



# Coroners Court of Victoria

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## Coronial Inquest into the deaths of

Matthew Poh Chuan Si

Thalia Hakin

Yosuke Kanno

Jess Mudie

Zachary Matthew Bryant

Bhavita Patel

Coroner Jacqui Hawkins

19 November 2020



# Coroners Court of Victoria at Melbourne

## Finding into Deaths with Inquest

*Form 37 Rule 63(1)*

*Section 67 of the Coroners Act 2008*

## Inquest into the deaths of:

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11 June 2020 to 12 June 2020

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# Part 1: Coronial Investigation

## Introduction

- 1.1 On 20 January 2017, at approximately 1.28 pm, James Gargasoulas<sup>1</sup> (**the Offender**), drove a stolen maroon-coloured<sup>2</sup> Holden Commodore (**the vehicle**) into Melbourne's Central Business District (**CBD**).
- 1.2 At the intersection of Flinders and Swanston streets, immediately outside Flinders Street Station, the Offender performed a series of 'donuts', shouted out to onlookers and taunted police. He then drove north up Swanston Street, followed by a convoy of police vehicles. After crossing Little Collins Street, he briefly veered onto the footpath, where pedestrians scattered to avoid being struck.
- 1.3 At approximately 1.32 pm, the Offender turned left into the Bourke Street Mall. He drove at speed through the lunchtime crowds on the southern-side footpath of Bourke Street for three city blocks until the vehicle came to a stop just after the intersection of Bourke and William streets.
- 1.4 In all, the vehicle struck 33 pedestrians, many of whom had their backs to the oncoming vehicle and were unaware of its approach when they were hit. Six of the pedestrians—Matthew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jessica (**Jess**) Mudie, Zachary Matthew Bryant and Bhavita Patel—sustained fatal injuries.
- 1.5 To simply describe these events does not capture their horror, occurring as they did in the midst of crowds of shoppers, tourists and office workers enjoying the height of summer during the period of the Australian Open. Numerous witnesses likened it to a nightmare. The moments they witnessed were simply beyond their comprehension. The Offender's actions were both unthinkable and repellent. They struck at the heart of Melbourne, with the city's iconic streetscapes as their setting.
- 1.6 The Offender's actions have reverberated nationally and internationally, leaving a lasting effect upon countless people including the friends and families of the deceased, the injured, those who tended to the injured and dying, and the witnesses to these events. I acknowledge all those affected and their enduring physical and psychological pain.
- 1.7 I also acknowledge the heroic actions of the many first responders to this large-scale emergency who provided aid, support and comfort to the injured and dying. On a day when Melbourne was witness to the callous acts of one man, it also saw remarkably selfless examples of the very best of humanity. Their service to our community cannot be overstated.
- 1.8 I also recognise that these events have had a severe and lasting effect on many of the witnesses who gave evidence at this Inquest, including Victoria Police members involved in the events of the day and the preceding week. I commend any individual who chooses to pursue a calling that focuses on protecting the safety and welfare of others.

1 Out of respect for the families of Matthew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel, and at their request, Mr Gargasoulas was referred to as the Offender throughout the Inquest and is henceforth referred to as the Offender throughout this Finding.

2 Please note that descriptions of the vehicle's colour vary throughout this Finding. While the vehicle's colour has been formally identified as maroon, red and maroon are used interchangeably depending on the evidence of witnesses.

## Jurisdiction

- 1.9 The deaths of Matthew, Thalia, Yosuke, Jess, Zachary and Bhavita constituted ‘reportable deaths’ pursuant to s. 4 of the *Coroners Act 2008* (Vic) (**Coroners Act**), because their deaths occurred in Victoria, were unexpected, violent and resulted directly from injury.

## Purpose of the Coronial Jurisdiction

- 1.10 The Coroners Court of Victoria is a specialist inquisitorial court.<sup>3</sup> 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 the death occurred.
- 1.11 The cause of death refers to the medical cause of death, incorporating where possible the mode or mechanism of death.
- 1.12 The circumstances in which the death occurred refers to the context or background and surrounding circumstances of the death. It is confined to those circumstances that are sufficiently proximate and causally related to the death.
- 1.13 The broader purpose of a coronial investigation is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by the making of recommendations by coroners. This is generally referred to as the prevention role.
- 1.14 Coroners are empowered to:
- a. report to the Attorney-General on a death<sup>4</sup>
  - b. comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice<sup>5</sup>
  - c. make recommendations to any Minister or public statutory authority or entity on any matter connected with the death, including public health and safety or the administration of justice.<sup>6</sup>

These powers are the means by which the prevention role may be advanced.

- 1.15 Coroners are not empowered to determine any civil or criminal liability arising from the investigation of a reportable death, and are specifically prohibited from including a finding or comment or any statement that a person is, or may be, guilty of an offence.<sup>7</sup> It is not the role of the coroner to lay or apportion blame but to establish the facts.<sup>8</sup>
- 1.16 The coronial system should operate in a fair and efficient manner.<sup>9</sup> When exercising a function under the Coroners Act, a person should have regard to those factors set out in s. 8, which includes the desirability of promoting public health and safety and the administration of justice.<sup>10</sup>

<sup>3</sup> *Coroners Act 2008* (Vic), ss. 1(d), 89(4).

<sup>4</sup> *Coroners Act 2008* (Vic), s. 72(1).

<sup>5</sup> *Coroners Act 2008* (Vic), s. 67(3).

<sup>6</sup> *Coroners Act 2008* (Vic), s. 72(2).

<sup>7</sup> *Coroners Act 2008* (Vic), s. 69(1). However, a coroner may include a statement relating to a notification to the Director of Public Prosecutions if they believe an indictable offence may have been committed in connection with the death. See ss. 69(2) and 49(1) of the Coroners Act.

<sup>8</sup> *Keown v Khan* (1999) 1 VR 69.

<sup>9</sup> *Coroners Act 2008* (Vic), s. 9.

<sup>10</sup> *Coroners Act 2008* (Vic), s. 8(e).

## Coronial Inquest

- 1.17 A coroner must hold an Inquest if the coroner suspects the death was the result of homicide.<sup>11</sup> A coroner is not required to hold an Inquest if a person has been charged with an indictable offence in respect of the death being investigated by the coroner.<sup>12</sup>
- 1.18 The Inquest was initially adjourned on 20 July 2017, pending finalisation of the criminal proceedings against the Offender for the murders of Matthew, Thalia, Yosuke, Jess, Zachary and Bhavita.<sup>13</sup>
- 1.19 On 13 November 2018, the Offender was found guilty of the murders of Matthew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel, as well as 27 charges of reckless conduct endangering life.<sup>14</sup> On 22 February 2019, Justice Weinberg of the Supreme Court of Victoria sentenced the Offender to life imprisonment with a non-parole period of 46 years.<sup>15</sup>
- 1.20 Section 52(1) of the Coroners Act provides that a coroner may hold an Inquest into any death that the coroner is investigating. This discretion must be exercised in a manner consistent with the preamble and purposes of the Coroners Act.
- 1.21 In deciding whether to conduct an Inquest, a coroner may consider factors including (but not limited to):
- a. whether there is such uncertainty or conflict of evidence as to justify the use of the judicial forensic process
  - b. whether there is a likelihood that an Inquest will uncover important systemic defects or risks not already known about
  - c. whether an Inquest is likely to assist in maintaining public confidence in the administration of justice or other public agencies
  - d. whether the family or another person has requested the Inquest
  - e. to draw attention to the existence of circumstances which, if unremedied, might lead to further deaths.
- 1.22 The events immediately proximate to the deaths of Matthew, Thalia, Yosuke, Jess, Zachary and Bhavita were uncontroversial. The cause of, and moral culpability for, the deaths of Matthew, Thalia, Yosuke, Jess, Zachary and Bhavita lies with the Offender. The path of the Offender's vehicle along the Bourke Street Mall was captured in video footage from numerous angles and is described in the uncontested statements of hundreds of eyewitnesses.
- 1.23 As noted by Justice Weinberg in his sentencing remarks, the Offender:
- ... deliberately swerved from the tram lines in the Bourke Street Mall onto the southern footpath which was, of course, crowded. [He] accelerated, mowing down many of the pedestrians who were walking along that footpath. [He was] obviously well aware of their presence. [He was] also well aware of the likelihood that by driving through the crowds in the way [he] did, [he] would kill, or at least seriously injure, those [he]

<sup>11</sup> *Coroners Act 2008* (Vic), s. 52(2)(a).

<sup>12</sup> *Coroners Act 2008* (Vic), s. 52(3)(b).

<sup>13</sup> Transcript of directions hearing on 20 July 2017, p. 10.

<sup>14</sup> *DPP v Gargasoulas* [2019] VSC 87, p. 1.

<sup>15</sup> *DPP v Gargasoulas* [2019] VSC 87, pp. 34–5.

struck.<sup>16</sup> As the charges of which [the Offender was convicted] make clear, [the Offender], by [his] deliberate and wanton conduct, murdered six young people, none of whom [he] knew, and none of whom had done [him] any wrong.<sup>17</sup>

- 1.24 It was apparent, upon reading the criminal brief of evidence, that the events leading up to the Bourke Street incident gave rise to community concern about aspects of the administration of justice and issues of public health and safety. Consequently, I determined that these issues warranted further investigation to:
- a. ascertain how a recidivist criminal, prone to extreme forms of violence with escalating behaviour proximate to 20 January 2017, was able to murder six innocent people and seriously injure many more
  - b. understand the environment that allowed the Offender to operate and navigate his way around the criminal justice system
  - c. learn from the deaths of Matthew, Thalia, Yosuke, Jess, Zachary and Bhavita to potentially reduce the risk of such an event occurring again and to ensure that our community is better able to anticipate and respond when confronted with similar circumstances.
- 1.25 After the Offender was sentenced, I held a directions hearing on 2 April 2019 to consider the scope of the Inquest, proposed witness schedule and preparation of the electronic coronial brief. Over the next seven months and following a further two directions hearings, the electronic coronial brief was collated and disseminated to the interested parties, and the proposed scope of Inquest underwent further revision following an application by the families of the deceased.<sup>18</sup>

## Interested parties

- 1.26 The following parties were granted interested party status<sup>19</sup> and appeared at the Inquest:
- a. families of the six deceased victims (**Families**)
  - b. Chief Commissioner of Police (**CCP**)
  - c. Department of Justice and Community Safety (**DJCS**)
  - d. 21 operational police officers from Port Phillip and Stonnington Criminal Investigation Units (**CIU**), the Critical Incident Response Team (**CIRT**) and the Police Communications Centre (**PCC**) (**Group A Police Officers**)<sup>20</sup>
  - e. 31 operational police officers from St Kilda and South Melbourne Uniform, Highway Patrol, Homicide Squad, State Surveillance Unit (**SSU**) and Air Wing, as well as Divisional Patrol Supervisors, Local Area Commanders, Crime Supervisors, Response Managers and Patrol Supervisors in the North West Metropolitan and Southern Metropolitan regions (**SMR**) (**Group B Police Officers**)<sup>21</sup>

<sup>16</sup> *DPP v Gargasoulas* [2019] VSC 87, p. 1.

<sup>17</sup> *DPP v Gargasoulas* [2019] VSC 87, p. 7.

<sup>18</sup> See Ruling No 2 dated 23 August 2019 in this matter.

<sup>19</sup> *Coroners Act 2008* (Vic), s. 56.

<sup>20</sup> Refer to Appendix A for the list of Group A Police Officers.

<sup>21</sup> Refer to Appendix B for the list of Group B Police Officers.

- f. SC Roland Jones of CIRT
- g. Mr Frank Caridi, former Sergeant of Victoria Police
- h. Mr Christos Pantelios, the Bail Justice.

## Scope of Inquest

- 1.27 The purpose of the Inquest was to investigate the following specific issues:
- a. the conduct of the out-of-sessions bail hearing on 14 January 2017, including:
    - i. what information was provided to the Bail Justice
    - ii. policies, procedures, training and information related to out-of-sessions bail/remand hearings
    - iii. any post-incident review/changes by or for the DJCS, the Victorian Government or Victoria Police
    - iv. any prevention opportunities for DJCS, the Victorian Government or Victoria Police.

The Inquest did not consider the correctness of the Bail Justice's decision.

- b. the Victoria Police response between 14–20 January 2017, including:
  - i. the police response to the granting of bail, including monitoring of the Offender's bail conditions
  - ii. the coordination and effectiveness of the Victoria Police response to the circumstances leading up to 20 January 2017
  - iii. the coordination and effectiveness of the Victoria Police response to the events of 20 January 2017 from the time the Offender entered the Melbourne CBD until his arrest.
- c. identification of any remedial changes that have been implemented by Victoria Police and other bodies in response to the events of 14–20 January 2017
- d. policing practices in respect of the use of vehicles as weapons
- e. identification of any further prevention opportunities.

## Witnesses

- 1.28 The Inquest was held over the course of 31 days from 18 November 2019–18 December 2019 and from 17 February 2020–24 February 2020. A further two days of oral submissions by the interested parties were heard on 11 June 2020–12 June 2020.
- 1.29 The Inquest received oral evidence from 50 current and former operational police officers and lay witnesses and received oral statements from 11 family members of the deceased either directly or via their legal representatives.<sup>22</sup>

<sup>22</sup> A complete list of the witnesses who gave *viva voce* evidence at the Inquest is set out in Appendix C.

- 1.30 All the current and former operational police members, save for Executive Command, Mr Caridi, DLSC Lachlan Watson, A/Sgt Simon Watts and SSgt Ronelle Quin, were given certificates under s. 57 of the Coroners Act. In accordance with s. 57(7) of the Coroners Act, the evidence given by these witnesses during this Inquest, and any information, document or thing obtained as a direct or indirect consequence of the person having given evidence, cannot be used against these witnesses in any proceeding in a court or before any person or body authorised by a law of this State, or by the consent of parties, to hear, receive and examine evidence.
- 1.31 A significant number of the witnesses and family members were visibly affected by the trauma of reliving the events of, and associated with, the incident. The hearings were regularly punctuated by moments in which the evident shadows of trauma, pain and loss intruded upon the memories and composure of those witnesses. I acknowledge their bravery, courage and service to the Victorian public in giving evidence at the Inquest .

## Inquiries and investigations

- 1.32 Two significant reviews were undertaken following the Bourke Street tragedy, namely:
- a. the Bail Review undertaken by the Honourable Paul Coghlan QC, in which his Honour conducted a detailed review of Victoria’s bail system, with a focus upon legislative and practical reforms to manage risk and maximise community safety
  - b. the Operation Titan Critical Incident Review (**Critical Incident Review**) undertaken by AC Stephen Fontana, in which a team of Victoria Police members led by him reviewed the events leading up to the Bourke Street incident, including policies, procedures and the police operational response to various events involving the Offender. The purpose of the review was to report on lessons learned and opportunities for improvement in Victoria Police policy, procedures and operational responses.
- 1.33 Relevant findings and recommendations resulting from these reviews are detailed further below.
- 1.34 I wish to express my gratitude for the work undertaken by the Honourable Paul Coghlan QC and AC Fontana. Their reports assisted my investigation by enabling me to identify the key issues requiring further investigation, narrow the scope of the Inquest and limit the number of witnesses that were required to give evidence before me. In this regard, I note the obligation under s. 7 of the Coroners Act to avoid unnecessary duplication of inquiries and investigations.
- 1.35 I would particularly like to commend AC Fontana and his team for their work in conducting the Critical Incident Review. This was a vast and technically complex investigation that placed scrutiny upon the actions of many police officers from the level of Constable to Inspector. It was apparent that AC Fontana’s investigation had been undertaken thoroughly, with courage, integrity and reflection and with a view to identifying areas of improvement in Victoria Police practices, processes and procedures. This approach was reflected in the candid and forthright evidence AC Fontana gave at the Inquest .

## Sources of evidence

- 1.36 This finding draws on the totality of the coronial investigation into the deaths of Matthew, Thalia, Yosuke, Jess, Zachary and Bhavita. That is, the court records maintained during the coronial investigation, the Coronial Brief incorporating Additional Materials, the Criminal Brief and associated material, the evidence adduced during the Inquest and oral and written submissions provided by Counsel Assisting and counsel representing the interested parties.
- 1.37 In writing this Finding, I do not purport to detail all of the vast body of evidence before me. I have referred to relevant parts of it and only in such detail as appears warranted by the scope of the Inquest, its forensic significance and the interests of narrative clarity. The absence of reference to any particular aspect of the evidence should not lead to the inference that it has not been considered.

## Standard of proof

- 1.38 All coronial findings must be based on proof of relevant facts on the balance of probabilities.<sup>23</sup> The strength of evidence necessary to prove relevant facts varies according to the nature of the facts and the circumstances in which they are sought to be proved.<sup>24</sup>
- 1.39 In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.<sup>25</sup> The effect of this and similar authorities is that coroners should exercise caution when considering adverse findings against, or comments about, individuals or entities.
- 1.40 Proof of facts underpinning a finding that would, or may, have an extremely deleterious effect on a party's character, reputation or employment prospects demands a weight of evidence commensurate with the gravity of the facts sought to be proved.<sup>26</sup> Facts should not be considered to have been proven on the balance of probabilities by inexact proofs, indefinite testimony or indirect inferences. Rather, such proof should be the result of clear, cogent or strict proof in the context of a presumption of innocence.<sup>27</sup>

## Charter of Human Rights and Responsibilities

- 1.41 In making my Finding, I have been mindful of the rights enshrined in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**), relevant to the coronial jurisdiction, particularly the right to recognition and equality before the law,<sup>28</sup> the right to life,<sup>29</sup> the right to liberty and security of the person<sup>30</sup> and the right to a fair hearing.<sup>31</sup>

23 *Re State Coroner, ex parte Minister for Health* (2009) 261 ALR 152.

24 *Qantas Airways Limited v Gama* (2008) 167 FCR 537, [139] per Branson J, noting that his Honour was referring to the correct approach to the standard of proof in a civil proceeding in the Federal Court with reference to s. 140 of the *Evidence Act 1995* (Cth);

*Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170, 170-171 per Mason CJ, Brennan, Deane and Gaudron JJ. (1938) 60 CLR 336.

26 *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336.

27 *Briginshaw v Briginshaw* (1938) 60 CLR 336, pp. 362-3 per Dixon J.

28 *Charter of Human Rights and Responsibilities Act 2006* (Vic), s. 8.

29 *Charter of Human Rights and Responsibilities Act 2006* (Vic), s. 9.

30 *Charter of Human Rights and Responsibilities Act 2006* (Vic), s. 21.

31 *Charter of Human Rights and Responsibilities Act 2006* (Vic), s. 24.

## Avoidance of hindsight bias

- 1.42 By its very nature, a coronial inquiry is wholly retrospective. This carries with it an implicit danger for the court in prospectively evaluating events through ‘the potentially distorting prism of hindsight’.<sup>32</sup> That is, it can be easy or seductive to conclude that what did occur was always going to occur and, from that conclusion, to view the actions or inactions of those involved more critically and as if the outcome was obvious and should have been foreseen. In writing this Finding, I have remained cognisant of the potential intrusion of hindsight bias.
- 1.43 This was a matter addressed in detail in the written and oral submissions of some of the interested parties, and I was referred to various authorities on this point.<sup>33</sup> It was submitted that the temptation to use hindsight is particularly pronounced in the context of considering issues of causation and whether, if other action had been taken, or if opportunities for apprehension were missed, that another and better outcome would or might have ensued.<sup>34</sup>
- 1.44 Further, in the context of evaluating police conduct, it was submitted this must be judged ‘by reference to the pressure of events and the agony of the moment, not by reference to hindsight’.<sup>35</sup>
- 1.45 As was observed by Connor J in *McIntosh v Webster*:

[Arrests] are frequently made in circumstances of excitement, turmoil and panic [and it is] altogether unfair to the police force as a whole to sit back in the comparatively calm and leisurely atmosphere of the courtroom and there make minute retrospective criticisms of what an arresting constable might or might not have done or believed in the circumstances.<sup>36</sup>

- 1.46 More recently, Smith J in *Walker v Hamm*<sup>37</sup> articulated that when assessing the reasonableness of a police officer’s conduct, this must be made in a ‘realistic manner’, taking into account ‘the reality that the officer has to make decisions quickly, often in emergencies and under pressure’.<sup>38</sup>
- 1.47 Decisions made quickly and in dynamic circumstances beset by competing considerations readily attract the ‘agony of the moment’ principle. However, that is not to say that the mere fact that a person decided to act or not act means that the moment involved ‘agony’. Much depends upon the circumstances, and there can be questions of degree involved. I have carefully considered the various submissions made on this topic and borne the phenomenon steadily in mind when making the findings required.

32 *Adamczak v AlSCO Pty Ltd* (No 4) [2019] FCCA 7, [80].

33 See *Brodie v Singleton Shire Council* (2001) 206 CLR 512, [320]; *Hawthorne v Hillcoat* [2008] NSWCA 340, [47]; *Vairy v Wyong Shire Council* (2005) 223 CLR 422, [443]; *Neindorf v Junkovic* (2005) 222 ALR 631, [93] per Hayne J; *Roads and Traffic Authority (NSW) v Dederer* (2007) 24 CLR 330, [65]-[66] per Gummow J; *DPP v Hicks* (No 1) (2014) 240 A Crim R 171, [74]-[75].

34 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 7.

35 *Woodley v Boyd* [2001] NSWCA 35, [37].

36 (1980) 43 FLR 112, 123.

37 [2008] VSC 596, [55].

38 See *Slaveski v State of Victoria* [2010] VSC 441, [130].

## Procedural fairness

- 1.48 Coronial investigations must be conducted in a fair and efficient manner, complying with the rules of natural justice and procedural fairness.<sup>39</sup> The principle of natural justice requires that any person or entity that may potentially be the subject of an adverse criticism or finding, must be afforded the opportunity to be heard on that matter.<sup>40</sup>
- 1.49 In this respect, various submissions were made on behalf of some of the interested parties that certain witnesses did not have specific propositions ‘put’ to them in oral evidence and that to make such a finding would be a denial of procedural fairness and natural justice.<sup>41</sup>
- 1.50 I acknowledge and naturally have considered the requirements of procedural fairness, including the ‘rule’ in *Browne v Dunn*.<sup>42</sup> However, to some extent, the written submissions tended to advance the underlying proposition a little too baldly, as if no finding can ever be made unless a specific piece of ‘puttage’ appears in which that particular proposition was asked and answered. That is not the law,<sup>43</sup> certainly not in respect to witnesses whose evidence was to a significant extent under general challenge.
- 1.51 Further, the limits of such a requirement must be borne in mind in the present; in which there is a written scope of inquiry, all witnesses called have made written statements and many other witnesses have also made written statements that, together, are compiled in a Coronial Brief available to all interested parties. In those circumstances, it is and was evident in the hearing that, where particular matters were in issue, the witnesses and their counsel were quite aware of the competing propositions.
- 1.52 For these reasons, I take account of the various submissions made concerning procedural fairness and the ‘rule’ in *Browne v Dunn*,<sup>44</sup> but certainly do not accept that in the present circumstances the operation of that ‘rule’ prevents me from making findings, including adverse findings, unless the transcript contains some precise point at which the finding, in the terms that I would find it, appears and is ‘put’. That would not be warranted and is also not the law.

39 *Coroners Act 2008* (Vic), s. 9; *Annetts v McCann* (1990) 170 CLR 596; *Harmsworth v State Coroner* [1989] VR 989, 994.

40 *Annetts v McCann* (1990) 170 CLR 596, p. 601.

41 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, pp. 12-13; Table of Submissions referred to by Counsel for the Operational Police Members (Group A) dated 11 June 2020 p. 2-7; Written submissions on behalf of Mr F Caridi dated 19 May 2020, p. 6; Transcript of evidence, p. 145.

42 (1893) 6 R 67.

43 *Casey v Transport Accident Commission* [2015] VSCA 38, [39]-[40].

44 (1893) 6 R 67.

# Part 2: The Six Deceased Victims

## Introduction

- 2.1 As highlighted by the motto of the Ontario Coroners' Office, coroners 'speak for the dead to protect the living'.<sup>1</sup> Part of my duty is to give a voice to the six people who lost their lives as a consequence of the Offender's actions: Matthew Poh Chuan Si, Thalia Hakin, Yos uke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel. By understanding and learning from the circumstances surrounding their deaths, we are better able to develop processes, procedures and practices that enhance safety and potentially prevent avoidable deaths.

## Matthew Poh Chuan Si

### Background

- 2.2 Matthew Poh Chuan Si was 33 years old at the time of his death. He was born in Perth to parents Kheng Cheng Si and Siew Si, and was the elder brother of Damian and Justin.<sup>2</sup> He was described as being a 'happy, easy-going, bright, curious, gentle and contented' child who was a good role model for his younger siblings.<sup>3</sup> He grew up to be a 'good son, patient, caring, respectful, kind, generous and loving'<sup>4</sup> and a 'brilliant, talented and kind person'<sup>5</sup>.
- 2.3 Matthew excelled academically and was dux of his secondary school in Year 12.<sup>6</sup> He completed a degree in architecture at the University of Western Australia before pursuing a successful career at architectural and consulting firm Woods Bagot in Perth and in London. He eventually settled in Melbourne in 2009.<sup>7</sup>
- 2.4 Matthew's colleagues described him as authentic, richly unique and gracious,<sup>8</sup> and possessing a 'unique vision'<sup>9</sup>. He was a talented musician and found pleasure in photography and gardening. He was also passionate about the environment, was a diligent recycler and ensured he minimised waste.<sup>10</sup>
- 2.5 Matthew married Siew Ping (Melinda) Tan on his birthday in April 2012. Together, they had a daughter, Arya, whom he adored. Arya was his favourite photography subject; he proudly created cards and calendars featuring her image for his family.<sup>11</sup> Matthew was a family man who was very proud of Melinda and Arya and would do anything to make them comfortable and happy.<sup>12</sup>

1 Ontario Law Reform Commission, Report on the Law of Coroners (1995), p. 3. (<https://collections.ola.org/mon/27010/188908.pdf>).

2 Transcript of evidence, p. 65; Family Statement in relation to Matthew Si by Siew Ping (Melinda) Tan, Coronial Brief, p. 1647; Family Statement in relation to Matthew Si by Kheng Si and Siew Si, Coronial Brief, p. 1611.

3 Transcript of evidence, p. 65.

4 Transcript of evidence, p. 71; Family Statement in relation to Matthew Si by Kheng Si and Siew Si, Coronial Brief, p. 1614.

5 Family Statement in relation to Matthew Si by Siew Ping (Melinda) Tan, Coronial Brief, p. 1647.

6 Transcript of evidence, p. 66; Family Statement in relation to Matthew Si by Kheng Si and Siew Si, Coronial Brief, p. 1611.

7 Transcript of evidence, p. 65; Family Statement in relation to Matthew Si by Siew Ping (Melinda) Tan, Coronial Brief, p. 1647;

8 Family Statement in relation to Matthew Si by Kheng Si and Siew Si, Coronial Brief, p. 1611.

9 Transcript of evidence, p. 67.

10 Transcript of evidence, p. 68; Family Statement in relation to Matthew Si by Kheng Si and Siew Si, Coronial Brief, p. 1612.

11 Transcript of evidence, p. 68; Family Statement in relation to Matthew Si by Siew Ping (Melinda) Tan, Coronial Brief, p. 1647; Family Statement in relation to Matthew Si by Kheng Si and Siew Si, Coronial Brief, p. 1613.

12 Transcript of evidence, p. 70.

13 Transcript of evidence, p. 71.

## Circumstances of death

- 2.6 On 20 January 2017, Matthew and his wife had lunch together before parting on the corner of Elizabeth and Bourke streets to return to work.<sup>13</sup> Matthew was returning to his office between William and King streets, when he was struck from behind by the Offender's vehicle on the southern side of Bourke Street near Queen Street.<sup>14</sup> Matthew was flung into the air before landing on the ground.<sup>15</sup> It was clear that Matthew had sustained serious head injuries.<sup>16</sup>
- 2.7 Bystanders rendered immediate assistance to Matthew. He was wrapped in blankets and jackets to keep him warm, and a towel was placed over his head to try to stop the bleeding.<sup>17</sup>
- 2.8 A MICA paramedic applied a bag valve mask to administer oxygen, fitted a cervical collar and commenced suction of Matthew's airway. The paramedic called for an ambulance, which arrived shortly thereafter. An Ambulance Victoria Clinical Support Officer accompanied Matthew to hospital.<sup>18</sup>
- 2.9 Matthew was taken to the Royal Melbourne Hospital Trauma Centre where, among other medical interventions, he underwent an emergency craniectomy. During that operation, medical staff ascertained that Matthew's head injury was not survivable. The wound was closed, and Matthew was transferred to the Intensive Care Unit (ICU) for further care.<sup>19</sup> Shortly after arriving in the ICU, Matthew's low blood pressure progressed to ventricular fibrillation and cardiac arrest. Resuscitation efforts ceased at 4.57 pm on 20 January 2017 and Matthew was pronounced deceased.<sup>20</sup>

## Identity of Deceased

- 2.10 On 20 January 2017, Melinda Tan visually identified her husband, Matthew Poh Chuan Si, born 14 April 1983. Identity was not in dispute and required no further investigation.

## Medical cause of death

- 2.11 On 21 January 2017, Dr Michael Burke, a Senior Forensic Pathologist practising at the Victorian Institute of Forensic Medicine, performed an external examination of Matthew's body and reviewed the post-mortem computed tomography (CT) scans and Victoria Police Report of Death Form No 83. Dr Burke had attended a 'walk-through' of the Bourke Street Mall on 20 January 2017 with investigating officers of the Homicide Squad.
- 2.12 The post-mortem CT scans showed a left craniectomy with a swollen brain and blood in the lateral ventricles, as well as traumatic subarachnoid haemorrhage. The pelvis was fractured bilaterally involving the superior and inferior rami. There was a left pneumothorax associated with a collapsed lung. Fluid in the right chest and an open laparotomy wound were also evident.

13 Transcript of evidence, p. 72; Family Statement in relation to Matthew Si by Siew Ping (Melinda) Tan, Coronial Brief, p. 1647.

14 Statement of Brett Cunningham dated 23 January 2017, Criminal Brief, p. 2; Statement of James Duffield dated 11 April 2017, Criminal Brief, p. 1; Statement of Brandon Walker dated 19 March 2017, Criminal Brief, p. 2.

15 Statement of Aryan Rohanian dated 25 January 2017, Criminal Brief, p. 1.

16 Statement of Brandon Walker dated 19 March 2017, Criminal Brief, p. 2; Statement of James Duffield dated 11 April 2017, Criminal Brief, p. 1.

17 Statement of James Duffield dated 11 April 2017, Criminal Brief, p. 1.

18 Statement of Gregory Gibson dated 30 March 2017, Criminal Brief, p. 2; Statement of Antony Armour dated 24 February 2017, Criminal Brief, p. 2.

19 E-Medical Deposition of Dr Navya Ramesh dated 20 January 2017.

20 E-Medical Deposition of Dr Navya Ramesh dated 20 January 2017.

- 2.13 The external examination identified a patterned injury to the back of the right calf which Dr Burke thought might represent a point of contact with the motor vehicle. He concluded that it appeared the major impact was to Matthew's back.
- 2.14 Dr Burke provided a written report, dated 17 March 2017, which concluded that a reasonable medical cause of death was '1(a) head injury'. I accept Dr Burke's opinion.

## Thalia Hakin

### Background

- 2.15 Thalia Hakin was 10 years old at the time of her death. Thalia is survived by her parents Nathalie and Tony Hakin and her younger sister Maggie.
- 2.16 Thalia attended Beth Rivkah Ladies College in St Kilda East, and was due to commence Year 5 in 2017.<sup>21</sup> Thalia was a creative child who enjoyed art, theatre and maths. She was a member of the local Scouts group and also took tennis lessons.<sup>22</sup>
- 2.17 Thalia was described as 'very kind, intuitive, beautiful with a special spirit'.<sup>23</sup> She brought joy, hope and light to her family.<sup>24</sup>

### Circumstances of death

- 2.18 On the morning of 20 January 2017, the Hakin family drove to the city together, parking at the RACV Club on Bourke Street. While Tony Hakin went to work, Nathalie planned to spend the day with her daughters and take them to a 2.00 pm magic show.
- 2.19 Thalia was with her mother and sister, Maggie, when all three were struck by the Offender's vehicle near the RACV Club. Witnesses saw Thalia going under the right front tyre of the vehicle.<sup>25</sup> Thalia's significant head injuries were immediately apparent.<sup>26</sup>
- 2.20 Nathalie and Maggie also sustained serious injuries, details of which are described in Part 8 of this Finding.
- 2.21 Numerous bystanders and police came to Thalia's aid and placed her in the recovery position.<sup>27</sup> CPR was commenced at the direction of an off-duty emergency nurse, with the use of a defibrillator provided by the duty manager of the RACV Club.<sup>28</sup> Despite the bystanders' efforts, Thalia could not be resuscitated and was pronounced deceased at the scene by a MICA paramedic.<sup>29</sup>

21 Transcript of evidence, p. 63.

22 Transcript of evidence, pp. 63–4.

23 Statement of Nathalie Hakin, Coronial Brief, p. 933.

24 Statement of Nathalie Hakin, Coronial Brief, p. 933.

25 Statement of Harpreet Singh dated 20 January 2017, Criminal Brief, p. 1.

26 Statement of Daniel Egan dated 11 May 2017, Criminal Brief, p. 1.

27 Statement of Andrew Picker dated 12 May 2017, Criminal Brief, p. 2; Statement of Gary Oke dated 20 January 2017, Criminal Brief, p. 3.

28 Statement of Gary Oke dated 20 January 2017, Criminal Brief, p. 3; Statement of Troy Fraser dated 17 July 2017, Criminal Brief, p. 1.

29 Statement of Troy Fraser dated 17 July 2017, Criminal Brief, p. 2; Statement of Glen White dated 2 March 2017, Criminal Brief, p. 2; Statement of Henry Dow dated 22 January 2017, Criminal Brief, p. 5.

## Identity of Deceased

- 2.22 On 22 January 2017, Tony Hakin visually identified his daughter, Thalia Hakin, born 19 April 2006. Identity was not in dispute and required no further investigation.

## Medical cause of death

- 2.23 On 21 January 2017, Dr Michael Burke conducted an external examination of Thalia's body and reviewed the post-mortem CT scans and Victoria Police Report of Death Form No 83.
- 2.24 The post-mortem CT scan showed significant cranial trauma. The base of Thalia's skull was fractured, as was her right humerus and proximal left femur. Thalia also sustained an injury to the back of her left knee and left lower leg, which Dr Burke theorised may have been the point of contact with the vehicle.
- 2.25 Dr Burke provided a written report, dated 17 March 2017, which concluded that a reasonable cause of death was '1(a) head injury'. I accept Dr Burke's opinion.

## Yosuke Kanno

### Background

- 2.26 Yosuke Kanno was 25 years old at the time of his death. Yosuke was the youngest child of Minako and Masayuki Kanno, and brother to Junpei.
- 2.27 Yosuke was born in Yokohama, Japan. He trained as an Occupational Therapist at the International University of Health and Welfare and attained his occupational therapist's licence in April 2015.<sup>30</sup>
- 2.28 After graduation, Yosuke began work in the rehabilitation section of the Asakura Hospital.<sup>31</sup> Yosuke had a strong interest in international medical practice and, in particular, the Swedish medical environment. He resigned from Asakura Hospital in July 2016 to pursue experiences overseas.<sup>32</sup>
- 2.29 Yosuke moved to Melbourne in mid-2016 with the intention of obtaining an internationally recognised qualification in English. He studied at the Kaplan International College and lived in a shared apartment in the city.<sup>33</sup>
- 2.30 Yosuke's family described him as a cheerful and compassionate person who enjoyed swimming, baseball, tennis and Japanese calligraphy.<sup>34</sup> Due to his medical background, he was often a carer for family members and was especially dedicated to caring for his maternal grandmother, with whom he enjoyed a particularly close relationship.<sup>35</sup>

30 Transcript of evidence, p. 76; Family statement in relation to Yosuke Kanno by Masayuki and Minako Kanno translated 29 May 2019, Coronial Brief, p. 1141.

31 Transcript of evidence, p. 77; Family statement in relation to Yosuke Kanno by Masayuki and Minako Kanno translated 29 May 2019, Coronial Brief, p. 1141.

32 Transcript of evidence, p. 76; Family statement in relation to Yosuke Kanno by Masayuki and Minako Kanno translated 29 May 2019, Coronial Brief, p. 1141.

33 Transcript of evidence, p. 78; Statement of Kashu Matsumoto dated 14 February 2017, Criminal Brief, p. 1; Family statement in relation to Yosuke Kanno by Masayuki and Minako Kanno translated 29 May 2019, Coronial Brief, p. 1142.

34 Transcript of evidence, p. 77; Family statement in relation to Yosuke Kanno by Masayuki and Minako Kanno translated 29 May 2019, Coronial Brief, p. 1141.

35 Transcript of evidence, p. 78; Family statement in relation to Yosuke Kanno by Masayuki and Minako Kanno translated 29 May 2019, Coronial Brief, p. 1141.

## Circumstances of death

- 2.31 On 20 January 2017, Yosuke had lunch with his friend Kashu Matsumoto at a restaurant in Chinatown on Russell Street.<sup>36</sup> After lunch, they walked together along Bourke Street towards their separate homes. As they were walking along Bourke Street, close to the intersection of Elizabeth Street they became aware of the Offender's vehicle travelling behind them on the footpath. Both Yosuke and Mr Matsumoto attempted to get out of harm's way but were unable to do so in time.<sup>37</sup> Yosuke was struck by the Offender's vehicle with such force that he was thrown metres forward.<sup>38</sup>
- 2.32 Details of Mr Matsumoto's injuries are described in Part 8 of this Finding.
- 2.33 Many people came to Yosuke's aid.<sup>39</sup> He was found to be unresponsive, with bleeding from his head and extensive facial fractures.<sup>40</sup> Yosuke was examined by an off-duty Advanced Life Support Paramedic who found he was unconscious, with no pulse.<sup>41</sup>
- 2.34 Four bystanders performed CPR, before a MICA responder took over with assistance from an ambulance crew.<sup>42</sup> Despite their efforts, they were unable to revive Yosuke. An ECG confirmed he had no cardiac activity and resuscitative efforts ceased at approximately 1.44 pm.<sup>43</sup>

## Identity of Deceased

- 2.35 On 23 January 2017, Masayuki Kanno visually identified his son, Yosuke Kanno, born 22 November 1991. Identity was not in dispute and required no further investigation.

## Medical cause of death

- 2.36 On 21 January 2017, Dr Michael Burke conducted an external examination of Yosuke's body and reviewed the post-mortem CT scans and Victoria Police Report of Death Form No 83.
- 2.37 The post-mortem CT scans showed complex skull and facial fractures. Yosuke also suffered a significant chest injury with fractured ribs and bilateral haemothoraces. Dr Burke observed abrasions to Yosuke's forehead, which appeared to have been caused by the windscreen of the vehicle.
- 2.38 Dr Burke provided a written report, dated 17 March 2017, which concluded that a reasonable medical cause of death was '1(a) head and chest injuries'. I accept Dr Burke's opinion.

36 Statement of Kashu Matsumoto dated 21 January 2017, Criminal Brief, p. 1.

37 Statement of Brett Cunningham dated 23 January 2017, Criminal Brief, p. 2; Statement of Kashu Matsumoto dated 21 January 2017, Criminal Brief, p. 2.

38 Statement of Kashu Matsumoto dated 21 January 2017, Criminal Brief, p. 2; Statement of Benjamin Sheridan dated 2 February 2017, Criminal Brief, p. 3; Statement of Guy Nealy dated 21 January 2017, Criminal Brief, p. 2; Statement of Brett Cunningham dated 23 January 2017, Criminal Brief, p. 2.

39 Statement of Kashu Matsumoto dated 21 January 2017, Criminal Brief, p. 2.

40 Statement of Kashu Matsumoto dated 21 January 2017, Criminal Brief, p. 2; Statement of Senior Constable Robert Hamilton dated 20 January 2017, Coronial Brief, p. 941; Statement of Alison Ray dated 20 January 2017, Criminal Brief, p. 2; Statement of Dr Michael Cooper dated 21 April 2017, Criminal Brief, p. 3; Statement of Haley Fothergill dated 3 May 2017, Criminal Brief, p. 2.

41 Statement of Alison Ray dated 5 April 2017, Criminal Brief, p. 1.

42 Statement of Alison Ray dated 5 April 2017, Criminal Brief, p. 2.

43 Statement of Dr Michael Cooper dated 21 April 2017, Criminal Brief, p. 3; Statement of Haley Fothergill dated 3 May 2017, Criminal Brief, p. 2.

## Jess Mudie

### Background

- 2.39 Jessica (Jess) Elizabeth Mudie was born in Kogarah, New South Wales, and was 22 years old at the time of her death. Jess is survived by her parents, Peter and Robyn, her five siblings—brother Kurt, sisters Renee, Fiona, Demi, and her twin Emily—and her boyfriend Reese. Family was important to her and she enjoyed close relationships with her siblings.<sup>44</sup>
- 2.40 At the age of 17, Jess started working at Allianz Insurance as a claims processor after completing a business course. She excelled in the role and, in 2016, began work as an insurance consultant at Marsh & McLennan in Sydney.
- 2.41 Jess was a caring and ambitious young woman.<sup>45</sup> She was quick-witted with a good sense of humour and would go out of her way to help her family and friends.<sup>46</sup> She showed love, compassion and empathy for all those in her life.<sup>47</sup>
- 2.42 Jess flew to Melbourne for work on 20 January 2017. She planned to stay overnight to spend the evening with her brother and two of her sisters before returning to Sydney the following day.<sup>48</sup>

### Circumstances of death

- 2.43 On 20 January 2017, Jess attended a work meeting at 385 Bourke Street. Shortly after 1.30 pm, Jess and a group of colleagues began walking a short distance to a restaurant in McKillop Street.<sup>49</sup> While walking on Bourke Street, between Elizabeth and Queen streets, Jess was struck from behind by the Offender. The impact caused her to travel approximately a metre off the ground and land at the western corner of McKillop and Bourke streets.<sup>50</sup>
- 2.44 Details of the injuries Jess's colleagues sustained are described in Part 8 of this Finding.
- 2.45 Bystanders immediately rendered assistance to Jess. She was found to be unresponsive and not breathing.<sup>51</sup> She had sustained obvious injuries to her pelvis and legs.<sup>52</sup> The bystanders cleared her airways and commenced CPR.<sup>53</sup> Despite the efforts of bystanders and attending police officers, Jess could not be revived and was pronounced deceased at the scene.<sup>54</sup>

44 Transcript of evidence, p. 3937.

45 Victim Impact Statement of Kurt Mudie dated 15 January 2019, p. 3.

46 Victim Impact Statement of Robyn Davis dated 6 December 2018, p. 4; Transcript of evidence, p. 3937.

47 Transcript of evidence, p. 3937.

48 Victim Impact Statement of Emily Mudie dated 14 February 2018, p. 2.

49 Statement of Jacqui Skelton dated 20 January 2017, Criminal Brief, p. 2; Statement of Trent Churchill dated 13 February 2017, Criminal Brief, pp. 1-2.

50 Statement of Brendan Smith dated 1 February 2017, Criminal Brief, p. 1.

51 Statement of Constable Ryan Sargeant dated 24 January 2017, Criminal Brief, p. 2; Statement of Brendan Smith dated 1 February 2017, Criminal Brief, p. 2.

52 Statement of Constable Ryan Sargeant dated 24 January 2017, Criminal Brief, p. 2; Statement of Jacqui Skelton dated 20 January 2017, Criminal Brief, p. 2.

53 Statement of Brendan Smith dated 1 February 2017, Criminal Brief, p. 2.

54 Statement of Constable Ryan Sargeant dated 24 January 2017, Criminal Brief, pp. 2-3.

## Identity of Deceased

- 2.46 On 21 January 2017, Peter Mudie visually identified his daughter, Jessica Elizabeth Mudie, born 6 February 1994. Identity was not in dispute and required no further investigation.

## Medical cause of death

- 2.47 On 21 January 2017, Dr Michael Burke conducted an external examination of Jess's body and reviewed post-mortem CT scans and Victoria Police Report of Death Form No 83.
- 2.48 The post-mortem CT scans showed a haemorrhage at the base of the brain and over the cerebral hemispheres. Jess's skull base was fractured, as were bones in both of her legs. Dr Burke stated that the severity of Jess's injuries indicated that death was inevitable and rapid in onset.
- 2.49 Dr Burke's external examination revealed abrasions to Jess's calves, bruises to the backs of her thighs and right shoulder, suggesting that she had been struck forcefully from behind.
- 2.50 Dr Burke provided a written report, dated 17 March 2017, which concluded that a reasonable cause of death was '1(a) head injury'. I accept Dr Burke's opinion.

## Zachary Matthew Bryant

### Background

- 2.51 Zachary Arif Matthew Bryant was three months old at the time of his death. He is survived by his parents, Matthew Bryant and Nawwar Hassan Bryant and his older sister Zara.
- 2.52 Zachary's mother described him as a 'handsome, beautiful little man' with 'a piercing smile that would melt hearts'<sup>55</sup>. In his short three months and 14 days of life, he brought joy to all of those around him<sup>56</sup> and was a 'delight to hold and cuddle'<sup>57</sup>.
- 2.53 Although they only had a short time with Zachary, his parents spoke of their 'perfect little man' who had begun to reveal his interesting personality.<sup>58</sup> He was a happy baby who smiled a lot.<sup>59</sup> Zachary had just begun to giggle a few days before he died.<sup>60</sup>

55 Transcript of evidence, p. 62.

56 Transcript of evidence, p. 62.

57 Family statement in relation to Zachary Matthew Bryant by Matthew Bryant and Nawwar Hassan Bryant dated 31 March 2019, Coronial Brief, p. 392.

58 Family statement in relation to Zachary Matthew Bryant by Matthew Bryant and Nawwar Hassan Bryant dated 31 March 2019, Coronial Brief, p. 392.

59 Transcript of evidence, p. 62.

60 Transcript of evidence, p. 62.

## Circumstances of death

- 2.54 On 20 January 2017, Zachary and his sister Zara were taken to the children’s exhibition at the Melbourne Museum by their mother and professional nanny Aaryn Melzer. Afterwards they boarded a tram on the corner of Spring and Bourke streets. Ms Melzer got off the tram on the corner of Bourke and Queen streets with Zachary and Zara in the pram, intending to walk the rest of the way to the Bryants’ home. As Ms Melzer pushed the pram west along the southern footpath of Bourke Street, it was struck by the Offender’s vehicle.<sup>61</sup> Zara, Zachary and Ms Melzer sustained serious injuries. The force of the impact propelled Zachary out of the pram and onto the footpath.<sup>62</sup>
- 2.55 Details of the injuries Zara and Ms Melzer sustained are described in Part 8 of this Finding.
- 2.56 Police members and a student paramedic rendered immediate assistance to Zachary. It was apparent he had sustained a significant head injury and he was unresponsive. The police officers put gauze padding under Zachary’s head, cradled him in their arms and took him to the Royal Children’s Hospital in an unmarked police car.<sup>63</sup> During transport, Zachary stopped breathing and the police officers commenced CPR.<sup>64</sup>
- 2.57 Zachary arrived at the Royal Children’s Hospital Emergency Department at about 1.40 pm. He was intubated and mechanically ventilated. He underwent a full-body CT scan which showed severe intracranial injuries. He was taken to theatre for evacuation of a subdural haemorrhage. The operation suggested a diagnosis of transverse sinus injury with significant brain ischaemia. This diagnosis was confirmed by a subsequent MRI which showed global ischaemic insult with sinus disruption and thrombosis and underlying complex parietal and occipital fractures. A brain perfusion scan performed on 21 January 2017 had the scintigraphic appearance of brain death. Zachary’s injuries were not survivable.<sup>65</sup>
- 2.58 Zachary was pronounced brain dead at 12.36 pm on 21 January 2017. He was extubated, and all care ceased at 7.50 pm. Zachary died in his parents’ arms.<sup>66</sup>

## Identity of Deceased

- 2.59 On 21 January 2017, Matthew Bryant visually identified his son, Zachary Arif Matthew Bryant, born 6 October 2016. Identity was not in dispute and required no further investigation.

## Medical cause of death

- 2.60 On 22 January 2017, Dr Michael Burke performed an external examination of Zachary’s body and reviewed the post-mortem CT scans and Victoria Police Report of Death Form No 83.
- 2.61 The post-mortem CT scans confirmed the clinical findings of bilateral occipital and parietal fractures. Zachary’s brain was swollen and there was subarachnoid blood.

61 Statement of Aaryn Melzer dated 25 January 2017, Criminal Brief, pp. 1–2; Statement of Johanna Jackson dated 20 January 2017, Criminal Brief, p. 2.

62 Statement of Johanna Jackson dated 20 January 2017, Criminal Brief, p. 2.

63 Statement of First Constable Benjamin Laird dated 23 January 2017, Coronial Brief, pp. 1200–1; Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017 as amended, Coronial Brief, p. 1433–4.

64 Statement of First Constable Benjamin Laird dated 23 January 2017, Coronial Brief, pp. 1200–1; Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017 as amended, Coronial Brief, p. 1434.

65 Statement of Associate Professor Ed Oakley dated 30 March 2017, Criminal Brief, pp. 1–2.

66 Transcript of evidence, p. 62; Statement of Associate Professor Ed Oakley dated 30 March 2017, Criminal Brief, p. 2.

- 2.62 The external examination showed multiple abrasions and depositions of a grease-like material that Dr Burke thought were consistent with forceful contact with part of a motor vehicle.
- 2.63 Dr Burke provided a written report, dated 17 March 2017, which concluded that a reasonable cause of death was '1(a) head injury'. I accept Dr Burke's opinion.

## Bhavita Patel

### Background

- 2.64 Bhavita Patel was 33 years old at the time of her death. She was the daughter of Ramesh and Jyoti Patel and older sister of Mitesh.<sup>67</sup>
- 2.65 Bhavita attained her degree in Commerce from the Australian National University and became a successful Chartered Accountant. She worked for the global consulting firm Deloitte Touche Tohmatsu Limited.<sup>68</sup> In 2016, she was promoted to Director and was well on her way to partnership.<sup>69</sup>
- 2.66 Bhavita came from a close-knit family that described her as extremely ambitious and a person who made a lasting impression on people she met.<sup>70</sup> She was an incredibly hard worker, with a competitive nature, strong organisational skills, a good sense of humour and an infectious, beautiful smile.<sup>71</sup> She was described as a person who shone so brightly that others were drawn to her like moths to a flame.<sup>72</sup>
- 2.67 Bhavita lived life to the fullest. She relished new experiences and had a passion for food and travel.<sup>73</sup> Above all else, Bhavita loved being around her family and friends.<sup>74</sup> She was due to fly to Canberra to see her family the day after the Bourke Street incident.<sup>75</sup>

## Circumstances of death

- 2.68 On 20 January 2017, Bhavita had lunch with colleagues at Red Spice Road in McKillop Street. At about 1.30 pm, she left the restaurant with two of her colleagues to return to their office at the corner of Bourke and William streets. After crossing the lights at Queen Street, they were walking along Bourke Street when Bhavita was struck by the Offender's vehicle.<sup>76</sup>
- 2.69 Details of the injuries Bhavita's colleagues sustained are described in Part 8 of this Finding.

67 Family statement in relation to Bhavita Patel by Mitesh Patel, Coronial Brief, p. 1422.

68 Transcript of evidence, p. 72.

69 Family statement in relation to Bhavita Patel by Mitesh Patel, Coronial Brief, p. 1422.

70 Transcript of evidence, p. 72.

71 Family statement in relation to Bhavita Patel by Mitesh Patel, Coronial Brief, p. 1422.

72 Family statement in relation to Bhavita Patel by Mitesh Patel, Coronial Brief, p. 1423.

73 Family statement in relation to Bhavita Patel by Mitesh Patel, Coronial Brief, p. 1422.

74 Family statement in relation to Bhavita Patel by Mitesh Patel, Coronial Brief, p. 1422.

75 Transcript of evidence, pp. 81–2.

76 Statement of Belinda Solohub dated 9 February 2017, Criminal Brief, p. 1; Statement of Robert Boyne dated 14 February 2017, Criminal Brief, pp. 1–2; Statement of Dr Rebecca Barton dated 20 January 2017, Criminal Brief, pp. 1–2.

- 2.70 Bystanders, including a doctor, immediately rendered aid to Bhavita. It was apparent that she had suffered significant trauma, including head injuries and an open fracture of her right leg.<sup>77</sup> On the doctor's instruction, Bhavita's right leg was supported with a makeshift splint, her airways were cleared with a jaw extension and she was placed in the recovery position.<sup>78</sup> Ambulance paramedics arrived shortly after and provided ongoing treatment, including cleaning and bandaging of Bhavita's head wounds. She was transported to Royal Melbourne Hospital by ambulance and admitted at about 2.22 pm.<sup>79</sup>
- 2.71 Physical examination revealed Bhavita had a penetrating left eye injury and a fixed and dilated right pupil. She was intubated and taken to theatre for immediate decompressive craniectomy and evacuation of a right frontotemporal subdural haemorrhage and left extradural haematoma detected radiographically.<sup>80</sup>
- 2.72 Following surgery, Bhavita was taken to the ICU where she remained intubated and sedated for the following five days to control intracranial pressures.<sup>81</sup> Repeat MRI confirmed the clinical suspicion of devastating brain injury.<sup>82</sup>
- 2.73 Despite medical intervention, Bhavita's condition did not improve and several discussions were held between her family and treating clinicians about the increasing intracranial pressure. A decision was made by Bhavita's family to cease life-prolonging measures and they kindly consented to organ and tissue donation. On 28 January 2017, Bhavita's ventilatory support was turned off. She was declared deceased at 2.30 pm.<sup>83</sup>

## Identity of Deceased

- 2.74 On 28 January 2017, Ramesh Patel visually identified his daughter, Bhavita Patel, born 7 December 1983. Identity was not in dispute and required no further investigation.

## Medical cause of death

- 2.75 On 31 January 2017, Dr Michael Burke conducted an external examination of Bhavita's body and reviewed the post-mortem CT scans, medical deposition from the Royal Melbourne Hospital and Victoria Police Report of Death Form No 83.
- 2.76 The external examination identified injuries to Bhavita's head, upper limbs and back. Dr Burke noted that the external examination suggested that Bhavita had been struck principally from behind.
- 2.77 Dr Burke provided a written report, dated 17 March 2017, which concluded that a reasonable medical cause of death was '1(a) head injury'. I accept Dr Burke's opinion.

77 Statement of Dr Rebecca Barton dated 20 January 2017, Criminal Brief, p. 2.

78 Statement of Dr Rebecca Barton dated 20 January 2017, Criminal Brief, p. 2.

79 Statement of Jessica Read, Ambulance Paramedic, dated 11 May 2017, Criminal Brief, pp. 1-2; E-Medical Deposition of Dr Rob Grant dated 20 January 2017.

80 E-Medical Deposition of Dr Rob Grant dated 20 January 2017.

81 E-Medical Deposition of Dr Rob Grant dated 20 January 2017.

82 E-Medical Deposition of Dr Rob Grant dated 20 January 2017.

83 E-Medical Deposition of Dr Rob Grant dated 20 January 2017.

# Part 3: Bail Hearing

## Overview

- 3.1 The Inquest commenced, chronologically, with consideration of the Offender's out-of-sessions bail hearing (**bail hearing**) on 14 January 2017. This part of the Finding details the Offender's background and history prior to 14 January 2017 and examines the events of 14 January 2017, including his arrest, interviews with police, the bail hearing and subsequent monitoring of his compliance with bail conditions.
- 3.2 Disputed issues related to the conduct of the bail hearing include:
- a. whether certain documents, including the LEAP record of the Offender's prior convictions, were provided to the bail justice
  - b. the charges and grounds relied upon by police to oppose a grant of bail to the Offender
  - c. the character and conduct of the hearing generally, including whether the police opposition to the grant of bail was 'real'.
- 3.3 The issues for determination at the Inquest did not include whether the decision made by the bail justice on 14 January 2017 was correct. The proper forum for any determination of that issue would have been an appeal of that decision, which did not occur.

## Offender's history prior to 14 January 2017

### Background

- 3.4 The Offender was born on 26 January 1990 in Adelaide.<sup>1</sup> He was 26 years of age at the time of these events. He has a younger brother, Angelo, 11 months his junior,<sup>2</sup> whom the Offender attacked in the early hours of 20 January 2017 (detailed in Part 5 below).
- 3.5 The Offender's parents separated when he was about five months old and his mother moved to Melbourne. He was raised initially by his father who had sole custody of him and Angelo. In 1993, the family moved to Coober Pedy, South Australia.<sup>3</sup>
- 3.6 The Offender began to display significant behavioural problems and criminality from the age of 14 years, when he was expelled from school after constructing a homemade bomb using explosives from his father's mining work.<sup>4</sup>
- 3.7 In 2006, at age 16, the Offender finished school and moved to Melbourne with Angelo to live with their mother.<sup>5</sup> In Melbourne, the Offender began committing offences including car theft, dangerous driving, burglary and assault.<sup>6</sup> He also developed a drug habit that involved the use of cannabis, amphetamine, methylamphetamine and cocaine.<sup>7</sup>

1 Statement of Christos Gargasoulas dated 11 February 2017, Coronial Brief, p. 821.

2 Statement of Christos Gargasoulas dated 11 February 2017, Coronial Brief, p. 822.

3 *DPP v Gargasoulas* [2019] VSC 87, pp. 9, 15; Statement of Christos Gargasoulas dated 11 February 2017, Coronial Brief, p. 822.

4 *DPP v Gargasoulas* [2019] VSC 87, p. 15; Statement of Christos Gargasoulas dated 11 February 2017, Coronial Brief, p. 823.

5 *DPP v Gargasoulas* [2019] VSC 87, p. 15; Statement of Christos Gargasoulas dated 11 February 2017, Coronial Brief, p. 823.

6 Exhibit 28, Victoria Police LEAP Criminal Record for the Offender as at 14 January 2017, Coronial Brief, pp. 3745–8.

7 Statement of Sesimani Kostaras dated 17 February 2017, Coronial Brief, p. 1166.

## Criminal history

- 3.8 The Offender had an extensive criminal history in Victoria, which was detailed in his record in Victoria Police's Law Enforcement Assistance Program (**LEAP**) database.<sup>8</sup> Beginning in 2007, when he was aged 17 years, he appeared in the Children's Court on charges of dangerous driving, reckless conduct endangering serious injury and theft of a motor vehicle. From that point onward, he was convicted of numerous offences involving dishonesty, assault and drug use.<sup>9</sup>
- 3.9 As an adult, he had been convicted of serious offences on the following dates:
- a. 27 February 2013 at the Melbourne Magistrates' Court—reckless conduct endangering serious injury, for which he was imprisoned for 14 months, with a non-parole period of eight months as part of an aggregate sentence<sup>10</sup>
  - b. 19 June 2014 at the Melbourne Magistrates' Court—reckless conduct endangering serious injury, for which he was imprisoned for 12 months as part of a total effective sentence of 18 months with a non-parole period of 10 months imposed for a consolidation of charges, including escaping from police custody, resisting police and failing to stop a vehicle at the request of police.<sup>11</sup>
- 3.10 It is evident that long before the bail hearing on 14 January 2017, the Offender had a history of evading police and driving dangerously. This pattern continued in the months leading up to 14 January 2017, during which the Offender was alleged to have committed several offences and had a number of interactions with police.

## Failure to appear on bail

- 3.11 On 6 April 2016, the Offender failed to appear on bail at the Moorabbin Magistrates' Court in answer to charges of possessing methylamphetamine, possessing a drug of dependence and driving while disqualified. A warrant to arrest the Offender (known as a 'bench warrant') was issued the same day.<sup>12</sup>
- 3.12 At the time the bench warrant was issued, the Offender was living in Coober Pedy, South Australia, with his father and AFM<sup>13</sup>, with whom he was in a relationship.<sup>14</sup> The Offender had moved from Melbourne to Coober Pedy with AFM in January 2016, and worked with his father repairing machinery, mining and operating earth-moving equipment.<sup>15</sup> In early October 2016, AFM returned to Melbourne. She was followed by the Offender later that month.<sup>16</sup>

8 Exhibit 28, Victoria Police LEAP Criminal Record for the Offender as at 14 January 2017, Coronial Brief, pp. 3745–8.

9 Exhibit 28, Victoria Police LEAP Criminal Record for the Offender as at 14 January 2017, Coronial Brief, pp. 3745–8.

10 Exhibit 28, Victoria Police LEAP Criminal Record for the Offender as at 14 January 2017, Coronial Brief, pp. 3734–7.

11 Exhibit 28, Victoria Police LEAP Criminal Record for the Offender as at 14 January 2017, Coronial Brief, pp. 3729–48.

12 Exhibit 36, Bench Warrant to Arrest the Offender by the Moorabbin Magistrates' Court dated 6 April 2016, Coronial Brief, p. 2443.

13 In accordance with my Order dated 11 November 2019, AFM has been granted a pseudonym. Any particulars likely to lead to the identification of AFM as the affected family member to a Family Violence Intervention Order are prohibited from publication in accordance with s. 166(2)(b) of the *Family Violence Protection Act 2008* (Vic).

14 Statement of Christos Gargasoulas dated 11 February 2017, Coronial Brief, p. 823; Statement of AFM dated 10 February 2017, Coronial Brief, p. 419.

15 Statement of Christos Gargasoulas dated 11 February 2017, Coronial Brief, p. 823; Statement of AFM dated 10 February 2017, Coronial Brief, p. 419.

16 Statement of Christos Gargasoulas dated 11 February 2017, Coronial Brief, pp. 823–4.

## Family violence incident

- 3.13 On the evening of 31 October 2016, the Offender was driving on Lakeside Drive in Albert Park with AFM who was 19 weeks pregnant at the time. An argument occurred and the Offender accused AFM of being unfaithful. He stopped the vehicle and repeatedly punched AFM to the head and face. Members of the public intervened, called the emergency services and reported the matter to police. AFM suffered cuts and bruises to her face and head requiring treatment in hospital.<sup>17</sup>
- 3.14 SC Steven Rea of South Melbourne Police Station investigated the alleged assault. He obtained a Complaint and Warrant for an intervention order against the Offender and tried through various means to locate him over the following five days in order to serve these documents.<sup>18</sup> Other police members from South Melbourne were also involved in trying to find him.<sup>19</sup> A 'Person Whereabouts Desired' (commonly referred to as a 'whereabouts file') was entered onto the Victoria Police LEAP system to alert any other police members who may come into contact with the Offender of these outstanding matters.<sup>20</sup>
- 3.15 On 5 November 2016, SC Rea completed a written remand/bail application, which was added to the LEAP 'whereabouts file'.<sup>21</sup> Three days later, he added charge sheets and a warrant to arrest the Offender in relation to the incident on 31 October 2016 and for his failure to appear at Moorabbin Magistrates' Court on 6 April 2016.<sup>22</sup>

## Tyre iron incident and interactions with police on 19 November 2016

- 3.16 On 19 November 2016, at about 1.00 am, the Offender had an argument with his brother Angelo while they were driving in the St Kilda area. The Offender stopped the car and Angelo jumped out and ran to the rear of a taxi that was parked nearby. The Offender chased him and threw a tyre iron at him, which missed Angelo but damaged the rear window of the taxi. The Offender then drove away. The incident was captured on Closed Circuit Television (**CCTV**) footage and reported to police.<sup>23</sup>
- 3.17 About three hours later, SC Jake Semmel and Constable Cam McDonald observed the Offender driving a stolen Toyota sedan on Carlisle Street, St Kilda. They continued to maintain observations of the vehicle and requested via police communications the assistance of an additional unit.<sup>24</sup> Upon the arrival of the backup unit, both police units activated their lights and sirens and attempted to intercept the Offender on St Kilda Road. The Offender yelled out the window words to the effect of 'Where have you been all night?' and then accelerated to a high rate of speed, crossing to the wrong side of the road

17 Exhibit 31, Preliminary Brief and Summary prepared by Senior Constable Steven Rea dated 5 November 2016, Coronial Brief, p. 3099.

18 Exhibit 31, Preliminary Brief and Summary prepared by Senior Constable Steven Rea dated 5 November 2016, Coronial Brief, p. 3099.

19 Statement of Senior Constable Tom Klestadt dated 10 May 2017, Coronial Brief, pp. 1163–4.

20 Statement of Senior Constable Steven Rea dated 14 May 2017, Coronial Brief, p. 1493.

21 Exhibit 31, Preliminary Brief and Summary prepared by Senior Constable Steven Rea dated 5 November 2016.

22 Exhibit 29, Charges and Warrant filed by Senior Constable Steven Rea dated 8 November 2016.

23 Exhibit 35, Preliminary Brief and Summary prepared by Senior Constable Jake Semmel, otherwise known as the Remand Application dated 14 January 2017, Coronial Brief, p. 2511; Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1598; Exhibit 25, Briefing Notes re Whereabouts of the Offender by Senior Constable Jake Semmel dated 20 November 2016, Coronial Brief, p. 3767.

24 Transcript of evidence, p. 440; Exhibit 25, Briefing Notes re Whereabouts of the Offender by Senior Constable Jake Semmel dated 20 November 2016, Coronial Brief, p. 3767.

in order to evade police.<sup>25</sup> SC Semmel decided not to pursue the Offender due to the high risk to the public. Both police units pulled over and turned off their lights and sirens.<sup>26</sup> The Offender drove north on Punt Road and out of sight.<sup>27</sup>

- 3.18 The same day, shortly after midday, the Offender was still driving the stolen Toyota when he picked up Clare Verdins in Greeves Street, St Kilda, and drove around the area. His driving was so erratic that Ms Verdins took the first opportunity to get out of the vehicle and called the emergency services to report the incident to police.<sup>28</sup> Police from St Kilda Police Station investigated. They quickly identified the Offender as the suspect driver and were warned that he may attempt to engage them in a pursuit and were directed not to pursue him. Patrols were tasked to search for the Offender, but they were unable to locate him.<sup>29</sup>
- 3.19 At about 2.00 pm, the Offender returned to Greeves Street and spoke again with Ms Verdins. She told him that the police were looking for him, at which point the Offender said:

Fuck the cops, I've got a gun if ever I need it.

...if they [the police] come near me I'll run, they won't chase me, I just have to drive on the wrong side of the road, they won't chase me.<sup>30</sup>

- 3.20 Ms Verdins again rang emergency services to report what had occurred.<sup>31</sup>
- 3.21 At about 2.10 pm, SC Darren Baird and SC Joshua Downes from St Kilda Police Station observed the stolen vehicle turning left into Fitzroy Street. Police maintained observations of the stolen vehicle, which became stuck in traffic approaching the corner of Fitzroy Street and Canterbury Road. When police approached the vehicle on foot, the Offender drove through a red light, heading towards the junction at Fitzroy Street and Punt Road. He subsequently abandoned the vehicle and escaped on foot.<sup>32</sup>
- 3.22 On 20 November 2016, SC Semmel initiated a number of charges against the Offender in relation to the events of 19 November 2016, including recklessly engaging in conduct endangering death or serious injury by driving at an excessive speed on the wrong side of the road, driving carelessly, failing to stop when directed to by police, and causing damage to the taxi.<sup>33</sup>

## Theft of Holden Jackaroo

- 3.23 On 22 November 2016, a stolen Holden Jackaroo was recovered by police in Windsor. It had apparently been stolen by the Offender two days earlier and, by 19 December 2016, his fingerprints were identified among those on the vehicle.<sup>34</sup>

25 Transcript of evidence, pp. 440-1; Exhibit 25, Briefing Notes re Whereabouts of the Offender by Senior Constable Jake Semmel dated 20 November 2016, Coronial Brief, p. 3767.

26 Transcript of evidence, p. 441; Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1598; Exhibit 25, Briefing Notes re Whereabouts of the Offender by Senior Constable Jake Semmel dated 20 November 2016, Coronial Brief, p. 3767.

27 Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1598; Exhibit 25, Briefing Notes re Whereabouts of the Offender by Senior Constable Jake Semmel dated 20 November 2016, Coronial Brief, p. 3767.

28 Exhibit 250, Statement of Clare Verdins dated 11 May 2017, Coronial Brief, pp. 1759-60.

29 Statement of Senior Constable Darren Baird dated 1 May 2017, Coronial Brief, p. 280.

30 Statement of Clare Verdins dated 11 May 2017, Coronial Brief, p. 1760.

31 Statement of Clare Verdins dated 11 May 2017, Coronial Brief, p. 1760.

32 Statement of Senior Constable Darren Baird dated 1 May 2017, Coronial Brief, pp. 280-1.

33 Charge Sheet prepared by Senior Constable Jake Semmel dated 20 November 2016.

34 Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1599; Exhibit 26, Transcript of interview with the Offender and Senior Constable Jake Semmel dated 14 January 2017, pp. 4534-5; LEAP Whereabouts Incident 160413231, Coronial Brief, Exhibit 214, p. 3989.

## Assault and theft of Mercedes Benz Coupe

- 3.24 On 29 November 2016, the Offender had a chance meeting with Jason Madej in St Kilda. The Offender was known to Mr Madej, but the pair had not had any recent contact. Mr Madej eventually drove the Offender to South Melbourne in his Mercedes Benz Coupe where they stopped in Moray Street. The Offender got out of the vehicle to speak with a man on a motorbike who Mr Madej did not recognise. Then, without warning, the Offender punched Mr Madej in the face, took the car keys and stole the Mercedes Benz Coupe.<sup>35</sup>
- 3.25 Mr Madej reported the theft and assault to police but left the police station without signing a statement.<sup>36</sup>
- 3.26 Mr Madej subsequently provided a statement to police in December 2017. He stated that:
- First he ripped my car keys out of the ignition then just started punching me in the face multiple times. Then I jumped out of the car in shock ... He then jumped into my car and started up the ignition. I went in front of the car because I thought he wouldn't run me over but he actually drove straight at me. He was trying to run me over; no doubt, if I didn't jump out of the way I would be dead. After that he just drove off.<sup>37</sup>
- 3.27 There is no evidence that Mr Madej told investigators at the time he initially reported the incident to police that the Offender had tried to run him over.

## Interaction with DSC Gentner on 11 December 2016

- 3.28 On 11 December 2016, at about 10.20 pm, DSC Murray Gentner spoke briefly with the Offender at a tram stop in St Kilda.<sup>38</sup> At the time of this interaction, DSC Gentner was patrolling the Fitzroy Street area with another detective when he observed the Offender loitering with a group of known drug users around someone on a motor scooter. When police approached, the motor scooter rider left the area. It was suspected that the motor scooter rider was a drug dealer. DSC Gentner had a brief conversation with the Offender who provided his name.<sup>39</sup> He did not ask for a LEAP check over the police radio and, so, was unaware that the Offender was wanted on warrants and other matters.<sup>40</sup> At Inquest, DSC Gentner recalled that this was the first time he had met the Offender and explained that his priority at the time was trying to find the rider of the motor scooter.<sup>41</sup> On 2 January 2017, DSC Gentner submitted a Field Contact Report in relation to this interaction.<sup>42</sup>

35 Statement of Jason Madej dated 5 October 2017, Coronial Brief, pp. 1258–9.

36 Statement of Jason Madej dated 5 October 2017, Coronial Brief, p. 1259; Statement of Detective Senior Constable Ciaran Duryea dated 11 May 2017, Coronial Brief, pp. 561–2; Police Notes of Ciaran Duryea dated 29 November 2016, Coronial Brief, pp. 2193–5.

37 Statement of Jason Madej dated 5 October 2017, Coronial Brief, p. 1259.

38 Transcript of evidence, p. 118; Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 850.

39 Transcript of evidence, pp. 118–9; Field Contact Report, Coronial Brief, Additional Materials 27, AM 27, p. 1; Handwritten Notes of Detective Senior Constable Murray Gentner dated 11 December 2016, Coronial Brief, Additional Materials 28, AM 28, p. 1.

40 Transcript of evidence, pp. 119–20.

41 Transcript of evidence, p. 119.

42 Field Contact Report, Coronial Brief, Additional Materials 27, AM 27, p. 1; LEAP person history report for the Offender as at 14 January 2017, Coronial Brief, Exhibit 335, p. 4698.

## Burnout outside St Kilda Police Station on 2 January 2017

- 3.29 Shortly before 9.00 am on 2 January 2017, the Offender drove a stolen Mitsubishi Evo sedan into the St Kilda area and performed a 'burnout' directly outside St Kilda Police Station. The incident was witnessed from the station by DSgt David Barry, DSC Shoshanna Epstein and others. It was recorded on CCTV footage in which the registration number of the vehicle was visible.<sup>43</sup> The vehicle was confirmed to be stolen, but the Offender was not identified as the driver until he made admissions to DSC Gentner in an interview conducted on 14 January 2017.<sup>44</sup>

## Burglary at psychology clinic

- 3.30 At some time between 4 and 10 January 2017, the Offender committed a burglary at a psychology clinic on Williams Road, Prahran, where he stole a laptop computer, cash and an EFTPOS machine. Again, he was not identified as the perpetrator of these crimes until he made admissions to DSC Gentner on 14 January 2017.<sup>45</sup>

## Arrest and interviews of the Offender on 14 January 2017

### Arrest of Offender

- 3.31 At about 1.30 pm on Saturday 14 January 2017, Mark Scammell, a resident in an apartment block on Raleigh Street, Windsor, telephoned emergency services. He reported that there was a 'crisis' with his neighbour, Emily Gargasoulas, and that the Offender had threatened to kill her while armed with a knife.<sup>46</sup>
- 3.32 Shortly after 2.00 pm, SC Dan Leach and SC Chris O'Casey from St Kilda Police Station attended the scene, together with Sgt Martin Little.<sup>47</sup>
- 3.33 The police determined that the threats to kill were historical rather than recent. However, they discovered that the Offender was wanted on two outstanding arrest warrants.<sup>48</sup> The first was the Warrant and Application for Intervention Order arising from the assaults committed against AFM on 31 October 2016.<sup>49</sup> The second was the Bench Warrant issued at the Moorabbin Magistrates' Court on 6 April 2016.<sup>50</sup> The Offender was also the subject of three police whereabouts files in relation to the assaults perpetrated against AFM and Angelo, criminal damage to the taxi, evading police on 19 November 2016 and the theft of the Holden Jackaroo.<sup>51</sup>

43 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 304; Exhibit 182, Second Statement of Detective Senior Constable Shoshanna Epstein dated 23 April 2017, Coronial Brief, p. 576; Exhibit 183, Handwritten Notes of Detective Senior Constable Shoshanna Epstein dated 2 January 2017, Coronial Brief, p. 2200.

44 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, p. 305; Exhibit 4, Transcript of interview with the Offender and Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, pp. 4006-7, 4018-9.

45 Exhibit 4, Transcript of interview with the Offender and Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, pp. 4011-6.

46 Exhibit 51, Transcript of 000 Call to Police by Mark Scammell dated 14 January 2017, Coronial Brief, pp. 4435, 4441.

47 Statement of Senior Constable Dan Leach dated 4 March 2017, Coronial Brief, pp. 1232-3.

48 Statement of Senior Constable Dan Leach dated 4 March 2017, Coronial Brief, pp. 1232-3; Exhibit 49, Statement of Senior Sergeant John Cannon dated 28 February 2017, Coronial Brief, pp. 438-9.

49 Exhibit 30, Warrant for Family Violence Intervention Order Application filed by Senior Constable Steven Rea dated 1 November 2016, Coronial Brief, pp. 3174-8.

50 Exhibit 36, Bench Warrant for the Arrest of the Offender by the Moorabbin Magistrates' Court dated 6 April 2016, Coronial Brief, pp. 2443-4.

51 Exhibit 49, Statement of Senior Sergeant John Cannon dated 28 February 2017, Coronial Brief, pp. 438-9.

- 3.34 The Offender was arrested without incident and taken to St Kilda Police Station for processing.<sup>52</sup> The Attendance Register records that the ‘initial supervisor check’ took place at 2.51 pm.<sup>53</sup>
- 3.35 The Section Sergeant for the afternoon shift at St Kilda Police Station was Sgt John Cannon. On review of the Offender’s file, Sgt Cannon formed the view that the Offender was an ‘unacceptable risk’ if bailed because he had history of failing to appear at court, no fixed place of abode, was avoiding apprehension and was considered a safety concern to himself and others.<sup>54</sup> Sgt Cannon tasked SC Catherine Ricardo to assist with the preparation of a written remand/bail application (VP Form 1372) while the Offender was interviewed in anticipation of an out-of-sessions bail hearing.<sup>55</sup>
- 3.36 At that time, SC Semmel was on afternoon shift divisional van duty with FC Madeline Sloan. Sgt Cannon identified that SC Semmel was the investigating member for the assault on the Offender’s brother and criminal damage to the taxi and, so, called him back to the station to interview and process the Offender about those matters, as well as the assault on AFM on 31 October 2016 and the theft of the Holden Jackaroo on 20 November 2016.<sup>56</sup>

## First interview with SC Semmel

- 3.37 At 4.16 pm, SC Semmel commenced a recorded interview with the Offender.<sup>57</sup> FC Sloan was the corroborator and took notes throughout the interview.<sup>58</sup>
- 3.38 The Offender admitted that he had:
- a. argued with AFM while they were driving in Albert Park on 31 October 2016 (although he denied assaulting her and claimed that she had lied about the allegations)<sup>59</sup>
  - b. argued with his brother, Angelo, on 19 November 2016 and thrown a tyre iron at him<sup>60</sup>
  - c. driven at high speed and on the wrong side of the road when he evaded SC Semmel’s attempt to intercept him later that same day<sup>61</sup>
  - d. stolen the Holden Jackaroo on 20 November 2016.<sup>62</sup>
- 3.39 Near the end of the interview, SC Semmel informed the Offender that he was going to be charged with conduct endangering life and serious injury, dangerous and careless driving, failing to stop a motor vehicle on request, driving on the wrong side of the road, driving while disqualified, wilful damage and theft of motor vehicle.<sup>63</sup> The interview concluded at 5.39 pm.<sup>64</sup>

52 Statement of Senior Constable Dan Leach dated 4 March 2017, Coronial Brief, p. 1233; Exhibit 49, Statement of Senior Sergeant John Cannon dated 28 February 2017, p. 438.

53 Exhibit 44, Victoria Police Attendance Register including AM 29, p. EX215-1-3.

54 Exhibit 49, Statement of Senior Sergeant John Cannon dated 2 February 2017, Coronial Brief, pp. 439-40.

55 Statement of Senior Constable Catherine Ricardo dated 6 March 2017, Coronial Brief, p. 1522; Exhibit 49, Statement of Senior Sergeant John Cannon dated 2 February 2017, Coronial Brief, pp. 439-40; Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1595; Statement of Senior Constable Dan Leach dated 4 March 2017, Coronial Brief, p. 1233.

56 Exhibit 49, Statement of Senior Sergeant John Cannon dated 28 February 2017, Coronial Brief, p. 439; Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1595; Transcript of evidence, p. 444.

57 Exhibit 26, Transcript of Interview with the Offender and Senior Constable Jake Semmel on 14 January 2017, Coronial Brief, p. 4470.

58 Transcript of evidence, p. 604; Exhibit 47, Notes of First Constable Madeline Sloan dated 14 January 2017, Coronial Brief, pp. 4574-80.

59 Exhibit 26, Transcript of Interview with the Offender and Senior Constable Jake Semmel dated 14 January 2017, Coronial Brief, pp. 4473-96, 4546.

60 Exhibit 26, Transcript of Interview with the Offender and Senior Constable Jake Semmel dated 14 January 2017, Coronial Brief, pp. 4502-3, 4512-18.

61 Exhibit 26, Transcript of Interview with the Offender and Senior Constable Jake Semmel dated 14 January 2017, Coronial Brief, pp. 4519-32.

62 Exhibit 26, Transcript of Interview with the Offender and Senior Constable Jake Semmel dated 14 January 2017, Coronial Brief, pp. 4534-35, 4541-3.

63 Exhibit 26, Transcript of Interview with the Offender and Senior Constable Jake Semmel dated 14 January 2017, Coronial Brief, p. 4548.

64 Exhibit 26, Transcript of Interview with the Offender and Senior Constable Jake Semmel dated 14 January 2017, Coronial Brief, p. 4552.

- 3.40 After the interview, SC Semmel served the Offender with the following charges prepared by SC Rea relating to the assault on AFM on 31 October 2016:
- a. intentionally causing injury
  - b. recklessly causing injury
  - c. unlawful assault
  - d. driving whilst disqualified
  - e. failing to answer bail on 6 April 2016.<sup>65</sup>
- 3.41 The Offender was also charged by SC Semmel with the following offences in relation to his driving on 19 November 2016:
- a. reckless conduct endangering death
  - b. reckless conduct endangering serious injury
  - c. dangerous driving
  - d. careless driving
  - e. failing to stop for police
  - f. driving on the wrong side of St Kilda Road
  - g. driving whilst disqualified
  - h. wilful damage to motor vehicle.<sup>66</sup>
- 3.42 Finally, the Offender was charged with the theft of the Holden Jackaroo between 18 and 21 November 2016, where the informant was SC Reeves.<sup>67</sup>
- 3.43 These are referred to collectively in this Finding as the ‘Semmel charges’.
- 3.44 After the interview, SC Semmel returned the Offender to the cells. The Offender asked to speak with DSC Gentner who, by chance, was at the police station. SC Semmel informed the detective that the Offender wished to speak with him<sup>68</sup> before completing the written remand/bail application commenced by SC Ricardo.<sup>69</sup>
- 3.45 DSC Gentner spoke with the Offender in the cells. The Offender claimed that he would get DSC Gentner promoted, and that he had knowledge or information about a murder. DSC Gentner knew these claims to be without basis.<sup>70</sup> The Offender then admitted stealing the Mitsubishi Evo and performing the burnout in front of the St Kilda Police Station on 2 January 2017. He also told DSC Gentner that he had stolen an EFTPOS machine from a clinic in Prahran.<sup>71</sup> Significantly, the Offender told the detective that he did the burnout outside the police station as an act of defiance because he thought DSC Gentner wanted to kill him.<sup>72</sup> DSC Gentner thought that the Offender exhibited some signs of mental illness, particularly because of this statement.<sup>73</sup>

65 Exhibit 29, Charges and Warrant filed by Senior Constable Steven Rea, Coronial Brief, pp. 3159–61.

66 Exhibit 33, Charge Sheet prepared by Senior Constable Jake Semmel dated 20 November 2016, Coronial Brief, pp. 2483–7.

67 Exhibit 34, Charge Sheet prepared by Senior Constable Jake Semmel dated 14 January 2017, Coronial Brief, p. 3498.

68 Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 850; Exhibit 3, Handwritten Notes of Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, p. 3995; Exhibit 24, Second Statement of Senior Constable Jake Semmel dated 27 February 2017, Coronial Brief, p. 1603.

69 Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1596.

70 Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 850.

71 Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 851; Exhibit 3, Handwritten Notes of Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, p. 3995.

72 Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 851.

73 Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 851.

## Second interview with DSC Gentner

- 3.46 After gathering the necessary records about the offences to which the Offender had made admissions, including checking LEAP in relation to the burglary,<sup>74</sup> DSC Gentner commenced his own recorded interview with the Offender at 6.57 pm.<sup>75</sup> FC Sloan was again the corroborator but did not take notes.<sup>76</sup>
- 3.47 During the interview with DSC Gentner, the Offender admitted stealing \$200 and an EFTPOS machine from the clinic in Prahran,<sup>77</sup> driving the stolen Mitsubishi Evo and doing the burnout in front of the St Kilda Police Station.<sup>78</sup> He also admitted hitting Mr Madej and stealing his Mercedes Benz Coupe but was not questioned extensively about the assault on Mr Madej.<sup>79</sup>
- 3.48 The Offender said that he had been told by unnamed individuals that DSC Gentner wanted to kill him.<sup>80</sup> This suggested to DSC Gentner that the Offender was paranoid and delusional. He considered that the Offender had probably focused on him as a ‘symbolic person of authority’.<sup>81</sup>
- 3.49 Near the end of the interview, DSC Gentner administered a caution and informed the Offender that he ‘may’ be charged in relation to the matters discussed in the interview.<sup>82</sup> The interview concluded at 7.04 pm.<sup>83</sup>
- 3.50 Following the interview, DSC Gentner took the Offender to an interview room where the remand/bail hearing was to take place and then had a discussion with SC Semmel. DSC Gentner recalled that SC Semmel described the strength of the application to remand as a ‘lock’ and a ‘solid remand’, ‘basically meaning that he’s not getting bail’.<sup>84</sup>
- 3.51 DSC Gentner then began to prepare charges against the Offender arising from the admissions he made during the second interview, namely:
- a. robbery, during which Mr Madej’s Mercedes Benz Coupe was stolen
  - b. theft of the Mitsubishi Evo sedan
  - c. dangerous driving
  - d. burglary
  - e. theft
  - f. reckless conduct endangering serious injury in relation to the burnout in front of St Kilda Police Station.<sup>85</sup>

74 Exhibit 3, Handwritten Notes of Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, p. 3995.

75 Exhibit 4, Transcript of interview with the Offender and Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, p. 4004.

76 Transcript of evidence, p. 605; Exhibit 46, Statement of First Constable Madeline Sloan dated 24 April 2017, Coronial Brief, p. 1627.

77 Exhibit 4, Transcript of interview with the Offender and Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, pp. 4011–7.

78 Exhibit 4, Transcript of interview with the Offender and Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, p. 4018.

79 Exhibit 4, Transcript of interview with the Offender and Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, pp. 4020–1.

80 Exhibit 4, Transcript of interview with the Offender and Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, pp. 4007–8.

81 Transcript of evidence, p. 129.

82 Exhibit 4, Transcript of interview with the Offender and Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, p. 4025.

83 Exhibit 4, Transcript of interview with the Offender and Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, p. 4026.

84 Transcript of evidence, p. 133; Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 852.

85 Exhibit 5, Charge Sheet for the Offender completed by Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, p. 2494.

- 3.52 These offences are referred to collectively in this Finding as the ‘Gentner charges’.

## Remand/bail application

- 3.53 In its printed form,<sup>86</sup> the remand/bail application consisted of one pro forma that contained a series of check boxes (**Check Boxes**)<sup>87</sup> and another entitled ‘Preliminary Brief—Statement Made By Informant’ (**Summary**). The Summary was a statement of alleged facts in narrative form detailing the circumstances in which the Offender had been apprehended, details of the Semmel charges and the nature of the evidence against the Offender, including his admissions<sup>88</sup> and the grounds upon which a grant of bail was opposed by police.<sup>89</sup>
- 3.54 The written remand/bail application was reviewed by Sgt Cannon before the bail hearing.<sup>90</sup>
- 3.55 The Summary did not make any reference to the anticipated Gentner charges. The Gentner charges were not available at the time of the bail hearing because the detective was still preparing them.<sup>91</sup> In evidence at Inquest, DSC Gentner explained:<sup>92</sup>

I briefed [SC] Semmel in relation to the admissions he’s made and just told him that I’m going to go up and type the charges for him and that he make sure that he acknowledged that during the bail application, gives evidence of that.<sup>93</sup>

## The bail hearing

### Victoria’s legislative framework for bail

- 3.56 Bail is the legal mechanism through which a person accused of a criminal offence is temporarily released from custody while awaiting trial. In Victoria, bail hearings, whether before a judge, magistrate or bail justice in an out-of-sessions hearing, are governed by the *Bail Act 1977* (Vic) (**Bail Act**). The Offender’s bail hearing was subject to the Bail Act as it operated on 14 January 2017.<sup>94</sup> Since then, the Bail Act has undergone significant amendment, and this is discussed in detail in Part 9 of this Finding.
- 3.57 The Bail Act required a bail hearing to be conducted before a bail justice if bail was opposed by police and it was impractical to bring the accused before a court immediately.<sup>95</sup> The alternative—if bail were not opposed—would have been for police to bail the accused.<sup>96</sup>

<sup>86</sup> It was clarified at Inquest that in preparing a written remand/bail application on Victoria Police computer systems, the Summary is completed before the Check Boxes. However, when printed out, the Check Boxes section appears before the Summary. See Transcript of evidence, p. 593.

<sup>87</sup> Exhibit 32, Remand Bail Application for the Offender completed by Senior Constable Jake Semmel dated 14 January 2017, Coronial Brief, p. 2504.

<sup>88</sup> Exhibit 35, Preliminary Brief and Summary prepared by Senior Constable Jake Semmel dated 14 January 2017, Coronial Brief, pp. 2512–4.

<sup>89</sup> Exhibit 35, Preliminary Brief and Summary prepared by Senior Constable Jake Semmel dated 14 January 2017, Coronial Brief, pp. 2511–2.

<sup>90</sup> Transcript of evidence, pp. 642–3.

<sup>91</sup> Transcript of evidence, p. 134.

<sup>92</sup> Throughout these submissions, inconsequential hesitations in speech (‘um’s’ and ‘ah’s’) have mostly been removed from the quoted testimony. Transcripts of radio transmissions, interviews and the like remain in their original form.

<sup>93</sup> Transcript of evidence, p. 133.

<sup>94</sup> For the purposes of this Part of the Finding, references to the Bail Act are to Version 131, incorporating amendments as at 7 December 2016.

<sup>95</sup> *Bail Act 1977* (Vic), s. 10(2). Out-of-sessions bail hearings occur outside of court hours. At the time of these events, bail justices would ordinarily conduct bail hearings between 4 pm and 6 am on weekdays and over the weekend from 4 pm Friday to 6 am Monday. A weekend court operated in some locations with specified catchments between 9 am and 3 pm on Saturday and Sunday, with bail justices providing a service outside of these court times.

<sup>96</sup> *Bail Act 1977* (Vic), s. 10(1).

3.58 As at the date of the Offender’s bail hearing, anyone accused of an offence had a prima facie entitlement to bail<sup>97</sup> unless an offence for which bail was sought was one specified in the Bail Act as requiring the applicant for bail to ‘show cause’<sup>98</sup> (or establish ‘exceptional circumstances’)<sup>99</sup> justifying the grant of bail. Irrespective of which bail test applied, bail would be refused if the accused posed an ‘unacceptable risk’ of a type articulated in the Bail Act.<sup>100</sup>

## Show cause

3.59 Section 4(4) of the Bail Act directed that where an accused was charged with a prescribed offence, the bail decision-maker was required to refuse bail unless the accused ‘shows cause’ why his detention in custody is not justified.<sup>101</sup> This is colloquially referred to as being a ‘show cause’ situation.

3.60 Relevantly, the prescribed offences included:

- a. an indictable offence alleged to have been committed whilst at large awaiting trial for another indictable offence<sup>102</sup>
- b. an offence against the Bail Act.<sup>103</sup>

3.61 The Offender was in a show cause situation because the Semmel charges included:

- a. a number of indictable offences, including intentionally causing injury and conduct endangering life and serious injury, which it was alleged had been committed whilst the Offender was at large awaiting trial at the Moorabbin Magistrates’ Court<sup>104</sup> for the indictable offences of possessing methylamphetamine and possessing a drug of dependence<sup>105</sup>
- b. an offence under s. 30(1) of the Bail Act, that is, failing to answer bail on 6 April 2016 at the Moorabbin Magistrates’ Court.<sup>106</sup>

## Unacceptable risk

3.62 The Bail Act further directed that bail was to be refused if the bail decision-maker was satisfied there was an unacceptable risk that the accused, if released on bail, would:

- a. fail to surrender himself into custody in answer to his bail
- b. commit an offence whilst on bail
- c. endanger the safety or welfare of members of the public
- d. interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person.<sup>107</sup>

<sup>97</sup> *Bail Act 1977* (Vic), s. 4.

<sup>98</sup> *Bail Act 1977* (Vic), s. 4(4).

<sup>99</sup> *Bail Act 1977* (Vic), s. 4(2) required that an applicant for bail demonstrate exceptional circumstances justifying a grant of bail for offences such as treason, murder and certain drug and terrorism offences.

<sup>100</sup> *Bail Act 1977* (Vic), s. 4(2)(d).

<sup>101</sup> *Bail Act 1977* (Vic), s. 4(4).

<sup>102</sup> *Bail Act 1977* (Vic), s. 4(4)(a).

<sup>103</sup> *Bail Act 1977* (Vic), s. 4(4)(d).

<sup>104</sup> Exhibit 29, Charges and Warrant filed by Senior Constable Steven Rea dated 8 November 2016, Coronial Brief, p. 3159; Exhibit 33, Charge Sheet prepared by Senior Constable Jake Semmel dated 20 November 2016, Coronial Brief, p. 2483; Exhibit 36, Bench Warrant to Arrest the Offender by the Moorabbin Magistrates’ Court dated 6 April 2016, Coronial Brief, p. 2443.

<sup>105</sup> Offences against s. 73(1) of the Drugs, Poisons and Controlled Substances Act 1981 (Vic).

<sup>106</sup> Exhibit 29, Charges and Warrant filed by Senior Constable Steven Rea dated 8 November 2016, Coronial Brief, p. 3161.

<sup>107</sup> *Bail Act 1977* (Vic), s. 4(2)(d)(i).

- 3.63 When assessing whether a risk is unacceptable, the bail decision-maker was required to have regard to all matters that appear to be relevant, including:
- a. the nature and seriousness of the offence
  - b. the character, antecedents, associations, home environment and background of the accused
  - c. the history of any previous grants of bail to the accused
  - d. the strength of evidence against the accused
  - e. the attitude, if expressed to the court, of the alleged victim of the offence to the grant of bail
  - f. any conditions that may be imposed to address the circumstances that may constitute an unacceptable risk.<sup>108</sup>
- 3.64 The Offender's LEAP record detailed his prior convictions, several of which could have been relied upon to support an argument that there was an 'unacceptable risk' he would fail to surrender himself into custody to answer any undertaking of bail. The relevant prior convictions were:
- a. escape from police custody, for which he was sentenced to seven days, imprisonment (imposed concurrently with other sentences) at the Melbourne Magistrates' Court on 19 June 2014<sup>109</sup>
  - b. escape from police custody and resisting police, for which he was sentenced to an aggregate sentence of 14 months' imprisonment with a non-parole period of eight months at the Melbourne Magistrates' Court on 27 February 2013<sup>110</sup>
  - c. failure to answer bail (eight counts) and assault to prevent lawful detention, for which he was sentenced to 12 months' detention in a Youth Training Centre as part of an aggregate sentence imposed at the Melbourne Magistrates' Court on 15 November 2010<sup>111</sup>
  - d. failure to answer bail (five counts) and failure to comply with an undertaking order, for which he was sentenced to six months' probation as part of an aggregate order at the Melbourne Children's Court on 30 March 2009.<sup>112</sup>
- 3.65 It was also open to police to contend that there was an 'unacceptable risk' the Offender would commit an offence while on bail and/or endanger the safety or welfare of the public. The alleged facts underlying the Semmel charges supported this position, because the alleged offending was objectively serious and dangerous to the public and involved repeated episodes of offending. In particular, the charges of dangerous driving and conduct endangering death and serious injury that arose when the Offender evaded police on 19 November 2016 (admitted by the Offender during interview) demonstrated the Offender's preparedness to endanger members of the public to avoid apprehension.

108 *Bail Act 1977* (Vic), s. 4(3).

109 Exhibit 28, Victoria Police LEAP criminal record for the Offender as at 14 January 2017, Coronial Brief, p. 3731.

110 Exhibit 28, Victoria Police LEAP criminal record for the Offender as at 14 January 2017, Coronial Brief, p. 3735.

111 Exhibit 28, Victoria Police LEAP criminal record for the Offender as at 14 January 2017, Coronial Brief, pp. 3740–1.

112 Exhibit 28, Victoria Police LEAP criminal record for the Offender as at 14 January 2017, Coronial Brief, p. 3745.

- 3.66 Finally, it was open to police to contend that there was an ‘unacceptable risk’ the Offender would interfere with witnesses. Specifically, there was a risk that the Offender would attempt to contact AFM to either reconcile or intimidate her as he had sent text messages to AFM’s friend, indicating that he was aware of her new address. Notably, the Offender had been convicted at the Melbourne Magistrates’ Court on 27 February 2013 of contravening an earlier interim family violence intervention order (FVIO), for which, as part of an aggregate sentence, he was imprisoned for 14 months.<sup>113</sup>

## Preliminaries

- 3.67 As at 14 January 2017, SC Semmel had been a police member for about four years and estimated that he had been involved in approximately 30 bail or remand applications.<sup>114</sup> He considered it appropriate that the Offender be remanded in custody due to the circumstances and seriousness of the charges, the Offender’s admissions to further offending in relation to the Holden Jackaroo and because he was in a ‘show cause’ situation, having previously failed to appear at court.<sup>115</sup>
- 3.68 Bail justice Christos Pantelios had been called to St Kilda Police Station for an unrelated bail application that evening.<sup>116</sup> He is a teacher by profession and had been appointed an honorary bail justice on 2 June 2015, after undertaking the training required by the DJCS.<sup>117</sup> Mr Pantelios estimated at Inquest that he had conducted between 40–60 bail hearings as at 14 January 2017.<sup>118</sup>
- 3.69 At about 6.30 pm and after completing the unrelated bail application, Mr Pantelios was asked by police to stay and hear the remand application relating to the Offender.<sup>119</sup> Mr Pantelios acceded to the request, subject to the hearing being arranged and approved via the proper channels.<sup>120</sup> SC Semmel telephoned the Bail Justice Centre and Mr Pantelios was allocated a new ‘job number’, which enabled him to conduct the bail hearing.<sup>121</sup>
- 3.70 Prior to the commencement of the bail hearing, Mr Pantelios had a brief discussion with SC Semmel.<sup>122</sup> SC Semmel was unable to recall details of this conversation but remembered a brief conversation about how the Offender came to be in custody and other general matters, including the Offender’s health.<sup>123</sup> Mr Pantelios recalled that he enquired whether there were any special circumstances that could impede the Offender’s participation in the bail application (which Mr Pantelios considered could include mental health difficulties or drug affectedness); SC Semmel informed him that there were not.<sup>124</sup> Mr Pantelios stated that he also asked police to bring all relevant documents to the hearing, such as LEAP records and anything else to which police might refer.<sup>125</sup>

113 Exhibit 28, Victoria Police LEAP Criminal Record for the Offender as at 14 January 2017, Coronial Brief, p. 3734.

114 Transcript of evidence, p. 459.

115 Transcript of evidence, p. 457.

116 Exhibit 49, Statement of Senior Sergeant John Cannon dated 28 February 2017, Coronial Brief, p. 440; Exhibit 52, First Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1409; Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1596.

117 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1407.

118 Transcript of evidence, pp. 694–5; Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1408.

119 Exhibit 49, Statement of Senior Sergeant John Cannon dated 28 February 2017, Coronial Brief, p. 440; Exhibit 52, First Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1409; Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1596.

120 Exhibit 52, First Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1409; Exhibit 49, Statement of Senior Sergeant John Cannon dated 28 February 2017, Coronial Brief, p. 440; Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1596.

121 Exhibit 52, First Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1409; Exhibit 49, Statement of Senior Sergeant John Cannon dated 28 February 2017, Coronial Brief, p. 440; Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1596.

122 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1409.

123 Transcript of evidence, p. 469.

124 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1409.

125 Transcript of evidence, pp. 711–2.

- 3.71 The bail hearing commenced shortly after 7.00 pm, in an interview room at the police station,<sup>126</sup> having been delayed by about 10–15 minutes because the Offender was being interviewed by DSC Gentner.<sup>127</sup>
- 3.72 Those present for the initial phase of the hearing were SC Semmel (who presented the police case), FC Sloan (as corroborator), the Offender and Mr Pantelios. It was understood by all parties involved, including the bail justice,<sup>128</sup> that police were opposing bail.
- 3.73 After introductions, SC Semmel swore himself in and presented the police case, which he read from the Summary ‘word for word’.<sup>129</sup>

## Reliability of evidence

- 3.74 In accordance with standard practice, the bail hearing was not recorded.<sup>130</sup> The only contemporaneous notes taken during the course of the hearing were those made by Mr Pantelios, who took notes on a ‘Bail Application Checklist’<sup>131</sup> form he created to assist him to conduct bail/remand applications.<sup>132</sup>
- 3.75 This documentary evidence, together with the Summary that SC Semmel had read ‘word for word’, shed light upon at least parts of what must have occurred at the bail hearing. Various notes taken by Mr Pantelios on the ‘Bail Application – Checklist’ align, in a general sense, with parts of SC Semmel’s Summary.<sup>133</sup>
- 3.76 However, neither of these documents was ‘perfect’, in that each of them was open to criticisms about their content or comprehensiveness and what this might be said to show about the reliability of the evidence given by the author of the document at Inquest . The reliability of these witnesses’ evidence was ultimately the subject of submissions by various interested parties and by Counsel Assisting. I have taken into account all those submissions.
- 3.77 In broad terms, the submissions made on behalf of the police witnesses tended to criticise the evidence of Mr Pantelios as unreliable concerning the disputed issues. Counsel Assisting submitted that Mr Pantelios seemed concerned to exculpate himself, which may have affected his reliability as a witness.<sup>134</sup> It was submitted on behalf of Mr Pantelios that this was a wholly unfair criticism, akin to saying he was lying to protect himself.<sup>135</sup>
- 3.78 During oral argument, it was submitted on behalf of Mr Pantelios that I should be ‘slow’ to place much weight on the demeanour of witnesses when assessing the reliability of their evidence, particularly Mr Pantelios’s evidence. It was said that the shortcomings associated with the evaluation of the demeanours of witnesses are ‘well known’ and referred to in case law.<sup>136</sup>

126 Transcript of evidence, p. 469.

127 Transcript of evidence, p. 701; Exhibit 52, Statement of Mr Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1410.

128 Transcript of evidence, p. 700.

129 Transcript of evidence, pp. 470–1.

130 Transcript of evidence, p. 343.

131 Exhibit 53, Bail Application – Checklist of Christos Pantelios dated 14 January 2017, Coronial Brief, p. 2407.

132 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1408.

133 Transcript of evidence, pp. 735–41.

134 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 29.

135 Written submissions on behalf of the bail justice dated 19 May 2020, p. 7.

136 Transcript of Oral Submissions Hearing, p. 158.

- 3.79 I accept that a finder of fact should approach findings based on the demeanour of witnesses with some caution, taking into account the artificial and sometimes stressful circumstances of the courtroom.<sup>137</sup> However, superior courts in Australia continue to consider the direct and indirect influence of demeanour to be of potential significance when assessing the reliability of evidence; appellate courts also continue to emphasise the advantage enjoyed by the trier of fact in hearing and seeing evidence as it is being communicated.<sup>138</sup> Given the essentially human process of verbal and non-verbal communication at the heart of giving evidence, and assessing the reliability of that evidence, it would be surprising if this were not so.
- 3.80 In light of the above, I considered that SC Semmel and FC Sloan testified in a straightforward manner. Their evidence appeared to be given from their actual memory, without speculation and without any significant self-consciousness or defensiveness. I considered Sgt Cannon and DSC Gentner gave their evidence in a similar manner.
- 3.81 It does not follow from what I have said so far that I necessarily accept all aspects of the evidence from these witnesses—that is especially so in relation to FC Sloan, who seemed to have an incomplete and somewhat vague memory of some critical events (it should be noted that she did not demur from this assessment).
- 3.82 On the other hand, the way Mr Pantelios gave his evidence left me uneasy about critical parts of his account. He seemed keen to impress upon me his view of events and was quick to blame police, at least by the tone in which his evidence was given—the more remarkable as the correctness of his decision to grant bail to the Offender was not under scrutiny.
- 3.83 Mr Pantelios often presented as defensive, and parts of his evidence were given in dogmatic and quite definitive terms such as, particularly, whether he was given a printed copy of the Offender’s LEAP record. In significant contrast, overall, his evidence suggested that his memory of the identity and detail of other documentary material before him during the bail hearings was practically non-existent. I also harbour some concern that parts of Mr Pantelios’s evidence were affected by a process of reconstruction as opposed to actual memory. For example, Mr Pantelios had no memory of any charge sheets being before him but reasoned that he must have had some because he remembered ‘documents’ positioned to his left-hand side.<sup>139</sup>
- 3.84 To be clear, I am not characterising any evidence given by Mr Pantelios as that of a liar. I accept that he believes what he says about the events at the bail hearing to be the truth. On the other hand, for the reasons I have indicated, where there is conflict in the evidence, I am unable to accept the evidence of Mr Pantelios as reliable without corroboration.

<sup>137</sup> *State Rail Authority of NSW v Earthline Constructions Pty Ltd (in liq)* (1990) 160 ALR 588, 617 [88] per Kirby J; *Pell v R* [2019] VSCA 186, [917]-[919] per Weinberg JA.

<sup>138</sup> See, for example, *Fox v Percy* (2003) 214 CLR 118 at [25]-[31], *Woolworths Ltd v Warfe* [2013] VSCA 22 at [114]-[120], *Southern Colour (Vic) Pty Ltd v Parr* [2017] VSCA 301 at [78] and *Lee v Lee* [2019] HCA 28 at [55].

<sup>139</sup> Transcript of evidence, pp. 703, 707, 764.

## Charges and documents before the bail justice

- 3.85 The major area of controversy between the police witnesses and Mr Pantelios concerned the identity of the documents referred to or furnished at the bail hearing.
- 3.86 The documents available for use at the hearing were:
- a. the Semmel charges
  - b. the written remand/bail application, including the Summary
  - c. the bench warrant issued on 6 April 2016 for failing to appear on bail
  - d. the complaint and warrant arising from the assault on AFM on 31 October 2016
  - e. the LEAP record of the Offender's prior convictions.
- 3.87 SC Semmel gave evidence that, at the start of the bail hearing, he had multiple copies of the Semmel charges, the remand/bail application, and the Offender's prior convictions (**LEAP criminal record**) for his own use and for the bail justice.<sup>140</sup>
- 3.88 SC Semmel testified that he handed copies of the Semmel charges, the remand/bail application and the LEAP criminal record to Mr Pantelios 'in person'.<sup>141</sup> He suspected, but was not certain, that he also had the warrant in his possession either on the table in front of him or on his person. He assumed that he would have also been in possession of the intervention order documents.<sup>142</sup>

### Semmel charges

- 3.89 In respect to the documents before him, Mr Pantelios's 'Checklist' left the box relating to 'charges' blank.<sup>143</sup>
- 3.90 In his statement, Mr Pantelios said that this indicated that he 'probably did have the charge sheet'.<sup>144</sup> This process of reconstruction was apparent in Mr Pantelios's statements and his Inquest testimony, and tended to indicate a paucity of any actual memory of events.
- 3.91 At Inquest, Mr Pantelios could not remember being given or asking for a copy of the charges but did recall having 'papers' in front of him.<sup>145</sup> He then said that there were charges in the papers but could not recall 'exactly what the charges were'.<sup>146</sup> When prompted, he confirmed there were some charges on the desk in front of him and that they were located on his left. He accepted that they were charges relating to the Offender that must have come from SC Semmel, but was unable to recall whether he had any other documents in front of him.<sup>147</sup> Mr Pantelios did not remember how many documents he had in front of him nor whether the Summary was among them; he could not recall how many sets of charges were before him either.<sup>148</sup> He could not say his 'Checklist' referred to warrants and could not remember why he did not ask for copies. The bail justice could not recall whether some of his notes in the 'Checklist' related to charges before him or whether the charge of theft of the Holden Jackaroo was among them but conceded that it may have been.<sup>149</sup>

140 Transcript of evidence, pp. 468–9.

141 Transcript of evidence, pp. 474–5, 585.

142 Transcript of evidence, pp. 468–9.

143 Exhibit 53, Bail Application – Checklist of Christos Pantelios dated 14 January 2017, Coronial Brief, pp. 2407–8.

144 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1411.

145 Transcript of evidence, p. 703.

146 Transcript of evidence, pp. 703, 707, 715.

147 Transcript of evidence, p. 703.

148 Transcript of evidence, p. 707.

149 Transcript of evidence, p. 709.

## Prior convictions (LEAP record)

- 3.92 In oral evidence, and in contrast to the evidence that he gave about the charges, Mr Pantelios said that he was ‘very sure’ that he was not provided the Offender’s LEAP record. He repeated several times, in quite assertive terms, that the LEAP record was ‘certainly ... not in front of me’,<sup>150</sup> ‘I’m very certain ... that I did not have the LEAP record before me’,<sup>151</sup> and ‘I did not receive a LEAP record’.<sup>152</sup>
- 3.93 When testifying at Inquest, Mr Pantelios said, or confirmed, that:
- a. in his training, he was told specifically to ask the informant for the LEAP record<sup>153</sup>
  - b. during the pre-hearing discussion he had asked the police (SC Semmel) to ‘make sure’ that ‘LEAP records, and anything else that you might need to refer to’ were on hand<sup>154</sup>
  - c. in any bail hearing, LEAP records are among the documents usually provided<sup>155</sup>
  - d. at the time of the bail hearing, he thought it was important to see the LEAP record<sup>156</sup>
  - e. nonetheless, he thought it ‘would be the police’s role to provide it’ because it was ‘up to the police to present their case’<sup>157</sup>
  - f. he remembered asking for relevant history but could not recall asking for a copy of the LEAP records<sup>158</sup>
  - g. he tends to place the charges to his left-hand side and any other documents, such as LEAP records, to his right-hand side<sup>159</sup>
  - h. as a school teacher, he knows what 20 pages looks like, and he did not have 20 pages in front of him (the LEAP record was roughly 20 pages).<sup>160</sup>
- 3.94 SC Semmel stated that he ‘printed out the LEAP form, signed them and provided a copy to [the bail justice]’.<sup>161</sup> He said that he preferred to have a record of the prior convictions he had signed to ensure they are the most current record of convictions, for his own ‘peace of mind’.<sup>162</sup> Consistent with this, there is in evidence a LEAP printout signed by SC Semmel bearing the date of 14 January 2017 and timestamped 7.07 pm.<sup>163</sup> SC Semmel was, however, unable to recall whether he provided the LEAP record to the bail justice in the interview room or during their preliminary conversation,<sup>164</sup> and could not recall if he referred to that document when presenting the police case to Mr Pantelios.<sup>165</sup>

150 Transcript of evidence, p. 766.

151 Transcript of evidence, p. 769.

152 Transcript of evidence, p. 712.

153 Transcript of evidence, p. 712.

154 Transcript of evidence, p. 711.

155 Transcript of evidence, p. 711.

156 Transcript of evidence, p. 709.

157 Transcript of evidence, pp. 709, 711.

158 Transcript of evidence, p. 704.

159 Transcript of evidence, p. 764.

160 Transcript of evidence, p. 821.

161 Transcript of evidence, p. 585.

162 Transcript of evidence, p. 448.

163 Exhibit 28, Victoria Police LEAP Criminal Record for the Offender as at 14 January 2017, Coronial Brief, p. 3729.

164 Transcript of evidence, p. 585.

165 Transcript of evidence, pp. 471, 536, 585.

3.95 FC Sloan gave evidence that she could not recall if a copy of the charges was given<sup>166</sup> to the bail justice but knew that a copy of the Offender's prior convictions had been provided. She remembered seeing a printout of the Offender's prior convictions on the table during the bail hearing.<sup>167</sup> At Inquest, she explained that:

... because I wasn't actually having to do anything else other than stand there and listen, I can remember staring at [the printout of the Offender's prior convictions] like they were upside down. They were facing the bail justice and I can remember staring at them whilst listening but I didn't ... have a copy of them myself.<sup>168</sup>

3.96 FC Sloan recalled SC Semmel referring to the prior convictions and them being discussed but was unable to recall whether he went through them one-by-one or if they were read out in the Summary.<sup>169</sup>

3.97 Counsel for Mr Pantelios submitted that FC Sloan's evidence was unreliable and was in various respects mistaken and, accordingly, that she was 'not a witness upon which weight could be placed'.<sup>170</sup> I accept that FC Sloan's memory of how this document came into the bail justice's possession and whether SC Semmel read out the prior convictions is vague. However, her evidence of seeing the LEAP record on the table in front of Mr Pantelios appeared to be given from her actual memory. Accordingly, although the evidence of FC Sloan in relation to the provision of the LEAP record is of diminished weight, I cannot say that it is of no weight at all.

## What documents were before the bail justice?

3.98 I am not satisfied that Mr Pantelios has a reliable memory of what documents were before him during the bail hearing. As I understood his evidence, he was not sure what or how many documents, or what charges, he had before him but was certain that he did not have the LEAP record among them. It seems unlikely that a witness who did not have a clear memory of what documents were before him, or what any of them contained, could nonetheless definitively say that the documents before him did not include a particular document.

3.99 It is more likely than not that, having gone to the trouble to print and sign a document intended for the bail justice (particularly a document requested by the bail justice during the prehearing discussion), SC Semmel would have given it to its intended recipient.

3.100 Accordingly, I accept the evidence of SC Semmel that he gave Mr Pantelios the Semmel charges, the remand/bail application and the LEAP record.

3.101 In his oral evidence, SC Semmel assumed, or suspected without being certain, that he had the bench warrant and intervention order documents in his possession.<sup>171</sup> Mr Pantelios could recall warrants being discussed but could not 'recall having any physical warrants in front of me'.<sup>172</sup> In the circumstances, I am unable to conclude whether or not SC Semmel provided the warrant and intervention order documents to the bail justice.

166 FC Sloan was unable to recall seeing SC Semmel hand the prior convictions to Mr Pantelios and did not know how the LEAP record got in front of him: Transcript of evidence, pp. 626–7; Exhibit 46, Statement of First Constable Madeline Sloan dated 24 April 2017, Coronial Brief, p. 1628.

167 Exhibit 46, Statement of First Constable Madeline Sloan dated 24 April 2017, Coronial Brief, p. 1628.

168 Transcript of evidence, p. 626.

169 Transcript of evidence, pp. 626–7.

170 Written submissions on behalf of the bail justice dated 19 May 2020, pp. 5–6.

171 Transcript of evidence, pp. 468–9.

172 Transcript of evidence, p. 704.

3.102 In light of the foregoing, I consider it unlikely that Mr Pantelios read or referred to any of the documents provided to him in the course of the bail hearing. It is likely that he listened to what SC Semmel said when reading from his Summary. I find that Mr Pantelios's memory or perhaps his understanding of the effect of what he was told during the bail hearing seems likely to have been in error.

## The initial phase of the bail hearing

### Grounds relied upon by police to oppose bail

3.103 SC Semmel's Summary detailed the four grounds upon which the police opposed a grant of bail to the Offender, namely:

- a. he was in a 'show cause' situation because he had committed an offence against the Bail Act by failing to answer bail at Moorabbin Magistrates' Court on 6 April 2016
- b. there was an unacceptable risk the Offender would fail to appear on bail because he had:
  - failed to appear at the Moorabbin Magistrates' Court on 6 April 2016
  - been found guilty on 15 November 2010 of eight counts of failing to answer bail
  - been found guilty on 30 March 2009 of five counts of failing to answer bail
  - no fixed address
- c. there was a risk that the Offender would attempt to contact AFM to either reconcile or intimidate her, given that he had sent text messages to AFM's friend indicating an awareness of her new address. Submissions were also made that the Offender was a methylamphetamine user, violent and had had no hesitation in assaulting a woman who was 19 weeks pregnant
- d. the Offender had shown a complete disregard for the safety of himself and members of the public by driving a motor vehicle in a dangerous manner to avoid apprehension, with police believing that if he was bailed and failed to appear at court, he would actively avoid arrest and, in doing so, may pose a risk to others.<sup>173</sup>

3.104 At Inquest, SC Semmel accepted that he had made errors in the Check Box section of the remand/bail application, having ticked 'no' instead of 'yes' in response to relevant questions regarding whether:

- a. there was an unacceptable risk of the Offender committing offence(s) while on bail<sup>174</sup>
- b. there was an unacceptable risk of the Offender endangering the safety and welfare of the public (although this was noted in the Summary read out by SC Semmel in the bail hearing)<sup>175</sup>
- c. the Offender had made any admissions<sup>176</sup>
- d. there was identification evidence.<sup>177</sup>

<sup>173</sup> Exhibit 35, Preliminary Brief and Summary prepared by Senior Constable Jake Semmel, otherwise known as the Remand Application, Coronial Brief, p. 2512.

<sup>174</sup> Transcript of evidence, p. 566.

<sup>175</sup> Transcript of evidence, pp. 526–7.

<sup>176</sup> Transcript of evidence, pp. 526–7.

<sup>177</sup> Transcript of evidence, p. 527.

- 3.105 The box for the ‘show cause’ grounds under s. 4(4)(a), ‘has the accused been charged (summonsed, bailed or remanded) with an indictable offence committed whilst at large awaiting trial for another indictable offence’, was also incorrectly ticked ‘no’.<sup>178</sup>
- 3.106 However, SC Semmel had correctly indicated that the Offender was charged with an offence against the Bail Act in failing to answer bail at the Moorabbin Magistrates’ Court and, accordingly, had to ‘show cause’ in order to be bailed.
- 3.107 In Mr Pantelios’s ‘Checklist’, however:
- a. nothing is written in the box in which ‘charges’ are to be identified
  - b. the boxes relating to ‘criminal history (LEAP records)’ and ‘any outstanding warrants’ are unchecked
  - c. boxes identifying grounds upon which the police contended the Offender was an ‘unacceptable risk’ are checked, specifically, the grounds of ‘accused would fail to answer bail (history of offending)’ and ‘endanger the safety or welfare of members of the public’
  - d. Mr Pantelios noted ‘history of fail to appear in last 5 years,’ which appears to indicate his appreciation that a ‘show cause’ situation was presented.<sup>179</sup>
- 3.108 On the weekend following the events of 20 January 2017, Mr Pantelios prepared ‘Bail Hearing Case Notes’ (**Case Notes**) documenting the Offender’s bail hearing on 14 January 2017.<sup>180</sup> The notes must have been prepared from his recent memory of events and annotations made on his ‘Bail Application – Checklist’ a week earlier.<sup>181</sup>
- 3.109 The Case Notes confirm that Mr Pantelios understood the Offender to be in a ‘show cause’ situation.<sup>182</sup> That said, the Case Notes also draw a distinction between the charges relating to the assault on AFM, and the later assault on Angelo, wilful damage, erratic driving and theft of a motor vehicle in November 2016, in respect of which Mr Pantelios recorded that ‘the police were not in a position to formally charge the accused’.<sup>183</sup> That distinction, which was repeated in Mr Pantelios’s later statement to the Honourable Paul Coghlan QC<sup>184</sup> and in a further statement dated 28 April 2017,<sup>185</sup> is not borne out by SC Semmel’s Summary. Further, charge sheets relating to these matters existed at the time of the bail hearing.
- 3.110 These aspects of Mr Pantelios’s written and considered statements seem to be erroneous. The errors appear to have flowed, in part, from errors made at the time the Case Notes were drafted. Mr Pantelios acknowledged errors in his final statement, explaining that the Case Notes were prepared at a time of significant trauma immediately following the Bourke Street tragedy. Compounding his distress, Mr Pantelios was also aware that his performance as bail justice had been publicly questioned by senior police members.<sup>186</sup> In such circumstances, it is understandable that errors of memory occurred.

178 *Bail Act 1977* (Vic), s. 4(4)(a).

179 Exhibit 53, Bail Application – Checklist of Christos Pantelios dated 14 January 2017, Coronial Brief, p. 2407.

180 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1408.

181 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1408.

182 Exhibit 54, Bail Hearing Case Notes of Christos Pantelios prepared on 21 to 22 January 2017, Coronial Brief, p. 2409.

183 Exhibit 54, Bail Hearing Case Notes of Christos Pantelios prepared on 21 to 22 January 2017, Coronial Brief, p. 2409.

184 Exhibit 55, Statement Regarding Bail Hearing BJO Ref 6655234, p. AM18, p. 1.

185 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1407.

186 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1408.

3.111 In his further statement dated 28 April 2017, Mr Pantelios also identified as a reason for his lack of satisfaction that the Offender was an ‘unacceptable risk’, that:

... some of the charges were nearly 12 months old and, despite raising concerns pertaining to other alleged offences, police were not pursuing charges beyond those relating to the Family Violence Order from January 2016 and the assault charge from 14 January 2017.<sup>187</sup>

3.112 In the paragraph immediately before this, Mr Pantelios links those charges to the involvement of DSC Gentner in the bail hearing. Mr Pantelios stated: ‘I have a clear recollection of this’.<sup>188</sup> Nonetheless, that recollection also seems likely to have been erroneous.

3.113 In the same statement, Mr Pantelios said that, in opposing bail, the police ‘did not refer to [the Offender] having any prior convictions’. He said that he had been told subsequently that the Offender had prior convictions but that ‘this was not drawn to my attention at the hearing’.<sup>189</sup> While it is possible that this is literally true, in the sense that police might not have referred orally to any past convictions or particular past convictions, the assertive emphasis given to the point in the statement is more indicative of Mr Pantelios’s state of mind at the time the statement was made than the accuracy of the assertion itself, given that references to two outstanding warrants for the Offender’s arrest and eight counts of failing to answer bail are recorded in his contemporaneous notes in the ‘Checklist’.<sup>190</sup>

## Reasons to grant Offender’s bail

3.114 An applicant for bail bears the evidentiary burden of justifying the grant of bail to the threshold stipulated in the Bail Act for prescribed offences. The Offender had to provide reasons—or ‘show cause’—justifying his release from custody.<sup>191</sup>

3.115 The Offender told Mr Pantelios that he had failed to answer bail because he had been in South Australia with his estranged father and he was in the process of mending that relationship. He said that he had attended court in September 2016 where the matter was resolved.<sup>192</sup> SC Semmel recalled that the Offender spoke well, ‘seeming regretful for the incidents he was involved in and reassuring that he intends to better himself’.<sup>193</sup> Mr Pantelios said that the police did not dispute the explanation given by the Offender.<sup>194</sup>

3.116 After the Offender provided his ‘show cause’ reasons, SC Semmel said that ‘the bail justice began talking about suitable bail conditions’,<sup>195</sup> which alerted him to the fact that the Offender would likely be granted bail.<sup>196</sup> ‘Alarmed’ at the turn of events, SC Semmel asked if Mr Pantelios would consider further evidence from DSC Gentner.<sup>197</sup> SC Semmel was not sure of the nature of the offences about which DSC Gentner had interviewed the Offender but assumed they would be indictable offences because a detective was involved.<sup>198</sup>

187 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1412.

188 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1412.

189 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1417.

190 Exhibit 53, Bail Application - Checklist of Christos Pantelios dated 14 January 2017, Coronial Brief, pp. 2407–8.

191 Transcript of evidence, pp. 706, 718; Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1413.

192 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1413.

193 Exhibit 23, First Statement of Senior Constable Jake Semmel dated 24 February 2017, Coronial Brief, p. 1600.

194 Exhibit 52, Statement of Mr Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1413.

195 Transcript of evidence, p. 472.

196 Transcript of evidence, p. 472.

197 Transcript of evidence, p. 473.

198 Transcript of evidence, pp. 472–3.

3.117 SC Semmel advised Sgt Cannon of the apparent prospect that the Offender would be bailed.<sup>199</sup> Sgt Cannon said he would ask DSC Gentner to see if he could come down to the bail hearing.<sup>200</sup> Sgt Cannon asked Mr Pantelios if he would be happy if a second informant spoke to him about a couple of matters that were not in the remand application.<sup>201</sup> Sgt Cannon said it was not usual practice to do that and, in 17 years, he had never known it to happen.<sup>202</sup>

## The second phase of the bail hearing

3.118 There was some controversy at Inquest about who had summoned DSC Gentner to the bail hearing. While FC Sloan testified that she had called the detective, she also recalled Sgt Cannon did as well.<sup>203</sup> Relevantly, DSC Gentner did not recall speaking with FC Sloan. His recollection was that Sgt Cannon had called him to request that he assist in the bail hearing.<sup>204</sup> Similarly, Sgt Cannon gave evidence that he called DSC Gentner and explained that it looked like the Offender would be bailed and DSC Gentner had offered to come down to the bail hearing to speak to the matters that were not on the remand application.<sup>205</sup> The statements of Sgt Cannon and DSC Gentner, and DSC Gentner's contemporaneous notes, suggest it was Sgt Cannon who contacted DSC Gentner about attending the bail hearing.<sup>206</sup> Accordingly, I accept that it is likely FC Sloan was mistaken about how DSC Gentner came to attend the bail hearing. It appears more likely that Sgt Cannon requested him to attend the bail hearing.

3.119 Upon learning that the Offender may be granted bail, DSC Gentner rushed downstairs and entered the interview room where the bail hearing was in progress.<sup>207</sup> It is unclear whether DSC Gentner was formally sworn in or just provided information about the offences that were the subject of his recent interview.<sup>208</sup> DSC Gentner remembered discussing one of the crimes the Offender had committed (driving dangerously through a red light, with little regard for the public), that 'he was an unacceptable risk of reoffending',<sup>209</sup> and the concerns he held if the Offender was granted bail. He also thought the Offender would need the structure of being 'inside' (in custody) to get mental health and drug treatment.<sup>210</sup>

## Gentner charges

3.120 There was a dispute in the evidence at the Inquest concerning what Mr Pantelios had been told by DSC Gentner about the prospect of further charges arising from his interview with the Offender.

199 Transcript of evidence, p. 472.

200 Transcript of evidence, p. 472.

201 Transcript of evidence, p. 638.

202 Transcript of evidence, p. 655.

203 Transcript of evidence, p. 614.

204 Transcript of evidence, p. 376.

205 Transcript of evidence, pp. 637–8.

206 Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 853; Exhibit 3, Handwritten Notes of Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, p. 3996; Exhibit 49, Statement of Senior Sergeant John Cannon dated 28 February 2017, Coronial Brief, p. 441.

207 Transcript of evidence, p. 137.

208 Transcript of evidence, p. 138.

209 Transcript of evidence, p. 139.

210 Transcript of evidence, p. 138.

- 3.121 Mr Pantelios remembered DSC Gentner joining the hearing and saying that no other charges were going to be laid.<sup>211</sup> His evidence was that no Gentner charges were before him<sup>212</sup> and the detective had told him that he was not in a position to formally charge the Offender.<sup>213</sup> In cross-examination, Mr Pantelios agreed he was aware that police were considering further charges.<sup>214</sup>
- 3.122 In his second written statement, DSC Gentner outlined the evidence that he gave to Mr Pantelios during this second phase of the hearing, which included telling Mr Pantelios:
- I am in the midst of typing [the Offender's] charges for all these confessions, but have not been able to complete them yet due to being called down to address the hearing.<sup>215</sup>
- 3.123 DSC Gentner denied that he said he was not going to charge the Offender.<sup>216</sup> His evidence was that, at the time, he 'was in the process of typing up charges'.<sup>217</sup>
- 3.124 Sgt Cannon was certain that the Gentner charges were served sometime after the bail hearing.<sup>218</sup> Further, Sgt Cannon recalled that DSC Gentner 'gave him the charges or served the charges on him [the Offender] before he left the station; it was definitely after the remand hearing or bail hearing but it was definitely before he left the station'.<sup>219</sup>
- 3.125 In evidence, DSC Gentner said he gave a copy of his charge sheets to Mr Pantelios at the time the Offender was bailed (that is, after the bail hearing).<sup>220</sup>
- 3.126 I accept the evidence of DSC Gentner that his charges were in preparation at the time he was called into the bail hearing and that he said that charges would be laid. I do not accept the evidence of Mr Pantelios that DSC Gentner said that those (or any) charges could or would not be laid.
- 3.127 As I have noted, the evidence is clear that the Gentner charges had not been finalised at the time of the bail hearing. Therefore, they were not extant charges upon which Mr Pantelios could directly determine the question of bail. At most, the fact that those charges would later be laid could amount to an additional circumstance for consideration according to s. 4(3) of the Bail Act when considering whether the Offender was an 'unacceptable risk'.
- 3.128 SC Semmel gave evidence that he was not aware that Mr Pantelios could only act upon charges that were in existence and before him.<sup>221</sup> It was not until DSC Gentner came into the bail hearing that SC Semmel became aware that further charges were to be laid.<sup>222</sup> He operated under a misapprehension that if DSC Gentner informed Mr Pantelios about the charges he was intending to lay this would have the same effect as if those charges had been laid.<sup>223</sup>

211 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, pp. 1412, 1414.

212 Transcript of evidence, p. 717.

213 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1412.

214 Transcript of evidence, p. 724.

215 Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 854.

216 Transcript of evidence, p. 143.

217 Transcript of evidence, pp. 139, 144.

218 Transcript of evidence, p. 663.

219 Transcript of evidence, p. 654.

220 Transcript of evidence, p. 361.

221 Transcript of evidence, p. 474.

222 Transcript of evidence, p. 480.

223 Transcript of evidence, p. 480.

- 3.129 Mr Pantelios thought that he ‘could not reasonably deny [the Offender] bail solely on the “suspicion” of having committed further offences’.<sup>224</sup> Further, he believed that ‘according to the law, charges need to be laid before [he] was able to consider them’.<sup>225</sup>
- 3.130 Counsel for the CCP submitted that s. 4(3) of the Bail Act provided a mechanism, when determining the question of ‘unacceptable risk’, for Mr Pantelios to factor in other information properly placed before him such as the anticipated Gentner charges. Furthermore, this information could include other offending, whether or not it was the subject of formal charges at that time.<sup>226</sup>
- 3.131 Section 4(3) of the Bail Act, as at January 2017, provided that:
- In assessing in relation to any event mentioned in subsection (2)(d)(i) whether the circumstances constitute an unacceptable risk the court shall have regard to *all matters appearing to be relevant* [emphasis added] and in particular, without in any way limiting the generality of the foregoing, to such of the following considerations as appear to be relevant ...
- 3.132 Counsel for the CCP submitted that all matters appearing to be relevant incorporated the anticipated Gentner charges. This is correct in the sense that such evidence would be properly admissible before Mr Pantelios. However, the submission fails to take into account the difference between the Gentner charges being considered as extant charges upon which bail should or should not be granted, compared with putative charges to be considered in the same way as priors and antecedents.
- 3.133 I find that in order to give the greatest strength to the police case, the Gentner charges ought to have been before Mr Pantelios as extant charges so that the bail justice could properly determine the questions before him. It was not sufficient to merely foreshadow the Gentner charges as general information to be considered when assessing ‘unacceptable risk’.
- 3.134 I further find that DSC Gentner and SC Semmel could have coordinated to ensure all charges were the subject of the bail application before the hearing commenced. This would have been the most efficient approach. Even if the bail hearing was already underway, when it was realised the Gentner charges should formally be included, either SC Semmel or DSC Gentner could have asked for the matter to be stood down pending completion of the Gentner charges. As suggested by AC Fontana, they could have potentially asked for an adjournment to do so.<sup>227</sup>
- 3.135 SC Semmel confirmed in evidence he did not ask for the matter to be stood down because he was not aware that he could have done so.<sup>228</sup>
- 3.136 Sgt Cannon was asked whether he considered having the hearing stood down so that the Gentner charges could be put before Mr Pantelios. He replied that he did not think this was necessary ‘because it was a strong application’.<sup>229</sup> However, he conceded that the police case would have been even stronger if the Gentner charges were formally included in the bail application.<sup>230</sup>

224 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1414.

225 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1414.

226 Transcript of evidence, pp. 477–8.

227 Transcript of evidence, p. 3463.

228 Transcript of evidence, p. 475.

229 Transcript of evidence, p. 656.

230 Transcript of evidence, p. 656.

- 3.137 DSC Gentner had never heard of a bail hearing being stood down unless it was at the request of the ‘convenor’ (that is, the bail justice).<sup>231</sup> This evidence was somewhat surprising, as short adjournments of hearings of all kinds are relatively commonplace. In any event, I do not reject this evidence concerning DSC Gentner’s state of mind at the time, particularly because when giving that evidence he seemed to be genuinely surprised to learn that it was within his power to ask to have the matter stood down.
- 3.138 DSC Gentner and SC Semmel should have been trained or otherwise made aware that it was within their power, and reasonable, to ask that the bail hearing be stood down. If they were in any doubt, they could then have sought direction from Sgt Cannon. It is not insignificant that DSC Gentner estimated that his charges would have only taken 10–15 minutes to prepare.<sup>232</sup>
- 3.139 Counsel for the CCP:
- ... conceded that the preferable position would have been for the bail hearing to be stood down so that Gentner could formally charge the Offender with these new offences and enable the bail justice to take those squarely into consideration as substantive charges for the bail application.<sup>233</sup>
- 3.140 It is possible that the police confusion about this issue may have been indirectly due to the Victoria Police Manual (**VPM**) *Bail and Remand, Procedures and Guidelines*, which required police to ‘abide by the decision of a bail justice in relation to that person’.<sup>234</sup> Counsel for the CCP submitted that this aspect of the policy has now been removed.<sup>235</sup>
- 3.141 It was submitted by Counsel for SC Semmel that ‘the suggestion that the bail application could have been deferred or stood down pending the formal laying of the Gentner charges is a suggestion made with hindsight’.<sup>236</sup>
- 3.142 Counsel for DSC Gentner submitted that there was ‘no basis for a finding that a different outcome would have resulted if his charges were filed prior to the bail application being heard; especially given that all pertinent information was before the bail justice’.<sup>237</sup> Further, despite a strong opposition to bail, ‘the lesson to be learned is that certainty of outcome cannot be assumed on the basis of the perceived strength’.<sup>238</sup> It was conceded that, with the benefit of hindsight, ‘it would have been better to have all the charges typed and before the bail justice, if only to avoid the dispute about them that emerged before this Court’.<sup>239</sup>
- 3.143 I have considered all submissions made about this issue. In the end, it would clearly have been preferable for the Gentner charges to have been formally put before the bail justice and for the police involved to have had been aware, that a short adjournment could be requested in order to allow that to occur.
- 3.144 Notwithstanding the various submissions made about the relevance of the present issue to the ‘outcome’ of the hearing, I simply repeat that the correctness of the outcome of the bail hearing is beyond the settled scope of issues before me.

231 Transcript of evidence, p. 135.

232 Transcript of evidence, p. 135.

233 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 18.

234 Victoria Police Manual: *Bail and Remand, Procedures and Guidelines*, Coronial Brief, p. 2557.

235 Victoria Police Manual: *Bail and Remand, Procedures and Guidelines*, Coronial Brief, p. 2571.

236 Written submissions on behalf of certain police members (Group B) including Sergeant John Cannon, Senior Constable Jake Semmel and First Constable Madeline Sloan dated 19 May 2020, p. 6.

237 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 27.

238 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 28.

239 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 28.

## Character of the bail hearing

- 3.145 Mr Pantelios consistently stated the police case was rushed and underprepared.<sup>240</sup> According to him, SC Semmel appeared flustered when trying to find information.<sup>241</sup> Mr Pantelios opined that SC Semmel did not have a good grasp of the case he was presenting.<sup>242</sup> He said ‘he fumbled through his papers when asked for evidence ... of failing to answer bail’.<sup>243</sup> He also needed to seek clarification from DSC Gentner about the Offender’s past.<sup>244</sup> FC Sloan disagreed that SC Semmel was unprepared.<sup>245</sup>
- 3.146 It was submitted by Counsel on behalf of Mr Pantelios that the effect of the police rushing the hearing and not being thoroughly prepared was that the bail justice was not provided with all the relevant information.<sup>246</sup> This assertion was rejected by Counsel for SC Semmel.<sup>247</sup>
- 3.147 It seems to me that there must necessarily have been some haste in the preparation and conduct of the case, probably by all concerned. No one had notice that the Offender would be apprehended that day. SC Semmel was brought into the station from other duties. He had to assimilate material that had been prepared by other police members, interview the Offender, lay the Semmel charges and interact with other police and with the bail justice prior to the hearing.
- 3.148 Mr Pantelios, also, had been hearing another bail application and had little advance notice of the application relating to the Offender. When he was given papers relating to the Offender’s application, it is unlikely that he read them, and if he did, not closely. When Mr Pantelios documented the circumstances shortly after the bail hearing, it is clear he made some errors.
- 3.149 It is not surprising that there was imperfection in the paperwork completed by SC Semmel and Mr Pantelios and in their recollection of events. As I have sought to emphasise, however, to some extent these deficits must be unavoidable given the short notice inherent in many out-of-sessions bail hearings and the effect this undoubtedly has on the ability of all concerned to familiarise themselves with an accused’s circumstances.
- 3.150 Accordingly, it is unfairly pejorative to tar the police alone with the brush of having been ‘rushed’ or ‘unprepared’. In the end, I do not accept that any part of the circumstances to which I have referred had a particularly significant role to play on the day. The substance of the case against the Offender was summarised by SC Semmel and the fact that the Offender was in a ‘show cause’ situation was grasped by Mr Pantelios. Beyond that, as I have noted, I say nothing about the correctness of the bail justice’s decision.
- 3.151 Nonetheless, Mr Pantelios sought to make one further point concerning the preparation and presentation of the case by police, namely, his perception that the rapport between police members and the Offender was ‘informal’, which is consistent with his belief that the police opposition to bail was not real.

240 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1418.

241 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1418.

242 Transcript of evidence, p. 726.

243 Transcript of evidence, p. 726.

244 Transcript of evidence, p. 726.

245 Transcript of evidence, p. 629.

246 Written submissions on behalf of the bail justice dated 18 May 2020, p. 16.

247 Written submissions on behalf of Certain Police Members (Group B), including Sergeant John Cannon, Senior Constable Jake Semmel and First Constable Madeline Sloan dated 19 May 2020, p. 6.

- 3.152 Mr Pantelios said that, at the commencement of the bail hearing, SC Semmel introduced the Offender as ‘Nick Kyrgios’. He also said that there was ‘a very warm, jovial rapport between the accused and the police’, contributed to by the fact, it was said, that the Offender was ‘willingly assisting the police with another investigation’.<sup>248</sup> Similar references—concerning the friendly nature of the hearing—were made in other evidence provided by Mr Pantelios.<sup>249</sup>
- 3.153 DSC Gentner agreed he had a friendly rapport with the Offender.<sup>250</sup> DSC Gentner said that he was ‘trying to be non-authoritarian in relation to extracting information from him’.<sup>251</sup> He agreed there was ‘a jocular dealing with him’.<sup>252</sup>
- 3.154 It should be noted that, at the beginning of DSC Gentner’s record of interview with the Offender, he does make reference to the Offender’s physical likeness to Nick Kyrgios.<sup>253</sup> At the time of the interview, the Australian Open was underway and DSC Gentner ‘thought [the resemblance] was quite remarkable’. He gave evidence that he introduced this reference at the end of the bail hearing as a ‘passing comment of the situation we’re in’.<sup>254</sup> He did not think he had mentioned his view of the resemblance to SC Semmel before the bail hearing.<sup>255</sup>
- 3.155 SC Semmel recalled hearing a reference to ‘Nick Kyrgios’ in connection with the Offender but could not recall whether he heard it on the day or at a later time.<sup>256</sup> He was, however, adamant that it was not said during the bail/remand application and he himself had never referred to the Offender as ‘Nick Kyrgios’.<sup>257</sup>
- 3.156 FC Sloan and Sgt Cannon did not have any recollection of hearing a reference to ‘Nick Kyrgios’ during the bail hearing.<sup>258</sup>
- 3.157 It was submitted on behalf of Mr Pantelios that he would not have heard the comment when it was made in interview with DSC Gentner because he was not present. It followed, therefore, that it must have been said in front of Mr Pantelios.<sup>259</sup> Mr Pantelios was certain the comment was made by SC Semmel.<sup>260</sup>
- 3.158 The evidence tends to suggest that the comment was made by DSC Gentner, consistent with what was said during his interview of the Offender and his admission of having repeated it during the bail hearing. However, I am unable to reach any definitive finding, beyond concluding that the comment must have been said at some point in front of the bail justice, either before, during or after the bail hearing.
- 3.159 In relation to the atmosphere of the bail hearing, DSC Gentner said that he was ‘very certain and very serious in relation to what we were telling the bail justice at the time’.<sup>261</sup> He considered that the joviality may have started once the Offender knew that he was getting bail.<sup>262</sup> DSC Gentner refuted the idea that having a rapport with the Offender could be misinterpreted as the police not really opposing bail.<sup>263</sup>

248 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, p. 1417.

249 Exhibit 55, Statement regarding Bail Hearing BJO Ref 6655234, AM 18-2.

250 Transcript of evidence, pp. 128, 143.

251 Transcript of evidence, p. 128.

252 Transcript of evidence, p. 128.

253 Transcript of evidence, p. 355; Exhibit 4, Transcript of interview with the Offender and Detective Senior Constable Murray Gentner dated 14 January 2017, Coronial Brief, p. 4006.

254 Transcript of evidence, p. 355.

255 Transcript of evidence, p. 356.

256 Transcript of evidence, p. 561.

257 Transcript of evidence, pp. 559–60, 562.

258 Transcript of evidence, pp. 617–8, 673; Exhibit 46, Statement of First Constable Madeline Sloan dated 24 April 2017, Coronial Brief, p. 1628.

259 Written submissions on behalf of the bail justice dated 18 May 2020, p. 18.

260 Transcript of evidence, p. 750.

261 Transcript of evidence, p. 143.

262 Transcript of evidence, p. 143.

263 Transcript of evidence, p. 143.

- 3.160 SC Semmel considered he had a good rapport with the Offender;<sup>264</sup> he said that he matched his tone to the way the Offender behaved and spoke.<sup>265</sup>
- 3.161 According to Mr Pantelios, a further example of the friendly and familiar tone of the police interaction occurred during discussion of bail conditions, when it was said that the Offender mentioned he would not put a foot wrong because he had ‘an understanding’ with police, particularly DSC Gentner.<sup>266</sup> Mr Pantelios said that DSC Gentner indicated that there was an understanding.<sup>267</sup>
- 3.162 In evidence, DSC Gentner denied there was any such ‘understanding’; he said, ‘I was clear that there’s no understanding.’<sup>268</sup> He said that he was shocked and taken aback by the comment.<sup>269</sup>
- 3.163 It was submitted by Counsel for Mr Pantelios that the tone of the police interaction with the Offender matched their attitude to the seriousness and formality of the hearing.<sup>270</sup> In contrast, it was asserted that Mr Pantelios approached the hearing with a formality that was appropriate, correct and in accordance with his oath of office.<sup>271</sup> Counsel for Mr Pantelios submitted that the bail justice was given the impression that the police were not strongly opposed to bail.<sup>272</sup>
- 3.164 Counsel for the Families submitted that an introductory reference to the Offender as ‘Nick Kyrgios’, if made, does bear upon whether the bail proceeding was conducted in a manner consistent with the seriousness of the issues under consideration and the need to impress upon the bail justice the seriousness with which police regarded the Offender as a risk to the public if released on bail.<sup>273</sup>
- 3.165 Counsel for the Families also submitted that Counsel Assisting’s description of the bail hearing as having some imperfections ‘understated the failures of the police and the bail justice in relation to the bail proceedings’.<sup>274</sup> Counsel for the Families detailed several aspects of the bail hearing in their submissions and contended that ‘had the errors/omissions not occurred there could well have been a different outcome of the bail application’.<sup>275</sup>
- 3.166 Notwithstanding some imperfections in the presentation of the police case, Counsel Assisting submitted it could not be concluded that the police attitude to bail was anything but one of conscientious opposition.<sup>276</sup> Among other things, Counsel Assisting pointed to the evidence of DSC Gentner that if bail was really not opposed, it would have been granted by Sgt Cannon.<sup>277</sup> Counsel Assisting also directed attention to the terms of the emails sent after the hearing by both SC Semmel and DSC Gentner, as is discussed below.

264 Transcript of evidence, p. 597.

265 Transcript of evidence, p. 598.

266 Transcript of evidence, p. 786.

267 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1415.

268 Transcript of evidence, p. 379.

269 Transcript of evidence, p. 379.

270 Written submissions on behalf of the bail justice dated 18 May 2020, p. 18.

271 Written submissions on behalf of the bail justice dated 18 May 2020, p. 18.

272 Written submissions on behalf of the bail justice dated 18 May 2020, p. 19.

273 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 3.

274 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 3.

275 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 3.

276 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 38.

277 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, pp. 37-8.

- 3.167 Counsel for the CCP submitted that ‘the factual conclusions proposed by Counsel Assisting on the issues in controversy should be adopted by the Court’.<sup>278</sup> Submissions on behalf of the CCP suggested that ‘police strenuously opposed the grant of bail to the Offender and any suggestion by the bail justice to the contrary should be rejected’.<sup>279</sup> Further, the Semmel charges ‘which included reckless conduct endangering life, driving in a manner dangerous, criminal damage ... were serious’.<sup>280</sup> It was asserted that DSC Gentner’s intervention in the bail hearing further supported the conclusion that police were conscientiously opposing the granting of bail.<sup>281</sup>
- 3.168 I accept that the evidence suggests that the bail hearing was conducted in a friendly and jovial manner. I acknowledge the evidence of DSC Gentner and other police officers (including Sgt Cannon<sup>282</sup>) that this is an accepted police practice.
- 3.169 Despite the friendly interaction with the Offender by police during the hearing, I find that the police were strongly opposed to bail. If that were not so, bail could simply have been granted by Sgt Cannon.
- 3.170 I also find that the invitation for DSC Gentner to join the bail hearing confirmed that police were opposed to the Offender being granted bail.
- 3.171 It is not appropriate for me to go beyond the above; as I have observed now several times, I am unable to comment upon the correctness or otherwise of the bail justice’s decision to release the Offender on bail.

## Bail conditions

- 3.172 Mr Pantelios decided to grant the Offender bail and invited police to propose conditions.<sup>283</sup> The police sought stringent bail conditions; SC Semmel said that they sought the strictest conditions possible.<sup>284</sup>
- 3.173 The Offender was subsequently released upon entering an undertaking of bail with conditions, including that he:
- a. report to the Officer-in-Charge of St Kilda Police Station daily between 9 am and 9 pm
  - b. reside at his mother’s address, with a curfew between 10 pm and 6 am and to present at the front door upon police request during those hours
  - c. not be affected by a drug of dependence
  - d. not drive a motor vehicle
  - e. comply with existing orders (associated with the FVIO)
  - f. not intentionally damage property.<sup>285</sup>

278 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 14.

279 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 14.

280 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 14.

281 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 15.

282 Transcript of evidence, pp. 672–3.

283 Exhibit 52, Statement of Christos Pantelios dated 28 April 2017 as amended, Coronial Brief, p. 1415.

284 Transcript of evidence, p. 600.

285 Exhibit 8, Undertaking of Bail for the Offender, Coronial Brief, p. 2516; Exhibit 58, Remand Warrant signed by Christos Pantelios dated 14 January 2017, Coronial Brief, p. 2519.

## Police response to grant of bail

### Consideration of appeal of the bail decision

- 3.174 Counsel for Mr Pantelios noted that police could have appealed the decision to grant bail pursuant to s. 18A of the Bail Act.<sup>286</sup>
- 3.175 During evidence, it was apparent SC Semmel and DSC Gentner were not aware at the time that police could appeal or continue to oppose a decision to grant bail.<sup>287</sup>
- 3.176 Sgt Cannon was aware that there was an appeal process in place but noted that an appeal would have to be filed in the Supreme Court and, in the interim, the Offender would be released in accordance with the bail justice's decision. He did not consider it appropriate to raise this as an available course of action in the circumstances, given that it was only five working days until the Offender's next court appearance and because DSC Gentner had indicated he would escalate the matter internally.<sup>288</sup>
- 3.177 There was no evidence before me that indicated one way or the other whether an appeal could have been heard and determined within the six-day period before the Offender was due to appear at court.

### Email to senior management

- 3.178 At 9.48 pm, after the Offender had been released on bail, DSC Gentner sent an email to his immediate supervisors, DSSgt Darren Humphries and DA/SSgt David Newman to advise them that the Offender had been interviewed by him, made admissions to several offences and had then been 'subjected to an out-of-sessions bail/remand application during which he was unbelievably granted bail with strict conditions'. In the email, DSC Gentner said 'I intend on doing some work on him this week to ensure that he is remanded before Friday the 20th of January, which is his court date'.<sup>289</sup>
- 3.179 In oral evidence, DSC Gentner agreed that the Offender remained a danger to the public.<sup>290</sup> He said that he had thought that the Offender would probably commit an indictable offence at some stage during that week.<sup>291</sup> He considered that there was potential for him to commit 'any number of offences'.<sup>292</sup>
- 3.180 DA/SSgt Newman's evidence was that he understood that DSC Gentner would do some 'proactive policing on him',<sup>293</sup> meaning that he would target the Offender for any future offending, whether there was any breach of bail or whether he was committing any further offences.<sup>294</sup>

286 Written submissions on behalf of the bail justice dated 18 May 2020, p. 19.

287 Transcript of evidence, pp. 135, 600.

288 Transcript of evidence, p. 686.

289 Exhibit 109, Emails between DA/SSgt David Newman and DSC Murray Gentner dated 14 January 2017, Coronial Brief, p. 3689.

290 Transcript of evidence, p. 149.

291 Transcript of evidence, pp. 150–1.

292 Transcript of evidence, p. 151.

293 Transcript of evidence, p. 1752.

294 Transcript of evidence, p. 1752.

3.181 In evidence, DSC Gentner explained what ‘work on him’ meant:

I’d be examining LEAP and all the databases every day for any crimes that would fit his MO ... so primarily if we got him committing another indictable offence there’d be ... I couldn’t see how he’d be managing to stay on bail. So that was the primary ... tool I was planning on using.<sup>295</sup>

## Monitoring Offender’s compliance with bail

3.182 When someone is granted bail with a condition to report to a police station, Victoria Police should keep a record of when the accused complies with this requirement, but the relevant VPM does not expressly state this.<sup>296</sup>

3.183 At St Kilda Police Station at the time of the Offender’s grant of bail, there was a manual sign-in process whereby an accused’s attendance in compliance with the reporting condition was recorded on the Bail Report Sheet associated with that person’s profile. This bail history was a daily record of the satisfaction of an offender’s obligation to report to police on bail.<sup>297</sup>

3.184 At the time, St Kilda Police Station had a Standard Operation Procedure (SOP) for notifying informants when an accused failed to report on bail.<sup>298</sup> The SOP required nightshift staff to check the bail reporting record for the previous day and, if an accused had failed to report, an automated email was sent to the relevant informant.<sup>299</sup>

3.185 SC Semmel was the informant for all relevant bail monitoring purposes in relation to the Offender but went on leave after 14 January 2017. He was unable to recall when his leave commenced but thought it may have been the following day.<sup>300</sup>

3.186 The bail reporting process at St Kilda Police Station appears to have been flawed because, between 14 and 20 January 2017:

- a. there were examples of the Offender reporting to the station that were not accurately recorded
- b. there were other occasions when the Offender was recorded as failing to appear on bail that were not recorded or followed up.

3.187 Indeed, the Bail Report Sheet relating to the Offender shows only two notations that week recording that he attended the station in compliance with his undertaking of bail: one on 15 January and another on 18 January 2017.<sup>301</sup> That is not an accurate record of what occurred that week.

3.188 According to DSSgt Humphries, St Kilda Police Station has ‘one of the highest rates of bail reportees in Victoria’.<sup>302</sup> He explained that ‘it is a substantial job to go through... each manual file and account for that’.<sup>303</sup>

295 Transcript of evidence, p. 150.

296 Victoria Police Manual *Bail and Remand, Procedures and Guidelines*, Coronial Brief, p. 2553.

297 Exhibit 62, Second Statement of Sergeant Peter Tasiopoulos dated 9 April 2019, Coronial Brief, p. 1660.

298 Exhibit 64, Bail Reporting for St Kilda Police Station, Coronial Brief, p. 4610.

299 Transcript of evidence, pp. 486, 668; Exhibit 64, Bail Reporting to St Kilda Police Station, Coronial Brief, pp. 4610-1; Exhibit 62, Second Statement of Sergeant Peter Tasiopoulos dated 9 April 2019, Coronial Brief, p. 1661.

300 Transcript of evidence, p. 485.

301 Exhibit 65, Bail History from 15 January 2017–19 January 2017, p. 3804; Bail Report Sheet, Coronial Brief, p. 3806.

302 Transcript of evidence, p. 2378.

303 Transcript of evidence, p. 2378.

- 3.189 DSSgt Humphries explained: ‘Just because there is a blank on the reporting card doesn’t necessarily in itself always [mean it] is a reliable record that the individual didn’t attend the police station.’<sup>304</sup> He gave a number of examples of why someone will not be marked as attending, including that sometimes the reception desks are busy, usually it is the most junior person at the police station on the desk, or there may be a more legitimate reason for not attending such as a medical appointment.<sup>305</sup> He said ‘it’s not a foolproof system’.<sup>306</sup>
- 3.190 The evidence of DSSgt Humphries about the bail reporting system was borne out by events relating to the Offender in the days following his release on bail on 14 January 2017.
- 3.191 The Offender attended the police station on 15 January 2017 at about 11.45 am to report on bail. This was documented in the Bail Report Sheet and the Offender’s Bail History.<sup>307</sup> On 16 January 2017, the Offender attended the station and asked to speak with DSC Gentner. The two spoke briefly, because DSC Gentner was occupied with another investigation, but DSC Gentner made a notation in his police diary that the Offender spoke to him about ‘Yazdanism’.<sup>308</sup> As I have noted, this attendance was recorded on the Bail Report Sheet.<sup>309</sup>
- 3.192 There was no record of attendance on 16 January 2017, which SC Semmel agreed was anomalous.<sup>310</sup>
- 3.193 On 17 January 2017, the Offender attended at the station and spoke briefly with DSC Gentner and produced a religious pamphlet. However, there was no recorded attendance on the Bail Report Sheet for that day.<sup>311</sup> In due course, that triggered an email that was sent to SC Semmel at 5.18 am on 18 January 2017. Because SC Semmel was on leave, an out-of-office reply was produced.<sup>312</sup>
- 3.194 The system for monitoring compliance with reporting on bail depended upon the relevant informant being notified of non-compliance. However, the evidence revealed that, due to the nature of work rosters, informants are often on leave<sup>313</sup> and, when this occurred, there was no system by which any other police member would be tasked to monitor bail compliance.
- 3.195 On 18 January 2017, the Offender reported to the St Kilda Police Station at 12.09 pm. A police member recorded the attendance on the Bail Report Sheet,<sup>314</sup> but despite the evident prior history of failures to report it is not apparent that any steps were taken to engage with the Offender to ascertain the reason for any non-attendance.
- 3.196 Sgt Peter Tasiopoulos explained that, generally, another member would not arrest a person on bail in circumstances of this kind unless the informant had put a notification on the file to do so.<sup>315</sup>

304 Transcript of evidence, p. 2457.

305 Transcript of evidence, p. 2457.

306 Transcript of evidence, p. 2457.

307 Exhibit 65, Bail History from 15 January–19 January 2017, Coronal Brief, p. 385; Bail Report Sheet for the Offender, Coronal Brief, p. 3806.

308 Exhibit 3, Handwritten Notes of DSC Murray Gentner dated 16 January 2017, Coronal Brief, p. 3998.

309 Exhibit 65, Bail History from 15 January 2017–19 January 2017, p. 3804; Coronal Brief, Bail Report Sheet, Coronal Brief, p. 3806.

310 Transcript of evidence, p. 487.

311 Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronal Brief, p. 856.

312 Exhibit 42, Email from SC Andrew Davidenko to SC Jake Semmel with Bail History (and out of office reply), Coronal Brief, p. 2526.

313 Transcript of evidence, p. 488.

314 Exhibit 65, Bail History from 15 January 2017–19 January 2017, p. 3804; Bail Report Sheet, Coronal Brief, p. 3806.

315 Transcript of evidence, p. 835.

- 3.197 Later the same day, 18 January 2017, the Offender's behaviour escalated—marked particularly by his assault on Gavin Wilson at about 9 pm. Those and other events concerning the activities of the Offender on and after 18 January 2017 are covered in Part 4 of this Finding.
- 3.198 By 19 January 2017, the Offender was wanted for the assault on Gavin Wilson. He also failed to appear at St Kilda Police Station on that day, which triggered another email to SC Semmel.<sup>316</sup>
- 3.199 The underlying reason for the rather haphazard nature of the operation of the bail reporting system was illuminated by evidence given by DSC Gentner; namely, that 'taking someone to the court just for breaching a condition rarely resulted in them remaining in custody'.<sup>317</sup> In short, the evidence tended to suggest that a breach of bail conditions alone would not have resulted in the Offender being remanded in custody.<sup>318</sup> In such circumstances, it is understandable (but perhaps not excusable) that more rigorous enforcement of bail compliance was not pursued.
- 3.200 The evidence received in this Inquest highlighted flaws in the bail reporting system as it pertained to the Offender. Such flaws must have impacted upon the utility of the Bail Report Sheet and, indeed, any of the bail records maintained at St Kilda Police Station as tools to monitor and enforce the Offender's compliance with his bail conditions. These flaws appear to undermine the efficacy of the bail reporting system as a whole.
- 3.201 While, as I have noted, an explanation for this state of affairs was proffered by DSC Gentner, it is far from reassuring that the evidence tended to suggest that police had sought 'strict' bail conditions for the Offender on 14 January 2017 but, thereafter, did little to check that he adhered to them or seek to enforce them when he did not.
- 3.202 Further, the system in place for recording whether or not the Offender complied with his reporting condition was inadequate in the ways I have identified.
- 3.203 Counsel for the Families submitted that the Offender was 'effectively left to his own devices without any or any proper monitoring of his bail conditions'.<sup>319</sup>
- 3.204 Counsel for DSC Gentner submitted that 'anything less than the commission of further indictable offences whilst on bail would be unlikely to bring about the desired result; taking the [O]ffender into custody'.<sup>320</sup>
- 3.205 Counsel Assisting submitted that Victoria Police should review its systems for monitoring compliance with bail reporting conditions so that notification and action upon non-compliance does not rest with a single police member.<sup>321</sup> Counsel Assisting suggested a potential recommendation referred to later in this Part of the Finding.
- 3.206 Despite the shortcomings of the system that I have identified, Counsel Assisting submitted that they could not be said to have been causative of any material circumstance between 14 and 18 January 2017 because based upon the evidence, it is unlikely that any reasonable police member would have arrested the Offender for breach of his bail conditions.<sup>322</sup>

316 Second email from SC Andrew Davidenko to SC Jake Semmel with Bail History (and out of office reply), Coronial Brief, pp. 2528–30.

317 Transcript of evidence, p. 150.

318 Transcript of evidence, pp. 150, 269, 400, 2457, 2564.

319 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 7.

320 Written submissions on behalf of Operational Police Members (Group A), p. 28.

321 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 40.

322 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 41.

- 3.207 Counsel for the CCP concurred with that submission.<sup>323</sup> The CCP conceded that there was little oversight of the Offender's bail conditions and only slight police involvement in evaluating whether he was non-compliant with bail conditions more broadly.<sup>324</sup> In contrast, Counsel for the CCP disagreed with Counsel Assisting's submission that it is a troubling revelation that there appears to be little policing of bail conditions even when they are insisted upon by police. They submitted, somewhat surprisingly, 'there is no evidence before the court that this is a systemic deficiency within Victoria Police'.<sup>325</sup> In that regard, if the system in place at St Kilda Police Station was unusually deficient and there was, in fact, a better or different system in wide operation at other stations, it is surprising that the CCP adduced no such evidence in the course of the Inquest .
- 3.208 I find that the police bail monitoring and compliance system relating to the Offender at St Kilda Police Station was flawed. There was no effective follow-up or enforcement of his compliance with bail conditions, despite indicating (erroneously) in the records that he had failed on multiple occasions to report to St Kilda Police Station in that week and that DSC Gentner considered it was likely the Offender would offend again that week.
- 3.209 I acknowledge the evidence suggested that just because a person fails to report on bail does not mean that they will necessarily be charged with breaching their conditions of bail. Further, the evidence before me indicated that it would be unlikely that an accused would be remanded for such an infraction.
- 3.210 Nonetheless, there does seem to be an overall pointlessness in seeking the imposition of 'strict' bail conditions, particularly in circumstances where the Offender's lack of compliance with the conditions in the days that followed seems to have been monitored and enforced in such a haphazard and desultory manner.
- 3.211 In a rhetorical sense, one might query the point of bail conditions at all if offenders' compliance is not likely to be adequately monitored, particularly, when, as in this instance, it was anticipated by DSC Gentner that the Offender could go on to commit one or more indictable or serious offences prior to the court date only six days hence. It does seem to me that if, for good reason, such conditions are to be sought and imposed, there should be an adequate system for monitoring compliance and ensuring consequences follow non-compliance.
- 3.212 That said, on the evidence, I am unable to conclude that any of the shortcomings identified above contributed to the Offender failing to be remanded in custody prior to 20 January 2017.

323 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 22.

324 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 23.

325 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 23.

## Lack of ‘proactive policing’

- 3.213 In the days that followed the Offender’s release on bail, SC Semmel was on leave. In the same period, the evidence was that DSC Gentner’s workload with other matters ‘snowballed’.<sup>326</sup>
- 3.214 DSC Gentner conceded there was no plan with respect to the Offender over the following five days, other than his own monitoring of the LEAP system for developments. For the remainder of that week, however, he became occupied with other offenders and did not have the resources to follow up the Offender.<sup>327</sup> DSC Gentner agreed it had been possible to request assistance, however no such steps were taken.<sup>328</sup> It is unfortunate that this did not occur.
- 3.215 DA/SSgt Newman agreed that DSC Gentner is ‘pretty busy most of the time’.<sup>329</sup> In evidence, when asked what could be done when a person such as DSC Gentner is not available, DA/SSgt Newman suggested it could have been handed over to a sergeant or a crew member for further investigations, but that did not occur in this instance.<sup>330</sup>
- 3.216 The evidence revealed that there was no active system in place to monitor and enforce the Offender’s compliance with his conditions of bail.
- 3.217 The evidence also revealed that the members of Port Phillip CIU had reported to AC Fontana that they were managing 18 high-risk recidivists in their area between 14 and 20 January 2017.<sup>331</sup> AC Fontana suggested that if the Port Phillip CIU had identified the Offender as one of these high-risk recidivists, then a bail management plan should have been part of the management strategy.<sup>332</sup>
- 3.218 Bail compliance is not the only tool available to monitor high-risk recidivist offenders. DSSgt Humphries stated that ‘there’s a whole pile of authoritative tools we can use particularly with recidivist offenders’.<sup>333</sup> In evidence, DSSgt Humphries said that, as soon as he took charge of Port Phillip CIU, he instituted a specialist recidivist unit, which included DSC Gentner and DSC Clayton White. The unit was designed to be a dedicated team targeting recidivist offenders rather than ‘crime themes’.<sup>334</sup> This work was supported with the Recidivist Offender Prioritisation Tool (**ROPT**).<sup>335</sup>
- 3.219 The ability to monitor recidivist offenders when there are limited resources and competing priorities led to the development of the Victoria Police Intelligence Doctrine (**VPID**), which included the ROPT and the Priority Target Management Plans (**PTMP**) to inform the police approach to targeting high-risk recidivist offenders. As explained in the Critical Incident Review, the ROPT ‘now dominates the intelligence arena as the go-to prioritisation tool for Offender Management’.<sup>336</sup>

326 Transcript of evidence, p. 152.

327 Transcript of evidence, p. 152.

328 Transcript of evidence, p. 153.

329 Transcript of evidence, p. 1753.

330 Transcript of evidence, p. 1753.

331 Transcript of evidence, p. 3467.

332 Transcript of evidence, p. 3468.

333 Transcript of evidence, p. 2377.

334 Transcript of evidence, p. 2370.

335 Transcript of evidence, pp. 2372–3.

336 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 144.

- 3.220 The ROPT is a police database interrogation tool that identifies active recidivist offenders in an area and produces a list of offenders for attention.<sup>337</sup> The ROPT assesses history, recidivism and recency of offending to rate an individual as 'low', 'medium', 'high' or 'extreme' risk. Had the ROPT been applied to the Offender as at 16 January 2017, he would have been rated 'extreme' in the categories of crime, family violence and road policing,<sup>338</sup> which would have required that a PTMP be implemented.<sup>339</sup>
- 3.221 The ROPT was not applied to the Offender because, according to DSSgt Humphries, his office did not then have the necessary support of an analyst.<sup>340</sup>
- 3.222 While there was no Tactical Intelligence Officer (**TIO**) available to Port Phillip CIU between 14 and 20 January 2017, AC Fontana noted there could have been resources made available to actively monitor the Offender; he said that sometimes it is about 'asking'.<sup>341</sup>
- 3.223 Despite the resourcing challenges faced by the Port Phillip CIU, this did not preclude requesting additional support and did not wholly explain the lack of effective response by that unit in the days after the Offender was granted bail. As observed in the Critical Incident Review:

The intelligence structure at Port Phillip is not unique and is reflective of many busy CIUs across the State. The reality is that they did not appear to consider [the Offender] a priority until the morning of 20 January and therefore no intelligence-gathering was considered until in reality it was too late.<sup>342</sup>

- 3.224 It was submitted by Counsel for Port Phillip CIU members that it would be unfair to be critical of them for failing to use the ROPT because it is a specialised analytical tool that cannot be used by anyone other than a trained analyst.<sup>343</sup> Further, it was submitted that the evidence was that there was no analyst available to them and the PTMP was also not available due to a lack of resources. It was submitted that it is not reasonable to criticise police members for failing to use these tools when it is conceded by Victoria Police that Port Phillip CIU was not provided with the necessary resources.<sup>344</sup>

- 3.225 Counsel Assisting submitted that:

... the evidence supports a conclusion that Victoria Police had in place an appropriately sophisticated regime for intelligence-gathering and offender management. Unfortunately, none of it was utilised by the Port Phillip CIU in respect of the Offender at any time up to 20 January 2017.<sup>345</sup>

- 3.226 It was submitted by Counsel for the CCP that, with the introduction of the Offender Management Project (**OMP**) and the VPID, more assertive monitoring of an individual such as the Offender would now take place. Moreover, if the Offender were processed today, he would certainly be subject to an offender management plan and active steps would be taken to monitor and manage his conduct.<sup>346</sup>

337 Transcript of evidence, pp. 2370–6.

338 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 145; Exhibit 202, Executive Summary of the Operation Titan Critical Incident Review, p. 666.

339 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, pp. 145, 148.

340 Transcript of evidence, p. 2376.

341 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, pp. 144, 147; Transcript of evidence, p. 3474.

342 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 147.

343 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 29.

344 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 29.

345 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 45.

346 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 23.

- 3.227 I find that in the week following 14 January 2017 Victoria Police had in place an appropriately sophisticated regime for intelligence-gathering and offender management, through the VPID, ROPT and the OMP.
- 3.228 Further, the problem of recidivist offenders had been recognised by the Port Phillip CIU and a ‘specialist recidivist unit’ created to ‘target’ those offenders. The members of that unit included DSC Gentner, but it is not evident that the Offender was considered or identified as such an offender, which is most regrettable because the application of the ROPT to him would have assessed the risk presented by him to be ‘extreme’ and would surely have placed the Offender as a higher priority.
- 3.229 I accept that the absence of an analyst and, perhaps, the limited resources of Port Phillip CIU, together with what seems to have been a significant number of recidivist offenders in the policing area, created a challenging situation. I also accept that—both in relation to the Offender and generally—it is important to be conscious of the seductive pull of ‘hindsight bias’.
- 3.230 However,
- a. it cannot have been surprising that the work of an experienced detective such as DSC Gentner might ‘snowball’
  - b. it was anticipated by DSC Gentner that the Offender could well commit further indictable offences in the coming few days
  - c. the use of the ROPT was not unknown (indeed, Port Phillip CIU had established a specialist recidivist unit and DSC Gentner was a member of it).
- 3.231 It is discomfoting to contemplate that no real effort seems to have been taken to apply this more intensive approach to the management of the Offender. Clearly, looking at the situation, the Offender should have been given some ongoing priority in monitoring—it is hard to conclude otherwise, given that the ROPT, had it been applied, would have revealed the Offender to present an ‘extreme’ risk.
- 3.232 That said, I am not prepared to say that the failure to apply the ROPT or to otherwise enhance monitoring of the Offender was causative of any of the events that followed. It is regrettable that the system, such as it existed, did not lead even to a consideration of whether the ROPT should have been applied to the Offender and whether resources should have been sought to make that possible. It is quite difficult to resist the conclusion that this must have been an oversight.
- 3.233 In light of the above, I have considered the VPM *Bail and Remand* and I note it is silent on monitoring compliance with and enforcement of bail conditions. It seems to me that the applicable procedures really should give some guidance about minimum requirements in the enforcement of compliance with bail conditions and, indeed, link to a consideration of the application of intelligence tools of the kind that I have discussed.

## Potential recommendations

### Out-of-sessions bail/remand hearings

3.234 Many changes have occurred to the bail system since this incident. For a detailed overview of the changes that have occurred, please refer to Part 9 of this Finding.

3.235 Notwithstanding those changes, the evidence received during the Inquest suggested some further areas in which improvements might be implemented. It was suggested by Counsel Assisting that I could consider making the following recommendation:

That Victoria Police and the DJCS coordinate to implement the audio recording of out-of-session bail/remand hearings before a bail justice and develop the necessary policies and procedures for the retention of such audio recordings.<sup>347</sup>

3.236 An analogous recommendation was made in the Coghlan Bail Review.

3.237 The CCP agreed with this proposed recommendation and stated that:

Victoria Police has no objection to the recording of bail justice hearings. Victoria Police will collaborate with the DJCS to determine how best audio recordings can be undertaken and the recordings retained.<sup>348</sup>

3.238 Counsel for DJCS stated that the audio recording of bail/remand hearings is supported in principle by the Victorian Government. However, due to a number of uncertainties, including the capacity to securely retain and use recordings, the number of bail justices who will remain active in their role and the costs associated with providing recording devices to bail justices, implementation of this suggested measure has not yet occurred.<sup>349</sup> Counsel for DJCS also noted that, in his evidence, AC Fontana had cautioned that a number of issues would need to be taken into account in considering the implementation of audio recordings.<sup>350</sup> It was submitted that given the willingness of DJCS and Victoria Police to investigate the potential audio recording of out-of-sessions bail hearings, it was unnecessary for this Court to make a formal recommendation.<sup>351</sup>

3.239 In their reply submissions, Counsel for the CCP suggested that if a recommendation of the kind suggested by Counsel Assisting were to be made, that it be amended to reflect that Victoria Police and DJCS are exploring the feasibility of issuing handheld recording devices to bail justices for the purpose of recording hearings.<sup>352</sup> Counsel for DJCS agreed the amended version of the recommendation was appropriate because it recognised the work already commenced in the area.<sup>353</sup>

3.240 Counsel for Mr Pantelios agreed with this proposed recommendation and noted that had the bail hearing here been recorded, there would be no uncertainty as to precisely what was said and produced at the time.<sup>354</sup>

347 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 164.

348 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 121.

349 Written submissions on behalf of the Department of Justice and Community Safety dated 19 May 2020, pp. 8–9.

350 Transcript of evidence, p. 3462.

351 Written submissions on behalf of the Department of Justice and Community Safety dated 19 May 2020, p. 9.

352 Outline of reply submissions on behalf of the Chief Commissioner of Victoria Police dated 11 June 2020, pp. 6–7.

353 Transcript of oral submissions hearing, pp. 164–5.

354 Written submissions on behalf of the bail justice dated 18 May 2020, p. 20.

- 3.241 I am satisfied that appropriate action is being undertaken by Victoria Police and DJCS in coordinating the implementation of the audio recording of out-of-sessions bail/remand hearings before a bail justice and they are developing necessary policies and procedures for the retention of such audio recordings. On that basis, I do not propose to make a recommendation of the kind suggested.
- 3.242 Nonetheless, I note that all frontline police officers are now required to wear a body-worn camera, which is a portable camera worn or used by uniform police that is able to record audio and video interactions between an officer and the public, including offenders.<sup>355</sup> In the circumstances, it seems to me that the feasibility of such cameras being used to record out-of-sessions bail hearings could be investigated, and I will make a recommendation to that effect. Please see Recommendation One.

## Remand/bail proceedings training

- 3.243 It was suggested by Counsel Assisting that I consider making the following recommendation:

That Victoria Police reviews its training and supervision of members in respect of bail/remand proceedings to improve members' skills and knowledge concerning:

- a. proper preparation of the bail/remand brief
- b. identification of the available grounds upon which to oppose bail
- c. identification and presentation of the necessary evidence to best support a case in opposition to bail.<sup>356</sup>

- 3.244 Counsel for the Families agreed with the proposed recommendation and identified a number of matters in support of the need for such a recommendation, including that SC Semmel and DSC Gentner were not aware they could ask for the hearing to be stood down and there were a number of errors in the written remand/bail application.<sup>357</sup>
- 3.245 Counsel for Mr Pantelios agreed with this proposed recommendation and submitted that further police training is required in respect of bail/remand proceedings.<sup>358</sup>
- 3.246 The CCP agreed with the proposed recommendation and stated that:

Victoria Police will conduct a review of its training and supervision of members' conduct during bail justice hearings. Whilst the training of members in respect of bail hearings is comprehensive, consideration is being given to ensure that members of at least the level of sergeant take an active role in ensuring that all relevant evidence is obtained and presented to a bail justice. This can primarily be achieved by a thorough checking of the Remand Brief document. Steps will be taken by the sergeant to ensure that a copy of the remand brief, which will incorporate the LEAP priors (if any), is provided to the bail justice routinely at each hearing.<sup>359</sup>

- 3.247 I propose to make a recommendation of the kind suggested. Please see Recommendation Two.

355 <https://www.police.vic.gov.au/body-worn-cameras>

356 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 165.

357 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, pp. 4–5.

358 Written submissions on behalf of the bail justice dated 18 May 2020, p. 20.

359 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 123.

## Access to Interpose

- 3.248 Counsel for the Families submitted I should give consideration to recommending that Victoria Police review whether it would be beneficial for uniform members presenting remand applications to have access to the more extensive records held on the Interpose database, noting that the Interpose record for the Offender as at 14 January 2017 included relevant alerts and warnings concerning a psychiatric condition and a history of violence and attempting to flee from custody.<sup>360</sup>
- 3.249 In response, Counsel for the CCP explained that Interpose had been designed as an investigation and case management system primarily for investigators and intelligence practitioners. It was submitted that there are good policy reasons why access is and should be limited, including that a percentage of the investigations managed on the system are sensitive and because Interpose records often incorporate the subjective views of members that require confirmation and validation.<sup>361</sup> It was further submitted that all relevant information was available to SC Semmel and Sgt Cannon about the Offender without the need to examine Interpose.<sup>362</sup>
- 3.250 I accept this response and do not propose to make a recommendation on this matter.

## Monitoring bail compliance

### Notification of failure to appear on bail

- 3.251 Counsel Assisting suggested the following recommendation:

That Victoria Police reviews its policies and procedures in respect of the reporting of incidents of an accused person failing to report on bail when required so that notification of the event is made more widely than solely to the informant. The system of notification should not rely on a single point of contact when such reports are made.<sup>363</sup>

- 3.252 Counsel for the Families supported this recommendation and submitted that this review should include the development and/or review of policies and procedures governing what actions should be taken upon reporting non-compliance and anomalous omissions from bail histories.<sup>364</sup>
- 3.253 Counsel for the CCP agreed with this recommendation and conceded that when notifications of a person failing to report occur, it is not only the informant but also the Officer-in-Charge of that member's station who should be notified. Victoria Police has committed to the electronic implementation of a system whereby more than the informant alone receives notification of breaches of bail reporting conditions.<sup>365</sup>
- 3.254 One suggested solution to this issue is for the email notification to be sent to both the informant and a Position-Based Email Account (**PBEA**), such as an Officer-in-Charge. The benefit of such an approach is that if the informant is on leave, the email would also go to an Officer in Charge, who would be able to ensure necessary action is considered and taken as required. I was informed during oral submissions that this already occurs in some but not all stations.<sup>366</sup>

<sup>360</sup> Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 5.

<sup>361</sup> Transcript of oral submissions hearing, pp. 42–3.

<sup>362</sup> Outline of Reply Submissions on behalf of the Chief Commissioner of Victoria Police dated 11 June 2020, pp. 1–2.

<sup>363</sup> Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 164.

<sup>364</sup> Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 5.

<sup>365</sup> Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 121.

<sup>366</sup> Transcript of oral submissions hearing, pp. 48–9.

- 3.255 Counsel for the CCP suggested there would be no opposition to a recommendation of that kind.<sup>367</sup> It was agreed that this could operate as a check and balance against information indicating that a particular offender is not reporting or that there are circumstances relating to the offender that require further examination.<sup>368</sup>
- 3.256 It seems to me that a notification reporting system with a single point of failure (namely an email notification to an informant on leave, as was the case here) should be avoided if possible and I will make a recommendation to this effect. Please see Recommendation Three.

## Enforcement of bail conditions

- 3.257 Counsel for the Families submitted that ‘there must be continuous review and enforcement of bail conditions, particularly for offenders with known criminal backgrounds, and offending’.<sup>369</sup>
- 3.258 The CCP disagreed with this proposal and submitted that despite an absence of follow-up on the Offender’s bail conditions in this instance, there was no evidence of a systemic deficiency within Victoria Police. The CCP also submitted that the introduction of the OMP and Offender Management Practice Doctrine had increased the prospect that more assertive monitoring of an individual such as the Offender would take place today, and there had been reforms across Victoria Police to support these systems, functions and practices.<sup>370</sup>
- 3.259 I accept this submission and do not propose to make a recommendation.

## Offender and Priority Target Management plans

- 3.260 Counsel Assisting suggested the following further recommendation:

Victoria Police reviews its training policies and procedures to ensure that accused persons released on bail in circumstances where the informant is concerned they may continue serious offending are subject to:

- a. a timely risk analysis using the ROPT or similar risk analysis tools
- b. a PTMP or OMP within the meaning of VPM—Tasking and Coordination or other suitable oversight plan designed to detect and disrupt further offending.<sup>371</sup>

- 3.261 The CCP acknowledged that it was unfortunate that the regime for offender management was not used by the Port Phillip CIU in relation to the Offender.<sup>372</sup>
- 3.262 The CCP agreed there was a need for members to better understand the processes for evaluating the likelihood that conditions of bail will be contravened. However, it was submitted that the proposed recommendation was not necessary because Victoria Police has since developed and implemented a *Person of Interest Management & Coordination Practice Guide* to support its members. It was submitted that this should address any concern that members are not now aware of the existence of the offender management regime or how to use it when it is applicable.<sup>373</sup>

367 Transcript of oral submissions hearing, p. 48.

368 Transcript of oral submissions hearing, p. 49.

369 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 7

370 Outline of reply submissions on behalf of the Chief Commissioner of Victoria Police dated 11 June 2020, p. 2.

371 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, pp. 164–5.

372 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, pp. 24–5

373 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, pp. 25, 122.

- 3.263 Given the implementation of the *Person of Interest Management & Coordination Practice Guide*, I do not propose to make a recommendation of the breadth sought by Counsel Assisting. Nevertheless, the present operation and availability of the *Person of Interest Management & Coordination Practice Guide* is not clear to me, particularly in relation to individuals such as the Offender who are released on bail for a short period of time prior to a court date.
- 3.264 In light of that lack of clarity, there appears to be the potential for a gap to continue to exist in situations like that presented by the Offender. That is particularly so when the VPM procedures and guidelines for bail and remand are silent concerning the ROPT and offender management procedures generally. Accordingly, I will make a recommendation that Victoria Police reviews its bail/remand training and procedures, and considers the adoption of procedures directing members to consider the application of offender management tools, particularly the ROPT when bail is granted. Please see Recommendation Four.

## Recommendations

### Recommendation One:

That Victoria Police, in consultation with the DJCS, investigates the feasibility of Victoria Police-issued body-worn cameras being used to record all out-of-sessions bail/remand hearings.

### Recommendation Two:

That Victoria Police reviews its training and supervision of members involved in bail/remand proceedings to improve members' skills and knowledge concerning:

- a. proper preparation of the bail/remand brief
- b. identification of the available grounds upon which to oppose bail
- c. identification and presentation of the evidence relevant to opposing bail
- d. information about obtaining all relevant information and seeking an adjournment if necessary
- e. information about the circumstances around when and how to appeal a decision to grant bail.

### Recommendation Three:

That Victoria Police develops force-wide policies and procedures to:

- a. ensure that notifications of failure to report on bail are forwarded to a Position-Based Email Account, such as the Officer-in-Charge of the police station, in addition to the informant
- b. provide guidance on the actions to be taken by the informant and Officer-in-Charge upon receipt of such notification.

### Recommendation Four:

That Victoria Police reviews its training, policies and procedures on bail and remand with respect to high-risk recidivist offenders to ensure members:

- a. conduct a timely risk analysis using the ROPT, POINTER or similar tool
- b. consider the need for and, if appropriate, implement a Priority Target Management Plan or Offender Management Plan within the meaning of Victoria Police Manual *Tasking and Coordination* or other suitable oversight plan designed to detect and disrupt further offending while on bail.

## Part 4: Escalation of the Offender's behaviour

- 4.1 Part 3 of this Finding outlined the Offender's attendances at St Kilda Police Station over the six days following the grant of bail. This Part provides a more complete chronological narrative of the Offender's movements from 15–19 January 2017, including his assault of Gavin Wilson on 18 January 2017 and the initial police investigations of that incident. This Part is largely uncontroversial, save for a submission by Counsel for the Families that the escalation in the Offender's behaviour during this period included two 'missed opportunities'.

### Sunday 15 January 2017

- 4.2 On Sunday 15 January 2017, at about 11.45 am, the Offender attended St Kilda Police Station to report on bail. This was documented in the Bail Report Sheet and the Offender's Bail History.<sup>1</sup>
- 4.3 At about 2.25 pm, the Offender was observed in the foyer of Flinders Street Station before boarding the Route 6 tram. According to witness Daniel Hume, the Offender was carrying textbooks on marketing and engineering and attempted to engage various people on the tram in conversation.<sup>2</sup> The Offender spoke to Mr Hume about religion and homosexuality.<sup>3</sup> He told Mr Hume, 'There's only one way and I'm going to be successful.'<sup>4</sup> The Offender got off the tram at the corner of High Street and St Kilda Road.<sup>5</sup>

### Monday 16 January 2017

- 4.4 On Monday 16 January 2017 between approximately 4.00 pm and 4.30 pm, the Offender was observed walking with another male outside the Alfred Hospital on Commercial Road, South Yarra. He was in a rage and threatening to kill the male. The Offender spoke to witness Sharon Vanderkaay, who was at the front of the hospital, about numerous matters, including the end of the world and Armageddon.<sup>6</sup>
- 4.5 At about 6.10 pm, the Offender attended the St Kilda Police Station to report on bail. He spoke briefly to DSC Gentner, commenting that he was now following 'Yazdanism'.<sup>7</sup> Because DSC Gentner had another offender in custody, the conversation was cut short.<sup>8</sup> This attendance was not recorded in the Bail Report Sheet or the Offender's Bail History.

1 Exhibit 65, Bail History from 15 January–19 January 2017, Coronial Brief, p. 3804; Bail Report Sheet for the Offender, Coronial Brief, p. 3806.

2 Statement of Daniel Hume dated 2 May 2017, Coronial Brief, pp. 1017–8.

3 Statement of Daniel Hume dated 2 May 2017, Coronial Brief, pp. 1018–9.

4 Statement of Daniel Hume dated 2 May 2017, Coronial Brief, p. 1019.

5 Statement of Daniel Hume dated 2 May 2017, Coronial Brief, p. 1019.

6 Statement of Sharon Vanderkaay dated 2 March 2017, Coronial Brief, p. 1747.

7 Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 856.

8 Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 856.

## Tuesday 17 January 2017

- 4.6 On the morning of Tuesday 17 January 2017, SC Damien Higgins attended Raleigh Street, Prahran, to serve a document on the Offender's brother, Angelo. Angelo was not at the residence at the time, but SC Higgins was able to speak with the Offender and his mother. He performed a name check on the Offender via police communications, which confirmed no outstanding matters. The Offender told SC Higgins that he did not know where his brother was, but said if he knew anything, he would tell DSC Gentner because he was an informant for him.<sup>9</sup> There is no evidence that this was the case.
- 4.7 Later that day, DSC Gentner was processing another suspect when the Offender attended the police station and asked to speak to him. DSC Gentner spoke to him at the front reception and advised him that he did not have time to chat. The Offender then showed DSC Gentner a pamphlet for a religious group.<sup>10</sup> This attendance was again not recorded in the Bail Report Sheet or the Offender's Bail History.
- 4.8 At some point that afternoon or evening, the Offender visited HCP.<sup>11</sup> Aiyesha Lee was also at HCP's residence at the time and they were later joined by Daniel Bodley and Robert Svich.<sup>12</sup>
- 4.9 HCP had known the Offender for approximately three to six months through Angelo.<sup>13</sup> HCP considered that the Offender had mental health issues, and had previously seen him affected by alcohol.<sup>14</sup>
- 4.10 On this occasion, the Offender was drinking Johnny Walker scotch whisky from a 750 ml bottle and made references to 'ruling the world', 'a comet coming to hit the earth' and that he would 'save us'. HCP thought he was 'full-on'<sup>15</sup> and wondered whether he was serious.<sup>16</sup>
- 4.11 Mr Bodley recalled that the Offender was:

... carrying on that he was superior, like a God, and that the end of the world [was] coming because of the comet and it was a couple of weeks away. He told me that he was going to save everyone. [The Offender] said that the Aboriginals were key in it and after they passed something with the courts everyone would get paid a million dollars. He said it wasn't about money and he would save everyone. It felt like he was trying to control the room with his confidence, like he was superior to everyone.<sup>17</sup>

9 Statement of Senior Constable Damien Higgins dated 9 March 2017, Coronial Brief, pp. 993–4.

10 Exhibit 2, Second Statement of Detective Senior Constable Murray Gentner dated 10 March 2017, Coronial Brief, p. 856.

11 Transcript of evidence, p. 855. HCP is a pseudonym for an identified witness as per Proceeding Suppression Order dated 22 November 2019.

12 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1675; Statement of Aiyesha Lee dated 2 February 2017, Coronial Brief, pp. 1234–5. There seems to be a conflict in the precise timing of events. Both HCP and Ms Lee recalled that the Offender's visit occurred on 17 January 2017. However, Mr Bodley thought that these events occurred on the 'afternoon or evening before [the Offender] drove into Bourke Street'. Statement of Daniel Bodley dated 6 April 2017, Coronial Brief, p. 354; Similarly, Mr Svich believed they occurred 'sometime after 10.00 pm on Thursday the 19th January 2017'. Statement of Robert Svich dated 26 July 2017, Coronial Brief, p. 1645. I consider it likely that Mr Bodley and Mr Svich are mistaken absent the timing of these events, as a considerable period of time had elapsed before they made their statements (six weeks and six months respectively) and the Offender's movements on the evening of 19 January 2017 are documented by numerous eyewitness accounts detailed below. I have also had the benefit of HCP's evidence at Inquest in which he confirmed this visit occurred on 17 January 2017: Transcript of evidence, p. 854.

13 Transcript of evidence, p. 854.

14 Transcript of evidence, p. 855.

15 Transcript of evidence, p. 856.

16 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, pp. 1675–6.

17 Statement of Daniel Bodley dated 6 April 2017, Coronial Brief, pp. 353–4.

- 4.12 The Offender asked Mr Bodley to fix his mobile phone.<sup>18</sup> Mr Bodley's friend Mr Svich then drove them both to Mr Bodley's home in Elwood where Mr Bodley put a new battery in the Offender's phone. Mr Bodley noted at the time that the phone did not have a SIM card in it and thought that the event may have been a ruse by the Offender to find out where he lived.<sup>19</sup>
- 4.13 During his visit to Mr Bodley's home, the Offender spoke at length about the comet. He told Mr Bodley that:
- ... he was the only one that could stop it coming and that he knew where the bunker was. [The Offender] was talking about a bunker and that he was going to take a few people to it and he wanted me to come with him and help him. [The Offender] spoke about the police a little bit. He said that they were following him but it wasn't a big concern of his because he was superior to police. He said he was 'more than a God' and that the bunker must be under the courts.
- 4.14 Notably, Mr Bodley also recalled that the Offender told him:
- ... if he was chased or if anyone tries to stop him he would 'keep driving and start running people over'. Those were his exact words and I remember them because that is what happened the next day. It was just another thing that he was saying so I didn't think at the time that he would actually do it.<sup>20</sup>
- 4.15 Significantly, police did not become aware of the Offender's comment about running people over until Mr Bodley provided a statement to investigators about six weeks after the Bourke Street event.
- 4.16 The Offender asked Mr Bodley for some 'ice'<sup>21</sup>; a request Mr Bodley refused. According to Mr Bodley, the Offender was 'definitely working himself up and he seemed anxious to get to the bunker but he said that the comet wasn't coming for a couple of weeks'.<sup>22</sup> Later that evening, the Offender left Mr Bodley's home alone.<sup>23</sup>

## Wednesday 18 January 2017

- 4.17 At around noon on Wednesday 18 January 2017, the Offender was observed outside the Balaclava Railway Station talking to bystanders and referring to the end coming, government conspiracies and the 'Illuminati'. He did not appear aggressive or threatening; 'he just seemed like a generally weird guy'.<sup>24</sup>

18 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1676; Statement of Daniel Bodley dated 6 April 2016, Coronial Brief, p. 354; Statement of Aiysha Lee dated 2 February 2017, Coronial Brief, p. 1236; Statement of Robert Svich dated 26 July 2017, Coronial Brief, p. 1645.

19 Statement of Daniel Bodley dated 6 April 2017, Coronial Brief, p. 354; Statement of Robert Svich dated 26 July 2017, Coronial Brief, pp. 1645–6.

20 Statement of Daniel Bodley dated 6 April 2017, Coronial Brief, pp. 354–5.

21 Methylamphetamine.

22 Statement of Daniel Bodley dated 6 April 2017, Coronial Brief, p. 355.

23 Statement of Daniel Bodley dated 6 April 2017, Coronial Brief, p. 355.

24 Statement of Charlie Hastings dated 5 March 2017, Coronial Brief, p. 958.

## Attendance at Central Queensland University

- 4.18 By about 2.25 pm, the Offender made his way into the CBD and entered the campus of Central Queensland (CQ) University in Spencer Street, Melbourne. He told a security guard that he needed to go to the business law area and the multi-faith prayer room.<sup>25</sup> The Offender then wandered around over several floors before he was asked to leave.<sup>26</sup> As the Offender left the building, he said that he could cause a lot of trouble but that he would not because he thought the security guard was a 'good bloke'.<sup>27</sup> This interaction was captured on CCTV footage.

## Interaction with Protective Services Officers

- 4.19 About an hour later, at about 3.35 pm, the Offender tried to enter the County Court building on the corner of William and Lonsdale streets in Melbourne. He was stopped on the forecourt by Protective Services Officers (**PSOs**). The PSOs observed that the Offender was sweating profusely and spoke in an aggressive and erratic manner. He spoke about the Chief Justice being a woman; concerningly, he said that 'she should have her head cut off and replaced with a man's head'<sup>28</sup> and that a man should be in charge as 'Man has the head of Christ'.<sup>29</sup> He also asked the PSOs about their faith.<sup>30</sup>
- 4.20 PSO Gavin Langton demanded to see the Offender's identification pursuant to the *Court Security Act 1980* (Vic). The Offender handed over his wallet, which contained a South Australian driver's licence. PSO Langton requested a LEAP enquiry (known as a 'person check') over the radio. There were no matters outstanding,<sup>31</sup> but it was confirmed that the Offender was on bail with a curfew condition.<sup>32</sup> The Offender told the PSOs that ASIO was always listening and also claimed to recognise one of them.<sup>33</sup>
- 4.21 After a few minutes, the Offender left and walked towards Melbourne Magistrates' Court on the opposite side of William Street. PSO Langton rang the PSO mobile patrol at the Magistrates' Court to tell them about the encounter at the County Court and to forewarn them that the Offender was heading their way. The Offender was last seen by the PSOs walking west along Lonsdale Street, towards King Street.<sup>34</sup>

## Interaction with duty lawyer at Magistrates' Court

- 4.22 Shortly afterwards, the Offender entered the Magistrates' Court and approached the Victoria Legal Aid duty lawyer. He asked whether it was the Supreme Court library and, when informed it was not, he was directed to the library. A short conversation followed, during which the Offender's behaviour towards the duty lawyer and other people, specifically 'legislators', was erratic and agitated. The Offender was asked to leave and was escorted from the building by PSOs.<sup>35</sup>

25 Statement of David O'Donnell dated 2 February 2017, Coronial Brief, p. 1380.

26 Statement of David O'Donnell dated 2 February 2017, Coronial Brief, p. 1380.

27 Statement of David O'Donnell dated 2 February 2017, Coronial Brief, p. 1381.

28 Statement of Protective Services Officer Mark Richardson dated 13 February 2017, Coronial Brief, p. 1526.

29 Statement of Protective Services Officer Gavin Langton dated 10 March 2017, Coronial Brief, p. 1218.

30 Statement of Protective Services Officer Mark Richardson dated 13 February 2017, Coronial Brief, pp. 1525–6.

31 Statement of Protective Services Officer Gavin Langton dated 10 March 2017, Coronial Brief, p. 1219.

32 Statement of Protective Services Officer Philip Davies dated 15 February 2017, Coronial Brief, p. 524; Statement of Protective Services Officer Mark Richardson dated 13 February 2017, Coronial Brief, p. 1526; Statement of Protective Services Officer Judith Smith dated 13 February 2017, Coronial Brief, p. 1631.

33 Statement of Protective Services Officer Gavin Langton dated 10 March 2017, Coronial Brief, p. 1220.

34 Statement of Protective Services Officer Gavin Langton dated 10 March 2017, Coronial Brief, pp. 1216–21.

35 Letter from Victoria Legal Aid regarding interaction with the Offender on 18 January 2017.

## Telephone call to Chief Justice of Victoria

- 4.23 At about 4.45 pm, the Offender telephoned the Supreme Court and asked to speak with the Chief Justice. The call was taken by the executive assistant to the Chief Justice, Nicole Young, who spoke with the Offender for approximately 20 minutes. The Offender seemed calm and gave his name, but then rambled about 'serious information relating to the government'.<sup>36</sup> He also said that he was not a terrorist or a freedom fighter but that 'something out of his control' would happen and he needed the help of the Chief Justice.<sup>37</sup> He made repeated references to the Bible and God and claimed he was being watched and followed.<sup>38</sup>
- 4.24 Ms Young tried to redirect the Offender by providing him with the telephone contact details of the CEO of the Supreme Court and a senior sergeant from Victoria Police. It seemed to Ms Young that the Offender was writing down those details. Finally, the call was accidentally disconnected by Ms Young. The Offender did not call back.<sup>39</sup>

## St Francis Catholic Church

- 4.25 At about 5.10 pm, the Offender attended St Francis' Church in Lonsdale Street, Melbourne, and started yelling outside that he needed to speak with a priest. Father Graeme Duro left his room at the presbytery and went into the church yard to speak with him. Over the next 10 or 15 minutes, the Offender spoke about the end of the world and his religiosity.<sup>40</sup> The whole time, a security guard stood watch nearby. When Father Duro went to finish the conversation, he was verbally abused by the Offender. The Offender then went into the church and started preaching at the altar and shouting about the end of the world.<sup>41</sup>
- 4.26 As the disturbance continued, a call was made to police and a unit from Melbourne East Police Station arrived at 5.37 pm. SC David Wagner and FC Angela Kerridge spoke with the Offender, established his identity and conducted a person check over the police radio. As this was happening, the Offender dropped some books he was carrying and ran off in a southerly direction along Elizabeth Street. SC Wagner confirmed that the Offender was not wanted for any outstanding matters.<sup>42</sup> Because no offence had evidently been committed, and the Offender did not appear to pose a threat to himself or anyone else at that time, the police members decided not to pursue him.<sup>43</sup>

## Assault and robbery of Gavin Wilson

- 4.27 Later that evening, the Offender travelled to Gavin Wilson's apartment in Raleigh Street, Windsor. Mr Wilson lived in the same apartment complex as the Offender's mother, Emily Gargasoulas, and had been in a relationship with her for about four years. Mr Wilson described the Offender as 'the son of my girlfriend'.<sup>44</sup>

36 Statement of Nicole Young dated 3 February 2017, Coronial Brief, p. 1906.

37 Statement of Nicole Young dated 3 February 2017, Coronial Brief, p. 1906.

38 Statement of Nicole Young dated 3 February 2017, Coronial Brief, p. 1907.

39 Statement of Nicole Young dated 3 February 2017, Coronial Brief, pp. 1906–7.

40 Statement of Graeme Duro dated 30 March 2017, Coronial Brief, p. 558.

41 Statement of Christos Haritos dated 13 February 2017, Coronial Brief, p. 949.

42 Statement of Senior Constable David Wagner dated 22 February 2017, Coronial Brief, p. 1777.

43 Statement of First Constable Angela Kerridge dated 3 February 2017, Coronial Brief, pp. 1153–4, Statement of Senior Constable David Wagner dated 22 February 2017, Coronial Brief, pp. 1776–7.

44 First Statement of Gavin Wilson dated 18 January 2017, Coronial Brief, p. 1886.

- 4.28 At approximately 9.00 pm, the Offender walked into Mr Wilson's apartment unannounced and sat down in the lounge room. He was carrying a large red Bible. The Offender started flicking through the pages of the Bible and then lit them with a cigarette lighter.<sup>45</sup> After Mr Wilson asked him to stop, the Offender suddenly thrust the burning Bible into Mr Wilson's face and held it there. It burnt his nose, cheeks and forehead. Mr Wilson managed to push the Bible away and saw the Offender standing over him. Mr Wilson described the Offender as 'crazy, it was like someone I had never met before'.<sup>46</sup>
- 4.29 When Mr Wilson asked him why he did it, the Offender responded by punching him to the side of the face and demanding his car keys.<sup>47</sup> The Offender gouged his thumb into Mr Wilson's eye and threatened to gouge it out if he did not hand over the keys. Mr Wilson relented and gave the Offender the keys to his maroon-coloured Holden Commodore sedan.<sup>48</sup> That was the vehicle that the Offender would drive into the Melbourne CBD some 40 hours later.
- 4.30 Mr Wilson soon discovered that his mobile phone had also been stolen, so he went to a neighbour's apartment to call the police.<sup>49</sup> Police arrived one hour and 15 minutes later and commenced an investigation. I will discuss that police investigation later in this Part of the Finding.

## Telephone calls to emergency services

- 4.31 Between 9.22 pm and 9.43 pm, the Offender made three phone calls to 000.<sup>50</sup>
- 4.32 In the first call, he said there was a comet in the sky and asked for the call-taker to contact NASA. He identified himself and became aggressive.<sup>51</sup>
- 4.33 In the second call, to another call-taker, he said that a comet was in the sky and referred to other strange topics. That conversation went for nearly 14 minutes.<sup>52</sup>
- 4.34 In the final call, to a third call-taker, the Offender again spoke of a comet in the sky and other unusual topics. That call lasted for more than seven minutes.<sup>53</sup>

## 7/11 Store—Punt Road, St Kilda

- 4.35 At 10.30 pm, the Offender was observed in the red Holden Commodore sedan on Punt Road, St Kilda, yelling out the window to no one in particular.<sup>54</sup>

45 First Statement of Gavin Wilson dated 18 January 2017, Coronial Brief, p. 1884.

46 Second Statement of Gavin Wilson dated 9 February 2017, Coronial Brief, p. 1892.

47 Second Statement of Gavin Wilson dated 9 February 2017, Coronial Brief, p. 1892.

48 Second Statement of Gavin Wilson dated 9 February 2017, Coronial Brief, p. 1892.

49 Second Statement of Gavin Wilson dated 9 February 2017, Coronial Brief, p. 1892.

50 Exhibit 435, Audio Recordings of 000 calls by the Offender on 18 January 2017, Criminal Brief.

51 Exhibit 435, Audio Recordings of 000 calls by the Offender on 18 January 2017, Criminal Brief.

52 Exhibit 435, Audio Recordings of 000 calls by the Offender on 18 January 2017, Criminal Brief.

53 Exhibit 435, Audio Recordings of 000 calls by the Offender on 18 January 2017, Criminal Brief.

54 Statement of Jason Boyd dated 10 March 2017, Coronial Brief, pp. 368–9.

## Police investigation of assault on Gavin Wilson

- 4.36 On 18 January 2017 at 9.20 pm, police communications dispatched a job to Raleigh Street, Windsor, following the report of threats made and theft of a vehicle. The Offender was named.<sup>55</sup>
- 4.37 Sgt Adam Oswald of the St Kilda Police Station was the patrol supervisor for the afternoon shift, ending at 10.00 pm. Sgt Oswald was monitoring the radio and heard that the job involved the theft of a vehicle but did not hear that it involved a Bible being burnt and an assault.<sup>56</sup> He heard the Offender's name and thought he was the victim. He noted in his written statement that St Kilda Police Station was notorious for poor radio communications,<sup>57</sup> which may account for him not hearing about the Bible and the assault.
- 4.38 Even though he mistakenly believed that the Offender was the victim, he knew that the Offender had 'serious risks and warnings associated with him'<sup>58</sup> and that the design of the apartment complex presented difficulties for police, including that the apartments had only one entry and exit point.<sup>59</sup> Assessment of their risks led him to decide that a minimum of four police members should attend the job. He instructed police communications to hold the job until sufficient nightshift units were available to attend together. This resulted in a delay of more than an hour.
- 4.39 At 9.30 pm, Sgt Peter Tasiopoulos arrived at the police station to take over supervision of the night shift from Sgt Oswald and was briefed about the outstanding job. Sgt Oswald advised him that if the Offender was involved, a minimum of four members should attend.<sup>60</sup>
- 4.40 Twenty minutes later, SC Andrew Davidenko and FC Aidan Verdun were tasked to attend the job at Raleigh Street and arrived at the apartment complex at 10.15 pm. They were initially unable to locate Mr Wilson but, after making enquiries with Mr Wilson's neighbours, found him at about 10.30 pm in Gargasoulas's apartment. Mr Wilson reported what had happened. SC Davidenko updated Sgt Tasiopoulos over the radio and requested an ambulance.<sup>61</sup>

### Efforts to locate the Offender

- 4.41 A short time later, Sgt Tasiopoulos arrived at Raleigh Street,<sup>62</sup> followed by DSgt David Barry and DSC Clayton White, who were performing crime response duties for the afternoon at the Port Phillip CIU.<sup>63</sup> The nightshift Divisional CIU was also called to attend. That unit was comprised of DA/Sgt Tzefer and DSC Reid.<sup>64</sup>
- 4.42 SC Davidenko and FC Verdun were tasked by DSC White to seize the Bible, photograph Mr Wilson's injuries, and obtain a statement from him about the assault once he had been assessed by paramedics.<sup>65</sup>

55 Statement of Sergeant Adam Oswald dated 26 February 2017, Coronial Brief, p. 1388.

56 Statement of Sergeant Adam Oswald dated 26 February 2017, Coronial Brief, p. 1390.

57 Statement of Sergeant Adam Oswald dated 26 February 2017, Coronial Brief, p. 1390.

58 Statement of Sergeant Adam Oswald dated 26 February 2017, Coronial Brief, p. 1389.

59 Statement of Sergeant Adam Oswald dated 26 February 2017, Coronial Brief, p. 1389.

60 Statement of Sergeant Adam Oswald dated 26 February 2017, Coronial Brief, p. 1390.

61 Statement of Senior Constable Andrew Davidenko dated 28 February 2017, Coronial Brief, pp. 521–2; Exhibit 92, Statement of First Constable Aidan Verdun dated 1 February 2017, Coronial Brief, p. 1762.

62 Exhibit 61, Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1656.

63 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 305; Exhibit 112, Second Statement of Detective Senior Constable Clayton White dated 2 March 2017 as amended, Coronial Brief, p. 1880.

64 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, pp. 305–6.

65 Exhibit 92, Statement of First Constable Aidan Verdun dated 1 February 2017, Coronial Brief, p. 1762; Exhibit 112, Second Statement of Detective Senior Constable Clayton White dated 2 March 2017 as amended, Coronial Brief, p. 1881.

- 4.43 A ‘keep a look out for’ (**KALOF**) the Offender was broadcast over police communications and a message was sent to DSC Gentner (who was off duty) for any information about where the investigators might find the Offender. DSC Gentner responded in a text message: ‘the Princes Street area’<sup>66</sup>.
- 4.44 In evidence, DSgt Barry agreed that the Offender was displaying ‘dangerous and bizarre behaviour’ in the assault on Mr Wilson and that it was ‘right up in the top level of strange assaults’.<sup>67</sup> He stated that the way in which the offence was committed indicated ‘either mental health or alcohol or ... drug issues ... making him unpredictable ... clearly offensive ... and violence (sic) ... and a risk’.<sup>68</sup>
- 4.45 When asked to summarise the subsequent attempts made to locate the Offender, DSgt Barry explained that:
- a. there was a briefing during which DSgt Barry outlined his concerns about the Offender’s history, including the events on 2 and 14 January 2017. DSgt Barry asked the police members present to make a concerted effort throughout the night to attend areas and locations where the Offender was known to frequent in an effort to locate him
  - b. attempts were made to locate the Offender via location-based service (LBS) requests with a view for that to continue throughout the following day across subsequent shifts, with greater efforts to be taken during business hours when more options were available.<sup>69</sup>
- 4.46 DA/Sgt Tzefer and DSC Reid were specifically tasked by DSgt Barry to patrol and locate the Offender.<sup>70</sup> DA/Sgt Tzefer checked LEAP to ascertain the Offender’s background, any warning flags and criminal history. They were also advised that he was on bail.<sup>71</sup> DA/Sgt Tzefer’s evidence was that they conducted general patrol duties in the areas the Offender might frequent.<sup>72</sup> Nonetheless, attempts to locate the Offender proved fruitless.<sup>73</sup>
- 4.47 The Critical Incident Review conducted by AC Stephen Fontana was critical of the fact that consideration appeared not to have been given to escalating the priority to locate the Offender.<sup>74</sup> The review noted that the development of a PTMP may have been appropriate to ensure a more focused, sustained and better-coordinated approach to tracking down the Offender.<sup>75</sup>
- 4.48 In oral evidence, DSgt Barry did not agree with the criticism that there had, in effect, been no active investigation following the assault on Mr Wilson.<sup>76</sup> Nor did he agree that there had been no sustained or coordinated approach to locate and arrest the Offender.<sup>77</sup>

66 Exhibit 67, Statement of Detective Sergeant Barry dated 9 February 2017, Coronial Brief, p. 306.

67 Transcript of evidence, p. 882.

68 Transcript of evidence, p. 882.

69 Transcript of evidence, pp. 884–5.

70 Transcript of evidence, p. 1008.

71 Transcript of evidence, p. 1008.

72 Transcript of evidence, p. 1009.

73 Transcript of evidence, p. 929.

74 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 172.

75 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 172.

76 Transcript of evidence, p. 930.

77 Transcript of evidence, p. 930.

- 4.49 In DSgt Barry's opinion, the sustained and coordinated approach to locate and arrest the Offender during this period included:
- a. briefing Sgt Tasiopoulos and DA/Sgt Tzefer about the events of 2 and 14 January 2017 in order to highlight the need to continue the search for the Offender overnight rather than leaving it for the Port Phillip CIU to action the following day<sup>78</sup>
  - b. notifying Sgt Tasiopoulos that DSgt Barry would brief each successive unit to maintain efforts to locate the Offender until he was found.<sup>79</sup>
- 4.50 When it was put to DSgt Barry by Counsel for the Families that this was, effectively, asking for the relevant police members to 'go out and have a look for him and if you see him, do something about it', DSgt Barry stated:
- ... no, it was to do what ... what we could ... one of the keys (sic) things, is to use the mobile phone technology as a starting point to actually look for him rather than just random patrolling and hope to find him ... then look at what other options are available during business hours to try and ... get a handle on his physical location.<sup>80</sup>
- 4.51 DSgt Barry considered that they had escalated the priority to locate the Offender, stating:
- I believe we were ... escalating it rather than, waiting or implementing a PTMP, he'd committed the offences there and then it was a case of, well, we don't let up on him until we actually get him into custody, in terms of going up and above and beyond that in the nature of what had occurred, you know ... I felt at that point in time, that that was satisfactory and we could build and continue that, campaign, until he was in custody.<sup>81</sup>
- 4.52 In response to the suggestion made by AC Fontana that a PTMP would have ensured a more targeted, sustained and better coordinated approach to locate the Offender, DSgt Barry commented 'that is exactly our ... our objective from the time he'd committed that offence on the ... on the 18th, irrespective of whether a document was created to outline that'.<sup>82</sup>

## Thursday 19 January 2017

### Attempts by Mr Wilson's friends to convince the Offender to return the vehicle

- 4.53 A long-time friend of Gavin Wilson, Patrick Carroll, heard about the assault and theft of Mr Wilson's vehicle. At approximately 10.00 am on Thursday 19 January 2017, Mr Carroll rang Ms Gargasoulas's mobile phone. The Offender answered and hung up.<sup>83</sup>

78 Transcript of evidence, p. 930.

79 Transcript of evidence, p. 931.

80 Transcript of evidence, p. 931.

81 Transcript of evidence, p. 932.

82 Transcript of evidence, p. 933.

83 Statement of Patrick Carroll dated 3 February 2017, Coronial Brief, p. 471.

- 4.54 Mr Carroll then went to Mr Wilson’s home and again started ringing Ms Gargasoulas’s mobile phone number. Other friends of Mr Wilson were also present at the apartment. Several calls were made, attempting to convince the Offender to return the vehicle. One of the calls was put on loudspeaker and the Offender was heard to say words to the following effect:

I could’ve killed him if I wanted to and I may come back and kill him tonight ... A lot more people are going to die, it’s Armageddon ... I’m the chosen one.<sup>84</sup>

- 4.55 At some stage later in the day, Mr Carroll called the number on two further occasions and the Offender answered the phone. Mr Carroll asked him to return the vehicle and phone. The Offender replied, ‘I don’t care, not scared, do what you like’ and hung up.<sup>85</sup>
- 4.56 Mr Carroll later called and spoke with Ms Gargasoulos and she said that the Offender was asleep.<sup>86</sup> Mr Carroll then telephoned the St Kilda Police Station to inform police about the calls but was told that he should ring the Caulfield Police Station because they were said to be investigating the theft of the vehicle. He then called the Caulfield Police Station.<sup>87</sup>
- 4.57 It is not clear when the Offender first appeared at his mother’s apartment that day, or for how long he stayed. Other events, however, demonstrate that there were periods in which the Offender was driving around in the stolen Holden Commodore.

## Theft of petrol in Malvern East

- 4.58 At about 2.40 pm, the Offender stole petrol from a service station in Warrigal Road, Malvern East, by refuelling and driving off without paying.<sup>88</sup> The Offender’s actions were recorded on CCTV footage and the service station operator reported the theft to FC Antarpreet Bajwa at the Malvern Police Station. FC Bajwa soon determined that the vehicle involved in the petrol theft was itself stolen and wanted by Port Phillip CIU.<sup>89</sup> Shortly afterwards, he contacted DSC Clayton White and was instructed to send the CCTV footage to Port Phillip CIU.<sup>90</sup>

## Shop theft at Woolworths

- 4.59 At 2.44 pm the Offender entered a Woolworths Supermarket in Warrigal Road, Ashburton, and selected some items before leaving the store without paying. He was observed to be talking to himself as he walked to the Holden Commodore in the car park.<sup>91</sup> This was captured on CCTV footage.

## Visit to Ashburton Library

- 4.60 At about 3.15 pm, the Offender went to the Ashburton Library. He parked the stolen vehicle in the staff car park at the rear of the building. Librarian Susan Sargeant saw the vehicle and placed a large note on the front windscreen to inform the driver that it was a staff car park and requested that they not park there in the future.<sup>92</sup>

84 Statement of Patrick Carroll dated 3 February 2017, Coronial Brief, p. 472.

85 Statement of Patrick Carroll dated 3 February 2017, Coronial Brief, p. 472.

86 Statement of Patrick Carroll dated 3 February 2017, Coronial Brief, p. 472.

87 Statement of Patrick Carroll dated 3 February 2017, Coronial Brief, p. 472.

88 CCTV footage from BP Service Station dated 19 January 2017, Criminal Brief.

89 Statement of First Constable Antarpreet Bajwa dated 20 February 2017, Coronial Brief, pp. 283–4; Police Notes of First Constable Antarpreet Bajwa dated 19 January 2017, Coronial Brief, p. 1938.

90 Statement of First Constable Antarpreet Bajwa dated 20 February 2017, Coronial Brief, p. 284; Police Notes of First Constable Antarpreet Bajwa dated 19 January 2017, Coronial Brief, p. 1938.

91 Statement of Paul McParland dated 6 March 2017, Coronial Brief, p. 1288.

92 Statement of Susan Sargeant dated 9 March 2017, Coronial Brief, p. 1569.

- 4.61 The Offender entered the library and approached the counter. He told library officer Mandy (Lai) Li that he wanted to print out one page from the computer. Ms Li told him that it would cost 20 cents, but the Offender said he did not have any cash. The Offender was disgruntled that there was a cost associated with printing but eventually said that he would go to his vehicle and obtain the money.
- 4.62 Shortly after leaving the main entrance of the library, the Offender was observed running back into the library. The security alarm to the door leading from the library to the side street then went off.<sup>93</sup> It appears the Offender used this door to return to the car park. He had a brief conversation in the car park with Ms Sargeant before driving off in the vehicle.<sup>94</sup>

## Visit to Lilly Gurevich

- 4.63 At 4.30 pm, the Offender visited Lilly Gurevich at her home in Burwood. Ms Gurevich had custody of three children that the Offender had fathered with her daughter. The Offender wanted to see the children, but they were not at the address when he visited and so he only stayed for a short time.<sup>95</sup> Ms Gurevich observed that the Offender was agitated and acting strangely. She concluded that he was affected by methylamphetamine ('ice'). In a written statement to police, she recalled that the Offender spoke to her about Armageddon and being the 'chosen one' and that, when he left, he told her to 'kiss the kids goodbye for me'.<sup>96</sup> The Offender told her that her daughter was a devil before driving away.<sup>97</sup>

## Reckless driving in the city

- 4.64 At approximately 5.25 pm, the Offender was observed by witness Amy Sheane-Smith to be driving the Holden Commodore erratically in William Street, Melbourne. He stopped behind her vehicle at a red turning light at the intersection of Lonsdale and William streets and was beeping his horn before driving around her vehicle and colliding with her front bumper.<sup>98</sup> The Offender did not stop, and drove off through a red traffic signal, nearly striking pedestrians, before turning west into Lonsdale Street, Melbourne. Ms Sheane-Smith attended the City West Police Station and reported the incident.<sup>99</sup>

## Return to Raleigh Street

- 4.65 At about 5.30 pm that day, the Offender's girlfriend, Akiir Muo, received a telephone call from Angelo, who told her that the Offender had assaulted Mr Wilson and stolen his vehicle. Ms Muo travelled from Truganina to Gargasoulas's apartment in Raleigh Street, Windsor, to see if Angelo and his mother were okay.<sup>100</sup>
- 4.66 When Ms Muo arrived at the apartment, only Ms Gargasoulas was there. Ms Muo telephoned Angelo to see where he was. He reportedly informed her that he was in Southbank but was returning home. She told him that it was safe because the Offender was not there.<sup>101</sup> Ms Muo later told investigators that Angelo was terrified of the Offender,

93 Statement of Mandy (Lai) Li dated 8 March 2017, Coronial Brief, pp. 1246–9.

94 Statement of Susan Sargeant dated 9 March 2017, Coronial Brief, p. 1569.

95 Statement of Lilly Gurevich dated 13 February 2017, Coronial Brief, p. 914.

96 Statement of Lilly Gurevich dated 13 February 2017, Coronial Brief, p. 915.

97 Statement of Lilly Gurevich dated 13 February 2017, Coronial Brief, p. 915.

98 Statement of Amy Sheane-Smith dated 22 January 2017, Coronial Brief, p. 1608.

99 Statement of Amy Sheane-Smith dated 22 January 2017, Coronial Brief, p. 1609.

100 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1327.

101 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1327.

and only felt safe when Ms Muo was around. According to Ms Muo, the Offender ‘gets on the drugs and starts hallucinating, telling Angelo he’s Murray Gentner’s son. [The Offender] says things like he’s going to kill Angelo’.<sup>102</sup>

- 4.67 Ms Muo told Ms Gargasoulas that she was going to stay the night and recalled that she went to sleep in Angelo’s bedroom for about an hour, by her estimation, before the Offender arrived, knocked on the door and woke her up. The Offender asked Ms Muo if she was hungry and told her to come for a drive with him. The pair left in the vehicle and drove to a McDonald’s restaurant located at the corner of The Esplanade and Acland Street in St Kilda (The Esplanade McDonald’s<sup>103</sup>).<sup>104</sup>

## Visit to The Esplanade McDonald’s and disturbance at Dog’s Bar, St Kilda

- 4.68 At about 12.26 am, the Offender drove into the drive-through area of The Esplanade McDonald’s and purchased food and drinks. Ms Muo was in the front passenger seat.<sup>105</sup> While there, the Offender saw some of his friends and spoke to them through his window for a few minutes.<sup>106</sup> Ms Muo recalled that he then shouted ‘Fuck the police, fuck the government’ and performed a burnout in the carpark. She asked him to stop because she was scared the Offender would release the brake and the vehicle would hit a pole.<sup>107</sup>
- 4.69 The Offender then drove out of the carpark and onto the wrong side of Acland Street. He stopped the vehicle outside Dog’s Bar, revving the engine and yelling at patrons. The Offender exited the vehicle and walked quickly up to an outside table where people were sitting. He swept food, glasses and bottles off the table causing the patrons to recoil.<sup>108</sup> Ms Muo recalled again telling the Offender to stop, and that she could not believe what he was doing. The Offender returned to the vehicle and drove back to his mother’s apartment.<sup>109</sup>
- 4.70 Gavan Breen, the owner of Dog’s Bar, ran after the Offender’s vehicle long enough to note its registration. Mr Breen then contacted the emergency services and supplied the vehicle’s registration details.<sup>110</sup> At 1.19 am, Police Communications sent the job out to police units in the area.

## Police attendance at The Esplanade McDonald’s disturbance

- 4.71 Sgt Frank Caridi was the nightshift patrol supervisor responsible for police units operating in the Port Phillip Response Zone, covering the South Melbourne and St Kilda divisional areas. He was working with Constable Abigail Brook in a marked police vehicle. Their call sign was South Melbourne 251.<sup>111</sup>

102 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1328.

103 I note that The Esplanade McDonald’s was variously referred to by witnesses as the ‘Acland Street McDonald’s’ or the ‘McDonald’s on Acland Street.’ For the purposes of this Finding, I have referred to this as The Esplanade McDonald’s.

104 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, pp. 1328–9.

105 CCTV Footage of McDonald’s restaurant, St Kilda dated 20 January 2017, Criminal Brief.

106 CCTV Footage of McDonald’s restaurant, St Kilda dated 20 January 2017, Criminal Brief.

107 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1322.

108 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1322; Statement of Sally Ceccanti dated 25 January 2017, Coronial Brief, p. 496; Statement of Margaret Guthrie dated 15 February 2017, Coronial Brief, pp. 921–2; Statement of Stephen Hadley dated 24 February 2017, Coronial Brief, p. 927; Statement of Daniel Kelly dated 15 March 2017, Coronial Brief, pp. 1150–1; Statement of Julia Pleadon dated 13 April 2017, Coronial Brief, pp. 1442–4; Statement of Gregory Russell dated 23 March 2017, Coronial Brief, pp. 1541–2; Statement of Lacey Whele dated 25 January 2017, Coronial Brief, pp. 1860–1.

109 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1322.

110 Statement of Gavan Breen dated 25 January 2017, Coronial Brief, p. 374.

111 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 448.

- 4.72 The nightshift divisional Crime Response Unit for the Stonnington and Port Phillip areas comprised DA/Sgt Jim Tzeferemineos (now Tzefer) and DSC Matthew Reid. Their call sign was South 541.<sup>112</sup>
- 4.73 At 1.19 am, Sgt Caridi was notified of the incident at The Esplanade McDonald's in St Kilda. The description of the incident was 'people causing trouble'.<sup>113</sup> Sgt Caridi stated he initially left this for local units to attend because the call suggested it was a minor issue.<sup>114</sup>
- 4.74 At 1.25 am, the event was updated with details of the person involved in the incident, who was identified as the Offender. Details were also provided of the vehicle's registration, which was known to be stolen.<sup>115</sup>
- 4.75 Sgt Caridi had prior knowledge and experience of the Offender's behaviour. He described the Offender as 'an extremely violent and erratic person who has displayed behaviour considered to be brazen and unpredictable'.<sup>116</sup> He was aware that the Offender had avoided arrest several times by using a vehicle to drive in a dangerous manner and was a frequent 'ice' user, which he believed exacerbated the Offender's behaviour and diminished his regard for the safety of others. Sgt Caridi stated that the Offender had a propensity for extreme violence, having previously assaulted and injured family members, domestic partners and strangers. He stated that the Offender had a great dislike for police and when 'hyped up' would ignore reasonable directions. Sgt Caridi had previously witnessed the Offender driving the wrong way on Punt Road at high speed to evade police.<sup>117</sup>
- 4.76 Sgt Caridi was tasked by South 541 to patrol the Fitzroy Street area for the stolen vehicle,<sup>118</sup> but after patrolling for about 10 minutes, it was not sighted. He closed the incident at 1.33 am with the record 'GOA' (Gone on Arrival).<sup>119</sup> At Inquest, Sgt Caridi explained that he turned into The Esplanade McDonald's and drove around the car park before circling around the surrounding blocks, searching without success for the Offender and the vehicle.<sup>120</sup>
- 4.77 At Inquest, DA/Sgt Tzefer was unable to recall being called out or attending the disturbances at The Esplanade McDonald's.<sup>121</sup> He had not recorded details of any attendance in his notes but stated that they were considering looking for the Offender because of the events of the previous night relating to the assault of Mr Wilson and theft of his vehicle.<sup>122</sup>
- 4.78 DSC Reid, who was with DA/Sgt Tzefer, recalled at Inquest that they had patrolled the St Kilda area and kept a look-out for the Offender's vehicle because of the 000 calls about the disturbance. At the time, he considered it was probable that the Offender was driving the stolen vehicle, given the events of the previous night.<sup>123</sup> It is unclear if any additional police units participated in the search for the Offender's vehicle at this time.

112 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1734.

113 Exhibit 85, Electronic Patrol Duty Return (ePDR) of Sergeant Frank Caridi dated 19-20 January 2017, Coronial Brief, p. 2046.

114 Exhibit 81, Second Statement of Sergeant Frank Caridi as amended dated 20 July 2017, Coronial Brief, p. 451.

115 Exhibit 85, Electronic Patrol Duty Return (ePDR) of Sergeant Frank Caridi dated 19-20 January 2017, Coronial Brief, p. 2046.

116 Exhibit 81, Second Statement of Sergeant Frank Caridi as amended dated 20 July 2017, Coronial Brief, p. 452.

117 Exhibit 81, Second Statement of Sergeant Frank Caridi as amended dated 20 July 2017, Coronial Brief, p. 454.

118 Exhibit 85, Electronic Patrol Duty Return (ePDR) of Sergeant Frank Caridi dated 19-20 January 2017, Coronial Brief, p. 2046.

119 Exhibit 85, Electronic Patrol Duty Return (ePDR) of Sergeant Frank Caridi dated 19-20 January 2017, Coronial Brief, p. 2046; Exhibit 81, Second Statement of Sergeant Frank Caridi as amended dated 20 July 2017, Coronial Brief pp. 451-7.

120 Transcript of evidence, p. 1728.

121 Transcript of evidence, p. 1011.

122 Transcript of evidence, pp. 1011-2.

123 Transcript of evidence, pp. 1139, 1142-3.

## Operation Resurrection 2017

4.79 Operation Resurrection 2017 was the name created in the Interpose system by Port Phillip CIU for the investigation into the assault, robbery and theft of a vehicle from Gavin Wilson.<sup>124</sup> DSC White was nominated as the lead investigator.

4.80 Interpose is a program used by Victoria Police; it serves several functions in the management of criminal investigations. DSgt Barry explained that an Interpose ‘shell’ is an investigation management program used to store updates about an investigation. It would initially contain a summary of the incident and the offending that had occurred, outline the investigation in progress, facilitate the upload of documents and, in some circumstances, outline avenues of enquiry and plan investigative steps.<sup>125</sup> It is a central repository for information reports, tasking, progress on tasking, applications for specialist services, persons responsible for making and following up on applications and intelligence holdings.<sup>126</sup> Not all police members have access to Interpose.

4.81 When the Critical Incident Review examined the Interpose ‘shell’ for Operation Resurrection 2017, it was noted that it did not contain any investigation plan or tasking. AC Fontana observed:

It appears that the investigation of this offence, including any attempts to locate [the Offender], were to remain the subject of routine daily tasking by Port Phillip CIU. No consideration was given to escalating it to a higher priority or to implement a formal investigation plan.<sup>127</sup>

4.82 In response to this criticism, DSSgt Humphries, the Officer-in-Charge of Port Phillip CIU, stated that it was common for the space available under the heading ‘Investigation Plan’ in an Interpose ‘shell’ to remain blank because:

... at this level of investigation, very rarely would you have an investigation plan required for that type of job. If you were doing a more sophisticated job in a crime department where you were calling on a lot of services ... if it was a substantial drug importation ... Command would require an investigation plan, which is a separate document to basically outline what your plans are ...<sup>128</sup>

4.83 DSSgt Humphries confirmed that multiple Interpose ‘shells’ can be created for the same offender and ‘shells’ can be linked.<sup>129</sup>

4.84 DSgt Barry agreed that, in addition, investigation plans could be put together and published on Interpose.<sup>130</sup> He stated that investigation plans are created, in part, to allow other detectives not familiar with a particular investigation to look at it and come up to speed quickly, in conjunction with other material.<sup>131</sup>

124 Transcript of evidence, p. 879.

125 Transcript of evidence, pp. 879–80.

126 Transcript of evidence, p. 880.

127 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 171.

128 Transcript of evidence, p. 2384.

129 Transcript of evidence, pp. 2384–5.

130 Transcript of evidence, p. 880.

131 Transcript of evidence, pp. 880–1.

- 4.85 DSgt Barry's evidence, was consistent with that of DSSgt Humphries, that is, it was not common practice at the time for investigation plans to be created by Port Phillip CIU. In contrast, at Crime Command, investigation plans were created as a matter of course.<sup>132</sup> He confirmed that this was due to the complexity of those investigations and that a more 'straightforward' investigation would not be formalised within an Interpose 'shell'.<sup>133</sup>

## Attempts to locate the Offender on 19 January 2017

- 4.86 When the night shift ended at 7.00 am on 19 January 2017, DSgt Barry briefed DSgt Jason Crawford and SC Jacqueline Reeves about the assault on Mr Wilson and efforts to locate the Offender.<sup>134</sup>
- 4.87 At about 3.00 pm, DSC Gentner commenced duty and was briefed about events overnight.<sup>135</sup> At about 5.10 pm, DSC Gentner and DSC White went out on patrol in an attempt to locate the Offender.<sup>136</sup>
- 4.88 At about 6.00 pm, on Dorcas Street in South Melbourne, DSC Gentner spoke to an associate of the Offender who said they had not seen him.<sup>137</sup>
- 4.89 At about 7.45 pm, DSC Gentner went to the Gatwick Hotel where he spoke with HCP, who had also not seen the Offender.<sup>138</sup> According to HCP, DSC Gentner said that the Offender was 'sounding a bit like going crazy'.<sup>139</sup> DSC Gentner asked HCP to contact him if the Offender was encountered.<sup>140</sup> DSC Gentner told HCP that he was working late, that his phone would be on all night and asked him to give him a call if anything happened.<sup>141</sup>
- 4.90 At about 12.35 am, DSC Gentner went off duty.<sup>142</sup>

## Knowledge by senior management of the Offender's escalating behaviour

- 4.91 After the assault on Mr Wilson, DSgt Barry considered that the Offender's behaviour was escalating. Religious themes had emerged on a fresh dimension and the degree of violence he was perpetrating against his victims had increased. The Offender was also in a stolen vehicle and was actively evading police.<sup>143</sup>
- 4.92 When asked whether he had knowledge of the Offender's escalating behaviour from 18 January 2017 or whether this was within the knowledge of detectives in the recidivist unit, DSSgt Humphries stated:

Ah, a bit of both ... I rely on the teams to brief me about certain aspects. It was becoming quite apparent this offender was ... escalating and, when I walked into work on, Friday morning ... it was, our No.1 priority to arrest him.<sup>144</sup>

132 Transcript of evidence, p. 880.

133 Transcript of evidence, p. 880.

134 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 306.

135 Exhibit 3, Handwritten Notes of Detective Senior Constable Murray Gentner, Coronial Brief, p. 3999.

136 Exhibit 3, Handwritten Notes of Detective Senior Constable Murray Gentner, Coronial Brief, p. 3999.

137 Exhibit 3, Handwritten Notes of Detective Senior Constable Murray Gentner, Coronial Brief, p. 3999.

138 Exhibit 3, Handwritten Notes of Detective Senior Constable Murray Gentner, Coronial Brief, p. 3999.

139 Transcript of evidence, p. 856.

140 Transcript of evidence, p. 856.

141 Transcript of evidence, pp. 159, 856; Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1676.

142 Exhibit 3, Handwritten Notes of Detective Senior Constable Murray Gentner, Coronial Brief, p. 4000.

143 Transcript of evidence, p. 929.

144 Transcript of evidence, p. 2385.

## ‘Missed opportunities’ and access to Interpose

- 4.93 It was submitted by Counsel on behalf of the Families that interactions the Offender had with PSOs at the County Court, and later with police officers at St Francis Church, represented ‘missed opportunities’ to potentially apprehend the Offender.<sup>145</sup>
- 4.94 Specifically, it was submitted that the PSOs and police officers were not informed that the Offender was on bail for serious charges, and that no explanation for this omission had been provided.<sup>146</sup> This submission is not wholly consistent with the evidence. Although PSO Langton did not include this detail in his statement, PSOs Davies, Richardson and Smith stated that, after conducting the name check, PSO Langton informed them that the Offender was on bail with curfew conditions.<sup>147</sup>
- 4.95 It was also submitted on behalf of the Families that the Interpose record for the Offender as at 14 January 2017 included alerts and warnings about him having a psychiatric condition and a history of violence and attempting to evade apprehension, and that this was crucial information not made available to officers on the ground.<sup>148</sup> However, there was no evidence before me to indicate that either the PSOs or police members would have taken any different actions had they had access to this information. As was acknowledged by Counsel for the Families, ‘one cannot speculate’ as to what may have occurred had the PSOs or police officers been apprised of the Interpose alerts and warnings.<sup>149</sup>
- 4.96 Further, it should be noted that the Offender’s Interpose record amounted to some 377 pages, including 11 investigations and 13 information reports, with information dating back to 2008.<sup>150</sup> I do not consider that it would be practical for PSOs or uniform police members to review such documentation when interacting with persons such as the Offender, while providing court security or performing divisional van duties. Further, as detailed in Part 3 of the Finding, I accept the submissions made on behalf of the CCP that there are appropriate policy reasons to limit access to Interpose within Victoria Police.<sup>151</sup>
- 4.97 It is apparent that, in his interactions with PSOs and police officers on 18 January 2017, the Offender behaved bizarrely and made several concerning comments, particularly that about the Chief Justice. However, he did not commit an offence in their presence, and there was no real reason to take the step of arresting him, especially when enquiries via police communications at the time did not reveal him to be wanted on any outstanding matters. Accordingly, I am not satisfied that these interactions represented a missed opportunity to potentially apprehend the Offender.
- 4.98 I accept that, after Mr Wilson was assaulted, police actively investigated the incident and attempted to locate and apprehend the Offender, both overnight and the following day. Unfortunately, these endeavours proved unsuccessful and the Offender’s behaviour continued to intensify.

145 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, pp. 1, 7–8.

146 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, pp. 7–8.

147 Statement of Protective Services Officer Philip Davies dated 15 February 2017, Coronial Brief, p. 524; Statement of Protective Services Officer Mark Richardson dated 13 February 2017, Coronial Brief, p. 1526; Statement of Protective Services Officer Judith Smith dated 13 February 2017, Coronial Brief, p. 1631.

148 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 8.

149 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 8.

150 Exhibit 346, Interpose Records for the Offender, Coronial Brief.

151 Transcript of oral submissions, pp. 44–5; Summary Outline of Reply Submissions on behalf of the Chief Commissioner of Victoria Police dated 11 June 2020, pp. 1–2.

- 4.99 The creation of a PTMP may have ensured a more targeted, sustained and better coordinated approach to tracing the Offender.<sup>152</sup> However, I am not convinced that the circumstances at that time demanded such a plan to be created, having regard to the competing priorities of Port Phillip CIU, available resources and the information available to investigating police members at the time. Notably, many of the interactions I have detailed above were not reported to police until after the events of Bourke Street, when lay witnesses recognised the Offender in news footage and contacted police to report their unusual interactions with the Offender during the preceding week. I acknowledge that, with the assembly of this information and the extensive homicide investigation, I have had the benefit of being able to develop a more complete picture of the Offender's movements and apparent escalation in behaviour during this week, one that was not available to investigating police at the time.
- 4.100 However, while I am not critical of the failure to create a PTMP immediately after the assault on Mr Wilson, it would be more reassuring if the evidence had revealed that active consideration was given to this by Port Phillip CIU. I note that, since these events, Victoria Police has undertaken significant reform through the introduction of the OMP, *Offender Management Practice Doctrine* and *Person of Interest Management and Coordination Practice Guide* to enhance the prospects that individuals such as the Offender will be subject to more assertive monitoring. These initiatives are discussed in Part 9 of this Finding.

152 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 172.

# Part 5: The Police Response to the Stabbing of Angelo Gargasoulas

## Overview

- 5.1 This Part of the Finding focuses on the stabbing incident involving the Offender's brother, Angelo, in the early hours of Friday 20 January 2017 and the subsequent police response overnight, including efforts to locate and apprehend the Offender.
- 5.2 This Part is divided into two sections: first, a chronology of the stabbing incident and the Offender's subsequent movements and, second, a chronology and analysis of the police response to the incident and the overnight investigation.

## Chronology of stabbing incident and Offender's movements

### Stabbing of Angelo Gargasoulas

- 5.3 At around 12.30 am on 20 January 2017, Angelo Gargasoulas visited his mother's apartment to have a shower and pick up some medication.<sup>1</sup> Angelo had spent the previous day with his friend, Nicholas Santos, at his home in Southbank. That evening, they met up with two other friends, Choel Sanderson and Alix Caille. Mr Santos, together with Ms Sanderson and Ms Caille, drove Angelo to Raleigh Street in Mr Santos's black Audi A5 sedan (**Audi**). They dropped him off before going to the supermarket for about an hour,<sup>2</sup> telling Angelo they would call him when they were five minutes away to pick him up.<sup>3</sup>
- 5.4 Before Angelo had a shower, the Offender and his girlfriend, Ms Muo, arrived. Angelo stated that:

... as soon as I saw my brother I shit myself because of the things he's done to me in the past. I felt better seeing [Ms Muo] was with him because I didn't think he'd do anything with her there.

[The Offender] was telling [Ms Muo] to ask me 'Do you know where the bunker is because if you don't you're going to die'. [The Offender] was saying this to her in front of me and he was asking her to convince me to believe him, but I never said I didn't believe him. He has said this stuff to me before and he knows I don't want to hear it so he was asking [Ms Muo] to tell explain it to me. [The Offender] only started saying this stuff in the last year. There were times when I told [the Offender] I did believe him just to shut him up.<sup>4</sup>

1 Statement of Angelo Gargasoulas dated 1 February 2017, Coronial Brief, p. 817.

2 Statement of Nicholas Santos dated 20 January 2017, Coronial Brief, pp. 1562–3.

3 Statement of Alix Caille dated 21 March 2017, Coronial Brief, p. 423.

4 Statement of Angelo Gargasoulas dated 1 February 2017, Coronial Brief, pp. 817–8.

- 5.5 When Angelo said he was going to have a shower, the Offender told him, ‘After you shower, you need to come with me to wreak havoc on the world because it is going to end anyway’.<sup>5</sup> He also said ‘If you don’t come with me you’re going to die’.<sup>6</sup> Angelo dismissed his brother’s comments and went off to shower.<sup>7</sup>
- 5.6 At about 1.45 am, Ms Sanderson telephoned Angelo and advised they were five minutes away and they would meet him outside the apartment complex in Raleigh Street.<sup>8</sup>
- 5.7 The Offender overheard this call and insisted that he wanted to meet Mr Santos.<sup>9</sup> According to Ms Muo, the Offender was screaming ‘Who is he? Who’s your mate?’<sup>10</sup> Angelo was worried because he knew Mr Santos drove an Audi and he thought his brother would want to steal it.<sup>11</sup>
- 5.8 Angelo’s three friends arrived in Raleigh Street at about 1.50 am. They parked between the car park entry and the front entrance of the apartment complex. At about 2.12 am, Mr Santos sent a text message to Angelo, asking him to hurry up because he had work in the morning.<sup>12</sup> Angelo replied ‘[The Offender] is following me’.<sup>13</sup> Mr Santos did not see Angelo’s text message at the time. Shortly after sending the text message, Mr Santos saw the Offender and Angelo running across the road, although he did not initially recognise them.<sup>14</sup>
- 5.9 Angelo had taken the stairs after leaving the apartment. When he reached the ground floor and was between the stairwell and the lift, the Offender stepped out of the lift. The Offender followed Angelo as he walked out of the apartment complex towards a secure gate leading onto Raleigh Street.
- 5.10 Immediately after Angelo opened the gate, he heard the Offender behind him and turned to see him holding a knife high up in front of him. Angelo recognised the knife was from their mother’s kitchen. He dropped the bag he was carrying and fled across the road. However, the road was wet, and Angelo slipped over into the gutter.<sup>15</sup>
- 5.11 The Offender chased Angelo and stabbed him at least once, possibly twice, to the left side of his head before the knife slipped from his hand. Angelo tried to grab the knife, but the Offender reached it first. Angelo got up and ran towards Mr Santos’s car. He managed to run approximately 10 metres before he slipped again. Angelo’s friends opened the passenger door of the Audi and yelled for him to get in, but Angelo struggled to regain his footing.<sup>16</sup>
- 5.12 When the Offender became distracted by witnesses screaming at him to stop, Angelo tried to punch him but received a serious stab wound to his chest. He tried to defend himself by blocking the knife with his right arm but suffered additional stab wounds to his face and neck.<sup>17</sup>

5 Statement of Angelo Gargasoulas dated 1 February 2017, Coronial Brief, p. 818.

6 Statement of Angelo Gargasoulas dated 1 February 2017, Coronial Brief, p. 818.

7 Statement of Angelo Gargasoulas dated 1 February 2017, Coronial Brief, p. 818.

8 Statement of Nicholas Santos dated 20 January 2017, Coronial Brief, pp. 1563–4.

9 Statement of Angelo Gargasoulas dated 1 February 2017, Coronial Brief, p. 818.

10 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1322.

11 Statement of Angelo Gargasoulas dated 1 February 2017, Coronial Brief, p. 818.

12 Statement of Nicholas Santos dated 20 January 2017, Coronial Brief, p. 1564.

13 Statement of Nicholas Santos dated 20 January 2017, Coronial Brief, p. 1567.

14 Statement of Nicholas Santos dated 20 January 2017, Coronial Brief, p. 1564.

15 Statement of Angelo Gargasoulas dated 1 February 2017, Coronial Brief, p. 818.

16 Statement of Angelo Gargasoulas dated 1 February 2017, Coronial Brief, p. 819; Statement of Juan Sotomayor dated 20 January 2017, Coronial Brief, pp. 1636–7.

17 Statement of Angelo Gargasoulas dated 1 February 2017, Coronial Brief, p. 819.

- 5.13 Ms Muo had initially remained in the apartment, but within a minute of Angelo and the Offender leaving, she heard screaming from outside the street and rushed downstairs. She saw Angelo running behind Mr Santos's car, which was travelling slowly towards Punt Road.<sup>18</sup> She then saw the Offender chase and tackle Angelo to the ground and described the frenzied attack as follows:

[The Offender] tackled Angelo to the ground in the middle of the road. He pushed him down to the ground from his upper back. Angelo fell to the ground, I could see [the Offender] was standing to the side of him with his back to me. I could see [the Offender] had a knife in his right hand. He was stabbing and slashing Angelo around his neck and head area. I kept watching and I saw the blade go into Angelo's right cheek and neck. There was a lot of blood coming out, his whole face was covered in blood. [The Offender] was repeatedly stabbing him I think it was about 7 times, he was doing it really fast. One of the stabs went into his right shoulder. Angelo was screaming. I shouted, '[to the Offender] stop! What are you doing?'.<sup>19</sup>

- 5.14 Ms Muo screamed at the Offender and grabbed his jacket. She pulled the Offender away from Angelo and he tripped over. Mr Santos reversed his car back towards Angelo and Ms Muo pushed him towards the passenger side of the car. Angelo managed to get into the front passenger seat but, while the passenger door was still open, the Offender grabbed Angelo by his left shoulder.<sup>20</sup>
- 5.15 Mr Santos drove off with the door still open and the Offender striking at the passenger side of the car. Mr Santos sped to the Alfred Hospital in Commercial Road, Prahran, and assisted Angelo into the Emergency Department. Mr Santos and Ms Sanderson provided their telephone numbers to hospital staff before leaving the hospital.<sup>21</sup>
- 5.16 After the Audi drove away, Ms Muo saw the Offender run off along Raleigh Street towards Punt Road. He still had the knife in his right hand.<sup>22</sup> By this time, Ms Gargasoulas had also come outside. She picked up Angelo's bag and, with Ms Muo, returned to the apartment complex and up to Mr Scammell's apartment. They told Mr Scammell what had happened and asked him to contact the police.<sup>23</sup>

18 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, pp. 1331–2.

19 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1332.

20 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, pp. 1333–4.

21 Statement of Choel Sanderson dated 21 March 2017, Coronial Brief, p. 1559; Statement of Nicholas Santos dated 20 January 2017, Coronial Brief, pp. 1565–6.

22 First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1334.

23 First Statement of Mark Scammell dated 20 January 2017, Coronial Brief, p. 1579; First Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1334.

## Calls to emergency services

- 5.17 Four separate calls were made to emergency services by witnesses to the incident.<sup>24</sup> The first call was made at about 2.15 am. The caller indicated there were two people fighting with a machete on the street outside Raleigh Street, Windsor.<sup>25</sup> Details of this call were relayed to police units at about 2.16 am by police communications on channel 03-01,<sup>26</sup> which is the channel for the SMR covering the suburbs of Port Melbourne, Albert Park, St Kilda, South Yarra, Prahran, Toorak, Armadale, Malvern, Malvern East and Elwood.<sup>27</sup> Police communications reported the incident as a ‘priority one assault’ and requested the attendance of a police unit.<sup>28</sup>
- 5.18 At about 2.18 am, after further details were broadcast by police communications about the first report of the assault, SC Steven Rea transmitted ‘This’ll be [the Offender] again... just all units beware’.<sup>29</sup> SC Rea’s assumption that the Offender was involved was correct. However, it should be noted that police had not, at that stage, received any confirmation from witnesses that the Offender was in fact involved.
- 5.19 Two further calls were made to emergency services at about 2.17 am. The first of these callers reported that a man had been repeatedly stabbed by another man with a bottle.<sup>30</sup> This was relayed by police communications to police units at about 2.18 am and linked to the first job.<sup>31</sup> The second caller indicated that a person had been abducted in a car and that two men carrying a knife had tried to stop the abductors.<sup>32</sup> This call was relayed to police units by police communications at about 2.24 am and also linked to the first job.<sup>33</sup>
- 5.20 Mr Scammell telephoned emergency services at about 2.21 am. He reported that there had been an altercation between two brothers, involving a knife or knives, and named the Offender in connection with the incident. Ms Gargasoulas, who was with Mr Scammell during this telephone call, told the 000 operator that she wanted the police to look for the Offender and lock him up.<sup>34</sup>
- 5.21 Police communications relayed the details of Mr Scammell’s call at about 2.26 am, noting there were possible injuries and naming the Offender as involved in the incident, although not relaying that a knife may have been involved.<sup>35</sup> This was the first time that responding police units received confirmation the Offender was linked to the incident.

24 Transcript of 000 Call to Police by Jessica Bergin on 20 January 2017, Exhibit 11, Coronial Brief; Transcript of 000 Call to Police by Felicia Finette on 20 January 2017, Exhibit 59, Coronial Brief; Transcript of 000 Call to Police by Mark Scammell on 20 January 2017, Exhibit 310, Coronial Brief; Transcript of 000 Call to Police by Juan Sotomayor on 20 January 2017, Exhibit 323, Coronial Brief.

25 Transcript of 000 Call to Police by Juan Sotomayor on 20 January 2017, Exhibit 323, Coronial Brief, pp. 4584–5.

26 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 1. This exhibit incorporates later corrections and amendments from the interested parties. Where there is a discrepancy in the transcript, I have referred to the audio, Coronial Brief, Exhibit 347, Police D24 Radio Communications (8 x Files).

27 Coronial Brief, Map of Victoria Police Metropolitan Radio Channel Service Area Channel 03-01, AM 11, p. 1.

28 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 1.

29 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 2.

30 Exhibit 59, Transcript of 000 Call to Police by Felicia Finette on 20 January 2017, Coronial Brief, pp. 2237–8.

31 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 2.

32 Transcript of 000 Call to Police by Jessica Bergin on 20 January 2017, Coronial Brief, pp. 1969–70.

33 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 2;

34 Transcript of 000 Call to Police by Mark Scammell on 20 January 2017, Exhibit 310, Coronial Brief.

35 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 8.

## Offender's movements after the stabbing

- 5.22 The chronology that follows outlines what is known of the Offender's movements after Angelo was stabbed. I acknowledge that much of this was not known to investigating officers at the time of these events. However, it provides an important foundation for identifying whether there were any opportunities reasonably available to investigating officers that could have assisted their efforts to locate and apprehend the Offender that night.

### Princes Street, St Kilda

- 5.23 Moments after the Offender left the scene at Raleigh Street in the stolen Commodore, he had a brief interaction with police on Punt Road before speeding off. This is discussed below. The evidence is that he then went to the home of an acquaintance, Nathan Clapham, in Princes Street, St Kilda. Earlier that night, he had visited Mr Clapham to shower and change into lighter clothes.<sup>36</sup> The Offender was captured on CCTV returning to Mr Clapham's residence at about 2.37 am.<sup>37</sup>
- 5.24 According to Mr Clapham, after he had let the Offender into his home, the Offender asked him to urgently ring Daniel Bodley, who was a mutual friend. The line was busy, and the Offender asked Mr Clapham to ring it again. Mr Clapham put the phone down and, when he briefly turned away, the Offender snatched the phone from him.<sup>38</sup> When Mr Clapham tried to retrieve the phone, the Offender told him 'Don't even try', backed away from him and said 'I killed my brother. I think I killed my brother'.<sup>39</sup> Mr Clapham saw that there was blood all over the Offender's white jeans.<sup>40</sup> The Offender then walked out of the apartment with Mr Clapham's phone, leaving behind a McDonald's cup on the couch.<sup>41</sup>
- 5.25 The Offender was recorded on CCTV leaving Mr Clapham's residence at about 2.40 am. He appeared to be carrying a phone in his hand.<sup>42</sup>

### Visit to HCP at Gatwick Hotel

- 5.26 Not long after, at about 2.49 am, the Offender visited HCP at the Gatwick Hotel. The Offender went to the side window of HCP's apartment and said he needed to talk to HCP and asked to come in.<sup>43</sup> HCP observed that the Offender was 'fidgety, erratic, worrying about who was behind him, paranoid'<sup>44</sup> and it was obvious that he had done something wrong.<sup>45</sup>

36 It is unclear when this first visit occurred. Nathan Clapham told investigators that the Offender had first visited him at about 12.30 am to shower and change into lighter clothing. However, it appears Mr Clapham was mistaken in this timing because the Offender was captured on CCTV footage at this time at The Esplanade McDonald's with Ms Muo. It is likely the visit occurred at some time prior to the assault on Angelo because it appears that the Offender was wearing light clothing at the time of that assault. See Coronial Brief, Statement of Nathan Clapham dated 20 January 2017, pp. 502–3.

37 CCTV Footage of 7 Princes Street, St Kilda on 20 January 2017, Criminal Brief.

38 Statement of Nathan Clapham dated 20 January 2017, Coronial Brief, p. 500.

39 Statement of Nathan Clapham dated 20 January 2017, Coronial Brief, p. 500.

40 Statement of Nathan Clapham dated 20 January 2017, Coronial Brief, p. 500.

41 Statement of Nathan Clapham dated 20 January 2017, Coronial Brief, p. 501.

42 CCTV Footage of 7 Princes Street, St Kilda on 20 January 2017, Criminal Brief.

43 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1676.

44 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1676.

45 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1676.

- 5.27 At Inquest, HCP explained the Offender was:
- ... acting very, um, paranoid. He, you know, didn't trust, um, anyone. He was, um ... was all over the place. He, um, you know, kept on looking at ... behind him, looking at the windows, looking at the door, um, just in a real paranoid, ah, sense of mind.<sup>46</sup>
- 5.28 The Offender was 'really irrational', 'just not composed' and 'all over the place', which 'was scary, 'cause he was just unpredictable'.<sup>47</sup> HCP believed the Offender had been taking drugs.<sup>48</sup>
- 5.29 HCP agreed to let the Offender in but asked him to park his vehicle first. He did this to give himself time to contact DSC Gentner without the Offender's knowledge. HCP wanted to tell DSC Gentner that the Offender was there and that he would stall the Offender for as long as possible to give DSC Gentner time to get there and arrest him. While the Offender was parking his vehicle, HCP tried to call DSC Gentner on his mobile phone but it rang out and no one answered.<sup>49</sup>
- 5.30 Phone records indicate that HCP first telephoned DSC Gentner at about 2.49 am and left a voicemail message, informing him that the Offender had just 'popped in to visit me'.<sup>50</sup> Shortly afterwards, he sent a text message to DSC Gentner stating that the Offender was 'in a commodore off his nana outside the fatty'<sup>51</sup> [sic] possibly just bashed his brother I'm trying to obtain license plate num call me asap'.<sup>52</sup> At 2.50 am, HCP sent a further text message to DSC Gentner stating 'He's scarey and cooked help'.<sup>53</sup>
- 5.31 The Offender was recorded on CCTV entering the Gatwick Hotel at about 2.50 am.<sup>54</sup> HCP stated that when the Offender came into the apartment, he was 'still erratic' and was 'paranoid that, you know, of people following him'.<sup>55</sup> HCP observed that the Offender had blood on his clothes. He 'seemed nervous and very paranoid. [He] was questioning every sound he heard, whether it was knocks at the door, cars driving by the window, anything that made noise'.<sup>56</sup> The Offender told HCP that he might have 'slashed' his brother's face and asked HCP to check on Angelo.<sup>57</sup>
- 5.32 According to HCP, the Offender also spoke about DSC Gentner. The Offender 'wasn't happy with him' and was on a 'bad buzz about ... Murray'.<sup>58</sup> HCP stated the Offender was paranoid about DSC Gentner and kept saying 'fuck you, Gentner'.<sup>59</sup> He told HCP that DSC Gentner was out to kill him.<sup>60</sup> HCP stated that the Offender seemed determined to do something and was 'a man on a mission'.<sup>61</sup> At Inquest, HCP agreed that the Offender's behaviour was very different to all of his previous interactions with him.<sup>62</sup>

46 Transcript of evidence, p. 857.

47 Transcript of evidence, p. 859.

48 Transcript of evidence, p. 859.

49 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1676.

50 Exhibit 10, Telephone records from Port Phillip CIU phone, Coronial Brief, p. 4665.

51 It is accepted that HCP was referring to the Gatwick Hotel.

52 Exhibit 10, Telephone records from Port Phillip CIU phone, Coronial Brief, p. 4665.

53 Exhibit 10, Telephone records from Port Phillip CIU phone, Coronial Brief, p. 4665.

54 CCTV Footage at Gatwick Hotel, 34 Fitzroy Street, St Kilda, dated 20 January 2017, Criminal Brief.

55 Transcript of evidence, p. 859.

56 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1677.

57 Transcript of evidence, pp. 859–60.

58 Transcript of evidence, p. 860.

59 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1677.

60 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1678.

61 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1679.

62 Transcript of evidence, p. 871.

- 5.33 HCP said that the Offender calmed down after a little while as HCP explained to him what all the sounds were that were triggering his alertness. The Offender would hold HCP's hand and be calm for periods of time but refused to sit down. The Offender told HCP he would dive out the window if the police came.<sup>63</sup>
- 5.34 HCP again attempted to contact DSC Gentner by phone, but there was no response.<sup>64</sup> HCP stated that he:
- ... tried, you know, three or four times to, um, you know, contact ... this is in between him, um, you know, being at my place, darting around the corner, coming back again, um, 'cause I didn't want him to ... didn't want the Offender to ... to see me making, um, phone calls to ... to anyone.<sup>65</sup>
- 5.35 HCP accepted during examination at Inquest that he kept trying to call DSC Gentner because the Offender was presenting in such an extreme and determined way.<sup>66</sup>
- 5.36 The Offender told HCP that he had things he had to do and, at about 3.10 am, HCP walked the Offender out of his residence and a little way along the street.<sup>67</sup> The Offender told HCP, 'I'm going to do something drastic, take everyone out, they can suffer the consequences, watch me, you'll see me tonight on the news, the police have stopped me before, but they aint gonna get me this time. I'll make you believe me.'<sup>68</sup> The Offender's comments distressed HCP and made him cry.<sup>69</sup>
- 5.37 HCP stated that the Offender then saw some people in the street and told him, 'I'm just going to mow them down.'<sup>70</sup> HCP told him not to do that. The Offender approached the people in the street and asked them whether they wanted him. They said no and, according to HCP, the Offender seemed to believe them. The Offender then left in the vehicle.<sup>71</sup> HCP again tried to call DSC Gentner, but the phone rang out. He tried to call him several more times but was unable to get through to him.<sup>72</sup>
- 5.38 Shortly after the Offender left, Mr Clapham visited HCP and told him that the Offender had stolen his phone.<sup>73</sup>

### Was there a missed opportunity to apprehend the Offender at Gatwick Hotel?

- 5.39 We now know that the Offender was out of the vehicle for about 20 minutes while he visited HCP. If investigating police officers had been contemporaneously apprised of this information, it is possible, but by no means certain, that they may have had an opportunity to successfully apprehend the Offender away from the vehicle.<sup>74</sup>
- 5.40 Despite the threat posed by the Offender, and the distress and fright HCP felt as a result of the Offender's behaviour,<sup>75</sup> HCP attempted to contact DSC Gentner to alert him as to the Offender's whereabouts to assist his apprehension.<sup>76</sup> By doing so, HCP was complying

63 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1677.

64 Transcript of evidence, p. 857.

65 Transcript of evidence, p. 857.

66 Transcript of evidence, p. 861.

67 CCTV Footage at Gatwick Hotel, 34 Fitzroy Street, St Kilda dated 20 January 2017, Criminal Brief; Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1679.

68 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1679.

69 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1679.

70 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1679.

71 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1679.

72 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1680.

73 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1680.

74 DSC Gentner accepted this possibility at Inquest: Transcript of evidence, p. 282.

75 Transcript of evidence, pp. 857, 865–6.

76 Transcript of evidence, p. 869.

with DSC Gentner's request a few hours earlier to call him if he came into contact with the Offender.<sup>77</sup> Unfortunately, at this time, DSC Gentner was off duty and asleep. He did not see HCP's messages until he woke up later that morning, about five hours after the Offender had left the Gatwick Hotel.<sup>78</sup>

- 5.41 Counsel for the Families submitted that had DSC Gentner monitored his work phone or made alternative arrangements regarding his work phone, such as call forwarding, then it was highly likely that vital information provided by HCP about the Offender's whereabouts would not have been delayed and could have been acted upon by police. It was submitted this was a missed opportunity to apprehend the Offender.<sup>79</sup>
- 5.42 In their reply submissions, the CCP stated that this was unreasonably founded in hindsight knowledge and was not a fair or reasonable criticism of an off-duty officer who, at the time of the calls and texts from HCP, was not aware that the Offender had stabbed his brother. The CCP also suggested that HCP was able to call 000, as he had reportedly done in the past, or St Kilda Police Station directly, as an alternative to calling DSC Gentner 'if [he] had information about the Offender that [he] considered was important'.<sup>80</sup>
- 5.43 In cross-examination, HCP agreed that nothing prevented him from calling St Kilda Police Station or calling 000.<sup>81</sup> However, DSC Gentner had not suggested that he call 000 if anything untoward happened.<sup>82</sup> HCP's understanding was that DSC Gentner would keep his mobile phone on overnight and he would be able to contact him if needed.<sup>83</sup> Although DSC Gentner gave evidence that HCP had previously been told by police to call 000 'in this type of scenario' and had called 000 previously,<sup>84</sup> HCP was not directly questioned about his previous experience in contacting emergency services or whether such an experience was comparable to the scenario that he faced on 20 January 2017.
- 5.44 The suggestion that HCP could have contacted emergency services or St Kilda Police Station to alert them of the Offender's whereabouts has been made with the benefit of hindsight. While this would have been optimal, there is no evidence before me to indicate HCP had the opportunity to do so while the Offender was at the Gatwick Hotel. HCP took the brief opportunities that presented themselves while the Offender was at the Gatwick Hotel to call and send text messages to DSC Gentner 'between [the Offender] ... being at my place, darting around the corner, coming back again',<sup>85</sup> but made it clear at Inquest that he did not want the Offender to see him making phone calls to anyone.<sup>86</sup>
- 5.45 I make no criticism of HCP for not contacting emergency services or St Kilda Police Station in what was clearly a volatile and difficult situation. I commend him for his courageous actions in attempting to contact DSC Gentner despite the risk to himself.
- 5.46 Further, I make no criticism of DSC Gentner for not monitoring his work phone when he was off duty. As with any serving police officer, DSC Gentner is entitled to adequate rest periods and should not be expected to monitor his work phone at all times.

77 Transcript of evidence, pp. 856, 872.

78 Transcript of evidence, p. 160.

79 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 15.

80 Transcript of oral submissions hearing, pp. 68–71; Outline of Reply Submissions of the Chief Commissioner of Police dated 11 June 2020, p. 13.

81 Transcript of evidence, p. 873.

82 Transcript of evidence, p. 864.

83 Transcript of evidence, pp. 863–4.

84 Transcript of evidence, p. 282.

85 Transcript of evidence, p. 857.

86 Transcript of evidence, p. 857.

- 5.47 With the benefit of hindsight, it may have been beneficial for DSC Gentner to have made alternative arrangements for the monitoring of his work phone overnight or the implementation of call and/or text message forwarding services to one of the other police officers on duty overnight.<sup>87</sup> However, even if the investigating police officers had been provided with timely intelligence of the Offender's location at the Gatwick Hotel, it is conjecture to suggest the Offender would have been apprehended out of his vehicle at that time.

## Text messages

- 5.48 The Offender sent a series of bizarre text messages to Mr Bodley from Mr Clapham's phone between 3.20 am and 6.51 am.<sup>88</sup> The Offender asked Mr Bodley to keep Angelo safe, spoke of government mind-control tactics, and concerns that he may have contracted syphilis. In response, Mr Bodley advised the Offender to lay low and keep out of trouble for at least a couple of days.<sup>89</sup>
- 5.49 At about 6.05 am, the Offender sent Mr Bodley photographs of mobile-phone towers he had taken at Chapel Street and Glenhuntly Road, which he linked to microwaves and government mind control.<sup>90</sup> Mr Bodley forwarded the text messages to HCP who subsequently forwarded them to DSC Gentner.<sup>91</sup>

## Visit to Glenhuntly Road, Carnegie

- 5.50 At about 5.00 am, AFM received a telephone call from the Offender. He asked where she was because he wanted to see her. The Offender disclosed to her that he had an argument and stabbed Angelo because Angelo had 'turned on him and was trying to get him'.<sup>92</sup> AFM wouldn't tell the Offender where she lived, so he hung up on her. When she attempted to call him back, the Offender's phone was switched off.<sup>93</sup>
- 5.51 According to AFM, shortly afterwards, she received a second call from the Offender saying he was out the front of her home in Glenhuntly Road, Carnegie. AFM initially didn't believe him but then could hear his voice outside.<sup>94</sup> She told him to leave because her mother would get upset and call the police. The Offender asked to speak to AFM's mother on the phone, and AFM's mother told him to leave AFM alone. AFM did not hear from the Offender again until around midday.<sup>95</sup>
- 5.52 Based on 'pings' of the Offender's phone, it appears likely that the Offender was in the vicinity of AFM's home for a period of around six minutes from 5.22 am to 5.28 am.<sup>96</sup> The Offender's phone was switched off or out of range shortly afterwards, at about 5.35 am.<sup>97</sup>

87 Transcript of evidence, pp. 284–5.

88 Text messages between Daniel Bodley and the Offender on 20 January 2017, Coronial Brief, pp. 1992–7.

89 Text messages between Daniel Bodley and the Offender on 20 January 2017, Coronial Brief, pp. 1992–7.

90 Text messages between Daniel Bodley and the Offender on 20 January 2017, Coronial Brief, pp. 1992–7.

91 Exhibit 66, Statement of HCP dated 2 February 2017 as amended, Coronial Brief, p. 1680.

92 Second Statement of AFM dated 10 February 2017, Coronial Brief, p. 420.

93 Second Statement of AFM dated 10 February 2017, Coronial Brief, p. 420.

94 Second Statement of AFM dated 10 February 2017, Coronial Brief, p. 421.

95 Second Statement of AFM dated 10 February 2017, Coronial Brief, p. 421.

96 Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1765; Exhibit 94, Email from First Constable Aidan Verdun to Detective Acting Sergeant Jim Tzefer dated 20 February 2017, Coronial Brief, p. 2534.

97 Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1766; Exhibit 94, Email from First Constable Aidan Verdun to Detective Acting Sergeant Jim Tzefer dated 20 February 2017, Coronial Brief, p. 2534.

## Offender's return to Raleigh Street

- 5.53 The Offender's movements over the following two-and-a-half hours remain unknown. However, it is apparent that the Offender returned to Raleigh Street at about 8.04 am. At the time, Nine Network Australia was broadcasting a report for live television on the Today Show. In the background of the live cross, the Offender can be seen pulling up in a vehicle on the wrong side of the road behind journalist Neary Ty. He hung out of the window, waving and yelling out in an attempt to attract attention before speeding off, fish-tailing the vehicle down the street, narrowly missing an oncoming vehicle. The incident occurred shortly after police and SES had packed up and left the scene.<sup>98</sup>
- 5.54 Approximately 10 minutes later, as the Nine Network crew was packing up its equipment, Ms Ty and cameraman Glenn Edwards again saw the vehicle with the same male driver return to the scene. The Offender parked on the side of the road and was still there when the Nine Network personnel left the scene.<sup>99</sup>

## Kidnapping of Ms Muo

- 5.55 Ms Muo had fallen asleep in Angelo's room after forensic police officers left the Raleigh Street scene. Ms Muo awoke to the Offender tapping her on the foot.<sup>100</sup> She later told investigators that this might have been at 7.00 am.<sup>101</sup> However, as police had left the Raleigh Street scene and the Offender appeared to be alone when he was sighted by Nine Network personnel at about 8.04 am, it is more likely this occurred at some time after 8.15 am.
- 5.56 The Offender told Ms Muo, 'There's no way in hell I'll let you out of my sight. I swear if police come I'll kill you, mum and me.'<sup>102</sup> Ms Muo believed he meant it and was scared, so she agreed to go with him. When the Offender went downstairs to wait for her, Ms Muo tried to turn on her phone to call police, but the Offender returned and asked her why she was taking so long. He grabbed her arm and took her downstairs to the vehicle, which was parked in the car park.<sup>103</sup>
- 5.57 As Ms Muo got into the vehicle, she saw the knife used to stab Angelo next to the handbrake. Ms Muo later told investigators:

I was begging him to go to the police and said he was just making it worse for himself. He kept holding my hand in the car, it wasn't in a good way but more of a way that I couldn't get away from him.

[The Offender] was driving crazy; he would speed up and then slow down because of the traffic. If he saw any silver cars he would say that was Murray Gentner... [The Offender] was speeding through red traffic lights; I think he hit about three cars. I kept telling him to stop, he kept telling me to shut up and that he could get away from the police even though at that point I hadn't seen any police. The way he was driving I just thought my life is gone and there was no way he was going to stop.<sup>104</sup>

98 Statement of Glenn Edwards dated 23 March 2017, Coronial Brief, p. 574; Statement of Neary Ty dated 21 March 2017, Coronial Brief, p. 1732; Channel 9 video recording from Raleigh Street, Windsor on 20 January 2017, (exhibit 357), Coronial Brief.

99 Statement of Glenn Edwards dated 23 March 2017, Coronial Brief, p. 574; Statement of Neary Ty dated 21 March 2017, Coronial Brief, p. 1732.

100 Second Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1339.

101 Second Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1339.

102 Second Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1339.

103 Second Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1339.

104 Second Statement of Akiir Muo dated 20 January 2017, Coronial Brief, pp. 1339–40.

- 5.58 Ms Muo was unable to escape until about 11.38 am, when CIRT units attempted to intercept the vehicle at Wurundjeri Way, as described in Part 6 of the Finding.

## Police response to the stabbing of Angelo

- 5.59 What follows is a chronology and analysis of the police response to the stabbing of Angelo. Some of the key issues examined during the Inquest included:
- a. the initial police response to the incident
  - b. police attempts to locate and arrest the Offender
  - c. request for assistance from CIRT
  - d. confusion of roles and responsibilities between police units
  - e. overnight handover to morning shifts
  - f. closure of crime scene
  - g. any potential prevention opportunities.

## Initial police response to the incident

### Overview of nightshift police units

- 5.60 Several police units responded to this incident overnight, including uniform, criminal investigation and other specialist units. For clarity, the units and supervising officers involved overnight are set out below.
- 5.61 Uniform units across the SMR included:
- a. Insp Mark Langhorn, the SMR Response Officer with call sign SMR 150. Insp Langhorn was responsible for higher-level management of the SMR, which comprised four divisions with up to two radio police channels and up to four senior sergeants per division reporting to him<sup>105</sup>
  - b. A/SSgt Adrian Filzek, the Divisional Patrol Supervisor for SMR Division 2 with call sign SMB 265<sup>106</sup>
  - c. Sgt Frank Caridi, the Patrol Supervisor for the Port Phillip Police Service Area covering the South Melbourne and St Kilda divisional areas, working with Constable Abigail Brook with call sign South 251<sup>107</sup>
  - d. Sgt David Ingram, the Patrol Supervisor for the neighbouring Glen Eira Bayside Police Service Area, covering the Elsternwick, Caulfield, Glen Huntly and Carnegie divisional areas with call sign Caulfield 252<sup>108</sup>
  - e. Sgt Peter Tasiopoulos, the Station Section Sergeant at St Kilda Police Station with call sign St Kilda 900<sup>109</sup>
  - f. FC Aidan Verdun, who was performing reception duties at St Kilda Police Station<sup>110</sup>

<sup>105</sup> Statement of Inspector Mark Langhorn dated 25 April 2017, Coronial Brief, p. 1208.

<sup>106</sup> Exhibit 89, Statement of Acting Senior Sergeant Adrian Filzek dated 1 February 2017, Coronial Brief, p. 621.

<sup>107</sup> Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 448; Statement of Constable Abigail Brook dated 5 March 2017, Coronial Brief, p. 377.

<sup>108</sup> Statement of Sergeant David Ingram dated 20 August 2019, Coronial Brief, p. 1047.

<sup>109</sup> Exhibit 61, Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1657.

<sup>110</sup> Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1764.

- g. St Kilda 310, a divisional van comprising SC Matt Thomason and Constable George Demos<sup>111</sup>
- h. St Kilda 311, a divisional van comprising FC Penny Ly and Constable Daniel Magee<sup>112</sup>
- i. South Melbourne 311, a divisional van comprising SC Steven Rea and FC Arissa Khanthakaew<sup>113</sup>
- j. Prahran 311, a divisional van comprising SC Tarryn McDonald and FC Melissa Borg.<sup>114</sup>

5.62 Criminal investigation units for SMR included:

- a. DA/SSgt Nathan Toey, Crime Supervisor, working with DSC Kellie Maher with call sign South 550<sup>115</sup>
- b. DA/Sgt Jim Tzefer<sup>116</sup> was the Divisional Crime Response unit for the Stonnington and Port Phillip areas, working with DSC Matthew Reid. Their call sign was South 541.<sup>117</sup>

5.63 Other police officers involved overnight included:

- a. A/Sgt Kalev Jones, who supervised the CIRT units. His call sign was CIRT 251<sup>118</sup> SSgt Ronelle Quin, the Police Shift Manager (**PSM**) at the Victoria Police Centre, State Emergency Communication Centre<sup>119</sup>
- b. DA/Sgt Claire Turner, the on-call Response Supervisor of Serious Crime Response Team (**SCRT**) 4<sup>120</sup>
- c. members of the Major Crime Scene Unit (**MCSU**), including Sgt Scott Harris, LSC Ross Burns and LSC Robert Huygen.<sup>121</sup>

5.64 In addition to the nightshift uniform units, a number of dayshift units assisted with crime scene guard duties later in the day. These included:

- a. Malvern 306, comprising SC Shane Ruwhiu and Constable George Yeoman. Their rostered shift commenced at 5.50 am<sup>122</sup>
- b. South Melbourne 307, a divisional van comprising SC Cody Mourad and FC Richard Camilleri. Their rostered shift commenced at 7.00 am<sup>123</sup>
- c. St Kilda 307, a divisional van comprising FC Aaron Henning and Constable Christopher Hughes.<sup>124</sup>

111 Statement of Constable George Demos dated 3 March 2017, Coronial Brief, p. 526.

112 Exhibit 86, Incident Report re stabbing of Angelo Gargasoulas dated 20 January 2017, Coronial Brief, p. 2053.

113 Second Statement of Senior Constable Steven Rea dated 15 February 2017, Coronial Brief, p. 1496.

114 Statement of First Constable Melissa Borg dated 21 January 2017, Coronial Brief, p. 358.

115 Exhibit 78, Statement of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, p. 1713; Statement of Detective Senior Constable Kellie Maher dated 3 August 2017, Coronial Brief, p. 1262.

116 At the time of this incident DA/Sgt Jim Tzefer was known as Dimitrios Tzeferemineos. He has since changed his name and is referred to in this Finding as DA/Sgt Jim Tzefer.

117 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1734; Exhibit 76, Statement of Detective Senior Constable Matthew Reid dated 20 January 2017, Coronial Brief, p. 4391.

118 Exhibit 103, Statement of Acting Sergeant Kalev Jones as amended dated 30 June 2017, Coronial Brief, p. 1121.

119 Exhibit 190, Statement of Senior Sergeant Ronelle Quin dated 22 June 2019, Coronial Brief, p. 1470.

120 Statement of Detective Senior Constable Claire Turner dated 3 March 2017, Coronial Brief, p. 1727.

121 Statement of Leading Senior Constable Robert Huygen dated 3 February 2017, Coronial Brief, p. 1045; Statement of Leading Senior Constable Ross Burns dated 27 January 2017, Coronial Brief, p. 405.

122 Statement of Senior Constable Shane Ruwhiu dated 21 February 2017, Coronial Brief, p. 1549; Statement of Constable George Yeoman dated 21 February 2017, Coronial Brief, p. 1904.

123 Exhibit 158, Statement of First Constable Richard Camilleri dated 20 January 2017, Coronial Brief, p. 427; Exhibit 164, Statement of Senior Constable Cody Mourad dated 20 January 2017, Coronial Brief, p. 1307.

124 Statement of First Constable Aaron Henning dated 6 April 2017, Coronial Brief, p. 990; Statement of Constable Christopher Hughes dated 22 February 2017, Coronial Brief, p. 1015.

## Police interaction with the Offender on Punt Road

- 5.65 At 2.16 am, police communications broadcast a report of a ‘priority one assault at... Raleigh Street, Windsor for two males fighting with a machete’,<sup>125</sup> followed by another report of ‘four people one with a machete. A female African or Sudanese, three Caucasian males and one of those males is armed with a machete wearing black jacket and white pants’.<sup>126</sup>
- 5.66 Two minutes later, SC Rea broadcast ‘this will be [the Offender] again’, referring to him by name. He continued, ‘He’s associated with an African female, so, yeah, so just all units beware.’<sup>127</sup>
- 5.67 South 541, comprising DA/Sgt Tzefer and DSC Reid, was a short distance from Raleigh Street on either High Street or Malvern Road at the time of the initial report on the radio.<sup>128</sup> They were in an unmarked police vehicle, driven by DSC Reid.<sup>129</sup> They travelled to the scene, south along Punt Road.<sup>130</sup>
- 5.68 At approximately 2.19 am, South 541 arrived at the intersection of Raleigh Street and Punt Road. It was raining at the time and the area was poorly lit, which limited visibility.<sup>131</sup> A truck driving north along Punt Road stopped at the intersection and two males alighted and ran over to South 541 to report that they had seen an unknown male being stabbed in Raleigh Street and that a black Audi had driven north along Punt Road. DSC Reid asked them to return to their truck and wait until the arrival of further police, who would be able to speak with them.<sup>132</sup>
- 5.69 South 541 immediately relayed on channel 03-01 their location at Punt Road and their interaction with the men from the truck.<sup>133</sup> They reported that it ‘possibly could have been a carjacking they’re saying, or attempted carjacking’.<sup>134</sup>
- 5.70 As DSC Reid drove south along Punt Road, he observed the Offender’s vehicle turn left out of Gladstone Street, onto Punt Road. DSC Reid knew the vehicle was listed as stolen and that it had been involved in an armed robbery the previous day. DSC Reid discussed his observations with DA/Sgt Tzefer and continued driving south along Punt Road until he reached the intersection of Union Street. He stopped at a red traffic control signal in a right-hand turning lane, waiting to perform a U-turn. While stationary, he watched the stolen Commodore pull up alongside them in the left-hand lane.<sup>135</sup>
- 5.71 DA/Sgt Tzefer lowered the passenger side window. The Offender was in the driver’s seat of the stolen vehicle with his window down and his torso half outside of the vehicle window. He yelled to DA/Sgt Tzefer and asked, ‘Are you Murray Gentner?’ DA/Sgt Tzefer replied, ‘No, but if you pull over to the side of the road, we can have a chat’. The Offender then asked where DSC Gentner was.<sup>136</sup>

125 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 1.

126 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 1.

127 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 2.

128 Transcript of evidence, pp. 1014, 1123. DA/Sgt Tzefer recalled that they were ‘coming down High Street approaching Punt Road’ while DSC Reid recalled that they were ‘on the Malvern Road area or somewhere’. Malvern Road and High Street run directly parallel to each other and both intersect Punt Road.

129 Transcript of evidence, pp. 1015, 1124.

130 Exhibit 76, Statement of Detective Senior Constable Matthew Reid dated 3 February 2017, Coronial Brief, p. 1507; Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1734.

131 Exhibit 76, Statement of Detective Senior Constable Matthew Reid dated 3 February 2017, Coronial Brief, p. 1507.

132 Exhibit 76, Statement of Detective Senior Constable Matthew Reid dated 3 February 2017, Coronial Brief, p. 1507; Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1734.

133 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 3. The transcript of the radio communication reported it was South 311. However this was clarified to be South 541 by DA/Sgt Tzefer at Inquest Transcript of evidence, p. 1021.

134 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, p. EX348-2 p. 3.

135 Exhibit 76, Statement of Detective Senior Constable Matthew Reid dated 3 February 2017, Coronial Brief, p. 1508; Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, pp. 1735–6.

136 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, pp. 1735–6.

- 5.72 The Offender continued to yell, swear and ramble for a few seconds, but DA/Sgt Tzefer and DSC Reid were unable to understand what he was saying. The Offender then heavily accelerated the stolen vehicle, spinning the wheels, and drove off at high speed, south along Punt Road. He turned left into Dandenong Road and out of sight.<sup>137</sup>
- 5.73 DA/Sgt Tzefer and DSC Reid did not pursue the Offender's vehicle. DSC Reid performed a U-turn and continued on to Raleigh Street where Prahran 311 was already at the scene of the reported stabbing. The South Melbourne 311 divisional van arrived shortly after.<sup>138</sup>

### Was it reasonable not to pursue the Offender's vehicle when it was first recognised?

- 5.74 Given their knowledge of the Offender, the decision of DA/Sgt Tzefer and DSC Reid to not pursue the Offender or broadcast their interaction with him at the time was scrutinised at Inquest.
- 5.75 The evidence of both police officers was that:
- a. they did not recall hearing South Melbourne 311's transmission at 2.18 am where SC Rea indicated the Offender was involved<sup>139</sup>
  - b. they were not aware the Offender had been nominated as a suspect for the incident at the time of their interaction with him<sup>140</sup>
  - c. their primary concern was to attend the job they had been dispatched to and protect the person/s from the reported stabbing and possible abduction<sup>141</sup>
  - d. they conducted a risk assessment of the situation, which took into account that the Offender's identity was known, he had a history of engaging or baiting police in pursuits, and that it was dark and raining heavily at the time.<sup>142</sup>
- 5.76 The Critical Incident Review Team, including AC Fontana, spoke with DA/Sgt Tzefer about his reasons for not pursuing the Offender after the events of Bourke Street.<sup>143</sup> DA/Sgt Tzefer explained to AC Fontana that had he known the Offender was suspected of the stabbing, it may have changed his decision not to pursue the Offender. However, he was unable to say whether he would have then pursued the Offender, noting that the wet conditions would have been dangerous for a pursuit. He conceded that he could have transmitted the encounter with the Offender to police communications and the other units earlier.<sup>144</sup> Satisfied with his response, AC Fontana made no criticism of South 541's decision not to pursue or follow the Offender when he sped off.
- 5.77 Neither Sgt Toey nor A/SSgt Filzek were aware that South 541 had come across the Offender on their way to the scene. However, both supported the decision made by South 541 not to pursue the Offender, noting that their priority was to respond to a serious stabbing incident and that they had no knowledge the Offender was responsible for it at the time. They also noted that the Offender appeared to be baiting police, and so it was unlikely he would have stopped even if they had pursued him.<sup>145</sup>

137 Transcript of evidence, p. 1017.

138 Exhibit 76, Statement of Detective Senior Constable Matthew Reid dated 3 February 2017, Coronial Brief, p. 1509; Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1736; Statement of First Constable Melissa Borg dated 21 January 2017, Coronial Brief, p. 359; Statement of Constable Arissa Khanthakaew dated 16 February 2017, Coronial Brief, p. 1155.

139 Transcript of evidence, pp. 1015, 1127, 1129.

140 Transcript of evidence, pp. 1019, 1022, 1129, 1151–2, 1155.

141 Transcript of evidence, pp. 1017, 1151–2.

142 Transcript of evidence, p. 1152.

143 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 190.

144 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 190.

145 Transcript of evidence, pp. 1229–31, 1465.

- 5.78 Counsel for CCP submitted that it was reasonable for DA/Sgt Tzefer to prioritise attendance at the crime scene over pursuing the Offender.<sup>146</sup>
- 5.79 I agree. I accept DA/Sgt Tzefer and DSC Reid made a risk assessment in accordance with their training, taking into account their knowledge of the Offender's propensity to bait police into pursuits, the wet and dark conditions and, due to the incident having just occurred, the ambiguity around the circumstances of the job and the serious nature of the incident to which they had been dispatched. I accept that it was appropriate for them to prioritise a response to the stabbing in Raleigh Street and the safety of any victims over attempting to apprehend the Offender who was not, at that stage, known by them have been involved in the incident.

### Should South 541 have broadcast earlier the Offender's location on Punt Road?

- 5.80 DA/Sgt Tzefer told DSC Reid not to immediately broadcast anything about their interaction with the Offender via police communications.<sup>147</sup> At Inquest, DA/Sgt Tzefer explained that he did not want to announce it to police units at that stage because he did not want anyone to be 'tainted' by two different jobs that might have been at play in relation to a major crime scene for the stabbing.<sup>148</sup> I understood DA/Sgt Tzefer meant here that he did not want to distract available members' focus, given the seriousness of the stabbing. He stated this was a risk management strategy because he wanted available members to go to the scene first.<sup>149</sup>
- 5.81 When DA/Sgt Tzefer became aware that the Offender was involved in the stabbing after arriving at the Raleigh Street scene, he asked DSC Reid to broadcast the details of their interaction with the Offender over the radio channel.<sup>150</sup> This transmission was broadcast approximately seven minutes after the encounter. DSC Reid stated the Offender had taken off 'south on Brighton Road<sup>151</sup> and then right somewhere. We lost sight of him and we didn't chase him.'<sup>152</sup> This occurred less than a minute after police communications had relayed details of Mr Scammell's telephone call to emergency services reporting the stabbing and the Offender's involvement in it.<sup>153</sup>
- 5.82 In cross-examination, DSC Reid agreed that it would have been beneficial for patrolling members to have been informed of the encounter because it would have provided other police with a point of reference for the Offender's last-known whereabouts and direction of travel.<sup>154</sup> However, he also noted that it was not possible to predict what a person would do and had no knowledge himself of the particular addresses the Offender was later known to have attended.<sup>155</sup> DSC Reid also clarified that he did not know how many units were available or whether any units would have been tasked to locate the Offender rather than being directed to the Raleigh Street crime scene.<sup>156</sup> He understood that 'everyone was coming to the stabbing because that was the new job, that was the more serious job than him driving off in a particular stolen vehicle at the time'.<sup>157</sup>

146 Transcript of oral submissions, p. 68.

147 Transcript of evidence, pp. 1017, 1058, 1062.

148 Transcript of evidence, pp. 1017-9, 1022.

149 Transcript of evidence, p. 1059.

150 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 190.

151 DSC Reid appears to have incorrectly transmitted that the Offender had taken off south on Brighton Road rather than Punt Road.

152 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 pp. 8-9.

153 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 8.

154 Transcript of evidence, pp. 1157-8.

155 Transcript of evidence, pp. 1157-8.

156 Transcript of evidence, p. 1158.

157 Transcript of evidence, p. 1155.

- 5.83 DA/Sgt Tzefer conceded in cross-examination that there was a missed opportunity for either his unit or for another unit to pursue the Offender had information about the encounter been disseminated.<sup>158</sup> However, DA/Sgt Tzefer ultimately stood by his decision not to immediately broadcast the interaction with the Offender in the circumstances.<sup>159</sup>
- 5.84 Counsel for the Families submitted that the failure to immediately notify other police units of the encounter on Punt Road was a missed opportunity to locate the Offender.<sup>160</sup> It was submitted that earlier notification of the Offender's whereabouts may have facilitated location of the vehicle in the area, particularly during the time he was at the Gatwick Hotel.<sup>161</sup> The Families considered that DA/Sgt Tzefer's explanation for not immediately broadcasting their encounter with the Offender was confounding and lacked credibility.<sup>162</sup> They submitted that, in contrast, DSC Reid had agreed that it would have given other officers the opportunity to locate the Offender if his location had been broadcast at the time they came across him.<sup>163</sup>
- 5.85 I note that once it was clear that the Offender was in fact involved in the stabbing incident, South 541 immediately relayed details of the encounter to police communications. This occurred only seven minutes after the encounter and less than a minute after police communications confirmed Mr Scammell had named the Offender as involved in the incident. Although responding police units may have been assisted by information about the encounter being provided seven minutes earlier, it is unclear what could or ought to have been done by police units at that time that would have led to the Offender being located and apprehended, taking into account their priorities at the time.
- 5.86 As submitted by Counsel Assisting, in considering whether an event constituted a 'missed opportunity', it is necessary to properly contextualise the 'missed opportunity', evaluate its dimensions and ascertain precisely what there was a missed opportunity to do.<sup>164</sup>
- 5.87 Counsel for CCP endorsed Counsel Assisting's reservations about the use of the terminology of 'missed opportunity'.<sup>165</sup> It was submitted it was loaded with value judgements and suggestive of options that may or may not reasonably have existed at the time.<sup>166</sup> It was further submitted that it takes a while to assemble the facts and to identify what has occurred and who is deemed responsible.<sup>167</sup>
- 5.88 There was no evidence before me to indicate that a police unit was available to search for the Offender at 2.20 am, given the uncertain circumstances of the reported stabbing and the fact that units had been directed to attend the incident scene as a 'priority one'. If a police unit had been available, it would have been entirely fortuitous for them to have come across the Offender at a time when he was outside his vehicle. Moreover, the Offender's prior history suggests that had he been located in his vehicle, it was more likely that he would attempt to engage police in a pursuit than obey any direction to stop.

158 Transcript of evidence, p. 1062.

159 Transcript of evidence, p. 1062.

160 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, pp. 11–2.

161 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 12.

162 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 12.

163 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 12.

164 Transcript of oral submissions, p. 8.

165 Transcript of oral submissions, p. 66.

166 Transcript of oral submissions, p. 66.

167 Transcript of oral submissions, p. 66.

5.89 I find that it is speculative to suggest that immediate transmission of South 541's encounter with the Offender on Punt Road may have facilitated his arrest at either of the locations he subsequently visited in St Kilda.<sup>168</sup> Despite the fact that DA/Sgt Tzefer recognised the Offender and knew he was wanted for the assault on Mr Wilson the previous night, I accept that they had been tasked to attend a stabbing at Raleigh Street and, at that stage, they were unaware the Offender was involved in that incident. I am satisfied that once DA/Sgt Tzefer was aware the Offender was involved, he instructed DSC Reid to broadcast their interaction, which was approximately seven minutes after they sighted him. Accordingly, I make no criticism of DA/Sgt Tzefer's decision to not immediately transmit details of South 541's encounter with the Offender to the other police units.

## Police attendance at Raleigh Street

- 5.90 Prahran 311, South 541 and South Melbourne 311 were on scene, having arrived around 2.22 am. St Kilda 310 arrived in the vicinity of Raleigh Street a couple of minutes later and patrolled the surrounding areas, including Windsor, the Alfred Hospital and St Kilda, trying to locate the black vehicle witnesses had reported leaving the scene, before returning to the scene to assist investigating members.<sup>169</sup>
- 5.91 Sgt Caridi (South Melbourne 251) arrived at the scene moments later, but, as there were already three units present, including criminal investigators, he decided to leave management of the scene with South 541 and attend the Alfred Hospital with Constable Brook to ascertain whether a victim had presented there with injuries.<sup>170</sup> Sgt Caridi requested the police station check with the local hospital to see if anyone had presented there,<sup>171</sup> and asked the responding divisional vans to clarify with witnesses whether an abduction had occurred.<sup>172</sup>
- 5.92 At Inquest, Sgt Caridi explained that he was looking for the victim in an effort to establish whether an offence had actually been committed and to search for further information about the incident.<sup>173</sup> He was joined at the Alfred Hospital by Sgt Toey and DSC Maher (South 550).<sup>174</sup>
- 5.93 When the police officers first arrived at Raleigh Street, they did not find any victims, relevant vehicles or offenders,<sup>175</sup> and there appeared to be some confusion as to what had occurred. Police communications on channel 03-01 relayed further reports of the incident, which included information that there had been a stabbing with a bottle and a possible abduction.<sup>176</sup> It is apparent that investigating officers had significant concerns regarding the wellbeing of the potential victim(s) in light of these reports.

168 Transcript of oral submissions, p. 68; Outline of Reply Submissions by the Chief Commissioner of Police dated 11 June 2020, pp. 12–3.

169 Statement of Constable George Demos dated 3 March 2017, Coronial Brief, pp. 526, 528.

170 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 448; Transcript of evidence, pp. 1281–2; Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 pp. 9–10.

171 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 6.

172 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 9.

173 Transcript of evidence, p. 1285.

174 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 449.

175 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 5.

176 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 pp. 7–8.

- 5.94 The attending units, including DA/Sgt Tzefer and DSC Reid entered the foyer of the apartment complex where they were met by Ms Muo and Ms Gargasoulas, who both appeared quite distressed.<sup>177</sup> Ms Muo and Ms Gargasoulas told the police officers that the Offender, in Ms Gargasoulas's apartment, had had an argument with Angelo that had continued all the way down into Raleigh Street, resulting in the Offender stabbing Angelo multiple times before his friends drove him away in a vehicle.<sup>178</sup> Ms Muo showed DSC Reid where the stabbing had occurred, and he saw a gold necklace lying on the road.<sup>179</sup>
- 5.95 At 2.35 am, DSC Reid provided an update to all units about the incident on channel 03-01. He reported:
- It's a domestic stabbing. At this stage [the Offender] has chased out his brother, Angelo Gargasoulas into Raleigh Street, pinned him down and stabbed him multiple times. Victim or witness who's here is saying that the victim's going to have some serious stab wounds to the face, possibly a slashed open face or similar.<sup>180</sup>
- 5.96 South 541 arranged for uniform members to cordon the scene.<sup>181</sup> FC Borg was tasked with crime scene guard duty and commenced a crime scene log to record all persons entering and leaving the scene.<sup>182</sup>
- 5.97 DSC Reid made a further broadcast at 2.37 am, identifying the Offender as the relevant suspect for both the stabbing and the earlier incident at The Esplanade McDonald's. He included a KALOF notice for the Offender, along with details of the stolen vehicle.<sup>183</sup> A short time later, at 2.43 am, Sgt Caridi confirmed that the victim, Angelo, was at the Alfred Hospital.<sup>184</sup>

## Enquiries at the Alfred Hospital

- 5.98 Sgt Caridi and Constable Brook arrived at the Alfred Hospital at about 2.28 am.<sup>185</sup> Sgt Caridi asked head nurse Tracy Allen if there had been any reports of a male receiving injuries from a knife attack. He was informed that a woman had just dropped off a man with injuries, and that she had just walked out. Sgt Caridi and Constable Brook ran outside but were unable to locate the woman.<sup>186</sup> Returning to the hospital, Sgt Caridi obtained further information from Ms Allen about the man who had been admitted with injuries, learning the injured man was Angelo, who had wounds to his face, neck and body, including a punctured lung. He was in a critical condition.<sup>187</sup> Sgt Caridi relayed this information to police units on channel 03-01 between about 2.43 am and 2.48 am.<sup>188</sup> Sgt Caridi also requested a copy of the CCTV footage of Angelo's arrival at the hospital.<sup>189</sup>

177 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1736; Exhibit 76, Statement of Detective Senior Constable Matthew Reid dated 3 February 2017, p. 1509.

178 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1734; Exhibit 76, Statement of Detective Senior Constable Matthew Reid dated 3 February 2017, p. 1509.

179 Exhibit 76, Statement of Detective Senior Constable Matthew Reid dated 3 February 2017, Coronial Brief, p. 1509; Exhibit 77, Handwritten Notes of Detective Senior Constable Matthew Reid dated 20 January 2017, Coronial Brief, p. 4392; Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, pp. 1736–8.

180 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 pp. 13–14; Exhibit 76, Statement of Detective Senior Constable Matthew Reid dated 3 February 2017, Coronial Brief, p. 1509.

181 Statement of First Constable Melissa Borg dated 21 January 2017, Coronial Brief, p. 359; Police Running Sheet for Prahran 311 dated 19–20 January 2017, Coronial Brief, p. 2003.

182 Statement of First Constable Melissa Borg dated 21 January 2017, Coronial Brief, p. 359; Police Running Sheet for Prahran 311 dated 19–20 January 2017, Coronial Brief, p. 2005.

183 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1738; Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 pp. 6, 15–16.

184 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 8.

185 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 pp. 9–10.

186 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 449; Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 pp. 10, 12, 17.

187 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 449.

188 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 pp. 17, 20.

189 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 449.

- 5.99 Sgt Caridi formed the impression that Angelo was unlikely to survive his injuries.<sup>190</sup> He knew the Offender to be ‘an extremely violent and erratic person who has displayed behaviour considered to be brazen and unpredictable’<sup>191</sup> and did not consider it to be out of the question for the Offender to attend the hospital and attempt to further injure Angelo.<sup>192</sup>
- 5.100 South 550 arrived at the Alfred Hospital at about 2.44 am<sup>193</sup> and liaised with Sgt Caridi who briefed them on Angelo’s condition.<sup>194</sup> Sgt Toey recalled being told by Ms Allen that Angelo was being treated for multiple stab wounds to the face, neck and chest, was unconscious and in an unstable, life-threatening condition.<sup>195</sup>
- 5.101 A secondary crime scene was established at the Alfred Hospital after police officers observed traces of blood on the footpath leading into the emergency area.<sup>196</sup> The police officers were advised by hospital staff that it appeared the weapon used against Angelo was a sharp blade. South 550 relayed this information to police units via radio at about 3.03 am, concluding that it was either a knife or a machete.<sup>197</sup>
- 5.102 At about this time, DA/Sgt Tzefer spoke with Sgt Caridi via telephone and received confirmation that the victim had been admitted to the Alfred Hospital and his condition was serious. Sgt Caridi informed him that he was coordinating with the ICU staff for the collection and security of the victim’s clothing, and sourcing CCTV footage from hospital security. Sgt Caridi reported that Sgt Toey and DSC Maher were on site and processing the Alfred Hospital scene.<sup>198</sup> This included obtaining Angelo’s clothing, taking photographs of blood on the footpath and collecting a series of swabs from the ground.<sup>199</sup>
- 5.103 While at the Alfred Hospital, Sgt Toey continued his management of the Raleigh Street crime scene. At 2.45 am, Sgt Toey recorded that he had a discussion by phone with DSC Reid, who provided him with an update on the Raleigh Street crime scene, information gleaned from Ms Muo and Ms Gargasoulas and details of the earlier incident at The Esplanade McDonald’s. Sgt Toey asked DSC Reid to separate all witnesses and that they be managed by detectives.<sup>200</sup> At 3.04 am, Sgt Toey asked police communications to notify the MCSU.<sup>201</sup>
- 5.104 At 3.20 am, Sgt Toey contacted SSgt Quin to request the assistance of the SCRT.<sup>202</sup> At 3.27 am, he briefed DSC Turner of the SCRT<sup>203</sup> who informed Sgt Toey that the offence did not meet the Accountability and Resource Model for the attendance of the SCRT 4<sup>204</sup> and the regions would need to take primacy of the investigation.

190 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017, Coronial Brief, p. 452; Transcript of evidence, p. 1286.

191 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017, Coronial Brief, p. 452.

192 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017, Coronial Brief, p. 452.

193 Exhibit 78, Statement of Sergeant Nathan Toey dated 31 March 2017, Coronial Brief, p. 1713.

194 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 449; Police Notes of Detective Senior Constable Kellie Maher dated 19 January 2017, Coronial Brief, p. 4288.

195 Exhibit 78, Statement of Sergeant Nathan Toey dated 31 March 2017, Coronial Brief, pp. 1713–4; Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, p. 4959.

196 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 449; Statement of Detective Senior Constable Kellie Maher dated 3 August 2017, Coronial Brief, p. 1263.

197 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 23.

198 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1739; Exhibit 72, Handwritten Notes of Detective Acting Sergeant Dimitrios Tzeferemineos, Coronial Brief, pp. 4976–7.

199 Statement of Detective Senior Constable Kellie Maher dated 3 August 2017, Coronial Brief, pp. 1262–3; Police Notes of Detective Senior Constable Kellie Maher dated 19 January 2017, Coronial Brief, p. 4288.

200 Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, p. 4960.

201 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 24.

202 Exhibit 190, Statement of Senior Sergeant Ronelle Quin dated 22 June 2017, Coronial Brief, p. 1470; Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, p. 4960.

203 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 24; Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, p. 4960.

204 At Inquest, Sgt Toey explained that Serious Crime Response Team (SCRT) 4 is responsible for general crime. A serious assault may end up being a murder that would fall into the category for which the SCRT may provide assistance, but because it was a stabbing with a known offender and being a serious injury, it fell into Category 2, a divisional responsibility: Transcript of evidence, p. 1190.

However, to assist the units on scene, she contacted SSgt Quin directly and arranged for the MCSU to attend.<sup>205</sup>

- 5.105 At about 3.24 am, Sgt Caridi and Sgt Toey spoke with the Clinical Operations Manager of the Alfred Hospital, Liz Gielen, who provided the details of Mr Santos and Ms Sanderson, who had dropped Angelo at the hospital.<sup>206</sup> Sgt Caridi advised Ms Gielen that due to Angelo's condition, he thought it would be preferable for a police member to remain with him in the event he expired and there was an opportunity for a dying declaration.<sup>207</sup> Sgt Caridi also suggested that it would be prudent to provide protection in case Angelo was attacked again.<sup>208</sup> He also requested CCTV footage. Ms Gielen declined to produce it without production of a warrant<sup>209</sup> and would not allow a police member to stay with Angelo because ICU staff were not comfortable with a police presence in the ward.<sup>210</sup>
- 5.106 At about 3.31 am, Sgt Toey received a briefing from DA/Sgt Tzefer via phone and decided to attend the Raleigh Street crime scene.<sup>211</sup> Sgt Toey and DSC Maher placed the exhibits in their police vehicle and left the Alfred Hospital at about 3.45 am.<sup>212</sup>
- 5.107 Sgt Caridi and Constable Brook left the Alfred Hospital at about 3.40 am and returned to the Raleigh Street crime scene. Before they left, Sgt Caridi asked Ms Allen to contact emergency services if they had any concerns about visitors for Angelo.<sup>213</sup> Around this time, Prahran 251 offered to take over Sgt Caridi's patch so that Sgt Caridi could coordinate the Raleigh Street job.<sup>214</sup>

## Crime scene management at Raleigh Street

- 5.108 A number of additional uniform units were requested and attended the Raleigh Street crime scene. DA/Sgt Tzefer briefed them about the known circumstances and allocated to each member duties including guarding the primary and secondary scenes, taking witness statements, door knocking and canvassing the immediate area for possible witnesses, and obtaining CCTV footage.<sup>215</sup> Police communications on channel 03-01 issued a KALOF for the vehicle, and advised units to seek further directions on air if they came across the Offender.<sup>216</sup>
- 5.109 At approximately 4.00 am, Constable Brook was directed by DSC Reid to leave the scene to collect CCTV footage of the Raleigh Street apartment complex from the time of the stabbing, which was held off site in Port Melbourne. She left the scene at about 4.03 am.<sup>217</sup> Sgt Caridi remained at Raleigh Street.

205 Statement of Detective Senior Constable Claire Turner dated 3 March 2017, Coronial Brief, p. 1728; Police Notes of Detective Senior Constable Claire Turner dated 20 January 2017, Coronial Brief, p. 4972; Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, p. 4961.

206 Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, p. 4960; Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 449.

207 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 449.

208 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 449.

209 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 450.

210 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 450.

211 Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, p. 4960; Exhibit 78, Statement of Sergeant Nathan Toey dated 31 March 2017, Coronial Brief, p. 1714.

212 Statement of Detective Senior Constable Kellie Maher dated 3 August 2017, Coronial Brief, p. 1263; Police Notes of Detective Senior Constable Kellie Maher dated 19 January 2017, Coronial Brief, p. 4289; Exhibit 78, Statement of Sergeant Nathan Toey dated 31 March 2017, Coronial Brief, p. 1714; Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, pp. 4961–2.

213 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 450.

214 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 pp. 26–7.

215 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1738; Exhibit 72, Handwritten Notes of Detective Acting Sergeant Dimitrios Tzeferemineos, Coronial Brief, p. 4976; Statement of Constable George Demos dated 3 March 2017, Coronial Brief, p. 528.

216 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 20.

217 Statement of Constable Abigail Brook dated 5 March 2017, Coronial Brief, p. 378; Notes of Constable Abigail Brook dated 20 January 2017, Coronial Brief, p. 2016; Exhibit 77, Handwritten Notes of Detective Senior Constable Matthew Reid dated 20 January 2017, p. 4394. I should note that, in his statement, DSC Reid stated, at approximately 4.29 am, he directed Constable Brook to pick up the CCTV footage. However, an examination of DSC Reid's notes indicates that he likely made an error in reviewing his notes to make his statement, because his notes, which appear to have been written at 4.29 am, state that 'Approx 0400 requested C/Brooke to ... pkp the CCTV footage'.

- 5.110 Sgt Toey and DSC Maher arrived at the Raleigh Street crime scene at about 3.53 am. DA/Sgt Tzefer held a briefing about the current status and progress of the investigation.<sup>218</sup> This included information regarding the statements being obtained by various witnesses, the identity of the crime scene guard FC Borg, canvassing of neighbouring apartments for witnesses and the assault and robbery that had occurred on 18 January 2017.<sup>219</sup> Sgt Toey was also aware enquiries were being conducted at St Kilda Police Station as to the whereabouts of the vehicle and the Offender, as previously detailed.<sup>220</sup>
- 5.111 The MCSU was called to attend the Raleigh Street crime scene at about 4.00 am and arrived approximately an hour later.<sup>221</sup> MCSU members examined the crime scene and took photographs. They also collected the gold chain from the roadway.<sup>222</sup> MCSU cleared the scene at about 7.05 am.<sup>223</sup>

## Request for CIRT

- 5.112 At approximately 4.20 am, Sgt Caridi contacted the Critical Incident Response Team (**CIRT**) and spoke to A/Sgt Kalev Jones and requested assistance with the arrest of the Offender. This request was subject to considerable dispute and is discussed later in this part of the Finding.

## Updates on Angelo's condition

- 5.113 At about 4.20 am, DSC Maher telephoned the Alfred Hospital to obtain an update on Angelo's condition. She was advised that there had been no change; he remained in a critical and life-threatening condition.<sup>224</sup> She relayed this information to DA/SSgt Toey who recorded the update in his notes.<sup>225</sup>
- 5.114 At about 5.09 am, DSC Maher telephoned the Alfred Hospital again for a further update but was told that information would not be provided over the phone. DSC Maher then attended the Alfred Hospital and was informed that Angelo was stable and would have surgery later that morning. She was informed Angelo had a punctured lung and lacerations to his arms, face and neck but that he was no longer in a critical or life-threatening condition. DSC Maher returned to Raleigh Street at about 5.30 am and advised Sgt Toey of Angelo's current condition<sup>226</sup>, who then relayed this information to DA/Sgt Tzefer.<sup>227</sup>

## Statements from witnesses

- 5.115 Police officers obtained witness statements from Ms Muo, Ms Gargasoulas and Mr Scammell and independent witnesses of Angelo's stabbing, including those who had contacted emergency services. Statements were taken at various locations within the apartment complex and at nearby police stations, and involved a significant contingent of uniform and criminal investigation units.

218 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1741; Exhibit 72, Handwritten Notes of Detective Acting Sergeant Dimitrios Tzeferemineos, Coronial Brief, p. 4978.

219 Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, pp. 4962–3; Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1741; Exhibit 72, Handwritten Notes of Detective Acting Sergeant Dimitrios Tzeferemineos, Coronial Brief, p. 4978.

220 Exhibit 78, Statement of Sergeant Nathan Toey dated 31 March 2017, Coronial Brief, p. 1714.

221 Statement of Leading Senior Constable Ross Burns dated 27 January 2017, Coronial Brief, p. 405; Police Notes of Leading Senior Constable Ross Burns dated 20 January 2017, Coronial Brief, p. 2036.

222 Statement of Leading Senior Constable Ross Burns dated 27 January 2017, Coronial Brief, p. 405; Police Notes of Leading Senior Constable Ross Burns dated 20 January 2017, Coronial Brief, p. 2036; Statement of Robert Huygen dated 3 February 2017, Coronial Brief, pp. 1045–6.

223 Police Notes of Leading Senior Constable Ross Burns dated 20 January 2017, Coronial Brief, p. 2036.

224 Police Notes of Detective Senior Constable Kellie Maher dated 19 January 2017, Coronial Brief, p. 4290.

225 Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, p. 4963.

226 Statement of Detective Senior Constable Kellie Maher dated 3 August 2017, Coronial Brief, pp. 1263–4; Police Notes of Detective Senior Constable Kellie Maher dated 19 January 2017, Coronial Brief, p. 4291; Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, p. 4964.

227 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1741; Exhibit 72, Handwritten Notes of Detective Acting Sergeant Dimitrios Tzeferemineos, Coronial Brief, p. 4980.

5.116 At about 4.50 am, DSC Reid identified the registration of the Audi linked to the stabbing and was tasked by Sgt Toey to obtain a statement from the owner, Mr Santos.<sup>228</sup> DSC Reid arranged to meet Mr Santos at Southbank Police Station and, over the following two-and-a-half hours, took a statement from him. After inspecting Mr Santos's vehicle and taking photographs, DSC Reid then drove to St Kilda Police Station where he handed Mr Santos's statement to DSC White.<sup>229</sup> He was present during the briefing conducted by DA/Sgt Tzefer to Port Phillip CIU detectives at approximately 9.00 am, which is detailed in Part 6 of this Finding.

### Facebook message to Ms Muo

5.117 At approximately 4.26 am, Ms Muo saw that she had received a Facebook Messenger message from the Offender at 4.08 am. The message read 'call me do not go on without me I will kill all babe'.<sup>230</sup> Ms Muo immediately showed this message to SC Rea, who had just finished taking her statement.<sup>231</sup>

5.118 Ms Muo took a screenshot of the message at about 4.28 am and provided a copy of the message to investigating police.<sup>232</sup> SC Rea sent a copy of the message at about 4.40 am to DA/Sgt Tzefer who, in turn, relayed this information to Sgt Tasiopoulos and Sgt Toey.<sup>233</sup>

### Priority given to resolution strategy

5.119 There were two principal aspects of the police response to Angelo's stabbing. First, there was the requirement to properly investigate the crime. This included securing, searching, recording and processing the crime scene and any physical exhibits. It also included locating witnesses and recording their evidence. Second, there was the need to locate, arrest, interview and charge the Offender, once he was identified as a suspect. He was, of course, already wanted in connection with the earlier assault and robbery of Mr Wilson.

5.120 The evidence of Sgt Toey and A/SSgt Filzek was that the investigation activities at the Raleigh Street crime scene were given primacy over arresting the Offender. In this case, the Raleigh Street scene was difficult to manage.<sup>234</sup> It extended over a wide area, and preserving and processing the scene was complicated by darkness and rain. The police investigators also had to consider a secondary crime scene at the Alfred Hospital, where a blood trail was evident near the entrance to the Emergency Department. Indeed, in the first few hours after the attack, it was not known whether Angelo would live or die, and responding police units were aware that this was potentially a homicide investigation.<sup>235</sup>

5.121 I accept that investigating officers were required to and did in fact take appropriate steps to preserve the crime scene and gather all relevant evidence. Significant police resources were necessary to guard and process the crime scene, canvass a large apartment complex, and take statements from several witnesses.

228 Exhibit 78, Statement of Sergeant Nathan Toey dated 31 March 2017, Coronial Brief, p. 1714.

229 Exhibit 76, Statement of Detective Senior Constable Matthew Reid dated 3 February 2017, Coronial Brief, pp. 1510-1; Exhibit 77, Handwritten Notes of Detective Senior Constable Matthew Reid dated 20 January 2017, Coronial Brief, pp. 4395-7; Statement of Nicholas Santos dated 20 January 2017, Coronial Brief, pp. 1567-8.

230 Exhibit 75, Screenshot of Facebook Message from the Offender to Akiir Muo dated 20 January 2017, Coronial Brief, p. 4375.

231 Second Statement of Senior Constable Steven Rea dated 15 February 2017, Coronial Brief, p. 1496; Police Notes of Senior Constable Steven Rea dated 19 January 2017, Coronial Brief, pp. 4364-5; Exhibit 75, Screenshot of Facebook Message from the Offender to Akiir Muo dated 20 January 2017, Coronial Brief, p. 4375.

232 Exhibit 75, Screenshot of Facebook Message from the Offender to Akiir Muo, Coronial Brief, p. 4375; Second Statement of Senior Constable Steven Rea dated 15 February 2017, Coronial Brief, p. 1497.

233 Second Statement of Senior Constable Steven Rea dated 15 February 2017, Coronial Brief, p. 1497; Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, pp. 1740-1

234 Transcript of evidence, pp. 1200, 1515.

235 Transcript of evidence, pp. 1061, 1189.

- 5.122 However, it was also clear that the Offender had to be arrested as soon as possible. The attack on Angelo was extraordinarily violent and occurred less than 28 hours after the Offender assaulted Mr Wilson. He was also known to be driving a stolen vehicle and may have been still armed with a knife. Further, by 4.28 am, investigating police officers were aware that the Offender had sent a Facebook Messenger message to Ms Muo that read ‘call me do not go on without me I will kill all babe’. These facts, coupled with any reasonable assessment of his dangerousness and the Offender’s criminal history, led inexorably to the conclusion that his prompt arrest also needed to be given high priority.
- 5.123 The following paragraphs examine the efforts by investigating units overnight to locate and arrest the Offender, including by way of triangulation, location-based searches (**LBS**) and requests for specialist resources.

## Police attempts to locate and arrest the Offender

### Telephone contact with the Offender

- 5.124 At around 2.35 am, DA/Sgt Tzefer contacted Sgt Tasiopoulos, who was stationed at St Kilda Police Station, and briefed him about the known circumstances of the incident in Raleigh Street. DA/Sgt Tzefer informed Sgt Tasiopoulos that the suspect was the same individual wanted for the robbery of Mr Wilson the previous day. He provided Sgt Tasiopoulos with the phone numbers of mobile phones believed to be in the Offender’s possession and asked him to arrange for triangulation of the Offender’s location via the D24 online supervisor.<sup>236</sup>
- 5.125 After speaking to Sgt Tasiopoulos, FC Verdun, who was on duty at St Kilda Police Station, attempted to ring the mobile phones believed to be in the possession of the Offender: a phone registered to his mother (the Offender’s phone) and a phone stolen from Mr Wilson the previous night.<sup>237</sup> FC Verdun’s intention was to identify which phone the Offender was using and to then keep him on the phone to assist investigators locate him and facilitate an arrest.<sup>238</sup> In doing so, FC Verdun acted on his own initiative in an effort to assist investigators on the ground.<sup>239</sup> FC Verdun tried calling both phones, but only the phone registered to Ms Gargasoulas was picked up.<sup>240</sup>
- 5.126 That call occurred at about 3.03 am.<sup>241</sup> The Offender answered the phone with, ‘Gentner, is that you?’<sup>242</sup> FC Verdun pretended to be DSC Gentner to try and engage the Offender and keep him on the phone.<sup>243</sup> He told the Offender that he needed to speak with him. The Offender was reportedly sceptical at first, said he could only trust DSC Gentner and spoke of a comet heading towards earth.<sup>244</sup> FC Verdun attempted to calm the Offender and invited him to attend St Kilda Police Station to discuss the situation.<sup>245</sup> However, the Offender replied with the demand, ‘Call me back in 15 minutes. I need to know if I can trust you.’<sup>246</sup> The call lasted about 90 seconds.<sup>247</sup>

236 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1739; Transcript of evidence, p. 1027.

237 Transcript of evidence, p. 1537.

238 Transcript of evidence, pp. 1537–8, 1540.

239 Transcript of evidence, pp. 827, 1537.

240 Transcript of evidence, p. 1537.

241 In his statement and typed notes of the events of 20 January 2017, First Constable Verdun recalled that he first contacted the Offender at 2.45 am, at 3.05 am and at some time after 4.30 am. However, the record of calls between St Kilda Police Station and the Offender’s phone (registered to Ms Gargasoulas) indicates that the first call took place at about 3.03 am. Two further successful calls were made at 3.36 am and 4.57 am. At Inquest, FC Verdun accepted in cross-examination that his recollection of the timings of these calls was a ‘little bit out’: Transcript of evidence, p. 1554. In this Finding, I have adopted the timings of the telephone calls as recorded by St Kilda Police Station, given they provide an objective and uncontentious record of the timing of these calls. See Exhibit 96, Record of Calls between St Kilda Police Station and the Offender’s Mobile, Coronial Brief, p. 3797.

242 Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1764.

243 Transcript of evidence, pp. 1538–9.

244 Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1764.

245 Transcript of evidence, p. 1539.

246 Transcript of evidence, p. 1539.

247 Exhibit 96, Record of Calls between St Kilda Police Station and the Offender’s Mobile, Coronial Brief, p. 3797.

- 5.127 FC Verdun informed Sgt Tasiopoulos that he had managed to contact the Offender via phone and that the Offender sounded psychotic and was making irrational references to a 'comet ... heading towards earth' and that the 'police and the government were watching him from above'.<sup>248</sup> He also told Sgt Tasiopoulos that the Offender had believed he was speaking with DSC Gentner.<sup>249</sup>
- 5.128 Sgt Tasiopoulos instructed FC Verdun to continue trying to contact the Offender and to let him think he was DSC Gentner, given the Offender appeared to have a rapport with the detective that may be used to convince him to surrender himself to police.<sup>250</sup>
- 5.129 Anticipating risks in the event the Offender attended the St Kilda Police Station, Sgt Tasiopoulos held a briefing with all staff on duty at the station and placed them on high alert. He set out contingencies for an arrest, cleared the front reception area of all non-police personnel and notified investigators at Raleigh Street via police communications.<sup>251</sup>
- 5.130 At about 3.36 am, FC Verdun telephoned the Offender again.<sup>252</sup> The Offender answered, saying, 'Gentner I need to trust you, but you called 20 minutes not 15, sir.'<sup>253</sup> FC Verdun attempted to engage with the Offender and spoke to him about coming to chat with him at St Kilda. FC Verdun thought the Offender sounded 'quite drug-affected and also erratic, with the tone of his voice calm one minute and erratic the next'.<sup>254</sup> The second call lasted about 11 minutes.<sup>255</sup>
- 5.131 Meanwhile, Sgt Tasiopoulos requested triangulation of the Offender's phone through the PCC and this request was refused. After FC Verdun's second telephone call with the Offender, Sgt Tasiopoulos informed FC Verdun of the request's denial. FC Verdun subsequently liaised with a member of the Special Projects Unit (**SPU**) who prepared an Integrated Public Number Database (**IPND**) and LBS request.<sup>256</sup>
- 5.132 After spending some time obtaining authorisation for LBS of the Offender's phone, FC Verdun called the Offender again at 4.57 am.<sup>257</sup> The purpose of this third call was to continue to get 'pings' on the phone and to establish the Offender's location, rather than to convince the Offender to surrender.<sup>258</sup>
- 5.133 According to FC Verdun, the Offender 'preached' to him during this call, describing himself as 'the chosen one' or 'the saviour' and warned FC Verdun of a comet that would hit soon. The Offender also spoke about his brother, Mr Santos and the fight that had occurred. He told FC Verdun several times that the assault on Angelo happened because Angelo had deceived him. He also added that he had asked everyone to sit at the table and just talk and that he was not going to 'kill anyone'.<sup>259</sup>

248 Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1764.

249 Exhibit 61, First Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1657; Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1764; Exhibit 93, Typed Notes of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 4986.

250 Exhibit 63, Notes of Sergeant Peter Tasiopoulos dated 20 January 2017, Coronial Brief, p. 4608.

251 Transcript of evidence, p. 828; Exhibit 61, First Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1657.

252 Exhibit 96, Record of Calls between St Kilda Police Station and the Offender's Mobile, Coronial Brief, p. 3797.

253 Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1764.

254 Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, pp. 1764–5; Exhibit 93, Typed Notes of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 4986.

255 Exhibit 96, Record of Calls between St Kilda Police Station and the Offender's Mobile, Coronial Brief, p. 3797.

256 Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1765; Exhibit 93, Typed Notes of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 4986; Exhibit 63, Notes of Sergeant Peter Tasiopoulos, Coronial Brief, p. 4608.

257 Exhibit 96, Record of Calls between St Kilda Police Station and the Offender's Mobile, Coronial Brief, p. 3797.

258 Transcript of evidence, pp. 1555–6.

259 Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1765.

- 5.134 The Offender did not provide FC Verdun with any information about his location or intentions and did not suggest he would surrender, although it was noted that the Offender appeared to be close to the police station given the location of the ‘pings’ of the phone.<sup>260</sup> FC Verdun thought the Offender was potentially under the influence of drugs or alcohol or had mental health issues.<sup>261</sup>
- 5.135 Sgt Tasiopoulos, who listened to FC Verdun’s calls with the Offender, noted that the Offender became ‘increasingly agitated and difficult to communicate with. He was not making much sense and kept insisting that a comet would hit earth and that he believed there was a bunker beneath the Prahran library’.<sup>262</sup> Sgt Tasiopoulos relayed the substance of these conversations to DA/Sgt Tzefer.<sup>263</sup>
- 5.136 In the first and second calls, FC Verdun’s secondary objective was to see if he could get the Offender to come into the police station and willingly give himself up.<sup>264</sup> At Inquest, FC Verdun stated that the Offender was willing to listen to him and thought there was a potential that the Offender was contemplating coming in. However, when the Offender mentioned going to an underground bunker in Prahran in the second call, FC Verdun discounted any chance of surrender.<sup>265</sup>
- 5.137 Counsel Assisting submitted that, over these two–three hours, FC Verdun and Sgt Tasiopoulos were instrumental in obtaining authorisation for LBS services, initiating the pings on the Offender’s phone and feeding that information back into the field.<sup>266</sup>
- 5.138 Counsel for the Families submitted that FC Verdun should be commended for the initiative he had taken in contacting the Offender to identify which phone he was using, and then engaging him in conversation to keep him on the phone long enough to ‘ping’ the Offender’s phone.<sup>267</sup>
- 5.139 I agree with this assessment and commend FC Verdun and Sgt Tasiopoulos for their proactive and positive policing response in their attempt to locate the Offender. This was intelligent policing and provided valuable information to investigators about the Offender’s state of mind and his potential whereabouts. There is no doubt they both have bright futures with Victoria Police.

## Requests for triangulation and location-based searches

- 5.140 Triangulation and LBS services are investigative tools used by Victoria Police to determine the location of a mobile phone handset in real time. The accuracy of triangulation and LBS can be affected by several factors, including the proximity of serving phone cell towers. However, these tools still enable investigators to identify the general area in which the mobile phone is roaming and assist them to locate offenders.<sup>268</sup> The stronger the signal and the larger the number of cell towers in an area, the more accurate the location these services can provide.<sup>269</sup>

260 Transcript of evidence, p. 1556.

261 Transcript of evidence, p. 1539.

262 Exhibit 61, Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1658.

263 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1740.

264 Transcript of evidence, p. 1540.

265 Transcript of evidence, p. 1540.

266 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 56.

267 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 10.

268 Exhibit 209, Statement of Superintendent Stephen White dated 23 December 2019, p. AM 95-1

269 Exhibit 209, Statement of Superintendent Stephen White dated 23 December 2019, p. AM 95-2

- 5.141 The terms triangulation and LBS refer to two different methods by which data is captured from the mobile network to locate a mobile phone but are often used interchangeably by Victoria Police members because they provide similar results, namely, a map marked with an approximate location of the mobile phone at a point in time.<sup>270</sup> The result of triangulation and LBS is presented in a mapping product that shows the most likely location of the mobile phone, which can cover an area varying in size from a street corner to an entire suburb.<sup>271</sup> The response is colloquially referred to in Victoria Police as a ‘ping’ or ‘pinging’ of a mobile phone.<sup>272</sup>
- 5.142 At the time of these events, two options were available to Victoria Police members to make a request for triangulation or LBS, each governed by separate legislative provisions:
- a. section 287 of the *Telecommunications Act 1997* (Cth) (**Telecommunications Act**)
  - b. section 180 of the *Telecommunications (Interception and Access) Act 1979* (Cth) (**Interception and Access Act**).<sup>273</sup>
- 5.143 The first option involved contacting the PSM, a Senior Sergeant at the Police Communication Centre (PCC). In this case, the relevant member was SSgt Quin. The PSM may authorise a request for triangulation or LBS where it is ‘reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of a person’.<sup>274</sup> If the PSM believes the request meets this criteria, they can enter the request through the relevant service provider’s electronic information technology platform and provide the response to the requesting member. This process operates on a 24/7 basis and is free of charge.<sup>275</sup> It also enables immediate triangulation.
- 5.144 The second option involved contacting either the State Intelligence Division (during business hours) or the SPU (after hours). A request for triangulation or LBS is submitted to a Certifying Officer at the rank of Inspector or above. In this case, the relevant member was Insp Langhorn. The Certifying Officer may authorise the request for disclosure if they are satisfied, in accordance with s. 180 of the *Interception and Access Act*, that disclosure of such information is ‘reasonably necessary for the investigation of a serious offence or an offence against a law of the Commonwealth, a State or a Territory that is punishable by imprisonment for at least 3 years’.<sup>276</sup> Requests for triangulation and LBS by frontline police and investigators are made via the Request Management System (**RMS**) platform.<sup>277</sup> Such requests take between two–fifteen minutes, depending on the carrier, and incur costs that vary between service providers and must be met by the requesting member’s unit.<sup>278</sup>
- 5.145 This Inquest highlighted discrepant interpretation and application of the provisions of the two Acts and Victoria Police policy.
- 5.146 At about 3.30 am, at the request of DA/Sgt Tzefer, Sgt Tasiopoulos telephoned SSgt Quin, the PSM at the State Emergency Communication Centre, to request a triangulation of the Offender’s phone.<sup>279</sup> She advised Sgt Tasiopoulos that because they were looking for an offender and there was no imminent threat to life or health, she could not process his request. She suggested that he contact the SPU of Victoria

270 Exhibit 209, Statement of Superintendent Stephen White dated 23 December 2019, p. AM 95-7.

271 Exhibit 209, Statement of Superintendent Stephen White dated 23 December 2019, p. AM 95-2.

272 Exhibit 209, Statement of Superintendent Stephen White dated 23 December 2019, pp. AM 95-2-3.

273 Exhibit 209, Statement of Superintendent Stephen White dated 23 December 2019, p. AM 95-3.

274 *Telecommunications Act 1997* (Cth), s. 287.

275 *Telecommunications Act 1997* (Cth), s. 287; Exhibit 209, Statement of Superintendent Stephen White dated 23 December 2019, pp. AM 95-3-4.

276 *Telecommunications (Interception and Access) Act 1979* (Cth), s. 180(4); Exhibit 209, Statement of Superintendent Stephen White dated 23 December 2019, pp. AM 95-4-5.

277 Exhibit 209, Statement of Superintendent Stephen White dated 23 December 2019, p. AM 95-2.

278 Exhibit 209, Statement of Superintendent Stephen White dated 23 December 2019, p. AM 95-7.

279 Transcript of evidence, p. 843; Exhibit 190, Statement of Senior Sergeant Ronelle Quin dated 22 June 2017, Coronial Brief, p. 1470.

Police because they had the ability to triangulate the mobile phone using a different legislative provision.<sup>280</sup>

- 5.147 Sgt Tasiopoulos relayed the result of this conversation to DA/Sgt Tzefer and informed him that FC Verdun had made contact with the Offender. DA/Sgt Tzefer asked Sgt Tasiopoulos to process a RMS web trace on the Offender’s mobile phone number.<sup>281</sup> DA/Sgt Tzefer then informed A/SSgt Filzek of this conversation and that the Offender had used his mother’s mobile phone to contact St Kilda Police Station. A/SSgt Filzek was told a plan was in place to attempt to negotiate the Offender’s surrender at the St Kilda Police Station.<sup>282</sup>

## Request made to the PSM

- 5.148 While FC Verdun was in contact with the Offender, DA/Sgt Tzefer advised Sgt Tasiopoulos to make an urgent request to the PSM. At 3.30 am, Sgt Tasiopoulos contacted SSgt Quin to make the request because he believed there was an imminent threat of harm.<sup>283</sup>
- 5.149 In evidence, SSgt Quin explained that it is the responsibility of requesting members to provide the PSM with as much information as they can to assist with forming an opinion as to whether the request fulfils the criteria set out in s. 287 of the Telecommunications Act.<sup>284</sup> In making her decision, SSgt Quin took into account the then applicable Victoria Police procedures for a call trace and information enquiry under s. 287, which set out that the threat to life or health of a person must be actual and imminent at the time of the request. During her evidence, she provided some examples of what that is considered to be, including threats to kill or seriously injure, threat to explode a bomb, an extortion demand (but not threats to property), a kidnapping or abduction in progress, a threat to public safety or threats to take one’s own life or self-inflict injury.<sup>285</sup>
- 5.150 Under cross-examination, Sgt Tasiopoulos stated that, in his mind, with the information available to him and that which he conveyed to SSgt Quin, he believed that the request was reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of a person.<sup>286</sup> He was concerned about the victim and the general community as the Offender remained at large.<sup>287</sup>
- 5.151 Sgt Tasiopoulos’s evidence was that, in making the request, he had told SSgt Quin about the incident at Raleigh Street, including that someone had received injuries allegedly as a result of a knife attack and that the person of interest was speaking to one of the constables at the time and they wanted to try and triangulate the Offender’s phone.<sup>288</sup> Sgt Tasiopoulos could not recall whether he told SSgt Quin that, in anticipation of the risks associated with the Offender attending St Kilda Police Station. He had placed staff at the police station on high alert, had instructed non-essential staff not to occupy the front desk or that he had instructed staff to be armed and wear their tactical vests.<sup>289</sup> Sgt Tasiopoulos conceded that was ‘pretty important information’ to relay to SSgt Quin.<sup>290</sup>

280 Exhibit 61, First Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1658; Exhibit 63, Notes of Sergeant Peter Tasiopoulos dated 20 January 2017, Coronial Brief, p. 4608; Exhibit 190, Statement of Senior Sergeant Ronelle Quin dated 22 June 2017, Coronial Brief, p. 1470; Transcript of evidence, p. 3350.

281 Transcript of evidence, pp. 829, 839; Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, pp. 1739–40; Exhibit 72, Handwritten Notes of Detective Acting Sergeant Dimitrios Tzeferemineos, Coronial Brief, p. 4976.

282 Exhibit 89, Statement of Acting Senior Sergeant Adrian Filzek dated 1 February 2017, Coronial Brief, p. 622; Transcript of evidence, p. 1443.

283 Transcript of evidence, pp. 843–4; Exhibit 190, Statement of Senior Sergeant Ronelle Quin dated 22 June 2017, Coronial Brief, p. 1470; Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1739.

284 Transcript of evidence, p. 3338.

285 Transcript of evidence, pp. 3335–6.

286 Transcript of evidence, p. 844.

287 Transcript of evidence, pp. 844–5.

288 Transcript of evidence, p. 840.

289 Transcript of evidence, p. 840.

290 Transcript of evidence, p. 840.

- 5.152 Ultimately, based on the information Sgt Tasiopoulos provided to her, SSgt Quin determined that the request did not meet the criteria of s. 287 of the Telecommunications Act and she, therefore, denied it. She recommended instead that Sgt Tasiopoulos contact the SPU.<sup>291</sup> Although Sgt Tasiopoulos did not have a recollection of being told this, he did not dispute it.<sup>292</sup>
- 5.153 Shortly after Sgt Tasiopoulos had spoken to SSgt Quin, Sgt Caridi also called her to request triangulation of the Offender's phone.<sup>293</sup> He said he expressed his concern that the Offender had a propensity for extreme violence and, while at large, was a danger to members of the public.<sup>294</sup> He said his request was denied because it did not meet the criteria.<sup>295</sup> He was not aware that Sgt Tasiopoulos had already made a request or that he was now making arrangements to go through the SPU to gain authorisation for triangulation of the Offender's phone.<sup>296</sup>
- 5.154 Sgt Caridi stated that he explained the situation to SSgt Quin and expressed concern about the Offender's propensity for extreme violence and the danger he presented to members of the public while at large.<sup>297</sup> SSgt Quin again refused the request, reiterating the advice she had previously provided to Sgt Tasiopoulos.<sup>298</sup> Sgt Caridi advised A/SSgt Filzek at about 4.05 am that the triangulation request was declined.<sup>299</sup>
- 5.155 At Inquest, SSgt Quin noted that she was 'confused as to who was in charge at that point'<sup>300</sup> and asked Sgt Caridi to liaise with Sgt Tasiopoulos and to call her back if anything had changed. She did not receive a return phone call.<sup>301</sup> It appears that there was a lack of clarity in the respective roles and responsibilities of the responding supervisory units that led to this confusion. This was a common theme throughout the Inquest and is discussed later in this Part of the Finding.

## Request to the SPU

- 5.156 After the request from the PSM was denied, Sgt Tasiopoulos immediately arranged for FC Verdun to make a request of the SPU.
- 5.157 At 3.50 am, FC Verdun submitted two requests to Insp Langhorn via the RMS platform for an IPND search in relation to the Offender to identify any phone numbers belonging to him that could hopefully reveal his whereabouts. Shortly afterwards, FC Verdun sent an explanatory email to Insp Langhorn, informing him that he had submitted the request for perusal and approval, and referred to a telephone conversation between Insp Langhorn and Sgt Tasiopoulos.<sup>302</sup>

291 Transcript of evidence, p. 3350.

292 Transcript of evidence, p. 841.

293 Transcript of evidence, p. 1292.

294 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017, Coronial Brief, p. 454.

295 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017, Coronial Brief, p. 454.

296 Transcript of evidence, pp. 1292–3.

297 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017, Coronial Brief, p. 454.

298 Transcript of evidence, p. 1293.

299 Exhibit 89, Statement of Acting Senior Sergeant Adrian Filzek dated 1 February 2017, Coronial Brief, p. 622.

300 Transcript of evidence, p. 3344.

301 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017, Coronial Brief, p. 454; Transcript of evidence, p. 3344.

302 Second Statement of Inspector Mark Langhorn dated 7 October 2019, Coronial Brief, p. 1209.

- 5.158 Insp Langhorn approved both requests within a couple of minutes of receipt at 3.51 am and 3.52 am.<sup>303</sup> At 4.04 am, FC Verdun submitted a further RMS request to Insp Langhorn, requesting authorisation for an LBS of the Offender’s phone, whose carrier was identified as Optus. This request was approved at 4.17 am.<sup>304</sup>
- 5.159 At Inquest, Sgt Tasiopoulos explained he had only a ‘very basic understanding’ of the technology used to triangulate a mobile phone.<sup>305</sup> He understood that the request is initially made by the online supervisor who has the ability to triangulate the telephone in question if it fits certain criteria, within ‘a matter of a few minutes’, but if it does not fit those criteria, then they go through the SPU, which requires permission from the Duty Inspector and takes ‘a bit longer’ to return a result.<sup>306</sup> Sgt Tasiopoulos estimated that the turnaround time through the communications centre was ‘a matter of minutes... within five to 10 minutes’,<sup>307</sup> but through the SPU it could take ‘up to 20 minutes or more, depending on the time of day and the location and the duty officers and so forth’.<sup>308</sup>
- 5.160 Sgt Tasiopoulos explained that the request through the SPU takes longer because it is necessary to complete an online application, requiring authority from the Duty Inspector.<sup>309</sup> He agreed that it was ‘suboptimal’ to have to go through the SPU when he had formed the view as an experienced sergeant that there was a risk of imminent harm and every minute is important.<sup>310</sup> Although he was not surprised the request for triangulation was refused, he agreed there was a sense of frustration that he had to be bounced from one agency for authorisation to locate an offender.<sup>311</sup> He explained that:

I’ve had requests rejected in the past and that’s due to the fact that, um, a formula is applied, a test is made by the online supervisor and, so, um, I guess, I’ve been around long enough to understand that I’m not surprised, I’m just... need to know where... what the next move is.<sup>312</sup>

- 5.161 The Critical Incident Review considered requests made to the PCC for urgent triangulation pursuant to s. 287 of the Telecommunications Act. AC Fontana concluded that:

Internal enquiries have revealed inconsistencies between Force Policy and the PCC Standard Operating Procedures. In summary, the decision on whether or not to accede to a request under s. 287 appears to hinge on a ‘misguided’ interpretation of that provision (and, for that matter, the provisions under the Telecommunications (Interceptions and Access) Act 1979). Additionally, on the basis of historical legal advice, the decision in relation to whether the criteria of s. 287 have been met rests with the PCC PSM, despite more recent Force Policy requiring the decision to rest with the requesting member.<sup>313</sup>

- 5.162 Since the Critical Incident Review, changes have been made to Victoria Police policy to provide clearer guidance to members about the criteria and process for requests under s. 287 of the Telecommunications Act.

303 Second Statement of Inspector Mark Langhorn dated 7 October 2019, Coronial Brief, p. 1209; Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1765; Exhibit 93, Typed Notes of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 4986; Transcript of evidence p. 846.

304 Second Statement of Inspector Mark Langhorn dated 7 October 2019, Coronial Brief, p. 1209; Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1765; Exhibit 93, Typed Notes of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 4986.

305 Transcript of evidence, p. 831.

306 Transcript of evidence, pp. 831–2.

307 Transcript of evidence, p. 832.

308 Transcript of evidence, p. 832.

309 Transcript of evidence, p. 849.

310 Transcript of evidence, p. 849.

311 Transcript of evidence, pp. 840–1.

312 Transcript of evidence, p. 848.

313 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 209.

- 5.163 The process now requires requesting members to first consult with their supervisor to ensure the circumstances meet the s. 287 criteria. They then contact an appropriate officer (an inspector or above) to brief them about the impending request and complete a form setting out the facts and circumstances of the request. The officer must endorse the facts and circumstances as meeting s. 287 of the Telecommunications Act before sending the signed request form to the PSM, which is then responsible for facilitating and recording the request.<sup>314</sup> In essence, the new policy has shifted the decision about compliance with s. 287 of the Telecommunications Act from the PSM to a senior officer.<sup>315</sup> I will return to this further in Part 9 of the Finding.
- 5.164 According to submissions on behalf of the CCP, this change came into effect on 31 December 2019 and has resulted in streamlining Victoria Police's access to telecommunication service providers' information about the location of mobile phones.<sup>316</sup>

### Pinging of the Offender's phone

- 5.165 The significance of LBS and triangulation approval was that 'pings' could identify the approximate location of the Offender's phone and, by extension, his possible whereabouts. There were four successful 'pings' of the Offender's phone over the course of about an hour between 4.21 am and 5.25 am, which showed the Offender was in the vicinity of various locations in St Kilda, Ripponlea and Carnegie.<sup>317</sup> If this information had been followed up or actioned, there was a potential to locate and arrest the Offender.
- 5.166 The first ping of the Offender's phone was activated at 4.21 am. FC Verdun explained that the RMS or LBS included a secondary tab which, when clicked on, provided notes, including longitude and latitude measurements, together with an approximate location involving a 100—150 metre radius where the phone is located.<sup>318</sup> On this occasion, it indicated the Offender's phone was active outside the vicinity of an address in Vale Street, St Kilda. This was approximately 2.2 kilometres from the crime scene at Raleigh Street, a journey of less than five minutes via car at that time of the morning. This information would enable police to attend this area and potentially locate the Offender, which was the objective of requesting a ping.
- 5.167 At about 4.24 am, Sgt Tasiopoulos advised police investigators and his supervisors at the scene of this ping result via police communications and telephoned DA/Sgt Tzefer to update him.<sup>319</sup> At about this time, Sgt Tasiopoulos also gave a warning to all units on channel 03-01 to beware because the Offender was 'not making sense—mentally unstable'<sup>320</sup> in his interactions with FC Verdun via phone.<sup>321</sup> Police communications directly contacted Sgt Caridi by telephone to update him in relation to the ping result.<sup>322</sup>

314 Exhibit 210, Victoria Police Manual *Telecommunications Interceptions* dated 31 December 2019, p. AM 104-13.

315 Exhibit 209, Statement of Detective Superintendent Stephen White dated 23 December 2019, p. AM 95-8; Exhibit 197, Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, p. AM 1-3.

316 Written submissions on behalf of the Chief Commissioner of Police dated 19 May 2020, p. 104.

317 Exhibit 94, Email from First Constable Aidan Verdun to Detective Senior Constable Jim Tzefer dated 20 January 2017, Coronial Brief, p. 2534.

318 Transcript of evidence, p. 1547.

319 Exhibit 61, First Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1658; Exhibit 63, Notes of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 4608; Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1765; Exhibit 93, Typed Notes of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 4986; Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 30.

320 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 33.

321 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing), dated 20 January 2017, EX348-2 p. 33.

322 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 31.

- 5.168 A second ping at 4.30 am indicated the Offender's phone was in the vicinity of Brighton Road, Ripponlea, a location close to the Elsternwick McDonald's. At about 4.42 am, Sgt Tasiopoulos relayed details of this second ping via police communications to all units concerned 'in case they're pre-planning'.<sup>323</sup> He also telephoned Sgt Caridi to ensure both he and the crime investigators were aware of the ping results.<sup>324</sup> In response to this information, Sgt Caridi transmitted at 4.43 am that 'Earlier it was at Vale Street, so he's obviously on the move and he's speeding away'.<sup>325</sup>
- 5.169 At the time of this transmission, investigating officers did not have any information regarding the direction or speed of travel of the Offender when his phone was pinged. Pings only give an approximate location of a mobile phone at a specific point in time. All that could really be said of the Offender's movements with any certainty is that, at about 4.21 am, the Offender was likely in the vicinity of Vale Street, St Kilda, and, at about 4.30 am, the Offender was likely in the vicinity of Brighton Road, Ripponlea.
- 5.170 Sgt Caridi recalled that at the time he was informed of the second ping he was driving back to the station on his own.<sup>326</sup> His recollection is inconsistent with Constable Brook's statement and their electronic patrol duty return (ePDR), which indicate that Sgt Caridi left Raleigh Street in company with his offside, Constable Brook.<sup>327</sup> His recollection was not challenged in evidence but appears to be inconsistent with the ePDR.
- 5.171 In response to information about the second ping, Sgt Caridi asked police communications to contact Caulfield 251 (Sgt David Ingram), the supervisor for the Elsternwick, Caulfield, Glenhuntly and Carnegie divisional areas, to give him a 'heads-up' that the Offender was heading into his area and to alert him as to what was going on.<sup>328</sup> At 4.45 am, the D24 operator informed Sgt Ingram over channel 03-01 that the Offender was the:
- ... suspect in a stabbing out in Raleigh Street in Windsor, and they're pinging his phone. It's now coming up to Brighton Road, Glen Eira Road in Ripponlea area near the McDonald's and the servo there. Just giving you a heads-up in case he comes down the patch, possibly still armed, believe he's in a vehicle as well.<sup>329</sup>
- 5.172 Sgt Caridi subsequently warned units on channel 03-01 to 'be aware that this male will take off and, yeah, will not—will not pull over. He'll just take off and burn'.<sup>330</sup> At Inquest, Sgt Caridi explained that the intention of his communication was to advise Sgt Ingram to treat the Offender with caution.<sup>331</sup> He agreed that, at the time of this communication, he had cleared the scene and, as far as he was concerned, this was a handover to police communications and to Sgt Ingram.<sup>332</sup>
- 5.173 Sgt Caridi considered that it was 'obvious that he's heading south heading into [the] Caulfield response area',<sup>333</sup> therefore it was the responsibility of Sgt Ingram to 'reassess and to ... be aware of the scenario or the situation ... be aware of the threats and ... and be aware of the fact that he's in this area'.<sup>334</sup> It should be noted, however, that the second ping location was still within Sgt Caridi's area of responsibility. Further,

323 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 32.

324 Exhibit 61, First Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1658; Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 32. Transcript of evidence, p. 1315.

325 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 32.

326 Transcript of evidence, p. 1315.

327 Statement of Constable Abigail Brook dated 5 March 2017, Coronial Brief, p. 378; Exhibit 85, Electronic Patrol Duty Return Sheet (ePDR) of Sergeant Frank Caridi, Coronial Brief, p. 2051.

328 Transcript of evidence, pp. 1315–6.

329 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 34.

330 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 34.

331 Transcript of evidence, p. 1317.

332 Transcript of evidence, pp. 1320–1.

333 Transcript of evidence, p. 1323.

334 Transcript of evidence, pp. 1323–4.

as I have previously noted, investigating police officers did not have any information about the Offender's direction or speed of travel. Although it was assumed by Sgt Caridi the Offender was travelling into Sgt Ingram's area (and it appears, in fact, that he did travel into this area by the time of the next ping at 5.22 am), this was not a foregone conclusion as is apparent from the D24 operator's transmission that they were giving Sgt Ingram a heads-up 'in case' the Offender came into his patch (area).

- 5.174 At about this time, the RMS system suffered a glitch and stopped working, which required FC Verdun to resubmit a secondary LBS request through the RMS platform. FC Verdun liaised with the SPU to resolve the issues and telephoned the Offender again at 4.57 am (the third call), to assist in the 'pinging' of the Offender's phone.<sup>335</sup>
- 5.175 Over the following 40 minutes, no further directions or information were given to Sgt Ingram or other police units about the stabbing incident or a proposed resolution strategy.
- 5.176 A third ping occurred at 5.22 am and indicated that the Offender's phone was in the vicinity of a residence on Glenhuntly Road, Elsternwick (near AFM's address).<sup>336</sup> This result was relayed to investigating units via police communications by Sgt Tasiopoulos at 5.24 am.<sup>337</sup> Sgt Caridi asked police communications to refer the details of the ping to either the Crime 541 unit, the South 550 unit or the other uniform units at the Raleigh Street crime scene.<sup>338</sup> It is notable that this was not referred to Sgt Ingram, despite the location being in his area of responsibility.<sup>339</sup> A short time later, St Kilda 310 conveyed the triangulation information to South 541 and South 550 on channel 03-01.<sup>340</sup>
- 5.177 A fourth ping at 5.28 am, indicated the Offender's phone was in the vicinity of a residence on Glenhuntly Road, Elsternwick, neighbouring the location of the third ping. This was also relayed to investigating units via police communications by Sgt Tasiopoulos at 5.31 am.<sup>341</sup> There was no response to this information from any of the investigating crime or supervising units on channel 03-01. However, St Kilda 310 came up on air to clarify the time of the last ping.<sup>342</sup>
- 5.178 At about 5.35 am, ping results indicated that the Offender's phone was switched off and it was no longer possible to ascertain its location. FC Verdun relayed this information to Sgt Tasiopoulos who, in turn, advised DA/Sgt Tzefer, noting that the most recent active ping indicated the Offender's phone was in the vicinity of two addresses in Glenhuntly Road.<sup>343</sup>
- 5.179 At about 5.48 am, FC Verdun advised investigating units via police communications that the phone was switched off and he was unable to do any further pings on it.<sup>344</sup>
- 5.180 Two further calls were made to the Offender's phone at 5.44 am and 6.39 am, but these calls were not answered, and it appeared the Offender had turned off the mobile phone, preventing further pings.<sup>345</sup>

335 Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1765; Exhibit 93, Typed Notes of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 4987; Transcript of evidence, p. 1543.

336 Exhibit 94, Email from First Constable Aidan Verdun to Detective Senior Constable Jim Tzefer dated 20 January 2017, Coronial Brief, p. 2534.

337 Exhibit 61, First Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1658; Exhibit 63, Notes of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 4609; Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 35.

338 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 35.

339 Exhibit 84, Annotated Map of Ping Locations prepared by Mr Frank Caridi dated 28 November 2019, p. AM50.

340 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 36.

341 Exhibit 61, First Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1658; Exhibit 63, Notes of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 4609; Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 6.

342 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 36.

343 Exhibit 61, First Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1659; Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, pp. 1741–2.

344 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 38.

345 Exhibit 96, Record of Calls between St Kilda Police Station and the Offender's Mobile, p. 3797.

## Failure to check ping locations

- 5.181 Sgt Tasiopoulos and FC Verdun were proactive in their efforts, at the police station, to ping the Offender's phone. Each result was promptly sent to members in the field. However, these results were not used in any meaningful way to confirm the location of the Offender or to coordinate police resources to arrest him.
- 5.182 It was accepted by the CCP that efforts should have been made to search the pinged locations.<sup>346</sup> It was also acknowledged that the pings at 5.22 am and 5.28 am were close to the address of the Offender's former partner, AFM, and that this provided police with a significant opportunity to attempt to locate the Offender.<sup>347</sup> It was conceded that 'the failure to attend promptly in Glenhuntly Road, Carnegie in response to the 5.22 am and 5.28 am pings was a serious oversight'.<sup>348</sup>
- 5.183 The ephemeral nature of ping information means that it is best investigated when it first comes to hand. The failure to do so is perplexing, particularly when the Offender's phone was turned off shortly before 5.35 am and the ability to locate the Offender by this method was lost.
- 5.184 When one looks, with the benefit of hindsight, at the circumstances of the day that followed, the failure to use the best opportunity to locate and arrest the Offender is a devastating blow.
- 5.185 I find the failure by any police member, including former Sgt Caridi, his colleagues, DA/Sgt Tzefer and his superiors, A/SSgt Filzek and Sgt Toey, to act on or arrange for someone to check the location of the ping of the Offender's phone or to even discuss a proposed plan to do so was a major oversight and a serious omission in the police response. It effectively removed the potential to locate and arrest the Offender overnight.
- 5.186 I accept that even if the ping had been acted upon, there is no guarantee it would have resulted in the Offender's arrest, but the fact that it was not considered is most unsatisfactory. This problem appears to have occurred due to a lack of clear awareness of whose responsibility it was to action this.

## Who was responsible for coordinating efforts to locate the Offender?

- 5.187 At Inquest, there was much blame-shifting as to who was responsible for attending to the 'pings' and for locating and arresting the Offender.
- 5.188 Sgt Toey conceded that the CIU was ultimately in charge of the job and, as the crime supervisor for the shift, he was ultimately the person in charge of the job.<sup>349</sup> This relevantly included the approach to the resolution phase of the investigation. He explained that his role involved putting trust in other members and that Sgt Caridi had taken on the role of locating and arresting the Offender. He considered Sgt Caridi could perform that role, and once the Offender was arrested, a CIU detective would then process him.<sup>350</sup> Despite this, he gave evidence that no arrest plan was put to him and that he had only had a 'minimal conversation' with DA/Sgt Tzefer and DSC Reid about trying to locate the Offender.<sup>351</sup>

<sup>346</sup> Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 57.

<sup>347</sup> Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 58.

<sup>348</sup> Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 58.

<sup>349</sup> Transcript of evidence, p. 1217.

<sup>350</sup> Transcript of evidence, pp. 1217-8.

<sup>351</sup> Transcript of evidence, p. 1216.

- 5.189 A/SSgt Filzek conceded that police units should have been sent or directed to attend the pinged locations.<sup>352</sup> He believed at the time there was a response to the pings,<sup>353</sup> he was unable to explain why no units were coordinating a response to check the addresses.<sup>354</sup> He conceded that he did not seek a significant briefing on the arrest plan.<sup>355</sup> He was happy that Sgt Caridi was formulating and enacting an arrest plan and went on to explain that he had a competent sergeant and equally competent detective sergeant at the scene and was comfortable having two sergeants running the incident.<sup>356</sup>
- 5.190 At Inquest, he stated that the person who should have been sending units to the pinged locations was Sgt Caridi,<sup>357</sup> but at the time he did not himself ask Sgt Caridi if any units were sent to those locations.<sup>358</sup> A/SSgt Filzek also stated that he wasn't privy to and could not recall any transmissions on the radio concerning the Offender's phone pinging in the vicinity of Glenhuntly Road because he was conducting a handover to the incoming senior sergeant (265 unit) via telephone at the time.<sup>359</sup>
- 5.191 In contrast, Sgt Caridi said at Inquest that the crime response units, including South 541, were responsible for responding to the pings.<sup>360</sup> He explained that he was assisting the crime units, but that it was 'their offender ... their job'.<sup>361</sup>
- 5.192 In his third statement, Sgt Caridi stated that his 'sole focus was on arresting a person who had already showed a propensity to end another person's life without remorse'.<sup>362</sup> Sgt Caridi confirmed at Inquest that his sole focus at the time was to assist the crime unit to locate and arrest the Offender,<sup>363</sup> but added that this came to a 'dead end' when CIRT refused to assist.<sup>364</sup> He conceded that he did not direct or allocate resources towards locating and arresting the Offender, but explained that all of his resources were assigned to assist the crime unit.<sup>365</sup>
- 5.193 AC Fontana's overall assessment was that there was a lack of leadership in the task to locate and arrest the Offender. He said:

Ideally, it would have been advantageous for someone to be specifically tasked to formulate a plan with the objective of locating and co-ordinating the arrest of [the Offender]. That would include the consideration of appropriate avenues of inquiries, and identification and tasking of dedicated resources to perform that role. This was only 'half-done' and because no one was given ownership of this task, the response was uncoordinated and ineffective. This is particularly evidenced through the lack of tasking to follow up on LBS 'pings' ... the LBS (ping) information was passed on, but there was no initiative shown or action taken to follow up the information.

In conclusion, there was a clear lack of leadership, ownership, thought and planning given to locate [the Offender] following the serious assault and stabbing of his brother Angelo. Police efforts in that regard were uncoordinated and fragmented, despite the well-intentioned actions

352 Transcript of evidence, p. 1525.

353 Transcript of evidence, p. 1526.

354 Transcript of evidence, p. 1455.

355 Transcript of evidence, p. 1467.

356 Transcript of evidence, p. 1467.

357 Transcript of evidence, p. 1525.

358 Transcript of evidence, p. 1526.

359 Transcript of evidence, p. 1455.

360 Transcript of evidence, p. 1321.

361 Transcript of evidence, p. 1321.

362 Exhibit 82, Third Statement of Mr Frank Caridi dated 23 July 2019, p. 460.

363 Transcript of evidence, p. 1376.

364 Transcript of evidence, p. 1396.

365 Transcript of evidence, p. 1377.

of some involved. This led to critical information in relation to [the Offender's] whereabouts being ignored. Toey (South 550), Caridi ([South Melbourne] 251) and Filzek ([Moorabbin] 265) should have taken action and formulated a response to locate and arrest [the Offender].<sup>366</sup>

5.194 Counsel Assisting submitted that this analysis was sound and 'reveals the importance of clear leadership and defined roles. It is troubling that there appeared to be role confusion as between the CIU and the uniform branch supervisory units'.<sup>367</sup> In a practical sense, 'the confusion in roles and responsibilit[ies] for responding to a sequence of specific information with significant potential to lead to the location and arrest of the Offender was not acted upon and therefore squandered'.<sup>368</sup> Counsel for the Families agreed with this submission.<sup>369</sup>

5.195 The CCP also agreed with the analysis of AC Fontana. It was submitted that Sgt Toey, Sgt Caridi and A/SSgt Filzek each had a responsibility to formulate a plan and take steps to actively locate and arrest the Offender.<sup>370</sup> Specifically:

- a. Sgt Caridi, as the patrol supervisor, had responsibility for liaising with the investigators to ensure that the pinging locations were properly searched. His decision to return to South Melbourne Police Station after CIRT declined his request for assistance and failure to take any further action to locate the Offender beyond requesting other units and supervisors be advised of the situation was 'seriously unsatisfactory',<sup>371</sup> a 'default [that] cannot be justified'.<sup>372</sup>
- b. A/SSgt Filzek, as the divisional patrol supervisor, should have taken an active role to intervene and ensure that police were actively searching for the Offender when he was advised by Sgt Caridi that the CIRT would not deploy.<sup>373</sup>
- c. Sgt Toey as the supervising crime unit and who was not required to be at the crime scene, was also well placed to plan and coordinate the search for the Offender. Had this been done, necessary consideration would have been given to appropriate avenues of inquiry, and identification and tasking of dedicated resources to follow up on the ping locations.<sup>374</sup>

5.196 Counsel for the CCP conceded that there was a clear lack of leadership, ownership, thought and planning given to locating the Offender on the nightshift following the stabbing incident.<sup>375</sup> An appropriate police response required pinged locations to be searched and that was not done.<sup>376</sup> However, as was acknowledged by AC Fontana, 'a better coordinated approach to try to locate [the Offender] that night might not have succeeded'.<sup>377</sup> Given the brief moments of time during which the Offender was present at the pinged locations, a more timely and proper search of these locations may not necessarily have resulted in the Offender being located and/or arrested.<sup>378</sup>

366 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 207.

367 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 63

368 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, pp. 63–4.

369 Written submissions on Counsel representing the Families of the Deceased dated 19 May 2020, p. 9.

370 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 57. It should be noted that Counsel for the CCP also submitted that DA/Sgt Tzefer and DSC Reid, as the primary investigators, were also responsible for taking steps to actively locate and arrest the Offender. This was not specifically put to either DA/Sgt Tzefer or DSC Reid in cross-examination. I note that DA/Sgt Tzefer and DSC Reid had the responsibility of managing the crime scene and had been specifically tasked by their supervisor, Sgt Toey, with remaining at the crime scene after raising the question of turning efforts towards obtaining an unmarked vehicle to check the ping locations. Accordingly, I make no criticism of either DA/Sgt Tzefer or DSC Reid for not taking steps to actively locate and arrest the Offender.

371 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 58.

372 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 57.

373 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, pp. 58–9.

374 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 59.

375 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 59.

376 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 59.

377 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 208.

378 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 59.

- 5.197 Counsel representing Sgt Caridi, A/SSgt Filzek and Sgt Toey made submissions rejecting these criticisms.
- 5.198 Counsel representing Sgt Caridi submitted that there was clear and comprehensive evidence that he had formulated an effective plan for locating the Offender, and that much of this evidence was not in dispute.<sup>379</sup> They further submitted that the criticism of Sgt Caridi was misplaced, bearing in mind there were other members with positions of responsibility who were also capable of acting on their own initiative, and that it was ultimately the CIU's responsibility to investigate and apprehend the Offender given the seriousness of the crimes committed by him.<sup>380</sup> Further, it was put that none of DA/Sgt Tzefer, Sgt Toey or A/SSgt Filzek gave evidence that they were solely relying on Sgt Caridi to devise a plan, nor that they did not have the authority to put in place steps to locate and apprehend the Offender themselves.<sup>381</sup>
- 5.199 Counsel representing Sgt Caridi submitted that the Court should find that he acted in good faith and used every means reasonably available to him to assist in apprehending the Offender.<sup>382</sup> Sgt Caridi agreed that a lack of clarity in the division of responsibility between uniformed officers and specialist units such as CIU and CIRT for management of the crime scene and apprehension of suspected offenders was a central element in the events of 20 January 2017, but it was submitted that he ought not to be criticised for the systemic failings of clarity in the organisation of responsibilities in Victoria Police at the time of the events.<sup>383</sup>
- 5.200 Counsel for A/SSgt Filzek and Sgt Toey submitted that the criticisms made of the search for the Offender in the initial hours of 20 January 2017 are made with the benefit of hindsight and in the knowledge of what the Offender went on to do on 20 January 2017.<sup>384</sup> While with hindsight, it was conceded, it would have been desirable to have a person specifically tasked to formulate a plan to locate and arrest the Offender, Sgt Toey understood at the time that Sgt Caridi was doing that and Sgt Caridi did not require direction or authorisation from Sgt Toey to do that.<sup>385</sup>
- 5.201 It was submitted on behalf of A/SSgt Filzek and Sgt Toey that there 'was no role confusion as between the CIU, uniform police and their respective supervisory units,'<sup>386</sup> and that the division of responsibility was clear. It was understood by all members involved that Sgt Caridi, as the 251 on duty, had assumed responsibility for the initial efforts to locate and apprehend the Offender. If the Offender had been located and arrested, CIU would have taken responsibility for charging and processing him.<sup>387</sup> I do not accept this argument, especially when these actions are in stark contrast to the actions of the Port Phillip CIU dayshift only hours later (as discussed later in this Finding).
- 5.202 The weight of the evidence before me indicated that Sgt Caridi was considered by most of the supervising units to be responsible for coordinating the police response to locate and apprehend the Offender overnight. Notwithstanding, Sgt Caridi's evidence that his sole focus was to arrest the Offender, by making the decision to return to the police station, while the Offender's phone was actively pinging in and around the vicinity of St Kilda and not action or task someone to action a response, demonstrated not just an indifference to this task but a dereliction of duty.

379 Written submissions on behalf of Frank Caridi dated 19 May 2020, p. 2.

380 Written submissions on behalf of Frank Caridi dated 19 May 2020, p. 5.

381 Written submissions on behalf of Frank Caridi dated 19 May 2020, p. 9.

382 Written submissions on behalf of Frank Caridi dated 19 May 2020, p. 10.

383 Written submissions on behalf of Frank Caridi dated 19 May 2020, p. 10.

384 Written submissions on behalf of Certain Police Members (Group B) dated 19 May 2020, p. 12.

385 Written submissions on behalf of Certain Police Members (Group B) dated 19 May 2020, p. 12.

386 Written submissions on behalf of Certain Police Members (Group B) dated 19 May 2020, p. 8.

387 Written submissions on behalf of Certain Police Members (Group B) dated 19 May 2020, p. 8.

- 5.203 Nonetheless, despite Sgt Caridi and a number of other witnesses saying it was his job to locate the Offender, it was not made clear to me why responsibility for locating and apprehending the Offender would shift from the CIU units (who had been attempting to locate and apprehend the Offender following the assault and robbery of Mr Wilson on 18 January 2017) to the uniform division, following the stabbing of Angelo, and then back to the CIU units after the morning handover on 20 January 2017.
- 5.204 Further, it seems to me that it should not be the sole responsibility of one person to plan and coordinate the location and arrest of an offender known to be dangerous, violent and wanted in relation to serious criminal offending. Rather, it should be a coordinated response to nominate and delineate clear and identified roles and responsibilities. This includes formulating a plan to search for and locate the Offender, developing an arrest plan that is understood by all officers involved, and ensuring that the tasks and actions required to implement the plan were appropriately allocated.
- 5.205 I find the response of Sgt Toey, A/SSgt Filzek and Sgt Caridi was unplanned, uncoordinated and fragmented—which resulted in no one taking responsibility to follow up the pings and actively search for the Offender. This response indicated a lack of leadership and ownership for a key element of the investigation: to locate the Offender. This was a serious oversight and meant that the best opportunity to locate the Offender that morning was lost.

## Request for assistance from Critical Incident Response Team

- 5.206 The request for CIRT assistance overnight was the subject of considerable dispute between the parties, in particular:
- a. the content of the request and whether Sgt Caridi communicated his plan to use an unmarked van to block the Offender's vehicle (the van plan) to A/Sgt Jones or other investigating officers
  - b. whether the refusal by A/Sgt Jones to deploy CIRT resources was reasonable in the circumstances
  - c. whether the refusal to deploy CIRT resources should have been escalated by senior management.

### Did Sgt Caridi communicate the van plan to A/Sgt Jones and other investigating officers?

- 5.207 At approximately 4.20 am, Sgt Caridi contacted CIRT and spoke to A/Sgt Jones, who was the nightshift supervisor, requesting CIRT assistance with the arrest of a person of interest.<sup>388</sup> Sgt Caridi and A/Sgt Jones have different recollections of what was said in this conversation.
- 5.208 In summary, Sgt Caridi informed A/Sgt Jones that the Offender, whom he named, had stabbed his brother with a knife at Raleigh Street, Windsor.<sup>389</sup> They then had a discussion about what Sgt Caridi wanted CIRT to do, which included a drive-over of possible addresses the Offender might attend.<sup>390</sup> Sgt Caridi informed A/Sgt Jones that they were 'pinging' the Offender's phone in Elsternwick, Elwood and Brighton.<sup>391</sup>

<sup>388</sup> Exhibit 104, CIRT Daily Summary and notes of Acting Sergeant Kalev Jones dated 20 January 2017, Coronial Brief, pp. 4208–9.

<sup>389</sup> Exhibit 103, Statement of Acting Sergeant Kalev Jones as amended dated 30 June 2017, Coronial Brief, p. 1121.

<sup>390</sup> Exhibit 103, Statement of Acting Sergeant Kalev Jones as amended dated 30 June 2017, Coronial Brief, p. 1121.

<sup>391</sup> Exhibit 103, Statement of Acting Sergeant Kalev Jones as amended dated 30 June 2017, Coronial Brief, p. 1122.

- 5.209 Sgt Caridi provided details of this conversation in his second statement, completed on 20 July 2017. He stated that he explained the situation to A/Sgt Jones, including that the Offender's phone was being triangulated and that it was highly likely the Offender was armed.<sup>392</sup> Sgt Caridi stated that he told A/Sgt Jones that he could not be certain that the Offender was armed with a weapon, but the 'machete' had not been found at the scene and the likely deduction was that the Offender still had it in his possession.<sup>393</sup>
- 5.210 According to Sgt Caridi, he detailed his plan to A/Sgt Jones, stating that if the Offender caught sight of a marked police vehicle, he would attempt to flee in a vehicle, doing so in an erratic and manic manner to avoid an arrest.<sup>394</sup> He stated the best strategy would be to approach the Offender in an unmarked van, such as the type used by CIRT, to block the Offender into a parking space and prevent him from driving off, with the 'likely outcome' from this being that the Offender would surrender without incident.<sup>395</sup> At Inquest, Sgt Caridi explained that 'it would be an easy process to just block him in'.<sup>396</sup>
- 5.211 Sgt Caridi reiterated this account in his third statement, compiled approximately two-and-a-half years after the incident. He stated that his plan was formed in light of his knowledge at the time, which included his reasonable belief that the injuries sustained by Angelo would be fatal, that the Offender's location had been tracked by 4.30 am and was accurate to within 50 metres, that the vehicle driven by the Offender was identified, and his first-hand knowledge of the Offender's propensity for extreme violence and initiation of dangerous pursuits to avoid arrest. Sgt Caridi's arrest plan was:

... designed to avoid a pursuit and bring the matter to a swift end. This consisted of the [CIRT] using an unmarked van to locate the vehicle being driven by [the Offender], and to simply block him in. This would prevent him from trying to escape. The unmarked van would be one CIRT have at their disposal and typically used by them. It would be a vehicle least suspected to be used by the Police. In the event [the Offender] attempted to escape after being blocked in, the size of the van would likely prevent this. In the event a pursuit occurred, the risk to the public was extremely minimal, considering the time was 4.30 am and the roads would be almost bare of traffic and pedestrians. However, if the plan was properly executed, it would have prevented a pursuit. Knowing [the Offender], once his vehicle was disabled, he would likely have just given himself up. A week earlier, he was encountered by Police away from his vehicle and did just that. Gave up peacefully.<sup>397</sup>

- 5.212 Sgt Caridi confirmed in evidence at Inquest that he suggested to A/Sgt Jones that an unmarked CIRT vehicle be used to block the Offender into a parking space to prevent him from driving off.<sup>398</sup> In cross-examination, Sgt Caridi was unable to remember whether he told CIRT about the van plan in his first conversation with A/Sgt Jones but that it was 'certainly part of the discussion'.<sup>399</sup>

392 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017 as amended, Coronial Brief, p. 455.

393 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017 as amended, Coronial Brief, p. 455.

394 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017 as amended, Coronial Brief, p. 455.

395 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017 as amended, Coronial Brief, p. 455.

396 Transcript of evidence, p. 1296.

397 Exhibit 82, Third Statement of Sergeant Frank Caridi dated 23 July 2019, Coronial Brief, pp. 458–9.

398 Transcript of evidence, pp. 1295–6.

399 Transcript of evidence, p. 1374.

- 5.213 According to Sgt Caridi, A/Sgt Jones's response to this was that CIRT does not perform mobile intercepts or arrests and would therefore not be able to assist.<sup>400</sup> However, if members could cordon and trap the Offender in an area and prevent him from escaping, away from his vehicle, CIRT would attend; otherwise, it did not fit their criteria. A/Sgt Jones reportedly also told him that they would have to receive definitive confirmation that the Offender was armed before they attended.<sup>401</sup>
- 5.214 Sgt Caridi later expressed puzzlement at this response because he had been involved in an incident the previous month, where CIRT units had used two unmarked vans to follow and pursue a stolen Lexus SUV from Williamstown to Port Melbourne.<sup>402</sup>
- 5.215 Sgt Caridi stated he then asked A/Sgt Jones if a CIRT unit could at least attend the scene to have a further discussion or assist by being on standby should the need arise. Sgt Caridi said that A/Sgt Jones rejected this suggestion but told him that he would monitor the incident on the radio.<sup>403</sup>
- 5.216 After this conversation, Sgt Caridi spoke to A/SSgt Filzek who was present while he was speaking to A/Sgt Jones on the phone. Sgt Caridi expressed his dismay at CIRT's response to which A/SSgt Filzek responded that there was 'nothing we could do about it'.<sup>404</sup>
- 5.217 A/Sgt Jones' recollection of the conversation was that Sgt Caridi wanted CIRT to drive past addresses at which the Offender might be found.<sup>405</sup>
- 5.218 A/Sgt Jones was adamant in his oral evidence that Sgt Caridi made no reference in their telephone conversation to using a CIRT van to hem in or stop the Offender's vehicle, or otherwise give effect to a 'vehicle stop plan'<sup>406</sup>, because they needed to know where the vehicle was and 'have someone maintain observations of the person of interest'.<sup>407</sup> In other words, they needed someone to have 'eyes on' him.<sup>408</sup> A/Sgt Jones's evidence was that he told Sgt Caridi that if they could put him to an address or locate him in his vehicle, then he could commit CIRT resources to the area.<sup>409</sup> A/Sgt Jones's evidence is that he was unaware of the van plan and Sgt Caridi did not mention it.<sup>410</sup> The request for CIRT assistance was refused by A/Sgt Jones at this time.
- 5.219 A short time later, Sgt Caridi telephoned A/Sgt Jones a second time, and then passed the call over to DSC Reid. A/Sgt Jones repeated his advice that CIRT does not perform mobile intercepts and could not engage in vehicle pursuits, which was confirmed by DSC Reid's handwritten notes:

'[Spoke to] CIRT 251 K Jones ... he stated they will not attend unless they can lock him to an address'.<sup>411</sup>

- 5.220 In evidence, DSC Reid's recollection of what A/Sgt Jones had said was:

That investigators or uniform or whoever would have to identify where the offender was and ... once they'd established that he was there, they would come out and formulate a plan and arrest him, cordon it off, whatever CIRT [does].<sup>412</sup>

400 Exhibit 81, Second Statement of Frank Caridi dated 20 July 2017 as amended, Coronial Brief, p. 455.

401 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017 as amended, Coronial Brief, p. 455.

402 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017 as amended, Coronial Brief, p. 456.

403 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017 as amended, Coronial Brief, p. 456.

404 Exhibit 81, Second Statement of Sergeant Frank Caridi as amended dated 20 July 2017, Coronial Brief, p. 456.

405 Transcript of evidence, p. 1680.

406 Transcript of evidence, p. 1681.

407 Transcript of evidence, p. 1681.

408 Transcript of evidence, p. 1728.

409 Transcript of evidence, p. 1683.

410 Transcript of evidence, p. 1681.

411 Exhibit 77, Handwritten Notes of DSC Reid dated 20 January 2017, Coronial Brief, p. 4395; Transcript of evidence, p. 1132.

412 Transcript of evidence, p. 1171.

- 5.221 A/Sgt Jones said that DSC Reid gave him:
- ... more details in regards to the vehicle ... registration of the vehicle and that—some information regarding his ... baiting of a police in the past and engaging in high-speed pursuits and driving down the wrong side of the road.<sup>413</sup>
- 5.222 Although, Sgt Caridi and A/Sgt Jones both agree that DSC Reid also participated in the second telephone call to CIRT, DSC Reid himself could not recall being involved in an arrest plan.<sup>414</sup>
- 5.223 Sgt Toey was adamant that he was not involved in the discussion of any arrest plan under consideration by Sgt Caridi.<sup>415</sup> Sgt Caridi agreed he did not discuss the van plan with DA/Sgt Tzefer or A/SSgt Filzek (at least not explicitly).<sup>416</sup> DA/Sgt Tzefer's evidence was that he did not remember Sgt Caridi discussing the van plan with him.<sup>417</sup>
- 5.224 A/SSgt Filzek was aware of Sgt Caridi's request to CIRT and was present while he was speaking to A/Sgt Jones on the phone.<sup>418</sup> He recalled that Sgt Caridi informed him that the request was outside CIRT's criteria because it involved a mobile or tactical intercept.<sup>419</sup> Sgt Caridi expressed his dismay at the response he received but was advised by A/SSgt Filzek that there was 'nothing we could do about it'.<sup>420</sup>
- 5.225 Sgt Caridi's plan to use a van, whether a CIRT van or some other vehicle as part of a vehicle stop plan to hem in or block the Offender's vehicle is not recorded in his first written statement made in February 2017,<sup>421</sup> his patrol duty return<sup>422</sup> or in the contemporaneous notes of any of the other police members. It is also notable he did not discuss it with DA/Sgt Tzefer or A/SSgt Filzek.
- 5.226 Counsel Assisting submitted that, on the balance of the evidence, Sgt Caridi's assertion that he proffered his 'van plan' or 'vehicle stop plan' to A/Sgt Jones should not be accepted.<sup>423</sup> Counsel for the Families generally supported the submissions made by Counsel Assisting as to factual findings on this point.<sup>424</sup>
- 5.227 When the factual dispute between Sgt Caridi and A/Sgt Jones is forensically examined, a few key points stand out. There is no dispute that Sgt Caridi contacted CIRT, spoke to A/Sgt Jones and requested their assistance. I accept that Sgt Caridi asked CIRT to do a drive-over at the location of Vale Street, St Kilda. This is due to the answers that A/Sgt Jones gave to him about CIRT not performing mobile intercepts or mobilising until police have 'eyes on' the Offender; these matters are reflected in A/Sgt Jones's contemporaneous notes.
- 5.228 It appears unlikely that Sgt Caridi had the time to elaborately explain to A/Sgt Jones the 'van plan' as detailed in his second and third statements made months and years after the events. Sgt Caridi accepted in evidence that he did not describe the van plan to any other police officer, and this was confirmed by the evidence of DA/Sgt Tzefer, A/SSgt Filzek and Sgt Toey. Therefore, I conclude that Sgt Caridi's recollection

413 Transcript of evidence, p. 1681.

414 Transcript of evidence, p. 1133.

415 Transcript of evidence, p. 1216.

416 Transcript of evidence, p. 1297.

417 Transcript of evidence, p. 1033.

418 Transcript of evidence, p. 1446.

419 Transcript of evidence, p. 1446.

420 Exhibit 81, Second Statement of Sergeant Frank Caridi dated 20 July 2017 as amended, Coronial Brief, p. 456.

421 Exhibit 80, First Statement of Sergeant Frank Caridi dated 16 February 2017, Coronial Brief, p. 448.

422 Exhibit 85, Electronic Patrol Duty Report of Sergeant Frank Caridi dated 20 January 2017, Coronial Brief, p. 2041.

423 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 59.

424 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 8.

may include a false memory of the level of detail he provided in discussions with A/Sgt Jones. This is entirely understandable given the time he had to reflect after learning of the devastation of the Bourke Street incident. In my experience as a Coroner, I have seen that trauma can affect people differently and play havoc with their recollection of events. Indeed, a false memory may appear as vivid and real to the witness as any recollection known to be accurate through objective evidence. I acknowledge the events of the day were yet to unfold and impossible to foresee, but I consider that subsequent events have affected Sgt Caridi's recollection of his request for CIRT assistance.

## Was the CIRT decision to not deploy reasonable?

5.229 The CIRT is a specialised unit trained to respond to high-risk critical incidents. It provides a 24-hour, 7-day-a-week response to incidents that are beyond the scope, experience and skill level of general-duties police and do not meet the criteria of the Special Operations Group (SOG).<sup>425</sup> Relevantly, CIRT assistance must be requested in circumstances, including:

- a. high-risk incidents where there is a probability of a violent confrontation with a person or it is reasonably suspected that a person is armed with a weapon (including sieges, barricade incidents and searches for armed or violent persons)
- b. mental illness-related incidents where the person is threatening suicide and/or intervention that is beyond the scope, expertise and capability of general-duties police
- c. other tasks approved by the CIRT Duty Officer in which the deployment of CIRT specialist skills or equipment is likely to provide the most appropriate level of response.<sup>426</sup>

5.230 A/Sgt Jones agreed that he declined Sgt Caridi's request for CIRT units to deploy and said in evidence:

... at that stage, um, (1) they didn't know where he was, ah, there was no one actually out looking for him and, um, we couldn't get confirmation whether or not, um, there was ... a weapon involved.<sup>427</sup>

5.231 A/Sgt Jones confirmed that he had asked Sgt Caridi if there were officers out on the road looking for the Offender. A/Sgt Jones stated, 'I believe [Sgt Caridi] said, "No". They were trying to work up some things.'<sup>428</sup>

5.232 A/SSgt Filzek could not recall a criterion suggesting that CIRT can only attend at specific addresses. He agreed CIRT would not respond as a primary responder for a mobile tactical intercept.<sup>429</sup> This was consistent with Supt Peter Ward's evidence that 'CIRT do not have the capability or capacity to conduct tactical vehicle intercepts',<sup>430</sup> and they are not used to covertly follow suspects because they primarily operate in marked vehicles and CIRT members wear police uniform.<sup>431</sup>

<sup>425</sup> Exhibit 233, Third Statement of Superintendent Peter Ward dated 20 December 2019, p. AM 92-1.

<sup>426</sup> Exhibit 233, Third Statement of Superintendent Peter Ward dated 20 December 2019, pp. AM 92-1-2; Exhibit 205, Victoria Police Manual *Specialist Support*, Coronial Brief, pp. 2763-4.

<sup>427</sup> Transcript of evidence, p. 1680.

<sup>428</sup> Transcript of evidence, p. 1680.

<sup>429</sup> Transcript of evidence, p. 1450.

<sup>430</sup> Exhibit 230, Statement of Superintendent Peter Ward dated 20 March 2019, p. 1787.

<sup>431</sup> Exhibit 230, Statement of Superintendent Peter Ward dated 20 March 2019, p. 1787.

- 5.233 Insp Stephen Reynolds, who supervises CIRT, supported A/Sgt Jones's decision not to deploy. In particular, he said CIRT members will not ordinarily deploy to a task if there is no indication of a firm location for the person being sought or a direction of travel.<sup>432</sup> A/Sgt Jones was questioned about CIRT's call out criteria requiring a location of an offender and agreed there was nothing in the VPM<sup>433</sup> that referred to an offender having to be locked into a location.<sup>434</sup>
- 5.234 It is noteworthy there were no other demands for CIRT resources at the time the requests were made to A/Sgt Jones. Those resources included three marked CIRT vans and one unmarked negotiator unit.<sup>435</sup> However A/Sgt Jones said the negotiator unit serviced the entire state and he would have had to deploy a marked CIRT van with them, although he conceded at the time of the request, they were not doing anything else.<sup>436</sup>
- 5.235 AC Fontana's evidence was that searching for an offender was not something that CIRT would normally do, but he would expect them to deploy if the Offender was located.<sup>437</sup> He confirmed if the Offender 'could be located they certainly were available to come and assist'.<sup>438</sup>
- 5.236 In relation to A/Sgt Jones's refusal for CIRT to attend, Counsel Assisting said he was 'rigid in his response to [Sgt] Caridi's request when requiring confirmation that the Offender was armed and having him identified at a precise location before the CIRT would deploy'.<sup>439</sup> Counsel Assisting submitted:
- ... it was reasonably open for the CIRT to be deployed on the basis that the Offender was likely to be located from a 'ping'. It is trite to observe that the Offender may only be stationary for a short time at any given opportunity and to have the CIRT as nearby as possible to exploit the chance is obviously desirable.<sup>440</sup>
- 5.237 Counsel Assisting also submitted that the position adopted in the early hours of the morning by A/Sgt Jones, when compared with the more responsive approach taken by the CIRT units later the same day when police units were searching for the Offender in the Werribee and Yarraville areas, seems misguided.<sup>441</sup>
- 5.238 Counsel Assisting submitted the combination of Sgt Caridi's unwillingness to pursue any means other than CIRT's involvement or the van plan to confirm the Offender's location and A/Sgt Jones's rigid interpretation of the circumstances warranting CIRT deployment led to a dissipation of the opportunities afforded by the ping information.<sup>442</sup>
- 5.239 Counsel for the Families submitted that CIRT should not have refused to deploy when requested by Sgt Caridi and/or DSC Reid.<sup>443</sup> They agreed with Counsel Assisting that A/Sgt Jones's response was rigid.<sup>444</sup> Counsel for the Families adopted the submissions of Counsel Assisting that it was reasonably open to CIRT to deploy at that time and suggested this was a missed opportunity.<sup>445</sup>

432 Statement of Inspector Stephen Reynolds dated 27 October 2017, Coronial Brief, p. 1519.

433 Exhibit 205, Victoria Police Manual *Specialist Support*, Coronial Brief, pp. 2763–4.

434 Transcript of evidence, p. 1689

435 Transcript of evidence, p. 1683

436 Transcript of evidence, p. 1682.

437 Transcript of evidence, p. 3493.

438 Transcript of evidence, p. 3501.

439 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 60.

440 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, pp. 60–1.

441 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 61.

442 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 61.

443 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 10.

444 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 11.

445 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 11.

- 5.240 Submissions on behalf of Sgt Caridi suggested the refusal of CIRT to deploy or even assist was unreasonable in the circumstances.<sup>446</sup>
- 5.241 Counsel for A/Sgt Jones submitted no criticism should be made of his actions. Further, it was argued that A/Sgt Jones gave credible evidence that it was the practice of CIRT to deploy when the location of an offender had been confirmed and this was the reason for refusal provided to Sgt Caridi and DSC Reid.<sup>447</sup>
- 5.242 Counsel for A/Sgt Jones submitted:
- ... the unanimous evidence is that the response of Jones was the expected, usual and conventional response from a CIRT 251 in response to a deployment request. His actions cannot be characterised as somehow unreasonable simply by reference to some unspecified standard.<sup>448</sup>
- 5.243 A/Sgt Jones's counsel submitted that the overwhelming evidence is that his assessment to not deploy CIRT was entirely in accordance with policy and the practice of Victoria Police.<sup>449</sup> Moreover, highly ranked officers, including AC Fontana, Insp Reynolds and Supt Ward, gave evidence that his actions were entirely appropriate.<sup>450</sup> Therefore, there is no reason to criticise or make any adverse comment about A/Sgt Jones.<sup>451</sup>
- 5.244 Counsel for CCP submitted that the decision by CIRT to not deploy in circumstances where the Offender's whereabouts were unknown was reasonable, appropriate and consistent with CIRT's deployment criteria.<sup>452</sup> Further, the submission by Counsel Assisting that A/Sgt Jones's approach was rigid, failed to appreciate the role of CIRT in policing and displayed a fundamental misunderstanding of the purpose of their deployment criteria. It was submitted that CIRT is a specialist response team that exists for particular purposes, that its role is not to conduct investigative duties, any more than it is to undertake mobile intercepts.<sup>453</sup> Counsel for CCP noted that CIRT was actively monitoring events on channel 03-01 from approximately 4.35 am.<sup>454</sup>
- 5.245 Clearly, CIRT deployment criteria can be subject to different interpretation. This is evidenced by A/Sgt Jones refusing CIRT deployment at 4.30 am when compared with Sgt Peck's decision to obtain pre-deployment approval from his supervisor only a few hours later when police were still attempting to locate the Offender,<sup>455</sup> and CIRT's subsequent attempts to relocate the Offender following their deployment later that day by attending various residences in Werribee and Yarraville.<sup>456</sup>

446 Written submissions on behalf of Frank Caridi dated 19 May 2020, p. 10.

447 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 30.

448 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 33.

449 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 29.

450 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 30.

451 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 33.

452 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 61.

453 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 61.

454 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 61.

455 Transcript of evidence, pp. 2214-5.

456 Transcript of evidence, p. 2232.

- 5.246 It was open to conclude that the circumstances at the time of Sgt Caridi's request for assistance may have met CIRT deployment criteria and supported deployment given:
- a. there was evidence the Offender was reasonably suspected to be armed with a weapon
  - b. the Offender had been involved in a serious stabbing that had caused serious and life-threatening injuries to his brother, which indicated there was a probability of a violent confrontation
  - c. Sgt Tasiopoulos had broadcast over police communications that the Offender was mentally unstable, and intervention was potentially beyond the scope, expertise and capability of general-duties police and Sgt Tasiopoulos had broadcast over police communications that the Offender was mentally unstable
  - d. the Offender's phone was pinging in locations in St Kilda and Elsternwick to within approximately 100 metres
  - e. there is nothing in the CIRT deployment criteria that says it must have a confirmed location of an offender before deploying
  - f. CIRT was available to deploy at the time
  - g. A/Sgt Jones was apprised by DSC Reid of details about the vehicle registration and the Offender's history of baiting police, driving on the wrong side of the road and high-speed pursuits.
- 5.247 Balancing those issues against A/Sgt Jones's belief that confirmation the Offender had a weapon and confirmation of his location were necessary preconditions (which was supported in evidence by other high-ranking officers, including AC Fontana, Insp Reynolds and Supt Ward), it seems to me that CIRT is a specialist resource that could have been used to assist with apprehension of the Offender in these circumstances. I do not consider it was reasonable to require confirmation that the Offender was armed when the circumstances demonstrated a high likelihood that this was the case. All the known circumstances properly support what should have been the working assumption, namely that the Offender was still armed with the knife he used to attack Angelo. Further, the pings were identifying a location within metres of where he might be.
- 5.248 I accept A/Sgt Jones's evidence that his decision not to deploy was based on his understanding that CIRT needed to have eyes on the Offender. I also acknowledge that A/Sgt Jones actively monitored police communications from 4.30 am onwards. Despite this, I fail to understand his decision not to deploy any CIRT units to assist when one considers what was known at the time.
- 5.249 I find the extremely violent nature of the attack upon Angelo and the Offender's known history should have featured more prominently in the decision to deploy CIRT resources. Throughout the Inquest, there was a tendency to downplay the gravity of the attack on Angelo and the grave risks it signalled if the Offender remained at large. It was a prolonged, determined and frenzied attack. It was very nearly a homicide. It appears that a rigid interpretation of the CIRT criteria did not adequately take into consideration what was known at the time about the Offender, including that he was wanted for the violent assault on his brother, that he had an extensive criminal history, the known escalation of his bizarre and violent behaviour over the preceding 36 hours, including the vicious attack on Mr Wilson, and that his phone was pinging to known areas.
- 5.250 The request for CIRT was for specialist operational support, to provide greater assistance and skills to uniform police and the CIU and to affect a strategic and safe arrest. The evidence was that they were not engaged in any other activity at the time of the request

and St Kilda is not far from the city if they had to be redeployed to a more urgent job anywhere in the state. Short of deploying his units, there was nothing preventing A/Sgt Jones from taking a more proactive approach to offer advice or assistance with formulating a planned response to Sgt Caridi, DSC Reid and DA/Sgt Tzefer. I consider that the CIRT could have been more proactive in offering advice for a potential planned response.

- 5.251 It is impossible to say if anything would have changed had the CIRT deployed—but not doing anything more than monitoring police communications seems to be unreasonable in the circumstances. The CIRT could have been deployed in anticipation that the Offender was likely to be located from a ping on his phone. It was likely that the Offender may only be at any identified location for a short time and, if the CIRT had to respond from their base near the CBD, transit time reduced the chance that these resources could be used effectively. Other demands on CIRT resources permitting, it makes sense to have at least some CIRT resources as nearby as possible to seize any opportunity to apprehend once the Offender was located.

### Should the refusal to deploy CIRT resources have been escalated by senior management?

- 5.252 At Inquest, DA/Sgt Tzefer recalled that he had a discussion with Sgt Toey and Sgt Caridi after the request for CIRT was declined. He stated that he:

... made a proposition to both members and stated to [them] that it would be an opportune time for us to perhaps get an unmarked vehicle, seeing as though we don't [have] CIRT available, to see whether we can identify the vehicle where the ping's coming from.<sup>457</sup>

- 5.253 DA/Sgt Tzefer recalled that, in response, Sgt Toey told him to remain at and lock down the scene, as he had been doing.<sup>458</sup> DA/Sgt Tzefer did not express frustration at this decision, but conceded that there should have been a risk assessment of any effort to locate the Offender in the stolen vehicle.<sup>459</sup> I agree.
- 5.254 Sgt Caridi stated that he had cleared the scene and returned to the police station because 'it was evident [he] could contribute no further and ... the scene was in the hands of other members who had secured the area',<sup>460</sup> and he had 'other duties ... to attend to as well'.<sup>461</sup>
- 5.255 Counsel for Sgt Caridi submitted that once the request for CIRT was refused, A/SSgt Filzek should have taken further action to intervene, either by calling CIRT directly or by contacting the inspector on duty.<sup>462</sup>
- 5.256 In evidence, A/SSgt Filzek said he took on face value what he was told about the CIRT call-out criteria.<sup>463</sup> He understood that it was 'black and white' in relation to the policy or criteria for CIRT assistance and, accordingly, did not think that using his own powers of persuasion or escalating this to Insp Langhorn would have made a difference.<sup>464</sup>

457 Transcript of evidence, p. 1035.

458 Transcript of evidence, p. 1035.

459 Transcript of evidence, pp. 1035–6.

460 Exhibit 81, Second Statement of Sergeant Frank Caridi as amended dated 20 July 2017, Coronial Brief, p. 456.

461 Transcript of evidence, p. 1315.

462 Written submissions on behalf of Frank Caridi dated 19 May 2020, p. 4.

463 Transcript of evidence, p. 1451.

464 Transcript of evidence, p. 1474.

5.257 I accept A/SSgt Filzek's evidence that he did not consider intervention, either by himself or through escalation to Insp Langhorn, would have resulted in a different outcome to the request for CIRT deployment. However, once alerted to the fact that CIRT would not deploy until the Offender was located, I find it was imperative for A/SSgt Filzek, Sgt Caridi and Sgt Toey to develop a coordinated plan for the location and subsequent arrest of the Offender.

## Confusion of roles and responsibilities between police units

5.258 At Inquest, it became apparent that there was not a clear distinction or delineation between who was in control of the 'incident' as compared to the 'investigation', with an overlap of responsibilities for both the criminal investigation and uniform units, particularly in relation to the crime scene and the location and apprehension of the Offender.

5.259 A/SSgt Filzek explained the distinction between the incident and investigation areas of management. He stated that CIU is the subject matter expert in crime investigation and is required to manage the crime scene, conduct the investigation and gather relevant evidence. The uniform division's expertise is in incident management, involving partly the crime scene and the location of the Offender.<sup>465</sup>

5.260 It was submitted by Counsel for Sgt Toey and A/SSgt Filzek that:

- a. Sgt Toey was the supervising crime unit and his role was to supervise all crime units within the SMR, including Crime 541, comprising DA/Sgt Tzefer and DSC Reid. Sgt Toey was in charge of the crime scenes and he tasked DA/Sgt Tzefer and DSC Reid to manage the witnesses and arrange for a canvass of witnesses to be done at the Raleigh Street crime scene. Sgt Toey's focus was the processing of the crime scenes and the witnesses<sup>466</sup>
- b. A/SSgt Filzek was the divisional patrol supervisor based at the Moorabbin Police Station. He had oversight of all the 251s within his division and he attended the crime scene in furtherance of his obligations under the VPM because it is a requirement for a 265 to attend the scene of a serious assault.<sup>467</sup>

5.261 In evidence, A/SSgt Filzek explained that he considered Sgt Caridi was in charge of the 'incident overall' and that the CIU (DA/Sgt Tzefer and DSC Reid) was in charge of processing the crime scene under the supervision of Sgt Toey.<sup>468</sup>

5.262 DA/Sgt Tzefer gave evidence that he and DSC Reid were in charge of the crime scene but that Sgt Caridi was in charge of locating the Offender.<sup>469</sup> DSC Reid was more circumspect and said the responsibility to locate the Offender would be part of a coordinated response between A/SSgt Filzek and his crime supervisor Sgt Toey.<sup>470</sup>

<sup>465</sup> Transcript of evidence, p. 1514.

<sup>466</sup> Written submissions on behalf of Certain Police Members (Group B) dated 19 May 2020, p. 9.

<sup>467</sup> Written submissions on behalf of Certain Police Members (Group B) dated 19 May 2020, p. 9.

<sup>468</sup> Transcript of evidence, p. 1462.

<sup>469</sup> Transcript of evidence, p. 1064.

<sup>470</sup> Transcript of evidence, pp. 1161–2.

5.263 Sgt Caridi did not consider himself to be in charge of the police response to the stabbing of the Offender’s brother. He said:

I’m not running the job. Crime 441<sup>471</sup> are running the job. It would be inappropriate for me to just step in and say ‘I’m Sgt Caridi and let’s do this’. This is their job. It would be inappropriate and it would be disruptive of me to try to take over something that they’re specialised in that—that they’re handling.<sup>472</sup>

5.264 Victoria Police policy requires the Divisional Patrol Supervisor to actively supervise, provide leadership and manage the activities of all patrol units within their division.<sup>473</sup> At Inquest, A/SSgt Filzek stated that he believed he had provided active management and supervision of the incident ‘by being there. By showing support to the people that were there at the scene at the time’.<sup>474</sup> A/SSgt Filzek explained that he went to the scene ‘to provide support and leadership to the people that were on the ground’<sup>475</sup> and noted that ‘often merely the presence of the boss uplifts people’s spirit to work’.<sup>476</sup>

5.265 A/SSgt Filzek conceded that he did not know if his presence at the scene significantly impacted the conduct of the arrest or the location and arrest of the Offender.<sup>477</sup> However, he later explained that his role is to watch what is happening from above or from the side, stepping in if there is a need.<sup>478</sup> In going into such a scene, he does not demand answers or a briefing immediately so as to not create confusion or ambiguity around who is in charge or to pull detectives away from their work processing a crime scene to explain to him what they are doing.<sup>479</sup> He noted that ‘there’s the need to trust what people are doing based on your knowledge of them and their ... particular supervisors’.<sup>480</sup> He further explained that, in his experience, deficiencies or gaps come to the attention of a 265 by a supervisor saying that they do not know what to do and by asking for help or in the case of a brand-new police member who does not know what they are doing—‘it’s obvious’.<sup>481</sup> However, in this case, he stated that he had ‘two very experienced sergeants that knew what they were doing’.<sup>482</sup> He stated that neither of the sergeants gave any indication to him that they were unable to make decisions themselves or that they were not in control of their respective areas of responsibility.<sup>483</sup>

5.266 Counsel for the Families submitted that A/SSgt Filzek was unable to identify who was in charge of the investigation. ‘He seemed certain that it was not him. He failed to act when advised by [Sgt] Caridi that CIRT had refused to attend. He did not act on the pings to the telephone in the possession of the Offender’.<sup>484</sup>

5.267 Counsel for A/SSgt Filzek and Sgt Toey submitted that their evidence in relation to roles and responsibilities was cogent and unambiguous. It was further submitted that they clearly understood their roles in the early hours of the morning and neither considered there was any role confusion.<sup>485</sup>

471 Sgt Caridi misstated the call sign at this point. He clearly intended to refer to Crime 541, which constituted DA/Sgt Tzefer and DSC Reid.

472 Transcript of evidence, pp. 1313–4.

473 Exhibit 179, Victoria Police Manual – *Procedures and Guidelines Resource management and patrol supervision* updated 28 September 2015, p. 2622.

474 Transcript of evidence, p. 1467.

475 Transcript of evidence, p. 1512.

476 Transcript of evidence, p. 1512.

477 Transcript of evidence, p. 1467.

478 Transcript of evidence, p. 1513.

479 Transcript of evidence, p. 1513.

480 Transcript of evidence, p. 1513.

481 Transcript of evidence, p. 1513.

482 Transcript of evidence, p. 1513.

483 Transcript of evidence, pp. 1513–4.

484 Written submissions on Counsel representing the Families of the Deceased dated 19 May 2020, p. 9.

485 Written submissions on behalf of Certain Police Members (Group B) dated 19 May 2020, p. 9.

- 5.268 I find that some of the supervising police officers involved in the overnight response to the stabbing of Angelo were reluctant to accept any form of responsibility for their role in the events of the early morning. Much of the evidence given about the police response immediately after Angelo's stabbing was marked by blame-shifting and standing behind the limits of roles, which were often expressed in imprecise terms. This culture of blame-shifting only serves to undermine the effectiveness of Victoria Police and the community's trust in its ability to perform its core function, which is to serve and protect the Victorian community.
- 5.269 It seems there was not a clear delineation of roles between the police officers involved with the investigation of the crime scene and incident, and those who were involved in undertaking and planning a resolution strategy. There was also no discussion between senior officers involved in the investigation about who specifically should be tasked with coordinating an arrest plan and communicating that plan to officers involved in the investigation. This was just assumed. Indeed, I find there was no planned resolution strategy. I further find there was inadequate communication, coordination and assumption of responsibility between A/SSgt Filzek, Sgt Toey and Sgt Caridi.<sup>486</sup>
- 5.270 I also find there was a distinct lack of clarity around roles and responsibilities. This led to important functions not being undertaken, such as attempting to locate and arrest the Offender. While I am unable to say whether the Offender would have been located and arrested had a planned resolution strategy been in place, the failure to develop such a plan and the lack of a coordinated response meant that this opportunity was lost.
- 5.271 This lack of clarity around roles and responsibilities, and lack of ownership, responsibility and leadership, had a deleterious effect and led to confusion between the supervising criminal and uniform units on the night, which ultimately hampered the effectiveness of the police response. The combined police response by the nightshift units led to a perfect storm of ineffectiveness. I consider this is a potential prevention opportunity and propose to make a recommendation to address ambiguity of roles and responsibilities.

## Overnight handover to morning shifts

### Handover to morning Critical Incident Response Team

- 5.272 At about 6.30 am, A/Sgt Jones provided a handover to the incoming CIRT 251, Sgt Matthew Peck. He briefed Sgt Peck on the stabbing incident, the conversations he had with Sgt Caridi and DSC Reid and the possibility CIRT would be called to assist if further intelligence was received about the Offender's location.<sup>487</sup>
- 5.273 Sgt Peck recalled that, as part of the briefing, he was informed that an incident had occurred involving the Offender where he had stabbed his brother multiple times, lit a bible on fire and then hit a relative with the burning bible, stuck his thumb into the person's eye socket and then stolen that person's vehicle.<sup>488</sup> Sgt Peck understood that a request had been made overnight for CIRT to place a cordon at an address where the Offender was thought to be, but the request was declined until further intelligence was obtained by local detectives. Sgt Peck was advised he may receive a call from investigators during his shift about the incident.<sup>489</sup>

486 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 59.

487 Exhibit 103, Statement of Acting Sergeant Kalev Jones dated 30 June 2017, Coronial Brief, p. 1122; Exhibit 106, Electronic Patrol Duty Return Form (ePDR) of Acting Sergeant Kalev Jones dated 20 January 2017, p. AM 41-3; Exhibit 131, Statement of Sergeant Matthew Peck as amended dated 20 January 2017, Coronial Brief, p. 1427; Exhibit 133, Electronic Patrol Duty Return (ePDR) of Sergeant Matthew Peck dated 20 January 2017, Coronial Brief, p. 4355.

488 Exhibit 131, Statement of Sergeant Matthew Peck as amended dated 20 January 2017, Coronial Brief, p. 1427.

489 Exhibit 131, Statement of Sergeant Matthew Peck as amended dated 20 January 2017, Coronial Brief, p. 1427.

5.274 At about 7.20 am, Sgt Peck briefed his morning-shift crew. The TIO for the unit was present and provided them with further detail about the previous night's job and the Offender's history, including his 'extensive mental history and propensity for violence'. The TIO then handed them all a copy of a KALOF about the Offender.<sup>490</sup> CIRT's involvement during the day is discussed further in Part 6 of the Finding.

## Handover to morning uniform units

5.275 A/SSgt Filzek returned to Moorabbin Police Station at about 4.36 am. At about 5.35 am, he briefed the incoming morning Divisional Patrol Supervisor, A/SSgt Stephen Russell, about the incident before going off duty at 6.00 am.<sup>491</sup> At 5.44 am, A/SSgt Russell confirmed over police communications that he had taken over supervision of Divisions 1 and 2 and had been briefed about the Raleigh Street stabbing incident.<sup>492</sup>

5.276 At about 5.40 am, Sgt Caridi briefed the incoming Patrol Supervisor, Sgt Karen Griffith, about the stabbing incident. Sgt Griffith understood that a crime scene guard was still required, that DA/Sgt Tzefer may require a second unit for a line search later and that South Melbourne 307 was tasked to take over crime scene duties from Malvern 306. Sgt Griffith was informed that the CIU was triangulating the Offender's phone and was responsible for making inquiries to locate the Offender.<sup>493</sup> At 6.02 am, Sgt Caridi created an Incident Fact Sheet for the stabbing incident that contained a brief summary of the circumstances and Angelo's condition, along with a list of attending police members and witnesses.<sup>494</sup>

5.277 Around 5.40 am, Sgt Tasiopoulos conducted a shift handover to the incoming Section Sergeant, Sgt Amy Van Maanen. He provided her with a full briefing of the incident, including the attempts to ping the Offender's phone and that it had recently been switched off. Sgt Van Maanen was told that FC Verdun would continue to try to ping the phone in case it was switched back on and that the nightshift crime units were preparing to hand over the investigation to the Port Phillip CIU morning shift.<sup>495</sup>

5.278 While Sgt Tasiopoulos briefed Sgt Van Maanen, FC Verdun telephoned Insp Langhorn. He was directed to pass on the most recent ping updates to the morning crime unit, as they would continue the pings.<sup>496</sup> FC Verdun subsequently emailed DA/Sgt Tzefer all screenshots of the RMS, along with further details of a minor technical problem that had occurred after the second ping.<sup>497</sup>

5.279 At about 5.50 am, Insp Langhorn provided a handover to the incoming regional response officer Local Area Commander, Insp Jennifer Forsyth, and briefed her about the incident.<sup>498</sup> At about 5.55 am, Insp Forsyth broadcast on channel 03-01 that handover with nightshift had occurred via mobile phone and was aware of the Raleigh Street incident.<sup>499</sup>

490 Exhibit 131, Statement of Sergeant Matthew Peck as amended dated 20 January 2017, Coronial Brief, p. 1428.

491 Exhibit 90, Handwritten Notes of Acting Senior Sergeant Adrian Filzek dated 19-20 January 2017, Coronial Brief, pp. 2228-9; Exhibit 91, Electronic Patrol Duty Return (ePDR) of Acting Senior Sergeant Adrian Filzek dated 20 January 2017, Coronial Brief, pp. 2230-5.

492 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 38.

493 Exhibit 176, Electronic Patrol Duty Return (ePDR) of Sergeant Karen Griffith, Coronial Brief, p. 4111; Exhibit 175, Handwritten Notes and pursuit debrief notes of Sergeant Karen Griffith, Coronial Brief, p. 4106; Exhibit 174, Statement of Sergeant Karen Griffith dated 27 January 2017, Coronial Brief, pp. 898-9.

494 Exhibit 86, Incident Report re Stabbing of Angelo Gargasoulas dated 20 January 2017, Coronial Brief, pp. 2052-3.

495 Exhibit 61, First Statement of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 1659; Exhibit 63, Notes of Sergeant Peter Tasiopoulos dated 9 March 2017, Coronial Brief, p. 4609; Statement of Sergeant Amy Van Maanen dated 13 June 2019, Coronial Brief, p. 1754; Police Notes of Sergeant Amy Van Maanen dated 20 January 2017, Coronial Brief, p. 4983.

496 Exhibit 93, Typed Notes of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 4987; Exhibit 92, Statement of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 1766.

497 Exhibit 93, Typed Notes of First Constable Aidan Verdun dated 27 February 2017, Coronial Brief, p. 4987.

498 Exhibit 100, Statement of Inspector Jennifer Forsyth dated 24 May 2017, Coronial Brief, p. 733; Exhibit 101, Typed and Handwritten Notes of Inspector Jennifer Forsyth dated 20 January 2017, Coronial Brief, p. 2306; Statement of Inspector Mark Langhorn dated 25 April 2017, Coronial Brief, p. 1206.

499 Exhibit 73, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Stabbing) dated 20 January 2017, EX348-2 p. 40.

## Handover to morning Criminal Investigation Unit

- 5.280 South 550 left the Raleigh Street crime scene at about 6.35 am after conducting a handover to DA/Sgt Tzefer and ensuring the continuity of evidentiary items seized at the Alfred Hospital.<sup>500</sup> DA/Sgt Tzefer was tasked with managing the crime scene and conducting a briefing with the Port Phillip CIU morning crime unit, which comprised DSC Burnett and SC Reeves.<sup>501</sup>
- 5.281 At about 7.10 am, DA/Sgt Tzefer liaised with DSC Burnett by telephone and briefed him on the circumstances of the incident and arranged to meet at the crime scene for handover.<sup>502</sup>
- 5.282 At about 7.15 am, DSSgt Humphries commenced duty and was briefed by DSC Lal Devinder Singh.<sup>503</sup> At that stage, DSC Burnett and SC Reeves had primacy of the investigation as the allocated crime response unit for the day, with responsibility for the shift for any crime that had been reported.<sup>504</sup>
- 5.283 At about 7.23 am, DSC Burnett arrived at the Raleigh Street crime scene with SC Reeves.<sup>505</sup> DA/Sgt Tzefer conducted an official handover to DSC Burnett of the crime scene and the exhibits seized during the investigation.<sup>506</sup>
- 5.284 The SMR Division 1 Investigation and Response Manager DInsp Damian Jackson commenced duty at 7.30 am<sup>507</sup> and Insp Forsyth briefed him on the stabbing incident and the LBS request.<sup>508</sup> DInsp Jackson reviewed the Incident Fact Sheet prepared by Sgt Caridi and spoke with DSSgt Humphries, who informed him that Port Phillip CIU members were actively looking for the Offender, that the Offender's mobile phone was switched off, the stabbing victim was not expected to die and the CIRT team had been notified of the situation. DSSgt Humphries advised DInsp Jackson that Port Phillip CIU required no further assistance, an arrest plan was in place and he would update DInsp Jackson as needed.<sup>509</sup>
- 5.285 The continued investigation of the search to locate and arrest the Offender continues in Part 6 of the Finding.

## Closure of crime scene

- 5.286 After the crime scene had been processed, it was closed and all attending police members returned to their respective police stations to complete their shift or undertake briefings in relation to the incident.

500 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1742; Exhibit 72, Handwritten Notes of Detective Acting Sergeant Dimitrios Tzeferemineos, Coronial Brief, p. 4981.

501 Exhibit 78, Statement of Sergeant Nathan Toey dated 31 March 2017, Coronial Brief, p. 1715; Exhibit 79, Handwritten Notes of Sergeant Nathan Toey dated 20 January 2017, Coronial Brief, p. 4964.

502 Exhibit 72, Handwritten Notes of Detective Acting Sergeant Dimitrios Tzeferemineos, Coronial Brief, p. 4982; Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 393; Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves dated 23 January 2017, Coronial Brief, p. 4378.

503 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1027; Exhibit 139, Handwritten and Typed Notes of Detective Senior Sergeant Darren Humphries dated 20 January 2017, Coronial Brief, p. 4184.

504 Transcript of evidence, pp. 2386–7.

505 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, pp. 393–4.

506 Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1742.

507 Exhibit 97, Statement of Detective Inspector Damian Jackson dated 18 April 2017, Coronial Brief, p. 1050.

508 Exhibit 100, Statement of Inspector Jennifer Forsyth dated 24 May 2017, Coronial Brief, p. 733.

509 Exhibit 97, Statement of Detective Inspector Damian Jackson dated 18 April 2017, Coronial Brief, p. 1050.

- 5.287 South Melbourne 307, consisting of FC Richard Camilleri and SC Cody Mourad, had been responsible for crime scene guard duties at the time it was cleared. They had taken over crime scene guard duties from Malvern 306 at about 7.10 am<sup>510</sup> and had been tasked by DA/Sgt Tzefer with guarding the crime scene until the State Emergency Services (SES) had completed a line search for the knife used in the attack on Angelo.<sup>511</sup> Both FC Camilleri and SC Mourad believed they were the last police officers remaining at the scene.<sup>512</sup>
- 5.288 Counsel for the Families submitted that by the time the crime scene at Raleigh Street had been cleared, it must have been apparent to police there was a real prospect that the Offender would return to the scene, given:
- a. only a few hours earlier, the Offender had sent a threatening Facebook message to Ms Muo, who it was known was staying the night at Raleigh Street
  - b. it was noted at the Port Phillip CIU briefing at 8.30 am that one of their first lines of enquiry was to follow up Ms Muo<sup>513</sup>
  - c. the Offender was bailed to reside at the Raleigh Street apartment.<sup>514</sup>
- 5.289 The evidence reveals that the Offender did return briefly to the Raleigh Street crime scene at 8.04 am. This was captured on a live television cross by Neary Ty reporting for the Today Show. The Offender was seen in the stolen vehicle, yelling out and attempting to get the attention of the media for a few seconds before driving off.
- 5.290 He returned approximately 10 minutes later, sometime between about 8.15 am and 8.30 am when he was observed parked on the side of the road outside the apartment complex. On this occasion, he did not attempt to engage with the media personnel who were packing away their equipment.<sup>515</sup>
- 5.291 The time at which the crime scene was cleared and whether any police were present when the Offender returned twice shortly after 8 am remains unknown.
- 5.292 DA/Sgt Tzefer's recollection was that police had left the crime scene sometime before 8 am, and that there were no police at the scene (as far as he knew) when the Offender was filmed at 8.04 am.<sup>516</sup> However, DSC Burnett gave evidence that, at the time of the Today Show live cross, the Offender was inside the apartment complex.<sup>517</sup> DSC Burnett explained that he gave a quick stand-up interview to the media under the foyer inside the complex. Ms Ty had subsequently gone down to the street to do a live feed at which point the Offender had driven past her.<sup>518</sup> DSC Burnett confirmed this evidence in re-examination but made it clear that he was not aware at the time that the Offender had returned to the crime scene. This information only came to light later.<sup>519</sup>

510 Exhibit 164, Statement of Senior Constable Cody Mourad dated 20 January 2017, Coronial Brief, p. 1307; Exhibit 158, Statement of First Constable Richard Camilleri dated 20 January 2017, Coronial Brief, p. 428.

511 Exhibit 164, Statement of Senior Constable Cody Mourad dated 20 January 2017, Coronial Brief, p. 1307; Exhibit 158, Statement of First Constable Richard Camilleri dated 20 January 2017, Coronial Brief, p. 428.

512 Transcript of evidence, p. 2830.

513 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, pp. 13–4.

514 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, pp. 13–4.

515 Statement of Glenn Edwards dated 23 March 2017, Coronial Brief, p. 574; Statement of Neary Ty dated 21 March 2017, Coronial Brief, p. 1732.

516 Transcript of evidence, p. 1075.

517 Transcript of evidence, pp. 1965–6.

518 Transcript of evidence, pp. 1965–6.

519 Transcript of evidence, pp. 1994–5.

- 5.293 At Inquest, SC Mourad accepted that, based on the ePDR for his unit (South Melbourne 307), they had been at the crime scene until about 8.21 am.<sup>520</sup> It appears to me, however, that given the ePDR also records that South Melbourne 307 dropped off stationery that had been used for the crime scene log<sup>521</sup> at Prahran Police Station at 8.20 am, they must have left Raleigh Street at least five to ten minutes earlier, given the time it would take to drive from Raleigh Street to Prahran Police Station.
- 5.294 In contrast, DA/Sgt Tzefer, DSC Burnett and SC Reeves all believed that there were no members left at the scene when they left together to return to St Kilda Police Station.<sup>522</sup> SC Reeves's records indicate that the crime scene was closed at 7.45 am,<sup>523</sup> which was consistent with the recollections of the St Kilda 307 unit and the crime scene log.<sup>524</sup> The notes and contemporaneous statements of both DSC Burnett and SC Reeves indicate they left the crime scene shortly afterwards and returned to St Kilda Police Station (a journey of approximately five to ten minutes by car) for a briefing with Port Phillip CIU at about 8.30 am.<sup>525</sup>
- 5.295 On balance, I consider it likely that SC Reeves, DSC Burnett and DA/Sgt Tzefer were the last units on the scene because the CIU was in charge of the investigation and directing uniform units as required. I further consider that it is likely, based on their contemporaneous notes and the timing of the Offender's return to Raleigh Street, that SC Reeves, DSC Burnett and DA/Sgt Tzefer left the scene between around 8.05 am and 8.20 am.
- 5.296 The evidence suggests that when the Offender first returned to Raleigh Street in the stolen vehicle, there was at least one police vehicle in the vicinity. This may explain why the Offender initially drove off, and why, when he returned ten to fifteen minutes later, he did not attempt to draw attention to himself. I accept that police officers had no knowledge at the time that the Offender had returned to the scene, however briefly.
- 5.297 Counsel for the Families submitted that, in all the circumstances, police should have left members stationed at the apartment building for at least the remainder of the day in case the Offender returned.<sup>526</sup>
- 5.298 In cross-examination, DSC Burnett conceded there was a chance the Offender might return to the crime scene, but explained that there are 'many crime scenes every day in every single suburb [and] the chance that an offender goes back to that address is unlikely'.<sup>527</sup> This comment does not account for the fact that the Offender lived at and was bailed to this address.

520 Transcript of evidence, p. 2830.

521 Exhibit 64, Statement of Senior Constable Cody Mourad dated 20 January 2017, Coronial Brief, p. 1308; Police Running Sheet – South Melbourne 308 (20/01/2017), Coronial Brief, p. 4315.

522 Transcript of evidence, pp. 1075, 1930, 1995.

523 Exhibit 118, Handwritten Diary Notes of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 4378; Exhibit 71, Statement of Detective Acting Sergeant Dimitrios Tzeferemineos dated 19 April 2017, Coronial Brief, p. 1743.

524 Statement of First Constable Aaron Henning dated 6 April 2017, Coronial Brief, p. 990; Electronic Patrol Duty Return (ePDR) form for St Kilda 307 dated 20 January 2017, Coronial Brief, pp. 4139–40; Statement of Constable Christopher Hughes dated 22 February 2017, Coronial Brief, p. 1015; Crime Scene Log at Raleigh Street Windsor dated 20 January 2017, Coronial Brief, AM 35, p. 1.

525 Exhibit 117, Statement of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 1500; Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 4378; Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 394; Exhibit 122, Handwritten Notes of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 2034.

526 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 14.

527 Transcript of evidence, p. 1994.

- 5.299 At Inquest, SC Reeves stated she did not personally give consideration to whether it was necessary to have someone remain at the scene,<sup>528</sup> and did not discuss this with DSC Burnett or anyone up the chain of command.<sup>529</sup> Under cross-examination, she conceded it was possible the Offender would return to the address and that a police presence could have been maintained in the event that occurred.<sup>530</sup>
- 5.300 At Inquest, DSSgt Humphries agreed that as part of the Port Phillip CIU dayshift's attempts to locate and arrest the Offender, he had directed that a number of avenues of enquiry be pursued, including, relevantly, to 'locate and stay with the girlfriend [Ms Muo].'<sup>531</sup> DSSgt Humphries was aware Ms Muo was at Raleigh Street,<sup>532</sup> but he had asked all units to return to St Kilda Police Station for the morning briefing with the nightshift crime unit. He did not know whether a uniform presence remained at the crime scene. He conceded he did not make any enquiries about this, stating that this was 'a detail that I left with [DSC Burnett] and [SC Reeves] to deal with [because] that was their responsibility'.<sup>533</sup>
- 5.301 It is apparent that, at the time the Raleigh Street crime scene was cleared, no consideration was given by investigating members to the likelihood that the Offender would return or to the potential implications of the threat made in the Facebook message to Ms Muo. I agree with the Families' submission that there was a real prospect of the Offender returning to Raleigh Street as he had done in the past, including after the assault against Mr Wilson. This potential was highlighted in the subsequent briefing at Port Phillip CIU and the actions taken to locate and apprehend the Offender thereafter. Aspects of this briefing are discussed in detail in Part 6 of this Finding.
- 5.302 Given it was one of the avenues of enquiry for the CIU that morning, I consider it would have been appropriate to have left a police unit at or near the scene, in the event the Offender returned. However, given the Offender's history of evading police and the paranoia he exhibited regarding the police when in the company of HCP (earlier that morning), it is unlikely he would have returned to his mother's apartment if he saw police or police vehicles in the vicinity. It is not possible to say with certainty whether this would have resulted in the Offender's arrest. We now know, however, that he did return, which resulted in the abduction of Ms Muo; this is discussed in more detail in Part 6 of the Finding.

## Potential prevention opportunities

- 5.303 The evidence at Inquest suggested that there were further areas in which improvements might be implemented with respect to command and control. It was suggested by Counsel Assisting that I consider making the following recommendation:

That Victoria Police review its training, policies and procedures relevant to the roles, responsibilities and coordination between CIU and other supervisory units to eliminate 'role confusion' and ambiguities concerning operational command in all areas including: criminal investigations; incident response and planned operations.<sup>534</sup>

528 Transcript of evidence, pp. 1930–1.

529 Transcript of evidence, p. 1931.

530 Transcript of evidence, p. 1931.

531 Transcript of evidence, pp. 2446–7; Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1028.

532 Transcript of evidence, p. 2447.

533 Transcript of evidence, p. 2448.

534 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, pp. 64, 162.

5.304 Counsel for the Families agreed with this suggested recommendation.<sup>535</sup>

5.305 The CCP also agreed with the suggested recommendation. It was submitted:

... there clearly was confusion on the night as to who was responsible for coordinating the search for and arrest of the Offender. While this constituted a deficit in respect of those involved, it is accepted that a broader assessment to avoid recurrence among others in a comparable scenario is required.<sup>536</sup>

5.306 CCP advised that the review will take place as recommended, including clarification of resources and management and patrol supervision issues in the VPM.<sup>537</sup>

5.307 I agree and have made this recommendation. See recommendation number five.

5.308 Counsel for the Families suggested that I make a further recommendation that:

Victoria Police review its procedures in relation to serious incidents where the suspect is at large, to identify a specific person/s responsible for locating a person who presents a danger to the public.<sup>538</sup>

5.309 In response, the CCP submitted that the families' proposed additional recommendation was not necessary because the CCP had already agreed to review its training, policies and procedures relevant to the roles, responsibilities and coordination between the CIU and other supervisory units to eliminate 'role confusion' and ambiguities of operational command in all areas. This will necessarily include consideration of who is responsible for locating an offender in these circumstances.<sup>539</sup>

5.310 I accept that the CCP has agreed to undertake a review of its training, policies and procedures, relevant to the roles, responsibilities and coordination between Criminal Investigation Units and other supervisory units, which will include responsibility for locating an offender. Therefore, I do not propose to make this further recommendation.

## Recommendation

### Recommendation Five:

That Victoria Police reviews its training, policies and procedures that govern the roles, responsibilities and coordination between the criminal investigation units and other supervisory units to eliminate role confusion and ambiguities concerning operational command in all areas, including criminal investigations, incident response and planned operations.

535 Written submissions on Counsel representing the Families of the Deceased dated 19 May 2020, p. 14.

536 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 60.

537 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 60.

538 Written submissions of the Families of the Deceased dated 19 May 2020, p. 14.

539 Outline of Reply Submissions by the Chief Commissioner of Police dated 11 June 2020, p. 3; Transcript of Oral Submissions Hearing, pp. 740–1.

# Part 6: Operation Invokes 2017

## Overview

- 6.1 As the police response to the stabbing of the Offender's brother carried over from the night shift to the day shift, a new operation was initiated, code-named Operation Invokes 2017 (**Operation Invokes**). Port Phillip CIU had primacy of this operation, with support provided throughout the course of the day from various other police units, including uniform, highway patrol, the CIRT and Air Wing. This operation had the immediate aim of locating and arresting the Offender for the stabbing of his brother.
- 6.2 Parts 6 and 7 of this Finding examine Operation Invokes as it unfolded across the course of the morning and early afternoon of 20 January 2017.
- 6.3 Part 6 focuses on the initial investigations and actions undertaken by police to locate and arrest the Offender, until the point where CIRT officers liberated Ms Muo and the Offender managed to escape from police at Wurundjeri Way just before midday.
- 6.4 Part 7 examines the subsequent attempts to relocate and arrest the Offender after he escaped from CIRT at Wurundjeri Way and sped away onto the West Gate Freeway.
- 6.5 These events raised many issues about resolution strategies, attempted intercepts, pursuits and the involvement of specialist units such as CIRT and the State Surveillance Unit.
- 6.6 For ease of reference, I have divided the chronology and analysis of the key issues into the following sections:
  - a. morning CIU investigations
  - b. attempted intercept of the Offender's vehicle in South Melbourne
  - c. police pursuit of the Offender
  - d. attempt to apprehend the Offender at Wurundjeri Way
  - e. Ms Muo as an important source of intelligence
  - f. request for specialist resources.

## Morning CIU Investigations

### Overview of morning-shift police units

- 6.7 Operation Invokes 2017 commenced at about 8.30 am. It had the immediate aim of locating and arresting the Offender<sup>1</sup> and was the 'No. 1 priority'<sup>2</sup> for Port Phillip CIU that day.

<sup>1</sup> Transcript of evidence, pp. 162, 1757.

<sup>2</sup> Transcript of evidence, pp. 2385, 2424, 2469.

- 6.8 All available Port Phillip CIU members on duty were involved in the search for the Offender.<sup>3</sup> They were assisted at various junctures throughout the morning by members of uniform and CIRT. For clarity of narrative, the police units and supervising officers involved in the morning response are set out below.
- 6.9 The Port Phillip CIU units involved in the operation on 20 January 2017 were:
- a. DSSgt Darren Humphries, the Officer-in-Charge of Port Phillip CIU. DSSgt Humphries was in charge of the entire operation, including strategy and the activities of his staff.<sup>4</sup> He was working with his sub-charge, DA/SSgt David Newman, and they had the call sign Port Phillip 560.<sup>5</sup>
  - b. DSgt David Barry was performing supervision duties at Port Phillip CIU. He was in command of the tactical aspects of the operation<sup>6</sup> and had the call sign Port Phillip 551.<sup>7</sup>
  - c. DSC Adam Burnett and SC Jacqueline Reeves were the morning crime response unit for the City of Port Phillip area. DSC Burnett was upgraded to the position of Detective Acting Sergeant for his crew that day.<sup>8</sup> They were responsible for new jobs and any outstanding tasks from overnight.<sup>9</sup> They had earlier attended the Raleigh Street crime scene, as detailed in Part 5 of this Finding. Their call sign was Port Phillip 507.<sup>10</sup> DSC Aaron Diwell joined their unit at about 12.50 pm after he had completed unrelated duties at the Melbourne Magistrates' Court.<sup>11</sup>
  - d. DSgt Adam Vohmann and DSC Shoshanna Lew (née Epstein)<sup>12</sup> had call sign Port Phillip 550.<sup>13</sup> DSgt Vohmann was tasked with assisting DSC Burnett with his investigation.<sup>14</sup>
  - e. DSC Murray Gentner was performing crime response duties with DSC Clayton White and DSC Lal Devinder Singh. They had the call sign Port Phillip 508.<sup>15</sup> DSC Gentner was upgraded to the position of Detective Acting Sergeant for his crew<sup>16</sup> that day.<sup>17</sup>
- 6.10 Port Phillip CIU was overseen by the Investigation and Response Manager for the SMR, DInsp Jackson. DInsp Jackson was ultimately in charge of the criminal investigation units within his area, which included Port Phillip CIU and Stonnington CIU, as well as the Prahran divisional response unit.<sup>18</sup> His call sign was SD1 150.<sup>19</sup>

3 Transcript of evidence, pp. 885, 1794.

4 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1027; Transcript of evidence, pp. 2445, 2559.

5 Exhibit 107, Statement of Detective Acting Senior Sergeant David Newman dated 20 January 2017 as amended, Coronial Brief, pp. 1361–2.

6 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 306; Transcript of evidence, pp. 904, 907, 982.

7 Transcript of evidence, p. 947.

8 Transcript of evidence, p. 878.

9 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, pp. 393–4; Exhibit 122, Police Notes of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 2034; Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1027.

10 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 393; Exhibit 117, Statement of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, pp. 1498–9.

11 Exhibit 125, Statement of Detective Senior Constable Aaron Diwell dated 20 January 2017, Coronial Brief, pp. 539–40; Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 4383.

12 For the purpose of this Finding, Detective Senior Constable Shoshanna Lew is referred to as DSC Epstein, which was her name as at the time of these events.

13 Exhibit 188, Statement of Detective Sergeant Adam Vohmann dated 8 February 2017, Coronial Brief, p. 1768.

14 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1029.

15 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner dated 20 January 2017, Coronial Brief, p. 844; Exhibit 111, First Statement of Detective Senior Constable Clayton White dated 20 January 2017, Coronial Brief, p. 1869; Exhibit 127, Statement of Detective Senior Constable Lal Devinder Singh dated 20 January 2017, Coronial Brief, p. 1616.

16 Port Phillip CIU comprised six teams or 'crews' identified by numbers. Each crew was led by a Detective Sergeant, who each had about four Senior Constables underneath them. Three crews responded to general serious crime, one crew managed registered sex offenders, one crew investigated recidivist offenders and one crew investigated vehicle crime. See transcript of evidence, p. 877 and Exhibit 125, Statement of Detective Senior Constable Aaron Diwell dated 20 January 2017, Coronial Brief, p. 538.

17 Transcript of evidence, p. 878.

18 Transcript of evidence, p. 1560; Exhibit 97, Statement of Detective Inspector Damian Jackson dated 18 April 2017, Coronial Brief, p. 1050.

19 Exhibit 97, Statement of Detective Inspector Damian Jackson dated 18 April 2017, Coronial Brief, p. 1050.

- 6.11 Uniform units across the SMR included:
- a. Insp Jennifer Forsyth, the Stonnington Local Area Commander, who was performing morning shift regional response duties for SMR Division 1. Her call sign was SMR 150.<sup>20</sup>
  - b. A/SSgt Stephen Russell, the divisional response supervisor for the Kingston, Bayside, Glen Eira, Port Phillip and Stonnington areas. His call sign was SMB 265.<sup>21</sup>
  - c. Sgt Karen Griffith, uniform patrol supervisor (251) for units in South Melbourne and St Kilda. Her call sign was South Melbourne 251.<sup>22</sup>
  - d. Sgt Amy Van Maanen, the Section Sergeant at St Kilda Police Station, with call sign St Kilda 900.
  - e. South Melbourne 307, a divisional van comprising SC Cody Mourad and FC Richard Camilleri.<sup>23</sup>
  - f. North Melbourne 640, a Melbourne Highway Patrol unit comprising SC Christopher Bowen and SC Stuart Haworth.<sup>24</sup>
- 6.12 CIRT units included:
- a. A/SSgt Kelly Gooden, who was responsible for maintaining operational management of the CIRT units working that day. Her call sign was CIRT 265.<sup>25</sup>
  - b. Sgt Matthew Peck, the shift supervisor for CIRT. He was working with SC Gregory Ralston and had the call sign CIRT 251.<sup>26</sup>
  - c. CIRT 377, comprising SC Roland Jones and SC David Cavanagh.<sup>27</sup>
  - d. CIRT 267, comprising LSC Martin Krajnc and FC Lauren Fuller.<sup>28</sup>
  - e. CIRT 367, comprising SC Scott Carroll and SC Jeremiah Roper.<sup>29</sup>
  - f. CIRT 300, the negotiator unit, comprising SC James Taylor and SC Mikah Heilbronn.<sup>30</sup>

## Handover briefing at 8.40 am

- 6.13 At about 8.40 am, in the kitchen area of Port Phillip CIU, DSSgt Humphries convened a meeting with the nightshift investigators DA/Sgt Dimitrios Tzefer and DSC Matthew Reid.<sup>31</sup>
- 6.14 The purpose of this briefing was to give the morning-shift investigators an overview of the events that had occurred the previous night, provide an update on the status of the investigation, detail the objectives of the operation, identify avenues of enquiry and outstanding tasks, set priorities, and plan how the available resources would be deployed with respect to the investigation.<sup>32</sup> Those present at the briefing were DSSgt

20 Exhibit 100, Statement of Inspector Jennifer Forsyth dated 24 May 2017, Coronial Brief, p. 733.  
 21 Statement of Acting Senior Sergeant Stephen Russell dated 7 February 2017, Coronial Brief, p. 1545.  
 22 Exhibit 174, Statement of Sergeant Karen Griffith dated 27 January 2017, Coronial Brief, p. 898.  
 23 Exhibit 164, Statement of Senior Constable Cody Mourad dated 20 January 2017, Coronial Brief, p. 1307.  
 24 Exhibit 130, Statement of Senior Constable Stuart Haworth dated 2 February 2017 as amended, Coronial Brief, p. 961.  
 25 Exhibit 168, Statement of Acting Senior Sergeant Kelly Gooden dated 6 February 2017 as amended, Coronial Brief, p. 866.  
 26 Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017 as amended, Coronial Brief, p. 1427.  
 27 Exhibit 144, Statement of Senior Constable Roland Jones dated 20 January 2017 as amended, Coronial Brief, p. 1130.  
 28 Exhibit 157, Statement of Leading Senior Constable Martin Krajnc dated 20 January 2017, Coronial Brief, p. 1171.  
 29 Statement of Senior Constable Scott Carroll dated 15 April 2017, Coronial Brief, p. 474.  
 30 Statement of Senior Constable James Taylor dated 20 January 2017, Coronial Brief, p. 1663.  
 31 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1027.  
 32 Transcript of evidence, pp. 1040, 1881, 1995, 2387, 2444–5, 3182.

Humphries, DA/SSgt Newman, DSgt Vohmann, DSC Burnett, DSC Diwell, DSC White, DSC Singh, DSC Epstein, SC Reeves, DA/Sgt Tzefer and DSC Reid.<sup>33</sup>

- 6.15 DSgt Barry gave evidence that he was ‘in effect, in charge of the meeting’ and took notes on a whiteboard.<sup>34</sup> The whiteboard documented Port Phillip CIU’s strategies, avenues of inquiry and resourcing requirements.<sup>35</sup> These notes were added to throughout the course of the morning as tasks were allocated and completed and further information came to hand.<sup>36</sup>
- 6.16 DA/Sgt Tzefer provided a summary of the overnight incident and investigation to Port Phillip CIU. This included details of:
- a. the circumstances of the stabbing, including timing, location and victim details
  - b. the whereabouts and condition of the victim
  - c. that the Offender departed Raleigh Street, driving a stolen red Holden Commodore
  - d. that the weapon used by the Offender had not been recovered
  - e. that the whereabouts of the Offender or the vehicle were presently unknown
  - f. that the Offender had since been in contact with Ms Muo
  - g. that the crime scene had been processed.<sup>37</sup>
- 6.17 DA/Sgt Tzefer also provided details of the Facebook message the Offender had sent to Ms Muo earlier that day: ‘call me do not go on without me I will kill all babe’.<sup>38</sup>
- 6.18 DSSgt Humphries requested the following avenues of enquiry be immediately undertaken:
- a. to locate and remain with the Offender’s girlfriend
  - b. to compile and distribute a circular to all members, alerting them to arrest the Offender and to locate the stolen Holden Commodore
  - c. to continue with electronic efforts to attempt to locate the Offender
  - d. to formulate a safe arrest plan with a designated arrest crew, which included:
    - i. contacting DSC Gentner with a view to requesting he attend the office and join the investigation
    - ii. exploiting DSC Gentner’s professional rapport with the Offender to bring about a peaceful resolution
    - iii. engaging with CIRT to assist with an arrest plan.

33 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1027; Police Notes of Detective Senior Sergeant Darren Humphries dated 20 January 2017, Coronial Brief, p. 4184; Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 306.

34 Transcript of evidence, p. 933; Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 306.

35 Exhibit 9, Photograph of Port Phillip CIU whiteboard, Coronial Brief, p. 1968.

36 Transcript of evidence, pp. 2395, 2444–5.

37 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1028; Exhibit 139, Handwritten and typed notes of Detective Senior Sergeant Darren Humphries dated 20 January 2017, Coronial Brief, p. 4184; Exhibit 107, Statement of Detective Acting Senior Sergeant David Newman dated 10 March 2017, Coronial Brief, pp. 1361–2; Exhibit 189, Handwritten Notes of Detective Sergeant Adam Vohmann dated 20 January 2017, Coronial Brief, p. 4988; Exhibit 125, Statement of Detective Senior Constable Aaron Diwell dated 20 January 2017 as amended, Coronial Brief, p. 539; Exhibit 111, First Statement of Detective Senior Constable Clayton White dated 20 January 2017, Coronial Brief, p. 1869; Exhibit 127, Statement of Detective Senior Constable Lal Devinder Singh dated 20 January 2017, Coronial Brief, p. 1616; Exhibit 128, Handwritten Notes of Detective Senior Constable Lal Devinder Singh dated 20 January 2017, Coronial Brief, pp. 4568–9; Exhibit 184, First Statement of Detective Senior Constable Shoshanna Epstein dated 8 February 2017, Coronial Brief, p. 578.

38 Exhibit 122, Handwritten Notes of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 2034; Exhibit 128, Handwritten Notes of Detective Senior Constable Lal Devinder Singh dated 20 January 2017, Coronial Brief, p. 4568.

- e. to ensure that sufficient resources were available to locate and arrest the Offender, including:
    - i. investigators
    - ii. Canine Unit (**K9**)
    - iii. Air Wing
    - iv. SSU
  - f. to search the crime scene again with the advantage of daylight.<sup>39</sup>
- 6.19 DSSgt Humphries and DA/SSgt Newman left the morning briefing meeting at about 9.10 am to attend a pre-arranged meeting with a Victoria Police Human Resources consultant about unrelated matters.<sup>40</sup> DSSgt Humphries stated that he left the investigators to continue the investigation,<sup>41</sup> with DSC Burnett and DSgt Barry charged with giving effect to the plan as detailed on the whiteboard.<sup>42</sup>
- 6.20 Across the following few hours, Port Phillip CIU actioned the avenues of enquiry identified on the whiteboard.

## Briefing of DSC Gentner

- 6.21 DSC Gentner commenced work at approximately 9.00 am, after being called in early to assist with the investigation. He was quickly brought up to speed about the overnight stabbing incident by DSC Burnett and DSgt Barry.<sup>43</sup>
- 6.22 DSgt Barry stated that he and DSC Gentner had a discussion around the possibility the Offender would surrender once contact was established or if he was located.<sup>44</sup> Based on the information to hand, DSgt Barry believed it was likely the Offender would contact DSC Gentner again 'at which time an arrangement would be made for him to hand himself in or [DSC] Gentner would contact him and the same arrangements would occur'.<sup>45</sup>
- 6.23 DSgt Barry instructed DSC Gentner to facilitate an arrest plan with the Offender if he called him but directed DSC Gentner not to call the Offender until his location had been established.<sup>46</sup> DSC Gentner's efforts to negotiate the Offender's surrender in the late morning and early afternoon of 20 January 2017 are discussed in Part 7 of this Finding.

39 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, pp. 1028–9.

40 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1029.

41 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1029; Exhibit 139, Handwritten and types notes of Detective Senior Sergeant Darren Humphries dated 20 January 2017, Coronial Brief, p. 4184.

42 Transcript of evidence, p. 2399.

43 Transcript of evidence, pp. 159–60; Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 307; Exhibit 1, First Statement of Detective Senior Constable Murray Gentner dated 20 January 2017, Coronial Brief, p. 844; Transcript of evidence, p. 161.

44 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 307.

45 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 307.

46 Transcript of evidence, p. 944.

## Telephone contact with Offender and Ms Muo by DSC Burnett

- 6.24 At about 9.12 am, DSC Burnett telephoned Ms Muo's mobile telephone number from the Port Phillip CIU mobile phone.<sup>47</sup> A male voice answered the phone and identified himself as 'Andrew'. DSC Burnett requested to speak with Ms Muo. 'Andrew' informed him that she was in the shower and asked what the call was about. DSC Burnett responded, 'Put me onto Akiir.' He then spoke with a female who identified herself as Ms Muo. DSC Burnett identified himself as 'Adam from the police'.<sup>48</sup>
- 6.25 DSC Burnett stated the following conversation ensued:
- I said: 'Was that [the Offender] on the phone?'
- She said: 'Yes.'
- I said: 'Where are you now?'
- She said: 'I am at a friend's house in St Kilda. I don't know the address.'
- I said: 'Put me onto [the Offender]'.<sup>49</sup>
- 6.26 DSC Burnett then heard the phone being passed to someone (the Offender) and the call was subsequently disconnected. DSC Burnett tried to call the number straight back but the phone was turned off.<sup>50</sup>
- 6.27 In a statement taken by investigators later that evening after the Bourke Street incident, Ms Muo said that the Offender hung up the phone, switched it off and told her that she had 'set him up'.<sup>51</sup> The Offender asked her how the police knew it was him, and she told him it was because he had answered the phone.
- 6.28 Ms Muo said that the Offender yelled at her and told her, 'If the cops come find me, I'll run everyone down in the city'.<sup>52</sup> He told her there were comets coming and that they would end the world and 'whoever he sees on the way, he will run over'.<sup>53</sup> He continued to speak about being 'the saviour' and being god and the king.<sup>54</sup> The important intelligence Ms Muo held about the Offender's purported intentions and state of mind is discussed further below.
- 6.29 DSgt Barry was present during the call between DSC Burnett, the Offender and Ms Muo.<sup>55</sup> He agreed that Ms Muo was cooperative, discreetly revealed who she was with and to the best of her ability tried to say where she was and that, as a result of that phone call, they were able to positively identify who the Offender was with.<sup>56</sup>

47 Exhibit 68, Handwritten Notes of Detective Sergeant David Barry, Coronial Brief, p. 1961; Exhibit 122, Police Notes of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 2034; Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 394.

48 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief p. 394.

49 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief p. 394.

50 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief p. 395.

51 Second Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1340.

52 Second Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1341.

53 Second Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1341.

54 Second Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1341.

55 Transcript of evidence, p. 888.

56 Transcript of evidence, p. 888.

## Triangulation requests

- 6.30 DSgt Barry made two requests to the PSM at the PCC, A/SSgt Ian Drury, on the morning of 20 January 2017 for urgent triangulation of mobile phones known to be connected with the Offender.<sup>57</sup>
- 6.31 The first request was made at about 9.14 am, shortly after DSC Burnett had spoken to the Offender on Ms Muo's phone.<sup>58</sup> A second request was made at 11.55 am, shortly after DSC Gentner had contacted the Offender on Nathan Clapham's phone (see Part 7 of this Finding).<sup>59</sup>
- 6.32 On both occasions, the requests were denied by A/SSgt Drury on the basis they were made for investigative purposes and did not meet the criteria of a threat to life pursuant to s. 287 of the Telecommunications Act.<sup>60</sup> A/SSgt Drury advised DSgt Barry to contact the SPU of Victoria Police to arrange triangulation of the mobile phone using a different legislative provision under the Interception and Access Act relevant to investigation purposes.<sup>61</sup> This was similar to what had occurred overnight. The different legislative provisions and subsequent amendments to the process for requesting triangulation are discussed in detail in Part 5 of this Finding.
- 6.33 DSgt Barry subsequently submitted a location-based search (**LBS**) request through the SPU at 12.41 pm after ascertaining that the Offender was using Mr Clapham's mobile phone number.<sup>62</sup> The outcome of this ping is detailed further in Part 7 of this Finding.

## Second briefing at 9.50 am

- 6.34 A further short briefing was held at the Port Phillip CIU offices at 9.50 am in relation to locating the Offender and a potential arrest plan.<sup>63</sup> DSgt Barry, DSgt Vohmann, DSC Gentner, DSC Burnett, DSC White, DSC Epstein, DSC Singh and SC Reeves were present at this meeting.<sup>64</sup>
- 6.35 During this meeting, investigators were updated on:
- a. the overnight pings at AFM's address
  - b. details of the stolen vehicle and the Offender's clothing
  - c. DSC Burnett's telephone contact with the Offender via Ms Muo's phone

<sup>57</sup> Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 307; Statement of Acting Senior Sergeant Ian Drury dated 26 June 2017, Coronial Brief, p. 557.

<sup>58</sup> Audio recordings of phone calls (Acting Senior Sergeant Ian Drury) dated 20 January 2017, Coronial Brief, Exhibit 47, Call 2; Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, p. 1961; Police Notes of Acting Senior Sergeant Ian Drury dated 20 January 2017, Coronial Brief, Exhibit 47, p. 2192;

<sup>59</sup> Audio recordings of phone calls (Acting Senior Sergeant Ian Drury) dated 20 January 2017, Coronial Brief, Exhibit 47, Call 1; Police Notes of Acting Senior Sergeant Ian Drury dated 20 January 2017, Coronial Brief, Exhibit 47, p. 2192; Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, p. 1963.

<sup>60</sup> Exhibit 68, Handwritten Notes of Detective Sergeant David Barry, Coronial Brief, p. 1961; Statement of Acting Senior Sergeant Ian Drury dated 26 June 2017, Coronial Brief, p. 557.

<sup>61</sup> Statement of Acting Senior Sergeant Ian Drury dated 26 June 2017, Coronial Brief, p. 557; Police Notes of Acting Senior Sergeant Ian Drury dated 20 January 2017, Coronial Brief, Exhibit 47, p. 2192.

<sup>62</sup> Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 311.

<sup>63</sup> Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1961.

<sup>64</sup> Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 4379; Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 308. DSgt Barry recorded that DSC Diwell was also present at this briefing. However, DSC Diwell's Statement makes clear that although he had been at the first briefing at 8.40 am, he left the police station immediately afterwards to attend the Melbourne Magistrates' Court for an unrelated matter and could not have been present during the second briefing. See Exhibit 125, Statement of Detective Senior Constable Aaron Diwell dated 20 January 2017 as amended, Coronial Brief, p. 539; Exhibit 126, Handwritten Notes of Detective Senior Constable Aaron Diwell dated 20 January 2017, AM 65, p. 1.

- d. the Offender's known movements overnight after the stabbing and the theft of Mr Clapham's phone
  - e. the Offender's Facebook message to Ms Muo stating 'I will kill all'.<sup>65</sup>
- 6.36 DSC Burnett recalled that DSC Gentner informed them that, after the assault on Angelo, the Offender had gone to the home of an associate, Mr Clapham, in Princes Street, St Kilda, where he had stolen Mr Clapham's mobile telephone.<sup>66</sup> DSgt Barry was unable to accurately recall whether the fact that Mr Clapham's phone had been seized by the Offender was known to him at the time of the first briefing, but he considered it might not have been.<sup>67</sup>
- 6.37 Avenues of investigation and strategy were also discussed during the briefing, and tasks allocated to members accordingly.<sup>68</sup> Investigators operated on the assumption that the Offender was still armed, although they did not have any clear evidence of this at the time.<sup>69</sup> DSgt Barry directed that key addresses were to be checked covertly in an attempt to locate the Offender, including the Gatwick Hotel, Princes Street, Raleigh Street and AFM's address.<sup>70</sup> All police officers were requested to advise the occupants of these addresses to contact police if they sighted the Offender.<sup>71</sup>
- 6.38 DSgt Barry agreed that, by this briefing, a fair portion of the critical parts of evidence-gathering had been completed.<sup>72</sup> The operation had essentially moved to the resolution phase of the investigation, which was to locate and arrest the Offender and was, in large part, a tactical operation.<sup>73</sup>
- 6.39 DSgt Barry stated that all members were briefed in relation to the plan that if the Offender's vehicle was located near an address, a cordon would be established, and if he was located driving in the vehicle, no immediate intercept was to occur and members were to keep observations of him.<sup>74</sup> DSgt Barry noted that these things were to occur with a view to obtaining other specialist services such as Air Wing, SSU, K9 and CIRT to assist.<sup>75</sup>
- 6.40 At the end of the briefing, DSC Gentner, DSC White and DSC Singh (Port Phillip 508) left the office to do a drive-over of an address at Glenhuntly Road where the Offender's phone had last pinged.<sup>76</sup>
- 6.41 Following this briefing, DSC Epstein obtained a local police tactical (**TAC**) radio channel (channel 03-15) to facilitate communications between the multiple units deployed from Port Phillip CIU.<sup>77</sup> She was subsequently tasked with arranging for Port Phillip Crime Scene Services to attend Mr Clapham's residence at Princes Street, St Kilda, to process that crime scene. DSC Epstein held a briefing with the crime scene officers at 10.50 am.<sup>78</sup>

65 Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1961; Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 395. Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, pp. 4379–80; Exhibit 128, Handwritten Notes of Detective Senior Constable Lal Devinder Singh dated 20 January 2017, Coronial Brief, pp. 4568–9; Exhibit 184, First Statement of Detective Senior Constable Shoshanna Epstein dated 8 February 2017, Coronial Brief, p. 579; Exhibit 185, Handwritten Notes of Detective Senior Constable Shoshanna Epstein dated 8 February 2017, Coronial Brief, p. 2202; Exhibit 122, Handwritten Notes of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief p. 2034.

66 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 395.

67 Transcript of evidence, p. 980.

68 Exhibit 182, First Statement of Detective Senior Constable Shoshanna Epstein dated 8 February 2017, Coronial Brief p. 579; Exhibit 185, Handwritten Notes of Detective Senior Constable Shoshanna Epstein dated 20 January 2017, Coronial Brief, p. 2202.

69 Transcript of evidence, p. 887.

70 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 308.

71 Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1961.

72 Transcript of evidence, p. 887.

73 Transcript of evidence, pp. 887, 904.

74 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 308.

75 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 308.

76 Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1961.

77 Exhibit 184, First Statement of Detective Senior Constable Shoshanna Epstein dated 8 February 2017, Coronial Brief, p. 579; Exhibit 185, Handwritten Notes of Detective Senior Constable Shoshanna Epstein dated 20 January 2017, Coronial Brief, p. 2202.

78 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 309; Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1961; Exhibit 185, Handwritten Notes of Detective Senior Constable Shoshanna Epstein dated 20 January 2017, Coronial Brief, p. 2203.

## Search in Carnegie and St Kilda

- 6.42 Port Phillip 508 left the office at approximately 10.05 am to search for the Offender at AFM's address in Carnegie, where the Offender's phone had last pinged earlier that morning.<sup>79</sup> After patrolling the area, DSC Gentner asked DSgt Barry for approval to check the residence. This was granted, but there did not appear to be anyone at home when they knocked on the door.<sup>80</sup> DSC Gentner advised DSgt Barry that the Offender was not at the residence.<sup>81</sup>
- 6.43 DSgt Barry conveyed this information to DSgt Vohmann and DSC Burnett. He decided to deploy more units to check the other addresses and patrol the St Kilda area for the Offender or the vehicle.<sup>82</sup>
- 6.44 DSC Burnett and SC Reeves (Port Phillip 507) were subsequently deployed at about 10.50 am, after organising a KALOF and LBS searches of Ms Muo's and Ms Gargasoulas's phones. As a result of these enquiries, it was established that both of these phones were switched off, and no location could be obtained.<sup>83</sup> Port Phillip 507 intended to patrol the St Kilda area to look for the stolen Commodore that the Offender was thought to be driving, and to check addresses of family and known associates.<sup>84</sup>

## Contact with the State Surveillance Unit

- 6.45 At about 10.08 am, DSgt Barry telephoned the SSU to request their assistance.<sup>85</sup>
- 6.46 SSU is a covert specialist policing unit that provides situational awareness and support for tactical resolution strategies. It does not engage in mobile intercepts or arrests unless faced with a critical situation where a person's life or wellbeing is seriously at risk and overrides its objective to remain covert. The importance of SSU as an investigative tool is discussed later in this Part of the Finding.<sup>86</sup>
- 6.47 At Inquest, DSgt Barry explained that the purpose of his telephone call was to give SSU a heads-up that an application would be forthcoming.<sup>87</sup> Requests for SSU assistance involve a formal process: an officer of the level of senior sergeant or above from the requesting unit is required to complete an online application form. Once received by SSU, this is then processed and (if appropriate) approved.<sup>88</sup>
- 6.48 At the time of DSgt Barry's first call to SSU, police did not know where the Offender was, but they were actively attempting to locate him.<sup>89</sup>
- 6.49 DSgt Barry spoke with the Senior Sergeant overseeing Crime Operations at the SSU, SSU Operative 005,<sup>90</sup> and provided him with a summary of what they were investigating and what their needs were.<sup>91</sup>

79 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner dated 20 January 2017, Coronial Brief, p. 844; Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1961; Exhibit 111, First Statement of Detective Senior Constable Clayton White dated 20 January 2017, Coronial Brief, p. 1869; Exhibit 127, Statement of Detective Senior Constable Lal Devinder Singh dated 20 January 2017, Coronial Brief, p. 1616.

80 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner dated 20 January 2017, Coronial Brief p. 845.

81 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 309. Exhibit 68, Handwritten Notes of Detective Sergeant David Barry, Coronial Brief, p. 1961.

82 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 309.

83 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, pp. 395–6.

84 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 396; Exhibit 122, Police Notes of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 2035.

85 Transcript of evidence, p. 974; Exhibit 68, Handwritten Notes of Detective Sergeant David Barry, Coronial Brief, p. 1961.

86 Exhibit 233, Third Statement of Superintendent Peter Ward dated 20 December 2019, AM 92, p. 7.

87 Transcript of evidence, p. 973.

88 Transcript of evidence, p. 973.

89 Transcript of evidence, p. 973.

90 SSU Operative 005 is a pseudonym granted pursuant to my ruling and order dated 23 August 2019.

91 Transcript of evidence, p. 974.

- 6.50 DSgt Barry stated that he was advised no resources were available<sup>92</sup> and he recorded in his notes 'nil likely till arvo'.<sup>93</sup> On this basis, he did not commence a formal application process.<sup>94</sup>
- 6.51 There was a dispute in evidence about these discussions, which is analysed later in this Part of the Finding.

## Request for a KALOF and information broadcast on police communications

- 6.52 At 10.08 am, DSC Burnett contacted the PCC and arranged for KALOF to be broadcast across the police radio network, providing details of the Offender, the crime for which he was being sought, the vehicle that he was thought to be driving and a warning that he was thought to be armed with a knife. DSC Burnett stated that this KALOF was broadcast over the SMR police channels.<sup>95</sup>
- 6.53 Following this KALOF broadcast, DSC Burnett organised two LBS requests with Optus for phones belonging to Ms Muo and the Offender's mother. The results of these enquiries indicated that both mobile phones were turned off and a location could, therefore, not be obtained.<sup>96</sup>
- 6.54 DSC Epstein was then tasked with compiling Person and Vehicle Whereabouts Desired LEAP reports, which she commenced.<sup>97</sup>
- 6.55 At about 10.15 am, DSgt Vohmann also contacted police communications to request that a KALOF be broadcast in relation to the Offender, along with a request to contact Port Phillip CIU if he was sighted.<sup>98</sup> Shortly afterwards, police communications broadcast the following KALOF:

... keep a lookout for a wanted person, [the Offender] or similar. He's wanted in regards to a serious assault. 182 centimetres tall, dark ... short dark hair, medium build. He's believed to be in the St Kilda area, possibly driving Uniform Zulu Sierra 179. It's a Holden sedan, red Commodore, believed to be, uh, drug-affected and possibly armed with a knife. Do not approach if sighted. Contact your relevant 251s if sighted and the Port Phillip CI, please ... keep a lookout for.<sup>99</sup>

- 6.56 Two minutes later, Port Phillip 507 broadcast, 'That vehicle is a stolen vehicle and the suspect will probably try to avoid police and be in pursuit.'<sup>100</sup> In response, police communications asked whether or not the Offender qualified to have units engage in a pursuit with him and Port Phillip 507 responded, 'We'll just have to see what happens when they try to intercept.'<sup>101</sup>

92 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 308.

93 Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1961.

94 Transcript of evidence, p. 974.

95 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 395; Exhibit 122, Police Notes of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 2034.

96 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 395. DSC Burnett stated that DSC Tzefer had informed him earlier that the offender was thought to have stolen his mother's mobile telephone.

97 Exhibit 182, First Statement of Detective Senior Constable Shoshanna Epstein dated 8 February 2017, Coronial Brief p. 579; Exhibit 185, Handwritten Notes of Detective Senior Constable Shoshanna Epstein dated 20 January 2017, Coronial Brief, p. 2203.

98 Exhibit 188, Statement of Detective Sergeant Adam Vohmann dated 8 February 2017, as amended, Coronial Brief, p. 1768.

99 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 2.

100 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 3.

101 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 3.

- 6.57 At 10.17 am, Sgt Griffith asked on police communications if the Offender could be put on the Mobile Data Terminal (**MDT**) bulletin board.<sup>102</sup> Sgt Griffith commented that this would be a useful investigative tool and further requested a photo and details of the vehicle be included.<sup>103</sup> Shortly afterwards, at 10.36 am, DSgt Vohmann (with the assistance of Sgt Van Maanen) arranged for this information to be broadcast via the MDT to police units in the St Kilda, South Melbourne and Prahran areas.<sup>104</sup>
- 6.58 Sgt Griffith then sought clarification about the directions in relation to pursuing the Offender and whether he was still armed.<sup>105</sup> Police communications responded that the Offender was believed to be armed with a knife.<sup>106</sup> They indicated they were unsure whether the Offender qualified for a pursuit, and they assumed, based on what Port Phillip 507 said that if he was sighted, that it would be ‘a call made at the time’<sup>107</sup> and ‘he is believed to still be armed with the knife.’<sup>108</sup> Port Phillip 507 then broadcast that they had a concern that the Offender was still armed with a knife and provided a warning that the Offender was ‘described to be in a manic psychotic state at the moment’.<sup>109</sup>
- 6.59 Sgt Griffith sought confirmation that there were currently officers out looking for the Offender. Port Phillip 507 confirmed that this was the case and stated that they were ‘doing the usual, um, tricks to try and locate this person’.<sup>110</sup>
- 6.60 At 10.22 am, police communications broadcast an updated KALOF, stating:
- I’ve just received another call for the KALOF, [the Offender]. Uh. Tan complexion, male, a very athletic build, about 26 years old, tall. He is wanted in regards to a stabbing at the corner of Raleigh Street and Punt Road in Windsor this morning, about two o’clock. He was last seen fleeing in that stolen vehicle as KALOF earlier on. Um. As so, the stabbing’s taken place at about two o’clock this morning in the vicinity of Raleigh and Punt Road in Windsor. Um. He is believed to be still currently armed with a knife. He’s in a psychotic and manic state. Um. Sending Facebook messages to kill people. If sighted, for all members to execute extreme precaution and call for immediate backup if locating or sighting of this vehicle is known. Please, units, can you just be very vigilant in regards to this male, Raleigh and Punt in Windsor ...<sup>111</sup>

## Request for CIRT assistance

- 6.61 Following the morning briefings, SC Reeves was tasked with contacting CIRT to request their assistance with the arrest of the Offender.<sup>112</sup>
- 6.62 CIRT is a specialist unit of Victoria Police that provides assistance to general duties police to resolve high-risk incidents. It has specialist equipment and resources that are not available to general duty police, including lethal weapons, less-lethal weapons, tasers, OC spray<sup>113</sup> and many other weapons and specialist resources.

102 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 3.

103 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 4.

104 Exhibit 188, Statement of Detective Sergeant Adam Vohmann dated 8 February 2017, as amended, Coronial Brief, p. 1768.

105 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 4.

106 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 4.

107 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 3–4.

108 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 4.

109 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 4.

110 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 5.

111 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 6.

112 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 308.

113 Transcript of evidence, pp. 2216–7, 2332

6.63 As Supt Ward explained in evidence:

... the capabilities of the [CIRT] are to support frontline general duty units who are confronted with violent offenders or offenders who are believed to be armed, um, with knives or other non-lethal weapons. Ah, they also have a negotiator capability attached to ... to the unit, as well as other aspects such as task[ed] operations and close personal protection. They are a 24/7-based response unit that deploy in the field to support frontline policing operations.<sup>114</sup>

- 6.64 SC Reeves telephoned the CIRT Supervisor, Sgt Peck, at about 10.20 am to discuss the arrest plan.<sup>115</sup> Sgt Peck had earlier briefed his crew, which consisted of eight members, about the incident overnight<sup>116</sup> and informed them that it was likely they would be required to assist local units in the resolution phase if the opportunity presented.<sup>117</sup> The briefing included information about the overnight events, the Offender's mental health and criminal history, including his propensity for violence.<sup>118</sup> They were all given a copy of the KALOF, which included a photo of the Offender.<sup>119</sup> Sgt Peck had obtained pre-authorisation approval from his superior, A/SSgt Gooden, to deploy to cordon and call the Offender if he was placed at an address.<sup>120</sup>
- 6.65 Sgt Peck advised SC Reeves that unless the Offender was confirmed at an address, they would not be able to assist but asked that they keep him in the loop with updates.<sup>121</sup>
- 6.66 At about 10.30 am, Sgt Peck called SC Reeves back and told her that if the Offender was in a vehicle and mobile, CIRT could not intercept. He explained that if they could get the Offender to an address, with observations in place, they would then be able to assist with an arrest. He provided advice relevant to such a scenario, including on establishing whether they could cut off the vehicle, whether there were rear-access points and advising local channel and units if available.<sup>122</sup>

## Sighting of Offender's vehicle in Windsor and extended follow

- 6.67 At 10.57 am, six minutes after leaving the office to check addresses of family and known associates, Port Phillip 507 came across the Offender driving the stolen vehicle in St Kilda Road, Windsor. The Offender was in the northbound lane, turning right onto Dandenong Road.<sup>123</sup> Port Phillip 507 immediately notified police communications of their observations. From their vantage point, they believed there were two males in the vehicle. They did not believe they had been spotted by the Offender and were approximately 500 metres behind the vehicle, following it as it headed eastbound.<sup>124</sup>

114 Transcript of evidence, p. 3832.

115 Transcript of evidence, p. 1916; Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 4380.

116 Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017, as amended Coronial Brief, p. 1427.

117 Transcript of evidence, p. 2803.

118 Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017, as amended Coronial Brief, p. 1428.

119 Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017, as amended Coronial Brief, p. 1428.

120 Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017, as amended Coronial Brief, p. 1429.

121 Transcript of evidence, p. 1916; Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 4380.

122 Transcript of evidence, pp. 1916–7; Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 4380.

123 Transcript of evidence, p. 1969.

124 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 7-8. Transcript of evidence, p. 1969.

- 6.68 Over the following 40 minutes, Port Phillip 507 covertly followed the vehicle through the suburbs of Prahran, Toorak, Albert Park and South Melbourne, providing regular updates to police communications on the Offender's location and direction of travel.<sup>125</sup> They were joined by a number of other unmarked units, including Stonnington CIU and Port Phillip 508.<sup>126</sup>
- 6.69 DSC Burnett's plan was to follow the Offender until he stopped so they could effect a safe arrest.<sup>127</sup> Throughout the extended follow, the Offender appeared to comply with all road rules.<sup>128</sup>
- 6.70 Immediately after locating the Offender, police communications made a request to the Air Wing (police aviation unit) for assistance but was advised there were no units available to assist at that time.<sup>129</sup> Due to technical difficulties, Air Wing was unable to be used until about noon.<sup>130</sup>
- 6.71 Port Phillip 507 then broadcast that they were following the Offender north on The Avenue, that they had other vehicles for cover, were travelling slowly at this stage and were not engaged in a pursuit. They confirmed they were in an unmarked police vehicle and that the Offender's vehicle was missing a rear number plate.<sup>131</sup>
- 6.72 Shortly afterwards, Port Phillip 507 asked police communications to make them the 550 unit (that is, the unit in charge).<sup>132</sup> Police communications acknowledged that they had a sergeant on board but advised they would continue to refer to them as Port Phillip 507.<sup>133</sup> Police communications asked whether they were in pursuit of the Offender, to which they replied 'negative'.<sup>134</sup> Sgt Griffith subsequently requested that St Kilda and South Melbourne units move to that area and try to get close but remain out of the Offender's sight.<sup>135</sup>
- 6.73 At approximately 11.00 am, DSC Epstein and DSgt Vohmann (Port Phillip 550) left the St Kilda Police Station to assist Port Phillip 507.<sup>136</sup> Around this time, DSSgt Humphries telephoned DInsp Jackson to provide an update on the operation, including that the Offender had been sighted in the Prahran area, Air Wing assistance had been requested but was unavailable and that they were engaging CIRT. DInsp Jackson then verbally briefed his superior, Supt Philip Green, about this information.<sup>137</sup>

125 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 396; Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 7–40.

126 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 11.

127 Transcript of evidence, pp. 1969–70, 1972; Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 7–40; Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 396.

128 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 396

129 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 8.

130 Statement of Senior Constable Alex Barron dated 22 January 2017, Coronial Brief, p. 294.

131 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 9–10; Transcript of evidence, p. 2446.

132 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 8–9.

133 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 8–9. The VKC Operator noted that Port Phillip 507 had a Sergeant onboard and informed them that they will continue to refer to the unit as Port Phillip 507, EX348-3, p. 9.

134 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 9.

135 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 9.

136 Exhibit 182, First Statement of Detective Senior Constable Shoshanna Epstein dated 8 February 2017, Coronial Brief, p. 580; Exhibit 185, Handwritten Notes of Detective Senior Constable Shoshanna Epstein dated 20 January 2017, Coronial Brief, p. 2202–3.

137 Exhibit 97, Statement of Detective Acting Inspector Damian Jackson dated 18 April 2017, Coronial Brief, p. 1051.

## Requests for additional resources

- 6.74 At 11.00 am, Port Phillip 507 broadcast that the Offender had turned right onto High Street and they confirmed their request for CIRT assistance, as well as urgent K9 and Air Wing support. Police communications advised that Air Wing was unavailable<sup>138</sup> but that requests would be made for CIRT and K9.<sup>139</sup>
- 6.75 DSgt Barry (Port Phillip 551) also asked that highway patrols with stop sticks be requested to attend, which were then requested by police communications.<sup>140</sup>
- 6.76 At 11.02 am, Sgt Peck (CIRT 251) came on air on channel 03-01 and was briefed on the unfolding incident and the previous KALOF that had been broadcast.<sup>141</sup> Police communications explained that the Offender was armed with a knife, entreating, ‘If we do have to go to ground with him, um, we want some CIRT backup.’<sup>142</sup> Sgt Peck advised that they would continue to monitor the situation and he would try to get a couple of units out to the area. He said they would ‘play it by ear’.<sup>143</sup>
- 6.77 Port Phillip 507 continued to provide updates on the Offender’s movements as he travelled towards Toorak. They confirmed they were following, with a car in front for cover, travelling at the speed limit.<sup>144</sup>
- 6.78 At 11.05 am, A/SSgt Russell (Moorabbin 265) broadcast that he was monitoring the channel and stated:

This male’s been involved in a number of evades in the last 24, 48 hours and there is absolutely no chance that he will pull over if, ah, they attempt to intercept. Is the Air Wing available or been requested as yet?<sup>145</sup>

- 6.79 Police communications responded that the Air Wing had been requested, and that they were not sure what ‘they’re tied up with’.<sup>146</sup> The Operator offered to make a repeat request to Air Wing. Moorabbin 265 asked the Operator to do so and to relay the ‘back story’ to Air Wing.<sup>147</sup>

## Coordination of units

- 6.80 As the extended follow progressed, Sgt Griffith played a significant role in coordinating general duties and Highway Patrol units to have them available nearby but out of the Offender’s sight.<sup>148</sup> CIRT units were also deployed and began to move into the area to be ready to assist with an arrest if the opportunity arose.<sup>149</sup> This way, various units would be able to move in quickly to apprehend the Offender if an opportunity presented itself.

138 Police D24 Radio Communications (8 x Files), Channel 03-01 (Morning) dated 20 January 2017, Exhibit 347, Coronial Brief.

139 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 10.

140 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 11.

141 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 11.

142 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 11–12.

143 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 12.

144 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 14.

145 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 14–15.

146 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 15.

147 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 15.

148 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), pp. 15–21.

149 Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017 (as amended), Coronial Brief, p. 1429.

- 6.81 At 11.07 am, police communications asked Sgt Griffith whether she was the incident controller.<sup>150</sup> Sgt Griffith responded that she believed the 550 (that is, Port Phillip 507) was doing that.<sup>151</sup> Police communications acknowledged this, saying, 'If he's to engage in anything, I'll get you to be the incident controller, please.'<sup>152</sup>
- 6.82 Sgt Griffith asked for a Traffic Management Unit (now known as Highway Patrol) from the city area to take up position on the St Kilda Road area.<sup>153</sup> That unit said they were on the Monash Freeway and could respond.<sup>154</sup> Police communications asked if they should arrange for Prahran 610 to head 'there' with stop sticks, to which Prahran 610 clarified that they did not have stop sticks with them.<sup>155</sup> Prahran 612 confirmed shortly after that they had stop sticks and were *en route*.<sup>156</sup>
- 6.83 At 11.10 am, Port Phillip 507 broadcast that the Offender had turned left at Orrong Road and was travelling north.<sup>157</sup> At some stage shortly after this sighting, Port Phillip 508 began following behind Port Phillip 507.<sup>158</sup>

## Resolution strategy

- 6.84 At 11.09 am, after speaking to DSgt Vohmann about a resolution strategy, DSgt Barry broadcast on channel 03-01 that Port Phillip 507 was to continue to maintain observations on the Offender:

We wish to get him to a point where he's out of the vehicles, or it gives the CIRT the opportunity to get to that location and effect the arrest. At this stage, we'll hold off on the stop sticks while he's driving safely and calmly.<sup>159</sup>

- 6.85 In response, Sgt Griffith asked for all the uniform vehicles to pull back completely out of sight and let the unmarked vehicles (that is, the CIU units) run the incident.<sup>160</sup>
- 6.86 Shortly afterwards, DSgt Barry requested an estimated time of arrival for the CIRT units and was advised by SC Scott Carroll and SC Jeremiah Roper (CIRT 367) that they were about 10 minutes away in heavy traffic.<sup>161</sup> DSgt Barry broadcast that they would consider the intercept plan once CIRT was in the area but that their preference remained for the Offender to pull over and to effect a safe arrest once he was out of the vehicle. He said that they would consider stop sticks if necessary.<sup>162</sup>
- 6.87 At 11.18 am, Sgt Peck confirmed that they had a few units coming from the Victoria Police Centre. He clarified that CIRT could not perform any type of tactical mobile intercept but that they could assist 'with the rest' if the other units coordinated an intercept with the vehicle once CIRT was in the area.<sup>163</sup> Port Phillip 507 acknowledged this fact and asked for the CIRT units to take up a position somewhere behind them.<sup>164</sup>

150 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 17.  
 151 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 17.  
 152 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 17.  
 153 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 18.  
 154 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 19.  
 155 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 19.  
 156 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 20.  
 157 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 19.  
 158 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner dated 20 January 2017, Coronial Brief p. 845.  
 159 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 22.  
 160 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 22.  
 161 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 23.  
 162 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 23.  
 163 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 27.  
 164 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 27.

- 6.88 The concept of a ‘tactical mobile intercept’ (which is also referred to as a mobile vehicle intercept) was an important issue considered throughout the Inquest. A tactical mobile intercept is used to describe the use of police vehicles in a type of tactical formation to force a moving suspect vehicle to stop. This is to be distinguished from the ‘standard’ intercept of pulling over a motorist or intercepting a stationary vehicle. Tactical mobile intercepts are complicated manoeuvres and constitute a high-risk arrest option, which requires specific and high-level training that is only provided to the SOG. CIRT members have no additional training in vehicle intercepts beyond the training provided to general duties or uniform members.<sup>165</sup> This issue is canvassed in further detail in parts 8 and 9 of this Finding.
- 6.89 Over the following eight minutes, Port Phillip 507 continued to follow the Offender as he drove along Toorak Road, Chapel Street, Bond Street and back onto Toorak Road. On occasion, Port Phillip 507 lost eyes on the vehicle, but the police units quickly gained observations of the vehicle again. Further requests were made for Air Wing, but they confirmed they were not available.<sup>166</sup>
- 6.90 At 11.26 am, Port Phillip 507 asked whether the CIRT was still *en route*. Sgt Peck advised that they were approximately half a block away.<sup>167</sup>
- 6.91 Port Phillip 507 provided a further update that the Offender had turned right onto St Kilda Road. At that time, they had one car for cover,<sup>168</sup> and Port Phillip 508 was behind them.<sup>169</sup> The Offender subsequently drove onto Kings Way and then onto Albert Road.
- 6.92 By 11.29 am, there were approximately six or seven unmarked police vehicles in the general area available to assist.<sup>170</sup> At 11.30 am, Sgt Peck advised that they had ‘sufficient units in the area at the moment, so we can probably start turning our mind to resolution’.<sup>171</sup> However, almost immediately afterwards, Port Phillip 507 broadcast that the Offender ‘definitely knows we’re here’.<sup>172</sup>
- 6.93 Sgt Griffith requested marked units pull back off the main road, into the side streets and out of sight.<sup>173</sup>
- 6.94 Port Phillip 507 then broadcast that the Offender’s vehicle was approximately 10 cars ahead on Toorak Road, near Punt Road, with heavy traffic.<sup>174</sup>
- 6.95 At 11.27 am, DSgt Barry advised to ‘just stick with the plan as discussed earlier. Can we confirm whether Air Wing got back to us and they definitely can’t assist?’<sup>175</sup> Air Wing responded that they had been trying to get on air, that their fleet was currently grounded and that he did not want to elaborate on air.<sup>176</sup>

165 Transcript of evidence, p. 3850; Exhibit 233, Third Statement of Superintendent Peter Ward, pp. AM 92, pp. 6–7.

166 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 27–37.

167 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 34–35.

168 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 35.

169 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner dated 20 January 2017, Coronial Brief p. 845.

170 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 38.

171 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 39.

172 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 39–40.

173 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 28.

174 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 31.

175 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 36.

176 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 37.

## Attempted intercept of the Offender's vehicle in South Melbourne

### Arrest plan

- 6.96 The original arrest plan for the morning was to locate the Offender's vehicle, when it was stationary and set up a planned arrest. At Inquest, DSgt Barry explained that if DSC Burnett and SC Reeves had stumbled upon the Offender while on the move, they would have to respond accordingly, but it was 'far from ideal' over a protracted period because their car was readily identifiable as a police vehicle.<sup>177</sup> DSgt Barry agreed that there was a high probability that the Offender would just take off again if pulled over, so the preference was to 'stay covert, follow him for as long as we can to get the right situation to arrest him out of the car'.<sup>178</sup> In evidence, DSgt Barry conceded that it was far less likely that the Offender would stop and get out of the vehicle if he knew he was being followed by police.<sup>179</sup>
- 6.97 DSgt Barry stated that it would be difficult to apprehend the Offender if he was still mobile in a vehicle.<sup>180</sup> He explained that it is exceptionally difficult to stop a person driving a vehicle who does not want to stop.<sup>181</sup> His evidence was that the Port Phillip units intended to exploit an opportunity as it presented itself, for example where the Offender stopped for food or petrol, to visit friends or to sleep.<sup>182</sup> He agreed that such opportunities could present suddenly and without forewarning.<sup>183</sup> However, it would be a case of waiting for the right opportunity to effect the arrest, when the Offender was away from the vehicle for an extended period of time, to then disable the vehicle and have sufficient police numbers around an address to effect the arrest.<sup>184</sup>

### Offender recognises police presence and pulls over in Moray Street

- 6.98 There was always a possibility that the Offender would realise he was being followed due to his previous attempts at baiting police and his familiarity with unmarked CIU vehicles.
- 6.99 This became a reality by 11.31 am, when it was apparent that the Offender had recognised the police presence behind him. He stopped in the right-hand turning lane onto Moray Street, and was looking in his rear-vision mirror and appeared to be making hand gestures back towards the unmarked police vehicles behind him.<sup>185</sup>
- 6.100 The Offender turned right into Moray Street, still driving at the speed limit and indicating appropriately.
- 6.101 Moray Street has a single lane for northbound traffic that is divided from the south bound lane by a narrow grassed median strip with established trees. To the left of the traffic lane is a marked bike lane and to the left of this are areas for parallel parking. At intervals, reservations extend out from the nature strip to the edge of the bike lane that divide the parking areas into sections. The area is generally comprised of residential housing.

177 Transcript of evidence, p. 905.

178 Transcript of evidence, p. 905.

179 Transcript of evidence, p. 900.

180 Transcript of evidence, p. 897.

181 Transcript of evidence, p. 897.

182 Transcript of evidence, p. 898.

183 Transcript of evidence, p. 898.

184 Transcript of evidence, p. 899.

185 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 396, Transcript of evidence, p. 1919.

6.102 At around this time, A/SSgt Russell broadcast:

If the CIRT 251 can formulate an arrest plan involving the vehicle when it becomes stationary in traffic, or at a red traffic control signal, that'd be, ah, beneficial, thanks.<sup>186</sup>

6.103 Similarly, on the CIU TAC channel, DSgt Barry broadcast:

Given the resources, if he's aware of us there, get [DSC Burnett] and a couple of units to surround it as best we can, do a standard intercept.<sup>187</sup>

6.104 After the Offender turned right into Moray Street, Port Phillip 507 'signalled for him to stop, which he did.'<sup>188</sup> The Offender pulled over on the left-hand side of the road and came to a complete stop and waved at DSC Burnett in a 'come to me' gesture.<sup>189</sup> DSC Burnett pulled up behind the Offender with Port Phillip 508 following suit, stationed directly behind them.<sup>190</sup>

6.105 Police from both units exited their vehicles and approached the Offender's vehicle. Instinctively, DSC Burnett and SC Reeves both drew their respective firearms, pointing them low<sup>191</sup> and issued the police challenge.<sup>192</sup> Once DSC Burnett was within approximately four metres of the Offender's vehicle, he shouted loudly, 'Turn the car off, get out of the vehicle'.<sup>193</sup> However, the Offender remained in the vehicle with the engine running.<sup>194</sup>

6.106 DSC White from Port Phillip 508 said he also drew his firearm because he considered the Offender might still be in possession of a knife.<sup>195</sup> DSC Singh did not have a clear recollection, but he remembered he heard the police challenge 'Police—don't move', which usually means someone has their firearm out.<sup>196</sup> DSC Singh considered it was justified because there was a chance the Offender was armed and they wanted to arrest a person who had almost killed someone.<sup>197</sup>

6.107 The evidence supported the conclusion that the police members' training took hold as they approached the vehicle, with their firearms drawn and was appropriate in the circumstances.

6.108 As the police members approached on foot, the Offender accelerated away northbound on Moray Street, taking the first left-hand turn.<sup>198</sup> This placed the police members at a significant disadvantage because they then had to scramble back to their vehicles. DSC Burnett conceded, 'It could have been a tactic as it's happened many times over the years where they get you out of the car and they drive off.'<sup>199</sup>

186 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 40.

187 Exhibit 129, Corrected transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT members, AM67-11.

188 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner dated 20 January 2017, Coronial Brief p. 845.

189 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 397.

190 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 397.

191 Transcript of evidence, pp. 1956, 1973.

192 Transcript of evidence, pp. 1919–20, 1973.

193 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 397.

194 Transcript of evidence, p. 1990.

195 Transcript of evidence, pp. 1807–8.

196 Transcript of evidence, p. 2114.

197 Exhibit 127, Statement of Detective Senior Constable Lalvinder Singh dated 20 January 2017, Coronial Brief, p. 1618.

198 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 397.

199 Transcript of evidence, p. 1974.

## Was the arrest plan appropriate?

6.109 There are no transmissions immediately before the events in Moray Street that describe how any intercept was to take place or what roles particular units might perform. The plan was no more particular than to have the CIU vehicles performing a ‘standard intercept’ with the CIRT nearby to assist. There was no detail to this plan. This was evident from Sgt Peck’s earlier transmission that it was time to ‘start turning our mind to resolution’.<sup>200</sup> This transmission in fact indicates an intention to begin laying down some essential details.

6.110 In response to questions regarding the arrest plan as the Offender drove into Moray Street, DSC Gentner explained:

Well, the preferred arrest plan as stated was when he’s out of the vehicle for them—CIRT to be directed using their training tactics to exit their vehicles—or carry out that arrest whilst he’s on foot.<sup>201</sup>

6.111 The resolution strategy was to follow the Offender and arrest him if an opportunity arose when he was away from his vehicle. Once that advantage was lost, it seems there was no alternative resolution strategy and the attempted intercept in Moray Street depended entirely on the Offender suddenly deciding to cooperate and obey the directions of police. He had shown no signs of doing so at any point from the stabbing of his brother to that time.

6.112 DSgt Barry’s transmission to ‘surround’ the Offender and do a ‘standard intercept’ was ambiguous and provided no meaningful guidance to the units following the Offender.

6.113 It is notable that neither Port Phillip 507 nor 508 transmitted a report that they were intercepting the Offender. The last transmission by either unit before the events in Moray Street was made by Port Phillip 507. It did not indicate that they were about to execute the plan proposed by DSgt Barry on the CIU TAC channel. Instead both units were simply reacting to the Offender.

Yeah, 507. Looks like he’s gunna go right, north in Moray Street. Yeah, got the green arrow, right into Moray. He definitely knows we’re here. He’s still driving at the speed limit and using his appropriate indication, over.<sup>202</sup>

6.114 I accept the sudden and unexpected behaviour of the Offender pulling over did not afford the police officers on the ground any time to implement and communicate an effective plan. No sooner had A/SSgt Russell, Sgt Peck and DSgt Barry transmitted the need for a planned resolution, than Port Phillip 507 had pulled over and attempted to intercept the Offender. However, I consider the possibility of this should have been anticipated and considered earlier, given their combined knowledge for this to potentially occur.

## Should a more aggressive intercept have been attempted?

6.115 The method DSC Burnett used when he stopped his vehicle behind the Offender’s vehicle is described as a ‘standard intercept’. Ordinarily, the police vehicle stops behind the subject vehicle slightly offset to the right by approximately half the width of a vehicle.

<sup>200</sup> Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 39.

<sup>201</sup> Transcript of evidence, p. 957.

<sup>202</sup> Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 39.

This provides a protected pathway from other traffic as the police members move forward to the subject vehicle. This pattern is used routinely when, for example, police intercept a motorist for a traffic infringement.

- 6.116 As was clear from the events in Moray Street, this pattern does nothing if the objective is to block or detain a suspect vehicle. It was all too easy for the Offender to wait until the police members were out of their vehicles, and at a significant disadvantage, then simply drive away. Accordingly, the efforts to intercept the Offender in Moray Street relied entirely on the Offender's compliance and cooperation.
- 6.117 In their oral evidence, the members of Port Phillip 508 and Port Phillip 507 consistently rejected the suggestion that it was possible or advisable to adopt a more aggressive positioning of police vehicles for the intercept at this location. DSC Burnett also said that 'a vehicle intercept is the most dangerous thing that you could do, that's not just in relation to this offender, but it's in general.'<sup>203</sup> DSC Burnett also explained there wasn't an opportunity to do that due to the way the Offender had positioned his vehicle at an angle, facing outward, and, it being a narrow street, he didn't think there would have been much room.<sup>204</sup> DSC Gentner also said he 'would have attempted to try to get in front of [the Offender] but ... in Moray Street, there's a large centre embankment, so we couldn't get past, so we were stuck at their rear'.<sup>205</sup>
- 6.118 In response to questions about aggressive intercepts, DSC White said 'it's possible, but that's not how we're trained to do intercepts'.<sup>206</sup> He added, 'We were never given any formal training.'<sup>207</sup> DSC Singh agreed that they 'haven't been trained to do a box-in or a pit manoeuvre, so to speak'.<sup>208</sup> DSC Singh further explained that 'the sensible approach in a perfect world would be to have the Air Wing up in the air, have specialist units available at the same time and then try to engage and do the intercept'.<sup>209</sup> The various options available to police when they intercept a vehicle are discussed in more detail in Part 8 of this Finding.
- 6.119 DSC White gave evidence that he did not consider that anything more than a standard intercept was warranted when the Offender stopped in Moray Street.<sup>210</sup> He stated that it was not worth running the risk of a more aggressive positioning of the police vehicles:

Because we hadn't tried to intercept him yet. So you have to try and just do a routine intercept first and see potentially if he's gonna pull over or not. We didn't know at that stage whether he was gonna pull over or not.<sup>211</sup>

- 6.120 This approach makes good sense when there is a reasonable prospect a suspect will cooperate. However, the Offender's prior history and behaviour left open only one reasonable forecast, that he would not cooperate and would likely employ dangerous driving to evade police.

203 Transcript of evidence, p. 2110.

204 Transcript of evidence, pp. 2018–9.

205 Transcript of evidence, p. 182.

206 Transcript of evidence, p. 1802.

207 Transcript of evidence, p. 1808.

208 Transcript of evidence, p. 2116.

209 Transcript of evidence, p. 2116.

210 Transcript of evidence, p. 1802.

211 Transcript of evidence, p. 1802.

6.121 DSC White claimed that there was nothing in the intelligence or briefings for Operation Invokes that referred to the Offender's propensity for baiting and evading police.<sup>212</sup> His perception and recollection of the morning briefings is surprising. He also did not recall the earlier transmission from A/SSgt Russell (Moorabbin 265) who was monitoring the operation when he warned:

This male's been involved in a number of evades in the last 24, 48 hours and there is absolutely no chance that he will pull over if, ah, they attempt to intercept.<sup>213</sup>

6.122 Forty-eight minutes before that broadcast, Port Phillip 507 had transmitted its own warning (at about 10.17 am) that the Offender would probably try to avoid police and be in a pursuit.<sup>214</sup>

6.123 In these circumstances, it is difficult to understand how DSC White, who was directly and substantially involved in Operation Invokes, could have been so unaware of this critical information about the Offender.

6.124 If one accepts these opinions as a reasonable assessment of the tactical realities of the situation, the transmission made by DSgt Barry makes little sense. It seems impossible for the police units to, at the same time, 'surround' the Offender and perform a 'standard intercept'. A standard intercept does not allow members to box in or block vehicles.

6.125 The events in Moray Street highlighted a critical issue that persisted throughout the entire operation—what was the arrest plan? This subject was visited time and time again at Inquest and through many witnesses. It was notable that the plan was invariably described in generic terms.

6.126 There were obvious challenges facing the members of the Port Phillip CIU in locating and arresting the Offender. He was known to have an extensive criminal history, including a history of dangerous driving and a willingness to evade police. Accordingly, it was vital that there was a considered strategy that was effectively communicated to all police involved.

6.127 From the moment Port Phillip 507 located the Offender driving around the eastern suburbs, the strategy was to keep him under observation until an opportunity arose, when he was out of or away from his vehicle and then arrest him, with the assistance of CIRT. It was submitted by Counsel Assisting that it was a sound strategy at that time.<sup>215</sup>

6.128 Counsel for the CCP concurred and submitted the strategy was suitably thought out and appropriate. There were no other viable options. It is clear that a high priority was given by the Port Phillip CIU to locate and arrest the Offender, and a concerted effort was made to that end on the morning of 20 January 2017.<sup>216</sup> The CCP submitted that the arrest plan was simple: keep him under covert surveillance until an opportunity arose when he was out of or away from his vehicle and then, with the assistance of CIRT, conduct the arrest, and attempt to negotiate a surrender with him as best could be done.<sup>217</sup>

212 Transcript of evidence, p. 1803.

213 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 15.

214 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 15.

215 Submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 72.

216 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 65.

217 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 64.

- 6.129 I agree this was a sound strategy of the morning operation until the events at Moray Street, when the character of the operation changed from covert to overt and a change of strategy was required.
- 6.130 What was needed was a plan with sufficient detail so that the various units could perform their different roles and functions promptly and effectively. That is not to say that such a plan is inflexible or has to have every detail determined. I acknowledge that this degree of precise planning is impossible in police operations of this kind. However, the stated plan must mean something. It must inform the members involved what will be expected of them. It must allow them to prepare and perform their own planning and risk assessments. It must also offer contingencies if the proposed plan is unsuccessful. Generic phrases such as ‘cordon and manage’ mean little without some proper detail. Worse still, they can lull police members into thinking there is a plan when there isn’t one.
- 6.131 When the Offender stopped in Moray Street, four CIRT units<sup>218</sup> were nearby but not close enough to immediately assist.<sup>219</sup> Counsel Assisting submitted there appeared to have been no significant attempt to direct the CIRT units (or other units) to positions that would be likely to block off escape routes or create some other tactical advantage. Furthermore, even if that had happened, it appears unlikely that it would have stopped the Offender given the members’ concerns about operational safety principles. This was again evidenced moments later when the Offender drove out of Moray Street and was face to face with CIRT 300 and CIRT 251 in the Albert Road Service Road<sup>220</sup>, which is discussed below.
- 6.132 Counsel for the CIU and CIRT members submitted that, the resolution plan ‘was well understood to those involved and imminently enacted when the Offender suddenly pulled over without warning’.<sup>221</sup> It was also submitted that police officers were required to avoid confrontation and use minimum force; therefore, a standard intercept was an appropriate action to attempt.
- 6.133 I acknowledge that the plan for the morning operation was well understood in terms of effecting a safe arrest, but the events in Moray Street were not a manifestation of that plan. The plan originally envisaged the police would move in to arrest the Offender when he was unaware of their presence and away from the vehicle.
- 6.134 I accept the dynamic nature of this intercept meant that there was not a lot of time to formulate a plan and quickly coordinate other resources into place at that moment. The point is that the plan should have been developing earlier while police were following him for an extended period of time and getting the units in place and to preempt and predict possible outcomes, particularly with the knowledge they had of him and his propensity to avoid apprehension. It appears the resolution strategy was haphazard and not well formulated by the time police intercepted the Offender in Moray Street.
- 6.135 The ease with which the Offender evaded police in Moray Street is concerning. These events and immediately after) confirmed what police already knew about the Offender’s propensity to bait and evade police and drive in a dangerous manner.

218 Senior Constable James Taylor and Senior Constable Mikah Heilbronn (CIRT 300); Statement of Senior Constable Mikah Heilbronn dated 22 January 2017, Coronial Brief, p. 981; Statement of Senior Constable James Taylor dated 20 January 2017, Coronial Brief, p. 1665; Sergeant Matthew Peck and Senior Constable Gregory Ralston (CIRT 251); Exhibit 136, Statement of Senior Constable Gregory Ralston dated 25 January 2017, Coronial Brief, p. 1479; Senior Constable Roland Jones and Senior Constable David Cavanagh (CIRT 377) Transcript of evidence, p. 2844; Exhibit 166, Statement of Senior Constable David Cavanagh dated 20 January 2017, Coronial Brief, p. 484 and Leading Senior Constable Krajnc and First Constable Fuller (CIRT 267) Transcript of evidence, p. 2844.

219 Exhibit 136, Statement of Senior Constable Gregory Ralston dated 25 January 2017, Coronial Brief, p. 1479

220 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 95.

221 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 43.

## Police pursuit of the Offender

- 6.136 The Offender sped off from Moray Street with the wheels of his vehicle spinning.<sup>222</sup> By the time DSC Burnett and SC Reeves could get back to their vehicle, he had a 200–300-metre head start on them. They followed with their lights and sirens activated and, at 11.31 am, SC Reeves announced via police communications ‘... in pursuit. He’s gone south on to Clarendon Street and left on to Albert Road’.<sup>223</sup> In evidence, DSC Burnett stated ‘like most criminals, they take their first left. That’s what he did straight away’.<sup>224</sup>
- 6.137 Sgt Griffith immediately nominated herself as the pursuit controller, noted that it was a known Offender and almost immediately terminated the pursuit and prompted the terminate pursuit tone to sound over channel 03-01.<sup>225</sup> Fifteen seconds later, police communications enquired, ‘I’ll just confirm ... terminate pursuit due to known offender?’ to which Sgt Griffith responded, ‘yeah, affirmative’.<sup>226</sup> The command from Sgt Griffith and the activation of the tone signalled a need to immediately disengage from the pursuit, stop their vehicles and report their location.
- 6.138 Upon hearing that the pursuit had been terminated, DSC Burnett pulled his vehicle over in Moray Street, South Melbourne.<sup>227</sup>
- 6.139 Shortly after, Port Phillip 507 broadcast that the Offender was travelling north on Moray Street, had just crossed over Park Street, was still travelling at the speed limit and acknowledged termination of the pursuit.<sup>228</sup> DSC Burnett considered the pursuit was ‘extremely quick’ and lasted only 30–60 seconds.<sup>229</sup> DSC Gentner also estimated that the pursuit lasted for approximately 30 seconds.<sup>230</sup>
- 6.140 Port Phillip 507 was subsequently instructed to return to South Melbourne Police Station for a debriefing.<sup>231</sup> Sgt Griffith requested over police communications, ‘Can 507 confirm why they called it as a pursuit, please?’<sup>232</sup> Port Phillip 507 responded:

He actually pulled the car over, waited for us to come up to him. As we got out of the car, approached him, he just accelerated.<sup>233</sup>

222 Transcript of evidence, p. 1017.

223 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 40.

224 Transcript of evidence, p. 1974.

225 Police D24 Radio Communications (8 x Files), Channel 03-01 (Morning) dated 20 January 2017, Exhibit 347, Coronial Brief.

226 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, pp. 40–1.

227 Exhibit 117, Statement of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 1501.

228 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 41.

229 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 397.

230 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner dated 20 January 2017, Coronial Brief p. 845.

231 Exhibit 117, Statement of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 1502; Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 41.

232 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 41.

233 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 41.

## Pursuit policy

6.141 The conduct of a police pursuit is governed by the VPM *Pursuit Policy*.<sup>234</sup> According to the policy:

Members may only conduct a pursuit when they reasonably believe a serious risk to the health or safety of a person existed before attempting interception and there is a need to prevent or respond to that risk; and

- Other means for apprehending the vehicle occupant/s are not practicable; and
- The serious risk they are seeking to prevent or respond to is greater than the risks involved in conducting the pursuit at the time.

When assessing whether alternative responses to immediate apprehension are practicable, considerations include whether:

- The driver needs to be apprehended immediately, given the nature of the offence or behaviour;
- A planned approach is possible and likely to be safer and more effective; for example where the offenders are known or can be located, or additional resources are required.

All members involved in the pursuit must apply the Risk assessment and decision-making guide at section 3.4 when conducting a pursuit. Any member involved can terminate the pursuit.<sup>235</sup>

6.142 Sgt Griffith performed the role of pursuit controller in accordance with that policy, which meant she was accountable for the operational tactics and control of police resources in the pursuit.<sup>236</sup> She was required to conduct a risk assessment on the information available to her and decide whether the risks involved in continuing the pursuit were justified.<sup>237</sup> Her instruction to terminate the pursuit was also in accordance with the pursuit policy.

6.143 In her written statement, Sgt Griffith explained her rationale for terminating the pursuit were:

... based on what I knew at the time, that being he was a known offender, the victim was safe from him and in hospital, he [the Offender] was severely drug-affected, very fatigued, had a history of evading police during pursuits, it was a residential area, there was a kindergarten or child-minding centre at the next intersection and he had warning flags for psychiatric history. All of that information helped me make my decision to terminate the pursuit because the risks of allowing the pursuit were too great and there were other options available to investigating members to locate and safely arrest him.<sup>238</sup>

<sup>234</sup> Exhibit 153, Victoria Police Manual *Pursuit Policy* as at 20 January 2017, Coronial Brief, p. 2783.

<sup>235</sup> Exhibit 153, Victoria Police Manual *Pursuit Policy* as at 20 January 2017, Coronial Brief, pp. 2786–7.

<sup>236</sup> Exhibit 153, Victoria Police Manual *Pursuit Policy* as at 20 January 2017, Coronial Brief, p. 2784.

<sup>237</sup> Exhibit 153, Victoria Police Manual *Pursuit Policy* as at 20 January 2017, Coronial Brief, p. 2786.

<sup>238</sup> Exhibit 174, Statement of Sergeant Karen Griffith dated 17 January 2017, Coronial Brief, p. 903.

- 6.144 Sgt Griffith's assessment that the risks were too high was appropriate, especially considering what was known of the Offender and the limited options available to the police members to actively bring a speeding vehicle to a stop in a busy, residential area. Further, at Inquest she stated, 'we don't physically have the means to stop a pursuing vehicle.'<sup>239</sup> This was a consistent theme at the Inquest and is explored in detail in Part 8 of the Finding.
- 6.145 DSC Gentner explained that the policy at the time caused police to be more risk averse.<sup>240</sup> He said he 'certainly was a lot more apprehensive and timid at that stage in the way [he] was policing as opposed to what [he] would have been, say, five years before that'.<sup>241</sup> This is also discussed further in Part 8 of the Finding.

## Request for units to return to attend debrief

- 6.146 The *Pursuit Policy* required that Sgt Griffith, as the pursuit controller, conduct a debrief as soon as possible. The policy specified that:

The Pursuit Controller must conduct a hot debrief after any pursuit as follows:

- as soon as possible after the event and before the end of the shift;
- may be held in person or conducted via a car-to-car police radio communications channel, telephone or e-mail;
- all members (including the Pursuit Coordinator/radio dispatcher) involved in the pursuit should be invited to contribute;
- should confirm the facts of the incident, including the police and vehicles involved, offenders/suspects, length of pursuit (time and distance), and other relevant information.<sup>242</sup>

- 6.147 At 11.35 am, Sgt Griffith asked police communications to broadcast a KALOF to channel 01-01 (the radio channel for Melbourne CBD), along with a warning that the Offender's vehicle was presently driving 'erratically and dangerously'.<sup>243</sup> Sgt Griffith then requested that 'all units' return to South Melbourne Police Station for a debrief.<sup>244</sup> At Inquest, she explained that she wanted all units involved in following the Offender's vehicle or involved in anticipating an arrest as additional resources to attend the debrief. This included Port Phillip CIU, CIRT and Highway Patrol<sup>245</sup> units.<sup>246</sup>
- 6.148 In terms of whether CIRT was expected to attend a pursuit debrief, Sgt Peck's evidence was that he would generally excuse members from attending debriefs as he will himself attend them on behalf of the other units, but he did not think he communicated that to Sgt Griffith.<sup>247</sup> He said, 'I just think it's a[n] unnecessary use of CIRT resources having them sitting around in a debrief, talking about the incident when they could be out doing other duties.'<sup>248</sup> SC Jones agreed he heard the call for the debrief but did not go because they were making attempts to try and locate the Offender, which had been confirmed by Sgt Peck.<sup>249</sup>

239 Transcript of evidence, p. 3024.

240 Transcript of evidence, p. 412.

241 Transcript of evidence, p. 412.

242 Exhibit 153, Victoria Police Manual *Pursuit Policy* as at 20 January 2017, Coronial Brief, p. 2795.

243 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 44.

244 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 44.

245 Previously known as Traffic Management Unit (TMU).

246 Transcript of evidence, p. 3025.

247 Transcript of evidence, p. 2234.

248 Transcript of evidence, p. 2286.

249 Transcript of evidence, p. 2599–2600.

- 6.149 There appeared to be a reluctance by some of the units to respond to this call, so, at 11.36 am, police communications repeated Sgt Griffith's request for all units to return to South Melbourne Police Station.<sup>250</sup> Sgt Griffith escalated her concerns about the lack of response to the debrief to her superior A/SSgt Russell.<sup>251</sup> In response, he telephoned the Local Area Commander, Insp Forsyth, to notify her of the pursuit.
- 6.150 Insp Forsyth confirmed she was monitoring the situation and subsequently contacted DInsp Jackson about the pursuit and expressed her concern that a number of people from CIU had not attended the debrief.<sup>252</sup> She asked him whether there was any change in the arrest plan and he informed her it was still the same.<sup>253</sup> Following her discussion with DInsp Jackson, Insp Forsyth anticipated that the other members of the CIU would attend or be directed to attend the pursuit debrief.<sup>254</sup>
- 6.151 After this conversation, DInsp Jackson spoke to DSSgt Humphries and directed the CIU members to attend the debrief.<sup>255</sup>
- 6.152 At about 11.55 am, DSSgt Humphries telephoned Port Phillip 507 and instructed them to attend South Melbourne Police Station for the pursuit debrief.<sup>256</sup> In evidence, DSC Burnett said he 'didn't want to go to the debrief'.<sup>257</sup> His reasons were '[the Offender] was in a manic state, he'd already said he wanted to kill someone. My thoughts were to stop him from offending. I wanted to try and find him'.<sup>258</sup>
- 6.153 DSC Gentner didn't think he needed to attend the debrief either because he was not involved in the pursuit and he was out on patrol looking for the Offender.<sup>259</sup>
- 6.154 At about 12.02 pm, Port Phillip 508 informed DSgt Barry and Port Phillip 507 (DSC Burnett) via the CIU TAC channel that they were still talking with the Offender and trying to set up a meeting.<sup>260</sup>
- 6.155 DSSgt Humphries and DA/SSgt Newman attended the South Melbourne Police Station at approximately 12.15 pm and spoke with Sgt Griffith. She noted that a number of units were unable to attend or remain due to the ongoing incident impacting member availability, with a full debrief to be conducted at a later date.<sup>261</sup>
- 6.156 DSSgt Humphries confirmed that they left the South Melbourne Police Station before the debrief commenced.<sup>262</sup> They told her their members had completed the online pursuit training and that 'there was still a lot going on to try and locate [the Offender]'.<sup>263</sup> DSSgt Humphries informed Sgt Griffith where DSC Gentner was at this time.<sup>264</sup>

250 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 44.

251 Transcript of evidence, p. 3025.

252 Transcript of evidence, p. 1630.

253 Exhibit 100, Statement of Inspector Jennifer Forsyth dated 24 May 2017, Coronial Brief, p. 733.

254 Transcript of evidence, pp. 1630–1.

255 Exhibit 97, Statement of Detective Inspector Damian Jackson dated 18 April 2017, Coronial Brief, p. 1051.

256 Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 4382;

Exhibit 118, Handwritten Notes of S/C Jacqueline Reeves, dated 20 January 2017, Coronial Brief, p. AM 64-4.

257 Transcript of evidence, p. 1976.

258 Transcript of evidence, p. 1976.

259 Transcript of evidence, p. 184.

260 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT Members, AM 67 p. 13.

261 Exhibit 176, Electronic Patrol Duty Return (ePDR) of Sergeant Karen Griffith, Coronial Brief, p. 4118.

262 Transcript of evidence, p. 2418.

263 Exhibit 174, Statement of Sergeant Karen Griffith dated 27 January 2017, Coronial Brief, pp. 904–5.

264 Transcript of evidence, p. 2417.

6.157 DSSgt Humphries stated the reasons for his overall approach were as follows:

Because our priority was to arrest the Offender and at this stage we had ... we were making progress with the LBS, and Detective Gentner had or was just about to make contact with the offender.

So, I made the call for him to keep going with the CIRT unit and try and effect the safe arrest of the Offender.<sup>265</sup>

6.158 According to Sgt Griffith, after DSSgt Humphries and DA/SSgt Newman left, she commenced the debrief with St Kilda 210, South Melbourne 210, South Melbourne 307 and Port Phillip 507. In Sgt Griffith's opinion, the purpose of the debrief is to identify if anything could be done better:

... it's a good learning curve for future potential pursuits. It clarified, ah, what instructions were given, how they were given, um, and it may be something that gives us further information to assist with the investigation.<sup>266</sup>

6.159 Of the principal units involved in the attempt to arrest the Offender in Moray Street and the short pursuit that followed, only DSC Burnett and SC Reeves (Port Phillip 507) attended the debrief at South Melbourne Police Station.<sup>267</sup> DSC Burnett and SC Reeves attended at approximately 12.50 pm but were only there for about 10 minutes because they were advised the Offender's phone was reported to be 'pinging' near Cruikshank Park in Yarraville.<sup>268</sup>

6.160 In evidence, DInsp Jackson explained that:

... members are often invited to attend the debrief, but there's no actual compulsion to attend the debrief is my understanding, um, that said, I would still expect members if they were able to attend the debrief.<sup>269</sup> [I was] mindful that there was still an offender in the community.<sup>270</sup>

6.161 There is no doubt that a debrief is an important opportunity to discuss the events at the time a pursuit is terminated; however, it does present significant challenges when an Offender is on the run, armed and dangerous, and evading police and had been for a number of hours. I acknowledge that there is an inherent tension between locating an offender with the requirements and benefits of attending a debrief.

## CIRT's interaction with the Offender on Albert Road Service Road

6.162 Shortly after the Offender drove away from Moray Street, he turned left and drove east on the Albert Road Service Road, which was where SC Taylor and SC Heilbronn (CIRT 300) and Sgt Peck and SC Ralston (CIRT 251) were located.

265 Transcript of evidence, p. 2414

266 Transcript of evidence, p. 3025.

267 Other uniform units (South Melbourne 210 and South Melbourne 307) attended the debrief as they had been involved at the periphery of the earlier operation, covertly following the Offender, even though they were not directly involved in the pursuit after Moray Street.

268 Exhibit 174, Statement of Sergeant Karen Griffith dated 27 January 2017, Coronial Brief, pp. 905–7.

269 Transcript of evidence, p. 1569.

270 Transcript of evidence, p. 1569.

6.163 Neither member of CIRT 300 was called as a witness, but they described the events in their respective statements. SC Taylor stated:

As we were driving up Albert Road, he popped out right in front of us, driving towards us. We tried to intercept him, but he just drove really slowly around us and drove away. Senior Constable Heilbronn had stopped the car, and I don't recall if he had his lights on, but he just drove around us. His window was open and he waved his arm out the window.<sup>271</sup>

6.164 SC Heilbronn was driving the CIRT vehicle and recollected:

I realised that the Albert Road slip lane was a one-way street and we were headed the wrong way. I also realised that if the Offender turned left and then left again, he would come straight at us. At that point, I reversed the police vehicle up a driveway so I could communicate any observations if he drove past. A few seconds later, I saw the offending vehicle enter the street that I was in and drive past the front of us.<sup>272</sup>

6.165 CIRT 251 was positioned a short distance away, facing west in the Albert Road service lane.<sup>273</sup> SC Ralston, who was driving the vehicle, stated that he saw the CIRT 300 vehicle manoeuvre out of the way of the Offender and then saw the Offender driving towards them.<sup>274</sup> Sgt Peck, in the front passenger seat, gave evidence that he was aware the CIRT 300 unit was in the area but could not recall seeing them in the Albert Road Service Road.<sup>275</sup>

6.166 SC Ralston stated that they started rolling forward at a slow pace as the Offender drove towards them.<sup>276</sup> Sgt Peck recalled that they attempted to block the road in the hope that the Offender would stop his vehicle and they could conduct an arrest, but it became apparent that the Offender was not willing to do that.<sup>277</sup> He said that 'while [the Offender] was driving towards us, he was gesturing for us to get out of the way, by putting his hand up [on] the windscreen and ushering us to the side'.<sup>278</sup>

6.167 SC Ralston asked Sgt Peck if they should stay in his path or move out of the way. Sgt Peck left it to SC Ralston's judgement, telling him, 'it's up to you, you do what you think you need to do'.<sup>279</sup> Due to their positioning on the road, Sgt Peck believed the Offender would have had to have mounted the curb to get past their vehicle if they did not move their vehicle.<sup>280</sup>

6.168 At Inquest, Sgt Peck explained that, in his view, the decision to leave their vehicle where it was (that is, at a point where a collision would have been imminent) or to move the vehicle was ultimately up to SC Ralston as the driver.<sup>281</sup> Even though he was senior in rank to SC Ralston, Sgt Peck did not think it was appropriate to give an order or direction to physically block the Offender's vehicle because of the attendant risks that they would both face in the event of a collision, and the consequences for SC Ralston as the driver.

271 Statement of Senior Constable James Taylor, Coronial Brief, p. 1666.

272 Statement of Senior Constable Mikah Heilbronn, Coronial Brief, p. 981.

273 Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017 as amended, Coronial Brief, p. 1429.

274 Exhibit 136, Statement of Senior Constable Gregory Ralston dated 25 January 2017, Coronial Brief, p. 1479.

275 Transcript of evidence, p. 2223.

276 Exhibit 136, Statement of Senior Constable Gregory Ralston dated 25 January 2017, Coronial Brief, p. 1479.

277 Transcript of evidence, p. 2224.

278 Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017 (as amended), Coronial Brief, p. 1429.

279 Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017 (as amended), Coronial Brief, p. 1429.

280 Transcript of evidence, p. 2223.

281 Transcript of evidence, p. 2225.

6.169 SC Ralston said the Offender continued to drive towards them and wave his hands almost in a polite manner like he was trying to say ‘stop, I don’t want an accident, move out of my way’.<sup>282</sup> At the last moment, after realising there was someone in the front passenger seat of the Offender’s vehicle, SC Ralston reversed their vehicle out of the path of the Offender.<sup>283</sup>

6.170 SC Ralston estimated that the Offender was driving towards him at approximately 40 km/h and described the pressure of the decision:

So, I had a million and one things running through my mind. I was just looking for, I suppose, reassurance that what I was thinking was on the same page. So I was asking, ‘What should I do? What should I do?’, and his reply was something along the lines of, ‘I’ll leave it to your judgement, I back you either way’, and by the time that sentence come out, it was, like, the car was on us and that’s when I made my decision ... to move out of the way.<sup>284</sup>

6.171 In evidence, SC Ralston did not believe the police SUV would afford adequate protection,<sup>285</sup> and that, in reaching his decision to move the vehicle, he considered three matters: firstly, the organisational safety principle of safety first particularly the safety of the public, the Offender’s passenger (Ms Muo), the Offender and the police;<sup>286</sup> secondly, justification; and, thirdly, whether he would ‘get in trouble’ with policy. He gave evidence that all those things did not ‘marry up’, so he moved the vehicle.<sup>287</sup>

6.172 It was submitted on behalf of the Families that: ‘[Sgt] Peck’s failure to provide his junior officer with any sort of guidance when [SC] Ralston asked for it constituted an abrogation of his responsibilities as Sergeant and commanding officer of the CIRT units.’<sup>288</sup> It was further submitted that Sgt Peck had failed to take any initiative during the confrontation (for example, by communicating with other police units in proximity), that there was a ‘total absence’ of coordination between the CIRT units and that Sgt Peck had no arrest plan or willingness to respond dynamically when presented with an opportunity to arrest the Offender.<sup>289</sup>

6.173 The CCP disagreed with these assessments. They submitted that every police officer is required to make his or her own assessment as to whether the use of force is justified in a particular scenario and this did not reflect an unwillingness to respond dynamically when presented with an opportunity to arrest the Offender.<sup>290</sup>

6.174 The situation in Albert Road Service Road presented itself suddenly and lasted only a matter of seconds. The evidence of the four members involved demonstrates how difficult it is to make decisions of this kind in a very short time frame, particularly when the risks are patent and there is not enough time to communicate an effective plan. I accept Sgt Peck’s reasoning for leaving it to SC Ralston’s judgement as to whether to move out of the way of the Offender’s vehicle, given the attendant risks involved.

282 Exhibit 136, Statement of Senior Constable Gregory Ralston dated 25 January 2017, Coronial Brief, p. 1479.

283 Exhibit 131, Statement of Sergeant Matthew Peck dated 20 January 2017 (as amended), Coronial Brief, p. 1429; Exhibit 136, Statement of Senior Constable Gregory Ralston dated 25 January 2017, Coronial Brief, p. 1479.

284 Transcript of evidence, p. 2315.

285 Transcript of evidence, p. 2354.

286 At the time of these events, when responding to incidents or planning operations that may involve any potential use of force, police officers were required to apply the 10 operational safety principles, including safety first, risk assessment, avoid confrontation, avoid force and using the minimum amount of force reasonably necessary. These 10 operational safety principles have since been replaced with a new Operational Safety Framework, with three principles of service, safety and harm minimisation. The new Operational Safety Framework is discussed in Part 9 of this Finding.

287 Transcript of evidence, p. 2352.

288 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 28.

289 Written submissions on behalf of the Families of the Deceased dated 19 May 2020, p. 29.

290 Outline of reply submissions by the Chief Commissioner of Victoria Police dated 11 June 2020, pp. 14–5.

In this regard, I note that Sgt Peck provided reassurance to SC Ralston at the time that he would 'back [him] either way'.<sup>291</sup>

- 6.175 The confrontation between the Offender and CIRT units highlights the dilemma that both the CIRT and CIU units were faced with that day. These police officers did not feel they could resort to extraordinary means to stop the Offender's vehicle because they were not expressly permitted to do so by Victoria Police policy; nor were they trained to do so. Ultimately, SC Ralston considered the safety risks outweighed the benefit of potentially effecting an arrest in circumstances that may have caused harm to the passenger (Ms Muo), the Offender, himself or Sgt Peck. Having considered the circumstances and assessed SC Ralston as a witness of truth, I am satisfied his decision was entirely reasonable in the circumstances and consistent with the Victoria Police operational safety principles in place at the time.
- 6.176 However, this moment demonstrated that there was a need for a change of strategy from that point on. Police units following the Offender in an overt manner or any attempt to intercept him using standard tactics had proved ineffective and a more planned and coordinated response was needed.

## Offender's near miss of pedestrians at Clarendon Street

- 6.177 SC Jones and SC Cavanagh (CIRT 377) were nearby in Dorcas Street, South Melbourne, when they heard the pursuit called and terminated shortly afterwards.<sup>292</sup> SC Jones stated that, a short time later, they were on York Street when he saw the Offender's vehicle travelling north on Clarendon Street at a fast rate of speed on the tram lines.<sup>293</sup>
- 6.178 At 11.34 am, CIRT 377 broadcast, '[h]e's northbound on Clarendon, high speed, just approaching Whiteman Street, on the tram tracks'.<sup>294</sup> At this stage, police communications queried whether Port Phillip 507 was still following the Offender.<sup>295</sup>
- 6.179 Almost immediately, DA/Sgt Sean Campbell (Crime 643), who was not involved in the operation but was approaching the intersection from the east, observed this incident<sup>296</sup> and broadcast '...[n]ow passing the Exhibition Centre. He's just nearly taken out about 10 people'.<sup>297</sup>
- 6.180 This incident was recorded on the dash cam of a motorist who was stopped at the lights and revealed that the Offender travelled through a red light, at speed, only narrowly missed hitting a vehicle, a number of pedestrians and two people on bikes crossing at the lights at the critical moment.<sup>298</sup>
- 6.181 On hearing this report, Sgt Griffith repeated her instruction to '...[t]erminate the pursuit, thanks. Far too dangerous'.<sup>299</sup> With his next transmission, DA/Sgt Campbell clarified that he was not in pursuit: 'There's no cars following him, but he's driving at speed. He's not slowing down'.<sup>300</sup> Sgt Griffith repeated, 'All units to stop following, thank you'.<sup>301</sup> This direction was subsequently repeated by police communications.

291 Transcript of evidence, p. 2315.

292 Transcript of evidence, p. 2595.

293 Exhibit 144, Statement of Senior Constable Roland Jones dated 20 January 2017, Coronial Brief, p. 1130; Transcript of evidence, p. 2595.

294 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 42.

295 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 42.

296 Statement of Detective Acting Sergeant Sean Campbell dated 27 January 2017, Coronial Brief, p. 435.

297 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 42.

298 Dashcam Footage at Clarendon Street on 20 January 2017, Coronial Brief, Exhibit 349.

299 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 43.

300 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 43.

301 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 43.

## Did police continue to follow after the pursuit was terminated?

- 6.182 This issue of whether any police units continued to follow the Offender's vehicle after the order was given to terminate, required some analysis at Inquest.
- 6.183 The initial pursuit by DSC Burnett and SC Reeves (Port Phillip 507) went west into Cobden Street, then south in Clarendon Street, then east into the Albert Road Service Road and finally north back into Moray Street.<sup>302</sup> In her written statement, SC Reeves described the action of her unit and her observations upon termination of the pursuit:

Upon hearing the pursuit had been terminated, [DA/Sgt] Burnett pulled the police vehicle over in Moray Street, South Melbourne.

It was at this time I observed a [CIRT] unit drive past my location. The unit's police lights were activated. I do not know who was within this CIRT unit.

From my position in Moray Street, South Melbourne I could see the accused's vehicle turn left onto Dorcas Street and then travel Northbound along Clarendon Street towards the Melbourne CBD.

Distance from our police vehicle to the accused's (as it continued driving away) at this time was about 600 metres. Distance from where the CIRT vehicle was to the accused's vehicle at this time was about 100 metres.<sup>303</sup>

- 6.184 Sgt Griffith considered that, after the pursuit was terminated, the Offender was still being followed and pursued by CIRT and she issued another command for the pursuit to be terminated. She also issued a command for members to stop following the vehicle.<sup>304</sup> At Inquest, Sgt Griffith explained, 'If you continue following ... once you are in a pursuit, or once a pursuit has been called, you are still pursuing.'<sup>305</sup>
- 6.185 DSC Burnett could not recall any other police vehicles pursuing the Offender except for a faint possibility that a CIRT van was nearby at the time.<sup>306</sup> DSC Singh could not recall a CIRT unit going past.<sup>307</sup> DSC Gentner recalled there was a 'TMU unit' (Highway Patrol) in front of him as well as Port Phillip 507 at some point in the vicinity of Moray Street.<sup>308</sup>
- 6.186 Ms Muo recalled, in her second statement, that she saw 'a big black van that had, police, written on the side had blocked the street'<sup>309</sup> on Coventry Street. She also recalled that [the Offender] 'just drove around it and went onto Kings Way'.<sup>310</sup> When assessing this evidence, the operating presumption is that the 'big black van' was one of the CIRT units. However, there is no other evidence to suggest that any action of this sort was taken in Clarendon Street and Ms Muo's recollection sits alone and remains untested because she did not give evidence.
- 6.187 I do not accept that any police vehicle, van or otherwise, attempted to block the Offender in Clarendon Street. Two possible causes of Ms Muo's error stand out. Firstly, she may have been seeking to recall the events in Albert Road Service Road (which are considered in detail above) but misremembered the locations. Secondly, her memory may have been conflated with her recollection of events on Wurundjeri Way, only minutes later.

302 Transcript of evidence, p. 1920

303 Exhibit 117, Statement of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, pp. 1501–2.

304 Transcript of evidence, p. 3024; Exhibit 174, Statement of Sergeant Karen Griffith dated 27 January 2017, p. 904; Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 43.

305 Transcript of evidence, p. 3030.

306 Transcript of evidence, p. 1975.

307 Transcript of evidence, p. 2118.

308 Transcript of evidence, p. 392.

309 Second Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1341.

310 Second Statement of Akiir Muo dated 20 January 2017, Coronial Brief, p. 1341.

- 6.188 SC Cavanagh (CIRT 377) recalled that he was travelling south on Clarendon Street when he first sighted the Offender turning onto Clarendon Street to head north. SC Cavanagh's evidence was that his unit did a U-turn after the Offender went past but that he and SC Jones did not give chase.<sup>311</sup>
- 6.189 SC Jones, who was driving CIRT 377, recalled being in Dorcas Street when the pursuit was terminated. The effect of his evidence was that, shortly after the pursuit was terminated, he was facing west in York Street near the intersection of Clarendon Street when the Offender drove past, heading north. He then turned north into Clarendon Street but did not give chase because as the Offender drove at a speed of 80 to 90 km/h.<sup>312</sup>
- 6.190 Although there are differences in the recollections of SC Jones and SC Cavanagh, they are consistent in an important respect—that their unit was travelling north in Clarendon Street. I accept that CIRT 377 lost sight of the Offender as he drove north on Clarendon Street at high speed and that this did not constitute a pursuit.
- 6.191 LSC Krajnc (CIRT 267) gave evidence that he and FC Fuller were in Clarendon Street when he first saw the Offender, also in Clarendon Street, crossing the intersection with City Road. He saw another CIRT vehicle behind that he believed to be to be CIRT 377. He could not be certain of his precise location in Clarendon Street when he made these observations and could not say what distance CIRT 377 was behind the Offender at that time.<sup>313</sup>
- 6.192 FC Fuller (CIRT 267) recalled that they had just left the CIRT offices at the Victoria Police Centre and were in Flinders Street, Docklands, when she heard the radio transmissions that the pursuit had commenced. Her unit was heading to the last known location of the Offender when she sighted CIRT 377 on Wurundjeri Way, at a location shortly before Wurundjeri Way passes under the West Gate Freeway.<sup>314</sup>
- 6.193 There are material differences between the recollections of LSC Krajnc and FC Fuller, who were in the same vehicle. Their recollections also differ from the evidence of SC Cavanagh and SC Jones in CIRT 377. However, all four were impressive witnesses and I am satisfied that these differing recollections arise from the ordinary challenges to human perception and recollection that are ever present, but even more apparent in rapidly evolving situations where there are significant sensory and cognitive demands on the observer. Police members are not immune from this phenomenon.
- 6.194 Having considered all the evidence, I am satisfied that the CIRT units were not involved in any pursuit of the Offender immediately after he sped away from Moray Street and the pursuit was terminated by Sgt Griffith. I am also satisfied that CIRT units were not chasing the Offender when, some minutes later, they observed his vehicle stuck in stationary traffic in Wurundjeri Way at the West Gate Freeway underpass.

## Was the pursuit debrief an opportunity to rethink strategy?

- 6.195 The pursuit debrief provided an opportunity to gather the key members involved in the operation to reassess the situation and strategy. The reassessment didn't have to form part of the debrief but it seemed to be an opportune time to have these discussions. In fact, this was raised in evidence by DSSgt Humphries who stated that:

<sup>311</sup> Transcript of evidence, pp. 2844–6.

<sup>312</sup> Transcript of evidence, pp. 2594–8.

<sup>313</sup> Transcript of evidence, pp. 2741–2.

<sup>314</sup> Transcript of evidence, pp. 2804–5.

... my priority was to go and reassess the investigation plan and the arrest plan and regroup. That ... was why I left the office and went to South Melbourne Police Station.

6.196 It was submitted by Counsel Assisting that this statement was, at best, indicative of a limited notion of regrouping or reassessment. It seems that DSSgt Humphries communicated with DSC Gentner and instructed him to continue to search for the Offender. Any communications with other police members seem to have occurred largely by telephone and likely after that instruction had already been given. That was certainly the case by the time that DSSgt Humphries spoke with Sgt Griffith at South Melbourne Police Station. In that sense, the other police officers were largely presented with a *fait accompli* in respect to a strategic decision that had already been made.<sup>315</sup>

6.197 In the Critical Incident Review, AC Fontana formed the opinion that the termination of the pursuit:

... should have signalled that it was time to regroup and review all aspects of the planned operation, including the level of command and control and operational support required to safely arrest [the Offender]. [DSSgt] Humphries and [DA/SSgt] Newman monitored the incident and were in phone contact with [DSgt] Barry and the units following [the Offender]. They should have taken steps to regroup to plan and consider options after the pursuit and should also have considered an alternative plan to that which they had relied on. [A/SSgt] Russell, [DSgt] Barry and [DSgt] Vohmann and upgraded members [DSC] Gentner and [DSgt] Burnett should have all taken active steps to reconsider the situation given the pursuit outcome.

In my view, what should have been a well-planned operation to resolve this evolving situation, unwittingly turned into a poorly coordinated, unplanned response.<sup>316</sup>

6.198 Counsel Assisting submitted that this opinion was sound and should be accepted.

6.199 It also seems difficult to understand how there could be any meaningful reassessment of the situation without the input of other important police involved in the operation such as DSgt Barry, DSgt Vohmann, Port Phillip 508, CIRT 251 and the other CIRT units.<sup>317</sup>

6.200 Counsel Assisting submitted that the reassessment of Operation Invokes needed to be performed in a coordinated way that was documented so that it could be subjected to critical evaluation by all those involved. The whiteboard at St Kilda Police Station recorded the details of the morning operation, including objectives, inquiries, specialist resources and tasking. It was updated as the morning operation progressed and provided an essential overview of what was happening and what had been done.<sup>318</sup> This was the perfect opportunity to revisit what had occurred, what was and was not working and what else was needed.

6.201 The pursuit from Moray Street marked the unsuccessful end of the strategy employed in the morning operation, namely, to covertly follow the offender and wait for an opportune moment to arrest him when away from the vehicle.

<sup>315</sup> Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 108.

<sup>316</sup> Exhibit 201, Operation Titan Critical Incident Review, p. 51.

<sup>317</sup> Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 108.

<sup>318</sup> Written submissions of Counsel Assisting the Coroner dated 14 April 2020, pp. 109–10.

- 6.202 It does not appear that the objectives of a pursuit debrief are aimed directly at a reassessment of strategies in operations such as Operation Invokes. Nonetheless, the requirement for a debrief provided a timely opportunity for a reassessment of the evolving incident to occur.
- 6.203 The episode also demonstrated the futility of trying to intercept the Offender in the ordinary manner that police conduct standard intercepts. It was clearly the time to rethink the approach, and I find the opportunity was not taken by those responsible for the conduct of the operation. The Offender's experience and knowledge that the police would not engage in a pursuit worked to his advantage as he continued to bait and evade police.
- 6.204 Despite the best intentions of all of the police members involved in the morning investigation, the evidence reveals the initial planning and coordination, which were sound features of the morning operation, dissipated at Moray Street, when the response changed from covert to overt. I find that the police response thereafter became uncoordinated, fragmented and ineffective, which is discussed below and in parts 7 and 8 of the Finding.

## Attempt to apprehend the Offender at Wurundjeri Way

- 6.205 CIRT 377 drove onto Clarendon Street in the general direction of the Offender's vehicle. They were approximately 400–500 metres behind the Offender and had lost sight of the Offender when they heard DA/Sgt Campbell's broadcast that the Offender had almost hit pedestrians near the Exhibition Centre.<sup>319</sup>
- 6.206 After the pursuit was terminated, CIRT 377 continued north on Clarendon Street at normal patrol speed. They then turned left onto Flinders Street and left onto Wurundjeri Way.
- 6.207 The roadway where Wurundjeri Way passes under the West Gate Freeway is a complicated set of intertwining roads. Wurundjeri Way (southbound) at this location is six lanes wide. To the left is a group of three lanes for through-traffic travelling to Montague Street, South Melbourne (the 'through lanes'). To the right is another group of three lanes for traffic heading right onto the West Gate Freeway on-ramp, heading west onto the freeway (the 'freeway lanes'). There is a large irregularly shaped traffic island separating the through lanes from the freeway lanes where Wurundjeri Way first passes under the West Gate Freeway.<sup>320</sup>
- 6.208 Almost immediately after turning onto Wurundjeri Way, CIRT 377 had a chance sighting of the Offender's vehicle, which was stationary in traffic, facing a red light, and waiting to get onto the West Gate Freeway.<sup>321</sup> The Offender's vehicle was about four or five cars back in the right lane.<sup>322</sup> SC Jones did a U-turn and positioned their car in front of two of the three lanes, blocking the traffic on the freeway lanes.<sup>323</sup>

319 Exhibit 144, Statement of Senior Constable Roland Jones dated 20 January 2017, Coronial Brief, p. 1131.

320 Exhibit 163, Satellite image of West Gate Freeway area as marked by FC Fuller, AM83.

321 Exhibit 144, Statement of Senior Constable Roland Jones dated 20 January 2017 (as amended), Coronial Brief, p. 1131.

322 Exhibit 144, Statement of Senior Constable Roland Jones dated 20 January 2017 (as amended), Coronial Brief, p. 1131.

323 Transcript of evidence, pp. 2602, 2851.

- 6.209 At about this time, LSC Kranjc and FC Fuller (CIRT 267) who had cleared from the area and were heading back towards their office saw CIRT 377 blocking traffic turning onto the West Gate Freeway. CIRT 267 pulled up alongside the CIRT 377 vehicle to assist in blocking traffic and activated their lights.<sup>324</sup>
- 6.210 All four CIRT members, got out of their vehicles and walked towards the Offender's vehicle between the lanes of traffic. SC Jones said he could not remember when he drew his firearm, but it was as he walked towards the Offender's vehicle.<sup>325</sup>
- 6.211 According to LSC Krajnc, he and FC Fuller approached the vehicle from the front on the driver side of the vehicle while SC Jones and SC Cavanagh approached the passenger side. LSC Krajnc observed movement inside the vehicle and also drew his firearm. According to LSC Krajnc:
- Both of the occupants in the vehicle leant forward. That is when I feared for my own safety as I didn't know if they were reaching for a weapon or anything. The female got out of the car from the front passenger seat and ran across the front of the car. I could not see the female's hands at that stage. I called on her loudly, 'Police—don't move'.<sup>326</sup>
- 6.212 As they got to within two vehicles of the Offender, SC Cavanagh saw Ms Muo jump out of the vehicle and run to the right-hand lane.<sup>327</sup> LSC Kranjc instructed 'her to lay on the ground and place her hands behind her back'.<sup>328</sup> Ms Muo complied with the direction,<sup>329</sup> and said 'I've been kidnapped'.<sup>330</sup> SC Cavanagh said that he questioned Ms Muo multiple times about where the Offender was going and she told him that he wanted to go to a friend's place in Werribee.<sup>331</sup>
- 6.213 At 11.37 am, an unidentified CIRT officer broadcast on channel 03-01 that the Offender had stopped in traffic and was about to turn right onto the West Gate Freeway. In response, police communications sought to clarify whether the broadcasting unit was still behind the subject vehicle. The unidentified CIRT officer responded, 'I've just got the female out of the vehicle. I'm waiting for some more in regards to the male.'<sup>332</sup>
- 6.214 At the time Ms Muo got out of the vehicle, the traffic lights turned green and the traffic began to move. SC Jones then heard the Offender's vehicle engine rev, before the Offender 'manipulated his car around the stopped traffic in front of him, around us and then took off at a fast rate of speed in the left lane'.<sup>333</sup> According to SC Jones, 'it all sort of happened at once'.<sup>334</sup>

324 Exhibit 161, Statement of First Constable Lauren Fuller dated 25 January 2017 as amended, Coronial Brief, p. 798.

325 Transcript of evidence, p. 2604.

326 Exhibit 157, Statement of Leading Senior Constable Martin Krajnc dated 20 January 2017, Coronial Brief, p. 1173.

327 Exhibit 166, Statement of Senior Constable David Cavanagh dated 20 January 2017, Coronial Brief, p. 485.

328 Exhibit 157, Statement of Leading Senior Constable Martin Krajnc dated 20 January 2017, Coronial Brief, p. 1173.

329 Exhibit 157, Statement of Leading Senior Constable Martin Krajnc dated 20 January 2017, Coronial Brief, p. 1173; Exhibit 166, Statement of Senior Constable David Cavanagh dated 20 January 2017, Coronial Brief, p. 485.

330 Transcript of evidence, p. 2745

331 Exhibit 166, Statement of Senior Constable David Cavanagh dated 20 January 2017, Coronial Brief, p. 486.

332 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 45. The VKC Operator seemed to be referring to the unit as '370'. It is unclear which unit '370' might have been on the day.

333 Transcript of evidence, p. 2605.

334 Transcript of evidence, p. 2605.

## 6.215 FC Fuller described that she:

... could hear the screeching from the tyres of his car, and I was in fear of what he was going to do with the vehicle. I was between the two far right turning lanes and wasn't sure what he was going to do, and whether he was going to drive at me. I drew my firearm and pointed it towards him. I issued the police challenge yelling 'Police—don't move'. I remember seeing him in the car coming past me. He didn't stop; he kept going past me, to the right of where I was standing. He was driving erratically, doing anything he could to get through the cars. He was accelerating at a fast rate of speed as he drove past me. There was about a gap of two or three metres between where I was standing and the path in which the offender drove past me. Having drawn my firearm, I was retreating in between two parked cars for cover from the [Offender's] vehicle'.<sup>335</sup>

6.216 A civilian witness, Timothy Coulson, observed the events from his vehicle. He recalled that the Offender's vehicle escaped by moving over to the first lane in the freeway lanes and marked a satellite image with the route taken by the Offender.<sup>336</sup> Mr Coulson saw the Offender drive past him at a high speed, revving the engine as he cut in front of the stopped traffic, and drove onto the West Gate Freeway.<sup>337</sup>

6.217 Mr Coulson also recalled that at least six or seven men wearing goggles jumped out of the CIRT van.<sup>338</sup> The details as to the number of people who jumped out of the CIRT van and their attire are objectively incorrect and Mr Coulson conceded that this was something he may have been mistaken about.<sup>339</sup> This demonstrated some degree of fallibility in Mr Coulson's perception and/or recollection. However, it does not follow that the entirety of Mr Coulson's evidence must be regarded as unreliable. For example, when he marked a map<sup>340</sup> during the Inquest, he depicted the route of the Offender's vehicle consistent with the balance of the evidence on this subject. Mr Coulson's recollection on this point is simply an example of how the complex processes of perception and memory can lead to an honest and conscientious witness holding a false memory in respect of one or more details.

6.218 In evidence, AC Fontana commented that although their actions did not fit within policy, the CIRT officers had 'used their initiative and taken action and as a result they rescued Muo. So good, good decision'.<sup>341</sup> He said they cannot be criticised for the fact that the Offender managed to escape. Instead, they deserve commendation for their initiative and effort. I agree.

6.219 The members of CIRT 267 and CIRT 377 came agonisingly close to arresting the Offender at Wurundjeri Way. They responded decisively and appropriately to an unanticipated and brief opportunity to arrest the Offender. The decisions taken by both CIRT units to try to block traffic demonstrated initiative and sound judgement.

6.220 It is noteworthy that such a manoeuvre, whether it is called a 'blocking' manoeuvre or otherwise, is not something these members were specifically permitted to do, nor trained to perform and was not found in any of the relevant VPMS or other training material at the time. Nonetheless, the manner in which the CIRT vehicles were

335 Exhibit 161, Statement of First Constable Lauren Fuller dated 25 January 2017, Coronial Brief, p. 799.

336 Exhibit 149, Map of Wurundjeri Way as produced and marked by Timothy Coulson, Coronial Brief, p. 2068; Transcript of evidence, pp. 2626-7; Exhibit 150, Statement of Timothy Coulson dated 20 January 2017, p. 511.

337 Transcript of evidence, pp. 2626, 2634-5.

338 Transcript of evidence, p. 2623.

339 Transcript of evidence, p. 2632.

340 Exhibit 149, Map of Wurundjeri Way as produced by Timothy Coulson.

341 Transcript of evidence, p. 3538.

used created the best opportunity to apprehend the Offender at any stage on 20 January 2017 prior to the events in Bourke Street. I commend the CIRT members for using their initiative to take such decisive action. Unfortunately, despite their best efforts, the Offender then sped off towards the western suburbs. This will be discussed in more detail in Part 7 of the Finding.

## Custody of Ms Muo and subsequent conversation at scene of arrest

- 6.221 At about 11.38 am, CIRT 377 notified police communications that the Offender had ‘taken off at a fast rate of speed’ and that they had ‘a female in custody who’s claiming to be a hostage’ and who was ‘hysterical’.<sup>342</sup>
- 6.222 In an attempt to quickly obtain information from her and establish where the Offender might be headed, SC Cavanagh said he remembered, ‘basically, just interrogating her, saying “tell me where he’s going. Who are you? Why [were] you in the car?”’, She said she’d been kidnapped<sup>343</sup> and SC Cavanagh said he asked her multiple times because ‘obviously, that’s some critical information’.<sup>344</sup>
- 6.223 The information was promptly conveyed to the other CIRT units over their TAC channel.<sup>345</sup> It appears that this information also became the basis (or at least part of the basis) for the subsequent inquiries that were made at various addresses in the Werribee area, which is discussed in more detail in Part 7 of the Finding.
- 6.224 At about 11.43 am, CIRT 377 reported on channel 03-01 that Ms Muo had stated that the Offender was saying ‘he wants to go to a friend’s place down in Werribee’<sup>346</sup> and to advise channel 01-01. CIRT 377 clarified that Ms Muo was unable to provide a more specific location or names.<sup>347</sup>

## Did Ms Muo communicate to police the Offender’s intent?

- 6.225 In a statement made three days after the events of Bourke Street, Ms Muo said:

*After I was arrested by the police on the bridge, the police kept asking me where [the Offender] was going. I told them he told me he was going to Werribee and then going to the city to run people over. I told police this while they still had their guns pointed at me.<sup>348</sup>*

- 6.226 The potential consequences of this comment were significant and needed to be tested at Inquest. The four CIRT members who arrested Ms Muo were credible and consistent in their evidence that Ms Muo did not tell them about any such threat made by the Offender.
- 6.227 SC Cavanagh (CIRT 377) said it was ‘completely incorrect’<sup>349</sup> and that if Ms Muo had said anything like that, he would have immediately transmitted the information on the police radio via the CIRT TAC channel and the local operating channel.<sup>350</sup>

342 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 47.

343 Transcript of evidence, p. 2853.

344 Transcript of evidence, p. 2853.

345 Exhibit 143, Corrected transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT members, AM 66-8.

346 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 52.

347 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 52.

348 Third Statement of Ms Akiir Muo dated 23 January 2017, Coronial Brief, p. 1348.

349 Transcript of evidence, p. 2854.

350 Transcript of evidence, p. 2854.

- 6.228 SC Jones (CIRT 377) was adamant and had ‘a huge level of confidence’<sup>351</sup> that Ms Muo did not say that the Offender had threatened to run people down because he would have conveyed that information to other police and the investigators.<sup>352</sup>
- 6.229 LSC Krajnc (CIRT 267) said that the only words he heard Ms Muo say were ‘I’ve been kidnapped’.<sup>353</sup>
- 6.230 FC Fuller (CIRT 267) said that she recalled Ms Muo shouting that she had been kidnapped and could not hear anything else said by Ms Muo when she was taken into custody.<sup>354</sup>
- 6.231 Mr Coulson, the civilian at the scene of Ms Muo’s arrest, said that he heard her screaming, ‘I don’t know anything about this, it wasn’t me, I don’t know anything about this’<sup>355</sup> and then she asked questions of one of the police members who had arrested her.<sup>356</sup>
- 6.232 The Critical Incident Review examined this issue and concluded:

If the police members involved in the subsequent search and pursuit of [the Offender] had knowledge of the comment, then it makes sense that their assessment of his actions would have resulted in an elevated response by those involved.<sup>357</sup>

- 6.233 I find the evidence supports a conclusion that, at the time of Ms Muo’s arrest, none of the CIRT officers or the civilian witness heard her say the Offender had threatened to drive into the city and run people down.
- 6.234 This conclusion leaves open two possibilities when assessing Ms Muo’s evidence on the subject. First, she did not speak about the Offender’s threat at the scene of her arrest, but her memory has suffered from confabulation. That is not to say that she was deliberately lying when she described these events in her third statement but merely that her memory in this respect was flawed.
- 6.235 The second possibility is that Ms Muo did say something about the threat she had heard from the Offender but, in the tumult of the arrest, it was not heard by any of the police members or civilian witnesses. I am, however, persuaded that the first possible reason is far more likely, and it is Ms Muo’s memory that was at fault.

### Did Ms Muo advise Port Phillip 507 of the Offender’s intent in the back of the divisional van?

- 6.236 After hearing of Ms Muo’s arrest, SC Mourad and FC Camilleri (South Melbourne 307) advised police communications that they would attend to pick her up. They arrived at Wurundjeri Way shortly after and located where the CIRT officers had taken Ms Muo into custody.
- 6.237 According to SC Mourad, they took custody of Ms Muo and obtained her name, date of birth and address and placed her in the back of their divisional van. They then drove towards St Kilda Police Station, but were requested to stop at the intersection of Montague Street and Normanby Road, South Melbourne (approximately 300–400 metres from the scene of Ms Muo’s arrest), and wait for the DSgt Vohmann and SC Epstein (Port Phillip 550) who wanted to speak with her.<sup>358</sup>

351 Transcript of evidence, p. 2609.

352 Transcript of evidence, p. 2609.

353 Transcript of evidence, p. 2745.

354 Transcript of evidence, p. 2811.

355 Transcript of evidence, p. 2627.

356 Transcript of evidence, p. 2627.

357 Exhibit 201, Operation Titan Critical Incident Review, p. 258.

358 Exhibit 164, Statement of Senior Constable Cody Mourad dated 20 January 2017, Coronial Brief, p. 1310; Exhibit 158, Statement of First Constable Richard Camilleri dated 20 January 2017, Coronial Brief, p. 430.

6.238 According to the statement of FC Camilleri, Port Phillip 550 attended at approximately 11.55 am and spoke to Ms Muo in the rear of the divisional van for a few minutes, before directing them to take her back to St Kilda Police Station.<sup>359</sup>

6.239 DSC Epstein and DSgt Vohmann spoke to Ms Muo in the back of the divisional van.<sup>360</sup> DSC Epstein overheard the conversation between Ms Muo and DSgt Vohmann, but she did not ask any questions or speak to Ms Muo.<sup>361</sup> Her notes record:

... states she was at the incident, then went to sleep at the mothers house.  
He returned and took to [sic] an address – poss union st/nearby. Scared.  
Then to McDonalds [sic]. Knife still in car. N/K where he will be heading.<sup>362</sup>

6.240 DSgt Vohmann recorded the interaction in his notes while he talked to her in the back of the divisional van:<sup>363</sup>

S/T Akiir [Muo]  
Stated that she was picked by [Offender] from Raleigh St, Windsor  
Threat to kill herself and mother of [Offender] if she didn't go w/ him  
Went against her will  
Scared, feared for her safety  
He has the knife in the car  
Went to an U/K address in Union St?  
Whilst @ address he answered her phone  
Went to bathroom, he snuck up behind her, grabbed phone, switched it off  
Said, 'I was going to drop you at home, now I know you are against me, you are coming w/ me'.  
Into vehicle, detained against will.  
Scared for her safety  
Told her to get out of vehicle when stuck in traffic @ Montague St.  
CIRT in front.  
Out of vehicle  
Vehicle drove at CIRT  
Arrested.<sup>364</sup>

6.241 DSgt Vohmann testified that the Offender's comment that he would drive into the city 'was not information that was provided to me, no'.<sup>365</sup> DSC Epstein also denied hearing such a comment.<sup>366</sup>

6.242 Having considered all of the evidence, I am satisfied Ms Muo did not advise DSgt Vohmann and DSC Epstein of the Offender's intention to go to the city and run someone down at the time DSgt Vohmann spoke to her in the back of the divisional van.

359 Exhibit 158, Statement of First Constable Richard Camilleri dated 20 January 2017, Coronial Brief, p. 430.

360 Exhibit 185, Handwritten Notes of Detective Senior Constable Shoshanna Epstein dated 20 January 2017, Coronial Brief, p. 2204; Exhibit 184, First Statement of Detective Senior Constable Shoshanna Epstein dated 8 February 2017, Coronial Brief, p. 581.

361 Transcript of evidence, p. 3192.

362 Exhibit 185, Handwritten Notes of Detective Senior Constable Shoshanna Epstein dated 20 January 2017, Coronial Brief, p. 2204.

363 Transcript of evidence, p. 3289.

364 Exhibit 189, Handwritten Notes of Detective Acting Sergeant Vohmann, Coronial Brief, pp. 4989–90.

365 Transcript of evidence, p. 3290.

366 Transcript of evidence, p. 3194

## Ms Muo as an important source of intelligence

- 6.243 Ms Muo had been abducted by the Offender at approximately 8.15 am that morning. She remained with him from that time until she was arrested at Wurundjeri Way underpass to the West Gate Freeway at 11.37 am. For part of the morning, she was at a house somewhere in the St Kilda area where she fell asleep, but for the remainder of the three-and-a-half-hour period, she was in direct contact with the Offender. There were significant periods when she was next to him in the stolen Holden Commodore, including when he sped away from police in Moray Street and past CIRT units at the Albert Road Service Road.
- 6.244 Ms Muo was undoubtedly a valuable source of information for those police members searching for the Offender. If she was cooperative with the police, they could potentially gain from her: some insight into the Offender's state of mind; his potential plans; and whether he was still armed with the knife used to attack his brother (or some other weapon).
- 6.245 After her arrest at Wurundjeri Way, Ms Muo was transported to the St Kilda Police Station. Initially, it was not known whether she was a co-offender or simply a witness and a victim of the Offender.
- 6.246 At about 12.15 pm, South Melbourne 307 arrived at St Kilda Police Station with Ms Muo, who was taken into custody.<sup>367</sup> She underwent an initial supervisor check and arrival check by section sergeant Sgt Amy Van Maanen and watch house keeper SC Jacinta Graham.<sup>368</sup> Property records indicate a number of items were taken from Ms Muo, including her phone.<sup>369</sup> According to FC Camilleri, Port Phillip 550 was in attendance and advised that they would take care of the interview. South Melbourne 307 then cleared and headed back to South Melbourne Police Station for the original pursuit debrief, arriving at 12.50pm.<sup>370</sup>
- 6.247 DSgt Barry had a discussion with DSgt Vohmann and DSC Epstein about whether Ms Muo was an offender or a witness.<sup>371</sup> They both formed the opinion that she was a victim and they needed to obtain a statement from her.
- 6.248 DSgt Vohmann gave evidence that, from his initial assessment of her, he did not regard Ms Muo as an overly important source of information. He further stated that, 'she wasn't able to provide a lot of information that might be beneficial in terms of the immediacy of progressing the investigation'.<sup>372</sup> At Inquest, he did, however, concede that she could have been a good source of information concerning the Offender's demeanour.<sup>373</sup> He explained:

... you don't know whether she's trying to feed you information to send you off on a different direction and all sorts of things like that, but potentially she could have been a good source of how his demeanour was.<sup>374</sup>

367 Statement of Sergeant Amy Van Maanen dated 13 June 2019, Coronial Brief, p. 1755; Police Notes of Sergeant Amy Van Maanen dated 20 January 2017, Coronial Brief, p. 4984; Attendance Summary of Akiir Muo dated 20 January 2017, Coronial Brief, AM 151, p. 1.

368 Statement of Sergeant Amy Van Maanen dated 13 June 2019, Coronial Brief, p. 1755; Police Notes of Sergeant Amy Van Maanen dated 20 January 2017, Coronial Brief, p. 4984; Attendance Summary of Akiir Muo dated 20 January 2017, Coronial Brief, AM 151, p. 1.

369 Prisoner Property Sheet of Akiir Muo dated 20 January 2017, Coronial Brief, AM 152, p. 1.

370 Exhibit 158, Statement of First Constable Richard Camilleri dated 20 January 2017, Coronial Brief, p. 430.

371 Transcript of evidence, p. 911.

372 Transcript of evidence, p. 3290.

373 Transcript of evidence, p. 3293.

374 Transcript of evidence, p. 3293.

- 6.249 In addition, he stated that ‘you’re cautious in your approach to make sure that the information you’re getting can be verified and be beneficial to whatever enquiry you’re undertaking’.<sup>375</sup>
- 6.250 DSgt Barry conceded in evidence that Ms Muo was an important source of information about the Offender on matters such as: what the Offender was armed with, what his current state of mind appeared to be and what his intentions might be.<sup>376</sup> In evidence, DSgt Barry stated he did not speak to Ms Muo at the St Kilda Police Station.<sup>377</sup> However, his notes recorded that he ‘S/T Akiir’ at about 12.41 pm.<sup>378</sup> He also recorded in his statement that he spoke briefly to Ms Muo after submitting an LBS request for Mr Clapham’s correct telephone number at about 12.41 pm.<sup>379</sup>
- 6.251 When DSgt Barry was asked at Inquest whether anyone was tasked to speak with Ms Muo, he replied:
- I sort of asked uniform members if someone was available to take a statement which was ...not a real preference of mine given her importance ... and then ... undertook other aspects to help people in the field while I waited for someone to get a statement from her.<sup>380</sup>
- 6.252 DSgt Barry briefed A/Sgt Simon Watts between about 2.00 pm and 2.10 pm to take a statement from Ms Muo, after he had become aware of the events of Bourke Street.<sup>381</sup>
- 6.253 In the intervening period between approximately 12.15 pm and 2.00 pm, Ms Muo was placed in an interview room near the CIU offices, waiting to be interviewed. DSgt Barry stated Ms Muo was given some administrative support with her welfare, drinks and toilet breaks if she needed, but she was not specifically asked any questions in relation to any information she may have had.<sup>382</sup>
- 6.254 Ms Muo was subsequently interviewed for the first time by A/Sgt Watts shortly after 2.00 pm. During the course of the interview, Ms Muo disclosed to A/Sgt Watts that the Offender had stated to her ‘if the cops come after me, I’ll just go into the city and run people down’.<sup>383</sup> Due to the significance of this comment and in light of the events in Bourke Street, A/Sgt Watts informed DSgt Barry of Ms Muo’s disclosure at about 2.41 pm.<sup>384</sup> DSgt Barry immediately relayed this information to DInsp Jackson.<sup>385</sup>
- 6.255 At Inquest, DSgt Barry explained that the delay of almost two hours to brief A/Sgt Watts to take a statement from Ms Muo was due to a lack of resources apart from uniform.<sup>386</sup> DSgt Barry’s evidence was that there were no other detectives in the office that were available, and he tasked DSgt Vohmann and DSC Epstein to head to the Princes Street, St Kilda, address for the dual purpose of addressing that as a secondary crime scene and engaging with Mr Clapham to try access a ‘Find My iPhone app’ to get a location on his phone that was known to be in possession of the Offender.<sup>387</sup> According to DSgt Barry,

375 Transcript of evidence, p. 3293.

376 Transcript of evidence, p. 911, 913, 963.

377 Transcript of evidence, p. 912.

378 Exhibit 68, Handwritten Notes of Detective Sergeant David Barry, Coronial Brief, p. 1964.

379 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 311.

380 Transcript of evidence, p. 912.

381 Transcript of evidence, p. 912; Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 312.

382 Transcript of evidence, p. 912.

383 Exhibit 243, Handwritten Notes of Acting Sergeant Simon Watts dated 20 January 2017, Coronial Brief, p. 5135.

384 Transcript of Evidence, p. 913; Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, pp. 312–3;

Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1964.

385 Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1964.

386 Transcript of evidence, p. 963.

387 Transcript of evidence, pp. 985–6.

the priority at that stage was on locating the Offender and 'using whatever we could ... exploring the options electronically to find ... a geographical location, um, Find My iPhone's are probably far more accurate in my experience'.<sup>388</sup>

6.256 Counsel for the CIRT and CIU members submitted it is clear:

... that an operational decision was made at the time to focus on the most likely avenues of enquiry to reveal the Offender's location. It was an active operation, the Offender was still at large, and his whereabouts were unknown. Police were trying to locate the Offender as a matter of priority.<sup>389</sup>

6.257 DSgt Barry frankly conceded at Inquest that Ms Muo was an important source of information. One may ask, what was the point of holding Ms Muo at the police station, as a witness and not as a suspect, if it was not thought she likely had important information about the Offender?

6.258 It was demonstrated later that Ms Muo was, indeed, a valuable source of information. Her subsequent interviews with A/Sgt Watts and DLSC Watson demonstrated that she was cooperative and coherent. She presented as a good historian who could describe the events of the preceding hours chronologically, in reasonably good detail and consistently. She did not refuse to answer any important question during these interviews.

6.259 There were several critical pieces of information that Ms Muo may have potentially been able to provide to the investigators about the Offender. These included that the Offender:

- a. was still armed with the knife he used to attack his brother in the early hours of the morning
- b. he had threatened to kill her, her mother and 'all'
- c. was constantly referring to DSC Gentner in the context of DSC Gentner being after him or following behind him
- d. most significantly, he had said several times that he could get away from police and, if the police chased him, he would drive into the city and run people down.

6.260 DSgt Vohmann already knew about the knife because Ms Muo told him about the weapon during the brief interview at the rear of the divisional van. However, I accept the Offender's preoccupation with DSC Gentner that day and that his threat to drive into the city and run people down remained unknown until the interview with A/Sgt Watts was conducted later in the afternoon and, indeed, not until after the events in Bourke Street.

6.261 Clearly these two critical pieces of information may have impacted the approach of the investigators to the operation as it unfolded between noon and 1.30 pm that afternoon. Indeed, if anything was likely to cause an escalation in the level of police response during this time, including an elevation in the command of the operation and the employment of specialist resources and/or the reassessment of DSC Gentner's role as the primary contact with the Offender, it was this information.

<sup>388</sup> Transcript of evidence, p. 986.

<sup>389</sup> Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 62.

- 6.262 There is no reference in DSgt Barry's notes that relates to a request for anyone to speak with Ms Muo until 2.10 pm. Furthermore, it is incongruous that DSgt Barry thought Ms Muo was a sufficiently important witness that his preference was that her statement should be taken by a detective but then took no action to ensure that someone, whether a detective or a member of the uniform branch, speak to her as soon as possible about substantive information she may be able to provide.
- 6.263 It was not necessary that any critical information she possessed be recorded in a written statement at first instance. There was nothing to prevent an investigator or uniform member having a preliminary conversation with her, which could have been audio-and/or video-recorded if that was deemed desirable. Moreover, such a preliminary conversation could have focused on seeking all information that might assist in the location and arrest of the Offender, rather than a statement that aims to record all relevant matters chronologically and in detail. In other words, a directed conversation was likely to elicit information of this kind at an earlier stage than might occur when taking a written statement and addressing events in a stepwise manner.
- 6.264 More than an hour passed between Ms Muo's arrival at the St Kilda Police Station, when she was available to be interviewed and when the Offender drove back towards the city, eastbound over the West Gate Bridge.
- 6.265 The Critical Incident Review concluded the following in respect of the treatment of Ms Muo as a witness:

During the two hours Muo was at the Port Phillip CIU office prior to Watts speaking with her, there appears to have been little engagement with her as an offender, critical witness or victim ... There is no explanation in member statements or notes regarding the length of time Muo was in the interview room or in relation to the lack of police action in relation to Muo's disposition as a victim, witness or offender. The Review Team is of the view that a high priority should have been given to interviewing Muo much earlier.<sup>390</sup>

- 6.266 AC Fontana also thought that someone could have been re-allocated and tasked to take her statement.<sup>391</sup> He said as a victim of a crime it seemed like an inordinate amount of time for someone to be sitting at the police station before they were spoken to.<sup>392</sup>
- 6.267 It was submitted by Counsel Assisting that:
- ... the fact that no one spoke to Ms Muo in that time is a significant failure by those members of the Port Phillip CIU responsible for Operation Invokes-2017. This was the time when police might well have been forearmed with the knowledge of the Offender's murderous intent. Even if they doubted his threats, it would not be possible to simply ignore them.<sup>393</sup>
- 6.268 Counsel for the Families submitted it was a significant omission.<sup>394</sup>

390 Exhibit 201, Operation Titan Critical Incident Review, p. 258.

391 Transcript of evidence, p. 3521.

392 Transcript of evidence, p. 3518.

393 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 122.

394 Written submissions on Counsel representing the Families of the Deceased dated 19 May 2020, p. 32

## 6.269 Counsel for the CCP properly conceded:

The failure to speak with her between the time she arrived at the St Kilda Police Station and the time when the Offender drove into the Bourke Street Mall was ‘a significant failure’ by the Port Phillip CIU. Had this information been elicited from Muo, this may have resulted in an elevated response in the course of the apprehension operation.<sup>395</sup>

6.270 Counsel for CIU and CIRT acknowledged that there should have been greater prioritisation of obtaining a statement from Ms Muo.<sup>396</sup> They agreed that it perhaps would have been appropriate to have tasked anyone to speak to her.<sup>397</sup> However, it was also contended that the delay was not unreasonable in circumstances where the investigators were focusing on other lines of inquiry that may have revealed the Offender’s location.<sup>398</sup> It is also said that it is not possible to determine what significance would have been placed on the Offender’s threats (as revealed by Ms Muo) if they were reported prior to the events in Bourke Street and in the context of the Offender’s other bizarre and rambling statements.<sup>399</sup>

6.271 Counsel for the CIRT and CIU members further submitted that it could not have been appreciated by anyone at the time that Ms Muo may have had more information about the Offender’s intentions.<sup>400</sup> In addition, it was submitted that ‘it is difficult to assess just how much weight would have been given to that statement prior to the events on Bourke Street.’<sup>401</sup>

6.272 Counsel for CIU and CIRT submitted that a fair analysis of what occurred, without hindsight perspective, indicates that while the delay in commencing a statement from Ms Muo was less than ideal, it was by no means unreasonable.<sup>402</sup> Nor, it was submitted, can it be established that more was lost than an opportunity to obtain unknown information, the significance of which could not at that point be determined.<sup>403</sup> Further, it was submitted that:

... there can be no positive finding, on the balance of probabilities and in accordance with the *Briginshaw* principles,<sup>404</sup> that had [Ms] Muo been spoken to at St Kilda Police Station earlier a different outcome would have resulted. To do this would be to speculate based on ‘inexact proofs, indefinite testimony or indirect inferences.’<sup>405</sup>

6.273 I agree that the evidence in this Inquest does not allow me to conclude that if Ms Muo had earlier disclosed the information about the Offender’s intention to drive to the city to run people over to police, the events of Bourke Street could or would have been prevented.

6.274 I find that Ms Muo was not only an essential witness to the events that had occurred up until her arrest but that she was a victim of a number of crimes committed against her that day. She had witnessed the Offender stab his brother in a frenzied attack, she had herself been threatened by the Offender that he would kill her, she had been kidnapped and held against her will for three-and-a-half hours, and she had intimate knowledge of his state of mind, his reckless and dangerous driving and potential murderous intent.

395 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 72.

396 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 64.

397 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 64.

398 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 62.

399 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 63.

400 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 62.

401 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 63.

402 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 64.

403 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 64.

404 *Briginshaw v Briginshaw* (1938) 60 CLR 336, pp. 361–2.

405 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 65.

When these issues are considered in their totality, I find the failure of the CIU to make efforts to interview her as a significant witness at the earliest opportunity was a serious oversight. I accept an operational decision was made at the time that the priority was to locate the Offender, but I consider Ms Muo's interview should have been given a higher priority and, at the very least, someone should have been tasked to speak to her earlier.

## Was Ms Muo aware of the events of Bourke Street prior to her comments to police about the Offender driving to the city to run people over?

- 6.275 The final matter concerning Ms Muo as a witness was the issue explored at Inquest about whether she was aware of the events in Bourke Street when she made the comment to A/Sgt Watts at about 2.41 pm on 20 January 2017 about the Offender's comment regarding his intention to drive into the city to run people over.
- 6.276 A/Sgt Watts and DLSC Watson were cross-examined by Counsel for the CIU and CIRT members in a manner designed to ascertain whether there was a possibility that Ms Muo had learned of the events in Bourke Street before she was spoken to by either of them. If this was true, then it must follow that Ms Muo disingenuously invented that part of her narrative when she said that the Offender had earlier told her he would drive into the city and run people down.
- 6.277 According to this theory, one would be entitled to assume Ms Muo had some malicious or mischievous motive when speaking with investigators. Although the theory was not explored in the CIU and CIRT submissions, it remained the subject of detailed examination and it is appropriate to deal with any remaining contention.
- 6.278 First, it is difficult to formulate a likely motive for Ms Muo to behave in this manner. Moreover, such behaviour would be completely at odds with the cooperation she provided to police over several hours of interviews and in other inquiries in respect to the Offender—both in the early hours of the morning after the stabbing of Angelo and, again, following her liberation at Wurundjeri Way.
- 6.279 Furthermore, the fact that the Offender had made such statements to Ms Muo was essentially consistent with the message he had sent to her via Facebook in the early hours of the morning. Ms Muo had provided a screenshot of the message to police at 4.26 am and the message had been referred to that morning on the Port Phillip CIU whiteboard. It is also notable that the Offender's threats made in the presence of Ms Muo were consistent with what the Offender had said to HCP outside the Gatwick Hotel in the early hours of the morning, which was also unknown to police.
- 6.280 The precise time when Ms Muo was placed in the interview room at the Port Phillip CIU offices is not known but it was likely around 12.25 pm, after the initial supervisor and arrival checks.<sup>406</sup> From the time Ms Muo was placed in the interview room, there is nothing to suggest that anyone spoke with her prior to A/Sgt Watts at 2.15 pm, save for a brief entry in DSgt Barry's notes, which records:

1241-New LBS submit  
- S/T Akiir<sup>407</sup>

<sup>406</sup> Attendance Summary of Akiir Muo dated 20 January 2017, Coronial Brief, AM 151, p. 1.

<sup>407</sup> Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1963.

- 6.281 DSgt Barry's conversation with Ms Muo cannot have been substantial and was prior to the events in Bourke Street. When DSgt Barry was asked whether he had any dealings with Ms Muo he replied, 'very brief'.<sup>408</sup> Later in evidence, he said that he did not speak to Ms Muo at the CIU office.<sup>409</sup> These answers indicate that, whatever interaction DSgt Barry had with Ms Muo, it was very brief and did not extend to any substantive matters.
- 6.282 After the events of Bourke Street, DLSC Watson was tasked to take a statement from Ms Muo at about 4.20 pm on 20 January 2017. He recalled that the interview room door must have been shut when he first went in to speak with Ms Muo<sup>410</sup> and that the preliminary words of his audio recording were spoken by him while still outside the interview room.<sup>411</sup> He gave evidence that the interview room door locked from the outside and could not be unlocked from inside the room.<sup>412</sup> He also confirmed that Ms Muo did not have her mobile phone in the interview room.<sup>413</sup> There is also no evidence to suggest that Ms Muo was outside of the interview room between 12.25 pm and 2.15 pm.
- 6.283 Counsel for the CIU and CIRT members also posed questions whether the monitor for the police radio could be heard in the CIU offices and whether the interview room was sound proofed.<sup>414</sup> However, there remains no evidence of any likely way Ms Muo could have learned of the events that had occurred in Bourke Street while she waited in the interview room.
- 6.284 DLSC Watson's evidence was that he didn't know what she knew, which was why he was careful not to contaminate her evidence.<sup>415</sup> DLSC Watson realised Ms Muo was not aware of the full extent of what had occurred in Bourke Street<sup>416</sup> while they were going through a McDonald's drive through at about 7 pm. The conversation she had with him was played in Court and is summarised below:

Ms Muo:	How long will he do?
DLSC Watson:	How long will he do?
Ms Muo:	Yeah.
DLSC Watson:	Oh, it will be a long time.
Ms Muo:	Yeah.
DLSC Watson:	Yeah, a very, very long time. I mean, yeah, I'm sure by now you've—you know what he's done.
Ms Muo:	Yeah.
DLSC Watson:	What were you told about what [the Offender's] done?
Ms Muo:	I know what he's done. He's just stabbed his brother ... and they didn't tell me ... Arrest us.

408 Transcript of evidence, p. 910.

409 Transcript of evidence, p. 912.

410 Transcript of evidence, p. 3891.

411 Transcript of evidence, pp. 3890–1.

412 Transcript of evidence, p. 3898.

413 Transcript of evidence, p. 3906.

414 Transcript of evidence, p. 3899.

415 Transcript of evidence, p. 3895.

416 Exhibit 236, Statement of Detective Leading Senior Constable Lachlan Watson dated 2 April 2019, Coronial Brief, p. 1856

DLSC Watson: So you know he stabbed his brother, did you say?

Ms Muo: Yeah. I know that he did 'cause I saw him and they've taken my statement down and that, but didn't even tell me, like, if he's got arrest or what.

DLSC Watson: Oh, so you don't know about the second part? That what he did after?

Ms Muo: After he drove off?

DLSC Watson: Yeah.

[...]

Ms Muo: Nuh.

DLSC Watson: All right. Well, then we're going to have a conversation and I'll tell you about what he's done because it's pretty serious.

[...]

DLSC Watson: ... I wasn't sure if you knew or not but I thought you did.

Ms Muo: No, I didn't.

[...]

DLSC Watson: ... after you got out of the car [the Offender] took off up into the city. Did you see that bit?

Ms Muo: Yeah.

DLSC Watson: When did you last see [the Offender]?

Ms Muo: When we were at Kings Way and he pushed me out of the car ...

[...]

DLSC Watson: But he did exactly what he told you?

Ms Muo: He ran ...

DLSC Watson: He ran people over.

Ms Muo: Did he?

DLSC Watson: Yeah, yeah. There's three or four people dead.<sup>417</sup>

6.285 This information was followed by silence and then a guttural wail. The genuine nature of Ms Muo's reaction to this news was described in evidence by DLSC Watson:

Oh, I've got no doubt that was the first time she'd heard of it. That was ...  
I mean, you can hear it, she's ... it was excruciating.<sup>418</sup>

6.286 Although Ms Muo did not give evidence at the Inquest, there remains the capacity to assess her veracity from the audio and video records of her interviews and from the opinions of the investigators involved in those interviews. It is both challenging and compelling in its authenticity to hear.

6.287 It is true that Ms Muo is, at times during the interviews, tired and frustrated. This is hardly surprising given her ordeal over the preceding 24 hours and consequent lack of sleep. She remained, however, a cooperative witness throughout and there is nothing to suggest she would not have been cooperative if interviewed as soon as possible after her arrival at the St Kilda Police Station.

6.288 The weight of the evidence supports a conclusion that Ms Muo heard of the events in Bourke Street for the first time when DLSC Watson revealed the news to her at 7.04 pm while driving in the car. Ms Muo's reaction is captured in the audio recording<sup>419</sup> and it is a reaction palpably marked by genuine shock and visceral grief.

6.289 The significance of this finding is that Ms Muo was unaware of the events in Bourke Street when she disclosed the Offender's intention to go to the city to run people down at 2.41 pm. The implication is that had someone spoken to her earlier, it may have presented an opportunity to inform police of the Offender's intention and highlighted the risk of him driving towards the city. This presents as a significant failing.

## Did police have knowledge of the Offender's intent?

6.290 At Inquest, AC Fontana said that 'it would have been a completely different approach all the way through if we had have known [the Offender's] prior intent'.<sup>420</sup> With the benefit of hindsight, I grappled with this concept because there was evidence from Ms Muo that some of these things were known or could potentially have been known had she been interviewed earlier, such as:

- a. the Facebook message where the Offender threatened to 'kill all'<sup>421</sup>
- b. her disclosure made to A/Sgt Watts that the Offender told her 'if the cops come after me, I'll just go into the city and run people down'<sup>422</sup>
- c. her comments 'if the cops come after me, I'll just go into the city and run people down' confirmed in the significant witness interview<sup>423</sup>
- d. her statement taken on the afternoon and early evening of 20 January 2017 when describing what the Offender said to her immediately after DSC Burnett had called her that morning: 'if the cops come find me, I'll run everyone down in the city'.

<sup>418</sup> Transcript of evidence, p. 3896.

<sup>419</sup> Exhibit 238, Audio/video of Ms Muo.

<sup>420</sup> Transcript of evidence, p. 3594.

<sup>421</sup> Exhibit 75, Screen shot of Facebook message from the Offender to Ms Muo dated 20 January 2017, Coronial Brief, p. 4375.

<sup>422</sup> Exhibit 243, Handwritten Notes of Acting Sergeant Simon Watts dated 20 January 2017, Coronial Brief, p. 5135.

<sup>423</sup> Exhibit 239, Transcript of significant witness interview with Ms Muo dated 20 January 2017, Coronial Brief, p. 517d. her statement taken on the afternoon and early evening of 20 January 2017 when describing what the Offender said to her immediately after DSC Burnett had called her that morning: 'if the cops come find me, I'll run everyone down in the city'.

- e. Her third statement made three days after the events of Bourke Street when she described what she said to police at Wurundjeri Way: 'I told them he told me he was going to Werribee and then going to the city to run people over. I told the police this while they still had their guns pointed at me'.

- 6.291 Had the Offender's intention been known, AC Fontana indicated they would have had all the available resources such as surveillance, a higher level of command, the option of SOG, and devoted a lot of other resources to track him.<sup>424</sup> He said that 'no one expected this offender to do what he did, no one knew of that intent at the time they were running this operation'.<sup>425</sup> AC Fontana explained that police deal with offenders like this one every day and that it's a very big step to jump from someone driving dangerously to someone who is driving with an intent to kill.<sup>426</sup> He said 'no one expected that to happen'.<sup>427</sup> Based on his review, AC Fontana stated that he 'didn't see that members had enough intelligence to indicate that they knew his intent'.<sup>428</sup>
- 6.292 I accept that there is no evidence that police knew of the Offender's murderous intent prior to the events of Bourke Street. However the ability to potentially be advised was lost with the failure to interview Ms Muo earlier. While it is true that investigators may have been dubious that the threats made by the Offender represented a real potential intent of the Offender, it would not have been reasonable for any investigator to entirely discount this information. It would have been necessary to consider the information as part of the ongoing assessment of risks associated with the operation, with the knowledge of the Offender's behaviour over the preceding 10 hours. The failure to interview Ms Muo at the earliest opportunity remains significant.

## Request for other specialist resources

- 6.293 Victoria Police has a number of specialist support units to complement the policing response, including CIRT, SSU, SOG, K9 and Air Wing.
- 6.294 The primary strategy adopted during the morning operation, from Windsor to Moray Street, Albert Park, was to follow the Offender and wait until he stopped and exited the vehicle (for whatever reason) and then take advantage of that opportunity to arrest him. This strategy was sound and informed by a recognition of the futility of pursuing the Offender with few, if any, viable tactical means to stop his vehicle. However, principal to the success of a covert operation like this is the engagement of appropriate resources such as SSU, which is better placed than unmarked CIU vehicles to follow targets without arousing suspicion of a police presence.

## The value of SSU as an investigative tool

- 6.295 The utility of the SSU in such an operation was explained by DSSgt Humphries, in that it is:

... a specialist unit that operate on teams and they ... covertly follow targets for us ... not necessarily to collect evidence but at least put them in an area that perhaps we can exploit either through further avenues of enquiry or effect a safe arrest.<sup>429</sup>

424 Transcript of evidence, p. 3617.

425 Transcript of evidence, p. 3569.

426 Transcript of evidence, p. 3594.

427 Transcript of evidence, p. 3594.

428 Transcript of evidence, p. 3594.

429 Transcript of evidence, p. 2390.

6.296 He stated that ‘they’re expert in following people in vehicles covertly from a great distance and can track the movements of our targets and, ah, present an opportunity for us to arrest them.’<sup>430</sup>

6.297 DSSgt Humphries said he had used the SSU regularly and successfully. He also explained that, when he was a member of the Homicide Squad, using the SSU was ‘as common as almost having a can of Coke’.<sup>431</sup>

6.298 DSC Burnett was also emphatic about the value of the SSU:

If we have State Surveillance with us, it’s pretty much game over for the offender ... they are highly professional ... they have an arsenal of support behind them, it is gold and I’ve used them many, many times.<sup>432</sup>

6.299 The risk with using unmarked police vehicles (as distinct from properly covert police vehicles) to follow the Offender in the morning operation was that the Offender would recognise or suspect the presence of police and would guard against any chance of leaving the vehicle or becoming trapped. If a unit following the Offender was recognised by him, the operation would lose its covert nature and its foundational strategy would become virtually worthless. The surveillance resources and expertise of the SSU guard against this while giving an accurate picture of the Offender’s movements. However, the critical need for SSU involvement was not given enough focus as the operation progressed.

6.300 DSgt Barry frankly acknowledged that unmarked CIU vehicles were easily recognised as police vehicles<sup>433</sup> and this problem is even more prominent when the subject of an operation is not naive and has experience of police through a substantial history of serious offending, as was the case with the Offender. DSgt Barry also acknowledged that:

- a. SSU vehicles are set up to be truly covert and very hard to spot as police vehicles
- b. the appearance of SSU operatives makes it unlikely that they will be recognised as police members
- c. SSU operatives have special training that makes it unlikely that a target will become aware of a surveillance operation.<sup>434</sup>

6.301 At Inquest, SSU Operative 005 gave evidence about SSU capabilities in operations such as the one in question and stated:

- a. SSU initial taskings or deployments generally involve suspects who are unaware that there is any surveillance upon them<sup>435</sup>
- b. the target vehicle did not necessarily have to be static before the SSU could commence surveillance, but there would have to be some sort of handover or a starting location provided<sup>436</sup>

430 Transcript of evidence, p. 2390.

431 Transcript of evidence, pp. 2390–1.

432 Transcript of evidence, p. 1971.

433 Transcript of evidence, p. 900.

434 Transcript of evidence, p. 901.

435 Transcript of evidence, p. 3151.

436 Transcript of evidence, p. 3151.

- c. the number of SSU crews required for a surveillance operation was an SSU operational decision, although it did not necessarily follow that more than one crew would be required if the suspect was aware of police presence (from earlier surveillance attempts) or engaging in counter surveillance tactics<sup>437</sup>
  - d. SSU crews can communicate directly with the commander of the operation to identify an appropriate opportunity for an arrest to take place<sup>438</sup>
  - e. although disadvantageous, it is possible, after other police units have disengaged, for SSU crews to take up surveillance of a target vehicle, even when the suspect has a heightened awareness and is looking for potential police vehicles.<sup>439</sup>
- 6.302 The evidence reveals that the SSU was perhaps the most critical specialist resource that was required for Operation Invokes to provide the most likely prospect for a successful outcome. The fact that the Air Wing was initially unavailable made the SSU even more important.

## Request for the SSU

- 6.303 The first communication between DSgt Barry and SSU Operative 005 took place at about 10.08 am when DSgt Barry requested the assistance of the SSU. DSgt Barry's notes record '10.08 SSU NIL likely until arvo'.<sup>440</sup> In evidence, he said he was advised there wouldn't be any availability until the afternoon and to submit an application.<sup>441</sup>
- 6.304 SSU Operative 005 required further information from DSgt Barry to make the assessment as to whether he had the ability to redeploy his crews, which comprised as a minimum of the surveillance application with details of the nature of the assistance required and the background of the job (including the Offender's current location).<sup>442</sup>
- 6.305 At about 11.40 am, according to the notes of DSSgt Humphries, he asked DSgt Barry to call the SSU to 'assist with crew re resolution phase'.<sup>443</sup> He also noted that 'Air still not available,<sup>444</sup> DSgt Barry then made a second telephone call to the SSU and recorded in his notes.
- 6.306 DSgt Barry contacted SSU again at 11.40 am. His notes record that SSU was still unavailable, and aerial assist was also not available due to the weather.<sup>445</sup> SSU Operative 005 recalled that DSgt Barry advised him that the Offender had been involved in a pursuit and enquired about SSU assistance. SSU Operative 005 informed DSgt Barry that they were not in a position to assist given the circumstances. He explained that although the Offender had been located, the operation was now overt, and his teams could not monitor the Offender under pursuit conditions. SSU Operative 005 again informed DSgt Barry to submit a surveillance application if the Offender eluded uniform officers.<sup>446</sup> DSgt Barry's evidence was that he was told that the capacity of the SSU to assist was limited as it had become an overt operation.<sup>447</sup>

437 Transcript of evidence, p. 3152.

438 Transcript of evidence, p. 3152.

439 Transcript of evidence, p. 3154.

440 Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1961.

441 Transcript of evidence, p. 901.

442 Transcript of evidence, pp. 3149-50.

443 Exhibit 139, Handwritten and Typed Notes of Detective Senior Sergeant Darren Humphries, Coronial Brief, p. 4185

444 Exhibit 139, Handwritten and Typed Notes of Detective Senior Sergeant Darren Humphries, Coronial Brief, p. 4185; Exhibit 138,

Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1030.

445 Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, p. 1962.

446 Exhibit 180, Statement of State Surveillance Operative 005 dated 14 April 2017, Coronial Brief, pp. 1643-4.

447 Transcript of evidence, p. 975.

6.307 DSgt Barry explained at Inquest that his understanding, following the telephone calls with the SSU, was that they didn't have the resources at that point.<sup>448</sup> He stated that if he had put in the application at that point, there would have been a further delay until the resources were available.<sup>449</sup> DSgt Barry said he was advised there wouldn't be any availability until the afternoon and to submit an application.<sup>450</sup> On this basis, DSgt Barry did not commence a formal application process.<sup>451</sup>

6.308 DSgt Barry explained at Inquest that he did not put in an application to SSU at either 10.08 am or 11.40 am because:

... there was probably one member short of actually sitting down to do that then and there. Um, if I had that one extra person to do it, that would've been done then and there ah, and progressively worked upon. Um, I was basically the only one left in the office to do it, which would've taken me away from one of the other aspects we were trying to achieve.<sup>452</sup>

6.309 The lack of appropriate resourcing support for DSgt Barry manning the command post at Port Phillip CIU was an issue identified by AC Fontana in his Critical Incident Review<sup>453</sup> and is discussed further below.

6.310 At about 1.22 pm, DSgt Barry sent an email to SSU Operative 005 referring to their earlier conversations<sup>454</sup> and advising that he had commenced a surveillance application, that the Air Wing was low on fuel and he indicated that CIU units and others were still attempting to maintain observations on the vehicle and that they were hopeful of an arrest.<sup>455</sup> DSgt Barry indicated that he may require surveillance assistance long term if the matter did not resolve and noted he understood that SSU were 'stretched to the limit'.<sup>456</sup> He also confirmed the LBS was in place at that time.<sup>457</sup> SSU Operative 005 understood the application would be sent through shortly.<sup>458</sup>

6.311 No formal application was ever logged in the system because, very shortly after DSgt Barry sent the email to SSU Operative 005, the events of Bourke Street occurred and overtook matters.<sup>459</sup> At about 1.35 pm, DSgt Barry was informed that the Offender had entered Melbourne CBD and a number of pedestrians had been hit.<sup>460</sup>

## Was the SSU available to assist?

6.312 SSU Operative 005's recollection was that he received a telephone call from DSgt Barry and was informed that there had been an overnight stabbing and a surveillance team was requested to assist.<sup>461</sup> SSU Operative 005 indicated that he needed more information, DSgt Barry should submit an application, and the SSU crews were busy at that time but he would look at the application once it came in.<sup>462</sup>

448 Transcript of evidence, p. 984.

449 Transcript of evidence, p. 984.

450 Transcript of evidence, p. 901.

451 Transcript of evidence, p. 974.

452 Transcript of evidence, pp. 983–4.

453 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, pp. 52, 292.

454 Transcript of Proceedings, p. 916.

455 Exhibit 69, Email from David Barry dated 20 January 2017 at 1.22 pm, Coronial Brief, p. 4602.

456 Exhibit 69, Email from David Barry dated 20 January 2017 at 1.22 pm, Coronial Brief, p. 4602.

457 Exhibit 69, Email from David Barry dated 20 January 2017 at 1.22 pm, Coronial Brief, p. 4602; Exhibit 180, Statement of Surveillance Operative 005 dated 14 March 2017 as amended, Coronial Brief, p. 1644; Exhibit 181, Email from Inspector Andrew Atkinson to Superintendent Chris Murray dated 20 January 2017, p. AM 75-2; Exhibit 68, Handwritten Notes of Detective Sergeant David Barry, Coronial Brief, p. 1964.

458 Exhibit 180, Statement of Surveillance Operative 005 dated 14 March 2017 as amended, Coronial Brief, p. 1644.

459 Transcript of proceedings, p. 976.

460 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 312.

461 Transcript of evidence, p. 3148.

462 Transcript of evidence, p. 3148.

6.313 SSU Operative 005 disputed DSgt Barry's record of their discussion that there were no SSU resources available until after noon.<sup>463</sup> His evidence was to 'put an application in and I'll, we'll look at it'<sup>464</sup>, which he explained is consistent with their operational procedure.<sup>465</sup> SSU Operative 005 explained:

... we'll triage a job; if it's serious enough, then I'll redeploy one of the other crews. But, at that stage, we had five crews at work, tied up with jobs with investigators running them.<sup>466</sup>

6.314 SSU Operative 005 said, as a minimum, he needed a surveillance application with the nature of the surveillance and the background, including the Offender's current location and further information.<sup>467</sup>

6.315 SSU Operative 005's evidence was clear that, although there were no SSU units available at the time of DSgt Barry's request, it was possible to reallocate units even on an expedited application. He said:

I just needed an application with just a picture of the suspect, the vehicle he was driving, an address and a ... and a short summary of what ... as I said, I would have assessed ... I would triage the job and assess it and if I can ... if it looked as though it would prioritise above the other two jobs that I could have prioritised above, then I would have ... I certainly would have issued the team ... reallocated the team.<sup>468</sup>

6.316 He further stated that he made decisions concerning the reallocation of SSU resources every day and that such decisions lay within his own authority.<sup>469</sup> Further, an application of the type contemplated would take, realistically, 10 to 15 minutes to compile<sup>470</sup> and 20 to 30 minutes for the entire application process to be completed.<sup>471</sup>

6.317 Counsel for DSgt Barry submitted that perhaps there were miscommunications, or perhaps there was not a clear or full explanation in response to the request for support.<sup>472</sup> It was asserted that, whatever the reason for the differences in recall, the weight of the evidence supports the conclusion that, as a result of those phone calls, DSgt Barry was left with the clear impression that SSU support was not available and would not be for some time.<sup>473</sup> His contemporaneous notes and conduct support that view.<sup>474</sup>

6.318 Counsel for DSgt Barry urged me to accept his evidence over SSU Operative 005 because DSgt Barry made contemporaneous notes of the call and because SSU Operative 005 acknowledged there were potential problems with his memory of the conversation.<sup>475</sup>

6.319 AC Fontana's opinion was that 'the reality is ... they ... can be redeployed on a more urgent matter and they do it all the time'.<sup>476</sup> AC Fontana commented that there didn't seem like there was anyone to do those types of jobs, such as submit an application.<sup>477</sup> He considered, given that the whole CIU was basically focused on locating and arresting

463 Transcript of evidence, p. 3149.

464 Transcript of evidence, p. 3149.

465 Transcript of evidence, p. 3149.

466 Transcript of evidence, p. 3149.

467 Transcript of evidence, pp. 3149–50.

468 Transcript of evidence, p. 3156.

469 Transcript of evidence, p. 3157.

470 Transcript of evidence, p. 3157.

471 Transcript of evidence, p. 3161.

472 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 40.

473 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 40.

474 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 40.

475 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 40; Transcript of evidence, p. 3174.

476 Transcript of evidence, p. 3508.

477 Transcript of evidence, p. 3509.

the Offender and it was their priority for the day, that he was ‘pretty sure, with a bit of escalation, it could’ve been a priority for surveillance as well’.<sup>478</sup>

6.320 Counsel for DSgt Barry submitted that there is simply no evidence to suggest that he had any basis to believe that ‘with a bit of escalation’ there was a possibility of changing the SSU position.<sup>479</sup> It was submitted that DSgt Barry’s supervisors, DSSgt Humphries and DA/SSgt Newman, both knew of the SSU response, which, given that information, led DSSgt Humphries to make an operational decision to use what resources were available to locate and arrest the Offender.<sup>480</sup>

6.321 Further, it was submitted that:

... there is no suggestion in any written policy, rule or procedure to indicate that busy operational police members should somehow argue their cases for specialist resources in the face of a refusal. The relevant VPM *Policy for Specialist Resources* does not make reference to any ‘escalation’ in response to a refusal. Indeed, that type of insistence may draw away from competing operational concerns.<sup>481</sup>

6.322 This fails to take into consideration the practical realities of a situation such as the one they faced, the combined years of investigative experience of DSgt Barry, DSSgt Humphries and DA/SSgt Newman and the knowledge of the benefits of the SSU and the need to locate and arrest the Offender as a paramount priority that day.

6.323 At Inquest, at the time he commenced preparing the application, DSgt Barry agreed that he was beginning to think ahead to the possibility that the matter wasn’t going to be resolved in the near future, and that there would be a need to reset and adopt different strategies to identify and apprehend the Offender, and he was looking ahead to the possibility that perhaps later that day or in coming days covert surveillance could be used.<sup>482</sup> While he commenced preparing the application, DSgt Barry was not monitoring the police transmissions.<sup>483</sup>

6.324 Although SSU Operative 005 could not speak directly about the priority or urgency of the other jobs that morning, his evidence was that once he had received the application from the CIU, he could triage its priority.<sup>484</sup> SSU Operative 005 was clear that it was routine for him to reallocate resources depending on the priority to be assigned to a request for SSU support.<sup>485</sup>

6.325 The CCP argued that it is speculative to suggest that SSU crews would have been deployed in response to an application by DSgt Barry as there was no evidence as to the seriousness or urgency of the other active jobs involving the SSU that morning. Hence, it was not reasonably open to conclude that there was a ‘real likelihood’ that the SSU would have deployed.<sup>486</sup>

478 Transcript of evidence, p. 3509.

479 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 41.

480 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 41.

481 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 41.

482 Transcript of evidence, p. 976.

483 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 312.

484 Transcript of evidence, pp. 3149-50.

485 Transcript of evidence, p. 3149.

486 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 66.

- 6.326 It is correct to observe that there was no evidence as to the specific nature of the other jobs undertaken by the SSU. Indeed, SSU Operative 005 gave evidence that the SSU resource sheet was shredded at the end of each day.<sup>487</sup> I make no criticism of this practice. Given the highly sensitive nature of much of the work undertaken by the SSU, it falls to them to decide how to manage the security of their own documents.
- 6.327 It was submitted by Counsel Assisting that:
- ... the failure to meaningfully advance the application for SSU support in the two or three hours that were available to do so was significant. There was a real likelihood that SSU resources could have been available for a properly covert operation.<sup>488</sup>
- 6.328 Counsel for the CCP disagreed with the proposition that there was a ‘real likelihood’ that SSU resources could have been made available for a properly covert operation.<sup>489</sup> It was submitted that all five SSU crews were engaged in other jobs that day and while the SSU has the ability to redeploy crews from other active jobs if the circumstances are urgent enough, there is no evidence before the Court as to the seriousness or urgency of those other SSU active jobs on 20 January 2017.<sup>490</sup>
- 6.329 Counsel for CCP conceded that ‘covert surveillance was the key’ and, therefore, a more concerted effort should have been made to engage the SSU. They submitted that:
- ... at the very least, an application should have been submitted as a matter of urgency. If [Ms] Muo had been interviewed in a timely way, an assessment about the Offender’s state of mind and his purported intention to go to the city to ‘run people over’ could have been elicited. This may have persuaded the SSU to redeploy a surveillance unit to the operation.<sup>491</sup>
- 6.330 Counsel for the CCP submitted that while it is unfortunate that more energetic efforts were not made by DSgt Barry and/or others at his behest to utilise the resources of the SSU, to assert that SSU would have deployed is speculative at best.<sup>492</sup>
- 6.331 What cannot be disputed, when one considers all of the evidence, is the importance of a specialist resource such as the SSU to an operation such as this, due to its expertise to covertly follow an offender and provide an opportunity for other units such as the CIU and CIRT to appear and execute a safe arrest.
- 6.332 I accept that from DSgt Barry’s perspective he had a reasonable and honest belief that the SSU was unavailable at the time he called at 10:08 am and later at 11.40 am. It is possible that there was a misunderstanding between DSgt Barry and SSU Operative 005 about the availability of the SSU, and I am not critical of this fact. However, I consider there would have been no harm in DSgt Barry submitting or instructing another member to submit an application for the SSU assistance as a priority, so that it could have at least commenced the process. This would have given the SSU Operative 005 an opportunity to triage and potentially re-prioritise the other SSU crews to make them available. The evidence of SSU Operative 005 was clear that he needed an application to be able to progress the request.

487 Transcript of evidence, p. 3146.

488 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 84.

489 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 66; Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 84.

490 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 66.

491 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 69.

492 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 66.

6.333 Even though there is no policy or VPM about when to escalate matters up the chain of command, I consider that DSgt Barry or his superiors should have considered escalating this request. The knowledge the CIU members had about the Offender at the time of the request included that he had stabbed his brother, kidnapped his girlfriend, made threats to 'kill all', was displaying psychotic and delusional behaviour, and would most likely continue to evade police. These factors meant that an application should have been made in a more timely way. I am satisfied, based on the evidence, that it was possible the SSU may have become involved in the early-afternoon efforts of police to locate and covertly follow the Offender, which would have potentially enabled the visible police presence to withdraw and de-escalate the impact of their presence.

## Can SSU get involved when an offender is aware of police presence?

6.334 The next issue in dispute that emerged during the Inquest was whether the SSU can logistically become involved in an operation if an offender is aware of police presence.

6.335 Counsel for the CCP contended that 'there was also the added complication that had the SSU been deployed after 11.31 am, their effectiveness would have diminished as the operation had become overt.'<sup>493</sup> Reliance was placed on the evidence of AC Fontana when he was asked about the ability of SSU units to conduct surveillance under pursuit conditions. He stated:

... the whole purpose of surveillance is to be covert. Um, so when you're actually involved in a pursuit, it's very difficult.<sup>494</sup>

6.336 The proposition has merit; however, the CCP submissions did not mention the evidence of SSU Operative 005. When asked about the viability of the SSU entering an operation after a suspect had become aware of the police presence, SSU Operative 005 agreed with its potential.<sup>495</sup>

6.337 SSU Operative 005 was asked whether SSU needs the target vehicle to be static before it can commence an operation and he answered:

A. Not necessarily. There's got to be some sort of handover or ... location for us to ... to start at, so, it's not the usual course of practice where we would take over from a CIU. In fact, I can't recall any of, ah, recent years that it's actually been done that way but, um, it's possible.<sup>496</sup>

Q. But it can be done?

A. Potentially, yes.<sup>497</sup>

493 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 66.

494 Transcript of evidence, p. 3511.

495 Transcript of evidence, pp. 3151-2

496 The transcript is in error at this point where 'impossible' should read, 'possible'.

497 Transcript of evidence, pp. 3151-2.

6.338 Later in the course of his evidence, when asked what he understood the conditions of following or attempting to locate the Offender were at that time,<sup>498</sup> he responded:

My understanding was that he was ... driving erratically, he's been in a number of pursuits or at least a pursuit, um, he was aware that the police were following him. I'm not sure whether it was a marked or unmarked or both and that was sort of relayed to me in a situation where the suspect is highly aware of vehicles around him. It's very hard to bring a covert team in to try and track him unless everyone else basically disappears, and even then, his awareness is still heightened.<sup>499</sup>

6.339 SSU Operative 005 was also asked whether it is possible for regular police, that is, for CIU and uniform, to disengage with the objective of picking up the target vehicle at a later time with SSU surveillance support, and he answered yes,<sup>500</sup> 'you can with ... with the right resources'<sup>501</sup>, which is with additional SSU crews.<sup>502</sup>

6.340 The covert morning operation had become overt at or before Moray Street, but once the Offender had escaped, and had been out of contact with police for some time, there was the opportunity for the operation to 'reset' and use the SSU, if it could provide the resources. There is no doubt that the Offender would have presented challenges to the SSU crews given the Offender was not a naïve target, but one should not conclude that these were insurmountable obstacles. The potential effectiveness of the SSU after 11.30 am was not necessarily diminished because of the events earlier in the morning.

6.341 The failure to meaningfully advance the application for SSU support in the two to three hours that were available to do so was significant. It was likely that SSU resources could have been made available for a properly covert operation.

6.342 The evidence reveals that with adequate information and appropriate resources (that is, additional SSU units) and had the CIU and uniform officers disengaged and disappeared, the SSU may have had an opportunity to become part of the strategic plan to covertly follow the Offender until such time as he stopped the vehicle and got out, allowing other units to effect a safe arrest.

## Should the SOG have been requested?

6.343 The SOG is a specialist tactical unit that responds to unplanned operational critical incidents such as sieges and siege hostage situations, armed offender tasks and bomb response incidents. It can also assist operational police in planned operations involving the apprehension of dangerous suspects.<sup>503</sup>

6.344 DSgt Barry gave evidence that he considered approaching the SOG for assistance but thought that in the circumstances it would have been denied.<sup>504</sup> Both DA/SSgt Newman and Sgt Griffith concurred with this assessment; they considered the unfolding events of the morning and early afternoon did not fit SOG's criteria.<sup>505</sup>

498 That is, at the time of the second telephone call between DSgt Barry and SSU Operative 005 shortly after 11.30 am.

499 Transcript of evidence, p. 3154.

500 Transcript of evidence, p. 3155.

501 Transcript of evidence, p. 3155.

502 Transcript of evidence, pp. 3154–5.

503 Exhibit 234, Fourth Statement of Superintendent Ward dated 15 January 2020, AM 103, p. 8.

504 Transcript of evidence, p. 969.

505 Transcript of evidence, pp. 1893, 3034.

- 6.345 Supt Ward is in charge of the Security Services Division of Victoria Police, which includes, amongst other units, the SOG and the CIRT, and had previously served as a SOG operator, team leader and Deputy Tactical Commander for approximately 15 years.<sup>506</sup>
- 6.346 Supt Ward explained the deployment criteria and the process for making applications for, and authorisations of, the deployment of SOG.<sup>507</sup> Supt Ward informed me that it was ‘most unlikely’ SOG would have been deployed in the circumstances of 20 January 2017. He explained that this was because there was no clear evidence the Offender was armed with a firearm, the incident did not meet the SOG criteria and it would be considered that the arrest of the Offender was a situation that CIRT had the capacity to resolve.<sup>508</sup>
- 6.347 SOG consists of highly skilled and trained members who have access to specialist equipment, armoured vehicles and four-wheel-drive vehicles that can be deployed for high-risk vehicle interdiction. A new specialist resource, the SOG Quick Response Force (**QRF**) has been established since the Bourke Street event.<sup>509</sup> The capabilities of the SOG QRF are discussed in Part 9 of this Finding.
- 6.348 I accept that the circumstances that faced police officers on 20 January 2017 did not meet the criteria for SOG deployment. I make no criticism of DSgt Barry for not lodging an application to SOG for their assistance, given the likelihood that such an application would have been refused.

## Concluding remarks

- 6.349 By 11.30 am, there were four significant events that occurred within the space of a six-minute period:
- a. the Offender evaded police when they attempted the intercept at Moray Street
  - b. he had engaged in a ‘face-off’ with CIRT units in the Albert Road Service Road
  - c. he had just missed hitting a number of pedestrians on Clarendon Street, South Melbourne
  - d. he had managed to avoid arrest by a number of CIRT units at Wurundjeri Way.
- 6.350 These events marked an end to the morning plan and demonstrated a significant shift in the prospects of success for Operation Invokes. I am satisfied that, up until the point where the Offender recognised the CIU vehicles behind him, the primary strategy had been viable. That is, to use unmarked CIU vehicles to covertly follow the Offender, with other units deployed nearby but out of sight, waiting for an opportunity to arrest him when he was out of the vehicle, with the assistance of CIRT. The use of unmarked CIU vehicles, as opposed to truly covert SSU vehicles crewed by trained SSU operatives, was not ideal, but it was still viable so long as the Offender remained unaware of the presence of police.

<sup>506</sup> Exhibit 230, Statement of Superintendent Peter Ward dated 24 March 2019, Coronial Brief, pp. 1781–2.

<sup>507</sup> Exhibit 230, Statement of Superintendent Peter Ward dated 24 March 2019, Coronial Brief, pp. 1782–3; Exhibit 234, Fourth Statement of Superintendent Peter Ward dated 15 January 2020, AM 103, pp. 2–3.

<sup>508</sup> Exhibit 234, Fourth Statement of Superintendent Peter Ward dated 15 January 2020, AM 103, p. 3.

<sup>509</sup> Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 418.

- 6.351 By the time the Offender had taken off over the West Gate Bridge towards the western suburbs, it was clear that he was going to continue to evade police and it was time to rethink the resolution strategy.
- 6.352 After the escape of the Offender, critical tasks were left unattended, such as the application for SSU assistance, which was not progressed for more than one-and-a-half hours, and the failure to interview Ms Muo as a matter of priority as a matter of priority.
- 6.353 By late morning on 20 January 2017, the Offender had demonstrated he was armed, dangerous, in a manic and psychotic state and had no intention to stop or surrender to police. He had viciously attacked his brother, made threats to 'kill all' in a Facebook message, kidnapped his girlfriend and driven dangerously to avoid apprehension, narrowly avoiding pedestrians crossing at Clarendon Street, South Melbourne.
- 6.354 Incomprehensibly, despite the best efforts of police officers, the Offender managed to evade arrest by police three times within the space of six minutes. By this stage of the operation, it was clear that there were limited options available to police to arrest the Offender while he was mobile in a vehicle. These facts represented a clear and significant escalation of risk that warranted a heightened level of police response and command. However, as detailed in Part 7, the operation instead devolved into disparate, fragmented and uncoordinated avenues of inquiry with a breakdown in communication between Port Phillip CIU, CIRT and uniform units.

# Part 7: Search for Offender in Western Suburbs and Attempts to Negotiate the Offender's Surrender

## Overview

- 7.1 After the Offender escaped from the attempted arrest by CIRT at Wurundjeri Way, he sped off onto the West Gate Freeway and out of sight of police. This marked the beginning of the operation to locate the Offender in the western suburbs and the attempts to negotiate a surrender.
- 7.2 This Part of the Finding provides a chronology and analysis of the subsequent attempts to relocate and arrest the Offender over the course of the early afternoon of 20 January 2017, up until the time Port Phillip CIU disengaged with the Offender at about 1.27 pm as he headed towards the Melbourne CBD. In particular, the following will be addressed:
- a. search for the Offender in the western suburbs
  - b. attempts to locate the Offender and negotiate a surrender
  - c. location of the Offender in Yarraville
  - d. engagement with the Offender as he drove toward the CBD
  - e. deterioration of command and control.

## Search for the Offender in the western suburbs

### Overview of early afternoon shift police units

- 7.3 Many of the police units involved in the morning response continued to assist with Operation Invokes as the operation moved into the early afternoon. I do not propose to recount each of these units here because they can be found in Part 6 of this Finding. However, for clarity of narrative, the additional police units that became involved as the search area for the Offender widened into the western suburbs included:
- a. SSgt Scott Poynder, the divisional patrol supervisor (265) for divisions 2 and 3 of the North West Metro Region<sup>1</sup>
  - b. Sgt Shannon Grant, uniform patrol supervisor (251) for the Hobson's Bay Police Service Area<sup>2</sup>

<sup>1</sup> Exhibit 177, Statement of Senior Sergeant Scott Poynder dated 27 January 2017, Coronial Brief, p. 1445.

<sup>2</sup> Exhibit 170, Statement of Sergeant Shannon Grant dated 4 March 2017, Coronial Brief, p. 891.

- c. Sgt Dominic Trimboli, uniform patrol supervisor (251) for units in the Wyndham Police Service Area<sup>3</sup>
- d. Police Air Wing unit, comprising Tactical Flight Officers LSC Andrew Edmonds and SC Alex Barron and pilot Constable Warwick Young with call sign Air 490.<sup>4</sup>

## Attempts to locate Offender in western suburbs

- 7.4 After the Offender sped away from Wurundjeri Way, SC Jones and SC Cavanagh (CIRT 377) transmitted to all units that the Offender's last direction of travel was believed to be westbound on the West Gate Freeway and over the West Gate Bridge.<sup>5</sup> They were unable to confirm where he had gone from there.<sup>6</sup> FC Fuller and LSC Krajnc (CIRT 267) got back into their vehicle and continued onto the West Gate Freeway to confirm if that was where the Offender had travelled.<sup>7</sup>
- 7.5 At about 11.39 am, Sgt Griffith requested a KALOF be broadcast on the other side of the West Gate Bridge, being the Hobson's Bay area (channel 01-02), and for access to VicRoads cameras on the West Gate Freeway to see what they could spot.<sup>8</sup> A/SSgt Russell directed that the KALOF should include warnings about the Offender and the reasons he was wanted.<sup>9</sup>
- 7.6 Sgt Peck alerted police communications on channel 01-02 that they would likely receive a KALOF shortly in relation to a male who was wanted for an overnight stabbing; he said:
- ... the vehicle has no rear number plate on it. It's got a male on board that is known to police. If attempted to be intercepted, he probably will pull over, but he'll, almost a hundred per cent, take off on members. Extremely aggressive.<sup>10</sup>
- 7.7 At about 11.44 am, CIRT 377 suggested on channel 03-01 that Port Phillip CIU may want to check names and locations of the Offender's associates to ascertain whether there were any in Werribee. DSC Burnett and SC Reeves (Port Phillip 507) confirmed they were in the vehicle but would get 'some of the officers to sort that out'.<sup>11</sup>
- 7.8 Sgt Peck informed CIRT 377 on their TAC channel that he was on channel 01-02 and they were getting several calls about the Offender driving at speed along the West Gate Freeway and to head that way.<sup>12</sup> Sgt Peck subsequently clarified on channel 01-02 that they were approximately one kilometre behind the Offender's vehicle and only just approaching Williamstown Road.<sup>13</sup>
- 7.9 Police communications broadcast that they had received a second call in relation to the same vehicle located on the West Gate Freeway and Grieve Parade, Altona North.

3 Statement of Sergeant Dominic Trimboli dated 10 May 2017, Coronial Brief, p. 1723.

4 Exhibit 186, First Statement of Leading Senior Constable Andrew Edmonds dated 22 January 2017, Coronial Brief, p. 566.

5 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 47.

6 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 48.

7 Exhibit 161, Statement of First Constable Lauren Fuller dated 25 January 2017 as amended, Coronial Brief, p. 800; Exhibit 157, Statement of Leading Senior Constable Martin Krajnc dated 20 January 2017, Coronial Brief, p. 1173.

8 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 49.

9 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 50.

10 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 66-8, p. 1. DSSgt Humphries commented that this transmission was in effect CIRT 251 providing an on-air handover, Transcript of evidence, p. 2570.

11 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 53.

12 Exhibit 143, Corrected transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) as amended by Counsel for CIRT members, AM 66, p. 8.

13 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 2.

- 7.10 *En route*, CIRT and divisional members were trying to identify any associates in Werribee whom the Offender may have been intending to visit. Police communications relayed an address of an associate in Altona North.<sup>14</sup> CIRT 377 confirmed on air that they had received that information and stated that they would switch over to channel 01-02.<sup>15</sup>
- 7.11 Sgt Grant (Altona North 251), the local sergeant, came up on air and advised she was monitoring the incident and asked for clarity from Sgt Peck as to whether they wanted a vehicle intercept to be attempted or to leave the vehicle alone.<sup>16</sup>
- 7.12 In response, Sgt Peck transmitted:
- I probably suggest against it at this stage. It's been attempted to be intercepted a couple of occasions through 31 and 11, and failed to pull—well, pulled over each time, but then he just takes off. A CIRT unit was able to extract a possible hostage from the vehicle, but then he's taken off again. Getting some intel. He's possibly heading to a Werribee address, so we can make those local units aware he may be heading into their town.<sup>17</sup>
- 7.13 Sgt Grant queried 'are we looking at perhaps wanting to get Air Wing up or a couple of unmarked units to maintain obs without getting compromised? Just after some further direction from the CIRT, thanks'.<sup>18</sup>
- 7.14 Sgt Peck responded that he would leave it up to the local 251s and reiterated that pursuits had been called off on other channels, stating:
- I'd strongly advise to go with that sort of plan. If he goes to ground, it would be good to have some unmarked units. I'll keep on heading in that direction. We can assist in a resolution strategy, possible K9 to come to the area. Air Wing was requested several times, and they've got an operation that they don't want to go into over the air at the moment, so they won't be able to help us.<sup>19</sup>
- 7.15 At about 11.47 am, Sgt Grant asked whether there were any unmarked units out and about near the freeway that may be able to assist.<sup>20</sup> CIRT 300 (the negotiator unit) confirmed that they were heading that way.<sup>21</sup>

14 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 55

15 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 55.

16 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 2.

17 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 3.

18 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 3.

19 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, pp. 3-4.

20 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 4.

21 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 4.

- 7.16 Sgt Grant requested the Werribee address<sup>22</sup> and Sgt Peck stated that they had not been able to obtain an address from the other occupant of the vehicle.<sup>23</sup> Sgt Grant transmitted:

We haven't had much luck so far. All I can suggest is that ... if CIRTs do come across the vehicle, I can try and organise a couple of unmarked and we'll sort of go from there. But, given obviously there's no obs, there's not much more we can do at this stage. But definitely sing out if they need us, if they come across the car, and I'll—I'll make something happen.<sup>24</sup>

- 7.17 At about 11.48 am, Sgt Peck broadcast on channel 01-02:

He's not—definitely not gunna stop for—for us. The only alternate would be if there's more sightings is getting some Highway Patrol with stop sticks. That's about the only way we're gunna get this bloke to stop. But, again, this bloke is known to us, so there will be obvious arrest powers and warrants, et cetera, for him, I would suggest.<sup>25</sup>

- 7.18 Sgt Grant then transmitted the following plan:

... if we did come across him, it would definitely have to be a planned response with anything that we do. I'll get you to broadcast a KALOF in relation to the vehicle and instructions to any members coming across it, that they are to maintain obs from a distance without lighting it up and without being compromised, and to notify the 251 who will formulate a plan—and 251, just based on what CIRT have said, that there's to be no engaging in pursuit, even though it would fit the criteria, if there's been two terminated already today we're not gunna reinitiate a pursuit, thanks. And can you just let the 265 know, just as a heads-up for him.<sup>26</sup>

- 7.19 At about 11.49 am, Port Phillip 507 asked police communications on channel 03-01 whether anyone had seen the vehicle go over the West Gate Bridge. Police communications confirmed on air they had 'received multiple calls for it over on their patch' and that it appeared the Offender's vehicle can 'either go north into Sunshine there or continue down to Werribee'.<sup>27</sup>

- 7.20 CIRT 377 came up on channel 01-02, stating that they had 'just flicked over'<sup>28</sup> from channel 03-01. They provided an update on an address and stated that the channel 03-01 operator had only been able to come up with an associate in Altona North, but the female they had spoken to from the vehicle (Ms Muo) was adamant that he was heading to Werribee.<sup>29</sup> Sgt Grant requested the Altona North address and stated that she would

22 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 4.

23 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 5.

24 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 5.

25 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 5.

26 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 6.

27 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 57.

28 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 6.

29 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 6–7.

- 7.21 go out in an unmarked vehicle herself and do a 'bit of a rece'.<sup>30</sup> Police communications confirmed on air to Sgt Grant that they would get the address and broadcast the KALOF they had just received from the channel 03-01 operator.<sup>31</sup>
- 7.22 Sgt Grant requested that the KALOF was to reinforce that:
- ... this vehicle is not to be approached by any members; no attempted intercept, no approaching if it's stationary. If they—anyone comes across it, they need to just maintain obs from a distance and let the relevant 251 know to formulate a plan.<sup>32</sup>
- 7.23 Police communications checked to ensure that Sgt Trimboli (Wyndham North 251) was also monitoring the transmissions. Sgt Trimboli requested that an email be circulated to the supervisors so that they could be aware of the incident in the crossover of the shifts for handover,<sup>33</sup> in response to which Sgt Peck confirmed he would get the informant's contact details to him.<sup>34</sup>
- 7.24 Police communications then broadcast the following KALOF, naming the Offender:
- He's wanted in regards to a stabbing at Raleigh Street and Punt Road, Windsor, this morning. He was last seen in a stolen vehicle, a 1995 Holden sedan, Uniform Zulu Sierra-179. The stabbing's taken place at 0200 hours this morning. Last known to be in the vicinity of Glen Huntly Road in Carnegie or—at 0530 hours, and more recently sighted on the Westgate Freeway outbound. He's currently armed with a knife. Occ safety principles he's in a psychotic and manic state, sending Facebook messages to kill. Police who are—are to approach with extreme caution and call for backup immediately. Also to be aware of possible abduction issues if other persons present—are present in the offending vehicle. If located, please contact Port Phillip CIU ASAP, Detective Senior Constable Burnett. Got a phone number if requested. And to reiterate from Altona North 251, vehicles are to maintain obs from a distance, notify the 251 and no pursuits are to be engaged in.<sup>35</sup>
- 7.25 No reference was made in the KALOF to the previous extended follow throughout Toorak, South Yarra and South Melbourne or the attempted intercept and pursuit in South Melbourne, nor, importantly, the alleged abduction of Ms Muo and her liberation at Wurundjeri Way.
- 7.26 At about 11.54 am, police communications relayed the telephone number for the member in charge of the incident to Sgt Trimboli.<sup>36</sup> Sgt Grant stated on air that she had an unmarked unit ready to go two-up in relation to the Altona North address, 'just to do a rece on it to see if that vehicle's parked there'<sup>37</sup>, and requested the address.

30 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 7.

31 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 7.

32 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 7. DSergeant Humphries commented that this transmission is very clear, and the fact that there is a CIRT unit in the area adds a greater weight to the request and directions and the involvement of the 251; Transcript of evidence, p. 2571.

33 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 8.

34 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 8.

35 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 8–9.

36 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 10.

37 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 10.

- 7.27 At about 11.54 am, information regarding a potential address for an associate of the Offender at Trinca Court, Werribee, was relayed on the CIRT TAC channel.<sup>38</sup>
- 7.28 CIRT 300 stated they were about eight minutes away from the Werribee address and asked Sgt Peck whether he wanted them to do a drive-by or get semi-close and have a look. Sgt Peck declined the offer and stated he would run it through the local 251 and leave it up to them.<sup>39</sup>
- 7.29 CIRT 367 asked for approval from Sgt Peck on the CIRT TAC channel to head to the Werribee area. Sgt Peck granted this request but reiterated that it would be left up to the local units in relation to how they wanted to run the operation.<sup>40</sup>
- 7.30 At about 11.59 am, Sgt Peck explained on channel 01-02 that he had been asked to come back to the channel. He stated that he was ‘just grabbing intel about a Werribee address that he’s probably heading to. I’m just crossing back to 1-3 to give that info to them’.<sup>41</sup>
- 7.31 Just before noon, the Air Wing had become available. Police communications informed Air Wing that no units had observations on the vehicle, but he was believed to be possibly heading to a Werribee address, and they were still waiting to confirm where that was. Police communications confirmed that the vehicle was last sighted on the West Gate Freeway at 11.42 am.<sup>42</sup>
- 7.32 At about 12.04 pm, Sgt Grant advised (for the Air Wing’s information) that the Werribee address was not known, but there was an Altona North address that the Offender was possibly headed towards and they were just waiting to get that address.<sup>43</sup> She advised she had an unmarked unit on the ground ready to go but would certainly utilise Air Wing if they were available once they received the address to do a flyover. Air Wing notified they would float around the Williamstown and Altona areas in the interim.<sup>44</sup>
- 7.33 At about 12.06 pm, police communications relayed an Altona North address to Sgt Grant.<sup>45</sup> Air Wing was tasked to pinpoint the address from the air and was provided with a description of the Offender’s vehicle. Sgt Grant directed all units to stay away from the address until they heard back from Air Wing, and that if a similar vehicle was confirmed at the address, she would get a ground unit to do a drive-over from a distance to confirm the registration number of the vehicle.<sup>46</sup>
- 7.34 CIRT 367 broadcast that they had a Werribee address of interest in relation to the Offender, which was relayed over the air.<sup>47</sup>

38 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, AM 89, p. 9.

39 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, AM 89, p. 10.

40 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, AM 89, p. 11.

41 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 12.

42 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 15.

43 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 16.

44 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 16.

45 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 16.

46 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 17.

47 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 19.

- 7.35 Sgt Peck requested that, failing a sighting at the Altona address, Air Wing should do a fly-by of the Werribee area. Sgt Peck stated that he had a couple of unmarked vehicles in the area as well.<sup>48</sup>
- 7.36 At about 12.11 pm, Sgt Grant stated that in relation to the previous broadcast from Sgt Peck for continuity and to ensure there was one point of contact, she would remain incident controller for the matter until they confirmed the Offender was not in her patch.<sup>49</sup>
- 7.37 Air Wing stated that they had checked the properties in Altona North but were unable to locate the Offender's vehicle. They advised they would continue to search the surrounding streets.<sup>50</sup>
- 7.38 At about 12.19 pm, Sgt Grant stated over the radio that Hobson's Bay 507 had moved into May Street, Altona North, and would have a look for the Offender's vehicle.<sup>51</sup> Sgt Peck advised that most of the CIRT units were in the Werribee area at that time. Sgt Grant clarified that if the vehicle was located in the Werribee area, then Sgt Trimboli (Wyndham North 251) would be the incident controller.<sup>52</sup>
- 7.39 At about 12.25 pm, Sgt Grant stated that because the Offender's vehicle wasn't in her patch and all of the CIRT units were in Werribee, she would hand over the incident to Werribee 251 (that is, Sgt Trimboli) for him to be the incident controller, and for everything to be run through him.<sup>53</sup>
- 7.40 At about 12.26 pm, Air Wing advised there was nothing in Trinca Court, Werribee, that resembled the Offender's vehicle and that they would continue to look in the surrounding streets.<sup>54</sup> Police communications provided Sgt Trimboli with an update. He directed Air Wing to continue the search while he talked to the informant and CIRT to advise if they could formulate a further plan.<sup>55</sup>
- 7.41 During this time, DSC Gentner had made contact with the Offender using Mr Clapham's phone number. The details of these discussions are outlined further below.
- 7.42 At 12.30 pm, Sgt Trimboli spoke to DSgt Barry who informed him that the CIU was attempting to negotiate a surrender plan with the Offender while conducting LBS of his phone.<sup>56</sup> At about 12.34 pm, Air Wing confirmed there were no other maroon-coloured vehicles located in the nearby streets and stated they would clear unless there was another address they wished them to check.<sup>57</sup>

48 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 19-20.

49 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 20.

50 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 21.

51 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 23-4.

52 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 24.

53 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 27.

54 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 27.

55 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 28.

56 Statement of Sergeant Dominic Trimboli dated 10 May 2017, Coronial Brief, p. 1725

57 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 30.

- 7.43 Sgt Trimboli broadcast that the vehicle was last seen heading towards Duncans Road, and he asked Air Wing to do a sweep of Werribee South. Sgt Trimboli advised that the informant was trying to make contact with the Offender to formulate some sort of surrender plan, but at that stage they would just keep the KALOF and patrols as they were.<sup>58</sup>
- 7.44 At about 12.37 pm, Air Wing patrolled Werribee South (as the area was known to the Offender) but did not locate the Offender's vehicle.<sup>59</sup>
- 7.45 Sgt Trimboli broadcast an update on channel 01-02 to all units, stating that Air Wing was doing an air search and CIRT units were on the ground doing patrols of the known Werribee address. He directed units that 'if the vehicle is sighted, to come up on the air to give details and wait for further direction. We'll then formulate an arrest plan or surrender plan'.<sup>60</sup>
- 7.46 After being unable to locate the Offender's vehicle in Werribee, the CIRT units cleared from Werribee and began to head back towards Melbourne<sup>61</sup> Sgt Peck stated that they were available on channel 7-1 if there were any further sightings.<sup>62</sup>

## Concerns of supervisors in the northwestern region

- 7.47 In the initial stages of the search in the western suburbs, the deployment of various units was managed, at least in part, by the respective patrol supervisors (251s) for the areas in which inquiries were being made. In addition, information concerning locations of interest (namely, the addresses of known associates of the Offender) appear to have been gathered by the CIRT and police communications. At this time, there was a notable shift in the control of the operation as the Port Phillip CIU stepped back and was noticeably absent and CIRT and general duties units endeavoured to locate the Offender.
- 7.48 Sgt Grant noted in her written statement:

I was surprised that no Detective involved in the investigation relating to [the Offender] had come up on the police radio to provide information about this entire incident and any plan in place or requirements relating to the arrest of [the Offender].<sup>63</sup>

58 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 31–2.

59 Exhibit 187, Handwritten Notes of Leading Senior Constable Andrew Edmonds dated 20 January 2017, Coronial Brief, p. 2197.

60 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 33.

61 Exhibit 143, Corrected transcript of Victoria Police D24 Radio Communications-Channel 13-25 (CIRT) amended by Counsel for Members, AM 66, p. 20.

62 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 34.

63 Exhibit 170, Statement of Sergeant Shannon Grant dated 4 February 2017, Coronial Brief, p. 892.

- 7.49 Sgt Grant also gave evidence how the lack of information and leadership from the CIU caused difficulties:

... in this instance, it certainly should have been the CI detectives who were managing the job itself ... where it was initiated in Windsor ... they should have maintained carriage of the whole incident as the forward controller, cross channels and maintain carriage of it ... they're definitely the ones that should have provided that information ...

I think it was over an hour before the 508 had come up and, you know, they could certainly have had crucial information that was valuable for—to myself and [Sgt Trimboli] who'd become the incident controller as well that might have assisted us ...

I was frustrated that I had been blindsided by this job.<sup>64</sup>

- 7.50 Ssgt Poynder (Werribee 265) first became aware of the operation taking place in his area of responsibility when he left a meeting at approximately 12.20 pm. Three minutes later, he received a telephone briefing from Sgt Grant who raised concerns that she was having trouble obtaining information from the Port Phillip CIU and that 'getting information from the people involved in the job was like pulling teeth'.<sup>65</sup>

- 7.51 At about 12.45 pm, SSgt Poynder returned to his office and telephoned the Port Phillip CIU office but was initially unable to make telephone contact with DSSgt Humphries or anyone else at Port Phillip CIU.<sup>66</sup>

- 7.52 Frustrated, he telephoned the CIRT office and spoke with A/SSgt Gooden (CIRT 265) who:

... gave me details of the preceding events overnight and during the morning. I expressed my concerns that there was no plan, no resolution strategies and no one appears to be in control. She advised that Port Phillip were in control and that her team had been asked to assist in the arrest.<sup>67</sup>

- 7.53 The notes of A/SSgt Gooden recorded that SSgt Poynder was 'not happy—knows nothing—explained story that I know'.<sup>68</sup>

- 7.54 The first time that any member of Port Phillip CIU broadcast on channel 01-02 was at 12.53 pm, when Port Phillip 508 stated, 'I'm sure you're aware we're tracking a male whose phone's pinging, Cruickshank Park and Williamstown Road',<sup>69</sup> which was more than an hour since the Offender had fled to the western suburbs. They transmitted that the location was a park, but they were unsure how big it was. After some prompting by Air Wing as to what they were looking for, they broadcast the registration number of the stolen Commodore.<sup>70</sup>

64 Transcript of evidence, pp. 2963–4.

65 Transcript of evidence, p. 3092.

66 Exhibit 177, Statement of Senior Sergeant Scott Poynder dated 27 January 2017, Coronial Brief, p. 1447.

67 Exhibit 177, Statement of Senior Sergeant Scott Poynder dated 27 January 2017, Coronial Brief, p. 1447–8.

68 Exhibit 169, Handwritten Notes of Acting Senior Sergeant Kelly Gooden, Coronial Brief, p. 4042.

69 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 34.

70 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 36.

- 7.55 Concerned about the lack of information and plan, SSgt Poynder made the following transmission on channel 01-02:

Can you tell me who's in control of this job that's involved Port Phillip, please, and have them give me a call.<sup>71</sup>

- 7.56 Port Phillip 508 immediately came up on air and stated they would give him a call.<sup>72</sup>

- 7.57 SSgt Poynder stated that, a short time later, he received a call from Port Phillip 508<sup>73</sup> who:

... confirmed that the male being sought had seriously stabbed his brother in the early hours of the morning at the suburb of Windsor, there had been at least two pursuits that had been called off, a female hostage had been recovered and he may be in possession of a weapon. I asked who was in charge and controlling the situation. He advised that they (the 508 unit) were controlling things on the road, but their manager, [DSSgt] Humphries, was controlling things from their office. I asked whether there was a plan or whether the SOG were involved and what resolution strategies were to be used. I was advised that they were conversing with the male on the telephone and trying to get him to give himself up to police. They were going to follow him to see where he goes. I was also advised that the mobile telephone of the male was being 'pinged'.<sup>74</sup>

- 7.58 In evidence, SSgt Poynder described the resulting conversation as follows:

I only recall speaking to one person on the phone and having a discussion with him about what was happening ... It was, 'Tell me what's happening, who's in charge, who's running the show, are the SOG coming, what's your plan ongoing, how are you going to resolve this, do you have any resolutions in place, do you know the identity of this person?' They are factors—'Are you in pursuit?'. You know, those sorts of things and, unfortunately, I wasn't happy with the answers I got.<sup>75</sup>

- 7.59 DSC Gentner also gave evidence of his conversation with SSgt Poynder and he recalled the relevant portions as follows:

I told [SSgt] Poynder that I was on the road trying to engage with him [the Offender] and I would most likely be one of the people that's effecting the arrest ... but [SSgt] Poynder was asking questions I couldn't answer, so I referred him back to [DSSgt] Humphries to ... deal with the logistical side of things ...<sup>76</sup>

71 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 36;

72 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 36; Exhibit 177, Statement of Senior Sergeant Scott Poynder dated 27 January 2017, Coronial Brief, p. 1446.

73 During the Inquest, SSgt Poynder helpfully explained what specific call signs mean in terms of role and rank of a police officer. This assists police listening to police communications to interpret who is transmitting. For example, if five is the middle of the three digits, that refers to a sergeant, (i.e. 251); if there is a six, that means senior sergeant (i.e. 265). If there is a two at the start, that means the person is in a sedan; if there is a five in front, that means it is a detective vehicle. The significance of this explanation is that SSgt Poynder deduced he was talking to a detective senior constable because call sign 508 'tells me, in my head, that it's a 5 which means it's a detective's car, it's a zero, so it's not a sergeant, it's generally a senior constable and 8 is that they started at 8 am: 508'. Transcript of evidence, p. 3094.

74 Exhibit 177, Statement of Senior Sergeant Scott Poynder dated 27 January 2017, pp. 1446–7; Transcript of evidence, p. 3095.

75 Transcript of evidence, p. 3094–5.

76 Transcript of evidence, p. 3409.

7.60 This information did not satisfy SSgt Poynder's concerns as he went on to explain:

My concern at that time is a 508, a senior constable, is controlling several units and he's in what is, in effect, a pursuit and he thinks he's in control when he should know that he's not. A senior constable in a pursuit is never in control. They're either the participant, they're the first unit, the second unit, all those sorts of things, but they're never in control. It's always the sergeant.<sup>77</sup>

7.61 SSgt Poynder correctly concluded that there was no real answer to the fundamental questions concerning command of the operation and a resolution strategy. At 12.59 pm, he transmitted on channel 01-02:

At this stage, I would have no units from Div 2 have anything to do with this car at the moment, please. I'm trying to sort it out and get a controller from Port Phillip CI. I'll get back to people on the air.<sup>78</sup>

7.62 Police communications confirmed his instruction.

7.63 One minute later, SSgt Poynder reiterated, 'There's to be no attempt to intercept or approach this bloke, please, until I let them know.'<sup>79</sup> Police communications again confirmed his instruction not to intercept.

7.64 SSgt Poynder then transmitted, 'I'm happy ... for the 490 to do whatever they're tasked to do by Port Phillip CI, that's no problem, but I need to sort out what's going on with our members first, please.'<sup>80</sup>

7.65 At Inquest, SSgt Poynder said his prohibition remained in place until he knew what was going on and until a safe and logical plan was implemented. He explained, 'We don't go chasing him all over the place because it's going to create drama.'<sup>81</sup> SSgt Poynder's rationale for his instruction not to engage was based on his experience:

... the person will try and evade the police: it's the fight or flight; people don't wanna get caught. They will run away if they think there's people after them. Um, certainly never put a uniform car there.<sup>82</sup>

7.66 He added 'following within view is really dangerous in a lot of ways'.<sup>83</sup>

7.67 SSgt Poynder said there were no real answers given to his requests and he needed to speak to DSSgt Humphries and see what was happening.<sup>84</sup> He then telephoned the Port Phillip CIU office again where the call was answered by a female he presumed was an administration clerk. SSgt Poynder asked to speak to DSSgt Humphries but was informed that he was away from the office. The clerk was not willing to provide SSgt Poynder with his mobile number because she could not confirm his identity. SSgt Poynder stated that he asked her to have DSSgt Humphries call him as soon as possible to discuss the event.<sup>85</sup>

77 Transcript of evidence, p. 3112–3.

78 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 37-8; Exhibit 177, Statement of Senior Sergeant Scott Poynder dated 27 January 2017, p. 1447.

79 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 38.

80 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 38.

81 Transcript of evidence, pp. 3103–4.

82 Transcript of evidence, p. 3109.

83 Transcript of evidence, p. 3109.

84 Transcript of evidence, p. 3095.

85 Exhibit 177, Statement of Senior Sergeant Scott Poynder dated 27 January 2017, Coronial Brief, p. 1448.

- 7.68 SSgt Poynder eventually received a call from DSgt Vohmann at approximately 1.15 pm who informed him that he was from Port Phillip CIU and involved in managing the search for, and arrest of, the Offender. SSgt Poynder said he voiced his concerns to DSgt Vohmann about:

... the need for there to be a plan with resolution strategies and that this needs to be broadcast so that our members could be aware of the situation. I was concerned that the risks without a plan and a person in control were too great. [DSgt] Vohmann advised that the mobile phone was still being 'pinged' and the helicopter was still involved. He advised me that he was in charge of the event and that he would come up on the radio and broadcast his role.<sup>86</sup>

- 7.69 In evidence, SSgt Poynder explained he fired the following questions at DSgt Vohmann:

Where's (indistinct) Humphries? What's going on? Who's running this? What's your plan? What's your strategy? All those things. Who's supposed to be running this? And he said, 'I am' as in he is. And I said, Well, you need to get on the air and start controlling this. And he said, 'Yep, I'm doing it now.' And then shortly after that, he did. He'd come up on the air as the car was heading back over the bridge.<sup>87</sup>

- 7.70 Shortly after DSgt Vohmann spoke with SSgt Poynder, he nominated himself as the incident controller on channel 01-02. Command of the incident is discussed in detail further below.

## Who was in control and what was the plan?

- 7.71 It is clear the supervising sergeants and senior sergeant of the northwest region were blindsided by this event suddenly appearing in their area. The Port Phillip CIU units 508 and 507 were, effectively, silent on channel 01-02 for approximately an hour after the events of Wurundjeri Way and the Offender entered into the northwest area. The supervisors in this area had difficulty establishing who was in control and, in the words of Sgt Grant, obtaining information was like 'pulling teeth'.

- 7.72 As concerned sergeants and senior sergeants, they were trying to establish what the resolution plan was. Based on their limited knowledge and the lack of communication from Port Phillip CIU, the local sergeants' plan was to not engage in a pursuit, and if sighted, to keep observations on the Offender. There was radio silence from Port Phillip 508 during this time because they were busy trying to negotiate with the Offender, and Port Phillip 507 was attending the pursuit debrief in South Melbourne.

- 7.73 At Inquest, AC Fontana stated:

The 251s in the local area commands were very active and ... in monitoring and taking charge for units and how events unfolded in their respective police service areas ... but I suppose they were filling a void in the lack of communication and leadership coming from the CIU at that time, which is why the 265 [SSgt Poynder] challenged and wanted further information from them about what this was about.<sup>88</sup>

86 Exhibit 177, Statement of Senior Sergeant Scott Poynder dated 27 January 2017, Coronial Brief, p. 1448.

87 Transcript of evidence, p. 3104.

88 Transcript of evidence, p. 3561.

- 7.74 In AC Fontana's opinion, SSgt Poynder was doing the right thing—taking charge, asking for information and making sure appropriate risk assessments had been made and that there was a proper resolution plan in place.<sup>89</sup>
- 7.75 The Critical Incident Review expressed a similar view:
- [SSgt] Poynder actively monitored and supervised this unfolding operation in the Division and correctly identified risks associated with the inadequate arrangements in place for control of the operation planning and ongoing risk assessment. He was right to intervene and challenge Port Phillip CIU regarding the adequacy of their management, oversight and control of it. They were much better informed regarding all aspects of this operation but were not engaging effectively with operational units assisting in the search for [the Offender].<sup>90</sup>
- 7.76 Counsel Assisting submitted there was a clear lack of leadership from DSSgt Humphries and DA/SSgt Newman during this stage of the operation.<sup>91</sup> Counsel Assisting agreed with AC Fontana that an arrest plan (and contingency plans), with meaningful tactical details needed to be able to be activated at short notice when the chance arose.<sup>92</sup>
- 7.77 Counsel for the CCP said that, despite the lack of communication from Port Phillip CIU, Sgt Grant immediately took charge of coordinating the search for the Offender in the northwestern region by asserting, over police communications, that she was the incident controller.<sup>93</sup> She sought clarity about what was required from her members and engaged with Sgt Peck to ascertain relevant background information to enable her to assess the risks and formulate a plan to locate the Offender.<sup>94</sup> The CCP submitted there was no ambiguity in her on-air communication and she gave a direction that a pursuit was not going to be reinitiated.<sup>95</sup> She also ensured that SSgt Poynder was updated. It was submitted that Sgt Grant 'displayed strong leadership and sound judgement throughout this operation before she handed control to Sgt Trimboli who was actively monitoring the situation'.<sup>96</sup>
- 7.78 It was submitted by Counsel for the CCP that Sgt Trimboli also effectively coordinated the ongoing search for the Offender and was eventually briefed by DSgt Barry that DSC Gentner was attempting to negotiate a surrender.<sup>97</sup>
- 7.79 I agree with these assessments of the roles performed by Sgt Grant and Sgt Trimboli.
- 7.80 Counsel for the CCP submitted that SSgt Poynder's instructions to his members that there were to be no pursuits involving the Offender because he was not satisfied that there were adequate risk control measures in place was reasonable, as was his belief that the Port Phillip CIU plan and resolution strategies were inadequate.<sup>98</sup>
- 7.81 The CCP also adopted the opinion of the Critical Incident Review when they said SSgt Poynder was right to intervene and challenge Port Phillip CIU regarding the adequacy of their management, oversight and control of the incident. It was submitted that the Port Phillip CIU should have been more active in the control of the operation and transmission of critical information to operational units.<sup>99</sup>

89 Transcript of evidence, p. 3561.

90 Exhibit 201, Operation Titan Critical Incident Review, p. 281.

91 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 131.

92 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 131.

93 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 76.

94 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 76.

95 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, pp. 76–7.

96 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 77.

97 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 77.

98 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 77.

99 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 78.

- 7.82 Counsel for the Families submitted that SSgt Poynder expressed the issue succinctly when he explained the need for a better plan to apprehend the Offender that balanced the risk to the public with the need to apprehend. He determined that members needed to be pulled back until there was a logical plan and he could not determine what that plan was.<sup>100</sup>
- 7.83 Counsel for Port Phillip CIU submitted that while the CIU members well understood who was in charge of locating the Offender, responsibility for communication outside CIU to the uniformed members and supervisors was less well appreciated. It seems that little thought was given to it.<sup>101</sup> It was conceded this triggered confusion among uniform members, especially those in the west, which caused them understandable consternation and concern about the operation unfolding in their area.<sup>102</sup>
- 7.84 Counsel for Port Phillip CIU further submitted that it appears that the members did not appreciate the local supervisors' expectations as to communication. Counsel for Port Phillip CIU explained that the absence of communication was because they had not followed the Offender into the area, and that his location was lost fairly quickly after he fled across the West Gate Bridge.<sup>103</sup>
- 7.85 I accept that, as police were searching for the Offender in the western suburbs, the Port Phillip 508 unit was busy attempting to negotiate with the Offender, which is discussed in more detail in the next section. I find their supervisors, DSgt Barry, DSgt Vohmann, DSSgt Humphries and DA/SSgt Newman, should have recognised this and actively communicated an explanation of the preceding events, the risks associated with this Offender and advised on the resolution plan as the channel changed to O1-02.
- 7.86 This lack of information and knowledge placed the supervisors in the northwest region at a significant disadvantage and meant they were scrambling to get information and understand the resolution strategy, while trying to balance the need to safely apprehend the Offender.
- 7.87 The fact that SSgt Poynder was compelled to repeatedly ask fundamental questions in his conversation with DSgt Vohmann, some 15 minutes after speaking with DSC Gentner, meant that the responses he received were not satisfactory. The inadequacy of an appropriate response from anyone in the Port Phillip CIU informed his strategy in that the risks outweighed any benefits in engaging in a pursuit with the Offender at that stage.
- 7.88 I consider that Sgt Grant, Sgt Trimboli and SSgt Poynder were excellent examples of diligent supervisors trying to ascertain who had control of the situation and the proposed resolution plan. I commend them for their response. They used their knowledge and experience about policing and risk management to inform their decisions.
- 7.89 I find the supervisors in the northwestern region were blindsided and needed more information to be able to adequately assist in the search for and coordination of the potential apprehension of the Offender. They demonstrated a high standard of strong leadership and effective supervision.

100 Written submissions on Counsel representing the Families of the Deceased dated 19 May 2020, p. 18.

101 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, pp. 51-2

102 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 52.

103 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 52.

## Attempts to locate the Offender and negotiate a surrender

### The plan to exploit DSC Gentner's unique ability to build rapport

7.90 The early morning strategy of Operation Invokes was to use DSC Gentner's communication skills and his apparent rapport with the Offender to negotiate a surrender.

7.91 Several witnesses from Port Phillip CIU and St Kilda Police Station made observations about DSC Gentner's unique power of persuasion and ability to build relationships with criminals in the St Kilda area, generally and with the Offender in particular.

7.92 DA/Sgt Tzefer described DSC Gentner as:

... that individual who has the capability to draw people in. He's a very affable person. He's probably one of the best detectives going around and, like I said, he's very capable and very astute. He has the ability to speak to offenders like perhaps no other. I would go as far as to say that not many police officers have the capabilities of Murray Gentner.<sup>104</sup>

7.93 DSgt Vohmann explained that DSC Gentner:

... has an ability to elicit information from people and build a rapport with offenders that can be beneficial to admissions in relation to certain crimes or providing information about other crimes, so that's what I understood his relationship to be based around that sort of context.<sup>105</sup>

7.94 Similarly, DSgt Barry indicated he was comfortable and confident DSC Gentner would be able to get the Offender to surrender.<sup>106</sup> This opinion was based on his 'knowledge of DSC Gentner and the rapport he has with a lot of people—that it's a genuine rapport'.<sup>107</sup>

7.95 It was submitted, on behalf of the Port Phillip CIU, that DSC Gentner had extensive experience and training dealing with offenders with mental illness and drug problems.

His natural disposition along with his on-the-job experience were supplemented by training on communicating with persons with mental illness, the emphasis being of keeping things calm and using personable, non-threatening language. He was known to be a very effective communicator, especially with vulnerable persons.<sup>108</sup>

7.96 Most significantly, it was DSSgt Humphries who placed his faith in the 'rapport' created by DSC Gentner. DSSgt Humphries described DSC Gentner as a strong communicator<sup>109</sup> who has 'the ability to build rapport with a whole host of different people ... including criminals'.<sup>110</sup> DSSgt Humphries said he had complete trust in DSC Gentner.<sup>111</sup> From

104 Transcript of evidence, pp. 1109–10.

105 Transcript of evidence, p. 3285.

106 Transcript of evidence, p. 922.

107 Transcript of evidence, p. 922.

108 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 45.

109 Transcript of evidence, p. 2487.

110 Transcript of evidence, p. 2487.

111 Transcript of evidence, p. 2427.

the outset of Operation Invokes, part of the plan, according to DSSgt Humphries was to 'exploit' that rapport.<sup>112</sup> In evidence, he explained:

But at the end of the day, [DSC] Gentner's ability to build rapport and exploit the rapport he already had with the Offender was something we were going to use. And that's exactly what we were doing.<sup>113</sup>

... We were trying to exploit quite an obvious avenue of inquiry that we had open to us and we thought it had a pretty high likelihood of success.<sup>114</sup>

- 7.97 DSC Gentner also believed in his ability to negotiate with the Offender. He was convinced that he had developed a rapport with the Offender and described it as a 'great rapport'.<sup>115</sup> He considered that it persisted almost to the end of the operation on 20 January 2017. DSSgt Humphries backed this view based on his opinion of DSC Gentner and the reports he had received from him throughout the morning that the communication was positive.<sup>116</sup>

## Was the rapport with the Offender real?

- 7.98 There appears to have been a unanimous view among the members of the Port Phillip CIU that DSC Gentner had a 'rapport' with the Offender that was ultimately founded in a belief that DSC Gentner had a charismatic ability with suspects and criminals.<sup>117</sup> He 'was well known in the St Kilda area among the locals. He had interactions with people associated with criminal activity on a daily basis. They often sought him out'.<sup>118</sup>
- 7.99 When forensically analysed, DSC Gentner's interactions with the Offender were few: a chance meeting in December 2016, during the recorded interview and bail hearing on 14 January 2017, and two brief meetings in the reception area of the St Kilda Police Station on 16 and 17 January 2017.
- 7.100 There was nothing to suggest that DSC Gentner had developed any particularly meaningful rapport with the Offender that could be exploited to gain the Offender's cooperation. It is likely these limited interactions, and presumably the notoriety of DSC Gentner among criminals in the St Kilda area, caused the Offender to develop a preoccupation with him.
- 7.101 Indeed, evidence adduced at Inquest suggested that the Offender had become fixated with DSC Gentner. This was apparent over the course of the week: in the record of interview with DSC Gentner on 14 January 2017; the interaction with DA/Sgt Tzefer earlier that morning; the phone interaction with FC Verdun when asked whether they were Murray Gentner; and various comments he made to HCP and Ms Muo at different times during the morning of 20 January 2017 (which, I accept, was not known to the investigators at the time). These all demonstrate he perceived DSC Gentner as a potential threat.

112 Transcript of evidence, p. 2396.

113 Transcript of evidence, p. 2422.

114 Transcript of evidence, p. 2486.

115 Transcript of evidence, p. 270.

116 Transcript of evidence, pp. 2421-2.

117 See for example: Transcript of evidence, Detective Sergeant Barry, p. 922; Sergeant Tzefer, p. 1114; Detective Acting Senior Sergeant Newman, p. 1755; and DSC White, p. 1815.

118 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 45.

- 7.102 No one seemed to question whether DSC Gentner was the best or most appropriate person to attempt that negotiation, or whether his efforts had any real prospect of success. Nor did any other member of Port Phillip CIU challenge the accepted notion of DSC Gentner's 'rapport' with the Offender or considered that the approach might even be counter productive given the Offender's preoccupation with him.
- 7.103 I find that the perceived rapport was not based on a proper evaluation of the reality of the situation, which was that there was no substance to the rapport, and it was more likely the Offender had a fixation with DSC Gentner due to his notoriety in the St Kilda area.

## Telephone conversations between DSC Gentner and the Offender

- 7.104 In order to determine whether the negotiated surrender plan had any chance of success, it is necessary to understand DSC Gentner's communications with the Offender over the course of 20 January 2017.
- 7.105 After the events of Wurundjeri Way, at about 11.42 am, DSC Gentner contacted the Offender using Nathan Clapham's phone number and engaged in two phone conversations with him as well as multiple text messages. This is what became known as the 'surrender negotiations'.
- 7.106 At about 11.50 am, Port Phillip 508 stated on channel 03-01 that DSC Gentner 'is on the phone to [the Offender] at the moment, trying to calm him down'<sup>119</sup> and confirmed that they did not know his location.<sup>120</sup>
- 7.107 According to DSC Gentner, during the phone call, the Offender was:

... quite eccentric and erratic ... and quite agitated, so I was talking to him, just calming him down and trying to formulate an arrest plan for him to come and surrender himself to us.<sup>121</sup>

- 7.108 DSC Gentner explained that, during this phone call, he was:

... trying to get him to come to the police station and meet us there. He didn't want to go to the police station, so I think at this stage I was sitting maybe near Williamstown Road in Port Melbourne. There's just a reserve there and I was, like, You can come here, come here, meet here and everything will be okay. We'll get you in, make sure you're safe, make sure nothing happens and get you to a police station.<sup>122</sup>

119 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 58.

120 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 58.

121 Transcript of evidence, pp. 185-6.

122 Transcript of evidence, p. 186.

7.109 During the phone conversation, the Offender did not disclose his whereabouts.<sup>123</sup> DSC Gentner recalled that the Offender made comments in which he contemplated killing himself, was focused on a comet that was going to hit the earth and that he had a vault and would be saved.<sup>124</sup> DSC Gentner formed the opinion that the Offender was mentally ill and completely delusional at that point.<sup>125</sup> The Offender told him that he was ‘going to come in and surrender but he was also talking about comets, he was speaking a million miles an hour and talking about, basically, delusions—there’s no doubt about that’.<sup>126</sup>

7.110 According to DSC Gentner, the Offender:

... was initially trying to bargain for more time. He’s saying ‘How about tomorrow? How about I come in tomorrow?’, and I—I was telling him, ‘We can’t wait until tomorrow. You have to come in now’, and so he’s going, ‘Yes, yes. I’ll come in. Let me just think about it, let me think about it’. So it went—it went around in circles like that for a fair while.<sup>127</sup>

7.111 The Offender ‘said he wanted a day to sort stuff out and then asked for a 10-minute breather to sort things out’.<sup>128</sup> The first phone call lasted for approximately 29 minutes.<sup>129</sup> DSC Gentner waited 10 minutes before calling him back.<sup>130</sup>

7.112 In evidence, DSC Gentner disagreed with the proposition that he was not making progress with the Offender because, as he said:

... as long as I had communication with him, I was nearer than having nothing which we had at that stage. We had nothing else. So ... the fact that I had dialogue with him and his attention was more than we had. Without that, we had nothing at that stage.<sup>131</sup>

7.113 Despite acknowledging that he was negotiating with a psychotic and delusional man, he still held a belief that he would be able to persuade the Offender to surrender.<sup>132</sup>

7.114 At 12.13 pm, DSC Gentner sent a text message to the Offender stating, ‘my number’.<sup>133</sup>

7.115 At 12.21 pm, the Offender received an incoming call from ‘No number null’ (presumed to be DSC Gentner’s work phone). The call lasted for around three minutes and 46 seconds.<sup>134</sup> DSC Gentner stated that he had a:

... very brief conversation where [the Offender] said he wasn’t sure if he wanted to hand himself in. [The Offender] asked for me to call him back in another three minutes to work out where to meet. Three minutes later, I tried calling him back and he didn’t answer.<sup>135</sup>

123 Transcript of evidence, p. 186.

124 Transcript of evidence, p. 186.

125 Transcript of evidence, p. 187.

126 Transcript of evidence, p. 303.

127 Transcript of evidence, p. 189.

128 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner as amended dated 20 January 2017, Coronial Brief, p. 846.

129 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4622.

130 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner as amended dated 20 January 2017, Coronial Brief, p. 846.

131 Transcript of evidence, pp. 304–5.

132 Transcript of evidence, p. 305.

133 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4626; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4664.

134 Coronial Brief, Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4621.

135 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner dated 20 January 2017 as amended, Coronial Brief, p. 846.

7.116 This call was the last voice communication DSC Gentner had with the Offender. Fourteen minutes later, DSC Gentner tried to call back without success. Between 12.38 pm and 1.18 pm, DSC Gentner tried to call the Offender 14 times, but all the calls went unanswered and the only communication was via text message.<sup>136</sup>

7.117 At about 12.40 pm, DSC Gentner sent a text message to the Offender asking him to call him.<sup>137</sup>

## Offender's further telephone contact with AFM

7.118 Telephone records reveal that, at about 12.12 pm, the Offender telephoned AFM and the conversation lasted for approximately nine minutes.<sup>138</sup>

7.119 At about 12.22 pm, the Offender received a text message from AFM stating 'the reception dropped out'.<sup>139</sup>

7.120 The Offender then received a text message from AFM telling him that she did not want to lose him through death, that she did not want her daughter not to know how amazing her father was and asked him not to hurt himself.<sup>140</sup> AFM sent a further message at about 12.24 pm, stating 'or anyone else ... you are not a bad person, but you are doing hurtful things'.<sup>141</sup>

7.121 At 12.25 pm, the Offender telephoned AFM and they spoke for approximately 15 minutes.<sup>142</sup> During this call, AFM thought the Offender sounded upset, he questioned whether he should hand himself into police, indicated that he wanted to kill himself and he thought the world was going to end.

7.122 At 12.42 pm, AFM sent a further three text messages to the Offender that remained unread.<sup>143</sup>

## Ongoing efforts to communicate with the Offender and negotiate his surrender

7.123 Between 12.45 and 1.32 pm, DSC Gentner and the Offender continued to communicate via text message. However, as time progressed, the Offender's messages became more bizarre, suggesting a continued decline in his mental health, and more pleading and desperate on the part of DSC Gentner.

7.124 At 12.45 pm, DSC Gentner sent a text message to the Offender stating 'james u have to call now bro. we don't have time'.<sup>144</sup>

136 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4621.

137 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4625; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4664.

138 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4622.

139 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4626.

140 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4626.

141 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4626.

142 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4621.

143 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4625.

144 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4625; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4664.

- 7.125 At 12.54 pm, the Offender sent a long and rambling text message to DSC Gentner in which he variously stated:

Ive calculated my options and yeah its not looking good I either die in jail or die trying to run from the boys ...

either options is not what a good man wants to choose and dude my life is well u know it and its sad but i think ill just implode quietly somewhere because im not the one to surrender when knowing all this is been done on purpose to destroy my life ...

i am the saviour and there is a commet and I know how to save everything and everyone but these guys are pretty good at making me look like im the devil.

the bunker entrance is the suprem court liabry leads underground all the way to the hospital alfred and then goes about 9 miles deep this so there theres another hint for u.<sup>145</sup>

- 7.126 DSC Gentner replied to the Offender, stating ‘don’t be silly. I will help u fix everything’.<sup>146</sup> The message was marked read.

- 7.127 Five minutes later, the Offender missed a telephone call from DSC Gentner.<sup>147</sup> At about 1.01 pm, DSC Gentner sent another text message, stating ‘u need to call me’.<sup>148</sup> The message was marked read.

- 7.128 One minute later, the Offender sent a text message to DSC Gentner, stating ‘Tell the fly in sky to go away or my friends will use fly spray’.<sup>149</sup> By this stage, the Air Wing was overhead, and he was referring to their presence, but they had not yet sighted him.

- 7.129 At 1.04 pm, DSC Gentner sent another text message to the Offender, stating ‘u have 2 call me now’.<sup>150</sup> The message was marked read.

- 7.130 Between about 1.04 pm and 1.07 pm, the Offender sent three text messages to DSC Gentner, stating:

Im one man out and u need an army

Like am I that important

If I make a phone call to my bikie associate wich I will explain and ill make sense to them becuase I do have old school in me then if they find out the truth then that would cause a war.<sup>151</sup>

- 7.131 Remarkably, in evidence, DSC Gentner considered that, at the time he read this text message, he still believed they had a chance of engaging with him.<sup>152</sup>

145 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4625; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4664.

146 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4625; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4664.

147 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4621.

148 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4664.

149 Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4664.

150 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

151 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

152 Transcript of proceedings, p. 199.

- 7.132 The text messages between DSC Gentner and the Offender continued right up until the events of Bourke Street, with DSC Gentner becoming more and more desperate for the Offender to stop what he was doing.
- 7.133 At 1.15 pm, DSC Gentner sent a text message to the Offender, stating 'stop'. The message was marked as read. The Offender sent a text message to DSC Gentner, stating 'I told you give me time'.<sup>153</sup>
- 7.134 DSC Gentner replied to the Offender, 'I told u out of my hands'. The message was marked as read. The Offender responded with a text message, stating 'im so not lying about how all this is true'.<sup>154</sup> Followed by 'then sir gedntner when I tell you that they lock the bunker on u just think of me'.<sup>155</sup>
- 7.135 At 1.18 pm, the Offender missed a call from DSC Gentner.<sup>156</sup> DSC Gentner then texted '4m behind u stop'.<sup>157</sup>
- 7.136 At 1.20 pm, the Offender sent two text messages to DSC Gentner, stating 'i am telling u ur making a big mistake' and 'I know the future'.<sup>158</sup> DSC Gentner responded with 'pull oves 4 me'.<sup>159</sup> The message was marked as read. The Offender sent 'its in ur hands'.<sup>160</sup>
- 7.137 At 1.21 pm, DSC Gentner sent a further two text messages to the Offender, stating 'st6p plea7e' followed by 'stop 4 me'.<sup>161</sup> Both messages were read.
- 7.138 At 1.23 pm, the Offender sent the following text message:
- God (creator) give me your strength and armour and all your power to defeat the enemy i will not let you down i will make a fool out of them may you have mercy because everyone has no knowledge of self-aware of what really going on.<sup>162</sup>
- 7.139 At 1.25 pm, DSC Gentner sent a text 'please'. This message was the last message read by the Offender.<sup>163</sup>
- 7.140 Between about 1.27 pm, and 1.32 pm, DSC Gentner desperately sent three text messages to the Offender that were marked unread by the Offender, stating, 'don't do this' at 1.27 pm, 'meet me. Stop doing this' at 1.31 pm and, finally, 'stop' at 1.32 pm.<sup>164</sup>

153 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4621; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

154 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

155 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

156 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624.

157 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

158 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

159 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

160 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

161 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

162 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

163 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

164 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

## Were the nature and tone of communications effectively relayed to supervisors?

- 7.141 The nature and tone of the communications between DSC Gentner and the Offender were not effectively communicated to those in charge of the investigation; no detailed updates were provided to police communications or to the Port Phillip CIU supervisors, other than the fact DSC Gentner was on the phone trying to negotiate a surrender. DSgt Barry agreed there was essentially no substantive information coming across the TAC channel about DSC Gentner's conversation with the Offender, what the Offender was saying or what new information might have been gleaned from that conversation, or of their subsequent text messages.<sup>165</sup>
- 7.142 DSSgt Humphries received a series of updates from DSC Gentner by phone over a five-minute period at approximately 1.00 pm. In evidence, DSSgt Humphries stated that he formed a view that the behaviour and activities of the Offender were becoming more erratic.<sup>166</sup> However, he defended not knowing the details of the text messages from the Offender to DSC Gentner, testifying that 'I can't be across all the forensic details of every phone call or text message, but I was confident that I had enough information for this to continue.'<sup>167</sup>
- 7.143 As to those messages, Counsel for the CIRT and CIU members contended that the text messages did not evidence an escalation in the Offender's communications. It was suggested that the 'Court has only a select record of text messages sent between the Offender and [DSC] Gentner' and 'It must be remembered that they evidence only the smallest aspect of communication between them.'<sup>168</sup>
- 7.144 While I acknowledge that text messages were only part of the communication that occurred between DSC Gentner and the Offender, unlike the voice calls, their content is verifiable, and not subject to the vagaries of even good faith recollection. As to the suggestion that the 'Court has only a select record of text messages', I note that Exhibit 10 is the Mobile Phone Extraction Report for the CIU telephone used by DSC Gentner. It records 46 text messages either to or from DSC Gentner's phone between 2.49 am and 3.47 pm on 20 January 2017. Thirty-five of these texts relate to communications between DSC Gentner and the Offender. If there are other significant text messages known to DSC Gentner, they have not been identified. Though only part of their communication, text messages were the only form of communication between DSC Gentner and the Offender—save for the Offender's wave to the detective on Williamstown Road—for the hour following the second and final telephone call between them, which concluded at 12.24 pm. These text messages are much more than the 'snapshot' that has been suggested.
- 7.145 All forms of communication between DSC Gentner and the Offender on 20 January 2017 were important because they enabled the detective to try to negotiate a peaceful surrender and, significantly, form a view about the Offender's state of mind. This was valuable intelligence, but only if it had been relayed to others involved in the operation. It was imperative that the nature and tone of these communications was conveyed by members of Port Phillip 508 to Port Phillip CIU supervisors and those in charge of the investigation. The failure to do this meant that supervisors were not able to have a full appreciation of the actual and deteriorating state of the surrender strategy. This is most regrettable.

<sup>165</sup> Transcript of evidence, p. 998.

<sup>166</sup> Transcript of evidence, p. 2428.

<sup>167</sup> Transcript of evidence, p. 2430.

<sup>168</sup> Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 46.

## Did DSC Gentner develop tunnel vision about the surrender strategy?

7.146 It appears that DSC Gentner became so focused on negotiating with the Offender that he was unable to see that the surrender strategy was not progressing. Indeed, remarkably, it was only when DSC Gentner got to Williamstown Road, Port Melbourne, that he thought the Offender 'was under a lot of pressure and wasn't wanting to engage at that stage'.<sup>169</sup> DSC Gentner conceded in evidence that 'my rapport with him was fading by that point'.<sup>170</sup> This belated realisation—perhaps indicative of a lack of insight about the depth of the 'rapport' between them—occurred at about 1.21 pm, nearly an hour after their last voice call when the Offender was, at best, equivocal about surrendering himself to police. Although the Offender maintained intermittent contact with DSC Gentner by text message, none of these suggested progress towards surrender; to the contrary, the Offender explicitly stated 'im not the one to surrender'.<sup>171</sup>

7.147 When asked whether DSC Gentner had exhibited 'tunnel vision' about the surrender strategy, AC Fontana explained:

I think that's exactly what's happened ... he had a genuine belief that he could negotiate the surrender. I've got no doubt about that, but he was in the heat of the moment. This is why, ah, my commentary came out that this information should've been more information about the nature of the text and what was being, ah, communicated. It should've been fed back so that people that are outside of that, um, fog of the war type of thing could make an appropriate decision and assessment of that information. That's part of your ongoing risk assessment in terms of—as the event's unfolding, and it is very dynamic.<sup>172</sup>

7.148 DSC Gentner's optimism was misplaced. It is unsurprising that the person in direct contact with the subject during a difficult negotiation may not be in the best position to assess the overall progress of the endeavour.

7.149 The Critical Incident Review made a significant observation concerning the narrowing of perspective as the operation deteriorated:

The text messages from SPP 508 [DSC Gentner] to [the Offender] appear to have become more desperate as they followed him into the [CBD]. I have no doubt that the investigating officers honestly believed they could successfully negotiate surrender with [the Offender], but it is evident that they realised their attempts would not succeed as time progressed. It seems that they were so focused on negotiating surrender that they failed to have awareness of a dynamically changing situation.<sup>173</sup>

7.150 I accept that DSC Gentner acted in good faith when attempting to negotiate the Offender's surrender. Sometimes in 'the fog of war', one can acquire tunnel vision and become so focused on the task at hand so as to lose sight of the bigger picture. I consider this is what occurred on this occasion.

169 Transcript of evidence, p. 233.

170 Transcript of evidence, p. 233.

171 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4625; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4664.

172 Transcript of evidence, p. 3564.

173 Exhibit 201, Operation Titan Critical Incident Review, p. 54.

7.151 The inadvertent development of tunnel vision, even by a detective of DSC Gentner's experience, highlights the importance of strong and assertive supervision and leadership. It seems that the Port Phillip CIU senior management put faith in one police officer's talent to build rapport and negotiate with a mentally ill person without reviewing or challenging the strategy or offering any other meaningful options for resolution.

## An objective perspective was needed

7.152 Another view, from an experienced and well-informed investigator, was required to evaluate whether any progress was being made in the negotiations with the Offender and whether there was a likelihood that progress would be made in the immediate future. Instead, the information fed back to DSgt Barry lacked sufficient detail to permit any meaningful assessment of these issues.<sup>174</sup> The same can be said of the detail available to DSSgt Humphries.<sup>175</sup>

7.153 The CCP submitted that these were complex circumstances and, therefore, it was appropriate to maintain an open line of communication with the Offender through DSC Gentner.<sup>176</sup> It was conceded by CCP, however, that an important element of informed decision-making by a person in overall command, such as DSSgt Humphries, meant that a person in Port Phillip 508 should have ensured they had provided better and more detailed communication of what was being said between the two.<sup>177</sup>

7.154 The text messages and other communications with DSC Gentner ought to have been considered against the background of the Offender's historic and recent behaviour.

7.155 An objective assessment was likely to lead to a conclusion that the Offender's behaviour was deteriorating, and the risks associated with the operation were increasing significantly. At the very least, an objective view was likely to conclude, even from a relatively early stage of the text exchange, that DSC Gentner was unable to make any progress negotiating with the Offender.

## Was persisting with the surrender plan appropriate?

7.156 AC Grainger considered the surrender plan a 'good option'.<sup>178</sup> AC Fontana agreed<sup>179</sup> and believed DSC Gentner had a genuine belief that he could talk the Offender into giving himself up.<sup>180</sup>

7.157 It was incumbent on one of the other members of Port Phillip 508 to convey, either on police communications or the CIU TAC channel, the nature and tone of the text messages. Without this vital information, no objective assessment as to the merits of the surrender plan could be obtained.

7.158 It was submitted that DSSgt Humphries stood steadfast in his stated 'faith' in DSC Gentner and his team.<sup>181</sup> It was suggested that the 'faith' of a superior officer in other officers under his or her command is a desirable quality;<sup>182</sup> however, Counsel Assisting submitted that the:

174 Transcript of evidence, pp. 993–4.

175 Transcript of evidence, pp. 2429–30.

176 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 30.

177 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 31.

178 Transcript of evidence, p. 3793.

179 Transcript of evidence, p. 3565.

180 Transcript of evidence, p. 3565.

181 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 112.

182 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 112.

... distracting assertion of faith in powers of 'rapport' or charisma are of much less value than a cool examination of all of the resources and lines of enquiries then available or potentially available and in light of the strategies that to that point had not worked.<sup>183</sup>

- 7.159 Counsel for the Families agreed,<sup>184</sup> as do I.
- 7.160 Counsel Assisting submitted the surrender plan was founded in fragile and elusive notions of 'rapport' or powers of charisma enjoyed by DSC Gentner when dealing with criminals.<sup>185</sup> It was further submitted that it placed responsibility for the negotiations in the hands of a person with whom the Offender had a paranoid delusion.<sup>186</sup> It conceived of the notion that the Offender would at some point surrender himself into custody.<sup>187</sup>
- 7.161 It was submitted by the CCP that nothing was lost, with DSC Gentner continuing to maintain contact with the Offender by phone; indeed, it meant that members were able to have some insight into this mental state, which would otherwise not have been available. Without DSC Gentner's contact with the Offender, there would have been no indication other than his overt acts to indicate the level and content of his delusional beliefs and paranoia.<sup>188</sup>
- 7.162 Moreover, Counsel for the CCP asserted that, 'Success in negotiation interactions is not linear, especially with a person who is erratic, paranoid and delusional.'<sup>189</sup>
- 7.163 Counsel for the CCP warned against *ex post facto* reasoning or analysis affected by hindsight bias. The presenting situation was highly ambiguous and there was no clear indication that the Offender's conduct was indicative of a linear escalation of violence.<sup>190</sup> At the same time, Counsel for the CCP conceded that 'it was absolutely apparent that the Offender was erratic, labile and dangerous.'<sup>191</sup>
- 7.164 The observations of CCP are logically sound, but it is incorrect to suggest that an indication of a 'linear escalation of violence' would need to be present to compel a different approach to the operation than that taken on the day. This sets the bar artificially high.
- 7.165 It was further submitted that no criticism should be levelled at DSC Gentner or his supervisors for continuing to try to give effect to the 'surrender plan'. Further, there was no doubt that DSC Gentner and others at the Port Phillip CIU believed there was a reasonable prospect of negotiating a surrender with the Offender.<sup>192</sup>
- 7.166 Counsel for the CCP submitted that a valid criticism was in respect of the ineffective exercise of command structure that meant an alternative strategy was not given careful consideration in addition to the 'surrender plan'. It caused those in charge to become too focused on the surrender plan and to not have sufficient awareness of the dynamic situation.<sup>193</sup>
- 7.167 Moreover, Counsel for the CCP asserted that, 'Success in negotiation interactions is not linear, especially with a person who is erratic, paranoid and delusional.'<sup>194</sup>

183 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 113.

184 Written submissions on behalf of Counsel representing the Families of the Deceased dated 19 May 2020, p. 34.

185 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 112.

186 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 112.

187 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 112.

188 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 79.

189 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 29.

190 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 29.

191 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 9.

192 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 79.

193 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 80.

194 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 29.

- 7.168 Counsel for the CCP warned against *ex post facto* reasoning or analysis affected by hindsight bias. The presenting situation was highly ambiguous and there was no clear indication that the Offender’s conduct was indicative of a linear escalation of violence.<sup>195</sup> At the same time Counsel for the CCP conceded that ‘it was absolutely apparent that the Offender was erratic, labile and dangerous.’<sup>196</sup>
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- 7.171 Counsel for the CCP submitted that a valid criticism was in respect of the ineffective exercise of command structure that meant an alternative strategy was not given careful consideration in addition to the ‘surrender plan’. It caused those in charge to become too focused on the surrender plan and to not have sufficient awareness of the dynamic situation.<sup>198</sup> Counsel for Port Phillip CIU members submitted that communication and negotiation are legitimate tactical options for the resolution of any potentially dangerous incident. Police should take every opportunity to exploit this as a means of resolution.<sup>199</sup> It was submitted that failure to do so is likely to be contrary to the Organisational Philosophy and Operational Safety Principles.<sup>200</sup> Further, the surrender plan was an appropriate aspect of the overall strategy.<sup>201</sup>
- 7.172 On any objective assessment of the phone conversations and text messages between DSC Gentner and the Offender, the attempts to negotiate the surrender of the Offender were not making any meaningful progress. DSC Gentner’s evidence was that the Offender indicated in the first phone call that he wanted to surrender however no actual detail was offered. If a surrender plan was truly progressing, then details such as time and place would start to emerge, or at least would be the subject of discussion.
- 7.173 Counsel for the CCP submitted that irrespective of any honest belief held by DSC Gentner or his Port Phillip CIU colleagues about achieving the Offender’s peaceful surrender, it remained crucial that relevant information was communicated to others in the field, especially the regional supervisors such as Sgt Grant and SSgt Poynder.
- 7.174 It was conceded by CCP that the ineffective exercise of command structure meant that an alternative strategy was not given careful consideration; those in charge were too focused on the surrender strategy and had insufficient awareness of the dynamic situation.<sup>202</sup>
- 7.175 I find once voice communication with the Offender ceased at 12.21 pm and certainly by 12.54 pm when his text messages became more bizarre, the need for an alternative strategy was imperative. The evidence suggests, however, that DSC Gentner was not well placed to make such an assessment given his immersion in the role of investigator and the potential influence of tunnel vision about the surrender strategy.

195 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 29.

196 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 9.

197 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 79.

198 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 80.

199 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 44.

200 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 44.

201 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 44.

202 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 79.

- 7.176 No contingency plan was in place and despite it being incumbent on one of the other members of Port Phillip 508 to convey on either police communications or the CIU TAC channel the details of the surrender negotiations as they unfolded, this did not occur.
- 7.177 I also consider that had the supervisors known that the surrender strategy was effectively stalled, they could have potentially sought advice from a qualified CIRT negotiator or formulated an alternative strategy.<sup>203</sup>
- 7.178 The surrender plan placed enormous responsibility on one person: DSC Gentner. I acknowledge the evidence that DSC Gentner was a skilled communicator and it was a suitable initial strategy for him to negotiate surrender. However, when all the facts are objectively considered, the negotiated surrender plan really amounted to nothing more than two phone calls and a series of bizarre text messages. There was no actual negotiation. There were no plans made, nor agreement reached. The strategy never had a chance of succeeding. How could it, when the person they were trying to negotiate with was not a clear-thinking, law-abiding, rational person but a paranoid and delusional offender, fixated on taunting police, particularly DSC Gentner? I accept that DSC Gentner appears to be a talented investigator, well-respected by his peers and many of his superiors, and his effective communication skills and talents may have been successfully exploited in the past, but on this occasion, with this Offender—they failed.

## Location of the Offender in Yarraville

### Attempts to ping phone used by the Offender

- 7.179 At about 11.49 am, DSgt Barry recorded in his notes that DSC Gentner was on the phone to the Offender and he submitted an LBS request to the online supervisor to ‘ping’ the phone, but the request was denied.<sup>204</sup>
- 7.180 Two minutes later, DSgt Barry confirmed on air that they would ‘ping’ the Offender’s phone as soon as possible.<sup>205</sup> At about 11.52 am, DSgt Barry stated on air that the phone number the Offender was ‘using at the moment is not one of the ones we’ve currently got a ping on. We’ll get that activated or actioned as soon as we can’.<sup>206</sup> It appears, however, the number initially provided to DSgt Barry was incorrectly stated to end in ‘788’ rather than ‘789’. This was not corrected for approximately half an hour.<sup>207</sup>
- 7.181 At about 11.53 am, DSgt Barry asked police communications whether it was possible for them to get the phone pinged given the circumstances and asked whether it would meet the criteria.<sup>208</sup> Police communications confirmed on air that DSgt Barry would have to ring and speak to the senior sergeant, which he acknowledged.<sup>209</sup>
- 7.182 At about 11.54 am, DSgt Barry asked DSC Singh via the CIU TAC channel to find out what mobile phone company the Offender’s phone was with and to whom the phone belonged.<sup>210</sup> Port Phillip 508 confirmed it was Nathan Clapman’s phone number and they had no knowledge of the carrier.<sup>211</sup>

203 CIRT 300 was a trained negotiation unit that was operational on the day.

204 Exhibit 68, Handwritten Notes of Detective Sergeant David Barry dated 20 January 2017, Coronial Brief, pp.1962-3.

205 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 58.

206 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 58.

207 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 311.

208 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 59.

209 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 59.

210 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT Members, AM 67, p. 12.

211 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT Members, AM 67, p. 13.

7.183 At about 12.21 pm, Port Phillip 550 (DSgt Vohmann and DSC Epstein) were tasked by DSgt Barry to attend the Princes Street, St Kilda, address to speak with Mr Clapham to ascertain whether he could activate his 'Find My iPhone' app to try to establish the Offender's location.<sup>212</sup>

## Location of Offender in Yarraville

7.184 At approximately 12.26 pm, the correct phone number was ascertained, and the LBS request was resubmitted at 12.41 pm.<sup>213</sup> Not long after, DSgt Barry transmitted over the CIU TAC channel that the Offender's phone had pinged in the Yarraville area.<sup>214</sup>

7.185 As discussed in the previous section, at about this time DSC Gentner was repeatedly trying to call the Offender, with no response.

7.186 At 12.51 pm, on channel 03-01 Port Phillip 508 broadcast the phone being used by the Offender had been:

... pinging in Cruickshank Park in Yarraville. We're en route there now from Port Melbourne. Can you just notify the CIRT units to start heading that way as well. When we get closer, we'll set up an RV point.<sup>215</sup>

7.187 DSgt Barry confirmed on the CIU TAC channel that the Offender's phone was still in Cruickshank Park and asked them to let police communications know, with advice to 'get what numbers you need there for the arrest'.<sup>216</sup>

7.188 As previously indicated, Port Phillip 508 first broadcast on channel 01-02, 'I'm sure you're aware we're tracking a male whose phone's pinged, Cruickshank Park and Williamstown Road. I believe the CIRT have been notified and we're en route shortly.'<sup>217</sup>

7.189 Police communications broadcast on channel 03-01 that Port Phillip 508 would be back on channel 01-02 when they arrived at the ping location, that 'they are all aware of what's going on' and they would inform the CIRT sergeant for them.<sup>218</sup> Moments later, Port Phillip 508 acknowledged and stated they were 'just heading over the West Gate now'.<sup>219</sup>

7.190 At 12.54 pm, the phone returned a ping at Cruickshank Park, Yarraville<sup>220</sup> and DSgt Barry immediately transmitted this information on the CIU TAC channel.<sup>221</sup> He immediately provided this information to DSC Gentner.<sup>222</sup> DSgt Barry continued to submit further LBS requests and provide updates to DSC Gentner on these results.<sup>223</sup>

212 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 311.

213 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 311.

214 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT Members, AM 67, p. 16.

215 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 61.

216 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT Members, p. 17.

217 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 34.

218 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 61.

219 Exhibit 11, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Morning), EX348-3, p. 61.

220 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 311.

221 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT Members, p. 16.

222 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 311; Exhibit 68, Handwritten Notes of Detective Sergeant David Barry, Coronial Brief, p. 1963.

223 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 312.

- 7.191 At about 12.55 pm, CIRT 377 reported on their TAC channel that the Offender's phone was pinging at a park in Yarraville.<sup>224</sup> Sgt Peck confirmed he had been on the phone to police communications, which was giving him the details. Sgt Peck advised that, 'We'll wait to see what happens with the flyover on your way back. Can't hurt to move to that sort of area, I suppose.'<sup>225</sup>
- 7.192 At this stage, Port Phillip 507 and 508 were heading to the location of the ping. Port Phillip 508 was the 'lead vehicle'.<sup>226</sup> At about 1.00 pm, Port Phillip 508 requested Sgt Peck's phone number over the 01-02 channel.<sup>227</sup>
- 7.193 DSgt Barry stated that DSC White informed him, at about 1.04 pm, that Air Wing, CIRT and police communications were all aware of the pinged location.<sup>228</sup>
- 7.194 The ping information indicated that the Offender was at Cruikshank Park but was not sufficiently accurate for the police units involved to immediately locate the Offender. Air Wing was also involved in the search, flying over Cruikshank Park, but did not immediately sight the Offender's vehicle.
- 7.195 At the time police were actively searching for the Offender in this area, two tradesmen, Trent Schmidt and Rabie Hourie, were working in Drew Street, Yarraville, when the Offender got out of his vehicle and spoke to them.<sup>229</sup> The Offender made comments about a comet in the sky, government conspiracy, a bunker at the State Library and what was later to be a memorable remark, 'You'll see me on the news tonight'.<sup>230</sup> The bizarre nature of the comments, coupled with his behaviour, prompted Mr Schmidt to call 000 at approximately 1.08 pm.<sup>231</sup>
- 7.196 It was Mr Schmidt's call to emergency services and the subsequent broadcast from police communications that prompted units to the Offender's location in Drew Street.
- 7.197 DSgt Barry notified DSC Burnett, DSC Gentner and DSgt Vohmann that the LBS was still in Cruickshank Park, with a red dot in the centre. He informed them that he would send them a screenshot. Port Phillip 507 asked whether K9 was in the area and DSgt Barry stated he was unsure and that Port Phillip 507 would have to check with DSC Gentner,<sup>232</sup> who confirmed they were not in the area.<sup>233</sup>
- 7.198 At 1.09 pm, the police communications broadcast:

I've got a welfare check on a male sitting on board your vehicle, [redacted] Drew Street in Yarraville. He has approached the complainant and staff who are working at that address, rambling about the end of the world. Looks mentally unwell. Uniform Zulu Sierra-179 given as a maroon-coloured sedan.<sup>234</sup>

224 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, p. 21.

225 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, p. 22.

226 Transcript of evidence, p. 2426.

227 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 38.

228 Exhibit 67, Statement of Detective Sergeant David Barry dated 9 February 2017, Coronial Brief, p. 312.

229 Statement of Trent Schmidt dated 20 January 2017, Coronial Brief, p. 1589.

230 Statement of Trent Schmidt dated 20 January 2017, Coronial Brief, p. 1589.

231 Statement of Trent Schmidt dated 20 January 2017, Coronial Brief, p. 1589. Mr Schmidt put the time as approximately noon, while Mr Hourie estimated the time as 12.30 to 12.45 pm. Statement of Rabie Hourie dated 20 January 2017, Coronial Brief, p. 1009. Given the time of the 000, Mr Hourie's estimate of 12.45 pm is likely the more accurate.

232 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT Members, p. 18.

233 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT Members, p. 19.

234 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 39–40.

7.199 At about 1.09 pm, Port Phillip 508 asked on the CIU TAC channel whether DSgt Barry was listening to a job coming across for a welfare check on a male in Drew Street. DSgt Barry asked what channel, but there appeared to be no response to this query.<sup>235</sup>

## Attempted rendezvous between CIRT and Port Phillip CIU

7.200 At about 1.09 pm, Port Phillip 508 transmitted on channel 01-02 that they would head to that location and requested police communications to notify CIRT. They stated they would rendezvous with them at the corner of Drew and Roberts Streets and they were nearby.<sup>236</sup> This was acknowledged by CIRT 377.<sup>237</sup>

7.201 CIRT 367 transmitted they were also *en route* and approximately five minutes off.<sup>238</sup>

7.202 At about 1.10 pm, Air Wing stated that they had located a maroon vehicle on Drew Street and would check the registration.<sup>239</sup>

7.203 At about 1.11 pm, the Offender received a missed call from DSC Gentner.<sup>240</sup> DSC Gentner sent a text message to the Offender stating, ‘call me now’.<sup>241</sup> The message was marked as read. The Offender then sent a long text message to DSC Gentner in which he spoke about his knowledge that everyone would die from a comet.<sup>242</sup>

7.204 Air Wing transmitted on channel 01-02 they were looking at the Offender’s vehicle, which was on the north side of Drew Street and west of Gent Street behind a white van.<sup>243</sup> Port Phillip 508 confirmed receipt of that information and stated they were still static on the corner of Drew and Roberts streets, waiting for the CIRT unit.<sup>244</sup> According to DSC Gentner, they were unable to see the Offender’s vehicle at that stage.<sup>245</sup>

7.205 Maribyrnong 508, an unmarked police unit, offered to assist with the incident and asked for background information. Police communications queried SSgt Poynder whether, based on his earlier direction, they were right to leave the job with Port Phillip, CIRT and the Air Wing.<sup>246</sup> SSgt Poynder confirmed this and stated on channel 01-02 that he was waiting for a call from the Port Phillip 5 (inaudible).<sup>247</sup>

235 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT Members, p. 19.

236 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 41.

237 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, p. 22.

238 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 41.

239 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 41.

240 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4621.

241 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

242 Mobile Phone Extraction Report—[Offender] (0435775789), Coronial Brief, p. 4624; Exhibit 10, Telephone records from Port Phillip CIU Phone, Coronial Brief, p. 4663.

243 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 42.

244 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 42.

245 Transcript of proceedings, p. 195.

246 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 42.

247 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 42. The context of the following broadcast indicates SSgt Poynder was referring to 508.

- 7.206 Over channel 01-02, Port Phillip 508 asked for Maribyrnong 508 to be on the corner of Gent and Drew Streets.<sup>248</sup> Police Communications directed Maribyrnong 508 to the area and provided a description of the vehicle and the reason the Offender was wanted.<sup>249</sup>
- 7.207 At about 1.12 pm, CIRT 377 and Port Phillip 508 met at the rendezvous point at Roberts and Drew streets in Yarraville.<sup>250</sup> Sgt Peck advised the CIRT units to use the observations of Air Wing, formulate an arrest plan, and use a shield if they felt it necessary and reminded them that the Offender may still be armed. He informed them that he was about five or six minutes away.<sup>251</sup>
- 7.208 In describing the rendezvous with CIRT, DSC Gentner said they 'physically pulled up alongside each other to have a discussion about how we were going to execute this arrest'.<sup>252</sup> They spoke for about 10 seconds and started to formulate a plan before Air Wing transmitted that the Offender's vehicle was 'on the move'.<sup>253</sup>
- 7.209 At about 1.13 pm, CIRT 377 transmitted on their TAC channel that the Offender was facing east on Drew Street and that they probably needed another unit at Gent Street to block him off. Via their TAC channel, SC Cavanagh attempted to coordinate blocking the street from each end with another CIRT unit, themselves and the crime unit, but the Offender drove off while discussing this plan.<sup>254</sup> According to SC Cavanagh, the unmarked CIU vehicles continued following the Offender, along with Air Wing giving observations, while CIRT 377 remained well back (approximately half a kilometre) because it was a marked unit.<sup>255</sup>

## What was the arrest plan once he was located in Yarraville?

- 7.210 The likelihood that any opportunity to arrest the Offender while he was out of the vehicle would be short-lived should have been anticipated. The Offender's behaviour earlier that day indicated that opportunities may be fleeting and transitory. An arrest plan and contingency plans, with meaningful tactical detail, needed to be ready and able to be activated at short notice when the chance arose. However, it was not until the Offender had been located that the members of Port Phillip CIU and the CIRT sought to rendezvous and formulate an arrest plan.
- 7.211 Any opportunity to apprehend the Offender in or around Drew Street quickly came to an end by the time it was reported he was on the move again. Air Wing questioned the plan, when they transmitted, 'I'm not sure what your resolution strategies are, but you've got about 20 seconds before he reaches Francis Street.'<sup>256</sup> Port Phillip 508 transmitted, 'We've got the Air Wing up. We're just going to monitor him at this stage and see what he does.'<sup>257</sup>

248 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 43.

249 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 43.

250 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, p. 23.

251 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, p. 23.

252 Transcript of proceedings, p. 194.

253 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, p. 44.

254 Exhibit 166, Statement of Senior Constable David Cavanagh dated 20 January 2017, Coronial Brief, p. 487.

255 Exhibit 166, Statement of Senior Constable David Cavanagh dated 20 January 2017, Coronial Brief, p. 487.

256 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, pp. 44–5.

257 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 45.

- 7.212 At that stage, Air Wing had been in the air for more than 70 minutes and was running out of flight time. It appears that the members of Port Phillip CIU were unaware of this limitation until Air Wing transmitted at 1.16 pm ‘... for your information, we’ve only got about 15 to 20 minutes of endurance following the long search for this guy ...’<sup>258</sup> Accordingly, their plan to rely on Air Wing to monitor him was significantly constrained.
- 7.213 Tactical decisions such as whether and how vehicles might be used to block potential escape routes, what roles would be performed by individual units and what other tactics might be used needed to have been canvassed ahead of any opportunity presenting itself. Although, undoubtedly, any plan would have to be flexible enough to meet the circumstances as they presented themselves and would need to incorporate a continuing assessment of risk. These requirements do not displace the need to formulate the basic structure of an arrest plan at an early opportunity. This does not appear to have been done at any time between the Offender’s escape onto the West Gate Freeway and when he was located again in Drew Street, Yarraville, a period of approximately 90 minutes.
- 7.214 The lack of a properly formulated plan that could be implemented at short notice was highlighted in the evidence of Sgt Peck when he said that he ‘hadn’t actually verbalised’<sup>259</sup> the plan he was developing. His plan was to ‘get observations on the [the Offender’s] vehicle and, ah, then formulate the plan, and I would then give that to my members first and then to the local members over their channel.’<sup>260</sup> In evidence, he could not remember if he knew the Port Phillip CIU’s plan.<sup>261</sup>
- 7.215 DSSgt Humphries’s evidence concerning the state of the operation immediately leading up to locating the Offender at Drew Street was as follows:
- Ah, we were pretty happy we had him in the location, and 508 was deployed into the area to RV with CIRT and, ah, attempt an arrest.<sup>262</sup>
- 7.216 Counsel Assisting submitted it was difficult to identify a solid basis for this confident expression of contentment. If CIRT could not use its vehicles to block any escape path for the Offender’s vehicle, the operation would likely result in a repeat of the events that unfolded earlier in Moray Street and in Albert Road Service Road. There is no evidence of any planning between the CIU and the CIRT prior to the rendezvous, which canvassed matters such as the operational limitations of the CIRT. It appears that the view taken within the Port Phillip CIU was that the CIRT would simply arrest the Offender, but there was no detail as to how that might occur.<sup>263</sup>
- 7.217 It was suggested by Counsel Assisting that a coordinated and properly documented reassessment of the operation in the time available between the Offender’s escape at Wurundjeri Way and police subsequently locating him in Yarraville may have involved the formulation of alternative plans, making clear the roles and responsibilities of individual units as well as making clear who was in command and ensuring that the necessary support services, such as the SSU, had been called upon. Instead, in the approximate 90 minutes that had elapsed during that period, strategy and planning by the Port Phillip CIU did not advance in any meaningful way. These matters were the subject of proper and significant concessions on behalf of the CCP.<sup>264</sup>

258 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 45.

259 Transcript of evidence, p. 2237.

260 Transcript of evidence, p. 2237.

261 Transcript of evidence, p. 2237.

262 Transcript of evidence, p. 2428.

263 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 133.

264 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 72.

- 7.218 Counsel Assisting submitted that the lack of clear leadership of the operation while the search for the Offender proceeded in the western suburbs could have led to a missed opportunity to apprehend him once the Offender's vehicle was located in Drew Street, Yarraville. Once the Offender's location became known, there were only a few minutes in which there was a chance to apprehend him while his vehicle was stationary or, perhaps, while he was away from the vehicle.<sup>265</sup>
- 7.219 Counsel Assisting submitted that Port Phillip 508 and the other CIU units were 'now simply reacting at the whim of the Offender, but there was no one in command who could see the emerging situation for what it was. The Offender was likely playing 'cat and mouse' with the CIU units and, at that point, they likely had no practical means available to stop him.<sup>266</sup> In my view this aptly describes the situation that had developed.
- 7.220 The sighting of the Offender at Cruickshank Park provided police another potential opportunity to arrest him. At no stage during the Inquest did anyone articulate what the actual 'arrest plan' was in Yarraville. The evidence is clear that there was no formulated arrest plan. The opportunity to formulate such a plan presented itself in the preceding hour when Port Phillip 508 was attempting to negotiate with the Offender and other units were out searching for him. The planning did not need to be the sole responsibility of Port Phillip 508. I find other units from Port Phillip CIU, such as Port Phillip 507 or DSgt Barry, DSgt Vohmann or DSSgt Humphries and DA/SSgt Newman could and should have assisted in coordinating with CIRT and Sgt Peck to formulate an arrest plan should an opportunity like this one have arisen.
- 7.221 Instead, by the time the Offender was located in Cruickshank Park, and CIRT 377 and Port Phillip 508 rendezvoused, they only had approximately five minutes to formulate an arrest plan. The transient nature of an opportunity like this should have been anticipated and developed as a contingency to any plan. It was entirely foreseeable that if the Offender was in his vehicle and sighted police, he would refuse to surrender. His potential response had already been a reality multiple times that day. Unfortunately, the opportunity to arrest the Offender quickly evaporated and he managed to evade police for the fourth time that day.

## Interaction with the Offender as he drove towards the CBD

### Offender drives onto the West Gate Freeway city bound

- 7.222 Just after the Offender moved away from Cruickshank Park, Sgt Peck transmitted on the CIRT TAC channel, 'Boys, no pursuits with this fella. You can try and intercept him as a normal uniform person would. If he takes off, let him go.'<sup>267</sup> When asked on air by CIRT 377 whether there was any chance of boxing him in, Sgt Peck replied, 'Not likely, bro'.<sup>268</sup>

<sup>265</sup> Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 131.

<sup>266</sup> Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 117.

<sup>267</sup> Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, AM 89, pp. 23–4.

<sup>268</sup> Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, AM 89, p. 24.

- 7.223 At about 1.15 pm, Air Wing reported over channel 01-02 that the Offender had turned left eastbound on Francis Street.<sup>269</sup> Air Wing then reported that the Offender was boxed in with trucks in the right turn lane at Williamstown Road.<sup>270</sup> Port Phillip 508 reported they were turning right behind the truck and they had seen the Offender. The Air Wing reported that he was about 300 metres behind in traffic and reported the Offender had left himself enough space to drive out forwards. The Offender was in lane one of two and continuing southbound. Port Phillip 508 transmitted on channel 01-02 that they were right behind him.<sup>271</sup>
- 7.224 Maribyrnong 508 stated on air that they were on the corner of Charles and Williamstown roads and would wait until they came past before 'joining the parade'.<sup>272</sup>
- 7.225 According to DSC Gentner, the Port Phillip 508 unit had been behind the Offender before he got onto the West Gate Freeway and agreed that the Offender would have seen their unit behind him prior to getting onto the West Gate Freeway.<sup>273</sup> DSC Gentner confirmed that at that point they:

... were trying to intercept him again, we tried to re-engage—re-engage with him and he didn't—didn't slow down, didn't stop for us so we let him go, we didn't—we didn't pursue him ... we just slowly drove normally quite slowly over the bridge.<sup>274</sup>

- 7.226 DSC Gentner explained that as they turned onto the West Gate Freeway, he was sure 'he put the lights and sirens on to try and get him to stop'<sup>275</sup>, but the Offender sped off, so they let him go. DSC Gentner said the Offender had been driving quite slowly prior to that:

... so once he escalated, we thought it best to slow down to get him to slow down ... That's when he took off and once he started speeding, there was going to be no benefit for us to continue—continue with him.<sup>276</sup>

- 7.227 At about 1.18 pm, Port Phillip 508 broadcast that they were keeping observations on him, were a couple of hundred metres behind, his driving did not appear erratic and he was driving in the left-hand lane on the West Gate Freeway heading towards the city.<sup>277</sup>
- 7.228 Air Wing continued to transmit updates:

I'll maintain the call if the unit in command of this incident wants to either hand over to the 302 operator or maintain it on this channel. Let us know. He's sped up considerably now and he's weaving between traffic to come up to about a hundred kilometres per hour. He's now in lane 3 of 5.<sup>278</sup>

269 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 45.

270 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 46.

271 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 46.

272 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 47.

273 Transcript of evidence, p. 207.

274 Transcript of evidence, pp. 207–8.

275 Transcript of evidence, p. 211.

276 Transcript of evidence, p. 211.

277 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 47.

278 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, pp. 47–8.

- 7.229 This call is consistent with what is observed on the Air Wing footage that recorded the Offender's vehicle driving on the West Gate Freeway. It appears at this stage he does speed up and start to swerve between vehicles, becoming more erratic and driving more dangerously.<sup>279</sup>
- 7.230 CIRT 267 informed Sgt Peck on the TAC channel that their unit was static on Montague Street, South Melbourne, to see where the Offender went.<sup>280</sup> Sgt Peck reiterated the previous direction that, 'There'd be no pursuits still, I would think. We're only gonna be helping out if he goes to ground'.<sup>281</sup>
- 7.231 At about 1.18 pm, Port Phillip 507 asked Port Phillip 508 via the CIU TAC channel whether they had their 'blues on'.<sup>282</sup> Port Phillip 508 stated they had turned them off and they were trying to call the Offender, but he was ignoring them.<sup>283</sup> Port Phillip 507 also headed back over the West Gate Freeway.<sup>284</sup>
- 7.232 Air Wing confirmed they intended to maintain observations of the Offender but also stated, 'We'll obviously just need to consider our resolution strategies and who's going to take control of the incident.'<sup>285</sup>
- 7.233 Police communications repeated the query to Port Phillip 508 as to whether they had an incident controller crossing over to deal with the incident. Port Phillip 508 replied 'negative at this stage'.<sup>286</sup> Altona North 450 offered to take coverage of the incident if required; police communications confirmed this on air and requested Air Wing to relay communications.<sup>287</sup>
- 7.234 Air Wing reported that the Offender was now in the left lane (lane one of five), one of the lanes that goes to the service station near Todd Road.<sup>288</sup> They then reported the Offender had taken the exit, had split the traffic and had 'busted a red light' at the service station.<sup>289</sup> They next reported the Offender was headed towards Port Melbourne.
- 7.235 At 1.21 pm, DSgt Vohmann announced on channel 01-02 that he was now incident controller.<sup>290</sup> The issue of the importance of continuity in command and control is discussed further in Part 8 of Finding.

279 Exhibit 15, Victoria Police Air Wing video.

280 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, AM 66, p. 24.

281 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, AM 66, pp. 24–5.

282 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT Members, AM 66, p. 19.

283 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT Members, AM 66, p. 19.

284 Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves, Coronial Brief, p. 4383; Exhibit 118, Handwritten Notes of Senior Constable Jacqueline Reeves, AM 64, p. 6.

285 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 48.

286 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 48.

287 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, pp. 48–9.

288 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 48.

289 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 49.

290 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) as amended by Sergeant Shannon Grant, p. 50.

## Engagement and attempted intercept with the Offender on Williamstown Road

7.236 The video recording from Air Wing<sup>291</sup> reveals that, between the entry to the West Gate Bridge (at Williamstown Road, Yarraville) and Williamstown Road, Port Melbourne, Port Phillip 508 was travelling behind the Offender at a distance that can properly be considered to have put them out of 'immediate contact'. That is, they were too far behind to signal effectively, to gesture or otherwise use the presence of their vehicle to any effect. However, as the two vehicles travelled east towards the city, Port Phillip 508 got close enough behind the Offender's vehicle to have 'regained contact' on Williamstown Road, Port Melbourne. The Air Wing video also showed that, at various points, the Offender was driving more slowly than he had to for the road or traffic conditions. However, when Port Phillip 508 caught up, the Offender manoeuvred his vehicle in order to block Port Phillip 508's vehicle.

7.237 As both vehicles were travelling along Williamstown Road, opposite the JL Murphy Reserve and approaching Graham Street, Port Melbourne, Port Phillip 508 tried to move up beside the Offender's vehicle in the left lane. The Offender then abruptly veered left and prevented Port Phillip 508 from drawing level and forced their vehicle to immediately fall back. This incident was captured on the Air Wing footage and revealed that this interaction was only brief.<sup>292</sup> It is clear that the Offender was aggressively manoeuvring his vehicle to prevent Port Phillip 508's vehicle moving alongside him or getting in front.

7.238 DSC Gentner described the Offender basically:

... slowed right down. Ah, we didn't want to push him too hard to get him to cause to go through the intersection dangerously. Ah, we were hoping that one of the other cars might box him in and then that would have been our opportunity that we've been waiting for.<sup>293</sup>

7.239 In evidence, DSC Gentner was asked whether this was a pursuit and he stated that, 'I think technically it would be a pursuit but, ah, in my mind, at the time, it wasn't, no.'<sup>294</sup> It certainly was not called as a pursuit over police communications. The issue of pursuits is discussed in further detail below.

7.240 DSC Gentner stated, 'I engaged with him around this point somewhere'.<sup>295</sup> DSC Gentner pulled off to the left as he was 'trying to get him to pull over, pull over to the left'.<sup>296</sup> DSC Gentner stated that he signalled to the Offender and, at that stage, the Offender was 'sort of turning around and trying to talk so I was, like, 'pull over, turn over—pull over'. He was going very, like, slow at this stage'.<sup>297</sup>

7.241 SC Reeves's notes recorded this incident:

Williamstown Rd. [DSC] Gentner trying to get [the Offender] to pull over. [The Offender] has attempted to hit their veh. Swaying towards it. Straight through to Normanby Rd. Traffic heavy, he has begun to drive very fast.<sup>298</sup>

291 Exhibit 15, Victoria Police Air Wing video.

292 Exhibit 15, Victoria Police Air Wing video.

293 Transcript of evidence, p. 214.

294 Transcript of evidence, p. 214.

295 Transcript of evidence, p. 213.

296 Transcript of evidence, p. 213.

297 Transcript of evidence, p. 213.

298 Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves, Coronial Brief, p. 4383; Exhibit 118, Handwritten Notes of Senior Constable Jacqueline Reeves, AM 64, p. 6.

- 7.242 DSC Gentner stated that he had pulled up almost level with the Offender who then pulled in front of him.<sup>299</sup> When asked what was going on at that point, DSC Gentner stated he was 'trying to again get his attention and get him to pull over', but the Offender accelerated in front of him in response to that.<sup>300</sup> DSC Gentner stated the Offender was 'clearly guarded, trying to make sure that we couldn't get in front of him'.<sup>301</sup>
- 7.243 At about 1.24 pm, Air Wing transmitted on channel 03-01 that they had observations of the Offender's vehicle and believed there was a police vehicle behind it. Air Wing stated that they would 'maintain the obs, until you have a resolution strategy. Unless the member behind believes that he can pull the vehicle up. He's stationary at that intersection, and I'll continue the obs until we have a resolution strategy'.<sup>302</sup>
- 7.244 Port Phillip 508 confirmed that they were the police vehicle behind the Offender's vehicle and stated, 'We're just engaging with him now. Detective Gentner's engaging with him'.<sup>303</sup> This engagement appears to be limited to hand and facial gestures towards each other while both manoeuvring their separate vehicles.
- 7.245 DSC Singh recorded this episode in his notes as 'MG trying to engage beeping horn'.<sup>304</sup> In evidence, he explained his notes and expanded as follows:

Murray Gentner saying, 'Talk to me—pull over.' Offender driving in the right-hand lane; we're driving in the left-hand lane. We've taken evasive action to avoid the collision and then he sped off and we back off ...<sup>305</sup>

- 7.246 Counsel Assisting submitted that to describe this or the interactions between Port Phillip 508 and the Offender at any stage along Williamstown Road, Port Melbourne, as 'engaging with the Offender' was, quite simply, misleading. Further, it may have been a hopeful characterisation of the state of affairs when the transmission was made, but it was not accurate.<sup>306</sup> The subsequent assumption by DSgt Vohmann that the engagement amounted to a member conversing with the Offender only deepened the misunderstanding of the true picture.<sup>307</sup>
- 7.247 This situation report from Port Phillip 508 was vague and imprecise. One may reasonably ask: what does 'engaging' mean? What was, in fact, happening at that time was detailed in DSC Gentner's first statement:

We caught up to him again and were tooting the horn and trying to get him to pull over. [The Offender] was heading northeast on Williamstown Road, Port Melbourne. He was going quite slow at this stage and we had a bit of an engagement with him through the window. He signalled something to us and I thought he was going to pull over, but he kept going. He was travelling at about 60 kilometres an hour maximum at this point. We followed him in that similar manner up to Whiteman Street ...<sup>308</sup>

299 Transcript of evidence, p. 214.

300 Transcript of evidence, p. 214.

301 Transcript of evidence, p. 214.

302 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon), pp. 1–2.

303 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon), p. 2.

304 Exhibit 128, Handwritten Notes of Detective Senior Constable Lalvinder Singh, Coronial Brief, p. 4566–73.

305 Transcript of evidence, p. 2147.

306 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 145.

307 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 145.

308 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner dated 20 January 2017, Coronial Brief, p. 847.

7.248 To suggest that facial and hand gestures between Port Phillip 508 and the Offender while driving their respective vehicles on Williamstown Road towards the city was an ‘engagement’ that provided some chance of meaningful resolution at this stage was simply fanciful.

## Multiple police units continue to follow the Offender

7.249 Port Phillip 508 came up on air, stating that the Offender was still on Williamstown Road, one of their members was trying to engage with him and the Offender was still driving safely.<sup>309</sup> They confirmed that the Offender was still eastbound approaching the intersection of Williamstown Road and Ingles Street, Port Melbourne.<sup>310</sup>

7.250 According to FC Fuller and LSC Krajnc, CIRT 267 placed themselves at Ingles Street to see if the Offender would drive past.<sup>311</sup> FC Fuller stated she saw the Offender drive past eastbound with a few unmarked units behind him. FC Fuller stated the Offender drove past at a low rate of speed and he was not driving erratically. CIRT 267 followed from a distance to be well placed to conduct a safe arrest if the opportunity arose.<sup>312</sup>

7.251 Describing this follow in his statement, LSC Krajnc stated that:

... the [O]ffender was being followed by three unmarked vehicles. The unmarked vehicles were approximately 50 metres behind the Offender. I could see that all of the police vehicles did not have lights or sirens operating. At that stage, there weren’t any vehicles between the police vehicles and the Offender. The male continued east on Normanby Road, and went into the right-hand turn lane to head south in Montague Street. Traffic was fairly heavy at that time. The Offender’s vehicle was driving within the speed limit and driving normally at that stage.

Once the lights turned green, the Offender continued straight through the intersection instead of turning right. All three unmarked police vehicles continued to follow. They were pretty close at that stage, and my car was number four in the chain.<sup>313</sup>

7.252 LSC Krajnc explained that they lost sight of the Offender shortly afterwards and continued to head east on Normanby Road while monitoring the local radio channel.<sup>314</sup>

7.253 St Kilda 200 and South Melbourne 210 and 307 units offered on channel 03-01 to provide back-up. DSgt Vohmann requested marked units keep away from the area at this stage and stated, ‘I don’t need any further assistance, we have enough units’ on the 03-01 channel.<sup>315</sup>

309 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon), p. 2.

310 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon), p. 3.

311 Exhibit 157, Statement of Leading Senior Constable Martin Krajnc dated 20 January 2017, p. 1175; Exhibit 161, Statement of First Constable Lauren Fuller dated 25 January 2017 as amended, Coronial Brief, p. 801.

312 Exhibit 161, Statement of First Constable Lauren Fuller dated 25 January 2017 as amended, Coronial Brief, p. 801.

313 Exhibit 157, Statement of Leading Senior Constable Martin Krajnc dated 20 January 2017, Coronial Brief, p. 1175.

314 Exhibit 157, Statement of Leading Senior Constable Martin Krajnc dated 20 January 2017, Coronial Brief, p. 1175.

315 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon), p. 3.

7.254 At about 1.26 pm, Air Wing described the movements of the Offender's vehicle:

... on Normanby, approaching Montague and going to go into the right-hand turning lane here, the wrong side of the road, but only at about 10 kilometres per hour. At the intersection, he's shaping up to do a—oh, no, he's going to go straight ahead, so straight ahead towards the South Wharf carpark entrance'.<sup>316</sup>

7.255 They then describe: 'it looks like he's going to head under the West Gate there. He's sped up there as he goes under the West Gate and continues on towards Crown Casino.'<sup>317</sup>

## Instruction to Port Phillip 508 to disengage

7.256 According to DSSgt Humphries, once the Offender was driving back over the West Gate Bridge and into their 'patch' in Port Melbourne, it was clear he was not compliant and the strategy 'wasn't working'.<sup>318</sup>

7.257 Once DSSgt Humphries heard that the Offender had travelled through a red light, he considered '... that was basically it for me ... as we're done, we're out'.<sup>319</sup> He said '... it was clear he wasn't going to comply with the instructions, so I told them to disengage'.<sup>320</sup>

7.258 DA/SSgt Newman described the decision for Port Phillip CIU members to disengage:

At approximately 1.15 pm ... I drove along Williamstown Road and, approximately 30 metres south of the intersection with Pickles Street, I observed the red Commodore driving towards us with [the Offender] in the driver's seat. [The Offender] appeared to be wagging his finger at me as I drove past. I also observed the Port Phillip CIU unit (Port Phillip 508) ... a short distance behind ... Both vehicles were travelling within the speed limit and didn't pose a danger to the public. I executed a U-turn and followed approximately 200 metres behind the CIU vehicle. A short time later, police lost observation of the red Commodore. At this time, Humphries and I decided to return to our office and consider other arrest options.<sup>321</sup>

7.259 In his oral evidence, DA/SSgt Newman said he remembered discussing the decision to disengage with DSSgt Humphries.<sup>322</sup> DSSgt Humphries stated that he communicated these sentiments via telephone to someone in Port Phillip 508, instructing them to disengage and return to the St Kilda Police Station.<sup>323</sup> He and DA/SSgt Newman then left the Port Melbourne area 'to regroup and arrest at a later stage. It was apparent that [the Offender] was not being cooperative'.<sup>324</sup>

7.260 In evidence, he accepted that this disengagement instruction was not communicated over police communications or to DSgt Vohmann, who had declared himself in charge of the incident at that stage.<sup>325</sup>

316 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon), p. 4.

317 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon), p. 4.

318 Transcript of evidence, p. 2436.

319 Transcript of evidence, p. 2437.

320 Transcript of evidence, p. 2433.

321 Exhibit 107, Statement of Detective Acting Senior Sergeant David Newman dated 20 January 2017, Coronial Brief, p. 1363.

322 Transcript of evidence, p. 1781.

323 Transcript of evidence, p. 2437.

324 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1032; Exhibit 139, Handwritten and Typed Notes of Detective Senior Sergeant Darren Humphries dated 20 January 2017, Coronial Brief, p. 4186.

325 Transcript of evidence, pp. 2438–9.

7.261 There seems some confusion about who made the call. At Inquest, DSC Gentner recalled that he received a phone call from D/Sgt Vohmann, who said it was ‘time to pull the pin and reassess’.<sup>326</sup> However, DSgt Vohmann, who had nominated himself as the incident controller six minutes earlier, learnt of the decision to disengage from the Offender for the first time when he heard Port Phillip 508 make the following transmission<sup>327</sup> on channel 03-01 at 1.27 pm:

We’ve attempted to negotiate with him, but he sped off on us. So, we’ve stopped following him. He’s now north on Clarendon Street.<sup>328</sup>

7.262 DSgt Vohmann said that this decision made sense to him.<sup>329</sup>

7.263 During this time, there was no further direction or instruction for the benefit of other CIU or general duties units from Port Phillip 508, 507, DSgt Vohmann, DSSgt Humphries or DA/SSgt Newman on police communications.

7.264 Given the way the day unfolded, I find the brief transmission from Port Phillip 508 about the decision to disengage was wholly insufficient to inform units outside the Port Phillip CIU that there had been a strategic change in the operation and the consequences of the altered response. From this point on, this approach was left wanting. I also find the lack of any instruction by DSgt Vohmann, DSSgt Humphries or DA/SSgt Newman on the police channel a significant oversight.

7.265 As the Offender was reported to be heading towards Crown Casino and just before the final transmission from Port Phillip 508, it was Sgt Griffith who requested police communications to get an incident controller from ‘the city’ to take over. This late change of channel again is discussed in more detail in Part 8 of the Finding.

## Did police engage in a pursuit from Yarraville to Port Melbourne?

7.266 From Drew Street in Yarraville to the point of disengagement in Williamstown Road, Port Melbourne, the evidence is that multiple police units were following the Offender.

At Inquest, it became a topic of debate as to whether an extended follow was technically a pursuit and should have been declared as such.

7.267 ‘Pursuit’ is defined in the VPM *Pursuit Policy* as:

... a pursuit occurs when a police vehicle continues to follow a vehicle that:

- has failed to comply with the members’ direction to stop; or
- is taking deliberate action to avoid being stopped.<sup>330</sup>

7.268 The Air Wing video revealed that Port Phillip 508 was in contact at the entrance to the West Gate Bridge from Williamstown Road in Yarraville and later in Williamstown Road, Port Melbourne. There were also a number of other units in the vicinity including Port Phillip 507, CIRT 267, CIRT 377 and Port Phillip 560.

<sup>326</sup> Transcript of evidence, p. 217.

<sup>327</sup> Transcript of evidence, p. 3305.

<sup>328</sup> Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon), p. 5.

<sup>329</sup> Transcript of evidence, p. 3305.

<sup>330</sup> Exhibit 153, Victoria Police Manual *Pursuit Policy* as at 20 January 2017, Coronial Brief, p. 2783.

- 7.269 At around this time, the evidence reveals that DSSgt Humphries and DA/SSgt Newman (Port Phillip 560) were patrolling in Port Melbourne when according to DSSgt Humphries they 'just happened to pass ... the Offender's vehicle with our 508 and 507 going past and that's when we realised he—he's not compliant'.<sup>331</sup> At this moment, DA/SSgt Newman observed the Offender wag his finger at them as they headed in the opposite direction.<sup>332</sup> They conducted a U-turn and commenced following the Offender, behind the other units.<sup>333</sup>
- 7.270 The fact that these episodes were not declared to be a pursuit by Port Phillip 508, and were not broadcast as such on the operational radio channel, meant that the usual oversight of the emerging situation that would come with the involvement of a Pursuit Controller did not occur.
- 7.271 The Critical Incident Review reached the same conclusion:
- This situation clearly meets the criteria of a police pursuit but this information was not communicated to other decision makers, and so it was not treated as a pursuit or called as a pursuit.<sup>334</sup>
- 7.272 In evidence, AC Fontana was adamant that an extended follow is a pursuit.<sup>335</sup> He commented that members are expected to follow policies and procedures; however, he also acknowledged that there are situations like this one when they are breached: 'if it's a situation where members acted reasonably and in good faith and albeit in breach of policy that [sic] its acceptable'.<sup>336</sup>
- 7.273 Port Phillip 508 should have called a pursuit. Counsel for the CIRT and CIU members properly conceded that the failure to recognise and call what was unfolding as a pursuit led to two things: a pursuit controller was not nominated, and an opportunity was lost for cross-channel communications while the pursuit continued.<sup>337</sup>
- 7.274 Issues associated with extended follows and cross-channel communications are discussed in further detail in parts 8 and 9 of this Finding.
- 7.275 I find that the extended follow from Yarraville to Port Melbourne was a pursuit and should have been called as such. Not calling a pursuit meant that proper oversight was not initiated, as no pursuit controller was allocated. This meant that no one had responsibility to conduct the appropriate and necessary risk assessments to manage the risk. This was a clear breach of the *Pursuit Policy*.
- 7.276 The risks to police and the public associated with pursuits were well known to all police at the time. The evidence of Sgt Peck to his units, minutes before the events on Williamstown Road, expressly prohibited engaging in a pursuit. This was consistent with the previous notifications of Sgt Griffith, Sgt Grant, Sgt Trimboli and SSgt Poynder throughout the preceding hours. Had a pursuit been called by Port Phillip 508 and/or any other of the units in the 'convoy' of police following at the time, and given the events preceding this incident, I have no doubt a pursuit controller would have recognised the futility of 'chasing' this offender again, and would have appropriately terminated the pursuit.

331 Transcript of evidence, p. 2436.

332 Transcript of evidence, pp. 1773-4.

333 Transcript of evidence, p. 1774.

334 Exhibit 201, Operation Titan Critical Incident Review, p. 54

335 Transcript of evidence, p. 3536.

336 Transcript of evidence, p. 3537.

337 Submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 55.

- 7.277 The failure to call the extended follow from Yarraville to Port Melbourne a pursuit highlighted the challenges associated with investigating police losing perspective in the heat of the moment. Not communicating effectively with command about the nature of this engagement was extremely problematic. So too, was having two senior police officers from Port Phillip CIU—DSSgt Humphries and DA/SSgt Newman—in one of the vehicles actively involved in the pursuit. They did not provide effective leadership nor challenge what was occurring until a short time after these events, when a decision was made to disengage, which is discussed below.
- 7.278 I am unable to say had a pursuit been called and probably terminated whether it would have changed the course of events—but not calling it did not allow any formal supervision or oversight.
- 7.279 I accept the circumstances of 20 January 2017 were most unusual and I acknowledge this Offender caused significant challenges to police in that he continued to evade police on numerous occasions, prior to this one. As previously mentioned, I recognise these circumstances demonstrated the ongoing tension between continuing to follow an armed and dangerous offender and the need to prevent harm to the public by engaging in a pursuit. It simply highlighted, once again, the necessity for some objective and strategic thinking by senior officers.

## Deterioration of command and control

### Need to re-evaluate and reformulate the resolution strategy

- 7.280 The events between Drew Street, Yarraville, and the Offender reaching the edge of the city marked a continuation of the strategy that had been adopted by the Port Phillip CIU, without success, since the first attempt to intercept him in Moray Street at 11.31 am. DSC Gentner continued to try to engage with the Offender in an attempt to convince him to pull over, but by the time he left Yarraville, these communications had been reduced to text messages. There was nothing to suggest that DSC Gentner's efforts were having any real effect to achieve the Offender's surrender.
- 7.281 Moreover, it is difficult to understand why any of the members of Port Phillip CIU would think that the Offender's behaviour would change and that he would cooperate and surrender peacefully after he drove away from Yarraville. The Offender had a history that was known to police that included baiting police, engaging in pursuits and driving dangerously to evade police. The events of the preceding one-and-a-half hours were worryingly consistent with his history:
- a. at Moray Street, the Offender had waited until the CIU members were on foot and at a disadvantage before he drove away at high speed
  - b. in the Albert Road Service Road, he had stubbornly driven past two CIRT vehicles (CIRT 300 and CIRT 251), effectively forcing these units to pull out of his way while he drove past
  - c. at Wurundjeri Way, the Offender had forced his way out of surrounding traffic and driven dangerously to escape intercept, driving onto the West Gate Freeway
  - d. his behaviour on leaving Drew Street, entering the West Gate Freeway and Williamstown Road, consistently indicated he had no intention of pulling over.

- 7.282 These events indicate that he was intentionally taunting police to interact with him. As I observed earlier, this should have compelled those in charge of the operation to reassess the strategy rather than simply continue in the hope that something different may occur.

## Lack of effective leadership

- 7.283 The events between Yarraville and Port Melbourne are marked by a lack of effective communication between the CIU units and other operational units and their supervisors. The fact that DSgt Vohmann broadcast that a member was conversing with the Offender—a report that was patently incorrect—demonstrated how haphazard the communications were.
- 7.284 At about 12.35 pm, DSSgt Humphries stated that he and DA/SSgt Newman departed the South Melbourne Police Station and conducted a general patrol of the area but were unable to locate the Offender. DSSgt Humphries recorded in his notes an intention to ‘Assist Crews with any further arrest opportunity and management issues ...’<sup>338</sup>
- 7.285 DSSgt Humphries stated that he and DA/SSgt Newman patrolled the South Melbourne area for the next 45 minutes. He stated that he and DA/SSgt Newman:
- ... were wracking our brains as far as, what else could we do ... to bring this guy to justice and stop this ... offending? ... at one stage there, we even threw around the idea, ‘Well, how do we drop that boom gate on the Westgate Freeway to create an artificial traffic stop? ... unfortunately, by that stage, he’d already ... passed that point.’<sup>339</sup>
- 7.286 DSSgt Humphries stated Port Phillip 508’s mission was quite clear—to keep negotiating with the Offender and try to locate him using LBS and be supported by a CIRT unit in an arrest.<sup>340</sup>
- 7.287 DSSgt Humphries states that ‘... [a] surrender plan was still a real possibility to bringing the situation to a safe conclusion.’<sup>341</sup> DSSgt Humphries explained this hopefulness in the context of the Offender’s location becoming known, police units being in close proximity to his location and that the Offender was continuing to engage with DSC Gentner.<sup>342</sup>
- 7.288 DSSgt Humphries further commented that it was clear from what DSC Gentner relayed to him at this point that the Offender’s language was becoming more ‘bizarre’ and ‘nonsensical’ and that he formed an impression that the Offender had been ‘spooked’ by the presence of Air Wing. He commented that it was ‘... clear that ... the behaviour and activities of ... the [O]ffender w[ere] becoming more erratic.’<sup>343</sup>
- 7.289 Just as the operation moved into the city, Sgt Peck made a telling comment to his members on the CIRT TAC channel: ‘Mate, none of the units have got any resolution strategy about this bloke. In my opinion, just slow-going.’<sup>344</sup>

338 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief, p. 1031; Exhibit 139, Handwritten and Typed Notes of Detective Senior Sergeant Darren Humphries dated 20 January 2017, Coronial Brief, p. 4186.

339 Transcript of evidence, p. 2425.

340 Transcript of evidence, p. 2425.

341 Exhibit 138, Statement of Detective Senior Sergeant Darren Humphries dated 9 February 2017, Coronial Brief pp. 1031-2; Exhibit 139, Handwritten and Typed Notes of Detective Senior Sergeant Darren Humphries dated 20 January 2017, Coronial Brief, p. 4186.

342 Transcript of evidence, p. 2429.

343 Transcript of evidence, p. 2428. DSSgt Humphries confirmed that he had more than one telephone conversation with DSC Gentner at this stage.

344 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, AM 66, pp. 24–5.

- 7.290 The leadership and members of the Port Phillip CIU had become preoccupied with the ‘surrender plan’ to the extent that it became the sole working strategy of the operation. Everything became reliant on DSC Gentner successfully negotiating a surrender and those in charge of the operation had faith in his ability to do this. The result was a failure to objectively and rigorously assess the likely success of the strategy, while necessary tasks and enquiries were not given sufficient priority or were ignored entirely until it was too late.
- 7.291 There was no decisive leadership in this period. Rather, the strategy remained unchanged despite the fact that the Offender’s behaviour showed nothing to suggest that he would pull over and surrender, and his behaviour was becoming increasingly erratic and unpredictable. There was no alternative strategy in place even as Air Wing was about to depart the area.
- 7.292 The lack of clear leadership while the search for the Offender continued in the western suburbs meant that, when the Offender’s vehicle was subsequently located in Yarraville, there was no plan for effecting an arrest that could be implemented at short notice. Instead, CIRT and Port Phillip CIU units were engaged in a rendezvous as the opportunity to arrest the Offender in Drew Street passed.
- 7.293 DSSgt Humphries explained his understanding of the arrest plan at that stage included: the telephone negotiations between DSC Gentner and the Offender; ensuring that a CIRT unit was with Port Phillip 508 (so that if they could locate the Offender, and it was safe to do so, then they could effect an arrest, by force if needed)<sup>345</sup>; the use of Air Wing; and having DSgt Barry attempt to get the LBS operational.<sup>346</sup>
- 7.294 When asked whether he had considered holding back at this point while they did not have the SSU engaged, DSSgt Humphries responded, ‘... no ... I made the operational decision that we need to arrest this offender as safely and as quickly as we can and that was our number one priority for the day ...’<sup>347</sup>
- 7.295 He further stated:

... as the officer in charge, the buck stops with me. I made the call ... we need to do what we need to do to protect the public and ... I had every faith in my staff ... and in conjunction with the support we were getting from CIRT and ... the Air Wing ... that we could—look, this circumstances is not particularly unusual ... this is not the first, not the last of these types of individuals at this point in time ... this is not uncommon set of circumstances and for us to sit back and wait for every service to become available to us ... vary rarely would anyone get arrested ... we have to be proactive and forthright and flexible that we can make plans happen and ... to the best ability, we do that as safely as we possibly can for all concerned.<sup>348</sup>

<sup>345</sup> DSSgt Humphries referred to an example of the use of force in this respect, noting that if the Offender, while driving, was held up in heavy traffic, ‘... it’s not uncommon that we would just physically drag him out of the car, if that’s what was needed ... and it was safe to do so for all concerned’; Transcript of evidence, pp. 2423–4. He further explained that this would be easier to effect in circumstances where the SSU was available; Transcript of evidence, p. 2424.

<sup>346</sup> Transcript of evidence, pp. 2422–3.

<sup>347</sup> Transcript of evidence, p. 2424.

<sup>348</sup> Transcript of evidence, p. 2424.

7.296 As the prospects of the operation leading to a successful conclusion continued to deteriorate, DS/Sgts Humphries and Newman were not well placed to exercise oversight or command. They had formed a single unit, Port Phillip 560, and were out patrolling from 12.35 pm for the next hour until the final events took place in Bourke Street.<sup>349</sup> The Critical Incident Review specifically criticised this arrangement and the impact it had on command and control of the operation:

Humphries placed Burnett in charge of the investigation but was in the field actively engaged in following/pursuing [the Offender] with SPP 508 (Gentner, White, Singh), rather than leading the investigation and considering alternate strategies. SPP 560 (Humphries/Newman) was advised of developments but did not appear to have actively intervened. They spent a great deal of their time in the field but did not take charge or communicate with other supervising units, either on air or by phone ...

7.297 Counsel Assisting submitted that I should adopt these conclusions.<sup>350</sup> Counsel for the Families agreed.

7.298 Counsel for the CCP submitted that the lack of command and control had an adverse effect on the police plan to locate and arrest the Offender. The CCP agreed with Counsel Assisting that there was a clear lack of leadership during this search.<sup>351</sup>

7.299 Counsel for the CCP also identified that DSSgt Humphries was ultimately in charge of the operation and conceded:

His failing on the day was not to take charge in a meaningful sense for the whole of the operation and ensure that roles and responsibilities for each member involved in the operation were clearly outlined and communicated to them. That did not occur.<sup>352</sup>

7.300 It was also submitted that DSSgt Humphries and DA/SSgt Newman did not actively intervene or take charge or communicate with other supervising units, either on air or by telephone. DSSgt Humphries did not document any consideration of the need for an alternative plan or resolution strategies, ongoing risk assessments or the option of seeking the assistance of other specialist support services.<sup>353</sup>

7.301 Counsel for the CIRT and CIU members submitted that:

There is no policy document before the Court that explains what the Command and Control structure of an incident such as this should look like. It is difficult, if not impossible, for the Court to arrive at any informed opinion about the extent of any perceived departures from standards of expected behaviour.<sup>354</sup>

349 Exhibit 139, Handwritten and Typed Notes of Detective Senior Sergeant Darren Humphries dated 20 January 2017, Coronial Brief, p. 4186;

Exhibit 108, Handwritten Notes of Detective Acting Senior Sergeant David Newman, Coronial Brief, p. 4331; Exhibit 107, Statement of Detective Acting Senior Sergeant David Newman dated 20 January 2017, Coronial Brief, p. 1363.

350 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 135.

351 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 72.

352 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 83.

353 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 83.

354 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, pp. 50–1.

- 7.302 I reject this argument. The Court has been greatly assisted by numerous witnesses who have drawn upon their police experience to illustrate proper command and control structures as well as the 'real life' challenges in operations of this type. I have been greatly assisted by the insights provided in the Critical Incident Review and by senior officers in the field including SSgt Poynder and Sgt Grant. To suggest that the Court cannot arrive at an informed opinion about command and control on 20 January 2017 in the absence of a specific policy document is misconceived.
- 7.303 As the operation to locate the Offender moved into the northwest region, there was a marked deterioration in command and control by the Port Phillip CIU. At this stage of the operation, I find DSSgt Humphries and DA/SSgt Newman did not exercise effective leadership despite the fact that this operation was a whole-of-office effort. Moreover, control at the lower detective sergeant level remained unclear, as did many individual roles and responsibilities.
- 7.304 I find that there was a lack of assertive leadership and supervision provided to the Port Phillip CIU by DSSgt Humphries and DA/SSgt Newman in relation to an appropriate arrest plan throughout the day, including during the time the Offender was located in Yarraville and up until the decision to disengage in South Melbourne.
- 7.305 I also consider that it was inappropriate and counterproductive for DSSgt Humphries and DA/SSgt Newman to be out and operational in a vehicle looking for the Offender during this time. They would have been better placed to have returned to the St Kilda Police Station and given active support, assistance and strategic direction to DSgt Barry and the overall operation.
- 7.306 The lack of leadership meant that an arrest plan was not formulated, which only served to highlight the ineffectiveness of command and control on the day, specifically this part of the day. What was needed was a disciplined, calculated and objective approach from senior officers so that decisions and alternative strategies could be evaluated and formulated as the events unfolded, and to assist in managing the dynamic situation and the operational police officers in the field.

# Part 8: Events in Melbourne CBD

## Overview

- 8.1 Initially, the scope of the Inquest concluded with the events at the intersection of Flinders and Swanston streets. The rationale for this was twofold: firstly, my examination of the coronial brief revealed few opportunities for police to stop the Offender after he entered the Melbourne CBD; and, secondly, to avoid exacerbating the distress of the families, police officers and others involved in the incident.
- 8.2 After hearing submissions on behalf of the Families, however, the scope was expanded to include events in the CBD up to the Offender's arrest. This enabled me to consider whether there were, in fact, any opportunities for intervention or apprehension of the Offender after he entered the CBD.<sup>1</sup>
- 8.3 This Part of the Finding provides a chronology of the events in the CBD on 20 January 2017 before the Offender's arrest and an analysis of the following issues:
  - a. the importance of continuity of command in incident control
  - b. challenges of frequent radio channel changes in a cross-border operation
  - c. issues with police communications during time-sensitive incidents
  - d. use of vehicle as a weapon and availability of other tactical options
  - e. police were tentative to act for fear of disobeying policy
  - f. whether there were any opportunities for intervention or apprehension of the Offender after he entered the CBD.
- 8.4 Finally, this part identifies some potential opportunities for reform.

## Chronology of events in Melbourne CBD

### Clarendon Street to Melbourne CBD

- 8.5 After unsuccessful attempts to negotiate a surrender of the Offender, and the extended follow from Yarraville into Port Melbourne indicated the Offender was intent on avoiding apprehension, Port Phillip CIU disengaged. Port Phillip 508 driven by DSC Gentner (with DSC White and DSC Singh), stopped in Whiteman Street, South Melbourne, and rendezvoused with Port Phillip 507 (DSC Burnett, SC Reeves, and DSC Diwell).
- 8.6 DSC Gentner explained that, at that stage, he concluded that the Offender was not going to pull over or surrender, and he had started 'taking a bit more of a chance' in moving between lanes of traffic.<sup>2</sup> He testified that DSgt Vohmann had called him and told him, 'All right, time to pull the pin and we'll reassess'.<sup>3</sup>

<sup>1</sup> See my Ruling No.2 dated 23 August 2019.

<sup>2</sup> Transcript of evidence, p. 217.

<sup>3</sup> Transcript of evidence, p. 217.

- 8.7 Air Wing continued to follow the Offender and broadcast his movements and direction of travel on channel 03-01. By 1.27 pm, as it became apparent that the Offender was heading towards the CBD, the uniform patrol supervisor for South Melbourne and St Kilda, Sgt Griffith, asked police communications on channel 03-01 to have an incident controller from the city (channel 01-01) take over command.<sup>4</sup> This request was acknowledged by police communications but was put on hold to allow for an update to be provided by Port Phillip 508.<sup>5</sup> Shortly afterwards, Port Phillip 508 broadcast on channel 03-01 that they had attempted to negotiate with the Offender, but he had sped off north on Clarendon Street and they had stopped following him.<sup>6</sup>
- 8.8 At 1.27 pm, DSC Gentner sent a text message to the Offender, stating ‘don’t do this’.<sup>7</sup> The Offender did not reply. At 1.29 pm, he sent a further text message to the Offender, which said, ‘Meet me, stop doing this’ and then, at 1.31 pm, simply, ‘stop’.<sup>8</sup> These were the last recorded communications with the Offender. Each of these messages remained unread.<sup>9</sup>
- 8.9 Air Wing tracked the Offender’s movements as he travelled north on Clarendon Street, South Melbourne, past the Exhibition Centre and over the Clarendon Street bridge.<sup>10</sup> Air Wing asked police communications whether they were happy to stay on the 03-01 channel and were advised they were seeking confirmation from their team leaders.<sup>11</sup> Immediately afterwards, police communications directed all units to cross over to channel 01-01. Air Wing provided a final update on channel 03-01, that the Offender had turned right and was now eastbound on Flinders Street, before changing channels.<sup>12</sup>
- 8.10 At 1.28 pm, Air Wing provided a situation report over the police radio communications channel for Melbourne CBD, channel 01-01. It informed units on that channel that they were following a maroon Holden sedan, east on Flinders Street along the wrong side of the tram tracks between King and Elizabeth streets, and asked whether any units were available to follow it.<sup>13</sup>
- 8.11 Over the following two minutes, Air Wing provided clear and concise descriptions of the Offender’s vehicle location and its direction of travel eastbound along Flinders Street.<sup>14</sup> Air Wing warned all units on the channel that the Offender’s vehicle was travelling at speed on the wrong side of the tram lines on Flinders Street and through a red traffic light at the Elizabeth Street intersection where a collision with pedestrians was narrowly avoided.<sup>15</sup>
- 8.12 Despite broadcasting that they had stopped following, it is clear that Port Phillip 508 (along with Port Phillip 507) continued to drive towards the Offender’s reported direction of travel, albeit not at speed or with their lights or sirens activated.<sup>16</sup>

4 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon), pp. 4–5; Exhibit 174, Statement of Sergeant Karen Griffith dated 27 January 2017, Coronial Brief, p. 907.

5 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon), pp. 4–5.

6 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon), pp. 4–5.

7 Exhibit 10 – Telephone records from Port Phillip CIU phone, Coronial Brief, Coronial Brief, p. 4663.

8 Exhibit 10 – Telephone records from Port Phillip CIU phone, Coronial Brief, Coronial Brief, p. 4663.

9 Mobile Phone Extraction Report of the Offender’s Phone (number ending 789), Coronial Brief, p. 4624.

10 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon) p. 5.

11 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon) p. 5.

12 Exhibit 16, Transcript of Victoria Police Radio Communications—Channel 03-01 (Afternoon) pp. 4–5.

13 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 1.

14 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD) pp. 1–2.

15 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD) pp. 2–3.

16 Exhibit 1, First Statement of Detective Senior Constable Murray Gentner dated 20 January 2017, Coronial Brief, pp. 847-8; Exhibit 111, First Statement of Detective Senior Constable Clayton White dated 20 January 2017, Coronial Brief, p. 1875; Exhibit 125, Statement of Detective Senior Constable Aaron Diwell dated 20 January 2017 as amended, Coronial Brief, p. 543; Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 400; Exhibit 117, Statement of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, pp. 1504-5; Exhibit 119, Handwritten Diary Notes of Senior Constable Jacqueline Reeves dated 20 January 2017, Coronial Brief, p. 4384.

- 8.13 DSC Burnett noted in his statement that, after the Offender had turned right into Flinders Street, their units were stopped in traffic at the intersection for a significant period of time because there were numerous vehicles in front of them and they had to wait for the turning arrow light to turn green.<sup>17</sup> Neither unit broadcast on channels 03-01, 01-01 or the Port Phillip CIU TAC channel 03-15<sup>18</sup> that they had resumed following the Offender.
- 8.14 As the Offender approached Elizabeth Street, DSgt Vohmann (who had previously self-nominated as incident controller for this job at 1.21 pm on channel 01-02) briefly came up on channel 01-01 and gave his call sign of Port Phillip 550, but did not provide any direction or instruction to units.<sup>19</sup> Notably, at around this time, Sgt Peck stated on the CIRT TAC channel, ‘none of the units have got any resolution strategy about this bloke. In my opinion, just slow-going.’<sup>20</sup>
- 8.15 Constable Anthony Krause, of the Melbourne Transit Safety Division, was standing on the north side of Flinders Street near the Degraeves Street intersection when he observed the Offender driving east on Flinders Street on the tram tracks. Constable Krause observed the vehicle enter the super tram stop on the wrong side of the tracks and travel a short distance before he stopped.<sup>21</sup> The Offender yelled at a female on the southern side of Flinders Street near the railway station. The Offender then drove off towards the intersection of Flinders and Swanston streets.<sup>22</sup>
- 8.16 In response to Air Wing’s communications, Sgt Paul Gilmour, of the Altona North Divisional Response Unit (Altona 450), who was in an unmarked vehicle, drove in the direction of the Offender’s vehicle along Flinders Street. In the distance, he observed the vehicle travelling on the wrong side of the tram tracks towards Swanston Street.<sup>23</sup>
- 8.17 The Offender briefly stopped at the super tram stop outside Flinders Street Station.<sup>24</sup> Witness Daniel Bergamin observed the vehicle get ‘stuck on or near the super tram stop’ at Flinders Street.<sup>25</sup> Mr Bergamin stated that the vehicle had to stop, reverse and drive around the obstacle before continuing up to the intersection of Flinders and Swanston streets.<sup>26</sup> He said that as the Offender drove up Flinders Street, he screamed at people as he drove past and had ‘kind of stopped to give way to the people’ when he came to the corner of Flinders and Elizabeth streets.<sup>27</sup>

## Donuts at intersection of Flinders and Swanston streets

- 8.18 At about 1.30 pm, the Offender arrived at the intersection of Flinders and Swanston streets. When he entered the intersection, he began driving in circles, colloquially known as performing donuts, spinning his rear wheels, screeching his tyres, revving the engine and creating smoke. Air Wing transmitted, ‘He’s lost it. He’s done a quick skid to do a U-turn. He’s doing donuts in the middle of Swanston Street and Flinders.’<sup>28</sup>

17 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, pp. 399–400.

18 Channel 03-15 was the Port Phillip CIU’s dedicated TAC channel for Operation Invokes. See Part 6 of this Finding.

19 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 1.

20 Exhibit 143, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 13-25 (CIRT) amended by Counsel for CIRT Members, p. 25.

21 Statement of Constable Anthony Krause dated 30 January 2017, Coronial Brief, p. 1185.

22 Statement of Constable Anthony Krause dated 30 January 2017, Coronial Brief, pp. 1185-6.

23 Statement of Sergeant Paul Gilmour dated 20 January 2017, Coronial Brief, p. 859.

24 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), pp. 1–2; Statement of Senior Constable Alex Barron dated 22 January 2017, Coronial Brief, p. 298.

25 Statement of Daniel Bergamin dated 6 March 2017, Coronial Brief, p. 314.

26 Statement of Daniel Bergamin dated 6 March 2017, Coronial Brief, p. 314.

27 Statement of Daniel Bergamin dated 6 March 2017, Coronial Brief, p. 315.

28 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), pp. 2–3.

The Offender's upper body was protruding from the driver's window as he gesticulated and taunted onlookers and police.<sup>29</sup> These actions were captured on CCTV, Safe City cameras, Air Wing footage and various witnesses' mobile phones.

- 8.19 Air Wing reported its observations of the Offender doing donuts at the intersection.<sup>30</sup> As it was a Friday lunchtime in the school holidays, the intersection was busy with pedestrians, vehicles and trams. The Offender's actions brought this entire area to a standstill as hundreds of people looked on.
- 8.20 Radio communications made it clear that Air Wing was becoming increasingly concerned for community safety; they warned units to be aware and advised them that the vehicle was a danger to pedestrians.<sup>31</sup>
- 8.21 At about this time, police communications asked Sgt Mitchell Capodiferro, the uniform patrol supervisor for Melbourne CBD, if he would be 'taking direction of this?'<sup>32</sup> Completely unaware of the preceding events of the morning and early afternoon, he assumed the role of incident controller.
- 8.22 By this time, Sgt Gilmour had arrived at the intersection. He pulled in front of the eastbound traffic on Flinders Street and stopped his unmarked vehicle so no traffic could go through the intersection where the Offender was performing donuts.<sup>33</sup> Sgt Gilmour transmitted a call on channel 01-01 for as many marked units as possible to attend the intersection to block it.<sup>34</sup>
- 8.23 CCTV and Air Wing footage strongly suggests that the Offender was waiting at the intersection and driving in circles in order to entice police to re-engage with him.<sup>35</sup> DSC Gentner agreed that the Offender most likely did this to allow police units to catch up with him.<sup>36</sup>
- 8.24 Two young male pedestrians attempted to intervene and approached the Offender's vehicle as it continued to perform donuts, striking his vehicle bonnet and windscreen with a baseball bat. This did not deter the Offender and on CCTV footage he appears to accelerate towards them.<sup>37</sup>
- 8.25 Police units converged on the area, including Port Phillip 507 and 508, which had accelerated towards the scene eastbound on Flinders Street following the path of the Offender's vehicle, with their lights activated.<sup>38</sup> They arrived at the intersection at about 1.31 pm and stopped in the westbound carriageway immediately before the intersection.<sup>39</sup> They were joined by LSC Krajnc and FC Fuller (CIRT 267).<sup>40</sup> All were in unmarked vehicles.<sup>41</sup>

29 Statement of Senior Constable Alex Barron dated 22 January 2017, Coronial Brief, p. 298.

30 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 3.

31 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 3.

32 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 4.

33 Statement of Sergeant Paul Gilmour dated 20 January 2017, Coronial Brief, pp. 859–60.

34 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 4; Statement of Sergeant Paul Gilmour dated 20 January 2017, Coronial Brief, pp. 858–9.

35 Statement of Sergeant Paul Gilmour dated 20 January 2017, Coronial Brief, p. 860.

36 Transcript of evidence, p. 312.

37 Police Airwing Video from 20 January 2017, Exhibit 6, Coronial Brief; CCTV Footage—Compilations (2 x files), Coronial Brief.

38 Transcript of evidence, p. 220; Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 400.

39 Police Air Wing Video from 20 January 2017, Coronial Brief.

40 Exhibit 157, Statement of Leading Senior Constable Martin Krajnc dated 20 January 2017, Coronial Brief, p. 1176; Exhibit 161, Statement of First Constable Lauren Fuller dated 25 January 2017, Coronial Brief, p. 802.

41 Exhibit 157, Statement of Leading Senior Constable Martin Krajnc dated 20 January 2017, Coronial Brief, p. 1171; Exhibit 161, Statement of First Constable Lauren Fuller dated 25 January 2017, Coronial Brief, p. 796; Statement of Sergeant Paul Gilmour dated 20 January 2017, Coronial Brief, p. 858; Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 396; Transcript of evidence, p. 175.

- 8.26 The Offender's torso was hanging outside the driver's window while he was still driving erratically and yelling out. DSC White heard DSC Gentner say something to the Offender like 'what are you doing?' or 'calm down'.<sup>42</sup>
- 8.27 After the Offender completed about eight donuts at the intersection of Swanston and Flinders streets, he then travelled north on Swanston Street along the tram lines at a relatively slow speed. According to Sgt Gilmour, the Offender slowed his vehicle and incited these police vehicles to follow him.<sup>43</sup> The Air Wing estimated that the Offender was travelling at approximately 10 km/h.<sup>44</sup> He was followed by a convoy of police vehicles, including Port Phillip 507, Port Phillip 508 and CIRT 267.<sup>45</sup>
- 8.28 An Operations Response Unit, Operations 420, driven by SC Robert Black (with SC Bradley Watson and SC Daniel Paisley), arrived at the intersection shortly afterwards and joined the convoy.<sup>46</sup> They were in a marked Ford Territory vehicle.<sup>47</sup> As the convoy travelled north on Swanston Street, a CIRT van came up behind the Operations 420 unit and they slowed to allow the CIRT van to pass in front of them.<sup>48</sup> That van was driven by SC Roland Jones with SC David Cavanagh (CIRT 377).<sup>49</sup>
- 8.29 At about 1.32 pm, SC Christopher Bowen of Melbourne Highway Patrol (Melbourne 906) was in his office at the North Melbourne Police Station, listening to the police radio. As he had been involved in earlier attempts to locate the Offender, he transmitted a warning, 'Can all members please be aware that this vehicle, if it was the one that was involved in the stabbing, he will be armed with a knife and he is very dangerous. Please be aware.'<sup>50</sup>
- 8.30 A/SSgt Andrew Bruce, the Divisional Supervisor for Melbourne CBD, attempted to get on air as the vehicle continued north up Swanston Street. It was clear to him that a pursuit had commenced, although no specific call was broadcast to that effect.<sup>51</sup> According to A/SSgt Bruce, the radio communications were constant at that time and it was difficult to get on air.<sup>52</sup>
- 8.31 As the Offender proceeded along Swanston Street, police communications asked a Highway Patrol unit, Melbourne 628, whether they had any stop sticks.<sup>53</sup> This unit was quick to respond and travelled south down Swanston Street to try to deploy the stop sticks ahead of the Offender's vehicle. They stopped to do so just as the Offender drove past them and onto the opposite footpath.<sup>54</sup>
- 8.32 As the Offender's vehicle approached the intersection of Collins Street, video footage shows that two of the unmarked police vehicles attempted to draw alongside it, but he increased speed and, after crossing the intersection of Swanston and Little Collins streets, abruptly veered left and mounted the western footpath of Swanston Street under the shop awnings and continued north along the footpath.<sup>55</sup> Pedestrians jumped out of the way and narrowly missed being hit by the vehicle.<sup>56</sup> DSC Burnett stated that he did not activate his sirens, but flashed his police lights and sounded his horn to alert

42 Exhibit 111, First Statement of Detective Senior Constable Clayton White dated 20 January 2017, Coronial Brief, p. 1874.

43 Statement of Sergeant Paul Gilmour dated 20 January 2017, Coronial Brief, p. 860.

44 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 5.

45 Statement of Senior Constable Alex Barron dated 22 January 2017, Coronial Brief, p. 298.

46 Statement of Senior Constable Robert Black dated 20 January 2017, Coronial Brief, p. 335.

47 Statement of Senior Constable Robert Black dated 20 January 2017, Coronial Brief, p. 334.

48 Statement of Senior Constable Bradley Watson dated 20 January 2017, Coronial Brief, p. 1847.

49 Statement of Senior Constable Robert Black dated 20 January 2017, Coronial Brief, p. 335.

50 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 5.

51 Statement of Acting Senior Sergeant Andrew Bruce dated 24 January 2017, Coronial Brief, p. 385.

52 Statement of Acting Senior Sergeant Andrew Bruce dated 24 January 2017, Coronial Brief, p. 385.

53 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 5.

54 Statement of Senior Constable Justin Holland dated 8 February 2017, Coronial Brief, p. 1004.

55 Compilation Video from the Police Airwing and CCTV Footage dated 20 January 2017.

56 Statement of Senior Constable Robert Black dated 20 January 2017, Coronial Brief, p. 336.

pedestrians.<sup>57</sup> The Offender then veered away from a male in a motorised mobility scooter and drove back onto the road just before the intersection of Bourke Street.<sup>58</sup>

- 8.33 Sgt Gilmour transmitted, 'Urgent. Someone needs to take this vehicle out before he kills someone. Received. Get an opportunity.'<sup>59</sup>
- 8.34 A/SSgt Bruce gave the direction on air to 'take the vehicle out'.<sup>60</sup> He had no awareness that the Port Phillip CIU units or the CIRT vehicles were still following the vehicle or otherwise present. His intention was to prevent any further injuries or death occurring as a result of the movement of the vehicle.<sup>61</sup> He stated that he did not get an opportunity to communicate a direction to pursue or to not pursue the vehicle prior to the stage when it had escalated to a critical incident requiring direct action.<sup>62</sup>

## Bourke Street

- 8.35 The Offender turned left into the Bourke Street Mall, a pedestrian- and tram-only section of the CBD. The Air Wing transmitted, 'Bourke Street mall now. Uncontrolled on Bourke Street mall.'<sup>63</sup> Sgt Capodiferro broadcast, 'If a unit gets an opportunity, I need them to take it out before some ped gets squashed'.<sup>64</sup>
- 8.36 The area was crowded with workers, shoppers, tourists and others going about their everyday business. The Offender deliberately swerved from the tram lines onto the crowded southern footpath. He drove along the footpath for the length of the Bourke Street Mall.<sup>65</sup>
- 8.37 A number of pedestrians managed, somehow, to take evasive action and avoided being struck. Tragically, many were unable to get out of the way. The CCTV footage shows that the Offender was in control of his vehicle throughout its passage along the footpath, manoeuvring between various fixed structures.<sup>66</sup>
- 8.38 Within 17 seconds of the report from the Air Wing that the Offender had turned into Bourke Street, a desperate radio transmission reported, 'Pedestrians hit. Bourke and Elizabeth ... Pedestrians hit.'<sup>67</sup> Police communications then transmitted again: 'if any vehicle has the opportunity to take the vehicle out'.<sup>68</sup>
- 8.39 Several police units rushed from all directions to intercept the Offender. Many of them had no opportunity to transmit on the police communications. Upon hearing what was transpiring on their portable radios, SC Robert Hamilton and SC Adrian Farano ran from the entrance of Myer just as the Offender turned into Bourke Street. They screamed out to warn everyone within earshot to get out of the way.<sup>69</sup> As the Offender approached

57 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, pp. 400–1.

58 CCTV Footage by Location, 'Deans Souvenirs 137 Swanston Street Melbourne; Platypus 149 Swanston Street Melbourne; 7/11 159 Swanston Street, Melbourne; Footlocker 163 Swanston Street, Melbourne', Exhibit 303, Coronial Brief.

59 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 6.

60 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 7.

61 Statement of Acting Senior Sergeant Andrew Bruce dated 24 January 2017, Coronial Brief, p. 386.

62 Statement of Acting Senior Sergeant Andrew Bruce dated 24 January 2017, Coronial Brief, p. 388.

63 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 6.

64 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 6.

65 *DPP v Gargasoulas* [2019] VSC 87, p. 1.

66 *DPP v Gargasoulas* [2019] VSC 87, p. 15; CCTV Footage - Compilation, Coronial Brief.

67 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 7.

68 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 7.

69 Statement of Senior Constable Robert Hamilton dated 20 January 2017, Coronial Brief, p. 939.

the tram stop where there were approximately 100 people waiting for trams, he did not brake, sound his car horn or engage in any way to warn the people in front of him.<sup>70</sup> As the Offender drove past, SC Farano described that the Offender had ‘a look of intensity on his face. He looked ... as though he would not stop for anything’.<sup>71</sup>

- 8.40 It is estimated that the Offender drove his vehicle at speeds of between 57 and 61 km/h along Bourke Street as he travelled along four crowded city blocks, while deliberately hitting multiple pedestrians.<sup>72</sup>
- 8.41 As the police vehicles followed the Offender up Bourke Street, they travelled on the road but had to be careful to avoid hitting pedestrians who had run onto the road to avoid the Offender’s vehicle.<sup>73</sup>
- 8.42 CIRT 377 managed to overtake the unmarked vehicles and drove along the tram tracks. SC Cavanagh stated that they were approximately 30–40 metres behind the Offender but were unable to drive at high speed because of the hundreds of pedestrians on both sides of the street. They witnessed the Offender hit multiple pedestrians with his vehicle as he drove along the footpath. SC Cavanagh attempted to warn people of the danger by continually hitting the siren button.<sup>74</sup>
- 8.43 As they crossed Queen Street, SC Cavanagh observed that a piece of the Offender’s vehicle, the bumper bar or part of its undercarriage, had fallen off and the windscreen was damaged from the people he had hit.<sup>75</sup> The vehicle started to slow, but ‘only through what appeared to be severe damage caused’.<sup>76</sup>

## Offender’s arrest

- 8.44 The Offender’s stolen vehicle eventually came to a halt outside 555 Bourke Street as a result of a combination of mechanical failure and of it having been impacted at low speed by the Operations 420 vehicle, which collided directly into the front right-hand quarter panel of the Offender’s vehicle.<sup>77</sup> His vehicle was hit at enough speed to stop it, but not fast enough to cause the airbags to deploy in either vehicle.<sup>78</sup>
- 8.45 Once the Offender’s vehicle stopped, police officers converged on it and issued their standard police challenge. SC Jones<sup>79</sup> and SC James Taylor<sup>80</sup> discharged their firearms in order to stop the threat and protect the lives of the public. The Offender was shot in the right upper arm. He was then tasered by SC Cavanagh,<sup>81</sup> DSC Kranjc<sup>82</sup> and SC Taylor who had re-holstered his gun and unholstered his taser.<sup>83</sup> The Offender was then extracted from the vehicle and handcuffed.<sup>84</sup> He was treated at the scene by police and off-duty doctors prior to the arrival of paramedics; his injuries were non-life-threatening.<sup>85</sup> The Offender was conveyed to the Alfred Hospital by ambulance.<sup>86</sup>

70 Statement of Senior Constable Robert Hamilton dated 20 January 2017, Coronial Brief, p. 940.

71 Statement of Senior Constable Adrian Farano dated 20 January 2017, Coronial Brief, p. 609.

72 Report on collision by Detective Sergeant Robert Hay dated 2 October 2017, Coronial Brief, AM 47, pp. 2, 21.

73 Statement of Senior Constable Robert Black dated 20 January 2017, Coronial Brief, p. 336.

74 Exhibit 166, Statement of Senior Constable David Cavanagh dated 20 January 2017, Coronial Brief, p. 488.

75 Exhibit 166, Statement of Senior Constable David Cavanagh dated 20 January 2017, Coronial Brief, pp. 488–9.

76 Exhibit 166, Statement of Senior Constable David Cavanagh dated 20 January 2017, Coronial Brief, pp. 488–9.

77 Statement of Senior Constable Robert Black dated 20 January 2017, Coronial Brief, p. 337; Statement of Senior Constable Michael Craine dated 20 April 2017, Coronial brief, AM 48, p. 13.

78 Statement of Senior Constable Robert Black dated 20 January 2017, Coronial Brief, p. 337.

79 Exhibit 144, Statement of Senior Constable Roland Jones dated 20 January 2017, Coronial Brief, p. 1134.

80 Statement of Senior Constable James Taylor dated 20 January 2017, Coronial Brief, p. 1671.

81 Exhibit 166, Statement of Senior Constable David Cavanagh dated 20 January 2017, Coronial Brief, p. 489.

82 Exhibit 157, Statement of Leading Senior Constable Martin Kranjc dated 20 January 2017, Coronial Brief, p. 1180.

83 Statement of Senior Constable James Taylor dated 20 January 2017, Coronial Brief, p. 1671.

84 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 402.

85 Exhibit 158, Statement of First Constable Richard Camilleri dated 20 January 2017, Coronial Brief, p. 432; Exhibit 157, Statement of Leading Senior Constable Martin Kranjc dated 20 January 2017, Coronial Brief, pp. 1181–2; Statement of Senior Constable Cody Mourad dated 20 January 2017, Coronial Brief, pp. 1311–2.

86 Statement of Detective Sergeant Sol Solomon dated 9 October 2017, Criminal Brief, pp. 4881–3.

- 8.46 Amphetamines, barbiturates and benzodiazepines were identified in a urine sample taken from the Offender later that day.<sup>87</sup>
- 8.47 The Offender was subsequently charged and found guilty of the murder of the six deceased victims and for recklessly endangering the lives of 27 other injured victims.<sup>88</sup>

## Police, emergency services and civilian response

- 8.48 At about 1.35 pm, Melbourne East 260 came on air to state that they would take charge of the scene at Bourke Street.<sup>89</sup> Shortly afterwards, they stated that the Offender had been shot and was in police custody, and the priority was the victims.<sup>90</sup>
- 8.49 Many police officers, witnesses and emergency workers rendered aid, support and comfort to the dying and wounded along Bourke Street Mall. Neighbouring businesses donated portable defibrillators, first-aid kits and blankets. The response of the Melbourne community to the horrific events on Bourke Street cannot be understated. As noted by AC Fontana in his Critical Incident Review, ‘There is no doubt that the combined actions of all who responded helped save lives and or minimise injury.’<sup>91</sup>

## Immediate circumstances of fatal injuries

- 8.50 The Offender’s actions caused the deaths of Matthew, Thalia, Yosuke, Jess, Zachary and Bhavita, and inflicted serious injuries on 27 others.<sup>92</sup>
- 8.51 As the Offender travelled at speed west along the Bourke Street Mall, he hit *Yosuke Kanno*, who was with a friend, Kashu Matsumoto, just outside the Royal Arcade. He was struck with such force that he was thrown metres forward, landing outside the Bardot store. He was assisted by police officers SC Farano and SC Hamilton and an off-duty paramedic, Alison Ray.<sup>93</sup> Despite their best efforts, he died at the scene.
- 8.52 The Offender continued along Bourke Street and across the intersection at Elizabeth Street. He struck *Jess Mudie* who was with five colleagues on the footpath between Elizabeth and Queen streets. She was thrown into the wall of a nearby building. Witnesses and police officers immediately rendered assistance. Jess was unable to be revived and died at the scene.
- 8.53 Near the intersection of Bourke and McKillop streets, the Offender struck *Matthew Si* who had just had lunch with his wife and was on his way back to work. The force of the impact threw him forward onto the road at the intersection of Queen and Bourke streets.<sup>94</sup> Bystanders immediately assisted him. He was transported to the Royal Melbourne Hospital and died later that afternoon.
- 8.54 *Bhavita Patel* was crossing Queen Street when she was struck by the Offender’s vehicle from behind. She was thrown some distance in the air and landed outside 461 Bourke Street. Witnesses, including an off-duty doctor, Dr Rebecca Barton, immediately rendered aid until paramedics arrived. Bhavita was taken to the Royal

87 *DPP v Gargasoulas* [2019] VSC 87, p. 7.

88 *DPP v Gargasoulas* [2019] VSC 87, p. 1.

89 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 8.

90 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), pp. 8–9.

91 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 348.

92 References for this come from the Sentencing Remarks of JA Weinberg, *DPP v Gargasoulas* [2019] VSC 87, pp. 1–6.

93 Statement of Kashu Matsumoto dated 21 January 2017, Criminal Brief, p. 2; Statement of Senior Constable Robert Hamilton dated 20 January 2017, Coronial Brief, p. 94; Statement of Alison Ray dated 20 January 2017, Criminal Brief, p. 2; Statement of Dr Michael Cooper dated 21 April 2017, Criminal Brief, p. 3; Statement of Haley Fothergill dated 3 May 2017, Criminal Brief, p. 2.

94 Statement of Brett Cunningham dated 23 January 2017, Criminal Brief, p. 2; Statement of James Duffield dated 11 April 2017, Criminal Brief, p. 1; Statement of Brandon Walker dated 19 March 2017, Criminal Brief, p. 2.

Melbourne Hospital by ambulance. Despite a number of medical interventions, she died eight days later in hospital from the injuries she received. She never regained consciousness.

- 8.55 *Thalia Hakin* was crossing Bourke Street near the corner of Chancery Lane with her younger sister Maggie and her mother Nathalie when the Offender's vehicle struck them. Thalia received a catastrophic head injury. Her mother and sister were severely injured. Numerous witnesses, including an off-duty emergency nurse and police came to her aid. Despite their heroic efforts, Thalia was unable to be resuscitated and died at the scene.
- 8.56 *Zachary Matthew Bryant* was being pushed in his pram with his sister Zara by their nanny, Aaryn Melzer, when the Offender's vehicle struck them. Baby Zachary was thrown with such force he landed almost 68 metres from the point of impact. Police officers and a student paramedic rendered immediate medical assistance to Baby Zachary. Attending police officers, including Sgt Peck, SC Ralston, DSC Jessica Graham, FC Robert Wren and FC Benjamin Laird, rendered first aid to Zachary and transported him to the Royal Children's Hospital in a police convoy. Baby Zachary died in hospital the following day from his injuries.

## Other injured pedestrians

- 8.57 It is only by sheer chance more people were not killed by the Offender's actions. Twenty-seven other pedestrians were struck and seriously injured by the Offender as he drove at high speed along Bourke Street Mall and the footpath.
- 8.58 The circumstances in which these victims sustained their physical injuries are summarised in this section. These details are drawn from the CCTV footage compiled at various locations along Bourke Street<sup>95</sup> and the Sentencing Remarks of His Honour Justice Weinberg,<sup>96</sup> along with statements provided by the victims and witnesses for the criminal brief of evidence.
- 8.59 *Hugh Johnston*, aged 13, was in the city with his father celebrating his birthday when he was struck by the vehicle outside the Causeway immediately west of the ANZ Bank on Bourke Street. He was conveyed to the Royal Children's Hospital by ambulance with non-life-threatening head injuries.
- 8.60 *Dilan Hoole*, aged 47, was struck by the vehicle between the Royal Arcade and ANZ Bank. He was taken to hospital by ambulance suffering a broken leg.
- 8.61 *Jelena Susa*, aged 30, was on her lunch break and had just left David Jones when she was struck by the vehicle outside the entrance to Royal Arcade. She suffered serious injuries including a lacerated spleen, a pelvic fracture and a spinal injury. She remained in hospital for seven days.
- 8.62 *Kashu Matsumoto*, aged 20, was walking with Yosuke Kanno when he was struck by the vehicle outside the Amart Sports store. He suffered a minor leg injury. CCTV footage shows Mr Matsumoto crawling to the aid of Yosuke after he was struck.
- 8.63 *Michael Hepponstall*, aged 49, was on his lunch break walking through the Bourke Street Mall when he was struck by the vehicle and thrown to the side of the road at Elizabeth Street. He sustained lower limb fractures and cuts to his head.

95 CCTV footage by Location (45 x locations), Exhibit 303, Coronial Brief.

96 *DPP v Gargasoulas* [2019] VSC 87, pp. 1–6.

- 8.64 *Erin Shi*, aged 18, was in the city shopping with a friend and was crossing Bourke Street at the intersection of Elizabeth Street when she was struck by the vehicle and flung into the wall of the nearby Commonwealth Bank. She suffered critical head injuries and remained in a coma and on life support for 26 days in hospital.
- 8.65 *Kim Trinh*, aged 34, was on her lunch break when she was struck by the vehicle outside 385 Bourke Street. She suffered pelvic and rib fractures, multiple abrasions and bruising. She remained in hospital for three weeks. She was 15 weeks pregnant at the time. Fortunately, her baby was not harmed.
- 8.66 *Nethra Krishnamurthy*, aged 32, was going out for a coffee with her husband when she was struck at the same location as Ms Trinh. She suffered multiple traumatic injuries involving her spine, chest and abdomen.
- 8.67 *Melinda Cleland*, aged 38, was on her lunch break, meeting friends in the Bourke Street Mall. She noticed the vehicle approaching her but was struck as she attempted to run back to the alcove of her building. She sustained rib fractures and multiple abrasions.
- 8.68 Colleagues *Stuart Wilkinson* and *Luke Winter* were on their way back to work after lunch when they were both struck by the vehicle. Mr Wilkinson, aged 48, suffered a fractured left foot, multiple bruises, cuts and abrasions. Mr Winter, aged 34, suffered multiple cuts and bruises.
- 8.69 Colleagues *Trent Churchill*, *Michelle Klobas*, *Scott Van Bronswijk*, *Roberto Jaro Erazo*, *Belinda Spencer* and Jess Mudie were on their way to lunch at a restaurant in McKillop Street when they were struck by the vehicle outside 415 Bourke Street.
- 8.70 Mr Churchill, aged 31, suffered a broken leg that required surgery, a non-life-threatening head injury, multiple abrasions, bruising and post-traumatic amnesia. He spent 21 days in hospital and required extensive rehabilitation.
- 8.71 Ms Klobas, aged 47, sustained multiple fractures, spent two-and-a-half weeks in hospital and required months of rehabilitation.
- 8.72 Mr Van Bronswijk, aged 31, suffered fractures of the leg, shoulder and face.
- 8.73 Mr Jaro Erazo, aged 46, suffered open fractures to both legs, requiring surgery. He spent seven days in hospital and needed months of rehabilitation.
- 8.74 Ms Spencer, aged 33, suffered a fractured pelvis.
- 8.75 *Shin Jiet Lim*, aged 25, was walking along Bourke Street on his way to his office when he was struck by the vehicle west of 423 Bourke Street. He suffered multiple traumatic injuries, including fractures to his leg, shoulder and back.
- 8.76 *Chang Zheng*, aged 29, was returning to work after lunch and was next to Mr Lim when he saw the vehicle coming straight at them. He was unable to take evasive action and was struck and thrown over the top of the vehicle. He sustained minor leg injuries.
- 8.77 *Nathalie Hakin*, aged 46, was going to a magic show at the RACV Club in Bourke Street with her daughters *Thalia* and *Maggie*. They were struck by the vehicle as they crossed Bourke Street, near the corner of Chancery Lane. Mrs Hakin was thrown forward and landed on the footpath outside 501 Bourke Street. She suffered multiple fractures, including to her shoulder, ribs, pelvis, ankles, fingers and back. She spent months in hospital. Maggie suffered a broken leg and deep lacerations.

- 8.78 *Zara Matthew Bryant*, aged 2, and her younger brother Zachary were with their nanny, *Aaryn Melzer*, aged 23. They were returning home after a visit to Melbourne Museum. Zara and Zachary were in a pram built for two children. As they reached 501 Bourke Street, they were struck from behind by the Offender's vehicle. Zara was ejected from the pram ahead of where Baby Zachary was thrown and landed outside the entrance to 535 Bourke Street. She suffered serious injuries, including a skull fracture, brain injury, facial injuries and spinal fractures. Ms Melzer sustained a minor leg injury.
- 8.79 *Serkan Hasan*, aged 28, was on his lunch break and had started walking up Bourke Street towards William Street when he was struck by the vehicle. He suffered a fractured skull, brain injury, broken nose and a broken leg. He spent seven days in hospital.
- 8.80 *Margaret Elliott*, aged 85, was on her way to the RACV Club to meet her husband when she was struck by the vehicle. She received minor injuries that were a result of being struck by Mr Hasan, who had been thrown into her by the force of the vehicle's impact.
- 8.81 *Peter Harry* and his partner *Briony Muller* were returning from lunch when they were both struck by the vehicle at the corner of William and Bourke streets. Mr Harry, aged 40, suffered extensive injuries, including fractures to his skull, face, ribs and spine, which all required surgery. He also suffered internal injuries and brain trauma. Ms Muller, aged 37, suffered abrasions, bruises and a head injury that required stitches.
- 8.82 *Paul O'Brien*, aged 37, was outside 140 William Street after leaving the gym at the RACV Club when he was struck by the vehicle. He suffered a fractured skull, head lacerations, facial injuries, fractured ribs, lacerations to his leg, sprained ankle and post-traumatic amnesia.
- 8.83 I acknowledge the ongoing physical and psychological trauma experienced by these victims. I also acknowledge the untold number of family and friends, witnesses, first responders and emergency services personnel who continue to suffer from the trauma associated with the events of this day.

## Analysis of issues

### Importance of continuity of command in incident control

- 8.84 At 1.21 pm, DSgt Vohmann announced on channel 01-02 that he was now incident controller.<sup>97</sup> The circumstances surrounding this handover from DSgt Barry to DSgt Vohmann are unclear and confused. At Inquest, DSgt Barry said that he had a conversation with DSgt Vohmann at about this time and handed over the role of tactical command to him, so that DSgt Barry could focus on getting the application for the SSU done he would not be able to listen properly to the radio channel at that point.<sup>98</sup> However, DSgt Vohmann provided evidence that he had taken it upon himself to nominate as incident controller, to 'appease [SSgt] Poynder in relation to who was running it and what was happening'.<sup>99</sup> DSgt Vohmann responded 'no' when asked whether DSgt Barry had told him to nominate himself as incident controller.<sup>100</sup>

97 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) as amended by Sergeant Shannon Grant, AM 89, p. 50.

98 Transcript of evidence, p. 915.

99 Transcript of evidence, pp. 3298–9.

100 Transcript of evidence, p. 3298.

- 8.85 Police communications reflect this confusion and uncertainty as to who was in control of the incident. At 1.19 pm, police communications asked Port Phillip 508 whether they had an incident controller as they followed the Offender from Cruickshank Park. Port Phillip 508 replied ‘negative at this stage’,<sup>101</sup> and Sgt Gilmour (Altona North 450), offered to take control of the incident.<sup>102</sup> Police communications confirmed this arrangement, but shortly afterwards, at 1.21 pm, DSgt Vohmann broadcast that, ‘I am the incident controller in relation to this incident from now on. I have knowledge of the job. Can you please run all the updates through me; I’ll monitor this job.’<sup>103</sup> DSgt Vohmann had to then be prompted at 1.22 pm to provide direction as to whether units would switch channels to 03-01 as the Offender crossed back into the Port Phillip police service area.<sup>104</sup> DSgt Barry agreed there was a possibility that CIRT and CIU officers hearing those radio transmissions may not have understood that DSgt Vohmann was now the tactical commander.<sup>105</sup>
- 8.86 Despite being incident controllers, there is nothing to suggest that either DSgt Barry or DSgt Vohmann had a proper understanding of the deteriorating nature of the text communications between DSC Gentner and the Offender and what these messages may have suggested about the Offender’s behaviour, his mental state and the dangers he presented.
- 8.87 The extent of DSgt Vohmann’s knowledge of the incident at that time appears to be set out in his written statement, where he outlines that he:
- ... was aware that the Police Air Wing were monitoring the movements of the stolen vehicle, that [DSC] Gentner was in intermittent contact with [the Offender] attempting to negotiate a peaceful surrender, that the [CIRT] had been briefed in relation to the incident and were in proximity to the stolen vehicle at Cruickshank Park and that there were several unmarked police vehicles also in proximity to Cruickshank Park, in a position to assist with an arrest if required.<sup>106</sup>
- 8.88 The only relevant transmission on the CIU TAC channel after Yarraville on this subject was at approximately 1.19 pm when Port Phillip 508 informed Port Phillip 507 that ‘we’re trying to call him and he’s just ignoring us’.<sup>107</sup>
- 8.89 There were no transmissions by DSgt Vohmann on the CIU TAC channel after he nominated himself as incident controller, and it appears he was not well placed to assume the role at short notice. From about 12.44 pm, he and DSC Epstein had been busy with enquiries at Princes Street, St Kilda. They were dealing with potential evidence from Nathan Clapham’s premises and trying to use a commercial smartphone application to track Mr Clapham’s phone, which was then in the Offender’s possession.<sup>108</sup>

101 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 48.

102 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 48.

103 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 50.

104 Exhibit 173, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 01-02 (Werribee & Yarraville) amended by Sergeant Shannon Grant, AM 89, p. 51.

105 Transcript of evidence, p. 916.

106 Exhibit 188, Statement of Detective Sergeant Adam Vohmann dated 8 February 2017, Coronial Brief, p. 1771.

107 Exhibit 129, Corrected Transcript of Victoria Police D24 Radio Communications—Channel 03-15 (TAC Channel) amended by Counsel for CIU and CIRT members, AM 67, p. 19.

108 Exhibit 188, Statement of Detective Sergeant Adam Vohmann dated 8 February 2017, Coronial Brief, p. 1770; Exhibit 189, Handwritten Notes of Detective Sergeant Adam Vohmann, Coronial Brief, p. 4990; Exhibit 185, Handwritten Notes of Detective Senior Constable Shoshanna Epstein dated 20 January 2017, Coronial Brief, p. 2205; Exhibit 184, First Statement of Detective Senior Constable Shoshanna Epstein dated 8 February 2017, Coronial Brief, pp. 581–2.

- 8.90 In evidence, DSgt Vohmann asserted that he had sufficient knowledge of the state of the operation to take over the role of incident controller and that he was not meaningfully hampered in that role by being remote from the office at a secondary crime scene.<sup>109</sup> When asked why he took on the role from DSgt Barry at that time, his unconvincing reply was ‘potentially because I’m in the field’.<sup>110</sup>
- 8.91 Counsel Assisting submitted that this reasoning did not stand up to logical scrutiny because DSgt Vohmann was, possibly, of all the senior members of Port Phillip CIU, the most disconnected from the operation at that time.<sup>111</sup> Although he could monitor developments via his portable radio, he had otherwise been engaged at Princes Street for more than 35 minutes.<sup>112</sup> Counsel Assisting submitted that there was no good reason for the change of command to DSgt Vohmann at that stage of the operation, except that it appears to have been in response to the concerns raised by SSgt Poynder and police communications, and the fact that DSgt Barry had handed over the role to him while he was preoccupied with the SSU application. It was submitted by Counsel Assisting that this was indicative of the command and control breaking down almost entirely.<sup>113</sup> SSgt Poynder concluded with the pointed advice, ‘Well, you need to get on the air and start controlling this.’<sup>114</sup>
- 8.92 In response to these criticisms, Counsel for the CIU and CIRT submitted:
- ... there was clearly good reason to hand over Incident Controller to someone else who was experienced, knew about the ‘job’ but was otherwise removed from the Offender in the field. The handover represented a continuity in command within Port Phillip CIU.<sup>115</sup>
- 8.93 It was further submitted by Counsel for the CIU and CIRT that there was no breakdown in command and control within Port Phillip CIU, and DSgt Vohmann was the best person to step in for DSgt Barry at that time.<sup>116</sup> I was directed to the following evidence in support of the appropriateness of DSgt Vohmann taking over the role of incident controller:<sup>117</sup>
- a. DSgt Vohmann was involved in the initial briefings<sup>118</sup>
  - b. he was well apprised of the original plans and of the developments throughout the day<sup>119</sup>
  - c. he was aware that DSC Gentner was following the Offender and that he had been in communication with him in an attempt to negotiate resolution<sup>120</sup>
  - d. he had been in contact with DSC Gentner<sup>121</sup> and SSgt Poynder<sup>122</sup>
  - e. he had been directly involved in developing a strategy with DSgt Barry earlier in the day and had a good understanding of the operation.<sup>123</sup>

109 Transcript of evidence, p. 3301.

110 Transcript of evidence, p. 3302.

111 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 143.

112 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 143.

113 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 143.

114 Transcript of evidence, p. 3104.

115 Submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 56.

116 Submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 57.

117 Submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, pp. 56–7.

118 Transcript of evidence, pp. 3278–9.

119 Transcript of evidence, pp. 3282, 3291–2, 3296, 3298.

120 Transcript of evidence, pp. 3285, 3317–8.

121 Transcript of evidence, pp. 3299–300; 3318.

122 Transcript of evidence, p. 3298.

123 Transcript of evidence, p. 3301; Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, pp. 56–7.

- 8.94 Despite the submissions on behalf of the CIU and CIRT members, I find the timing of the change of incident controller and the manner in which it occurred was indicative of a significant breakdown of Port Phillip CIU’s command and control.
- 8.95 DSgt Vohmann stated that, at approximately 1.25 pm, he broadcast via police radio a resolution strategy for the information of all police units involved in the incident.<sup>124</sup>
- 8.96 While I accept that DSgt Vohmann did not have the benefit of the transcript of the police communications at the time he made his statement, the actual transmission varied greatly to his memory. At 1.25 pm, he broadcast the following on channel 03-01:
- Yeah received. Can they maintain obs as indicated at this stage? I’ve got a member conversing with the offender in the vehicle. We’re trying to get him to voluntarily ... voluntarily surrender at this stage. That’s the current resolution plan.<sup>125</sup>
- 8.97 Despite DSgt Vohmann’s transmission, at 1.27 pm Sgt Griffith asked the operator on channel 03-01 to get an incident controller from the city to take over command. This request was acknowledged and put on hold to allow an update from Port Phillip 508. It is possible that at the time she made her transmission, Sgt Griffith may not have known about or heard the transmission of DSgt Vohmann.<sup>126</sup> However, it is clear, having reviewed transcripts of the police communications, that DSgt Vohmann announced he was the incident controller on channel 01-02, while the Offender was coming across the West Gate Bridge then, after changing over to channel 03-01, he next asked whether police were aware of an incident coming into their area. It is clear he did not broadcast on channel 01-01 (CBD channel) that he was the incident controller.
- 8.98 Almost six minutes after the change to channel 03-01 occurred, a decision was made to switch channels again, this time from channel 03-01 to 01-01. This meant that when the Offender approached the CBD, police in the CBD were not privy to what had been occurring at that time, nor what had occurred<sup>127</sup> earlier that day. They were caught completely unaware.
- 8.99 In his statement, DSgt Vohmann declared, ‘I directed all police units involved in the incident to switch to the local police radio channel covering the Melbourne CBD area.’<sup>128</sup> However, the transcript of the police communications of this channel confirmed DSgt Vohmann only transmitted his call sign ‘Port Phillip 550’<sup>129</sup> and the operator acknowledged his response.<sup>130</sup> There was no further transmission from DSgt Vohmann on channel 01-01. In evidence, he said that he didn’t think he tried at the time ‘because the Air Wing were very particular that, “we need some clear air on the channel”’.<sup>131</sup> I consider this is an extraordinary position to hold for someone who was the incident controller and did not think it was necessary or appropriate to provide leadership or guidance for units on the ground during a critical incident.

124 Exhibit 188, Statement of Detective Sergeant Adam Vohmann dated 8 February 2017, Coronial Brief, p. 1771.

125 Exhibit 16, Transcript of Victoria Police D24 Radio Communications—Channel 03-01 (Afternoon), p. 2.

126 Exhibit 201, Operation Titan Critical Incident Review, p. 284.

127 Transcript of evidence, p. 1987.

128 Exhibit 188, Statement of Detective Sergeant Adam Vohmann dated 8 February 2017, Coronial Brief, p. 1772.

129 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 2.

130 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 2.

131 Transcript of evidence, p. 3307.

- 8.100 At 1.31 pm, police communications asked the uniform patrol supervisor for the Melbourne East and Southbank areas (East 252), Sgt Capodiferro, whether he would be the incident controller, and he agreed.<sup>132</sup> Sgt Capodiferro was completely unaware of the previous interactions with the Offender. He learnt of the Offender's vehicle travelling along the tram tracks in Flinders Street from police communications shortly before the Offender began performing donuts.<sup>133</sup> He was placed in the unenviable position of becoming the incident controller for an incident of which he had absolutely no knowledge at a time when he had been 'listening to the radio trying to figure out what was occurring'.<sup>134</sup> He was not aware that Port Phillip CIU or CIRT units were already in the vicinity of the CBD or that police units had previously been following or been in pursuit of the Offender's vehicle.<sup>135</sup>
- 8.101 Despite this enormous disadvantage, he said he would take control and asked what units were in the vicinity.<sup>136</sup> He requested the assistance of K9 and CIRT units. To his knowledge, only Melbourne East 317, Melbourne 628, Southbank 306 and himself were in a position to attend.<sup>137</sup> This incident demonstrates the perils of changing channel during an emerging critical incident.
- 8.102 The Divisional Supervisor for the CBD, A/SSgt Bruce (Melbourne 265), had obtained limited knowledge of the Offender's behaviour earlier that morning, when he was informed of the termination of the pursuit at Moray Street in South Melbourne by the 01-01 radio operator.<sup>138</sup> He subsequently heard communications from the CIRT units on channel 03-01 about the attempted arrest of the Offender at Wurundjeri Way. A/SSgt Bruce had also heard communications suggesting the Offender was psychotic and drug-affected and that he had made threats to kill people and police members. He also reviewed the Incident Fact Sheet.<sup>139</sup> Nevertheless, at the time he was alerted to a vehicle being driven eastbound along the tram tracks on Flinders Street, he had not associated this with the earlier incidents involving the Offender. This was not clarified until the Offender was performing donuts at the intersection of Flinders and Swanston streets.<sup>140</sup>
- 8.103 It is evident that continuity of command is crucial in an unfolding and dynamic policing environment such as the one that occurred on 20 January 2017. An important facet of policing, especially during an incident, is to provide regular communications about the nature of the situation and directions about possible resolution strategies. Such communications ensure all members listening to a local police channel have optimal situational awareness and understand established command, plans, roles and responsibilities. A lack of continuity of command and communication by police during an evolving incident can place members of the public at great risk of harm due to a dearth of crucial information being known—which is what occurred when the incident controller was changed multiple times and in quick succession.

132 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 4.

133 Statement of Sergeant Mitchell Capodiferro dated 1 April 2017, Coronial Brief, p. 444.

134 Statement of Sergeant Mitchell Capodiferro dated 1 April 2017, Coronial Brief, pp. 444–5.

135 Statement of Sergeant Mitchell Capodiferro dated 1 April 2017, Coronial Brief, pp. 444–5.

136 Exhibit 17, Transcript of Victoria Police D24 Radio Communications—Channel 01-01 (CBD), p. 4.

137 Statement of Sergeant Mitchell Capodiferro dated 1 April 2017, Coronial Brief, p. 445.

138 Statement of Detective Acting Senior Sergeant Andrew Bruce dated 24 January 2017, Coronial Brief, p. 384.

139 Statement of Acting Senior Sergeant Andrew Bruce dated 24 January 2017, Coronial Brief, p. 384.

140 Statement of Acting Senior Sergeant Andrew Bruce dated 24 January 2017, Coronial Brief, pp. 383–5.

## Challenges of frequent radio channel changes in cross-border operations

8.104 As events unfolded throughout the morning and early afternoon of 20 January 2017, Operation Invokes moved across police service areas, from Port Phillip to the North Western Metropolitan region, back to Port Phillip, and then on to the Melbourne CBD. Each area had its own police radio communication channel and, so, each crossing of a geographical boundary involved a change of communication channel. With each of these channel changes, there was a different uniform patrol supervisor (251), each having various levels of knowledge about the preceding events and nature of the unfolding incident.

Two TAC channels were also being used concurrently: one with the Port Phillip CIU and one with CIRT. The utility of the TAC channels is that they permit a more rapid 'car-to-car' communication without the involvement of police communications and without the radio traffic of other operational units in the area. The downside is that when transmissions are confined to TAC channels, the information is not broadcast or heard by other general and supervisory units in the area of operation. Those issues compound when mobile phones are used to communicate between units with key information not being communicated on the radio channels.

8.105 Shortly before the Offender entered the CBD, a number of units from Port Phillip CIU had been following the Offender as he drove from Cruickshank Park, across the West Gate Bridge and along Williamstown Road towards the CBD. AC Fontana considered that this was being treated as a vehicle follow rather than a police pursuit.<sup>141</sup> At Inquest, DSC Gentner accepted that, by following the Offender over the West Gate Bridge and along Williamstown Road, they were in a pursuit, but at the time he did not consider it as such.<sup>142</sup> AC Fontana said the circumstances of the follow 'met the criteria for a cross-channel/cross-division pursuit which means all units should have remained on the originating channel and pursuit control should not have changed'.<sup>143</sup> However, because it was treated as a follow, the channel was twice changed and critical information was not passed on. This issue is discussed in Part 7 of the Finding.

8.106 Critically, in the five minutes during which the Offender drove eastbound along Williamstown Road, Port Melbourne, and entered Flinders Street in Melbourne's CBD, there were two changes of police radio channel. These channel changes caused significant disadvantage to the police officers in the CBD due to a lack of knowledge of the evolving situation, and contributed to the confusion about who was in command and control of the incident.

8.107 Police units in the CBD only became aware of the Offender after he was travelling eastbound on Flinders Street. They had limited-to-no knowledge of the interactions various police units had had with him over the preceding minutes, hours and days, including the stabbing of Angelo Gargasoulas, the threats to 'kill all', nor the attempts to negotiate a surrender and his consistent avoidance of apprehension.

<sup>141</sup> Exhibit 201, Operation Titan Critical Incident Review, p. 286.

<sup>142</sup> Transcript of evidence, p. 214.

<sup>143</sup> Exhibit 201, Operation Titan Critical Incident Review, p. 286.

8.108 According to AC Fontana, the channel and incident controller changes in such a short time frame:

... resulted in lack of continuity in control of the incident and communication controllers, causing confusion and disadvantage to N101 with little or no warning or background of events leading up to the incident crossing to the channel.<sup>144</sup>

8.109 AC Fontana was critical that ‘there was no continuity of leadership for this critical incident’.<sup>145</sup> In his opinion, the circumstances required the early appointment of an independent incident controller, who had a full ‘helicopter’ view of the event.<sup>146</sup> It was originally DSgt Barry; however, the evidence was that he was not listening to police communications at this stage because he was preoccupied with the request for SSU and had handed it over to DSgt Vohmann. In the circumstances, DSgt Vohmann should have remained as incident controller and given the necessary directions.

8.110 As the Offender was doing donuts at the corner of Flinders and Swanston streets, DSgt Vohmann was still at Mr Clapham’s house in St Kilda<sup>147</sup> and Sgt Capodiferro took over as the incident controller. In evidence, DSgt Vohmann was unable to say how this all unfolded.<sup>148</sup> Once it was broadcast that the Offender was doing donuts, DSgt Vohmann’s thinking was to let the vehicle go and get out of the area because he believed that police may have potentially been aggravating the Offender’s behaviour. His evidence was that he was trying to think about what could be done.<sup>149</sup>

8.111 It was submitted by Counsel Assisting that if DSgt Vohmann considered that the Offender’s behaviour was aggravated by the presence of police, ‘it is regrettable that he did not take an active role as the incident controller but instead left command of the situation to another unit that had ... essentially no forewarning’.<sup>150</sup> Further, despite the best efforts of Sgt Capodiferro, as was submitted by Counsel Assisting, ‘in reality, there was nothing he could do to command the units in Swanston Street in any more effective manner’.<sup>151</sup>

8.112 As the operation crossed over police geographical boundaries and made its way back into the CBD, it placed the operational CBD supervisors and general duty units at a profound disadvantage. This meant that Sgt Capodiferro had no knowledge of an evolving incident that had been operational for hours.

8.113 A number of witnesses provided some insight into the challenges associated with channel changes during each incident.

8.114 In evidence, DSC Burnett conceded that this ‘would make it difficult for them not having all that information’.<sup>152</sup>

8.115 A/SSgt Gooden explained that when an operation crosses to another channel:

... you have to change radio channels, you then have to relay again what the job is that’s come into their area ... they’ve got to get an understanding of what the job is before they can make a call on actions.<sup>153</sup>

144 Exhibit 201, Operation Titan Critical Incident Review, p. 286.

145 Exhibit 201, Operation Titan Critical Incident Review, p. 295.

146 Exhibit 201, Operation Titan Critical Incident Review, p. 295.

147 Exhibit 188, Statement of Detective Sergeant Adam Vohmann dated 8 February 2017, Coronial Brief, p. 1772.

148 Transcript of evidence, p. 3307.

149 Transcript of evidence, pp. 3307–8.

150 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 152.

151 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 155.

152 Transcript of evidence, p. 1927.

153 Transcript of evidence, p. 2912.

8.116 Sgt Grant emphasised the importance of maintaining continuity of the incident controller. She said that when an incident crosses police borders, a sergeant would broadcast on the new channel that they had an incident coming their way, request a forward commander and advise what was known.<sup>154</sup> This requires the sergeant in the new region to quickly obtain as much information as possible, make the necessary risk assessments, conduct a safety briefing, advise the units on the channel of the plan and then manage an operation of which they have no prior knowledge.<sup>155</sup> She described that, ... if we change channels, I change channel with the job and I come up on channel as the forward commander ...<sup>156</sup> This seems to be an appropriate response.

8.117 DSgt Barry appeared to downplay the potential issue:

... the difficulties of changing channel and not being aware necessarily where the offender was ... quickly enough to be able to get those channels to start communicating with and making phone calls with them, but certainly, you know, as an operational member, the ability to make quick decisions based on limited information, you know, is an important skill to have.<sup>157</sup>

8.118 Counsel Assisting submitted that this logic was flawed<sup>158</sup> because the incident controller is the person who is in the best position to exercise command and importantly, they possess the relevant information.<sup>159</sup>

8.119 The *Pursuit Policy* recognises the importance of maintaining continuity of command and radio channel when a pursuit moves across a police boundary. It requires the pursuit to remain on the originating channel and for the original pursuit controller to retain control and management of the pursuit.<sup>160</sup>

8.120 It was submitted by Counsel Assisting that had the operation to follow the Offender from Yarraville been treated as a pursuit, and the requirements of the *Pursuit Policy* been followed, the problems associated with the changes to incident controller would have been avoided.<sup>161</sup>

8.121 To counter this problem, Victoria Police has introduced a new VPM *Urgent Duty Driving* that now includes extended following of vehicles.<sup>162</sup> When this occurs, it requires active management from a patrol supervisor, analogous to a pursuit controller. This is discussed in further detail in Part 9 of the Finding.

154 Transcript of evidence, p. 2959.

155 Transcript of evidence, p. 2959.

156 Transcript of evidence, p. 2959.

157 Transcript of evidence, p. 908.

158 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 76.

159 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 76.

160 Exhibit 19, Victoria Police Manual *Pursuit Policy* (2017), Coronial Brief, p. 2790; Exhibit 204, Victoria Police Manual *Pursuit Policy* (current), Coronial Brief, p. 2809.

161 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 77.

162 Exhibit 228, Victoria Police Manual *Urgent Duty Driving Policy* (unpublished), AM 98-5.

8.122 The Officer in Charge of the PCC, Insp Peter Ferguson, detailed the advantages and disadvantages of an operation such as this one remaining on a single channel.<sup>163</sup>

The advantages were:

- a. communications are dedicated to the operation at hand
- b. there is greater airtime available to the operation
- c. only units involved in the operation are involved in the communications
- d. there are no competing emergency calls, other operations or vehicle/person checks occurring on the radio.<sup>164</sup>

8.123 Counsel Assisting submitted that, in listing the advantages, Insp Ferguson failed to mention the importance of continuity of command.<sup>165</sup>

8.124 The disadvantages included:

- a. lack of informed communications across the new division, which potentially creates a risk to non-involved units. This means there are police units operating in that area whose members may have no idea the operation is underway
- b. while supervisory units in the new division must remain on their local radio channel to supervise their local area, they are also responsible as supervisors for the operation occurring in their region and this will be required to operate off two radio channels with a commensurate loss of awareness
- c. there is the loss of potential support from specialist and other units that may be in the area performing other functions or tasks
- d. there is a need for police forward commanders to maintain the event and division communications simultaneously.<sup>166</sup>

8.125 Counsel Assisting submitted that multiple channel changes of incident controller in quick succession is self-evidently a significant problem that needs to be addressed.<sup>167</sup>

8.126 Insp Ferguson noted that, to the best of his knowledge, there have been no reviews by Victoria Police into radio communication when a police operation crosses into a different division.<sup>168</sup> Consequently, Counsel Assisting suggested a potential recommendation<sup>169</sup>, which is discussed later in this Part of the Finding.

8.127 Submissions on behalf of the Families agreed with Counsel Assisting's assertion of the importance of the continuity of command and 'that the aim must be to have an incident controller who is in the best position to exercise command and who is in possession of all relevant and up-to-date information.'<sup>170</sup>

163 Exhibit 208, Statement of Inspector Peter Ferguson dated 19 December 2019, AM 91-8.

164 Exhibit 208, Statement of Inspector Peter Ferguson dated 19 December 2019, AM 91-8.

165 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 78.

166 Exhibit 208, Statement of Inspector Peter Ferguson dated 19 December 2019, AM 91-8.

167 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 79.

168 Exhibit 208, Statement of Inspector Peter Ferguson dated 19 December 2019, AM 91-10.

169 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 79.

170 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 20.

8.128 Counsel for the CCP submitted that:

Victoria Police recognises that with dynamic and rapidly changing police operations, there is a need for continuity of radio communications across different police divisions. This is particularly so with police pursuits. Victoria Police policy dictates that a pursuit is to remain on the originating radio channel and that the original pursuit controller will retain control and management of the pursuit.<sup>171</sup>

8.129 The CCP conceded that ‘it was not appropriate to change from channel 01-02 to 03-01 and very shortly thereafter to 01-01, the radio channel for the CBD’.<sup>172</sup> These channel changes caused challenges to the city units that included ‘a lack of informed communications across the new division and the need to engage new supervisory units to act as incident controllers’.<sup>173</sup>

8.130 The CCP accepted that it was important for police units in the CBD to be relevantly informed of background information and new developments, and that the police units and supervisors in northwestern region and the CBD were disadvantaged by the lack of informed communications across the new division and the need to engage new supervisory units to act as incident controllers.<sup>174</sup>

8.131 The CCP further submitted that:

... it is a fundamental component of police training and operational experience that all relevant information/intelligence should be conveyed to all members involved in an operation so that informed decisions can be made about strategies to locate and arrest an offender. That relevant information includes details of an offender’s demeanour, background, circumstances of their offending and prior attempts to locate and arrest.<sup>175</sup>

8.132 Counsel for the CIU and CIRT members conceded that ‘better communication is always preferable’<sup>176</sup> and further:

... with the benefit of hindsight, opportunities for improved communications can always be identified. That is because what is important and germane to the task or issue may not be as evident in the agony of the moment as they become in light of subsequent events, including the opportunity to receive and evaluate a number of different perspectives. This is not the function of policing but of the human condition and experience. However, reflected opportunities for improvement do not equate to a conclusion that what occurred was unreasonable.<sup>177</sup>

8.133 I completely agree. It is clear the recent incident that had been evolving since Cruickshank Park was treated as a follow and not a pursuit at the time, meaning there was no pursuit controller to provide leadership and supervision of this incident and, therefore, there was no continuity of command and control, and significant knowledge and intelligence about the Offender and the events of the day were simply lost.

171 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 86.

172 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 86.

173 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 86.

174 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 86.

175 Outline of Reply Submissions of the Chief Commissioner of Police dated 11 June 2020, p. 10.

176 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 53.

177 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 59.

- 8.134 I find that multiple radio channel changes and fragmented handover across multiple channels led to a lack of clarity in roles and responsibilities; in particular, there was confusion about who was the incident controller as the Offender approached the city.
- 8.135 I find that the sudden changes of radio channels caused the city units to be taken by surprise and significantly impeded their ability to quickly respond and provide guidance to other city units.
- 8.136 It is an incident controller's role to not only provide updates on what is occurring to inform everyone listening on the police communications channel but also to direct units to undertake particular actions. I find, with the benefit of hindsight, that members of the Port Phillip CIU should have taken a more active role in controlling this incident as it approached the city and should have attempted to provide all relevant information, advice and direction to the city units. Nonetheless, I am unable to say whether, had this been done, the outcome would have been any different.

## Issues with police communications during time-sensitive incidents

- 8.137 During the Inquest, it became apparent that there were difficulties with police communication when the Offender entered the city, particularly when he reached the intersection of Swanston and Flinders streets.
- 8.138 The frustration and panic in the voice of LSC Andrew Edmonds from the Air Wing as he reported the unfolding events over police communications is palpable. In his statement, LSC Edmonds explained that, as the Offender was speeding up Flinders Street, 'the radio traffic became more frequent and it was difficult for me to get a transmission out as I was repeatedly hearing the busy tone'<sup>178</sup> as another unit was reporting on an unrelated matter. He said, not long after this, he was able to get on air and advise the units that the vehicle was doing donuts in the Flinders and Swanston streets intersection and his intention was to assert the urgency of the situation.<sup>179</sup>
- 8.139 At Inquest, he explained other difficulties associated with police communications from the Air Wing. He said that when they are dealing with a time critical incident, the radio channel does not allow for more than one transmission at a time.<sup>180</sup> He also indicated that to transmit over the radio he has to use a foot pedal.<sup>181</sup> There is an emergency button available for Air Wing to transmit an important communication, but it only gives 10 seconds of unimpeded transmission, which is impractically short in a moment of critical decision-making.<sup>182</sup> Apart from pressing the emergency button, it is difficult to convey an urgent message. He said that previous requests to make that button a priority button had not been followed through.<sup>183</sup> He also expressed concern at having to switch radio channels, as the incident changed geographic location, and tying up the communications channel with pursuits involving Air Wing.<sup>184</sup>

178 Exhibit 186, First and Second Statement of Leading Senior Constable Andrew Edmonds dated 22 January 2017 and 14 June 2017, Coronial Brief, p. 569.

179 Exhibit 186, First and Second Statement of Leading Senior Constable Andrew Edmonds dated 22 January 2017 and 14 June 2017, Coronial Brief, p. 569.

180 Transcript of evidence, p. 3232.

181 Transcript of evidence, p. 3232.

182 Transcript of evidence, p. 3233.

183 Transcript of evidence, p. 3234.

184 Transcript of evidence, pp. 3258–62.

- 8.140 Counsel for the Families submitted that the issues in relation to police communications extended to communications to and from Air Wing. Consistent with the evidence of LSC Edmonds, Counsel for the Families urged me to make a recommendation responding to these issues.<sup>185</sup>
- 8.141 The CCP submitted that a recommendation of this kind should not be made because busy radio traffic is a common occurrence and there is no policy reason for the Air Wing to receive precedence over the radio.<sup>186</sup> It was further submitted that despite the busy communications traffic, LSC Edmonds was still able to communicate effectively. In addition, Victoria Police policy is to not change channels in the course of a pursuit, and this has since been expanded to include extended follows of a vehicle.<sup>187</sup>
- 8.142 I acknowledge LSC Edmonds's frustration about the communication challenges associated with the Air Wing trying to transmit on a channel that is busy. Nonetheless, I accept the explanation provided by the CCP as to why a recommendation is not needed and, consequently, I do not propose to make one in relation to this issue.

## Use of vehicle as a weapon and availability of other tactical options

- 8.143 It is clear that, on 20 January 2017, the Offender intentionally used his vehicle as a weapon. The evidence of operational members and senior officers within Victoria Police was that using a vehicle as a weapon creates additional dangers to its members and the public. This issue was examined extensively at the Inquest.
- 8.144 Evidence adduced starkly exposed the significant practical challenges of stopping a moving vehicle. The use of force is a constant issue that Victoria Police members are faced with every time they deal with armed or violent offenders. This Inquest has shown that finding an appropriate means to neutralise offenders who use their vehicles as a weapon is incredibly difficult and options are limited.
- 8.145 The potential tactical options were thoroughly explored during examination of many police witnesses. It was conceded by AC Fontana that 'there's limited options if he's in the vehicle'.<sup>188</sup> AC Fontana said police deal with offenders like this every day and they would not have expected him to deliberately drive into pedestrians.<sup>189</sup> He admitted that by the time the Offender was at the Flinders and Swanston streets intersection, 'there was very little they could do from here on in terms of decisive action to stop him, without endangering the lives of many people.'<sup>190</sup>
- 8.146 Police members consistently testified about the dangers of intercepting a moving vehicle. DSC Burnett expressed his thoughts:

... you don't want him in the car because, obviously, it's a weapon, but if you can block him in and stop that weapon and that's your arrest or block him in in the street ... But you have to try and isolate that car.<sup>191</sup>

- 8.147 DSC Singh described a vehicle intercept as one of the most dangerous things police do, 'not just in relation to this offender, but it's in general'.<sup>192</sup>

185 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, pp. 21, 25.

186 Outline of Reply Submissions by Chief Commissioner of Police dated 11 June 2020, p. 5.

187 Outline of Reply Submissions by Chief Commissioner of Police dated 11 June 2020, p. 5.

188 Transcript of evidence, pp. 3502, 3569.

189 Exhibit 201, Operation Titan Critical Incident Review, p. 290.

190 Exhibit 201, Operation Titan Critical Incident Review, p. 290; Transcript of evidence, p. 3596.

191 Transcript of evidence, p. 1990.

192 Transcript of evidence, p. 2110.

8.148 As at January 2017 and now, any use of force by a member must be consistent with the legal requirements of s. 462A of the *Crimes Act 1958* (Vic) (**Crimes Act**), which states that:

A person may use such force not disproportionate to the objective as he believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or assist in effecting the lawful arrest of a person committing or suspected of committing any offence.

8.149 Further guidance is provided to police in the Victoria Police Operational Safety Principles, which states that ‘the success of an operation will be primarily judged by the extent to which the use of force is avoided or minimised’.<sup>193</sup>

8.150 In his review of the circumstances of this case, AC Fontana believed that:

Members took appropriate action, in accordance with policy, to resolve this situation with a proportionate use of force and consideration of the safety of themselves and others.<sup>194</sup>

8.151 In January 2018, Victoria Police implemented a new operational safety strategy to better reflect the current policing environment.<sup>195</sup> According to AC Fontana, the changes clarify expectations and improve operational decision-making.<sup>196</sup> The new model acknowledges that Victoria Police members ‘have a role to perform that may, on occasion, require them to undertake tasks that are inherently unsafe to themselves or others’.<sup>197</sup> The three main principles that govern operational decision-making now are Service, Safety and Harm Minimisation. This is discussed in more detail in Part 9 of this Finding.

8.152 The following tactical options were explored further in evidence:

- a. discharge of a firearm
- b. tyre deflation devices
- c. ramming
- d. boxing in/corralling.

## Discharge of a firearm

8.153 The question of whether the use of a firearm was a suitable tactical option was considered in this Inquest. Consensus among police officers was that the use of a firearm in these circumstances carried extreme potential for collateral damage and, according to AC Fontana, is only justified in the most extreme of circumstances.<sup>198</sup>

<sup>193</sup> Exhibit 201, Operation Titan Critical Incident Review, p. 327.

<sup>194</sup> Exhibit 201, Operation Titan Critical Incident Review, p. 330.

<sup>195</sup> Exhibit 201, Operation Titan Critical Incident Review, p. 329.

<sup>196</sup> Exhibit 201, Operation Titan Critical Incident Review, p. 329.

<sup>197</sup> Exhibit 201, Operation Titan Critical Incident Review, p. 329.

<sup>198</sup> Transcript of evidence, p. 3578.

8.154 DSC Gentner said it is incredibly dangerous to shoot at a moving vehicle and there is 'a huge risk with shooting at a moving car for what realistically is a minimal chance of stopping a vehicle. It would be pure luck'.<sup>199</sup> He further explained the difficulty that:

... anyone that's shot a handgun will realise that they're very difficult to shoot accurately, so a moving car with a tyre would be near impossible ... that bullet ... cartridge is then to ... end up ... in a trajectory that you don't know where it's going to go, who it's going to hit.<sup>200</sup>

8.155 Similarly, AC Grainger explained that it was:

Not an option in those circumstances given the risk posed to other members of the community. Firearms don't stop vehicles, they can stop people, but again you would then have a vehicle with some momentum out of control if you had an injured or deceased driver behind the wheel.<sup>201</sup>

8.156 In the circumstances faced by police on 20 January 2017, AC Fontana suggested if a firearm had been discharged, there was a high likelihood of hitting an innocent bystander and shooting at a moving car would be problematic.<sup>202</sup> Having considered this issue, I agree using a firearm to stop the Offender in the city, while he was in a moving vehicle, was not a viable option available to police on the day in question.

## Tyre deflation devices

8.157 Qualified police members are explicitly enabled to deploy tyre deflation devices or vehicle immobilisation devices, also known as stop sticks, 'to stop or assist in stopping a vehicle in connection with the pursuit of a vehicle by police officers'.<sup>203</sup> Stop sticks are a device that can be thrown out onto a road. The device has spikes attached to a long thin panel that when thrown across a road are designed to puncture a vehicle's tyres if the vehicle drives over the device. They are capable of causing a vehicle to stop, or prevent a vehicle from moving, by deflating its tyres.

8.158 As of January 2017, stop sticks could be deployed by qualified members on the authority of an authorising member (namely, a pursuit controller or police commander for an incident or event). This could be used 'as a pursuit resolution strategy or to prevent the use of a vehicle by a person for the purpose of escaping from lawful custody or avoiding arrest'.<sup>204</sup> Their use was governed by the *VPM Tyre Deflation Devices*. Deployment requires a risk assessment to be conducted by the police officer, weighing the feasibility of options with safety as the primary consideration.

8.159 As the Offender made his way along Swanston Street, Melbourne 628 stopped to deploy stop sticks just as the Offender drove past them and onto the opposite footpath.<sup>205</sup> It appears that their opportunity was missed by mere seconds, but, even if Melbourne 628 had managed to deploy the stop sticks, the evidence revealed that there is no guarantee that this would have promptly stopped the vehicle.

199 Transcript of evidence, p. 102.

200 Transcript of evidence, p. 102.

201 Transcript of evidence, p. 3783.

202 Transcript of evidence, p. 3580.

203 Pursuant to s. 63B(1)(c) of the *Road Safety Act 1986* (Vic).

204 Victoria Police Manual *Tyre Deflation Devices*, an exhibit to Statement of Assistant Commissioner Elizabeth Murphy with attachments dated 24 January 2020.

205 Statement of Senior Constable Justin Holland dated 8 February 2017, Coronial Brief, p. 1003.

8.160 AC Grainger commented:

... to safely deploy at that location would have been incredibly difficult. The consequence of deflating tyres potentially impacts the drivability of the accused's vehicle, the potential for the accused to lose control of that vehicle having had their tyres deflated potentially is a significant risk to the community and to the offender.<sup>206</sup>

8.161 AC Fontana provided an overview of the limitations of stop sticks<sup>207</sup> and adopted the explanation of their limitations as described in AC Elizabeth Murphy's written statement.<sup>208</sup> A number of considerations needs to be contemplated by police members when deploying them as part of an ongoing risk assessment, including:

- a. the road and traffic conditions
- b. the ability to manage other vehicles
- c. clear communication with other members about intention
- d. the suitability for the type of vehicle
- e. safety of police, public, suspect and any passengers
- f. speed and manner of the driving of a pursued vehicle and the appropriateness of the resolution strategy
- g. the risk of property damage
- h. the appropriateness of the deployment zone
- i. the appropriateness of cover and concealment for police members
- j. the time available for a member considering deployment.<sup>209</sup>

8.162 One of the key issues as explained by AC Fontana is that 'you need to get ahead of the driver ... so you need to know where they're going.'<sup>210</sup> Another challenge is about finding safe locations, which is difficult without knowledge of where the driver is going.<sup>211</sup> In the circumstances of this incident, AC Grainger explained there was a risk of damaging the tyres of other road users in a suburban area and the timing of throwing the device out to affect the Offender's vehicle would have been 'incredibly problematic'.<sup>212</sup> He said the devices are difficult to deploy safely in a metropolitan area.<sup>213</sup>

8.163 According to AC Murphy, as at January 2017, traditional stop sticks were the only option available to police officers and only a small number of frontline units carried them, mainly Highway Patrol units, some general duty and CIU units.<sup>214</sup> The limitations were in part due to competing demands for resources and the requirement that members were to requalify every three years to use them.<sup>215</sup> Recent additional funding has permitted the expansion of the supply of stop sticks to every frontline police vehicle, and the program was expected to be completed by October 2020.<sup>216</sup> The equipment rollout is supported by provision of specific, additional training to be provided to all Victoria Police, which was to have been completed within the first half of 2020.<sup>217</sup>

206 Transcript of evidence, p. 3783.

207 Transcript of evidence, pp. 3576-8.

208 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy with attachments dated 24 January 2020, AM 99.

209 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy with attachments dated 24 January 2020, AM 99-6-7.

210 Transcript of evidence, p. 3577.

211 Transcript of evidence, p. 3577.

212 Transcript of evidence, pp. 3788, 3815.

213 Transcript of evidence, p. 3788.

214 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy with attachments dated 24 January 2020, AM 99-3.

215 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy with attachments dated 24 January 2020, AM 99-3.

216 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy with attachments dated 24 January 2020, AM 99-4.

217 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy with attachments dated 24 January 2020, AM 99-4.

- 8.164 In June 2018, the definition of ‘Tyre Deflation Device’ in s. 63B of the *Road Safety Act 1986* (Vic) (**Road Safety Act**) was amended to ‘Vehicle Immobilising Device’ to enable the exploration of new technology which, while immobilising vehicles, did not primarily deflate the tyres.<sup>218</sup>
- 8.165 Throughout the later stages of the Inquest, there was significant discussion about emerging new technologies and tactical equipment. Since 2017, Victoria Police has introduced two new immobilisation devices: the ‘Patrol Terminator’ and the ‘Piranha’.<sup>219</sup> These are primarily designed to be used against a stationary vehicle to deflate a tyre (or tyres) once the vehicle moves away rather than to be used against a vehicle moving at normal speed on the road. It should be noted that many of the available options appear better suited for use on a highway and may be impractical for use in built-up areas.<sup>220</sup>
- 8.166 The evidence showed that while stop sticks were an available resource to some members at the time of the incident, they are not perfect in that they present additional safety issues and are difficult to deploy due to having to find the right location for deployment. Further, sometimes, when deployed, they do not stop the offending vehicle. I find that, despite being attempted, the opportunity did not present itself on the day. Even if it had, there is no guarantee it would have stopped the Offender and prevented harm.

## Ramming

- 8.167 It appears, from reviewing the CCTV footage, that at the corner of Swanston and Collins streets, the Port Phillip 507 unit, driven by DSC Burnett, manoeuvred until it was almost level with the Offender’s vehicle. DSC Gentner explained that, momentarily, Port Phillip 507 veered left while his unit Port Phillip 508 veered right to try to shepherd the Offender’s vehicle, but, unfortunately, the manoeuvre was not effective.<sup>221</sup> DSC Burnett stated that his initial thought was to ‘ram’ the Offender’s vehicle before it collided with members of the public, but observed there were ‘hundreds of people in the vicinity’.<sup>222</sup>
- 8.168 Ramming or bumping another vehicle was not permitted under Victoria Police policy at the time of this incident.<sup>223</sup> Commenting on this particular incident, AC Fontana said, ‘while it might have been a breach of policy, if it worked, fantastic, but the circumstances didn’t provide them the opportunity to carry that through’.<sup>224</sup>
- 8.169 In terms of risk, AC Fontana confirmed it was ‘against policy because it’s dangerous’.<sup>225</sup> Supt Ward agreed that the use of the tactical mobile intercept as an arrest option is ‘extremely risky’<sup>226</sup> and ‘very, very dangerous’.<sup>227</sup> AC Grainger explained that the risks extended to ‘our members, the community and the offender, should we intervene in those circumstances’.<sup>228</sup>
- 8.170 Due to the risks associated with ramming, both AC Fontana and AC Grainger explained that general duties police members were not trained in manoeuvres because they were highly dangerous and required specialised skills and training.<sup>229</sup> The dangers include that there is a risk the vehicle can be propelled into civilians.<sup>230</sup> The risks are exacerbated

218 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy with attachments dated 24 January 2020, AM 99-3.

219 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy with attachments dated 24 January 2020, AM 99-3 & AM 99-23.

220 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 161.

221 Transcript of evidence, p. 397.

222 Exhibit 121, Statement of Detective Senior Constable Adam Burnett dated 20 January 2017, Coronial Brief, p. 400.

223 Transcript of evidence, p. 3580.

224 Transcript of evidence, p. 3580.

225 Transcript of evidence, p. 3580.

226 Transcript of evidence, p. 3883.

227 Transcript of evidence, p. 3851.

228 Transcript of evidence, p. 3786.

229 Transcript of evidence, pp. 3824, 3581.

230 Transcript of evidence, p. 3786.

when airbags are deployed, which can render a driver unable to continue their duty and immobilise their vehicle.<sup>231</sup>

- 8.171 AC Grainger observed if there had been an attempt to ram the Offender's vehicle when he was doing donuts outside Flinders Street Station, 'the potential for that vehicle to spin out of control into pedestrians was extremely high'.<sup>232</sup>
- 8.172 In discussing tactical options, AC Fontana said, 'a deliberate full-frontal collision with [the Offender]'s vehicle as he proceeded along Swanston Street was the only real option left for police to stop him from this point onwards.'<sup>233</sup> Further, the SOG was the only unit properly trained to deal with these high-risk situations.<sup>234</sup>
- 8.173 Despite the dangers and it being against force policy, in desperate measures to stop the Offender, it was not only considered by DSC Burnett but the CIRT 377 unit that comprised SC Cavanagh and SC Jones. The evidence reveals that CIRT 377 discussed ramming the Offender's vehicle as they chased it up Bourke Street.<sup>235</sup> SC Jones remembered warning SC Cavanagh that he was going to ram the Offender. At the time, SC Cavanagh was urgently attempting to put on his seatbelt, he eventually gave up and told SC Jones to just do it.<sup>236</sup> SC Cavanagh explained, however, that his unit never had an opportunity to block or ram the Offender because 'we were never in front really. We were always behind'.<sup>237</sup>
- 8.174 It was submitted by Counsel for the CCP that:

... ramming, save in the most extreme circumstances, was not justified and was too dangerous an option—until Swanston Street/Bourke Street, the Offender did not constitute a hostile vehicle threat, as that term is now employed. Discharge of firearms would not have been justified until the very end when it would have been too dangerous. Tyre deflation devices were, for the most part, not feasible.<sup>238</sup>

- 8.175 I accept the evidence of AC Grainger and AC Fontana that ramming is a highly dangerous tactical option. While considered by some members, the Offender's ability to remain in front of the police vehicles meant no opportunity to ram the vehicle could occur until his vehicle started to fail and the Operations 420 team hit the Offender's vehicle at low speed. I accept it was not an option that presented itself on the day, and further, police members are not trained in this manoeuvre, except the SOG.

## Boxing in/corralling

- 8.176 Another tactical option examined in the Inquest was the technique of boxing in or corralling an offender. Boxing in is positioning a police vehicle either in front of or behind an Offender's vehicle.<sup>239</sup> Corraling uses multiple vehicles to stop an offender's vehicle.<sup>240</sup>

231 Transcript of evidence, pp. 3786, 3578.

232 Transcript of evidence, p. 3783.

233 Exhibit 201, Operation Titan Critical Incident Review, p. 290.

234 Exhibit 201, Operation Titan Critical Incident Review, p. 290.

235 Transcript of evidence, p. 2735.

236 Transcript of evidence, pp. 2735-6.

237 Transcript of evidence, p. 2983.

238 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 117.

239 Transcript of evidence, p. 3865.

240 Transcript of evidence, p. 3866.

- 8.177 AC Grainger said ‘blocking a vehicle in is incredibly difficult and incredibly dangerous and it does require specific training, specific vehicles, to have any real effect’<sup>241</sup> and it is not the role of general duty officers.<sup>242</sup> Neither general duty members nor CIRT officers are trained to perform such a manoeuvre.<sup>243</sup> CIRT does not have the capability or capacity to conduct tactical vehicle intercepts<sup>244</sup> and its members are trained to only intercept when the vehicle is stationary.<sup>245</sup>
- 8.178 The SOG is trained and has appropriate resources and vehicles to undertake this type of action but is a limited specialist resource.
- 8.179 With experience in more than 150 tactical mobile intercepts, Supt Ward described boxing in as ‘one of the most dangerous tactical arrest options that can be used by Victoria Police. They’re dangerous to the community, they’re dangerous for Victoria Police members and, at times, they’re dangerous for the offenders’.<sup>246</sup> When asked about the attempt to box in the Offender at Wurundjeri Way by CIRT (described in detail in Part 6 of this Finding), he said ‘our members are acting in good faith in this instance ... they are trying to support our frontline members and protect the community’.<sup>247</sup> He conceded that opportunistic attempts such as occurred with the Offender at that time would be an appropriate operational decision.<sup>248</sup>
- 8.180 LSC Krajnc said that, at the corner of Swanston and Bourke streets, there were two trams going in opposite directions and he thought he ‘could use the bulk of the tram to box him in, so [he] drove north on Swanston along the wrong side of the road around the tram to cut [the Offender] off and box him in safely’.<sup>249</sup> However, he lost the opportunity because the Offender turned left into Bourke Street.
- 8.181 DSC Singh’s evidence was that:
- ... we haven’t been trained to do a box-in or a pit manoeuvre, so to speak. The sensible approach or in a perfect world would be to have the Air Wing up in the air. Have specialist units available at the same time and then try to engage and do the intercept.<sup>250</sup>
- 8.182 DA/SSgt Newman agreed that boxing in is not an acceptable practice.<sup>251</sup>
- 8.183 I accept that, in this instance, boxing in or corralling the Offender’s vehicle was too dangerous a technique to attempt. Victoria Police members are not trained to do it, save for the SOG.

## Police were tentative to act for fear of disobeying policy

- 8.184 Despite the lack of options available to effectively stop the Offender in a moving vehicle, a number of police officers gave evidence at the Inquest that they were tentative to act assertively for fear of breaching Victoria Police policy and, potentially, left facing disciplinary action. This appeared to be a real fear for those police officers and may have hampered some of their decision-making on the day.

241 Transcript of evidence, p. 3824.

242 Transcript of evidence, p. 3824.

243 Transcript of evidence, p. 3833.

244 Exhibit 230, Statement of Superintendent Peter Ward dated 20 March 2019, Coronial brief, p. 1788.

245 Exhibit 230, Statement of Superintendent Peter Ward dated 20 March 2019, Coronial brief, p. 1788; Transcript of evidence, p. 3866.

246 Transcript of evidence, p. 3849.

247 Transcript of evidence, p. 3849.

248 Transcript of evidence, p. 3849.

249 Exhibit 157, Statement of Leading Senior Constable Martin Krajnc dated 20 January 2017, Coronial Brief, p. 1178.

250 Transcript of evidence, p. 2116.

251 Transcript of evidence, p. 1892.

8.185 DSC Burnett explained the difficulty of weighing up these risks and his thought process:

What do you do? ... I wanted to ram him into the tram. I wanted to be violent towards his car. I wanted to stop him. That has big risks for ah, for the police, for the public. Um, the other big thing is it's a risk to me and my career. It's um, its known that um, if I ram the offender, I'll be charged with a criminal offence. I'll lose my career. It's a big risk to take. It's a weigh ... it's a weigh-up: what can you do? Um, and that's something that I didn't do at the time. You know, I sort of wish I did, but, um, and it was only seconds later that he turned left. So, it's something that weighs on my mind and I think something you should know that police officers have to weigh up these risks to be charged with offences even though you're trying to stop a violent offender.<sup>252</sup>

8.186 This was also reflected in SC Ralston's thought process when faced with the option of blocking or moving out of the way of the Offender's vehicle in the Albert Road Service Road. He spoke of the considerations he took into account, including policy and the thought that he would 'get in trouble' if he used their vehicle to block the Offender.<sup>253</sup>

8.187 DSC Gentner was also concerned about the potential for disciplinary action. He gave evidence that, at the time of the incident, he was aware that a police member had been charged for ramming a stolen vehicle and 'there was a general feeling that it was not something we do'.<sup>254</sup> This was confirmed by DSSgt Humphries, who described the hesitation of police on the day was due to the fact that, in recent years, members had fallen foul of policy and gotten into trouble.<sup>255</sup>

8.188 SC Jones acknowledged that s. 462A of the *Crimes Act 1958 (Vic)* has always allowed police to do things that are reasonable. However, he said, prior to this incident, he believed they would have been heavily criticised and potentially charged with criminal offences if they were to have used their vehicles to bring on a resolution.<sup>256</sup> Discussing the options available to CIRT, SC Jones stated 'the only way we were going to stop him, is if we use[d] force with vehicles against him ... and, given the circumstances, that would result in a lot of us getting in a lot of trouble.'<sup>257</sup>

8.189 Based on his review of the incident, AC Fontana considered it was clear on occasions throughout the day that some members hesitated because they were worried about the potential consequences and may have been paralysed by policy.<sup>258</sup> He agreed that

it could be a difficult decision to choose between breaching policy and protecting the lives of others but would accept a member breaching policy to protect the lives of others in reasonable circumstances.<sup>259</sup>

8.190 It was submitted by Counsel for the CIU and CIRT police members that:

It was palpable through the police members' evidence that they want to be able to do more. Waiting until the point where someone is already in the CBD and the only option is a highly dangerous ramming imperilling many members of the public is not sufficient. The police members want

252 Transcript of evidence, pp. 2025–6.

253 Transcript of evidence, p. 2352.

254 Transcript of evidence, p. 336.

255 Transcript of evidence, p. 2504.

256 Transcript of evidence, p. 2684.

257 Transcript of evidence, p. 2612.

258 Transcript of evidence, pp. 3580–1.

259 Transcript of evidence, p. 3580.

resources, skills, technology and specialist ability to stop moving vehicles beyond stop sticks, before it is too late. They want the policy to permit their taking of effective and decisive action, and they want a hierarchy that will support them when they do. It is clear that more work needs to be done.<sup>260</sup>

8.191 The evidence supports a finding that some police members were reticent on the day to take more assertive action because they were concerned that force command would not support them and, instead, discipline them for breaching policy. I agree with AC Fontana's opinion that the fear of being disciplined paralysed some police members from taking more assertive action on the day. This issue has, in part, been addressed with the implementation of the new VPM *Hostile Vehicle Policy*, which is discussed in detail in Part 9 of this Finding.

## Were there any opportunities for intervention or apprehension of the Offender after he entered the CBD?

8.192 A common theme that emerged in evidence from a number of the police witnesses, including Executive Command, was that there were limited options available to police once the Offender had entered the CBD.<sup>261</sup> AC Fontana commented that 'by the time he was at the intersection, I didn't think there were too many other options available'.<sup>262</sup> He did not think the responding police units 'would have been able to stop him in the intersection without causing injury to other people'.<sup>263</sup> Similarly, when discussing the Offender's actions at Swanston and Bourke streets, AC Grainger said, 'I can't think of an option at that time, in those circumstances, to stop the vehicle safely'.<sup>264</sup>

8.193 DSC Gentner's evidence was that it would be 'almost impossible to stop him without creating huge risks for the people there'.<sup>265</sup> Similarly, DSC Burnett said an offender like this one is very hard to apprehend.<sup>266</sup>

8.194 In AC Fontana's opinion, 'the option of trying to intercept [the Offender] in a vehicle was never going to succeed without additional specialist support'.<sup>267</sup> It appears from earlier evidence, referred to in Part 6 of this Finding, that engagement of the SSU was the best option.<sup>268</sup> DA/SSgt Newman agreed that the best they could have hoped for was a specialist service such as the SSU. He said, 'if he doesn't get out of the car and he's driving, we cannot do a thing'.<sup>269</sup>

8.195 With limited options available to them, AC Fontana said:

The best option for them at this stage, it was the original strategy, was a covert follow and take him to a location. Otherwise, um, which was ... and ... and the other strategy that was adopted, which was good also, was the engagement through negotiations.<sup>270</sup>

260 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 68.

261 Transcript of evidence, p. 3569.

262 Transcript of evidence, p. 3595.

263 Transcript of evidence, p. 3596.

264 Transcript of evidence, p. 3783.

265 Transcript of evidence, p. 315.

266 Transcript of evidence, p. 1989.

267 Exhibit 201, Operation Titan Critical Incident Review, p. 291.

268 Transcript of evidence, p. 3539.

269 Transcript of evidence, p. 1894.

270 Transcript of evidence, p. 3539.

- 8.196 DSC Burnett agreed and indicated that, with the knowledge we now have, that it was impossible to stop him without other support.<sup>271</sup> DSC Gentner agreed that the only real options for success included the engagement and planning of specialist resources, including surveillance, the SOG and the Air Wing, because he believed they needed numbers as well as resources.<sup>272</sup>
- 8.197 Even if another tactical option had been taken by the members on the day, AC Fontana said, unfortunately, 'it may not have resulted in a different outcome'.<sup>273</sup>
- 8.198 Counsel Assisting submitted that any suggestion that there were missed opportunities by police to intervene in Swanston Street was not pursued in any forceful or meaningful way by any counsel during the Inquest.<sup>274</sup> There was no real suggestion put to any police witnesses that there were missed opportunities to intervene to avert the Offender's actions in Bourke Street.<sup>275</sup> It was submitted that this reflects an appreciation that there were no realistic opportunities by that time. It was proposed that this should also be the finding of the Court.<sup>276</sup> It was further submitted that the Court should find that there was nothing police could have done once the Offender was driving west along Bourke Street.<sup>277</sup>
- 8.199 Counsel for the Families made no further submissions about this issue.<sup>278</sup>
- 8.200 Counsel for SC Jones also supported Counsel Assisting's submissions that there were no realistic opportunities for him or any other member to intervene and stop the Offender in Swanston Street or Bourke Street.<sup>279</sup>
- 8.201 The CCP conceded that once the Offender arrived at the intersection of Flinders and Swanston Streets there:

... was very little police could do in terms of decisive action to stop him, without endangering the lives of many people. At the time, the SOG was the only unit appropriately trained to deal with such a high-risk situation. It had the vehicles to do so and appropriately trained personnel. Dangerous as it would have been in the context of large numbers of pedestrians, a deliberate full-frontal collision with the Offender's vehicle as he proceeded along Swanston Street by then was the only real option left for police to stop him from this point onwards.<sup>280</sup>

- 8.202 The CCP further submitted:

... the evidence adduced at this Inquest has shown that there were no easy solutions. He was a dangerous offender who was thought to be delusional, erratic and possibly drug-affected. He needed to be apprehended. His intentions were unknown, save that he did not appear to want to be taken into custody and he had a background of baiting and manipulating police. His antecedents suggested that he was, principally, a source of risk to family members. He was the number one priority on the day for the Port Philip CIU. Considerable resources from diverse areas of Victoria Police were devoted for many hours in an attempt to apprehend him.<sup>281</sup>

271 Transcript of evidence, p. 1991.

272 Transcript of evidence, p. 336.

273 Transcript of evidence, p. 3539.

274 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 156.

275 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 156.

276 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 155.

277 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 156.

278 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 34.

279 Written submissions on behalf of Senior Constable Roland Jones dated 19 May 2020, p. 2.

280 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 80.

281 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 115.

8.203 In conclusion, the CCP submitted that:

... in the exceptional and difficult circumstances that presented on 20 January 2017, and in the absence of the gift of foresight, even had the innovations implemented since the tragedy been in place at the time, the unpalatable reality is that there can be no confidence that the Offender would not still have succeeded in his homicidal actions.<sup>282</sup>

8.204 This Inquest has established that when a vehicle is used as a weapon, it is almost impossible to stop without aggressive and decisive action, best achieved with the assistance of specialist services such as the SOG. Evidently, there are limited options available to police when attempting to apprehend someone in a moving vehicle that do not present other dangerous risks to the public, police officers or offenders.

## Concluding remarks

8.205 There are many risks associated with modern policing. The evidence at this Inquest has revealed the unusual and dangerous nature of the Offender's actions in driving onto and through pedestrian footpaths in Swanston and Bourke streets. While I accept police regularly deal with offenders who drive in a reckless manner, the actions of the Offender and his refusal to stop and get out of the vehicle were unprecedented.

8.206 I find that once the Offender was driving recklessly around the intersection of Swanston and Flinders streets and then headed west along Bourke Street, due to the very populated area and the extreme dangers involved, there was nothing further the operational police could have done safely.

8.207 The evidence of most of the police officers was consistent in that it is extremely difficult and dangerous to stop a moving vehicle and options to do so are limited. The risks and benefits of achieving apprehension must be weighed against each other to reduce the potential of causing further harm to police and others. It appears, with the benefit of hindsight, the best and most viable option was the engagement and use of specialist services such as the SSU or the SOG. Without a planned, fully covert operation, it was extremely difficult for police officers to stop the Offender while he was in a moving vehicle, and no realistic opportunity presented itself once he was in Swanston and Bourke streets.

## Potential opportunities for reform

### Management of critical incidents

8.208 The evidence in this Inquest indicated there may be scope for improvement to police command, control and communication during emerging critical incidents.

8.209 Counsel Assisting submitted that there was a significant problem in a procedure that results in multiple changes of incident controller in relatively quick succession without continuity of command.<sup>283</sup> In response to this issue, Counsel Assisting suggested I recommend that:

<sup>282</sup> Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 117.

<sup>283</sup> Written submissions of Counsel Assisting dated 14 April 2020, pp. 78-9.

Victoria Police reviews its training, policies, procedures and infrastructure in respect of radio communications, with the aim of improving police radio communications so that:

- a. there is, to the maximum extent possible, continuity of command of planned operations and critical incidents, particularly in circumstances where:
  - i. the operation or incident crosses Divisional or Regional boundaries and may involve a change of radio channels; or
  - ii. the operation or incident may involve the use of dedicated [TAC] radio channels
- b. there is, to the maximum extent possible, continuity of involvement of PCC personnel performing the role of channel operator during a critical incident or an emerging critical incident
- c. all police members that may be impacted or become involved in an operation or incident are afforded the best possible 'situational awareness' and clarity of command, plans, roles and responsibilities.<sup>284</sup>

8.210 Counsel for the Families agreed with this suggested recommendation.<sup>285</sup>

8.211 Counsel for CCP submitted that this recommendation was not necessary.<sup>286</sup> It was submitted that Victoria Police policies for pursuits and extended follows are clear and address cross-border operations; specifically, the *Pursuit* and new *Urgent Duty driving* policies both require no changing of channels in such circumstances.<sup>287</sup> It was submitted that it was appropriate for the operation to stay on the one channel with the same incident controller (a pursuit controller or patrol supervisor), and that other types of operations are usually static or would be appropriately conducted on TAC channels.<sup>288</sup>

8.212 It is clear to me there was a breakdown in communication between operational Port Phillip CIU members and other units involved throughout the day, such as CIRT and divisional and regional supervisors in the northwest region and the CBD. There appeared to be a lack of recognition of the need for more assertive management of this emerging critical incident.

8.213 The incident that culminated in the devastation in Bourke Street had been unfolding since late in the morning on the day of the incident and involved multiple police units from different geographical locations. The incident required continuity of command and someone to provide assertive leadership, effective supervision and clear communications to all members involved. This did not occur. Supervisors in different locations were significantly disadvantaged. There was a failure to recognise that this incident had reached a level of critical risk. I consider more work is required for supervising units, particularly in the criminal investigation units, to understand the roles and responsibilities associated with identifying and managing critical incidents. Therefore, I have adapted the recommendation of Counsel Assisting and made Recommendation Six. I have also included a recommendation for critical incident training specific to investigators; please see Recommendation Seven.

284 Written submissions of Counsel Assisting dated 14 April 2020, p. 163.

285 Written submissions of the Families of the Deceased dated 19 May 2020, p. 21.

286 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 119.

287 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 78.

288 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 119.

## Recommendations

### Recommendation Six:

That Victoria Police conducts a review of its policies, procedures, training and infrastructure in respect of the management of critical incidents or emerging critical incidents and the proper and effective use of police communications, so that:

- a. there is, to the maximum extent possible, continuity of command in planned operations and critical incidents, particularly in circumstances where:
  - i. the operation or incident crosses Divisional or Regional boundaries and may involve a change of radio channel
  - ii. the operation or incident may involve the use of dedicated (TAC) radio channels.
- b. There is to the maximum extent possible, continuity of involvement of police communications personnel performing the role of channel operator during a critical incident or emerging critical incident
- c. all police members that may be impacted or become involved in an operation or incident are afforded the best possible situational awareness and clarity of command, plans, roles and responsibilities.

### Recommendation Seven:

That Victoria Police reviews its criminal investigator and investigator management training program with a view to incorporating a curriculum on risk evaluation, transition to incident management and the identification and management of critical incidents. Such training should incorporate an immersive, interactive training environment to support decision-making in critical incidents and emerging critical incidents.

# Part 9: Reviews and Reforms Following Bourke Street Tragedy

## Overview

- 9.1 The Bourke Street tragedy triggered a number of reviews by government agencies and departments to examine how processes, systems and infrastructure could be reformed to improve community safety and prevent such an event reoccurring.
- 9.2 These reviews have been wide-ranging, including a wholesale review of Victoria's bail system, an operational post-arrest debrief by the State Emergencies and Securities Command (**SESC**) and a Critical Incident Review of the response by Victoria Police to incidents as they unfolded from 14–20 January 2017.
- 9.3 Significant changes have been implemented in response to these reviews, including:
- a. legislative reform to the *Bail Act 1977* (Vic) (**Bail Act**)
  - b. reforms to the Victoria Police operational safety framework, offender management practices, emergency management response, intelligence management and approval processes for urgent triangulation requests
  - c. development of urgent duty driving and hostile vehicle policies
  - d. new specialist police response units
  - e. installation of protective security infrastructure measures in Melbourne CBD.
- 9.4 These reforms have been designed to place a greater focus on the assessment of risk and protection of the community in bail decision-making, enhance Victoria Police's capabilities in responding to people such as the Offender, and better protect crowded places within Melbourne's CBD from hostile vehicle attacks.
- 9.5 This Part of the Finding outlines these reviews and details the key reforms that have been implemented since the events of 20 January 2017.

## Bail Reforms

### Coghlan Bail Review

- 9.6 Shortly after the Bourke Street event, the Hon Paul Coghlan QC was asked to advise the State Government on Victoria's bail system. The Hon Coghlan QC conducted a comprehensive inquiry (**Coghlan Bail Review**) focused on providing advice on legislative and practical reforms to better manage risk and maximise community safety.
- 9.7 The Hon Coghlan QC's findings and recommendations are set out in two advices provided to the Victorian Government in early 2017. The first, dated 3 April 2017, was directed largely to legislative reform.<sup>1</sup> The second, dated 1 May 2017, was directed to broader systemic issues arising from his consideration of the operation of the bail system.<sup>2</sup>

<sup>1</sup> *Bail Review: First Advice to the Victorian Government* dated 3 April 2017, Coronial Brief, pp. 2847–61.

<sup>2</sup> *Bail Review: Second Advice to the Victorian Government* dated 1 May 2017, Coronial Brief, pp. 2971–3044.

The Hon Coghlan QC proposed 37 recommendations across these two advices, which were supported by the Victorian Government in full, in principle or in part.<sup>3</sup> I do not propose to recount the findings and recommendations in detail, save for those that bear direct relevance on the matters subject to my inquiry.<sup>4</sup>

## Legislative amendments

9.8 Twenty-two recommendations were implemented to the Bail Act under two stages of legislative amendments in 2017 and 2018.<sup>5</sup> The first stage of legislative amendments came into operation on 1 July 2018,<sup>6</sup> with the second stage commencing on 1 October 2018.<sup>7</sup>

9.9 These legislative amendments included:

- a. inserting guiding principles that recognise, to the greatest extent possible, the importance of maximising the safety of the community and persons affected by crime
- b. making it harder for people to be granted bail for a much broader range of serious violent and serious sexual offences
- c. making it harder for people to be granted bail if charged with committing serious offences while on bail, summons or parole, at-large awaiting trial or undergoing a sentence
- d. requiring that only a court may grant bail to an accused charged with specified offences while already on two or more bail undertakings for other indictable offences
- e. establishing a new police remand system that authorises police officers of or above the rank of sergeant to refuse bail and remand an accused person in custody for up to 48 hours before bringing them before a court, except in limited circumstances where the accused is an Aboriginal person, a child, a vulnerable adult or has been arrested on an enforcement warrant issued under the *Fines Reform Act 2014* (Vic)
- f. restricting the role of bail justices to making bail decisions for youth, Aboriginal and Torres Strait Islanders and vulnerable adults (including people with a mental impairment) and where an accused person cannot be brought before a court within 48 hours or has objected to the bail conditions set by police after hours.<sup>8</sup>

## Bail and Remand Court

9.10 At the time of the Offender's bail hearing on 14 January 2017, a Weekend Bail and Remand Court (**BaRC**) operated. However, it only operated from 10.00 am to 4.00 pm and the police informant had to file the remand and bail application by 3.00 pm for the matter to be heard.<sup>9</sup> Due to the timing of the Offender's arrest and subsequent interviews, it was necessary for the Offender's bail remand hearing to be heard 'out-of-sessions' by a bail justice.

<sup>3</sup> *Government Response to the Bail Review* (Advice provided by the Hon Paul Coghlan QC on 3 April 2017), Coronial Brief, pp. 2962–70.

<sup>4</sup> Further information about the Hon Paul Coghlan QC's Bail Review can be located at <https://engage.vic.gov.au/bailreview>, including the Terms of Reference, First Advice, the Victorian Government's Response to the First Advice, and the Second Advice.

<sup>5</sup> *Bail Amendment (Stage One) Act 2017* (Vic); *Bail Amendment (Stage Two) Act 2018* (Vic).

<sup>6</sup> *Bail Amendment (Stage One) Act 2017* (Vic), s. 2.

<sup>7</sup> *Bail Amendment (Stage Two) Act 2018* (Vic), s. 2.

<sup>8</sup> First Statement of Deputy Secretary Anna Faithfull dated 19 June 2019, Coronial Brief, pp. 597–8; Transcript of evidence, p. 3461.

<sup>9</sup> *Bail Review: Second Advice to the Victorian Government* dated 1 May 2017, Coronial Brief, p. 3012.

- 9.11 Immediately following the Bourke Street incident, the Victorian Government established a pilot Night Court at Melbourne Magistrates' Court, which commenced on 28 January 2017. The Night Court initially commenced with weekend night sittings, but by 6 February 2017, weekday night sittings were added so that the Night Court operated seven days a week.<sup>10</sup>
- 9.12 The Hon Coghlan QC recommended the establishment of a new BaRC at the Magistrates' Court to replace the Night and Weekend Courts that then existed.<sup>11</sup> This recommendation was adopted, and the BaRC commenced full operation at the Melbourne Magistrates' Court in July 2018. It covers the Melbourne metropolitan region, conducting hearings from 10.00 am to 9.00 pm seven days a week. It has capacity to deal with guilty pleas as well as bail applications.<sup>12</sup>
- 9.13 Deputy Secretary of the DJCS, Ms Anna Faithfull, informed me that, since the commencement of the Bail Act reforms and establishment of the BaRC, demand for bail justices to conduct bail hearings has fallen by 50 per cent.<sup>13</sup>

## Bail justice training

- 9.14 Bail justices have been provided with training on each stage of the Bail Act reforms through two online units, as well as specific Koori cultural awareness training delivered through a mix of online and face-to-face components.<sup>14</sup> They are also required to complete prescribed reappointment training if they seek to be reappointed at the conclusion of their five-year term. This prescribed training now includes specialist training on children and youth issues, Aboriginality, family violence and mental illness, cognitive disability, homelessness and substance dependence.<sup>15</sup>
- 9.15 Ms Faithfull explained that, due to current resourcing limitations, the Honorary Justice Office (now known as Honorary Justices Services Support<sup>16</sup> (HJSS)) has been unable to deliver more extensive training. HJSS's capability is being built and DJCS intends to 'support the implementation of a training and development program for bail justices that can assure the competencies and quality of services delivered are maintained'.<sup>17</sup> I support the implementation of such a program.

## Training of police officers

- 9.16 Victoria Police has also rolled out force-wide training in response to the Bail Act amendments.<sup>18</sup> Regional Training Officers have delivered a three-hour face-to-face training course to all sergeants and senior sergeants in their regions. This training is mandated for all sergeants and senior sergeants but is also open to other operational general duties members and detectives to attend. The training was initially delivered to the majority of sergeants and senior sergeants over a three-month period from 1 July 2018, but the training remains ongoing to those members who were on leave, promoted, are seeking to be promoted to the rank of sergeant or have been upgraded to the rank of acting sergeant. The training includes a PowerPoint presentation and scenario-based exercises, and participants are given handouts.<sup>19</sup>

10 *Bail Review: Second Advice to the Victorian Government* dated 1 May 2017, Coronial Brief, p. 3013.

11 *Bail Review: Second Advice to the Victorian Government* dated 1 May 2017, Coronial Brief, p. 3016.

12 *Bail Review: Second Advice to the Victorian Government* dated 1 May 2017, Coronial Brief, pp. 3015–7; First Statement of Deputy Secretary Anna Faithfull dated 19 June 2019, Coronial Brief, pp. 597–8.

13 Transcript of evidence, p. 3461; First Statement of Deputy Secretary Anna Faithfull dated 19 June 2019, Coronial Brief, p. 600; Second Statement of Deputy Secretary Anna Faithfull dated 20 February 2020, AM 149, p. 2.

14 First Statement of Deputy Secretary Anna Faithfull dated 19 June 2019, Coronial Brief, pp. 603–4.

15 Second Statement of Deputy Secretary Anna Faithfull dated 20 February 2020, AM 149, pp. 4–5.

16 Second Statement of Deputy Secretary Anna Faithfull dated 20 February 2020, AM 149, p. 2.

17 First Statement of Deputy Secretary Anna Faithfull dated 19 June 2019, Coronial Brief, pp. 603–4.

18 Transcript of evidence, p. 3461.

19 Statement of Superintendent Bradley Dixon dated 10 July 2019, Coronial Brief, pp. 535–6.

- 9.17 Victoria Police has also published a new VPM *Bail and Remand* policy. This reflects the recent legislative amendments to the Bail Act and provides clarification on the appeals process and capacity of the Director of Public Prosecutions to appeal against the granting of bail or insufficient bail conditions.<sup>20</sup> If a police member is dissatisfied with a decision by a bail justice, they are able to escalate this to the Legal Services Department within Victoria Police, where consideration can be given to an appeal being instituted.<sup>21</sup>
- 9.18 The CCP has also informed me that Victoria Police will conduct a review of its training and supervision of members' conduct during bail justice hearings.<sup>22</sup> This is discussed in Part 3 of this Finding.

## Recommendations yet to be implemented

- 9.19 The Coghlan Bail Review recommended that bail justice hearings be recorded and that the HJSS examine the method of recording and retention of recordings.<sup>23</sup> This recommendation has been supported in principle by Victoria Police<sup>24</sup> and the DJCS<sup>25</sup> but has not yet been implemented. Part 3 of this Finding discusses the current status of the implementation of this recommendation and I propose a further recommendation in relation to this. See Recommendation One.
- 9.20 The Coghlan Bail Review also made two recommendations regarding stays on a decision to grant bail, namely that the Bail Act be amended to allow:
- a. police to apply for an immediate stay from a decision of a bail justice to grant bail<sup>26</sup>
  - b. for immediate stays from a decision of a court to grant bail in certain circumstances.<sup>27</sup>
- 9.21 Ms Faithfull explained that the first of these recommendations may have been rendered unnecessary by virtue of the legislative amendments to the Bail Act that have substantially limited the role of bail justices.<sup>28</sup> However, Ms Faithfull informed me that DJCS is in the process of preparing a discussion paper on the bail appeal recommendations, following which the need for any further legislative reform will be considered.<sup>29</sup>

## Post-incident reviews by Victoria Police

- 9.22 Victoria Police conducted two significant reviews into the Bourke Street event: an operational post-arrest internal debrief of the police response to the Bourke Street incident by the SESC and a Critical Incident Review of the events leading up to the Bourke Street incident by AC Fontana.

20 Victoria Police Manual *Bail and Remand*, Coronial Brief, pp. 2571–92.

21 Victoria Police Manual *Bail and Remand*, Coronial Brief, pp. 2585–6.

22 Written submissions of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 19.

23 *Bail Review: First Advice to the Victorian Government* dated 3 April 2017, Coronial Brief, p. 2857.

24 Written submissions of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 19.

25 First Statement of Deputy Secretary Anna Faithfull dated 19 June 2019, Coronial Brief, p. 602; Second Statement of Deputy Secretary Anna Faithfull dated 20 February 2020, AM 149, pp. 3–4.

26 *Bail Review: First Advice to the Victorian Government* dated 3 April 2017, Coronial Brief, p. 2857.

27 *Bail Review: Second Advice to the Victorian Government* dated 1 May 2017, Coronial Brief, p. 2979.

28 First Statement of Deputy Secretary Anna Faithfull dated 19 June 2019, Coronial Brief, pp. 599–600, 603–5; Second Statement of Deputy Secretary Anna Faithfull dated 20 February 2020, AM 149, p. 4.

29 First Statement of Deputy Secretary Anna Faithfull dated 19 June 2019, Coronial Brief, pp. 603, 605.

## State Emergencies and Securities Command debrief

- 9.23 The SESC coordinated an operational post-arrest internal debrief on 20 April 2017. This debrief was attended by senior members of Victoria Police, at the rank of senior sergeant and higher, representing various aspects of the police response to the Bourke Street incident. The focus of the SESC debrief was upon identifying what did and did not work well in relation to control, command, coordination, communication, triage of witnesses, triage of victims, scene control and investigation.<sup>30</sup>
- 9.24 As a result of this debrief, the SESC developed nine key recommendations, including relevantly:
- a. developing and implementing regular training exercises to demonstrate the command, control and coordination functions applicable to major incident management, including identification and use of an Incident Control Point (now replaced by the Police Forward Command Post in line with Australia–New Zealand Counter–Terrorism Committee (ANZCTC) guidelines)
  - b. developing a shared understanding of each other’s roles and functions between State, Regional and Divisional capability advisers
  - c. reviewing emergency management terminology to ensure common language is used during an incident response
  - d. improving the identification of the Police Forward Command Post
  - e. documenting the hierarchical relationship between the State PCC, Crime Command and Incident Controller
  - f. developing clear communication lines between the Media Liaison Unit and the Public Information Cell
  - g. clarifying privacy issues in relation to the sharing of information when patients involved in a critical incident are admitted to hospital.<sup>31</sup>
- 9.25 AC Grainger informed me that significant progress had been made on the implementation of these recommendations. Many had been completed, and action was being undertaken in respect of the remaining recommendations.<sup>32</sup>
- 9.26 The actions taken in response to the SESC debrief recommendations included:
- a. Regional Emergency Management Inspectors now conduct regular training in conjunction with other areas of SESC to test emergency response capabilities via desktop scenario-based exercises that include localised risks and issues.
  - b. State-level exercises involving state capability advisers were conducted to assess capability prior to New Year’s Eve in 2017 and 2018.
  - c. Victoria Police policies have been updated to reflect the terminology set out in the ANZCTC guidelines, clarifying the roles and responsibilities in incident control, command and coordination.

30 Exhibit 226, Second Statement of Assistant Commissioner Michael Grainger dated 16 October 2019, AM 2, p. 2.

31 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 346; Exhibit 226, Second Statement of Assistant Commissioner Michael Grainger dated 16 October 2019, AM 2, pp. 2–9.

32 Exhibit 226, Second Statement of Assistant Commissioner Michael Grainger dated 16 October 2019, AM 2, pp. 2–9.

- d. The Police Forward Command Post (previously known as the Incident Control Point) is now visually identifiable through patches worn on members' Integrated Operational Equipment Vests or tabards, and their location is communicated to other personnel by means of description.
- e. Standard Operating Procedures for the State Investigations Capability Advisor have been updated to reflect the relevant responsibilities of bodies to notify and provide advice to the capability adviser.
- f. Updating of the Media and Corporate Communications Department *Communications and Public Information Guide* to reflect who will be primarily responsible for the staffing and management of the Public Information Cell.
- g. Implementing an Emergency Incident Casualty Data Collection Protocol between Victoria Police and the Department of Health and Human Services (DHHS) for the provision of information relating to casualties following an emergency incident. The objective of the protocol is to collate reliable, accurate, timely and consistent information on presentations to health services resulting from an emergency incident, so that DHHS facilitates information-sharing between key stakeholders, meets its responsibilities under the State Health Emergency Response Plan and provides information to Victoria Police for law enforcement purposes.<sup>33</sup>

## Critical Incident Review

- 9.27 In accordance with the VPM *Death or serious injury/illness incidents involving police* policy, Victoria Police also conducted a comprehensive Critical Incident Review of the events of the week leading up to the Bourke Street incident. This policy requires that certain incidents (such as that which occurred on Bourke Street) be subject to a debrief and organisational review.<sup>34</sup> The purpose of this policy is to require a debrief of an incident be done in the interest of organisational development to assess the strategy and tactics of an operation and to identify and recommend opportunities for improvement in police systems, processes, practices, policies, training and resources.<sup>35</sup> Such debriefs provide an important opportunity for an organisation such as Victoria Police to review its policies and procedures, learn lessons and identify areas for improvement. They also give individual police officers a safe space to reflect on outcomes and on what did and did not work well.
- 9.28 AC Fontana was appointed to conduct the review into the events leading up to the Bourke Street tragedy. At the time of preparing the Critical Incident Review, he was Assistant Commissioner of Crime Command.<sup>36</sup> He is now Assistant Commissioner of Information Systems and Security Command and Chief Information Officer for Victoria Police, with responsibility for overall management and strategic direction of enterprise information management and protective security.<sup>37</sup> AC Fontana has worked in the police force for 45 years and has extensive experience as a criminal investigator and in conducting critical incident reviews, including reviews of fatal shootings, police pursuits and non-fatal shootings.<sup>38</sup>

33 Exhibit 226, Second Statement of Assistant Commissioner Michael Grainger dated 16 October 2019, AM 2, p. 2–8.

34 Transcript of evidence, p. 3453; Exhibit 203, Victoria Police Manual – Policy Rules *Death or serious injury/illness incidents involving police* last updated 31 August 2015, p. 1.

35 Transcript of evidence, p. 3454.

36 Transcript of evidence, p. 3455; Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 720.

37 Transcript of evidence, p. 3432; Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, pp. 719–20.

38 Transcript of evidence, pp. 3431, 3454; Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 719.

9.29 The Critical Incident Review examined policies, procedures and the police operational response to various incidents and crime involving the Offender, for the purpose of reporting on ‘lessons learned and opportunities for improvement in Victoria Police policy, procedures and operational responses’.<sup>39</sup> As a result of his review, AC Fontana identified organisational gaps and set out the actions that had been taken to address them into the future, including:

- a. offender management practices
- b. policy and decision-making
- c. incident command, control and communication
- d. police vehicle intercepts, including urgent duty driving, pursuits, vehicle-borne attacks and ‘vehicle follows’ that impact on the continuity of incident control and radio communications.<sup>40</sup>

9.30 At Inquest , AC Fontana told me:

Victoria Police has done a lot of soul-searching as a result of our response to this particular incident, and we’ve implemented a number of recommendations to improve our operational response ... to actually try and improve the way we deal with these situations into the future. And we’re absolutely committed to learning from these incidents to ensure that we’re always improving our practices.<sup>41</sup>

9.31 I was most impressed with the evidence of AC Fontana and, as I have previously stated in this Finding, the Critical Incident Review formed an essential feature of my investigation and assisted to guide the scope of the Inquest . I am grateful to have had the opportunity to examine and review the Critical Incident Review. It significantly assisted me to identify issues that required further investigation and evidence.

## Process of review

9.32 AC Fontana commenced the review in February 2017. He was assisted by Inspector Jacqueline Curran, along with other members of Crime Command.<sup>42</sup>

9.33 The primary focus of the Critical Incident Review was on identifying systemic or thematic issues for immediate address or redress from an organisational standpoint.<sup>43</sup> It was done in terms of organisational learning, with recommendations made for ‘where we needed

to be going from an organisational point of view’.<sup>44</sup> At Inquest , AC Fontana explained that, as issues were identified, they were relayed to the organisation so that the process of reform could start without waiting for recommendations in the final report.<sup>45</sup>

39 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 15.

40 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 16.

41 Transcript of evidence, p. 3433.

42 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 87.

43 Transcript of evidence, p. 3635.

44 Transcript of evidence, p. 3633.

45 Transcript of evidence, p. 3635.

9.34 AC Fontana’s review was not ‘exhaustive’ and was based on the information he had available to him at the time.<sup>46</sup> The review team did not conduct a forensic cross-examination of any individual involved, and individuals were not interviewed in relation to the contents of their statements or other documentation.<sup>47</sup> They were not individually counselled in relation to the substance of the report or any of the potential criticisms made by AC Fontana with the benefit of hindsight.<sup>48</sup> They have subsequently received training in relation to new policies, practices, procedures and equipment introduced since the Bourke Street event, including in relation to the new operational safety framework, hostile vehicle policy, offender management and vehicle immobilisation devices as described below.

## Debriefing sessions

9.35 The review team conducted debriefing sessions in groups and with individual police members involved.<sup>49</sup> The debriefing sessions provided an opportunity for therapeutic ventilation of issues. Their purpose was ‘open and frank discussion; it wasn’t a disciplinary inquiry or criminal interview; it was there to ... go across a whole range of themes in terms of ... what happened on the day’.<sup>50</sup>

9.36 According to AC Fontana:

... it was about trying to create an environment where we just discuss what happened, open and frank, um, discussion, you know, to ascertain what happened and get views on where things could have improved.<sup>51</sup>

9.37 The debriefing sessions included group meetings held with CIRT and Port Phillip CIU, and included key figures such as DSSgt Humphries, DSgt Barry, DSC Gentner and DSC Burnett.<sup>52</sup> Participation was voluntary, with invitations extended through work units or station managers.<sup>53</sup>

9.38 DSC Gentner described that the debriefing session involved:

... a very brief meeting with ... [AC] Fontana, maybe a month or two after this incident. We had a ... it was basically a group meeting with people from my office. Um, I wasn’t aware at that stage that that was going to end up ... well, where that discussion was going to end up. It was a fairly brief analysis.<sup>54</sup>

9.39 It should be noted that not all police officers involved with the events on 20 January 2017 were spoken to in person by the review team.

9.40 Frank Caridi gave evidence that he was not involved in any process of consultation with Victoria Police about the events on 20 January 2017. He formed the view that ‘what they actually did is ah, closed ranks and just put a big cone of silence about this. When I tried to talk about this um, no one would discuss it’.<sup>55</sup>

46 Transcript of evidence, p. 3631.

47 Transcript of evidence, p. 3457.

48 Transcript of evidence, pp. 322–4.

49 Transcript of evidence, p. 3457.

50 Transcript of evidence, pp. 3715–6.

51 Transcript of evidence, p. 3459.

52 Transcript of evidence, p. 3459.

53 Transcript of evidence, pp. 3457–9.

54 Transcript of evidence, p. 323.

55 Transcript of evidence, p. 1328.

- 9.41 Similarly, despite being a high-ranking police officer involved with the events of 20 January 2017, Insp Forsyth gave evidence that she had never had any connection with the report, had had no debrief and was not aware of the Critical Incident Review until portions of it were provided to her in preparation for giving evidence at the Inquest. It is unfortunate that they felt excluded from this important process.<sup>56</sup>

## Key outcomes and conclusions

- 9.42 AC Fontana's conclusions, as relevant to this Inquest, are discussed in great detail in various parts of this Finding. I do not propose to recount these. Some of these conclusions included criticisms of individual police members or their respective units. As a matter of procedural fairness, this Inquest sought to give those members an opportunity to provide a response to those criticisms. This enabled me to make a balanced assessment of their individual and collective actions.
- 9.43 It is clear that AC Fontana identified a variety of deficits in police actions during the events leading up to the Bourke Street tragedy.<sup>57</sup> He observed that, at various junctures during the events leading up to the tragedy, it would have been constructive for further consideration to have been given to options and potential amendments to the plan to locate and arrest the Offender.<sup>58</sup>
- 9.44 However, AC Fontana made it clear that it was also his view that even if such actions had been taken on the day, it may not have resulted in a different outcome.<sup>59</sup> He stated that it is possible to:

... sit back and, you know, go through any incident and pull it apart. Um, but, you know, in some we will, sometimes identify what we might consider to be failings, but that doesn't mean that, um, you know, if we, um, recommend some alternative action, that it may have resulted in a different outcome.<sup>60</sup>

- 9.45 AC Fontana recognised the difficulties faced by police officers in the exercise of their duty, explaining that when:

... dealing with high-risk situations, it is tough and you don't always see everything that's happening; you're [...] really focused on the events you're dealing with and sometimes you're not seeing everything perhaps from a different perspective.<sup>61</sup>

- 9.46 This was reinforced by other Executive Command officers who appeared at Inquest .

56 Transcript of evidence, pp. 1638–9.

57 Transcript of evidence, p. 3612.

58 Transcript of evidence, p. 3612–3.

59 Transcript of evidence, pp. 3613, 3620.

60 Transcript of evidence, p. 3457.

61 Transcript of evidence, p. 3637.

9.47 AC Grainger stated that:

... in the exercise of their duty, we ask our people to make ... to risk-assess and ... make decisions in good faith and in accordance with the law on a daily basis. Policy is certainly a guideline; it's there to ensure the safety of our community, our members and offenders. However, now our people make sound decisions on a daily basis, based upon a risk assessment and based on their commitment to their mission statement and their duty.<sup>62</sup>

9.48 Supt Ward reiterated this, noting that general duties police officers have:

... the toughest job within this organisation ... the community expects a lot of them, we expect a lot of them; they're the ones that have to make the decisions on the fly with little, if any, intelligence, without the benefit of hindsight.<sup>63</sup>

9.49 AC Fontana noted that, 'Policing is very difficult. We have to make decisions on our feet and, um, basically, we don't get it right all the time, but um, that doesn't mean actions weren't reasonable.'<sup>64</sup> He concluded that all of the police officers involved were 'genuine in their attempts' to locate and arrest the Offender and had acted in good faith.<sup>65</sup> I agree with this assessment.

## AC Fontana's recommendations

9.50 Nine recommendations were developed by AC Fontana as a result of his Critical Incident Review.<sup>66</sup> This included, relevantly, recommendations to:

- a. develop a revised definition of 'critical incident' in emergency management response to capture investigations or incidents that are escalating in risk and magnitude, and provide guidance on trigger points for activating a higher level of oversight and risk assessment by officers
- b. review, update and realign policies on urgent duty driving, police pursuits, vehicle follows, safer intercepts, vehicle-borne attacks and driver accreditation under one overarching policy
- c. review the introduction of enhanced centralised coordination to support pursuit controllers in the field
- d. develop and implement enhanced pursuit training programs for supervisors and incident controllers
- e. develop an Offender Management Practice Guide to provide guidance for members searching for or investigating high-to-extreme-risk fugitives or offenders.

62 Transcript of evidence, p. 3767.

63 Transcript of evidence, p. 3852.

64 Transcript of evidence, p. 3717.

65 Transcript of evidence, p. 3717.

66 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, pp. 18–9; Exhibit 202, Executive Summary of Operation Titan Critical Incident Review, pp. 654–5; Transcript of evidence, p. 3717.

9.51 AC Fontana explained in his closing remarks to the Inquest that:

... from the review, I will say that, from an organisational ... point of view, the recommendations we made were to actually improve our operational responses to ensure that we do pick up those emerging risks in a much ... better time or manage these risks at a much ... identify them as an emerging risk as they're moving along but also to put in ... the appropriate command and control arrangements to ensure that we can improve our overall response.<sup>67</sup>

9.52 All of the recommendations were endorsed by Executive Command, and AC Fontana told me that he was satisfied those recommendations had been implemented and now form part of Victoria Police policy.<sup>68</sup>

## Victoria Police reforms

9.53 It is clear that Victoria Police has undertaken extensive reviews and implemented a number of changes to its practices, procedures, technologies and resources following and in response to the Bourke Street incident. These reforms cover a range of areas, including operational safety, emergency management response, offender management, intelligence management, tasking and coordination, urgent triangulation requests, specialist resources, vehicle interdiction, and hostile vehicles.

## Operational Safety Framework

9.54 On 1 January 2018, Victoria Police introduced a new Operational Safety Framework (**Framework**) with revised Operational Safety Principles and a new Operational Safety Strategy to better reflect the current policing environment.<sup>69</sup> The Framework was the culmination of extensive research, reviews and studies into operational decision-making that took place from 2013–2017. It was designed to foster a clearly articulated safety culture, guide members in the performance of their operational duties, clarify expectations and improve operational decision-making for frontline members.<sup>70</sup>

9.55 The Framework is founded on three overriding principles of service, safety and harm minimisation. This is articulated into a single statement of intent: 'Safe Service – Victoria Police employees will manage all tasks and incidents with the aim of maximising safety and minimising harm.'<sup>71</sup>

67 Transcript of evidence, pp. 3756–7.

68 Transcript of evidence, p. 3613.

69 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, pp. 329; 393–5.

70 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, pp. 386–95.

71 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 330.

9.56 It is supported by a newly developed safety tool, SAFE TACTICS:

S – Slow Down / Step Back

A – Assess the Risks

F – Formulate a Plan

E – Evaluate your Options

T – Take Charge

A – Apply Relevant Legislation / Policy

C – Create a Safe Operating Environment

T – Tactical Options

I – Information Gathering

C – Communication

S – Support.<sup>72</sup>

1.57 These Operational Response Principles have been embedded into Victoria Police policy, with members undertaking training on the Framework as part of their usual Operational Safety and Tactics Training (**OSTT**).<sup>73</sup>

9.58 According to AC Fontana, this Framework will:

... make it easier for police to be more agile in our response to our current environment and will be empowered to make rapid, relevant policing decisions. It is also expected that Police will positively adopt the change and feel empowered and supported by the organisation to make decisions and take action to keep the community safe. This will be a significant and positive step forward as it encourages appropriate risk-taking and action.<sup>74</sup>

## Emergency Management Response

9.59 The Critical Incident Review identified that there were gaps in the identification of critical risk in evolving incidents such as that which presented on 20 January 2017.<sup>75</sup> It was found that there were discrepancies in level of command, control and coordination applied by regional crime investigation units in responding to incidents and investigations involving high-risk persons of interest suspected of committing serious crimes in the context of high levels of violence, use of offensive weapons and escalation in violence and frequency of offending.<sup>76</sup> AC Fontana found that these types of events tended to be treated as local policing matters and, unfortunately, the command and control and emergency management procedures in place were not necessarily being invoked.<sup>77</sup> He found that it was necessary to put new policies and practices in place to enhance identification of emerging risks and improve operational command, control and response to such incidents.<sup>78</sup>

72 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 397.

73 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 395.

74 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 396.

75 Transcript of evidence, pp. 3457–8.

76 Transcript of evidence, pp. 3457–8; Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, pp. 484–5.

77 Transcript of evidence, pp. 3736–7.

78 Transcript of evidence, pp. 3457–8.

- 9.60 Accordingly, AC Fontana recommended that the definition of ‘critical incident’ be revised to capture investigations that are escalating in risk and magnitude, and provide guidance on trigger points for activation to a higher level of command and control to ensure that risks to public safety are adequately managed.<sup>79</sup> This recommendation was directed to Victoria Police’s Command Capability Working Group (CCWG).
- 9.61 Chaired by Commander (Cmdr) Michael Hermans, CCWG is an advisory group that provides strategic advice to Victoria Police Executive Command on organisational reform.<sup>80</sup> CCWG was established to assist Victoria Police in developing its capability around incident command and control. It undertakes continual review of processes and procedures, considers the adequacy of guidelines and policies, and is tasked with considering and implementing recommendations arising from critical incident reviews.<sup>81</sup>
- 9.62 CCWG reviewed AC Fontana’s recommendation to revise the definition of ‘critical incident’ and developed a revised policy with a new context definition of ‘critical risk’, which is defined as meaning:
- ... an incident presenting serious risk, requiring immediate police attention; or, an investigation or other police activity, where it’s a significant escalation of risk which requires a heightened level of police response and/or command.<sup>82</sup>
- 9.63 This definition has now been incorporated into the VPM *Emergency Management Response* policy.<sup>83</sup>
- 9.64 At Inquest, AC Fontana explained that the new definition of critical risk will provoke the implementation of appropriate command and control and emergency management procedures, ensuring a higher level of command and control response and oversight in evolving situations.<sup>84</sup> He explained that:
- ... if there’s an escalation in activity by the person or persons involved in the incidents or evolving situation, where we think there’s a serious risk presented to the community, that we need to step back, think about our command and control ... think about the adequacy of the control that we’ve got in place. And it also requires our officers to probably take a closer look at the arrangements that are in place and, if necessary, escalate the level of command response or command oversight of these incidents.<sup>85</sup>
- 9.65 CCWG also considered AC Fontana’s recommendation for the definition of critical incident to include guidance regarding trigger points for activation of a higher level of oversight and risk assessment by officers. CCWG noted that the concept of ongoing risk evaluation is now embedded into the new Operational Safety Framework, Operational Response Principles of Service, Safety and Harm Minimisation and the Operational Safety Tool SAFE TACTICS.<sup>86</sup> However, it was identified that there was a potential gap relating to the ongoing risk assessment of investigations.<sup>87</sup>

79 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 494; Transcript of evidence, pp. 3601, 3736–7.

80 Transcript of evidence, p. 3601; Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 488.

81 Transcript of evidence, p. 3601.

82 Transcript of evidence, pp. 3601–3; Exhibit 213, Steering Committee Update by Commander Mick Hermans on Operation Titan Operational Practice FF-128 Recommendations dated 21 January 2019, AM 87, p. 4.

83 Transcript of Evidence, pp. 3601–2; Exhibit 213, Steering Committee Update by Commander Mick Hermans on Operation Titan Operational Practice FF-128 Recommendations dated 21 January 2019, AM 87, p. 4; Exhibit 214, Victoria Police Manual *Emergency Management Response* updated 10 February 2020, AM 113, p. 3.

84 Transcript of evidence, pp. 3602–3.

85 Transcript of evidence, p. 3603.

86 Exhibit 213, Steering Committee Update by Commander Mick Hermans on Operation Titan Operational Practice FF-128 Recommendations dated 21 January 2019, AM 87, pp. 6–7.

87 Exhibit 213, Steering Committee Update by Commander Mick Hermans on Operation Titan Operational Practice FF-128 Recommendations dated 21 January 2019, AM 87, p. 7.

- 9.66 Cmdr Hermans stated that a clear risk evaluation process, with an agreed trigger point at ‘critical risk’ for the ongoing management of the investigation, was required to resolve this gap. He considered that the process of ongoing risk evaluation needed to be incorporated into investigator and investigator management training.<sup>88</sup> Work has already commenced on addressing the potential for operational deficiencies with the introduction of Hydra technology, an immersive interactive training environment to support decision-making in critical incidents. Cmdr Hermans recommended that engagement continue with the People Development Command Centre for crime investigation training material to include curriculum on risk evaluation and transition to incident management.<sup>89</sup>

## Offender Management Project

- 9.67 Victoria Police has also introduced new processes and procedures for managing high-risk and recidivist offenders with the introduction of the OMP in 2017. This was established as an innovative approach to monitoring and management that scans, prioritises and manages persons of interest (**POIs**) who are identified as causing the most harm and having the highest impact within the Victorian community.<sup>90</sup> It reinforces prioritisation of high-risk offenders, increasing the prospect that more assertive monitoring of individuals, such as the Offender in this case, would take place today.<sup>91</sup>
- 9.68 The OMP shifts the focus from the offence (reactive response) to the offender (proactive prevention), with police units being accountable for the offenders in their area and not just the crime itself. POI managers are encouraged to achieve this by building rapport, engaging with POIs, understanding the reasons for their offending and supporting them by linking them to supportive programs, including, where appropriate, by involving other agencies and partners to support POI rehabilitation.<sup>92</sup>
- 9.69 The project was initially implemented in five sites from April 2018 and a further five sites between July and September 2018.<sup>93</sup> As at the end of 2018, all Victorian Police Divisions were undertaking the standardised POI management process. By June 2019, there were 2,682 POIs that police had commenced managing for a period of three months or more.<sup>94</sup>
- 9.70 In November 2019, a Final Evaluation Report of the OMP was completed by the Crime Statistics Agency (**CSA**).<sup>95</sup> The CSA undertook an evaluation of the early and emerging impacts of the OMP at the transition sites.<sup>96</sup>
- 9.71 The CSA concluded that there was an administrative burden that accompanied the project, but tasking and coordination operators were complying with the POI management processes. The POI management was targeting high-frequency generalist offenders as intended, and it was found there was a 31 per cent reduction in the number of ‘crimes against the person’ and a 20 per cent reduction in ‘property and deception’ offences between the pre- and post-contact periods, as well as overall decreases in the total number of high-seriousness offences (a 28 per cent decrease).<sup>97</sup>
- 9.72 The Evaluation Report made seven recommendations designed to improve the ongoing

88 Exhibit 213, Steering Committee Update by Commander Mick Hermans on Operation Titan Operational Practice FF-128 Recommendations dated 21 January 2019, AM 87, p. 8.

89 Exhibit 213, Steering Committee Update by Commander Mick Hermans on Operation Titan Operational Practice FF-128 Recommendations dated 21 January 2019, AM 87, pp. 8–9.

90 Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, p. 726.

91 Transcript of evidence, p. 3468.

92 Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, p. 727.

93 Exhibit 217, Offender Management Project: Final Evaluation Report dated November 2019, pp. 6, 10.

94 Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 727.

95 Exhibit 217, Offender Management Project: Final evaluation report dated November 2019, pp. 1–70.

96 Exhibit 217, Offender Management Project: Final evaluation report dated November 2019, p. 6.

97 Exhibit 217, Offender Management Project: Final evaluation report dated November 2019, p. 7.

operation of the POI management process. These included developing training in the principles and practice of offender management, case management approaches and avenues for addressing POI needs. An online training module for Victoria Police members has already been completed and released, providing a brief and simple overview of POI management along with case studies on best practice.<sup>98</sup>

- 9.73 The CCP acknowledged that there was a need for members to better understand the processes for evaluating breaches of bail terms. In response, the OMP recently published a *Person of Interest Management and Coordination Practice Guide* to provide guidance to members searching for and investigating high-to-extreme-risk fugitives/offenders.<sup>99</sup>
- 9.74 The OMP has led to force-wide improvements in systems, functions and practices to more effectively and assertively monitor high-risk recidivist offenders.<sup>100</sup> AC Fontana gave evidence that these changes have increased the prospect that more assertive monitoring of an individual such as the Offender would take place today.<sup>101</sup> I agree with this conclusion and agree with the CCP's submission that, if the Offender was processed today, he would now be subject to an offender management plan and active steps would be taken to monitor and manage his conduct.<sup>102</sup>

## Intelligence management, tasking and coordination

- 9.75 Since the Bourke Street incident, there have been significant reforms to the way Victoria Police manages and responds to intelligence. This includes new intelligence policies, procedures and guidelines, advancements in the NEO Intelligence Management System (NEO), rollout of BlueConnect Mobile Technology for frontline police officers, and the establishment of the Victoria Police Monitoring and Assessment Centre (VPMAC).

### Intelligence policies, procedures and guidelines

- 9.76 In March 2018, Victoria Police updated its 'Intelligence Doctrine', the vision statement for Victoria Police intelligence.<sup>103</sup> The Intelligence Doctrine sets out a strategic pathway for intelligence focused on continuous improvement within Victoria Police, with emphasis on recruitment and retention, continuous professional development, standardisation of the intelligence profession, performance assessment of intelligence, tasking and coordination capability and ensuring intelligence meets future needs.<sup>104</sup>
- 9.77 It operates collectively with the VPM *Intelligence* and VPM *Tasking and Coordination* Policy instruments, which detail the minimum standards of intelligence practice.<sup>105</sup> The VPM *Tasking and Coordination* policy sets out the process for prioritising problems, planning effective responses, allocating tasks and coordinating resources to improve community safety.<sup>106</sup> It provides the minimum standards required for prioritising, planning, tasking and responding to policing problems to provide guidance for supervisors and decision-makers.<sup>107</sup>

98 Exhibit 217, Offender Management Project: Final evaluation report dated November 2019, pp. 8–9; 60.

99 Written submissions of the Chief Commissioner of Police dated 19 May 2020, pp. 25, 124–49.

100 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, pp. 400–5; Exhibit 197, Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, pp. 3–5.

101 Transcript of evidence, p. 3468.

102 Written submissions of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 23.

103 Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 720; Exhibit 196, Victoria Police Intelligence Doctrine dated March 2018, Coronial Brief, p. 3815.

104 Exhibit 196, Victoria Police Intelligence Doctrine dated March 2018, Coronial Brief, pp. 3815–8.

105 Exhibit 196, Victoria Police Intelligence Doctrine dated March 2018, Coronial Brief, p. 3812; Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, pp. 720–1.

106 Exhibit 195, Attachments to Assistant Commissioner Stephen Fontana's First Statement, Victoria Police Manual *Tasking and Coordination*, Coronial Brief, p. 2266.

107 Exhibit 195, Attachments to Assistant Commissioner Stephen Fontana's First Statement, Victoria Police Manual *Tasking and Coordination*, Coronial Brief, p. 2266.

- 9.78 Relevantly, the policy sets out the need to develop an evidence-based response plan under the ‘PIERS’ framework (Prevention, Intelligence, Enforcement, Reassurance and Support) for planned responses that are focused on the minimisation of harm.<sup>108</sup> Of key importance in this process is the setting and reviewing of priorities, tasking, proactive planning, review of intelligence, region and divisional responsibilities and requirements for ongoing evaluation.<sup>109</sup>
- 9.79 This suite of policy instruments is supported by Practice Guides,<sup>110</sup> which are regularly updated to reflect best-practice tools and techniques and the operational environment, with the VPMs formally updated to codify good practice or issues of practice when required.<sup>111</sup>

## NEO Intelligence Management Solution system

- 9.80 In December 2015, Victoria Police introduced NEO, a program that enables authorised members and users to build a more holistic picture of a person’s offending and be more proactive in the identification of emerging trends. It allows searches to be conducted across multiple data sources using a single interface to assist in the prevention and solving of crimes. It collects data from separate source systems within Victoria Police, including LEAP, Interpose, Traffic Incident Systems and Incident Fact Sheets.
- 9.81 There is also a new NEO ‘Person of Interest Nomination Tool and Enforcement Rating’ (**POINTER**) system that will replace the ROPT. POINTER is based on probabilities derived by rating the seriousness of a crime for each person, and creates a POI score incorporating two factors for offender management prioritisation; namely, the likelihood of offenders committing a crime in the next three months and the seriousness of the offence as ranked using the CSA seriousness index.<sup>112</sup> The Offender in this case would have rated high on POINTER, which would likely have led to him being identified as a person of interest for offender management.<sup>113</sup>
- 9.82 At the time of writing the Critical Incident Review, it was anticipated the full release and implementation of NEO was expected to be delivered by the end of 2019.<sup>114</sup> It is anticipated that, in the future, NEO will be able to receive data from other sources such as ePDR, Victorian Infringements Enforcement Warrant System, external telecommunications data and Custody and Attendance documentation.<sup>115</sup> It is also expected to include advanced analytics modelling with proactive scanning, significant issues and trends analysis, external communications data (CCRs) analysis, social media and offender management prioritisation.<sup>116</sup> These technological advances have improved the ability of Victoria Police to produce predictive analysis to identify high-risk recidivist offenders in various regions and divisions.<sup>117</sup>

108 Exhibit 195, Attachments to Assistant Commissioner Stephen Fontana’s First Statement, Victoria Police Manual *Tasking and Coordination*, Coronial Brief, pp. 2266–7.

109 Exhibit 195, Attachments to Assistant Commissioner Stephen Fontana’s First Statement, Victoria Police Manual *Tasking and Coordination*, Coronial Brief, pp. 2266–76.

110 Exhibit 195, Attachments to Assistant Commissioner Stephen Fontana’s First Statement, Universal Intelligence Practice Guide, Coronial Brief, pp. 2255–65.

111 Exhibit 196, Victoria Police Intelligence Doctrine dated March 2018, Coronial Brief, p. 3812.

112 Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 726.

113 Transcript of evidence, p. 3443.

114 Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 725.

115 Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 725.

116 Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 726.

117 Transcript of evidence, pp. 3440–1.

## BlueConnect Mobile Technology Project

- 9.83 As part of the BlueConnect Mobile Technology Project (**BlueConnect**), Victoria Police is equipping general duties police, protective service officers (**PSOs**) and highway patrol units with iPhones and iPads that have purpose-built applications to allow frontline officers to access operational information in the field. AC Fontana informed me that these devices will deliver new ways for frontline police to access and share real-time information in the field when it is needed most.<sup>118</sup> The project is designed to allow frontline officers to conduct person, vehicle, licence and location checks across three national databases. They have recently been upgraded to include Computer-Aided Dispatch (**CAD**) functionality with interactive mapping and Electronic Patrol Data Return (**ePDR**) entry capabilities. BlueConnect is also trialling a crime and event reporting application that will allow frontline officers to take crime reports into the field and transmit them electronically for entry into LEAP.<sup>119</sup>
- 9.84 The advanced mapping on the devices allows Victoria Police to see where units are positioned across the state.<sup>120</sup> The enterprise geospatial mapping enhances the information provided to the forward commander in an incident so that units can be positioned in advance.<sup>121</sup> At this stage, the system does not have full functionality, but it is expected that the devices will have more capability in the future to allow for real-time field reporting.<sup>122</sup> As at February 2020, some 10,600 mobile devices had been rolled out to frontline police officers.<sup>123</sup>

## Victoria Police Monitoring and Assessment Centre

- 9.85 In late 2016, Victoria Police launched the Victoria Police Monitoring and Assessment Centre (**VPMAC**).<sup>124</sup> It was designed in response to a recognition that there were several disparate sources of information that provided intelligence to police commanders in the field, particularly when police operations crossed police divisional borders and there was no unit with a cross-border or ‘umbrella’ view that could ‘join the dots’ and forewarn police, particularly the police commanders in and across divisions.<sup>125</sup> Initially, its focus was on building a comprehensive view of operations across the state to provide a ‘situational awareness’ of emerging incidents to command to support frontline decision-makers.<sup>126</sup>
- 9.86 VPMAC is a proactive resource with the ability to identify potential incidents via intelligence systems, streaming cameras and social media, allowing police to pre-deploy resources to specific areas as needed to pre-empt and prevent potential incidents.<sup>127</sup> The information gathered by VPMAC is then fed to decision-makers in the field, forward commanders and other relevant units playing a supervisory role.<sup>128</sup> VPMAC has the capacity to provide a more active role in coordinating and providing information back into the field to assist decision-making and risk assessment by commanders in the field.<sup>129</sup>

118 Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 724.

119 Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, pp. 724–5.

120 Transcript of evidence, p. 3439.

121 Transcript of evidence, p. 3445.

122 Transcript of evidence, p. 3477.

123 Transcript of evidence, p. 3439.

124 Transcript of evidence, pp. 3443, 3735; Exhibit 216, Statement of Inspector Andrew Rowlands dated 23 December 2019, AM 94, p. 1; Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 728.

125 Exhibit 216, Statement of Inspector Andrew Rowlands dated 23 December 2019, AM 94, p. 1.

126 Exhibit 216, Statement of Inspector Andrew Rowlands dated 23 December 2019, AM 94, p. 2.

127 Transcript of evidence, p. 3444; Exhibit 216, Statement of Inspector Andrew Rowlands dated 23 December 2019, AM 94, pp. 2–3.

128 Transcript of evidence, p. 3446; Exhibit 216, Statement of Inspector Andrew Rowlands dated 23 December 2019, AM 94, pp. 2–3.

129 Transcript of evidence, p. 3447; Exhibit 216, Statement of Inspector Andrew Rowlands dated 23 December 2019, AM 94, p. 2.

- 9.87 It operates 24/7 and is staffed by senior police and strategic analysts who monitor emerging CAD data and look at incidents that might warrant further or closer monitoring in the field.<sup>130</sup> It has access to thousands of cameras throughout the state, including Safe City Cameras, VicRoads cameras, Air Wing footage and Department of Transport cameras, providing police with ‘enormous capability’ to monitor information in real time.<sup>131</sup> It enables real-time information collection, analysis, assessment and integration, and is designed to increase situational awareness and operational effectiveness while giving decision-makers more accurate and timely information.<sup>132</sup>
- 9.88 The intelligence gathered by VPMAC is provided to members by way of alerts to specialist units and relevant distribution lists via the WHISPIR multi-channel messaging platform.<sup>133</sup> In the event of an emerging critical incident, VPMAC analysts will assess the CAD event to determine whether it reaches the criteria for VPMAC involvement, and then notify their senior sergeant who will review, and, if appropriate, send a text message to specialist units, as well as regional inspectors and senior sergeants if deemed necessary.
- 9.89 Analysts may also conduct checks of LEAP, Interpose, social media, CCTV and other intelligence sources as relevant, the results of which are relayed to specialist units. Information may be relayed via WHISPIR with the best up-to-date available information, with recipients including the Operations Response Unit, Transit, Welfare or general command as appropriate. VPMAC may also be used to perform an initial intelligence-gathering and dissemination role when a decision is made to activate the State, and will also fill the intelligence role until the Incident Command and Control System cell leaders are in place.<sup>134</sup>
- 9.90 VPMAC performs a strictly intelligence-gathering and dissemination role within Victoria Police and does not perform a tactical, operational or decision-making role in any police operations.<sup>135</sup>
- 9.91 On 20 January 2017, VPMAC was tasked by Port Phillip CIU with social media scanning of the Offender, as detailed in Part 7 of this Finding. Since that time, VPMAC’s capabilities have advanced significantly in the setting of technological advances including BlueConnect, NEO and POINTER (detailed above). The CCP submitted that if an incident such as that which occurred on 20 January 2017 were to happen again, VPMAC would be able to access surveillance data, such as from Air Wing, and would also receive geospatial mapping of units’ locations from BlueConnect, which would assist in coordinating intelligence to assist the apprehension operation.<sup>136</sup>

## Approval process for urgent triangulation

- 9.92 As detailed in Part 5 of this Finding, the Critical Incident Review identified that there were inconsistencies between Victoria Police policy and Police Communication Centre’s (PCC) Standard Operating Procedures regarding whether decision-making under s. 287 of the *Telecommunications Act 1997* rests with the PCC’s PSM or with the requesting member.<sup>137</sup>

130 Transcript of evidence, p. 3443; Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 728; Exhibit 216, Statement of Inspector Andrew Rowlands dated 23 December 2019, AM 94, pp. 2–3.

131 Transcript of evidence, pp. 3443–4; Exhibit 216, Statement of Inspector Andrew Rowlands dated 23 December 2019, AM 94, pp. 2–3.

132 Exhibit 194, First Statement of Assistant Commissioner Stephen Fontana dated 11 July 2019, Coronial Brief, p. 728.

133 Exhibit 216, Statement of Inspector Andrew Rowlands dated 23 December 2019, AM 94, pp. 3–5.

134 Exhibit 216, Statement of Inspector Andrew Rowlands dated 23 December 2019, AM 94, pp. 6–7.

135 Exhibit 216, Statement of Inspector Andrew Rowlands dated 23 December 2019, AM 94, p. 7.

136 Written submissions of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 98.

137 Exhibit 197, Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, p. 2.

- 9.93 To address this issue, Victoria Police has updated the VPM *Telecommunications Interceptions Act* to clarify decision-making authority for these requests. Members are now required to consult with their supervisor to ensure the circumstances meet the criteria under s. 287 of the Act. If the supervisor is so satisfied, the request is forwarded to an appropriate senior officer for approval, with the senior officer forwarding the request to the PSM to facilitate. This has changed the ultimate decision-maker from being the PSM at PCC to the senior officer.<sup>138</sup>

## Specialist resources

- 9.94 The capabilities and deployment criteria for specialist units such as the CIRT and the SOG was reviewed following the Bourke Street incident. These reviews are detailed below, along with details of additional teams established within these units to provide further tactical response capabilities for critical incidents in Melbourne's CBD.

### CIRT vehicle capabilities and deployment criteria

- 9.95 In the aftermath of the Bourke Street incident, CIRT officers raised concerns about the suitability of the CIRT vehicle fleet and suggested that CIRT should be given authority and training to conduct mobile vehicle intercepts and conclude pursuits.<sup>139</sup> Specific concerns were raised about the safety of VW Transporter vans as rear seating had to be retro-fitted into the vehicle and there was a lack of side-impact airbags to provide an appropriate level of protection for rear passengers.<sup>140</sup> Additional concerns were raised in relation to the classification of the VW Transporter vans, which limited the speed at which the van could be driven.<sup>141</sup>
- 9.96 Victoria Police had already commenced a review of the CIRT vehicle fleet prior to the Bourke Street incident.<sup>142</sup> In late 2016, CIRT engaged Victoria Police Transport Branch to discuss safety concerns, the CIRT deployment model and the specifications required to future-proof the CIRT vehicle fleet. As a result of this, an Ergonomics Assessment Report was conducted and completed by David Capel on 1 September 2016. Mr Capel concluded that the most appropriate vehicles to transport people and equipment were the VW Multivan and the Ford Ranger dual-cab utility.<sup>143</sup> However, due to ordering vehicles, associated fit-out, design and delivery and consultation processes with occupational health and safety representatives, the Police Association and relevant engineering requirements, the changeover of the fleet took some time.<sup>144</sup>
- 9.97 At Inquest, Supt Ward informed me that:

A review was conducted in relation to the vehicles that were being utilised by the [CIRT], and it was determined that, at the time, they were not fit for purpose and that they could be enhanced by the release of newer vehicles ... and newer vehicles being made available to Victoria Police. As a result of that ... testing took place, as well as some ergonomic assessments of those vehicles, and as a result of those tests, a number of vehicles were recommended ... to be utilised by the [CIRT].<sup>145</sup>

138 Exhibit 197, Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, p. 3.

139 Exhibit 116, CIRT Issue Cover Sheet regarding vehicles and pursuits dated 22 August 2017, pp. 1–7; Exhibit 155, CIRT Issue Cover Sheet CIRC1700177 regarding CIRT van fleet dated 25 January 2017, pp. 1–2.

140 Exhibit 233, Third Statement of Superintendent Peter Ward dated 20 December 2019, AM 92, p. 3.

141 Exhibit 233, Third Statement of Superintendent Peter Ward dated 20 December 2019, AM 92, p. 4.

142 Exhibit 233, Third Statement of Superintendent Peter Ward dated 20 December 2019, AM 92, pp. 5, 8–39.

143 Exhibit 233, Third Statement of Superintendent Peter Ward dated 20 December 2019, AM 92, p. 4.

144 Exhibit 233, Third Statement of Superintendent Peter Ward dated 20 December 2019, AM 92, p. 5.

145 Transcript of evidence, p. 3837.

- 9.98 In respect of the vehicles in operation as at January 2017, Supt Ward told me that the deficit was that the majority of the CIRT fleet were sedans and their functional classification meant that there were some restrictions regarding the speed at which some of the vehicles could be driven.<sup>146</sup> This has now been addressed with upgrades in classification from white to bronze and bronze to silver.<sup>147</sup>
- 9.99 A further review of the CIRT fleet was undertaken in late 2018 and early 2019, with a new fleet of vehicles approved for CIRT in early 2019. The vehicles were provided to CIRT by April 2019 and the fleet now consists predominantly of Toyota Kluger AWD, Ford Ranger and VW Multivan vehicles.<sup>148</sup> At Inquest, Supt Ward informed me that he believes the CIRT vehicle fleet is now fit for purpose, with appropriate classifications.<sup>149</sup>
- 9.100 However, CIRT's role has not been expanded to include mobile vehicle intercepts due to the significant risks associated with such manoeuvres. As explained by Supt Ward, mobile intercepts are considered:

... one of the most dangerous tactical arrest options that can be used by Victoria Police. They're dangerous to the community, they're dangerous for Victoria Police members and, at times, they're dangerous for the offenders.<sup>150</sup>

- 9.101 He explained that they are a complicated arrest option that requires a number of elements to be in place in advance, including extensive contingency planning. If not conducted with precision, mobile vehicle intercepts have a high likelihood of resulting in serious injury or fatality.<sup>151</sup> SOG is the only unit that has the specific skillsets, responsibilities, equipment, powers and level of training required to undertake these manoeuvres.<sup>152</sup>

## Special Operations Group

- 9.102 Victoria Police also reviewed and amended the process for applying for deployment of the SOG to ensure a more timely and efficient response to critical incidents.<sup>153</sup> The VPM *Specialist Support* policy was amended in September 2017<sup>154</sup> to simplify and streamline the application and authorisation process for SOG deployment.<sup>155</sup> The purpose of these amendments was to expedite the process by allowing a SOG Inspector or qualified SOG Senior Sergeant to approve the deployment of resources for planned and unplanned operations.<sup>156</sup>

<sup>146</sup> Transcript of evidence, p. 3838.

<sup>147</sup> Transcript of evidence, p. 3838.

<sup>148</sup> Exhibit 231, Second Statement of Superintendent Peter Ward dated 30 September 2019, Coronial Brief, p. 1791; Exhibit 233, Third Statement of Superintendent Peter Ward dated 20 December 2019, AM 92, pp. 5, 60.

<sup>149</sup> Transcript of evidence, p. 3838.

<sup>150</sup> Transcript of evidence, p. 3849; Exhibit 233, Third Statement of Superintendent Peter Ward dated 20 December 2019, AM 92, p. 6.

<sup>151</sup> Exhibit 233, Third Statement of Superintendent Peter Ward dated 20 December 2019, AM 92, pp. 6–7.

<sup>152</sup> Transcript of evidence, p. 3850; Exhibit 233, Third Statement of Superintendent Peter Ward, AM 92, pp. 6–7.

<sup>153</sup> Exhibit 234, Fourth Statement of Superintendent Peter Ward dated 7 October 2019, AM 103, p. 8.

<sup>154</sup> Supt Ward stated that as at 26 November 2018, the Victoria Police Manual – Procedures and Guidelines *Specialist Support* policy (the 2018 policy) was amended to change the process concerning applications for deployment of the SOG and the authorisation required for any application. See Exhibit 230 Statement of Superintendent Peter Ward dated 24 March 2019. However, examination of the 2018 policy indicates that the review and amendment of the deployment authorisation process took place on 18 September 2017. See Exhibit 205, Victoria Police Manual – Procedures and Guidelines *Specialist Support*, p. 2781. It appears likely that this error arose as the 2018 policy was last amended on 26 November 2018 with a minor unrelated change.

<sup>155</sup> Exhibit 205, Victoria Police Manual – Procedures and Guidelines *Specialist Support*, pp. 2759, 2781. This policy has since been updated and converted into the current VPM format. See Exhibit 234, Fourth Statement of Superintendent Peter Ward dated 15 January 2020, AM 103, pp. 2, 5–26.

<sup>156</sup> Exhibit 230, Statement of Superintendent Peter Ward dated 24 March 2019, Coronial Brief, p. 1784.

9.103 According to Supt Ward, this process change ensured a more timely and efficient response by SOG to critical incidents by removing various layers of approval from superior officers, up to the rank of Assistant Commissioner, that historically had the potential to cause delay to SOG deployment.<sup>157</sup> There has been no other change to the criteria for deployment of SOG, save for the addition of responding to hostile vehicles.<sup>158</sup>

## Specialist response and security teams

9.104 Following the Bourke Street incident, Victoria Police established dedicated teams within CIRT and SOG to enhance the capabilities of Victoria Police to provide an immediate tactical response to incidents occurring within Melbourne's CBD.<sup>159</sup>

9.105 The CST consists of small mobile teams within the CBD that patrol likely areas of threat, during allocated times, to respond to high-risk critical incidents.<sup>160</sup> They are equipped with full operational equipment including specialist weapons to enable a rapid response to high-risk domestic policing and terrorist incidents.<sup>161</sup> They are able to provide additional capability at short notice in the event of a hostile vehicle attack in the CBD or in suburban areas.<sup>162</sup> They can also operate covertly in a variety of vehicles and can provide situational awareness and accurate real-time tactical intelligence for the SOG teams in connection with larger-scale events.<sup>163</sup>

9.106 The CST is 'designed to provide an immediate tactical response to ... incidents that are occurring within the CBD',<sup>164</sup> is able to be deployed at extremely short notice and was created to deal with circumstances of emergency within the CBD.<sup>165</sup>

9.107 The QRF is a specialist covert unit attached to SOG that provides rapid high-level specialist tactical early intervention to life-threatening events where:

- a. it is reasonably believed an imminent threat to life is perceived
- b. an immediate tactical response is required to counter a terrorist incident, high-risk or high-impact crime.<sup>166</sup>

9.108 QRF monitors incidents and assesses their potential to become an operation requiring SOG involvement.<sup>167</sup> It is agile and has the authority to self-deploy without approval from superior members, allowing it to more easily deploy to required areas to respond to a terrorism or high-risk crime incident.<sup>168</sup> QRF has specialist tactical equipment above that available to CIRT and operational members<sup>169</sup> and includes a SOG medic who has the ability to administer medical assistance during the course of a SOG critical incident without waiting until the area is secure.<sup>170</sup>

9.109 The CST and QRF conduct intra-operability training so that they can work in conjunction with one another.<sup>171</sup>

157 Exhibit 230, Statement of Superintendent Peter Ward dated 24 March 2019, Coronial Brief, p. 1784.

158 Exhibit 234, Fourth Statement of Superintendent Peter Ward dated 7 October 2019, AM 103, p. 8.

159 Transcript of evidence, p. 3860.

160 Exhibit 235, Two Issue Cover Sheets, AM 57 & AM 58, AM 58, p. 1.

161 Exhibit 235, Two Issue Cover Sheets, AM 57 & AM 58, p. 1.

162 Exhibit 235, Two Issue Cover Sheets, AM 57 & AM 58, AM 58, p. 1.

163 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 111.

164 Transcript of evidence, p. 3860.

165 Transcript of evidence, p. 3862.

166 Transcript of evidence, p. 3862; Exhibit 230, First Statement of Superintendent Peter Ward dated 24 March 2019, Coronial Brief, p. 1784.

167 Exhibit 230, Statement of Superintendent Peter Ward dated 20 March 2019, Coronial Brief, p. 1785.

168 Exhibit 230, Statement of Superintendent Peter Ward dated 24 March 2019, Coronial Brief, p. 1785.

169 Exhibit 230, Statement of Superintendent Peter Ward dated 20 March 2019, Coronial Brief, p. 1785.

170 Exhibit 230, Statement of Superintendent Peter Ward dated 24 March 2019, Coronial Brief, p. 1786.

171 Transcript of evidence, p. 3871.

9.110 According to Supt Ward, these innovations with the CST and SOG QRF have provided Victoria Police with:

... a greater response capability to support front-wide policing operations and have been proven, particularly in the CIRT's security team's space, to be able to get to locations within the CBD where incidents are occurring by latest intelligence, indicates [in] under two minutes'.<sup>172</sup>

## Vehicle interdiction

9.111 This Inquest highlighted the difficulties of stopping and apprehending an offender in a moving vehicle who refuses to stop. These are 'incredibly difficult' and dangerous challenges,<sup>173</sup> which Victoria Police has aimed to address through policies on pursuits and urgent duty driving, and through the use of vehicle immobilisation devices, as described below.

### Pursuit policy

9.112 The VPM *Pursuit Policy* has undergone extensive revision and reform over the past 20 years in response to internal reports and reviews, updates to practice and thinking in this area, recommendations from independent investigations, coronial inquests,<sup>174</sup> and feedback provided by Victoria Police members.<sup>175</sup> In the interests of brevity, I do not propose to provide a detailed historical account of the evolution of the current *Pursuit Policy*. It is sufficient to note that the *Pursuit Policy* has been in its current form (save for a minor amendment on 16 January 2017) since 27 July 2016.<sup>176</sup> The overriding intention of the policy is the minimisation of death and serious injury associated with police pursuits.<sup>177</sup>

9.113 At Inquest, AC Grainger explained that following the introduction of the amended 2015 *Pursuit Policy*, Victoria Police received input from members that the policy was confusing. The 2016 iteration of the *Pursuit Policy* was introduced with the aim of eliminating this confusion, and was supported by various internal communications and a more staggered approach to advising members about policy changes, giving officers more clarity on the prevailing policy position. Victoria Police members were advised that they would receive institutional support if they engaged in a pursuit, provided there was proper reason to do so.<sup>178</sup>

9.114 AC Grainger noted that, following the introduction of the 2015 *Pursuit Policy*, a disengagement with the pursuits process was observed, with data demonstrating a reduction from about 170 pursuits per month to seven after the 2015 implementation. Upon implementation of the revised policy in 2016, Victoria Police observed an increase to about 55 pursuits per month, a rate that has remained relatively steady since that time. It was considered this was indicative of a workforce re-engaged in the practice and with an enhanced understanding of police requirements.<sup>179</sup>

<sup>172</sup> Transcript of evidence, p. 3863.

<sup>173</sup> Transcript of evidence, p. 3766.

<sup>174</sup> See Findings into the deaths of Jason Kumar (COR 2009 5767), Sarah Booth (COR 2006 4974), Jason Govan (COR 2012 0264), Robert Di Bartolo (COR 2013 3749), Rutiano Chong Gum (COR 2014 4554) and Kyra-Lee Clarke.

<sup>175</sup> Exhibit 224, Statement of Assistant Commissioner Douglas Fryer dated 19 October 2017, Coronial Brief, p. 743.

<sup>176</sup> Exhibit 224, Statement of Assistant Commissioner Douglas Fryer dated 19 October 2017, Coronial Brief, p. 770.

<sup>177</sup> Exhibit 224, Statement of Assistant Commissioner Douglas Fryer dated 19 October 2017, Coronial Brief, p. 772.

<sup>178</sup> Transcript of evidence, p. 3768.

<sup>179</sup> Transcript of evidence, p. 3774.

- 9.115 The CCP issued an instruction, effective from 1 January 2017, prohibiting police members who had not completed the mandatory online learning course from involvement in a pursuit as a driver or occupant of the primary or secondary units, a pursuit controller or a pursuit coordinator.<sup>180</sup>
- 9.116 On 10 May 2017, Victoria Police completed an evaluation of the *Pursuit Policy*.<sup>181</sup> This review was undertaken to examine the impact and effectiveness of the *Pursuit Policy* introduced on 13 July 2015 (**2015 Pursuit Policy**) and the amended policy dated 27 July 2016 (**2016 Pursuit Policy**), exploring the issues around changes brought about by the VPM *Pursuit Policy* and identifying opportunities for further improvements.<sup>182</sup> It was noted that the amendments to the 2016 *Pursuit Policy* had successfully redressed the general lack of understanding of the intentions of the 2015 *Pursuit Policy*. It provided effective instruction, enabling police to meet the complex challenges of a potential pursuit situation. While there had been an increase in pursuits of suspect vehicles since the amendment in 2016, this remained at a much lower recorded rate than prior to the 2015 *Pursuit Policy* and there was no discernible change to the number of collisions or injuries resulting from pursuits since the amended policy.<sup>183</sup> The rate has remained stable at around 55 pursuits per month since June 2016.<sup>184</sup>
- 9.117 The review concluded that:
- a. police are evaluating the risks before engaging and while continuing to engage in a pursuit<sup>185</sup>
  - b. members are more confident to engage in pursuits, but this has not resulted in an excessive rise in collisions or injuries<sup>186</sup>
  - c. there is an opportunity to further improve the supervision and coordination of police pursuits through holistic training recently trialled at the Centre for Incident and Emergency Management<sup>187</sup>
  - d. the *Pursuit Policy* has had no impact on drug - or drink-driving offending<sup>188</sup>
  - e. there was scope for improvement in the understanding of the policy and the risk assessment process, particularly for frontline supervisors who, as pursuit controllers, have a key role in coordinating the safe conduct of pursuits and the recording of the rationale used to justify or not justify a pursuit.<sup>189</sup>
- 9.118 The *Pursuit Policy* was subsequently amended on 14 January 2019 to incorporate the Chief Commissioner's instruction that pursuit participants must have completed mandatory training before being permitted to engage in pursuits.<sup>190</sup> No other substantive amendments have been made to the policy since this time.<sup>191</sup>
- 9.119 In 2019, Victoria Police launched a *Pursuit Policy* Refresher Online Course to enhance members' understanding of the policy, including justification criteria to engage in a pursuit, mandatory requirements when conducting a pursuit, risk assessment considerations, and knowledge of the roles and responsibilities of the pursuit controller

180 Exhibit 221, First Statement of Assistant Commissioner Michael Grainger dated 11 June 2019, Coronial Brief, p. 888.

181 Exhibit 215, Evaluation Report Victoria Police Manual *Pursuit Policy* dated 10 May 2017, AM 143, pp. 1–28; Transcript of evidence, p. 3610.

182 Exhibit 215, Evaluation Report Victoria Police Manual *Pursuit Policy* dated 10 May 2017, AM 143, p. 4.

183 Exhibit 215, Evaluation Report Victoria Police Manual *Pursuit Policy* dated 10 May 2017, AM 143, p. 4.

184 Exhibit 215, Evaluation Report Victoria Police Manual *Pursuit Policy* dated 10 May 2017, AM 143, p. 15.

185 Exhibit 215, Evaluation Report Victoria Police Manual *Pursuit Policy* dated 10 May 2017, AM 143, p. 4.

186 Exhibit 215, Evaluation Report Victoria Police Manual *Pursuit Policy* dated 10 May 2017, AM 143, p. 4.

187 Exhibit 215, Evaluation Report Victoria Police Manual *Pursuit Policy* dated 10 May 2017, AM 143, p. 4.

188 Exhibit 215, Evaluation Report Victoria Police Manual *Pursuit Policy* dated 10 May 2017, AM 143, p. 4.

189 Exhibit 215, Evaluation Report Victoria Police Manual *Pursuit Policy* dated 10 May 2017, AM 143, p. 24.

190 Exhibit 221, Statement of Assistant Commissioner Michael Grainger dated 11 June 2019, Coronial Brief, p. 888; Exhibit 204, Victoria Police Current *Pursuit Policy*, last updated 14 January 2019, Coronial Brief, pp. 2801–18.

191 Exhibit 221, Statement of Assistant Commissioner Michael Grainger dated 11 June 2019, Coronial Brief, p. 889; Exhibit 204, Victoria Police Current *Pursuit Policy*, last updated 14 January 2019, Coronial Brief, pp. 2801–18.

and coordinator.<sup>192</sup> It consists of a scenario-based quiz where members are required to determine whether a pursuit is justified in each instance, along with an online quiz at the conclusion of the training module.<sup>193</sup>

- 9.120 AC Grainger informed me that the Road Policing Strategy Division undertakes ongoing evaluation of pursuits, monitoring the Incident Fact Sheet system that references vehicle pursuits, looking for any potential issues that may arise and evaluating whether there is a need for any adjustment to be made to organisational messaging to operational police.<sup>194</sup> Victoria Police also initiated a review of the coordination function of vehicle pursuits in late 2019, to determine whether this could be enhanced in any way. This work is ongoing.<sup>195</sup>

## Urgent duty driving

- 9.121 Victoria Police has also developed the VPM *Urgent Duty Driving* policy to outline the circumstances in which initiatives including extended follows can be undertaken by police. At the time of the Inquest hearings, this policy was in the process of being authorised and implemented.<sup>196</sup>

- 9.122 Urgent duty driving is defined as occurring:

... when a police member drives or positions a police vehicle in such a manner that requires them to breach one or more of the provisions of the Road Safety Rules 2017, in order to immediately respond to an incident or to carry out their duties as a police member.<sup>197</sup>

- 9.123 Urgent duty driving may be undertaken by members to facilitate the mobile positioning of a police vehicle in relation to a subject vehicle and/or high-risk offender and extended following of the subject vehicle and/or high-risk driver in circumstances where it is reasonably believed the driver of the subject vehicle is unaware of the presence of police.<sup>198</sup>

- 9.124 This policy communicates to members the relevant pre-conditions for extended follows to be an acceptable and appropriate way to maintain contact with suspect vehicles.<sup>199</sup> It sets out that where extended following is done, it must be in accordance with the risk assessment and decision-making guide in the policy, which reflects the operational response principles and operational safety tool.<sup>200</sup>

- 9.125 However, in the circumstances of the events on 20 January 2017, the extended follows of the Offender where he was aware of the police presence constituted a pursuit rather than urgent duty driving and would not have met the criteria under the *Urgent Duty Driving* policy.<sup>201</sup>

192 Exhibit 221, Statement of Assistant Commissioner Michael Grainger dated 11 June 2019, Coronial Brief, p. 889; Exhibit 223, 2019 Pursuit Policy Refresher, Coronial Brief, pp. 4071–98.

193 Exhibit 221, Statement of Assistant Commissioner Michael Grainger dated 11 June 2019, Coronial Brief, p. 890; Exhibit 223, 2019 Pursuit Policy Refresher, Coronial Brief, pp. 4071–98.

194 Transcript of evidence, pp. 3774–5.

195 Transcript of evidence, p. 3775.

196 Transcript of evidence, p. 3789; Exhibit 228, Victoria Police Manual *Urgent Duty Driving* (not yet published), AM 98, pp. 1–14.

197 Exhibit 228, Victoria Police Manual *Urgent Duty Driving* (not yet published), AM 98, p. 2.

198 Exhibit 228, Victoria Police Manual *Urgent Duty Driving* (not yet published), AM 98, p. 5.

199 Transcript of evidence, p. 3789; Exhibit 228, Victoria Police Manual *Urgent Duty Driving* (not yet published), AM 98, p. 3.

200 Transcript of evidence, p. 3790; Exhibit 228, Victoria Police Manual *Urgent Duty Driving* (not yet published), AM 98, pp. 4–6.

201 Transcript of evidence, p. 3790.

- 9.126 The policy highlights the inherent risks of urgent duty driving, which increase significantly with speed, adverse weather and road conditions and in areas of high vehicular or pedestrian traffic. It provides instructions to police officers on how to manage risks in order to protect themselves and the public.<sup>202</sup>
- 9.127 The policy mandates that where police members are engaged in following a vehicle, they are obliged to notify police communications as soon as they can to enable communication to the patrol supervisor or the divisional patrol supervisor.<sup>203</sup> The patrol supervisor or the divisional patrol supervisor then has a role in taking command of the situation in the way that a pursuit controller does, and providing advice and guidance, including to terminate or permit the urgent duty driving.<sup>204</sup> The rollout of the *Urgent Duty Driving* policy is intended to be accompanied by further education to members to ensure they understand the distinctions between hostile duty driving, pursuits and extended follows.<sup>205</sup>

## Vehicle immobilisation devices

- 9.128 As previously discussed in Part 8 of this Finding, tyre deflation devices are capable of causing a vehicle to stop or preventing a vehicle from moving. However, the devices may not prevent a driver from continuing to drive. I was informed that there have been many instances where drivers have continued driving on flat tyres, rims and in some cases, after the rim has disintegrated, they have continued to drive on the drums until the wheel assembly collapses completely.<sup>206</sup> There are certain prerequisites that must be met for tyre deflation devices to be deployed safely, with several considerations forming part of an ongoing risk assessment before deployment.<sup>207</sup>
- 9.129 In 2017, Victoria Police sought legislative change to s. 63B of the Road Safety Act to amend the definition of ‘Tyre Deflation Device’ to ‘Vehicle Immobilising Device’ to enable the exploration of new technology that, while immobilising vehicles, did not primarily deflate the tyres. Following this legislative amendment, the VPM *Tyre Deflation Devices* policy was amended to VPM *Vehicle Immobilising Devices* policy on 10 January 2020.<sup>208</sup> Subsequent amendments were also made to the VPM *Pursuit Policy* to reflect the change in terminology.<sup>209</sup>
- 9.130 At the time of the Bourke Street incident, the only tyre deflation devices available to Victoria Police were traditional stop sticks. However, in 2017, Victoria Police conducted limited trials of additional vehicle immobilising devices, the ‘Patrol Terminator’ and the ‘Piranha’, for low-speed or static deployment and covert deployment on unoccupied vehicles.<sup>210</sup>
- 9.131 I was informed by AC Murphy that Victoria Police has secured additional funding for the rollout of these devices and expansion of the supply of tyre deflation devices to every frontline police vehicle, including Frontline Tactical Units, CIU, CIRT and Divisional Highway Patrols. This rollout commenced in February 2020 and it is expected all frontline policing units will be equipped with these devices by October 2020.<sup>211</sup> Victoria Police commenced additional training for police officers in the use of vehicle immobilisation

202 Exhibit 228, Victoria Police Manual *Urgent Duty Driving* (not yet published), AM 98, pp. 1, 4–6.

203 Transcript of evidence, p. 3791; Exhibit 228, Victoria Police Manual *Urgent Duty Driving* (not yet published), AM 98, p. 5.

204 Transcript of evidence, p. 3791; Exhibit 228, Victoria Police Manual *Urgent Duty Driving* (not yet published), AM 98, p. 4.

205 Transcript of evidence, p. 3791.

206 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy dated 24 January 2020, AM 99, p. 6.

207 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy dated 24 January 2020, AM 99, pp. 6–8.

208 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy dated 24 January 2020, AM 99, pp. 2–3; Exhibit 206, Attachments to the Statement of Assistant Commissioner Elizabeth Murphy dated 24 January 2020, Victoria Police Manual *Vehicle Immobilising Devices*, AM 99, pp. 16–23.

209 Exhibit 204, Victoria Police Current *Pursuit Policy*, pp. 2801–18.

210 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy dated 24 January 2020, AM 99, p. 3.

211 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy dated 24 January 2020, AM 99, pp. 3–4, 8.

devices in January 2020. This training consists of an online education course and practical training,<sup>212</sup> including instructional videos on the use of tyre deflation devices.<sup>213</sup>

- 9.132 Counsel Assisting suggested that I give consideration to making a recommendation that Victoria Police continue to seek out new technologies and tactical equipment for interdiction against moving vehicles.<sup>214</sup> It was suggested that I make the following recommendation:

The Victoria Police continues to research new technologies and tactical equipment for interdiction against moving vehicles with the aim of incorporating appropriate new technologies and equipment into police operations.<sup>215</sup>

- 9.133 This suggested recommendation was supported by Counsel for the Families,<sup>216</sup> and Counsel for SC Jones.<sup>217</sup>

- 9.134 Counsel representing the CCP submitted that there is no need for such a recommendation.<sup>218</sup> It was submitted that Victoria Police routinely and on an ongoing basis explores new and emerging technologies and tactical equipment, including for interdiction of moving vehicles.<sup>219</sup>

- 9.135 I accept the CCP's submissions that they regularly explore emerging technologies and tactical equipment to enhance Victoria Police's approach to road policing and safety. The Critical Incident Review detailed a range of alternative vehicle immobilisation technologies that have been trialled by Victoria Police in recent years. It also noted that, as part of its remit, Road Policing Command constantly scans the international environment to identify new and emerging technologies and tactics for enhancing Victoria Police's approach to policing and safety.<sup>220</sup> I am satisfied that the CCP will continue to undertake ongoing research and review in this area and, accordingly, I do not propose to make a recommendation on this issue.

## Hostile vehicles

- 9.136 Victoria Police has implemented a range of measures since the Bourke Street event in response to the threat of hostile vehicles and vehicular incursions in Melbourne's CBD. These measures have been designed to provide improved police presence and give guidance to supervisors and frontline members to support their decision-making in the event of a potential or actual vehicle-borne attack.<sup>221</sup> These measures include:

- a. implementation of Operation Millennial, which provides an enhanced police presence in Melbourne CBD, with highly visible patrols to provide community reassurance, support the current National Terrorism threat environment and assist in reducing crime levels (particularly by preventing offences against the person)<sup>222</sup>

212 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy dated 24 January 2020, AM 99, pp. 4, 8.

213 Exhibit 206, Statement of Assistant Commissioner Elizabeth Murphy dated 24 January 2020, AM 99, p. 4.

214 Submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 162.

215 Submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 164.

216 Submissions on Counsel representing the Families of the Deceased dated 19 May 2020, p. 34.

217 Submissions on behalf of Senior Constable Roland Jones dated 19 May 2020, p. 7.

218 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 105.

219 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 105.

220 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, pp. 453–6.

221 Exhibit 197, Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, pp. 7–9.

222 Exhibit 197, Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, p. 8; Exhibit 198, Attachments SF-1 to SF-10 to the Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, 'Victoria Police Practitioner Guide – Response to Vehicle Borne Attacks in the CBD', AM 4, p. 89.

- b. Vehicle Borne Attack Supervisor checklist, which was designed to guide and assist supervisors when making decisions during potential or actual vehicle-borne attacks<sup>223</sup>
- c. a Practitioner Guide ‘Response to Significant Event – Vehicle Borne Attacks in the CBD’ to guide and assist Melbourne CBD supervisors with threat assessment, risk and consequence management when there is a potential or actual vehicle-borne attack in Melbourne’s CBD<sup>224</sup>
- d. introduction of CIRT Security Teams and SOG QRT to enhance the capability of Victoria Police to provide immediate tactical responses to critical incidents in Melbourne’s CBD (discussed above).<sup>225</sup>

9.137 Victoria Police has also developed and introduced a dedicated hostile vehicle policy, *VPM Hostile Vehicles*<sup>226</sup> to specifically address the challenge posed by vehicles being used as a weapon. The policy was first published on 28 October 2019 and is the first of its kind in Australia.<sup>227</sup> The contents of this policy, along with details of associated training materials, are detailed below.

## Hostile vehicle policy

9.138 The hostile vehicle policy provides guidance to police members on the emerging threat of hostile vehicles and how to identify and respond to a hostile vehicle threat or attack.<sup>228</sup> It was designed to give operational members ‘the authority to make those decisions in the field, to take some more decisive action’ in an attempt to stop a vehicle attack, while managing the risks involved in order to protect the public and themselves.<sup>229</sup>

9.139 A hostile vehicle threat is defined as:

... where the driver of a vehicle uses it to access or encroach upon an area where the circumstances indicate an intention or recklessness to cause serious injury and/or death, or additional information about a hostile vehicle indicates an impending attack, including:

- Emerging information or intelligence;
- Overt acts by the driver/occupants at the time;
- Statement of intent (pre-recorded videos, social medial posts, texts or phones calls).<sup>230</sup>

9.140 A hostile vehicle attack is defined as:

When a hostile vehicle is being used or controlled as a primary weapon in a deliberate or reckless attack to cause serious injury and/or death and continues while there is access to victims.<sup>231</sup>

223 Exhibit 197, Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, p. 8; Exhibit 198, Attachments SF-1 to SF-10 to the Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, ‘North West Metro - Division 1 - Vehicle Borne Attack supervisor checklist’, AM 4, p. 84.

224 Exhibit 197, Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, p. 8; Exhibit 198, Attachments SF-1 to SF-10 to the Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, ‘Victoria Police - North West Metro Division 1 - Practitioner Guide: Response to Significant Security Event - Vehicle Borne Attacks in CBD’, AM 4, pp. 85–94.

225 Exhibit 197, Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, pp. 8–9.

226 Exhibit 152, Victoria Police Manual *Hostile Vehicles Policy*, pp. 1–5; Written submissions of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 99.

227 Transcript of evidence, p. 3591.

228 Exhibit 152, Victoria Police Manual *Hostile Vehicles Policy*, AM 6, p. 2.

229 Transcript of evidence, p. 3591.

230 Exhibit 152, Victoria Police Manual *Hostile Vehicles Policy*, AM 6, p. 2.

231 Exhibit 152, Victoria Police Manual *Hostile Vehicles Policy*, AM 6, p. 2.

- 9.141 The policy directs that once a police member has identified a hostile vehicle threat or attack, they must assess the risk to the public and take immediate and decisive action, including lethal force, if warranted by the circumstances, to prevent a threat from progressing to an attack or to bring the incident to a rapid conclusion.<sup>232</sup> It authorises police officers to use police vehicles to stop the vehicle or other form of lethal force to prevent the incident from progressing to a hostile vehicle attack.<sup>233</sup>
- 9.142 Members have been reassured that if such drastic action needs to be taken, they will not face disciplinary action for trying to save lives.<sup>234</sup> The policy states that ‘any decision that aims to limit the risks to the public will be viewed as a decision that displays sound professional judgment’.<sup>235</sup>
- 9.143 It should be noted that the hostile vehicle policy does not apply to pursuits.<sup>236</sup>
- 9.144 The benefit of the new policy was explained by AC Grainger as providing:

... our people overt permission to exercise the use of reasonable force that’s been enshrined in law under s. 462A of the Crimes Act for many, many years. I think it is also a very clear sign by our workforce that they have permission to take extreme action in extreme circumstances but, however, it’s very clear on what sits around that requirement, the training is very specific in terms of, for example, the outcome of using your vehicle to ram another vehicle. Our members have very, very good awareness that, by doing so, it’s likely they will be immobilised themselves, likely they may injure themselves in the course of the action, likely they may or may not stop the subject vehicle. So, I think what it does, the new policy, absolutely gives clarity to when they can act and also is very clear on the risk assessment process that must precede such an act. I think it frees them up to make that decision, whereas, in 2015, we had a workforce that, for a whole range of reasons, including the public commentary that went around at the release of that [*Pursuit Policy*], police, felt disempowered. I think this policy empowers them to make decisions in terrible circumstances.<sup>237</sup>

- 9.145 This view was reiterated by Supt Ward, who stated:

I think the hostile vehicle policy has provided our members with role clarity and clear expectations in these scenarios. Am I concerned? I think we need to trust our members; we need to trust them to conduct those risk assessments, be aware of the operating environment and understand the risk of consequence if they act or don’t act, and that risk or consequence relates to the community, themselves and the offenders.<sup>238</sup>

- 9.146 From an operational member’s perspective, DSC Gentner said the new policy had improved their confidence in dealing with something should the situation arise.<sup>239</sup> He said the new policy means that if there is a risk to the public with a vehicle, police officers have the ability to use force to stop that vehicle, using whatever force is appropriate.<sup>240</sup>

232 Exhibit 152, Victoria Police Manual *Hostile Vehicles Policy*, AM 6, pp. 3–4.

233 Submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 99.

234 Transcript of evidence, p. 3823.

235 Exhibit 152, Victoria Police Manual *Hostile Vehicles Policy*, AM 6, p. 2.

236 Transcript of evidence, p. 3592.

237 Transcript of evidence, p. 3784.

238 Transcript of evidence, p. 3852.

239 Transcript of evidence, p. 250.

240 Transcript of evidence, p. 115.

9.147 However, there appear to be two principal challenges with the application and operation of the hostile vehicle policy. The first is determining when it applies. This requires members to make an operational assessment as to whether an offender constitutes a threat.<sup>241</sup> The second challenge is how to then stop a hostile vehicle.

## Identifying a hostile vehicle threat

9.148 The hostile vehicle policy only takes effect when a person is using a vehicle to access or encroach upon an area in circumstances that indicate an intention or recklessness to cause death or serious injury. Subjectively, it appears different police officers will have different views on when it will apply.

9.149 This was evident in the views expressed by some of the senior officers at Inquest . When asked how the hostile vehicle policy would apply if it had been in force on 20 January 2017, DA/SSgt Newman said that evading police and driving dangerously would not constitute a hostile vehicle.<sup>242</sup> Supt Ward considered that the Offender was a hostile vehicle threat from the moment he commenced performing donuts at the Flinders and Swanston streets intersection until the time he entered Bourke Street.<sup>243</sup> However, AC Grainger considered that it wasn't until the Offender mounted the footpath on Swanston Street that this new policy would apply.<sup>244</sup>

9.150 It is apparent that reasonable minds can differ in assessing whether an incident constitutes a hostile vehicle threat.<sup>245</sup> However, it is important to recognise that operational decision-making in a dynamic, quickly evolving situation of a potential hostile vehicle threat is substantially dependent upon intelligence and information available to the police officer being called upon to make such a decision. As was submitted by Counsel Assisting, had the hostile vehicle policy been in force at the time of these events, if it was a police officer on duty in the CBD, operating on channel 01-01 with no knowledge of the Offender's behaviour, statements or threats to 'kill all' over the preceding hours, it is likely that the hostile vehicle threat would not be recognised as such until moments before it became a hostile vehicle attack.<sup>246</sup>

## Responding to a hostile vehicle threat

9.151 The new policy does not provide any specific direction to members on how to stop a hostile vehicle, beyond stating that members should: consider the interdiction tactical options; formulate a plan if time permits; notify police communications to request backup, supervisor, additional and specialist resources; and isolate the vehicle and offender from potential victims.<sup>247</sup>

9.152 The policy outlines the vehicle interdiction tactical options as follows:

- a. all tactical options considered or used must be in line with s. 462A, the operational response principles of Service, Safety and Harm Minimisation and VPM *Operational Safety and the Issue of Force*
- b. interdiction tactical options may involve the use of a police vehicle (stationary or mobile), other objects or vehicle(s) to stop the hostile vehicle. Damage to vehicles caused during the interdiction is a secondary consideration to the safety of the public

<sup>241</sup> Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 100.

<sup>242</sup> Transcript of evidence, p. 1895.

<sup>243</sup> Transcript of evidence, p. 3858.

<sup>244</sup> Transcript of evidence, p. 3782.

<sup>245</sup> Transcript of evidence, p. 3645.

<sup>246</sup> Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 159.

<sup>247</sup> Exhibit 152, Victoria Police Manual *Hostile Vehicles Policy*, AM6, pp. 3–4.

- c. if the circumstances warrant the action, members may use lethal force against the driver of a hostile vehicle in order to stop an attack.<sup>248</sup>

9.153 AC Grainger explained that:

... any interaction with a moving vehicle is extremely dangerous. I think what this policy does is, is call out that—yes, it's dangerous, but we absolutely have a responsibility to consider our service to the community, the safety and harm minimisation as our ... as the tenants [sic] of our operational response. I think it makes that really clear that in dire circumstances, sadly, police may have to put themselves in harm's way and there's a consequence and it's very clear about the potential consequences of taking such action. We may be immobilised; we may be hurt in the process.<sup>249</sup>

9.154 The CCP reiterated this in their written submissions, stating that:

... decisions have to be made quickly in volatile and dynamic situations with the knowledge that if no action is taken, then members of the public may be at serious risk of death or serious injury. Simultaneously, the taking of drastic action to stop the vehicle may also result in death or serious injury to themselves, members of the public and the offender.<sup>250</sup>

9.155 To support members' awareness of the various tactical interdiction options available to them, and the risks associated with such actions, Victoria Police is providing members with specific training on the hostile vehicle policy.

## Hostile vehicle training

9.156 AC Fontana informed me that Victoria Police is rolling out a mandatory e-learning package for police officers on the new hostile vehicle policy, alongside additional training in the bi-annual OSTT in relation to hostile vehicle policy and decision-making.<sup>251</sup> Police members have previously received training on vehicle-borne attacks in an OSTT training package rolled out between July 2017 and July 2018. That training included instruction on legislative powers that supports action to protect life, use of force, self-defence and operational responses that include consideration of all tactical options (including ramming and shooting) while applying the SAFE principles of slowing down, stepping back, assessing the risk, formulating a plan and evaluating available options.<sup>252</sup>

9.157 The Hostile Vehicle Policy e-Learning activity program consists of three modules. The modules provide clear information that enables police officers to identify hazards and mitigate risks associated with hostile vehicles, with a focus on the Operational Response Principles of Service, Safety and Harm Minimisation. There is guidance on what a hostile vehicle threat or attack is, the vehicle interdiction tactical options available to police members in responding to such events, and information to help support police members' risk assessment and planning in response to the threat posed by hostile vehicles. This includes:

248 Exhibit 152, Victoria Police Manual *Hostile Vehicles Policy*, AM6.

249 Transcript of evidence, p. 3785.

250 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 100.

251 Transcript of evidence, p. 3598.

252 Exhibit 201, Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 451; Exhibit 202, Executive Summary of the Operation Titan Critical Incident Review by Assistant Commissioner Stephen Fontana, p. 713.

- a. details of the legislative authority to act and use of force under s. 462A of the *Crimes Act 1958*
- b. how to identify a hostile vehicle threat and attack
- c. activation of the Emergency Alert public warning system when a hostile vehicle attack occurs
- d. how to respond to a hostile vehicle threat, including the primary objectives, communications, risk assessment and planning of response
- e. applying the Operational Response Principles of Service, Safety and Harm Minimisation, the Operational Safety Tool SAFE TACTICS and vehicle interdiction tactical options.<sup>253</sup>

9.158 Police members are provided with theoretical advice on vehicle interdiction tactical options, including ramming, corralling/blocking, vehicle immobilising devices and roadblocks. This is accompanied by video demonstrations of these tactical options in operation and considerations for the risk assessment of each manoeuvre.<sup>254</sup> In the final module, police members are presented with scenarios, including communications over D24 and directions from supervisors, options and outcomes. Members are required to apply the definition of hostile vehicle threat/attack, and give consideration to applying the operational safety principles, undertake a risk assessment and determine their response to the scenarios.<sup>255</sup> The scenarios highlight the importance of taking charge of the incident and clear communications, and considering and undertaking risk assessment of the tactical options available and determining the appropriate operational response.<sup>256</sup>

9.159 Notably, the e-learning package reiterates that Command will support decisions and justifiable actions made in good faith to protect the lives of those in our community.<sup>257</sup> There will also be additional OSTT training to assist police with their decision-making in crisis situations.<sup>258</sup>

9.160 At Inquest, both AC Grainger and Supt Ward discussed the difficulties in training general duty members to conduct extreme vehicle manoeuvres for hostile vehicle interdiction. AC Grainger explained that such manoeuvres are inherently 'extremely dangerous', carrying a risk of immobilising the vehicle and causing injury to bystanders or police officers.<sup>259</sup> Supt Ward also expressed strong reservations about training general duty members because of the dangers inherent in such manoeuvres, that mixed messages would be transmitted by the provision of such training about the appropriateness of general duties and other police engaging in such strategies, and that such manoeuvres are best deployed by those with ongoing specific training.<sup>260</sup> I accept that this is a difficult issue.

9.161 During the Inquest, I asked AC Fontana and AC Grainger whether Victoria Police had considered any kind of simulated training or virtual reality training in relation to hostile vehicles.<sup>261</sup> AC Fontana responded, 'we do simulation in some areas, so it's something that's, you know, could be explored by us in relation to that.'<sup>262</sup> AC Grainger said

253 Exhibit 212, Hostile Vehicles E-Learning Package, Module 1–2.

254 Exhibit 212, Hostile Vehicles E-Learning Package, Module 2.

255 Exhibit 212, Hostile Vehicles E-Learning Package, Module 3.

256 Exhibit 212, Hostile Vehicles E-Learning Package, Module 3.

257 Exhibit 212, Hostile Vehicles E-Learning Package, Module 3, p. 44.

258 Transcript of evidence, p. 3598.

259 Transcript of evidence, pp. 3785-6.

260 Transcript of evidence, p. 3884.

261 Transcript of evidence, pp. 3583, 3776.

262 Transcript of evidence, p. 3583.

that simulated training has been considered in the past, but would be the responsibility of Professional Development Command. He said it is very difficult to simulate situations.<sup>263</sup>

9.162 AC Grainger explained that Victoria Police now has a process known as Hydra training, which is an immersive or interactive risk assessment process that is undertaken at the Centre for Incident or Emergency Management. According to AC Grainger, this is essentially a debriefing process based on a scenario that is studied either visually or audibly with discussion about decisions made.<sup>264</sup>

## Operational safety and driver training

9.163 Counsel Assisting noted with concern that although Victoria Police has sought to reassure its members that they will be supported if they have to act *in extremis* against a hostile vehicle, it has not provided any additional driver training to police members to assist them in doing so.<sup>265</sup> Counsel for the Families reiterated this concern and submitted that:

... there were numerous other vehicles already at the scene, none of which would even now be trained or equipped to act against the Offender's vehicle. It is surely of critical importance that whichever police unit is first on scene of a hostile vehicle attack is trained and able if required, *in extremis*, to act against the hostile vehicle.<sup>266</sup>

9.164 Similarly, Counsel for the CIU and CIRT officers submitted that:

... whilst the hostile vehicle policy is a step towards empowering members to take more decisive action, it needs to be backed up with fit for purpose training, equipment and organisational support to have any meaningful impact on any similar future situation.<sup>267</sup>

9.165 Counsel Assisting suggested that I make the following recommendation:

Victoria Police develops appropriate operational safety training and driver training to augment the skills of its members who may have to act against a hostile vehicle according to VPM – *Hostile Vehicles*.<sup>268</sup>

9.166 Both Counsel for the Families and Counsel for SC Jones supported this proposed recommendation.<sup>269</sup>

9.167 The CCP submitted that this proposed recommendation was not necessary because the mandatory hostile vehicle e-learning package had already been rolled out for all members of Victoria Police, which contained training in respect of responding to hostile vehicles, including roadblocks, corralling and blocking, ramming and shooting as available tactical options.<sup>270</sup> This new training was in addition to an OSTT training package on vehicle-borne attacks that was rolled out to members of Victoria Police between July 2017 and July 2018.<sup>271</sup>

263 Transcript of evidence, p. 3776.

264 Transcript of evidence, pp. 3776-7.

265 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 162.

266 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 36.

267 Written submissions on behalf of Operational Police Members (Group A) dated 19 May 2020, p. 69.

268 Written submissions of Counsel Assisting the Coroner dated 14 April 2020, p. 163.

269 Written submissions of Counsel representing the Families of the Deceased dated 19 May 2020, p. 36; Written submissions on behalf of Senior Constable Roland Jones dated 19 May 2020, p. 7.

270 Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 54.

271 The vehicle-borne attack training included identifying characteristics of a vehicle-borne attack and objectives and phases associated with managing a response to a vehicle-borne attack, application of the SAFE principles, instruction on legislative powers that support action to protect life, use of force, self-defence and operational responses that include consideration of all tactical options from the Tactical Options Model. Submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, pp. 119-20.

- 9.168 The CCP submitted that the vehicle ramming component of the vehicle-borne attack package adequately and comprehensively addresses the current knowledge gaps members have in relation to awareness of the issues and dangers of being rammed. It also provides information and direction to members on safety positioning if they are going to be rammed or to avoid being rammed altogether. This theory component has also been canvassed in face-to-face training at OSTT.<sup>272</sup>
- 9.169 Finally, it was submitted by the CCP that the recommendation proposed by Counsel Assisting was not necessary because the e-learning packages have already been released for hostile vehicle training to all members on ramming, blocking and corralling.<sup>273</sup> Further training for hostile vehicles will be delivered to members as part of their OSTT training in 2020.<sup>274</sup> This training is designed to equip members to make informed decisions if confronted with such a difficult scenario.<sup>275</sup>

## Conclusions

- 9.170 I accept it would be difficult for Victoria Police to prescribe any specific actions to be taken as circumstances vary from case to case. I acknowledge these decisions are never easy and have to be made on a daily basis in a whole range of different high-pressure scenarios and must be considered in terms of what constitutes reasonable force. I also accept that policies and procedures cannot provide for every situation, and reasonable minds will always differ.
- 9.171 I acknowledge that operational police members frequently work in dynamic and volatile situations. I consider this new policy permits members to balance the risks associated with taking such decisive action against the risks of potential harm. An outcome of the policy is that the element of reticence of police members to act due to the perception of disciplinary action for breaching policy has been negated if its use is proportionate to the harm. These situations are challenging, particularly when a member is in the agony of the moment and faced with a situation as dangerous as this one.
- 9.172 It is difficult, if not impossible, to know whether, if this new policy had been in place during these events, it would have altered the outcome and/or reduced deaths and prevented harm. As the nature of the threat must have to be actualised for the hostile vehicle policy to become effective, it may not alter the outcome or reduce or prevent harm, but it does support police members in taking decisive action to prevent or lessen harm to the community where the circumstances justify such action to be taken and that action is made in good faith.
- 9.173 I acknowledge that Victoria Police has introduced training to assist with the rollout of the new *Hostile Vehicle Policy*. I accept that this policy has supported members in feeling more confident, clear and supported in dealing with such a situation if it ever arose again.<sup>276</sup>
- 9.174 However, I do have concerns that the advice in the policy for members to apply the vehicle interdiction options seems rather vague. While I agree with Supt Ward that the *Hostile Vehicle Policy* is not intended to be used, save in extreme scenarios as a 'last resort',<sup>277</sup> members need a basic understanding of these options if they are ever faced with a similar incident. Scenario-based training, in the form of simulation or Hydra

<sup>272</sup> Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 54.

<sup>273</sup> Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 119.

<sup>274</sup> Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, pp. 55, 119-20; Transcript of evidence, p. 3598.

<sup>275</sup> Written submissions on behalf of the Chief Commissioner of Victoria Police dated 19 May 2020, p. 55.

<sup>276</sup> Transcript of evidence, p. 387.

<sup>277</sup> Transcript of evidence, p. 3853.

training may assist members to make appropriate risk assessments and act decisively in a dynamic environment if faced with such a situation again.

- 9.175 Given the inherent dangers of responding to hostile vehicles or vehicle-borne attacks, I consider it would be appropriate to explore the use of simulation or Hydra training to better assist members' ability to conduct risk assessments and make effective decisions in similar high-pressure and stressful situations. Therefore, I have adapted the recommendation suggested by Counsel Assisting. Please see Recommendation Eight.
- 9.176 Further, given the extreme challenges posed by hostile vehicle threats and vehicle – borne attacks, I consider it is important for police officers to receive regular refresher training to ensure their knowledge and skills remain up to date if ever faced with such a situation in the future. Such refresher training could be incorporated as part of an annual or biennial OSTT program to refresh members' understanding of the policy, the tactical options available to them and the risks they have to consider before taking action. Therefore, I have made a further recommendation in relation to this. Please see Recommendation Nine.

## Protective Security Infrastructure

### Melbourne Protective Security Enhancement program

- 9.177 In response to the Bourke Street tragedy, the Victorian Government established the Melbourne Protective Security Enhancement (MPSE) program. This program introduced a range of protective security infrastructure measures throughout the Melbourne CBD to reduce the likelihood and consequences of a hostile vehicle attack at priority sites.<sup>278</sup> It was overseen by a Steering Group chaired by the DJCS and included representatives from the City of Melbourne, Victoria Police, Emergency Management Victoria, Department of Premier and Cabinet, Department of Jobs, Precincts and Regions, Transport for Victoria, Public Transport Victoria and VicRoads.<sup>279</sup>
- 9.178 The scope, design and implementation of the MPSE program was informed and supported by advice and guidance from Victoria Police, independent security experts, the Centre for the Protection of National Infrastructure (UK), ANZCTC and the Australian Security Intelligence Organisation (ASIO) T4 Protective Security.<sup>280</sup>
- 9.179 This guidance included the Australian Government's Strategy for Protecting Crowded Places from Terrorism (Strategy), published in August 2017.<sup>281</sup> The strategy was designed to protect the lives of people working in, using and visiting crowded places, by building partnerships between governments and the private sector, enabling better information sharing and guidance, implementing effective protective security and increasing the resilience of crowded places. The strategy is supplemented by guidance material including a Crowded Places Self-Assessment Tool, Crowded Places Security Audit, Hostile Vehicle Mitigation Guidelines and Active Armed Offender Guidelines.<sup>282</sup>

278 Statement of Deputy Secretary Corri McKenzie dated 21 May 2019, Coronial Brief, p. 1280.

279 Statement of Deputy Secretary Corri McKenzie dated 21 May 2019, Coronial Brief, p. 1280.

280 Statement of Deputy Secretary Corri McKenzie dated 21 May 2019, Coronial Brief, p. 1281.

281 Statement of Deputy Secretary Corri McKenzie dated 21 May 2019, Coronial Brief, p. 1281; Statement of Ms Brigid Ryan dated 24 January 2020, Coronial Brief, AM 109, p. 2.

282 See <https://www.nationalsecurity.gov.au/Securityandyourcommunity/Pages/australias-strategy-for-protecting-crowded-places-from-terrorism.aspx>.

9.180 In response to this expert advice, a range of protective security infrastructure measures have been introduced in Melbourne's CBD, including:

- a. installation of temporary blocks and barriers at key pedestrian locations across the Melbourne CBD
- b. design and installation of long-term protections (such as bollards, barriers and street furniture) to improve protective security for pedestrians in the event of a hostile vehicle attack
- c. upgrading the CCTV network through expansion of the Safe City Camera Network to provide broader and higher-quality coverage across the city
- d. installation of a new Public Address System (**PAS**) to provide audible alerts in the Melbourne CBD during an emergency, complementing other communication channels.<sup>283</sup> This system may be activated by the Victoria Police incident controller in the event of a hostile vehicle attack or terrorism event.<sup>284</sup>

9.181 The City of Melbourne has been working with the State Government on the integration of these security measures. Their Legal Counsel, Ms Brigid Ryan, explained that:

There have been considerable learnings about the complexity of integrating protective infrastructure into these locations, as well as what constitutes a proportional response in considering the continued day-to-day functions and other safety and access requirements. The learnings from this experience have informed how the City considers the design for projects it is currently delivering.<sup>285</sup>

9.182 The initial stage of this program involved the installation of 440 temporary concrete blocks and water-filled barriers at key pedestrian locations across the Melbourne CBD, including the Bourke Street Mall.<sup>286</sup> Since that time, the Victorian Government has undertaken three stages of work to install long-term hostile vehicle mitigation measures at these sites. By November 2017, the first stage of works had been completed, with steel bollards installed at either end of Bourke Street Mall. The second phase was completed in December 2018 and involved the installation of 36 bollards at strategic points along the Mall, along with additional temporary measures. I was informed that the final stage was expected to be completed by August 2019 with the addition of further bollards to provide extensive protection zones throughout the length of the Mall. Works have also been commenced or completed in relation to eight other key sites in the CBD.<sup>287</sup>

## Public address system

9.183 A new Public Address System (**PAS**) has also been installed in Melbourne's CBD, allowing Victoria Police to provide audible alerts in the event of an emergency. It has been installed at 95 sites to provide broad coverage across the CBD and can be activated individually, in zones or all at once. This complements the existing suite of communication channels used by emergency services, including alerts in languages other than English and for people who are deaf and hard of hearing. Deputy Secretary of DJCS, Ms Corri McKenzie, informed me that the PAS was successfully used during the November 2018 Bourke Street incident to inform people to stay away from the area.<sup>288</sup>

283 Statement of Deputy Secretary Corri McKenzie dated 21 May 2019, Coronial Brief, p. 1280.

284 Exhibit 197, Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, p. 9.

285 Statement of Ms Brigid Ryan dated 24 January 2020, Coronial Brief, AM 109, p. 2.

286 Statement of Deputy Secretary Corri McKenzie dated 21 May 2019, Coronial Brief, p. 1280.

287 Statement of Deputy Secretary Corri McKenzie dated 21 May 2019, Coronial Brief, pp. 1283-6.

288 Statement of Deputy Secretary Corri McKenzie dated 21 May 2019, Coronial Brief, p. 1287.

9.184 Victoria Police has developed standard operating procedures for the PAS that provide information for police forward commanders about the protocols, procedures for activation and deactivation, issuing of emergency warnings, and testing and locations of the Safe City Cameras.<sup>289</sup> These procedures have been updated to reflect current terminology, provide information on camera locations within the CBD and to include templates for voiceover messages.<sup>290</sup>

## Public Space Protection Framework

9.185 In addition to its work on the MPSE Program, the City of Melbourne has worked with consultant firm Arup to develop a draft City of Melbourne Public Space Protection Framework (**Framework**) for use in assisting decision-making to reduce risks associated with vehicle-as-weapon threats to areas identified as crowded places.

9.186 Ms Ryan informed me that this tool supports council officers working on public space improvement projects by providing them with an informed and consistent process to follow for identifying the level of protection to be considered for a public space. The draft Framework is currently being tested for use on several projects to determine site classification and appropriate and proportionate design response considerations.<sup>291</sup>

## Concluding remarks on reforms

9.187 When an incident as significant as this one occurs, it is important for key agencies and stakeholders to reflect on lessons learned to identify and implement solutions as part of a continuous process of improvement. The tragic events of 20 January 2017 have been a catalyst for significant reforms as described above.

9.188 I acknowledge the enormous amount of work that has been undertaken by government agencies and departments in reviewing the events leading up to the Bourke Street incident and in developing and implementing practical, focused and effective solutions designed to prevent a similar event from occurring. I find that work was responsive, appropriate and conducted in a timely manner. This has reduced the need for me to make many substantial recommendations. I commend those involved in the reforms outlined in this Part of the Finding, particularly Victoria Police and DJCS for their proactive response to this tragic incident.

289 Exhibit 198, Attachments SF-1 to SF-10 to the Second Statement of Assistant Commissioner Stephen Fontana dated 15 October 2019, 'Victoria Police – Melbourne CBD Security Public Address System SOPs', pp. 95–102.

290 Exhibit 199, Third Statement of Assistant Commissioner Stephen Fontana dated 13 November 2019, pp. 2–3; Exhibit 200, Attachments to the Third Statement of Assistant Commissioner Stephen Fontana dated 13 November 2019, 'Victoria Police – Melbourne CBD Security Public Address System SOPs' dated 20 July 2018, pp. 1–6.

291 Statement of Ms Brigid Ryan dated 24 January 2020, Coronial Brief, AM 109, p. 2.

## Recommendations

### Recommendation Eight:

That Victoria Police Professional Development Command develops and implements appropriate operational safety training on hostile vehicles and vehicle-borne attacks that incorporates simulation or Hydra experience training to enhance the skills and operational decision-making of frontline operational members (including uniform, criminal investigation units and the Critical Incident Response Teams) who may be called upon to act in response to a hostile vehicle or vehicle-borne attack.

### Recommendation Nine:

That Victoria Police Professional Development Command incorporates regular annual or biennial refresher training on the Victoria Police Manual *Hostile Vehicle Policy* and on vehicle-borne attacks to ensure members' knowledge and skills remain up to date.

# Part 10: Summary of Key Findings and Comments

## Part 1: Coronial Investigation

- 10.1 The events of the Bourke Street tragedy are forever etched into our minds. On 20 January 2017, the Offender drove a stolen maroon-coloured Holden Commodore through the Bourke Street Mall and caused the deaths of six innocent young people, physically and psychologically scarring many more. Due to the significance of these events to the Victorian community, I determined it was appropriate to conduct an Inquest into the circumstances of the deaths of Matthew Poh Chuan Si, Thalia Hakin, Yosuke Kanno, Jess Mudie, Zachary Matthew Bryant and Bhavita Patel.
- 10.2 The events immediately proximate to the deaths of Matthew, Thalia, Yosuke, Jess, Zachary and Bhavita were uncontroversial. The cause of, and moral culpability for, the deaths of the six victims lies solely with the Offender. The path of the Offender's vehicle along the Bourke Street Mall was captured by video footage from numerous angles and is described in the uncontested statements of hundreds of eyewitnesses.
- 10.3 By its very nature, a coronial inquiry is wholly retrospective. This carries with it an implicit danger for the court in prospectively evaluating events through the optics of hindsight. That is, it can be easy or seductive to conclude that what did occur was always going to occur, and from that conclusion to view the actions or inactions of those involved more critically, and as if the outcome was obvious and should have been foreseen. In writing this Finding, I have remained cognisant of the potential intrusion of hindsight bias.
- 10.4 These key findings and comments are a summary of those drawn from the individual parts of the Finding.

## Part 2: The Six Deceased Victims

- 10.5 The Inquest examined the events of that day and the previous six days when the Offender came to the attention of Victoria Police after he was taken into custody on 14 January 2017. The individual circumstances that related to the deaths of the six victims are examined in Part 2 of this Finding.
- 10.6 My role is to make formal findings as to the identity, cause of death and the circumstances of each of the six victims, pursuant to s. 67(1) of the *Coroners Act 2008* (Vic).

## Matthew Poh Chuan Si

10.7 In relation to Matthew Poh Chuan Si, I find:

- a. the identity of the deceased was Matthew Poh Chuan Si, born on 14 April 1983
- b. Matthew died on 20 January 2017 at Royal Melbourne Hospital from 1(a) head injury
- c. Matthew had just had lunch with his wife, Melinda, and was on his way back to work when he was struck by the Offender's stolen motor vehicle just near the intersection of Bourke and McKillop streets. The force of the impact threw him forward onto the road at the intersection of Queen and Bourke streets. Bystanders immediately assisted him. Matthew was transported to the Royal Melbourne Hospital and died later that afternoon in hospital.

## Thalia Hakin

10.8 In relation to Thalia Hakin, I find:

- a. the identity of the deceased was Thalia Hakin, born on 19 April 2006
- b. Thalia died on 20 January 2017 at Bourke Street, Melbourne from 1(a) head injury
- c. Thalia was walking with her younger sister, Maggie, holding her mother Nathalie's hand, just outside the RACV Club in Bourke Street, when the Offender's stolen vehicle struck them. Thalia received a catastrophic head injury and died at the scene. Her mother and sister were also severely injured. Numerous bystanders including an off-duty emergency nurse and police came to her aid. Despite the heroic efforts of the bystanders, Thalia was unable to be resuscitated and died at the scene.

## Yosuke Kanno

10.9 In relation to Yosuke Kanno, I find:

- a. the identity of the deceased was Yosuke Kanno, born on 22 November 1991
- b. Yosuke died on 20 January 2017 at Bourke Street, Melbourne from 1(a) head and chest injuries
- c. Yosuke was with a friend, Kashu Matsumoto, just outside the Royal Arcade when he was struck with such force by the Offender's stolen vehicle, that he was thrown metres in front of where he stood, landing outside the Bardot store in the Bourke Street Mall. He was assisted by witnesses and police officers. Despite all best efforts, he died at the scene.

## Jess Mudie

10.10 In relation to Jess Mudie, I find:

- a. the identity of the deceased was Jessica Elizabeth Mudie, born on 6 February 1994
- b. Jess died on 20 January 2017 at Bourke Street, Melbourne from 1(a) head injury
- c. Jess was on her way to lunch with five work colleagues when she was struck by the Offender's stolen vehicle on the footpath between Elizabeth and Queen streets. Bystanders and police officers immediately rendered assistance; however, Jess was unable to be revived and died at the scene.

## Zachary Matthew Bryant

10.11 In relation to Zachary Matthew Bryant, I find:

- a. the identity of the deceased was Zachary Matthew Bryant, born on 6 October 2016
- b. Zachary died on 21 January 2017 at Royal Children's Hospital from 1(a) head injury
- c. Zachary was being pushed in his pram with his sister, Zara, by his nanny, Aaryn Melzer, when the Offender's stolen vehicle struck them. Baby Zachary was thrown with such force he landed almost 68 metres from the first point of impact. Police officers and a student paramedic rendered immediate medical assistance to Baby Zachary. He was rushed to the Royal Children's Hospital by attending police officers, including Sgt Matthew Peck and FC Benjamin Laird, who cradled him in their arms. Baby Zachary died in hospital the following day from the injuries he had received.

## Bhavita Patel

10.12 In relation Bhavita Patel, I find:

- a. the identity of the deceased was Bhavita Patel, born on 7 December 1983
- b. Bhavita died on 28 January 2017 at Royal Melbourne Hospital from 1(a) head injury
- c. Bhavita was crossing Queen Street when the Offender's stolen vehicle hit her from behind. She was thrown into the air and landed outside 461 Bourke Street. Bystanders including an off-duty doctor immediately rendered aid until paramedics arrived. Bhavita was taken to the Royal Melbourne Hospital by ambulance. Despite a number of medical interventions, she never regained consciousness and died 8 days later in hospital from the injuries she received.

## Part 3: Bail Hearing

- 10.13 On 14 January 2017, an application was made to a bail justice to remand the Offender in custody after he was interviewed by two separate police officers for a number of different incidents and offences committed over several months. Following a remand/bail hearing, the Offender was bailed with strict conditions. The events surrounding this remand/bail hearing and associated disputed facts are examined in Part 3 of this Finding.
- 10.14 The following paragraphs are my formal findings and comments in relation to the disputed issues associated with the bail hearing.

### What documents were before the bail justice?

- 10.15 I am not satisfied that Mr Pantelios had a reliable memory of the documents before him during the bail hearing. As I understood his evidence, he was unsure of what or how many documents he had before him, but he was certain that he did not have the LEAP record among them. It seems unlikely that a witness who did not have a clear memory of what documents were before him, or what any of them contained, could nonetheless definitively say that the documents before him did not include a particular document.
- 10.16 It is more likely than not that, having gone to the trouble to print and sign a document intended for the bail justice (particularly a document requested by the bail justice during the prehearing discussion), that SC Semmel would have given it to its intended recipient.
- 10.17 Accordingly, I accept the evidence of SC Semmel that he gave Mr Pantelios the Semmel charges, the remand/bail application and the LEAP record.
- 10.18 In the circumstances, I am unable to conclude whether or not SC Semmel provided the warrant and intervention order documents to the bail justice.
- 10.19 In light of the foregoing, I consider it unlikely that Mr Pantelios read or referred to any of the documents provided to him in the course of the bail hearing. It is likely that he listened to what SC Semmel read out from his Summary. I find that Mr Pantelios' memory or perhaps understanding of the effect of what he was told during the bail hearing seems likely to have been in error.

### Gentner charges

- 10.20 I accept the evidence of DSC Gentner that his charges were in preparation at the time he was called into the bail hearing, and that he said charges would be laid. I do not accept the evidence of Mr Pantelios that DSC Gentner said that those (or any) charges could or would not be laid.
- 10.21 I find that in order to give the greatest strength to the police case, the Gentner charges ought to have been before Mr Pantelios as extant charges so that the bail justice could properly determine the questions before him. It was not sufficient to merely foreshadow the Gentner charges as general information to be considered when assessing what was an 'unacceptable risk'.
- 10.22 I further find that DSC Gentner and SC Semmel could have coordinated to ensure all charges were the subject of the bail application before the hearing commenced. This would have been the most efficient and effective approach. Even if the bail hearing was already underway, when it was realised the Gentner charges should formally be included, either SC Semmel or DSC Gentner could have asked for the matter

to be stood down pending completion of the Gentner charges. It would clearly have been preferable that the Gentner charges were formally before the bail justice and for the police involved to have been made aware that a short adjournment could be requested in order for that to occur.

## Character of the bail hearing

- 10.23 It seems to me that there must necessarily have been some haste in the preparation and conduct of the case, probably by all concerned. No one had prior notice that the Offender would be apprehended that day. SC Semmel was brought into the station from other duties. He had to assimilate material that had been prepared by other police members, interview the Offender, lay the Semmel charges and interact with other police and with the bail justice prior to the hearing.
- 10.24 Mr Pantelios, also, had been hearing another bail application and had little advance notice of the application relating to the Offender. When he was given papers relating to the Offender's application, it is unlikely that he read them, and if he did, not closely. When the bail justice documented the circumstances shortly after the bail hearing, it is clear he made some errors.
- 10.25 It is perhaps not surprising that there were degrees of imperfection in the paperwork completed by both SC Semmel and Mr Pantelios, and in their recollection of events. As I have described in Part 3 of this Finding, these deficits must be unavoidable given the short notice inherent in many out-of-sessions bail hearings and the effect this undoubtedly has on the ability of all concerned to familiarise themselves with an accused's circumstances.
- 10.26 Accordingly, it seems to be unfairly pejorative to seek to tar the police alone with the brush of having been 'rushed' or 'unprepared'. In the end, I do not accept that any part of the circumstances to which I have referred had a particularly significant role to play on the day. The substance of the case against the Offender was summarised by SC Semmel, and the fact that the Offender was in a 'show cause' situation was grasped by Mr Pantelios. Beyond that, I can say nothing about the correctness of the bail justice's decision.
- 10.27 I accept that the evidence suggests that the bail hearing was conducted in a friendly and jovial manner. I acknowledge the evidence of DSC Gentner and other police officers including Sgt Cannon that this is an accepted police practice.
- 10.28 Despite the friendly interaction with the Offender by police during the bail hearing, I find that the police were strongly opposed to bail. If that were not so, bail could simply have been granted by Sgt Cannon without a hearing. I also find that the request for DSC Gentner to join the bail hearing confirmed that police were opposed to the Offender being granted bail.
- 10.29 I note one of the recommendations of the Honourable Justice Paul Coghlan was to record bail/remand hearings and I endorse his recommendation with a slight adjustment. Please see Recommendation One. I have also made a recommendation that Victoria Police reviews its training and supervision in relation to bail. Please see Recommendation Two.

## Monitoring of the Offender's compliance with bail

- 10.30 I find that the police bail monitoring and compliance system relating to the Offender at St Kilda Police Station was flawed. There was no effective follow up or enforcement of his compliance with bail conditions, despite it being evident in the records that he had failed to report to St Kilda Police Station on more than one day in that week and that DSC Gentner considered it was likely the Offender would offend again that week.
- 10.31 I acknowledge the evidence suggested that just because a person fails to report on bail does not mean that they will necessarily be charged with breaching their conditions of bail. Further, the evidence before me indicated that it is unlikely that an accused would be remanded for such an infraction.
- 10.32 Nonetheless, there does seem to be an overall pointlessness in seeking the imposition of 'strict' bail conditions, particularly in circumstances where the Offender's lack of compliance with the conditions in the days that followed seems to have been monitored and enforced in such a haphazard and desultory manner.
- 10.33 In a rhetorical sense, one might query the point of bail conditions at all if offenders' compliance is not likely to be adequately monitored. Particularly when, as in this instance, it was foreshadowed by DSC Gentner that the Offender could go on to commit one or more indictable or serious offences prior to the court date only six days hence. It does seem to me that if, for good reason, such conditions are to be sought and imposed, there should be an adequate system for monitoring compliance and ensuring consequences follow non-compliance.
- 10.34 That said, on the evidence, I am unable to conclude that any of the deficiencies identified above contributed to the Offender failing to be remanded in custody prior to 20 January 2017.
- 10.35 The evidence revealed that there was no active system in place to monitor and enforce the Offender's compliance with his conditions of bail and I have made a recommendation about this. Please refer to Recommendation Three.

## Lack of proactive policing

- 10.36 I find that in the week following 14 January 2017, Victoria Police had in place an appropriately sophisticated regime for intelligence-gathering and offender management, through the VPID, ROPT and the OMP.
- 10.37 Further, problems with recidivist offenders had been recognised by the Port Phillip CIU and a 'specialist recidivist unit' was created to 'target' those offenders. The members of that unit included DSC Gentner, but it is not evident that the Offender was considered or identified as such an offender, which is most regrettable as the application of the ROPT to him would have assessed the risk presented by him to be 'extreme' and would surely have placed the Offender as a higher priority.
- 10.38 I accept that the absence of an analyst and, perhaps, the limited resources of Port Phillip CIU together with what seems to have been a significant number of recidivist offenders in the area created a challenging situation.
- 10.39 It is discomfiting to contemplate that no real effort seems to have been taken to apply this more intensive approach to the management of the Offender. Clearly, looking at the situation, the Offender should have been given some ongoing priority in monitoring.

- 10.40 That said, I am not prepared to say that the failure to apply the ROPT or otherwise enhanced monitoring of the Offender was causative of any of the events that followed. It is sufficient to observe no more than that it is regrettable that the system such as it existed did not evidently lead even to a consideration whether the ROPT should be applied to the Offender and resources thereafter sought in order to allow that to occur. It is quite difficult to resist the conclusion that this must have been an oversight.
- 10.41 I have considered the VPM *Bail and Remand* and I note that it is silent on monitoring compliance with and enforcement of bail conditions. It seems to me that the applicable procedures really should give some guidance about minimum requirements in the enforcement of compliance with bail conditions and, indeed, link to a consideration of the application of intelligence tools of the kind that I have discussed. I have made a recommendation consistent with this—see Recommendation Four.

## Part 4: Escalation of the Offender’s Behaviour

- 10.42 After being bailed on 14 January 2017, the Offender erratically reported on bail during that week, and his unusual behaviour drew the attention of a number of witnesses that week. His behaviour appeared to escalate over the week, which led to further police intervention, including a serious assault against his mother’s partner, Gavin Wilson, on 18 January 2017 and an incident at the Dog’s Bar in St Kilda. The events of the week are explored in Part 4 of this Finding.
- 10.43 Many of the events and interactions police and individuals had with the Offender as detailed in Part 4 of the Finding were not known or reported to police until after the events of Bourke Street, when lay witnesses recognised the Offender in news footage and contacted police to report their unusual interactions with him during the preceding week. I acknowledge that, with the assembly of this information and the extensive homicide investigation, I have had the benefit of putting all the pieces of the puzzle together to develop a more complete picture of the Offender’s movements and apparent escalation in behaviour during this week; one that was not available to investigating police at the time of his offending on 20 January 2017.
- 10.44 I accept that after Mr Wilson was assaulted on 18 January 2017, police actively investigated that incident and attempted to locate and apprehend the Offender, both overnight and the following day. Unfortunately, these endeavours proved unsuccessful and the Offender’s behaviour continued to intensify.

## Part 5: The Police Response to the Stabbing of Angelo Gargasoulas

- 10.45 Just after 1.45 am on 20 January 2017, the Offender violently and viciously attacked and stabbed his brother outside the Raleigh Street apartment complex. The events of this morning and the police’s subsequent investigation of the crime and attempts to locate and arrest the Offender are extensively examined in Part 5 of the Finding.

## Was there a missed opportunity to apprehend the Offender at the Gatwick Hotel?

- 10.46 The suggestion that HCP could have contacted emergency services or St Kilda Police Station to alert them of the Offender's whereabouts has been made with the benefit of hindsight. While this would have been optimal, there is no evidence before me to indicate HCP had the opportunity to do so while the Offender was at the Gatwick Hotel. HCP took the brief opportunities that presented themselves while the Offender was at the Gatwick Hotel to call and send text messages to DSC Gentner but made it clear at Inquest that he did not want the Offender to see him making phone calls to anyone.
- 10.47 I make no criticism of HCP for not contacting emergency services or St Kilda Police Station in what was clearly a volatile and difficult situation. I commend him for his courageous actions in attempting to contact DSC Gentner despite the risk to himself.
- 10.48 Further, I make no criticism of DSC Gentner for not monitoring his work phone when he was off duty. As with any serving police officer, DSC Gentner is entitled to adequate rest periods and should not be expected to monitor his work phone at all times.
- 10.49 With the benefit of hindsight, it may have been beneficial for DSC Gentner to have made alternative arrangements for the monitoring of his work phone overnight or the implementation of call and/or text message forwarding services to one of the other police officers on duty overnight. However, even if the investigating police officers had been provided with timely intelligence of the Offender's location at the Gatwick Hotel, it is conjecture to suggest the Offender would have been apprehended out of his vehicle at that time.

## Was it reasonable not to pursue the Offender's vehicle when it was first recognised on Punt Road just after 2 am on the morning of 20 January 2017?

- 10.50 I accept that just after DA/Sgt Tzefer and DSC Reid observed the Offender on Punt Road on their way to the stabbing incident at Raleigh Street, they made a risk assessment in accordance with their training, taking into account their knowledge of the Offender's propensity to bait police into pursuits, the wet and dark conditions, and due to the incident having just occurred, the ambiguity around the circumstances of the job and the serious nature of the incident to which they had been dispatched. I am satisfied that it was appropriate for them to prioritise responding to the stabbing in Raleigh Street to ensure the safety of any victims, over attempting to apprehend the Offender who was not, at that stage, known by them to have been involved in the incident.

## Should South 541 have broadcast the Offender's location on Punt Road earlier?

- 10.51 I find that it is speculative to suggest that immediate transmission of South 541's encounter with the Offender on Punt Road may have facilitated his arrest at either of the locations he subsequently visited in St Kilda. Despite the fact that DA/Sgt Tzefer recognised the Offender and knew he was wanted for the assault on Mr Wilson the previous night, I accept they had been tasked to attend a stabbing at Raleigh Street and at that stage they were unaware the Offender was involved in that incident. I am satisfied that once DA/Sgt Tzefer was aware the Offender was involved he instructed

DSC Reid to broadcast their interaction, which was approximately seven minutes after they sighted him. Accordingly, I make no criticism of DA/Sgt Tzefer's decision to not immediately transmit details of South 541's encounter with the Offender to other police units.

## Telephone contact with the Offender after the Raleigh Street incident

10.52 I commend FC Verdun for his proactive and positive policing response in his attempt to locate the Offender and directly telephone him. This was intelligent policing and provided valuable information to investigators about the Offender's state of mind and his potential whereabouts. There is no doubt FC Verdun has a bright future with Victoria Police.

## Failure to check ping locations

10.53 The ephemeral nature of ping information means that it is best investigated when it first comes to hand. The failure to do so is perplexing particularly when the Offender's phone was turned off shortly before 5.35 am, which meant that the ability to locate the Offender by this method was lost.

10.54 When one looks, with the benefit of hindsight, at the circumstances of the day that followed, the failure to use the best opportunity to locate and arrest the Offender by following up on his phone pinging in St Kilda is a devastating blow.

10.55 I find the failure by any police member, including former sergeant Frank Caridi, his colleagues, DA/Sgt Tzefer and his superiors A/SSgt Filzek and DA/SSgt Toey to act on or arrange for someone to check the location of the pinging of the Offender's phone or to even discuss a proposed plan to do so, was a major oversight and a serious omission in the early morning police response. It effectively removed the potential to locate and arrest the Offender overnight.

10.56 I accept that even if the pinging had been acted upon there is no guarantee it would have resulted in the Offender's arrest, but the fact it was not considered is most unsatisfactory. This problem appears to have occurred due to a lack of clear awareness of whose responsibility it was to action this.

## Who was responsible for coordinating efforts to locate the Offender?

10.57 The weight of the evidence before me indicated that Sgt Caridi was considered by most of the supervising units to be responsible for coordinating the police response to locate and apprehend the Offender overnight. Notwithstanding, Sgt Caridi's evidence that his sole focus was to arrest the Offender, by making the decision to return to the police station, while the Offender's phone was actively pinging in and around the vicinity of St Kilda and not action or task someone to effect a response, demonstrated not just an indifference to this task but a dereliction of duty.

10.58 Despite Sgt Caridi and a number of other witnesses saying it was his job to locate the Offender, it was not made clear to me why responsibility for locating and apprehending the Offender would shift from the CIU units (who had been attempting to locate and apprehend the Offender following the assault and robbery of Mr Wilson on 18 January 2017), to the uniform division following the stabbing of Angelo, then back to the CIU units after the morning handover on 20 January 2017.

- 10.59 Further, it seems to me that it should not be the sole responsibility of one person to plan and coordinate the location and arrest of an offender known to be dangerous, violent and wanted in relation to serious criminal offending. Rather, it should be a coordinated response to nominate and delineate clear and identified roles and responsibilities. This includes formulating a plan to search for and locate the Offender, developing an arrest plan that is understood by all officers involved, and ensuring that the tasks and actions required to implement these plans were appropriately allocated.
- 10.60 I find the response of DA/SSgt Toey, A/SSgt Filzek and Sgt Caridi was unplanned, uncoordinated and fragmented, which resulted in no one taking responsibility to follow up the pings and actively search for the Offender. This response indicated a lack of leadership and ownership for a key element of the investigation: to locate the Offender. This was clearly unsatisfactory and the best opportunity to locate the Offender that morning was lost.

### Request for assistance from the CIRT

- 10.61 It appears unlikely that Sgt Caridi had the time to elaborately explain to A/Sgt Jones the 'van plan' as detailed in his second and third statements made months and years after the events. Sgt Caridi accepted in evidence that he did not describe the van plan to any other police officer, and this was confirmed by the evidence of DA/Sgt Tzefer, A/SSgt Filzek and DA/SSgt Toey. Therefore, I conclude that Sgt Caridi's recollection may include a false memory of the level of detail he provided in discussions with A/Sgt Jones. This is entirely understandable given time he had to reflect, after learning of the devastation of the Bourke Street incident. In my experience as a Coroner, I have seen that trauma can affect people differently and play havoc with their recollection of events. Indeed, a false memory may appear as vivid and real to the witness as any recollection known to be accurate through objective evidence. I acknowledge the events of the day were yet to unfold and impossible to foresee, but I find that subsequent events have affected Sgt Caridi's recollection of his request for CIRT assistance.

### Was the CIRT decision to not deploy reasonable?

- 10.62 I accept A/Sgt Jones' evidence that his decision not to deploy was based on his understanding that CIRT needed to have 'eyes on' the Offender. I also acknowledge that A/Sgt Jones actively monitored police communications from 4.30 am onwards. Despite this, I fail to understand his decision not to deploy any CIRT units to assist when you consider what was known at the time.
- 10.63 I find the extremely violent nature of the attack upon Angelo and the Offender's known history should have featured more prominently in the decision to deploy CIRT resources. Throughout the Inquest there was a tendency to downplay the gravity of the attack on Angelo and the grave risks it signalled if the Offender remained at large. It was a prolonged, determined and frenzied attack. It was very nearly a homicide. It seems more was needed to inform CIRT's decision to deploy. If CIRT had conducted a risk assessment based on the CIRT criteria and what was known at the time about the Offender, including that he was wanted for the violent assault on his brother, that he had an extensive criminal history, that his bizarre and violent behaviour had escalated over the preceding 36 hours, including the vicious attack on Mr Wilson, and that his phone was pinging to known areas, it seems a more thoughtful and considered approach may have led to a different conclusion.

- 10.64 The request for CIRT was for specialist operational support, to provide greater assistance and skills to uniform police and the CIU in order to affect a strategic and safe arrest. The evidence was that they were not engaged in any other activity at the time of the request and St Kilda is not far from the city if units had to be re-deployed to a more urgent job anywhere in the state. Short of deploying his units, there was nothing preventing A/Sgt Jones from taking a more proactive approach to offer advice or assistance with formulating a planned response with Sgt Caridi, DSC Reid and DA/Sgt Tzefer.
- 10.65 I find that the CIRT could have been more proactive in offering advice for a potential planned response. It appears that the decision by CIRT not to deploy was consistent with the overall nightshift response, in that it was not planned, well-thought out or adequately risk assessed.
- 10.66 It is impossible to say if anything would have changed had the CIRT deployed but not doing anything more than monitoring police communications seems to be unreasonable in the circumstances. The CIRT could have been deployed in anticipation that the Offender was likely to be located from a ping on his phone. It was likely that the Offender may only be at any identified location for a short time, and, if the CIRT had to respond from their base near the CBD, transit time reduced the chance that these resources could be used effectively. Other demands on CIRT resources permitting, it made sense to have at least some CIRT resources as nearby as possible to seize any opportunity to apprehend once the Offender was located.

### Should the refusal to deploy CIRT resources have been escalated by senior management?

- 10.67 I accept A/SSgt Filzek's evidence that he did not consider that intervention, either by himself or through escalation to Insp Langhorn, would have resulted in a different outcome to the request for CIRT deployment. However, once alerted to the fact that CIRT would not deploy until the Offender was located, I find it was imperative for A/SSgt Filzek, Sgt Caridi and DA/SSgt Toey to develop a coordinated plan for the location and subsequent arrest of the Offender.

### Confusion of roles and responsibilities between police units

- 10.68 I find that some of the supervising police officers involved in the overnight response to the stabbing of Angelo were reluctant to accept any form of responsibility for their role in the events of the early morning. Much of the evidence given about the police response immediately after Angelo's stabbing was marked by blame shifting and standing behind the limits of roles, which were often expressed in imprecise terms. This culture of blame shifting only serves to undermine the effectiveness of Victoria Police and the community's trust in its ability to perform its core function, which is to serve and protect the Victorian community.
- 10.69 It seems there was no clear delineation of roles between the police officers involved with the investigation of the crime scene and incident, and those who were involved in undertaking and planning a resolution strategy. There was also no discussion between senior officers involved in the investigation about who specifically should be tasked with coordinating an arrest plan and communicating that plan to officers involved in the investigation. This was just assumed. Indeed, I find there was no planned resolution strategy. I further find the communication, co-ordination and responsibility for certain aspects of the investigation were just assumed between A/SSgt Filzek, DA/SSgt Toey and Sgt Caridi.

- 10.70 I also find there was a distinct lack of clarity around roles and responsibilities. This led to important functions not being undertaken as I have previously indicated, such as attempting to locate and arrest the Offender. While I am unable to say whether the Offender would have been located and arrested had a planned resolution strategy been in place, the failure to develop such a plan and the lack of a coordinated response meant that this opportunity was lost.
- 10.71 This lack of clarity around roles and responsibilities, and lack of ownership, responsibility and leadership, had a deleterious effect and led to confusion between the supervising criminal and uniform units on the night, which ultimately hampered the effectiveness of the police response. The combined police response by the nightshift units led to a perfect storm of ineffectiveness. I consider this is a potential prevention opportunity and propose to make a recommendation to address ambiguity of roles and responsibilities—see Recommendation Five.

### Closure of crime scene

- 10.72 It is apparent that, at the time the Raleigh Street crime scene was cleared, no consideration was given by investigating members as to the likelihood that the Offender would return to the scene, or to the potential implications of the threat made in the Facebook message to his partner, Ms Akiir Muo. I agree with the Families' submission that there was a real prospect of the Offender returning to Raleigh Street as he had done in the past, including after the assault against Mr Wilson. This potential was highlighted in the subsequent handover to, and briefing of, Port Phillip CIU and the actions taken to locate and apprehend the Offender thereafter.
- 10.73 Given it was one of the avenues of enquiry for the CIU later that morning, I consider it would have been appropriate to have left a police unit at or near the scene, in the event the Offender returned. However, given the Offender's history of evading police and the paranoia he exhibited when in the company of HCP regarding the police (earlier that morning), it is unlikely he would have returned to his mother's apartment if he saw police or police vehicles in the vicinity. It is not possible to say with certainty whether this would have resulted in the Offender's arrest. However, we now know, that he did return, which resulted in the abduction of Ms Muo.

## Part 6: Operation Invokes 2017

- 10.74 After failing to locate and arrest the Offender, the nightshift police handed over to the dayshift Criminal Investigation Unit to continue the investigation into Angelo's stabbing. The Port Phillip CIU team met to discuss the strategy to locate and arrest the Offender for the day, which included obtaining further police resources. The Offender was eventually located driving the stolen Commodore in the south-eastern suburbs before being followed for approximately 40 minutes, until he was intercepted by police in Moray Street, South Melbourne. Moments after being intercepted he sped away from police and a short police pursuit ensued that was quickly terminated. At about this time, the Offender encountered two CIRT units in Albert Park, but avoided interception. Driving down Clarendon Street, South Melbourne, and through a red light, he narrowly missed hitting a number of pedestrians. Shortly afterwards he was observed in traffic on Wurundjeri Way by CIRT units, who attempted to intercept him, but once again he managed to elude apprehension. During this encounter, Ms Muo managed to escape and was taken into custody by police. The Offender then drove off towards the western suburbs over the West Gate Bridge.

- 10.75 The extended follow, multiple intercepts, police pursuit, liberation of Ms Muo, request for additional resources, and the resolution plans are forensically examined in Part 6 of the Finding.

### Should a more aggressive intercept have been attempted at Moray Street?

- 10.76 I find the strategy of the morning investigation was sound until the events at Moray Street when the character of the operation changed from covert to overt and a change of strategy was required.
- 10.77 What was needed was a plan with sufficient detail so that the various units could perform their different roles and functions promptly and effectively. That is not to say that such a plan is inflexible or has to have every detail determined. I acknowledge that this degree of precise planning is impossible in police operations of this kind. However, the stated plan must mean something. It must inform the members involved of their role and the expectations of them. It must allow them to prepare and perform their own planning and risk assessments. It must also offer contingencies if the proposed plan is unsuccessful. Generic phrases such as ‘cordon and manage’ mean very little without some proper detail. Worse still, they can lull police members into thinking there is a plan when there isn’t one.
- 10.78 I accept that the plan for the morning operation was well understood in terms of effecting a safe arrest, but the events in Moray Street were not a manifestation of that plan. The plan originally envisaged the police would move in to arrest the Offender when he was unaware of their presence and away from the vehicle.
- 10.79 As this intercept appeared to be on the Offender’s instigation and terms, I accept the dynamic nature of this intercept meant that there was little time to formulate a plan and quickly coordinate other resources into place at that moment. The point is that the plan should have been developing earlier while they were following the Offender for an extended period of time and getting units in place, and to pre-empt and predict possible outcomes, particularly with the knowledge they had of him and his behaviour to avoid apprehension. It appears the resolution strategy was haphazard and not well formulated by the time police intercepted the Offender in Moray Street.
- 10.80 The ease with which the Offender evaded police in Moray Street is concerning. Given the knowledge of the Offender’s propensity to evade police, the prospects of the success of this intercept were no more than wholly speculative. The events in Moray Street (and immediately after) confirmed what police already knew about the Offender’s propensity to bait and evade police, and to drive in a dangerous manner.

### CIRT’s interaction with the Offender on Albert Road Service Road

- 10.81 The situation in Albert Road Service Road presented itself suddenly and lasted only a matter of seconds. The evidence of the four members involved demonstrates how difficult it is to make decisions of this kind in a very short time frame, particularly when the risks are patent and there is not enough time to communicate an effective plan. I accept Sgt Peck’s reasoning for leaving it to SC Ralston’s judgment as to whether to move out of the way of the Offender’s vehicle given the attendant risks involved. In this regard, I note that Sgt Peck provided reassurance to SC Ralston at the time that he would ‘back [him] either way’.

- 10.82 The confrontation between the Offender and CIRT units highlights the dilemma that both the CIRT and the CIU units were faced with that day. These police officers did not feel that they could resort to extraordinary means to stop the Offender's vehicle as they were not expressly permitted to do so by Victoria Police policy, nor were they trained to do so. Ultimately, SC Ralston considered the safety risks outweighed the benefit of potentially effecting an arrest in circumstances that may have caused harm to the passenger (Ms Muo), the Offender, himself or Sgt Peck. Having considered the circumstances and assessed SC Ralston as a witness of truth, I am satisfied his decision was entirely reasonable in the circumstances and consistent with the Victoria Police operational safety principles in place at the time.
- 10.83 However, this moment demonstrated that there was a need for a change of strategy from that point on. Police units following the Offender in an overt manner or any attempt to intercept him using standard tactics had proved ineffective, and a more planned and coordinated response was needed.

### Did police continue to follow after the pursuit was terminated?

- 10.84 Having considered all the evidence, I am satisfied that the CIRT units were not involved in any pursuit of the Offender immediately after he sped away from Moray Street and after the pursuit was terminated by Sgt Griffith. I am also satisfied that CIRT units were not chasing the Offender when, some minutes later, they observed his vehicle stuck in stationary traffic on Wurundjeri Way at the West Gate Freeway underpass.

### Request for units to return to attend debrief

- 10.85 There is no doubt that a debrief is an important opportunity to discuss the events at the time a pursuit is terminated; however, it does present significant challenges when an Offender is on the run, armed and dangerous, and evading police and had been the case for a number of hours. I accept the inherent tension between locating an offender with the requirements and benefits of attending a pursuit debrief.

### Was the pursuit debrief an opportunity to rethink strategy?

- 10.86 The pursuit from Moray Street marked the unsuccessful end of the strategy employed in the morning operation; namely, to covertly follow the Offender and wait for an opportune moment to arrest him when away from the vehicle.
- 10.87 It does not appear that the objectives of a pursuit debrief are aimed directly at a reassessment of strategies in operations such as Operation Invokes. Nonetheless, the requirement for a debrief provided a timely opportunity for a re-assessment of the evolving incident to occur.
- 10.88 The episode also demonstrated the futility of trying to intercept the Offender in the ordinary manner that police conduct standard intercepts. It was clearly the time to rethink the approach and I find the opportunity was not taken by those responsible for the conduct of the operation. The Offender's experience and knowledge that the police would not engage in a pursuit worked to his advantage as he continued to bait and evade police.

- 10.89 Despite the best intentions of all police members involved in the morning investigation, the evidence reveals the initial planning and coordination, which were originally a sound feature of the morning operation, dissipated by the attempted intercept at Moray Street, when the response changed from covert to overt. I find the police response thereafter became uncoordinated, fragmented and ineffective.

### Attempt to apprehend the Offender at Wurundjeri Way

- 10.90 The members of CIRT 267 and CIRT 377 came agonisingly close to arresting the Offender at Wurundjeri Way. They responded decisively and appropriately to an unanticipated and brief opportunity to arrest the Offender. The decisions taken by both CIRT units to try to block traffic demonstrated initiative and resourcefulness.
- 10.91 It is noteworthy that such a manoeuvre, whether it is called a 'blocking' manoeuvre or otherwise, is not something these members were specifically permitted to do, nor trained to perform and was not found in any of the relevant VPMs or other training material at the time. Nonetheless, the manner in which the CIRT vehicles were used in an attempt to prevent the Offender's escape, created the best opportunity to apprehend the Offender at any stage on 20 January 2017 prior to the events in Bourke Street. I commend the CIRT members for using their initiative to take such decisive action. Unfortunately, despite their best efforts, the Offender sped away towards the western suburbs.

### Did Ms Muo communicate to police the Offender's intent?

- 10.92 I find the evidence supports a conclusion that none of the CIRT officers or the civilian witnesses heard Ms Muo say the Offender had threatened to drive into the city and run people down, at the time of her initial arrest.
- 10.93 This conclusion leaves open two possibilities when assessing Ms Muo's evidence on the subject. First, she did not speak about the Offender's threat at the scene of her arrest, but her memory has suffered from confabulation. That is not to say that she was deliberately lying when she described these events in her third statement, but merely that her memory in this respect was flawed.
- 10.94 The second possibility is that Ms Muo did say something about the threat she had heard from the Offender but, in the tumult of the arrest, it was not heard by any of the police members or civilian witnesses. I am however persuaded that the first possible reason was far more likely, and it is Ms Muo's memory that was at fault.

### Did Ms Muo advise Port Phillip 507 of the Offender's intent in the back of the divisional van?

- 10.95 Having considered all of the evidence, I am satisfied with the evidence of DSgt Vohmann and DSC Epstein that Ms Muo did not advise them of the Offender's intention to go to the city and run someone down at the time DSgt Vohmann spoke to her in the back of the divisional van on the way to the St Kilda Police Station.

### Ms Muo as an important source of intelligence

- 10.96 I agree that the evidence in this Inquest does not allow me to conclude that had Ms Muo disclosed information to police earlier about the Offender's intention to drive to the city to run people over, the events of Bourke Street could or would have been prevented.

10.97 I find that Ms Muo was not only an essential witness to the events that had occurred up until her arrest but that she was a victim of a number of crimes committed against her that day. She had witnessed the Offender stab his brother in a frenzied attack, she had herself been threatened by the Offender that he would kill her, she had been kidnapped and held against her will for three-and-a-half hours, and she had intimate knowledge of his state of mind, his reckless and dangerous driving, and potential murderous intent. When these issues are considered in their totality, I find the failure of the CIU to make efforts to interview her as a significant witness at the earliest opportunity was a serious oversight. I accept an operational decision was made at the time that the priority was to locate the Offender, but I consider Ms Muo's interview should have been given a higher priority and at the very least someone should have been tasked to speak to her at the earliest opportunity.

### Did police have knowledge of Offender's intent?

10.98 I accept that there is no evidence that police knew of the Offender's murderous intent prior to the events of Bourke Street, however the ability to potentially be advised was lost with the failure to interview Ms Muo earlier. While it is true that investigators may have been dubious that the threats made by the Offender represented a real potential intent of the Offender, it would not have been reasonable for any investigator to entirely discount this information. It would have been necessary to consider the information as part of the ongoing assessment of risks associated with the operation, with the knowledge of the Offender's behaviour over the preceding hours. The failure to interview Ms Muo at the earliest opportunity remains significant.

### Was Ms Muo aware of the events of Bourke Street prior to her comments to police about the Offender going to the city to run people over?

10.99 The weight of the evidence supports a conclusion that Ms Muo heard of the events in Bourke Street for the first time when DSgt Watson revealed the news to her at 7.04 pm while driving in the car. Ms Muo's reaction is captured in the audio recording and her reaction palpably marked by genuine shock and visceral grief.

10.100 The significance of this finding is that Ms Muo was unaware of the events in Bourke Street when she disclosed at 2.41 pm the Offender's intention to go to the city to run people down. The implication is that had someone spoken to her earlier, it may have presented an opportunity to inform police of the Offender's intention and highlighted the risk of him driving towards the city. This presents a significant failing.

### Was the SSU available to assist?

10.101 I accept that from DSgt Barry's perspective he had a reasonable and honest belief that the SSU was unavailable at the time he called at 10.08 am and later at 11.41 am. It is possible that there was a misunderstanding between DSgt Barry and SSU Operative 005 about the availability of the SSU, and I am not critical of this fact. However, I consider there would have been no harm in DSgt Barry submitting or instructing another member to submit an application for SSU assistance as a priority, so that it could have at least commenced the process. This would have given SSU Operative 005 an opportunity to triage and potentially re-prioritise the other SSU crews to make them available. The evidence of SSU Operative 005 was clear that he needed an application to be able to progress the request.

10.102 Even though there is no policy or VPM about when to escalate matters up the chain of command, I consider that DSgt Barry or his superiors should have considered escalating this request. The knowledge the CIU members had about the Offender at the time of the request, included that he had stabbed his brother, kidnapped his girlfriend, made threats to 'kill all' and would most likely continue to evade police, meant that an application should have been made in a more timely way. I am satisfied, based on the evidence, that it was possible the SSU may have become involved in the early afternoon efforts of police to locate and covertly follow the Offender, which would have potentially enabled the visible police presence to withdraw and potentially de-escalate the impact of their presence.

### Can SSU get involved when an offender is aware of police presence?

10.103 The failure to meaningfully advance the application for SSU support in the two-to-three hours that were available to do so was significant. There was a real likelihood that SSU resources could have been made available for a properly covert operation.

10.104 The evidence reveals that with the adequate information and appropriate resources (that is, additional SSU units) and had the CIU and uniform officers disengaged and disappeared, the SSU may have had an opportunity to become part of the strategic plan to covertly follow the Offender until such time as he stopped the car and got out, and the others unit could effect a safe arrest.

### Concluding remarks about the events of the morning operation

10.105 By 11.30 am, there were four significant events that occurred within the space of a six-minute period:

- a. the Offender evaded police when they attempted the intercept at Moray Street
- b. the Offender had engaged in a 'face off' with the CIRT units in the Albert Road Service Road
- c. the Offender had narrowly missed hitting a number of pedestrians on Clarendon Street, South Melbourne
- d. the Offender had managed to avoid apprehension by a number of CIRT units at Wurundjeri Way.

10.106 These events marked an end to the morning plan and demonstrated a significant shift in the prospects of success for Operation Invokes. I am satisfied that up until the point where the Offender recognised the CIU vehicles behind him, the primary strategy had been a feasible one. That is, to use unmarked CIU vehicles to covertly follow the Offender, with other units deployed nearby but out of sight, waiting for an opportunity to arrest him with the assistance of CIRT when he was out of the vehicle. The use of unmarked CIU vehicles, as opposed to truly covert SSU vehicles crewed by trained SSU operatives, was not ideal, but it was viable as long as the Offender remained unaware of the presence of police.

10.107 By the time the Offender had taken off over the West Gate Bridge towards the western suburbs, it was clear that he was going to continue to evade police and it was time to rethink the resolution strategy.

10.108 After the escape of the Offender, critical tasks were left unattended, such as the application for SSU assistance that was not progressed for more than one-and-a-half hours and the failure to interview Ms Muo as a matter of priority.

- 10.109 By late morning on 20 January 2017, the Offender had demonstrated he was armed, dangerous, in a manic and psychotic state and had no intention to stop or surrender to police. He had viciously attacked his brother, made threats to 'kill all' in a Facebook message, kidnapped his girlfriend and driven dangerously to avoid apprehension, narrowly missing hitting a number of pedestrians crossing at Clarendon Street, South Melbourne.
- 10.110 Incomprehensibly, despite the best efforts of police officers, the Offender managed to evade arrest by police three times within the space of six minutes. By this stage of the operation, it was clear that there were limited options available to police to arrest the Offender while he was mobile in a vehicle. These facts represented a clear and significant escalation of risk that warranted a heightened level of police response and command.

## Part 7: Search for the Offender in the Western Suburbs and Attempts to Negotiate the Offender's Surrender

- 10.111 After the unsuccessful attempt to apprehend the Offender at Wurundjeri Way, he escaped to the western suburbs. Part 7 examines the attempts to search for and locate the Offender in the western suburbs, including efforts to negotiate a surrender, engagement with the Offender on Williamstown Road, the direction to disengage with him just as he drove back towards the central business district, and the deterioration of command and control.
- 10.112 Once the Offender drove off towards the western suburbs over the West Gate Bridge, the morning operation transformed into a fragmented and uncoordinated police response that resulted in a breakdown of communication between Port Phillip CIU, CIRT and uniform units.

### Who was in control and what was the plan?

- 10.113 I accept as police were searching for the Offender in the western suburbs, the Port Phillip 508 unit was busy attempting to negotiate with the Offender. I find their supervisors DSgt Barry, DSgt Vohmann, DSSgt Humphries and DA/SSgt Newman should have recognised this and proactively communicated an explanation of the preceding events, the risks associated with this Offender and advised of the resolution plan as the channel changed to 01-02. I find the failure to inform and advise the operators about the Offender and the preceding events placed the supervisors in the northwest region at a significant disadvantage and meant they were scrambling to get information and understand the resolution strategy, while trying to balance the need to safely locate and apprehend the Offender.
- 10.114 The fact that SSgt Poynder was compelled to repeatedly ask fundamental questions in his conversation with DSgt Vohmann, some 15 minutes after speaking with DSC Gentner, meant that the responses he received were not satisfactory. The inadequacy of an appropriate response from anyone in Port Phillip CIU informed his strategy in that the risks outweighed any benefits in engaging in a pursuit with the Offender at that stage.

- 10.115 I consider that Sgt Grant, Sgt Trimboli and SSgt Poynder were excellent examples of diligent supervisors trying to understand and ascertain who had control of the situation and the proposed resolution plan. I commend them for their proactive response. They used their knowledge and experience about policing and risk management to inform their decisions.
- 10.116 I find the supervisors in the northwest region were blindsided and needed more information to be able to adequately assist in the search for and potential apprehension of the Offender. They demonstrated a high standard of strong leadership and effective supervision. When you compare their responses to those of the senior sergeants and sergeants from the early morning investigation as referred to in Part 5 of the Finding, it was a stark improvement.

### DSC Gentner's rapport with the Offender

- 10.117 There was never any challenge to the prevailing belief that a rapport existed between the Offender and DSC Gentner. Rather, it was taken on faith that there was some useful 'rapport' between the two.
- 10.118 No one seemed to question whether DSC Gentner was the best or most appropriate person to attempt that negotiation, or whether his efforts ever had any real prospect of success. Nor did any other member of Port Phillip CIU challenge the accepted notion of DSC Gentner's 'rapport' with the Offender or consider that the approach might even be counter-productive given the Offender's preoccupation with him.

### Were the nature and tone of communications effectively communicated to supervisors?

- 10.119 All forms of communication between DSC Gentner and the Offender on 20 January 2017 were important as they enabled the detective to try and negotiate a peaceful surrender and, significantly, form a view about the Offender's state of mind. This was valuable intelligence, but only if it had been adequately relayed to others involved in the operation. It was imperative that the nature and tone of these communications were conveyed by members of Port Phillip 508 to Port Phillip CIU supervisors and those in charge of the investigation. The failure to do this meant that supervisors were not able to have a full appreciation of the actual and deteriorating state of the surrender strategy. This is most regrettable.

### Did DSC Gentner develop tunnel vision about the surrender strategy?

- 10.120 I accept that DSC Gentner acted in good faith when attempting to negotiate the Offender's surrender. Sometimes in 'the fog of war', one can acquire tunnel vision and become so focused on the task at hand as to lose sight of the bigger picture. I consider this is what occurred on this occasion.
- 10.121 The inadvertent development of tunnel vision even by a detective of DSC Gentner's experience, highlights the importance of strong and assertive supervision and leadership. It seems that the Port Phillip CIU senior management put faith in one police officer's talent to build rapport and negotiate with a mentally ill person, without reviewing or challenging the strategy or offering any other meaningful options.

## Was persisting with the surrender plan appropriate?

- 10.122 I find once voice communication with the Offender ceased at 12.21 pm and certainly by 12.54 pm when the Offender's text messages became more bizarre, the need for an alternative strategy was imperative. The evidence suggests, however, that DSC Gentner was not well placed to make such an assessment given his immersion in the role of investigator and the potential influence of tunnel vision about the surrender strategy.
- 10.123 No contingency plan was in place and despite it being incumbent on one of the other members of Port Phillip 508 to convey on either police communications or the CIU TAC channel the details of the surrender negotiations as they unfolded, this did not occur.
- 10.124 I also consider that had the supervisors known that the surrender strategy was effectively stalled, they could have potentially sought advice from a qualified CIRT negotiator or formulated an alternative strategy.
- 10.125 The surrender plan placed enormous responsibility on one person: DSC Gentner. I acknowledge the evidence that DSC Gentner was a skilled communicator and it was a suitable initial strategy for him to negotiate a surrender. However, when all the facts are objectively considered the negotiated surrender plan really amounted to nothing more than two phone calls and a series of bizarre text messages. There was no actual negotiation. There were no plans made, nor agreement reached. The strategy never had a chance of succeeding. How could it, when the person they were trying to negotiate with was not a clear-thinking, law-abiding, rational person, but a paranoid and delusional offender, fixated on taunting police, namely DSC Gentner? I accept that DSC Gentner appears to be a talented investigator, well-respected by his peers and many of his superiors and his effective communication skills and talents may have been successfully exploited in the past, but on this occasion, with this Offender, they failed.

## What was the arrest plan once he was located in Yarraville?

- 10.126 The sighting of the Offender at Cruickshank Park in Yarraville provided police with another potential opportunity to arrest him. At no stage during the Inquest did anyone articulate the actual 'arrest plan' was in Yarraville; the evidence is clear that there was no formulated arrest plan. The opportunity presented itself in the preceding hour when Port Phillip 508 was attempting to negotiate with the Offender and other units were out searching for him. The planning did not need to be the sole responsibility of Port Phillip 508. Indeed, I find other units from Port Phillip CIU, such as Port Phillip 507, DSgt Barry, DSgt Vohmann or DSSgt Humphries and DA/SSgt Newman could and should have assisted in coordinating with other CIU units and CIRT to formulate an arrest plan had an opportunity like this one arisen.
- 10.127 Instead, by the time the Offender was located in Cruickshank Park, and CIRT 377 and Port Phillip 508 rendezvoused, they had less than five minutes to formulate an arrest plan. The transient nature of an opportunity like this should have been anticipated and developed as a contingency to any plan. It was not expected that if the Offender was in his vehicle and sighted police he would willingly comply and surrender. His potential response had already been a reality multiple times that day. Unfortunately, the opportunity to arrest the Offender quickly evaporated and he managed to evade police for the fourth time that day.
- 10.128 It was clear the units on the ground needed clear guidance from their supervisors on the available arrest options and significantly, I find this support and leadership was absent.

## Engagement and attempted intercept with the Offender on Williamstown Road

10.129 To suggest that facial and hand gestures between Port Phillip 508 and the Offender while driving their respective vehicles on Williamstown Road towards the city was an engagement with the Offender that provided some chance of meaningful resolution at this stage was simply fanciful.

## Did police engage in a pursuit from Yarraville to Port Melbourne?

10.130 I find that the extended follow from Yarraville to Port Melbourne was a pursuit and should have been called as such. Not calling a pursuit meant that proper oversight was not initiated, as no pursuit controller was allocated. This meant that no one had responsibility to conduct the appropriate and necessary assessments to manage the risk and coordinate or terminate the pursuit. This was a clear breach of the *Pursuit Policy*.

10.131 The risks to police and the public associated with pursuits were well known to all police at the time. The evidence of Sgt Peck to his units, minutes before the events on Williamstown Road, expressly prohibited them engaging in a pursuit. This was consistent with the previous notifications of Sgt Griffith, Sgt Grant, Sgt Trimboli and SSgt Poynder throughout the preceding hours. Had a pursuit been called by Port Phillip 508 and/or any other of the units in the ‘convoy’ of police following at the time, and given the events preceding this incident, I have no doubt a pursuit controller would have seen the futility in ‘chasing’ this offender again, and would have appropriately terminated the pursuit.

10.132 The failure to call the extended follow from Yarraville to Port Melbourne a pursuit highlighted the challenges associated with investigating police losing perspective in the heat of the moment. Not communicating effectively with command about the nature of this engagement was extremely problematic. So too, was having two senior police officers from Port Phillip CIU—DSSgt Humphries and DA/SSgt Newman—in one of the vehicles actively involved in the pursuit. They did not provide effective leadership and challenge what was occurring until a short time after these events, when a decision was made to disengage with the Offender.

10.133 I am unable to say had a pursuit been called and probably terminated whether it would have changed the course of events—but not calling it did not allow any formal supervision or oversight.

10.134 I accept the circumstances of 20 January 2017 were most unusual and I acknowledge this Offender caused significant challenges to police in that he continued to evade police on numerous occasions, prior to this one. As previously mentioned, I recognise these circumstances demonstrated the ongoing tension between continuing to follow an armed and dangerous offender and the need to prevent harm to the public by engaging in a pursuit. It simply highlighted, once again, the necessity for some objective and strategic thinking by senior officers.

## Instruction to Port Phillip 508 to disengage

10.135 I find the brief transmission from Port Phillip 508 about their decision to disengage was wholly inadequate to inform units outside the Port Phillip CIU that there had been a significant and strategic change in the operation, and the consequences of the altered approach. Given the way the day unfolded from this point on this approach was left

wanting. I also find the lack of any instruction by DSgt Vohmann, DSSgt Humphries or DA/SSgt Newman on any police channel about this change in strategy was a significant omission.

### Lack of effective leadership

- 10.136 I find that there was a lack of assertive leadership and supervision provided to the Port Phillip CIU by DSSgt Humphries and DA/SSgt Newman in relation to an appropriate arrest strategy throughout the day, including during the time the Offender was located in Yarraville and up until the decision to disengage in South Melbourne.
- 10.137 I also consider that it was inappropriate and counterproductive for DSSgt Humphries and DA/SSgt Newman to be out and operational in a vehicle looking for the Offender during this time. They would have been better placed to have returned to the St Kilda Police Station and given active support, assistance and strategic direction to DSgt Barry and the overall operation.
- 10.138 The lack of leadership meant that an arrest plan was not formulated, which only served to highlight the ineffectiveness of command and control on the day, specifically this part of the day. What was needed was a disciplined, calculated and objective approach from senior officers so that decisions and alternative strategies could be evaluated and formulated as the dynamic events unfolded, and to assist in managing the unpredictable situation and the operational police officers in the field.

## Part 8: Events in the Melbourne CBD

- 10.139 Part 8 examines the events as they unfolded in the CBD and the attempts made by police to intercept and apprehend the Offender, including the importance of continuity of command in critical incidents, the challenges with frequent radio channel changes in a cross-border incident, the use of a vehicle as a weapon, the availability of other tactical options, the reticence of police to disobey policy and whether there were any opportunities for intervention or apprehension of the Offender after he entered the CBD.

### Importance of continuity of command in incident control

- 10.140 I find the timing of the change of incident controller and the manner in which it occurred was indicative of a significant breakdown of Port Phillip CIU's command and control.
- 10.141 It is evident that continuity of command is crucial in an unfolding and dynamic policing environment, such as the one that occurred on 20 January 2017. An important facet of policing, especially during an incident, is to provide regular communications about the nature of the situation and directions about possible resolution strategies. Such communications ensure all members listening to a local police channel have optimal situational awareness and understand established command, plans, roles and responsibilities. A lack of continuity of command and communication by police during an evolving incident can place members of the public at great risk of harm due to a dearth of crucial information being known, which is what occurred when the incident controller was changed multiple times and in quick succession.

## Challenges of frequent radio channel changes in cross-border operations

- 10.142 As the operation crossed over police geographical boundaries and made its way back into the CBD, it placed the operational CBD supervisors and general duty units at a profound disadvantage. This meant that Sgt Capodiferro had no knowledge of an evolving incident that had been operational for hours.
- 10.143 The *Pursuit Policy* recognises the importance of maintaining continuity of command and radio channel when a pursuit moves across a police boundary. It requires the pursuit to remain on the originating channel and for the original pursuit controller to retain control and management of the pursuit.
- 10.144 I find that multiple radio channel changes and fragmented handover across multiple channels led to a lack of clarity in roles and responsibilities; in particular, there was significant confusion about who was the incident controller as the Offender approached the city.
- 10.145 I find that the sudden changes of radio channels caused the city units to be taken by surprise and significantly impeded their ability to quickly respond and provide guidance to other city units.
- 10.146 It is an incident controller's role to not only provide updates to inform everyone listening on the police communications channel, but to also direct and task units to undertake particular actions. I find with the benefit of hindsight that members of the Port Phillip CIU should have taken a more active role in controlling this critical incident as it approached the city and should have attempted to provide all relevant information, advice and direction to the city units about the preceding events. Nonetheless, I am unable to say whether had this been done the outcome would have been any different.

## Police were tentative to act for fear of disobeying policy

- 10.147 The evidence supports a finding that some police members were reticent on the day to take more assertive action because they were concerned that force command would not support them and instead discipline them for breaching policy. I agree with AC Fontana's opinion that the fear of being disciplined paralysed some police members from taking more assertive action on the day.

## Whether there were any opportunities for intervention or apprehension of the Offender after he entered the CBD?

- 10.148 This Inquest has established that when a vehicle is used as a weapon it is almost impossible to stop it without aggressive and decisive action best achieved with the assistance of specialist services such as the SOG. Evidently there are limited options available to police when attempting to apprehend someone in a moving vehicle that do not present other dangerous risks to the public, police officers or offenders.
- 10.149 There are many risks associated with modern policing. The evidence in this Inquest has revealed the unusual and dangerous nature of the Offender's actions in driving onto and through pedestrian footpaths in Swanston and Bourke streets. While I accept police regularly deal with offenders who drive in a reckless manner, the actions of the Offender and his refusal to stop and get out of the car were unprecedented.

- 10.150 I agree that once the Offender was driving recklessly around the Swanston and Flinders street intersection and then headed west along Bourke Street, there was nothing further the operational police could have done safely due to the very populated area and the extreme dangers.
- 10.151 The evidence of most of the police officers was consistent in that it is extremely difficult and dangerous to stop a moving vehicle and options to do so are very limited. The risks and benefits of achieving apprehension must be weighed against each other to reduce the potential of causing further harm to police and others. It appears, with the benefit of hindsight, the best and most viable option was the early engagement and use of specialist services such as the SSU or the SOG. Without a planned, fully covert operation, it was extremely difficult for police officers to stop the Offender while he was in a moving vehicle and no realistic opportunity presented itself once he was in Swanston and Bourke streets.
- 10.152 The incident that culminated in the devastation in Bourke Street had been unfolding throughout the morning and involved multiple police units from different geographical locations. The incident required continuity of command and someone to provide assertive leadership, effective supervision and clear communications to all members involved. This did not occur. Supervisors in different locations were significantly disadvantaged. There was a failure to recognise that this incident had reached a level of critical risk. I consider more work is required for supervising units, particularly in the criminal investigation units, to understand the roles and responsibilities associated with identifying and managing critical incidents. Therefore, I have made a recommendation consistent with this; please see Recommendation Six. I have also included a recommendation specific to investigator training; please see Recommendation Seven.

## Part 9: Reviews and Reforms Following the Bourke Street Tragedy

- 10.153 After the events of 20 January 2017, Victoria Police and other government agencies did a lot of soul searching and have since made many amendments and reforms to legislation and policy. This is extensively outlined in Part 9 of this Finding.

### Hostile Vehicle Policy

- 10.154 I acknowledge that operational police members frequently work in dynamic and volatile situations. I consider the new *Hostile Vehicle Policy* permits members to balance the risks associated with taking such decisive action against the risks of potential harm. An outcome of the policy is that the element of reticence of police members to act due to the perception of disciplinary action for breaching policy has now been negated, if its use is proportionate to the harm. These situations are never easy, particularly when a member is in the heat of the moment and faced with a situation as dangerous as this one.
- 10.155 It is difficult, if not impossible, to know whether, if this new policy had been in place during these events, it would have altered the outcome and/or reduced or prevented deaths and serious injury. As the nature of the threat must have to be actualised for the hostile vehicle policy to become effective, it may not alter the outcome or reduce or prevent harm, but it does support police members in taking decisive action to prevent or lessen harm to the community where the circumstances justify such action to be taken and that action is made in good faith.

10.156 I acknowledge that Victoria Police has introduced training to assist with the rollout of the new *Hostile Vehicle Policy*. I accept that this policy has supported members in feeling more confident, clear and supported in how they would deal with such a situation if it arose again. However, I do have concerns that the advice in the policy for members to apply the vehicle interdiction options seems rather vague. While I agree with Supt Ward that the hostile vehicle policy is not intended to be utilised save in extreme scenarios as a ‘last resort’, members do need a basic understanding of these options if they are ever faced with a similar incident. While I accept that police have implemented training in relation to this new policy, scenario-based training, in the form of simulation or Hydra training may assist members to make appropriate risk assessments and act decisively in a dynamic environment if faced with such a situation again. I have made two recommendations consistent with this. Please see Recommendations Eight and Nine.

## Conclusions and Comments

10.157 I hold a unique and privileged position in our community to independently examine, through a prevention-focused lens, all the relevant circumstances of this matter. My job is to establish the facts and identify any systemic gaps or failures in processes or responses, and to make recommendations in an attempt to prevent an event like this from ever happening again.

10.158 I have thoroughly and forensically analysed the salient facts and issues associated with the Offender’s behaviour and his interaction with police, from the bail application to the catastrophic events in Bourke Street and the deaths of six innocent young people.

10.159 I have had the benefit of examining thousands of pages of evidence, policies and procedures, viewing CCTV footage and hearing the evidence of witnesses and the submissions of highly skilled counsel. This confers upon me a significant advantage: to examine in detail the totality of the circumstances, which I concede was not an advantage available to police on the day.

10.160 The precise events of Bourke Street were unprecedented and unforeseeable. However, I find the Offender’s behaviour in the lead up to 20 January 2017 was consistently dangerous, violent and unpredictable. He committed two violent assaults against Gavin Wilson on 18 January 2017 and his brother, Angelo, in the early hours of 20 January 2017. He was known to drive dangerously, bait police and evade apprehension on multiple occasions. Given this knowledge, I find the potential for him to drive recklessly in a vehicle and avoid apprehension was unsurprising.

10.161 It is the cause of much anguish that a violent, drug-fuelled, psychotic and delusional criminal was able to slip through the cracks and evade interception by police over a number of hours on 20 January 2017, despite the escalating events of the preceding days and the scores of police members actively attempting to stop him. Agonisingly, he was able to take the lives of six people by repeatedly avoiding and confounding a police force whose job it is to protect the Victorian community.

- 10.162 In this context, it seems a remarkable confluence of events emerged in favour of the Offender, together with a series of systemic deficiencies in the response of Victoria Police, that allowed their response to be manipulated and breached by one dangerous and unpredictable offender. Some of these deficiencies included poor planning; a lack of assertive leadership, supervision, coordinated command and control; inadequate communications between units across police radio channels; inflexible attitudes and policies; a staunch belief that negotiating with a delusional person was the best chance of bringing the incident to a conclusion; and, ultimately a reluctance to act assertively. Each of these factors contributed to the perfect storm.
- 10.163 Despite the range of tactical options available to police, I acknowledge that once the Offender arrived in the CBD, began driving recklessly and intentionally used his vehicle as a weapon, he was extremely difficult to stop without causing additional harm to police and members of the public.
- 10.164 To prevent something like this from occurring again, the systems and processes need to be robust and flexible enough to address a dynamic situation. When an individual is able to act recklessly, dangerously, with wilful intent and a blatant disregard for authority and public order, our police system needs to be able and equipped to rapidly and assertively respond. Leadership, command and control, clear and established roles and responsibilities, detailed plans, objectivity and a recognition of an unfolding escalation of events are all essential.
- 10.165 I am unable to conclude, however, had one of these responses been different that the catastrophic outcome would have been avoided.
- 10.166 When an incident as significant as this one occurs, it is important for key agencies and stakeholders to reflect on lessons learned to identify and implement solutions as part of a process of continual improvement. The tragic events of 20 January 2017 have been a catalyst for significant reforms.
- 10.167 I acknowledge the enormous work by government agencies and departments who have reviewed the events leading up to the Bourke Street tragedy in order to develop and implement practical, focused and effective solutions designed to prevent a similar event from occurring. I find that work was responsive, appropriate and conducted in a timely manner. This has reduced the need for me to make many substantial recommendations. I hope the families of the deceased may find some comfort in this knowledge.
- 10.168 I am satisfied that Victoria Police has done much soul searching to ensure it is better equipped, and that individual officers now have the support of the police command to be more decisive in their efforts and able to respond differently if this kind of incident were to present itself again. Even though many changes have been made, this forensic process has identified some remaining gaps and areas of improvement, for which I have made a number of recommendations.

# Part 11: Summary of Recommendations

11.1 Pursuant to s. 72(2) of the *Coroners Act 2008*, I make the following recommendations connected with the deaths:

## Recommendations

### Recommendation One:

That Victoria Police, in consultation with the DJCS, investigates the feasibility of Victoria Police-issued body-worn cameras being used to record all out-of-sessions bail/remand hearings.

### Recommendation Two:

That Victoria Police reviews its training and supervision of members involved in bail/remand proceedings to improve members' skills and knowledge concerning:

- a. proper preparation of the bail/remand brief
- b. identification of the available grounds upon which to oppose bail
- c. identification and presentation of the evidence relevant to opposing bail
- d. information about obtaining all relevant information and seeking an adjournment if necessary
- e. information about the circumstances around when and how to appeal a decision to grant bail.

### Recommendation Three:

That Victoria Police develops force-wide policies and procedures to:

- a. ensure that notifications of failure to report on bail are forwarded to a Position-Based Email Account, such as the Officer-in-Charge of the police station, in addition to the informant
- b. provide guidance on the actions to be taken by the informant and Officer-in-Charge upon receipt of such notification.

### Recommendation Four:

That Victoria Police reviews its training, policies and procedures on bail and remand with respect to high-risk recidivist offenders to ensure members:

- a. conduct a timely risk analysis using the ROPT, POINTER or similar tool
- b. consider the need for and, if appropriate, implement a Priority Target Management Plan or Offender Management Plan within the meaning of Victoria Police Manual *Tasking and Coordination* or other suitable oversight plan designed to detect and disrupt further offending while on bail.

### Recommendation Five:

That Victoria Police reviews its training, policies and procedures that govern the roles, responsibilities and coordination between the criminal investigation units and other supervisory units to eliminate role confusion and ambiguities concerning operational command in all areas, including criminal investigations, incident response and planned operations.

### Recommendation Six:

That Victoria Police conducts a review of its policies, procedures, training and infrastructure in respect of the management of critical incidents or emerging critical incidents and the proper and effective use of police communications, so that:

- a. there is, to the maximum extent possible, continuity of command in planned operations and critical incidents, particularly in circumstances where:
  - i. the operation or incident crosses Divisional or Regional boundaries and may involve a change of radio channel
  - ii. the operation or incident may involve the use of dedicated (TAC) radio channels.
- b. there is to the maximum extent possible, continuity of involvement of police communications personnel performing the role of channel operator during a critical incident or emerging critical incident
- c. all police members that may be impacted or become involved in an operation or incident are afforded the best possible situational awareness and clarity of command, plans, roles and responsibilities.

### Recommendation Seven:

That Victoria Police reviews its criminal investigator and investigator management training program with a view to incorporating a curriculum on risk evaluation, transition to incident management and the identification and management of critical incidents. Such training should incorporate an immersive, interactive training environment to support decision-making in critical incidents and emerging critical incidents.

### Recommendation Eight:

That Victoria Police Professional Development Command develops and implements appropriate operational safety training on hostile vehicles and vehicle-borne attacks that incorporates simulation or Hydra experience training to enhance the skills and operational decision-making of frontline operational members (including uniform, criminal investigation units and the Critical Incident Response Teams) who may be called upon to act in response to a hostile vehicle or vehicle-borne attack.

### Recommendation Nine:

That Victoria Police Professional Development Command incorporates regular annual or biennial refresher training on the Victoria Police Manual *Hostile Vehicle Policy* and on vehicle-borne attacks to ensure members' knowledge and skills remain up to date.

# Part 12: Acknowledgements

## Condolences

- 12.1 I extend my sincere and heartfelt condolences to the families of Matthew, Thalia, Yosuke, Jess, Zachary and Bhavita. I acknowledge the absolute grief and utter devastation you have endured as a result of your respective losses.
- 12.2 I also wish to take this opportunity to thank you for sharing your very personal thoughts and experiences with this Court. I recognise the grace, dignity and courage with which you have approached this Inquest and acknowledge that this has been a difficult and, at times, traumatising process for you. Sitting through an Inquest and listening to evidence and legal argument day after day is never easy. I am grateful to have had the benefit of your considered and thoughtful comments at the beginning and at the end of the Inquest hearing, and I have taken these into account when approaching my task.
- 12.3 I acknowledge that reliving the events of 20 January 2017 through this Inquest has also been traumatic for many, particularly those injured on the day, the many civilian witnesses and the first responders.

## Apologies

- 12.4 During the Inquest, four police officers directly addressed the Families of the Deceased to express their sympathies, sorrow or regret.<sup>1</sup> These were poignant moments of recognition for the loss and trauma suffered by the Families. I acknowledge the empathy and courage shown by those officers: DSC Matthew Reid,<sup>2</sup> DSC Lal Singh,<sup>3</sup> SC Roland Jones,<sup>4</sup> and DSSgt Pixie Fuhrmeister.<sup>5</sup>
- 12.5 On behalf of Victoria Police, AC Fontana also recognised the suffering experienced by the Families of the Deceased, stating:

I would like to, on behalf of Victoria Police, acknowledge the great harm and pain that this tragic incident has had on the families of the deceased and those that were injured, and they continue to suffer. It was an unprecedented event for Victoria, and it's had a significant impact on all those involved.<sup>6</sup>

1 An apology under the *Coroners Act 2008* (Vic), s. 70 means an expression of sorrow, regret or sympathy; it does not constitute an admission as to any matter, for the purposes of coronial findings.

2 Transcript of evidence, p. 1177.

3 Transcript of evidence, p. 2159.

4 Transcript of evidence, p. 2737.

5 Transcript of evidence, p. 3933.

6 Transcript of evidence, p. 3433.

## Coronial Investigation and Support Team

- 12.6 This Finding is the culmination of an extraordinary amount of work by many people. It would not have been possible to conduct an Inquest of this magnitude and complexity without the support of a dedicated and professional coronial investigation and support team.
- 12.7 I would like to take this opportunity to commend and thank the Coroner's Investigators, DSSgt Pixie Fuhrmeister and DA/Sgt Justin Tippett who both worked tirelessly on the coronial investigation. They worked diligently to collate all the evidence that formed the Coronial Brief, which included parts of the Criminal Brief as well as many additional pieces of evidence. This Inquest required these investigators to not only present all the facts and circumstances relevant to the deaths of the six victims but to, at times, scrutinise the actions of other police officers; this required great courage and integrity. They are dedicated and hardworking police officers and a credit to Victoria Police. I am indebted to them for their assistance.
- 12.8 I would particularly like to express my sincere gratitude to Stephen O'Meara QC, Senior Counsel Assisting, and Paul Lawrie, Counsel Assisting, for their hard work, excellent advocacy and wise counsel. I also thank the Bourke Street Legal Team of the Coroners Court: Amira Kafka, Elizabeth Morris, Sarah Richter and Daniel Wright. Their professionalism, talent and commitment led to the smooth running of the Inquest. It is an honour to work with such a dedicated team. I extend my thanks to the Coroners Court staff who have assisted me throughout this investigation.<sup>7</sup>
- 12.9 I am also grateful for the professionalism of the 26 counsel representing the interested parties and their respective legal teams.

<sup>7</sup> A full list of those who assisted is outlined in Appendix E.

## Orders and directions

12.10 Pursuant to s. 73(1) of the *Coroners Act 2008*, I order that this Finding be published on the internet.

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

- The family of Matthew Poh Chuan Si
- The family of Thalia Hakin
- The family of Yosuke Kanno
- The family of Jess Mudie
- The family of Zachary Matthew Bryant
- The family of Bhavita Patel
- All police officers identified in Appendix A
- All police officers identified in Appendix B
- Senior Constable Roland Jones
- Mr Frank Caridi
- Mr Christos Pantelios
- Mr Shane Patton, Chief Commissioner of Victoria Police
- Ms Anna Faithfull, Deputy Secretary, Department of Justice and Community Safety
- The Honourable Jill Hennessy, Attorney-General
- The Honourable Lisa Neville, Minister for Police
- Ms Brigid Ryan, City of Melbourne
- Detective Acting Senior Sergeant Chris Alexander, Professional Standards Command
- Ms Kellie Gumm, Trauma Program Manager, The Royal Melbourne Hospital
- Mr James Yianoulatos, James Harris Lawyers
- Detective Senior Sergeant Pixie Fuhrmeister, Coroner's Investigator



**JACQUI HAWKINS**  
Coroner

Date: 19 November 2020



# Appendix A

## List of operational members (Group A)

1.	DSgt David Barry	Port Phillip CIU
2.	DSC Adam Burnett	Port Phillip CIU
3.	SC David Cavanagh	CIRT
4.	DSC Aaron Diwell	Port Phillip CIU
5.	DSC Shoshanna Lew (née Epstein)	Port Phillip CIU
6.	FC Lauren Fuller	CIRT
7.	DSC Murray Gentner	Port Phillip CIU
8.	A/SSgt Kelly Gooden	CIRT
9.	DSSgt Darren Humphries	Port Phillip CIU
10.	A/Sgt Kalev Jones	CIRT
11.	LSC Martin Krajnc	CIRT
12.	DA/SSgt David Newman	Port Phillip CIU
13.	Sgt Matthew Peck	CIRT
14.	SSgt Ronelle Quin	PCC
15.	SC Gregory Ralston	CIRT
16.	SC Jacqueline Reeves	Port Phillip CIU
17.	DSC Matthew Reid	Port Phillip CIU
18.	DSC Lal Devinder Singh	Port Phillip CIU
19.	DA/Sgt Dimitrios Tzefer	Port Phillip CIU
20.	DSgt Adam Vohmann	Port Phillip CIU
21.	DSC Clayton White	Port Phillip CIU

# Appendix B

## List of operational members (Group B)

1.	FC Richard Camilleri	South Melbourne Police Station
2.	Sgt John Cannon	St Kilda Police Station
3.	LSC Andrew Edmonds	Air Wing
4.	A/SSgt Adrian Filzek	Moorabbin Police Station
5.	Insp Jennifer Forsyth	Stonnington Local Area Commander
6.	Sgt Shannon Grant	Altona North Police Station
7.	Sgt Karen Griffith	South Melbourne Police Station
8.	SC Stuart Haworth	Melbourne Highway Patrol
9.	DInsp Damian Jackson	Southern Metro Investigation & Response Mgr
10.	SC Cody Mourad	South Melbourne Police Station
11.	SSgt Scott Poynder	Werribee Police Station
12.	SC Jake Semmel	St Kilda Police Station
13.	FC Madeline Sloan	St Kilda Police Station
14.	Sgt Peter Tasiopoulos	St Kilda Police Station
15.	Sgt Nathan Toey	Caulfield DRU
16.	FC Aidan Verdun	St Kilda Police Station
17.	A/Sgt Simon Watts	St Kilda Police Station
18.	SSU Operative 005 <sup>1</sup>	State Surveillance Unit

*The following witnesses were not called to give evidence but were included in this group*

19.	SC Robert Black	ORU
20.	DA/SSgt Andrew Bruce	Melbourne West CIU
21.	DA/Sgt Sean Campbell	Echo Taskforce
22.	Sgt Mitchell Capodiferro	East Melbourne Police Station
23.	Sgt Paul Gilmour	Altona North DRU
24.	SC Robert Hamilton	Melbourne East Police Station
25.	SC Peter Hay	Melbourne Highway Patrol
26.	SC Justin Holland	Melbourne Highway Patrol
27.	Insp Mark Langhorn	PCC
28.	SC Joseph Muscat	Altona North DRU
29.	SC Daniel Paisley	ORU
30.	DSC Brett Thomas	Maribyrnong CIU
31.	SC Bradley Watson	ORU

## Appendix C

### List of witnesses who appeared at the Inquest

1. DSC Murray Gentner
2. SC Jake Semmel
3. SC Madeline Sloan
4. Sgt John Cannon
5. Mr Christos Pantelios
6. Sgt Peter Tasiopoulos
7. HCP<sup>1</sup>
8. DSgt David Barry
9. DA/Sgt Dimitrios Tzefer
10. DSC Matthew Reid
11. Sgt Nathan Toey
12. Mr Frank Caridi
13. A/SSgt Adrian Filzek
14. FC Adrian Verdun
15. DInsp Damian Jackson
16. Insp Jennifer Forsyth
17. A/Sgt Kalev Jones
18. DA/SSgt David Newman
19. DSC Clayton White
20. SC Jacqueline Reeves
21. DSC Adam Burnett
22. DSC Aaron Diwell
23. DSC Lal Devinder Singh
24. SC Stuart Haworth
25. Sgt Matthew Peck
26. SC Gregory Ralston
27. DSSgt Darren Humphries
28. SC Roland Jones
29. Mr Timothy Coulson
30. LSC Martin Krajnc
31. FC Richard Camilleri
32. FC Lauren Fuller
33. SC Cody Mourad
34. SC David Cavanagh

35. A/SSgt Kelly Gooden
36. Sgt Shannon Grant
37. Sgt Karen Griffith
38. SSgt Scott Poynder
39. SSU Operative 005
40. DSC Shoshanna Lew (née Epstein)
41. LSC Andrew Edmonds
42. DSgt Adam Vohmann
43. SSgt Ronelle Quin
44. DA/SSgt Andrew Bruce
45. AC Stephen Fontana
46. AC Michael Grainger
47. Supt Peter Ward
48. DLSC Lachlan Watson
49. A/Sgt Simon Watts
50. DSSgt Pixie Fuhrmeister

# Appendix D

## Police members rank abbreviations

Constable	Constable
FC	First Constable
SC	Senior Constable
LSC	Leading Senior Constable
Sgt	Sergeant
A/Sgt	Acting Sergeant
SSgt	Senior Sergeant
A/SSgt	Acting Senior Sergeant
Insp	Inspector
A/Insp	Acting Inspector
DSC	Detective Senior Constable
DSgt	Detective Sergeant
DA/Sgt	Detective Acting Sergeant
DSSgt	Detective Senior Sergeant
DA/SSgt	Detective Acting Senior Sergeant
DInsp	Detective Inspector
DA/Insp	Detective Acting Inspector
Supt	Superintendent
Cmdr	Commander
AC	Assistant Commissioner

## List of abbreviations

BaRC	Bail and Remand Court
CAD	Computer-Aided Dispatch
CBD	Central Business District
CCAG	Command Capability Advisory Group
CCP	Chief Commissioner of Police
CCTV	Closed Circuit Television
CIRT	Critical Incident Response Team
CIU	Criminal Investigation Unit
CSA	Crime Statistics Agency
CST	CIRT Security Team
DHHS	Department of Health and Human Services
DJCS	Department of Justice and Community Safety

ePDR	Electronic Patrol Data Return
HJSS	Honorary Justice Services Support
KALOF	Keep A Look Out For
LBS	Location-Based Search
LEAP	Law Enforcement Assistance Program
MCSU	Major Crime Scene Unit
MDT	Mobile Data Terminal
MPSE	Melbourne Protective Security Enhancement
NEO	Neo Intelligence Management System
OMP	Offender Management Project
OSTT	Operational Safety Tactics Training
PAS	Public Address System
PBEA	Position-Based Email Account
PCC	Police Communications Centre
POI	Person of Interest
POC	Police Operations Centre
PSO	Protective Service Officer
PSM	Police Shift Manager
PTMP	Priority Target Management Plan
QRT	Quick Response Team
RMS	Request Management System
ROPT	Recidivist Offender Prioritisation Tool
SESC	State Emergencies and Securities Command
SMR	Southern Metropolitan Region
SOG	Special Operations Group
SOP	Standard Operating Procedure
SPU	Special Projects Unit
SSU	State Surveillance Unit
TAC	Tactical Radio Communications Channel
TIO	Tactical Intelligence Officer
TMU	Traffic Management Unit
VPID	Victoria Police Intelligence Doctrine
VPM	Victoria Police Manual
VPMAC	Victoria Police Monitoring and Assessment Centre

# Appendix E

## List of persons who assisted with the Inquest

### *Coroner's Investigators*

DSSgt Pixie Fuhrmeister

DA/Sgt Justin Tippett

### *Counsel Assisting*

Mr Stephen O'Meara QC

Mr Paul Lawrie

### *Legal Team*

Amira Kafka, Principal In-House Solicitor

Elizabeth Morris, Senior In-House Solicitor

Sarah Richter, Senior In-House Solicitor

Daniel Wright, Coroner's Solicitor

### *Media*

Claudia Hodgens, Strategic Communications Manager

### *Bench Clerk and Registry Support*

Rachel Nicol, Coroner's Registrar

Rebecca Hudson, Bench Clerk

William Doolan, Bench Clerk

Nick Boesten, Bench Clerk

Ruby Robinson, Bench Clerk

Hayley Philpot, Registry Manager

Alex Cottrell, Principal Registrar

Emma Lindsey, Acting Registry Manager

### *Legal Administration*

Lise Cooper, Admin Briefing Clerk

Konstantina Giblett, Admin Briefing Clerk

### *Editors*

Glenn Cartledge —Woo Group

Samantha Brown, Principal In-House Solicitor

***Creative Agency***

Travis Atkins —Woo Group

***Welfare Support***

Kathryn Sandercock, Family Liaison Officer

Trauma Support Dogs Coop, Duke and River, along with their owner Tessa

Court Network Volunteers

***Japanese Interpreter***

Yuta Suzuki

***IT***

Adam Trevethan, IT Analyst

Gaurang Janodia, Business Systems Manager

Shane Fuller, IT Support Analyst

***Corporate Services***

Brooke Leslie, Records Officer

Lucille Thomas, Principal Project Officer

Robert Guilfoyle, Project Manager

Gerard Garson, Director, Corporate Services

Amanda Ford, Strategic Program Manager

Carolyn Gale, Chief Executive Officer

***Security***

Jasbir Singh, Court Security Officer

Cristina Salocchi, Court Security Officer

Neeta Tailor, Court Security Officer

Dane-Michael Starwood, Court Security Officer

Muhammad Zeeshan, Court Security Officer

Ian Bredle, G4S Security Manager

Gary Stokie, CSV Security Manager

***Court 2 Supervisors***

Troy Williamson

Monique Balassone

Laima Pandars

Sheean Werkmeister

Olivia Collard

Hayley Challenger

Whitney Bartlett

Hayley Burgess

Sanchia Nigli

Joanne Chila

Nancy Carbone

Sian Harper

Ashne Lamb

Jeremy Dwyer

Lise Cooper

Daniel Wright

