “*[I]f any police attend the address he would kill his mother and go for the police*”.¹⁰⁴ In their respective police statements and at the inquest, both Officer Briggs and Officer Maher confirmed that these words were said.¹⁰⁵ By “*go for police*” Ms Benjafield understood Ms Tong to be saying that Mr Tong would attack police if they attended.
69. Officer Maher says that Ms Tong told him that during the Altercation, Mr Tong came into the kitchen and picked up a knife which he used to threaten his parents. Ms Nguyen had attempted to take the knife and Mr Tong had thrown her head first into a wall before pushing his father to the ground. Ms Tong then confirmed that Mr Tong and Ms Nguyen were still at the Tong family home.¹⁰⁶

¹⁰¹ ts 21.09.21 (Briggs), pp25 & 43-44 and ts 21.09.21 (Maher), pp63-64

¹⁰² ts 21.09.21 (Briggs), p26

¹⁰³ ts 21.09.21 (Briggs), p35

¹⁰⁴ Exhibit 1, Vol. 2, Tab 11.1, Statement - Ms K Benjafield, (06.12.08), paras 67-68

¹⁰⁵ ts 21.09.21 (Briggs), pp26 & 29 and ts 21.09.21 (Maher), p66

¹⁰⁶ ts 21.09.21 (Maher), pp64-65

70. Officer Maher says that Ms Tong also said that Mr Tong was very violent and that all of the family were scared of him. She said that Mr Tong told the family that if they went to the police, he would “*kill them and burn the house to the ground*”. When Officer Maher asked who Mr Tong would kill, Ms Tong replied: “*He will kill family and Police*”.¹⁰⁷
71. As I will explain later in this finding, Officer Maher was subsequently ordered to speak to the Tongs at the Station’s front counter and later took them into a room to interview them about the Altercation. As he spoke with the Tongs and later interviewed them, Officer Maher took notes of the information he was given (the Notes).
72. I will deal with the propriety of Officer Maher being directed to speak to and later interview the Tongs later, but for now, I will mention that the Notes included the following general observations:¹⁰⁸
- a. Mr Tong uses illicit drugs and demands money from his parents every few days. When this is not forthcoming, Mr Tong damages items around home and has previously taken his parents’ car and deliberately smashed it when they refused to give him money;
 - b. One of Mr Tong’s brothers had bought their parents a car and Mr Tong had deliberately accrued speeding fines in it, knowing it was registered in his brother’s name;
 - c. Mr Tong had threatened to keep accruing speeding fines unless his brother gave him money, and when his brother refused to do so, Mr Tong attempted to assault him;
 - d. All of Mr Tong’s siblings were frightened of him and preferred not to go to the Tong family home;
 - e. Mr Tong’s twin nephews (who live at the Tong family home) had witnessed many arguments between Mr Tong and his parents;

¹⁰⁷ Exhibit 1, Vol. 2, Tab 12.3, Statement - Officer D Maher (31.12.18), paras 25-27

¹⁰⁸ Exhibit 1, Vol. 2, Tab 12.4, Notes - Officer D Maher (22.12.18) and ts 21.09.21 (Maher), p62

- f. Mr Tong repeatedly told his siblings that if they went to the police, he would kill them and set fire to the house;
- g. Ms Tong said that Mr Tong did not leave the Tong family home after being served with the VRO and there was nothing she could do about it;
- h. Ms Tong said her parents felt trapped in the house and were scared of Mr Tong as he was always angry;
- i. Ms Tong said she was scared to bring her father to the Station as Mr Tong would try to hurt her mother or father, or whoever alerted the police; and
- j. Mr P Tong and his wife had tried to call “000” that morning but Mr Tong had snatched the phone from their hand and cut the cord.

73. In relation to the Altercation, the Notes included the following information:¹⁰⁹

- a. Mr Tong confronted his father in the kitchen and demanded money. When his father refused, Mr Tong started swearing and shouting and picked up a knife from a kitchen drawer;
- b. Ms Nguyen told Mr Tong to put the knife down and when she moved between Mr Tong and his father, Mr Tong grabbed her and threw her into a wall causing her to hit her head; and
- c. Mr Tong then chased his father who fell over and hurt his knee and hip. Mr Tong continued to shout at his father and then ran out of the house, leaving his parents crying on the floor.¹¹⁰

74. As I will now explain, after Mr Tong’s death, both Mr P Tong and Ms Tong disputed key aspects of the information police say they obtained from them.

¹⁰⁹ Exhibit 1, Vol. 2, Tab 12.4, Notes - Officer D Maher (22.12.18)

¹¹⁰ Exhibit 1, Vol. 2, Tab 12.4, Notes - Officer D Maher (22.12.18)

The Tongs' version of what was said^{111,112}

75. Ms Tong says after going into the Station and telling “*them*” that her father wanted to report an argument with Mr Tong, she and her father were taken into a room and asked “*lots of questions*” by an officer (Officer Maher). Ms Tong says that she interpreted what her father was saying and told Officer Maher that she did not live at the family home and had simply been asked by her father to bring him to the Station.
76. In her police statement, Ms Tong said that she could not remember exactly what her father told police, but that everything he said was in Vietnamese and she relayed, in English, what he was saying. Ms Tong said that as she was speaking, the officer (Officer Maher) took copious notes. She said that a police officer (Detective Senior Constable Poulsen)¹¹³ came to her house and:

[R]ead out to me some notes about what the police officer wrote down while I was interpreting for my Daddy. Detective Poulsen asked me about the knife in the kitchen that was carried by [Mr Tong] after an argument, how [Mr Tong] has told family that if they call [the] Police he will kill family, the police and burn the house down and also that my Daddy tried calling 000 but couldn't because [Mr Tong had] cut the cord. **All these things are what my Daddy told me to say.** They are not things that happened to me. The only thing that Detective Poulsen read out that I didn't agree with was that I was scared to drive my Daddy to the Police. I wasn't scared, my Daddy was. My Daddy also said that [Mr Tong] pushed my mum against a wall and that's how she hurt her head. **This is what my Daddy told me to say.** I signed the notes at Midland to say I wasn't a witness I was only interpreting for my Daddy. [Emphasis added].¹¹⁴

77. Despite these clear words, at the inquest, Ms Tong appeared to be keen to minimise the impact of what she had told police at the Station. Contrary to the evidence of Ms Benjafield, Ms Tong denied saying that Mr Tong had assaulted her father with a knife or held a knife to his throat.¹¹⁵

¹¹¹ Exhibit 1, Vol. 2, Tab 3.2, Statement - Ms T Tong (27.11.18), paras 21-23

¹¹² See also: Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 108-115

¹¹³ Exhibit 1, Vol. 2, Tab 32, Statement - Det. Sen. Const. N Poulsen (01.01.19), para 7

¹¹⁴ Exhibit 1, Vol. 2, Tab 3.2, Statement - Ms T Tong (27.11.18), paras 24

¹¹⁵ ts 21.09.21 (Ms Tong), pp15 & 17

78. Instead, Ms Tong said that her father had told her there was an argument and that Mr Tong had pushed him. She said her father told her he was “*really scared*” and had seen Mr Tong go into the kitchen where he thought Mr Tong would “*grab a knife*”. Despite the fact that neither Ms Benjafield nor Officer Maher made a note of this, Ms Tong insisted that this is what she told police at the Station.¹¹⁶
79. At the inquest, Ms Tong agreed that her father told her that during the Altercation Mr Tong had pushed both him and Ms Nguyen and “*then we fall*”. She also recalled that on the way to the Station, her father had told her that Ms Nguyen had hurt her head when she fell. Despite this, Ms Tong denied telling police anything about her parents’ injuries, although she agreed she did tell police that Mr Tong had pushed her parents. Ms Tong also recalled telling police that her father had said Mr Tong damaged phone lines at the family home and that her father had run from his house and come to hers.¹¹⁷
80. At the inquest, Ms Tong vehemently denied telling police that Mr Tong had told family members he would kill his mother and police if police came to the house.¹¹⁸ Ms Tong was asked if she was certain that she had not said this and her reply was “*Yes, No, absolutely not. No.*” Ms Tong further denied saying anything about threats Mr Tong may have made.¹¹⁹
81. At the inquest Ms Tong similarly denied telling Officer Maher that Mr Tong had been carrying a knife in the kitchen and contrary to what Ms Tong had just said she told Ms Benjafield, Ms Tong’s response was:

I didn’t say that he has - he carried a knife. What happened, as I remember, [was] that my father was scared that he [i.e.: Mr Tong] went into the kitchen and tried to fetch a knife, but actually my father didn’t see any knife.¹²⁰

¹¹⁶ ts Ms Tong (21.09.21), p15

¹¹⁷ ts Ms Tong (21.09.21), pp13, 16-17, 18 & 19

¹¹⁸ ts Ms Tong (21.09.21), p16

¹¹⁹ ts Ms Tong (21.09.21), p17

¹²⁰ ts Ms Tong (21.09.21), pp 16 & 17

82. At the inquest, Ms Tong also claimed that when speaking with Officer Maher, her level of English was “*not that good to answer him correctly what happened really*”. When it was put to Ms Tong that Officer Maher’s notes of their interview included a passage to the effect that Mr Tong had told his family that if they called police, he would kill the family and the police and burn the house down, Ms Tong’s response was: “*I don’t know about it*”.¹²¹
83. Although Ms Tong conceded that she told Officer Maher that both her parents had been pushed by Mr Tong, she denied saying anything about their injuries. Nevertheless, Ms Tong agreed that she was worried about her mother and that her father had told her that Ms Nguyen was “*okay now*”.
84. In his police statement (prepared with the help of a professional Vietnamese interpreter) Mr P Tong disputed several aspects of the notes taken by Officer Maher and claimed that:
- Mr Tong had never demanded money from NH or AH;
 - Mr Tong had never chased him or Mr Tong’s brother with a knife;
 - He had never seen Mr Tong threaten anyone with a knife;
 - He did not see Mr Tong pick up a knife from the kitchen drawer;
 - He did not see Mr Tong grab a knife or other weapon;
 - He never said Mr Tong had a knife and didn’t know why Ms Tong said this;
 - He did not say the home phone line had been cut but did say it didn’t work; and
 - He did not say Ms Nguyen needed an ambulance.^{122,123}
85. However, in his police statement, Mr P Tong did confirm that Mr Tong made threats when there was conflict in the family and had previously threatened to hit family members who did not do as he asked. Mr P Tong also agreed that he felt scared of Mr Tong and said that Mr Tong’s siblings felt the same.^{124,125}

¹²¹ ts Ms Tong (21.09.21), p18

¹²² Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 119, 126-132

¹²³ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p138

¹²⁴ Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 120-123 & 125

¹²⁵ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21)

Comments about the information police received from Ms Tong

- 86.** Having carefully considered the available evidence, I have concluded that Ms Tong's recollection of what she told police at the Station on 22 November 2018 is flawed and incomplete. For reasons I will now explain, I prefer the evidence of Ms Benjafield, Officer Briggs and Officer Maher.
- 87.** In expressing this conclusion, I wish to emphasise that I am not being critical of Ms Tong. She was doing her best to interpret her father's responses to police questions in very difficult circumstances. Mr P Tong was an elderly man who had been assaulted and he was clearly agitated by his circumstances. Further, Ms Tong was obviously concerned about the extent of the injuries to her parents following the Altercation and was doing her best to help her father explain this situation to police.
- 88.** Even if Ms Tong's level of English is of a higher standard than she claimed at the inquest, at the relevant time she was acting as her father's interpreter in very difficult circumstances. For reasons I will explore later in this finding, it was inappropriate for her to have been placed in this position.
- 89.** In concluding that the evidence of Ms Benjafield, Officer Briggs and Officer Maher is to be preferred over that of Ms Tong in relation to what police were told at the Station, I am mindful of the fact that Ms Benjafield and Officer Maher made notes about what Ms Tong told them. On the other hand, Ms Tong relied on her memory of traumatic events and on the evidence before me, was clearly concerned that members of her family blamed her for Mr Tong's death. It is therefore understandable that Ms Tong might seek to minimise the seriousness of the information she was relaying from her father to police at the Station.
- 90.** If I were to accept that Mr P Tong did not tell police (via Ms Tong) that Mr Tong had threatened to kill family members and/or police if police attended the family home, then I would have to find either that police were mistaken about what Ms Tong had told them or had made this evidence up, presumably to retrospectively explain the nature of the police response in this case.

91. Dealing with the first of these possibilities, Mr Tong's threats was reportedly conveyed to Ms Benjafield, Officer Maher and Officer Briggs all of whom have a clear recollection of being told this. The threat is so detailed and bizarre, that in my view, it is inconceivable that three staff at the Station could each have been mistaken about these words being said, even allowing for the language difficulties I have referred to.
92. As I have explained, the evidence about Mr Tong's threat to kill his mother and/or the police was crucial to the way police responded to Mr P Tong's report of the Altercation. Attending police were obviously vitally concerned about Ms Nguyen's safety when they arrived at the Tong family home, precisely because of Mr Tong's threat.
93. It would be natural for Ms Tong to be concerned about whether anything she relayed to police from her father was in any way related to Mr Tong's death. In addition, there is evidence before me that after Mr Tong had been shot and killed, Ms Tong appeared to be very concerned that her family blamed her for his death, in the sense that had she not taken Mr P Tong to the Station, police would never have attended the Tong family home.
94. As I will describe in more detail later, before leaving the Station carpark, Ms Tong asked for written confirmation that she had not been an eyewitness to any of the events involving Mr Tong's death. This strongly suggests that Ms Tong was motivated by a desire to avoid any suggestion that she was responsible for her brother's death.
95. On any reasonable view of the evidence, it is obvious that Ms Tong had nothing to do with her brother's death. She was clearly trying to help her father when she took him to the Station and acted as his interpreter. She was not to know how events would unfold or that her brother would be killed.
96. In all of the circumstances and given the time that has passed since Mr Tong's death, it is completely understandable that Ms Tong's recollection of these terrible events should be found wanting.

- 97.** For example, at the inquest Ms Tong was confused about whether she had spoken to Ms Benjafield, when CCTV footage from the Station showed them speaking for several minutes. Ms Tong also unable to recall exactly what she told Officer Maher when she answered his questions.¹²⁶
- 98.** The second possibility is that police made up the evidence about Mr Tong's alleged threats, presumably to justify their subsequent response. However, the evidence before me makes it quite clear that reports of the threats allegedly made by Mr Tong were recorded on CAD and broadcast over the police radio before police attended the Tong family home, and therefore before Mr Tong was shot.
- 99.** Quite apart from the fact that there is no evidence whatsoever that any of the police involved in this matter have acted dishonestly, in my view it would be nonsensical to assert that Mr Tong's alleged threats were fabricated before his death because at that time, the supposed lie would not have benefitted police in the slightest.
- 100.** Therefore, on the basis of the evidence before me, I have concluded that the information police entered into the CAD system and broadcast on the police radio came from either Mr P Tong via Ms Tong or from Ms Tong herself. I therefore find that police were told that Mr Tong had threatened to kill his mother and police if they attended the Tong family home and as I have explained, the subsequent police response was primarily shaped by concerns that Mr Tong's mother was in imminent danger.
- 101.** I have been unable to determine why key elements of the information given to the police by the Tongs turned out to be incorrect. It is possible that Ms Tong was mistaken about what her father was telling her and/or that either or both of the Tongs may have exaggerated their version of events to ensure Mr Tong was removed from the family home.

¹²⁶ ts 21.09.21 (Ms Tong), pp 14 & 17

Family members describe police arriving at the Tong family home^{127,128,129,130}

- 102.** In her statement to police, Ms Nguyen says that on the afternoon of 22 November 2018, she was at the family home with her four grandchildren when police officers knocked on the front door. Her granddaughter (IT) opened the door and two police officers (Officers Dellar and Bogunovich) came into the lounge room. Ms Nguyen says the officers did not say anything to her and she watched as they walked past her with their pistols drawn. A short time later, Ms Nguyen saw two other police (Officers McArthur and Parker) in her backyard and they walked towards the rear sliding door.
- 103.** As she saw Officers Dellar and Bogunovich walk towards AH and NH's bedroom, Ms Nguyen said "*No, no, no, no*" and then pointed towards Mr Tong's room. She says she lost sight of the officers as they walked down the hallway towards his bedroom and called out in Vietnamese "*Ly, the police are looking for you*". Ms Nguyen says a short time later she heard a noise like a door shutting and then what sounded like three gunshots.¹³¹
- 104.** NH and AH give similar accounts in their statements to police. Both say they were in their shared bedroom at about 4.30 pm, when they heard footsteps and male voices inside the family home. A short time later, NH noticed the handle of their locked bedroom "*jiggling*" and heard a raised voice say: "*This is the police open up*".^{132,133}
- 105.** NH and AH froze and then heard one or two "*thuds*" which sounded like "*a hard force hitting the door*". NH could hear raised voices coming from near Mr Tong's room but was unable to make out what was being said. Both NH and AH then heard what sounded like two gunshots fired in quick succession, followed by a third.^{134,135}

¹²⁷ Exhibit 1, Vol. 2, Tab 1, Statement - Ms T Nguyen (01.12.18), paras 88-134

¹²⁸ Exhibit 1, Vol. 2, Tab 4.2, Statement - NH (22.11.18), paras 47-75

¹²⁹ Exhibit 1, Vol. 2, Tab 9.2, Statement - AH (22.11.18), paras 22-43

¹³⁰ Exhibit 1, Vol. 2, Tab 14.1, Statement - Sen. Const. D Parker (23.11.18), paras 50-87

¹³¹ Exhibit 1, Vol. 2, Tab 1, Statement - Ms T Nguyen (01.12.18), paras 104-106

¹³² Exhibit 1, Vol. 2, Tab 4.2, Statement - NH (22.11.18), paras 47-50

¹³³ Exhibit 1, Vol. 2, Tab 9.2, Statement - AH (22.11.18), paras 22-25

¹³⁴ Exhibit 1, Vol. 2, Tab 4.2, Statement - NH (22.11.18), paras 51-57

¹³⁵ Exhibit 1, Vol. 2, Tab 9.2, Statement - AH (22.11.18), paras 25-27

106. AH heard a male voice say: “*Tom are you OK?*” and NH heard police officers panting and saying something about CPR. Police subsequently spoke to NH and AH through their locked door and told them to stay in their bedroom, which they did. After about two hours, police helped AH and NH climb out of their bedroom window and they were both assessed by ambulance officers.^{136,137}
107. Meanwhile, Ms Nguyen says she took JT and IT through the sliding door at the rear of the house and waited with them in the backyard. About five minutes later, Ms Nguyen says she heard Mr Tong say: “*Mummy, mummy cigarette*” and says she replied: “*Yes I will get you a cigarette*”. With great respect to Ms Nguyen, this evidence cannot be correct, because at the time Ms Nguyen says she heard Mr Tong’s voice, he was already dead.¹³⁸
108. Ms Nguyen says she asked to go back inside the house and was told this was not possible. An ambulance arrived and Ms Nguyen told ambulance officers she had a headache and a heart condition. At about 5.00 pm, Ms O Tong and Mr Tang arrived home from work and a short time later, Mr Tang told her that Mr Tong had died.

Police version of attendance at the Tong family home^{139,140,141,142,143,144,145,146}

109. After speaking with the Tongs at the Station, Officer Briggs left the front counter to contact the Police Operations Centre (the POC) by radio to request the urgent attendance of a police vehicle at the Tong family home. At 4.18 pm, Officer Briggs made the following radio broadcast to the POC: “*Yeah, can we get a car going priority 2 to 1 Yenisey Crescent, Beechboro for a violent domestic. Should be a male offender and mother still in the house we have the father and daughter at address. We’ll put a job on.*”^{147,148}

¹³⁶ Exhibit 1, Vol. 2, Tab 4.2, Statement - NH (22.11.18), paras 53-73

¹³⁷ Exhibit 1, Vol. 2, Tab 9.2, Statement - AH (22.11.18), paras 30-43

¹³⁸ Exhibit 1, Vol. 2, Tab 1, Statement - Ms T Nguyen (01.12.18), paras 113-122

¹³⁹ Exhibit 1, Vol. 2, Tab 10.1, Statement - Sen. Const. S Briggs (23.11.18)

¹⁴⁰ Exhibit 1, Vol. 2, Tab 12.3, Statement - Const. D Maher (31.12.18)

¹⁴¹ Exhibit 1, Vol. 2, Tab 14.1, Statement - Sen. Const. D Parker (23.11.18)

¹⁴² Exhibit 1, Vol. 2, Tab 15, Statement - FC Const. D McArthur (23.11.18) and ts 21.09.21 (McArthur), pp93-106

¹⁴³ Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19)

¹⁴⁴ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19) and ts 22.09.21 (Dellar), pp153-170

¹⁴⁵ Exhibit 1, Vol. 2, Tab 48.1, Statement - Sgt. G Bogunovich (23.11.18) and ts 22.09.21 (Bogunovich), pp121-149

¹⁴⁶ Exhibit 1, Vol. 2, Tab 48.3, Statement - Sgt. G Bogunovich (17.09.21)

¹⁴⁷ Exhibit 1, Vol. 1, Tab 19, Police Operations Communications Transmissions, serial 7

¹⁴⁸ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p91

110. After making this broadcast, Officer Briggs returned to the front counter and asked Ms Tong to confirm that the VRO related to Mr Tong and that the only occupants of the Tong family home were her mother and Mr Tong. Ms Tong confirmed this was the case and at 4.20 pm, Officer Briggs used his computer to create a “CAD job”¹⁴⁹. He updated the CAD job (as further information was obtained from the Tongs as follows:^{150,151}

- a. 4.22 pm: father and daughter have just attended the station after being involved in a violent DVI (domestic violence incident) with a son TONG MINH LY;¹⁵²
- b. 4.23 pm: mother is still in the house with the POI (person of interest);
- c. 4.25 pm: mother doesn’t speak English, the POI does (16:25:17); and POI was armed with a knife or similar (16:25:38);
- d. 4.26 pm: VRO in place; and
- e. 4.33 pm: from the father/daughter at the Midland Station ascertained mother at the house has a head injury from being pushed into a wall and has sustained a large lump to her head and she was unsteady on her feet. SJA (St John Ambulance) to be arranged.

111. At 4.22 pm, Officer Briggs made a radio broadcast suggesting that attending police meet at a rendezvous point (RV point) before attending the Tong family home. His broadcast was as follows:

Yeah, the cars might want to liaise somewhere. Apparently, he’s told the family if the police rock up, he’ll kill mum and then come out and kill the police. I put his name on the job for officers to look him up.¹⁵³

¹⁴⁹ CAD or “Computer Aided Despatch” is the system used by the Police to manage responses to situations.

¹⁵⁰ Exhibit 1, Vol. 1, Tab 20.1, Incident report (LWP18112200844038, 22.11.18), pp1-4

¹⁵¹ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp91-96 and ts 21.09.21 (Briggs), pp30 & 33-34

¹⁵² Officer Briggs said that the suspect’s surname is entered first: ts 21.09.21 (Briggs), p33

¹⁵³ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p92

- 112.** Officer Maher says that after Ms Tong mentioned the head injury sustained by Ms Nguyen during the Altercation, he told Officer Briggs that an ambulance would be needed. Officer Briggs instructed him to contact the POC by radio and make the necessary arrangements and Officer Maher subsequently did so.¹⁵⁴
- 113.** Meanwhile, Officers Dellar and Bogunovich, who were stationed at the Kiara Police station, heard the radio broadcast and responded to the job. However, it appears that as they walked to their police vehicle, the officers did not hear Officer Briggs' subsequent radio transmission and were therefore unaware of his suggestion to proceed to a RV point.
- 114.** As Officer Bogunovich drove towards the Tong family home, Officer Dellar (who was in the passenger seat), was operating a terminal connected to the Police in-car computer system in use at the time (TADIS). Officer Dellar described TADIS as "*a cumbersome and outdated piece of technology*" which, as I will discuss later, has since been replaced by a mobile app called One Force Core. Officer Bogunovich called TADIS "*slow and cumbersome*".^{155,156}
- 115.** In any event, in addition to the information that had been broadcast on the police radio, TADIS advised that a VRO was in place and that the male suspect's name was "*Tong Ly*". Although Officer Dellar searched on TADIS he was unable to find Mr Tong because he had assumed that "*Tong*" was the suspect's first name. As a result of being unable to find Mr Tong on TADIS, Officer Dellar was unaware of Mr Tong's age or criminal history. Officer Dellar was also unable to access any alerts about Mr Tong in the police system.¹⁵⁷
- 116.** In fact, there were police alerts for Mr Tong including: "*may inflict self-injury*"; "*talk of self-harm*"; "*may possess syringe or use syringe on police*"; and "*may carry a weapon (knife, club etc)*".¹⁵⁸

¹⁵⁴ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp95-96

¹⁵⁵ See discussion of One Force Core later in this finding.

¹⁵⁶ ts 22.09.21 (Dellar), pp153-154 and ts 22.09.21 (Bogunovich), pp115-116

¹⁵⁷ Exhibit 1, Vol. 1, Tab 10, Report - Homicide Squad (09.06.20), p4 and ts 22.09.21 (Dellar), p156

¹⁵⁸ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p9

- 117.** Meanwhile, two other officers based at the Kiara Police station (Officers Parker and McArthur) had also responded to the job. At 4.24 pm, Officer McArthur called the Station seeking further information about the incident and spoke to Officer Maher. Based on what Ms Tong had told him, Officer Maher advised Officer McArthur that there were no firearms at the home and that Mr Tong had earlier cut his father on the leg with a knife and shoved his mother against a wall.
- 118.** Officer Maher also said that Mr Tong had told family members that if police attended, he would kill his mother and police. Officer Maher later denied telling Officer McArthur that Mr Tong was holding Ms Nguyen hostage, although this is something which Officer McArthur recalls being told.^{159,160}
- 119.** As Officer McArthur was relaying what he had been told to Officer Parker, Officer Maher sat with the Tongs in the Station's foyer area and asked them questions about the Altercation. As noted, as Ms Tong translated for her father, Officer Maher took notes.
- 120.** Meanwhile, as Officer Bogunovich drove along Benara Road in Beechboro and he and Officer Dellar saw stationary police vehicles on the side of the road about 125 metres east of Danube Avenue. According to Officer Dellar, there appeared to be some confusion as to whether police were to proceed directly to the Tong family home or were to gather some distance away at an RV point.
- 121.** Nevertheless, there had been a radio broadcast at 4.26 pm from the POC confirming the "*meeting point*" and advising police vehicles not to "*head directly to the address*". This was followed by the following broadcast from the POC at 4.27 pm:

Yeah, Roger. You're heading to my domestic there. If you can meet up with the guys at Benara Road crosses with Danube Ave that would be great.^{161,162}

¹⁵⁹ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp36 & 93

¹⁶⁰ ts 21.09.21 (Maher), pp68 & 70-71

¹⁶¹ Exhibit 1, Vol. 1, Tab 19, Police Operations Communications Transmissions, serial 95

¹⁶² Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp94-95

122. In addition, a CAD entry by the POC at 4.28 pm stated: “*All veh’s (vehicles) to meet at Benara Rd/Danube Av*”. Meanwhile, Officer Bogunovich had turned into Danube Avenue and pulled up about one block from the Tong family home as Officer Dellar made a radio broadcast asking if the plan was for police to gather at an RV point.^{163,164}

123. For their part, Officers Parker and McArthur had pulled over on Benara Road to organise an RV and Officer Dellar heard Officer Parker respond to his radio call with: “*Yeah, Tom. RV [is] over here*”. Officer Dellar took this to be a reference to the shoulder of Benara Road where he and Officer Bogunovich had seen several police vehicles moments before.^{165,166} In the end, Officers Bogunovich and Dellar did not go to the RV, and with the benefit of hindsight, Officer Bogunovich conceded that this would have been appropriate.¹⁶⁷

124. Starting at 4.31 pm, the following interchange occurred on the Police radio between Officer Maher and the POC:

Officer Maher: Yeah just for that 229 in Beechboro (the incident at the Tong family home), can we just grab an ambulance on their way just due to the mother having head injuries. **Hotel Kilo 103 I think is at the door now.** [Emphasis added]

POC: Roger. So you believe she has head injuries already?

Officer Maher: Yeah. Roger that. We’ve just got the witnesses here who said she had been thrown head first into a wall.^{168,169}

125. During his IAU interview Officer Maher said he didn’t know where the information about HK103 had come from, but believed he “*must have heard it*”. He also said that when he made the broadcast he meant to convey that the vehicle “*was stopped just down the road from the door*”.¹⁷⁰

¹⁶³ Exhibit 1, Vol. 1, Tab 19, Police Operations Communications Transmissions, serial 101

¹⁶⁴ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p95

¹⁶⁵ Exhibit 1, Vol. 1, Tab 19, Police Operations Communications Transmissions, serial 109

¹⁶⁶ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p95

¹⁶⁷ ts 22.09.21 (Bogunovich), pp118-119

¹⁶⁸ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp95-96

¹⁶⁹ Exhibit 1, Vol. 1, Tab 19, Police Operations Communications Transmissions, serials 123-125

¹⁷⁰ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p36 and ts 21.09.21 (Maher), pp69-70

- 126.** In fact, the source of Officer Maher’s information about HK103 appears to have been the POC radio broadcast at 4.21 pm where a POC operator said: “*VKI Hotel Kilo 103 or any other vehicles heading back up for a 229 in Beechboro*”. In any event, at 4.32 pm, when Officer Parker asked the POC: “*Is there already vehicles at the job?*” a POC operator replied: “*Apparently Kilo 103 is off*”. Exactly where the POC operator obtained this information about the whereabouts of HK103 is unclear.^{171,172,173}
- 127.** Officer Dellar says he was still trying to find Mr Tong on TADIS when he heard the radio broadcast about HK103 being at Tong family home. As it later transpired, this information was incorrect and at the relevant time, HK103 was actually parked, unoccupied, at the Kiara police station.¹⁷⁴ The false broadcast about HK103’s location was clearly significant and was described by Officer Dellar as the “*sliding doors moment*”¹⁷⁵.
- 128.** Given Mr Tong’s apparent threat to kill his mother and police if police attended the family home, in a very real sense, the broadcast about HK103’s location fundamentally altered the police response. That is because it caused officers to become gravely concerned for Ms Nguyen’s safety and the occupants of HK103 (who police had not been able to contact).
- 129.** These concerns led police to leave the RV point and proceed directly to the Tong family home. Thus, any chance to plan and coordinate a police response at the RV point was lost, as was any prospect of deploying the Tactical Response Group (TRG) to deal with the situation.^{176,177,178}
- 130.** For the reasons I have just explained, on hearing the broadcast about HK103, Officers Dellar and Bogunovich decided to proceed directly to the Tong family home, because as Officer Dellar put it:

¹⁷¹ Exhibit 1, Vol. 1, Tab 19, Police Operations Communications Transmissions, serials 35 & 127-128

¹⁷² Exhibit 1, Vol. 1, Tab 19, Police Operations Communications Transmissions, serials 123-125

¹⁷³ ts 21.09.21 (Maher), pp80-81

¹⁷⁴ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p90

¹⁷⁵ ts 22.09.21 (Dellar), pp159-160

¹⁷⁶ ts 22.09.21 (Bogunovich), p123

¹⁷⁷ ts 22.09.21 (Dellar), pp177-178

¹⁷⁸ ts 22.09.21 (Markham), pp211-212

From this moment, I was acting intuitively and swiftly to try and protect the mother from an imminent threat to life, given the suspect's overt threat to her life.^{179,180}

- 131.** As it happens, Officer Bogunovich was familiar with the Tong family home having previously attended the premises to try to serve the VRO. However, as he turned into Yenisey Crescent, he and Officer Dellar realised that they were in fact the first police vehicle at the scene. Officer Dellar advised the POC of this fact at 4.32 pm.¹⁸¹
- 132.** In light of Mr Tong's threats and because they were in a marked police car, the officers did not feel they could safely depart the scene, but to try to avoid drawing further attention to their vehicle, Officer Bogunovich parked a few houses down. As Officer Dellar walked towards the Tong family home, he drew his pistol because the information he had received was that there was an armed and dangerous male at the premises. Officer Dellar also heard the radio broadcast requesting an ambulance for Mr Tong's mother who had reportedly been thrown into a wall.¹⁸²
- 133.** As he approached the front of the home, Officer Dellar could see the silhouette of a person through the closed screen door. The person did not appear to be armed or threatening so Officer Dellar holstered his pistol before asking for the locked door to be opened. The door was opened by IT and Officers Dellar and Bogunovich went inside.¹⁸³
- 134.** Officer Dellar was approached by an elderly woman (Ms Nguyen) who he assumed was Mr Tong's grandmother. Officer Dellar had been unable to determine Mr Tong's age using TADIS and had relied on his experience of other incidents to estimate that Mr Tong was in his late teens or early 20's, meaning Mr Tong's mother would be in her 30's or 40's. An ambulance had been requested for "*the mother*" and the elderly lady Officer Dellar encountered was apparently uninjured.^{184,185}

¹⁷⁹ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 100 and ts 22.09.21 (Dellar), pp161

¹⁸⁰ ts 22.09.21 (Bogunovich), pp121-123

¹⁸¹ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p96

¹⁸² ts 22.09.21 (Bogunovich), pp124 & 147

¹⁸³ See: s35 of the *Criminal Investigation Act 2006* (WA)

¹⁸⁴ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), paras 51-52

¹⁸⁵ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p75

135. For all of these reasons, Officer Dellar believed that Mr Tong’s mother was still in immediate danger and “*possibly under the control of the suspect*”.^{186,187}
136. In any event, Ms Nguyen seemed very frightened and was grabbing at Officer Dellar’s arm. Officer Dellar said: “*What happened? Where’s Tong*”, but was unable to understand Ms Nguyen’s response because she was not speaking English. Neither of the small children present responded either. Officer Dellar then asked: “*Is anyone else in the house*” and one of the children pointed to the hallway towards a room at the back of the house. Officer Dellar assumed the child was pointing to Mr Tong’s bedroom, where he thought Mr Tong was located, possibly with his **mother** as a hostage.¹⁸⁸
137. Both Officer Dellar and Officer Bogunovich directed Ms Nguyen and her grandchildren to leave the house through the front door. Officer Dellar said he did this because he wanted to ensure their safety because at that stage Mr Tong’s location had not been established.¹⁸⁹ Meanwhile, when officers at the RV point realised that Officers Bogunovich and Dellar had proceeded to the Tong family home, they raced there in order to assist.¹⁹⁰
138. In a letter to Inspector Scantlebury (Officer Scantlebury), as he then was, Officer Dellar says that as Ms Nguyen and the two children exited the house, he saw Officers MacArthur and Parker arrive. However, at the inquest, Officer Dellar conceded that although he had assumed that Ms Nguyen and the two small children had gone outside, he did not actually see them do so.^{191,192}
139. At the inquest, both Officer Dellar and Officer Bogunovich properly conceded they should have ensured that Ms Nguyen and the two children were outside the home. There were at least two good reasons to do so.

¹⁸⁶ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), paras 51-52

¹⁸⁷ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p75

¹⁸⁸ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), paras 53-55 and ts 21.09.21 (Dellar), p165

¹⁸⁹ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19) , paras 57-58

¹⁹⁰ ts 21.09.21 (McArthur), pp92-94

¹⁹¹ Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19), p4

¹⁹² Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), paras 55-58

140. First, there was the risk that Ms Nguyen and/or the children might have been harmed inadvertently by police action. Second, because civilians (and especially children) might react unpredictably and there was a risk that police operations may have been interfered with. Apart from Ms Nguyen and her two small grandchildren, AH and NH were also in the house, but their presence was not detected until later.¹⁹³

141. Officers Parker and McArthur arrived at the scene at 4.34 pm,¹⁹⁴ and because they realised police were already at the front of the home, they went to the backyard to create a cordon in case Mr Tong tried to escape. During this time, Officers Parker and McArthur had their Tasers drawn because of the risks they perceived.

142. Officer McArthur said he felt drawing his Taser in these circumstances was appropriate because:

I was also mindful that despite the information being (Mr Tong) was armed with a knife, being outside the house I had room to move away and put distance between myself and (Mr Tong).^{195,196}

143. Meanwhile, Officer Dellar says he was “*anxious to locate the mother and extract her to safety*” and with this in mind, he walked towards the hallway with his pistol drawn, followed by Officer Bogunovich. The hallway was dark and narrow and although he was feeling uncomfortable about the situation, Officer Dellar said he felt an overwhelming desire to protect any persons who may be in the house.¹⁹⁷

144. After seeing an officer from the Police Canine Unit arrive and go into the backyard, Officer McArthur walked through the front door of the home and moved behind Officer Bogunovich, who was following Officer Dellar down a hallway towards what was assumed to be Mr Tong’s bedroom. Officer McArthur’s account of subsequent events is consistent with the evidence of Officers Dellar and Bogunovich.

¹⁹³ ts 21.09.21 (Bogunovich), p132; ts 21.09.21 (Dellar), p166; and ts 22.09.21 (McArthur), p103

¹⁹⁴ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p97

¹⁹⁵ Exhibit 1, Vol. 2, Tab 15, Statement - FC Const. D McArthur (23.01.18), para 39

¹⁹⁶ ts 21.09.21 (McArthur), pp96-97

¹⁹⁷ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 58

145. Officer Dellar tried the door to NH and AH's bedroom but it was locked and when he glanced back, he realised that Officer Bogunovich had drawn his pistol. The officers continued towards Mr Tong's bedroom door which was on the left-hand side of the hallway and Officer Dellar called out: "*Tong, it's the Police mate. We need you to come out and have a chat with us*".¹⁹⁸
146. There was no reply and Officer Bogunovich then called out: "*You need to come out and show us your hands*" and a male voice inside the room called out: "*Why?*", in what Officer Dellar described in his letter to Officer Scantlebury as "*an aggressive snappy tone*".¹⁹⁹
147. In his police statement, Officer Bogunovich says that Mr Tong's response was in fact "*what, what*", and that when he repeated his order for Mr Tong to come out and show his hands, Mr Tong began yelling unintelligibly.²⁰⁰
148. Officer Dellar said that in his mind, even though although he couldn't hear signs of a struggle or a female voice, this did not mean that "*the mother*" was not in Mr Tong's bedroom. This is because she might have been intimidated by Mr Tong and thus too scared to respond or have been incapacitated in some way.²⁰¹ Officer Dellar said it had become clear that the male (i.e.: Mr Tong) was not going to speak to police and Officer Dellar was concerned about why he was refusing to open the door.
149. A short time later, Officer Dellar was alarmed to hear "*rustling and banging sounds*" coming from inside Mr Tong's bedroom. In his IAU interview Officer Dellar says he thought there was a high probability that the noises related to some sort of weapon, although he was unsure what type. At the inquest, he described the noises as someone rummaging through drawers or moving furniture.^{202,203}

¹⁹⁸ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 62

¹⁹⁹ In his statement to the Police, Officer Dellar described the tone as "*aggressive and hostile*".

²⁰⁰ Exhibit 1, Vol. 2, Tab 48.2, Statement - Sgt. G Bogunovich (27.11.18), para 77

²⁰¹ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), paras 62-63

²⁰² Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p78

²⁰³ ts 22.09.21 (Dellar), p170

150. Officer Bogunovich described the noises as “*metal or something being put together that was metal*” and based on his experience in the Police and the Army Reserve, he thought a Glock pistol or similar was being cocked. Officer McArthur thought the noises sounded like “*items being moved around and clanking together*.”^{204,205,206,207}
151. Officer Dellar said at this stage, he had no idea what Mr Tong was doing and was still concerned that “*the mother*” was in Mr Tong’s bedroom. Officer Dellar said Officer Bogunovich’s facial expression showed that he was also concerned about what was going on in the bedroom and he heard Officer Bogunovich say: “*He’s doing something in there*.”^{208,209} Officer Dellar was becoming increasingly concerned that the life of Mr Tong’s mother was in imminent danger and using “*non-verbal communications*” he and Officer Bogunovich agreed that he (Officer Dellar) would open Mr Tong’s bedroom door.
152. With Officer Bogunovich hugging the wall at the hinge side of the door, Officer Dellar stood directly in front of the door and used the handle to quietly open it. He then used his left foot to push the door open so he could see into the room.²¹⁰ As I will explain later in this finding, this was actually a very dangerous thing to do and placed Officer Dellar in the so-called “*fatal funnel*”. At the inquest, Officer Dellar conceded that this had been a mistake but explained that he had been acting instinctively.²¹¹
153. In any event, the door swung open and collided with some furniture, making a loud noise before swinging back. The loud noise took Officer Dellar by surprise and “*caused a noticeable spike in the tension in the house*.”²¹² Shortly after the door opened, Officer Dellar heard Mr Tong yelling aggressively and he (Officer Dellar) began backing away towards the open bathroom door which was opposite.

²⁰⁴ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 64

²⁰⁵ Exhibit 1, Vol. 2, Tab 48.2, Statement - Sgt. G Bogunovich (27.11.18), paras 84-88

²⁰⁶ Exhibit 1, Vol. 2, Tab 15, Statement - FC Const. D McArthur (23.11.18), para 58

²⁰⁷ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p64

²⁰⁸ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 63

²⁰⁹ Exhibit 1, Vol. 2, Tab 48.1, Statement - Sgt. G Bogunovich (23.11.18), para 57

²¹⁰ Exhibit 1, Vol. 2, Tab 48.3, Statement - Sgt. G Bogunovich (17.09.21), paras 102-104 and ts 22.09.21 (Dellar), p172

²¹¹ ts 22.09.21 (Dellar), p172 and see also: ts 22.09.21 (Markham), pp213

²¹² Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 69 and ts 22.09.21 (Dellar), p173

154. At this point, Officer Bogunovich, who was still at the hinge end, could see Mr Tong through the partially open door and they made eye contact. Officer Bogunovich was unable to see Mr Tong’s arms or lower body because a chest of drawers was blocking his view, but observed that: “*The male had a crazy look on his face and I thought he’s about to go off*”.²¹³

155. In a subsequent police statement, Officer Bogunovich said:

I thought he (Mr Tong) looked like he had just been caught doing something and was about to go crazy. His body was tensed, which indicated to me that he was angry or pissed off. I have seen other people look like this and my experience and intuition made me think ‘*oh fuck*’. I was scared of what could happen.^{214,215}

156. Officer Dellar said he felt the situation had “*just escalated and become extremely dangerous*” and that he and Officer Bogunovich were now “*in serious and immediate danger*”.²¹⁶ As Officer Bogunovich yelled: “*Police*”, Mr Tong started screaming and as Mr Tong started moving towards his bedroom door, Officer Bogunovich called out “*he’s coming*”.²¹⁷

157. Suddenly Mr Tong ran out of his bedroom straight towards the officers “*at considerable speed*” with “*a look of fury and aggression on his face*”. Mr Tong was still yelling and Officer Dellar says he saw Mr Tong’s “*right arm come up in an upwards motion*”. Mr Tong had pushed through the door as he made his way out of his bedroom and was heading straight for Officer Bogunovich, who thought that Mr Tong was about to kill him. Officer Bogunovich says he saw Mr Tong’s left arm raised but that the bedroom door blocked his view of Mr Tong’s right arm.^{218,219,220,221}

²¹³ Exhibit 1, Vol. 2, Tab 48.1, Statement - Sgt. G Bogunovich (23.11.18), paras 63-66

²¹⁴ Exhibit 1, Vol. 2, Tab 48.3, Statement - Sgt. G Bogunovich (17.09.21), paras 114-116

²¹⁵ ts 22.09.21 (Bogunovich), p142

²¹⁶ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 70

²¹⁷ Exhibit 1, Vol. 2, Tab 48.1, Statement - Sgt. G Bogunovich (23.11.18), paras 67-68

²¹⁸ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 73

²¹⁹ Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19), p6

²²⁰ Exhibit 1, Vol. 2, Tab 48.3, Statement - Sgt. G Bogunovich (23.11.18), paras 125-126

²²¹ ts 22.09.21 (Bogunovich), p173

- 158.** At the inquest, Officer Bogunovich and Officer Dellar were each asked whether it was possible that Mr Tong had both arms raised as if in surrender. Both officers rejected this possibility and reiterated the fact that Mr Tong was yelling incoherently as he rushed towards them, showing no signs of surrender. In fact, Officer Bogunovich said that when the bedroom door opened, Mr Tong “*came out like a bull out of a gate*”.^{222,223}
- 159.** Officer Bogunovich says he thought Mr Tong was coming straight for him and in accordance with his training, he stepped sideways to get out of Mr Tong’s way. Officer Bogunovich says that although he did not see a knife, based on the information gleaned earlier from TADIS, he thought Mr Tong was about to attack him and stab him with a knife. Officer Bogunovich says as he stepped back towards the bathroom doorway, he ended up just in front of and to the left of Officer Dellar.²²⁴
- 160.** In his letter to Officer Scantlebury, Officer Dellar describes what happened next:
- I didn’t have any opportunity to see what he [Mr Tong] had in his hand, because he was moving at speed at me and I was in a confined space with no option for retreat or escape, and in poor lighting conditions. In that moment, based on an assessment of the information provided to me to that point and the conduct of the male, I firmly believed that he was armed with a knife and was about to stab me.^{225,226}
- 161.** Officer Dellar said he had never before felt that level of concern for his personal safety and that: “*In that split second, I thought I was not going to walk out of that house alive*”.²²⁷ He said he believed he had no other option than to discharge his pistol and so he fired three shots at Mr Tong “*to stop the immediate threat*” to his (Officer Dellar’s) life.²²⁸

²²² ts 21.09.21 (Dellar), p174 and ts 21.09.21 (Bogunovich), pp143 & 149

²²³ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp66 & 78

²²⁴ Exhibit 1, Vol. 2, Tab 48.3, Statement - Sgt. G Bogunovich (23.11.18), paras 127-133

²²⁵ Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19), pp6-7

²²⁶ ts 22.09.21 (Bogunovich), pp174 - 176

²²⁷ Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19), p7

²²⁸ Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19), p7

162. As to whether or not Mr Tong was armed, Officer Dellar said:

It was dark in the house and he [Mr Tong] ran at me very quickly in very close quarters. I did not positively sight a knife in his hand, nor did I identify him to be empty handed, however, I was convinced the suspect was armed with a knife based on the information given to us and his behaviour throughout our interaction. I made a literal split-second decision to protect myself in what I perceived to be a life and death situation.²²⁹

163. In his IAU interview, Officer Dellar was asked why he hadn't seen Mr Tong holding a weapon. Officer Dellar said he had information that Mr Tong was armed with a knife which he had threatened to use and said: *"I didn't positively sight a knife in his hands, but I did not positively identify that he was not holding a knife either"*. In his IAU interview, Officer Bogunovich said he suspected that he would have discharged his pistol had Officer Dellar not discharged his.^{230,231}

The aftermath of Mr Tong's shooting^{232,233,234,235,236,237,238}

164. After being shot, Mr Tong fell backwards bleeding profusely. Officer Dellar holstered his pistol and donned rubber gloves before providing first aid. Officer Bogunovich, who was assisting with first aid, asked Officer Dellar if he was "OK" and Officer Dellar replied "*Ahh fuck*" and appeared to be in shock.²³⁹

165. At the time, officers did not have access to trauma packs designed to deal with gunshot wounds, but these are now standard issue with the body armour which officers routinely wear.^{240,241}

²²⁹ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 75

²³⁰ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp66 & 78

²³¹ Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19), p7

²³² Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19), pp6-7

²³³ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 75

²³⁴ Exhibit 1, Vol. 2, Tab 48.1, Statement - Sgt. G Bogunovich (23.11.18), paras 72-104

²³⁵ Exhibit 1, Vol. 2, Tab 48.3, Statement - Sgt. G Bogunovich (17.09.21), paras 134-164

²³⁶ Exhibit 1, Vol. 2, Tab 15, Statement - FC Const. D McArthur (23.11.18), paras 61-84

²³⁷ Exhibit 1, Vol. 2, Tab 14.1, Statement - Sen. Const. D Parker (23.12.18), paras 70-98

²³⁸ Exhibit 1, Vol. 2, Tab 20, Statement - FC Const. F Wigger (22.11.18), paras 20-58

²³⁹ ts 21.09.21 (Dellar), p175

²⁴⁰ Exhibit 1, Vol. 1, Tab 17, Att. 5 - WA Police Force Body Armour Project update (25.05.21)

²⁴¹ Exhibit 1, Vol. 1, Tab 17, Att. 6 - Emergency Casualty Care Training update (20.09.21)

166. Meanwhile, at about 4.35 pm, Officer McArthur made a radio broadcast to the POC that: *“We’ve had shots fired here. We need an ambulance priority 1, all officers are OK”*. The POC asked for clarification of this information and Officer McArthur responded: *“I believe the POI has been shot. All officers are OK”*.^{242,243,244}

167. At about this time, Officer Dellar yelled for someone to call an ambulance and was told this had already been done. He then started looking for the knife he assumed Mr Tong was carrying. Officer Dellar says this was the first opportunity he was given to assess whether Mr Tong was armed.²⁴⁵ In his police statement, Officer Dellar made this observation about his thought process at that time:

This was the moment it dawned on me that Mr Tong may not have actually had a knife in his hand at the moment he emerged from the room and ran towards me. I started to feel a nauseating sense of horror and dread. I called out multiple times to my colleagues to the effect of *“where’s the knife”*.²⁴⁶

168. Shortly afterwards, Officer Dellar was escorted outside and Officer Parker (who had been in the backyard) came into the house and shepherded Ms Nguyen and her two grandchildren into the carport. In his IAU interview, First Class Constable Wigger (Officer Wigger), another of the officers at the scene said Officer Dellar looked pale and was clearly in shock, and was saying: *“What have I done...Am I going to get into trouble...I thought he was going to kill me”*.²⁴⁷

169. Meanwhile, Officer Bogunovich spoke with AH and NH and told them to try to get out of their bedroom window because he did not want them to see Mr Tong’s lifeless body in the hallway.

170. At 4.37 pm, Officer Wigger made the following broadcast to POC:

²⁴² Exhibit 1, Vol. 2, Tab 15, Statement - FC Const. D McArthur (23.11.18), paras 67-70

²⁴³ Exhibit 1, Vol. 2, Tab 43, Statement - FC Const. J Parker (23.11.18), para 3

²⁴⁴ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p96

²⁴⁵ Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19), p8

²⁴⁶ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 81

²⁴⁷ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p56

POI has been shot multiple times inside the address where we are at. No police officers are injured. SJA should be coming here P1 if they haven't been called already. I don't think he's going to survive the gunshot wounds. So we'll declare this a PFA (protected forensic area) and isolate the family from the area.²⁴⁸

171. At 4.43 pm, Officer Wigger advised the POC: "*He's dead*" and an update to the CAD job by the POC at 4.43 pm stated: "*2 x chest, 1 x arm. POI reported deceased*".^{249,250} It follows that from this point, the Police were aware that Mr Tong had been shot and killed. Meanwhile, at 4.49 pm, the first of two ambulances arrived at the Tong family home and at 4.55 pm, an officer from that ambulance confirmed that Mr Tong had died.^{251,252,253,254}

172. After he was escorted outside, Officer Dellar was examined by an ambulance officer from the second ambulance that had arrived at the scene at about 4.51 pm. The account Officer Dellar gave to an officer from that ambulance was consistent with the contents of his letter to Officer Scantlebury, his police statement and his evidence at the inquest.²⁵⁵ The SJA patient care record relevantly notes:

Officer (i.e.: Officer Dellar) stated he had entered the home and when he opened door to back bedroom was charged by unknown male. Officer states discharged forearm approx. 2 or 3 times.²⁵⁶

173. Detective First Class Constable Waldeck (Officer Waldeck) arrived at the Tong family home at about 5.09 pm and was directed to speak to several family members who were seated at the front of the home. He initially spoke to Ms Nguyen and her grandchildren and asked them to come with him to the Station, but they declined to do so. Officer Waldeck also spoke to Ms O Tong and Mr Tang after they arrived home.²⁵⁷

²⁴⁸ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p99

²⁴⁹ Exhibit 1, Vol. 1, Tab 19, Police Operations Communications Transmissions, serial 211

²⁵⁰ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p101

²⁵¹ Exhibit 1, Vol. 1, Tabs 22 & 23 - SJA Patient Care Record (Crew WNG40DD - 28.11.18)

²⁵² Exhibit 1, Vol. 2, Tab 21, Statement - Ambulance Officer D Paterson, paras 58-60 & 64-65

²⁵³ Exhibit 1, Vol. 1, Tab 3, Life Extinct Certification (22.11.18)

²⁵⁴ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p101

²⁵⁵ Exhibit 1, Vol. 2, Tab 21, Statement - Ambulance Officer K White, paras 13 & 58-60

²⁵⁶ Exhibit 1, Vol. 1, Tab 24, SJA Patient Care Record (Crew OPK21D2 - 28.11.18), p2

²⁵⁷ Exhibit 1, Vol. 2, Tab 44, Statement - Det. FC Const. K Waldeck, paras 5-12

174. Ms O Tong told Officer Waldeck that she and Mr Tong were close and that her father (Mr P Tong) blamed Mr Tong for “*anything that went wrong in the house*”. She said her sister (Ms Tong) and her father “*lie and exaggerate about issues*” and that the family “*felt safe*” living with Mr Tong. Interestingly, Ms O Tong also said that sharp knives were not kept at the house “*because of the children*”. By way of contrast, Mr Tang (Ms O Tong’s husband) told Officer Waldeck that Mr Tong “*had been causing trouble*” for the family for a long time.²⁵⁸

175. Some hours later, Officer Waldeck and another officer spoke to Ms Tong at her home. Ms Tong appeared to be very upset and was crying as she told officers that her family “*blamed her*” for Mr Tong’s death because she had taken her father to the Station. Ms Tong said Mr Tong had caused trouble for her family for years and had demanded money from family members.²⁵⁹

176. Ms Tong also told the officers her father had obtained the VRO to protect himself from Mr Tong and her family were scared of Mr Tong. She said her father had encouraged family members to apply for restraining orders and that her father had come to her house earlier that day asking to be taken to a police station because “*other family members refused*”.²⁶⁰

Events back at the Station^{261,262}

177. While police were at the Tong family home, Officer Maher was back at the Station speaking to the Tongs. Shortly after Officer McArthur’s radio broadcast 4.35 pm, Officer Briggs took Officer Maher aside and told him “*[S]hots have been fired and they have shot him*”. Officer Briggs made it clear that this information was for Officer Maher’s ears only and told him to turn his radio off and take the Tongs into the Station’s interview room.^{263,264,265}

²⁵⁸ Exhibit 1, Vol. 2, Tab 44, Statement - Det. FC Const. K Waldeck, paras 13-21

²⁵⁹ Exhibit 1, Vol. 2, Tab 44, Statement - Det. FC Const. K Waldeck, paras 26-29

²⁶⁰ Exhibit 1, Vol. 2, Tab 44, Statement - Det. FC Const. K Waldeck, paras 26-29

²⁶¹ Exhibit 1, Vol. 2, Tab 12.3, Statement - Officer D Maher (31.12.18), paras 50-72

²⁶² Exhibit 1, Vol. 2, Tab 12.4, Notes - Officer D Maher (22.12.18)

²⁶³ Exhibit 1, Vol. 2, Tab 10.1, Statement - Officer S Briggs (23.11.18), paras 61-63

²⁶⁴ ts 21.09.21 (Briggs), p38-39

²⁶⁵ ts 21.09.21 (Maher), pp72-73

- 178.** As Officer Maher walked back to the Station foyer, he made sure his police radio was off because he didn't want the Tongs to hear any police broadcasts about Mr Tong's death. Notwithstanding the fact that by this stage police were well aware that Mr Tong had been shot and killed, Officer Maher had been ordered by Officer Briggs to continue questioning the Tongs about the Altercation, and he did so. As already noted, as he spoke to the Tongs, Officer Maher made detailed notes of what Ms Tong told him her father was saying.²⁶⁶
- 179.** This was an appalling position for both the Tongs and Officer Maher to have been placed in.
- 180.** The Tongs had a right to be promptly informed of Mr Tong's death. As for Officer Maher, at the time he was ordered to interview the Tongs, [first by Officer Briggs and later by Officer Benington, the acting Officer in Charge (OIC) of the Station], he was a probationary constable with less than 13-months of experience. Officer **Maher** told investigators from the IAU that he had never dealt with victims of a shooting before and believed any notification should be made by a senior officer. He also said he felt "*overawed by the enormity of the incident and task*".²⁶⁷
- 181.** While Officer Maher was speaking with the Tongs, Officer Briggs came into the interview room to advise that Ms Nguyen and the children at the Tong family home had not received any injuries and were "OK". Officer Briggs said he did not immediately notify the Tongs that Mr Tong had died because he wanted more details about the matter first, and had not done so later because he had deferred to Officer Benington.²⁶⁸
- 182.** In her police statement, Officer Benington says she became aware of "*a shooting incident involving police that had occurred within the district*" at about 5.10 pm. By that time, police had been aware of Mr Tong's death for at least 27 minutes.^{269,270,271}

²⁶⁶ Exhibit 1, Vol. 2, Tab 12.4, Notes - Officer D Maher (22.12.18)

²⁶⁷ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p141

²⁶⁸ Exhibit 1, Vol. 2, Tab 10.1, Statement - Officer S Briggs (23.11.18), paras 65 and ts 21.09.12 (Briggs), pp39-40

²⁶⁹ Exhibit 1, Vol. 2, Tab 12.3, Statement - Officer D Maher (31.12.18), para 56

²⁷⁰ Exhibit 1, Vol. 2, Tab 10.1, Statement - Officer S Briggs (23.11.18), paras 65

²⁷¹ Exhibit 1, Vol. 2, Tab 50, Statement - Sgt. L Benington (01.08.19), paras 4-8 and ts 21.09.12 (Benington), pp46-47

- 183.** Officer Benington says she was briefed about the circumstances of the incident and made aware that the Tongs were in the Station being spoken to by Officer Maher. She was also told that Ms Tong was acting as interpreter for her father and that the Tongs: “*may not be aware of what happened after they left the house*”.²⁷²
- 184.** Officer Benington says she instructed Officer Maher to continue taking notes until “*further information came to light or alternative arrangements could be made*” because Mr P Tong appeared to have been the victim of serious family violence.²⁷³ Thus, even though Officer Benington was well aware that the Tongs were actually in the Station, she took no immediate steps to notify them of Mr Tong’s death. Further, she instructed Officer Maher to continue speaking to the Tongs, thereby ensuring the continuation of the appalling situation created earlier by Officer Briggs.
- 185.** Officer Benington said she did not immediately notify the Tongs about Mr Tong’s death because “*she was not aware of what was happening at the scene and was not sure if it was appropriate at the time*”. At the inquest, Officer Benington said that “*trying to find out accurate information is crucial*” and that she had called Senior Sergeant Stoneham (Officer Stoneham), the OIC of the Kiara Police station, who was the incident controller, a couple of times but the phone was engaged.^{274,275}
- 186.** At about 5.55 pm, Ms Tong took a call on her mobile from Ms O Tong who told her that Mr Tong had been shot and killed. Officer Maher could hear shouting during the call and when it ended, Ms Tong told Officer Maher what he already knew, namely that police had shot and killed her brother. Ms Tong says she told her father: “*We done wrong thing, they’ve shot my brother*”.^{276,277,278,279}
- 187.** Officer Maher left the interview room to brief Officer Benington about what had just occurred and says she told him:

²⁷² Exhibit 1, Vol. 2, Tab 50, Statement - Sgt. L Benington (01.08.19), paras 9-18 and ts 21.09.12 (Benington), p48

²⁷³ Exhibit 1, Vol. 2, Tab 50, Statement - Sgt. L Benington (01.08.19), para 17

²⁷⁴ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p41

²⁷⁵ ts 21.09.21 (Benington), pp48-50

²⁷⁶ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p142

²⁷⁷ Exhibit 1, Vol. 2, Tab 3.1, Statement - Ms T Tong (27.11.18), para 25 & ts 21.09.21 (Tong), p19

²⁷⁸ Exhibit 1, Vol. 2, Tab 12.3, Statement - Officer D Maher (31.12.18), paras 59-62

²⁷⁹ Exhibit 1, Vol. 2, Tab 2, Statement - Mr P Tong (01.12.18), paras 139-140

I will come in there and speak with the father and daughter, when I leave just try and keep taking notes adding to what you have got. When I leave I will obtain conformation of what has happened and come back in.²⁸⁰

- 188.** Even at this point, when the Tongs were clearly aware that Mr Tong had been killed, Officer Benington did not formally notify them of what she already knew. Instead, Officer Benington came into the interview room and told Ms Tong she would “*find out more information*” and return shortly. Officer Maher continued to speak with the Tongs, but after that point, took no further notes because understandably, the Tongs “*just wanted more information*” about what had happened to Mr Tong.^{281,282}
- 189.** After leaving the interview room Officer Benington was able to contact Officer Stoneman and she sought his direction “*with regards to a notification*” to the Tongs. She says that it was agreed that in view of the circumstances, she would notify the Tongs of Mr Tong’s death, and she finally did so at 6.10 pm.²⁸³ Thus, the Tongs were formally advised of Mr Tong’s death, some 90 minutes after police first became aware of that fact. On any reasonable view, this is completely unacceptable.
- 190.** As I will discuss in more detail later in this finding, Officers Briggs, Benington and Maher were each the subject of criticism in the IAU report for failing to uphold the Police values of openness, empathy and accountability in their dealings with the Tongs.^{284,285}
- 191.** After Officer Benington had told the Tongs that Mr Tong had been shot and killed, Ms Tong (who was understandably distraught) said that her siblings would blame her for what had happened because she had taken her father to the Station. Officer Benington says Ms Tong repeated this “*several times and that appeared to be at the forefront of her concerns.*”²⁸⁶

²⁸⁰ Exhibit 1, Vol. 2, Tab 12.3, Statement - Officer D Maher (31.12.18), para 66

²⁸¹ Exhibit 1, Vol. 2, Tab 50, Statement - Sgt. L Bennington (01.08.19), paras 22-25 and ts 21.09.21 (Benington), p49

²⁸² Exhibit 1, Vol. 2, Tab 12.3, Statement - Officer D Maher (31.12.18), paras 67-68

²⁸³ Exhibit 1, Vol. 2, Tab 50, Statement - Sgt. L Bennington (01.08.19), paras 29

²⁸⁴ Exhibit 1, Vol. 2, Tab 50, Statement - Sgt. L Bennington (01.08.19), paras 29-35

²⁸⁵ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp138-145

²⁸⁶ Exhibit 1, Vol. 2, Tab 50, Statement - Sgt. L Bennington (01.08.19), paras 31-37

- 192.** But there was more to come. Even after the Tongs had said they wanted to leave the Station, they were subjected to a further indignity.
- 193.** As the Tongs left the Station and headed to the carpark, Officer Benington asked Officer Maher whether the Notes had been endorsed by the Tongs. Officer Maher confirmed the Notes had not been signed and he followed Officer Benington out of the Station to the carpark, where they spoke to the Tongs.²⁸⁷ Officer Benington explained what it meant to endorse the Notes and asked Ms Tong to explain to her father that the Notes contained the information which had earlier been given to Officer Maher.
- 194.** In her police statement, Officer Benington says: “*She (Ms Tong) translated the information and he (Mr P Tong) nodded in agreement and signed the notes*”.²⁸⁸ However, during her IAU interview and at the inquest, Officer Benington explained that this passage was intended to mean that Mr P Tong had been asked to endorse the Notes, not that the content of the Notes had been translated to him.
- 195.** At the inquest, Ms Tong made it very clear that she did not translate the Notes and had merely signed them to confirm she was not an eyewitness.²⁸⁹
- 196.** Ms Tong appeared to be concerned that by endorsing the notes, she was signing a formal statement as a witness and Officer Benington explained that she was under no obligation to sign the Notes and that by doing so, she would only be confirming that she had been present when the Notes were taken and had acted as interpreter for her father.
- 197.** In her IAU interview, Officer Benington said that it had been “*drummed*” into her that notes relating to domestic violence incidents had to be signed. This is understandable in circumstances where the complainant refuses to make a statement and police wish to ensure they are acting on credible information.

²⁸⁷ Exhibit 1, Vol. 2, Tab 50, Statement - Sgt. L Bennington (01.08.19), paras 42-44

²⁸⁸ Exhibit 1, Vol. 2, Tab 50, Statement - Sgt. L Bennington (01.08.19), paras 45-47

²⁸⁹ ts 21.09.21 (Benington), pp53-53 and ts 21.09.21 (Ms Tong), pp19-20

- 198.** However, in this case, the alleged perpetrator of the domestic violence was already dead and so having the Notes endorsed was pointless.²⁹⁰ At the inquest, Officer Benington was unable to offer any other explanation for wanting the Notes endorsed. During her IAU interview, Officer Benington was asked whether she considered the Tongs were vulnerable people and whether her decision to have the Notes signed was the “*best option*”. She replied: “*If I had not got them signed, we may be sitting here asking the other question, why did I not get them signed*”. She also reiterated that having people endorse notes “*gets drummed into you*”.^{291,292}
- 199.** Officer Benington noted that Ms Tong had asked “*for something in writing should she be questioned by her siblings*”. Ms Tong seemed particularly keen to have official confirmation that she was not an eyewitness to the events involving Mr Tong’s death and for that reason, Officer Benington handed her a card on which she wrote “*not a witness*”. Although this appeared to make Ms Tong “*more at ease*”, she was still “*worried about her siblings*” but would not say why.²⁹³
- 200.** Although Officer Benington conceded at the inquest that it had been pointless to ask the Tongs to endorse the Notes, she refused to concede that the Tongs could or should have been advised about Mr Tong’s death at an earlier stage. This was despite several questions from counsel assisting and me and is regrettable because it demonstrates an unwillingness to learn from past mistakes. Officer Benington claimed that she had been unable to make a notification to the Tongs at an earlier stage because she was still seeking to clarify “*details*” about the matter.²⁹⁴
- 201.** At the inquest, Officer Briggs also refused to concede that he should have advised the Tongs about Mr Tongs death at an earlier stage. He said he needed to obtain additional details and had later deferred to Officer Benington because she was the acting OIC.²⁹⁵

²⁹⁰ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p42

²⁹¹ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p42

²⁹² ts 21.09.21 (Benington), p54

²⁹³ Exhibit 1, Vol. 2, Tab 50, Statement - Sgt. L Bennington (01.08.19), paras 48-52

²⁹⁴ ts xx.09.21 (Bennington), pp49-50, 52-54 & 55-58

²⁹⁵ ts 21.09.21 (Briggs), p39-42

- 202.** Given that both Officer Briggs and Officer Bennington were well aware that Mr Tong had been shot, both of them claimed they needed further information before they could make a formal notification to the Tongs. I accept that the shooting incident occurred in the Kiara Police station catchment and that this may have caused some blurring of lines of communication.
- 203.** Nevertheless, Mr Tong’s death was known from at least 4.43 pm, and exactly what extra information either Officers Briggs or later, Officer Bennington required before the Tongs were advised of this fact was unclear to me. Obviously additional information would have been forthcoming and some, or perhaps even most of the family’s questions about Mr Tong’s death may have had to be deferred until that extra detail became clear.
- 204.** At the inquest, Officer Bennington said that some family’s asked questions after being notified of a loved one’s death. Ms Western (counsel for the Police) then asked Officer Bennington whether she considered it was important to have a good understanding of “*the incident and what had happened before making a notification (of the death)*”, and she replied “*Yes, absolutely*”. However the following interchange then occurred:
- Coroner Jenkin:* But you wouldn’t think it was necessary to get every piece of information before you made a notification would you?
- Officer Bennington:* No.²⁹⁶
- 205.** To his great credit, and in stark contrast to his more experienced colleagues, at the inquest Officer Maher said he should not have continued to interview the Tongs after becoming aware that Mr Tong was dead. Although he had been following direct orders from his superiors he said with the benefit of hindsight he should have told the Tongs about Mr Tong’s death as soon he became aware of it.²⁹⁷ After reviewing CCV footage from the Station, Officer Maher accepted the Tongs had signed the Notes in the Station car park and said he was “*not happy*” with the fact that he had been involved in asking the Tongs to do so.²⁹⁸

²⁹⁶ ts 21.09.21 (Bennington), pp57-58

²⁹⁷ ts 21.09.21 (Maher), pp73-75

²⁹⁸ ts 21.09.21 (Maher), pp75-76

CAUSE AND MANNER OF DEATH

Post Mortem Examination^{299,300,301}

- 206.** A forensic pathologist, (Dr Judith McCreath), conducted post mortem examinations of Mr Tong's body on 26 and 30 November 2018. Dr McCreath found that Mr Tong had sustained three gunshot wounds. The first wound involved his left chest, whilst the second involved his left upper arm with the round entering his left chest and ending up in his abdomen. The third wound involved Mr Tong's left forearm, with the round entering his chest and ending up in his abdomen.
- 207.** In addition to three gunshot wounds, Dr McCreath found associated damage to Mr Tong's ribs, aorta, pulmonary trunk, lungs, liver and large bowel. Cirrhosis of the liver was noted along with multiple puncture wounds on Mr Tong's left and right arms, and possible injection sites on his neck, all of which were consistent with the intravenous use of illicit drugs. Specialist examination of Mr Tong's brain found evidence of an old stroke,³⁰² which may be explained by the fact that strokes are a well-known consequence of methylamphetamine use.³⁰³
- 208.** Toxicological analysis detected the medications clonazepam, nitrazepam, olanzapine and quetiapine (and their respective metabolites) in Mr Tong's system, along with methylamphetamine and its metabolite, amphetamine.³⁰⁴
- 209.** Professor David Joyce (a physician and forensic toxicologist) prepared a report for the Court, in which he noted that the levels of methylamphetamine in Mr Tong's system were:

[Q]uite a lot higher than the concentrations anticipated in occasional users of the drug, notwithstanding the possibility of some post-mortem redistribution.³⁰⁵

²⁹⁹ Exhibit 1, Vol. 1, Tab 5.3, Post Mortem Report (30.11.18)

³⁰⁰ Exhibit 1, Vol. 1, Tab 5.2, Supplementary Post Mortem Report (29.05.19)

³⁰¹ Exhibit 1, Vol. 1, Tab 9, Histopathology Report (29.05.19)

³⁰² Exhibit 1, Vol. 1, Tab 7, Neuropathology Report (29.11.18)

³⁰³ Exhibit 1, Vol. 3, Tab 7, Report - Prof. D Joyce (28.07.21), para 12

³⁰⁴ Exhibit 1, Vol.1, Tab 6.1, ChemCentre Report - Final (18.12.18)

³⁰⁵ Exhibit 1, Vol. 3, Tab 7, Report - Prof. D Joyce (28.07.21), para 23

- 210.** Methylamphetamine is a powerful, highly addictive stimulant that affects the central nervous system. It usually takes the form of a white, bitter tasting crystalline powder that dissolves easily in water and alcohol. It can be smoked, snorted, injected or taken in tablet form.³⁰⁶
- 211.** Professor Joyce explained that methylamphetamine intoxication can manifest in several primary forms. Acute intoxication may be characterised by agitation, increased physical activity and a propensity for aggression as well as involvement in risky, reckless or violent behaviour. Paranoid beliefs about others are common and intoxicated persons can become delirious and exhibit confusion and bizarre behaviour.³⁰⁷
- 212.** The term agitated or excited delirium (ED) may also be applied to this condition, although there is some controversy about what this term actually means. One definition of ED is as follows:

Agitated or excited delirium is an acute, transient disturbance in consciousness and cognition that involves combative and/or violent behaviour...This disturbance in cognition is marked by intense paranoia, aggressive behaviour toward objects and people, hallucinations, hyperthermia, altered sensorium, and lack of willingness to yield to force...The bizarre and threatening behavior of these individuals typically leads to a police response. The subject violently resists police attempts at restraint with a surprising amount of strength, and death often occurs unexpectedly once in custody^{308,309}

- 213.** Acute intoxication subsides as methylamphetamine is metabolised by the body and users may progress to a state of slowness, malaise and sometimes depression. As Professor Joyce pointed out, users may then take additional methylamphetamine in order to recapture their previous state of intoxication, leading to progressively larger doses to stave off the effects of withdrawal. This can lead to chronic high-level methylamphetamine use, which carries the risk of psychiatric disorders, including paranoia and associated violence.³¹⁰

³⁰⁶ See: <https://www.drugabuse.gov/publications/research-reports/methamphetamine/what-methamphetamine>

³⁰⁷ Exhibit 1, Vol. 3, Tab 7, Report - Prof. D Joyce (28.07.21), para 24

³⁰⁸ Dukes, GD & Davis GJ, Encyclopedia of Forensic and Legal Medicine (2nd Ed, 2016)

³⁰⁹ See: <https://www.sciencedirect.com/topics/neuroscience/excited-delirium>

³¹⁰ Exhibit 1, Vol. 3, Tab 7, Report - Prof. D Joyce (28.07.21), para 25

214. Professor Joyce explained that psychotic features such as delusions (i.e.: abnormal beliefs inconsistent with reality) and hallucinations (e.g.: hearing voices) can arise during the acute intoxication phase and fade as methylamphetamine levels drop. A period of sustained high-level methylamphetamine use can also cause “*amphetamine induced delusional state*”, a severe disorder characterised by paranoid delusions and hostility or violence towards the subjects of the paranoia. Professor Joyce said that Mr Tong’s methylamphetamine levels were consistent with any of the above states which, he explained, can co-exist.³¹¹

215. Professor Joyce made the following comments on the available evidence:

There are aspects of (Mr Tong’s) behaviour that would be well explained by methylamphetamine intoxication. They were the argumentativeness, the physical aggression towards (Mr P Tong, NH and Ms Nguyen) and running towards police in apparent attack. The evidence offered by witnesses, though, does not include mention of paranoid beliefs or hallucinations, which are the necessary elements of a diagnosis of amphetamine-induced psychosis. These are typically paranoid delusions and commonly auditory hallucinations. (Mr Tong) had a history of amphetamine-induced psychosis, which would probably have made his family more perceptive towards its emergence. When the condition occurs, its presentation is usually quite obvious. So, it is credible that his reaction to the police officers was based on paranoid beliefs about them or their intentions, but there does not seem to be any direct evidence for this.³¹²

216. Dr Victoria Pascu (a consultant forensic psychiatrist who prepared a report for the Court) expressed the view that:

The level of methylamphetamine in Mr Tong’s drug screen is consistent with a significant intoxication with methylamphetamine which more likely than not contributed to him experiencing psychotic symptoms at the time. This most likely contributed to his agitated behaviour and likely persecutory beliefs involving his family and possibly the Police. Given the high level of methylamphetamine in his system it is possible that Mr Tong might have also experienced hallucinations (voice) which were in keeping with his persecutory beliefs.³¹³

³¹¹ Exhibit 1, Vol. 3, Tab 7, Report - Prof. D Joyce (28.07.21), paras 26-27

³¹² Exhibit 1, Vol. 3, Tab 7, Report - Prof. D Joyce (28.07.21), para 28

³¹³ Exhibit 1, Vol. 3, Tab 8, Report - Dr V Pascu (13.09.21), paras 53-54

217. Although Professor Joyce noted that the absence of witness reports about Mr Tong experiencing delusional beliefs and hallucinations argued against the presence of amphetamine-induced psychosis, he also noted: *“the observational evidence is too sparse to be confident that psychosis was absent.”*³¹⁴

218. In any event, Professor Joyce considered that methylamphetamine had impacted on Mr Tong’s behaviour, stating:

(Mr Tong’s) involvement in verbal and physical altercations during the day confirms that methylamphetamine was working on his mind to make him more aggressive and to energise and agitate him. He was taking drugs whose purpose is to suppress agitation and anxiety,³¹⁵ which presumably means he perceived these adverse effects of methylamphetamine himself. Methylamphetamine intoxication would have been present at the time he encountered the policemen. There would be good reasons to think that the methylamphetamine intoxication affected his reactions to their arrival at his bedroom door.³¹⁶

219. On the basis of the evidence of Professor Joyce and Dr Pascu, I find that at the time he was shot, Mr Tong was intoxicated with methylamphetamine and was likely experiencing a drug-induced psychosis. As a consequence, Mr Tong behaved in a combative and aggressive manner towards the police who attended his home.

Cause and manner of Death³¹⁷

220. At the conclusion of her post mortem examinations, Dr McCreath expressed the opinion that the cause of Mr Tong’s death was multiple gunshot wounds. I accept and adopt Dr McCreath’s conclusion as to the cause of Mr Tong’s death.

221. Given the circumstances of this case and for the reasons outlined in this finding, I find that the manner of Mr Tong’s death was homicide by way of self-defence.

³¹⁴ Exhibit 1, Vol. 3, Tab 7, Report - Prof. D Joyce (28.07.21), para 35

³¹⁵ In Mr Tong’s case, this is a reference to the prescribed benzodiazepines clonazepam and nitrazepam.

³¹⁶ Exhibit 1, Vol. 3, Tab 7, Report - Prof. D Joyce (28.07.21), para 36

³¹⁷ Exhibit 1, Vol. 1, Tab 4, Supplementary-Post mortem report, p1

INVESTIGATIONS INTO POLICE ACTIONS

*Homicide Squad investigation*³¹⁸

- 222.** After Mr Tong’s death, officers from the Homicide Squad conducted an investigation during which they examined physical evidence³¹⁹ and obtained statements from relevant witnesses. The investigators also reviewed expert reports dealing with ballistics information and blood patterns found at the scene. The findings of these reports were consistent with witness accounts and physical evidence.^{320,321}
- 223.** After Mr Tong had been shot, police found a small folded up pocket knife in his pocket and a search of his bedroom found: a fish knife, a meat cleaver, a fold-up utility knife, a bottle opener with a 50 mm blade and a filleting knife with a broken handle and a 65 mm blade.^{322,323,324}
- 224.** Officer Dellar’s actions were reviewed by investigators with reference to “*objective and subjective influences*”. It was noted that prior to entering the Tong family home, Officer Dellar had received information that Mr Tong was armed with a knife and had threatened to kill his mother and police. Both Officer Dellar and Officer Bogunovich had said they were in fear for their lives when Mr Tong ran towards them, and both officers thought they were about to be stabbed and killed.
- 225.** Having reviewed all of the available evidence, the investigating officers expressed the following conclusion:

The investigation by Homicide Squad found, in the prevailing circumstances, the discharge of (Officer Dellar’s) firearm and subsequent death of the deceased to be lawful. Whilst the deceased was not holding a knife, nor hostages, when shot by (Officer Dellar), based on all available evidence, investigators could not eliminate Self Defence s248 *Criminal Code* as a defence for (Officer Dellar) in the killing of the deceased.³²⁵

³¹⁸ Exhibit 1, Vol. 1, Tab 10, Report - Homicide Squad (09.06.20) & ts 22.09.21 (Moore), pp179-191

³¹⁹ See: Exhibit 1, Vol. 1, Tab 11, Forensic Disclosure Report (07.11.19)

³²⁰ Exhibit 1, Vol. 1, Tab 12, Blood Pattern Analysis Report (03.01.19)

³²¹ Exhibit 1, Vol. 1, Tabs 13.1 – 13.5, Forensic Firearm Unit Report & attachments (25.12.18)

³²² Exhibit 1, Vol. 1, Tab 10, Report - Homicide Squad (09.06.20), p5

³²³ Exhibit 1, Vol. 1, Tab 18, Police photographs 1-6, depicting knives found in Mr Tong’s bedroom

³²⁴ Exhibit 1, Vol. 1, Tab 37, Statement - Det. Sen. Const. R Peters, (31.12.18), paras 10-11

³²⁵ Exhibit 1, Vol. 1, Tab 10, Report - Det. A’Sen. Sgt. W Moore, Homicide Squad (09.06.20), p9

226. Police sought an opinion from the Director of Public Prosecutions (DPP) as to whether any charges against Officer Dellar were warranted in relation to Mr Tong's death. The DPP expressed the opinion that there were no reasonable prospects of conviction because the prosecution would be unable to disprove self-defence on Officer Dellar's part. A prosecution in those circumstances would be inappropriate.^{326,327}

Internal Affairs Unit investigation³²⁸

227. In accordance with Police policy, the IAU examined the conduct of the officers attending the Tong family home as well as the actions of officers at the Station. In broad terms, the issues examined during the IAU investigation were:

- a. *Issue 1:* whether Officer Briggs and Officer Maher complied with relevant policies in relation to the use of interpreters;
- b. *Issue 2:* whether Officers Briggs, Benington and Maher breached the Police Code of Conduct by failing to act with openness, empathy and accountability in their dealings with the Tongs;
- c. *Issues 3-5:* whether Officers Dellar, Bogunovich and McArthur acted in accordance with the Police use of force policy;
- d. *Issues 6-7:* whether, in the manner they entered and cleared the Tong family home, Officers Dellar and Bogunovich complied with the relevant Police rules, orders and administrative instructions; and
- e. *Issue 8:* whether the Police family violence reporting policy was complied with following Mr Tong's death.

228. The IAU investigation considered the evidence gathered by the Homicide Squad, including interviews with police and civilian witnesses and physical evidence. Officers Dellar, Bogunovich, Parker, McArthur and Wigger were all subjected to drug and alcohol testing immediately following Mr Tong's death with all tests being reported as negative.³²⁹

³²⁶ Exhibit 1, Vol. 1, Tab 10, Report - Homicide Squad (09.06.20), p9

³²⁷ Exhibit 1, Vol. 1, Tab 26, Letter - DPP to Det. Insp. R Scantlebury (12.04.19)

³²⁸ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21)

³²⁹ Exhibit 1, Vol. 2, Tab 38, Statement - Det. Snr. Sgt. B Hunter, paras 9-16

COMMENTS ON THE ACTIONS OF OFFICERS

General

229. I now intend to make some comments about the police response in this case, including the actions of some of the officers involved in Mr Tong’s death, either by attending at the Tong family home or by interacting with the Tongs at the Station.

230. Before I do so, I want to acknowledge that police are often called on to react to rapidly changing situations without necessarily having all of the available facts at their disposal. I also accept that police work is often dangerous and that many of the tasks carried out by the Police are of enormous benefit to the community.

Hindsight bias

231. In assessing the actions of the officers in this case, I have been mindful of the phenomenon known as “*hindsight bias*”. Hindsight bias is the common tendency to perceive events that have occurred as having been more predictable than they actually were at the time.³³⁰ This is particularly relevant in the present case, because although Mr Tong turned out to be unarmed when he was shot, prior to arriving at the Tong family home, police had credible evidence to the contrary.

Did Officer Dellar cause Mr Tong’s death?

232. The inquest into Mr Tong’s death was mandatory because of the operation of section 22 of the Act, which provides:

(1) A coroner who has jurisdiction to investigate a death must hold an inquest if the death appears to be a Western Australian death and —

(b) it appears that the death was caused, or contributed to, by any action of a member of the Police Force.

233. 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 any member of the Police.

³³⁰ See for example: <https://www.britannica.com/topic/hindsight-bias>

234. The clear and unequivocal evidence before me is that the actions of Officer Dellar at the Tong family home caused Mr Tong's death. However, that bald statement is not the end of the matter.

235. In this case, Officers Dellar and Bogunovich made several attempts to engage with Mr Tong and de-escalate the situation they were confronted with. Both officers considered less lethal force options including a Taser. However, due to the nature of the threat they perceived they were facing and the poor lighting and cramped conditions in the hallway outside Mr Tong's bedroom, none of these less lethal force options were appropriate.^{331,332,333,334,335}

236. As I have already explained, at the relevant time, Mr Tong was intoxicated with methylamphetamine and this had a catastrophic impact on his behaviour. Mr Tong's decision to run out of his bedroom towards police whilst yelling, shows that at the relevant time, his mental state was significantly disordered. Had he not been intoxicated with methylamphetamine it is possible that Mr Tong may have surrendered.

237. In my view, when Mr Tong ran towards them screaming unintelligibly and apparently armed, Officers Dellar and Bogunovich were each entitled to believe that he posed a serious and imminent threat to each of their lives. In these circumstances, the use of lethal force is authorised.³³⁶ For the reasons I have outlined, I find that Officer Dellar's actions in shooting Mr Tong were reasonable in all of the circumstances. Further, in relation to the police response to the situation at the Tong family home, I agree with the following statement made by Officer Dellar at the inquest namely:

I'm not necessarily sure that we handled it perfectly. But, at the same time, I struggle to think of an unequivocally better way. It was a dangerous and volatile situation, and we did our best to handle it the way that we thought was appropriate in the moment.³³⁷

³³¹ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp 64, 66 & 82

³³² Exhibit 1, Vol. 1, 17.3, Reports - Mr C Markham (10.04.20), paras 376-381

³³³ Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19), pp4-5

³³⁴ ts 22.07.20 (Bogunovich), p133 and ts 22.07.20 (Dellar), p162-163 & 167

³³⁵ Exhibit 1, Vol. 1, 17.3, Reports - Mr C Markham (10.04.20), paras 376-381

³³⁶ Exhibit 1, Vol. 17, Tab 1, Report - Mr C Markham, paras 36-74 and ts 22.07.20 (Markham), pp131-132

³³⁷ ts 22.09.21 (Dellar), p179

238. I now turn to look at other aspects of this case, and in doing so, I have been greatly assisted by the comprehensive nature of the report of the IAU investigation onto this matter. In my view, the IAU report addresses all of the relevant issues arising in this case and provides a useful framework to comment on those matters.

Issue 1: Use of interpreters

239. Accounts about Ms Tong’s standard of English vary and in any event are clearly subjective. At the very least, it appears uncontroversial to say that Ms Tong spoke with an accent and had to repeat herself to ensure staff at the Station understood what she was saying.³³⁸

240. Although it appears that Ms Tong was able to make herself understood, albeit with some difficulty, staff at the Station could make no assessment about whether she was accurately translating questions posed to her father and/or his responses.³³⁹ Further, staff at the Station had no idea about the dynamics in the family as between Ms Tong and her father or between Ms Tong and her brother.

241. Apart from these specific issues, there are other more general problems with using family members as translators. Family members may not appreciate the importance of translating everything that their relative says and may summarise the information instead. A family interpreter may also impose their own views onto the relative’s response or add a “gloss” to what is being said.

242. Professional interpreters have had their language proficiency validated and are trained to be independent and neutral. On the other hand, family members may have difficulty remaining objective, especially in stressful situations like the one Ms Tong found herself in.

³³⁸ ts 21.09.21 (Briggs), p26; ts 21.09.21 (Benington), p51; and ts 21.09.21 (Maher), pp63-64

³³⁹ ts 22.09.21 (Moore), pp190-191

243. Guidelines supporting the Government’s *Language Services Policy 2020*³⁴⁰ state:

It is not recommended to ask family or friends to act as interpreters as they may be emotionally involved and lack the necessary skills. The professional standards of ethics and conduct do not apply to non-professionals.³⁴¹

244. A similar warning can be found in the Commonwealth Ombudsman’s best practice guide relating to the use of interpreters, which also recommends that all federal agencies have a clear, comprehensive and overarching policy on the use of interpreters.³⁴²

245. Relevantly, the Police Manual provides policy guidance on the use of interpreters (the Policy). Inspector Hill (Officer Hill) provided a statement to the Court, attached to which were most recent version of the Policy as well as the version in place at the time the Tongs attended the Station.^{343,344} Officer Hill confirmed that recent changes to the Policy have focussed on modernising the wording and that both versions are substantively the same.

246. The Policy outlines the options available to police for obtaining an interpreter and Officer Hill confirmed that police will consider using a professional interpreter “*on all occasions when interviewing witnesses who do not sufficiently understand English*”. The Policy relevantly states:

If police seek to obtain witness statements, confessional evidence or critical information in relation to an incident, and there is doubt over the individual’s ability to communicate in English, police must provide a professional interpreter or translator...The use of professional independent interpreters and translators is important to: ensure the factual correctness of the information; negate adverse legal challenges in a Court of Law; and ensure fairness to the interviewee.^{345,346}

³⁴⁰ The policy aims to ensure equitable access to public sector agencies through the provision of language services.

³⁴¹ WA Language Services Policy 2020: Policy statement and guidelines, p6

³⁴² Commonwealth Ombudsman Fact Sheet - Use of Interpreters

³⁴³ Exhibit 1, Vol. 2, Tab 51, Att. A, Interpreters and Translators - Use of (Professionals) (19.07.21)

³⁴⁴ Exhibit 1, Vol. 2, Tab 51, Att. B, Interpreters and Translators - Use of (Professionals) (15.09.21)

³⁴⁵ Exhibit 1, Vol. 2, Tab 51, Statement - Insp. B Hill, para 9

³⁴⁶ Exhibit 1, Vol. 2, Tab 51, Att. A, Interpreters and Translators - Use of (Professionals) (19.07.21), pp1-2

- 247.** Notwithstanding the reference to obtaining “*critical information*” in relation to an incident, Officer Hill confirmed that the Policy is silent about the use of interpreters in “*urgent situations*” and does not address the use of “*family members or friends as interpreters where questioning is time critical.*”³⁴⁷ In my view, the Policy should be amended to deal with these important issues.
- 248.** I have already touched on the very difficult situation Ms Tong found herself in when she took her father to the Station. Mr P Tong was an elderly gentleman who was clearly distressed about the fact that he had been assaulted by Mr Tong. He was also frightened of Mr Tong and was clearly motivated by a desire to have police intervene and remove Mr Tong from the Tong family home.
- 249.** In this case, Mr P Tong had come to the Station to report alleged criminal offences, namely a breach of the VRO and assaults by Mr Tong against both himself and his wife. Mr P Tong had also reportedly told police about threats Mr Tong had made to kill Ms Nguyen and police if they attended. In those circumstances, it was clearly important for police to “*ensure factual correctness of the information*” they were getting from him.
- 250.** The IAU report observes that because of what Mr P Tong was conveying to police at the Station: “*in accordance with policy it was not practicable to seek an interpreter or translator (in the first instance) given the urgent nature of the reported matter*”. For that reason, the IAU investigators concluded that the actions of Officers Briggs and Maher, in calling for an immediate police response without first seeking the services of an interpreter, “*was not considered a breach of policy*”.³⁴⁸
- 251.** I have some difficulty understanding how the IAU investigators were able to reach this conclusion, given that the Policy does not deal with the use of family members as interpreters or the use of interpreters in urgent situations. In my view it would have been better to conclude that in view of the circumstances, the actions of Officers Briggs and Maher were not unreasonable.

³⁴⁷ Exhibit 1, Vol. 2, Tab 51, Statement - Insp. B Hill, paras 10-12

³⁴⁸ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp137-138

- 252.** At the inquest, Officer Briggs said that the process for obtaining an interpreter can be time-consuming and involved obtaining approval from the State Operations Centre first. He said the last time he had sought an interpreter, it had taken 30 - 40 minutes before one was actually available. On the other hand, Officer Moore said that interpreter services were available to the Police “24/7” and have been around “*a long time*”. Officer Moore said that interpreters can be available very quickly although there can be reasons why “*there can be a delay or lag in*” in obtaining these services.³⁴⁹
- 253.** At the inquest, Officer Briggs said he did not think an interpreter was necessary, whereas Officer Maher said that with the benefit of hindsight, he would have obtained an interpreter when the Tongs arrived at the Station. Officer Maher’s reasoning was that that this would have ensured that there was no misunderstanding between himself and Mr P Tong.³⁵⁰
- 254.** There is no evidence before me as to the availability of Vietnamese interpreters, but given that Vietnamese is a relatively common language in Perth, I would have expected that it would have been possible to obtain a Vietnamese telephone interpreter relatively quickly when the Tongs first attended the Station.
- 255.** In my view, it would have been appropriate for officers at the Station to have made urgent attempts to obtain the services of a professional Vietnamese telephone interpreter when the Tongs attended the Station. Had it been possible to obtain the services of an appropriate interpreter, the task faced by Officers Briggs and Maher, namely trying to obtain accurate information about exactly what Mr P Tong was saying, would have been simpler.
- 256.** Notwithstanding their earlier conclusion, the IAU investigators determined that the services of a professional interpreter should have been obtained once the Tongs had been escorted to the Station’s interview room.

³⁴⁹ ts 21.09.21 (Briggs), pp28-29 and ts 22.09.21 (Moore), pp187-188

³⁵⁰ ts 21.09.21 (Briggs), p40 and ts 21.09.21 (Maher), pp76-77 & 81-82

257. Officer Benington said that when she had been briefed about the language difficulties being experienced by Officer Maher as he interviewed the Tongs, she considered obtaining an independent interpreter but decided it was impracticable to do so because “*the situation was unfolding and it was important to get as much information as possible and an interpreter would take too long*”.³⁵¹

258. The IAU investigators were of the view that Officer Benington’s assessment was flawed and contrary to the Policy and that notwithstanding the views she expressed at the time:

There was sufficient time to contact a professional interpreter over the phone to assist with an immediate translation and validate information for the ongoing investigation.³⁵²

259. In any event, for the reasons I have outlined, it is my firm view that wherever practicable the Police should avoid using family members or friends as interpreters. Whilst I accept that it may not always be possible to obtain the services of a professional interpreter (such as when police arrived at the Tong family home),³⁵³ every attempt should be made to do so in all but the direst of emergencies.

260. I recommend that the Policy be amended accordingly and I would also suggest that some attempt is made to include guidance when dealing with the use of interpreters in emergency situations.

261. In passing I note that the IAU report also commented on the fact that when the Tongs were taken into the interview room, they were not informed of their rights as persons who were not in lawful custody but were assisting police with an investigation into an offence.³⁵⁴ When interviewed by IAU investigators, both Officer Maher and Officer Briggs stated that their failure to advise the Tongs of these rights was an oversight “*due to the magnitude of the event*”.³⁵⁵

³⁵¹ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p140

³⁵² Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp140-141

³⁵³ Exhibit 1, Vol. 2, Tab 48.3, Statement - Sgt. G Bogunovich (17.09.21), para 54

³⁵⁴ Section 28, *Criminal Investigation Act 2006* (WA)

³⁵⁵ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p139

Issue 2: Notifying the Tongs of Mr Tong's death^{356,357}

- 262.** I have already dealt with the way in which the Tongs were formally notified about Mr Tong's death and made comments about what I consider were the failings of individual officers in that regard. I am also critical of the decision to order Officer Maher to continue to interview the Tongs about the Altercation after it was clear that Mr Tong had been killed.
- 263.** At the time, Officer Maher was a probationary constable. Officer Briggs should not have ordered him to speak with the Tongs and should have undertaken this task himself or have found another experienced officer to do so. Further, having allocated this onerous task to Officer Maher, Officer Briggs checked on him only once during the following 90-minutes and thus failed to provide anything close to an appropriate level of supervision.
- 264.** To his credit, during his IAU interview, Officer Briggs accepted that Officer Maher was not suitably qualified to have been tasked with interviewing the Tongs and that his supervision of Officer Maher had been unacceptable.
- 265.** As noted, after Officer Benington was briefed about the situation, she erred by ordering Officer Maher to continue interviewing the Tongs. However, as Officer Benington acknowledged in her IAU interview, she should have appreciated that Officer Maher was too junior to have been given this task in the first place and should have arranged for Officer Briggs, or another experienced officer to take over.
- 266.** For the reasons I have outlined, I consider that the IAU report's criticism of Officer Briggs and Officer Benington for their respective failures to notify the Tongs at the first available opportunity after that Mr Tong had been shot, to have been entirely justified. In my view however, the IAU's criticism of Officer Maher in this regard is misplaced.

³⁵⁶ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p141

³⁵⁷ See also: ts 21.09.21 (Briggs), pp39-41 and ts 21.09.21 (Benington), pp48, 50 & 55-56

- 267.** At the relevant time, Officers Benington and Briggs were relatively senior officers with many years of service. As experienced police officers, there was an expectation that they would both demonstrate leadership skills and model appropriate behaviour.
- 268.** Regrettably, neither Officer Benington nor Officer Briggs demonstrated appropriate leadership in the way they handled the notification issue. From my perspective, it is also regrettable that at the inquest, despite being given the opportunity to do so, neither officer was willing to concede, even with the benefit of hindsight, that their conduct in relation to the Tongs had been inappropriate and both Officer Briggs and Officer Benington said they would not do anything differently.³⁵⁸
- 269.** Officer Benington said she accepted the findings of the IAU investigators and had no comment to make. Officer Briggs also said he accepted the findings, but added that he didn't agree with them and felt that the verbal guidance he had received following the IAU investigation had been unnecessary.³⁵⁹
- 270.** On the other hand, Officer Maher (who was a probationary constable at the time) was doing his best to comply with lawful orders from his superiors. Frankly, he had been placed in an impossible situation, first by Officer Briggs and then by Officer Benington and was understandably "*overawed*" by the enormity of the task he was required to undertake. In my view it is quite wrong to attribute to Officer Maher, the same responsibility with respect to notifying the Tongs, that was properly attributed to Officers Benington and Briggs.
- 271.** In my assessment, Officer Maher discharged the onerous responsibility he was given with considerable fortitude and he interviewed the Tongs for 90 minutes whilst his superiors tried to work out what to do. Given his lack of experience and the fact that he had been placed in a situation he should never have been placed in, it is my view that Officer Maher should not have been the subject of criticism by the IAU investigators.

³⁵⁸ ts 21.09.21 (Briggs), p43 & ts 21.09.21 (Benington), p55

³⁵⁹ ts 21.09.21 (Briggs), p44 and ts xx.09.21 (Benington), p55

- 272.** In any event, and in contrast, to his superiors, Officer Maher said that with the benefit of hindsight, he would have acted differently. He said he should have told the Tongs that Mr Tong had been shot as soon as he became aware of that fact. This is commendable precisely because it demonstrates a capacity to learn from past mistakes.³⁶⁰
- 273.** Turning to the endorsement of the Notes, for the reasons I have explained, I am critical of Officer Benington’s actions in following the Tongs into the Station carpark to have the Notes “*endorsed*”. At that time, the Tongs were obviously highly distressed and they were understandably anxious to leave the Station precincts as soon as possible.
- 274.** Asking the Tongs sign the Notes in these circumstances was not only pointless, it was insensitive and inappropriate. Notwithstanding her attempts to justify this conduct during her IAU interview, at the inquest Officer Benington agreed it had been inappropriate to ask the Tongs to sign the Notes and that in similar circumstances she would not act in this way again. This was a welcome concession.

Issues 3-5: Use of Force^{361,362,363}

- 275.** At the relevant time, officers attending the Tong family home believed that Mr Tong was holding his mother hostage at knifepoint and that her life was at grave and imminent risk. That belief was based on apparently credible information extracted by Ms Benjafield, Officer Briggs and Officer Maher from Mr P Tong (via Ms Tong as interpreter).
- 276.** Attending officers had no reason to doubt the veracity of the information they were provided with and there were alerts on the police system relating to Mr Tong’s propensity to violence which were consistent with that information. On the basis of the information the attending officers had, it was lawful for them to arrest Mr Tong.

³⁶⁰ ts 21.09.21 (Maher), pp74-75

³⁶¹ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp115-118

³⁶² Exhibit 1, Vol. 1, Tabs 17.1, 17.2 & 17.3, Reports - Mr C Markham (21.08.19, 21.08.19 & 10.04.20)

³⁶³ ts 22.09.21 (Markham), pp205-209

277. In circumstances where police are authorised to effect an arrest, the *Criminal Code* authorises the use force.³⁶⁴ However, in any case where the use of force by police is lawful, the use of more force than is justified, is unlawful.³⁶⁵ A person’s harmful act, including the killing of another, is lawful if the act is done in self-defence. An act is done in self-defence if:

- (a) the person believes the act is necessary to defend the person or another person from a harmful act, including a harmful act that is not imminent; and
- (b) the person’s harmful act is a reasonable response by the person in the circumstances as the person believes them to be; and
- (c) there are reasonable grounds for those beliefs.³⁶⁶

278. At the inquest, a member of Mr Tong’s family said that the family were struggling to understand how police had concluded the force used by Officer Dellar was “*reasonable*”. Mr Markham’s³⁶⁷ response was:

I believe the officers responded in...the way that they did because they had an honestly held belief that [Mr Tong] was armed with an edge weapon, that he was coming at them. The information that they had had, everything they had up until that point led them to believe that he had a knife. And when he came charging out of the room at them, because of their situation and where they were and what they were trying to do, they had no option but to discharge the firearm in those circumstances. So, I do honestly believe that [Officer] Dellar, who discharged his firearm...had no other option in the circumstances.³⁶⁸

279. The Police Manual deals with the circumstances in which the force options available to general duty officers (i.e.: baton, OC spray,³⁶⁹ Taser and pistol) may be used. At the inquest, policies relating to the use of force (including firearms) were tendered into evidence. I made a non-publication order in relation to those policies and for that reason, I do not intend to detail relevant provisions in this finding.

³⁶⁴ *Criminal Code*, section 231

³⁶⁵ *Criminal Code*, section 260

³⁶⁶ *Criminal Code*, section 248(4)(a)-(c)

³⁶⁷ Mr Markham is the Police subject matter expert on the use of force.

³⁶⁸ ts 22.09.21 (Markham), p214

³⁶⁹ Oleoresin capsicum is the oil derived from the stem of peppers, hence the colloquial term “pepper spray”.

280. However, what I am able to say is that having carefully examined the relevant provisions of the Police Manual, comprehensive reports prepared by Mr Markham,³⁷⁰ and all of the available evidence, I am satisfied that the use of lethal force by Officer Dellar was justified by the circumstances he was faced with and was in accordance with the relevant provisions of the *Criminal Code* and the Police Manual.

281. In this respect, I agree with the conclusions reached in the reports prepared by both the Homicide Squad and the IAU.^{371,372}

Issues 6-7: Manner of entry into the Tong family home

282. After responding to the CAD job and arriving in the vicinity of the Tong family home, Officer Bogunovich's intention had been to hold back and await direction and/or determine whether a negotiator from the Tactical Response Group (TRG) was going to attend to manage the situation. However, the radio broadcast about HK103's arrival on the scene "*mandated an immediate and rapid response and was the catalyst for (Officers) Bogunovich and Dellar to attend the said address and support officers in an unfolding dynamic situation*".³⁷³

283. Both Officer Bogunovich and Officer Dellar agreed that they were caught off-guard when, on arriving at the Tong family home, they realised the radio broadcast about HK103 was false and they were the first police on the scene. Although it would have been possible for them to have returned to the RV point, their decision not to do so was based on their concern that Mr Tong may have seen their vehicle as they had driven past.³⁷⁴

284. In these circumstances, although in retrospect the drive past was unfortunate,³⁷⁵ given that Ms Nguyen's life might have been in grave and imminent danger, their decision not to withdraw to the RV point was, in my view, eminently sensible.³⁷⁶

³⁷⁰ Exhibit 1, Vol. 1, Tabs 17.1, 17.2 & 17.3, Reports - Mr C Markham (21.08.19, 21.08.19 & 10.04.20)

³⁷¹ Exhibit 1, Vol. 1, Tab 10, Homicide Squad Report, p9

³⁷² Exhibit 1, Vol. 2, Tab 48, IAU Report, p167 and see also: ts 22.09.21 (Markham), p212-214

³⁷³ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p161

³⁷⁴ ts 22.09.21 (Bogunovich), pp122-123 and ts 22.09.21 (Dellar), p159-160

³⁷⁵ ts 22.09.21 (Markham), p212

³⁷⁶ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp161-162

- 285.** Both officers showed great courage by entering premises where they believed, on reasonable grounds, that an armed suspect (Mr Tong) was holding his mother at knifepoint. Their desire to respond immediately to what they perceived as an urgent threat to another person's life is commendable. However, whilst understandable, it is unfortunate that there was not even the most basic of communication between them about a plan for entry into the Tong family home.³⁷⁷
- 286.** Officer Dellar acknowledged that he and Officer Bogunovich had not discussed what they would do when they arrived at the Tong family home before doing so, explaining that, as I have earlier: "*I was acting intuitively and swiftly to try and protect the mother from an imminent threat to life, given the suspect's overt threat to her life*". However, as the IAU report observed, although the officers did not communicate with each other as to an action plan, they initiated tactical options in accordance with policy and their training.^{378,379,380}
- 287.** In this case, after trying the handle of AH and NH's bedroom and finding it locked, Officers Dellar and Bogunovich proceeded down the hallway towards what they believed was Mr Tong's bedroom. With the benefit of hindsight, had either officer knocked on AH and NH's bedroom door and identified themselves as police, there is at least a chance that AH or NH might have confirmed that Mr Tong's mother was not being held hostage. Although AH and NH both heard police come into the house, neither said anything because they were too frightened.^{381,382,383,384}
- 288.** Again, with the benefit of hindsight, had attending police been able to confirm that Ms Nguyen was not being held hostage by Mr Tong, they would have had the opportunity to evacuate the Tong family home and create a cordon. This would have allowed the situation to be contained until specialist negotiators had deployed to the premises.

³⁷⁷ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), paras 99-100

³⁷⁸ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), paras 99-100 and ts 22.09.21 (Dellar), p168

³⁷⁹ See also: Exhibit 1, Vol. 2, Tab 48.3, Statement - Sgt. G Bogunovich (17.09.21), paras 30-38

³⁸⁰ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p162

³⁸¹ Exhibit 1, Vol. 2, Tab 9.2, Statement - AH (22.11.18), paras 22-32

³⁸² Exhibit 1, Vol. 2, Tab 4.2, Statement - NH (22.11.18), paras 47-62

³⁸³ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp162-163

³⁸⁴ Exhibit 1, Vol. 1, Tab 17.3, Report - Mr C Markham (10.04.20), paras 382-395

- 289.** As to the manner in which Mr Tong’s bedroom door was opened, Officer Dellar was adamant that he had not “*kicked the door open*”, which in any event is not part of police training. Instead, Officer Dellar says that after pressing down on the handle, he had used only as much force against the door with his left foot as was needed to cause the door to swing open. Officer Dellar says he then stepped backwards towards the bathroom doorway, which was opposite, so as to “*cover*” the bedroom door with his firearm.^{385,386,387,388}
- 290.** Regardless of Officer Dellar’s intentions, it appears that he used more force than he had planned to open the door. I say that because as the door swung open, it struck some furniture and made a loud noise which startled Officer Dellar and considerably escalated tensions. That noise was heard by others at the scene and two witnesses also described Officer Dellar as having kicked open Mr Tong’s bedroom door.^{389,390,391,392,393,394,395}
- 291.** To some extent however, the question of whether or not Officer Dellar kicked open the door to Mr Tong’s bedroom is beside the point. From my perspective, the more important issue is whether Officer Dellar’s actions were safe. The problem is that when he applied force to the door with his left foot, Officer Dellar was standing directly in front of the door within the so-called “*fatal funnel*”.³⁹⁶
- 292.** Officer Dellar had thereby placed himself in the most dangerous possible position and was vulnerable to attack with limited escape options. Had Mr Tong had been armed with a firearm (and discharged it through the closed door), or had a knife and attacked Officer Dellar as the door opened, there is a high likelihood that Officer Dellar could have been seriously injured or killed.^{397,398}

³⁸⁵ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 68

³⁸⁶ Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19), p6

³⁸⁷ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp163-165

³⁸⁸ Exhibit 1, Vol. 1, Tab 17.3, Report - Mr C Markham (10.04.20), paras 429-455

³⁸⁹ Exhibit 1, Vol. 2, Tab 9.2, Statement - AH (22.11.18), paras 52

³⁹⁰ Exhibit 1, Vol. 2, Tab 4.2, Statement - NH (22.11.18), paras 26

³⁹¹ Exhibit 1, Vol. 2, Tab 15, Statement - FC Const. D McArthur (23.11.18), para 59

³⁹² ts 22.09.21 (McArthur), para 101

³⁹³ Exhibit 1, Vol. 2, Tab 14.1, Statement - Sen. Const. D Parker (23.12.18), para 70

³⁹⁴ Exhibit 1, Vol. 2, Tab 48.3, Statement - Sgt. G Bogunovich (17.09.21), para 107

³⁹⁵ ts 22.09.21 (Bogunovich), pp139-141

³⁹⁶ ts 22.09.21 (Bogunovich), p140 and ts 22.09.21 (Dellar), p172

³⁹⁷ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp164-165

³⁹⁸ Exhibit 1, Vol. 1, Tab 17.3, Reports - Mr C Markham (10.04.20), para 434-442

- 293.** What Officer Dellar could have done instead was to have positioned himself on the door handle side of the door with his body “*hugging*” the adjoining wall. This would have enabled him to operate the door handle with “*reduced exposure*” of his profile and thereby have been a much safer option. This was the position Officer Bogunovich adopted at the hinge side of the door and was correct from a tactical point of view.^{399,400}
- 294.** Having made those observations, I accept that the situation faced by Officers Dellar and Bogunovich was extremely serious and that threat levels escalated considerably when officers heard noises suggesting that Mr Tong was possibly assembling a firearm. Further, at all relevant times, the officers reasonably believed that Mr Tong’s mother was at grave and imminent risk of death. In those circumstances, the officers both believed they had to act immediately and urgently to ensure Ms Nguyen’s safety.
- 295.** Officer Dellar said that at the time he shot Mr Tong, he did not recall hearing shots or seeing the muzzle flashes described by others and it was clear to him that he was “*experiencing physio-psychological effects of stress*”, a phenomenon referred to by the Police as the “*body alarm reaction*” (BAR).^{401,402}
- 296.** BAR is a psychological and physiological response to, amongst other things, the threat of an attack from a suspect armed with an edged weapon. BAR can cause symptoms such as tunnel vision, exaggeration of the perceived threat, loss of manual dexterity of the fingers, a reduced capacity for analytical reasoning and decision making, an inability to keep a mental track of the sequence of events and a reversion to trained behaviour.^{403,404}
- 297.** During recruit training, police are exposed to scenarios designed to help them deal with the effects of BAR and officers are required to complete annual critical skills refresher training that includes BAR scenarios.⁴⁰⁵

³⁹⁹ Exhibit 1, Vol. 2, Tab 48.3, Statement - Sgt. G Bogunovich (17.09.21), 105

⁴⁰⁰ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p165

⁴⁰¹ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), para 103 and ts 22.09.21 (Dellar), p175

⁴⁰² ts 22.09.21 (Markham), pp216-217

⁴⁰³ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p165

⁴⁰⁴ Exhibit 1, Vol. 1, Tabs 17.1, Reports - Mr C Markham (21.08.19), paras 99-105

⁴⁰⁵ Exhibit 1, Vol. 1, Tab 17.1, Memo - Mr C Markham to Insp. R Scantlebury (21.08.19), paras 99-105

298. During his recruit training, Officer Dellar says was exposed a self-defence exercise relating to armed offenders. Officer Dellar said that by the time he had processed what was happening and drawn his firearm, he only had time to fire one round before being struck by the inert training knife carried by the suspect. Officer Dellar said that this exercise had demonstrated the “*serious danger*” presented by a suspect with an edged weapon at close quarters.^{406,407,408,409}

299. Officer Dellar completed his mandatory annual critical skills refresher training on 15 November 2018, exactly one week before Mr Tong’s death. One of the scenarios officers were exposed to on that day involved an armed suspect.^{410,411,412}

300. When it was Officer Dellar’s turn to participate in the scenario, the “*pressure of the moment*” caused him to struggle with his holster’s locking system and he was unable to draw his pistol in time. Had the scenario been real, Officer Dellar said he believed he would have been killed. In terms of the effect of this training, he said:

This exercise reinforced to me the limited reaction time available and dangers faced when dealing with an armed suspect in close quarters. These learnings would have been fresh in my mind on 22 November 2018 (the day Mr Tong was shot).⁴¹³

301. Senior Sergeant Kris Giesen (Officer Giesen) is a clinical psychologist employed by the Police as a behavioural analyst. In a memo to Officer Scantlebury, she explained that the flight-fight response is an autonomic nervous system response that is activated at times of perceived danger. She noted that the perceptual and cognitive aspects of the fight-flight response include hypervigilance (where an individual screens their surroundings for danger) and threat bias (where events can be perceived as more harmful than they are).

⁴⁰⁶ Exhibit 1, Vol. 1, Tab 17.1, Memo - Mr C Markham to Insp. R Scantlebury (21.08.19), paras 97-98

⁴⁰⁷ ts 22.09.21 (Markham), pp209-210

⁴⁰⁸ Exhibit 1, Vol. 2, Tab 13.1, Letter - Sgt. T Dellar to Insp. R Scantlebury (29.01.19), pp1-2

⁴⁰⁹ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), paras 83-88

⁴¹⁰ Exhibit 1, Vol. 1, Tab 17.2, Memo - Mr C Markham to Det. Insp. M Ninyett (21.08.19), para183

⁴¹¹ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), paras 89-90

⁴¹² ts 22.09.21 (Dellar), pp176-177

⁴¹³ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), paras 91-92

302. Where the available information is vague or non-specific, there is a tendency for this to be “*(mis)interpreted in a way that accords with the perceived threat*”. Officer Giesen applied these concepts to the present case and expressed the following conclusion:

[U]nlike (Officer Bogunovich), (Officer Dellar) was unable to observe (Mr Tong’s) actions to assess level of risk, and instead needed to rely on (Officer Bogunovich’s) body and verbal responses and facial expressions, as well as (Mr Tong’s) screams and noises from inside the room to make his assessment. This is what I would conceive of as being ‘vague’ information as I described above. When (Officer Bogunovich) yelled out “he’s coming”, my thoughts are that (Officer Dellar) had interpreted and integrated all of this highly threatening information to perceive that (Mr Tong) was the actual threat – not any weapon he might have possessed. Further, in my opinion, (Officer Dellar) responded not as a police officer tasked with responsibility of assessing actual risk and taking proportionate action, but as a human being responding in an instinctive protective manner.⁴¹⁴

303. As to the tactics employed by Officers Dellar and Bogunovich inside the Tong family home, the IAU report expressed the following conclusion (with which I agree):

Some of (Officer) Bogunovich and Officer Dellar’s actions were not textbook, though they were executed within the acceptable boundaries. With consideration of the totality of the matter, panel member officers who reviewed this matter during related Managerial Evidence Assessments Meetings (EAM) submitted that the deviations were acceptable. In considering the rapidly unfolding and dynamic nature of the incident that confronted (the officers), it was the collective view of the EAM panel members that the actions and operational tactics applied did not deviate sufficiently to reach the threshold for a statutory breach or regulation 402(e) of the *Police Force Regulations 1979*.⁴¹⁵

⁴¹⁴ Exhibit 1, Vol. 1, Tab 15, Memo - Sen. Sgt. K Giesen to Det. Insp. R Scantlebury (04.01.19), pp1-2

⁴¹⁵ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p167

Issue 8: Family violence incident report

304. Police policy requires officers attending an incident involving family violence to submit a report at the conclusion of the shift in which the incident occurs. Even though the alleged perpetrator of the family violence (Mr Tong) had died and submitting the report would have been pointless, it was still technically required. In this case, it appears that the failure to submit the report was merely an oversight on the part of relevant officers and was quite understandable.⁴¹⁶

One Force Core

305. One Force Core (One Force) is a mobile phone application which was rolled out on 17 August 2021, to replace TADIS and several other police systems. One Force provides increased search functionality for frontline officers and displays the location of incidents and police vehicles in real-time.⁴¹⁷

306. One Force also provides incident alerts and, where an officer is wearing a smart watch linked to their mobile phone, alerts are displayed on the watch as well. Had One Force been available in this case, officers would have been able to check whether HK103 was in fact at the Tong family home before they left the RV point.⁴¹⁸

⁴¹⁶ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp167-169

⁴¹⁷ Exhibit 1, Vol. 1, Tab 17, Att. 8 - One Force Core information update (20.09.21)

⁴¹⁸ Exhibit 1, Vol. 1, Tab 17, Att. 8 - One Force Core information update (20.09.21)

ISSUES RELATING TO THE TACTICAL RESPONSE GROUP

General

307. The Tactical Response Group (TRG) is a unit of the Police that provides specialist skills and capabilities beyond the scope and expertise of general duty police. Examples of occasions where the TRG may be employed include sieges, hostage situations and cases involving armed offenders.⁴¹⁹

Deployment of the TRG

308. After Officer Briggs had advised the POC about Mr Tong's threats to kill his mother and police, Senior Constable Dawe, who was the Operations Manager at the Station at the time, realised that the CAD job had not been updated to reflect this threat. He considered that it was extremely important for attending officers to be so aware and at 4.28 pm, he made the following CAD entry: "*Given mention that suspect stated if police attended he would kill his mother then approach police, can TRG be advised*".⁴²⁰

309. The fact that the situation at the Tong family home apparently involved a person armed with a knife holding another person hostage meant that it "*met the criteria to request the attendance and assistance of the TRG*",^{421,422} and Officer McArthur said he thought he had heard a reference to the TRG attending the scene.⁴²³

310. In fact, the POC had made a request to the TRG for them to attend at the Tong family home. As the TRG were preparing to leave their base, advice was received that Mr Tong had been killed. In a statement to the Court, Superintendent Hatch (Officer Hatch) advised that if the TRG had deployed, they would have established a cordon around the family home and a trained negotiator may have attempted to engage with Mr Tong.⁴²⁴

⁴¹⁹ Exhibit 1, Vol. 1, Tab 28.1, Statement - Supt. P Hatch (17.9.21) paras 7-8 and ts 22.09.21 (Hatch), pp193-194

⁴²⁰ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp38-39

⁴²¹ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p161

⁴²² Exhibit 1, Vol. 1, Tab 28.1, Statement - Superintendent P Hatch (17.9.21) para 20

⁴²³ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p48

⁴²⁴ Exhibit 1, Vol. 1, Tab 28.1, Statement - Superintendent P Hatch (17.9.21) paras 18-27

311. Officer Dellar agreed that with the benefit of hindsight, the TRG may have been better skilled and equipped to resolve the incident. However, he said that although he was aware of the existence of the TRG at the relevant time, he did not know exactly what the TRG did or the sorts of situations they should be requested to attend. Further, although he had never been to an incident attended by the TRG, he had previously been told it could take some time for the TRG to deploy. In this case, Officer Dellar believed that “*time was of the essence*” because “*there was an imminent threat*” to Ms Nguyen’s life.⁴²⁵

312. In his IAU interview, Officer Dellar said that in a perfect world, the TRG would attend every situation involving an armed offender, and had this been a confirmed hostage situation, he would have expected the TRG to attend. Officer Dellar acknowledged that he did not request TRG attendance, but he pointed out that at the relevant time, he was trying to operate TADIS in a vehicle proceeding under priority conditions.⁴²⁶

The “sliding doors” moment

313. In this case, the opportunity to deploy the TRG evaporated when police at the RV point heard a radio broadcast that HK103 was already at the Tong family home. At that point, on the basis of the information police had been given, attending police believed that Ms Nguyen’s life was at imminent risk and were also concerned about the lack of response from the occupants of HK103.

314. Officer McArthur said that confusion about the police response to the incident had started with the broadcast about HK103’s location and Officer Parker said that but for that broadcast, officers would have remained at the RV point. They would then have come up with a plan which would likely have involved the TRG.^{427,428} With the benefit of hindsight, it is least possible that had police remained at the RV and the had TRG had deployed to the Tong family home, the outcome for Mr Tong may have different.

⁴²⁵ Exhibit 1, Vol. 2, Tab 13.2, Statement - Sgt. T Dellar (29.01.19), p95-98

⁴²⁶ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), p74

⁴²⁷ Exhibit 1, Vol. 2, Tab 49, Report - Internal Affairs Unit (08.02.21), pp45 & p48-49

⁴²⁸ ts 22.09.21 (McArthur), ts 104-105

RECOMMENDATIONS

315. In light of the observations I have made in this finding, I make the following recommendations:

Recommendation No.1

The Western Australian Police Force policy on the Use of Interpreters should be amended to provide that when a person requires the services of an interpreter, wherever possible, family members and/or friends of that person are not used as interpreters.

Recommendation No.2

Where it appears that the death of a person has been caused or contributed to by any action of a member of the Western Australian Police Force (the Police), then in order to ensure that communications between the Police and the deceased's family members are effective and timely, the Police should task a suitably experienced senior police officer to undertake early, regular and ongoing contact with the deceased's family members.

Recommendation No.3

In order to improve operational awareness within the Western Australian Police Force, information about the roles and capabilities of the Tactical Response Group and the Regional Operations Group should be disseminated to all general duties police officers.

Comments relating to recommendations

316. After reviewing the available evidence, I determined it would be appropriate to make three recommendations and they were forwarded in draft forwarded to Ms Eagling (counsel for the Police) by Ms Tyler (counsel assisting), on 14 October 2021.⁴²⁹

⁴²⁹ Email - Ms S Tyler to Ms N Eagling (14.10.21)

317. By email dated 25 October 2021, Ms Eagling forwarded a document entitled “Briefing Note” to Ms Tyler containing comments in relation to each of the draft recommendations.⁴³⁰ It appears that the Police are generally supportive of the recommendations and in summary, the comments in the Briefing Note were as follows:

a. Recommendation 1:

Police are currently reviewing the interpreter policy and guidelines “*in consideration of adopting this draft recommendation*”. It was pointed out that the caveat “*wherever possible*” as important because exceptional circumstances may make it impractical to obtain the services of an accredited interpreter;

b. Recommendation 2:

Police are broadly supportive of this recommendation, although consideration is being given to circumstances where it may be more appropriate to have a staff member other than a commissioned officer act as a family liaison officer; and

c. Recommendation 3:

Police intend introducing an additional awareness presentation to all police recruits dealing with the roles and functions of the POC, the TRG, the State Operations Command Centre and the Regional Operations Group (ROG) as well as specialist resources available to frontline staff. Additionally, the Police are currently considering:

[F]urther appropriate mediums to provide all current frontline staff information/awareness regarding the roles and capabilities of TRG and ROG.⁴³¹

318. After carefully considering the contents of the Briefing Note, I made what I considered to be appropriate amendments to Recommendation 2.

⁴³⁰ Email - Ms N Eagling to Ms S Tyler enclosing Briefing Note (25.10.21)

⁴³¹ Briefing Note (25.10.21), p2

CONCLUSION

- 319.** In this case, a cascade of events led to the death of Mr Tong, a much-loved 38-year old man whose life had been adversely impacted by his habitual use of methylamphetamine. It seems clear that a number of his family were frightened of his propensity for violence when he used illicit drugs.
- 320.** Police attended the Tong family home because of credible information that Mr Tong was armed with a knife and was holding his mother hostage. That information came from Mr Tong's father and sister who had reported an earlier altercation to police. At the relevant time, Mr Tong was intoxicated with methylamphetamine and was probably experiencing a drug-induced psychosis. When officers arrived on the scene and called on Mr Tong to surrender, he rushed at them screaming incoherently. Attending police believed that Mr Tong was about to kill them and he was shot dead by one of those officers.
- 321.** Although the lack of planning by attending officers before they entered the Tong family home is unfortunate, I accept that the primary concern of these officers was their belief that Mr Tong's mother was at imminent risk of being killed by Mr Tong. Having carefully considered all of the available evidence, I have concluded that although Mr Tong's death was caused by a member of the Police, attending officers acted reasonably given the information that was available to them at the time.
- 322.** In my view, it is also clear that Ms Tong believed that she was acting in her father's best interests when, at his request, she took him to the Station and interpreted his answers to questions from police. Ms Tong was doing her best in extraordinarily difficult circumstances, and was not to know how events would unfold.
- 323.** On any reasonable view of the evidence in this case, the suggestion that Ms Tong is in any way responsible for Mr Tong's death is completely without foundation. It would therefore be quite unreasonable for any person to blame Ms Tong for her brother's death. Mr Tong's death was the culmination of a series of interconnected events, almost all of which occurred independently of Ms Tong.

324. I have made three recommendations dealing respectively with: the appropriate use of interpreters; the appointment of an appropriate police liaison officer in the event of a death caused or contributed to by a member of the Police; and further awareness training as to the availability of specialist staff and resources. It is my hope that these recommendations will be implemented.

325. Finally, I wish to again express, on behalf of the Court, my very sincere condolences to Mr Tong's family for their terrible loss. I also wish to record here, what Officer Dellar said at the conclusion of his evidence at the inquest, namely:

If I could briefly address the Tong family. I know there's...nothing I could possibly say that's ever going to take away the pain that you must feel, from the loss that you suffered that day. But I would just like to express how sorry I am for your loss. I really wish things had ended differently that day.⁴³²

MAG Jenkin

Coroner

29 November 2021

⁴³² ts 22.09.21 (Dellar), p179