



IN THE CORONERS COURT  
OF VICTORIA  
AT MELBOURNE

Court Reference: COR 2018 0472

**FINDING INTO DEATH WITH INQUEST OF TROY VAN DEN BEMT**

*Form 37 Rule 63(1)*

*Section 67 of the Coroners Act 2008*

*(Amended pursuant to s76 of the Coroners Act 2008 on 20 September 2021)*

Findings of:	Coroner Jacqui Hawkins
Delivered on:	17 September 2021
Delivered at:	Coroners Court of Victoria 65 Kavanagh Street, Southbank, Victoria, 3006
Inquest hearing date:	5-11 & 16 August 2021
Counsel Assisting the Coroner:	Mr Paul Lawrie of Counsel instructed by Mr Lindsay Spence, Principal In-House Solicitor of the Coroners Court of Victoria
Chief Commissioner of Police	Mr Ron Gipp of Counsel, instructed by Ms Katherine Goldberg, Norton Rose Fulbright
Catchwords:	POLICE SHOOTING, VICTORIA POLICE, DEATH IN POLICE CUSTODY, MANDATORY INQUEST, STATE SURVEILLANCE UNIT, COVERT TO OVERT, ARMED CRIME SQUAD, REASONABLE FORCE, OPERATIONAL PLAN, RISK ASSESSMENTS

## BACKGROUND

1. Troy Van Den Bemt was 48 years old when he died on 28 January 2018, following an incident that occurred at a bottle shop in Park Orchards, involving an undercover police officer.
2. Mr Van Den Bemt was the eldest son of Peter Van Den Bemt and Rita Teuwsen and brother to Shane Van Den Bemt.
3. Mr Van Den Bemt had a history of using illicit drugs and criminal offending to support his drug habit. His criminal history began with trafficking cannabis and dishonesty offences, and later significantly escalated to burglary, theft and drug trafficking for which he spent some time in prison.

## CORONIAL INVESTIGATION

### *Jurisdiction*

4. Mr Van Den Bemt's death constituted a 'reportable death' pursuant to section 4(2)(c) of the Coroners Act 2008 (Vic) (Coroners Act), as his death occurred in Victoria and immediately before his death he was a person placed in custody or care. A person placed in custody or care includes "*(j) a person who a police officer ... is attempting to take into custody or who is dying from injuries sustained when a police officer attempted to take the person into custody*".
5. The evidence in this case established that Mr Van Den Bemt was shot and fatally injured whilst a police officer attempted to take him into custody immediately before his death.
6. Section 52(2)(b) of the Coroners Act requires that I must hold an inquest if the death occurred in Victoria and the deceased was, immediately before death, a person placed in custody or care. Consequently, an Inquest was held on 5-11 and 16 August 2021.

### *Purpose of the Coronial Jurisdiction*

7. The Coroners Court of Victoria (**Coroners Court**) is an inquisitorial court.<sup>1</sup> The purpose of a coronial investigation is to independently investigate a reportable death to

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<sup>1</sup> Section 89(4) *Coroners Act 2008*.

ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the death occurred.

8. The cause of death refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
9. 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 relevant to the death.
10. The broader purpose of coronial investigations 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.
11. Coroners are empowered to:
  - (a) report to the Attorney-General on a death;
  - (b) comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and
  - (c) make recommendations to any Minister or public statutory authority or entity on any matter connected with the death, including public health or safety or the administration of justice.
12. These powers are the vehicles by which the prevention role may be advanced.
13. It is important to stress that coroners are not empowered to determine civil or criminal liability arising from the investigation of a reportable death. Further they are specifically prohibited from including a finding or comment, or any statement that a person is, or may be, guilty of an offence.<sup>2</sup> It is also not the role of the coroner to lay or apportion blame, but to establish the facts.<sup>3</sup>

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<sup>2</sup> Section 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 sections 69(2) and 49(1) of the Act.

<sup>3</sup> *Keown v Khan* (1999) 1 VR 69.

### ***Standard of Proof***

14. All coronial findings must be made based on proof of relevant facts on the balance of probabilities.<sup>4</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>5</sup>
15. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.<sup>6</sup> The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals or entities, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.
16. 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>7</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>8</sup>

### ***Sources of Evidence***

17. This Finding draws on the totality of the coronial investigation into Mr Van Den Bemt's death. That is, the court records maintained during the coronial investigation, the Coronial Brief and any further material sought and obtained by the Coroners Court, the evidence adduced during the Inquest and any submissions.
18. In writing this Finding, I do not purport to summarise all the evidence but refer to it only in such detail as appears warranted by its forensic significance and the interests of narrative clarity. The absence of reference to any aspect of the evidence should not lead to the inference that it has not been considered.

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<sup>4</sup> *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

<sup>5</sup> *Qantas Airways Limited v Gama* (2008) 167 FCR 537 at [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 section 140 of the *Evidence Act 1995* (Cth); *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 170-171 per Mason CJ, Brennan, Deane and Gaudron JJ.

<sup>6</sup> (1938) 60 CLR 336.

<sup>7</sup> *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336.

<sup>8</sup> *Briginshaw v Briginshaw* (1938) 60 CLR 336 at pp 362-3 per Dixon J.

## **CIRCUMSTANCES OF DEATH**

### **Circumstances proximate to the death**

19. In January 2018 the Victoria Police Armed Crime Squad (**ACS**) were investigating a series of four armed robberies which had occurred in the Eastern suburbs of Melbourne between 12 and 26 January 2018. Specialist units were assisting the ACS with their investigation, codenamed Operation Masonary-2018 (**Operation Masonary**) including the State Surveillance Unit (**SSU**) which performs covert surveillance and provides intelligence to investigators, and the Special Operations Group (**SOG**) which provides high risk tactical response.
20. The investigation had identified Mr Van Den Bemt, Michael Laskowski and Jeffrey Wright as persons of interest. Commonalities in the modus operandi of the robberies had been identified by the ACS, including the use of a sawn-off double barrel shotgun and other certain physical characteristics of the offending. These common aspects provided a nexus between the armed robberies and the potential suspects. Police had also identified three vehicles linked to the persons of interest that may have been used in the robberies, including a stolen white 2017 Toyota Kluger (**Kluger**), a silver 2005 Holden Commodore sedan (**Commodore**) and a grey 2012 Ford Mondeo sedan (**Mondeo**).
21. On 28 January 2018, the investigation had reached a stage where if any of the suspects were located in or near the stolen Kluger, Investigators had sufficient evidence to effect an arrest. It had previously been agreed however between ACS and SOG, that the SOG would be deployed to effect the arrest of the suspects in the event the investigation advanced to the point that sufficient evidence existed to charge either Mr Van Den Bemt or Mr Laskowski for the substantive offences of armed robbery.

### **Events of 28 January 2018**

22. On 28 January 2018 at 2pm, SSU commenced their surveillance on an address associated with the persons of interest, the priority being to locate the Kluger. ACS Crew 4 were tasked to continue investigations relating to Operation Masonary and work jointly with the SSU. Crew 4 included Detective Acting Sergeant (**DA/Sgt**) Robert Ormerod (as Team Leader), Detective Senior Constable (**DSC**) Cara Brockwell, DSC Matthew Davey and DSC Brett Waterson.

23. The ACS team commenced duties at about 2pm and based themselves at Box Hill Police Station for their shift. They conducted various investigative duties associated with the operation including preparing affidavits and relevant search warrants to ensure an urgent response, if required.
24. At 7.31pm, the SSU observed the Mondeo and Commodore attend a BP service station in Heathmont. They positively identified Mr Van Den Bemt and Mr Laskowski fill a red fuel container with petrol, which was then placed in the back of Mr Laskowski's vehicle. Moments later, SSU operatives located the Kluger, parked in close proximity to Mr Laskowski's address in Ringwood East and notified the ACS.
25. At 7.47pm DA/Sgt Ormerod notified Detective Acting Senior Sergeant (**DA/SSgt**) Simon Polson that the SSU had located the Kluger. Further DA/Sgt Ormerod conveyed that the Holden and the Mondeo were driving erratically and engaging in conduct consistent with anti-surveillance measures. At 7.49pm DA/SSgt Polson contacted his supervisor, Detective Acting Inspector (DA/Insp) Mark Ward to request SOG deployment, which was subsequently approved.
26. At that time, the SOG team were located in central Melbourne. Prior to deployment the team had to reconvene, be briefed on the unfolding situation, develop an arrest plan, arrange the necessary equipment and vehicles, and deploy to the area of operation. This was confirmed when at 8.01pm SOG Operative 113 telephoned DA/Insp Ward and advised him that the SOG would deploy to the area of operation once they had gathered enough members to effect multiple vehicle interdictions. No estimated time of arrival was provided to DA/Insp Ward in that telephone call.
27. At 7.59pm the SSU Team Leader, SSU Operative 145 warned the SSU team to be mindful that the suspects were known to be armed with shotguns and he reminded SSU members of the safety first principles - to protect themselves and members of the public and to use whatever OSTT equipment they deemed necessary.
28. At 8.29pm the Mondeo was observed leaving Mr Laskowski's address in Ringwood East with Mr Wright driving and Mr Van Den Bemt in the front passenger seat. A minute later the Mondeo attended Hillary Grove, Ringwood East where the Kluger was parked. Mr Van Den Bemt and Mr Laskowski got into the Kluger and both vehicles departed Hillary Grove, under SSU surveillance.

29. At approximately 8.32pm DSC Davey and DSC Waterson, at the request of DA/Sgt Ormerod, departed Box Hill Police Station in an unmarked ACS vehicle and deployed towards the last known suburb of operation of the SSU.
30. At 8.38pm the Mondeo and Kluger were observed parked at a carpark at the North Ringwood Shopping Centre. Mr Laskowski removed the red container of petrol from the Mondeo and emptied its contents into the Kluger's fuel tank. It was the opinion of SSU operatives that the suspects were either going to commit another armed robbery or drive somewhere and burn the Kluger. In the moments leading up to this, SSU Operative 145 broadcast that the SOG were still in the city, so the SSU were effectively on their own. Around the same time DA/Sgt Ormerod and DCS Brockwell also departed Box Hill Police Station and commenced travelling towards the last known suburb of operation of the SSU.
31. At 8.40pm the Mondeo and Kluger drove away from the North Ringwood Shopping Centre towards the suburb of Park Orchards. The Kluger was being driven by Mr Laskowski with Mr Van Den Bemt in the front passenger seat whilst Mr Wright was driving the Mondeo solo.
32. At 8.44pm the Mondeo and Kluger were observed by SSU operatives to repeatedly drive past a small shopping strip on Park Road, Park Orchards. Within that small shopping strip was the Park Orchard Cellars (**bottle shop**) as well as at least one takeaway shop that remained open. Their manner of driving caused the SSU members to suspect that an armed robbery was imminent. SSU Operative 129 broadcast: *"I've got a bottle shop here, I'm just gunna cover this for a sec ... .. They eyeballed that bottle shop pretty well"*. SSU Operative 145 replied: *"Good work. It's gunna be a target here for sure"*. The Mondeo was then observed to reverse into a driveway and remain stationary whilst the Kluger continued circling the area.
33. At 8.45pm SOG Operative 113 was advised by SOG Team Leader Operative 37 that their team had sufficient numbers and were deploying into the field as requested.
34. Due to observations made of the Kluger, SSU Operatives 116 and 129 parked their vehicle just outside the small strip of shops in Park Road, Park Orchards.
35. SSU Operative 129 entered the Park Orchards Cellars and covertly assessed the risks to those inside, in the event an armed robbery was to occur. Inside the shop were the owner Xueqiang (Sean) Wang in a rear office, and his son Kanru Wang at the front

counter. There were no members of the public inside the bottle shop at the time, however SSU Operative 129 had observed members of the public inside a takeaway store a number of shops further along.

36. Ordinarily, SSU personnel are not involved in the arrest of a suspect and remain covert from the start to finish of an operation. When Operative 129 entered the store, he was wearing a covert police radio and could hear continuing reports from other SSU members as the Kluger circled the streets nearby.
37. At the time the SOG were in the process of departing their Melbourne headquarters and were unable to intervene. DSC Waterson and DSC Davey were in a static position in Dickson Crescent, Ringwood North, approximately three kilometres away, but were not in a position to disrupt the armed robbery.
38. To entice Kanru Wang away from the cash register at the front of the store, Operative 129 who was at the rear of the store, pretended to be a customer and asked him some questions about some wine. At this time Sean Wang was in a storeroom at the rear of the premises which had a short curtain covering the doorway to the storeroom.
39. As the Kluger pulled up directly outside the bottle shop and Mr Van Den Bemt exited the front passenger seat wearing a balaclava and brandishing a sawn-off shotgun, Operative 116 who was outside the store broadcast over the SSU radio "*armed rob in progress*".
40. Operative 129 then told Kanru Wang that he was a policeman and tried to convince him to move towards him.
41. Within two-and-a-half minutes of Operative 129 entering the store, Mr Van Den Bemt ran into the bottle shop wearing a balaclava and was armed with a loaded 12 gauge, sawn-off, double-barrel shotgun. Mr Van Den Bemt yelled "*This is a stickup*" and "*Don't you bloody dare. Stay there*". He ran past the unattended front counter and down one of the two aisles that ran the length of the store, to the doorway leading to the rear storeroom.
42. Kanru Wang immediately retreated into the storeroom while Operative 129 remained at the rear of Aisle 2. Mr Van Den Bemt stood in the storeroom doorway that was covered with a curtain, and threatened Kanru and Sean Wang with the shotgun, pointing it directly towards them. Kanru Wang was closest and tried to defend himself against Mr



Van Den Bemt waving a steel pole towards him, while Sean Wang picked up a chair to do the same.

43. In a written statement provided the next morning Operative 129 stated:

*I became extremely concerned that the actions of the young Asian male would cause the man with the shotgun to shoot him and kill him. At that moment the shotgun was within a metre of the young Asian male. ... I formed the view that if I didn't take immediate action the young Asian male or the older Asian gentleman would be shot.<sup>9</sup>*

44. Operative 129 drew his police-issued semi-automatic pistol and fired what he thought were two to three shots at Mr Van Den Bemt's torso, which appeared to have no effect. Operative 129 then perceived that Mr Van Den Bemt started to rotate towards him and was about to fire when Operative 129 fired two further shots. At some stage during the gunfire, Mr Van Den Bemt discharged his shotgun. This shot impacted a fridge near where Mr Van Den Bemt was standing, located near the entrance to the back storeroom.

45. After being shot, Mr Van Den Bemt continued to run down Aisle 1 towards the front of the store. Operative 129 described his reaction in his written statement:

*... in that split second, I perceived him to rotate towards us and thought he was going to fire the shotgun in our direction. I fired I think two more shots at his upper body. It was only when I fired those last few shots that the male fell forwards towards the ground and dropped the firearm ...<sup>10</sup>*

46. Operative 116 drew her police-issued semi-automatic pistol and attempted to apprehend Mr Laskowski who had remained seated in the driver's seat of the Kluger, however Mr Laskowski ignored repeated demands to get out of the vehicle, reversed at speed and fled the location. Operative 116 immediately broadcast "shots fired, shots fired" and then entered the bottle shop with her firearm drawn to assist Operative 129.

47. Despite Ambulance Victoria being immediately requested Mr Van Dem Bemt died as a result of the gunshot wounds.

48. Sean and Kanru Wang managed to escape out a storeroom backdoor and called emergency services for assistance.

49. The two co-offenders, Mr Laskowski and Mr Wright fled the scene and within minutes were arrested and subsequently charged by police.

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<sup>9</sup> Exhibit 20, Statement of SSU Operative 129 dated 29 January 2018, Coronial Brief, p 130.

<sup>10</sup> Exhibit 20, Statement of SSU Operative 129 dated 29 January 2018, Coronial Brief, p 131.

50. Detectives from the Victoria Police Homicide Squad immediately took carriage of the investigation, with oversight from Professional Standards Command.
51. The store had CCTV cameras installed and the recording reveals significant parts of these events.
52. Six spent .40 calibre shells were recovered from the scene which ballistics examination concludes were fired by Operative 129. Ballistic examination of Operative 129's semi-automatic pistol and magazine concluded that there were a total of seven discharges of the firearm.
53. Victoria Police conducted its own review of these events in the form of an Operational Safety Committee – Critical Incident Review (**OSCIR**), led by Superintendent (**Supt**) Charles Allen.

#### **IDENTITY OF THE DECEASED**

54. On 31 January 2018, Troy John Van Den Bemt was formally identified by his father Peter Van Den Bemt. Identity was not in issue and required no further investigation.

#### **MEDICAL CAUSE OF DEATH**

55. On 29 January 2018, Dr Paul Bedford, Forensic Pathologist at the Victorian Institute of Forensic Medicine conducted an autopsy on the body of Mr Van Den Bemt and reviewed the Victoria Police Report of Death Form 83, Section 27 request for autopsy and a post-mortem computed tomography (CT) scan.
56. Dr Bedford reported six bullets struck Mr Van Den Bemt with three entering the left back, two in the left arm and one in the right leg. The most superior injuries to the back (1 and 2) caused damage to the left lung and a pneumothorax as well as damaging the left ventricle of the heart, thus resulting in his death. All the gunshot wounds appear to be of pathologically distant range.
57. Toxicological analysis revealed the presence of methamphetamine, benzodiazepines, methadone, paracetamol and cannabis.
58. Dr Bedford provided an opinion that the medical cause of death was 1(a) *Gunshot wounds to the upper torso*. I accept and adopt this cause of death.

## CORONIAL INQUEST

### *Witnesses*

59. The following witnesses were called to give *viva voce* evidence at the Inquest:

- Detective Acting Inspector Mark Ward;
- Detective Acting Senior Sergeant Simon Polson;
- Senior Constable David Grey;
- Detective Senior Constable Kevin Squires;
- SSU Operative 145;
- SSU Operative 129;
- SSU Operative 116;
- SSU Operative 147;
- Detective Senior Constable Brett Waterson;
- Detective Acting Sergeant Rob Ormerod;
- Detective Senior Constable Cara Brockwell;
- Detective Senior Constable Matthew Davey;
- Detective Superintendent Kieran Moloney;
- SOG Operative 113;
- Retired Superintendent Charles Allen.

### **Scope of inquest**

60. The following issues were investigated at Inquest:

- a) Operation Masonary.
- b) Briefing Note v Operational Order.
- c) Briefing of SSU in respect of disruption strategy and contingency plan.
- d) Timing of SOG deployment.
- e) Disruption strategy.
- f) Contingency plan to allow the offence to occur - when SSU can go covert to overt.
- g) Concept of working in the field with SSU.

- h) Situational awareness.
- i) Actions of SSU Operative 129.
- j) Prevention opportunities.

### **Operation Masonary**

61. The ACS is a specialist investigative unit tasked with the investigation of certain categories of armed robbery, aggravated burglary, kidnapping, non-fatal shootings and firearms offences. It is comprised of several teams or crews.
62. After four armed robberies occurred between 12 and 22 January 2018 in the Eastern suburbs of Victoria, with commonalities including the presence of a sawn off double barrel shotgun, a Kluger, and a Commodore, Detective Sergeant (**DSgt**) Adam Ferguson identified that there was a sufficient nexus between the offending. This led to the establishment of Operation Masonary. It was hoped that by combining the matters, it would ensure a consistent and efficient progression of the investigations, in conjunction with overt, covert, contemporary and traditional avenues of enquiry.<sup>11</sup> DSgt Ferguson was assigned primacy of the investigation.<sup>12</sup>
63. An investigation strategy was devised and recorded on Interpose and included using conventional lines of investigations, with the support of Victoria Police specialist services including the SSU, Technical Support Unit (**TSU**) and SOG.<sup>13</sup> ACS investigators prepared an application for SSU support on 25 January 2018 which identified Mr Van Den Bemt as a person of interest and which included photographs of he and the other suspects. The request sought support to identify/locate the Commodore, Kluger and assist with the arrest phase, utilising SOG, if appropriate.
64. In the early hours of the following morning, Senior Constable (**SC**) Steven Reid and SC David Grey were conducting patrols in a divisional van when they intercepted a Commodore in Mooroolbark with an overdue registration. The manner in which the vehicle was being driven caused a level of suspicion to the officers. They conducted a Law Enforcement Assistance Program (**LEAP**) check on Mr Van Den Bemt and Mr Laskowski (who gave the name Michael Nash) and identified that they both had prior convictions, and considered there may have been drugs of dependence in the vehicle and consequently conducted a search of the vehicle. Police observed several items

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<sup>11</sup> Exhibit 41, Coronial Brief, p 168.

<sup>12</sup> Exhibit 41, Coronial Brief, p 174.

consistent with being used to conduct burglaries and robberies, including *inter alia* balaclavas, gloves, torches, knives, a window breaker, a screwdriver and a key to a Toyota<sup>14</sup>, and seized these items.

65. The officers took photos of Mr Van Den Bemt and Mr Laskowski and advised them they would receive a charge on summons as there were no grounds to arrest them at that point in time.<sup>15</sup> SC Reid and SC Grey returned to the police station and prepared a detailed information report<sup>16</sup> which was subsequently provided to the ACS. The information gathered from this intercept, including a Toyota key, played an important part in the intelligence being gathered by the ACS.
66. The SSU were advised of the Information Report and commenced surveillance duties on Friday 26 January 2018. At approximately 1.00pm the SSU commenced surveillance on the persons of interest. Locating the Kluger was the primary objective. By 7.30pm there had been minimal movement and/or sightings of the suspects and a decision was made to cease surveillance duties just before 8.00pm that day.
67. Within the next hour, an armed robbery was committed at Dan Murphy's Liquor Store in High Street, Kew. The suspects were seen to leave the scene in a white Toyota Kluger. A mobile phone stolen in the robbery was tracked to Ringwood until it was switched off and the suspects were unable to be located. Operation Masonary was updated to reflect this latest robbery.

### **Briefing Note v Operational Order**

68. On 27 January 2018, Detective Acting Senior Sergeant (**DA/SSgt**) Polson, the officer in charge of Team 4 of the ACS prepared a Briefing Note which provided a background to the armed robberies and the persons of interest.<sup>17</sup> The Briefing Note identified a nexus between the stolen Kluger and the persons of interest (**POIs**).
69. The Briefing Note included an arrest plan and disruption strategies.<sup>18</sup> It explicitly stated that if the SSU located the Kluger and either or both suspects were observed driving the vehicle, then the SOG would be contacted to assist with an arrest. Investigators were of

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<sup>13</sup> Exhibit 41, Coronial Brief, p 174.

<sup>14</sup> Exhibit 11, Statement of Senior Constable David Grey dated 19 February 2018, Coronial Brief, pp 263-4.

<sup>15</sup> Transcript of evidence, p 197.

<sup>16</sup> Exhibit 12, Information Report dated 26 January 2018, Coronial Brief, pp 426-7.

<sup>17</sup> Exhibit 8, Briefing Note dated 27 January 2018, Coronial Brief, p 635.

<sup>18</sup> Exhibit 8, Briefing Note dated 27 January 2018, Coronial Brief, p 635.

the belief that if the suspects got into the Kluger they were planning to commit an armed robbery and that if this occurred the SOG should be contacted immediately.<sup>19</sup>

70. The proposed disruption strategy was that if the SOG were not able to effect an arrest “*all attempts will be to disrupt and prevent an armed robbery from occurring*”.<sup>20</sup> If a disruption strategy was not able to be implemented the Briefing Note anticipated that the SSU would remain covert whilst the armed robbery occurred, then continue surveillance of the suspects awaiting SOG deployment and formulation of an arrest plan.<sup>21</sup> This component was more appropriately referred to as a contingency plan, and referred to in the OSCIR review as ‘letting the job run’.<sup>22</sup>
71. At Inquest, DA/SSgt Polson gave evidence that in his opinion the Briefing Note was considered, and risk assessed. He said the operational strategy and plan was clear.<sup>23</sup> The Briefing Note was submitted to and subsequently approved by DA/Insp Ward, the senior officer in charge of the ACS. DA/Insp Ward was also comfortable with the plan<sup>24</sup> and believed it had been adequately risk assessed, reviewed, and considered.<sup>25</sup>
72. One of the key findings of the OSCIR review was that the ACS did not develop an Operational Order, as set out in Victoria Police Manual (VPM) – Procedures and Guidelines – Operational Orders<sup>26</sup> (**Operational Orders**). This required members to follow the SMEACS principles – that is to consider the Situation, Mission, Execution, Administration and Logistics, Communication and Safety. In evidence, DA/Insp Ward considered the Briefing Note complied with the SMEACS principles.<sup>27</sup>
73. In relation to whether an Operational Order should have been prepared, DA/SSgt Polson considered they were used specifically for planned events, such as public order type events because their content doesn’t relate to an operation like Operation Masonary. He considered filling out an Operation Order for this type of plan was an exercise in futility “*because nobody will take any notice of it, because it doesn’t relate to what we’re*

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<sup>20</sup> Exhibit 8, Briefing Note dated 27 January 2018, Coronial Brief, p 637.

<sup>21</sup> Exhibit 8, Briefing Note dated 27 January 2018, Coronial Brief, p 637.

<sup>22</sup> Exhibit 37, Operational Safety Committee – Critical Incident Review, Coronial Brief, p 625.

<sup>23</sup> Transcript of evidence, p 156.

<sup>24</sup> Transcript of evidence, p 29.

<sup>25</sup> Transcript of evidence, p 39.

<sup>26</sup> Exhibit 38, VPM, Procedures and Guidelines – Operational Orders, Coronial Brief, p 673.

<sup>27</sup> Transcript of evidence, p 95.

*actually trying to achieve*".<sup>28</sup> He was not aware of a specific risk assessment template for operations such as Operation Masonary.<sup>29</sup>

74. The OSCIR review also noted that there was no documented evidence of an ongoing risk assessment and continuous development of contingencies in relation to Operation Masonary.<sup>30</sup> In evidence both DA/Insp Ward and DA/SSgt Polson disagreed with this finding.<sup>31</sup> DA/Insp Ward said the plan is "*reflected in the briefing note and the actions and decisions*"<sup>32</sup> of members on the day. DA/SSgt Polson said there were continual ongoing risk assessments but agreed they didn't have a specific risk assessment document.<sup>33</sup>
75. Counsel for Chief Commissioner of Police (CCP) submitted that Operational Orders are designed for planned operations for events such as demonstrations and that this document would not be applied for a dynamic operation such as Operation Masonary.<sup>34</sup> It was submitted that parts of the Briefing Note did address the SMEACS principles. Further, that the Operational Order is a guideline and is therefore not mandated.<sup>35</sup>
76. I acknowledge the OSCIR finding that the ACS did not comply with the VPM Operational Orders. Having considered all of the evidence, I accept that the VPM is a guidance document and the understanding of many of the officers is that an Operational Order is usually required for larger planned events. However, I find the Briefing Note did seem to lack sufficient contingencies if one or other of the planned arrest or disruption strategies were not able to be implemented in time. I further find that there was no documented risk assessment but accept the evidence of many of the police members that they continually risk assess when performing operational duties.

### **Briefing of SSU in respect of disruption strategy and contingency plan**

77. Once the Briefing Note was approved it was then communicated to the relevant ACS teams, the SSU and the SOG on 27 and 28 January 2018, respectively.
78. An issue in dispute at the inquest was whether the ACS briefed the SSU Sergeant, Operative 145 on the third point of the Briefing Note under the heading 'disruption

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<sup>28</sup> Transcript of evidence, pp 154-5.

<sup>29</sup> Transcript of evidence, p 155.

<sup>30</sup> Exhibit 37, Operational Safety Committee – Critical Incident Review, Coronial Brief, p 610.

<sup>31</sup> Transcript of evidence, p 125.

<sup>32</sup> Transcript of evidence, p 96.

<sup>33</sup> Transcript of evidence, p 153.

<sup>34</sup> Transcript of evidence, p 684.

<sup>35</sup> Transcript of evidence, p 685.

strategy’, also referred to in evidence as the contingency plan. The contingency plan envisaged that the SSU would remain covert whilst the armed robbery occurred, then continue surveillance of the suspects awaiting SOG deployment, colloquially referred to as ‘letting the job run’.<sup>36</sup> A fundamental principle of this contingency plan was that all SSU Operatives would remain covert, irrespective of the evolving circumstances.

79. At inquest, DA/SSgt Polson attested that he requested DA/Sgt Kevin Squires and DA/Sgt Ormerod to brief the SSU of the Briefing Note and he believed they did.<sup>37</sup> This was confirmed by DA/Sgt Squires and DA/Sgt Ormerod who were both confident they discussed the option of letting the crime run as part of their separate briefings to Operative 145.<sup>38</sup>
80. DA/Sgt Squires, the ACS Team Leader on 27 January 2017, remembered DA/SSgt Polson was very forthright with him about his responsibilities including that he needed to brief the ACS members and the SSU in relation to the Briefing Note.<sup>39</sup> DA/Sgt Squires’ evidence was that he spoke to Operative 145 and “*definitely briefed them orally*”<sup>40</sup> and “*discussed the disruption strategy and arrest plan as per the briefing note*”.<sup>41</sup> He said he provided an overview of the offending and considered the main focus of his briefing would have been in relation to the arrest plan and disruption strategies.<sup>42</sup> He believed he discussed the strategies at length but did not give a copy of the Briefing Note to the SSU.<sup>43</sup>
81. DA/Sgt Ormerod was emphatic that the content of the Briefing Note was communicated to the SSU on the 28 January 2018.<sup>44</sup> DA/Insp Ward was also adamant that the ACS informed Operator 145,<sup>45</sup> he said it was a regular occurrence<sup>46</sup> and that this type of plan is still used today.<sup>47</sup>
82. Operative 145 appeared to have a different recollection and denied being informed about the contingency plan. He remembered being told that once the Kluger was

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<sup>36</sup> Exhibit 37, Operational Safety Committee – Critical Incident Review, Coronial Brief, p 605.

<sup>37</sup> Transcript of evidence, p 163.

<sup>38</sup> Transcript of evidence, pp 51, 83-4.

<sup>39</sup> Transcript of evidence, p 225.

<sup>40</sup> Transcript of evidence, p 210.

<sup>41</sup> Exhibit 13, Statement of Detective Leading Senior Constable Kevin Squires dated 7 March 2018, Coronial Brief, p 247.

<sup>42</sup> Transcript of evidence, p 210.

<sup>43</sup> Transcript of evidence, p 225.

<sup>44</sup> Transcript of evidence, p 529.

<sup>45</sup> Transcript of evidence, pp 37, 51.

<sup>46</sup> Transcript of evidence, pp 81-2.

<sup>47</sup> Transcript of evidence, p 57.



located, the SOG would be called out<sup>48</sup> and if the SOG couldn't get there, then a disruption strategy would be implemented. Operative 145 said the contingency plan of letting the crime run was not communicated to him. However, he conceded it would be a natural progression of this type of offending because - *"If you can't disrupt, ... and you can't get in between the victims and offender, then you've got no choice once they're there. You have to let it happen and take 'em away"*.<sup>49</sup>

83. Counsel for the CCP conceded there was a conflict in evidence but submitted that it did not need to be resolved due to the comments made by Operative 145. Further, Operative 145 emphasised in evidence the obligation or responsibility of police officers, whether acting in a covert role or not, was to act where there was an imminent threat to life.<sup>50</sup>
84. I agree there was a dispute in evidence, and I am unable to resolve it.

### **Timing of SOG deployment**

85. As previously discussed, the arrest plan as outlined in the Briefing Note required the deployment of SOG once the Kluger was located and either or both Mr Laskowski or Mr Van Den Bemt were positively linked to it. The OSCIR reported that whilst the SOG deployment had been approved, they were not in the area in time to effect the arrest plan.<sup>51</sup> This issue was explored further at inquest.
86. On 28 January 2018, once the Kluger was located by the SSU at 7.43pm, DA/SSgt Polson contacted DA/Insp Ward who then requested the SOG be called out.<sup>52</sup> SOG deployment was subsequently authorised by SOG Operator 113 at 7.49pm.<sup>53</sup> This could be viewed as a somewhat proactive measure given that at that time, whilst the Kluger had been located, neither Mr Laskowski nor Mr Van Den Bemt had been linked to the Kluger. At that time the relevant assessments made by ACS management deemed the risk appropriate to enact SOG deployment.
87. DA/SSgt Polson requested DA/Sgt Ormerod to advise the SSU Team Leader that the SOG were deployed – meaning they had been activated to come to the job.<sup>54</sup> However, at the time he didn't specifically know whether or not they were on the road.<sup>55</sup>

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<sup>48</sup> Transcript of evidence, p 236.

<sup>49</sup> Transcript of evidence, p 249.

<sup>50</sup> Written Submissions on behalf of the Chief Commissioner of Police, p 1.

<sup>51</sup> Exhibit 37, Operational Safety Committee – Critical Incident Review, Coronial Brief, p 611.

<sup>52</sup> Transcript of evidence, p 137.

<sup>53</sup> Transcript of evidence, p 138.

<sup>54</sup> Transcript of evidence, p 169.

88. According to SOG Operative 113 that evening the SOG had resources tasked to the Australian Open Men's Final.<sup>56</sup> Once he received approval to deploy to the ACS job he rallied his team together with the aim of reaching the area of operation as quickly as possible.<sup>57</sup> Given it was the State Response team, some of the members were on-call and had to come from their residential addresses across metropolitan Melbourne.<sup>58</sup> He said the forward commanders of ACS and SSU "*were well aware and well versed that it takes some time to recall our team after hours*".<sup>59</sup>
89. Witnesses were asked about their knowledge of the SOG response times. DA/SSgt Polson's evidence was that he didn't know what time it takes for SOG to deploy and he didn't have any expectation of the response time.<sup>60</sup> However, he considered that SOG move as quickly as they can once deployed.<sup>61</sup>
90. It was also clear that evening that SSU Operatives understood whilst the SOG had been deployed, they were not within their area of operations to assist in any capacity. Whilst the refuelling of the Kluger occurred in the carpark of the North Ringwood Shopping Centre, Operator 145 broadcast "*Look, SOG are still in the city, guys, so we're still on our own for a while*".<sup>62</sup> Operative 129, said he "*was under no illusion that it was going to be a rapid process*".<sup>63</sup>
91. It is clear in the circumstances that whilst SOG was approved to deploy, it would always take some time for them to mobilise as a team, especially coming from the city. Therefore, given the dynamic nature of this type of offending, the likelihood they would arrive in time to effect an arrest was remote, and this needed to be factored into any planning by the ACS. The evidence demonstrates that this delay was clearly known and appreciated by both ACS and SSU. This inevitable delay meant that this aspect of the arrest plan could not be immediately relied upon, making other aspects of the Briefing Note, in particular the disruption strategy, to be of greater significance.

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<sup>55</sup> Transcript of evidence, p 169.

<sup>56</sup> Transcript of evidence, p 581.

<sup>57</sup> Transcript of evidence, p 583.

<sup>58</sup> Transcript of evidence, p 584.

<sup>59</sup> Transcript of evidence, p 585.

<sup>60</sup> Transcript of evidence, pp 131-2.

<sup>61</sup> Transcript of evidence, p 171.

<sup>62</sup> Exhibit 39, SSU Radio transmission (time annotated), Coronial Brief, p 315.

<sup>63</sup> Transcript of evidence, p 300.

## Disruption strategy

92. Once the SOG were unable to assist, the Briefing Note suggested that a disruption strategy should be implemented. The OSCIR reported that “*the disruption strategy was ineffective as planned*”.<sup>64</sup> This issue was also investigated further at inquest.
93. DA/Sgt Ormerod explained that the ACS are not specifically trained to perform high-risk vehicle intercepts and would never have arrested the suspects without the assistance of SOG,<sup>65</sup> which highlights the importance of the planned disruption strategy.
94. DA/SSgt Polson explained that if the SOG couldn’t effect an arrest and they had information or intelligence that would suggest the suspects were going to commit an offence, then they would attempt to employ a disruption strategy, if it were safe to do so.<sup>66</sup> He clarified that it is always contingent on whether you have enough intelligence to be able to identify what the intended target may be and the time to implement the strategy.<sup>67</sup> DA/SSgt Polson explained that in his mind they needed time to set it up and be in place because arriving at the same time or shortly before or after the offenders may cause a confrontation could result in the worst-case scenario - a shootout between police and the offenders.<sup>68</sup> DA/Sgt Squires agreed that the key to a successful disruption strategy was to be as close as possible to the offenders.<sup>69</sup>
95. To confidently initiate a disruption strategy, DA/Sgt Ormerod agreed you need to know the target location, and exactly where the offenders are. He explained that you can’t initiate a disruption strategy if the offenders are closer to the venue than the disruption unit, because it would likely result in an armed confrontation.<sup>70</sup> DA/Sgt Ormerod said it is crucial you have a clear understanding where they are going to strike, and they didn’t have that information.<sup>71</sup>
96. It was anticipated the disruption strategy would be able to be implemented by the ACS investigators using a police vehicle with lights or sirens, to create a scene at a target location.<sup>72</sup> As to what the disruption strategy may have been, DA/Sgt Ormerod recalled conversations involving a mock intercept, that is, one vehicle would intercept the other

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<sup>64</sup> Exhibit 37, Operational Safety Committee – Critical Incident Review, Coronial Brief, p 610.

<sup>65</sup> Transcript of evidence, p 530.

<sup>66</sup> Transcript of evidence, p 158.

<sup>67</sup> Transcript of evidence, p 159.

<sup>68</sup> Transcript of evidence, p 160.

<sup>69</sup> Transcript of evidence, p 219.

<sup>70</sup> Transcript of evidence, p 522.

<sup>71</sup> Transcript of evidence, p 527.

<sup>72</sup> Transcript of evidence, p 149.

outside a target venue, if that target venue was known and they had sufficient time to deploy that tactic. The other option was to have one vehicle arrive outside a target location and activate the lights and sirens to simply scare away any activity.<sup>73</sup> However it was acknowledged that you would need some lead time to do this. DSC Brockwell said that pulling up out the front or intercepting a vehicle, is part of everyday policing and something they do and have done since being on the van in uniform. Therefore, it wasn't anything out of the ordinary.<sup>74</sup> DA/Sgt Ormerod considered "*the disruption plan was satisfactory in the circumstances.*"<sup>75</sup>

97. Operative 145 was aware the disruption strategy would involve members of the ACS arriving with lights and sirens.<sup>76</sup> According to Operative 129 the disruption plan was the Investigator's job, and he was happy to leave it to them and trusted that something was in place.<sup>77</sup>
98. In evidence, DA/SSgt Polson agreed that there was no detail provided of the disruption strategy in the Briefing Note<sup>78</sup> but explained that "*you'd need to make a decision based on what was evolving in front of you*".<sup>79</sup> He accepted however, "*that there would be scope to have discussions with the SSU about how in fact, that would actually occur as part of the briefing*".<sup>80</sup> He explained that it is a very difficult especially when you don't know what your intended target is and particularly because it is important not to compromise the surveillance operation.<sup>81</sup>
99. Despite, DA/Insp Ward's evidence that there were members in the field able to perform that disruption strategy<sup>82</sup>, the evidence of the investigators was there wasn't enough time to implement one.<sup>83</sup> DSC Davey remembered looking at their location on his phone and realising there was no way they would get there in time.<sup>84</sup> He acknowledged in evidence he did not communicate that over the radio.
100. For a disruption plan to be effective, members need to be in a position to implement it quickly. In evidence, DA/SSgt Polson agreed that even though the disruption strategy

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<sup>73</sup> Transcript of evidence, p 493.

<sup>74</sup> Transcript of evidence, p 451.

<sup>75</sup> Transcript of evidence, p 517.

<sup>76</sup> Transcript of evidence, p 238.

<sup>77</sup> Transcript of evidence, p 299.

<sup>78</sup> Transcript of evidence, p 135.

<sup>79</sup> Transcript of evidence, p 135.

<sup>80</sup> Transcript of evidence, p 135.

<sup>81</sup> Transcript of evidence, pp 135-6.

<sup>82</sup> Transcript of evidence, p 78.

<sup>83</sup> Transcript of evidence, pp 427-8.

<sup>84</sup> Transcript of evidence, pp 428.

was planned and part of the risk assessment, the likelihood any police would get there in time for an unplanned incident like this was remote.<sup>85</sup> DA/SSgt Polson said “*it is very, very difficult. It’s not an easy thing to do*”<sup>86</sup> and he didn’t know of an alternative in the circumstances. It is “*contingent on having certain circumstances as intelligence and time*”.<sup>87</sup> Further, DA/SSgt Polson agreed that in the circumstances there was very little chance the disruption strategy was going to be effective.<sup>88</sup> DA/Sgt Ormerod also agreed it was unlikely to occur in the circumstances.<sup>89</sup>

101. Counsel for the CCP submitted the disruption plan, was a reasonable plan if the SOG were unable to effect an arrest strategy.<sup>90</sup> It was further submitted that once the suspects were linked to the Kluger, the ACS reacted quickly and appropriately.<sup>91</sup>
102. It is clear on the available evidence that SSU Operatives had an expectation of a disruption strategy being available. In the moments prior to the armed robbery, various SSU transmissions included “*They eyeballed that bottle shop pretty well*”<sup>92</sup>, “*It’s gunna be a target here for sure*”,<sup>93</sup> “*They’re waiting to go back so they might be waiting to Bala up or something*”<sup>94</sup> and “*Did not take his eyes off the bottle shop entrance*”<sup>95</sup> followed by Operative 145’s transmission “*Roger. Investigators, where – where are you guys at the moment?*”<sup>96</sup>. These transmissions went unanswered.
103. At the time of that transmission DSC Davey and Waterson were either still approaching North Ringwood Shopping Centre or static in a street behind the Shopping Centre where the suspects had previously re-fuelled the Kluger. This was three kilometres from the Park Orchards Cellars. DSC Davey conceded that “*given the distance between ourselves and the target location, we were not in a position to disrupt any offence that was about to occur and as such, we took up a static position in Ringwood North and awaited further updates from the SSU*”.<sup>97</sup> DA/Sgt Ormerod and DSC Brockwell were

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<sup>85</sup> Transcript of evidence, p 160.

<sup>86</sup> Transcript of evidence, p 159.

<sup>87</sup> Transcript of evidence, p 159.

<sup>88</sup> Transcript of evidence, p 185.

<sup>89</sup> Transcript of evidence, p 523.

<sup>90</sup> Written Submissions on behalf of the Chief Commissioner of Police, p 2.

<sup>91</sup> Written Submissions on behalf of the Chief Commissioner of Police, p 2.

<sup>92</sup> Exhibit 39, SSU Radio transmission (time annotated), Coronial Brief, p 321.

<sup>93</sup> Exhibit 39, SSU Radio transmission (time annotated), Coronial Brief, p 321.

<sup>94</sup> Exhibit 39, SSU Radio transmission (time annotated), Coronial Brief, p 323.

<sup>95</sup> Exhibit 39, SSU Radio transmission (time annotated), Coronial Brief, p 323.

<sup>96</sup> Exhibit 39, SSU Radio transmission (time annotated), Coronial Brief, p 323.

<sup>97</sup> Exhibit 27, Statement of Detective Senior Constable Matthew Davey dated 6 March 208, Coronial Brief, pp 237-8.

also unable to assist as they were even further away at that time, having departed Box Hill Police Station approximately five minutes after their colleagues.

104. Given that the SOG were not immediately in the vicinity to assist, the suggested plan was to implement a disruption strategy. To be effective, the ACS required knowledge of the suspects and their target, and they needed to be proximate to the area of operation and be able to respond at short notice. If unable to be implemented safely, the evidence indicated it could significantly exacerbate the risks, by causing a confrontation with the offenders. It appears from the evidence, the disruption strategy was more a theoretical possibility, than a practical reality. The evidence clearly demonstrates that the disruption strategy was not a feasible option in the circumstances. This is concerning given that it was such an integral component of the operational response that evening. This shortcoming highlights the importance of strategic thinking and risk assessments when planning for an operation such as this one.

#### **Contingency plan to allow the offence to occur - when SSU can go covert to overt**

105. As previously indicated the contingency plan in the Briefing Note was referred to as 'letting the crime run'. The ACS' plan for SSU was for them to continue with surveillance of the suspects until such time as the SOG were able to effect a safe arrest. The OSCIR review reported that during post incident discussions, the "*SSU stated they would not have implemented the disruption strategy of letting the 'crime run'; particularly if the public was at risk as this would have been abrogating their police duties*".<sup>98</sup>
106. At inquest, DA/SSgt Polson indicated he did not like the term 'let it run'.<sup>99</sup> He didn't like the idea of allowing a crime to occur in front of them, but didn't see an alternative in the circumstances, without putting members at risk. Members needed to decide to arrest, if they believed that was the right thing to do in the circumstances.<sup>100</sup>
107. DA/Sgt Ormerod was comfortable with the contingency plan<sup>101</sup> and had not contemplated a situation where the SSU would have to break cover and take some form of action.<sup>102</sup> It is apparent from the evidence that the ACS never anticipated a situation like that faced by Operative 129.

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<sup>98</sup> Exhibit 37, Operational Safety Committee – Critical Incident Review, Coronial Brief, p 610.

<sup>99</sup> Transcript of evidence, p 160.

<sup>100</sup> Transcript of evidence, p 161.

<sup>101</sup> Transcript of evidence, p 525.

<sup>102</sup> Transcript of evidence, p 494.

108. DA/Insp Ward said whilst this contingency was not the preferred option, he would have allowed the offence to occur.<sup>103</sup> The best case is that the suspects are arrested prior to any offence being committed.<sup>104</sup> The reason being is that *“if you create an environment with an armed offender where they’re being confronted, it is likely that it will end in serious injury or death”*.<sup>105</sup> DA/Insp Ward explained that these are high risk operations and they were trying to avoid a confrontation with an armed offender at a time when the situation was heightened.<sup>106</sup>
109. An operation such as this one requires an ability to be responsive to the situation at hand. Operative 129 pragmatically explained that jobs run, whether you want them to or not because the police are *“not the ones dictating the terms”*.<sup>107</sup> Operative 129 did not understand the contingency plan to mean sit back and watch an armed robbery occur. He said that wasn’t his understanding of how they operate.<sup>108</sup>
110. The OSCIR noted that the *“SSU have a philosophy of relinquish before compromise. Maintaining covert status is considered critical to the success of surveillance operations. The SSU realise the responsibility of police to protect the public”*.<sup>109</sup> There were specific SSU Arrest Guidelines operative at the time that address this issue. The guidelines state that *“Surveillance operatives are not to engage in the arrest of a surveillance target unless .... There is an imminent threat to life, the threat is genuine and currently exists.”*<sup>110</sup> According to Operative 129, breaking cover is understood by surveillance operatives, and is a realistic possibility.<sup>111</sup>
111. As the members of SSU are police officers, Operative 145 explained that they *would* break cover and get involved in an incident<sup>112</sup> because that is their duty for which they all swore an oath. He said there are situations and crimes that they simply would never allow to occur. Operator 145 explained that he is a policeman first and foremost, and then a surveillance operative.<sup>113</sup> A decision to intervene will depend on the circumstances including whether a person is a drug user, or a weapon is involved or a

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<sup>103</sup> Transcript of evidence, pp 48-50.

<sup>104</sup> Transcript of evidence, p 88.

<sup>105</sup> Transcript of evidence, p 88.

<sup>106</sup> Transcript of evidence, p 88.

<sup>107</sup> Transcript of evidence, p 332.

<sup>108</sup> Transcript of evidence, p 333.

<sup>109</sup> Exhibit 37, Operational Safety Committee – Critical Incident Review, Coronial Brief, p 611.

<sup>110</sup> Exhibit 41, Coronial Brief, p 671.

<sup>111</sup> Transcript of evidence, p 296.

<sup>112</sup> Transcript of evidence, p 242.

<sup>113</sup> Transcript of evidence, p 275.

likelihood a person could get hurt or killed.<sup>114</sup> It was described as a balancing act. He said “...we’ve got a duty to protect life and we go in. That’s what we’re paid for”.<sup>115</sup>

112. It appears however, that the SSU breaking cover was never appreciated by the ACS when they devised the Briefing Note. DA/Insp Ward, DA/SSgt Polson and DA/Sgt Ormerod were all not aware of the SSU covert to overt guidelines.<sup>116</sup> Operative 145 agreed that in 2018 many police units would have assumed the SSU wouldn’t go overt.<sup>117</sup> Whilst unaware of the guidelines, DA/Insp Ward argued the SSU could have raised it at the briefing.<sup>118</sup> DA/Insp Ward said if he had known Operator 129 was going to enter the store, he would have advised against it because he wouldn’t want to encourage a confrontation with an armed offender, one-up.<sup>119</sup> He acknowledged, however that individual operatives can make their own decisions.<sup>120</sup>
113. DA/SSgt Polson agreed that the SSU operative would have to form the view that there was an imminent life threatening event.<sup>121</sup> He acknowledged it would be a dangerous situation to enter, “*knowing that an armed robbery could occur and that the offender was armed with a firearm, not to mention there being multiple offenders and putting himself in a position where he was outnumbered*”.<sup>122</sup> He considered the best option, based on the observations of the previous armed robberies, (where no shots had been fired previously) was to continue with surveillance.<sup>123</sup> But he also recognised that police have sworn an oath to protect the public and so he understood why Operative 129 acted in the way he did.<sup>124</sup> He considered it dangerous in that it carried an inherent risk of causing a confrontation, and putting either the operator, the offenders, or members of the public at risk.<sup>125</sup> But he recognised the importance of police members having the autonomy to make a decision in these circumstances.<sup>126</sup>
114. According to Operative 145 there had been an evolution of the philosophy which is now reflected in OSTT principles to protect life and property.<sup>127</sup> Applications for SSU

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<sup>114</sup> Transcript of evidence, p 244.

<sup>115</sup> Transcript of evidence, p 245.

<sup>116</sup> Transcript of evidence, pp 52, 164, 494.

<sup>117</sup> Transcript of evidence, p 278.

<sup>118</sup> Transcript of evidence, pp 53, 56.

<sup>119</sup> Transcript of evidence, p 92.

<sup>120</sup> Transcript of evidence, pp 54, 58, 92.

<sup>121</sup> Transcript of evidence, p 165.

<sup>122</sup> Transcript of evidence, p 166.

<sup>123</sup> Transcript of evidence, p 166.

<sup>124</sup> Transcript of evidence, p 166.

<sup>125</sup> Transcript of evidence, p 167.

<sup>126</sup> Transcript of evidence, p 167.

<sup>127</sup> Transcript of evidence, p 245.



assistance now factor in contingencies and arrest plans and if the SSU are not happy with any of the plan they can discuss changes with the Investigator.<sup>128</sup>

115. Counsel for CCP stated what became obvious in this inquest was that ACS investigators did not appreciate that despite the possibility of an imminent threat to life, SSU operatives would not remain covert and would ‘break cover’. That misapprehension has since been addressed.<sup>129</sup> The SSU application now specifically refers to disruption strategies and contingencies, including whether the SSU will become overt where there is an imminent threat to life.<sup>130</sup>
116. I find that at the time of this incident, the ACS were not aware that the SSU had a guideline that they could break their cover if there was an imminent threat to life and therefore it had not been factored into the Briefing Note as a potential contingency plan. I acknowledge that this has now been addressed in the SSU application process which specifically refers to these issues.

### **Concept of ASC working in the field with SSU**

117. It was clear that on 28 January 2018, the SSU operatives considered that the ACS were working in close proximity to where the SSU were operating. This is evidenced when moments before the incident, Operative 145 asked on the SSU radio - “*Investigators, ... where are you guys at the moment?*”<sup>131</sup> At that point he was certain an armed robbery was imminent and the bottle shop was the target and he wanted the ACS to disrupt the suspects.<sup>132</sup> As previously indicated, the evidence revealed that the ACS were not close enough to effect a disruption strategy or to assist the SSU. At inquest there was some confusion between the SSU and the ACS as to what working ‘in the field’ constituted.
118. The SSU members’ understanding was that they expected investigators to be working near them.<sup>133</sup> At 7.43pm when the Kluger was located, Operative 145 assumed the ACS were out on the road, but he wasn’t sure where they were.<sup>134</sup> Operative 116 also had an expectation the ACS investigators would be in their vicinity.<sup>135</sup> Operative 129 suggested that “*there’s a fine line between being close and being too close, ... to just make*

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<sup>128</sup> Transcript of evidence, pp 277-8.

<sup>129</sup> Written Submissions on behalf of the Chief Commissioner of Police, p 1.

<sup>130</sup> Written Submissions on behalf of the Chief Commissioner of Police, pp 1-2.

<sup>131</sup> Exhibit 39, SSU Radio transmission (time annotated), Coronial Brief, p 323.

<sup>132</sup> Transcript of evidence, p 262.

<sup>133</sup> Transcript of evidence, p 240.

<sup>134</sup> Transcript of evidence, p 258.

<sup>135</sup> Transcript of evidence, p 342.

*observations*".<sup>136</sup> Operative 145 considered a two kilometre zone was a good distance for investigators to operate, due to the balance of being close enough but not wanting to compromise the investigation. He couldn't remember if he specifically said this to DA/Sgt Squires or DA/Sgt Ormerod.<sup>137</sup>

119. The beliefs of the SSU were consistent with DA/Sgt Squires' understanding. When he worked on 27 January 2018 his team were mobile.<sup>138</sup> He explained when working with the SSU - if the target is mobile, you were mobile with a sufficient distance so as not to interfere with their operations.<sup>139</sup> He agreed that on some occasions it was important to monitor phone activity, so you would remain at the office, but on his shift when the targets were mobile, he was mobile,<sup>140</sup> and operating as close to SSU as possible. DA/Sgt Squires said it is dependent on factors such as the behaviour of the target.<sup>141</sup> Importantly, "*you can't put yourself in a position where you're going to compromise what's occurring ahead of you*".<sup>142</sup>
120. Conversely, DA/Sgt Ormerod's position was that he was comfortable ACS were located at Box Hill police station.<sup>143</sup> He explained "*it's a balancing act between being too close and too far away*".<sup>144</sup> The evidence was that DSC Davey and Waterson were situated approximately three kilometres from the Park Orchard Cellars. DA/Sgt Ormerod admitted in evidence he did not appreciate their proximity to the incident. DA/SSgt Polson advised him that the ACS were to be in position to employ a disruption strategy should it be required.<sup>145</sup> DA/Sgt Ormerod thought the position of his team was reasonable in the circumstances particularly, when they did not have a known target.<sup>146</sup> In any event, as previously noted, the ACS were unable to implement a disruption strategy.
121. DSC Brockwell considered that being at the police station was working in the field and in the vicinity of an operation because their normal office is in the city.<sup>147</sup> DSC

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<sup>136</sup> Transcript of evidence, p 304.

<sup>137</sup> Transcript of evidence, p 240.

<sup>138</sup> Transcript of evidence, p 214.

<sup>139</sup> Transcript of evidence, p 214.

<sup>140</sup> Transcript of evidence, p 214.

<sup>141</sup> Transcript of evidence, p 217.

<sup>142</sup> Transcript of evidence, p 217.

<sup>143</sup> Transcript of evidence, pp 501-2.

<sup>144</sup> Transcript of evidence, p 506.

<sup>145</sup> Transcript of evidence, p 505.

<sup>146</sup> Transcript of evidence, p 506.

<sup>147</sup> Transcript of evidence, p 452.

Brockwell agreed that since this incident they have been encouraged to be out on the road and mobile.<sup>148</sup>

122. To allay any uncertainty, on 6 April 2021, Detective Superintendent (**DSupt**) Kieran Moloney, Acting Commander, Intelligence and Covert Support, prepared an email which was subsequently circulated to appropriate recipients within Victoria Police.<sup>149</sup> In evidence, DSupt Moloney made it very clear that ‘in the field’ means that investigators are to be in a position (within the vicinity of the area of operations) to be able to respond to implement contingencies or disruption measures as required.<sup>150</sup> DSupt Moloney confirmed the email was a directive that all investigators be in the field with SSU.<sup>151</sup> He explained that it is about planning when these investigations occur, to ensure that there’s sufficient resourcing to provide that support.<sup>152</sup>
123. Counsel for CCP acknowledged the evidence establishes a difference of opinion amongst police as to what constitutes ‘in the field’ when investigating in conjunction with the SSU. Firm clarification was provided by DSupt Moloney that investigators should always be in the vicinity of the SSU operatives to support them if circumstances change with little warning. It was submitted by Counsel for CCP that whilst this was not a universal understanding on 28 January 2018, it is certainly the case now that there is an expectation that investigators, where possible, will be mobile in the vicinity of surveillance operations conducted by the SSU. In this instance, DSC Waterson and Davey deploying at 8.32pm and being approximately three kilometres from the bottle shop when the attempted robbery occurred, could properly be construed as being in reasonable proximity to support the SSU if required, bearing in mind the need to avoid compromising the operation or creating an armed confrontation.<sup>153</sup>
124. Whilst I recognise the inherent danger of hindsight bias, I reject the submission that ACS Investigators could properly be construed as being in reasonable proximity to support the SSU if required on the night. In the circumstances and given the absence of any credible intelligence as to an intended target, ACS Investigators needed to be highly reactive to the developing circumstances. This required them to be within the SSU area of operation and capable of responding at short notice. Quite simply they were not. I

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<sup>148</sup> Transcript of evidence, p 453.

<sup>149</sup> Exhibit 34, Email in relation to Support for SSU and Portable Radios dated 7 April 2021, issued by Acting Commander Maloney, Transcript of evidence, p 555.

<sup>150</sup> Transcript of evidence, pp 557-8.

<sup>151</sup> Transcript of evidence, p 562.

<sup>152</sup> Transcript of evidence, p 562.

<sup>153</sup> Written Submissions on behalf of the Chief Commissioner of Police, p 3.

acknowledge the delicate balancing act undertaken by Investigators being close enough to the SSU area of operation to provide support, whilst not being too close to compromise the SSU operation. But by being stationed at Box Hill Police Station that evening, clearly demonstrates that ACS Investigators put themselves and the SSU at a distinct disadvantage in that there were unable to respond quickly. I acknowledge that since DSupt Moloney's directive in April 2021 there is no doubt that Investigators have an obligation to be in the field with the respective SSU team that are servicing their request.

### **Situational awareness**

125. The evidence is that the ACS members had access to and listened to the SSU radio communications. The ACS were not using their own TAC channel to communicate on the night. Instead, the two ACS teams and DA/SSgt Polson and DA/Insp Ward all communicated with each other and the SSU via mobile phone. They also relied on their mobile phones to assist to navigate to the area where the SSU were operating. The OSCIR review noted that "*the reliance on mobile phones had a negative impact on situational awareness*"<sup>154</sup> and suggested that members should minimise use of mobile phones and communication should occur through the appropriate police radio channel to improve situational awareness across teams.<sup>155</sup>
126. The evidence is that all of the ACS investigators were unfamiliar with the area where the SSU were conducting surveillance on the suspects and they were at the Box Hill Police Station until 8.32pm when the suspects were located with the Kluger when they promptly deployed towards the Ringwood area. The investigators also didn't have an appreciation of where the other ACS team was either.<sup>156</sup>
127. DA/Sgt Ormerod and DSC Brockwell experienced difficulty locating the area in which the SSU were operating. DA/Sgt Ormerod said the police vehicle did not have a GPS device<sup>157</sup> and they were reliant on his mobile phone to assist with navigation whilst communicating on the mobile phone, and listening to the SSU radio communications.<sup>158</sup> This caused obvious distraction and made it difficult for DSC Brockwell to know where to go. DSC Brockwell knew Park Orchards had become a significant suburb but didn't know how to get there. She considered they overshot the area due to all the distractions

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<sup>154</sup> Exhibit 37, Operational Safety Committee – Critical Incident Review, Coronial Brief, p 610.

<sup>155</sup> Exhibit 37, Operational Safety Committee – Critical Incident Review, Coronial Brief, p 610.

<sup>156</sup> Transcript of evidence, p 505.

<sup>157</sup> Transcript of evidence, p 515.

and not being familiar with the area.<sup>159</sup> Before hearing about the shots being fired and the location of Park Road, she had to pull the car over and google the address of the Park Orchards Cellar because she didn't know where they were.<sup>160</sup>

128. DA/Sgt Ormerod admitted they got lost and didn't have a clear understanding of where they were, in relation to Park Road, Park Orchards. In evidence, he acknowledged that since this incident he has trained as a sergeant and they are instructed that with the management of these types of incidents that you should stop, get out a map, a radio, and your resources. That is not what he had previously been taught.<sup>161</sup>
129. DSC Brockwell agreed that communication was an issue. Her evidence was that there were some calls they didn't hear and some she couldn't understand because the SSU speak in their own coded language.<sup>162</sup> DSC Brockwell explained she was reluctant to clarify on the SSU channel where they were, so she waited to hear another street broadcast to try and figure it out.<sup>163</sup> She conceded in evidence they could have requested someone to call the SSU team leader and ask for clarification of their location<sup>164</sup>.
130. As DA/SSgt Polson was not on shift and had been at home at the time these events starting unfolding. He did not have a SSU radio<sup>165</sup> and as there was no ACS TAC channel he was reliant on mobile phone communications with DA/Sgt Ormerod. His evidence was that he could hear some SSU communications via the mobile phone. DA/SSgt Polson's evidence what that he experienced difficulties with SSU radios dropping out and consequently, DSC Brockwell and DA/Sgt Ormerod were missing key pieces of information.<sup>166</sup>
131. DSC Davey also described the difficulty of navigating with his mobile phone, in between taking calls from DA/Sgt Ormerod and listening to the SSU communications.<sup>167</sup> DSC Waterson couldn't remember hearing all the transmissions and

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<sup>158</sup> Transcript of evidence, p 460.

<sup>159</sup> Transcript of evidence, p 461.

<sup>160</sup> Transcript of evidence, p 466.

<sup>161</sup> Transcript of evidence, p 516.

<sup>162</sup> Transcript of evidence, p 468.

<sup>163</sup> Transcript of evidence, p 469.

<sup>164</sup> Transcript of evidence, p 470.

<sup>165</sup> Transcript of evidence, pp 139, 141.

<sup>166</sup> Transcript of evidence, pp 139.

<sup>167</sup> Transcript of evidence, p 436.

he was unsure if it was broken communications or that he just couldn't understand the voices.<sup>168</sup>

132. The lack of situational awareness was apparent when you listen to the D24 communications and hear the lack of clarity of ACS's location and the fact that DA/Sgt Ormerod and DSC Brockwell, followed by DA/SSgt Polson did not arrive at the scene until 20 minutes after the incident.
133. Counsel for the CCP submitted that considerable difficulty was experienced by the Investigators when they deployed after 8.32pm as to where the SSU operatives and the persons of interest were located.
134. I find that the capability of ACS investigators that evening was severely compromised by a lack of situational awareness. An over-reliance upon mobile phone communications, the absence of GPS navigational technology (apart from mobile phones), a lack of knowledge of the location of the incident, an unfamiliarity with the area and missing key SSU transmissions, all contributed to an ineffectiveness of the ACS investigation. This ultimately resulted in not only an inability to effect any form of disruption strategy, but also resulted in ACS Investigators being unfamiliar with the area and becoming lost. I further note that despite getting lost, no one from the ACS investigation team sought clarification from the SSU. In essence, due to their lack of situational awareness, it appears the ACS were using guesswork and luck to try and locate the SSU.

### **Actions of SSU Operative 129**

135. After Operative 129 observed the unusual driving behaviour of the Kluger, in the form of "gutter crawling" and eyeing off the bottle shop, he assessed the risks and entered the bottle shop.<sup>169</sup> Operative 129 had a heightened level of concern there might be more people in the shop that he hadn't seen from the street.<sup>170</sup> He reasoned that it was the Australia Day long weekend, there were lots of families in a nearby takeaway shop, and he was concerned for their safety. Operative 129 said they are well trained members and they "*accept that there's a risk that this is going to happen, and we just hope we're going to make the right choice when it does*".<sup>171</sup>

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<sup>168</sup> Transcript of evidence, p 394.

<sup>169</sup> Transcript of evidence, pp 305, 307.

<sup>170</sup> Transcript of evidence, p 332.

<sup>171</sup> Transcript of evidence, p 338.

136. His partner, Operative 116 had similar thoughts. She said either one of them was going in the bottle shop – but Operative 129 got there first. The purpose was to protect the people inside the store, *“to try and either get them out or try and protect them if an armed robbery was going to occur”*.<sup>172</sup> She said there wasn’t a formal conversation but we both had the same idea to protect the people inside because she said she would have gone in, if Operative 129 hadn’t. She explained *“It’s ... our job is to protect life so that’s why we would’ve gone, why I would’ve gone in the store and I’m sure that’s why 129 went into the store. If an armed robbery was going to occur.”*<sup>173</sup>
137. Operative 129 said the situation evolved *“so quickly and changed so many times ... my initial feeling was that if something did occur, such as an armed robbery, that certainly anyone inside that store had a better chance with me in there with them, than they did without. The form that was going to take evolved as I was in there”*.<sup>174</sup>
138. Operative 129 was hoping the suspects were just doing reconnaissance and it was his hope that the SOG would arrive and arrest them.<sup>175</sup> He explained that as surveillance operatives, they do everything they can to remain covert, and effect an arrest safely. But they *“walk, sort of tap dance on razor blades in some sense of trying to get as close as we can to that point without putting anyone in danger”*.<sup>176</sup>
139. Once Operative 129 entered the bottle shop, he had a strong feeling that something nefarious was about to occur and he realised he had potentially put himself in a position of *“fool-hearty peril”*.<sup>177</sup> He disclosed in evidence that that morning, he had had an uncharacteristic argument with his wife, and so he quickly sent her a text message, because he thought that may have been the last chance that he got to speak to her.<sup>178</sup>
140. Operative 129 said when he was at the back of the store and realised there was no door to the back office that they could lock themselves in. His risk assessment therefore changed, but he was concerned that if they locked the front door of the store, the offenders would be diverted to the busy takeaway store two shops down, where he had seen families with children.<sup>179</sup>

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<sup>172</sup> Transcript of evidence, p 350.

<sup>173</sup> Transcript of evidence, p 350.

<sup>174</sup> Transcript of evidence, p 333.

<sup>175</sup> Transcript of evidence, p 308.

<sup>176</sup> Transcript of evidence, p 308.

<sup>177</sup> Transcript of evidence, p 313.

<sup>178</sup> Transcript of evidence, p 312.

<sup>179</sup> Transcript of evidence, p 333.

141. In describing his thinking, Operative 129 said he “*was just trying to do the best [he] could in the split second*”.<sup>180</sup> He explained “*there seemed no reason that he would fixate on that younger male and hunt him down. ... he chased him down the store, fixated on him, and that changed everything, ... when the male armed himself, the victim ... it just kept evolving to a less than ideal situation*”.<sup>181</sup> He saw the shopkeeper arm himself with a pole and tried to hit the shotgun out of the offender’s hands. That’s the point Operative 129 considered: “*Oh he’s gonna kill you, what are you doing?*”<sup>182</sup> He realised at that moment he would have to do something otherwise the Wangs would be killed. So he discharged his police semi-automatic pistol numerous times to neutralise the threat.<sup>183</sup>

142. In his written statement Operative 129 stated:

*I became extremely concerned that the actions of the young Asian male would cause the man with the shotgun to shoot him and kill him. At that moment the shotgun was within a metre of the young Asian male. ... I formed the view that if I didn’t take immediate action the young Asian male or the older Asian gentleman would be shot.*<sup>184</sup>

143. In that moment Operative 129 was concerned about Mr Van Den Bemt running out the door into Operative 116 and a potential firefight with someone that would be standing at the door ...our training is to fire until the threat stops.<sup>185</sup> When Mr Van Den Bemt didn’t immediately stop or fall, Operative 129 thought Mr Van Den Bemt was either invincible or wearing a ballistic vest, and it wasn’t until that final shot that he dropped and the threat stopped.<sup>186</sup> He explained it “*all happened so rapidly*”.<sup>187</sup> At the time, he thought he had killed the shopkeeper.<sup>188</sup>

144. Operative 145 praised Operative 129’s efforts because he saved two people’s lives.<sup>189</sup> He was sure most of his members would have acted similarly.<sup>190</sup> DSupt Moloney thought he did an exceptional job.<sup>191</sup>

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<sup>180</sup> Transcript of evidence, p 320.

<sup>181</sup> Transcript of evidence, p 334.

<sup>182</sup> Transcript of evidence, p 332.

<sup>183</sup> Transcript of evidence, p 322.

<sup>184</sup> Exhibit 20, Statement of SSU Operative 129 dated 29 January 2018, Coronial Brief, p 130.

<sup>185</sup> Transcript of evidence, p 322.

<sup>186</sup> Transcript of evidence, p 322.

<sup>187</sup> Transcript of evidence, p 333.

<sup>188</sup> Transcript of evidence, p 334.

<sup>189</sup> Transcript of evidence, p 250.

<sup>190</sup> Transcript of evidence, p 272.

<sup>191</sup> Transcript of evidence, p 563.



145. Counsel for the CCP submitted the decision by Operator 129 and 116 to go into the bottle shop and remove any members of the public from danger was reasonable and in compliance with their duty as police officers.<sup>192</sup>
146. Whilst I find Operative 129 shot and killed Mr Van Den Bemt, I find he did so in self-defence and his actions were courageous and entirely reasonable in the circumstances. Victoria Police members swear an oath to serve and protect the Victorian community and Operative 129's conduct clearly upheld that oath.

### **Prevention opportunities**

147. The inquest raised two important potential prevention opportunities: – the use of geolocation trackers of SSU operatives and the appointment of an incident controller.

#### ***Geolocation trackers***

148. Evidence adduced at the inquest identified the frustrations of the ACS investigators being unfamiliar with the area of the surveillance and incident and not knowing their physical location, apart from listening to the SSU radio channel. Even then from the evidence of ACS investigators they were impeded by potential interference of radio transmissions and failed to receive critical transmissions in what was a rapidly evolving operational environment.
149. A number of ACS witnesses suggested that it would be useful to have some form of GPS tracking device (on an iPad for example) to being able to observe in real time on a map, where the SSU operatives are so they don't compromise the surveillance operation but also to know as quickly as possible where they were located, if a contingency such as a disruption strategy was required.<sup>193</sup> I note this technology appears to be commonly available on everyday devices these days such as the Apple 'Find My iPhone' application and similar apps on Android and other mobile operating systems.
150. At inquest, Operative 145 said the SSU have learnt from this incident.<sup>194</sup> A senior manager of the SSU, Operative 147, gave evidence that because of the issues raised in this inquest, the SSU are currently developing an app that could be utilised by investigators when working with the SSU which could show in real time the location of

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<sup>192</sup> Written Submissions on behalf of the Chief Commissioner of Police, p 4.

<sup>193</sup> Transcript of evidence, pp 75, 105, 432, 528.

<sup>194</sup> Transcript of evidence, p 275.

SSU operatives when working on a job together using some form of geolocation device.<sup>195</sup> He explained that it is something they are currently exploring as a priority.<sup>196</sup>

151. I was impressed with the positive and proactive culture of the SSU. I commend the SSU for their proactive response to this incident and reiterate the importance of this technology being made operational available as a priority. Due to the clear indication from Operative 147 that the SSU understand the importance of these issues and the assistance this would give investigators, and they are currently developing an app that can be used for these purposes, I have decided not to make a recommendation.

### ***Incident controller***

152. Evidence adduced at inquest was that investigators may have been in a better position had an incident controller been appointed to objectively make decisions, provide guidance and direction to the ACS members and liaise with the SSU. DSC Brockwell agreed that potentially having a forward commander similar to a pursuit controller who can be listening to events and giving direction or information about what and who should be doing certain things.<sup>197</sup> DSgt Ormerod agreed that building an incident controller into the operation plan was a good idea.<sup>198</sup>
153. It was submitted on behalf of the CCP that the concept of an incident controller in these types of situations was considered by many of the police involved as an attractive and sensible process. As to how and when an incident controller would be appointed would be dependent on the nature of future operations, but it is an idea that will be workshopped by Victoria Police for future implementation in operations such as Masonary when appropriate.<sup>199</sup>
154. I encourage Victoria Police to continue discussions about the implementation of an incident controller in joint planned operations as it has the potential to overcome and resolve many of the operational difficulties identified and explored throughout the Inquest.

## **FINDINGS AND CONCLUSIONS**

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<sup>195</sup> Transcript of evidence, p 568.

<sup>196</sup> Transcript of evidence, p 569.

<sup>197</sup> Transcript of evidence, p 475.

<sup>198</sup> Transcript of evidence, p 517.

<sup>199</sup> Written Submissions on behalf of the Chief Commissioner of Police, p 5.

155. Having investigated the death of Troy Van Den Bemt, and having held an Inquest in relation to his death on 5- 11 August and 16 August 2021, at Melbourne, I make the following findings and conclusions, pursuant to section 67(1) of the *Coroners Act 2008*:
- a) that the identity of the deceased was Troy Van Den Bemt, born 27 April 1969; and
  - b) Mr Van Den Bemt died on 28 January 2018, at 600 Park Road, Park Orchards, Victoria, 3114 from 1(a) *Gunshot wounds to the upper torso*;
  - c) in the circumstances set out above.
156. I convey my sincerest sympathy to Mr Van Den Bemt's family.
157. I acknowledge the OSCIR finding that the ACS did not comply with the VPM Operational Orders. Having considered all of the evidence, I accept that the VPM is a guidance document and the understanding of many of the officers is that an Operational Order is usually required for larger planned events. However, I find the Briefing Note did seem to lack sufficient contingencies if one or other of the planned arrest or disruption strategies were not able to be implemented in time. I further find that there was no documented risk assessment but accept the evidence of many of the police members that they continually risk assess when performing operational duties.
158. It is clear in the circumstances that whilst SOG was approved to deploy, it would always take some time for them to mobilise as a team, especially coming from the city. Therefore, given the dynamic nature of this type of offending, the likelihood they would arrive in time to effect an arrest was remote, and this needed to be factored into any planning by the ACS. The evidence demonstrates that this delay was clearly known and appreciated by both ACS and SSU. This inevitable delay meant that this aspect of the arrest plan could not be immediately relied upon, making other aspects of the Briefing Note, in particular the disruption strategy, to be of greater significance.
159. Given that the SOG were not immediately in the vicinity to assist, the suggested plan was to implement a disruption strategy. To be effective, the ACS required knowledge of the suspects and their target, and they needed to be proximate to the area of operation and be able to respond at short notice. If unable to be implemented safely, the evidence indicated it could significantly exacerbate the risks, by causing a confrontation with the offenders. It appears from the evidence, the disruption strategy was more a theoretical

possibility, than a practical reality. The evidence clearly demonstrates that the disruption strategy was not a feasible option in the circumstances. This is concerning given that it was such an integral component of the operational response that evening. This shortcoming highlights the importance of strategic thinking and risk assessments when planning for an operation such as this one.

160. I find that at the time of this incident, the ACS were not aware that the SSU had a guideline that they could break their cover if there was an imminent threat to life and therefore it had not been factored into the Briefing Note as a potential contingency plan. I acknowledge that this has now been addressed in the SSU application process which specifically refers to these issues.
161. Whilst I recognise the inherent danger of hindsight bias, I reject the submission that ACS Investigators could properly be construed as being in reasonable proximity to support the SSU if required on the night. In the circumstances and given the absence of any credible intelligence as to an intended target, ACS Investigators needed to be highly reactive to the developing circumstances. This required them to be within the SSU area of operation and capable of responding at short notice. Quite simply they were not. I acknowledge the delicate balancing act undertaken by Investigators being close enough to the SSU area of operation to provide support, whilst not being too close to compromise the SSU operation. But by being stationed at Box Hill Police Station that evening, clearly demonstrates that ACS Investigators put themselves and the SSU at a distinct disadvantage in that they were unable to respond quickly. I acknowledge that since DSupt Moloney's directive in April 2021 there is no doubt that Investigators have an obligation to be in the field with the respective SSU team that are servicing their request.
162. I find that the capability of ACS investigators that evening was severely compromised by a lack of situational awareness. An over-reliance upon mobile phone communications, the absence of GPS navigational technology (apart from mobile phones), a lack of knowledge of the location of the incident, an unfamiliarity with the area and missing key SSU transmissions, all contributed to an ineffectiveness of the ACS investigation. This ultimately resulted in not only an inability to effect any form of disruption strategy, but also resulted in ACS Investigators being unfamiliar with the area and becoming lost. I further note that despite getting lost, no one from the ACS investigation team sought clarification from the SSU. In essence, due to their lack of

situational awareness, it appears the ACS were using guesswork and luck to try and locate the SSU.

163. Whilst I find Operative 129 shot and fatally wounded Mr Van Den Bemt, I find he did so in self-defence and his actions were courageous and entirely reasonable in the circumstances. Victoria Police members swear an oath to serve and protect the Victorian community and Operative 129's conduct clearly upheld that oath.

164. Pursuant to section 73(1) of the *Coroners Act 2008*, I order that this Finding be published on the internet.

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

The Family of Mr Van Den Bemt;

Mr Shane Patton, Chief Commissioner of Victoria Police;

Professional Standards Command, Victoria Police;

Civil Litigation Department, Victoria Police,

Detective Senior Sergeant Pixie Fuhmeister, Coroner's Investigator.

Signature:



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**JACQUI HAWKINS**  
**CORONER**

Date: 17 September 2021