Rule 63(1)

IN THE CORONERS COURT

OF VICTORIA

AT MELBOURNE

Court Reference: COR 2013 3776

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 63(1)

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

Inquest into the death of: VLADO TOMISLAV MICETIC

Findings of:	AUDREY JAMIESON, CORONER
Delivered On:	22 November 2022
Delivered At:	Coroners Court of Victoria, 65 Kavanagh Street, Southbank 3006.
Hearing Dates:	21, 24 and 25 October 2019; 27, 28, 29, 30 and 31 July 2020; 21 and 22 December 2020; and 6 May 2021
Appearances:	Mrs Mary Anne Hartley QC with Ms Viola Katotas and Ms Stephanie Wallace of

Counsel instructed by Robinson Gill Lawyers on behalf of the Micetic Family.

Mr Anthony Lewis with Ms Felicity Fox of Counsel instructed by Tony Hargreaves & Partners Lawyers on behalf of Mr Timothy Baker.

Mr Ron Gipp of Counsel instructed by the Victorian Government Solicitors Office (VGSO) on behalf of the Chief Commissioner of Police.

Counsel Assisting the Coroner: Ms Rachel Ellyard of Counsel instructed by Ms Kate Hughes and Mr Lindsay Spence, In-House Legal Service, Coroners Court of Victoria.

Keywords: Fatal police shooting, Workplace death, Inquest following criminal trial.

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I, AUDREY JAMIESON, Coroner having investigated the death of **VLADO TOMISLAV MICETIC**

AND having held an Inquest in relation to this death which opened on 21 October 2019,

at the Coroners Court of Victoria

find that the identity of the deceased was **VLADO TOMISLAV MICETIC**

born on 5 June 1969

died on 25 August 2013

at the Alfred Hospital, Commercial Road Prahran, 3181

from:

1 (a) GUNSHOT INJURY TO THE ABDOMEN

In the following summary of circumstances:

On 25 August 2013, Vlado Micetic was shot by Leading Senior Constable Timothy Baker who had intercepted Vlado Micetic after observing and confirming that Vlado Micetic was driving a motor vehicle with stolen numberplates.

BACKGROUND CIRCUMSTANCES

1. Vlado Tomislav Micetic[1] was born in Carlton on 5 June 1969 to mother Danica and father Nikola. He was one of four children to his parents and following his mother's second marriage, he also had two younger half-brothers. Vlado and his siblings experienced many difficulties during their childhood years.

2. In his early childhood, Vlado and his older sister Mera lived with their grandparents. In 1975, at the age of 6 years, Vlado and Mera aged 8 years, witnessed the murder of their grandparents and another person in the kitchen of their grandparents' home. Thereafter Vlado and Mera returned to live with their parents and other siblings.

3. In 1981, at the age of 11 years, Vlado's father Nikola died from a subarachnoid haemorrhage. After Nikola's death Vlado's mother Danica struggled to look after four

[1] At the request of the family VLADO TOMISLAV MICETIC was referred to only as **Vlado** during the running of the Inquest. For consistency I have endeavoured to refer to him only as Vlado throughout the Finding except where I have deemed it appropriate to refer to his full name.

children. She ultimately experienced a nervous breakdown necessitating a period of inpatient admission to a psychiatric unit. Consequentially Mera, now 15 years and Vlado aged 13 years, took care of their younger siblings Ivan aged 10 years and Suzie aged 2 years.

4. At the time of his death, Vlado had three children, borne from two previous relationships. He was estranged from his children and their mothers.

SURROUNDING CIRCUMSTANCES

5. On 25 August 2013 at approximately 10.34 pm, on-duty police officer Leading Senior Constable (LSC) Timothy Baker of the Stonnington Highway Patrol was engaged in a mobile traffic control by himself, referred to by police as a "one man mobile traffic control" or a "one-up", when he noticed a white Hyundai vehicle with registration plates UNF-733. Although it is not clear what drew LSC Baker's attention to the vehicle, he checked the registration details and established that the licence plates belonged to a Mitsubishi motor vehicle and that the licence plates were reported stolen in Caroline Springs on 23 May 2013.

6. At approximately 10.40 pm, LSC Baker, having informed the Police Communications Centre about what he was about to do, intercepted the Hyundai motor vehicle in Union Street, Windsor, and discovered that there were two occupants.[2]

7. The male occupant, the driver of the vehicle, identified himself as Vlado Micetic. The other occupant, the front seat passenger, was a female who remained unidentified at the scene. The ensuing investigation identified the female occupant as Evelina Niedzwiecki who was, at the time of the incident, Vlado's partner of approximately three weeks.

8. Following a brief exchange of words between Vlado and LSC Baker when the car was pulled over, Vlado alighted from the vehicle on LSC Baker's instruction.

9. LSC Baker then informed Vlado that he was under arrest because of the stolen licence plates which appears to have caused Vlado to protest against the intended arrest. When LSC Baker proceeded to restrain him to effect the arrest, a struggle ensued during which LSC Baker managed only to secure one manacle of the handcuffs to one of

[2] Coronial Brief of Evidence [CB], statement of DSS McIntyre who refers to the Police Communications Centre as "D24".

Vlado's wrists. LSC Baker alleged that, during the struggle, Vlado produced a knife, causing him to draw his police-issue firearm and discharge it three time, injuring Vlado.[3]

10. LSC Baker's patrol vehicle was fitted with a dash-mounted Digital Video Recording Device (DVRD) and on LSC Baker's person, he wore a Digital Voice Recorder (DVR). During the arrest, both devices were activated, respectively making a video and audio recording of the events as they unfolded. The video recording depicted Vlado and LSC Baker's interaction from the time Vlado alighted the vehicle, moving around the rear of the vehicle where Vlado appears to accede to the intended arrest.

11. At the same time, the video footage depicts Ms Niedzwiecki alighting from the vehicle and leaving the scene, encouraged by Vlado while LSC Baker is seen and heard to admonish Ms Niedzwiecki to remain at the scene during which time both Vlado and LSC Baker move to the left side of the vehicle. Vlado is then seen to trip and fall following a scuffle as LSC Baker continued to restrain him. After Vlado is assisted to his feet by LSC Baker, they are seen to move to the front of the vehicle, obscured from the camera of the DVRD. Nevertheless, LSC Baker's DVR continued to record the audio at which point the sound of gunfire is heard.

12. After the sound of gunfire is heard, the DVRD records Vlado falling to the ground. Shortly afterwards, responding to LSC Baker's call to the Police Communications Centre, Sergeant Rodney Giles and Constable Eric MacDonald arrived at the scene as back-up officers to assist LSC Baker who had intercepted a vehicle while working 'one-up'.[4]

13. When they arrived, Sergeant Giles and Constable MacDonald observed LSC Baker holding his firearm while Vlado was lying on the ground. Both officers also observed a black handled knife with a retractable blade lying on the ground near Vlado. LSC

[3] Exhibit 9, Copy of the Digital Recording taken from the in-car camera of Police Vehicle ZNO854, driven by LSC Baker. The Recording shows the progression of the interaction between Vlado and LSC Baker from the rear of the vehicle to the left, passenger side to the front of the vehicle where the line of vision is obscured by the vehicle itself. Vlado can be heard uttering coded language implying that he was known to Victoria Police. The impression created, is that he was a police informant or the like. Further, Vlado appears to resist arrest, advising LSC Baker that to arrest him would be a mistake. Subsequent investigation revealed that the coded language uttered by Vlado was meaningless. He was not a police informant.

[4] The unit in which the officers arrived was Prahran 251.

Baker then spontaneously informed his colleagues that Vlado resisted arrest, produced a knife and that he acted in self-defence.[5]

14. Ambulance Victoria (AV) paramedics also arrived at the scene at about the same time as Sergeant Giles and Constable MacDonald. AV paramedics then conveyed Vlado to the Alfred Hospital where he succumbed to his gunshot injuries soon after his arrival there.

15. At 11.50 pm, Vlado was pronounced deceased.

JURISDICTION

16. Vlado Micetic's death was a reportable death pursuant to 4(2)(c) of the *Coroners Act 2008* (the Act) as his death occurred in Victoria and immediately before his death, Vlado was a person placed in custody, being a person who a police officer attempted to take into custody or whose death resulted from injuries sustained when a police officer attempted to take him into custody immediately before his death.[6]

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[5] The knife was later identified as a Black Finger 707 Automatic Knife. It was seized and forensically analysed by Victoria Police, both for the presence of DNA and for audio compatibility with the sequence of events as stated by LSC Baker. See paragraphs 36 to 39 *infra*.

[6] *Coroners Act 2008* (Vic)

i. Section 4(1) provides that a death of a person is reportable if—

a) the body is in Victoria; or

b) the death occurred in Victoria; or

c) the cause of death occurred in Victoria; or

d) the person ordinarily resided in Victoria.

ii. Section 4(2) provides that for the purposes of section 4(1), the deaths are—

a) A death that appears to have been unexpected, unnatural or violent or to have resulted, directly or indirectly, from an accident or injury; or

b) ---

c) The death of a person who immediately before death was a person placed in custody or care.

17. Further, as envisaged by section 3(1)(j) of the Act, Vlado was a person who a police officer attempted to take into custody and subsequently died from the injuries he sustained when the police officer attempted to take him into custody.

PURPOSE OF THE CORONIAL INVESTIGATION

18. The Coroners Court of Victoria is an inquisitorial jurisdiction.[7] The purpose of a coronial investigation is to independently investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which death occurred.[8] The cause of death refers to the medical cause of death, incorporating where possible the mode or mechanism of death. For coronial purposes, the circumstances in which death occurred refers to the context or background and surrounding circumstances but is confined to those circumstances sufficiently proximate and causally relevant to the death and not merely all circumstances which might form part of a narrative culminating in death. [9]

19. The broader purpose of coronial investigations is to contribute to the reduction of the number of preventable deaths through the findings of the investigation and the making of recommendations by Coroners, generally referred to as the 'prevention' role.[10] Coroners are also empowered to report to the Attorney-General on a death; to comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice; and to make recommendations to any Minister or public statutory authority on any matter connected with the death, including public health or safety or the administration of justice.[11] These are effectively the vehicles by which the prevention role may be advanced.[12]

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

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

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

22. The circumstances of Vlado's death make this a mandatory Inquest under section 52(2) of the Act.

STANDARD OF PROOF

23. All coronial findings must be made based on proof of relevant facts on the balance of probabilities. In determining whether a matter is proven to that standard, I should give effect to the principles enunciated in *Briginshaw v Briginshaw*.[13] These principles state that in deciding whether a matter is proven on the balance of probabilities, in considering the weight of the evidence, I should bear in mind:

    - the nature and consequence of the facts to be proved;
    - the seriousness of any allegations made;
    - the inherent unlikelihood of the occurrence alleged;
    - the gravity of the consequences flowing from an adverse finding; and
    - if the allegation involves conduct of a criminal nature, weight must be given to the presumption of innocence, and the court should not be satisfied by inexact proofs, indefinite testimony or indirect inferences.

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

INVESTIGATIONS PRECEDING THE INQUEST

25. The circumstances in which Vlado's death occurred initiated an investigation in accordance with the relevant policies concerning a death or serious injury incident

[13] (1938) 60 CLR 336.

involving police officers, overseen by the Victoria Police Professional Standards Command (PSC).

26. At approximately 11.15 pm on 25 August 2013, the Victoria Police Homicide Squad (VPHS) were informed about the incident and attended the scene, arriving at around midnight, led by Detective Senior Sergeant (DSS) Stephen McIntyre.

27. Prior to attending the scene, DSS McIntyre conducted preliminary enquiries and ascertained that the vehicle driven by LSC Baker whilst on duty was fitted with a DVRD and further that the device had a recording capacity of 24 hours which meant that it could operate continuously for that period of time. Consequently, DSS McIntyre enjoined the assistance of other investigative police services to attend the scene including the Victoria Police Forensic Services Department (FSD) comprising members skilled in, *inter alia*, major crime scene examination and ballistics.

28. Arriving at the scene at approximately midnight, DSS McIntyre observed that the DVRD in LSC Baker's patrol vehicle had been turned off and that the media card or memory storage card had been removed from the DRVD. After conducting the necessary enquiries with regard to his observations about the DRVD, DSS McIntyre ascertained that Detective Sergeant (DS) Allan Brown of the PSC had taken a unilateral decision to turn the DRVD off and to remove the memory card without consulting the VPHS members. As a member of the PSC, DS Brown merely had an oversight role and his conduct was contrary to an earlier direction from DSS McIntyre.[14]

29. Inspector Matthew Anderson of the FSD led the crime scene forensic investigation and by his direction the Hyundai which was driven by Vlado, was conveyed to a different location for further examination, in line with police investigative policies and protocol.

30. At the scene, FSD members recovered three spent .40 calibre shell casings, a set of keys, a police issue Safety Assessment Principles (SAP) flag and a black handled knife

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[14] Coronial File [CF]. Having identified that DS Brown's conduct appeared to be irregular, *prima facie,* my concerns in this regard were brought to the attention of PSC management in a letter from the Court dated 5 September 2013. The PSC Acting Superintendent, Adrian White, responded by letter which was received by the Court on 18 September 2013 in which the PSC advised that DS Brown's conduct resulted from his lack of knowledge of the VPHS directive to leave the 'car video' undisturbed. Although the PSC accepted that DS Brown did not intend to compromise the investigation, he was removed from his role as PSC Oversight Officer for operational reasons and to avoid the potential for any further conflict in this regard. Detective Senior Sergeant Wayne Cameron-Smith was substituted as the PSC Officer in my investigation.

with a spring-loaded sliding blade. The police officers who attended the scene did not find any mobile phone belonging to Vlado at the scene, in his Hyundai vehicle or on his person.

31. The investigation included reviewing the security cameras in the immediate vicinity of the incident. The recorded footage, however, was of little or no value because the cameras were either not working or, for those cameras which did work, the light intensity at the time the incident occurred was too low for the recording function of the security cameras to operate optimally.

32. Having ascertained that the female occupant of the Hyundai had left the scene before the fatal shooting, the police launched a public appeal for her to come forward.

33. On 29 August 2013, Ms Niedzwiecki presented to the VPHS offices and availed herself for an interview with the police.

34. In summary, Ms Niedzwiecki revealed that she did not witness the events which led to Vlado's fatal shooting. Nevertheless, she denied that Vlado had a knife in his possession at the time they were pulled over by LSC Baker. In support of her contention that Vlado did not have a knife on his person, Ms Niedzwiecki told police that earlier that evening she had observed Vlado go through his own pants pockets looking for money. She did not see a knife at any stage.

35. Ms Niedzwiecki also denied that she removed any mobile phones belonging to Vlado from the Hyundai when she left the scene.

36. The knife was identified as a Black Finger 707 Automatic knife. As part of the investigation into the incident, DSS McIntyre determined that forensic analysis was required in respect of the knife with the retractable blade, identified as a Black Finger 707 Automatic knife, found at the scene of the incident.

37. Consequently, on 4 September 2013, DSS McIntyre requested the Audio-Visual Section of the Victoria Police Forensic Services Centre (VPFSC) to conduct an analysis of the retractable or switch blade knife and LSC Baker's audio recording. According to DSS McIntyre, the analysis could possibly identify when the blade of the switch knife was deployed-- before or after the sound of gunfire is heard.

38. On 9 September 2013, the switch blade knife was also submitted to the Biology Division of the VPFSC for analysis. The Biology Division's task was to identify

samples of human tissue or the like with a view to isolating the presence of Deoxyribonucleic Acid (DNA) for further analysis to determine, if possible, the identity of the person who handled the knife.

39. DSS McIntyre also made enquiries to identify a possible source of the Black Finger 707 Automatic Knife. His attempts to identify the manufacturer or retailer were unsuccessful, however.

Vlado's forensic history

40. The police investigation following the events in which Vlado was fatally wounded by LSC Baker revealed that Vlado had an extensive forensic history, dating back to 2007 which included offences related to violence, dishonesty and illicit drugs, amongst others. At the time of his death Vlado also had a number of criminal matters pending.[15]

41. At the time of his death, Victoria Police had a Master Name Index (MNI), a unique identifier, registered to Vlado. Assigned to an individual by the Victoria Police's Law Enforcement Assistance Program (LEAP) database, an MNI helps police determine whether a particular individual has other offences associated with their name and its aim is to reduce the incidence of an offender's forensic history remaining undetected where multiple addresses or aliases are used.[16]

Identity

42. On 26 August 2013, the body of Vlado Tomislav Micetic was visually identified by his sister, Mera Gelencir who signed a formal Statement of Identification.[17]

43. Identity was not in dispute and required no further investigation.

[15] CB.

i. On 27 July 2013, Vlado was intercepted whilst driving an unregistered white Coloured Hyundai motor vehicle with registration number OQI 253, fitted with false number plates bearing the registration number NOK 655. At that time, Vlado was disqualified from holding a driver licence and during the search of his vehicle a kitchen knife was found in the centre console.
ii. On 15 June 2013, Vlado was involved in a physical altercation with his sister Mera Gelencir who called the police. However, Vlado fled before the police arrived but was tracked and charged with related offences.
iii. On 3 December 2012, Vlado was arrested on a charge of theft in the circumstances of shoplifting.

[16] CB, Victoria Police records indicate that:

i. On 9 November 2007, Vlado was noted to have a history of significant violence; and
ii. On 7 June 2011, it was noted that Vlado suffered from a significant psychiatric condition.

[17] CB, Statement of Identification.

Medical Cause of Death

44. On 26 August 2013, Dr Kate Strachan, Forensic Pathologist at the Victorian Institute of Forensic Medicine (VIFM) conducted an autopsy upon the body of Vlado Tomislav Micetic.[18]

Post-mortem examination

45. At autopsy Dr Strachan noted the following:

    i. Three gunshot wounds, two of which followed a trajectory through the abdominal cavity and resulted in damage to the liver, pancreas, the second lumbar vertebra, the caecum and the surrounding soft tissues., causing extensive abdominal haemorrhage;

    ii. Post-mortem examination of the lungs revealed 'fragments of polarisable material with an associated foreign body giant cell response'. According to Dr Strachan, these ante-mortem changes are consistent with previous intravenous drug use which is further supported by a scabbed injury on the left antecubital fossa, the inner aspect of the elbow, which had the appearance 'of a healing track mark'.

    iii. Nevertheless, Dr Strachan did not observe underlying natural disease during the post-mortem examination which could have contributed to the death.

46. Dr Strachan recovered three projectiles from the body of Vlado Tomislav Micetic during the autopsy which were submitted for ballistic testing.

Toxicology

47. Dr Dimitri Gerostamoulos, as he was then known, the Chief Forensic Toxicologist and the Manager of Toxicology at the VIFM conducted the toxicological analysis of biological samples retained at autopsy.[19]

48. The toxicological analysis identified the presence of the following drugs:

    i. Ethanol, 0.14 g/100 mL;[20]

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[18] CB, Medical Examiner's Report of Dr Kate Strachan dated 17 January 2014.

[19] CB, Toxicology Report of Dr Dimitri Gerostamoulos of the VIFM dated 11 December 2013. Dr Gerostamoulas was subsequently elevated to the academic rank of Associate Professor.

ii. Methylamphetamine ~ 0.03 mg/L;[21]

iii. Amphetamine ~ 0.1 mg/L;[22]

iv. Diazepam ~ 0.01 mg/L;[23]

v. Nordiazepam ~ 0.03 mg/L;[24]

vi. Oxazepam ~ 0.05 mg/L;[25]

vii. Temazepam ~ 0.01 mg/L;[26]

viii. Morphine ~ 0.1 mg/L;[27]

ix. Codeine ~ 0.04 mg/L;[28] and

x. Ophenadrine ~ 0.5 mg/L.[29]

49. According to Dr Gerostamoulos, excluding the illicit substances detected, the concentrations of common drugs or poisons detected in the biological samples were consistent with therapeutic levels.

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[20] A psychoactive recreational drug, commonly used in the production and manufacture of alcoholic beverages. The concentration indicated was detected in the sample of blood retained at autopsy and equally, in the vitreous humour of the eye.

[21] A potent central nervous system (CNS) stimulant drug. It is used recreationally as an illicit drug. It is, however, though less commonly, medically indicated for the treatment of Attention Deficit Hyperactivity Disorder (ADHD), amongst others. This concentration was detected in the blood sample retained at autopsy. The drug was also detected in the sample of urine retained, concentrated at ~ 0.4 mg/L.

[22] A potent CNS stimulant drug indicated for the treatment of ADHD. It is highly addictive and used recreationally as an illicit drug. This concentration was detected in the sample of urine retained at autopsy.

[23] A benzodiazepine drug indicated for the treatment of anxiety and seizures. This concentration was detected in the blood sample retained at autopsy.

[24] A benzodiazepine derivative drug, indicated for the treatment of anxiety. This concentration was detected in the blood sample retained. The drug was also detected in the urine sample, concentrated at ~ 0.01 mg/L.

[25] A benzodiazepine drug indicated for the treatment of anxiety and insomnia. This concentration was detected in the urine sample retained at autopsy.

[26] Indicated for the treatment of insomnia. This concentration was detected in the urine sample retained at autopsy.

[27] An opiate drug indicated for its analgaesic properties. This concentration was detected in the sample of urine retained at autopsy.

[28] An opiate and prodrug of morphine, medically indicated for its analgaesic properties. This concentration was detected in the sample of urine retained at autopsy.

[29] An anticholinergic drug indicated for the treatment of muscle pain, amongst others. This concentration was detected in the sample of blood retained at autopsy. The drug was also detected in the sample of urine retained at autopsy but the concentration remained unquantified.

Forensic pathology opinion

50. On 17 January 2014, having completed her forensic investigation upon the body of Vlado Tomislav Micetic, Dr Strachan compiled and submitted her autopsy report in which she opined that the medical cause of death was a gunshot wound to the abdomen.

Conduct of my Investigation

51. My investigation into the death of Vlado Tomislav Micetic commenced with an inspection of the scene of the incident on 25 August 2013. By the time I arrived, Vlado had already been conveyed to the Alfred Hospital. At the time, Victoria Police members were in the process of examining the scene.

52. The investigation and the preparation of the Inquest Brief was undertaken by DSS Stephen McIntyre of the VPHS, Crew 2, on my behalf. A recognised specialist in the field of suspicious death investigation, DSS McIntyre had 22 years' experience in supervising and managing investigations and more specifically, when he had begun investigating this matter, he held eight years' experience working at the VPHS.

53. Similarly, when I began my investigation into the death, I was informed that DSS McIntyre was the holder of a Top-Secret National Security status as a designated investigator of police related deaths. He also participated in corruption related investigations.

54. Victoria Police appointed Detective Sergeant (DS) Brent Fisher of the VPHS, another experienced investigator in suspicious deaths and corruption related matters, as the primary investigator in the matter to assist DSS McIntyre with the investigation into Vlado's police-related death.

55. On 28 August 2013, the VPHS investigators convened a meeting with Vlado's family including Vlado's sister Mera Gelencir, the Senior Next of Kin (SNOK). The VPHS investigators noted the family's numerous concerns in relation to Vlado's death.

56. Ms Gelencir expressed her grief and added that the family, too, was stricken with grief by their sudden and tragic loss. She then voiced the following concerns:

    i. That the statement made by Victoria Police Assistant Commissioner Luke Cornelius to the media that Vlado was killed by a member of the Victoria Police in self-defence was offensive;

    ii. That the media articles which exposed Vlado's forensic history was offensive;

iii. That the family did not believe that Vlado would carry a knife or that he would assault a police officer.

57. Having explained the VPHS investigative processes to the family, DSS McIntyre then referred the family members to the relevant support services for counselling.

Issues relating to LSC Baker's account of the events

58. At the time of the incident, LSC Baker had been a serving member of the Victoria Police Force for 23 years during which time, he undertook ongoing training. In early 2013, LSC Baker completed Operational and Safety Tactics Training (OSTT) and when the incident occurred, he was issued with, and carried police-issue tactical equipment and paraphernalia including, *inter alia*, one .40 calibre Smith & Wesson semi-automatic pistol and handcuffs.

59. Immediately after the incident and following the commencement of the investigation at the scene, LSC Baker was conveyed to the Prahran Police Station where he voluntarily underwent a test for the presence of gunshot residue. In addition, LSC Baker underwent mandatory drug and alcohol screening in line with Victoria Police policies and regulations in respect of a critical incident.[30]

60. While at the Prahran Police station, due the nature of the incident, VPHS investigators afforded LSC Baker an opportunity to consult with a psychologist and a legal representative before proceeding with their investigation into his conduct and the events that transpired at the scene.[31] During the consultation with the psychologist, of his own volition, LSC Baker disclosed that he was currently on prescription medication to manage his ongoing anxiety.[32]

61. When DSS McIntyre was informed of LSC Baker's condition and after following up the information he received, DSS McIntyre discovered that LSC Baker had a history of psychiatric disorders and further, that he had a history of absence from duty related to his anxiety and stress. In addition, DSS McIntyre also identified that LSC Baker had

[30] As envisaged by section 85B(b) of the Police Regulations Act 1958 (Vic)

[31] These services are available to serving members of the Victoria Police and provided by the Victoria Police Psychology Unit and the Victoria Police Association.

[32] CB, Statement of DSS McIntyre who, having heard that LSC Baker was on prescription medication for anxiety from LSC Baker himself, investigated this aspect before approaching him for his statement and when DSS McIntyre approached him, LSC Baker objected. See paragraph 66 *infra*, *et seq*.

encountered issues with Victoria Police management over the years in relation to behavioural traits he displayed in the course and scope of his employment.[33]

62. Further investigation into LSC Baker's medical history revealed that he had received treatment for the following conditions:

    i. Alcohol dependence;

    ii. Bipolar Disorder;

    iii. Unipolar Depressive Disorder;

    iv. Major Depressive Disorder; and

    v. Post-Traumatic Stress Disorder.(PTSD)

63. While the medical records support a conclusion that LSC Baker's history of mental health issues dates from the year 2000, the evidence before me indicates that intervention strategies were only put in place from the year 2003 onwards when LSC Baker was placed on an Alcohol Detoxification program.[34]

64. Approximately two years after the apparent onset of his mental health issues, LSC Baker suffered a mental breakdown due to work-related incidents and was booked off work for two months and prescribed anti-depressant medication. The records indicate that he remained on the prescription medication until the year 2008 and in January of that year, he also reported episodes of sleep walking during a consultation with his psychologist.

65. In addition to his medical records, Victoria Police records also indicated that LSC Baker had been referred to the Police Medical Officer on at least three occasions to assess his fitness for duty in respect of the following:

    i. In November 2008 after he attempted to commit suicide and was involuntarily admitted to the Victoria Clinic, a mental health facility. While in in-patient care

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[33] CB, Statement of DSS Stephen McIntyre. In October 2011 LSC Baker was admonished for malicious damage to a police vehicle when it was discovered that he intentionally cut away a portion of the vehicle's seat to sit more comfortably whilst wearing his firearm.

[34] CB, Ibid. A report of Elissa Jackson, Psychologist, dated 10 November 2008 indicates that LSC Baker cited precipitating events in the years 2000 and 2001. According to the report LSC Baker witnessed events whilst on duty and as a result, he suffered vicarious trauma which led his PTSD episodes.

at the Victoria Clinic, LSC Baker again attempted to commit suicide and as a result, he was transferred to the Psychiatric Ward at the Alfred Hospital;[35]

ii. In April 2009 to obtain clearance to return to work after an absence from August 2008 to February 2009, after his suicide attempt;

iii. In May 2012 when he failed to pass an Operational Safety and Tactics Training Module (OSTT) offered by the Victoria Police.

66. In December 2008, after the attempted suicide, LSC Baker was diagnosed with Major Depressive Disorder--Moderate Severity. Dr Arthur Velakoulis, the clinical psychologist who assessed LSC Baker after his release from the Alfred Hospital Psychiatric Ward opined that LSC Baker's recurrent psychiatric history placed him at a disadvantage and at risk of deterioration given the appropriate adverse circumstances. Dr Velakoulis was unable to quantify the risk, however.

67. On 13 February 2009, following the assessment by Dr Velakoulis, Police Medical Officer, Dr Suzanne Teh, authorised LSC Baker to return to work on a part-time, non-operational basis subject to further review before returning to full operational duties.

Grounds for objection to providing a statement

68. Having granted LSC Baker an opportunity to consult with a psychologist while at the Prahran Police Station and to seek legal representation prior to providing a statement, LSC Baker objected to the request to provide a statement in relation to the events that led to Vlado's death.

69. On 26 August 2013, VPHS was contacted by Solicitor, Tony Hargreaves on behalf of LSC Baker who informed the investigators that his client would not be making a formal statement in relation to the events that led to Vlado's death for the following reasons:

    i. His client was psychologically distressed and may not be able to relate his accounts of the events accurately;

    ii. His client's distressed state may result in his providing details about the events which may amount to self-incrimination; and

[35] CB, Ibid. The report indicates that LSC Baker's suicide attempt is said to have emanated from an interview held with him in relation to an event which occurred in the year 2000. The interview 'upset' LSC Baker.

iii. Mr Hargreaves himself wanted an opportunity to review the DRVD footage before his client provides a statement to the VPHS;

70. Mr Hargreaves informed the VPHS investigators further that his client declined to participate in a Video Recorded Significant Witness Interview (VRSWI) and that any statement LSC Baker may provide would only take the form of a written statement in the ordinary course. The VPHS investigators indulged Mr Hargreaves' request and postponed the interview with LSC Baker for the purpose of obtaining a conventional written statement. Arrangements were then made to interview LSC Baker and obtain his statement and the time and date was set at 3 pm on 30 August 2013.

71. However, on 29 August 2013, Mr Hargreaves advised DSS McIntyre and DS Fisher that he had advised his client not to provide a written statement without first viewing the DRVD footage and listening to the DVR audio recording.

72. The investigators then expressed the view that Mr Hargreaves' request was unreasonable and inappropriate in the context of their investigation. However, despite the inappropriate nature of the request, DSS McIntyre and DS Fisher affirmed that LSC Baker was not a suspect in their criminal investigation at that stage, nor was he the subject of a Victoria Police disciplinary process. The investigators then proposed the following course of action:[36]

    i. LSC Baker will be allowed access to the DVR audio recording prior to reducing his statement to writing. The audio recording would fulfil the function of his own contemporaneous notes from which he could refresh his memory;

    ii. LSC Baker would then be prompted to provide a written statement, his memory aided by the DVR recording;

    iii. Having reduced his statement to writing, the interview process would be suspended; and then

[36] Acceding to Mr Hargreaves' request would be contrary to the general principles of the Law of Evidence and violate standing admissibility rules applicable to criminal investigations and criminal procedure. Admissibility rules are rigidly guarded at Criminal Law, guided by criminal standard '*beyond reasonable doubt*'. Ultimately, the integrity of the criminal investigation process would be seriously undermined, if not compromised, if LSC Baker was allowed access to the DRVD footage before making his statement.

iv. LSC Baker would be allowed access to the DRVD to view the footage and then to comment on any discrepancy in his written statement as it related to the recorded footage.

73. On the advice of Mr Hargreaves, LSC Baker then declined the opportunity to provide a statement in the manner proposed by the investigators.

74. The effect of LSC Baker's refusal to provide a statement to the VPHS was that the investigators were unable to advance their investigation with a view to either verify or corroborate LSC Baker's spontaneous utterances to Sergeant Giles and Constable MacDonald when they arrived at the scene as back-up shortly after the fatal events unfolded. By LSC Baker's own account he verbally informed Sergeant Giles and Constable MacDonald that Vlado resisted lawful arrest and in doing so, produced a knife which led him to fire the shots in self-defence.

75. In the absence of a formal account from LSC Baker, the investigators DSS McIntyre and DS Fisher appeared to be hamstrung by the lack of evidence to verify LSC Baker's spontaneous utterances at the scene. In summary, the evidence collected from other police officers, Sergeant Giles and Constable MacDonald together with the DVRD footage, the DVR audio recording and Vlado's extensive forensic history appeared to corroborate LSC Baker's version that Vlado resisted arrest, may have produced a knife and that in shooting Vlado, LSC Baker may have acted in self-defence. Consequently, DSS McIntyre was unable to identify any reasonable grounds to justify the belief that LSC Baker had committed an indictable offence and was therefore not in a position to interview him with regard to the circumstances of the fatal shooting as, in doing so, he may have infringed LSC Baker's Common Law privilege against self-incrimination, amongst others.[37]

76. The VPHS considered other avenues to obtain a statement from LSC Baker but were thwarted in their efforts, curtailed by either current jurisprudence or legislative injunctions.[38]

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[37] As further guaranteed by Sections 25 *et seq* of the *Charter of Human Rights and Responsibilities Act 2005* (Vic).

[38] See:

i. *Baff v New South Wales Commissioner of Police* (2013) NSWSC 1205 where the Court held that for a senior police official to direct a subordinate officer to provide a statement in circumstances not

77. However, on 2 September 2013, DSS McIntyre sought my assistance in obtaining LSC Baker's statement to support my investigation. In addition, DSS McIntyre sought an authorisation to obtain documents relating to both Vlado and LSC Baker from various entities, government agencies or service providers.

78. On the same day, by my Direction, the coronial process was explained to Mr Hargreaves, emphasising that I required his client's statement to advance my investigation. In the ensuing correspondence with the Court, Mr Hargreaves advised me that his client would not provide a statement without first being afforded an opportunity to view the DVRD footage and listen to the DVR audio recording. In the context of the coronial jurisdiction, his request was both unreasonable and inappropriate. In my purview, Mr Hargreaves' request could only be acceded to if the same opportunity was equally afforded to all the interested parties.[39]

79. After Mr Hargreaves refused to comply with the request to provide a statement on behalf of LSC Baker, he was advised, by my further Direction, that his failure to cooperate, *per se*, was tantamount to invoking my powers conferred by section 42 of the *Coroners Act 2008* (Vic)—*Form 4*, Request for Documents or a Prepared Statement.[40]

80. On 6 September 2013, mindful of the limitations of the coronial jurisdiction with regard to obtaining evidence, that the coronial jurisdiction is to avoid findings of civil liability or criminal responsibility, I Directed LSC Baker to provide a statement by means of the statutory *Form 4* procedure within 14 days as I envisaged that a mandatory Directions Hearing would be listed before the end of September. Alternatively, LSC Baker was apprised of the option available to him as provided for by section 50 of the *Coroners*

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dissimilar to the factual matrix of this matter, that direction would be tantamount to an unlawful direction.

ii. In terms of section 86L of the *Police Regulations Act 1958* (Vic), The VPHS can only refer police conduct matters to the Independent Broad-Based Anti-Corruption Commission (IBAC) in circumstances where there was a reasonable belief that the officer has committed serious misconduct. However, IBAC may accept a referral from members of the public without the existence of a reasonable belief that a police officer has committed serious misconduct.

[39] The Court File [CF] records indicate extensive telephonic correspondence between the Coroners Court of Victoria solicitor and Mr Hargreaves in this regard.

[40] CF, Ibid.

Act 2008 (Vic), to advise the Court in writing if he elected not to comply with my request for a statement.

81. Contemporaneously, DSS McIntyre requested my authority to obtain documents from various entities to advance my investigation into the death of Vlado. More specifically, DSS McIntyre required access to the records held by the Police Medical Officer and the Police Psychology Unit relating to LSC Baker. On 5 September 2013, by *Form 18*, the requisite authorisation was granted in respect of both the entities.[41]

82. Over the next few days, in conducting his investigative duties, DSS McIntyre identified that more records were held by other entities which could advance my investigation. The following entities were identified by DSS McIntyre as holding records relevant to my investigation:

<u>In respect of LSC Timothy Baker--</u>

i. Alfred Hospital Psychiatric Ward and Crisis Assessment and Treatment Team (CATT) records;

ii. Brunswick Betta Health;

iii. The Victoria Clinic; and

iv. The Melbourne Clinic.

<u>In respect of Vlado Tomislav Micetic--</u>

i. BreakThru People Solutions;

ii. Thomas Embling Hospital; and

iii. The Department of Justice, Justice Health.

83. Having considered the relevance of these records to my investigation in light of both LSC Baker's and Vlado's documented mental health concerns as well as their behavioural issues and forensic history respectively, I formed the opinion that the records held by these entities would advance my investigation. Consequently, on 12 September 2013, *by Form 18*, I authorised the Victoria Police to obtain the records

[41] CF, *Form 18* documents authorised by Coroner Spanos in my stead. DSS McIntyre was authorised to obtain these records.

identified by DSS McIntyre in order to incorporate the records into the Coronial Brief of Evidence.[42]

PREPARATION FOR INQUEST

84. An Inquest is mandated in the circumstances in which Vlado's death occurred. Vlado died in Victoria, his death was unexpected and violent and resulted directly from injury when he was placed in custody immediately before his death.[43]

Directions Hearings

Mandatory Directions Hearing[44]

85. A mandatory Directions Hearing was held on 23 September 2013. Pursuant to Practice Direction 1 of 2012, titled 'Opening Inquests into Police Contact Deaths', I was obligated to convene a Directions Hearing within a 28-day period following the event or within 28 days of the death being reported to the Coroner.

86. The purpose of a mandatory 28-day Directions Hearing is firstly, to confirm which member of the Victoria Police will act as the Coroner's Investigator. In this instance, before the mandatory Directions Hearing was listed, it was established that DSS McIntyre would act as my Coroner's Investigator. The second purpose of a mandatory Directions Hearing is to set a date for delivery of the Coronial Brief of Evidence (CB) and thirdly, to provide any other directions appropriate at the time.

87. At the mandatory Directions Hearing I was assisted by the erstwhile Senior Legal Counsel, Coroners Court of Victoria, Ms J Hawkins. Mr R Gipp, appeared on behalf of the Chief Commissioner of Police and Mr G Stewart, instructed by Mr Hargreaves, appeared on behalf of LSC Baker who was present in Court on the day. Vlado's family was also present on the day.

88. After providing her summary, Ms Hawkins drew my attention to the fact that LSC Baker had not complied with my request for a statement by *Form 4* dated 6 September 2013.

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[42] CF, *Form 18* documents. Detective Senior Constable (DSC) Ben Kelly was authorised to obtain these records.

[43] As envisaged by section 52(2) of the *Coroners Act 2008* (Vic).

[44] Transcript of Proceedings dated 23 September 2013, pages 1-9.

89. Before the Directions Hearing, I received written submissions from Mr Stewart, dated 22 September 2013, objecting to his client providing a statement. As the main ground for objection, Mr Stewart cited his client's Common Law privilege against self-incrimination in respect of indictable offences at Common Law and included references to statutory offences.

90. Having determined beforehand that I was not in a position to entertain submissions in relation to LSC Baker's Common Law privilege against self-incrimination at the mandatory Directions Hearing, I enquired from Mr Stewart what his client's position was in relation to the *Form 4* request for a statement. In my view, given the context within which evidence is received in the coronial jurisdiction, not subject to the traditional rules of evidence, objections on the basis of a witness's Common Law privilege against self-incrimination are properly raised and considered at the Inquest itself, when that witness is called to testify and not at a mandatory Directions Hearing.

91. Ultimately, in answering my question, Mr Stewart indicated that LSC Baker was willing to provide a statement to assist my investigation given that he himself was the only witness to the events that led to Vlado's death. However, Mr Stewart pressed the point that the factual matrix of this matter was unique in that the events were both video and audio recorded. As such, LSC Baker was disadvantaged to the extent that what he may set out in his statement may not be borne out by what is depicted in the recordings which may prejudice him in the criminal investigation into his conduct.[45]

92. Having ascertained that LSC Baker was willing to provide his statement to support my investigation, I acceded to Mr Stewart's request to hear his submissions on his client's Common Law privilege against self-incrimination at the mandatory Directions Hearing. Mr Stewarts ultimate request was that his client is afforded an opportunity to view the video recording and listen to the audio recording prior to providing his statement.

93. Having considered that the traditional rules of evidence are not applicable to the coronial jurisdiction, I ruled on Mr Stewart's request, allowing his client access to the video and audio recordings on the proviso that all the interested parties are afforded an

[45] It later transpired during the criminal trial in the Supreme Court of Victoria that LSC Baker was possibly not the only witness to the events that led to Vlado's death. However, as at the 23 September 2013 at the mandatory Directions Hearing, the evidence available to me indicated that LSC Baker was the only witness to the incident.

equal opportunity to do the same and further, that LSC Baker and the other interested parties view and listen to the video and audio recordings within the confines of the Court building at a mutually arranged date and time.[46]

94. Further, I determined that the Coronial Brief of Evidence would be submitted during February 2014.

95. Shortly after I adjourned the proceedings, having ruled in favour of Mr Stewart's request, I was informed on behalf of the family, that Ms Gelencir, Vlado's sister and SNOK intended to appeal my Ruling. In order to allow the family opportunity to obtain legal advice in this regard, I stayed the operation of my Ruling relating to access to the video and audio recording by all interested parties for a period of 28 days.

96. Following my Ruling to allow the interested parties access to the video and audio recordings, I considered the possible effect that the publication or disclosure of the material, after it was viewed and listened to, would have on my ongoing investigation into the death. In the circumstances of this matter, given the controversial nature of the material and in light of a possible appeal against my Ruling at the behest of the family, I came to the conclusion that any prospective publication or disclosure of the material, once accessed, would not be in the public interest. Consequently, pursuant to section 73 (2) of the *Coroners Act 2008* (Vic), in order to preserve the integrity of my investigation into the death, I issued a concomitant order, appropriate in the circumstances, suppressing the possible dissemination of the video recording footage and the audio recording into the public domain.[47]

Conduct of my investigation after the mandatory Directions Hearing

97. On 6 November 2013, Mr Hargreaves informed the Court that, in the period following the mandatory Directions Hearing, LSC Baker had taken ill and was medically certified to be unfit for work. In summary, Mr Hargreaves' concern was that, as LSC Baker only returned to work on 20 October 2013, it would be inappropriate for him to view the footage and listen to the audio recording until such time as his treating psychiatrist could examine him with a view to providing an opinion on whether his viewing the footage and listening to the audio recording could possibly affect his mental health

[46] CF, Ruling dated 23 September 2013.
[47] CF, Suppression Order dated 23 September 2013,

adversely. Mr Hargreaves then undertook to inform the Court when his client would be in a position to view the footage and listen to the audio recording.[48]

98. After a period of approximately two weeks, on 20 November 2013, in order to expedite the process of obtaining LSC Baker's statement, Mr Hargreaves was contacted by the Court to canvass the option of he himself, being the legal representative of LSC Baker, viewing the video footage and listening to the audio recording without his client. In addition, I wanted to ascertain whether Mr Hargreaves had any objection to the other interested parties viewing the video recording or listening to the audio recording in the interim. Mr Hargreaves indicated that he was amenable to my proposal to allow the other interested parties access to the material in the interim. Mr Hargreaves also indicated that when LSC Baker provides his statement to the VPHS or is interviewed in relation to providing his statement, he would prefer not to deal with DSS McIntyre or DS Fisher.

99. In considering Mr Hargreaves' request, I took into account the experience of both DSS McIntyre and DS Fisher and their role in my investigation. The former, my assigned Coroner's Investigator and the latter, the assistant investigator. Given the extent of both officers' involvement in my investigation since its inception, which process I conducted hitherto in a completely transparent manner, I concluded that Mr Hargreaves' request was unsubstantiated. In my purview, his request was without precedent and unreasonable in the circumstances of this matter where there was no evidence to support a conclusion that either DSS McIntyre or DS Fisher were not impartial or lacked integrity and that my investigation was not transparent. To accede to a request for any other police officer to take LSC Baker's statement would be impervious to sound reasoning. In the circumstances, however, I directed that DSS Wayne Cameron-Smith of the PSC oversee the process when LSC Baker's statement is taken.

100. By my direction, Mr Hargreaves was informed of my decision that, although his request was without merit in my view, DS Fisher would take LSC Baker's statement but that, to accommodate his request to some degree, the process would be overseen by DSS Cameron- Smith. Arrangements were then made for LSC Baker to view the footage and listen to the audio recording on 6 December 2013 at 2pm.

[48] CF, Letter from Tony Hargreaves to the Court dated 6 November 2013

101. While this matter was *sub judice*, having held the mandatory Directions Hearing on 23 September 2013 and pending the finalisation of my investigation, Mr Hargreaves authored an article which was published during November 2013. Having read the article, a case study, it was clear that the factual matrix expounded by Mr Hargreaves encompassed a direct reference to this matter. In summary, Mr Hargreaves suggested that the *Form 18* Authorisation to DSS McIntyre to obtain information and records from the Police Psychology Unit (PPU) in respect of LSC Baker, dated 5 September 2013, related to his contact with the PPU after the incident. That is, assessments conducted by the PPU on LSC Baker after August 2013.

102. At the time when the *Form 18* Authorisation was issued, the evidence indicated that in the period leading up to the fatal shooting incident, a period of approximately two years, LSC Baker had failed his OSTT and was not allowed to drive a police vehicle or to be in possession of a Victoria Police issued firearm. The evidence indicated further, however, that in the period immediately preceding the incident in August 2013, LSC Baker had been cleared to drive a police vehicle and to possess a Victoria Police issued firearm. It was in this context and, guided by the principles enunciated by Her Honour Williams J of the Supreme Court of Victoria in the matter of *Grace v Saines*, that the *Form 18* Authorisation was issued.[49]

103. By a cursory examination of the *Form 18* Authorisation, it is clear that the information sought relates specifically to documents relevant to my investigation. That is, documents relating to any assessment of LSC Baker by the PPU that occurred prior to the incident, in the context of the suspension of LSC Baker's OSTT accreditation and the like.

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[49] CF,

i. *The Police Association Journal*, Volume 79, Issue 11, November 2013.
ii. *Grace v Saines* [2004] VSC 229 (29 June 2004). In this matter Her Honour Judge Williams of the Supreme Court of Victoria considered whether an investigating coroner acted *ultra vires* in authorising seizure of medical records of persons other than the person whose death was under investigation, the deceased. Having considered the ambit of the empowering provisions of the Coroners Act 1985 in the context of the factual matrix of the matter, the Court held that it was reasonable to obtain the medical records of people other than the deceased in circumstances where the coroner reasonably believes that those records may be relevant to the cause or circumstances of the death under investigation and therefore that those records may contain relevant material which would enable the coroner to discharge his/her duties under the Act.

Statement of LSC Baker

104. On 16 December 2013, Mr Hargreaves forwarded an unsigned statement of LSC Baker for my attention. Having perused the statement, I was satisfied that its content met the requirements of my investigation and directed DS Fisher to file the statement in the Coronial Brief. As this matter would proceed to Inquest, LSC Baker could sign it at a later stage or could affirm the content under oath when he was called to testify.[50]

Further Investigation

105. Having received LSC Baker's unsigned statement, I identified the need to interrogate certain aspects of his version. In particular, that aspect of his version insofar as it related to private defence. Recognising that my ongoing investigation may impede the delivery of the Coronial Brief, due in February 2014, I granted DSS McIntyre an extension for its delivery.

106. In his statement, LSC Baker reiterated that in resisting arrest, Vlado produced a knife and that, in self-defence, he drew his firearm and fired the fatal shots. By contrast, as identified by DSS McIntyre during the interview with the police, Ms Niedzwiecki stated that she did not observe a knife in Vlado's possession at any stage during that evening.

107. Faced with these conflicting accounts, in order to rule out the conflicting versions with regard to who possessed the knife, I queried whether the DNA analysis and the audio analysis had been completed. More specifically, I wanted to peruse and consider the respective analysis reports. I was informed that the DNA analysis had been completed but that any report in relation thereto would only be made available for the purposes of my coronial investigation, by an order of Court. To this end, on 1 May 2014, by *Form 4*, I requested the DNA analysis reports of the VPFSC of the knife in question and directed that the report be filed in the Coronial Brief.

108. In the DNA analysis report received, the Forensic Scientist, in examining the handle of the knife, was able only to find 'Moderate support that MICETIC' was 'a contributor'

[50] Exhibit 14. The final version of LSC Baker's statement was received, dated 18 April 2014.

of biological material. Vlado was excluded as a contributor of biological material taken from the knife's blade.[51]

109. A further DNA analysis report was received analysing LSC Baker's DNA profile *vis-a -vis* the knife's handle. Unsurprisingly, given that according to LSC Baker in his statement, during his scuffle with Vlado he grabbed the knife and threw it away', the report revealed that 'The DNA evidence is 570 times more likely' that 'Baker is a contributor'.[52] The evidence available at that stage indicated that LSC Baker wore fingerless or open-fingered gloves when the incident occurred.[53]

110. Turning to the analysis of LSC Baker's DVR, I was advised by the VPFSC that Forensic Officer (FO) Paul Tierney of the Audio-Visual Unit of the VPFSC was tasked, on 30 September 2013, with the analysis of the DVR and that his investigation was ongoing. I was advised further that the VPFSC intended to enjoin the services of an interstate counterpart, the Queensland Police Forensics Services Department (QPSFSD), for the purposes of peer review to garner certainty with regard to the course of their investigation and to verify their own findings.

111. Having considered the DNA reports, I determined that the weight of DNA analysis report *per se,* would not advance my investigation insofar as it failed to elucidate or enhance the probative value of the evidence available to me at the time. For the purposes of my investigation, therefore, the DNA evidence was inconclusive.

112. In addition to the DNA reports and the audio-visual report of the VPFSC, I requested a copy of the Chief Commissioner of Police's (CCP) policy on Single Officer Patrols in force at the time. From the information available as at 1 May 2014, Victoria Police's Commander Terry Purton had recently completed a review into Single Officer Police Patrols and compiled a report titled '*Report on Single Officer Patrols*' (The Report). In my view, the prevailing policy and The Report may have been relevant and could have resolved, or at least indicated, how and why LSC Baker, working on his own, came to

[51] CB, page 224, statement of Debra Ryan, Forensic Scientist, analysing Item 11, Knife in a container labelled "Knife- marker #6"[Submitted at the Inquest as Exhibit 55]

[52] CB, page 240, statement of Debra Ryan, Forensic Scientist, analysing Item 11.

[53] CB, Statement of DSS Stephen McIntyre according to whom the "Oakley" fingerless gloves were 'not Victoria Police issue' and did 'not comply with uniform standards'.

intercept Vlado which led to the fatal consequences. As such, the circumstances leading to the death may have been placed in a better context thereby advancing my investigation.

113. Consequently, on 16 June 2014, following similar requests, I again requested DSS McIntyre to obtain The Report as I intended to incorporate it into my investigation. I did, however, emphasise that my request for The Report was not to impede the finalisation of the Coronial Brief. The Report could be provided later.[54]

114. On 24 June 2014 FO Tierney informed DSS McIntyre of his preliminary findings. According to FO Tierney, the DVR recording was of a high quality and he identified that the sound of the switch knife flicking or deploying its blade only occurs after the sound of all three shots of the gunfire is heard. In addition, after the sound of gunfire, the DVR recorded the sound of a zipper opening and then sound of what is believed to be keys, or the like, is heard falling to the ground from LSC Baker's possession.

115. On 3 July 2014, FO Tierney provided a signed Laboratory Report outlining his findings as follows:

    i. He conducted an aural analysis of the recording to identify similar sounds to that produced by the deployment of the knife blade which he numbered at 'event 6', which occurred on the DVR recording at 4 minutes and 37 seconds after the commencement of the original audio recording;

    ii. He identified a number of sound events on the recording which he determined to have similarities to that of the knife;

    iii. He conducted a waveform analysis on each of those sounds as well as the test recording;

    iv. Having compared the waveforms of each sound event with the control recording, he found a strong correlation between the waveform numbered 'event 6' and the sound of the controlled test recording;

[54] The Report was requested from the Victorian Government Solicitor's Office (VGSO), solicitors for the CCP. Although receipt of my request was acknowledged, a response was not received until 10 October 2018, when the CCP submitted a similar report dated February 2014. The VGSO did not however submit this report until after the criminal trial against LSC Baker had run its course, during which period my coronial investigation was held in abeyance.

v. The manner in which this correlation manifested itself was by waveform shape, timing of the signal peaks and the frequency analysis of the waveform;

vi. He did not observe any correlations between the waveforms of any of the other events on the original recording when compared with the controlled test recording;

vii. 'Event 6' occurred 14 seconds after the first time that the sound of gunfire is heard.

116. On 21 August 2014, I was provided with a preliminary statement from FO Tierney, dated 12 August 2014, contained in the Interim Coronial Brief of Evidence (ICB) submitted by DSS McIntyre, setting out his findings as recorded in his Laboratory Report of 3 July 2014.

117. Having considered the evidence contained in the ICB, in particular the evidence contained in the preliminary statement of FO Tierney, I formed the opinion that there was now before me conflicting evidence about when the knife was introduced to the scene. In my purview, LSC Baker's account of the events that led to Vlado's death was not consistent with what was observed in the DVRD and what was heard on the DVR recording.

118. Further, DSS McIntyre's Interim Statement of Material Facts, submitted as part of the ICB, identified the outstanding evidence to advance my investigation which included, *inter alia*, search and seizure procedures and a biological sample from LSC Baker. Upon scrutiny of the statement of DSS McIntyre in the context of the evidence contained in ICB as a whole, it was my considered view that what was required at that stage to advance my investigation fell squarely within the realms of the criminal jurisdiction. To advance my investigation at this stage, using my coronial powers, would have been both improper and inappropriate in the circumstances.

Referral to the Office of Public Prosecutions

119. Consequently, on 10 September 2014, pursuant to section 49(1) of the *Coroners Act 2008 (Vic)*, having formed the belief that an indictable offence may have been committed, I referred the matter to the Office of the Director of Public Prosecutions (DPP).

120. On 17 September 2014, the Office of Public Prosecutions (OPP) acknowledged receipt of my referral. On the following day, 18 September 2014, the OPP confirmed that my referral was brought to the attention of the Acting DPP, Mr Gavin Silbert QC who was to consider the merits of my referral. I was informed further that the Acting DPP would confer directly with DSS McIntyre in relation to the criminal investigation.

121. Satisfied that the aspects of the investigation relating to the criminal jurisdiction would be adequately interrogated and guided by the DPP and having ascertained that the decision on whether to proceed with a criminal prosecution could only be taken after the matter is investigated further, I took the view that it would be expedient, pending the outcome of DPP's decision on whether or not to prosecute on the available evidence, to follow up certain aspects of the coronial investigation in the interim given the extent and complexity of the issues relevant to my investigation. As this was a workplace death, raising issues of occupational health and safety, I had taken the view at the outset of my investigation that I would examine these issues more closely at Inquest.

122. Having considered the outstanding investigation relevant to my jurisdiction, I directed DSS McIntyre to obtain the medical records, *inter alia*, of both LSC Baker and Vlado.[55]

123. On 18 December 2014, after a search warrant was executed at LSC Baker's home, he was arrested and interviewed at the offices of the Victoria Police Crime Command. When a Forensic Medical Officer attempted to conduct an assessment of LSC Baker's fitness to be interviewed, he refused to cooperate. Likewise, when officers enquired whether LSC Baker would provide a DNA Buccal Swab sample, he refused. After the interview, LSC Baker was released unconditionally.[56]

124. The criminal investigation continued for the next few months and on 30 March 2015, DSS McIntyre submitted a revised Criminal Brief of Evidence to the OPP for consideration.

125. On 21 September 2015, I was informed that the DPP recommended that LSC Baker should be charged in respect of his connection to the death Vlado Tomislav Micetic.

[55] CF, The records were requested on numerous occasions during the initial stages of my investigation including the 12 June 2014, 16 March 2015 and 13 October 2015, amongst others.
[56] CB, statement of DS Stephen Sheahan.

After I was apprised of the DPP's recommendation, I determined that it would be appropriate to hold my own investigation in abeyance until the finalisation of the criminal proceedings. Consequently, I stayed my investigation pending the outcome of the criminal trial.[57]

126. On 29 July 2016, I was informed further that LSC Baker's Committal Hearing in the Magistrates' Court of Victoria was set down for 1 August 2016.

127. On 1 August 2016, the day on which the Committal Hearing commenced, the Presiding Magistrate anticipated that the media may seek leave to access the DVRD and the DVR material, the subject matter of my Suppression Order of 23 September 2013. I was informed further that the Presiding Magistrate anticipated that the media may move an application before me for the revocation of that Suppression Order.

128. By further electronic correspondence I was informed that both LSC Baker and Vlado's family indicated to the Presiding Magistrate at the Committal Hearing that they would not have any objection should the media proceed with an Application for Revocation of the Suppression Order before me. Having ascertained the attitude of the interested parties in this regard, I resolved to revoke my Suppression Order of 23 September 2013, if an application were to be brought before me.

129. On the same day, a Revocation of Suppression Order was granted revoking the Suppression Order of 23 September 2013.[58]

130. On 12 August 2016, at the conclusion of the Committal Hearing proceedings, LSC Baker was committed to stand trial in the Supreme Court of Victoria, charged in relation to the death of Vlado Tomislav Micetic.

131. Pre-trial proceedings began in the Supreme Court of Victoria on 31 July 2017 and on 14 August 2017, LSC Baker was arraigned on a charge of Murder, *inter alia,* to be tried by a jury.

132. On 15 September 2017, LSC Baker was acquitted on all counts.

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[57] CF, Telephonic correspondence between DSS McIntyre and the Court on 21 September 2015 as recorded in the electronic correspondence of even date from the Court's Principal In-House Solicitor to me.
[58] CF, Revocation of Suppression Order by the State Coroner dated 1 August 2016.

Resumption of the Coronial Investigation

133. After LSC Baker was acquitted in the Supreme Court of Victoria, I resumed my investigation by following up my previous request for The Report by Commander Terry Purton on One-Person Police Patrols. In following up, I specifically referred to the 2013-2014 Report.[59]

134. Having previously determined that this was a workplace death which raised issues of occupational health and safety and, therefore, that this matter would go to a public hearing after the conclusion of the criminal proceedings, I resumed my investigation focusing on matters of public health and safety, in the context of my prevention role in the coronial jurisdiction.

135. On 10 October 2018, the VGSO submitted a Single Officer Police Patrols Report, similar to the one requested. This Report was dated February 2014. The Report included references to numerous other documents which it sought to incorporate by virtue of the relevance of those documents to my inquiry. Amongst these documents were the Victoria Police's Professional Standards Command (PSC) Briefing Notes and the Victoria Police's Critical Incident Management Review (CIMR) which related to the fatal incident.[60]

136. According to the VGSO on behalf of the CCP, following this Report, Victoria Police members have not been permitted to perform primary response duties as a single officer since the year 2015. Ultimately, in the CCP's view, the import of the Report obviated the need for any Recommendations as envisaged by section 67(3) of the *Coroners Act 2008* (Vic) with regard to the impact of single officer patrols on matters of occupational or public health and safety.[61]

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[59] CF,

i. Email to VGSO, on behalf of the CCP.
ii. See also paragraphs 111 *et seq*. The CF reflects records of numerous requests for the same Report, dated 1 May 2014, 30 May 2014, 16 June 2014 and 20 December 2017, amongst others.

[60] CF, Cover Letter of the VGSO. The documents referred to included the following:

i. A document reflecting the CCP's instruction, titled CCI 04/15 Operational Safety Measures;
ii. A second document reflecting the CCP's instruction, titled CCI 08/15 Operational Safety Measures (extension)' and
iii. A third document titled CCI 08/15 Operational Safety Measures- Risk Assessment.

[61] CF, VGSO's Cover Letter to the Report. The letter articulated that 'primary response duties as a single officer' include all duties 'where a first response to incidents is likely or expected, such as general patrolling, public order management, or, relevantly, Highway Patrol'. (sic)

137. In this regard, I considered the Finding of Coroner Parkinson in the *Inquest into the Death of Anthony John Hogarth-Clarke* delivered on 9 June 2010. In this matter the Coroner made a Recommendation to the Victoria Police in respect of single officer patrols. That Recommendation read as follows:[62]

“…that the practice of working one up be abolished in circumstances involving high risk activities such as drink driver, late night and remote area intercepts and that a risk assessment tool be developed to assist supervisors to determine whether one or two up manning is appropriate in other circumstances.”

138. On 23 September 2013, more than three years later and only after the fatal events which led to Vlado’s death, the CCP announced that a commission would investigate the issues surrounding single officer patrols, which became known as the Purton Review and which was submitted for my consideration on 10 October 2018. The evidence therefore indicated that the lapse of time *per se* since the Recommendations in the *Hogarth-Clarke* matter were made and when those Recommendations received any attention, may have had a direct bearing on the fatal events on the night when Vlado was killed.

139. Against this background, I determined that the VGSO’s view that the Report obviated the need for me to focus my investigation on the impact of single officer patrols was misplaced. In my purview, the lack of urgency to respond to the *Hogarth-Clarke* Recommendation, made by my erstwhile colleague, represented an indication that the re-examination of the impact of single officer patrols on occupational as well as on public health and safety issues was pertinent to the circumstances of my investigation. Accordingly, I determined that the content of the Report was relevant to my investigation and the issue relating to single officer patrols would be ventilated at the Inquest.

140. Having established the relevance of the Report to my investigation and, having considered the body of evidence available to me at this stage of my investigation, I directed DSS McIntyre to explore the availability or the existence of any further

[62] *Inquest Finding into the Death of Anthony John Hogarth- Clarke*, *Form 37*, COR 2005.1376.

information on the issue of single officer patrols. To this end, DSS McIntyre filed the following documents for my consideration in the Coronial Brief:[63]

i. A statement from Inspector Stephen Beith of the Prahran Highway Patrol setting out the local policies relating to the Prahran Highway Patrol (PHP) which was established in 2013 when the Port Phillip Traffic Management Unit (TMU) and the Stonnington TMU amalgamated.

ii. The Australian Institute of Criminology Report titled "First-response police officers working in Single Person Patrols: A literature review"; and

iii. A report by the Assistant Commissioner of Police, Robert Hastings, titled "Single Officer Traffic Patrol Review"

141. According to Inspector Beith, before the amalgamation of the TMUs to form the PHP, the Port Phillip TMU had a policy which prohibited single officer patrols on afternoon shifts. The Stonnington TMU's policy, on the other hand, also prohibited single officer patrols but only after midnight, however. Inspector Beith stated further that the policies of these respective TMUs, own to each TMU individually, were devised to address the risks identified after each TMU conducted an environmental risk assessment based on their own geographical area of operation.[64]

142. However, after the amalgamation, the newly formed PHP did not have a policy in place with regard to single officer patrols despite the fact that members were now expected to work across both geographic areas.

143. Inspector Beith identified further that, although a fluorescent vest was available in the vehicle which LSC Baker was driving, that vehicle having been appropriately fitted with the necessary equipment, LSC Baker did not 'wear high visibility or reflecting clothing' as required by the Victoria Police Manual (VPM)- Road Policing 1.2.[65]

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[63] In addition to these documents as listed in this paragraph, I considered the Findings and Recommendations of my erstwhile colleague, Coroner Kim Parkinson, in the *Hogarth-Clarke* matter.

[64] CB, statement of Inspector Stephen Beith.

[65] CB, statements of Inspector Beith and Sergeant James Robbins

i. In this regard, the DVRD does not depict that LSC Baker wore high visibility clothing as required by the VPM.

ii. VPM- Road Policing 1.2 sets out that member must wear high visibility clothing whilst conducting road policing related duties including intercepting vehicles unless otherwise authorised or for an operational imperative.

Family concerns after the recommencement of the coronial investigation

144. Following LSC Baker's acquittal at the criminal trial, Vlado's family sought legal advice.

145. On 21 September 2017, Robinson Gill Lawyers contacted the Court for information on the coronial investigation in order to advise the family further. It was not, however, clear what the family's concerns were at that stage.

146. On 9 October 2017, Ms Gelencir, the *de iure* SNOK in the coronial proceedings filed an Application for Leave to Appear as an Interested Party, *Form 31*, as well as an Application for Access to Coronial Documents, *Form 45*. The reasons for her applications, clearly focused on the criminal investigation, indicated that she was unhappy with the collection and the processing of the forensic evidence adduced at the criminal trial or anything that may have resulted in LSC Baker's acquittal. Ms Gelencir's *Form 31* and *Form 45* Applications indicated that the family was aggrieved and therefore required the coronial documents 'to assist in explaining to the extended family the circumstances of Vlado's death'.[66]

147. In addition to the family concerns as indicated in the *Form 31* and *Form 45* Applications, my attention was drawn to a pending investigation by VPHS after it was identified that relevant information or evidence was not adduced and ventilated in the criminal trial which could possibly have had a bearing on the outcome of the proceedings in that forum.

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iii. According to Sergeant Robbins of the PHP, another exception to wearing high visibility clothing is when members are operating in an unmarked vehicle. However, after alighting from an unmarked vehicle, acceptable practice for members is to conduct a risk assessment in order to make an informed decision as to whether the conditions required a member to wear high visibility clothing.

[66] CF,

i. *Form 31* and *Form 45* signed by Mera Gelencir and dated 25 September 2017.
ii. The CF also contains both a *Form 31* document and a *Form 45* document submitted by Robinson Gill Lawyers on behalf of the family for the coronial documents dated 30 July 2018, including transcripts of LSC Baker's Committal Hearing at the Magistrates' Court as well as copies of his deposition statements.

Briefing Note[67]

148. On 5 November 2017, I received a briefing note from the VPHS, placing me on notice that they believed that crucial information was withheld from the investigators of Operation Rillion—the fatal police shooting of Vlado Micetic.[68]

149. According to the VPHS, their members who were tasked with the criminal investigation, were unaware of certain events or occurrences in the chain of events which unfolded immediately after the shooting, when the police unit, Prahran 251, manned by Sergeant Giles and Constable MacDonald, arrived at the scene. In particular, the investigating members were unaware that Sergeant Giles had ushered a passing vehicle away from the scene. This passing vehicle was clearly visible on the footage recorded by the DVRD mounted in LSC Baker's patrol vehicle.

150. According to the VPHS notice, Constables Tim Cahill and Emily Stewart-Jacks who attended the scene in another vehicle, the St Kilda 310 unit, responding to the call for back-up, stated that Sergeant Giles had 'involvement with a green coloured car'.[69]

151. In the context of Sergeant Giles' evidence at the Committal Hearing, that he left LSC Baker and the deceased to 'coordinate units and the air-wing' without mentioning his interaction with the occupant of the 'green car' indicated to the investigators that this omission of fact and, in the absence of an accurate time of arrival of St Kilda Unit 310, led to the misinformed conclusion or belief that the green vehicle was a passer-by after the fact or that it arrived at the scene only after Sergeant Giles arrived in the Prahran 251 Unit.

152. Similarly, when Constable MacDonald testified at the Committal Hearing, he omitted all details relating to the 'parked green vehicle' at the scene at the time of his arrival with Sergeant Giles. In support of Constable Macdonald's *viva voce* evidence at the

[67] CF, Briefing Note, Operation Rillion (the appellation given to the investigation)—Identification of information regarding witness not previously disclosed to investigators.

[68] CF, The VPHS Briefing Note articulates that the crucial information referred to was in addition to the existing evidence of the Vlado's forensic history and LSC Baker's history of irrational behaviour and ongoing mental health concerns which included a diagnosis of psychosis for which he prescribed medication and for which he was institutionalised.

[69] CF, Briefing Note, Operation Rillion. It is not clear from the Briefing Note how this crucial evidence was not brought to the attention of the investigators or how they discovered that the evidence was withheld from them. The statements and notes of the St Kilda Unit 310 did not contain any explanatory diagrams or sketches.

Committal Hearing, a map of the crime scene was tendered. This map did not indicate the 'presence of a green car'.

153. On 21 August 2017, during the cross-examination of Constables Cahill and Stewart-Jacks at the LSC Baker's trial, the trial court heard evidence, hitherto unknown to the VPHS investigators, about the presence of a 'Green Hyundai' at the scene at the time of the commission of the offence. At the conclusion of the proceedings on that day, Constable Stewart-Jacks remarked that 'Giles should never have let that car go'. The VPHS investigators then decided to interrogate this aspect of the evidence elicited at the session in the criminal trial proceedings when Constables Cahill and Stewart-Jacks testified under cross-examination.

154. On 23 August 2017, when Sergeant Giles was confronted about his omissions with respect to his observations of the 'parked green car' and his interaction with its occupant when he was out of the DVRD's range of view, only then did he divulge his true actions on that day *vis-a-vis* the green vehicle and its occupant.[70]

155. According to the VPHS investigators, this information was withheld in Sergeant Giles' 'original on scene briefing, notes, statement at the committal of Baker and evidence given at trial'. (sic)

156. The following information represents a synopsis of Sergeant Giles' response to the VPHS investigators when he was confronted:

    i. Initially, he questioned the source of the information and when prompted to divulge his recollection about the 'small green car', Sergeant Giles responded that the vehicle was 'stationary at the lights' and when he approached the vehicle, the driver complained that his 'car's been shot'. After a cursory inspection of the vehicle for visible signs of damage, Sergeant Giles then dismissed the complaint and excused the driver from the scene using expletive language;

    ii. According to Sergeant Giles, he dismissed the complaint and did not inform the VPHS investigators about his interaction with the driver because he thought that the driver's claim that the vehicle had been damaged by gunfire was unfounded.

[70] CF, Briefing Note. Sergeant Giles was confronted by VPHS members tasked with the criminal investigation.

I noted that, in Sergeant Giles' explanation of his observations in respect of the 'small green car' to the VPHS investigators, he again used expletive language to articulate his observations.

157. Having ascertained the veracity of the line of cross-examination of Constables Cahill and Stewart-Jacks by confronting Sergeant Giles with this information, the VPHS investigators, on the advice of the prosecutor, sought a supplementary statement from Sergeant Giles.

158. On 24 August 2017, Sergeant Giles delivered his supplementary statement and when he was recalled to testify before the presiding judge, Justice Beale of the Supreme Court of Victoria, he confirmed that he failed to disclose the existence of the 'green coloured car' as well as his interaction with the driver. According to the VPHS investigators, Sergeant Giles' evidence when recalled to testify was 'evasive' and did not offer any detail which could assist the investigators to identify that witness. LSC Baker's defence counsel did not press the issue and did not elect to take the issue further.

159. At this juncture, to place Sergeant Giles' supplementary statement in context, I reviewed the evidence contained in his initial statement in conjunction with the statements of LSC Baker and Constable MacDonald. Of note, neither LSC Baker nor Constable MacDonald mentioned anything in their statements about the 'green Hyundai'.

160. Placing this new evidence in the context of the body of evidence yielded by my investigation to this point, I formed the opinion that the weight of the available evidence indicated that the 'green Hyundai' was, in fact, that vehicle seen passing by at the time when the fatal incident occurred, as depicted in the DRVD footage. Consequently, in my view, the possibility existed that the evidence of the driver of that vehicle may shed light on my investigation, given that the witness claimed that his vehicle was struck by a projectile at the time of the fatal incident. As such and in the context of my coronial investigation, I determined that this specific witness' evidence, could have contributed to the probative value of the evidence already contained in the Coronial Brief.

161. Having considered the impact that the tainted evidence of Sergeant Giles may have had on the outcome of criminal trial which, in turn, led the family to raise their concerns in

my jurisdiction in their quest for closure or 'to assist in explaining to the extended family the circumstances of Vlado's death', I reaffirmed my resolve to refer this matter to a public hearing, inquiring into the death of Vlado Micetic. Moreover, despite LSC Baker's acquittal in the Supreme Court of Victoria, I resolved to address issues related to public health and safety as well as issues related to occupational health and safety, as Vlado's death occurred in LSC Baker's workplace.

162. Consequently, taking into account that the advanced stage of my investigation as well as the evidence contained in the Coronial Brief, I determined that a hearing could be imminent, and I therefore listed the matter for a Directions Hearing in order to propose the scope of my Inquest into Vlado's death to the interested parties.

163. Prior to the Directions Hearing, I circulated a proposal for the scope of my Inquest as follows:

Issues arising from the period immediately preceding the death

i. The appropriateness of allocating mobile traffic patrol unit duties in the St Kilda area on the evening of 25 August 2013 to a single patrol officer;

ii. Whether LSC Baker was fit for his assigned duties on 25 August 2013 and, in particular, at the time he intercepted Vlado Micetic;

Events on 25 August 2013

iii. The immediate circumstances leading to the death of Vlado Micetic on 25 August 2013 from gunshot injuries received in Union Street, Windsor;

iv. Whether LSC Baker's use of force against Vlado Micetic was-

    a) Consistent with the relevant Victoria Police policies, practices and training; and

    b) Otherwise reasonable in the circumstances.

Issues arising in the aftermath of the death

v. The appropriateness of Assiatant Commissioner Luke Cornelius' statements to the media following the shooting of Vlado Micetic on 25 August 2013;

vi. The manner in which evidence was obtained from LSC Baker, including

a) The mode in which the evidence was secured from LSC Baker-- a written statement rather than an alternative method such as a video recording;

b) My granting LSC Baker access to the CCTV footage for the purposes of preparing his statement; and

c) The length of time LSC had taken before he provided the statement which I requested.

vii. The appropriateness of my own access to information from the Victoria Police Force Psychology Unit following that Unit's consultation with LSC Baker after the fatal incident.

Further Directions Hearings

Directions Hearing of 9 November 2018

164. At this Directions Hearing, Ms Rachel Ellyard appeared as my Counsel Assisting and further appearances were as follows:

i. Mr Ronald Gipp appeared on behalf of the CCP;

ii. Mr Anthony Lewis appeared on behalf of LSC Baker; and

iii. Mrs Mary Anne Hartley QC appeared on behalf of Vlado's family.

165. Having reviewed the Coronial Brief and having considered the sensitive nature of the material contained therein, I determined that I would not release the Coronial Brief to the interested parties before convening this Directions Hearing. I adopted this stratagem specifically so that I could place the necessary restrictions on the release of the material in the Coronial Brief at a public hearing.[71]

166. However, conscious that the Coronial Brief had not been made available to the interested parties prior to the Directions Hearing, I caused an index of the content of the Coronial Brief to be circulated instead, in order to create an awareness of the issues involved in the matter and similarly, to lay a basis for my proposed scope.

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[71] Transcript of Directions Hearing dated 9 November 2018, pages 6-7.

i. The sensitive material referred to related to Vlado's health and forensic history as well as to LSC Baker's mental health concerns, amongst others.

ii. In addition, I specifically excluded the Report received from the Victoria Police on Single Officer Patrols dated 10 October 2018 from the Coronial Brief released to the interested parties.

167. At the Directions Hearing I directed that the Coronial Brief, in its present form excluding *Victoria Police Review of Single Officer Patrols*, the Purton Report, be released to the interested parties. In addition to this exclusion, I restricted the dissemination of all, or any material contained therein. I then invited the interested parties to review the material so that they would be in a better position at the next Directions Hearing to make informed submissions on the proposed scope of my Inquest into the death.

168. Mr Lewis then took the opportunity to indicate that he had submissions to make on my proposed scope but that, guided by my decision to release the Coronial Brief to allow counsel to make informed submissions, he would reserve his submissions until the next Directions Hearing to enable all interested parties to respond. Mr Lewis then raised a further aspect-- that if LSC Baker is called to testify at the Inquest he was instructed to move an application to excuse him from doing so. According to Mr Lewis, LSC Baker sought to be excused from testifying on medical grounds. Mr Lewis then proposed to raise his objection in this regard at the point in the Inquest proceedings when LSC Baker is called to testify.

169. After the Directions Hearing, Detective Senior Sergeant (DSS) Paul Scarlett of the Professional Standards Command (PSC) of the Victoria Police brought to my attention that, following the review of his conduct at the time of the fatal incident, the PSC had launched an investigation into Sergeant Giles' conduct. I was informed further that a report detailing all the evidence along with the recommendations of the Discipline Advisory Unit (DAU) of the Victoria Police was forwarded to the Assistant Commissioner of Police (ACP) at the PSC to consider appropriate action.[72]

170. According to DSS Scarlett, on 19 November 2018, he was informed that the ACP had reviewed the file and the recommendations of the DAU and had resolved to close the file after Sergeant Giles was 'issued Workplace Guidance concerning his actions on the night'.[73]

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[72] CF, Email from DSS Paul Scarlett to the Court dated 29 November 2018. It is not clear what the report to the PSC contained, nor what recommendations were made to the ACP of the PSC.
[73] CF, it is not clear what the 'Workplace guidance' procedure entailed.

Directions Hearing of 14 February 2019

171. At this Directions Hearing, the appearances were the same as at the previous hearing except for Ms Viola Katokas who appeared with Mrs Hartley for Vlado's family and Mr Hargreaves for LSC Baker.

172. At this Directions Hearing the parties confirmed receipt of the Coronial Brief and further that they have considered my proposed scope. I then canvassed the idea with the parties that the Coronial Brief may need to be revised for the following reasons:

   i. As a result of the revelation that the evidence in the criminal trial was tainted, I would exhaust all available avenues to locate the witness in the 'green car' as his evidence was material to my investigation. I informed the parties that I intended to use the Court's media liaison officer as a resource in an attempt to identify the witness with a view to securing that witness' evidence at the Inquest;

   ii. I intended to secure expert evidence on the pharmacological effects of LSC Baker's prescription medication on his thoughts, mood, actions and his general fitness for duty on the day of the fatal incident;

   iii. I also intended to secure further expert evidence of a behavioural nature in the setting of occupational health and safety. To this end, I sought first to identify behaviours, if possible, that may or may not indicate that someone is at risk of engaging in a pattern of conduct averse to standing safe practices in a high-risk workplace environment like the Victoria Police. Secondly, I sought to identify whether LSC Baker's pattern of behaviour while on duty was appropriately monitored and managed in the circumstances given his history of mental health concerns whilst in service with the Victoria Police; and

   iv. I informed the parties that I intended to include those sections of the Purton Report, insofar as it related to the broader analysis of single officer patrols, in the revised Coronial Brief for distribution. In this regard, Mr Gipp was invited to obtain a statement from the CCP, elucidating the Victoria Police's progress in implementing the recommendations made in the Report or the Victoria

Police's policies in respect of single officer patrols adopted since the Report was released.[74]

173. A proposed list of witnesses to be called at the Inquest was also circulated to the parties. Among these, was LSC Baker.

174. Mrs Hartley and Mr Hargreaves then submitted that the medical records of their clients were irrelevant to the proceedings, in part, and that I should consider an order to redact the records accordingly. I invited the parties to discuss this issue in consultation with Ms Ellyard, Counsel Assisting, and to revert with a resolution, reached by mutual agreement, at the next Directions Hearing.

175. When Mr Hargreaves revisited Mr Lewis' intimation to the Court at the previous Directions Hearing, that 'there will be an application to have Mr Baker excused from giving evidence', I referred him to my previous Direction that his client would have to move a substantive application, following the formal process, to enable me to rule on the merits of his proposed application.

176. After Mr Hargreaves raised his concerns that my proposed scope may amount to a duplication of LSC Baker's criminal trial and that I should therefore curtail the scope to exclude what 'is effectively a retrial of whether Mr Baker was acting in lawful self-defence', I reiterated my role in the coronial jurisdiction and that my proposed scope, though it may include evidentiary material already ventilated in the criminal trial, was aligned to my prevention role with the focus on matters of public health and safety.[75]

<u>Directions Hearing of 16 May 2019</u>

177. At this Directions Hearing, Mr Lewis appeared for LSC Baker and Ms Katotas for Vlado's family. All other appearances were as in the previous Directions Hearing.

178. Ms Ellyard indicated that the media release authorised at the previous Directions Hearing to identify the witness in the 'green car' has attracted some attention, but that the process remained ongoing to increase the possibility of a positive response.

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[74] Transcript of the Directions Hearing of 14 February 2019, page 11

[75] Ibid, page 14. I reminded Mr Hargreaves of his right to raise an objection at any stage during the Inquest proceedings if he took the view that any question or line of questioning would be unfairly prejudicial, unjust or inequitable to his client.

179. I was informed further that counsel for the CCP proposed to move an application for a Suppression Order in relation to evidence about matters of police methodology, proposed to be led at the Inquest. However, the CCP was still in the process of preparing the statement which I resolved to include in the Coronial Brief at my previous sitting.

180. With regard to the process of securing expert evidence from a pharmacologist and psychiatrist, Ms Ellyard informed me that that process was yet to be finalised, but that further evidence was obtained from LSC Baker's treating psychiatrist and was included in the Coronial Brief and circulated to the parties. In addition, my investigator secured statements of two other police officers present at the scene of the fatal incident on the night in question.[76]

181. Counsel for LSC Baker, Mr Lewis and Counsel for Vlado's family, Ms Katotas, indicated that their discussions with regard to the exclusion of their clients' medical histories were ongoing and that submissions for my consideration would be forthcoming. At this juncture, I reminded the parties that in the normal course of a coronial inquiry, medical records, particularly those of the deceased, are relevant and that it was my duty as the investigating coroner to determine the probative value of that evidence in the context of my investigation and the evidence as a whole. I reminded the parties further that any objections to evidence would be properly raised when such evidence is adduced rather than as a point *in limine* at the Directions Hearing.[77]

182. Mr Lewis then informed the Court that he intended to raise an exception to the third and fourth points of my proposed scope. Consequently, he submitted that CCP should refrain from including certain information in the statement I requested until after, he has had an opportunity to be heard and after I ruled on his exception pertaining to the Scope of the Inquest.[78]

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[76] Transcript of Directions Hearing of 16 May 2019, pages 2-3.
   i. Dr Keryn Fitzpatrick was identified as LSC Baker's treating psychiatrist.
   ii. SC Faulkner and SS Hope were identified as the additional police officers.

[77] CF, Letter from Mrs Hartley, for Vlado's family, dated 7 May 2019.

[78] Ibid, pages 14-15.
   i. In order to guide the CCP in providing the statement, I posed certain questions which were aimed at isolating only that information necessary for my investigation. That list of questions was circulated to

183. Having set a time limit within which the CCP was asked to deliver that statement and, guided by the protracted nature of the proceedings to this point and the fact that the parties had already agreed upon the date on which the Inquest would proceed, I expressed my reluctance to accede to Mr Lewis' submission that the CCP should refrain from including certain information in the statement which I requested. Instead, I resolved that the CCP proceed with drafting the statement as requested which statement could be redacted, if necessary, and in that way, it could be reconciled with any ruling I may make with regard to the Scope of the Inquest.

184. When Mr Lewis again brought his intention to move an application to excuse LSC Baker from testifying at the Inquest, I reiterated my view that his application could only be properly considered as and when LSC Baker is called to testify.

185. Concluding the Directions Hearing, I adjourned the proceedings *sine die* on the understanding that the parties would reach consensus on a suitable date for a further Directions Hearing taking into account the agreed date, 21 October 2019, on which the Inquest would open. I then undertook to list the matter for a further Directions Hearing to consider the submissions and to hear argument on the Scope of the Inquest. Mr Lewis undertook to file his written submissions within a two-week period.

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the parties and brought to their attention. Mr Lewis submitted that the CCP should not respond to questions 5, 6 and 7 in their statement until such time as I ruled on his objection.

ii. CF, Mr Hargreaves brought the gravamen of Mr Lewis submissions to my attention in a letter to the Court dated 13 May 2019. In summary, Mr Hargreaves' letter outlined following:
    a) Points 3 and 4 of my proposed scope should be excluded on the basis that the issues had been exhaustively traversed at LSC Baker's criminal trial;
    b) That the summary of evidence contained in my Coronial Brief lacks objectivity and that my coroner's investigator is argumentative insofar as his summary contains allegations that have been rejected by the jury in the criminal trial. Accordingly, these portions of the summary and the Coronial Brief should be redacted.
    c) That the submissions made by counsel for Vlado's family, in their letter to the Court dated 7 May 2019, in support of their view that certain portions of Vlado's medical history should be redacted, are unfounded on the basis that those medical records will then 'not adequately represent the history of Mr Micetic's mental illness'. In order to fully appreciate the effect of Vlado's mental illness in relation to the events of the fatal shooting, the Coronial Brief should include the full complement of Vlado's medical history from the year 2002 to the date of the incident.
    d) Only limited medical records relating to LSC Baker are relevant to my Inquest which should remain confidential and made available only to the lawyers for interested parties.

Written submissions[79]

186. On 31 May 2019, I received written submissions from Mr Lewis under cover of a letter from Mr Hargreaves which sought to elucidate LSC Baker's reasons for objecting to aspects of my proposed Scope of the Inquest. Mr Lewis' document itself was dated 30 May 2019.

187. In replication, on 21 June 2019, I received written submissions from Mrs Hartley, on behalf of Vlado's family and from Ms Ellyard, Counsel Assisting. Mr Gipp did not file written submissions on behalf of the CCP with regard to the Scope of the Inquest but, instead, he elected to make oral submissions at the next Directions Hearing in relation to the collateral issue, the statement sought from the CCP, the content of which was guided by questions posed to the CCP which I had sanctioned as they were relevant to my investigation. Consequently, by mutual agreement, the matter was listed for a further Directions Hearing.

Directions Hearing of 8 July 2019

188. At this Directions Hearing Mrs Hartley appeared for Vlado's family. All other appearances were the same as in the previous Directions Hearing.

189. At this Directions Hearing I heard oral submissions on the Scope of the Inquest. These oral submissions elaborated upon the written submissions which were filed previously. Having heard oral argument on the Scope of the Inquest and, given the complexity of the submissions made, I reserved my Ruling.

190. Mr Gipp then addressed the Court on the collateral issue. Mr Gipp brought to my attention that logistical delays hampered the finalisation of the statement and requested an extension for the submission of the statement. Mr Gipp confirmed that some aspects of the statement had been completed like those aspects relating LSC Baker's mental health concerns, but that his client was still in the process applying their mind before responding to my list of questions, particularly those related to policies and procedures

[79] CF, Submissions on the Scope of the Inquest. The gravamen of the submissions received is contained in my Ruling on the Scope of the Inquest dated 18 August 2019.

and their 'expressing opinions about any other of the actual circumstances of this case'.[80]

191. Having considered Mr Gipp's request, I granted an extension for the preparation and submission of the statement.[81]

192. Mr Gipp then addressed a further aspect of my investigation on which the CCP was asked to comment, that being my interrogation of the reasons for LSC Baker's solo patrol despite the 2010 Recommendation in the *Hogarth-Clarke* matter. According to Mr Gipp, following that matter, Victoria Police had focused on changing their policy as borne out by the Purton Report and Appendix K to the Purton Report which appears to be a report by Superintendent Hermans, drafted along similar lines as the Purton Report. These documents, according to Mr Gipp, resulted in Victoria Police changing their policy with regard to single officer patrols and therefore, the CCP had nothing further to add.

193. In relation to my question on the work instructions of the PHP, whether the members followed the Stonnington TMU's instructions or the Port Phillip TMU's instructions with regard to their operating hours, Mr Gipp submitted that the Coronial Brief as per the statement of Inspector Beith, offered little by way of explanation other than to say that LSC Baker started his shift at 4 pm on 25 August 2013 and would therefore finish his shift at midnight, in line with the standing eight-hour long shifts. Mr Gipp submitted that in the absence of anything to the contrary in the Coronial Brief like a roster, his client would be unable to answer the question I posed because the work instructions are issued by the local police stations and not the CCP. As such, the CCP could not comment on work instructions to LSC Baker at the time of the incident because these work instructions did not form part of the Victoria Police Policy Manual.[82]

194. Then, in relation to my question about whether and how the Victoria Police assessed LSC Baker's fitness for duty, Mr Gipp submitted that the Victoria Police's Psychology Unit did not have any involvement in that assessment. However, that assessment was

[80] Transcript of the Directions Hearing of 8 July 2019, page 29.
[81] Ibid, page 30.
[82] Transcript of Directions Hearing of 8 July 2019, pages 29 to 35.

conducted by the Victoria Police's Medical Officer. In this regard, other than the assessment by Medical Officer, Dr McKenna who, having changed LSC Baker's medication in May 2012, certified that he could 'go back to full operational duties', there is no independent evidence. Consequently, the CCP was not in a position to answer my question. Mr Gipp submitted further that, for my purposes, the statements of Medical Officers, Drs McKenna and Blaher on LSC Baker's fitness for duty sufficed and that I should explore their processes and rationale in coming to the conclusions they did when they are called to testify at the Inquest.[83]

195. At the conclusion of the Directions Hearing, Ms Ellyard indicated that the witness list for the Inquest was yet to be finalised and identified that certain expert witness(es) would possibly be included. Ms Ellyard indicated further that the Purton Report had been redacted in line with discussions *inter partes* and would be distributed and included in the Coronial Brief in due course.

196. Ms Ellyard also informed me that the media reports and recordings of interviews offered to the media by LSC Baker after his acquittal would be filed in the Coronial Brief as it may contain information which may assist the Court in exercising discretion on whether or not to excuse LSC Baker from giving evidence when he is called to testify at the Inquest.

197. Further evidence under consideration for inclusion in the Coronial Brief was a toxicology report on the effects of LSC Baker's medication or his delay in taking his medication on his behaviour. This report, however, would only be obtained subject to the receipt of the CCP statement and the information contained therein. It was anticipated that, following on the questions posed to the CCP, the statement would refer to LSC Baker's prescribed medication when he was assessed as fit for duty.

198. As at the date of this Directions Hearing, the media appeal for the witness in the 'green car' was ongoing and Ms Ellyard raised the possibility of that witness' evidence being included in the Coronial Brief, if the media release yielded a positive result.

199. A revised summary of evidence had been prepared by the Coroner's Investigator which was circulated and included in the Coronial Brief.

[83] Ibid, page 33.

200. Before I adjourned the proceedings, the parties were in agreement that, pending my handing down the Ruling on the Scope of the Inquest, a further Directions Hearing should only be convened as and when a contingency arose which could impede the commencement of the Inquest itself.

Ruling on the Scope of the Inquest

201. Having considered the submissions on my proposed Scope of the Inquest, on 19 August 2019, I ruled that the matters set out in paragraphs three and four of my proposed scope, is retained as I considered the matters raised in those paragraphs relevant and appropriate in the circumstances and having considered the available evidence at this juncture, I came to the conclusion that inquiring into those matters would assist me in discharging my duties under the Act.[84]

202. As previously agreed upon *inter partes*, the Inquest Hearing was set down to open on 21 October 2019.

203. On 18 October 2019, Mr Hargreaves filed medical reports from Drs Lester Walton and Keryn Fitzpatrick on behalf of LSC Baker. According to Mr Hargreaves he was 'requested to file' the 'medical reports of the expert witnesses' who LSC Baker's legal team proposed to call at the Inquest.[85]

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[84] CF, Ruling on Application Regarding The Scope of the Inquest. My Ruling, handed down to the interested parties, was delivered fully annotated with the reasons for my inclusion of the points against which LSC Baker raised his exception. I do not propose to revisit those reasons in my Finding on the merits of the matter as it forms part of the Court record.

[85] CF, Email correspondence to the Court from Mr Hargreaves dated 18 October 2019.

i. Dr Lester Walton was LSC Baker's Consultant Psychiatrist who provided written reports on LSC Baker's mental health concerns as well as on his 'fitness to give evidence' having consulted with him on the following dates:
   a) 17 December 2014;
   b) 13 October 2015;
   c) 29 January 2019; and
   d) 1 October 2019

ii. Dr Keryn Fitzpatrick was another Consultant Psychiatrist who provided written reports on LSC Baker's mental health concerns and his 'fitness to give evidence'. LSC Baker consulted Dr Fitzpatrick on the following dates:
   a) 29 October 2014;
   b) Undated document, relayed by facsimile dated 8 October 2015;
   c) 8 October 2015;
   d) 29 January 2017;
   e) 25 October 2018; and
   f) 15 October 2019.

THE INQUEST

204. Having considered the body of evidence available at this juncture, I indicated to the parties that I intended to hear the evidence of the following witnesses at the Inquest to complement my investigation:

- Leading Senior Constable Timothy Baker;
- Sergeant Rodney Giles;
- Constable Eric Macdonald;
- Detective Senior Constable Jarrod Dwyer;
- Inspector Stephen Beith;
- Sergeant Michael Free
- Dr Ann McKenna;
- Dr Alexandra West;
- Dr Foti Blaher;
- Sergeant Jason Fotis;
- Sergeant Lisa Bullock;
- Detective Sergeant Allan Brown;
- Assistant Commissioner of Police, Luke Cornelius;
- Detective Senior Sergeant Stephen McIntyre;
- Dr Keryn Fitzgerald;
- Chief Commissioner of Police;
- Expert witness (on fitness for duty and toxicology);
- Senior Sergeant Robert Hope; and
- Senior Constable Andrew Faulkner

<u>Issues raised prior to opening the Inquest</u>

205. On 21 October 2019, the date on which the Inquest was set down to commence, Ms Ellyard informed the Court that two interrelated applications were pending following

the submission by Mr Hargreaves of the medical reports which dealt with LSC Baker's fitness to testify.

206. In the first instance, LSC Baker sought to be excused as a witness at the Inquest. In this regard, Ms Ellyard informed the Court, in opening, that Mr Lewis sought to lead the evidence of Dr Fitzpatrick in support of LSC Baker's Application to be Excused as a Witness.

207. Secondly, emanating from the medical reports circulated by Mr Hargreaves on 18 October 2019, Mrs Hartley on behalf of Vlado's family, sought an adjournment of the Inquest proceedings so that she could peruse the medical reports filed on behalf of LSC Baker as the reports were not only voluminous, but also historical in nature rather than having been recently compiled. As such, Vlado's family sought an indulgence to garner further evidence by way of an independent expert opinion on the medical reports for my consideration during LSC Baker's application to be excused from testifying at the Inquest. Ultimately, Mrs Hartley sought an opportunity to rebut the evidence contained in the medical reports submitted by LSC Baker.[86]

208. As foreshadowed by the medical reports filed on 18 October 2019, Mr Lewis indicated his intention to move an application to excuse LSC Baker from testifying at the Inquest. However, objecting to Mrs Hartley's application to postpone the proceedings, Mr Lewis informed the Court that Dr Fitzpatrick will be available 'some time in this two-week period' and Mrs Hartley would then be in a position to 'ask questions' about LSC Baker's 'medication regimes and the like' and further, in support of his objection, he submitted that Mrs Hartley could address the matters she sought to elucidate by obtaining her own expert report by posing an appropriate line of questions to Dr Fitzpatrick when her evidence is adduced during the application to excuse LSC Baker.[87]

209. Acknowledging that the family's legitimate purpose, served by Mrs Hartley's application for a postponement, if granted, would afford them natural justice, I was mindful of the impact that a postponement may have on LSC Baker's deteriorating mental health, having heard Mr Lewis on that point. In balancing these competing

[86] Transcript of proceedings of 21 October 2019, pages 4-9.

[87] Ibid, page 22.

interests, the benefit to the family of an opportunity to garner further evidence and the ostensible harm that may be caused to LSC Baker by a further delay, I resolved to accommodate Mrs Hartley's application by rearranging the order in which I receive the evidence, starting with the evidence of Inspector Beith and Acting Senior Sergeant Bullock who were available to testify on the day. Accordingly, I dismissed Mrs Hartley's application to postpone the Inquest.[88]

210. After Ms Ellyard delivered her Opening Address, during which a synchronised version of the audio-visual footage previously viewed by LSC Baker before he provided his statement and which footage was made available to all interested parties after the mandatory Directions Hearing, was tendered and received into evidence, of my own volition, I canvassed the issue of suppressing the dissemination of that material into the public domain with Mr Gipp for the CCP.[89] Anticipating a request for the release of the footage from the media, I then invited submissions from the bar table or other interested parties in this regard, mindful that my Suppression Order of 23 September 2013 in relation to the same evidential material was subsequently revoked by the State Coroner on 1 August 2016 as a consequence of LSC Baker's Committal Hearing proceedings. Mr Gipp then raised further issues which related to evidence to be heard at the Inquest, the content of which he considered worthy of inclusion in any pending Suppression Order.[90]

211. Having ascertained that the interested parties at the bar table did not raise any objections to my own motion proposing the suppression of the content of the synchronised audio-visual material and Mr Gipps' further proposition, I extended the same courtesy to members of the public gallery, cognisant that media representatives were present in the Courtroom.

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[88] Ibid,

i. Page 27;
ii. Page 90. Just before adjourning the day's proceedings, Mr Lewis informed me that LSC Baker's mental health had deteriorated to such an extent that his admission to a facility for mental health management was imminent.

[89] Exhibit 1

[90] Transcript of 21 October 2019, page 53-54. Mr Gipp specifically sought an order to suppress information relating to Victoria Police operational policies and procedures. The Court noted a *Form 46* Application for a Suppression Order received from the CCP, dated 15 May 2019 in relation to the evidence referred to by Mr Gipp.

212. Mr Cameron Baud, a news reporter at Channel 7 News, then informed me that he had applied for access to the audio-visual material on behalf of Channel 7 News. Although, Mr Baud's application had not been brought to my attention, other than his intimation in Court, I informed him and the interested parties that, in the absence of any reasonable objections, I intended to make the audio-visual material available to the media for dissemination to the public. My Ruling in this regard was stayed until I could fully consider the merits of Mr Gipp's application for a Suppression Order, however.

213. The first witness called at the Inquest was Inspector Stephen Beith, the officer in charge of the PHP at the time of the fatal incident. His statement was read into the record and tendered as an exhibit.[91] In summary, Inspector Beith's evidence informed me that single officer police controls continued despite the Recommendation to desist from that practice in the *Hogarth- Clarke* matter and further, that conflicting policies existed at the time of the incident amongst respective police units operating single officer police patrols.[92]

214. Inspector Beith's evidence was followed by the evidence of Sergeant Lisa Bullock who, at the time of the incident, was an Acting Senior Sergeant at the Victoria Police's Centre for Operational Safety (COS) involved in officer training. After her statement was read into the record and tendered, I received it into evidence. Sergeant Bullock's evidence encapsulated Victoria Police's policy that members of the force were required to undergo accreditation in relation to their handling of firearms bi-annually. In her position stationed at the COS at the time, her duties included conducting members' assessments. In this capacity, Sergeant Bullock explained under what circumstances LSC Baker 'was given some remedial instruction' after he failed his OSTT assessment.[93]

215. Having heard the evidence of these witnesses, I adjourned the proceedings in anticipation of the updated notes on the reports from Drs Walton and Fitzpatrick in respect of LSC Baker, in particular I wanted to be apprised of the length of time they

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[91] Exhibit 2.

[92] Transcript of 21 October 2019, pages 59 to 67 and pages 80 to 83.

[93] Exhibit 3. According to Sergeant Bullock, whether or not an individual member was allowed to engage in operational duties after failing an OSTT assessment is a subjective enquiry. Sergeant Bullock was not cross-examined by any of the other parties.

anticipated that LSC Baker's would be incapacitated for or when they anticipated that he would be well enough to attend the proceedings. Mr Lewis undertook to discuss the situation with Mr Hargreaves, his instructing solicitor, and revert before the next sitting, 24 October 2019.

216. On 22 October 2019, having considered the merits of Mr Gipp's Application for a Suppression Order brought before me at the opening of the Inquest proceedings, I granted the order in the public interest after no objections were raised. The Suppression Order was in respect of pages 772 and 773 of the Coronial Brief which related to the statement of Sergeant Jason Photis whose *viva voce* evidence was anticipated at the Inquest.[94]

217. On 24 October 2019, Mr Lewis moved the application to excuse LSC Baker from testifying at the Inquest. Mrs Hartley, for the family, opposed the application. In support of his application, Mr Lewis led the evidence of Dr Keryn Fitzpatrick, LSC Baker's treating psychiatrist. Dr Fitzpatrick was duly cross-examined by Ms Ellyard and Mrs Hartley. Mr Gipp, however, did not have any questions by way of cross-examination. Mr Lewis then took the opportunity to re-examine his witness.

218. In summary, Dr Fitzpatrick testified that LSC Baker's mental health had deteriorated to such an extent that the current Inquest proceedings represented a real risk of self-harm to him. She opined further that even if the proceedings were postponed accommodating LSC Baker until his current mental health condition improved, he would suffer deterioration of his mental health every time he received a summons to give evidence and, as a result, giving his evidence via an alternative means like video link would not abate the risk to his mental health. Dr Fitzpatrick conceded, however, that she had not explored the range of options available to vulnerable witnesses to enable them to testify and further that her opinion was not informed by any available empirical data on the

[94] CF,

i. Suppression Order dated 22 October 2019.
ii. Superintendent Seiz was sufficiently qualified to include the evidence of Sergeant Photis in his own evidence. I was satisfied that his knowledge and areas of expertise sufficed to include the evidence that Sergeant Photis would contribute to the Inquest. Consequently, Sergeant Photis was not called to testify at the Inquest.

issue, nor had she undertaken any research before she expressed her opinion in this regard.[95]

219. At the conclusion of the day's proceedings, the matter was adjourned for oral submissions on LSC Baker's application. Pending my ruling on this application, I then considered the risk of prejudice, actual or potential, posed to any of the parties or the Inquest itself by the dissemination into the public domain of the evidence led in support of LSC Baker's application to be excused from giving evidence. In my view, given the sensitive nature of the evidence, its publication would not be in the public interest. Consequently, I issued and Interim Suppression Order in this regard.[96]

220. On 25 October 2019, I heard oral submissions from all the parties on LSC Baker's application.

221. When Mrs Hartley raised her intention, on behalf of the family, to move a substantive application to obtain further expert evidence to oppose LSC Baker's application to be excused from testifying at the Inquest, I indicated that, on the evidence available to me at the time, I had considered adopting a bifurcated approach to LSC Baker's application. Firstly, I proposed to consider his application based on his mental health concerns during the current listing of the Inquest and secondly, whether I was satisfied, on the weight of the available evidence adduced during his application, that he could be excused in perpetuity from testifying at the Inquest.[97]

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[95] Transcripts dated 24 and 25 October 2019. During the course of the proceedings on 24 and 25 October 2019, the following Exhibits were tendered and received into evidence:

i. Exhibit 4- Reports of Dr Keryn Fitzpatrick dated 29 October 2014, 8 October 2015, 25 January 2017, 25 October 2018, 15 October 2019 and 22 October 2019;
ii. Exhibit 5- Medico Legal Reports of Dr Lester Walton dated 17 December 2014, 13 October 2015, 19 January 2019 and 1 October 2019;
iii. Exhibit 6- Inquest Brief, Notes of Dr Keryn Fitzpatrick pages 8480,8474,8473,8471,8472 and 8464;
iv. Exhibit 7- Video recording of extract of radio station, 3AW, interview of Timothy Baker by John Sylvester dated 25 July 2018;
v. Exhibit 8- Inquest Brief, Notes of Dr Kern Fitzpatrick pages 8326, 8444 and 8311;
vi. Exhibit 9- Inquest Brief, Letter from Dr Teh to Dr Fitzpatrick- page 7420; and
vii. Exhibit 10- Inquest Brief, Letter from Ellisa Jackson to Dr Teh- pages 7421 to 7423.
viii. Exhibit 11- Inquest Brief, Referral from Victoria Police to PMO dated 13 April 2012, pages 716-720.
ix. Exhibit 12- Complaint/Incident/Issue Form to ESD regarding an incident on 9 December 2012.
x. Exhibit 13- Inquest Brief, Dr Keryn Fitzpatrick complete notes, pages 6875-7046 and 8048-8688.

[96] CF, Interim Suppression Order dated 24 October 2019.

[97] Transcript of 25 October 2019, pages 240 *et seq*

222. Accordingly, having heard the submissions of the parties on LSC Baker's application and acknowledging his prevailing mental health concerns, I ruled that the evidence adduced at his application was insufficient to enable me to discharge my duties under the Act.[98] Consequently, I adjourned the Inquest *sine die* to obtain an independent expert opinion to explore the possibility of an alternative means by which LSC Baker could testify having regard to his history of mental ill health and his difficulties, real or perceived, in attending Court proceedings.[99]

Further Directions in respect of my proposed independent expert opinion

223. After I adjourned the Inquest, I reconsidered my proposition to obtain an independent expert opinion taking into account the extent to which a report of that nature may or may not assist me in discharging my duties under the Act. Recognising the possibility that obtaining a report, as I initially proposed, may not enhance the probative value of the available evidence and therefore not advance my investigation, on 10 December 2019, I put the following propositions to LSC Baker's legal representatives instead:[100]

    i. Recognising that LSC Baker could be considered to fall within the definition of a vulnerable witness if he was called to give evidence, I adopted the principles of a Ground Rules Hearing to give LSC Baker an opportunity to give his best evidence. To this end, I indicated my intention to control the manner in which his evidence is led by confining his interrogator at the Inquest to my Counsel Assisting, should he present to testify;[101]

    ii. LSC Baker would, if called to testify, give his evidence from outside the courtroom by closed-circuit television;

[98] Section 55 of the *Coroner's Act 2008* (Vic)

[99] *Ex Tempore* Ruling on Application to excuse Mr Timothy Baker from giving evidence, dated 25 October 2019. By agreement, the current listing was adjourned to a date to be fixed.

[100] CF, Correspondence from the Court to Mr Hargreaves dated 10 December 2019.

i. This communique constituted a Direction to all the interested parties.

ii. The matter was initially relisted for 15-17 April 2020 to hear further evidence on LSC Baker's application to be permanently excused from testifying. Contingency arrangements had to be made, however, in line with the State Coroner's Practice Direction 1 of 2020, issued in response to COVID-19 public health restrictions adopted by the State Government.

[101] A Ground Rules Hearing is an extra-curial or pre-trial process involving all parties and the judicial officer to address a number of issues including manner and content of cross-examination. It aims to bring to the attention of lawyers and judicial officers alike, the capacity and communication needs of vulnerable witnesses. In my view, because of his diagnosed and/or documented mental health concerns, LSC Baker was a vulnerable witness or could be perceived to be a vulnerable witness in the circumstances.

iii. Providing LSC Baker with a suitably qualified person to provide emotional support while he testifies;

iv. Limiting the duration of his evidence by setting a daily limit with regular breaks; and

v. Conducting the proceedings *in camera* whilst LSC Baker testifies.

224. To assist my investigation further and with the aim of hearing the evidence of a crucial witness in a trauma-informed approach, I Directed LSC Baker's legal representatives to obtain a written expert report, specifically from, but not limited to Dr Fitzpatrick, to address the impact of implementing my proposed measures in respect of LSC Baker's concerns with regard to his testifying at the Inquest. It was my considered view, as communicated to the interested parties, that the report should address the extent to which all or some of my proposed measures would be relevant to LSC Baker's capacity to testify.[102]

225. The interested parties were informed further that I intended to rule on LSC Baker's application after I received the expert reports and their respective submissions and invited them to bring any anticipated or supervening issues in complying with my Direction to my attention as soon as possible.

226. On 4 March 2020, Mr Hargreaves informed the Court that he was experiencing some difficulty in receiving the reports which he requested from Drs Fitzpatrick and Walton but that he would advise the Court of his progress in complying with my Direction.[103]

227. On 5 March 2020, Dr Fitzpatrick communicated with the Court directly. According to Dr Fitzpatrick, LSC Baker was still consulting her as an outpatient and, in her opinion, he remained 'severely incapacitated' by 'his psychological injuries from the workplace injury'. Dr Fitzpatrick articulated that these psychological injuries are characterised by low mood 'associated with flashbacks and nightmares, not only to the shooting incident

[102] CF, Email Correspondence from the Court to the interested parties dated 10 December 2019. The return date for filing the expert report was 4 March 2020, approximately six weeks before the 15 April 2019, the date on which the Inquest would resume.

[103] CF, Email from Mr Hargreaves to the Court dated 4 March 2020.

but also to the raid on his home, his arrest for murder and his imprisonment in the Melbourne Remand Centre'.[104] (sic)

228. Dr Fitzpatrick went on to say that she believes that 'Mr Baker remains too unwell to give evidence in any capacity in this Coroner's inquest' and further, in her opinion, 'his mental state is too fragile and would exacerbate both his Depressive Illness and the PTSD symptoms' and that 'None of the measures suggested would help to increase [reduce] his already severe traumatic reaction to the past event'.[105] (sic)

229. On 10 March 2020, Mr Hargreaves submitted a report on behalf of Dr Lester Walton. In summary, Dr Walton agreed with Dr Fitzpatrick's opinion. According to Dr Walton, the 'principal difficulty is that Mr Baker seems to find the prospect of giving evidence at all to be quite overwhelming' which led him to 'concur with the treating psychiatrist that none of these measures is likely to be especially effective'.[106]

230. On 12 March 2020, following the dissemination of the reports by Drs Fitzpatrick and Walton to the interested parties, the legal representatives for Vlado's family requested my leave to release the reports, the Coronial Brief of Evidence and LSC Baker's other medical records to an independent medical expert in order to obtain their own expert report. Mr Hargreaves did not raise an objection but requested that the proposed medical expert be admonished about the confidential nature of the documents.[107]

231. Cognisant that I had previously determined that an independent expert opinion may not enhance the probative value of the available evidence and that, following my Ruling of 25 October 2019, I had deferred to the position adopted in my Direction of 10 December 2019, I was averse to accede the family's request.[108]

232. Consequently, recognising that any meaningful expert opinion would have to take into account not only the relevant historical documents but also independently assess LSC Baker's current mental health by examining him as a patient, I considered whether,

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[104] CF, Letter from Dr Keryn Fitzpatrick to the Court dated 4 March 2020.
[105] Ibid
[106] CF, Letter from Dr Lester Walton dated 10 March 2020.
[107] CF, Email from Robinson Gill Lawyers to the Court dated 12 March 2020.
[108] In terms of section 55 of the Act, the Coroner has the power to issue any Direction considered necessary to conduct the Inquest. My Direction of 10 December 2019 which specifically dealt with the same subject matter was issued pursuant to this provision in the Act. In my view, any subsequent Direction to the contrary, in relation to the same subject matter, would be *ultra vires*, as I was bound by my own record.

having expended my powers under the Act, I had any other powers, either an inherent power as a judicial officer or under the Act, to compel LSC Baker to avail himself for a consultation. To this end, I invited the interested parties to file written submissions in this regard.

233. Mr Hargreaves contended that any further exercise of my coronial powers in this regard would be tantamount to 'a jurisdictional error'. Subsequently, the legal representatives for Vlado's family agreed with his contention. In particular, they agreed that any order compelling LSC Baker to 'attend for an independent psychiatric examination' would be 'beyond power'. [109]

234. On 20 April 2020, I informed the parties that to advance LSC Baker's application to be excused as a witness, I had reconsidered the available evidence. In my view, the evidence available to me sufficed, thereby allowing me to exercise my discretion in discharging my duty. In this vein, noting that counsel for LSC Baker had intended to adduce further oral evidence of Dr Fitzpatrick and, in addition, the oral evidence of Dr Walton, I informed the parties that I was amenable to considering the evidence contained in the written reports by Drs Fitzpatrick and Walton in the application which would obviate the need to adduce their oral evidence in this regard. [110]

235. Having dispensed with the need for further oral evidence to enable me to rule on LSC Baker's application, I set timeframes within which LSC Baker was to file any further evidentiary material that he intended to rely upon in his application. In this regard, I specifically noted that it was brought to my attention that, on 24 March 2020, LSC Baker had instituted a civil claim for damages against the State of Victoria in the County Court of Victoria. All parties were then advised to file their written submissions within a specific timeframe and requested to include submissions on the impact of the

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[109] CF,

i. Letter from Tony Hargreaves Lawyers to the Court dated 19 March 2020; and
ii. Letter from Robinson Gill Lawyers to the Court dated 30 March 2020.

[110] CF, Email from the Court to the interested parties dated 20 April 2020, setting out my proposals for the future conduct of the Inquest in light of the density restrictions imposed after the advent of the COVID-19 pandemic. The Hearing dates of 15-17 April 2020 were abandoned as a consequence of the State public health directions adopted in response to the COVID-19 pandemic.

civil proceedings in the County Court of Victoria on Mr Baker's current application before me to be excused from testifying.[111]

236. On 1 May 2020, Mr Hargreaves filed additional reports by Drs Fitzpatrick and Walton for my consideration. In summary, both psychiatrists advanced the same opinions they had in their earlier reports dated 4 March 2020 and 10 March 2020 respectively.[112]

237. On 14 May 2020, Mr Hargreaves informed me that the civil claim, as far as he could ascertain, was instituted on 24 March 2020 so that LSC Baker's claim for damages, would not expire. Mr Hargreaves' assertion in this regard, was supported by a letter from Slater & Gordon Lawyers, LSC Baker's legal representatives in the civil matter, addressed to Tony Hargreaves & Partners Lawyers.[113]

238. On 15 May 2020, in addition to the evidence contained in the reports by Drs Fitzpatrick and Walton, I received written submissions from counsel for LSC Baker, Mr Lewis.

239. On the same day, I received written submissions from Ms Ellyard, Counsel Assisting and from Mrs Hartley, counsel for Vlado's family. Counsel for the CCP, Mr Gipp, did not file any written submissions.

240. On 22 May 2020, Mr Lewis filed his submissions in replication.

241. On 20 July 2020, having considered the available evidence in conjunction with the submissions received, I dismissed LSC Baker's application and ruled that his evidence would be received remotely via the Cisco Webex medium, in two-hour sessions with a 30-minute break between successive sessions. I ruled further that LSC Baker would only be interrogated by Ms Ellyard, Counsel Assisting, including the examination-in-chief by his own counsel and that any cross-examination from the family or the CCP

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[111] CF

i. Letter from the Court to interested parties dated 20 April 2020;
ii. Civil Claim in the County Court of Victoria, Form 5A Writ, dated 24 March 2020.

[112] CF, Letter from Mr Hargreaves to the Court dated 1 May 2020. I noted that the reports make reference to civil proceedings, a claim for damages, *Form 5A* Writ in the County Court of Victoria, instituted by Timothy Howard Baker as Plaintiff, *versus* the State of Victoria as Defendant.

[113] CF,

i. Letter from Mr Hargreaves to the Court dated 14 May 2020.
ii. Letter from Slater & Gordon Lawyers to Mr Hargreaves dated 1 May 2020. The letter articulates that the writ was issued within the required timeframe but not served. The Plaintiff has 12 months from date of issue to serve the writ but the lawyers for the Plaintiff did not have any current instructions to serve the writ.

and any re-examination by his own legal representatives would only be conducted via my Counsel Assisting as the conduit. When he testifies, LSC Baker would also have the services of a support person at his disposal. This support person could be someone of his choice or a family liaison officer provided by the Court.[114]

***Viva Voce* Evidence at the Inquest**

242. When the Inquest resumed on 27 July 2020, in consultation with the parties, I resolved to hear the evidence of the following witnesses from 27-31 July 2020 and from 21-22 December 2020:

- Leading Senior Constable Timothy Baker;[115]
- Sergeant Rodney Giles;
- Senior Constable Andrew Faulkner;
- Constable Eric MacDonald;
- Detective Senior Constable Jarrod Dwyer;
- Senior Sergeant Bob Hope;
- Detective Sergeant Allan Brown;
- Sergeant Michael Free;
- Superintendent Peter Seiz;
- Detective Senior Sergeant Stephen McIntyre;
- Dr Foti Blaher;
- Dr Anne McKenna;
- Dr Alexandra West;
- Dr Keryn Fitzpatrick; and

[114] CF, Ruling on Application to permanently excuse LSC Timothy Baker from giving evidence dated 20 July 2020. The Ruling was delivered with full reasons and forms part of the Court record. I do not propose, therefore, to repeat those reasons in my Finding on the merits. The date on which my Ruling was delivered was specifically selected to accommodate Mr Hargreaves' request in his letter to the Court dated 19 March 2020, to be deferred to a date closer to the resumption of the Inquest proceedings taking into account LSC Baker's ongoing mental health concerns.

[115] I have noted that during the course my investigation, LSC Baker had left the employ of the Victoria Police and was then referred to as "Mr Baker". For the sake of consistency in my Finding, however, I continued to refer to him as "LSC Baker".

- Associate Professor Samuel Harvey

Objection to giving evidence

243. When LSC Baker was called to testify on 27 July 2020, he objected to giving evidence on the grounds that his evidence may violate his right against self -incrimination.[116]

244. After I informed LSC Baker that if he gave his evidence voluntarily and truthfully, he could be indemnified and, having been granted this indemnity, anything said by him while under oath and any documentary evidence tendered during his evidence, could not be used against him in any future proceedings. LSC Baker was also informed that the indemnity did not extend to allegations of perjury in the current proceedings.[117]

245. Despite this offer of protection, LSC Baker refused to cooperate, indicating that he would not give his evidence voluntarily.[118]

246. In support of his client's objection, expressing the view that the interests of justice do not require LSC Baker to give evidence, Mr Lewis made the following submissions:[119]

    i. The Court had the benefit of a record of LSC Baker's spontaneous utterances to 'a number of police officers who attended the scene';

    ii. LSC Baker made a seven-page written statement;

    iii. The Court had the benefit of the video and audio recordings of the incident;

    iv. The Court had the benefit of the criminal trial transcripts;

    v. LSC Baker's current mental ill health was caused by the incident and the 'subsequent curial process';

    vi. The Court was in uncharted waters in that a coronial inquest following a criminal trial is unprecedented in the State of Victoria; and

    vii. The potential relevance of LSC Baker's evidence to 'other matters that this inquest is concerned with, namely his fitness for duty' and 'whether he should have been working one up' can be covered by the evidence of other 'more

[116] In support of LSC Baker's objection to giving evidence, Mr Lewis followed up his client's objection with submissions, relying on the provisions of section 57 of the Act.

[117] As envisaged by section 57 of the Act.

[118] Transcript of 27 July 2020, page 3.

[119] Ibid, pages 4-6. This is a summarised version of Mr Lewis' submissions.

qualified witnesses' and, therefore, that his evidence 'is not likely to be of significant weight'.

247. Both Ms Ellyard and Mrs Hartley made opposing submissions.

248. In summary, Ms Ellyard, Counsel Assisting, submitted that for the purposes of a ruling as envisaged by section 57 of the Act, in weighing up the interests of justice, I should consider the overarching role of the Coroner in reducing the number of preventable deaths and in making a contribution to public health and safety and the administration of justice.

249. On behalf of the family, Mrs Hartley submitted that the interests of justice required LSC Baker to give evidence because, despite the fact that the circumstances surrounding Vlado's death had been ventilated at the criminal trial, the family still had concerns 'about how it was that Vlado came to be killed over a relatively trivial offence' and although LSC Baker had provided a statement, there are still aspects that are 'inconclusive and unsatisfactory'.[120]

250. Mr Gipp, on behalf of the CCP, did not make any submissions.

251. Having considered LSC Baker's objection, the supporting and opposing submissions made, and taking into account my Ruling of 20 July 2020, I formed the view that LSC Baker was a necessary and significant witness. Against this background and further, in balancing the interests of justice and the rationale proffered by LSC Baker in support of his objection, namely that by giving evidence before me would place him at risk of self-incrimination, I noted that his concerns lie not so much in his apprehension of a risk of self-incrimination but rather that his evidence was unnecessary because whatever he could contribute by giving evidence at the Inquest, was either already before me by way of documentary evidence or could be obtained from the *viva voce* evidence of other witnesses.

252. Mindful of the benefit of LSC Baker's evidence to the Inquest and guarding against any actual or potential risks to his mental health, whether they were real or perceived, I considered the objection taking into account that the protection afforded to a witness in LSC Baker's position was within my powers and could be afforded to him at my

[120] Ibid, pages 10-11

discretion. In my purview, in balancing the interests of justice with the factual matrix in which death occurred and given the protracted history of the investigation of this matter, upholding LSC Baker's objection would bring the administration of justice into disrepute. Consequently, I overruled LSC Baker's objection, thereby compelling him to give evidence.[121]

253. Recognising, however, that by compelling him to give evidence, his right against self-incrimination may be violated or, at least, may be perceived to have been violated, I issued a Certificate as provided for by section 57 of the Act.[122]

ISSUES INVESTIGATED AT THE INQUEST

254. The following issues were investigated at the Inquest:

   i. Whether it was appropriate for mobile traffic patrol duties in the St Kilda area on the date of the incident to be allocated to officers working as single officers;

   ii. Whether LSC Baker was fit for his assigned duties on the date of the incident and particularly, at the time that he intercepted Vlado;

   iii. The immediate circumstances leading to Vlado's death;

   iv. Whether LSC Baker's use of force against Vlado was consistent with the relevant policies, practices and training of the Victoria Police and further, whether it was reasonable in the circumstances;

   v. Whether the statements of Assistant Police Commissioner, Luke Cornelius, to the media following the fatal incident was appropriate;

   vi. The manner in which LSC Baker's statement was obtained; and

   vii. Whether it was appropriate for me to have access to LSC Baker's consultation records held by the Victoria Police Psychology Unit after the incident.

255. The evidence adduced to cover each point was heard over a period of seven days. In addition to the *viva voce* evidence, documentary evidence was tendered in further support of the evidence of each witness. After all the witnesses had testified, the remainder of the Coronial Brief of Evidence was tendered and received into evidence.[123]

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[121] Ibid, page 13. *Ex tempore* Ruling on LSC Baker's objection to give evidence. After hearing submissions from the interested parties on LSC Baker's objection, I adjourned to consider the merits of the objection.
[122] CF, *Form 32* Certificate under section 57 of the Coroner's Act 2008, dated 27 July 2020.
[123] Exhibits 1 to 13 were tendered at the Inquest on 21, 24 and 25 October 2019. Exhibits 14 to 55 were tendered at the Inquest between 27-31 July 2020 and 21-22 December 2020.

256. In summary, each witness called at the Inquest, testified as follows:[124]

Leading Senior Constable Baker[125]

257. As the only eyewitness account, LSC Baker testified that he intercepted Vlado having ascertained that the car in which Vlado was driving had stolen number plates.

258. When he attempted to arrest Vlado, Vlado resisted. LSC Baker then tried to deploy his OC Spray but was unable to do so because of his own proximity to Vlado.[126]

259. In the ensuing scuffle in which LSC Baker tried to restrain him, Vlado produced a knife. In an act of self-defence, LSC Baker then reached for his firearm and after removing his firearm from its holster, he discharged three rounds aimed at Vlado who was fatally wounded.

Sergeant Rodney Giles[127]

260. On 25 August 2013, Sergeant Giles, while stationed at the Prahran Police Station, was on patrol supervision duties as Prahran Unit 251 with Constable Eric MacDonald. After he heard the radio communications of LSC Baker that he was in the process of intercepting a vehicle with stolen number plates, he made his way towards the scene after the location was identified as Union Street, Windsor.

261. According to Sergeant Giles, he was among the first responders who attended the scene after the fatal shooting. He gave details of his observations at the scene, his discussion with LSC Baker and about how he took charge of the scene and collected items of evidence including LSC Baker's equipment belt.

262. In his evidence at the Inquest, Sergeant Giles covered his second statement in which he admitted that he had failed to disclose the existence of the 'green Hyundai' in the immediate vicinity of the fatal shooting to the investigators. Sergeant Giles told the Court that the driver of that vehicle claimed that his vehicle may have been struck by projectile during the fatal shooting but that he dismissed the driver's claim, directing

[124] My summaries of the evidence represent the import of each witness' contribution to my investigation and Inquest into the death. For the purposes of my Finding, I do not propose to detail specific points raised during examination-in-chief, cross-examination or re-examination, but have considered any inconsistencies in the evidence insofar as the interested parties have ventilated contentious points and matters of common cause in the evidence in their submissions, both written and oral.

[125] Transcript of 27 July 2020, Exhibit 14, Statement of Timothy Baker dated 18 April 2014.

[126] Oleoresin Capsicum (OC) Spray. Colloquially known as "pepper spray" or "mace".

[127] Transcript of 28 July 2020:

i. Exhibit 15, Statement of Rodney Giles dated 26 August 2013;
ii. Exhibit 16, Statement of Rodney Giles dated 24 August 2017;
iii. Exhibit 17, Handwritten notes of Rodney Giles and Eric MacDonald dated 25 August 2013 but signed by both on 27 August 2013;
iv. Exhibit 18, VP Initial Action Pad of Rodney Giles and Eric Macdonald dated 25 August 2013

him away from the scene without recording crucial information like his name or the vehicle's registration details.

Senior Constable Andrew Faulkner[128]

263. Senior Constable (SC) Andrew Faulkner attended the scene at Union Street, Windsor, after he heard of the shooting incident via the police radio. He testified that he received LSC Baker's digital voice recorder and, after downloading the recording, he handed over the content of the audio recording to my Coroner's Investigator.

264. While at the scene, SC Faulkner joined the discussions with LSC Baker which were recorded on his own DVR. He handed over this recording to Detective Sergeant (DS) Brent Fisher.[129]

Constable Eric MacDonald[130]

265. Stationed at Prahran Police Station, Constable MacDonald, the driver of Prahran Unit 251, was on duty with Sergeant Rodney Giles on 25 August 2013 when they responded to the radio communication by LSC Baker who was about to intercept a vehicle with stolen number plates.

266. Constable MacDonald gave details of his observations at the scene in Union Street, Windsor, as a first responder including his discussions with LSC Baker and gave further evidence on a series of 33 photographs of the scene and on a schematic representation or sketch plan of his observations there.

Detective Senior Constable Jarrod Dwyer[131]

267. Detective Senior Constable (DSC) Jarrod Dwyer was a member of the first investigation team, deployed to the scene on 25 August 2013.

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[128] Transcript of 28 July 2020:

i. Exhibit 19, Statement of Andrew Faulkner dated 3 September 2013;
ii. Exhibit 20, Disc G Voice activated recording of Andrew Faulkner;
iii. Exhibit 21, Transcript of Exhibit 20;
iv. Exhibit 22. Email, Initial Action Pad and HWP tasking sheet of Andrew Faulkner;

[129] DS Brent Fisher initially assisted in the coronial investigation. He was subsequently transferred to the Victoria Police's Professional Standards Command (PSC).

[130] Transcript of 29 July 2020:

i. Exhibit 23, Statement of Eric MacDonald dated 26 August 2013;
ii. Exhibit 24, Set of colour photographs taken by Eric MacDonald, pages 885-917 of the Coronial Brief;
iii. Exhibit 25, Hand-drawn sketch by Eric MacDonald, page 376 of Coronial Brief;

[131] Transcript of 29 July 2020:

i. Exhibit 26, Statement of Jarrod Dwyer dated 2 September 2013. Amended as per Transcript of 29 July 2020 ;
ii. Exhibit 27, Handwritten notes of Jarrod Dwyer;

268. In his evidence, DSC Dwyer outlined his observations upon arrival at the scene and his discussions with LSC Baker. According to DSC Dwyer, LSC Baker informed him that he had shot Vlado three times after Vlado had produced a knife and that after the shooting, he (LSC Baker) had moved the knife to a safer distance.

269. DSC Dwyer testified further that LSC Baker requested to have access to his personal medication, Tegretol Carbamazepine and Quilonum SR and that it was he who removed the Secure Digital (SD) memory card from LSC Baker's in-car camera.[132]

Senior Sergeant (SS) Robert Hope[133]

270. Stationed at the South Melbourne Police Station, SS Hope testified that on 25 August 2013, while on patrol, he was alerted to an incident in Union Street, Windsor, via the police radio. Responding to the call, he attended the scene arriving in South Melbourne Unit 265.

271. SS Hope provided details of his own observations and the action he took at the scene.

Detective Sergeant (DS) Allan Brown[134]

272. Stationed at the Victoria Police Professional Standards Command, DS Brown gave evidence of his involvement in managing the scene of the fatal shooting on 25 August 2013.

273. DS Brown gave further evidence about the action he took in the initial gathering of evidence at the scene including his direction to remove the SD memory card from the in-car camera in the police vehicle driven by LSC Baker.

Sergeant Michael Free[135]

274. As the Officer in charge of the Stonnington Highway Patrol, Sergeant Free testified that he was LSC Baker's superior when he, LSC Baker, transferred to the unit on 5 December 2011.

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[132] Transcript of 29 July 2020.
  i. Tegretol Carbamazepine is an anticonvulsant medication, indicated for the treatment of epilepsy and neuropathic pain. It is also used as an adjunctive treatment in schizophrenia along with other medications and as a second-line agent in bi-polar disorder.
  ii. Quilonum SR is indicated for the treatment of treat mental illness.

[133] Transcript of 29 July 2020:
  i. Exhibit 28, Statement of Bob Hope dated 23 September 2013;
  ii. Exhibit 29, Handwritten notes of Bob Hope dated 25 August 2013;

[134] Transcript of 30 July 2020:
  i. Exhibit 30, Statement of Allan Brown dated 2 September 2013;
  ii. Exhibit 31, Handwritten notes of Allan Brown dated 25 August 2013;

[135] Transcript of 30 July 2020:
  i. Exhibit 32, Statement of Michael Free dated 25 August 2013;
  ii. Exhibit 33, Attachments 1-53 to the statement of Michael Free, pages 680-732 of Coronial Brief;

275. Sergeant Free's evidence provided a historical account of LSC Baker's removal from operational duties following his failure to pass the OSTT and his subsequent requalification to resume operational duties on 16 May 2012.

Superintendent Peter Seiz[136]

276. Superintendent Seiz was Superintendent of Victoria Police, stationed at the People Development Command of the Victoria Police Academy, Glen Waverley.

277. Superintendent Seiz gave evidence on the significance and processes adopted in OSTT training, before police frontline workers are certified as competent. According to Superintendent Seiz, a member must have attended and passed relevant OSTT training. His evidence included the applicable timeframes within which a member must comply with and pass the training modules.

278. In addition to his own evidence, Superintendent Seiz's evidence covered the statement of Sergeant Jason Photis of the Victoria Police's Centre for Operational Safety, whose evidence as contained in his statement deals with contemporary training provided to police members with regard to the use and deployment of operational safety equipment.

Detective Senior Sergeant Stephen McIntyre[137]

279. DSS McIntyre, testified as my Coroner's Investigator. His evidence provided an overview of the entire investigation and the processes involved.

[136] Transcript of 31 July 2020:

i. Exhibit 34, Statement of Peter Seiz dated 16 August 2019;
ii. Exhibit 35, Statement of Jason Photis dated 24 June 2014;

[137] Transcript of 31 July 2020:

i. Exhibit 36, Redacted statement of Stephen McIntyre dated 23 February 2018. Amended as per Transcript of 31 July 2020.
ii. Exhibit 37, Statement of Stephen McIntyre dated 15 July 2020;
iii. Exhibit 38, Handwritten notes of Stephen McIntyre, 807 pages, commencing at page 205 of the Coronial Brief.
iv. Exhibit 39, LEAP Master Name Summary, Aide Memoire in respect of Vlado Micetic, tendered during the evidence of Stephen McIntyre;
v. Exhibit 40, Aide Memoire-Crime Scene Diagram drawn to scale by Stephen McIntyre;
vi. Exhibit 41, Physical Exhibit- Body Vest of Timothy Baker worn on 25 August 2013;
vii. Exhibit 42, Physical Exhibit- Belt and holster of Timothy Baker worn on 25 August 2013;

Dr Foti Blaher[138]

280. Dr Blaher testified that he was the Senior Police Medical Officer for the Victoria Police. His evidence covered the results of a urine drug test and an alcohol breath test conducted upon LSC Baker following the fatal shooting. According, to Dr Blaher, the test results were negative for narcotic drugs and alcohol.

281. Dr Blaher's evidence outlined the prescription drugs detected in the biological samples collected from LSC Baker and the policies with regard to assessments of police members for fitness to perform operational duties. Specifically related to LSC Baker, Dr Blaher testified about LSC Baker's referrals to the Police Medical Officer including the May 2012 referral when LSC Baker 'was unable to pass the OSTT qualification due to tremor or shaking his hands'.[139]

Dr Anne McKenna[140]

282. Dr McKenna was a Police Medical Officer who, on occasion, examined LSC Baker. According to Dr McKenna, on 7 May 2012, she assessed LSC Baker as fit for normal operational duties.[141]

Dr Alexandra West[142]

283. Dr West was the Senior Psychologist at the Victoria Police Psychology Unit. She testified about her role in assessing LSC Baker's fitness for duty, having received reports of his mental health risks and suicidality.[143]

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[138] Transcript of 21 December 2020:

i. Exhibit 43, Statement of Senior Police Medical Officer, Dr Foti Blaher dated 14 July 2014. Amended as per Transcript of 21 December 2020.
ii. Exhibit 44, Police Medical Officer's File, pages 7396-7515 of the Coronial Brief;

[139] Transcript of 21 December 2021, page 575 *et seq*.

i. Statement of Dr Foti Blaher, Exhibit 43. cf paragraph 296 *infra* and the reference cited there.

[140] Transcript of 21 December 2020, Exhibit 45, Statement of Dr Anne McKenna dated 8 January 2014.

[141] Transcript of 21 December 2021, page 641 *et seq*

[142] Transcript of 21 December 2020:

i. Exhibit 46, Statement of Dr Alexandra West dated 11 November 2015;
ii. Exhibit 47, Email from Dr West to Dr Blaher dated 4 September 2013;
iii. Exhibit 48, Statement of Dr Alexandra West dated 2 August 2019;
iv. Exhibit 49, Police Psychology Unit File, pages 7516-7578 of the Coronial Brief;
v. Exhibit 50, Emails and Draft Report of Dr Alexandra west re: Police Suicide, pages 8690-8698 of the Coronial Brief;

[143] Transcript of 21 December 2021, page 672 *et seq*

Associate Professor Samuel Harvey[144]

284. Associate Professor (AP) Harvey is a Consultant Psychiatrist and was the expert witness called upon by my own motion.

285. AP Harvey's evidence elaborated upon a report prepared by himself, having received pertinent questions on the policies, practices and processes of Victoria Police in assessing members' fitness for duty in circumstances where those members are first responders, acting in the course and scope of their employment.[145]

Dr Keryn Fitzpatrick[146]

286. Dr Fitzpatrick gave evidence on her role as LSC Baker's treating psychiatrist. Her evidence at the Inquest provided context for and elaborated upon her various reports which formed part of the Coronial Brief of Evidence and those submitted in support of LSC Baker's application to be excused from giving evidence and his subsequent objection to giving evidence at the Inquest.[147]

287. Dr Fitzpatrick was the last witness to be called at the Inquest.

288. At the conclusion of the *viva voce* evidence and, after the balance of the Inquest Brief was tendered, I adjourned the proceedings to hear oral submissions. The parties agreed to file written submissions in the interim for my consideration.

Written Submissions on the Findings to be made[148]

289. On 30 April 2021, the parties filed their written submissions for my consideration, following an exchange of the written submissions *inter partes*. Addressing the matters investigated at Inquest, the parties made the following submissions with regard to:

Whether single officer patrol duties was appropriate on the night of the incident

290. Ms Ellyard submitted that, in light of the Recommendations in the *Hogarth-Clarke* matter, it was not appropriate for a police officer to be working as a single officer on the night of the incident as doing so would expose police officers and the public to

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[144] Transcript of 22 December 2020, Exhibit 51, Expert Report of Associate Professor Samuel Harvey dated 30 September 2019.

[145] Transcript of 21 December 2020, page 705 *et seq*

[146] Transcript of 22 December 2020:

i. Exhibit 52, Reports of Dr Keryn Fitzpatrick dated 29 August 2014, 8 October 2015, 25 January 2017, 25 October 2018, 15 October 2019 and 10 September 2019- pages 7943-7949A of the Coronial Brief;
ii. Exhibit 53, Victoria Clinic Records re: Timothy Baker, pages 6876-7045 of the Coronial Brief.
iii. Exhibit 54, Clinical File of Dr Keryn Fitzpatrick re: Timothy Baker, pages 8048-8688 of the Coronial Brief;

[147] Transcript of 22 December 2021, page 731 *et seq.*

[148] These submissions were confined to points settled upon in the Scope of the Inquest. For the purposes of my Finding, I will consider the submissions received from the interested parties as they relate to the submissions made by my Counsel Assisting on the issues investigated at the Inquest.

associated risks as was evident in this matter. Having another officer with him may have alleviated the difficulties he experienced in handcuffing Vlado, for example. In addition, having another police officer on duty with LSC Baker would have availed other tactical options to that team which, in turn, would have reduced the associated risk of resorting to the use of lethal force.

291. Agreeing with the submissions made by Ms Ellyard, Mrs Hartley submitted further that LSC Baker had other tactical options available to him but failed to consider these options. According to Mrs Hartley, LSC Baker could have called for back-up, and could have created a physical distance between himself and Vlado or he could have resorted to non-lethal means like using OC Spray.

292. Mr Gipp submitted that although there had been a Recommendation in the *Hogarth-Clarke* matter which was under consideration by the CCP when the incident occurred, for Victoria Police to desist from carrying out single officer patrols at the time, LSC Baker was not in breach of any work instruction on the date of the incident. Mr Gipp submitted further that as a result of that Recommendation, the CCP introduced the Chief Commissioner's Instruction CCI 08/15 Operations Safety Measures on 20 August 2015, in terms of which Victoria Police members were not permitted to operate as single officers performing police facility reception duties or primary response duties which included first response to incident duties.

293. Mr Lewis, whose submissions were mainly focused on the circumstances in which the death occurred, did not make any express submissions on this point.

<u>Whether LSC Baker was fit for duty on the date of incident and at the time he intercepted Vlado</u>

294. Pointing out that the Coronial Brief contained a historical account of LSC Baker's mental health concerns, Ms Ellyard drew attention to the evidence of the Police Medical Officers at the Inquest, Drs West, McKenna and Blaher and to the evidence of Dr Fitzpatrick, LSC Baker's treating psychiatrist.

295. According to Ms Ellyard, despite the availability of these sources of evidence, there was a lack of evidence before me which relates directly to LSC Baker's physical and mental health on the day of the incident. Consequently, I would be unable to make any Findings about LSC Baker's physical and psychological fitness for duty as at 25 August 2013, the day of the incident. Similarly, I would be unable, on the available evidence, to make any Finding that LSC Baker was unfit for duty on the day of the incident.

296. Ms Ellyard submitted further that, on the evidence of Sergeant Free who referred LSC Baker to the Police Medical Officer and moreover, on LSC Baker's own evidence with regard to his mental health concerns and his alcohol dependency issues, that it is indeed concerning that his employer, Victoria Police, would not have any real understanding of the extent of his condition and the effect of his medication on his role as a serving operational police member. Consequently, it would be open to me to make a Finding about the need for Victoria Police to be adequately informed about the physical and

mental health of their members who are on operational duties and who carry weapons.[149]

297. Mr Gipp submitted that there was no evidence before me upon which I could base a Finding that LSC Baker was physically or psychologically unfit for duty on 25 August 2013, most especially since he was cleared to return to work by Dr McKenna in May 2012 and, in the absence of any supervening incident, there was no reason for his supervisors to consider him incapable of performing his duties.[150]

298. Relying on the evidence of Dr Fitzpatrick, Mr Gipp submitted that LSC Baker's medication did not affect his fitness for duty. Dr Fitzpatrick did not consider LSC Baker to be a risk to himself or others because she had been monitoring his blood results which showed that his medication 'was in the appropriate therapeutic range' and if she had any concerns, she would have disclosed her concerns to the Victoria Police. There is no evidence, therefore, which indicates that LSC Baker's medication affected his ability to perform his duties.

299. In response to Ms Ellyard's submission that there is a need for Victoria Police, notwithstanding the risk of violating individual members' right to privacy, to be adequately informed about the physical and mental health of their members, Mr Gipp submitted that the benefit of disclosure could not outweigh the risk of the possibility that 'hundreds of police officers that would not seek treatment for fear of being obliged to tell their employer and the impact might have on their career'.[151] (sic)

300. Mrs Hartley agreed with the submissions made by Ms Ellyard and submitted further that Dr Fitzpatrick's failed to appreciate that the Police Medical Officer relied on LSC Baker's ongoing psychiatric supervision to inform the decision to clear LSC Baker to return to active duty. This failure to adopt a co-ordinated approach to LSC Baker's mental health concerns resulted in the failure by Victoria Police to adequately monitor LSC Baker's mental health concerns.

301. Mr Lewis did not make any written submissions or oral submissions on this point.[152]

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[149] The evidence indicates that despite LSC Baker's lengthy absences from work due to ongoing mental health concerns, his protracted medical history was not fully considered by the Police Medical Officers. In May 2012, Dr McKenna understood her role as one where she had to assess physical fitness for duty and when questioned on this point, she deferred to Dr Butler's opinion on the cause of LSC Baker's hand tremor. To fill this lacuna, it would then be up to me as the Coroner to consider the evidence of LSC Baker's treating psychiatrist, Dr Fitzpatrick. Her evidence, however, indicates that her role did not include assessing LSC Baker's fitness for duty.

[150] In this regard, the evidence indicated that Dr McKenna, the Police Medical Officer, had the benefit of the opinions of LSC Baker's treating psychiatrists at her disposal which further informed her of the decision to allow LSC Baker to return to full operational duties. Therefore, if LSC Baker was unfit for duty, the responsibility to identify his 'vulnerbilities or deterioration' fell upon his line managers, but there is no evidence post May 2012, however, to support a conclusion that his psychiatric state had deteriorated.

[151] In support of this submission, Mr Gipp relied on the evidence of Associate Professor Samuel Harvey.

[152] Transcript of 6 May 2021.

The immediate circumstances leading to Vlado's death

302. Ms Ellyard submitted that the available evidence did not support a Finding that Vlado introduced a knife to the scene, to which LSC Baker could have reacted when he fired the fatal shots. In support of her submission, Ms Ellyard pointed out that:

    i. The best evidence in this regard is the D24 radio recording and transcript and the combined audio and video recording which depicts the interaction between Vlado and LSC Baker as follows:

        a) LSC Baker's initial interaction with Vlado was unremarkable and appropriate;

        b) Vlado was initially compliant with LSC Baker's directions which included alighting from his vehicle and emptying his pockets;

        c) In the video, Valdo appears to be placing the items from his emptied pockets onto the boot of his vehicle;

        d) The video does not depict Vlado resisting arrest during LSC Baker's initial efforts to handcuff him;

        e) LSC Baker struggled with the handcuffs. It is not clear, however, why he struggled with the handcuffs;

        f) LSC Baker became distracted when he realised that Ms Niedzwiecki, Vlado's companion, had alighted from the vehicle and was leaving the scene;

        g) Simultaneously, Vlado displayed some degree of physical resistance to his arrest;

        h) In the physical altercation which followed, as depicted in the video, LSC Baker is seen to push Vlado to the ground. It appears from the video that LSC Baker rather than Vlado instigated the physical altercation.

        i) There is no sign of a knife in Vlado's hand whilst LSC Baker and Vlado are in view of the camera or until the time when the physical altercation moves to the front of the car, out of view of LSC Baker's camera, mounted in his patrol vehicle;

        j) LSC Baker's hand can be seen to be on his holster during the latter part of the physical altercation;

        k) The audio recording does not indicate that Vlado made any physical threats of violence towards LSC Baker. Vlado is not heard saying anything that suggests that he was about to produce a weapon of any description;

l) Vlado is heard talking right up until the time that the sound of gunfire is heard; and

m) Although LSC Baker is heard to have uttered "police" as the sound of gunfire is heard, he is not heard to give any warning that he was about to discharge his firearm.

ii. The only evidence that Vlado produced a knife, was the evidence from LSC Baker himself in his spontaneous utterances made to the first responders at the scene which he then repeated in his statement to the investigators. At the Inquest, he maintained this version of events. It was noteworthy that if this were to be accepted as a correct version of events, Vlado could only have drawn a knife after he and LSC Baker moved out of the camera's range of view and in front of Vlado's vehicle. Given the evidence contained in the video and audio recording which indicates a very brief interval from when they moved in front of the vehicle until the sound of gunfire is heard and given the evidence that LSC Baker had already unclipped his holster, the evidence does not indicate that LSC Baker, fired the shots to ward off an attack by Vlado who he says was wielding a knife.

iii. At the Inquest, LSC Baker conceded that he did not make any attempt to use his OC Spray. However, this evidence is inconsistent with his previous statement that he dropped the OC Spray after he initially prepared to use it.

iv. A knife was found at the scene by Sergeant Giles and Constable MacDonald between Vlado and LSC Baker. However, except for the evidence of LSC Baker, there is no evidence that LSC Baker moved the knife away from Vlado. In contradistinction, the video evidence indicates that LSC Baker remained in front of the vehicle, on the passenger side near the curb whereas Vlado was on the ground on the driver's side where he fell after he had been shot.

v. The video evidence indicated further that the light from LSC Baker's torch is in his back pocket glowing towards the passenger side of the vehicle while he called for an ambulance approximately 22 seconds after the sound of gunfire is heard. This supports a conclusion that LSC Baker did not move the knife away from Vlado after the shots were fired.

vi. The evidence from the audio recording indicates the sound of metal falling on the ground and the sound of a zipper either opening or closing. In this regard, Ms Ellyard submitted that on the available evidence, it was open to me to make a Finding that the items located on the ground fell from a zippered compartment in LSC Baker's vest.

vii. Although the available evidence indicates that both Vlado and LSC Baker had a history of having knives in their possession respectively, the evidence is inconclusive as to who introduced the knife to the scene.

viii. On the available evidence, a Finding that Vlado did produce a knife is mitigated by the following:

a) Vlado is seen to have emptied his pockets;

b) If he had a knife in his possession, then he deliberately concealed it until he was out of the range of vision of the camera. Vlado, however, did not know that a camera was recording his interaction with LSC Baker.

c) By contrast, that the camera was recording was only within LSC Baker's knowledge as it was he who activated the camera's recording function;

ix. Ms Ellyard went on to say that, on the other hand, a Finding that Vlado did not produce a knife is supported by the following:

a) LSC Baker's evidence that Vlado brought the knife to the scene is not consistent with other evidence and should be rejected insofar as it is contradicted by other evidence;

b) This evidence includes the audio-visual evidence, the position of the items on the ground and the evidence of LSC Baker's movements after the sound of gunfire is heard. Although, these threads of evidence, when viewed collectively could lead to a reasonable inference that Vlado did not introduce the knife to the scene, the effect of such a positive Finding would be tantamount to making a credibility finding on LSC Baker as a witness and, in turn, a Finding, by implication, that it was LSC Baker who introduced the knife to the scene.[153]

303. Consequently, Ms Ellyard submitted that the available evidence, therefore, does not permit me to make a Finding about how the knife came to be at the scene.

304. Mr Gipp, for the CCP, did not make any submissions on this point.

305. Mrs Hartley, for the family, agreed with Ms Ellyard that the only account that Vlado had a knife in his possession was in the evidence of LSC Baker. Mrs Hartley submitted that even though the available evidence indicates that Vlado and LSC Baker had a history of having knives in their possession, this evidence alone was inconclusive as to who brought the knife to the scene.

[153] Ms Ellyard rightly pointed out that a Finding of this nature could, or had the potential to, subvert the past criminal proceedings in the Supreme Court of Victoria or the outcome of that judicial process.

306. In the same vein, the forensic evidence including the evidence of FO Tierney on the sound analysis together with the audio-visual evidence was inconclusive and did not, therefore, support a positive Finding on who introduced the knife to the scene.

307. Mrs Hartley submitted further, however, that a positive Finding that Vlado did not introduce the knife to the scene was supported by the available evidence. According to Mrs Hartley a Finding that Vlado did not introduce the knife to the scene differed from a Finding that it was LSC Baker who introduced the knife to the scene. A Finding that LSC Baker introduced the knife to the scene would not 'traverse the jury's verdict' because by acquitting him, that judicial process made 'no findings of fact' and, therefore, it would be permissible for me to make a Finding that it was LSC Baker who introduced the knife to the scene.

308. Mr Lewis, on the other hand, submitted that the available evidence does leave me in a position to make a Finding in relation to the circumstances of the death. Obversely, if any finding 'can be made in relation to the circumstances leading to the death', then the 'only appropriate finding is that Vlado produced the knife'.[154]

309. According to Mr Lewis, the 'immediate circumstances' leading to the death were fully ventilated in the Supreme Court of Victoria during LSC Baker's trial in which he was acquitted. That acquittal, Mr Lewis submitted, resolved all issues relating to the immediate circumstances of the death and, consequently, pronouncing a Finding in relation to the immediate circumstances leading to the death would not 'impact upon any findings of public health and safety or the administration of justice'.[155]

310. Mr Gipp did not make any submissions on this point.

Whether LSC Baker's use of force against Vlado was consistent with the relevant Victoria Police policies, practices and training

311. Following on from her submission that a Finding as to who introduced a knife to the scene was not open to me on the available evidence, Ms Ellyard submitted that, similarly, the available evidence does not support a Finding that the use of a firearm was consistent with the Victoria Police's policies, practices and training. Given the evidence of Superintendent Seiz, that the use of a firearm was reasonable in circumstances where a knife-wielding offender poses an imminent threat of harm to a police officer, I would only have been able to make a Finding in those specific terms, if the evidence supported a Finding that Vlado had introduced the knife to the scene.[156]

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[154] CF, Outline of Submissions on Behalf of Timothy Baker dated 30 April 2021.

[155] CF, Outline of Submissions on Behalf of Timothy Baker dated 30 April 2021. To support his argument, Mr Lewis drew my attention to the evidence of DSC Klova at page 610 of Exhibit 55. DSC Klova was one of the police officers who conducted the search and seizure operation at Vlado's home after the incident. I note Mr Lewis' submissions in this regard at pages 5-7 of his Submissions.

[156] Exhibit 34, statement of Superintendent Seiz.

i. Ms Ellyard drew my attention to the audio-visual evidence where LSC Baker's can be seen with his hand on his holster without any sign of a knife in Vlado's hand. The evidence indicates therefore that

312. Mr Gipp submitted, following the evidence of Superintendent Seiz, that if Vlado produced a knife, LSC Baker's use of a firearm in circumstances where he was threatened, was justified as 'a tactical option' and therefore it would be 'purely speculative to suggest otherwise'.[157]

313. Mrs Hartley submitted that' absent a finding that Vlado produced a knife,' the use of force (using a firearm) must be found to be disproportionate or unjustified'.[158]

314. Mr Lewis, agreeing with Ms Ellyard, submitted that 'no finding ought to be made in relation to the appropriateness or otherwise of Mr Baker's use of force'. Alternatively, if I were to adopt his submission to Find that it was Vlado who introduced the knife to the scene, then a concomitant Finding that LSC Baker's use of force was appropriate in the circumstances should follow.[159]

<u>Whether Assistant Commissioner of Police, Luke Cornelius', statements to the media were appropriate.</u>

315. Ms Ellyard submitted that while the statements made by the Assistant Commissioner asserting a particular version of events were inappropriate given the infancy of the investigation at that stage, the Court has received a statement of concession and an apology which should be accepted.

316. Mrs Hartley agreed with Ms Ellyard but submitted that an adverse Finding in this regard would be open to me, given that the apology was made more than five years after the fact and failed to acknowledge the distress that the statements made to the media caused the family.

317. Mr Gipp's only submission on this point was that his client advanced a statement of concession which expressed an apology. [160]

318. Mr Lewis did not make any submissions on this point.

LSC Baker had discharged his firearm in less than two seconds after he observed the knife, decided to act upon it, draw his weapon and fire. In doing so, on his own version, LSC Baker surpassed Victoria Police training outcomes which require police members to demonstrate an ability to discharge their firearms in 4 seconds, as indicated by the evidence on this point.

ii. In this regard, I specifically noted that the evidence <u>does not</u> indicate that LSC Baker's level of skill was beyond the expected 4-second training outcome timeframe. The weight of the available evidence including that evidence relating to LSC Baker's OSTT training assessment, indicates to the contrary, however.

[157] CF, Outline of Submissions on Behalf of the Chief Commissioner of Police, page 3.

[158] CF, Outline of Submissions for the Family, page 5. Ms Hartley conceded that 'Mr Baker had a lawful reason for arresting Vlado, namely the suspicion that he was driving a vehicle with stolen number plates'.

[159] CF, Outline of Submissions on Behalf of Timothy Baker, page 11.

[160] CF, Outline of Submissions on Behalf of the Chief Commissioner of Police, page 5. Mr Gipp did not take this submission further at the Submissions Hearing on 6 May 2021 at page 801 of the Transcript lines 8-12.

The manner in which the evidence was obtained from LSC Baker

319. Ms Ellyard submitted that in the circumstances in which the death occurred and, on the evidence garnered during the initial stages of the investigation, there was no basis for LSC Baker 'to be treated as a suspect in relation to any criminal offence'. In addition, given his claim that the incident caused him distress, the delay in obtaining his statement was reasonable.

320. Ms Ellyard submitted further that the prolonged delay which followed, could have affected LSC Baker's recollection of the events as they unfolded or, at least, had the potential to be a disadvantage to his memory. In this light, my Ruling of the 23 September 2013 was reasonable.[161]

321. However, after LSC Baker gave evidence at the Inquest and, despite the advantage of access to the audio-visual evidence before making his statement, it remained unclear if, or to what extent, his recollection of the events on the night of the incident were affected by the passage of time. In support of this submission, Ms Ellyard drew my attention to the material errors made by LSC Baker with regard to his attempt to deploy the OC Spray when he testified. Ms Ellyard noted that this discrepancy remained unexplained and could not be attributed to a lapse in his memory caused by the passage of time because it is the account, he gave in making his spontaneous utterances on the night of the incident.[162]

322. Standing by his submissions made in support of his request to grant LSC Baker access to the audio-visual material, which resulted in my Ruling of September 2013, Mr Lewis submitted that my Ruling 'allowed Mr Baker to view the contemporaneous video and listen to the audio before making his statement' which 'process was consistent with the practice of police at the time in the Highway Patrol'. Mr Lewis submitted further that there was no evidence to support a conclusion that 'any "infection' of memory occurred'.[163]

323. Neither Mrs Hartley, for the family, nor Mr Gipp, for the CCP, made any substantive submissions on this point.

[161] Ruling dated 23 September 2013, allowing all the interested parties to view the video recording and listen to the audio recording before LSC Baker made his statement which I requested.
[162] CF, Outline of Submissions by Counsel Assisting. LSC Baker's account that he attempted to deploy the OC Spray is inconsistent with the audio-visual evidence. It was not clear whether LSC Baker's evidence was contaminated by his access to the audio-visual material prior to making his statement or whether he adapted his evidence to what he observed in that evidential material. His evidence at the Inquest, however, could not be reconciled with the evidence borne out by the video recording.
[163] CF, Outline of Submissions on Behalf of Timothy Baker, page 11.

Whether it was appropriate for an Investigating Coroner to access the records of the Victoria Police Force Psychology Unit after consulting with a police member following a fatal incident

324. Ms Ellyard submitted that by operation of the coronial process, accessing records relevant to an investigation is proper and within my powers as an Investigating Coroner. Ms Ellyard submitted further that it was incumbent upon any psychologist to inform a client that their right to confidentiality is not unlimited insofar as their medical records may come under the scrutiny of a judicial process and consequently, be the subject matter of a subpoena.

325. Mrs Hartley and Mr Gipps agreed with Ms Ellyard on this point and did not make any substantive submissions.

326. Mr Lewis submitted that my access to LSC Baker's records held by the Police Psychology Unit 'undermined' the 'level of confidence and trust and led to a breakdown of the relationship between patient and clinician'. According to Mr Lewis, the services offered by the Police Psychology Unit was to offer support to officers involved in fatalities and that service can 'only be effective if the officer can be assured the communications are confidential.

Submissions Hearing

327. On 6 May 2021, I convened a Submissions Hearing at which all the parties elaborated on their written submissions.

COMMENTS[164]

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

LSC Baker's evidence

1. Having heard the evidence on the points identified in the Scope of the Inquest, I am mindful that the best evidence may not be the *viva voce* evidence which, due the passage of time since the fatal event, may have been affected by the fallibility of the human mind and memory. I accept that the written sources of evidence, proximate to the incident, may be more reliable than the oral evidence. I am cognisant, therefore, that in order to determine which source of evidence, written or oral, is to be preferred, I am

[164] Although focused on the salient points of my investigation examined at the Inquest itself, I have made these comments in the context of my investigation as a whole, taking into account the full ambit of the pre-Inquest investigation as well as all collateral curial processes including my Rulings, both reasoned and *ex tempore*. All comments are to be read within the context of my investigation as a whole, taking into account the body of available evidence.

required to consider the evidence of each witness more closely to ascertain the reliability of their evidence.

2. In considering the evidence of LSC Baker, the only eyewitness to the incident, I accept that his memory may have been compromised by the passage of time and even further by diagnosed mental health conditions, possibly compounded by medication prescribed to manage his condition.

3. In this regard, conceding that LSC Baker's evidence is inconsistent with other available evidence, most notably the audio-visual evidence, Mr Lewis sought to ameliorate the obvious contradictions relating to the OC Spray by contending that LSC Baker's 'muscle memory' was triggered to default to his training 'to consider using the minimum available force'. This trigger, according to Mr Lewis, led LSC Baker to believe that he had accessed his OC Spray as a non-lethal deterrent. This mistaken belief in conjunction with the trauma of shooting another human being and the resultant Post Traumatic Stress Disorder explains why LSC Baker 'clearly thought at the time that he had produced the OC Spray'. With the benefit of hindsight, LSC Baker 'now he accepts that he did not do so'. There is no evidence before me from which any reasonable inference can be drawn to find support for Mr Lewis' submissions on what LSC Baker 'clearly thought at the time'. In my view, this submission is misguided.

4. I accept that the Victoria Police's training model requires its members 'to consider using the minimum available force'. However, the weight of the available evidence does not support a conclusion that LSC Baker considered using the 'minimum available force'. In contradistinction, the evidence indicates that LSC Baker's first reaction was not 'to consider using the minimum force available'.

5. With regard to Mr Lewis' further submission that there is a 'significant difference between being mistaken as to certain specific details, as compared to being mistaken about whether Vlado produced a knife' because 'Mr Baker has been consistent in his evidence in relation to the fact that Vlado produced a knife', I have consciously considered the specific version proffered by LSC Baker, that he, in shooting Vlado, acted in self-defence after Vlado produced a knife. In considering this specific detail and his consequential conduct to ward off the attack, it follows that LSC Baker's mistake 'as to specific details' which includes his belief that he 'had produced the OC

Spray' is unreasonable. The evidence before me does not support Mr Lewis' submission made in attempting to explain why LSC Baker would be mistaken on some material aspects of the events as they unfolded, but not on others. [165]

6. Having considered LSC Baker's evidence in conjunction with the body of evidence available to me, I am disinclined to accept that, as Mr Lewis submitted, he 'has been consistent in his evidence in relation to the fact that Vlado produced a knife' and that 'he shot him in response' and therefore, that LSC Baker's consistency in this regard leads to the 'only finding that is open on the evidence' that Vlado produced a knife. In my view, recognising that a previous consistent statement considered in isolation does not advance the version of a single witness by virtue of a mere repetition, in the absence of any other corroborating evidence, that consistency offers little or no evidential value. Consequently, and on the facts of this case, however, the weight of the available evidence does not support Mr Lewis' submission that I am open to find that Vlado produced the knife and that LSC Baker shot him in response to his producing the knife. Mr Lewis' submission cannot be reconciled with the available evidence on this point and is therefore misplaced.[166]

The impact of single officer patrols

7. The practice by Victoria Police of engaging single officer patrols has been the focus of previous coronial investigation(s). There can be no doubt that the inherent risks posed by single officer patrols to public health and safety are immeasurable. I accept that Victoria Police has, in the interim, discontinued the practice of single officer patrols in first response situations. However, it would be remiss of me if I were to ignore the ostensible lack of urgency afforded to the Recommendation made three years earlier, in *Hogarth-Clarke* matter. The weight of the available evidence supports a conclusion that the delay in implementing the current policy on single officer patrols represented an opportunity lost for Vlado. Had Victoria Police heeded the Recommendation in the

[165] LSC Baker's version that he thought that he had produced the OC Spray to ward off the attack is not borne out by the evidence, even on the civil standard, the balance of probabilities.

[166] Similarly, Mrs Hartley's submission that the evidence indicates that Vlado did not introduce the knife to the scene does not accord with the available evidence.

Hogarth-Clarke matter timeously, the outcome for Vlado could have been different as his death occurred in similar circumstances.

Fitness for duty

8. I have considered the evidence in relation to LSC Baker's fitness for duty on 25 August 2013. In doing so, I have specifically endeavoured to ascertain whether the events that led to the death of Vlado can be attributed, either wholly or in part, to his history of mental health concerns and his physical fitness or lack thereof. In this regard the evidence of Dr Fitzpatrick, his treating psychiatrist, in conjunction with the evidence of Drs Blaher, McKenna and West is historical and is not indicative of LSC Baker's physical or psychological fitness for duty proximate to the fatal event.

9. Similarly, there is no evidence before me, direct or otherwise, which indicates, or which allows me to reasonably infer that LSC Baker may or may not have been unfit for duty on that day by virtue of his use of prescription medication or his alcohol dependency issues. Neither the Police Medical Officers' evidence nor the evidence of Dr Fitzpatrick could enhance this aspect of my Inquiry.

10. This lack of evidence in LSC Baker's fitness for duty indicates, in turn, that the Victoria Police lacked adequate strategies to monitor members' fitness for duty. While I recognise the concern raised by Mr Gipp on behalf of the CCP, that monitoring information relating to a member's physical and mental fitness for duty may violate that member's right to privacy, I consider a member's mental and physical ability to sustain the rigours of police operational duties, to be in the public interest. In my purview, there is a need for the Victoria Police to be adequately informed about the physical and mental health of their members and to what extent that information becomes relevant in assessing a member's fitness for duty and divulged to Victoria Police management must be weighed against the notional yardstick of the public interest. To withhold crucial information from Victoria Police management about a member's mental or physical health in circumstances where a member is medically unfit for duty carries an inherent risk to public health and safety and, in my view, withholding such information is therefore not in the public interest and may compromise the administration of justice.

Circumstances in which the death occurred

11. Having dismissed Mr Lewis' submission, which was based on the evidence of LSC Baker, that Vlado produced the knife, I turned to consider the body of available evidence in order determine whether any finding on the circumstances in which the death occurred, either open or otherwise, could be made. In particular, I focused on the audio-visual evidence, the audio analysis conducted by FO Tierney in collaboration with the Queensland Police, the inconclusive DNA results and the tainted evidence of Sergeant Giles during the criminal trial. In my view, the weight of the available evidence does not support the sequence of events or how the events unfolded as maintained by LSC Baker in his evidence at the Inquest. From the audio-visual evidence, no knife is visible and the timeframe in which Vlado is said to have produced the knife cannot be reconciled with or is not corroborated by the evidence before me which includes LSC Baker's documented OSTT results. I am therefore unable to find, to the requisite standard, that Vlado introduced the knife to the scene.

12. In considering Mrs Hartley's submission that a finding that Vlado did not introduce the knife was supported by the available evidence because, by acquitting LSC Baker, the jury made 'no findings of fact' and therefore it was open to me to find that Vlado did not produce the knife which was different to a finding that LSC Baker did produce the knife. In my view, even on a cursory examination of the evidence—two role players, one knife which was not visible in the video recording and LSC Baker's version that it was Vlado who introduced the knife, a finding that Vlado did not produce the knife implies a concomitant finding that it was LSC Baker who produced the knife. For this reason, amongst others, Mrs Hartley's submission is misguided in that it does not take into account the basis for an acquittal at criminal law, reasonable doubt as to whether the factual matrix, as alleged, is supported by the evidence adduced. In the same vein, the submission itself is contradictory and is not borne out by the available evidence.

13. Turning to consider Mr Lewis' submission that LSC Baker's acquittal after the criminal trial has obviated the need for any inquiry into the immediate circumstances in which the death occurred because it 'would not impact any findings of public health and safety', I am guided by my own imperatives as an investigating Coroner under the Act. In this regard, I specifically considered my "prevention role", which is explicitly articulated in the Preamble and Purposes of the Act, in conjunction with the prescripts

of the Act as envisaged by sections 52(2), 67(3) and 72(2). Having considered the import of these statutory imperatives which define my role in the coronial jurisdiction, I disagree with Mr Lewis' submission that LSC Baker's acquittal has resolved all the issues relating to the immediate circumstances of the death and therefore that a finding in relation thereto would not impact upon any findings of public health and safety or the administration of justice. In my view, Mr Lewis' submission cannot be reconciled with the prescripts of the Act and is therefore misguided.

14. However, a finding that Vlado <u>did not</u> produce a knife would be tantamount to a credibility finding on LSC Baker as a witness and, in the absence of direct evidence on this point, a finding of how the knife came to be at the scene or by whom it was introduced, would require me to draw an inference from the available evidence which is reasonable in the circumstances of this matter. I am also conscious of the fact that where I seek to draw an inference from the available evidence, the inference sought to be drawn must be the <u>only</u> reasonable inference which can be drawn from the evidence before me. In my view, the available evidence on this point is too varied and lacks the required cogency to support a positive finding on how or by whom the knife was introduced to the scene. I am, therefore, disinclined to make a Finding in this regard.

<u>Was LSC Baker's use of force reasonable?</u>

15. I accept Superintendent Seiz's evidence that, in the circumstances where a police officer is threatened by an offender wielding a knife, the use of a firearm to ward off the attack is justified and consistent with Victoria Police's policy. However, on the available evidence, and given my view that the evidence does not enable me to make a Finding as to how or by whom the knife was introduced to the scene, expressing my view on whether LSC Baker's use of force was reasonable, would be unfounded or without proper basis. Consequently, I am unable, on the available evidence, to make any Finding, positive or otherwise, in this regard.

<u>Were the statements by Assistant Commissioner of Police (ACP) to the media appropriate?</u>

16. While I acknowledge Mrs Hartley's submission that the apology from ACP Luke Cornelius was made approximately five years after the incident and failed to address the distress caused to the family, I note that the ACP's apology was made in a statement of concession. As such, I note that by apologising, ACP Luke Cornelius accepts that his

statements to the media were inappropriate in the circumstances. I commend the admission made by the ACP in conceding that the statements were inappropriate in the circumstances and for apologising for making those statements to the media while my investigation was pending.[167]

<u>The manner in which the statement was obtained from LSC Baker</u>

17. The available evidence at this juncture in my investigation had a significant bearing on the manner in which I exercised my discretion to allow LSC Baker and the interested parties access to the audio-visual material. If I had any information akin to the body of evidence available to me after LSC Baker's criminal trial, the outcome of his request for access to the audio-visual material may have been different. Simply put, if I had evidence before me at that stage, to rebut LSC Baker's claim that by shooting Vlado he acted in self-defence, I would not have permitted him or the other interested parties to view and listen to the audio-visual material before he made his statement.

18. Consequently, in the absence of any evidence during the initial stages of my investigation to suggest that LSC Baker was a suspect in a criminal offence and given the delay caused by his own ill health after incident, I deemed it appropriate in the context of my own jurisdiction to afford LSC Baker and the interested parties an opportunity to view and listen to the audio-visual material before he made his statement which then formed part of the Coronial Brief of Evidence.

19. Having considered LSC Baker's evidence as whole including his spontaneous utterances at the scene, his statement made and his *viva voce* evidence at the Inquest, it remains unclear whether his recollection of the events have been affected by his access to the audio-visual material. In particular, LSC Baker's version of the events with regard to his attempt to access the OC Spray, remained unchanged after he viewed the video recording which does not depict that he did so. He only conceded that he did not attempt to access the OC Spray at the Inquest when he was confronted with the video recording.

[167] When this issue was first raised with regard to whether or not ACP Cornelius' comments to the media were appropriate, the impression was created that I sanctioned the media release until I pointed out that my own contemporaneous investigation notes indicated otherwise. In response to this, the apology followed.

20. Accordingly, in my view, while it remains unclear whether LSC Baker's recollection of the events had been affected by his viewing the audio-visual material before making his statement, it is also unclear whether or to what extent he may or may not have adapted his evidence to what he observed on the video recording. To the extent that the evidence is equivocal in this regard, it does not support a conclusion that LSC Baker's recollection has been tainted by what he observed in the video recording.

Whether my access to LSC Baker's medical records held by the Police Psychology Unit was appropriate

21. I have considered the submissions made on this point, particularly Mr Lewis' submission that my access to these records has undermined the level of confidence and trust and led to a breakdown of the relationship between patient and client'. Against the background of the purpose and function of the coronial jurisdiction in reducing the number of preventable deaths and in light of the inquisitorial nature of my role, Mr Lewis' submission is misguided. The Act specifically empowers me to inquire into all relevant information, whether it be medical records or otherwise, to discharge my duties under the Act.

Conclusion

22. As I considered the circumstances of this matter to be a workplace death, a key feature of my investigation and Inquest, focusing on issues of public health and safety, was to identify any opportunities for the prevention of similar deaths in future. In this regard, I specifically included the impact of single officer patrols and police members' fitness for duty in my Scope of Inquest so that I could examine these issues more closely with a view to isolating any prevention opportunities.

23. Mr Gipp submitted that on 20 August 2015, the CCP introduced the Chief Commissioner's Instruction CCI 08/15 Operations Safety Measures in terms of which Victoria Police members were no longer permitted to operate as single officers performing primary response duties. I acknowledge this restorative and preventative measure adopted by the CCP and I commend the action taken. Having noted, however, that this directive from the CCP was in response to the Recommendation in the *Hogarth-Clarke* matter, it would be remiss of me not to consider the impact of this ostensible delay in taking the action as recommended in the *Hogarth-Clarke* matter. If

the CCP had taken action timeously, the outcome for Vlado could have been different. In my view, in the circumstances of this specific matter and given that the inherent risks in police members operating as single officers was identified in the June 2010 *Hogarth-Clarke* Finding, more than three years before the incident in this matter occurred, Vlado's death was preventable.

24. However, given the preventative and restorative measures implemented in the CCI 08/15 on 20 August 2015, any Recommendation in this regard would be inappropriate.

25. With regard to whether Victoria Police adequately assess their members' fitness for duty, it is indeed alarming that the available evidence does not enable me to make any Findings about LSC Baker's fitness for duty on 25 August 2013, the day of the incident. The evidence indicates Victoria Police were not adequately informed about his mental or physical fitness for duty. In my view, in the context of the high-risk environment in which frontline police officers carry out their daily duties, there is a need for Victoria Police to be adequately informed about their members' mental and physical fitness for duty insofar as those health aspects either relate to or would impact their performance whilst acting in the course and scope of their employment.

26. Consequently, I deem the following Recommendation to be appropriate in the circumstances.

RECOMMENDATIONS

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

1. In the interests of promoting public health and safety and with the aim of preventing similar deaths, I recommend that the Chief Commissioner of Police develop and maintain a system to ensure that Victoria Police remains adequately informed about their members' fitness for duty. In particular, the system so devised or developed must ensure that their members are both physically and psychologically fit for duty without violating individual rights to privacy, amongst others.

FINDINGS

1. The standard of proof for coronial findings of fact is the civil standard of proof, on the balance of probabilities, with the *Briginshaw* gloss or explication. Adverse findings or

comments against individuals in their professional capacity, or against institutions, are not to be made with the benefit of hindsight but only on the basis of what was known or ought reasonably to have been known or done at the time and, only where the evidence supports a finding that they departed materially from the standards of their profession and, in so doing, caused or contributed to the death under investigation.[168]

Pursuant to section 67(1) of the *Coroners Act 2008*, I make the following findings having considered the body of evidence available to me:

2. I find that Vlado Tomislav Micetic, born on 5 June 1969, died on 25 August 2013 at the Alfred Hospital, Commercial Road, Prahran 3181 in the State of Victoria;

3. Having considered all the evidence, I find that Vlado Tomislav Mictetic was intercepted by Leading Senior Constable Timothy Howard Baker of Victoria Police, acting in the course and scope of his employment, in Union Street, Winsdor, at approximately 10.34 pm on 25 August 2013, after he ascertained that Vlado Tomislav Micetic was driving a motor vehicle with stolen number plates;

4. I find that Leading Senior Constable Timothy Howard Baker, when he attempted to arrest Vlado Tomislav Micetic, discharged his Victoria Police-issue firearm three times, injuring Vlado Tomislav Micetic;

5. I accept and adopt the cause of death as ascribed by Dr Strachan and I find that Vlado Tomislav Micetic died from the gunshot wound to his abdomen.

6. I find that Vlado Tomislav Micetic sustained the fatal gunshot wound to his abdomen when Leading Senior Constable Timothy Howard Baker discharged his firearm and fired the three shots at Vlado Tomislav Micetic, using the firearm issued to him by Victoria Police in the course and scope of his employment while working as a single officer.

7. In the circumstances in which Vlado Tomislav Micetic died, I find that his death was preventable.

[168] *Briginshaw v Briginshaw* (1938) 60 CLR 336

8. I am unable to make a definitive Finding, on the available evidence, that Vlado Tomislav Micetic, in resisting arrest, produced a knife and threatened Leading Senior Constable Timothy Howard Baker;

9. Similarly, on the available evidence, I am unable to make a definitive Finding that Leading Senior Constable Timothy Howard Baker shot Vlado Tomislav Micetic to ward off an imminent attack;

10. I acknowledge that Leading Senior Constable Timothy Howard Baker's ongoing mental health concerns as well as the physical and psychological challenges he experienced while performing his duties as a police officer. However, I am unable to make a definitive Finding, on the available evidence, that Leading Senior Constable Timothy Howard Baker either was or was not physically and psychologically fit for duty on 25 August 2013;

11. The evidence indicates, however, that Victoria Police's monitoring of their members' physical and mental health was inadequate, and I find that the Police Medical Officers did not assess Leading Senior Constable Baker's physical and psychological health adequately.

12. Similarly, although a change in Leading Senior Constable Timothy Howard Baker's medication was implicated in his failing the Operational Safety and Tactical Training assessment in May 2012, the available evidence does not indicate that the change in medication altered his mood or level of functioning in any manner. Consequently, the available evidence does not support a definitive Finding and I am unable to find that Leading Senior Constable Timothy Howard Baker suffered any side effects on 25 August 2013 from the change in his medication;

13. I find that the evidence indicates that the practice of the Prahran Highway Patrol at the time, which allowed for single officer patrols, contributed to the manner in which the events unfolded which led to the death of Vlado Tomislav Micetic;

14. AND I find further that the failure of Victoria Police to respond timeously to the Recommendation in the *Finding into The Death of Anthony John Hogarth-Clarke*, COR 2005. 1376, on 9 June 2010, to abolish single officer patrols, further contributed

to the manner in which the events unfolded which led to the death of Vlado Tomislav Mictetic.

I offer my condolences to the family of Vlado Tomislav Micetic for their sudden, unexpected and tragic loss.

To enable compliance with section 73(1) of the Coroners Act 2008 (Vic), I direct that the Findings will be published on the internet in accordance with the Rules.

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

Robinson Gill Lawyers, on behalf Mera Gelencir and the Family

Victorian Government Solicitor's Office, on behalf of the Chief Commissioner of Police

Tony Hargreaves & Partners Lawyers, on behalf of Timothy Howard Baker

Signature:

AUDREY JAMIESON

CORONER

Date: 22 November 2022

NOTE: Under section 83 of the ***Coroners Act 2008*** ('the Act'), a person with sufficient interest in an investigation may appeal to the Trial Division of the Supreme Court against the findings of a coroner in respect of a death after an investigation. An appeal must be made within 6 months after the day on which the determination is made, unless the Supreme Court grants leave to appeal out of time under section 86 of the Act.