IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2009 5915

FINDING INTO DEATH WITH INQUEST[1]

Form 37 Rule 60(1)

*Section 67 of the **Coroners Act 2008***

Inquest into the Death of: ODISSEAS VEKIARIS

Hearing Dates:	20 August 2012 – 24 August 2012, 27 August 2012 – 31 August 2012, 3 September 2012, 18 June 2013 and 13 August 2013
Appearances:	Mr Robert O'Neil of Counsel on behalf of the Chief Commissioner of Police (Victorian Government Solicitors Office).
	Mr Ron Gipp of Counsel on behalf of Victoria Police members:
	Leading Senior Constable Ryan Porter, Senior Constable (SC) Brad Mascoll, SC Adam Sutton, SC Peter Van Der Meer, Sergeant Leo Van Tol, Constable Kimberley Alp and Constable Bianca Aitken.
	Mr David Hallowes of Counsel on behalf of Mr Thomas Vekiaris (DCA Lawyers).
	Ms Erin Gardner of Counsel on behalf of Ambulance Victoria (Russell Kennedy Lawyers).
	Mr Sean Cash of Counsel[2] on behalf of Dr Kim Vu.
	Mr John Snowden,[3] Corporate Counsel, Southern Health
Counsel Assisting the Coroner:	Mr Douglas Trapnell SC, Senior Crown Prosecutor (Office of Public Prosecutions), Mr M. Fisher of Counsel[4]
	Ms Sharon Pattison, Instructing Solicitor (Office of Public Prosecutions)
Findings of:	AUDREY JAMIESON, CORONER
Findings Delivered on:	18 December 2015

[1] The Finding does not purport to refer to all aspects of the evidence obtained in the course of the Investigation. The material relied upon included statements and documents tendered in evidence together with the Transcript of proceedings and submissions of legal representatives/Counsel. In writing this Finding, I do not purport to summarise all of the evidence, but refer to it only in such detail as appears warranted by its forensic significance and the interests of narrative clarity. The absence of reference to any particular aspect of the evidence, either obtained through a witness or tendered in evidence does not infer that it has not been considered.

[2] Mr Cash was excused from his ongoing appearance on 20 August 2012.

[3] Mr Snowden was excused from his ongoing appearance on 21 August 2012.

[4] Mr M. Fisher appeared with Mr Trapnell on 27 August 2012 and appeared to assist me in place of Mr Trapnell from 27 August 2012 until I excused him on 29 August 2012.

Delivered At: Coroners Court of Victoria
65 Kavanagh Street
Southbank 3006

I, AUDREY JAMIESON, Coroner having investigated the death of **ODISSEAS VEKIARIS**

AND having held an Inquest in relation to this death on 20 August 2012 – 24 August 2012, 27 August 2012 – 31 August 2012, 3 September 2012, 18 June 2013 and 13 August 2013.

at Melbourne

find that the identity of the deceased was **ODISSEAS VEKIARIS**

born on 26 November 1980

and the death occurred on 21 December 2009

at **Dandenong** Police Station, 50 Langhorne St, Dandenong Victoria 3175
from:

1(a) UNASCERTAINED CAUSES ON A BACKGROUND OF AGITATED DELIRIUM STATE

in the following summary of circumstances:

1. Odisseas Vekiaris died on Monday, 21 December 2009, while being transported in a Police divisional van from Noble Park North to the Dandenong Police Station.

2. Police had been called to attend Odisseas Vekiaris following reports of his unprovoked aggression in a public place. During his arrest he struggled with Police for a prolonged period, was sprayed with oleoresin capsicum foam and spray, and was handcuffed. Ambulance Victoria paramedics attended the scene and cleared Odisseas Vekiaris for transport to the Dandenong Police Station. He was placed in the Police divisional van while still handcuffed. On arrival at the Dandenong Police Station, Odisseas Vekiaris was deceased. Cardio-pulmonary resuscitation attempts were unsuccessful.

3. The death of Odisseas Vekiaris was *reportable*[5] as defined in the *Coroners Act 2008* (the Act) as immediately before his death, Odisseas Vekiaris was a *person placed in custody or care*[6] as defined, and specifically he was in the custody of Police at the time of his death.

BACKGROUND CIRCUMSTANCES

4. Odisseas Vekiaris[7] was 29 years of age at the time of his death. He lived 12 Doonbrae Avenue, Noble Park with his parents Thomas (Tom) and Vicki Vekiaris. Odisseas had a 12 year history of mental ill health. He was 17 years of age when he was first diagnosed with psychotic symptoms related to polysubstance abuse. He was treated by a general medical practitioner with the antipsychotic medication, Olanzapine for six years.

5. In or around September 2006, Odisseas stopped taking his anti psychotic medication. On 10 October 2006, Odisseas was admitted as an involuntary patient to the Banksia ward of Dandenong Hospital for treatment of psychotic symptoms after he assaulted his mother and destroyed religious icons in the family home. At the end of the second week of inpatient care, Odisseas was discharged from involuntary status. On 23 October 2006, Odisseas was discharged from the hospital into the care of a crisis assessment and treatment team (CATT). His medication on discharge was Risperidone 4mgs daily.

6. On 19 October 2009, Odisseas attended on general medical practitioner (GP), Dr Kim Son Vu, at the TLC Medical Clinic and advised Dr Vu that he wanted to ween off his antipsychotic medication. Dr Vu advised him to reduce his medication over a three to four week period, and to return to him prior to stopping completely. Odisseas did not return to the clinic.

SURROUNDING CIRCUMSTANCES

7. On 21 December 2009 at approximately 2.30pm Registered Nurse Katrina Sweeny (RN Sweeny) from the Southern Health Psychiatric Triage Service (SHPTS) received a telephone call from Odisseas' father, Mr Tom Vekiaris (Mr Vekiaris) expressing concern that his son's mental health was deteriorating.[8] According to RN Sweeny, Mr Vekiaris informed her that Odisseas had stopped taking his medication approximately one month earlier after being

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[5] Section 4 *Coroners Act 2008* (Vic).
[6] Section 3(1)(f).
[7] The family of Odisseas Vekiaris requested that he be referred to by his first name "Odisseas" during the course of the Inquest in place of the more formal reference of "Mr Vekiaris". For consistency I have, in most part, avoided formality and also referred to him only as Odisseas throughout the Finding.
[8] Exhibit 3 – Statement of Katrina Sweeny dated 5 March 2010.

advised by his GP to reduce the dosage by half and that Odisseas' sleep pattern had deteriorated, his appetite had reduced and his behaviour was not right.[9] RN Sweeny attempted to contact Odisseas by telephone but was unable to locate him. She called Mr Vekiaris back, but he was at work, and could not speak at length to RN Sweeny. He believed Odisseas was at home and agreed to call the SHPTS when he returned home at 6.00pm. At 6.20pm. Odisseas' sister, Ms Mary Vekiaris, telephoned the SHPTS and spoke to RN Janelle Browning. Ms Vekiaris reported that she was very concerned that her brother was relapsing in his mental illness. She further reported to RN Browning that Odisseas had stopped taking his medication a couple of weeks ago and he was currently drug affected. Ms Vekiaris told RN Browning that it would not be a good time to approach Odisseas and that he would be best approached in the morning when he had no drugs on board. She agreed to contact '000' if Odisseas became verbally or physically abusive.[10]

8. At 8.30pm, Mr Neil McGrath attended at Doonbrae Avenue to visit his father, who resided there. Odisseas approached Mr McGrath and stabbed him in the arm with a black handled knife. Mr McGrath got back into his car, and drove some distance away from Odisseas before telephoning emergency services on "000" at 8.38pm to report the incident. During the course of his call to 000, Odisseas pursued Mr McGrath's car. When Odisseas approached, Mr McGrath drove off for some distance before stopping again but soon noticed that Odisseas was continuing to pursue him.

9. Leading Senior Constable (LSC) Ryan Porter, of the Dog Squad, was dispatched to attend the scene. He arrived at 8.46pm and found Odisseas attacking Mr McGrath's car. LSC Porter armed himself with Oleoresin capsicum foam (OC foam) and alighted from his vehicle. Before LSC Porter had an opportunity to release his Police dog from the rear of his vehicle, Odisseas ran towards him with the knife, yelling. LSC Porter retreated, while yelling a warning to Odisseas. When Odisseas failed to respond to the warning LSC Porter sprayed Odisseas with the OC foam, hitting him in the face and causing him to drop the knife. LSC Porter tackled Odisseas and a struggle ensued, during which Odisseas grabbed hold of LSC Porter's clothing, around the neck area. Both men fell to the ground, with LSC Porter on top. Odisseas, whom LSC Porter described as "very strong and very determined", still had hold of LSC Porter, and was striking him to the left thigh and the hip area. LSC Porter decided to deploy his Oleoresin capsicum spray (OC spray) in an attempt to subdue

[9] *Ibid.*
[10] Exhibit 4 – Triage Assessment Report and Exhibit 5 – Statement of Janelle browning dated 17 March 2010.

Odisseas as he believed he was not gaining control of the situation. The spray however appeared to have no effect. A passer-by assisted LSC Porter with attempting to restrain Odisseas.

10. At 8.52pm, Senior Constables Bradley Mascoll and Adam Sutton from the Dandenong Traffic Management Unit (TMU) arrived at the scene, and assisted in restraining Odisseas, who was still struggling violently. Eventually, Odisseas' arms were handcuffed behind his back, whilst pressure was applied to his shoulders and legs by the other Police officers. At 8.55pm, LSC Porter went to his car to retrieve a bottle of water, which he poured over Odisseas' face to ameliorate the effects of the OC foam and spray. At the same time, Constable Peter Van der Meer and Constable Bianca Aitken arrived in a Police divisional van. Odisseas continued to struggle, and was restrained throughout this period. An ambulance was requested to attend to check Odisseas' condition, following exposure to the OC foam and spray.

11. At 9.11pm, Ambulance Paramedics Ms Shayna Gamble and Mr Ward Sheppard arrived at the scene. Mr Sheppard examined Odisseas and determined that it was safe for him to be transported to the Dandenong Police Station using the Police divisional van, conditional upon him being monitored, and that if there were any further concerns regarding Odisseas' condition, Police were to contact Ambulance Victoria again.

12. For the purposes of transporting Odisseas to the Dandenong Police Station, SCs Mascoll and Sutton carried Odisseas, who was still struggling, to the divisional van. Constable Van Der Meer assisted to get Odisseas into the divisional van where he was placed in a seated position, with his back against the door.

13. At 9.26pm, Constables Van der Meer and Aitken drove Odisseas, in the divisional van, to the Dandenong Police Station. On the way, both officers monitored Odisseas using a closed circuit TV camera, and a light which was fitted in the divisional van. At 9.30pm, Constable Aitken noted that Odisseas appeared to have calmed down, and was no longer kicking and struggling in the divisional van. At this stage, Odisseas had slouched down, and only his legs were visible to the officers on the CCTV monitor. Constable Aitken concluded that Odisseas must have worn himself out.

14. At 9.35pm, the divisional van arrived in the sally port[11] of the Dandenong Police Station. When Constables Van der Meer and Aitken opened the back door of the van, they found that Odisseas was slumped over with his eyes half open, and there was no discernable pulse or respiration. They placed him on the ground and administered cardio-pulmonary resuscitation (CPR). At 9.51pm, Ambulance Paramedics Gamble and Sheppard attended at the Dandenong Police Station, along with another paramedic team, and took over resuscitation attempts. Paramedics continued with CPR for approximately 20 minutes, however they were unable to revive Odisseas and he was declared deceased in the sally port of the Dandenong Police Station.

PRE-INQUEST INVESTIGATIONS

Identity

15. The identity of Odisseas was without dispute and required no additional investigation.

Medical Cause of Death

16. Victorian Institute of Forensic Medicine (VIFM) Senior Forensic Pathologist, Dr Malcolm John Dodd conducted a full autopsy on the body of Odisseas on 22 December 2009 and could not identify any disease or other physical pathology that was relevant to the cause of death. Toxicological analysis[12] of body fluids did not detect Odisseas' antipsychotic medication, Risperidone but did detect its metabolite, Hydroxyrisperidone in blood at a level of approximately 12 ng/mL. Methamphetamine and Amphetamine[13] were noted in blood at levels of 0.6 and 0.2 mg/L respectively and the psychoactive component of cannabis, Δ9-tetrahydrocannabinol was also detected at a level of 46 ng/mL.

17. In his autopsy report dated 1 April 2010,[14] Dr Dodd ascribed the cause of death to: "1(a) Excited Delirium (death in custody)". He provided the following explanation for this cause of death:

> *The cause of death has been assigned as Excited Delirium.*
>
> *Excited Delirium (ED) is a well documented entity which appears to be responsible for sudden and unexpected death, predominantly in males, usually in a context of arrest and Police custody.*

[11] The function of the sally port is for the secure transfer of prisoners to and from vehicles and the cells.
[12] Exhibit 68 – Toxicological report of Dr Katherine Wong dated 15 August 2010.
[13] Amphetamines is a collective word to describe central nervous system (CNS) stimulants structurally related to dexamphetamine. One of these, methamphetamine, is often known as "speed" (Exhibit 68).
[14] Exhibit 74 – Autopsy Report of Dr Malcolm John Dodd dated 1 April 2010.

Frequently, these people have well documented psychiatric illness and may or may not be on medication for their condition.

ED is valid at the exclusion of significant physical trauma and positional asphyxia.

Many papers exist outlining this condition. Many of the papers indicate a scenario which matches this case almost exactly.

The victims are usually male and of young age and have been arrested, frequently in an agitated or hyperexcitable state. The use of capsicum spray is often documented.

The post mortem examination usually demonstrates no significant naturally occurring disease.

Significantly however the toxicological analysis often discloses the presence of illicit drugs such as Amphetamine and Cannabis in tandem with psychoactive medication as used in the treatment of schizophrenia and psychosis (as is seen in this case).[15]

Coroners Investigation

18. Detective Sergeant Gerard Clanchy was assigned as my Coroners Investigator and prepared the Inquest brief on my behalf.

Coroners Prevention Unit[16]

19. The Coroners Prevention Unit (CPU) was requested to provide me with a background and discussion paper on Excited Delirium with the aim of informing my investigation and assisting me in addressing and making findings pursuant to section 67(1)(b) *Coroners Act* 2008 regarding the cause of Odisseas' death. The CPU Report dated 4 July 2011[17] provided me with relevant information from the point of view of those who believe that Excited Delirium exists and is a valid medical cause of death however, the report equally highlighted that some experts do not recognise Excited Delirium as a medical condition, nor is it recognised by most professional medical associations (such as the American Medical

[15] *Ibid.*

[16] The Coroners Prevention Unit (CPU) was established in 2008 to strengthen the prevention role of the coroner. The unit assists the coroner with research in matters related to public health and safety and in relation to the formulation of prevention recommendations, as well as assisting in monitoring and evaluating the effectiveness of the recommendations.

[17] Contained within Exhibit 79 and entitled "Excited Delirium as a medical cause of death".

Association, Australian Medical Association, American Psychiatric Association and the World Health Organisation).

20. The CPU Report comprehensively addressed the issues surrounding Excited Delirium as well as drawing my attention to commissions of inquiry and organisations with special interests in the promotion of the condition as a cause of death. Excited Delirium was a major issue addressed by the Braidwood Commission, because the Royal Canadian Mounted Police claimed that Mr Dziekanski died as a result of Excited Delirium rather than Taser shock when Royal Canadian Mounted Police shocked him several times with a Taser conducted energy weapon at the Vancouver International Airport in October 2007. Retired Justice Thomas Braidwood concluded from his enquiries that while Police undoubtedly deal with a number of emotionally disturbed, violent people who may be exhibiting behaviours and symptoms such as imperviousness to pain, hyperthermia, sweating and perceptual disturbances, these people are not suffering from 'Excited Delirium'. Rather, they are probably suffering a variety of different conditions with different aetiologies related to delirium.[18]

21. In relation to organisations with special interest, the CPU drew my attention to the copious published material on Taser International, its activities to promote Excited Delirium as a cause of death, and the financial relationships between Taser International and the major proponents of Excited Delirium. I note the pervading suspicion in this material that Taser International might be making a concerted effort to have Excited Delirium recognised as a cause of death so that any death occurring proximal to a Taser deployment are attributed to the deceased's underlying medical condition rather than the electric shock delivered by the Taser device. I also note the concern being expressed around Taser International's activities to promote Excited Delirium, which include strategies such as bringing legal proceedings against medical examiners in North America who associate Taser shocks with deaths, and funding witnesses to testify that Excited Delirium was the cause of death in fatal incidents where Tasers were deployed.[19]

22. The CPU Report concluded by informing me that there appears to be some controversy over nominating Excited Delirium as a cause of death.

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[18] Thomas R. Braidwood, Restoring Public Confidence: Restricting the Use of Conducted Energy Weapons in British Columbia, Braidwood Commission on Conducted Energy Weapon Use, 18 June 2009, pp.262-263.

[19] Contained within Exhibit 79 and entitled "Excited Delirium as a medical cause of death".

23. I subsequently sought the opinion of a second Forensic Pathologist on issues related to the determination and characterisation of Odisseas' medical cause of death. Deputy Director of the Victorian Institute of Forensic Medicine, Dr David Ranson[20] provided an expert opinion dated 20 March 2012.[21] The questions that Dr Ranson had specifically been asked to address were:

a. what is Excited Delirium? Is it a cause of death, a mechanism of death, syndrome and/or something else?

b. what features would need to be present for a forensic pathologist to consider Excited Delirium for as the cause of a death?

c. is Excited Delirium a reasonable conclusion to reach on the available evidence in the death of Odisseas Vekiaris?; and

d. is there a more suitable formulation for Odisseas Vekiaris' cause of death?[22]

24. In response to (a) Dr Ranson stated:

> *I believe that Excited Delirium can best be categorised as a syndrome and, moreover a syndrome that might prove fatal. It is important to recognise however that the syndrome does not necessarily specify a mechanism of death and particularly does not specify whether the mechanism of death is wholly endogenous, partly endogenous, partly exogenous or wholly exogenous. I do not believe it would be unreasonable for a pathologist to nominate this syndrome as being a cause of death in certain circumstances.*[23]

25. In response to the questions posed in c. and d. Dr Ranson opined that it was open to Dr Dodd from many of his findings and deductions drawn in his autopsy report to come to the conclusion that Excited Delirium could be given as a cause of death and that the use of that term as a cause of death formulation would appear to be reasonable.[24]

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[20] In addition to his position as Deputy Director of VIFM, Dr Ranson is also an Adjunct Clinical Associate Professor in the Department of Forensic Medicine at Monash University. For ease of reference in this Finding I have referred to him as "Doctor Ranson".
[21] Exhibit 79.
[22] T @ p 1125.
[23] Exhibit 79 @ paragraph 42, T @ p 1137.
[24] Exhibit 79 @ paragraphs 43 & 44, T @ p 1138.

JURISDICTION

26. The Coroners Court of Victoria is an inquisitorial jurisdiction.[25] The purpose of a coronial investigation is to independently investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.[26] The cause of death refers to the medical cause of death, incorporating where possible the mode or mechanism of death. For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances, but is confined to those circumstances sufficiently proximate and causally relevant to the death and not merely all circumstances which might form part of a narrative culminating in death.[27]

27. The broader purpose of coronial investigations is to contribute to the reduction of the number of preventable deaths through the findings of the investigation and the making of recommendations by Coroners, generally referred to as the 'prevention' role.[28] Coroners are also empowered to report to the Attorney-General on a death; to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.[29] These are effectively the vehicles by which the prevention role may be advanced.[30]

28. It is not the Coroner's role to determine criminal or civil liability arising from the death under investigation. Nor is it the Coroner's role to determine disciplinary matters.

29. Section 52(2) of the Act provides that it is mandatory for a Coroner to hold an Inquest into a death if the death or cause of death occurred in Victoria and a Coroner suspects the death was as a result of homicide, or the deceased was, immediately before death, a person placed in custody or care, or the identity of the deceased is unknown.

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[25] Section 89(4) *Coroners Act 2008*.
[26] Section 67(1) of the *Coroners Act 2008*.
[27] See for example *Harmsworth v The State Coroner* [1989] VR 989; *Clancy v West* (Unreported 17/08/1994, Supreme Court of Victoria, Harper J).
[28] The "prevention" role is explicitly articulated in the Preamble and Purposes of the Act.
[29] See sections 72(1), 67(3) and 72(2) of the Act regarding reports, comments and recommendations respectively.
[30] See also sections 73(1) and 72(5) of the Act which requires publication of coronial findings, comments and recommendations and responses respectively; section 72(3) and (4) which oblige the recipient of a coronial recommendation to respond within three months, specifying a statement of action which has or will be taken in relation to the recommendation.

STANDARD OF PROOF

30. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining whether a matter is proven to that standard, I should give effect to the principles enunciated in *Briginshaw v Briginshaw*.[31] These principles state that in deciding whether a matter is proven on the balance of probabilities, in considering the weight of the evidence, I should bear in mind:

    a. the nature and consequence of the facts to be proved;

    b. the seriousness of any allegations made;

    c. the inherent unlikelihood of the occurrence alleged;

    d. the gravity of the consequences flowing from an adverse finding; and

    e. if the allegation involves conduct of a criminal nature, weight must be given to the presumption of innocence, and the court should not be satisfied by inexact proofs, indefinite testimony or indirect inferences.

31. The effect of the authorities is that Coroners should not make adverse findings against or comments about individuals, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.

INQUEST

A mandatory Inquest in accordance with section 52(2)(b) was held.

32. Prior to the commencement of the Inquest, Directions Hearings were held on 23 September 2011 and 20 December 2011. A Directions Hearing was also held on 21 December 2012.

33. The Inquest was held between 20 August 2012 to 24 August 2012, 27 August 2012 to 31 August 2012, 3 September 2012 and 18 June 2013. At the conclusion of the evidence, I received written outlines of submissions from Counsel Assisting and all interested parties. On 13 August 2013, Counsel Assisting and the interested parties, through their legal representatives, made oral submissions in accordance with their respective outlines.

Issues investigated at the Inquest

34. A number of issues were examined in the course of the Inquest including but not limited to:

[31] (1938) 60 CLR 336.

a. the appropriateness or otherwise of the deployment of OC foam and OC spray, and the significance of this in relation to Odisseas' death;

b. the extent and type of physical restraint applied to Odisseas by Police prior to his being placed in the divisional van and the significance of this restraint in relation to the cause of Odisseas' death;

c. Police training and procedures for identifying persons suffering from or likely to be suffering from Excited Delirium Syndrome in a particular situation and what their response to that situation ought to be;

d. the appropriateness of the examination and assessment of Odisseas by Ambulance Victoria members, and Ambulance Victoria's protocols for identifying and dealing with patients who may be exhibiting the signs of Excited Delirium Syndrome.

e. the appropriateness of placing Odisseas in the divisional van for transportation to the Dandenong Police Station;

f. the effectiveness of the equipment and the adequacy of the actual physical monitoring of Odisseas within the pod of that van;

g. the appropriateness of the Police response once Odisseas was no longer being properly monitored within the pod of the van;

h. the appropriateness of steps taken in the sally port of the Dandenong Police Station once Odisseas' condition was discovered, including the availability and use of resuscitation equipment by Police and any barriers to effective communication within the Police station;

i. the relevance of Odisseas' mental illness and particularly his having reduced and then stopped taking his antipsychotic medication;

j. the role played by Odisseas' ingestion of methylamphetamine and/or cannabis to his death; and

k. the appropriateness or otherwise of Excited Delirium as Dr Malcolm Dodd describes it, or Excited Delirium Syndrome as Dr Ranson describes it, as a cause of death in general and in the particular circumstances of this case.

***Viva voce* Evidence at the Inquest**

35. *Viva voce* evidence was obtained from the following witnesses:

a. Dr Kim Son Vu;[32]

b. Katrina Sweeny, Registered Nurse, Southern Health Psychiatric Triage Service;

c. Janelle Browning, Registered Nurse, Southern Health Psychiatric Triage Service;

d. Dr Ilina Tzolova-Iontchev, Consultant Psychiatrist, Southern Adult Mental Health Service;

e. Mr Neil Ashley McGrath;[33]

f. Mr Lee Zarifopoulos;

g. Mr Shane Gerard McDonald;

h. Mr Giuseppe Iorlano;

i. Mr Jim Fournarakis;

j. Leading Senior Constable Ryan Porter;

k. Mr Dale Allen Dove;[34]

l. Senior Constable Adam Sutton;

m. Senior Constable Bradley Mascoll;

n. Detective Sergeant Trevor Smith;

o. Constable Peter Van der Meer;

p. Constable Bianca Aitken;

q. Ward Sheppard, Ambulance Paramedic;

r. Shayna Gamble, Ambulance Paramedic;

s. Sergeant Leonardus van Tol;

t. Constable Carol Williams;

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[32] A successful application was made pursuant to section 57 of the *Coroners Act 2008* for Dr Kim Son Vu to be granted a certificate pursuant to section 57(1)(b) of the Act. The certificate enables the witness to give evidence at the Inquest without that evidence being used in any proceeding against him.

[33] A successful application was made pursuant to section 57 of the *Coroners Act 2008* for Neil Ashley McGrath to be granted a certificate pursuant to section 57(1)(b) of the Act. The certificate enables the witness to give evidence at the Inquest without that evidence being used in any proceeding against him.

[34] A successful application was made pursuant to section 57 of the *Coroners Act 2008* for Dale Allen Dove to be granted a certificate pursuant to section 57(1)(b) of the Act. The certificate enables the witness to give evidence at the Inquest without that evidence being used in any proceeding against him.

u. Constable Kimberly Alp;

v. Detective Senior Constable Adam McFarlane;

w. Gregory Nicholls, Mobile Intensive Care Ambulance Paramedic;

x. Mr Guy Hungerford, Victoria Police Transport Branch;

y. Acting Senior Sergeant Ian Pregnell;

z. Senior Sergeant Andrew Miles;

aa. Dr Dimitri Gerostamoulos, Chief Toxicologist and Manager, Toxicology, VIFM;

bb. Dr Malcolm Dodd, Forensic Pathologist, VIFM;

cc. Dr David Ranson, Forensic Pathologist and Deputy Director of the VIFM;

dd. Acting Sergeant Marie Kranidis;

ee. Detective Sergeant Michael Silva;

ff. Detective Sergeant Gerard Clanchy, Coroner's Investigator; and

gg. Professor Anthony Brown – Expert Opinion.

Odisseas' mental state

36. Odisseas had seen GP Dr Kim Son Vu at the TLC Medical Clinic (the medical clinic) in Noble Park approximately ten times between 23 November 2006 and 19 October 2009.[35] On this last appointment, Odisseas consulted with Dr Vu about weaning off the medication Risperidol[36] which was prescribed to him at a dosage of 4mg daily. Odisseas had complained that he was suffering from side effects of the drug and as his condition had been stable for a number of years and Dr Vu accordingly considered this a reasonable thing to do.[37] Dr Vu advised Odisseas to wean down his medication over a period of three to four weeks and then to return to see him before stopping the medication.[38] Dr Vu stated that he had told Odisseas to wean the Risperidol down to halve the current dosage and return for reassessment. Dr Vu stated that he never told Odisseas to stop the medication altogether.[39] Odisseas did not return to see Dr Vu and there was no follow up undertaken by Dr Vu or the medical clinic.

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[35] Transcript (T) @ page (p) 26.
[36] Risperidol is an antipsychotic medication used mainly in the treatment of schizophrenia.
[37] T @ p 36.
[38] Exhibit 1 – Statement of Dr Kim Son Vu dated 1 February 2010.
[39] T @ p 29.

37. Dr Vu conceded that it would have been better medical practice to have followed Odisseas up for his review appointment. He said that at the time, the medical clinic did not have an adequate system in place for following up patients who were to return for review.[40] Dr Vu did not however know that Odisseas had a history of illicit drug use or that there was a relationship between his illicit drug use and his mental ill health. Dr Vu agreed with Counsel assisting that had he known about Odisseas' illicit drug use, he would have sought the assistance of or advice from a psychiatrist and monitored Odisseas more closely during the period he was reducing the dosage of his anti psychotic medication.[41]

38. On 21 December 2009, the SHPTS were notified in two separate telephone calls that Odisseas' family were concerned about his deteriorating mental state. RN Sweeny attempted to speak to Odisseas by telephoning him and was expecting Mr Vekiaris to ring the service back once he returned home from work that evening. RN Browning provided advice to Mary Vekiaris and understood that she would call the service back in the morning or call '000' if Odisseas became verbally or physically aggressive. The CATT had not been requested to attend Doonbrae Avenue because in the absence of speaking directly to Odisseas an assessment of his mental state had not been made[42] and there was nothing in the content of either of the calls to the service that indicated that Odisseas was a risk to self or others in which case, according to RN Browning, the family would have been advised to ring the Police.[43]

Circumstances leading up to the involvement of Police

39. Police were requested to attend Noble Park North in the vicinity of Doonbrae Avenue and its surrounds by Mr Neil McGrath. He reported having been confronted by Odisseas for no apparent reason and stabbed in the arm before managing to get back into his car and drive away. Mr Shane McDonald corroborated Mr McGrath's evidence to the extent that he witnessed an altercation between the two men outside the house on the corner of Doonbrae Avenue and Garland Court from his place of residence at the boarding house in Doonbrae Avenue. Mr McDonald was not too concerned about the exchange between the two men as he guessed it was *just a couple of junkies arguing over money.*[44] Mr McDonald also saw

[40] T @ p 32.
[41] T @ pp 38 – 39.
[42] T @ p 61.
[43] T @ p 61.
[44] T @ p 141.

Odisseas lunge at Mr McGrath[45] but it was not until Odisseas lunged for a second time that he saw that Odisseas was holding a knife.[46] Mr McDonald stated that Odisseas was yelling and raving but he could not understand what he was saying. Mr McDonald also witnessed Mr McGrath driving off in his Magna up to the intersection and turning left with Odisseas following the car on foot.[47]

40. Mr Dale Dove also witnessed Odisseas and Mr McGrath arguing outside of the house on the corner of Garland Court and Doonbrae Avenue as he rode his bicycle past them on his return to his place of residence at the boarding house in Doonbrae Avenue. He saw that Odisseas was armed with a knife and was making "pick like stabbing actions" towards Mr McGrath.[48] Mr Dove continued to watch the altercation from the vantage point of the boarding house front porch. He could hear Odisseas was yelling but could not make out what he was saying and he observed Odisseas swing the knife at Mr McGrath "at least ten times" and that "one of them contacted with the left shoulder area" of Mr McGrath.[49] Mr Dove saw Mr McGrath get into his Magna motor vehicle and drive out of Doonbrae Avenue with Odisseas in pursuit on foot. He said that the Magna and Odisseas passed Doonbrae Avenue a short time later and that Odisseas returned to the Avenue and hid in the garden opposite the house where the two had been arguing. When the Magna again passed by Doonbrae Avenue, Odisseas took after it once more on foot.

41. Mr Dove walked down to the corner of Doonbrae Avenue and Garland Court to take a closer look and when he noticed a Police car go past,[50] he decided to follow it. When he arrived near the intersection of Heyington Crescent he saw a Police officer wrestling[51] with Odisseas on the nature strip[52] and about 10 people standing around watching.[53] Mr Dove offered to assist the Police officer.

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[45] Exhibit 12 – Statement of Shane McDonald dated 23 December 2009, T @ p 138.
[46] Exhibit 12 – Statement of Shane McDonald dated 23 December 2009.
[47] *Ibid.*
[48] Exhibit 19 - Statement of Dale Allen Dove dated 23 December 2009.
[49] Exhibit 19 - Statement of Dale Allen Dove dated 23 December 2009.
[50] T @ p 268.
[51] Exhibit 19 - Statement of Dale Allen Dove dated 23 December 2009, T @ p 266.
[52] T @ p 269.
[53] Exhibit 19 - Statement of Dale Allen Dove dated 23 December 2009.

Police Response

42. LSC Ryan Porter of the Dog Squad[54] commenced duties at 7.00pm. The first hour of his shift was spent at home with preparation of the dog and other fatigues.[55] At 8.00pm he commenced mobile duties with his dog and was driving a white Holden utility fully marked Police vehicle with lights and sirens. At 8.43pm, while *en route* to Springvale Police Station where the Dog Squad for Region 5 is based, LSC Porter overhead the job allocation to the Dandenong 251[56] in relation to a report of a stabbing in Doonbrae Avenue, Noble Park. The 251 was working alone and there were no other units available to assist. After pulling over and checking his satellite navigation device, LSC Porter ascertained that he was approximately three minutes from the incident address. LSC Porter proceeded to Doonbrae Avenue and whilst *en route* sought information as to how far off the Dandenong 251 was from the scene. He also heard over the radio that the offender was still chasing and assaulting the victim and was described as wearing a blue top with white strips and black or dark coloured track suit pants.[57]

43. At 8.26pm, LSC Porter turned right into Doonbrae Avenue from Oakwood Avenue but was unable to identify anything out of the ordinary. At the intersection of Doonbrae Avenue and Mollison Street he informed Police radio communications of his location and requested any updates. He was informed that the offender was still in pursuit of the victim somewhere in Mollison Street. LSC Porter turned left into Mollison Street and when approximately 20 metres from the intersection of Heyington Crescent he saw a vehicle on the left hand side of the road, in front of him[58] that had stopped or was moving slowly with a male, who fitted the description previously provided.[59] He was standing next to the driver's side window and appeared "pretty worked up" and was banging on the window with his hands.[60] LSC alighted from his Police vehicle with a canister of OC Foam and intended to retrieve his dog from the rear of the vehicle[61] before approaching Odisseas however, after closing the driver's side door of his Police vehicle, LSC Porter looked back up the street to the location of Mr McGrath's vehicle only to see Odisseas running towards him with a knife in his

[54] Call sign for LSC Porter was K9506.
[55] Exhibit 18 – Statement of LSC Ryan Porter dated 22 December 2009.
[56] The "251" is the call sign for the on-duty Sergeant in charge of the Region.
[57] Exhibit 18 – Statement of LSC Ryan Porter dated 22 December 2009.
[58] T @ p 217.
[59] T @ p 272.
[60] Exhibit 18 – Statement of LSC Ryan Porter dated 22 December 2009.
[61] T @ p 314.

hand.[62] He was yelling and looked menacing to LSC Porter.[63] LSC Porter yelled the command "Police, Stop, Get Down on the ground"[64] repeatedly but with no effect. Odisseas continued to advance on LSC Porter. When Odisseas was approximately four metres[65] from LSC Porter and still on the nature strip,[66] LSC Porter decided to discharge the OC Foam with effect. Odisseas dropped the knife whereupon LSC Porter attempted to tackle Odisseas to the ground to restrain him before Odisseas could recover enough to reclaim his knife.

44. A struggle between the two men ensued. Odisseas did not heed the commands of LSC Porter to stop struggling and to release hold of LSC Porter's clothing which was having the effect of tightening around LSC Porter's throat. LSC Porter retrieved his OC spray from his equipment belt and deployed it into Odisseas' face but with little effect. Odisseas continued to fight against LSC Porter's attempts to restrain him. With the assistance of Mr Dove, holding onto Odisseas' legs,[67] LSC Porter was able to retrieve his handcuffs from their pouch on his equipment belt and put one onto Odisseas' wrists however he was still unable to complete the restraint as Odisseas continued to struggle against him. LSC Porter opted to keep Odisseas pinned to the ground, face down[68] and used his radio transmitter on his lapel[69] to contact Police radio communications seeking urgent assistance.

45. Dandenong TMU members[70] SCs Bradley Mascoll and Adam Sutton arrived shortly thereafter at 8.52pm. SC Mascoll took over from Mr Dove and knelt on Odisseas' legs "just below his knees to pin them down"[71] while SC Sutton knelt on Odisseas' shoulder area. With this assistance, LSC Porter was able to complete the handcuffing of Odisseas however, he continue to "struggle, mumble and moan and resist for about two minutes" [72] during which time SC Sutton maintained his weight on Odisseas' shoulders. When Odisseas struggled less, SC Sutton took his weight off his shoulders, replacing them again when Odisseas' struggling increased. SC Mascoll's response to whenever Odisseas "squirmed" or

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[62] T @ p 272.
[63] T 2 p 274.
[64] LSC Porter conceded in his *viva voce* evidence that he may have also yelled words to the effect of "drop your weapon" - T @ pp 227-228.
[65] T @ p 217.
[66] T @ p 228.
[67] Mr Dove stated that he believed that Odisseas was "laying on his back" while he was assisting LSC Porter by holding Odisseas' legs – T @ pp 266-267, 269, 270 and 271.
[68] T @ pp 228-229.
[69] The radio is situated on the officer's equipment belt and the transmitter/transceiver on his lapel – T @ p 230.
[70] Call sign Dandenong 620.
[71] Exhibit 26 – Statement of Bradley Scott Mascoll dated 22 December 2012, T @ p 394.
[72] Exhibit 23 – Statement of Adam Christopher Sutton dated 22 December 2012.

"started resisting" was to use his "right hand knuckles to put pressure on his leg muscle to stop him resisting."[73]

46. The *viva voce* evidence of SC Mascoll regarding the position of Odisseas at any one time *prime facie* appeared inconsistent with the evidence of those that had come before him. SC Mascoll maintained that Odisseas was on his back with his legs facing upwards when he took over from Mr Dove. Odisseas' upper body was twisted to the side while the attempt was being made to handcuff him. SC Mascoll took up the position from Mr Dove on Odisseas' legs while he himself was facing towards Odisseas' feet which necessitating him to twist and look back over his shoulder to ascertain the actions of his colleagues, LSC Porter and SC Sutton. He stated that he did not see SC Sutton with his knee on Odisseas' shoulder area.[74] SC Mascoll went onto explain that once Odisseas was handcuffed "he was pulled back over onto his back and that is when he was placed up onto his left-hand side; he was under control."[75]

47. After Odisseas was handcuffed, LSC Porter went to his vehicle to retrieve a two litre bottle of water to treat Odisseas and himself for the effects of the OC foam/spray. After treating himself for his exposure to a "secondary dose" of the OC spray, LSC Porter provided "after care"[76] to Odisseas with water to flush his face[77] with the initial focus being on the eyes.[78] LSC Porter also refilled the bottle from a nearby tap to enable him to continue with the after care whilst the TMU members were restraining Odisseas in the left lateral coma or recovery position with his face down towards the ground.[79] SC Sutton described his involvement:

> *I was kneeling behind him and his weight was on his left side and I was holding his right shoulder up so that his body weight wouldn't be on his chest.*[80]

48. Odisseas was maintained in this position when he was not struggling and prevented from rolling onto his back by SC Sutton placing his knee on Odisseas' back.[81] In his statement,

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[73] Exhibit 26 – Statement of Bradley Scott Mascoll dated 22 December 2012, T @ p 394.
[74] T @ pp 411 – 412.
[75] T @ p 412.
[76] Exhibit 18 - Statement of LSC Ryan Porter dated 22 December 2009.
[77] T @ p 238.
[78] T @ p 320.
[79] T @ P 231.
[80] T @ p 380.
[81] T @ p 339 (referring to SC Sutton's handwritten notes at p 473 Inquest Brief).

SC Sutton described Odisseas as "going in and out of consciousness"[82] however, in his *viva voce* evidence he said that "may have been a poor choice of word."[83] He explained:

> *It's a word that I used at the time to describe him going through periods of where he would mumble and talk and then towards when the ambulance arrived he went – he was in periods where he wasn't talking, wasn't mumbling and he was just lying there on his side breathing so I used – I described that as being unconscious and because I – couldn't have a conversation with him I described it as being unconscious.*[84]

49. Other Police units arrived soon after including the Springvale divisional van[85] with Constables Van der Meer and Aitken and later Sergeant Marie Kranidis, the Dandenong 251[86] LSC Porter directed Constable Aitken to obtain the details of the bystanders and discussed with Constable Van der Meer what to do.[87] Whilst the other officers were performing various roles, LSC Porter saw an amount of cash on the road that he believed Odisseas had dropped during their physical encounter. LSC Porter stated that he retrieved $310 in cash notes, a "crack pipe" and a small plastic bag containing white powder residue.[88] SC Sutton also observed the glass "crack pipe", clear resealable plastic bag, cash and a small piece of foil on the ground approximately two metres away from where Odisseas was being restrained.[89] SC Mascoll also observed these items[90] as did Constable Van der Meer.[91]

50. Throughout LSC Porter's interaction with Odisseas he said that he did not recall understanding anything that he had said. LSC Porter stated:

> *..I do recall thinking perhaps he was speaking in a different language at the time. I don't recall any intelligible words from him myself.* [92]

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[82] Exhibit 23 - Statement of Adam Christopher Sutton dated 22 December 2012.
[83] T @ p 341.
[84] T @ pp 341 – 342.
[85] Call sign "Springvale 303".
[86] The "251" reflects the divisional supervisor on duty who is responsible for the patrol units in that area. The 251 assumes responsibility for being in charge of the scene even if not physically present. On arrival of Greater Dandenong CIU members, Detective Senior Constable (DSC) Adam McFarlane and DSC Michael Silva at 9.11pm, they assumed responsibility for being in charge of the crime scene – T @ p 811.
[87] Exhibit 18 - Statement of LSC Ryan Porter dated 22 December 2009.
[88] *Ibid.*
[89] Exhibit 23 - Statement of Adam Christopher Sutton dated 22 December 2012.
[90] Exhibit 26 – Statement of Bradley Scott Mascoll dated 22 December 2012, T @ pp 395-396.
[91] Exhibit 29 – Statement of Peter Anthony Van der Meer dated 22 December 2009, T @ pp 448-449.
[92] T @ p 232 and also @ p 321.

51. When Constable Van der Meer arrived at the scene, he observed that SCs Sutton and Mascoll had Odisseas in custody and that he was "laying on his side, facing towards the road, which meant he was on his left shoulder."[93] Constable Van der Meer went over to where Odisseas was being restrained, stood on the road, facing Odisseas and asked him his name but got no response. Constable Van der Meer stated that Odisseas was conscious and looking at him and considered that "it seemed like he was deliberately not answering" his questions.[94] Constable Van der Meer observed Odisseas to at times be moving and making noises and at other times when he was not "talking or uttering noises".[95]

Assessment by Ambulance paramedics

52. Prior to her arrival at the scene the Dandenong 251, Acting Sergeant Marie Kranidis directed that Odisseas be taken to the Dandenong Police Station and lodged in the cells until he was fit for interview unless he was making threats to harm himself in which case he was to be taken to hospital.[96] Springvale 303 officer Constable Van der Meer however requested to Police Communications[97] that an ambulance be dispatched to the scene to assess Odisseas before he was put in the divisional van. Constable Van der Meer reported to Police Communications that Odisseas was conscious and breathing but he was not responding to any questions.[98] In his *viva voce* evidence, Constable Van der Meer stated that his main reason for requesting an ambulance was because of the shallow breathing he had observed.[99] He later stated it was because he was concerned for Odisseas' "welfare, his general body fitness"[100] and concerned that he was to be responsible for transporting a prisoner who he did not think was fit to be transported at that time.[101]

53. Ambulance Victoria records reflect that ambulance Heatherton 177 was despatched at 9.07pm and at the scene at 9.16pm.[102]

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[93] Exhibit 29 – Statement of Peter Anthony Van der Meer dated 22 December 2009, T @ p 448.
[94] Exhibit 29 – Statement of Peter Anthony Van der Meer dated 22 December 2009, T @ p 448.
[95] T @ p 468.
[96] P 412 Inquest brief (Transcript of Police radio communications) and referred to at T @ pp 250, 357-358.
[97] "VKC" is the call sign for Police Communications and as it is referred to in the Transcript of Police radio communications. VKC, Police Communications and D24 are used interchangeably during the proceedings.
[98] Inquest Brief, @ p 413.
[99] T @ pp 468-469.
[100] T @ p 470.
[101] T @ p 518.
[102] Inquest Brief @ p 629.

Police evidence of their interaction with Ambulance paramedics

54. On arrival of Heatherton 177, Constable Van der Meer spoke to Ambulance Paramedic Ward Shepard and informed him that Police suspected that Odisseas was on some form of drug as they had located a "crack pipe" nearby. Constable Van der Meer watched on as the paramedic took Odisseas' blood pressure, attempted to check his pupils and attempted to illicit a verbal response from Odisseas. In response to a specific question about whether Odisseas had been subjected to OC spray, Constable Van der Meer informed paramedic Shepard that Odisseas had received either OC spray and/or foam.[103] Constable Van der Meer also recalls informing paramedic Shepard that before their arrival, he had observed Odisseas to have a period of shallow breathing.[104]

55. During the course of the Ambulance paramedics' assessment of Odisseas, SCs Sutton and Mascoll remained present for the purposes of maintaining restraint.[105] Odisseas was relatively calm during the paramedic's assessment.

56. Paramedic Shepard reported to Constable Van der Meer that Odisseas' blood pressure was normal and that he could be transported to the Police station but that if he deteriorated, an ambulance was to be called to the station to provide further treatment.[106]

57. Constable Aitken said that although she remained concerned that Odisseas' health may be at risk, her main concern was that he was affected by drugs but that her "initial concerns were alleviated after the ambulance had checked him out".[107]

Evidence of Ambulance paramedics' interaction with Police and Odisseas

58. Ambulance paramedics Ward Sheppard and Shayna Gamble arrived at the scene on the coroner of Heyington Crescent and Mollison Street[108] at 9.16pm. Paramedic Sheppard observed that Odisseas was handcuffed with his hands behind his back and was being held in the prone (face down) position by two Police officers.[109] He recalled that:

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[103] Exhibit 29 – Statement of Peter Anthony Van der Meer dated 22 December 2009, T @ p 450, T @ p 454.
[104] T @ pp 466-467.
[105] T @ p 375.
[106] Exhibit 29 – Statement of Peter Anthony Van der Meer dated 22 December 2009, T @ p 450.
[107] T @ p 564.
[108] Mollison Street and Wimpole Street have been used interchangeably in various Police and Ambulance Victoria communications as well as in witness statements due to change in naming caused by the construction of the EastLink freeway. Current Google maps depict Wimpole Street connecting with Heyington Crescent whereas Mollison Street is on the other side of the freeway.
[109] Exhibit 38 – Statement of Ward Sheppard dated 30 December 2009, T @ p 587.

...one Policeman was crouched beside his legs with his arms on his legs and the other Policeman was crouched or squatting near his chest on his back holding his arms.[110]

59. Paramedic Sheppard later clarified that although Odisseas was positioned on his stomach, his face was turned to side so he could see one half of his face.[111]

60. Paramedic Sheppard stated that on his arrival, he was provided with some background information from Police as to what had led to the restraint of Odisseas including that he had been involved in an assault with a knife.[112] He recalled dealing predominantly with one Police officer, Constable Van der Meer[113] and that he was informed that Odisseas had been subdued with capsicum foam and spray, that he had been very aggressive with erratic behaviour, was in possession of drug paraphernalia and was not answering any questions. Paramedic Sheppard stated that it was suggested to him that Odisseas may not understand English.[114]

61. Similarly, Odisseas did not verbally respond to Paramedic Sheppard introducing himself or to the questions he directed at Odisseas. During the assessment that Paramedic Sheppard undertook of Odisseas, he was moved from the prone position and rolled into the left lateral position with the assistance of the officers so that he "could conduct a more accurate assessment."[115] The assessment involved Odisseas' perfusion, respiratory and neurological status and a "secondary survey in accordance with Ambulance Victoria's clinical practice guidelines."[116] Paramedic Sheppard's assessment identified slightly elevated heart and respiratory rates which Paramedic Sheppard considered consistent with Odisseas having been involved in a struggle with Police. Neurological assessment was rendered difficult due to Odisseas not responding to questions nevertheless, Paramedic Sheppard formed that view that Odisseas appeared to be aware of his surroundings. He assessed Odisseas' Glasgow Coma Scale (GCS) as 14.[117] Apart from some minor grazes and scratches, no significant

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[110] T @ p 587. Paramedic Sheppard later confirmed in his *viva voce* evidence that the prone position Odisseas was being held in upon his arrival was the same as depicted (save to say that he was also handcuffed) in the photographs in Exhibit 20 – T @ p 590.
[111] T @ p 617.
[112] Exhibit 38 – Statement of Ward Sheppard dated 30 December 2009.
[113] T @ p 593.
[114] Exhibit 38 – Statement of Ward Sheppard dated 30 December 2009.
[115] T @ p 587.
[116] Exhibit 38 – Statement of Ward Sheppard dated 30 December 2009, T @ pp 624 - 627.
[117] Glasgow Coma Scale is a standarised system for assessing response to stimuli in a neurologically impaired patient; reactions are given a numerical value in three categories (eye opening, verbal responsiveness, and motor

head, chest or abdominal injuries were identified. According to Paramedic Sheppard's assessment, Odisseas appeared unaffected by his exposure to the capsicum foam and spray.[118] Paramedic Sheppard stated that he held some concern that Odisseas was suffering from some form of psychosis but he could not assess his behaviour because he could not get any answers from Odisseas and "he was restrained, handcuffed."[119] On the information he had about Odisseas and the surrounding circumstances, he could "have been just violent."[120]

62. At the time of the incident, Paramedic Sheppard had no knowledge or training in respect of the phrase 'positional asphyxia' however, he said that the position that Odisseas was being held in upon his arrival that is, the prone position, was ultimately irrelevant to his assessment because Odisseas' "respiratory status was adequate, more than adequate."[121]

63. Following his assessment of Odisseas, Paramedic Sheppard cleared him to be transported by Police to the Police station. He said:

> *At the time of my assessment he wasn't in any immediate life danger from a vital sign survey, he was within reasonable parameters, so I deemed it appropriate to go with Police.*[122]

64. Paramedic Sheppard said he also gave Police his "standard advice" to keep Odisseas monitored and to contact for an ambulance again if they became concerned for his welfare.[123] By 'monitoring' Paramedic Sheppard stated that he really wanted Police to "monitor what he looked like" and his breathing – to monitor his head and torso.[124]

65. Paramedic Sheppard said that at no time during his involvement with Odisseas and Police did he witness or form the view that Police were using excessive force or being harsh with Odisseas while they were restraining him.[125]

66. Paramedic Sheppard witnessed Police move Odisseas into the rear pod of the divisional van for transportation before Heatherton 177 departed the Noble Park North scene. Paramedic

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responsiveness), and the three scores are then added together. The lowest values are the worst clinical scores. (Source: *Dorland's Illustrated Medical Dictionary*, 30th Edition).

[118] Exhibit 38 – Statement of Ward Sheppard dated 30 December 2009.
[119] T @ p 604.
[120] T @ p 605.
[121] T @ pp 614, 620
[122] T @ p 612.
[123] T @ p 640.
[124] T @ p 642.
[125] T @ pp 614-615.

Sheppard gave no direction or instruction to Police as to how Odisseas should be restrained or placed in the rear of the divisional van.[126]

67. The evidence of Paramedic Shayna Gamble was consistent with that of her colleague in respect of their involvement with Odisseas and Police.[127] Paramedic Gamble confirmed that it was Paramedic Sheppard that carried out the assessment of Odisseas and that she watched on, standing approximately one metre behind him, ready to provide him with assistance if he required it but he did not.[128] She had also watched on as Police carried Odisseas to the divisional van after Paramedic Sheppard had cleared him for transportation to the Police station and stated that Odisseas had struggled or resisted against the Police in this process and had been calling/yelling out, but she could not understand what he was saying.[129] Once Odisseas was placed in the rear of the divisional van she said that it left the scene almost straight away.[130] Paramedic Gamble's notes[131] made later that evening after the Heatherton 177 had attended at Dandenong Police Station reflect that she was told by a Police officer at the station that Odisseas had been active for approximately five minutes in the rear of the divisional van during the transportation journey.[132]

Transportation to Dandenong Police Station

(i) Police procedure

68. Police procedure at the time of the incident relevant to the observation and transportation of people who had been inflicted with OC spray was contained in the *Oleoresin Capsicum Spray Training Manual* (the Manual). [133] For the observation of such a person, the Manual states:

> *A sprayed person must be accompanied and kept under constant and direct observation for at least 45 minutes or until the symptoms or effects are no longer apparent (which ever is the longer).*

69. In respect of transportation of a sprayed person, the Manual states:

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[126] T @ p 634.
[127] Exhibit 42 – Statement of Shayna Anne Gamble dated 23 March 2010, T @ pp 646-675.
[128] T @ p 652.
[129] T @ p 654.
[130] T @ pp 671-672.
[131] Exhibit 43 – handwritten notes of Shayna Gamble from 21 December 2009.
[132] T @ pp 671-672.
[133] Exhibit 64.

A sprayed person must not be transported in a divisional or brawler van until that person has been kept under constant and direct observation for at least 45 minutes or until the symptoms or effects are no longer.

70. SC Mascoll was unaware of when Odisseas had been sprayed by LSC Porter before he and his partner, SC Sutton arrived at the incident scene to assist. He was however present when LSC Porter applied the aftercare to Odisseas. SC Mascoll confirmed that he had received training about the management of persons sprayed with OC foam or spray and was aware that such a person required constant monitoring but he was unable to recollect if he was aware at the time of the incident involving Odisseas of the prescribed time frame for observation before a sprayed person could be placed into a divisional van. At the time of the Inquest, SC Mascoll was aware that the procedure prescribed a minimum of 45 minutes.[134] In relation to his involvement with Odisseas, SC Mascoll stated that "we were with him the whole time (sic) so we were obviously constantly monitoring"[135] him.

(ii) Use of the divisional van

71. Once ambulance paramedics gave clearance to Police to transport Odisseas in the divisional van to Dandenong Police Station, SCs Sutton and Mascoll lifted Odisseas off the ground and carried him to the Dandenong 303 van "which was parked about four car lengths away."[136] SC Mascoll had hold of Odisseas' legs and SC Sutton was holding his right arm. They were carrying Odisseas face up.[137] When SCs Sutton and Mascoll got to the rear of the divisional van and attempted to put Odisseas into the pod feet first, he started to struggle against them.[138] The back of the van was already open enabling SCs Sutton and Mascoll to maintain control over Odisseas. They placed him into the pod of the van feet first. His legs were straight and his back vertical.[139] With some effort, SC Mascoll was able to push Odisseas' upper body into the van with his left hand while grabbing the van door with his right allowing him to shut the door and lock it using the door locking bar.[140]

72. SCs Sutton and Mascoll had no further involvement with Odisseas.

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[134] T @ pp 418-421.
[135] T 2 p 419.
[136] Exhibit 26 – Statement of Bradley Scott Mascoll dated 22 December 2012, T @ p 399. SC Van der Meer estimated the distance to be approximately 15 metres - Exhibit 29 – Statement of Peter Anthony Van der Meer dated 22 December 2009, T @ p 451.
[137] Exhibit 23 - Statement of Adam Christopher Sutton dated 22 December 2012.
[138] *Ibid*, T @ p 376.
[139] Exhibit 26 – Statement of Bradley Scott Mascoll dated 22 December 2012, T @ p 399.
[140] Exhibit 26 – Statement of Bradley Scott Mascoll dated 22 December 2012, T @ p 399.

(iii) The journey to Dandenong Police Station

73. After Odisseas was placed into the rear pod of the divisional van,[141] Constable Van der Meer got into the driver's seat and turned on the light and the camera so that he and Constable Aitken could view Odisseas. The prisoner compartment cameras are installed in the rear right-hand side corner of the vehicle and intended to provide views to the Police personnel of the two detainees seated in the back of the van.[142] The camera monitor sits in the console of the divisional van and is approximately 10cms by 5cms in size.[143] At the time, there was no audio attached to the monitor so the officer's ability to monitor Odisseas constantly was dependant on the visual images of him only[144] and the extent of the visual image was of Odisseas' legs only[145] because the camera is fixed so as to provide vision of the seats in the pod. Odisseas was not on the seats[146] but on the floor of the pod and there is no ability for the officers to rotate or in any way change the camera's orientation. Consequentially, the officers could not see Odisseas' torso on the monitor.[147] Similarly, the design of the divisional van did not allow the officers to have "a clear look" even if they were to physically turn around in their seats in an attempt to look into the rear pod.[148] Constable Aitken stated that although there is a window separating the officers from the rear pod as depicted in the photographs,[149] she said that it is "quite a blurred vision. You can't really see into the pod."[150]

74. As Constable Van der Meer was driving the divisional van, he said that Constable Aitken would have been "able to maintain more constant observations"[151] than he could. Constable Aitken agreed that as the officer in the passenger seat it was part of her role to monitor the camera.[152]

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[141] The vehicle at the time of the incident was a VZ Holden Crewman which had seating for 5 Police personnel and seating for 2 detainees in the rear compartment – Exhibit 55 – Statement of Guy Hungerford dated 4 March 2011.
[142] Exhibit 55 – Statement of Guy Hungerford dated 4 March 2011.
[143] See p 351 Inquest brief, T @ p 549
[144] T @ p 479.
[145] T @ pp 481 and 549 (Constable Aitken).
[146] T @ p 488.
[147] T @ pp 523 and 566 - 567 (Constable Aitken).
[148] T @ p 567.
[149] See Inquest Brief @ pp 355-357.
[150] T @ p 584.
[151] T @ p 481.
[152] T @ p 549.

75. The Dandenong 303 departed the scene in Noble Park North at approximately 9.26pm[153] on a Code 6, that is, on route to the Police station.

76. Constable Van der Meer stated that Odisseas "kicked out" just after they departed but that after a couple of minutes he did not kick anymore.[154] At some stage in the journey, Constable Van der Meer noticed that the position of Odisseas' legs had changed.[155] His evidence as to when this occurred in the journey to Dandenong Police Station changed somewhat from the time he did a reconstruction journey with his legal counsel and when he was presented with GPS data taken from his vehicle however, ultimately Constable Van der Meer could not be any more definitive than he noticed the change in Odisseas' position sometime when the divisional van was travelling on Princes Highway.[156]

77. Constable Van der Meer stated that he was a little bit concerned about the change in position and believes that he mentioned his concern to Constable Aitken but he could not recall what her response was.[157] Constable Van der Meer said that he was not however concerned that the change in position of Odisseas' legs equated to a concern that something might be affecting his breathing or that something else might have happen adversely affecting Odisseas' health.[158] He would have been more concerned for Odisseas' airway if his torso had actually slid/slumped forwards or ended up on his stomach.[159]

78. Constable Aitken also noticed a change in the position of Odisseas' legs. This change, described as his legs sliding forward, occurred approximately five minutes before arriving at the Dandenong Police Station. Prior to this change, Constable Aitken stated that she could see Odisseas' legs to just about knee level and that after the change she could see his legs up to his upper thigh.[160]

79. Constable Van der Meer estimated that the journey to the Dandenong Police Station took less than 10 minutes.[161] The officer's Running Sheet reflects that Springvale 303 changed to

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[153] Exhibit 33 – Running Sheet from Springvale 303 of B.M. Aitken and P.A. Van der Meer - reflects that the officers left the incident scene on Heyington and Mollison Streets at 9.25pm on a Code 6 to 5DG900 (Dandenong Police Station), T @ p 538, 570.
[154] Exhibit 29 – Statement of Peter Anthony Van der Meer dated 22 December 2009, T @ p 451.
[155] T @ p 481.
[156] T @ p 766.
[157] T @ pp 481-482.
[158] T @ pp 482-483.
[159] T @ p 523.
[160] T @ pp 549-550.
[161] T @ p 488.

a Code 2 that is, that they had arrived at Dandenong Police Station at 9.35pm.[162] As Constable Van der Meer drove into the sally port, Constable Van der Meer could see that Odisseas was still sitting upright. Constable Van der Meer and Constable Aitken left the vehicle and deposited their firearms in the safe in the sally port in accordance with Police procedure before returning to the rear of the divisional van to check on Odisseas. When Constable Van der Meer opened the rear door he grabbed onto Odisseas' right shoulder. When he met with no resistance Constable Van der Meer realised something was not right and directed Constable Aitken to alert the Watch House Keepers and to call for an ambulance. When the rear door of the divisional van was opened, Constable Aitken observed that Odisseas was no longer in a complete upright position, he was slumped to one side.[163] Constable Aitken did as directed by Constable Van der Meer and sought assistance by "buzzing" the intercom button in the sally port.[164]

80. Constable Van der Meer removed Odisseas' back first from the rear pod of the divisional van and placed him on the ground. Constable Aitken removed Odisseas' handcuffs. With the assistance of the two Watch House keepers, Constables Carol Williams and Kimberley Alp, and Sergeant Leonardus Van Tol, the rostered section sergeant, Odisseas was moved approximately one metre away from the van and cardio-pulmonary resuscitation (CPR) was initiated. The section sergeant, Sergeant Van Tol assumed control of the scene in the sally port[165] and also directed Constable Bartlett at the reception to call for an ambulance.[166] The officers continued with CPR until the arrival of two ambulance units, Heatherton 177[167] and MICA 7,[168] wherein paramedics took over the resuscitation attempts.[169] Despite the endeavours of the paramedics, Odisseas remained refractory to all attempts at resuscitation. He remained in asystole[170] throughout. At approximately 10.10pm, paramedics determined that Odisseas could not be revived and resuscitation was ceased.[171]

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[162] Exhibit 33, T @ p 538. The time stamp on the CCTV footage from the sally port indicates that the time of Springvale 303's arrival is 9.40pm.
[163] T @ p 550.
[164] Exhibit 35 – Statement of Bianca Maree Aitken dated 22 December 2009, T @ p 551.
[165] T @ pp 696, 697.
[166] Exhibit 44 - Statement of Leonardus Van Tol dated 6 January 2010, T @ p 688
[167] Ambulance Victoria records reflect that Heatherton 177 was despatch at 9.46pm and at the sally port of the Police station at 9.51pm – Inquest brief @ p 636, Exhibit 41.
[168] Ambulance Victoria records reflect that MICA 7 (with MICA paramedics Gregory Nicholls and Stephen Wood) was despatch at 9.43pm and at the sally port of the Police station at 9.52pm – Inquest brief @ pp 643 – 646, Exhibit 54.
[169] Exhibit 29 – Statement of Peter Anthony Van der Meer dated 22 December 2009, T @ pp 453-454.
[170] T @ p 818.
[171] Exhibit 53 – Statement of Gregory Nicholls dated 27 December 2009.

Available emergency equipment

81. At no time prior to the arrival of the ambulance paramedics did any officer enquire if an automated external defibrillator unit was available and/or retrieve and/or utilise the station's automated external defibrillator unit.[172] Indeed, although Sergeant Van Tol had been at the station for nine years, he was not aware if there was one available at his station at that time.[173] Similarly, Sergeant Van Tol could not recall if he had received any training in the use of an automated external defibrillator unit prior to December 2009[174] and at the time of the incident involving Odisseas, he stated that there was no signage around the station indicating that there was a defibrillator and/or its' location within the station.[175] The equipment that was available at the Dandenong Police Station according to Sergeant Van Tol included a first aid kit (which he also referred to as a personal protection kit)[176] and a "hand pump" (a bag and mask device for providing respirations).[177] Both these kits were retrieved from other locations within the station and made available to Constables Van der Meer and Williams who were performing the CPR on Odisseas however, neither were utilised.

82. Sergeant Van Tol conceded that he was told in 2010 that there was indeed an automated external defibrillator unit at his station at the time of Odisseas' death and that it was stored in the property office.[178] At the time of his *viva voce* evidence, he was more confidently able to state that since December 2009 there was prominent signage around the station indicating where the defibrillator is kept.[179] He had also received training in the use of the same.[180]

83. Subsequent to Sergeant Van Tol's evidence, I was provided with five photographs of the said signage at Dandenong Police Station which inform that in the event of a medical emergency, the defibrillator and resuscitation bag are located in the custody medical room.[181] From the information provided to me by Mr O'Neil of Counsel,[182] the signs appear to be placed at appropriate locations around the station so as to remove any doubt that the station now has appropriate resuscitation equipment.

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[172] T @ p 710.
[173] T @ p 688.
[174] T @ p 692.
[175] T @ p 701.
[176] Exhibit 44 – Statement of Leonardus Van Tol dated 6 January 2010, T @ p 701.
[177] T @ p 742.
[178] T @ p 709.
[179] T @ p 701.
[180] T @ p 710.
[181] Exhibit 73.
[182] T @ p 1077.

Communication in the sally port

84. There is one intercom system within the sally port which enables communication to the Reception within the station. Neither Constable Williams nor Constable Alp, both serving officers at Dandenong Police Station were aware if there was an emergency alert system within the sally port[183] although both Constables were aware that such buttons exist in the interview rooms[184] and other parts of the station. Neither Constable Aitken nor Constable Van der Meer activated the emergency button. Officers within the station were alerted to the emergency by a call for assistance coming from within the sally port and a banging on the internal door connecting the sally port with the station.[185]

85. A red emergency button does in fact exist in the sally port but at the time of the incident, there was no signage identifying it.[186]

86. No other means of communication were available within the sally port such as a land line/cordless telephone. CCTV cameras operate within the sally port and are relayed to monitors within the station located at the reception, the watch house and the sergeant's office.[187] To display any particular area covered by CCTV cameras, an officer located at one of the monitors must select the area to be displayed.[188] On 21 December 2009, vision of the sally port was being displayed in the watch house however, at the time Springvale 303 arrived in the sally port no officer was watching the monitors as they were attending to prisoners within the cells.[189]

Police procedure post the death of Odisseas

87. Detective Sergeant (DS) Trevor John Smith was performing supervision duties in the office of the Greater Dandenong CIU on 21 December 2009. At 10.00pm, he was notified that paramedics were attempting to resuscitate an arrested male of unknown identity in the sally port area of the Dandenong Police Station. At 10.12pm, DS Smith was informed that paramedics had ceased their resuscitation attempts and that the male, who was still unknown to Police at this stage, was deceased. DS Smith arranged for the sally port to be cleared of all Police members and sealed off as a crime scene. He assigned an officer as a crime scene

[183] T @ pp 734, 748.
[184] T @ pp 732-733, 755.
[185] Exhibit 49 – Statement of Kimberley Alp dated 22 December 2009, T @ p 741.
[186] T @ pp 735- 736.
[187] T @ p 706.
[188] T @ p 706.
[189] T @ p 718.

guard and a crime scene log was commenced. DS Smith also liaised with DSC Michael Silva from the Greater Dandenong CIU who was at the scene of the incident in Noble Park North and he gave some instructions to DSC Silva regarding protecting that scene.

88. At 10.38pm, DS Smith contacted the Major Crime desk to notify them of the death in Police custody and requested the attendance of the Homicide Squad. He also directed that the equipment belts of all Police members involved in the arrest and transportation of Odisseas be seized. At 11.25pm, DS Smith spoke with Deputy State Coroner Iain West who had attended at the Dandenong Police station and at 11.30pm, DS Smith accompanied the Coroner into the crime scene in the sally port.

89. At 12.02am on 22 December 2009, DS Smith re-entered the sally port with Forensic Pathologist Dr Malcolm Dodd who declared Odisseas deceased at 12.06am. DS Smith and Dr Dodd remained in the sally port until 12.16am. At 12.30am, members of the Homicide Squad including DS Clanchy arrived at the Dandenong Police Station. DS Smith briefed the Homicide Squad members shortly thereafter effectively handing the conduct of the investigation over to them. DS Smith's involvement in the investigation into Odisseas' death thereafter ceased save for receiving equipment belts and equipment from DSC Michael Silver and DSC Adam McFarlane. At 4.40am, DS Smith was informed that Odisseas had been identified.[190]

90. No issues were identified in respect of the timeliness and conduct of the initial investigation undertaken by DS Smith. His involvement in the investigation into Odisseas' death appears to have been reasonable, appropriate and in accordance with Police procedure.

Police awareness about positional asphyxia

91. LSC Porter stated that he had been trained in the meaning and risks of positional asphyxia in his initial training at the Police Academy and in subsequent Operational Safety and Tactics Training (OSTT) packages.[191] He was aware of the risk factors associated with positional asphyxia, that is, in what circumstances a person maybe at risk of positional asphyxia whilst in contact with Police[192] including situations where OC foam or spray has been deployed.[193] LSC Porter did not however see any signs or symptoms from Odisseas[194] during his

[190] Exhibit 28 – Statement of Trevor John Smith dated 22 December 2009, T @ pp 436-439.
[191] T @ p 240.
[192] T @ pp 240 – 244.
[193] T @ p 310.
[194] T @ p 244.

encounter with him that caused him to be concerned about positional asphyxia in the circumstances. Similarly, LSC Porter said he was aware of the presenting features of acute behavioural disturbance and that he had received training about acute behavioural disturbance at the same session of OSTT where he had received training about positional asphyxia.[195] In being taken through the documented presenting features of acute behavioural disturbance by Mr Gipp of Counsel, LSC Porter agreed that Odisseas had demonstrated some of those features being bizarre and/or aggressive behaviour, "sweating quite heavily", periods of agitation coupled with great strength, "excitability" and incapability of a rational response.[196] He did not however have "enough information to say whether it (sic - Odisseas' behaviour) was a mental illness or (sic) drug episode".[197]

92. SC Sutton similarly confirmed his training in relation to positional asphyxia and said that "many of those risk factors (sic) were present"[198] including behavioural symptoms and the involvement of multiple Police and the use of OC spray.[199] However, SC Sutton said that Odisseas "had no problem breathing. He didn't have – show any of those signs of positional asphyxia."[200] Unlike LSC Porter, SC Sutton said that he was not familiar with the phrase and or condition of "acute behavioural disturbance". He knew a little about psychosis and how it was a risk factor for positional asphyxia but only became aware of acute behavioural disturbance when he was trained in "Excited Delirium."[201]

93. SC Mascoll's evidence about his training and knowledge of positional asphyxia was not dissimilar. He stated that:

> *We had done everything that we had to do to mitigate and chance of positional asphyxia. We kept him off his chest, we provided him with aftercare. We had done all the things that were necessary.*[202]

94. SC Mascoll later conceded that he was not aware of the full range of possible signs and/or symptoms of positional asphyxia including the onset of sudden tranquillity.[203]

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[195] T @ p 301.
[196] T @ pp 300 – 301, 313.
[197] T @ p 316.
[198] T @ p 349.
[199] T @ pp 349 – 350.
[200] T @ p 353.
[201] T @ p 355.
[202] T @ p 422.
[203] T @ p 424.

Police awareness about "Excited Delirium"

95. LSC Porter stated that he had only become aware of the phrase or concept of Excited Delirium some months after the death of Odisseas.[204] An OSTT package on Excited Delirium was introduced into the Police compulsory training in 2010[205] with package headed as: "Acute behavioural disturbance (Excited Delirium)". The evidence of SC Mascoll in respect of his lack of knowledge at the time of acute behavioural disturbance and/or Excited Delirium was consistent with that of SC Sutton.[206] SC Sutton undertook the package in 2010[207] as did SC Mascoll.[208]

96. Senior Sergeant Andrew Miles, in-charge of the OSTT Unit describes in his statement[209] the training provided to Victoria Police in defensive tactics, restraint and related issues:

> *The current training package (July - December 2010) contains in part, Dr Morris Odell, Forensic Medical Officer, Coroners Court of Victoria, via a recorded video presentation. Dr Odell refers to signs and symptoms displayed by persons suffering Excited Delirium. Dr Odell goes on to explain the possibilities of these persons going on to become affected by 'restraint asphyxia', commonly referred to by Police as 'positional asphyxia'. He also explains how communication with affected persons may often have no result, and 'medical restraint' may be the only possibility.*

Changes to the Police vehicle

97. Since the death of Odisseas[210] there has been some changes to the CCTV capacity installed in the Police divisional vans. Audio communication is now available which enables both the officers to listen to what the prisoner is saying/doing and enables the officers to also speak to the prisoner if necessary through an intercom system.[211] Communication to the prisoner is activated by depressing a button on the console of the system.[212] In addition, there is also the

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[204] T @ pp 234, 244
[205] T @ pp 244, 302.
[206] T @ pp 423-424.
[207] T @ p 379
[208] T @ pp 424, 431.
[209] Exhibit 59 – Statement of Andrew Miles dated 1 December 2010.
[210] Since October 2010 all Holden VE divisional vans have been installed with Digital Video recording (DVR) and an intercom system. The VE model itself started being phased in late 2009 after being developed through a Victoria Police Holden Motor Company project - Exhibit 55 – Statement of Guy Hungerford dated 4 March 2011. T @ pp 853 – 855, 864. The VZ model is said to have been phased out by late 2010 or maybe in 2011 – T @ pp 867 – 868.
[211] T @ p 841.
[212] T @ p 528.

ability to record footage of the prisoner in the rear pod.[213] There is a separate button for activating the video camera and one for activating the recording capacity.[214] The camera itself is now "positioned over the door to give a better view of angle"[215] however, the situation remains that if the detainee is resting against the backdoor, facing forward the officers will not be able to view his/her body, only their feet.[216]

Post mortem medical investigation

(i) Toxicological analysis

98. Dr Dimitri Gerostamoulos, Chief Toxicologist and Manager of Toxicology at the VIFM gave evidence about the post mortem analysis of Odisseas' blood. He adopted the Toxicology Report of Toxicologist Katherine Wong[217] which Dr Gerostamoulos had also authorised.

99. Dr Gerostamoulos stated that the 0.6 mg/L of methamphetamine identified in blood was "consistent with someone who's regularly using methamphetamine."[218] Similarly, the presence in blood of the by-product of methamphetamine, amphetamine at 0.2 mg/L was also consistent with someone taking methamphetamine and consistent with "someone who's probably using the drug in the last 24 hours."[219] Dr Gerostamoulos advised that there are a number of ways that methamphetamine can be consumed and "given that there is a pipe found near (sic) Odisseas, the likely method of administration might be smoking."[220] However he also said that it is not possible to tell exactly what the dose was that Odisseas took or how much he consumed "only that it was recently consumed and this is consistent with someone who's regularly using methamphetamine."[221]

100. According to Dr Gerostamoulos, the level of Δ9-tetrahydrocannabinol identified in blood at 46 ng/mL was also consistent with the very recent use of cannabis, "probably within the last two to four hours."[222] Dr Gerostamoulos described Risperidone as an atypical or newer generation antipsychotic medication which has less side effects than some of the traditional

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[213] T @ pp 516, 839.
[214] T @ p 528.
[215] T @ p 835.
[216] T @ pp 836 – 837.
[217] Exhibit 68 – Toxicology Report of Katherine Wong, authorised by Dimitri Gerostamoulos, dated 18 March 2010.
[218] T @ p 949.
[219] T @ p 950.
[220] T @ p 951.
[221] T @ p 962.
[222] T @ p 951.

older antipsychotic drugs. No Risperidone was identified in Odisseas' blood, only the metabolite, hydroxyrisperidone which left open the possibilities that Odisseas had consumed Risperidone in the last 24 hours or longer, that he could have taken the reduced dose of 2mgs in the morning resulting in it all but being eliminated save for the metabolite by the time he dies, or that he has taken a drug called Paliperidone which is hydroxyrisperidone in its own right. Dr Gerostamoulos also agreed that the lack of Risperidone in blood but with the presence of hydroxyrisperidone could also be consistent with Risperidone not being taken that day but having been taken the day before.[223]

101. Dr Gerostamoulos also gave evidence about the stimulant effects of methamphetamine and the synergistic effect of Risperidone and methamphetamine are such that when the two are taken together there could be a greater effect on the dopamine release in the brain.[224]

(ii) Excited Delirium as a cause of death

102. Dr Gerostamoulos said that "Excited Delirium" was more a pathology definition or diagnosis than one used in toxicology. His understanding of its use was that:

> *..it's a (sic) diagnosis given by a pathologist,....retrospectively, in a set of circumstances where there is certain environmental factors or pharmacological factors leading to the sudden and unexpected death of an individual in a setting of stress, be that restraint or in (sic) an agitated situation.*[225]

103. The post mortem findings and comments of Dr Malcolm Dodd, Senior Forensic Pathologist have been referred to above in the section titled **Pre- Inquest Investigations**. In his *viva voce* evidence Dr Dodd said that he thought 'Excited Delirium' and 'Excited Delirium Syndrome' were pseudonyms but a "syndrome is probably the best description" for this relatively uncommon entity".[226] He said:

> *It includes people who die, usually in the context of arrest and Police custody, who frequently have a psychiatric history documented, frequently are on medication for that condition and they die, and the mechanism of the death would appear to be one of an excited state, causing rapid heart rate, possibly raised blood pressure, sweating, disorientation – the exact mechanism is not*

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[223] T @ pp 951-955.
[224] T @ pp 958-959.
[225] T @ p 959.
[226] T @ p 1083.

known, but it appears that they have ultimately a lethal arrhythmia or a heart attack as a result of these things all coming together. So in that regard, it can be regarded as a syndrome.[227]

104. Dr Dodd did not use the word "syndrome" when he formulated the cause of Odisseas' death[228] however, he opined that it could be considered a syndrome, consistent with the opinion as expressed by Dr Ranson,[229] because it did not involve a particular disease entity or condition but was more so identified by "certain factors coming together leading to a common end point" and involves the exclusion at autopsy of "significant naturally occurring disease" as well as excluding "the notion of positional asphyxia or mechanical asphyxia" where multiple Police or people have been restraining on top of the person.[230] In short, it was a diagnosis by exclusion.[231]

105. Dr Dodd acknowledged that there was some debate within medical circles about the existence of the "syndrome" but was confident that "within Australia the forensic pathology fraternity have belief in this condition being a real entity."[232] Dr Dodd was aware that a number of internationally recognised publications, including the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV) did not list or include "Excited Delirium Syndrome" amongst its diseases and that a number of prominent medical professional bodies in the United States including the American Medical Association, did not recognise it as a syndrome.[233] Other medical professional organisations including the College of Medical Examiners, the professional body of forensic pathologists, did recognise Excited Delirium Syndrome as a cause of death.[234]

106. From his own research, Dr Dodd said that he had identified certain factors that may predispose a person to succumb to Excited Delirium Syndrome and these included a "younger male, documented medical history of psychiatric illness, use of restraints, use of illicit drugs all coming together."[235] The presenting features of the syndrome progressing through to death that Dr Dodd had become aware of were not dissimilar he said, to Odisseas' case and included:

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[227] T @ pp 1083 – 1084.
[228] Exhibit 74 – Autopsy Report of Dr Malcolm John Dodd dated 1 April 2010, T @ pp 1115 – 1116.
[229] Exhibit 79 – Expert Statement of Dr David Ranson dated 20 March 2012.
[230] T @ p 1084.
[231] T @ p 1094.
[232] T @ 1085.
[233] T @ pp 1085-1086
[234] T @ p 1086.
[235] T @ p 1088.

...a person shows an extreme case of agitation, maybe sweating, maybe incoherent, thrashing about, acting in a refracting manner. The restraint occurs and that person may then persist with aggressive behaviour, thrashing about, even in the context of being cuffed, but at some point they seem to settle, that settling maybe subdued settling of a fairly acute one, and sometimes it can be in transit – like in the case – the person's in the divisional van, then they finally settle down.....but when the person gets to where they're going to they are either in extremis of have in fact died. So (sic) the actual act of death would appear to be quite a rapid one rather than a protracted process, from my understanding.[236]

107. The mechanism of death is a cardiac arrest from a cardiac arrhythmia which is incompatible with life because the heart ceases to be an effective pump or alternatively, it just stops.[237]

108. In constructing the cause of Odisseas' death, Dr Dodd said that it was his initial impression that Excited Delirium may have been the cause of death "because it seemed to tick the boxes" on background information and then by the exclusion of "any significant naturally occurring disease".[238] Dr Dodd said that "it appeared that there was certainly some restraint in the face down position, as evidence by the gravel rashes on his face"[239] but that he had excluded positional asphyxia as a cause of death to his satisfaction based on information he had obtained in a document/statement[240] provided to him contemporaneously to the death of Odisseas and also because of "the absence of asphyxia stigmata on the body."[241] Dr Dodd said that he was also assisted in his conclusion by the content of two journal articles[242] that he also referred to in his autopsy report.

(iii) Dr David Ranson – independent Forensic Pathologist opinion

109. In his *viva voce* evidence Dr Ranson said that there is often a philosophical difference in the way pathologists will give a cause of death. He said that there are personal variations adopted by Pathologists and referenced Dr Dodd's use of the words "(death in custody)"

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[236] T @ pp 1088 – 1089.
[237] T @ p 1091.
[238] T @ pp 1100 – 1101.
[239] T @ p 1101, 1111.
[240] Exhibit 75 – Document referred to by Dr Malcolm Dodd in his autopsy report (Exhibit 74).
[241] T @ pp 1101, 1105.
[242] Exhibit 76 (Articles attached to the Exhibit are: "Excited Delirium Deaths in Custody: Past and Present", Jami R. Grant *et al.* The American Journal of Forensic Medicine and Pathology, Vol. 30 No. 1, March 2009 and "Unexpected death related to restraint for Excited Delirium: a retrospective study of deaths in Police custody and in the community", Michael S. Pollanen *et al*, Canadian Medical Association June 16, 1998; 158 (12).

which directly followed his ascription of Excited Delirium as the medical cause death. Dr Ranson stated that although it was not his practice to place the "death in custody" phrase within the cause he would describe the death in custody process within his report rather than place it with the cause. Nevertheless, he said that there was a spectrum of approaches adopted by pathologists and did not believe this was unreasonable "given a particular pathologist's philosophy about how they bring their knowledge and expertise to the legal process."[243] He said that although he agreed with Dr Dodd that a thorough exclusionary examination is crucial to remove other causes of death, he said that there is also certain patterns/associations that commonly "come together to form a cluster of ideas or clusters of pieces of (sic) information that suggests the diagnosis."[244] Some of these are internal in the body and some are "external and go to the social or circumstantial factors surrounding the death." So it is not limited to a diagnosis of exclusion but also "a diagnosis that recognises a cluster of associations."[245] Such an approach is important both from a scientific perspective and a general community perspective because it enables people "in particular medical areas to focus on issues which may have important messages for prevention and important issues in relation to therapeutics and management."[246]

110. Dr Ranson agreed that most of the literature about Excited Delirium Syndrome arose in the United States of America but acknowledged that it was important to follow some of the reviews and analyses because we do see some cases here albeit that there are some differences in the drug profiles between the two countries seen in these cases. He said that:

> *I think the general issue is that Excited Delirium is an entity, as a constellation is something that is recognised here, and it is seen here from time to time, but not very commonly.*[247]

111. In discussions and evidence about what this jurisdiction could learn from the body of knowledge coming out of the United States and whether the two-sided pocket card developed by the National Institute of Justice's Technology Working Group[248] for use by Police and paramedics had any applicability here, Dr Ranson said that improving the

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[243] T @p 1141.
[244] T @ p 1142.
[245] T @ p 1142.
[246] T @ p 1143.
[247] T @ p 1178.
[248] Exhibit 79 – Article attached to Dr Ranson's statement entitled "Excited Delirium Syndrome (ExDS): Redefining an old diagnosis", Journal of Forensic and Legal Medicine, 19 (2012) 7-11 (see page 4 of the article, Figure 1 for a depiction of the two-sided card).

knowledge base about the syndrome so that Police for example can have risk-focused practice has considerable value.[249] He also said however that he accepted that there is potentially a danger in emphasising risk management relevant to issues or situations infrequently encountered:

> *...because you can overload people with protocols and checklists...so it makes it very difficult for them to do their job. But I think general awareness and awareness of the importance of the medical input that might have a value, which traditionally forensic pathologists are not as involved with, I think is something that is worth exploring.*[250]

(iii) Professor Anthony Brown – Senior Emergency Medicine Specialist - expert opinion[251]

112. In his report, Professor Brown stated that Excited Delirium Syndrome is not a recognised diagnosis in Australian emergency medicine nor an accepted medical diagnosis in Australia. In the concluding comments of his report to the Court, Professor Brown stated that currently Excited Delirium Syndrome (ExDS) has "no agreed definition, no agreed pathophysiological causation, no agreed test or gold standard measurement, and no outcome data demonstrating positive response to preventative measures."[252]

113. In his *viva voce* evidence, Professor Brown explained that Emergency Departments would treat hundreds if not thousands of cases of people presenting with 'delirium' where the expected outcome was for improvement except in cases where there is an underlying significant medical disorder such as head injury, meningitis or liver disease. But these were the exception he emphasised stating that "delirium is very common and very rarely should lead to death."[253] The key feature of delirium he said is that it is a medical problem until proven otherwise.[254]

114. Professor Brown was keen to point out that 'delirium' is very difficult to recognise. He said:

> *A delirium is an altered mental status with clouding of consciousness, and that can manifest as inappropriate behaviour, inappropriate attention span, not answering questions sensibly.....so the presentation is the aggressive,*

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[249] T @ p 1179.
[250] T @ pp 1178 – 1179.
[251] Exhibit 83 – Report of Professor Anthony Frank Treacher Brown dated 25 October 2012.
[252] Exhibit 83 - Report of Professor Anthony Frank Treacher Brown dated 25 October 2012.
[253] T @ p 1248.
[254] T @ p 1259.

agitated, behaviourally disturbed person. To determine if that is simply a behavioural disorder, a psychiatric disorder or a delirium at the start is very difficult indeed. And so it's very hard for the Police to be certain because there are many, many (sic) "bad people" who will act up in an aggressive manner simply because that's their character; to be able to then work out amongst the people with irrational, or agitated, or dangerous behaviour, who has delirium is very difficult.[255]

115. Professor Brown further acknowledged the difficulty for first responders and said that although it was easy for him to say delirium is a medical problem he was "not the one at the scene seeing people with behavioural disturbance and saying 'that one's delirium' and 'that one isn't'."[256] To this end, he said that "these little cards that have been developed in America with some of the features" are helpful.[257] Confounding the difficulties for non-medically trained first responders particularly where a struggle has ensued, is distinguishing whether the symptoms, for example, rapid breathing and sweating are symptomatic of the physical struggle or a more dangerous medical condition such as a delirium.[258] He said that the card should be used "to determine who has a medical problem and should go to hospital so they don't go to the Police cells" or at the time restraint is being applied to decide if that the person is medically sick, not agitated sick.[259] Professor Brown said that he liked the prompts on the back of the card: 'identify, control, sedate, transport' which he said is basically telling the first responder that this is not a behavioural disturbance but a medical emergency.[260]

116. On his assessment of the investigation material provided to him to prepare his report to the Court, Professor Brown said he was not critical of either the Police or the paramedics who attended at the scene of Odisseas' arrest.[261]

117. Professor Brown noted in his report that ExDS is not recognised in the DSM-IV or by the American Psychiatric Association and at the date of giving evidence before the Inquest, the DSM-V had been published but still made no reference to ExDS. Professor Brown said that 'delirium' is defined as a disturbance in attention that comes on over a short period of time

[255] T @ p 1258.
[256] T @ p 1282.
[257] T @ p 1282.
[258] T @ pp 1294 – 1295.
[259] T @ p 1307.
[260] T @ p 1307.
[261] T @ p 1300.

with disturbance of cognition so that it is considered to be "an acute and hopefully reversible condition."[262] DSM-V provides five descriptor categories of 'delirium' which Professor Brown said is "quite straightforward and useful". The categories are substance intoxication delirium, substance withdrawal delirium, medication-induced delirium, delirium due to another medical condition and delirium due to multiple aetiologies.[263] Psychiatric illness is not of itself a cause of delirium and therefore not a specific category[264] because a person with a psychiatric illness does not have a clouding of consciousness that the definition of delirium necessitates.[265]

118. Professor Brown said that he struggles with 'Excited Delirium' being considered an illness or a diagnosis because he personally did not recognise it and neither was it recognised in Australia by any of the Colleges including those in the specialities of emergency and psychiatric medicine and nor was it recognised by the Australian Medical Association. He specifically rejected Dr Ranson's views about the extent of Excited Delirium being well recognised within the medical profession and said "it's just incorrect to say that it's a well-recognised condition amongst emergency physicians, that's not correct; certainly not in this country, not in Europe and really only coming out of a small cohort in America."[266]

119. Professor Brown said that interestingly the data base around Excited Delirium in America was actually "very very small". He said that there were only 18 publications most of which were based on "case series", so considered the degree of science on Excited Delirium was miniscule.[267] He also said that if you look at the blogs on the topic "there is a polarization with Excited Delirium as to whether it is a medical condition or whether it is an excuse"[268] in terms of where death has occurred in the context of either physical and/or chemical restraint. Professor Brown cautioned against assuming the safety of capsicum spray and the use of Tasers because their use kept coming up in these type of matters because "that's what you use when you have an incredibly violent person." But he said that lots of the literature about their safety was by the same people who write about Excited Delirium and their

[262] T @ p 1263.
[263] T @ p 1263.
[264] T @ p 1265.
[265] T @ p 1266.
[266] T @ pp 1311 - 1312.
[267] T @ p 1271.
[268] T @ p 1299.

pronouncements about safety were based on experiments on healthy volunteers "which is not the same as somebody who is in an extreme, exhausted, decompensated delirium."[269]

120. Professor Brown said that he had a problem with the way that Dr Dodd had stated that the features that Odisseas showed have been described in people who have been labelled with Excited Delirium because:

> *I think that is just a descriptor of what they were like before they died, and it doesn't help us predict who will die, why they have died and then, more importantly, how to prevent it. So it becomes an iterative sort of argument where it's almost like the cause of death because the circumstance and I think that's dangerous.*[270]

COMMENTS

Pursuant to section 67(3) of the **Coroners Act 2008**, I make the following comments connected with the death:

1. Toxicological analysis on post mortem specimens confirmed that Risperidone was not detected in Odisseas' blood contrary to the submission of Mr Trapnell. Only the medication's metabolite was detected which leaves open the possibility that either Odisseas took 2mgs in the morning of 21 December 2009 as per Dr Vu's instructions to half the dose, or is also possibly consistent with the evidence that Odisseas had either ceased taking his antipsychotic medication or was not taking it consistently. These scenarios are more likely than the possible scenario that he was taking the drug Paliperdone. The only definitive conclusion that can be drawn from the toxicological analysis and the evidence of Dr Gerostamoulos is that Odisseas was no longer taking his daily maintenance dose of 4mgs of Risperidone at the time of his death.

2. I acknowledge the concession made by Dr Kim Son Vu in respect of his failure to follow up Odisseas for a review appointment to monitor the effects of the planned reduction of Odisseas' principal antipsychotic medication. Dr Vu also conceded that he would have managed Odisseas more closely and sought the assistance of a psychiatrist about the planned reduction in medication if he had known of Odisseas' use of illicit drugs, but Dr Vu did know that Odisseas had a long history of mental ill health and did know that Odisseas had been taking this prescription medication for a number of years. I consider that Dr Vu had

[269] T @ p 1303.
[270] T @ pp 1309 - 1310.

sufficient knowledge about Odisseas which should have enabled him to anticipate that such a reduction without consultation with a psychiatrist and without close supervision was fraught.

3. I also acknowledge that Dr Vu in conceding his own failure to follow-up Odisseas, and the lack of a follow-up system at the TLC Medical Clinic at that time, Dr Vu has implemented a recall and reminders system into his own sole practitioner clinic in Springvale[271] with the aim of preventing like incidents.[272]

4. I acknowledge the multitude of difficulties Police experience in their encounters with violent and/or potentially violent members of the public. It is well reported that the violence can be escalated if the individual is affected by alcohol or drugs, the most notable currently being methylamphetamines. Acute behavioural disturbance brought about by mental ill health, mental ill health in combination with alcohol and/or drugs or the effects of a combination of alcohol and drugs presents as a multitude of challenges for Police members. Police are not medically trained and they are not diagnosticians, nor are they usually afforded the time to consider which of the many possible range of conditions applies to the member of the public with aberrant behaviour that they are confronted with. It is imperative that they endeavour to apply their training to the best of their ability relevant to the circumstances. In general terms, I make no criticism of individual officers who are not always fully cognisant of the full range of possible signs and/or symptoms of impending complications related to a set of circumstances to which they are attempting to apply their training, for example, in respect of the evidence related to positional asphyxia.

5. I note the recent finding of Coroner Byrne in the investigation into the death of Craig McMillan (COR 2013 1891) which involved the death of a man with a mental health illness which occurred during Police transport in the back of the divisional van when Mr McMillan was positioned such that his upper torso and head were not displayed via the fixed camera located above the back door facing the cabin. The cause of Mr McMillan's death was unascertained (death in custody). In the course of Coroner Byrne's investigation, a statement was obtained from the Manager of the Victoria Police Operational Infrastructure Department (Transport Branch), Mr Frank Melilli, indicating that consideration is being given to installing a second camera in the pod of existing divisional vans, but to do so raises the issues of significant cost and data management. It is my understanding that on 22 May

[271] Exhibit 2 – Recall and Reminder Policy.
[272] T @ p 33.

2015, the Vehicle Policy Committee approved the recommendation to not adopt a second camera in the current divisional van pods, while noting the intention of providing 360° view digital recording systems in the next generation of Victoria Police divisional vans. It is also my understanding that concept planning for this vehicle has commenced and it is anticipated that Victoria Police will commence a trial of these vehicles late this year or early next year and that there will be a large scale roll out of vehicles to replace the current divisional van in 2018. It therefore appears that although there is an anticipated programme for improving the extent of visual capacities of the rear pod, there is a current ongoing risk of Police members not being able to view the upper torso and head of those being transported in divisional vans, and that this risk will remain until approximately 2018. I therefore note the potential for like situations to occur in the future, and encourage Victoria Police in the interim to consider communicating to all Victoria Police members the limitations of the visual capacities of rear pod cameras in current divisional vans in the context of Odisseas' and Mr McMillan's deaths.

6. The lack of knowledge of the on-duty Police officers, including the most senior officer on duty, about the availability and/or location of emergency equipment in the Dandenong Police Station was unacceptable and not conducive to supporting a work environment where, from time to time, members of Victoria Police may need to respond to medical emergencies. I am however satisfied on the evidence that this has been rectified at the Dandenong Police Station and that appropriate signage has also been erected around the station to provide a permanent visual prompt of available equipment and its location,[273] which has been further enforced by forming part of the "Dandenong Police Station New Arrivals Checklist."[274] My comments are equally applicable to the lack of knowledge about the existence of the emergency button in the sally port and similarly, I am satisfied that the erection of appropriate signage has rectified this shortcoming.

7. Given the apparent ongoing disagreement regarding the existence and status of Excited Delirium, it would be helpful for relevant professional bodies in Australia, such as the Australasian College for Emergency Medicine, the Royal Australian and New Zealand College of Psychiatrists, the Australian Medical Association and the Royal College of Pathologists of Australasia (Forensic Pathology) to publish position papers on Excited Delirium as a starting point for Australian discussion about and research into appropriate

[273] Exhibit 73.
[274] Exhibit 78.

clinical responses to people presenting with delirium, agitation or acute behavioural disturbance.

FINDINGS

1. I find that the identity of the deceased is Odisseas Vekiaris, born on 26 November 1980 and died on 21 December 2009.

2. Save for the comments I have made in relation to Dr Vu's involvement with Odisseas and in particular in respect to his antipsychotic medication reduction plan and Dr Vu's implementation of prevention measures in response, I make no adverse finding against Dr Vu.

3. I make no adverse finding against the Southern Health Psychiatric Triage Service in respect of their involvement and response to the telephone calls from Tom and Mary Vekiaris on 21 December 2009.

4. I am unable to make any findings on whether there was in fact any precipitating relationship or events between Odisseas and Mr McGrath that contributed to or may provide some explanation to the apparent attack on Mr McGrath by Odisseas. Odisseas' family have their own beliefs that Odisseas may have been robbed based on their discovery that a large amount of Odisseas' money has gone missing, but such beliefs were not put to Mr McGrath in cross examination. Indeed, as this information was not provided to me until after the evidence was completed, its relevance to the circumstances surrounding Odisseas' death could not be explored or tested in anyway. I am thus constrained in attaching any weight to this information. It is regrettable and unintentional if my inability to make such findings on this particular issue add to the family's distress over the death of Odisseas.

5. The weight of the evidence supports findings that Odisseas was armed with a knife, confronted Mr McGrath with that knife, stabbed Mr McGrath and pursued him while he remained armed with that knife.

6. Despite some variations in accounts of how the scenario between Odisseas and Leading Senior Constable Porter unfolded, I accept his account of the immediacy of the situation as it presented itself to him supported by the fact that as a member of the Dog Squad, he did not have the time or opportunity to retrieve and release his dog from the rear of his vehicle before he confronted or was confronted by Odisseas. There was an immediacy to the situation as it rapidly unfolded. At the time of confronting Odisseas, Leading Senior Constable Porter already knew that Odisseas had stabbed one member of the public. Leading

Senior Constable Porter was working alone and faced a violent and aggressive Odisseas who was armed with a kitchen knife with a 130 mm long blade. I find that Leading Senior Constable Porter appropriately commanded[275] Odisseas to drop the knife and get down on the ground[276] before deploying the OC foam. I find that Leading Senior Constable Porter acted appropriately in deploying OC foam and spray and wrestling[277] Odisseas to the ground in the manner he did in an attempt to handcuff Odisseas and contain his behaviour. Leading Senior Constable Porter conducted himself in accordance with his training by using the minimum amount of force, OC Foam, to achieve the objective of disarming Odisseas.

7. During the attempt by Senior Constable Sutton and Senior Constable Mascoll to handcuff and restrain Odisseas, a great deal of force was applied to him. He was struggling violently and a number of witnesses, both Police and civilian, commented on his apparent overwhelming degree of strength. I am unable to reconcile SC Mascoll's evidence regarding the position of Odisseas during the process of handcuffing him and thereafter. If I was to accept the evidence of SC Mascoll in isolation of the evidence of his colleague SC Sutton, and the evidence of LSC Porter and some of the civilian witnesses, the scenario never places Odisseas with his chest on or towards the ground in the prone position whilst being restrained from behind. The weight of the evidence supports a finding that Odisseas was held in the prone position from time to time as the events unfolded. The evidence of Dr Dodd and the injuries he identified on Odisseas' face also supports a finding that Odisseas was held in the prone position from time to time as the events unfolded.

8. Whilst it is concerning that Odisseas appears to have been maintained in a prone position not only from time to time but possibly for a lengthy and inappropriate period of time, he did not die from positional asphyxia at the scene of his arrest. The evidence of ambulance Paramedic Sheppard that Odisseas' respiratory system showed no signs of being compromised by the manner in which he had been restrained at a point in time immediately prior to Odisseas being placed in the rear of the divisional van, supports a finding that the force applied in restraining Odisseas by TMU members, SCs Sutton and Mascoll, did not cause or contribute to Odisseas' death.

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[275] T @ p 192.
[276] T @ p 146.
[277] T @ p 202.

9. I note the minor shortcomings in Paramedic Sheppard's assessment of Odisseas as identified by Ambulance Victoria's internal review.[278] Paramedic Sheppard has acknowledged and/or made concessions[279] in respect of the same but I am satisfied that these shortcomings were not of such significance to his overall assessment of Odisseas so as to influence my findings. I find that the assessment of Odisseas undertaken by Paramedic Sheppard was based on information provided to him by attending Police, his own observations and physical examination of Odisseas and was reasonable and appropriate in the circumstances. And I further find that having made his assessment, Paramedic Sheppard was entitled to advise Police that at that time, Odisseas was fit to be transported to the Police Station in the divisional van. I accept the submission[280] that there was nothing objective on the face of Odisseas' presentation that should have led the paramedics, and in particular Paramedic Sheppard, to a conclusion other than he was fit to be transported. Although Paramedic Sheppard was not cognisant of the descriptor 'Excited Delirium', it is not apparent on the evidence that even if he had been armed with this knowledge, that it would have or should have influenced his overall assessment in the circumstances.

10. The evidence of Professor Brown is compelling. It is compelling in respect of his experience of treating people who present with delirium type symptoms to the Emergency Department and compelling that the presentation of such a range of symptoms should be treated as a medical condition. For first responders outside the hospital setting, it was Professor Brown's opinion that a better outcome is more predictable if that person is transported to hospital. I accept that transportation to hospital should be the preferred position for first responders to adopt, but it is neither practical nor appropriate to mandate such an approach. It is not practical for Emergency Departments to receive all people attended on by first responders who may be presenting with symptoms that appear to fall within in the range of symptoms associated with delirium. It is not appropriate to mandate such a response as first responders, particularly paramedics, must be able to apply their training and exercise their discretion in this regard. Although I am persuaded that transportation to hospital is preferred because of the possibility of improved outcomes, it is not appropriate to make such a finding as it is not open to me on the evidence that transporting Odisseas to hospital would have made any difference to the outcome.

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[278] Exhibit 39 – Ambulance Victoria Clinical Case Review Report dated 27 December 2009.
[279] T @ pp 629,641.
[280] T @ p 1346.

11. I find that Constables Van der Meer and Aitken were entitled to feel reassured about Odisseas' fitness to be transported in the divisional van after receiving clearance from ambulance paramedics. They did not however turn their minds to whether the mandated time frame of 45 minutes had elapsed since Odisseas had been subjected to OC foam and spray as is required by Victoria Police's own policies and procedures. Whether or not the policy is ambiguous, neither officer responsible for the transportation of Odisseas could say exactly what time frame had elapsed since he had been inflicted with the foam and spray. I find that they failed to comply with their own policies and procedures before commencing the transportation however, I repeat my above finding that the officers were entitled to feel reassured about Odisseas' wellbeing and fitness for transportation by the attendance of paramedics.

12. The officers were not however entitled to be complacent about Odisseas' wellbeing during his transportation merely due to the fact of the paramedics' assessment and clearance. I find that the monitoring of Odisseas in the rear pod of the Springvale 303 divisional van was inadequate. It was inadequate for the circumstances having regard to the behaviour of Odisseas, the fact that he had been chemically and physically restrained for a considerable period of time. He was not constantly observed as I interpret the Victorian Police Manual Guidelines on post chemical restraint intend. It was inadequate for the circumstances and difficult to reconcile with the evidence and actions of Constable Van der Meer such that before transporting Odisseas, he appropriately requested the attendance of an ambulance for assessment of Odisseas' wellbeing. It was inadequate for the circumstances and difficult to reconcile with the evidence of Constable Aitken that she was concerned that Odisseas was affected by drugs. The monitoring was inadequate for the circumstances of transporting a handcuffed prisoner, who was not secured with a seatbelt, placed on the floor of the rear pod, as neither his torso nor face could be seen at any time during the journey to the Dandenong Police Station. Given the extensive limitations of the monitoring system and its' inadequacies related to the circumstances, I find that the members of Springvale 303 should have pulled over and checked on the welfare of Odisseas when he was noted to become quiet and/or when they noticed that his legs had slid forward. At no time during the journey to the Dandenong Police Station did either officer have the capacity and/or information available to them to make any meaningful interpretation of Odisseas' wellbeing in the rear pod by the viewing of only his legs on the monitor in the console of their vehicle. The situation demanded that they implement more proactive measures to actually monitor his

welfare rather than passively accepting the limitations of what was technically available to them. The relatively short distance that they were required to travel from Noble Park North to the Dandenong Police Station may have influenced their relatively passive attention to the change in Odisseas' position, save to say that I attach very little weight to the somewhat protracted evidence which focused on providing an analysis of the route taken by Springvale 303 back to the Dandenong Police Station. Constable Van der Meer's evidence could not be relied upon for a definitive depiction of the route and although he was prepared to later accept the GPS data analysis taken from the vehicle as the actual route travelled, it nevertheless provided no clarity to the evidence as to when, in the space of that journey, the members of Springvale 303 noticed a change to Odisseas' position. It is not necessary for me to make findings on the route taken by Springvale 303, how it was chosen, what was relied upon or indeed whether there was a more appropriate and shorter route open to them. Nothing turns on the actual route or speculating as to when in the journey the change in Odisseas was noticed. It is the failure to respond to that change that causes concern and analysis of whether the outcome may have been different. Concern and analysis does not however enable a definitive finding that pulling over and checking on Odisseas' welfare *en route* would have made any difference to the outcome. At best it was an opportunity lost to reassess Odisseas' welfare and if he had indeed gone into cardiac arrest at that time, an opportunity lost to commence CPR contemporaneously to the changed circumstance.

13. I make no adverse finding in respect of the response of Constables Van der Meer and Aitken to Odisseas when they opened the rear of their divisional van and found him to be unresponsive, not breathing and pulseless. I am satisfied that they acted promptly to position Odisseas so that CPR could be initiated. The evidence of the attending paramedics also supports a conclusion that there is no basis for criticism of the CPR techniques and endeavours of Constables Van der Meer and Williams. I am satisfied that they sustained their CPR attempts in a manner consistent with their training until the arrival of Ambulance paramedics. Whether they were curtailed in their ability to provide additional treatment to Odisseas in the means of cardio-version is not known as no AED was made available to the officers to place on Odisseas' chest for the purposes of ascertaining if his cardiac rhythm was one that was amenable to cardioversion. As MICA paramedic Nicholls stated, "it could have been any sort of rhythm."[281] It is only with the arrival of the paramedics at or around 9.52pm that Odisseas' rhythm was identified as asystole on their cardiac monitor. I am

[281] T @ pp 819, 821.

therefore unable to make a finding as to what rhythm Odisseas was in when he was located unresponsive or while Police were performing CPR. It is not possible to determine whether he was in ventricular fibrillation, a bradyasystole or pulseless electrical activity and thus whether or not the provision and placement of the AED on Odisseas would have made any difference to the emergency management of him prior to the arrival of paramedics or indeed, whether it would have made any difference to the outcome. Once Odisseas' rhythm was identified as asystole by paramedics I accept that the application of "defibrillation" is not a treatment option as there is no rhythm as such to defibrillate.[282] I also accept that this remained the situation until CPR was discontinued.

14. I find that there is a disputed status of Excited Delirium within the scientific and medical community including but not limited to the fears that Police might be using Excited Delirium to explain deaths during Police intervention. This is not ideal and has the potential to detract from a rigorous analysis of whether the deceased should have been transported to hospital. I note that an independent review of use of force in the Royal Canadian Mounted Police following Mr Dziekanski's death recommended that all mention of Excited Delirium should be removed from Royal Canadian Mounted Police literature unless and until the syndrome is recognised and approved by an independent expert medical advisory body.[283] I support this approach.

15. I accept that "Excited Delirium" and "Excited Delirium Syndrome" may be useful phrases for first responders. These phrases have been used to encapsulate how a person is presenting in that the phrases denotes or compartmentalises a set of circumstances about the presentation to the first responder that can be utilised and/or provide assistance in assessing risk and the appropriate response. "Excited Delirium" and "Excited Delirium Syndrome" are not however phrases recognised as representative of a distinct medical entity or diagnosis by the Australasian College for Emergency Medicine, the Royal Australian and New Zealand College of Psychiatrists, the Australian Medical Association, the World Health Organization or any college or organisation in Australia or New Zealand. It is thus confounding to introduce these descriptive phrases into the nomenclature of forensic pathology as being representative of a medical cause of death.

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[282] T @ pp 818-819.

[283] John Kiedrowski, et al., "An Independent Review of the Adoption and Use of Conducted Energy Weapons by the Royal Canadian Mounted Police: Executive Summary", Royal Canadian Mounted Police, 5 June 2008, <http://www.rcmp-grc.gc.ca/ccaps-spcca/cew-ai/kiedrowski-report-rapport-eng.htm>, accessed 15 February 2010.

16. I find that "Excited Delirium" and "Excited Delirium Syndrome" are neither appropriate nor helpful for the ascribing of a medical cause of death.

17. I find that it is not necessary to refer to death having occurred in the presence or custody of Police within the ascription of the medical cause of death as it forms part of the circumstances that section 67(1)(c) requires me, if possible, to make findings on. Written findings on the circumstances where a death has occurred in the presence of or custody of Police will always occur and as such there is no basis to place such circumstances within the medical cause of death merely for the purported purposes of capturing the 'background' for researchers.

18. Accordingly, the cause of death as it is currently registered with the Registrar of Births Deaths and Marriages, will be amended.

19. I find that Odisseas Vekiaris died in circumstances which are in all probability multifactorial and related to his pre-existing mental ill health and use of antipsychotic medication, his consumption of illicit drugs, his behaviour being a violent and agitated delirious state and the necessary involvement of Police who applied chemical and physical restraint in order to contain and arrest him. Odisseas died in the rear of the divisional van whilst being transported to the Dandenong Police Station. The exact mechanism of his death, save that it is accepted that he has gone into or suffered a cardiac arrest at some stage, is unascertained.

20. Given the absence of definitive causal factors as outlined above, I am unable to find that Odisseas' death was preventable.

21. I find that Odisseas Vekiaris died from unascertained causes on a background of agitated delirium state.

22. I direct that pursuant to Section 49(2) *Coroners Act 2008* that the Principal Registrar notify the Registrar of Births, Deaths and Marriages of the prescribed particulars of my Findings following my investigation and accordingly that the Registrar amend the currently registered cause of death to reflect my Findings into the cause of death of Odisseas Vekiaris.

RECOMMENDATIONS

Pursuant to section 72(2) of the **Coroners Act 2008**, I make the following recommendations connected with the death:

1. I commend Victoria Police for the introduction of the OSTT training package that addresses the possible presenting signs and symptoms of 'Excited Delirium' however in line with the

approach adopted by the Canadian Mounted Police following the Braidwood Commission, **I recommend** that Victoria Police remove from its' training materials/literature reference to "Excited Delirium" and/or "Excited Delirium Syndrome" until such time that it is recognised by Australian medical professional bodies as a discreet medical condition/entity. The interpretation of this recommendation by Victoria Police should not be so prescriptive so as to exclude the use of audio-visual materials obtained and already utilised from other jurisdictions such as the United States.

2. With the view to developing a collaborative and coordinated approach to the management of people presenting with delirium, agitation or acute behavioural disturbance by first responders, **I recommend** that Victoria Police and Ambulance Victoria convene a working group in consultation with the Australasian College for Emergency Medicine with the aim of developing a working protocol/clinical practice guidelines or operational work instructions between the organisations including but not limited to, exploring the development of a readily accessible reference tool such as, but not necessarily limited to, a pocket card such as developed by the NIJ's Technology Working Group on Less-Lethal Devices. The development of such a readily accessible reference tool (which could take the form of an application for telecommunication devices) should be consistent with Recommendation 1 and should instead adopt nomenclature for 'delirium' as it is referenced in the DSM-5.

3. With the view to developing a collaborative and coordinated approach to the management of people presenting with delirium, agitation or acute behavioural disturbance by first responders, **I recommend** that Victoria Police and Ambulance Victoria develop a joint training package including but not limited to, scenario based training which is focussed on the implementation of any newly developed joint protocol, and the use of the readily accessible reference tool.

4. In anticipation that it may take some time for recommendations 1 & 2 to be considered, commenced, completed and implemented and with a view to supporting first responders and in particular, paramedics with enhancing understanding and knowledge of the constellation of presenting symptoms of persons experiencing the range of manifestations of delirium, **I recommend** that Ambulance Victoria, if they have not already done so, not only review the Police training material as referred to in paragraph 49 of their written submissions[284] but

[284] T @ p 1356.

implement training and/or continuing professional development to its paramedics in this regard.

To enable compliance with sections 72(5) and 73(1) of the *Coroners Act 2008* (Vic), I direct that the Findings will be published on the internet.

I direct that a copy of this finding be provided to the following:

- Mr Thomas Vekiaris
- Ms Ashley Del Corral, DCA Lawyers
- Ms Joanna Hill, Landers and Rogers Lawyers
- Mr Peter Stewart, Victorian Government Solicitors Office
- Mr John Snowden, Monash Health
- Mr Colin Grant, Ambulance Victoria
- Ms Marika Hubble-Marriott, Russell Kennedy Lawyers
- Ms Sharon Pattison, Office of Public Prosecutions
- Professor Anthony Brown
- Associate Professor David Ranson, Victoria Institute of Forensic Medicine
- Dr Malcolm Dodd, Victoria Institute of Forensic Medicine
- Australian Medical Association
- Australasian College for Emergency Medicine
- Royal Australian and New Zealand College of Psychiatrists
- Royal College of Pathologists of Australasia (Forensic Pathology)

Signature:

AUDREY JAMIESON
CORONER
Date: **18 December 2015**