



Rule 63(1)
IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE

Court Reference: COR 2017 2644

Related matter: COR 2017 2643

FINDING INTO DEATH WITH INQUEST

Form 37 Rule 63(1)

Section 67 of the *Coroners Act 2008*

Inquest into the death of: KAI HAO

Findings of:	AUDREY JAMIESON, CORONER
Delivered On:	20 July 2023
Delivered At:	Coroners Court of Victoria, 65 Kavanagh Street, Southbank 3006.
Hearing Dates:	15, 16, 17 and 19 March 2021
Appearances:	Ms Fiona Crock of Counsel, instructed by Shine Lawyers on behalf of the family of Kai Hao.
	No representative appeared on behalf of the

family of Yacqub Khayre (no application to appear as an interested party).

Mr Liam Brown of counsel with Ms Sarala Fitzgerald, instructed by the Victorian Government Solicitor's Office (VGSO), on behalf of the Department of Justice and Community Safety and the Adult Parole Board.

Mr Paul Lawrie of counsel, instructed by VGSO, on behalf of the Chief Commissioner of Police.

Ms Marion Isobel of counsel, instructed by Russell Kennedy Lawyers, on behalf of the Community Integration Support Program (CISP) employees.

Lennon Lawyers on behalf of the hostage.

Counsel Assisting the Coroner:

Ms Rachel Ellyard of Counsel, instructed by Mr Lindsay Spence, Principal In-House Solicitor, Coroners Court of Victoria.

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I, AUDREY JAMIESON, Coroner having investigated the death of **KAI HAO**

AND having held an Inquest in relation to this death on 15-17 and 19 March 2021,
at Melbourne

find that the identity of the deceased was **KAI HAO**,

born on 22 December 1980, and who

died on 5 June 2017

at Buckingham International Serviced Apartments, 406 Bay Street, Brighton 3186

from:

1 (a) SHOTGUN WOUNDS TO THE CHEST AND ABDOMEN

In the following summary of circumstances:

On 5 June 2017, Kai Hao was in the reception area of the Buckingham International Serviced Apartments (BISA) where he was employed as a receptionist. At approximately 4.10 pm, Yacub Khayre entered the BISA reception area and shot Kai Hao twice with a shotgun, killing him instantly.

Before he had shot and killed Mr Hao, Mr Khayre took a woman, who he had ‘booked as an escort’, hostage in Apartment 11 at the BISA. At approximately 4 pm, Mr Khayre bound and blindfolded the woman (the hostage).¹ However, after she managed to free herself, at approximately 4.10 pm, she alerted Victoria Police who deployed their specialist units including the Critical Incident Response Unit (CIRU) and the Special Operations Group (SOG). At approximately 6.02 pm, Mr Khayre emerged from the apartment, discharging his firearm twice. The SOG then returned fire and during the exchange of gunfire between Mr Khayre and the SOG members, Mr Khayre was fatally wounded and died at the scene.

The events that unfolded at BISA on 5 June 2017 became known as the “Brighton Siege” incident.

¹ Court File [CF]. On 7 June 2017, the State Coroner, *mero motu*, granted a Proceeding Suppression Order, pursuant to sections 18(2) and 19 of the Open Courts Act 2013, suppressing the identity of the female person who was taken hostage by Yacub Khayre on 5 June 2017 at the BISA.

BACKGROUND CIRCUMSTANCES

1. Kai Hao, an only child to his parents, was born in China on 22 December 1980. After he had completed his undergraduate studies at Beijing University, Mr Hao took up further study at the Institute of Science and Technology in China.
2. In July 2002, Mr Hao came to Australia. He enrolled in a TAFE course in Gippsland before going on to register at Monash University for further study. In 2008 after Mr Hao graduated from Monash University, he became an Australian Permanent Resident and moved to Melbourne.
3. When he arrived in Melbourne, Mr Hao found it difficult to secure gainful employment in his chosen field. Taking up various positions in the interim, in about 2011, Mr Hao started working as a receptionist at the BISA.
4. The evidence indicates that Mr Hao was a hardworking and reliable employee. According to his mother, Yingping Zhang, when their family experienced financial hardship, her son supported his parents while working in Australia. When Australian citizenship was conferred on Mr Hao on 6 November 2013, he made arrangements for his parents to visit him in Australia and, from December 2014 to December 2015, Mrs Zhang and her husband came to live with their son.²
5. After his parents returned to China, Mr Hao's family elders introduced him to Lu Li as a possible suitor in June 2016. The evidence indicates that Mr Hao and Ms Li's relationship flourished, and Ms Li relocated to Australia to be with Mr Hao. On 12 April 2017, the couple were married. According to Ms Li, after their marriage, she and Mr Hao discussed their future together and decided on where they would live and how many children they intended to have.

² Coronial Brief of Evidence [CB], Volume 1, pages 49-54, statement of Yingping Zhang.

SURROUNDING CIRCUMSTANCES

6. Born in Mogadishu, Somalia, in 1987, Yacub Khayre immigrated to Australia in 1993 with his grandparents and his brother. When they arrived in Melbourne, Mr Khayre and his brother settled in Gladstone Park with their grandparents.
7. In 1998, Mr Khayre's parents and his other siblings immigrated to Australia to join the rest of the family, temporarily moving into the Gladstone Park home which Mr Khayre shared with his brother and grandparents. However, when his parents and siblings moved to their own home in Broadmeadows shortly after arriving in Melbourne, Mr Khayre stayed with his grandparents in their Gladstone Park home. In 2004, Mr Khayre's grandfather passed away.
8. The evidence indicates that Mr Khayre was significantly impacted by his grandfather's passing, after which time he started to drift from his family, exhibiting the hallmarks of delinquent behaviour.

Forensic history

9. In 2005, Mr Khayre's behaviour drew the attention of Victoria Police and by 2006 his behaviour led to him being held in a youth detention centre. Over the course of the next few years, Mr Khayre's offending escalated to the extent that it culminated in his conviction on a number of offences.³
10. During 2009, Mr Khayre was implicated in terrorist activity in Melbourne, suspected to have been financed by the Al-Shabaab terrorist group based in East Africa. As a result of Victoria Police's investigation into the allegations of terrorism, it was identified that

³ CB, Statement of Jennifer Hosking, according to whom, during this time Mr Khayre was convicted of the following:

- i. Drug related offences;
- ii. Theft;
- iii. Handling stolen goods;
- iv. Burglary;
- v. Arson;
- vi. Aggravated burglary;
- vii. Recklessly causing injury;
- viii. Intentionally causing injury;
- ix. Being a prohibited person in possession of a firearm; and
- x. Possessing ammunition without a licence.

Mr Khayre was implicated in a plot to launch an attack on the Holsworthy Army Barracks in New South Wales (NSW) which led to his arrest on 4 August 2009. Although he was charged with related offences together with a number of co-accused in the matter, Mr Khayre himself was acquitted on all counts on 23 December 2010.

11. The evidence indicates that Mr Khayre's offending continued to escalate over the next few years and, as a result, on 3 May 2012 he was sentenced to imprisonment on numerous counts.
12. On 14 December 2016 Mr Khayre was released on parole, fitted with an electronic monitoring device (EMD) or ankle bracelet which was to ensure that Mr Khayre complied with the curfew imposed as part of his parole conditions.
13. Corrections Victoria (CV) was tasked to manage Mr Khayre while he was on parole. His management program included enrolling Mr Khayre in the Community Integration Support Program (CISP) which offered a range of services and associated programs to support the reintegration of offenders into the community, upon their release from prison.⁴ At that time, the CISP was specifically aimed at providing support to individuals with needs associated with radical and violent extremism and to assist those individuals with reintegration strategies as they transitioned from life in prison after their prison term had expired. Ultimately, the CISP sought to rehabilitate offenders with the aim to alleviate the associated dangers of radical extremism.
14. The lack of clarity of the evidence surrounding Mr Khayre's supervision, management and monitoring while he was on parole became the focal point of my coronial investigation into the Brighton Siege incident.

⁴ CB, page 2821: Justice Assurance and Review Office (JARO), *Review into the management of Mr Yacub Khayre (PID 820959825) by Corrections Victoria*. Corrections Victoria referred Mr Khayre to the CISP program in 2013. Mr Khayre's engagement in the CISP commenced in April 2014 and was still engaged in the program until the date of his death.

Circumstances proximate to the death

15. Mr Khayre had booked an apartment at the BISA for two nights from 4 June 2017 onwards. When he arrived, shortly after 2 pm on that day, he was given access to Apartment 11. Mr Khayre did not stay at the BISA overnight on 4 June 2017, however. It appears that Mr Khayre, monitored by the EMD, was mindful not to breach his curfew conditions or to draw attention to his whereabouts.
16. At approximately 4 pm on 5 June 2017, a woman arrived at the BISA by taxi. The evidence indicates that the woman was commissioned by an escort service which Mr Khayre had booked. As soon as the woman entered Apartment 11, Mr Khayre threatened her, binding her with cable ties.
17. At approximately 4.10 pm, Mr Khayre left Apartment 11 and made his way to the reception area of the BISA where he shot Mr Hao in his chest and abdomen, causing fatal injuries. During this time, the woman who Mr Khayre had bound, managed to free herself from the cable ties which Mr Khayre had used to bind her and alerted the police.
18. After he had shot Mr Hao, Mr Khayre returned to Apartment 11 where he intercepted the call made by his hostage. According to the emergency services call-taker, the person who took the phone from the woman advised that he had killed the receptionist and planted a bomb in the building. The evidence indicates that this person was Mr Khayre. That call was then ended.
19. At approximately 4.20 pm Victoria Police arrived at the BISA. The first police officers to arrive at the scene were general duties uniformed members who cordoned off the area and requested back-up from Victoria Police specialist units, namely the Critical Incident Response Team (CIRT) and the Special Operations Group (SOG).
20. At approximately 4.44 pm, Mr Khayre called emergency services, reiterating that he had planted a bomb and confirming that he had taken a woman hostage at the BISA.

21. At approximately 5.41 pm, Mr Khayre made another call. This time, the call was made to the Channel 7 television studios. Mr Khayre is reported to have uttered the following words: “This is the Brighton hostage. This is for IS, this is for Al-Qaeda”.⁵
22. At approximately 6.02 pm, Mr Khayre ran out of Apartment 11 and confronted Victoria Police, discharging his firearm twice. When Victoria Police SOG members returned fire, Mr Khayre was fatally wounded.

PURPOSE OF THE CORONIAL INVESTIGATION

23. The Coroners Court of Victoria is an inquisitorial jurisdiction.⁶ 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.⁷ 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.⁸
24. 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.⁹ 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

⁵ The references were clearly to well-known Islamic dissident groups, Islamic State (IS) and Al-Qaeda.

- i. IS is abbreviated form of the Islamic State of Iraq and Syria (ISIS) and also known as Islamic State of Iraq and the Levant (ISIL).
- ii. Officially known as Qaedat al-Jihad, Wikipedia describes Al Qaeda as ‘a multinational militant Sunni Islamic extremist network.

⁶ Section 89(4) Coroners Act 2008.

⁷ Section 67(1) of the *Coroners Act 2008*.

⁸ See for example *Harmsworth v The State Coroner* [1989] VR 989; *Clancy v West* (Unreported 17/08/1994, Supreme Court of Victoria, Harper J).

⁹ The "prevention" role is explicitly articulated in the Preamble and Purposes of the Act.

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.¹⁰ These are effectively the vehicles by which the prevention role may be advanced.¹¹

25. 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.
26. 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.
27. The circumstances of Mr Hao's death render this a mandatory Inquest under section 52(2) of the Act. Mr Hao died by homicide at the hands of Mr Khayre and because Mr Khayre had been fatally wounded later that same day, no indictable charge connected with Mr Hao's death could be laid.

STANDARD OF PROOF

28. 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*.¹² 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;

¹⁰ See sections 72(1), 67(3) and 72(2) of the Act regarding reports, comments and recommendations respectively.

¹¹ 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.

¹² (1938) 60 CLR 336.

- 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.
29. 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

30. The State Coroner, Judge Hinchey (as she then was), had carriage of the coronial investigation into the deaths of Kai Hao and Yacub Khayre at the inception.
31. An investigation of the Brighton Siege incident was immediately commenced by Victoria Police Homicide Squad. Detective Senior Sergeant (DSS) Mark Colbert was appointed as the Coroner's Investigator (CI).
32. On 9 August 2017, Judge Hinchey directed the CI to compile a full Coronial Brief of Evidence (CB).

Sources of Evidence

33. This Finding draws on the totality of the evidential material produced during the investigation into Mr Hao's death. That is, the Court records maintained during the coronial investigation, the Coronial Brief of Evidence and all other material sought and obtained by the Court prior to the Inquest, the evidence adduced at the Inquest and all submissions made by the interested parties.
34. In writing this Finding, I do not propose to summarise all the evidence but will endeavour to refer to the evidence yielded by the coronial investigation, only in such detail as would appear to be warranted by its forensic significance and in the interests

of narrative clarity. The absence of a reference to any aspect of the evidence, does not imply that I have not considered that evidence.

35. The circumstances in which Mr Hao's death occurred, a fatal shooting at the hands of Mr Khayre, were apparent at the outset of the coronial investigation. However, having considered the evidence available at the conclusion of the preliminary investigations, I was satisfied that I would be able to discharge my duties under the Act in respect of Mr Hao's identity, the cause of his death and the circumstances in which the death occurred.

Identity

36. On 7 June 2017, the body of Kai Hao was visually identified by his friend, Diao Ke who signed a formal Statement of Identification.
37. Identity was not in dispute and required no further investigation.

Medical Cause of Death

38. On 7 June 2017, Forensic Pathologist, Dr Sarah Parsons of the Victorian Institute of Forensic Medicine (VIFM) conducted an autopsy upon the body of Kai Hao.
39. Prior to the autopsy, Dr Parsons considered the Police Report of Death, *Form 83* and the Coroner's Direction Regarding Autopsy, *Form 9*.¹³

Post-mortem examination

40. At autopsy, Dr Parsons noted ovoid defects on the right upper abdomen and the right mid-chest which she described as entry wounds. Dr Parsons commented that the 'pellets caused significant internal damage which has led to the deceased's death' and further that there 'was no significant natural disease identified at autopsy'.¹⁴

¹³ Court File [CF], *Form 9* dated 6 June 2017. Pursuant to section 27 of the Coroners Act 2008, Detective Senior Sergeant Pixie Fuhrmeister of Victoria Police Homicide Squad requested a Direction for autopsy on 5 June 2017.

¹⁴ CB, Medical Examiner's Report (MER) of Dr Sarah Parsons, dated 4 August 2017.

Toxicology

41. The toxicological examination of the post-mortem samples did not identify the presence of any common drugs or poisons.

Forensic pathology opinion

42. On 4 August 2017, Dr Parsons provided a written report of her findings and opined that the medical cause of death was 1(a) Shotgun wounds to the chest and abdomen.

Directions Hearing¹⁵

43. On 22 August 2017, Judge Hinchey convened a Directions Hearing into the deaths of Mr Khayre and Mr Hao. Pursuant to Practice Direction 1 of 2012, titled 'Opening Inquests into Police Contact Deaths', an Inquest is mandated in the circumstances in which Mr Khayre's death occurred. For the sake of expediency, the Directions Hearing included the coronial investigation into Mr Hao's death by homicide.
44. At this Directions Hearing, Ms S Thomas appeared to assist the coroner, Dr I Freckleton appeared on behalf of Corrections Victoria (CV) and the Adult Parole Board (APB) and Mr B Ihle appeared on behalf of the Chief Commissioner of Police.
45. The interested parties agreed to the timeline proposed for the delivery of the CB and the additional statements from Victoria Police after their review of the incident, to consider compliance with Victoria Police policies and procedures. The interested parties agreed further to obtaining information from the APB with regard to the circumstances under which Mr Khayre was released on parole in December 2016 and a statement from CV setting out how they had managed Mr Khayre between December 2016 and 5 June 2017 while he was in the community, on parole.
46. The proceedings were adjourned *sine die* on the understanding that the matter would be set down for a further Directions Hearing after the submission of the CB.

¹⁵ Transcript of Proceedings dated 22 August 2017, pages 1-8.

Conduct of my Investigation

47. Cognisant that I was already in a position to discharge my duties pursuant to section 67 of the Act, I focused my investigation on my prevention role as a coroner. The Preamble to the Act specifically enjoins an investigating coroner to contribute to the reduction of the number of preventable deaths and to promote public health and safety and the administration of justice.
48. In my view, the circumstances in which Mr Hao died, by homicide at the hands of Mr Khayre, a parolee with suspected tendencies to radical extremism and to commit violent crime for which he was admitted to the CISP at the time of his own death, I considered whether Mr Hao's death could have been prevented in the circumstances.
49. The investigation and the preparation of the CB in preparation for an Inquest was undertaken by DSS Colbert who remained the CI and who completed the investigation and compiled the CB on my behalf.
50. The control and management of Mr Khayre upon his release from prison on parole was central to my investigation into Mr Hao's death. Examining this aspect more closely, would enable me to consider whether there were any systemic deficiencies which could have contributed to the events that led to Mr Hao's death and, to the extent that I could identify any deficiencies, whether those deficiencies presented an opportunity lost to alter the outcome for Mr Hao.

INQUEST

51. The Inquest was set down to be held over a three-day period from 15 to 17 March 2021. To expedite the Inquest proceedings, I convened further Directions Hearings after I took over the conduct of the coronial investigation from the former State Coroner.

Direction Hearing/s

Second Directions Hearing

52. At this Directions Hearing, held on 19 July 2019, I was assisted by Ms R Ellyard. Mr L Brown appeared on behalf of the Secretary to the Department of Justice and

Community Safety (DJCS) and the Adult Parole Board (APB) and Mr R Gipp appeared on behalf of the Chief Commissioner of Police (CCP).¹⁶

53. Ms Ellyard confirmed that Mr Hao's family did not apply to join the proceedings as interested parties and further, that the CB would therefore only be made available to the interested parties present in Court as and when it was finalised.
54. In relation to the finalisation of the CB, Ms Ellyard brought to my attention that Mr Gipp on behalf of the CCP had filed an application, on the grounds of Public Interest Immunity (PII), for the CB to be redacted before it was circulated to the parties.
55. Acknowledging that I have received written submissions from the CCP in this regard, I invited Mr Gipp to address the Court on this point. The gravamen of the CCP's PII Application lie in the methodology of SOG and CIRT Operations and the descriptions of their specialist equipment.
56. In further acknowledgement of the concerns raised by Mr Gipp, I resolved to make the redacted version of the CB available to the interested parties before considering any applications for interlocutory injunctions. In my view, even though neither Mr Hao nor Mr Khayre's family sought to join the proceedings as interested parties, a copy of the CB is made available to families in the ordinary course.
57. Mr Gipp made a further request for a Pseudonym Order for those SOG and CIRT members involved in the Brighton Siege. Cognisant of the keen media interest in this matter and to provide an opportunity for the media to make submissions with regard to the CCP's application, from the Bench, I canvassed with the representatives of the interested parties at the Bar Table whether such orders as sought by Mr Gipp may be premature, given that orders of this nature are properly considered at the time when that evidence is adduced. Consequently, it was resolved that Mr Gipp first examine the redacted CB, before launching his substantive applications in this regard.¹⁷

¹⁶ DJCS encompassing CV and The Justice Assurance Review Office (JARO).

¹⁷ Transcript of Proceedings of 19 July 2019, page 5.

Third Directions Hearing

58. Held on 4 December 2019, the appearances for the interested parties were as per the previous Directions Hearing, with Mr P Lennon of Lennon Lawyers appearing for the hostage at this Directions Hearing.
59. Counsel Assisting, Ms Ellyard, confirmed that my CB was now adequately redacted to reflect the PII concerns raised by Mr Gipp for the CPP at the previous Directions Hearing, and that it was appropriate to release the CB to all the interested parties including the families of Mr Hao and Mr Khayre, if required, and to the hostage.
60. Following Mr Brown's acknowledgment that CB had been appropriately redacted for release to the interested parties, he pursued applications for suppression orders on behalf of his clients, CV and the APB, who had 'broader' concerns about some of the material in their evidence dealing with their systems, protocols and policies. Mr Brown was of the view that disseminating material of that nature would not be in the public interest and supported his application by submitting confidential affidavits of appropriately qualified employees of his clients.¹⁸
61. Acknowledging that the media may have an interest in his clients' applications, Mr Brown indicated that his clients were willing to accept interim suppression orders until other interested parties were afforded a reasonable opportunity to respond. Consequently, I resolved to grant Mr Brown's application.
62. On behalf of the CPP, Mr Gipp revisited the two applications for suppression orders he brought to my attention previously. The first of these orders related to the evidence of potential witnesses at the Inquest—the two CISP witnesses and the Victoria Police SOG operatives. Mr Gipp specifically sought to redact that part of their evidence which

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- i. After Mr Gipp on behalf of the CPP had reviewed the redacted CB, he was invited to make submissions by 9 August 2019 with regard to the whether the CB was adequately redacted and aligned with his substantive PII Ordee and Pseudonym Order applications.
 - ii. Having reviewed the CPP's submissions on this point, I granted the application-- PII Order dated 28 August 2019.

¹⁸ Transcript of Proceedings of 4 December 2019, page 3.

related to their own review procedures and training practices, *inter alia*, before the media is invited to peruse his application and make submissions thereon.

63. The second application Mr Gipp addressed was the application for Pseudonym Orders for one CISP employee and the SOG operatives.
64. In replication, Ms Ellyard submitted that to avoid any duplication, I should consider making one order to incorporate the applications for suppression orders by Mr Gipp and Mr Brown at the appropriate time when the oral evidence of those witnesses is adduced.
65. After Mr Lennon, on behalf of the hostage, indicated that he would be representing his client during the Inquest and that his client wanted access to the CB, for public immunity reasons and on the understanding that I was open to consider further submissions particularly from the media, I resolved to release the latest version of the CB, appropriately redacted, to the interested parties under the protection of interim suppression orders as requested by Mr Gipp and Mr Brown.¹⁹

Scope of the Inquest

66. At the same Directions Hearing, I heard submissions on the Scope of the Inquest and the potential witnesses to be called to testify at the Inquest.
67. The parties agreed that the evidence contained in CB was sufficient to enable me to discharge my statutory obligations pursuant to section 67 of the Act. Accordingly, aligned with my prevention role, I determined to examine how Mr Khayre's parole was supervised, managed and monitored by the relevant government agencies.
68. Mr Lennon confirmed that his client will be participating in the Inquest and requested my indulgence to consult his client to consider whether he needed to make further submissions for my consideration on the Scope of the Inquest.

¹⁹ Court File,

- i. Interim Suppression Order granted in favour of the CCP dated 4 December 2019.
- ii. Interim Suppression Order granted in favour of the DJCS dated 4 December 2019.
- iii. Pursuant to section 11(1) of the Open Courts Act (OCA), a Court must take reasonable steps to ensure that media agencies are notified of applications for Suppression Orders.

69. Consequently, subject to further submissions from Mr Lennon, I determined that the Scope of my Inquest would encompass the adequacy of the supervision, monitoring and management of Yacub Khayre by the various government agencies prior to the events of 5 June 2017, the day of the incident, while he was on parole.

Subsequent submissions by the CCP and DJCS

70. Following the granting of the Interim Suppression Orders, both Mr Gipp and Mr Brown filed further submissions on their applications which remained under my consideration at the time.²⁰

71. In summary, Mr Gipp advanced further reasons to support his existing applications for:²¹

- i. Suppression Orders relating to operational tactics and procedures adopted by Victoria Police;
- ii. PII Orders relating to those parts of my Coronial Brief containing references to firearms and specialist equipment and training procedures for the Victoria Police SOG, their Technical Surveillance Unit (TSU) and details relating to their Joint Counter Terrorism Team (JCTT). in relation to Victoria Police; and
- iii. Pseudonym Orders for those SOG members who attended the Brighton Siege incident.

72. Similarly, Mr Brown's written submissions advanced the submissions made in support of his application at the Directions Hearings.

73. In summary, Mr Brown sought Suppression Orders in relation to the following documents:²²

²⁰ Court File,

- i. On 22 April 2020, Mr Brown filed his written submissions on behalf of the DJCS.
- ii. On 23 April 2020, Mr Gipp filed written submissions to supplement his original submissions dated 18 July 2019.

²¹ Court File, *Form 46* Notice of Application for Suppression Order dated 21 March 2018. The Application was ventilated at the Directions Hearings in the intervening period, after which I granted Interim Orders and the CB was redacted at my Direction.

- i. JARO's review dated 4 August 2017;
 - ii. CV's review dated 30 June 2017;
 - iii. CV's Electronic monitoring instruction dated January 2017;
 - iv. Details relating to the risk assessment tools in use by CV;
 - v. The identities of the CISP witnesses list in the Inquest Brief;
 - vi. The identities of the Islamic religious leaders associated with the CISP program;
and
 - vii. The affidavit of CV's Jennifer Hosking dated 23 March 2018;
74. Subsequently, pursuant to section 11(1) of the *Open Courts Act 2013* (OCA), I brought the applications to the attention of the media, inviting their submissions for my consideration.
75. On 27 April 2020, I received submissions from The Age Company Pty Ltd (The Age) and the Australian Broadcasting Corporation (The ABC), responding to the applications filed by Mr Gipp and Mr Brown. Having perused the media's submissions, I made it available to the interested parties. Mr Gipp and Mr Brown filed submissions in replication on 4 May 2020 and 8 May 2020 respectively.
76. Having considered the submissions made by the respective interested parties, I granted the following orders:
- i. Pseudonym Order dated 18 February 2021 to protect the identities of all the officers involved the Brighton Siege including the SOG Operatives, Tactical Support Unit (TSU) Operatives and both Victoria Police and the Australian Federal Police (AFP) Counter-Terrorism Officers;

²² Court File, *Form 46* Notice of Application for Suppression Order dated 23 March 2018.

- ii. Public Interest Immunity Order dated 18 February 2021, granting the PII application filed by Mr Gipp on behalf of the CCP over a range of material in the Coronial Brief; and
 - iii. Public Interest Immunity Order dated 18 February 2021, granting the PII application filed by Mr Brown on behalf of CV over a range of material in the Coronial Brief.
77. At this juncture, I determined that applications in respect of those witnesses who were to be called to give evidence at the Inquest would be properly considered when they are called to testify. Accordingly, my Rulings on the applications in respect of the CISP witnesses and the CV witnesses were reserved until the Inquest proceedings commenced.

Viva Voce Evidence at the Inquest

78. *Viva voce* evidence was obtained from the following witnesses of the various government agencies who played a role in Mr Khayre's supervision, monitoring and management while he was on parole before the incident on 5 June 2017:
- Detective Inspector (DI) Ian Milner of Victoria Police;
 - Witness F (CISP);
 - Another CISP witness whose name was suppressed;
 - Mario Nuzzo of the Department of Justice;
 - Anita Lis of the Adult Parole Board; and
 - Jennifer Hosking of Corrections Victoria
79. At the Inquest, Ms Ellyard appeared to assist me, Mr Brown appeared with Ms S Fitzgerald on behalf of the DJCS, Mr Lawrie appeared on behalf of the CCP, Ms M Isobel appeared on behalf of the CISP witnesses, Ms F Crock appeared on behalf of the family of Mr Hao and Mr Lennon appeared on behalf of the hostage.

80. At the commencement of the Inquest proceedings on 15 March 2021, in addition to the application for a Pseudonym Order for one of the CISP witnesses, of which I was aware, Ms Isobel filed a further application for an order allowing the witnesses to testify in a closed court, pursuant to section 33 of the OCA.²³
81. On the same day, after affording the interested parties an opportunity to be heard on Ms Isobel's application and after no objections were raised, I granted a Pseudonym Order to protect to identity of the one CISP employee to be referred to in the Inquest proceedings as Witness F and further, I granted the application for Witness F to testify in a closed court.²⁴

ISSUES INVESTIGATED AT THE INQUEST

82. At the Inquest, I sought to investigate the following issues more closely:
- i. How was Mr Khayre, who appeared to be influenced by terrorist ideology at the time, able to plan and execute his actions of 5 June 2017 without his views and plans coming to the attention of the government agencies who had contact with him during his parole period; and
 - ii. To what extent were Mr Khayre's views about terrorism known or able to have been known including the extent to which his actions may have been anticipated and prevented so as to avoid Mr Hao's death and his own death.
83. In summary, the witnesses called at the Inquest testified as follows:
- i. Detective Inspector Ian Milner²⁵

²³ Transcript of Proceedings dated 15 March 2021, page 4. Ms Isobel also applied for the witness to testify via the Cisco Webex platform.

²⁴ Ibid, page 51 and Court File, Pseudonym Order dated 15 March 2021.

²⁵ At time the matter was listed Inquest DI Milner had been elevated to the rank of Superintendent of Police

- i. Exhibit 1, Statement of DI Ian Milner;
- ii. Exhibit 2, Victoria Police Target Profile for Yacqub Khayre;
- iii. Exhibit 3, Intelligence Brief dated 6 June 2017;
- iv. Exhibit 4, Extract from Victoria Police Court Outcomes Report dated 6 June 2017;

DI Milner who was the Officer in charge of the Security Intelligence Unit (SIU) at the time of the Brighton Siege incident gave evidence of Victoria Police's involvement with Mr Khayre while he was on parole.²⁶

According to DI Milner, Victoria Police adopted a passive monitoring role over Mr Khayre because by their assessment, he did not exhibit any recognised behaviours that could be assessed as indicating an extremist Islamic ideology. Mr Khayre's behaviour for which Victoria Police engaged with him related to his extensive criminal activity and chronic drug addiction issues rather than terrorist extremism.

Victoria Police used two indicator tools to assess Mr Khayre's level of extremist risk to the Victorian security environment—the SIU Security Prioritisation Tool (SPT) and the Australia-New Zealand Counter Terrorism Committee (ANZCTC) Person of Interest Security Prioritisation Tool— both of which indicated that Mr Khayre was 'a low level risk to the Victorian security environment'.²⁷

DI Milner testified further that the SPT assessment was subject to regular review, the last of which was conducted in May 2017 which yielded a positive result and confirming that Mr Khayre was 'a low level risk' at the time.²⁸

Mr Khayre's Target Profile, which was received into evidence as Exhibit 2, was not based on a concern by Victoria Police that he was likely to engage in conduct related to violent extremism. Victoria Police did, however, take into account Mr Khayre's history of terrorist related activity when they assessed him even though he had been acquitted on criminal charges relating to terrorism in December 2010.²⁹

²⁶ The SIU operated as a subsidiary unit within Victoria Police's Counter Terrorism Command (CTC).

²⁷ Exhibit 1, Page 517 of the Inquest Brief.

²⁸ Exhibit 1, CB pages 517-518

²⁹ Transcript of Proceedings dated 15 March 2021, pages 35-36.

DI Milner's evidence also gave me insight into the complexities of the Victoria Police SPT and ANZCTC assessment tools which indicated that the length of time required to perform and complete these assessments was around two months. DI Milner identified and explained how the assessments led Victoria Police to conclude that Mr Khayre was 'a low level risk' of extremist behaviour.³⁰

According to DI Milner, the ANZCTC tool is aimed at assisting Victoria Police to identify where they should focus their attention in assisting to rehabilitate offenders rather than identifying that particular offender's potential to commit any specific offence. His evidence indicated further that there was no information available to the SIU to justify their taking any action to abate the risk of Mr Khayre's conduct on 5 June 2017. They did not know that Mr Khayre was accessing extremist material online in 2017 and the SIU assessments were supported by the assessments conducted with Mr Khayre's CISP case worker and the CV assessments.

ii. Witness F³¹

Employed as a CISP case worker, Witness F gave evidence about his involvement with Mr Khayre for the period December 2016 to June 2017.

The CISP sought to address the needs of Muslim men in the community and offered a range of social welfare services aimed at supporting the reintegration from prison into the broader Islamic community of individuals who presented with needs associated with radicalisation to violent extremism. The program was delivered across three main areas—social and welfare, religious and clinical support.

Between 2014 and 2017, the CISP records indicated that Mr Khayre received 104 mentoring sessions with his CISP mentor and 19 intensive case management sessions with his CISP case manager. The records indicated further

³⁰ Ibid, page 38.

³¹ Exhibit 5, statement of Witness F

that Mr Khayre's case had been reviewed six times during the period 2014 to 2017 by the CISP Review panel.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³² Transcript of Proceedings dated 16 March 2021, pages 56-66.

[REDACTED]

iii. Second CISP employee³⁴

This witness was the manager of the CISP which was administered by the Islamic Council of Victoria at the time when Mr Khayre was engaged in the program. By and large, the evidence of this witness provided an overview of CISP involvement with Mr Khayre and complimented the evidence of Witness F in relation to Mr Khayre’s engagement with the CISP.³⁵

This witness provided further insight into the operation of the CISP mentorship and the role that it played observing signs that Mr Khayre may be experiencing any form of ‘distress and anxiety’ and if Mr Khayre was observed to show any signs of ‘distress or anxiety’, the CISP aimed to assist with positive intervention strategies to alleviate any related issues.

The CISP manager also provided insight in the changes made to the CISP mentorship program in response to the Brighton Siege incident.

iv. Mario Nuzzo³⁶

Mr Nuzzo had been employed at the Department of Justice and Regulation (DJR) for 24 years and testified in his capacity as a DJR Principal Practitioner, a

³³ Subsequent investigation revealed that the items were later believed to be the proceeds of crime, derived from a burglary committed on 22 April 2017 in Essendon.

³⁴ Court File, On application by the DJCS, the evidence of this witness was protected by a Proceeding Suppression Order granted on 19 March 2021. The witness’ statement was redacted to reflect previous applications by the DJCS. Although no Pseudonym Order was granted in respect of this witness, for the purposes of this Finding I will not identify the witness.

³⁵ Exhibit 6, statement of the second CISP employee.

³⁶ Exhibits 7 to 11, statement of Mario Nuzzo and supporting documents.

role he had been performing for a period of three years when the Brighton Siege incident occurred. On the day of the incident, Mr Nuzzo was the Duty Director.

Mr Nuzzo's evidence centred on the DJR's monitoring of Mr Khayre by means of an electronic bracelet to enforce a curfew imposed by the APB as a condition of his parole. According to Mr Nuzzo, Mr Khayre was subject to a daily curfew between the hours 10 pm to 6 am [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁷ Transcript of Proceedings, 16 March 2021, pages 103 to 104.

v. Anita Lis³⁸

Adopting the statement of Stuart Ward whose role she now fulfilled and who was unavailable at the time of the Inquest, Ms Lis testified in her capacity as the APB General Manager of Operations. Ms Lis' evidence covered CV's involvement with Mr Khayre including the decision-making process surrounding his release on parole in December 2016.

According to Ms Lis, Mr Khayre first became eligible for parole on 21 April 2015. In the lead up to his eligibility date, in considering Mr Khayre's application for parole, CV conducted a Parole Assessment and on 2 March 2015 the CV released their Parole Assessment Summary (PAS) in terms of which Mr Khayre's application was unsuccessful because he had not yet completed 'offence specific treatment' to address his 'problematic behaviour' in prison which included igniting fires in his cell on three occasions. At the time, Mr Khayre was deemed to present a 'high risk of reoffending' and required 'program interventions' to address his issues before he was considered for release on parole. Mr Khayre was then admitted to various programs to address his behavioural issues.

On 22 March 2015, the APB received a Community Offenders Advice and Treatment Service (COATS) Confidential Forensic Drug and Alcohol Assessment Report which identified a link between Mr Khayre's substance use and his offending. Based on this finding, the COATS Report recommended that when Mr Khayre is released on parole, he attends counselling at a local drug treatment service.

On 16 April 2015, having acknowledged the recommendations of the COATS Report, the APB determined that to consider any further application for parole, Mr Khayre had to complete High Intensity Violence Intervention Program (HIVIP) and the Exploring Change Program.

³⁸ Exhibits 12 to 17, statement of Stuart Ward and supporting documents.

On 26 August 2015, the APB received a report from Caraniche Drug and Alcohol Services (CDAS) which indicated that Mr Khayre had successfully completed all the tasks set for him as recommended in the COATS Report. According to the CDAS, by his proactive engagement in the program, Mr Khayre gave them the impression that he was motivated and committed to the program's projected outcomes.

In addition to the CDAS program, in the same month, August 2015, Mr Khayre enrolled in an offence specific intervention program with Offending Behaviour Programs which he duly completed over the course of the next few months.

On 12 August 2016, the APB received Mr Khayre's second application for parole replete with a Case Management Review Committee Parole Application Report (CMRC PAR) dated 10 August 2016 indicating that Mr Khayre had met the threshold for progressing to the parole planning stage because he had completed his HIVIP requirements. The CMRC PAR indicated further that Mr Khayre's recent behaviour or conduct while he was in prison, was satisfactory and although he was noted to be a 'serious violent offender' (SVO), his behaviour had improved considerably.

On 14 November 2016, the APB received a Parole Suitability Assessment (PSR) dated 4 November 2016 from CV in terms of which Mr Khayre was deemed a suitable candidate for parole on the following conditions:

- a) To undergo assessment, as directed, to determine suitability for drug and alcohol abuse treatment, medical or psychological treatment and to undergo such treatment if necessary;
- b) To submit to testing for alcohol consumption or drug use as directed;
- c) To submit to a curfew at his family home each day between 10 pm and 6am;
- d) To submit to electronic monitoring for curfew compliance;

- e) Not to contact his victim or his victim's family;
- f) To undergo assessment for offending behaviour programs and participate if any were deemed to be appropriate;
- g) To submit to intensive parole for the period specified by the APB;
- h) To undertake unpaid community work as directed unless otherwise employed or participating in an approved educational or training program; and
- i) To report to his supervising community corrections officer at a frequency and duration to be determined by the APB.

On 30 November 2016, the APB approved Mr Khayre's application for parole to commence on 14 December 2016. A copy of the parole order dated 14 December 2016 was sent to the Broadmeadows Community Corrections office where Mr Khayre was to be supervised.

Mr Khayre's parole period was set to expire on 14 December 2017.

vi. Jennifer Hosking³⁹

Ms Hosking testified in her capacity as the Assistant Director, Community Corrections Services (CCS). Confirming the processes described by Ms Lis in assessing Mr Khayre's suitability for parole, Ms Hosking's evidence goes on to include the measures taken by CV to monitor, supervise and manage Mr Khayre while he was on parole from 14 December 2016 to 5 June 2017, the day of the Brighton Siege incident.

According to Ms Hosking, Mr Khayre was supervised by a Senior Parole Officer (SPO) due to his SVO status and commenced his parole at the highest level of intervention as a "designated 'Priority 1' high risk parolee". Mr

³⁹ Exhibits 18 to 31

Khayre's SPO, like all other SPOs, received ongoing, specialised training to manage the parolees under their care and management.

During the period of his parole, until the events of 5 June 2017, Mr Khayre had two SPOs. His first SPO, dealt with his initial release into the community after which he was managed by a second SPO from about 19 January 2019.

While on parole, between December 2016 and May 2017, Mr Khayre was tested for illicit drugs thirteen times—all his tests returned a negative result. In addition, Mr Khayre was monitored, managed and supported with CISP supervision, drug and alcohol counselling and regular home-visit supervision appointments by CCS staff. He was also enrolled in a treatment and support program, Maintaining Change.

The evidence before me indicated further that Mr Khayre had contact with the CCS on multiple occasions, approximately 65 times in total of direct contact with Mr Khayre, throughout his parole by way of home visits, reporting to the CSS for supervision, attending drug and alcohol counselling sessions and honouring his appointments for drug and alcohol testing.

Ms Hosking's evidence indicated further that over and above his sessions with his CISP workers, Mr Khayre's SPO collaborated with his CISP case worker(s) in providing support services to mitigate the risk of his returning to radicalisation and, by the CISP assessment, Mr Khayre had made positive progress with no signs of imminent radical extremism. Throughout his period of monitoring and supervision, neither the CISP case workers nor the CSS identified any instance where Mr Khayre had breached any of his parole conditions or showed any inclination to extremist ideology.

With regard to Mr Khayre's compliance with his condition to perform community work, Ms Hosking's evidence indicated that he performed 42 hours in total and on the one occasion where he was absent from work, 1 February 2017, Mr Khayre was certified to be medically unfit for duty on the day. From 24 March onwards, Mr Khayre was able to secure gainful employment with a

bricklayer and submitted his bank statements to prove that he was gainfully employed.

With regard to Mr Khayre's real-time electronic monitoring regime, Ms Hosking's evidence indicated that, prior to the events of 5 June 2017, only one 'low battery alert' was triggered on 23 December 2016 at 1.12 am. After CCS followed up the alert with Mr Khayre's emergency contact, the monitoring device was successfully charged and the cause for concern was alleviated.

84. Ms Hosking was the last witness to be called at the Inquest. After Ms Hosking was excused, Ms Ellyard tendered the balance of the Coronial Brief of Evidence.⁴⁰
85. After the balance of the Coronial Brief of Evidence was admitted into evidence, I adjourned the proceedings to enable the interested parties to prepare for oral submissions on the Findings to be made. On 19 March 2021, the interested parties made their submissions for my consideration.⁴¹
86. In writing my Finding, I have considered all the evidence, both written and oral, as well as the submissions of the interested parties.⁴²

COMMENTS

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

Was Mr Khayre's conduct motivated by extremist ideology?

1. There is no doubt that violence, whether perpetrated in the public or private domain, has lasting effects on victims and their families. The events of the Brighton Siege on 5 June 2017 have not only left Mr Hao's family without their loved one but have also impacted them significantly—his parents have lost their only child and his wife, her husband. Similarly, Mr Khayre's family has also lost a loved one. In the same vein, I

⁴⁰ Exhibit 32.

⁴¹ Prior to the Submissions Hearing, Mr Lawrie for the CCP and Ms Crock for Mr Hao's family delivered written submissions for my perusal and elaborated on their written submissions at the Submissions Hearing.

⁴² The absence of any reference to any particular aspect of the evidence or the submissions made by the interested parties does not imply that I have not considered that evidence or the submissions.

acknowledge the likelihood that the hostage in this matter may suffer lasting trauma, whether psychological or otherwise, from her experience during the Brighton Siege incident.

2. Politically motivated violence, on the other hand, driven by hatred, prejudice or bias towards a group of people based on race, religion or ethnicity, *inter alia*, affects an entire community or society. Given the circumstances in which Mr Hao's death had occurred and given Mr Khayre's history of extremist dissidence, I considered the impact, if any, of what appeared to be Mr Khayre's political persuasion on his decision to follow that course of action which culminated in Mr Hao's death.
3. In determining whether Mr Khayre's conduct on 5 June 2017 was motivated by extremist political ideology, I considered the evidence relating to his accessing extremist audio-visual online material prior to the day of the incident and his conduct during the Brighton Siege event including his call to the Channel 7 Newsroom while holding a hostage at the BISA. Further, I considered Mr Khayre's own claim relating to his affiliation to IS and Al-Qaeda. Although this evidence appears to suggest that his conduct was possibly motivated by extremist ideology, there is little by way of substantive evidence to corroborate Mr Khayre's claims made in his spontaneous utterances to the Channel 7 Newsroom. The available evidence does not support a conclusion that Mr Khayre's conduct apropos the events of the day was planned with any degree of sophistication or links to the terrorist organisations he referred to. Moreover, the evidence of the hostage, according to whom Mr Khayre did not want to kill the police but wanted the police to kill him, is not indicative of extremist or political ideology.⁴³
4. The totality of the evidence before me is not sufficiently cogent to enable me to make any definitive finding on whether or not Mr Khayre's conduct was motivated by extremist ideology.

⁴³ Exhibit 32, statement of the hostage.

Mr Khayre's fitness for conditional release on parole

5. On behalf of Mr Hao's family, Ms Crock submitted that the decision of the APB to release Mr Khayre on parole was taken 'without proper reference to his history of radicalisation' and further that the decision was based on 'Corrections Victoria's inadequate provision of relevant material' to the APB in relation to the risk of radicalisation posed by Mr Khayre'.⁴⁴
6. Ms Crock submitted further that one of Mr Khayre's conditions of release on parole, that 'he could not associate' with his co-accused in the 2009 terror plot trial, indicates an awareness of his potential of radicalisation and despite the 'presumption against parole in circumstances where there is either terror related charges or a risk of radicalisation' (sic), the APB took a decision to release Mr Khayre on parole. Consequently, that decision to release Mr Khayre on parole was taken in the 'absence of a proper identification of the risk of radicalisation' and the decision -making process was therefore deficient. To place Ms Crock's submissions in context, I had regard to the evidence of Ms Hosking and Ms Lis.
7. Ms Hosking conceded that in their briefings to the APB, CV failed to include references to Mr Khayre's risk of radicalisation with sufficient detail of the risk he posed in the past but added that since his imprisonment in 2012, by ongoing assessment, there was nothing to indicate or to 'cause' CV 'to think that [Mr Khayre] was radicalised'.⁴⁵
8. Ms Lis' evidence detailed the all the steps taken by the APB before approving Mr Khayre's release on parole including the various programs he attended before he was considered eligible for release on parole. The relevant documentary evidence before me indicates that the APB had taken a proactive approach in considering Mr Khayre's suitability for parole.

⁴⁴ Transcript of Proceedings, 19 March 2021, page 202. According to Ms Crock the CV placed limited or minimal information before the APB upon which to exercise their discretion in approving Mr Khayre's parole.

⁴⁵ Transcript of Proceedings, 17 March 2021, page 152.

9. I have considered all the evidence contained in the documents relating to the various assessments which were received into evidence at the Inquest and while that evidence indicates that there was material available to CV to suggest that in the past Mr Khayre was at risk of radicalisation, the details of that risk as it presented in the past was not brought to the attention of the APB in considering his release on parole. The evidence indicates that the APB was unable to consider the existence of the ostensible risk of radicalisation which Mr Khayre may have presented after his release on parole.
10. Given that Mr Khayre was assessed for release on parole on more than one occasion and further, that he had complied with further directions from CV and APB to support future parole applications, I am satisfied, on the available evidence, that in collaboration with CV, the APB's assessment of Mr Khayre's eligibility for release on parole was adequate in that they took into account all the available and necessary factors before making the decision to grant his application for parole.

Was Mr Khayre adequately supervised, managed and monitored while on parole?

11. Turning to Mr Khayre's supervision, management and monitoring while in the community, I considered the evidence of DI Milner, Witness F and the second CISP witness. To avert the ostensible propensity to reoffend and to support his transition into the community, the APB imposed conditions of parole, which they deemed suitable at the time, with which Mr Khayre had to comply.
12. DI Milner testified that Mr Khayre was being 'passively monitored' for risk of radicalisation and that during his SPT and ANZCTC assessments, Mr Khayre had not exhibited any recognised behaviour that could be taken to indicate extremist ideology. Consequently, Victoria Police assessed Mr Khayre as 'a low risk to the Victorian security environment'.
13. DI Milner testified further that the SPT assessment was reviewed regularly, and the last review was conducted in May 2017, at which stage there was no information available to the SIU about Mr Khayre's viewing of extremist material online. Even if information of that nature had been available, it would not have been possible to monitor Mr

Khayre's telephone or internet use without first obtaining a telecommunications intercept warrant, following due process.⁴⁶

14. Given that Mr Khayre's access to extremist online material only became known after the events of 5 June 2017 and given that Victoria Police or Corrections Victoria could only take action against Mr Khayre for his conduct in accessing online extremist material if they had information to support an application for a telecommunications intercept warrant to authorise their monitoring of his online activities, I am satisfied, on the available evidence, that Victoria Police's 'passive monitoring' of Mr Khayre while on parole was appropriate in the circumstances, based on the material available to them at the time.

Efficacy of the CISP

15. Witness F who had been trained to identify signs of radicalisation, testified that if he had identified that Mr Khayre was at risk of radicalisation, he would have brought it to the attention of his CISP mentor whose role it was to guide Mr Khayre spiritually and to dissuade him from interpretations of Islam which may have influenced Mr Khayre to commit crime. [REDACTED]

16. The evidence before me further indicates that if Mr Khayre had developed a risk of radicalisation while on parole, given the focus of the ongoing CV assessments on countering criminal recidivism and given Victoria Police's 'passive monitoring' of radicalisation as referred to by DI Milner, the CISP workers would have been best placed to identify whether Mr Khayre was developing a tendency to radicalisation.

17. On the evidence of Witness F that he would have deferred to the CISP mentor if he had identified any tendency to radicalisation which Mr Khayre may have had and further,

⁴⁶ Transcript of Proceedings, 15 March 2021, page 30 *et seq.* Telecommunications intercept warrants are issued subject to strict conditions as provided for in the *Telecommunications (Intercept and Access) Act 1979 (Cth)* and the *Telecommunication (Interception) Act 1988 (Vic)*.

⁴⁷ Transcript of Proceedings, 16 March 2021, page 66

on the evidence of the second CISP witness that, due to unforeseen circumstances, Mr Khayre's CISP mentor was not available from February 2017 and no other arrangements had been made for another mentor to manage Mr Khayre's spiritual needs, I considered the efficacy of the CISP in Mr Khayre's supervision, management and monitoring while on parole. I remained mindful, however, that identifying any deficiencies in Mr Khayre's engagement in the CISP or in the CISP itself, would only be with the benefit of hindsight.

18. The available evidence indicates that the CISP mentor fulfilled an important role in abating any risk that Mr Khayre may have been moving towards an incorrect interpretation of his faith if such a risk had been identified. It therefore follows that the availability of a CISP mentor from February 2017 onwards, may have assisted Mr Khayre only if it was identified that he was at risk of radicalisation. The weight of the available evidence does not, however, support a conclusion that the CISP workers were able to identify that Mr Khayre was at risk of radicalisation.
19. Similarly, there is no evidence to support a conclusion that Mr Khayre could have benefitted from ongoing mental health treatment while he was on parole. I have noted that Witness F, according to whom, while he did not have authority to compel Mr Khayre to submit to mental health treatment, he encouraged him to seek psychological counselling for concerns he raised about the trajectory of his younger brother's life in view of his own life experiences. However, with the benefit of hindsight, although such treatment may have been helpful, there was no material before the APB, when they considered Mr Khayre's release on parole, to consider the possible implementation of psychological treatment as a condition of his parole.
20. Having considered the evidence of the CISP workers and taking into account all the available evidence, I am satisfied that the service they provided to Mr Khayre with the resources, material and information available to them at the time was reasonable and appropriate in the circumstances.

Monitoring Mr Khayre's conduct in the months leading to the Brighton Siege incident

21. The evidence before me indicates that Mr Khayre's conduct in preparation for the Brighton Siege incident had gone unnoticed by those agencies tasked with his supervision, management and monitoring while on parole.
22. Firstly, neither Witness F nor Mr Khayre's parole officer knew that he had stopped working and no checks were conducted to verify his working arrangements after the initial period when he had stopped doing community service because he had become gainfully employed. However, the evidence indicates that nothing arose from Mr Khayre's supervision appointments to raise any doubt about Mr Khayre's working arrangements to prompt the APB to check whether he was still gainfully employed. Accordingly, the available evidence is not sufficiently cogent to enable me to criticise the parole officers or the APB for their inability to identify that Mr Khayre had stopped working.
23. Secondly, the evidence indicates that Mr Khayre had been involved in criminal activity in the period leading to the Brighton Siege incident including burglaries and acquiring firearms. Mr Khayre's family had found items at home which they were unable to identify as belonging to themselves or Mr Khayre. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Taking the latter approach, when his family confronted him, Mr Khayre convinced them that what they had discovered was his loot from previous offending and that he had not been involved in recent criminal activity. Subsequent investigations, however revealed that the items were indeed the proceeds of recent criminal activity, but it is not clear, on the available evidence, whether Victoria Police or CV would have been able to identify the source of the items to enable them to take any remedial action against Mr Khayre or to cancel his parole.

24. Thirdly, with regard to Mr Khayre's acquisition of illegal firearms, although it was significant in the circumstances of the Brighton Siege incident, given the clandestine

nature of that criminal activity itself, it would have been difficult for the relevant authorities, in the ordinary course, to discover that Mr Khayre had acquired illegal firearms. The available evidence does not support a conclusion that knowledge of Mr Khayre's acquisition of illegal firearms by the authorities could have been easily ascertained or detected.

25. Finally, while I acknowledge that there is a strong expectation from the community that all reasonable steps should be taken to monitor those who pose a risk of harm to the community in the manner played out in the Brighton Siege incident and for authorities to proactively engage their resources to take remedial action in a timely manner, I am mindful that my findings and comments as a coroner, should be guided by the available evidence rather than be made with the benefit of hindsight.
26. Although it is regrettable and unfortunate that crucial information was not available to the authorities tasked with approving Mr Khayre's release on parole and tasked with supervising, managing, and monitoring him while he was on parole, the evidence does not provide a basis for adverse comments about or findings against the interested parties in this matter. In my view, the weight of the available evidence supports a conclusion that the conditions attached Mr Khayre's parole as well as his supervision, management and monitoring in the community were adequate and appropriate in the circumstances.
27. I now make apposite findings in this matter.

FINDINGS

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. The effect of this authority 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.⁴⁸

⁴⁸ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362-363. "The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding, are considerations which must affect the answer to the question whether the issues had been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences..."

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

1. I find that the identity of the deceased is Kai Hao, born on 22 December 1980, who died on 5 June 2017 at the Buckingham International Serviced Apartments, Bay Road, Brighton 3186 in the State of Victoria.
2. I accept and adopt the medical cause of death as ascribed by Dr Parsons and I find that Kai Hao died from shotgun wounds to the chest and abdomen.
3. I find that Kai Hao sustained the fatal shotgun wounds to his chest and abdomen in the circumstances where Yacub Khayre entered the reception area of Buckingham International Serviced Apartments where Kai Hao was working at the time and discharged the shotgun in his possession, injuring Kai Hao and killing him instantly.
4. The weight of the available evidence supports a conclusion that Yacub Khayre did not adopt a sophisticated planning strategy in carrying out the events at the Buckingham International Serviced Apartments on 5 June 2017 and I am unable to make a definitive finding on whether the action he took was tantamount to a terror attack or that it was motivated by extremist ideology.
5. On the evidence available to me, I am unable to make a definitive finding on what motivated Yacub Khayre to discharge the shotgun in his possession on Kai Hao thereby killing him. The weight of the available evidence does, however, support an inference that Yacub Khayre would have discharged his shotgun on any person or employee in the Buckingham International Serviced Apartments reception area at the time he discharged the shotgun on Kai Hao. Accordingly, I am unable to find that the death of Kai Hao was preventable.
6. I acknowledge the interest of the Victorian community in the need to curtail conduct as occurred in the Brighton Siege incident and further, I acknowledge that the Victorian community has a legitimate expectation that the relevant authorities are to take all reasonable and necessary precautionary measures to avert harm to the community by groups or individuals who engage in dissident behaviour. However, the weight of the available evidence in this matter does not support a conclusion that Corrections

Victoria or the Adult Parole Board did not take all the precautions necessary to ensure that they had made the correct decision, on the material available to them at the time, in authorising Yacub Khayre's release on parole and I find that the decision taken by the relevant authorities to release Yacub Khayre on parole was reasonable in the circumstances.

7. I find further that the conditions attached to Yacub Khayre's release on parole were reasonable in the circumstances.
8. Similarly, the weight of the available evidence does not support a conclusion that Yacub Khayre's supervision, management and monitoring by the relevant authorities while he was on parole was inadequate. In all of the circumstances, I find that Yacub Khayre's supervision, management and monitoring by the relevant authorities, while on parole, was adequate.
9. AND FURTHER, I make no adverse findings against or comments about any interested parties in this matter.

I offer my condolences to the family of Kai Hao for their sudden, unexpected, inexplicable 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:

Lu Li

Adult Parole Board

Corrections Victoria

Chief Commissioner of Police

Community Integration Support Program

Lennon Lawyers on behalf of the hostage

Detective Senior Sergeant Mark Colbert, Coroner's Investigator

Signature:

A handwritten signature in black ink, consisting of a large, loopy oval shape with a horizontal line extending to the right.

AUDREY JAMIESON

CORONER

Date: 20 July 2023

