



**IN THE CORONERS COURT
OF VICTORIA
AT MELBOURNE**

Court Reference: COR 2020 2838

FINDING INTO DEATH AFTER INQUEST OF XY (A PSEUDONYM)

Form 37 Rule 63(1)

Section 67 of the Coroners Act 2008

Findings of:	State Coroner Judge John Cain
Delivered on:	1 August 2022
Delivered at:	Coroners Court of Victoria 65 Kavanagh Street Southbank, Victoria, 3006
Counsel Assisting:	Catherine Fitzgerald of Counsel Susanna Locke of Counsel instructed by In-House Legal Service Coroners Court of Victoria
Chief Commissioner of Police:	Paul Lawrie of Counsel instructed by MinterEllison
Emergency Services Telecommunications Authority:	Roslyn Kaye of Counsel instructed by Lander & Rogers

BACKGROUND | XY

1. XY was born on 5 June 1966 in Coburg and was 53 years of age when he passed away on 28 May 2020 on the Monash Freeway, Dandenong North from multiple gunshot wounds inflicted by a Victoria Police officer.
2. XY grew up in Essendon attending a local Primary School and High School. XY's wife gave evidence in her statement that XY *'was a mischievous child. He loved and spent a lot of time with his maternal grandparents, his Nan and Pa and also spent a lot of time with his cousins who were younger than him. He had a great love for his family. Once as a child there was a small fire in their home and he put on his snorkel and goggles and tried to put the fire out only to have the Fire Brigade arrive in full breathing apparatus. XY's mother said that he came home one day and she opened the door to find he had brought a horse home'*.¹ XY was described as having a happy and bubbly personality as he grew up.
3. XY met his wife at the end of 1994, and they socialised a lot with friends and family and went out almost every weekend. They were engaged in 1996 and married in 1997 and had four children, aged 18, 16, 14 and 11 at the time of his passing. XY and his wife separated approximately twelve months prior to his passing but continued to live in the same house but in separate rooms.
4. XY was an electrician by trade and throughout his career continually upskilled himself and worked across residential, commercial, industrial, solar, phone/data, home automation, refrigeration and air conditioners.
5. XY's wife gave evidence that *'XY always had unresolved issues from his childhood and I knew this before we got married ... XY was impacted a lot by his upbringing and the domestic violence (emotional, psychological and physical violence) he witnessed committed by his father against his mother, and against him ... He just had a deep sadness at times. It was just an unhappiness that he constantly had. He said to me at one time a few years ago that he had spoken to a psychologist as a child, but it didn't help then so why would it help now'*.²
6. A close friend of XY's mother gave evidence that whilst XY was growing up she was aware of incidents of XY being locked in a cupboard by his father. The death of XY's father in 2015 also affected XY greatly, although he had had limited contact since his parents had separated.

¹ Inquest Brief, Statement of XY's wife dated 25 June 2020, p175.

7. It was apparent XY largely hid his unhappiness from his extended family and friends. Evidence from a variety of sources indicated that XY was friendly, a dedicated family man who loved his children and was heavily involved in all aspects of the children's lives including their schooling, sporting endeavours, camping trips and family holidays. Many of XY's friends, parents of children who all went to the same school, describe XY as kind, selfless, always keen to help, a father and husband who constantly spoke of his children and wife and how proud he was of them.

XY's mother

8. XY's mother had been living with the family since 2017 and was '*the cause of great stress for everyone in the home*'.³ XY's mother was '*reliving past trauma daily and sometimes multiple times daily*'.⁴ This created tension between XY and his wife.⁵
9. XY's mother's mental health continued to decline over this period. XY found the decision to put his mother into fulltime care very difficult, being torn between that option and having her live in the family home. In early 2018 XY's mother had her driver's licence cancelled for medical reasons which left her even more isolated and dependent upon XY.
10. From 5 December 2019 until 8 March 2020 XY's mother was admitted to Japara Hallam Residential Care for respite care.

Impact of COVID 19 Pandemic

11. The COVID-19 pandemic was a significant adverse psychological trigger for XY. XY's wife states '*XY stopped working. The lockdown seemed to increase the paranoia and anxiety in XY. XY took the lockdown very seriously and was very worried about us getting coronavirus. XY was very stringent about the lockdown and hygiene. XY became more security conscious and installed more CCTV cameras and lights*'.⁶ XY's wife indicates that '*XY's concern around the virus was two-fold, one in relation to keeping the virus at bay at any cost and two the disorder and lawlessness that would*

² Ibid.

³ Inquest Brief, Statement of XY's wife dated 25 June 2020, p177.

⁴ Inquest Brief, Statement of XY's wife dated 25 June 2020, p180.

⁵ Inquest Brief, Statement of XY's wife dated 25 June 2020, p178.

⁶ Inquest Brief, Statement of XY's wife dated 25 June 2020, p163.

follow'.⁷ XY instituted numerous very strict and stringent measures within the family home in terms of hygiene, household practices and regimes that XY's wife and children believed were not within reason but which they complied with to keep the peace. XY's former employer gave evidence that he stopped working as soon as the pandemic restrictions came into force on 23 March 2020.

12. XY engaged in behaviour displaying an extreme level of paranoia and anxiety. XY would sleep during the day so he could sit up all night and monitor the CCTV feed looking for intruders or suspicious behaviour outside the family home. He would comment in the morning if he saw anything. XY kept the blind down on the kitchen window just far enough that he could see outside but so other people couldn't see in. In the event XY thought people were outside the house, he would crawl around on the floor. In the event a visitor came to the front door, no one was allowed to open it until the CCTV feed on the television had been checked to identify who they were. At one stage XY made enquiries with a former workmate asking if they knew someone who could lend him a gun for protection. Over time, XY slowly relaxed restrictions and by around week 5 of the lockdown felt comfortable enough to take one his children shopping with him.
13. During the lockdown XY also escalated his usage of Facebook making posts in respect of the way the government was handling the pandemic response. XY blocked his wife from his account as he didn't believe she was taking it seriously enough and that she wasn't viewing the pandemic the same way he was. The isolation caused by the pandemic lockdown also heightened the tension inside the house between XY, his wife and his mother. XY's wife gives evidence that *'the kids and I segregated to one half of the house to concentrate on remote work and schooling as XY and his mother were so loud. Every day, and sometimes multiple times daily, she asked why she couldn't go to the shops and XY had to tell her the same thing over and over. She also continued to relive her past trauma'*.⁸

⁷ Inquest Brief, Statement of XY's wife dated 25 June 2020, p189.

⁸ Inquest Brief, Statement of XY's wife dated 25 June 2020, p187.

XY's mother's needs increase

14. On Friday 15 May 2020, XY telephoned the Police Assistance Line and expressed concerns in respect of his mother and then said '*they discharged her so I really don't know where to ring, so I just rung you guys ... I don't know what options I've got*'.⁹ Sergeant Cummins repeatedly informed XY that this was not a police issue however to assist XY, he provided the number for Victoria Legal Aid so XY could make enquiries in respect of obtaining power of attorney in respect of his mother and being able to facilitate payment for aged care services. Sergeant Cummins also explained the role of the Crisis Assessment Team (CAT) and then provided the number for the Dandenong CAT indicating that they provided a 24 hour, seven days a week service.¹⁰
15. The same day XY called a close family friend of his mother and asked if she was able to care for his mother for the weekend. The family friend declined telling XY that she wasn't going to be home, giving evidence that '*this wasn't entirely true but I just couldn't manage having her for the weekend. As an alternative I offered to have her over on Monday*'.¹¹
16. When XY visited on the Monday the family friend described that '*XY was really jumpy, he was all over the place and couldn't stand still ... He was rambling, the same way his mother had been rambling for the last couple of years*'.¹² Between Monday 18 and Wednesday 20 May 2020, XY's mother stayed with a life-long family friend to provide XY with some respite.

Events of the 20 May 2020

17. On Wednesday 20 May 2020, XY asked his wife to ring an ambulance as his mother '*had driven him to his wits end*'.¹³ XY's wife instead contacted the Monash Health Psychiatric Triage Service (PTS) who spoke with both XY and his mother. Notations made by PTS included '*Spoke with XY who was quite distressed and crying at times, indicating that his mother who has BPAD is insight less and non-compliant with Rx. XY stated that every single night his mother is constantly asking him*

⁹ Inquest Brief, Transcript of telephone call from XY to Police Assistance Line dated 15 May 2020, p492.

¹⁰ Ibid.

¹¹ Inquest Brief, Statement of ML, p211.

¹² Inquest Brief, Statement of ML, p213.

questions about his father and speaks about how she was treated in the past by his father and his mother is not able to stop arguing with him. XY stated that he is at the point that he feels his mother has to go to the hospital, because he has x4 children to look after, he is going through separation and lost his job evident that client will benefit from mental health support'.¹⁴ PTS then spoke with XY's mother however as a consequence of XY's mother alluding to self-harming on the phone, PTS notified Victoria Police.

18. First Constable KUM and Constable MEIERS (callsign Narre Warren 303) together with Police, Ambulance and Clinical Early Response (PACER) team staffed by Senior Constable TIORI and Mental Health Clinician Kirsty DURRANT attended XY's premises.
19. The decision was made to admit XY's mother on an Assessment Order pursuant to the *Mental Health Act 2014*.¹⁵ An ambulance was then requested to attend and XY's mother was conveyed and admitted to Unit 3, an aged care unit at Dandenong Hospital.
20. During these interactions XY's wife spoke with Kirsty DURRANT and indicated that XY's mother's mental state was affecting XY as was the marriage breakdown. XY's wife indicated that XY was not someone to accept help which was why he, unlike her and their children, was not under any form of mental health care.
21. XY disclosed to Kirsty DURRANT that the week before he had held a knife to his stomach in front of his mother and made a comment to the effect of '*is this what I need to do to get you to shut up?*'.¹⁶ XY also disclosed that on Monday 18 May he had been arguing with his mother whilst driving in the car and that he had the ideation to run them both off the road. Kirsty DURRANT asked XY what supports he had in place to which he replied initially that he used Facebook as his outlet, documenting his life on Facebook. Later, Kirsty DURRANT indicated to XY that he would be receiving a follow-up telephone call the following day from the Psychiatric Triage Service and that he should answer that call, which XY agreed to do.

¹³ Inquest Brief, Statement of XY's wife dated 25 June 2020, p188.

¹⁴ Inquest Brief, Monash Health Triage Report dated 20 May 2020, p510.

¹⁵ *Mental Health Act 2014* (Vic) Part 4 Division 1.

¹⁶ Inquest Brief, Statement of Kirsty Durrant dated 18 June 2020, p278.

22. In Kirsty DURRANT's opinion, *'although XY was frustrated on 20 May, he did not present as mentally unwell and made no expression of risk towards himself and or others. Had he made any threats, or had I identified any risk for XY, I would have sent XY's mother on her way to Dandenong and remained back at the residence and completed an assessment of XY. This was not called for as no risk was identified and both XY and XY's wife knew the Psychiatric Triage Service was calling the next day and were both amenable to this'*.¹⁷
23. In Senior Constable TIORI's opinion, *'at no point did XY express any suicidal ideation or willingness to self-harm. In my opinion, XY's emotional state appeared natural considering the circumstances surrounding his mother and the relationship breakdown with his wife. It is for these reasons that I believe a mental health assessment on XY was not conducted. XY did appear however, as though he had given up on the matter and was very accepting of Police and PACER's actions and was willing to allow us to take full control to do whatever was deemed necessary'*.¹⁸
24. First Constable KUM gave evidence that he *'made numerous offers of support to XY, I offered to put some referral in so he could chat to someone who was suitably qualified numerous times. He declined on all offers. I offered him the chance to have a chat with the clinician, but he declined that offer also'*.¹⁹
25. The following day on Thursday 21 May 2020 at 3.40pm, the Monash Health Psychiatric Triage Service (PTS) contacted XY to follow-up, assess his mental state examination and discuss options for support. The PTS notation indicated that *'XY stated that he is feeling better and he does not feel he needs currently mental health support PTS offered AMP support but client has declined and agreed for PTS to send him a message with the PTS contact so he can save it in his phone for future reference. SMS sent to client'*.²⁰
26. The same day XY's mother was assessed and an Inpatient Temporary Treatment Order authorised.

¹⁷ Inquest Brief, Statement of Kirsty Durrant dated 18 June 2020, p279.

¹⁸ Inquest Brief, Statement of Senior Constable Kosta Tiori dated 2 June 2020, p272.

¹⁹ Inquest Brief, Statement of First Constable Jason Kum, dated 10 June 2020, p274.

²⁰ Inquest Brief, Monash Health Triage Report dated 20 May 2020, p512.

XY's situation deteriorates

27. In the week immediately prior to XY's passing, he became extremely paranoid, believing that their wi-fi had been hacked, that his Facebook account has also been hacked and that someone was listening to the family through their devices (hence turning the wi-fi off at night). He spoke with a number of friends over this period, all of whom formed the opinion that XY required professional mental health assistance, offered to assist XY obtain this, however all offers of assistance were refused. In his final three days, XY started telling his wife that people were following and tracking him, that he was a target, that someone had driven past him slowly and stared at him, that a car tried to run him off the freeway, and that he was trying to work out what to do with Facebook to shut it down and that he wouldn't check it at home, he'd go to a park and check it there so 'they' couldn't track him to where he lived.
28. On Wednesday 27 May 2020 approximately 4.46pm, XY made a Facebook post that read *'Hi all, During this covid thing i had family issues with my mum which are now sorted out. I said some silly things. Probably hurt some people ...i apologise ... Moving forward should you want to get in touch please ring me ... i am truly sorry to those i have hurt, now i just want to relax ... and to me relaxing isn't social media in any shape or form. I would like a quiet life, looking after the people i care about ... So if you want to talk feel free ... Bye for ever ... and always Stay Safe ...'*²¹

XY's Recorded Medical History

29. Despite the many stressors in XY's life there is no evidence that XY ever received any treatment for his mental health and was never formally diagnosed with any mental health condition. Records from the Belgrave-Hallam Road Medical Centre indicate that XY had attended the clinic since 31 August 2018 however had never consulted any doctor there regarding any mental health issues.²²
30. In addition, enquiries made by the Coroner's Investigator confirmed that XY had no recorded mental health involvement with any State based systems except for the interaction on 20-21 May 2020 with the Monash Health Psychiatric Triage Service (PTS). Enquiries made by the Coroner's Investigator also confirmed that XY had no recorded criminal history.

²¹ Inquest Brief, Screenshot from XY's Facebook Profile, p490.

²² Inquest Brief, Medical Records Belgrave-Hallam Road Medical Centre, p484.

CORONIAL INVESTIGATION

Jurisdiction

31. XY's death constituted a '*reportable death*' pursuant to section 4(2)(c) of the *Coroners Act 2008* (Vic) (**Coroners Act**), as his death occurred in Victoria and immediately before his death, XY was a person placed in custody (being a person who a police officer was attempting to take into custody or who passed away from injuries sustained when a police officer attempted to take the person into custody).

Purpose of the Coronial Jurisdiction

32. The jurisdiction of the Coroners Court of Victoria (**Coroners Court**) is inquisitorial.²³ The purpose of a coronial investigation is to independently investigate a reportable death to ascertain, if possible, the identity of the deceased person, the cause of death and the circumstances in which the death occurred.
33. The cause of death refers to the medical cause of death, incorporating where possible, the mode or mechanism of death.
34. The circumstances in which the death occurred refers to the context or background and surrounding circumstances of the death. It is confined to those circumstances that are sufficiently proximate and causally relevant to the death.
35. The broader purpose of coronial investigations is to contribute to a reduction in the number of preventable deaths, both through the observations made in the investigation findings and by the making of recommendations by coroners. This is generally referred to as the prevention role.
36. Coroners are empowered to:
- (a) report to the Attorney-General on a death;
 - (b) comment on any matter connected with the death they have investigated, including matters of public health or safety and the administration of justice;
- and

²³ Section 89(4) *Coroners Act 2008*.

- (c) make recommendations to any Minister or public statutory authority or entity on any matter connected with the death, including public health or safety or the administration of justice.

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

37. It is important to stress that coroners are not empowered to determine the civil or criminal liability arising from the investigation of a reportable death and are specifically prohibited from including a finding or comment or any statement that a person is, or may be, guilty of an offence.²⁴ It is not the role of the coroner to lay or apportion blame, but to establish the facts.²⁵

Standard of Proof

38. All coronial findings must be made based on proof of relevant facts on the balance of probabilities.²⁶ The strength of evidence necessary to prove relevant facts varies according to the nature of the facts and the circumstances in which they are sought to be proved.²⁷
39. In determining these matters, I am guided by the principles enunciated in *Briginshaw v Briginshaw*.²⁸ The effect of this and similar authorities is that coroners should not make adverse findings against, or comments about, individuals or entities, unless the evidence provides a comfortable level of satisfaction that they caused or contributed to the death.
40. Proof of facts underpinning a finding that would, or may, have an extremely deleterious effect on a party's character, reputation or employment prospects demands a weight of evidence commensurate with the gravity of the facts sought to be proved.²⁹ Facts should not be considered to have been proven on the balance of probabilities by inexact proofs, indefinite testimony or indirect inferences. Rather, such proof should be the result of clear, cogent or strict proof in the context of a presumption of innocence.³⁰

²⁴ Section 69(1). However, a coroner may include a statement relating to a notification to the Director of Public Prosecutions if they believe an indictable offence may have been committed in connection with the death. See sections 69(2) and 49(1) of the Act.

²⁵ *Keown v Khan* (1999) 1 VR 69.

²⁶ *Re State Coroner; ex parte Minister for Health* (2009) 261 ALR 152.

²⁷ *Qantas Airways Limited v Gama* (2008) 167 FCR 537 at [139] per Branson J (noting that His Honour was referring to the correct approach to the standard of proof in a civil proceeding in the Federal Court with reference to section 140 of the *Evidence Act 1995* (Cth); *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170 at 170-171 per Mason CJ, Brennan, Deane and Gaudron JJ.

²⁸ (1938) 60 CLR 336.

²⁹ *Anderson v Blashki* [1993] 2 VR 89, following *Briginshaw v Briginshaw* (1938) 60 CLR 336.

³⁰ *Briginshaw v Briginshaw* (1938) 60 CLR 336 at pp 362-3 per Dixon J.

Scope of the Inquest

41. At a Directions Hearing held on 3 November 2021 the Inquest Scope was determined, pursuant to section 64(b) of the *Coroners Act 2008* as follows:
1. *The response by ESTA to the 000 call received on 28 May 2020 reporting that XY was in possession of a knife, including:*
 - a) *The accuracy of the information recorded about the knife by the ESTA call-taker;*
 - b) *The ESTA call-dispatcher omitting reference to the knife in the radio broadcast to Police Units; and*
 - c) *The ESTA procedure for change-over of call-dispatchers.*
 2. *The information that was available and known to attending Victoria Police members with respect to the information reported from the 000 calls on 28 May 2020.*
 3. *The response by members of Victoria Police to the incident on 28 May 2020 including:*
 - a) *the use of tactical options and their effectiveness;*
 - b) *the decision to halt negotiations and arrest XY pursuant to s 351 of the Mental Health Act;*
 - c) *assessment of the use of lethal force.*
 4. *The use of body worn camera footage by the police members in preparation of their witness statements.*
42. The inquest was conducted over five sitting days taking evidence from eleven witnesses in March 2022. The Chief Commissioner of Police and the Emergency Services Telecommunications Authority were both represented by counsel.
43. XY's family were not legally represented at the inquest but XY's wife and other family members attended each day of the hearing. XY's wife, one of XY's sons and an extended family member each made a family impact statement at the conclusion of the hearing. I acknowledge and thank XY's wife and other family members and friends for their assistance and contribution to the inquest in what were very challenging and difficult circumstances.
44. This finding draws on the totality of the material obtained in the coronial investigation of XY's passing. That is, the court file, the Coronial Brief prepared by Detective Sergeant Tim Bell of the Homicide Squad and further material obtained by the Court, together with the transcript of the evidence adduced at Inquest and the closing submissions of counsel.
45. On 28 May 2020 following notification of the incident, I attended the scene on the Monash Freeway with police as part of my investigation.

46. In writing this finding, I do not purport to summarise all the material evidence but refer to it only in such detail as appears warranted by its forensic significance and the interests of narrative clarity. It should not be inferred from the absence of reference to any aspect of the evidence that it has not been considered.
47. With an investigation of this magnitude, it is appropriate that I acknowledge the significant work of all who were involved in assisting me.
48. I thank Detective Sergeant Tim Bell of the Homicide Squad who was appointed the Coroner's Investigator in this investigation and compiled a comprehensive Coronial Brief that was of great assistance.
49. I thank Counsel Assisting, Ms Catherine Fitzgerald and Ms Susanna Locke, and the counsel and solicitors who represented the interested parties, for their work and comprehensive submissions.
50. I also acknowledge and thank Mr Lindsay Spence, Principal In-House Solicitor at the Coroners Court of Victoria, who has worked tirelessly and provided me with invaluable assistance in this investigation.

MATTERS IN RELATION TO WHICH A FINDING MUST, IF POSSIBLE, BE MADE

s67(1)(a) *Coroners Act 2008* IDENTITY OF THE DECEASED

51. On 4 June 2020, XY was identified through Visual Identification by his wife as detailed within the Statement of Identification same dated. XY's identity was not in dispute and required no further investigation.

s67(1)(b) Coroners Act 2008 CAUSE OF DEATH

52. On 29 May 2020, Dr Michael Burke, Forensic Pathologist at the Victorian Institute of Forensic Medicine conducted an autopsy on XY. In an Autopsy Report dated 4 September 2020 Dr Burke made the following Autopsy Findings:

- a) The postmortem examination showed multiple gunshot injuries.
- b) The fatal gunshot injury involved the distal thoracic aorta resulting in large haemothoraces (blood within the chest).
- c) The postmortem examination showed multiple abrasions and bruises to the right thigh consistent with impact from beanbag rounds.

53. Dr Burke formulated the cause of death as MULTIPLE GUNSHOT INJURIES.

54. Post-mortem toxicology did NOT detect the presence of any ethanol, common drugs or poisons.

s67(1)(c) Coroners Act 2008 Circumstances in which the death occurred

The Events of the Morning of 28 May 2020

55. Approximately 6.00am on Thursday 28 May 2020, XY entered his wife's bedroom and made her go to the front room of their house, as he was concerned someone would listen to their conversation over their devices. XY told his wife that he did not want her to go to work, or the kids to go to school, and that he wanted a family day. When XY's wife said she had to go to work, XY said she couldn't as '*something is going to happen today, they are going to kill me, and I don't want them to harm you or the kids*'.³¹ XY said that there were people everywhere watching him and that he didn't know who he could trust.

56. A short time later, XY was watching the news on television when he gave his wife the "Shhh" symbol by placing his finger in front of his pursed lips and pointed to the text in the banner that ran across the screen. When she indicated that she didn't know what he was talking about, he took her into another room and said '*see, it said six, they know there are six people in our house*'.³² Another time during the morning, XY's wife saw him crawling on the floor.

³¹ Inquest Brief, Statement of XY's wife dated 28 May 2020, p164.

³² Inquest Brief, Statement of XY's wife dated 25 June 2020, p196.

57. At 7.32am, XY's wife rang her employer requesting a carer's day that was granted. One of their children contacted their school as they were due to sit a SAC test that day. The school indicated that they would email it so it could be printed and completed at home. This led XY to say, '*see, they are trying to get us to turn the Wi-Fi on and access us*'.³³
58. At 7.23am, XY's second eldest child sent a text message to the school chaplain, advising that the children were not allowed to go to school that day. The school chaplain spoke to the school wellbeing officer. As a result, the wellbeing officer attempted to speak to XY's wife at 8.05am and 8.06am. At 8.11am, the wellbeing officer had a telephone conversation with XY's wife for 34 minutes. He asked her if everything was OK, if they were being held against their will and if she had access to a phone and house keys. The wellbeing officer suggested that he notify the Crisis Assessment and Treatment Team (**CATT**), which XY's wife supported.³⁴ Approximately 9.00am, XY's wife informed XY that police would be attending to conduct a welfare check because the school had notified them. XY responded that he had to leave as he was putting the whole family in danger. XY's wife indicated that '*he was quite agitated now. He was going in and out of his bedroom*'.³⁵
59. XY placed a poker from the fireplace and a knife from the kitchen in a guitar case. XY then hugged all his children goodbye. He said to his eldest child, '*If I don't come back, it will be your job to look after the other kids and be very careful*'.³⁶ He then said to his wife '*someone is going to kill me today and this might be the last time you see me, I love you they may kill me before I get to the end of the street. I'm going to go on to the freeway and if they try and do anything to me there are cameras there*'.³⁷
60. XY then made the family go outside to the front letterbox so that they would be visible on the CCTV and '*so it would be known he hadn't hurt his family before leaving*'.³⁸ Just after 9.10am, XY left the family home in his mother's vehicle, a silver Mitsubishi Colt.

³³ Ibid.

³⁴ Inquest Brief, Statement of BC, p294.

³⁵ Inquest Brief, Statement of XY's wife dated 25 June 2020, p197.

³⁶ Inquest Brief, Statement of XY's child #1 dated 28 May 2020, p284.

³⁷ Inquest Brief, Statement of XY's wife dated 25 June 2020, p197.

³⁸ Inquest Brief, Statement of XY's wife dated 25 June 2020, p165.

61. At 9.13am, XY's wife called the wellbeing officer in a highly distressed state, advising the wellbeing officer that XY had left the house in possession of a knife and driven off in a vehicle, telling them that this was the last time that they would see him. In the wellbeing officer's opinion, *'XY's wife was very emotionally distressed and not thinking clearly so I told her I would telephone the police and advise them of what had happened'*.³⁹

XY's attendance at the Monash Freeway

62. XY drove onto the Monash Freeway citybound, just west of the Eastlink overpass at Dandenong North. This section of roadway is a dual carriageway with four inbound lanes and, at the time, had no emergency stopping lanes due to roadworks. XY stopped his vehicle in running Lane 1 (the far-left lane) almost directly under multiple speed sign gantry No. 226R. Clearly affixed to this gantry was a VicRoads CCTV camera, for monitoring traffic flow (however does not record).

Call to triple zero

63. At 9.19am, XY called triple zero and requested the assistance of Police. When asked by the Emergency Services Telecommunications Authority (**ESTA**) call taker PCT-1 why he needed police, XY replied *'I've just got a bit of an urgent situation and I need to talk to somebody and see what my options are I don't have any options so I'll just talk to – I'll talk to police when I get here. I don't want to talk on the phone'*.⁴⁰

64. PCT-1 accepted the event in the dispatch system (**CAD**) with the reference number P2005235784 (**the XY event**). When further questioned by PCT-1 about the nature of the situation, XY replied *'It's just – it's a bit of a crisis situation'*. Later in the conversation XY again indicated *'Well, they're coming to a bit of a crisis. Maybe they'll – they'll come and speak to me'*. XY provided his first name but refused to provide his surname, address, phone number or vehicle details. When asked *'Do you have any weapons at all?'* XY replied *'Don't know'*.⁴¹

65. At 9.22am, an ESTA police dispatcher (**PD-1**) reviewed the XY event details and dispatched the XY event to the Police Communications Liaison Officer (**PCLO**) Sergeant Goldsmith for direction as to how to manage the event.

³⁹ Inquest Brief, Statement of BC dated 1 June 2020, p295.

⁴⁰ Inquest Brief, Transcript of telephone call between XY and ESTA PCT-1, p568.

⁴¹ Inquest Brief, Transcript of telephone call between XY and ESTA PCT-1, p573.

66. At 9.25am, PCT-1 transferred the call from XY through to Sergeant Goldsmith. XY informed Sergeant Goldsmith that *'I've just got a few problems and I need to speak to police to sort them out'* but declined to provide further detail saying *'I'd – I'd like to – I'd like to tell – I'd like to hear them – to talk to police personally, not on the phone'*. Sergeant Goldsmith informed XY that a police unit wouldn't be sent out unless he was able to tell Sergeant Goldsmith what was occurring with XY replying *'OK, I'll be – I'll be waiting here for a while'*.⁴² The telephone conversation ended with Sergeant Goldsmith again informing XY that Police would not be attending.
67. At 9.23am, having ended the call to XY's wife at 9.22am, the wellbeing officer called triple zero and spoke to ESTA call taker PCT-2. The wellbeing officer advised PCT-2 that *'we were notified by a parent of one of our students that their husband was having a significant medical health episode this morning and whilst in the process of dealing with it, the mother has notified me that the husband has now left the house in his car alleging suicide he merely stated that this would be the last time they saw him'*.⁴³ The wellbeing officer provided the make, model, colour and registration of the vehicle that XY was driving.
68. The wellbeing officer also advised PCT-2 that XY *'left the house approximately five minutes ago carrying a knife'* causing PCT-2 to ask in response, *'He had a knife with him, did he?'* The wellbeing officer replied, *'He did'*. Later in the conversation PCT-2 asked, *'Do we know if he's got any weapons at all?'* with the wellbeing officer replying, *'All I know is that she believes he's taken a knife with him'*.⁴⁴
69. At 9.29am, PCT-2 accepted an event in CAD with the reference number P2005235847 (**the wellbeing officer event**). PCT-2 distilled and recorded the wellbeing officer's comments about the knife in the event comments as "believes M may have had a knife – not confirmed – nil sighting".⁴⁵

⁴² Inquest Brief, Transcript of telephone call between XY and Sergeant Goldsmith, p 594.

⁴³ Inquest Brief, Transcript of telephone call between wellbeing officer and ESTA PCT-2, p577.

⁴⁴ Inquest Brief, Transcript of telephone call between wellbeing officer and ESTA PCT-2, p581.

⁴⁵ Inquest Brief, Event Chronology Event Number P2005235847, p638.

70. At 9.25am, prior to PCT-2 accepting the wellbeing officer event in CAD, PD-1 handed over management of the relevant police radio channel to a second police dispatcher, PD-2. As PCT-2 had not accepted the wellbeing officer event in CAD at this stage, PD-1 was not aware of the wellbeing officer's call. Nonetheless, PD-1 alerted PD-2 to the XY event, so that PD-2 was aware of the situation as it was known to PD-1 at the time.

71. At 9.27am, XY telephoned his wife. During the roughly 90 second call XY told his wife that the Police *'won't or aren't coming'*. XY's wife asked him where he was, and he replied near Stud Road on the freeway. XY said that he couldn't hear her very well with XY's wife then shouting at him *'what do you need me to do?'*. XY then terminated the call.

72. Shortly before 9.30am, Kenneth Lesar (Lesar), who was employed as a truck accident coordinator, was travelling citybound on the Monash Freeway when he heard a call on the UHF radio about a car broken down in the far-left lane. Lesar attended the location and observed XY's vehicle parked in the far-left lane with its hazard lights flashing. Lesar stopped his vehicle approximately three metres behind XY's vehicle and activated his amber warning lights and his vehicle hazard lights. He contacted the VicRoads Control Centre to notify them of the traffic hazard and, as a consequence, VicRoads closed lanes one and two and reduced the sign-posted speed limit in the remaining lanes to 40km/h.

73. XY was standing at the front of his vehicle on his mobile phone. When the telephone call ended, XY approached Lesar's vehicle, and they had the following conversation through the open front passenger window:

Lesar *'Are you ok? What's wrong with your vehicle?'*

XY *'There is nothing wrong with it'*

Lesar *'Mate, you are stopped in a very dangerous spot, I am on the phone to VicRoads to get some help. Is there anything I can do to help you?'*

XY *'No, I don't care what they do to me, I'll take a bullet unless they can protect my family'*

Lesar *'What's the problem?'*

XY *'If they can't protect my family, I will take a bullet'* ⁴⁶

⁴⁶ Inquest Brief, Statement of Kenneth Lesar dated 28 May 2020, p304.

74. XY then walked back towards the passenger side of his vehicle. Lesar formed the opinion that XY was having some form of mental health episode and was concerned for XY's safety because he continued to pace at the front of his vehicle on his mobile phone with traffic passing him at freeway speeds.
75. Just before 9.33am, Lesar called triple zero and spoke with ESTA call taker PCT-3 who accepted an event in CAD with the reference number P200523883 (**the Lesar 1 event**). Lesar advised, *'you've got a guy here in the left-hand running lane that's – I think he's got mental issues and he's talking about taking a bullet from the police He's telling me that if the police can't guarantee his safety he's prepared to take a bullet'*. Lesar also indicated *'you need to get on to VicRoads and they need to shut this down. This – this guy is, you know, capable of just running out in front of the traffic'*. Lesar indicated that he had not sighted any weapons and that *'he doesn't appear to be drug-affected but he's got issues'*.⁴⁷
76. A second call to triple zero made by Lesar at 9.45am was answered by ESTA call taker PCT-4, who accepted an event with the reference number P2005235985 (**the Lesar 2 event**). Lesar repeated the information he had already provided police, including that *'we've got a guy here I asked him if he was OK. He said "Yeah, I'm fine" but he said "I – I want the police to take me out I don't care whether they shoot me"*.⁴⁸
77. At 9.31am, due to the developing situation, Sergeant Goldsmith called XY back and had a lengthy telephone conversation with him during which Police were being directed to his location. Sergeant Goldsmith asked XY *'Can I just check, have you – and it probably sounds like a silly question. Do you have any weapons or anything on you there?'* to which XY replied *'Nuh'*. XY denied having any mental health issues saying *'life's a bit stressful at the moment and I'd like to resolve my problems'*. Later in the conversation Sergeant Goldsmith again asked, *'So I said before, do you have any weapons or anything with you or in the car?'* with XY replying *'Nuh'*.
78. XY denied being suicidal and said that all he wanted was a peaceful outcome, for his Facebook account to be closed and to spend time with his family. However, XY then said *'And going forward, I don't know how it's all going to happen but, you know, there's options there at the moment. At the end of it, there might not be options'* but denied that he was in any way making threats. For a third time Sergeant Goldsmith asked the question *'I've got to ask you XY, do you have any knives on you at all?'* with XY again replying *'Nuh'*.⁴⁹ At 9.47am, XY terminated his call with Goldsmith, telephoned his wife and spoke for 49 seconds and then said *'the police are coming, I got to go'*⁵⁰ and terminated the call.

⁴⁷ Inquest Brief, Transcript of telephone call between Lesar and ESTA PCT-3, p628.

⁴⁸ Inquest Brief, Transcript of telephone call between Lesar and ESTA PCT-4, p631.

⁴⁹ Inquest Brief, Transcript of telephone call between XY and Sergeant Goldsmith, p619.

⁵⁰ Inquest Brief, Statement of XY's wife dated 25 June 2020, p198.

Information dispatched by ESTA via radio (D24) and CAD

79. At 9.30am, following handover of the relevant radio channel, PD-2 reviewed the comments in the wellbeing officer event.

80. At 9.32am, Sergeant Goldsmith directed, in relation to the XY event, that a welfare check by police occur.

81. At 9:33:53am D24 broadcast a 'priority one' job to Dandenong police unit SDG307, made up of First Constable (FC) Matthew Baker and Constable Tim Buckler. The job caught the attention of the Dandenong Patrol Supervisor SDG251, Acting Sergeant Joey Tubecki, who was accompanied in his patrol vehicle by Constable Lee Pearson. The on-air broadcast contained the following:

- D24 VKC Dandenong 307 for a priority one welfare check for a male running on foot up Monash Freeway, EastLink in Dandenong North It's come through as Monash and EastLink in Dandenong North. Complainant's stopped with this male with his hazards on. There's a male on foot and apparently he's said to the complainant that he wants to take a bullet from police so it looks like a suicide threat This was a Mitsubishi, [registration]. This male I believe is going to be a XY from [address] in [suburb]. We had a third party call through a threat of suicide from that address and a male by the name of XY who's rung up triple zero as well, asking for help. So I'm going to put all three on your plate just to keep them all together. But this male is currently over the top of EastLink, gantry 266R, and he's on the phone to someone at the moment which I believe is going to be our sergeant who's having a chat with him.
- Dandenong 251 Dandenong 251, copy last. And just to confirm the complainant in this has conveyed a message from this XY guy that he's suggesting that he wants to take a bullet from a cop. Is that
- D24 Yep. That's correct. It looks like his car has possibly broken and he's saying to our complainant that if police can't keep him safe, he's going to take a bullet. He appears to be lucid at the moment but he's there with his vehicle. We've had a call for a welfare check at Monash and Police Road as well. That's where XY rang us from saying he was at that location and needed police assistance as well, on the inbound side. We're just trying to narrow down that location.
- Dandenong 251 251 copy. So he's suggesting that if police don't come and help him and keep him safe, that he'll take a bullet. It's - he's not making the reference to being shot by police. I just need to confirm that prior to members going on scene. I - I - I don't want them walking into a situation that he's going to attempt to confront them in a way that they have to resort to other measures.

D24

Understood. I just can't give you that confirmation at the moment, sorry, with the details I have. The initial job that he rang – that was rung through for him appears to be a suicide threat from his home address in [suburb]. I've put that on the plate as well, third party complainant. It appears like he's had some mental health issues, paranoid and refusing to let his family use the wifi at home. Then he's left in the car. He's called after requesting assistance saying that he was in a crisis situation, and then someone else has arrived with him and he got off the phone. And then we've had this third party call through saying that they were with this male and he's talking about taking a bullet. That's as much as I can give you, sorry. It says enter via Stud Road city-bound and he's on top of EastLink as well. ⁵¹

82. At 9.34am, PD-2 dispatched the XY event in CAD to SDG307. At the same time, the wellbeing officer event was also assigned to SDG307 in CAD.

83. While PD-2 referred to the wellbeing officer event over the radio broadcast (the "third party call"), and indicated it was being placed on SDG307's "plate", PD-2 did not broadcast at any time during the incident that XY may be in possession of a knife as reflected in PCT-2's comment that the wellbeing officer "believes M may have had a knife – not confirmed – nil sighting".

84. The Lesar 1 event was dispatched to SDG307 at 9.34am and the Lesar 2 event was dispatched to SDG307 at 9.49am.

85. The wellbeing officer event, which contained the information about the knife, was available to view on the IRIS devices⁵² of SDG307, SDG251, and a Critical Incident Response Team (CIRT) unit (CIRT337) made up of Senior Constable Jacob Bowman, Senior Constable Damien Flannelly, and Senior Constable Ashleigh Murphy. The evidence of SC Flannelly was that CIRT337 offered to assist because they were an available resource in the area but that in any event SDG251 requested their assistance at around the same time.

86. An audit shows that, at 9.36am, CIRT337 accessed the event, while SDG307 never viewed the details associated with the event. (It is noted that by 9.49am, there were four separate events in CAD relating to XY, containing relevant information about his situation, and that were all assigned to SDG307).

⁵¹ Inquest Brief, Transcript of D24 Radio Broadcasts commencing at p662.

⁵² iPads and similar enabling police officers' access to real-time information from police systems when in the field.

87. At 9.40am D24 broadcast a further update *'Dandenong 251, just from the sergeant, he is saying that he's not sure of his intentions. He doesn't trust police at this stage, he's currently standing outside of his vehicle'*.⁵³ As a consequence A/Sergeant Tubecki directed Dandenong 307 *not* to proceed directly to the location but identified a rendezvous location where all responding Police units were to meet.
88. At 9.41am whilst enroute to the rendezvous location, SC Flannelly broadcast to his CIRT Supervisor *'there's a male at the side of the Monash Freeway. He's making threats. The locals just requested us to go with them and attend just to grab him. The van and the 251 are primary. We're just gonna back them up. The freeway has one lane closed already before we get there'*. The CIRT Supervisor immediately questioned on-air *'is he armed?'* with SC Flannelly responding *'Negative to being armed, at this stage but he's made indications that he wants to be shot by police. He's not sure of his intentions on the freeway'*.⁵⁴
89. At 9.44am A/Sergeant Tubecki made a direct request to D24 for the specific details relating to the earlier call by the wellbeing officer. D24 provided a verbal briefing that contained no information regarding weapons. A/Sergeant Tubecki also requested further information from Sergeant Goldsmith's ongoing conversation, and whether Sergeant Goldsmith could negotiate XY off the Freeway. D24 advised that this was highly unlikely given XY's reported level of paranoia. At 9.45am, D24 relayed to A/Sergeant Tubecki an update from Sergeant Goldsmith that included that XY had stated he was not in possession of any knives. This was the first verbal broadcast in relation to any weapons.
90. At 9.48am a VicRoads Incident Response Van (callsign Traffic 11) arrived driven by Tony Gleeson (Gleeson) and parked behind Lesar's vehicle in the running lane one. Gleeson initially had a conversation with Lesar and then approached XY. As he approached XY said to him *'That's far enough, don't come any further'*. Gleeson then asked whether XY's vehicle was driveable and, once XY indicated it was, Gleeson asked XY to get into his vehicle and move it. XY refused saying *'the car's not the problem'*. Gleeson then indicated that he was trying to help him with XY replying *'no, you can't help me'*⁵⁵ and then mentioned something about his Facebook account being cancelled. Gleeson returned to his Incident Response Van to await the arrival of Victoria Police that he was aware had also been requested to attend the location.

⁵³ Inquest Brief, Transcript of D24 Radio Broadcasts, p667.

⁵⁴ Inquest Brief, Transcript of D24 Radio Broadcasts, p684.

⁵⁵ Inquest Brief, Statement of Anthony Gleeson dated 28 May 2020, p313.

Police Rendezvous and Briefing

91. Between 9.45am and 9.50am, the following units arrived at a rendezvous point near the intersection of Stud Road and Monash Freeway:

SDG251	Acting Sergeant Tubecki (Forward Commander) with Constable Pearson
SDG756	Dandenong Frontline Tactical Unit (FTU) made up of Acting Sergeant Joshua Milligan, Senior Constable Stephen Gibbs and First Constable Callum Nathan
CIR337	SC Flannelly, SC Bowman and SC Murphy
SDG307	FC Baker and Constable Buckler

92. A/Sergeant Tubecki gave evidence that upon arriving at the rendezvous point *'owing to the urgency of this male still being out on foot on the freeway, there was only very limited time for a briefing with members. As the 251 unit I was the Forward Commander meaning I had command of this incident. I communicated with the CIRT members and had a very short discussion about employing a negotiator, however there was no negotiator in their vehicle'*.⁵⁶

93. A/Sergeant Tubecki then gives evidence *'as it happened, the Sergeant from the Dandenong 756 unit – Sergeant Josh Milligan – was an ex-CIRT member and trained negotiator. Given this we agreed that the 756 unit be the primary unit to approach the male and commence negotiations. The plan was for the CIRT unit to follow and hold back with less than lethal options should the need arise to deploy them. I also directed that as we arrived, we were to block the freeway of oncoming vehicles in an effort to harbour a safer environment for members and the male'*.⁵⁷

⁵⁶ Inquest Brief, Statement of Acting Sergeant Tubecki dated 28 May 2020, p337.

⁵⁷ Ibid.

CIRT Negotiator

94. A/Sergeant Milligan commenced the CIRT training course in February 2017 and obtained a gazetted position at CIRT in June 2017. He completed the initial seven weeks training and also completed further CIRT training courses including tactical medicine course. He was however not a formally appointed CIRT Negotiator. A/Sergeant Milligan was a CIRT member up until October 2019 after which he transferred back to the Narre Warren Uniform section.
95. A/Sergeant Tubecki told the Inquest that he knew that A/Sergeant Milligan had trained as a negotiator, but he did not know how the qualification process worked. A/Sergeant Tubecki acknowledged that while he knew that A/Sergeant Milligan had received the negotiator training, he had no awareness as to whether he was qualified or not. Enquiries made later by the Coroner's Investigator indicated A/Sergeant Milligan had undertaken but not successfully completed all components of the CIRT Negotiators Course and was therefore not a qualified negotiator. A/Sergeant Milligan gave evidence *'another course that I completed was the CIRT negotiator course. This is a 4 week long course. The first 2 weeks is training in psychology and dealing with suicidal subjects. The second 2 weeks consists of hostage negotiation. I finished the course in November 2018. I did finish the course, but I did not successfully complete the course, I didn't pass the hostage negotiation section however I did pass the suicidal subject and psychology section of the course. I was not a CIRT negotiator'*.⁵⁸

Police arrival at the Monash Freeway

96. The four Police vehicles then drove off in convoy and approached XY's location on the Monash Freeway arriving approximately 9.53am without lights or sirens activated in an attempt to de-escalate the situation. Dandenong 756 (marked Police vehicle) parked in lane two to the rear of XY's vehicle, CIRT 337 (unmarked Police vehicle) parked in lane two but offset to create a corridor of safety, Dandenong 307 parked further back in lane two but some distance back and Dandenong 251 parked across lanes three and four completely blocking traffic on the Monash Freeway with the assistance of the two VicRoads Incident Controller vehicles that were also there.

97. A/Sergeant Milligan then exited the vehicle and stood at the front passenger side of the vehicle whilst SC Gibbs and FC Nathan remained standing at the front right-hand side of the vehicle. XY at this time was standing in line with the rear of his vehicle. A/Sergeant Milligan commenced engaging in a conversation with XY. A/Sergeant Milligan made the decision at that point NOT to activate his Body Worn Camera as, knowing he was to be the primary contact, the beeping noise of the camera could be distracting or aggravating to the person being engaged with. All remaining Police members however activated their body-worn camera that captured the subsequent interactions.

Negotiation with XY

98. Upon arrival XY was observed to have his right hand in his right jacket pocket and stated that he didn't want Police to approach and come close to him. When requested to remove his hands from his pocket, XY agreed on the condition that Police kept their distance. Throughout the entire negotiation, he was continually fidgeting his hands in front of his waistline and pacing forwards and backwards up to two metres from a centre point.

99. XY said that he and the police '*would talk like one big family and hopefully there would be some resolution but if there couldn't be, we'll see what happens*'.⁵⁹ Much of the subsequent conversation centred around privacy issues and control around Facebook and what had brought him to the current situation. When A/Sergeant Milligan explored that further and XY indicated that he had made some posts on Facebook in a public forum that had some consequences for him, and he wasn't happy about that, however when asked what those consequences were XY intentionally deflected the conversation. XY then went onto explain that he wanted to delete his Facebook account but couldn't as he'd lost his password and confirmed that this was all he was wanting to achieve. At one point XY indicated that his whole house was networked and quite secure but still '*people got in*' and he didn't know how but '*that's a threat to him and his family*'.⁶⁰

⁵⁸ Inquest Brief, Statement of A/Sergeant Milligan dated 28 May 2020, p343.

⁵⁹ Inquest Brief, BWC Transcript of Officers Gibbs, Tubecki, Flannelly, Murphy, Bowman, pp708-802.

⁶⁰ Ibid.

100. When asked directly by A/Sergeant Milligan, XY indicated he did not want to commit suicide and had not tried in the past. After a period of time A/Sergeant Milligan walked back to brief A/Sergeant Tubecki as to the progress of the negotiations. SC Gibbs continued to talk with XY.
101. SC Gibbs asked if the situation today could be resolved and XY admitted that he didn't know. It was then suggested to XY that they could move off the freeway and continue the conversation at another location. XY requested to know the '*fine grain detail*'⁶¹ around this proposal, and when further detail was offered to him, XY indicated that he wanted some things offered to him, although was unable to articulate anything specifically. XY also indicated that there was a risk associated with accepting the proposal, namely that he could end up in hospital or locked up at a police station.
102. Towards the end of the conversation SC Gibbs asked XY directly if he had anything in his pockets that could harm the police, with XY replying no by shaking his head. SC Gibbs then asked XY directly if he would come with them with XY shaking his head to indicate no.
103. The three members of CIRT337 remained at the rear of SDG756's vehicle out of sight of XY so as not to escalate the situation. Constable Pearson (SDG251) ensured that all approaching traffic had stopped and that all civilian motorists remained inside their vehicles. At this time another Police Unit, SIL853 (COVID-19 Supervisor) driven by A/Sergeant Burnes attended the location and stopped to receive direction from A/Sergeant Tubecki. The direction was made for A/Sergeant Burnes and Constable Baker (from Dandenong 307) to position the SIL853 vehicle so that they could block XY in his vehicle in the event that he attempted to flee. A/Sergeant Burnes positioned his vehicle in lane four but stopped parallel with the Dandenong 756 vehicle.
104. A/Sergeant Tubecki discussed a number of tactical options with SC Flannelly (the CIRT Unit Leader) including preventing XY re-entering his vehicle through physical force, the use of less lethal options including non-lethal bean bag rounds from the Remington shotgun if XY produced an edged weapon. SC Flannelly also discussed utilising CIRT negotiators in the event the incident became protracted.

105. Police members were aware of the disruption being caused to peak hour traffic on the freeway. A/Sergeant Tubecki referred to not holding the traffic for too long on the Monash Freeway in busy morning peak. However, in his evidence he advised the Inquest that the build-up of traffic during peak hour played no role in the decision to proceed to resolution and arrest. Similarly, A/Sergeant Milligan told the Inquest that his sole focus was XY and how that situation could be resolved. The impact on peak hour traffic did not “come into”⁶² his mind. A/Sergeant Flannelly said that while closing off all the inbound lanes of the Monash Freeway was something that had to be considered, it didn’t push the job along either way, it was not a driving factor in the decision-making process.

Decision to Arrest XY

106. At 10.01am A/Sergeant Tubecki advised D24 Police Communications that they were going to give the negotiations five minutes more before attempting to arrest XY pursuant to s 351 *Mental Health Act 2014*.

107. Approximately 10.06am, after 12 minutes of negotiations, A/Sergeant Milligan approached A/Sergeant Tubecki and advised that XY was not cooperating and that discussions were not progressing. A/Sergeant Milligan advised that he had asked XY if he was in possession of anything in his pockets or wanted to hurt himself, to which he stated that he did not.

108. Whilst SC Milligan and SC Gibbs were negotiating, SC Flannelly kept his CIRT unit continually abreast of the evolving plan. He directed SC Murphy to retain the beanbag shotgun in case it was required and that, if XY produced a knife, SC Murphy was to move forward to SC Milligan’s position and fire on XY repeatedly emptying the chamber and then other members would move in and effect the arrest. This plan would be instigated by SC Flannelly calling the single word ‘knife’.

109. At 10.06am, A/Sergeant Tubecki advised SC Flannelly that due to the failed negotiations they were going to approach XY and arrest him pursuant to s 351 *Mental Health Act 2014*.

⁶¹ Inquest Brief, BWC Transcript of Officers Gibbs, Tubecki, Flannelly, Murphy, Bowman, pp708-802.

⁶² T160.13-21 (MILLIGAN).

110. At 10.07am, A/Sergeant Tubecki, A/Sergeant Milligan, SC Flannelly and FC Nathan all walked to the right of and forward of the SDG756 vehicle and fanned out generating a semi-circle around XY. A/Sergeant Tubecki continued to engage with XY and had his hands held up high to show he was not in possession of anything. At the same time SC Murphy and SC Bowman walked to the left and forward of the SDG756 vehicle towards the location of SC Gibbs. At the same time, SC Murphy was in possession of the bean bag shotgun and had it slung across the front of his body and pointed to the ground.

111. XY initially reacted by making immediate eye contact with SC Murphy and placing his right hand in his jacket pocket very briefly before then placing both hands behind his head as if to surrender. He then immediately put them back down and placed his right hand back into his jacket pocket and used his left hand to point at the police. XY began to back away and focussed his attention at A/Sergeant Tubecki repeating 'back back' and 'stay there, stay there'.⁶³ All members continued to advance towards XY.

112. As the officers approached XY his right hand remained within his jacket pocket. SC Murphy raised the bean bag shotgun and pointed it at XY and called on him to keep his hands out of his pockets. SC Bowman drew his semi-automatic pistol and held it in the 'assess' position (drawn and pointed forward but not up on target) as cover for SC Murphy. SC Bowman then commanded XY '*Get your hands out of your pockets now*'⁶⁴ causing XY to focus his attention on SC Bowman.

113. SC Murphy then positioned himself next to SC Gibbs and in line with the rear of XY's vehicle. A/Sergeant Tubecki and other police repeatedly called on XY to show them his hands and remove them from the pocket. XY refused saying '*I'll show you my hands when you take four steps back*'⁶⁵ and variations of this instruction three times. SC Bowman has then re-holstered his semi-automatic pistol and held his hands up to show XY that they were empty.

⁶³ Inquest Brief, BWC Transcript of Officers Gibbs, Tubecki, Flannelly, Murphy, Bowman, pp708-802.

⁶⁴ Ibid.

⁶⁵ Ibid.

114. A/Sergeant Milligan then moved forward to become nearest to XY causing him to shift his focus from A/Sergeant Tubecki to SC Milligan. As SC Milligan started to move closer, he said *'We've tried to be nice to you XY, but we can't go any further'*.⁶⁶ XY responded removing a sheathed knife from his right jacket pocket using his right hand. This occurred thirty-five seconds after police commenced their approach to XY.
115. SC Flannelly drew his semi-automatic pistol and SC Murphy moved to his right to be better aligned to XY. SC Gibbs, who was standing at the driver's door to XY's vehicle then opened the door locating the keys in the ignition of the vehicle which he leant in and removed.
116. XY then used his left hand to withdraw the knife from the sheath, retaining the sheath in his right hand. Numerous police called on XY to drop the knife and SC Bowman and SC Flannelly both, upon identifying the knife, called out *'bean bag'*⁶⁷ causing SC Murphy to commence firing the pump action Remington shotgun with non-lethal beanbag rounds.
117. SC Murphy fired the first bean bag round approximately three seconds after the knife had been removed from XY's pocket. SC Murphy then fired all five rounds from the shotgun in quick succession with all five rounds striking XY in the lower body/upper leg. After firing five rounds the bean bag shotgun was empty of ammunition. The bean bag rounds failed to have any significant effect on XY who then focused his entire attention on SC Murphy.
118. Before the fifth bean bag shot had been discharged XY commenced charging at SC Murphy causing SC Flannelly to begin drawing his taser and SC Bowman his semi-automatic pistol. Whilst charging XY moved his overhand grip of the knife to an underhand grip and raised it in his left hand above his head as he charged at SC Murphy. SC Murphy in response began backing away from the approaching threat and continued to rack and fire the empty bean bag shotgun.

⁶⁶ Ibid.

⁶⁷ Ibid.

119. SC Bowman who had drawn his semi-automatic pistol just prior to the fifth and final bean bag round being discharged saw XY running towards SC Murphy with the knife and fired two shots which struck XY to the upper body. SC Bowman was then forced to remove his aim from XY as XY passed in front of SC Gibbs who was caught between the driver's side of XY's vehicle and XY.
120. Whilst this was occurring SC Murphy who was backing away tripped and fell backwards. SC Bowman waited for the line of crossfire to pass and, seeing that the initial two shots had had no immediate effect on XY, brought his semi-automatic pistol back up and fired four more shots, including three shots whilst XY was over the top of SC Murphy. All shots impacted XY's upper body.
121. XY reached SC Murphy as he was falling backwards and XY came over the top of SC Murphy still holding the knife. SC Murphy has then used the barrel of the bean bag shotgun to push into XY and keep him and the knife away. The momentum of SC Murphy falling backwards with the barrel on XY and XY's momentum caused SC Murphy to roll over backwards and XY to be catapulted forward landing face down past SC Murphy.
122. The duration of time between the first bean bag discharge and the final semi-automatic pistol discharge was a total of six seconds.
123. On landing the sheath flew out of XY's right hand forward of his body. SC Bowman immediately moved in and placed his foot on XY's left hand which still had hold of the knife. A/Sergeant Tubecki, Constable Buckler and FC Nathan moved in to restrain XY while SC Flannelly assisted SC Murphy to his feet and assessed him for knife wounds (none identified).
124. SC Bowman removed the knife from XY's left hand and threw it onto the roadway forward of their position. Officers then immediately commenced first aid on XY including resuscitation attempts and utilising the Tactical Medical Kit of the Critical Incident Response Team. D24 Communications were also immediately notified.

125. At approximately 10.09am, numerous resources from Ambulance Victoria were dispatched including two separate MICA Paramedic Units and an Ambulance from Noble Park Ambulance Station. Due to severe traffic congestion on the major roadways leading into the incident scene, all Ambulance resources encountered significant difficulty in reaching the incident scene. MICA Paramedic Peter O'DONNELL was the first unit from Ambulance Victoria to arrive at 10.27am followed soon thereafter by MICA Paramedic Peter COOK. Upon their arrival numerous Victoria Police Officers were continuing cardio-pulmonary resuscitation upon XY. Following an assessment by both MICA Paramedics it was determined that XY was deceased at 10.33am

126. A Critical Incident was declared with carriage of the investigation taken over by the Homicide Squad overseen by Professional Standards Command.

127. The Monash Freeway was cordoned off as a crime scene and subsequently forensically examined by multiple resources from Victoria Police.

Post-Incident Investigations

128. A/Sergeants Milligan and Tubecki and SC Bowman, Murphy and Gibbs were all subject to mandatory drug and alcohol testing with all Officers returning negative results to alcohol and illicit drugs.

129. Just after midday on Thursday 28 May 2020, Senior Sergeant Munro, Leading Senior Constable Gann and Senior Constable Pearson attached to the Major Crime Scene Unit and Ballistics Unit, Victoria Police Forensic Services Centre attended and commenced a forensic crime scene examination.

130. Senior Constable Pearson located and identified the following items of interest within the crime scene:

- a) A silver Baccarat branded kitchen knife in a sheath (Item 1). The overall length of the knife was measured to be 260 millimetres.
- b) Six (6) fired cartridge cases (Items 4 to 9)
- c) Five (5) shotgun fired cartridge cases (Items 10 to 14)
- d) Five (5) bean bag projectiles and associated wadding (Items 15 to 18)

131. On 31 May 2020, at the Major Crime Scene Unit garage, Sergeant Nisbet attached to the Ballistics Unit, Victoria Police Forensic Services Centre examined the silver Mitsubishi Colt driven by XY to the Monash Freeway on-ramp. A black nylon guitar case and a black hooded winter coat were located within the vehicle lying across the footwell of the rear seats. The nylon guitar bag contained a Yamaha branded acoustic guitar and a wrought iron fire poker measuring 68.4 centimetres in length.
132. At a later date Senior Constable Pearson examined the police issue semi-automatic pistol issued to Senior Constable Bowman and concluded a total of six cartridges had been discharged from the firearm during the incident.
133. A/Sergeant Milligan and SC Flannelly, Murphy and Bowman were qualified to use both the Operational Skills Tactics and Training (OSTT) equipment and CIRT specific weapons systems that were deployed on 28 May 2020.

COMMENTS

134. I make the following comments connected with XY's passing pursuant to s67(3) *Coroners Act 2008*.

XY's MENTAL HEALTH

135. XY was never formally diagnosed with any mental health illness or disorder. There is no evidence of XY consulting his general practitioner or any other doctor regarding any mental health issue, nor is there any evidence he engaged in any substantive way with the support services offered following incidents arising in respect of his mother. The COVID-19 pandemic was a significant adverse psychological trigger for XY with evidence from XY's family indicating a significant increase in his level of paranoia and anxiety. This was further exacerbated in respect of the care of XY's mother.

136. The absence of a formal diagnosis and any formal engagement with mental health professionals or support services significantly limited any prevention opportunities. In that respect it brings into focus the events of Wednesday 20 May 2020, where XY asked his wife to ring an ambulance as his mother '*had driven him to his wits end*'.⁶⁸ XY's wife instead contacted the Monash Health Psychiatric Triage Service (PTS) with both Victoria Police and the afternoon PACER team staffed by Senior Constable TIORI and Mental Health Clinician Kirsty DURRANT attending XY's premises.

137. During the subsequent interaction XY disclosed to DURRANT that the week before he had held a knife to his stomach in front of his mother and made a comment to the effect of '*is this what I need to do to get you to shut up?*'.⁶⁹ XY also disclosed that the previous Monday he had been arguing with his mother whilst driving in the car and that he had the ideation to run them both off the road. No formal mental health assessment was conducted on XY at the time, and after XY's mother had been conveyed and admitted to Dandenong Hospital pursuant to an Assessment Order under the *Mental Health Act 2014*,⁷⁰ DURRANT indicated to XY that he would be receiving a follow-up telephone call the following day from the Psychiatric Triage Service.

⁶⁸ Inquest Brief, Statement of XY's wife dated 25 June 2020, p188.

⁶⁹ Inquest Brief, Statement of Kirsty Durrant dated 18 June 2020, p279.

⁷⁰ *Mental Health Act 2014* (Vic) Part 4 Division 1.

138. I am satisfied that based on the available statements and review of body worn camera footage, that XY did not disclose thoughts nor display behaviours of concern or consistent with psychosis. There was no indication to Clinician DURRANT that XY was at immediate risk of harm to himself or others during their brief interactions. I note that a referral was opened for XY to Monash Health, to which he agreed to engage.
139. Although XY disclosed two recent episodes of suicidal ideation, these both appeared to be in the context of his mother's challenging behaviours and his level of frustration. In these circumstances, despite the disclosures, I am satisfied that it was reasonable for Clinician DURRANT to believe that removing XY's mother from the home would be protective for XY, along with the plan for Monash Health PTS to contact him the following day. There was no indication that XY was actively suicidal at the time of the PACER visit.
140. Ultimately, I am satisfied that in the circumstances, given the context in which the PACER Team attended XY's premises, that this was *not* a missed prevention opportunity in respect of XY's declining mental health.

ESTA's MANAGEMENT OF TRIPLE ZERO CALL FROM WELLBEING OFFICER

141. At 9.23am, having ended the call to XY's wife at 9.22am, the wellbeing officer called triple zero and spoke to ESTA call taker PCT-2. During that telephone call the wellbeing officer advised PCT-2 that XY *'left the house approximately five minutes ago carrying a knife'* causing PCT-2 to ask in response, *'He had a knife with him, did he?'* The wellbeing officer replied, *'He did'*.⁷¹ Later in the conversation PCT-2 asked, *'Do we know if he's got any weapons at all?'* with the wellbeing officer replying, *'All I know is that she believes he's taken a knife with him'*. In the subsequent CAD event created (the wellbeing officer event), PCT-2 distilled and recorded the wellbeing officer's comments about the knife in the event comments as "believes M may have had a knife – not confirmed – nil sighting".⁷²

⁷¹ Inquest Brief, Transcript of telephone call between wellbeing officer and ESTA PCT-2, p579.

⁷² Inquest Brief, Event Chronology Event Number P2005235847, p638.

142. Thomas DUNBAR, an ESTA Quality Improvement Investigator conducted ESTA's investigation into the call taking and dispatch of this entire event on 28 May 2020. Mr DUNBAR provided two statements contained within the Inquest Brief in addition to giving viva voce evidence at Inquest. Mr DUNBAR gave evidence that the language used by PCT-2 in the comment "believes M may have had a knife – not confirmed – nil sighting" was inaccurate and ambiguous, that it did not reflect any training or instruction provided by ESTA, and that *'the full sentence shouldn't have been recorded in that manner'*.⁷³

143. During ESTA's investigation it was identified that PCT-2 had commenced his formal training course on 10 January 2020 and completed it on 24 February 2020. PCT-2 then underwent the consolidation phase and received his final qualification certificate on 25 July 2020. At the date of this incident therefore, PCT-2 was still in their consolidation phase.

144. Mr DUNBAR further advised the Court that following the incident, PCT-2 was thoroughly debriefed by his team leader, who discussed with PCT-2 the inaccuracy of the way in which they had recorded the information and the team leader provided guidance to PCT-2 as to how to more accurately and appropriately record such information in CAD in the future. PCT-2 was further debriefed by Mr DUNBAR during his investigation and *'PCT-2 told me that he now clearly understands that the manner in which he recorded the above information in CAD was inaccurate and ambiguous. He said that he now had a stronger understanding of the importance of accurately and unambiguously recording information from calls so that it can be accurately conveyed to the police, and he understands that that is important from the perspective of police members' and public safety'*.⁷⁴

145. In December 2021 as part of Mr DUNBAR's investigation, PCT-2 relistened to the audio of the telephone call with the wellbeing officer and advised Mr DUNBAR that if he was now in a similar situation, he would record the information received as "Male left home in possession of a knife".⁷⁵ Mr DUNBAR confirmed that this is the appropriate way of recording that information, and that information recorded in that manner would be clear and unambiguous to subsequent people viewing it, including ESTA dispatchers.

⁷³ T.385.26-28 (DUNBAR).

⁷⁴ Inquest Brief, Statement of Thomas Dunbar dated 3 December 2021, p908.

⁷⁵ Ibid.

146. Mr DUNBAR further advised the Court that ESTA planned to implement training, both to new and existing call takers, in respect of contextualised information as to the perspective of police officers and the manner in which information has to be recorded in CAD as clearly as possible so that it can be conveyed accurately to the police.

147. I accept Mr DUNBAR's evidence that the manner in which PCT-2 recorded the information conveyed by the wellbeing officer was inaccurate and ambiguous and that it did not reflect any training or instruction provided by ESTA. I am satisfied with the internal review conducted by ESTA's Quality Improvement Team and thank them for their assistance and cooperation with the coronial investigation. I am satisfied that this occurrence is not evidence of any systemic issues that need addressing within ESTA. I am satisfied that both the remedial performance measures instituted in respect of PCT-2, as well as the training package to be developed in collaboration with ESTA's Quality Improvement and Learning and Development teams, is an appropriate response and sufficiently mitigates the risk in preventing a future reoccurrence.

ESTA's ABSENCE OF BROADCAST IN RESPECT OF KNIFE

148. Following on from the above discussion, at 9.25am, prior to PCT-2 accepting the wellbeing officer event in CAD, PD-1 handed over management of the relevant police radio channel to a second police dispatcher, PD-2. As PCT-2 had not accepted the wellbeing officer event in CAD at this stage, PD-1 was not aware of the wellbeing officer's call. Nonetheless, PD-1 alerted PD-2 to the XY event, so that PD-2 was aware of the situation as it was known to PD-1 at the time. At 9.30am, following handover of the relevant radio channel, PD-2 reviewed the comments in the wellbeing officer event.

149. While PD-2 referred to the wellbeing officer event over the radio broadcast (the "third party call"), and indicated it was being placed on SDG307's "plate",⁷⁶ PD-2 did not broadcast at any time during the incident that XY may be in possession of a knife as reflected in PCT-2's comment that the wellbeing officer "believes M may have had a knife – not confirmed – nil sighting".⁷⁷

⁷⁶ Inquest Brief, Transcript of D24 Radio Broadcasts commencing p662.

⁷⁷ Inquest Brief, Event Chronology Event Number P2005235847, p638.

150. Mr DUNBAR gave evidence that PD-2 accepts that when he reviewed the wellbeing officer event, he inadvertently failed to see the comment about the knife. It appears that this oversight was the result of human error by PD-2. I accept Mr DUNBAR's evidence that as part of the investigation, PD-2's performance records were reviewed, and the records indicated no prior reference to any occasion when he omitted to broadcast important information. PD-2 advised Mr DUNBAR that if he had seen PCT-2's comment about the knife he would have sought clarification because of its ambiguity. This is consistent with PD-2's experience (noting he had been employed with ESTA for over a decade and was an experienced operator and dispatcher).

151. I find, that at no time was there a relevant broadcast to police over the radio conveying the information provided by the wellbeing officer in his call to triple zero, that XY was, or may have been, armed with a knife.

152. Whilst I accept that the CAD events were also dispatched electronically to mobile device equipped vehicles, the evidence at Inquest was that PCT-2's comment about the knife was not seen by any police member that had access to the wellbeing officer event via the IRIS device. The evidence at Inquest was that police members on duty rely primarily on police radio communications to receive salient and critical information (including information about weapons) about the jobs they attend.

153. Acting Sergeant Joshua Milligan agreed with the proposition that primarily, officers relied on the information coming over the radio for their policing work.⁷⁸ A/Sergeant Joey Tubecki said that he relied on information that was dispatched over the radio because it's not feasible to be reading a laptop while he was on the road, making decisions, planning, coordinating and communicating with other units.⁷⁹

154. Mr DUNBAR confirmed that police dispatchers are expected to broadcast critical information, such as an offender being armed, over the radio. This expectation exists even though CAD events are dispatched to members' IRIS devices so that information about jobs are accessible by them remotely.

⁷⁸ T149.26-30 (MILLIGAN)

⁷⁹ T98.25-100.31 (TUBECKI)

Enhancements to CAD

155. Mr DUNBAR gave evidence about improvements that were made to the way event remarks are displayed in CAD, as part of a larger upgrade of the CAD platform in November 2020.⁸⁰
156. The first enhancement is that certain words are now automatically displayed in colour and bold type. In the case of the wellbeing officer event, the words 'knife' and 'aggressive' will now automatically appear in bold font and in colour. New words can be added at any time to the list of words that are automatically highlighted and appear in colour.
157. The second enhancement is that call takers now have the capacity to mark comments as critical by either selecting a critical box next to the event remarks (which will result in the remarks appearing in bold with a red hazard symbol next to them) or by starting a comment with two exclamation marks.
158. The purpose of the enhancements is to ensure that critical information, including information regarding weapons, stands out to police dispatchers for broadcast over the radio, noting that event remarks can often be voluminous and generally appear as black text in capital letters.
159. The enhancements, which seek to highlight critical information, has not displaced the expectation that police dispatchers review the entirety of the event comments to ensure they broadcast all relevant information.
160. Further, ESTA has implemented additional training for dispatchers that emphasises the importance of reviewing comments for, and communicating to police via the radio, critical information such as the presence of weapons. ESTA advised the Court that the training for new dispatchers was to be ready in late March or April 2022.⁸¹ ESTA was unable to advise on the timeframe for the updated training to existing dispatchers.

⁸⁰ T388.3-390.26 (DUNBAR)

⁸¹ T410.22-411.5 (DUNBAR)

161. Having carefully reviewed all the relevant material and the evidence of Mr Dunbar I am satisfied with the internal review conducted by ESTA's Quality Improvement Team and thank them for their assistance and cooperation with the coronial investigation. I am also satisfied that the proposed CAD enhancements that have been implemented is an appropriate response and sufficiently mitigates the risk in preventing a future reoccurrence.

TACTICAL DECISION REGARDING A 'HANDS-ON' ARREST

162. Negotiations with XY commenced approximately 9.54am. At 10.01am A/Sergeant Tubecki advised D24 Police Communications that they were going to give the negotiations five minutes more before attempting to arrest XY pursuant to section 351 *Mental Health Act 2014*. Approximately 10.06am, after 12 minutes of negotiations, A/Sergeant Milligan approached A/Sergeant Tubecki and advised that XY was not cooperating and that discussions were not progressing.

163. By that time A/Sergeant Milligan had asked XY directly whether he wanted to commit suicide or had tried in the past, with XY responding in the negative. Further SC Gibbs had asked XY directly if he was prepared to come with them in the transport offered to move him to a safer place off the freeway to continue their discussions, XY shook his head indicating no. At that time both A/Sergeant Milligan and SC Gibbs had asked XY directly, and separately, whether he had anything in his pockets that could harm the police, with XY replying no by shaking his head.

164. Negotiations with XY are best captured in the following assessment by the Coroner's Investigator, Detective Sergeant Bell, Homicide Squad who opined '*XY's conversation can be overall described as calm and controlled, it wasn't rambling or incoherent, there were no overtly obvious illogical comments. He was however elusive with his answers, made several lies and continually stalled police in a manner that presented as having no desire to reach a resolution*'.⁸²

⁸² Inquest Brief, Coroner's Investigator Statement of Material Facts, p27.

165. I agree with that assessment and further, that it is clear that an impasse had been reached in negotiations. It is entirely unclear what, if anything, could be gained in respect of negotiations becoming protracted. In the circumstances, I am satisfied it was reasonable for police to conclude that negotiations had progressed as far as they could at that time, and that it was reasonable for Officers to move in to attempt to arrest XY pursuant to section 351 *Mental Health Act 2014*. I am satisfied that whilst Police members were alive to the disruption being caused to peak hour traffic (given all inbound lanes of the Monash Freeway were closed), it was not a significant factor within the tactical decision-making process.

166. The consistent evidence before the Inquest was that it was not a feasible tactical option to withdraw from XY once the arrest process commenced. SC Flannelly told the Inquest that:

*... no one wants to be apprehended, no one wants to be arrested, no one wants physical force. So, it's not uncommon for someone to say, stop go back. No, don't touch me, get off and worse. But in my opinion, the time given was sufficient to go through the options that we had available to us to get XY to comply and the time to move up and effect the apprehension had come and it needed to continue. And that is in the context of him being an unarmed man.*⁸³

167. I repeat what I have previously found, that is at no time was there a relevant broadcast to police over the air reflecting the information that XY was, or may have been, armed with a knife.

168. The evidence of the police members, in particular A/Sergeant Tubecki, SC Milligan and SC Flannelly, was that the risk assessments and decision making proceeded on the basis that XY denied being in possession of any weapons and that it was unlikely that he was in possession of a weapon. In keeping with police training, the police members all spoke to the possibility that XY may be in possession of a concealed weapon not being entirely discounted.

⁸³ T291.1-17 (FLANNELLY)

169. A/Sergeant Tubecki told the Inquest that his risk assessment would have been different had he known XY was in possession of a knife; he would have assessed the risk as greater.
170. A/Sergeant Milligan stated that his decision-making would have been different if information had been available about the knife. He told the Inquest that at every stage of the job, he considered XY to be a very low risk of having a weapon. He agreed that one of the motivations for bringing negotiations to a close and moving to the arrest phase was his firm belief that XY was not armed and that a “hands on”⁸⁴ arrest was feasible.
171. A/Sergeant Flannelly stated that if he had known XY had a weapon, he would most likely have engaged the CIRT negotiators. He described the various options available to CIRT if he had known XY was armed and had chosen to implement a “full set deployment”⁸⁵, including withdrawing the uniform officers, using a canine siege dog, reducing the size of the operating area and using shields. A/Sergeant Flannelly accepted that it was speculative whether the use of any of these options would have led to a different result.
172. I accept the Police members evidence and find that the Police members risk assessments and decision making proceeded on the basis that XY denied being in possession of any weapons and that it was unlikely that he was in possession of a weapon. This was entirely reasonable on the basis of the information available to them *and* on the basis of the enquiries they had conducted themselves, including in negotiations with XY. In all the circumstances the planning, preparation, risk assessments and decision making of Police members was reasonable and appropriate and adequately accounted for the risks (including the possibility that XY was armed).
173. Further I find that *had* Police members received information in respect of XY being armed with a knife, including through a D24 Police Communications broadcast from an ESTA police dispatcher, the risk assessment and tactical decision making would have been fundamentally different. I accept that Police would *not* have considered a ‘hands-on’ arrest to have been feasible, and further negotiations would have become protracted with CIRT Negotiators formally deployed and a different range of tactical options utilised.

⁸⁴ T161.21-27 (MILLIGAN)

⁸⁵ T298.3-7 (FLANNELLY)

174. In the circumstances however I am unable to find that such a course may have achieved a different outcome. XY's motivations remain unclear in respect of his conduct that day, and on all the available evidence it is clear he was experiencing some form of significant mental health crisis. In those circumstances it is impossible to predict the outcome regardless of the tactical decision making employed.

XY's MOTIVATION

175. It is difficult to define with any precision XY's motivation on 28 May 2020, other than to conclude he was experiencing some form of mental health crisis. XY's wife in her statement gives evidence that *'at about 9am I told him that the police would be coming to check on us because of the school. XY said he would have to leave because he was putting us in danger. XY felt that someone was going to kill him and if he was with us it would put us in danger XY said "That's it now, I have to go. You might not see me again. I will drive on the freeway so that the cameras can record if anyone does something to me'.*⁸⁶

176. In his telephone conversation with Sergeant Goldsmith, XY denied being suicidal although then stated *'and going forward, I don't know how the – how it's all going to happen but, you know, there's options there at the moment. At the end of it, there might not be options'.*⁸⁷

177. In his short conversation with Lesar on the Monash Freeway, XY stated *'I don't care what they do to me, I'll take a bullet unless they can protect my family if they can't protect my family, I will take a bullet'.*⁸⁸

178. During negotiations A/Sergeant Milligan asked XY directly whether he wanted to commit suicide or had tried in the past, with XY responding in the negative. Further SC Gibbs had asked XY directly if he was prepared to come with them in the transport offered to remove him to a safer place off the freeway to continue their discussions, XY shook his head indicating no.

⁸⁶ Inquest Brief, Statement of XY's wife dated 28 May 2020, p164-5.

⁸⁷ Inquest Brief, Transcript of telephone call between XY and Sergeant Goldsmith, p615.

⁸⁸ Inquest Brief, Transcript of telephone call between Lesar and ESTA PCT-3, p628.

179. I note that as part of the Victoria Police internal Operational Safety Critical Incident Review (OSCIR) the Review Team sought the assistance of Dr Karla Lopez, Senior Forensic Psychologist who opined '*given all the information provided regarding the state of mind of the deceased prior to and during the incident, it would appear that he had been suffering from a form of psychotic disorder. It is not possible to provide a diagnosis, but on balance, it would seem likely that XY was experiencing persecutory delusions*'.⁸⁹

180. XY's motivation either at the commencement of the incident, or indeed at any time throughout is uncertain. As Dr Lopez opined, XY did not clearly articulate his reasons for stopping on the freeway, the details he expected or wanted from police or the outcome he was hoping for. On balance, considering all of the available evidence, I am not satisfied that XY travelled to the Monash Freeway that day, with the intention of forcing Victoria Police members to utilise lethal force against him ('suiciding by cop'). The evidence does not support such a conclusion.

EXPECTED TACTICAL OUTCOME REGARDING BEANBAG DEPLOYMENT

181. The tenor of the evidence of police members at the Inquest was an expectation that the deployment of the beanbag gun would incapacitate, stun or disarm XY. SC Murphy, who had seen the beanbag gun used operationally, told the Inquest that the intended outcome would be that the beanbag gun was disabling of the target. He described a "multipronged" approach which coupled with the physical pain of being hit with the bean bag, which can be disabling, with the psychological factor of having a longarm pointed at you and not knowing what you have been hit by:

*...your intended outcome is that it's going to be disabling and have some sort of major effect on the person to stop doing what they're doing. It also sort of acts as a distraction device and can sometimes break them out of whatever loop that they're in with their mindset.*⁹⁰

⁸⁹ Inquest Brief, Victoria Police Operational Safety Critical Incident Review, p968.

⁹⁰ T243.10-14 (MURPHY)

182. Police members gave evidence that they were surprised that the beanbag gun failed to deter or disable XY. SC Flannelly stated that he was very surprised that the beanbag rounds did not have a stronger effect on XY, expecting it to at least knock him down to his knees or cause a change of behaviour.
183. The Inquest heard evidence from Operator 33, an experienced Senior Sergeant of Victoria Police stationed at the Special Operations Group (SOG). Operator 33's responsibilities include overseeing the selection and training of the SOG and CIRT units.
184. Operator 33 provided training documentation related to the 12-gauge beanbag gun. The training documentation consistently states that 'the purpose of this capability is to deliver high energy single target round for the incapacitation or the distraction of a non-compliance aggressive subject'.⁹¹ This appears consistent with the expectations of the attending members.
185. Operator 33's evidence was that 'the intended outcome of the beanbag is not to incapacitate the subject'. He explained that use of the term 'incapacitation' meant that a person was affected to the extent that they were "unable to do anything", and the likely result of deployment of a beanbag gun fell short of that.⁹²
186. Operator 33's experience with the beanbag gun was that tactically it was a 50/50 chance whether it was effective. His evidence was that during training, members were given scenarios in which the beanbag gun did not work so they should be aware it was not a fail-safe option. The training slides annexed to Operator 33's statement do not make any reference of the likely effectiveness of the beanbag gun.
187. It is apparent, on the available evidence, that there arose a clear disconnect between the Police members expectations in utilising the beanbag rounds, and the actual outcome produced. It is difficult to reconcile this given Operator 33's evidence, in particular that members during training were exposed to scenarios in which the beanbag shotgun failed to produce the intended outcome, forcing them to resort to other tactical options (as occurred here).
188. In the circumstances I do not intend to make a recommendation, however it would be prudent for the Chief Commissioner to review the training in respect of the beanbag shotgun, to remove any opportunity for ambiguity in respect of the efficacy of that particular tactical option.

⁹¹ Inquest Brief, CIRT Training PowerPoint Presentation Slide, p1225.

⁹² T344.30-31 (OPERATOR 33)

ASSESSMENT OF THE USE OF LETHAL FORCE

189. The *Victoria Police Manual Operational safety and the use of force* states that ‘any force used by a member must be in line with legal requirements and the principles of section 462A *Crimes Act* which states

*A person may use such force not disproportionate to the objective as he or she believes on reasonable grounds to be necessary to prevent the commission, continuance or completion of an indictable offence or to effect or assist in effecting the lawful arrest of a person committing or suspected of committing any offence*⁹³

190. Section 322K *Crimes Act* in respect of self-defence is also relevant here, that section stating

*A person is not guilty of an offence if the person carries out the conduct constituting the offence in self-defence. A person carries out conduct in self-defence if (i) the person believes that the conduct is necessary in self-defence; and (ii) the conduct is a reasonable response in the circumstances as the person perceives them*⁹⁴

191. Thirty-five seconds after police members commenced their approach to XY to effect a ‘hands-on’ arrest and apprehension pursuant to s351 *Mental Health Act 2014*, XY removed a sheathed knife from his right jacket pocket. Numerous police called on XY to drop the knife and SC Bowman and SC Flannelly both, upon identifying the knife, called out ‘bean bag’ causing SC Murphy to commence firing the pump action Remington shotgun. SC Murphy fired the first bean bag round approximately three seconds after the knife had been removed from XY’s pocket and then fired all five rounds in quick succession. Before the fifth bean bag round had been discharged, XY commenced charging towards SC Murphy causing SC Bowman to draw his semi-automatic pistol. Whilst charging XY moved his overhand grip of the knife to an underhand grip and raised it in his left hand above his head. SC Murphy in response began backing away from the approaching threat and continued to rack and fire the empty bean bag shotgun. SC Bowman then discharged his semi-automatic pistol multiple times with all shots impacting XY’s upper body.

⁹³ *Crimes Act 1958*(Vic)s462A.

192. XY reached SC Murphy as he was falling backwards and XY came over the top of SC Murphy still holding the knife. SC Murphy has then used the barrel of the bean bag shotgun to push into XY and keep him and the knife away. The momentum of SC Murphy falling backwards with the barrel on XY and XY's momentum caused SC Murphy to roll over backwards and XY to be catapulted forward landing face down past SC Murphy.

193. The time between the first bean bag discharge and the final semi-automatic pistol discharge was a total of six seconds.

194. SC Bowman gave evidence in his statement that *'the male ran towards Senior Constable Murphy with the knife raised in his left hand. I formed the view that the male intended to stab Murphy with the knife. I believed that MURPHY was at risk of death or serious injury I considered all other options available to me and formed the belief that the only option I reasonably could have used to stop the male from stabbing Murphy was to shoot him. I continued to shoot until the male was incapacitated'*.⁹⁵ Body Worn Camera footage immediately post-discharge captured SC Bowman saying to SC Murphy *'I really thought he was gunna get a – you were gunna cop a knife to the neck'*.⁹⁶

195. On the basis of all available evidence, I am satisfied that the use of lethal force by SC Bowman complied with all legislative and policy requirements, in particular sections 462A and 322K *Crimes Act*.

VICTORIA POLICE POLICY | MEMBER STATEMENTS AND VIEWING OF BWC FOOTAGE

196. The same day as the fatal incident, investigating officers took statements from police members who had attended the incident with XY. Before and during the preparation of their written witness statements, these police members were offered the opportunity to watch their own body worn camera (**BWC**) footage *and* the BWC footage of other members, which was permitted by Victoria Police policy at the time.

⁹⁴ *Crimes Act 1958*(Vic)s322K.

⁹⁵ Inquest Brief, Statement of Senior Constable BOWMAN, p384.

⁹⁶ Inquest Brief, BWC Transcript of Officers Gibbs, Tubecki, Flannelly, Murphy, Bowman, pp708-802.

197. A/Sergerant Milligan, FC Baker, SC Flannelly, SC Murphy, SC Gibbs, and SC Bowman all gave evidence that they watched portions of theirs *and* others footage. A/Sergeant Tubecki and Constable Buckler each gave evidence that they watched their own footage only. Constable Pearson gave evidence that he chose not to watch body worn footage at all.⁹⁷

198. Whilst the above approach was permitted by Victoria Police policy at the time, such an approach raises significant concerns in respect of the administration of justice regarding proper practice in the making and taking of witness statements. There is no need to explore this issue further as since the date of this incident there has been a fundamental change in Victoria Police's policy regarding the access by police members to their own and other members' BWC footage prior to making a written statement.

199. On 17 February 2022 the Chief Commissioner's Instruction (CCI) 01/22 Witness statements⁹⁸, and Victoria Police Manual (VPM)⁹⁹ on Body worn cameras came into force.

200. CCI 01/22 states that:

- a) Prior to being interviewed for a critical incident, police officers must document their independent recollection by making contemporaneous notes or commencing a statement (at para [18])
- b) After documenting their independent recollection police officers may view their own BWC footage (at para [19])
- c) The point at which BWC footage is viewed must be recorded within contemporaneous notes and/or written statements, including the date and time (at para [20]).

⁹⁷ T42.10-11 (BAKER); T76.23-30 (BUCKLER); T132.12-31 (TUBECKI); T166.18-25 (MILLIGAN); T211.25-31 (GIBBS); T245.6-31 (Murphy); T328.18-28 (BOWMAN).

⁹⁸ Inquest Brief, Chief Commissioner's Instruction 01/22 Witness statement, p1 194.

⁹⁹ Inquest Brief, Victoria Police Manual Body Worn Cameras, p1 201.

201. Clause 9.1 of the VPM – BWC includes the following guidance:

- a) “Members must document their independent recollection by making contemporaneous notes or commencing a statement prior to viewing their own BWC footage”; and
- b) “the point at which the BWC footage is viewed must be recorded within contemporaneous notes and written statements, including the date and time”.

202. In a statement dated 11 March 2022, Assistant Commissioner Casey advised the Court that compliance with the policy will be within the remit of Professional Standards Command (**PSC**), who oversee the investigation of critical incidents, and that there is planned training concerning the new policy.¹⁰⁰

203. I am satisfied that the new policies that came into force on 17 February 2022 represent proper practice in the making and taking of witness statements, especially in circumstances where multimedia such as body-worn camera footage of the incident is available. At the current time however it is too early to make any assessments in respect of the implementation and training for this new Commissioners Instruction. I urge the CCP to ensure that all members are informed and provided training to ensure compliance with this new instruction.

¹⁰⁰ Inquest Brief, Statement of Assistant Commissioner Casey dated 24 January 2022, p983.

FINDINGS AND CONCLUSION

204. Having investigated the death of XY, I make the following findings and conclusions, pursuant to section 67(1) of the *Coroners Act 2008*:

- a) that the identity of the deceased was XY, born 5 June 1966; and
- b) that XY died on 28 May 2020, on the Monash Freeway at North Dandenong, from MULTIPLE GUNSHOT INJURIES:
- c) in the circumstances set out above.

205. I convey my sincere sympathy to the family and friends of XY.

206. I order that this finding be published on the internet in accordance with section 73(1) *Coroners Act 2008* and the rules.

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

- a) The Family of XY;
- b) Mr Shane Patton APM, Chief Commissioner of Police;
- c) Mr Stephen Leane APM, Interim Chief Executive Officer, ESTA;
- d) Coroner's Investigator, Detective Sergeant Tim BELL, Homicide Squad;
- e) Professional Standards Command, Victoria Police.

Signature:



JUDGE JOHN CAIN
STATE CORONER

Date: 1 August 2022

