CORONERS COURT OF THE AUSTRALIAN CAPITAL TERRITORY

Case Title:	**Inquest into the death of ANTHONY ROMANAS CARISTO**
Citation:	**[2020] ACTCD 9**
Hearing Dates:	5.08.2019 – 9.08.2019; 14.01.2020 – 16.01.2020
Decision Date:	25 September 2020
Before:	**Coroner Stewart**
Decision:	See [158]– [179]
Catchwords:	**CORONIAL LAW –** cause and manner of death – excited delirium syndrome – methylamphetamine toxicity - use of taser – use of conducted electrical weapon (CEW) – police use of force – police training - deemed death in custody – matters of public safety – coroner's power to make comments
Legislation Cited:	*Coroners Act 1997* (ACT) *Crimes Act 1900* (ACT) *Mental Health Act 2015* (ACT)
Cases Cited:	*Chief Commissioner of Police v Hallenstein* (1996) 2 VR 1 *E & M.H. March v Stramare Pty Ltd* (1991) 171 CLR 506 *Harmsworth v The State Coroner* [1989] VR 989 *Inquest into the death of Antonio Carmelo Galeano* 2012 Brisbane Coroner's Court *Keown v Khan* Victorian Court of Appeal, 1 May 1998 (unreported). *The Queen v Coroner Maria Doogan; ex parte Peter Lucas-Smith & Ors; the Queen v Coroner Maria Doogan & Ors; ex parte Australian Capital Territory* [2005] ACTSC 74.
File Number(s):	CD 246 of 2017
Publication Restriction:	This matter is subject to several non-publication orders pursuant to s40(2) Coroners Act 1997 (ACT)

CORONER STEWART:

A. BACKGROUND

1. Anthony Romanas Caristo passed away on 31 October 2017 in tragic circumstances that gave rise to the need for a hearing as part of the inquest into his death. That is because Mr Caristo died whilst he was deemed to be in the custody of the Australian Capital Territory ("ACT") Police ("ACTPOL").

2. Mr Caristo enjoyed the love of his daughter and his immediate family. At the time prior to his death his behaviour was becoming erratic. His family relationships had become strained. He displayed unusual behaviours such as selling prized possessions. It seems clear that his mental health had become disturbed and that he was spiralling into an unwellness assisted by illicit drugs.

3. It is not a purpose of this inquest and hearing to besmirch Mr Caristo's character or to pass moral judgement on his behaviour leading up to his death. Many people fall prey to illicit drug use, and it is the experience of this Court that psychological ill-health often goes hand in hand with a vulnerability to illicit drug use. It was upon this background that a combination of events led to Anthony Caristo's death.

4. In very broad summary, on 31 October 2017, after a neighbour had raised alarm about noise, Mr Caristo was found by ACTPOL in his home. He was mostly laying on his back behind broken windows. His blood was visibly smeared all over the front rooms in quite a horrifically confronting manner. He had obviously severed one of his fingers and was apparently cutting at himself with a large knife.

5. The ACTPOL officers who attended could not communicate with him in any meaningful way. In order to assist him, those officers needed to ensure that they could safely enter the house. That meant isolating him from the knife or vice versa. The combined circumstances of his surroundings and the presence of the knife in those circumstances placed ACTPOL or ACT Ambulance Service ("ACTAS") members at risk in terms of their occupational health and safety.

6. Mr Caristo was subjected to a single electrical charge using a police-issued taser.

7. Mr Caristo went into cardiac arrest shortly after the taser was deployed and could not be resuscitated by ACTAS members. His autopsy revealed that he had imbibed a lethal dose of methamphetamines, had suffered an amputation of one of his fingers, had several lacerations to his limbs and had died from a cardiac arrest.

B. SCOPE OF INQUEST

8. Prior to commencement of the hearing [1] the scope of this inquest was specified and a 'Final Issues List' was distributed by the Court to parties in the following terms:

   Events of the day

   a. Chronology of events

   b. Information known to attending police as to the deceased's antecedents, alerts and mental health

   c. Availability of CEWs for first attenders

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[1] 25 July 2019.

d. Decision to enter – lawfulness of entry

e. Availability of Specialist Response Group (SRG)

f. Use of force assessments

    i. Availability of alternatives

    ii. Assessment of risks that were presented

    iii. Safety of AFP members and members of the public

g. Deployment of the TASER

    i. Justification

    ii. Proportionality of the response

    iii. Assessment of the manner in which the device was operated

    iv. Position of the deceased at time the device was deployed

    v. Determination of whether use in question was consistent with operational guidance

h. Post tasering care

    i. Use of handcuffs

    ii. Medical care

Autopsy findings as to cause of death

a. Consideration of cause of death in light of the use of a TASER

Issues Concerning the use of Tasers

a. the TASER brand x2 model

    i. operational features

    ii. use of expired cartridges

    iii. functionality of the device used

    iv. video recording system

b. Training of AFP operational police in use of the device

    i. Adequacy of training

        1. Justification of use

        2. Associated health risks

    ii. Use of TASERS on those exhibiting signs of mental illness or intoxication

Guidelines for the use of TASERS in the ACT

a. Comparative analysis of TASER governance, policies and procedures in use in the ACT

b. Recommendations for changes to procedures

Outcomes of internal reviews

a. The incident

b. Auditing of operational safety of CEW assets including cartridges

9. My findings are confined to these issues and some other preliminary matters. Where I have not made a finding or a comment on issues it is because they became irrelevant or were not able to be the subject of evidence.

C. AFP INVESTIGATION

10. It is important to set out how this matter was investigated and make findings on the nature and standard of the investigation.

11. Mr Caristo's death became the subject of a notification to the Coroner. As the death of Mr Caristo may have been occasioned by the actions of a member of the Australian Federal Police ("AFP"), measures were put in place by Coroner Morrison to ensure that the death was investigated independently and at arms-length from the operational command of the AFP. [2] An Investigation Team was established, and on 22 March 2018 Coroner Morrison wrote to the Chief Police Officer setting out how the investigation was to be undertaken. [3] The letter directed the AFP that the evidence gathered by the investigations team would only be used for the purposes of the inquest:

> 1. Any evidence and information gathered during the investigation must only be used for the purposes of the inquest until and unless I otherwise direct. Specifically:
>
>   a. Individual documents or information must not be released to any person or party (including AFP Legal) outside the Investigation Team without my prior approval.
>
>   b. The brief of evidence will only be released to the AFP (beyond the Investigation Team) by and via the Court if leave is sought in writing and granted.

12. Terms of reference for the investigation were attached to the letter:

> A. The specific circumstances of Mr Caristo's death, including but not limited to:
>   i. The manner and cause of Mr Caristo's death.
>   ii. The timeline of events surrounding Mr Caristo's death.
>   iii. Whether the actions of the attending police in any way caused or contributed to his death..
>   iv. Whether, having regard to the terms in which Mr Caristo's death was a death in custody, the actions of the attending police had relevance to the quality of care, treatment and supervision of Mr Caristo that may have contributed to his death
>   v. Whether the actions of the attending police were in accordance with the applicable AFP policies and procedures in place at the time
>
> B. AFP policies and procedures in relation to the use of conducted electrical weapons (Tasers) including but not limited to:
>   i. The use of a Taser on a person presenting with mental illness or disorder symptoms, or apparent intoxication.
>   ii. Alternative options available to attending police, including non-violent alternatives.
>   iii. The appropriateness of use of a Taser in circumstances where a person is primarily engaged in an act of self-harm with little apparent threat of harm to others.

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[2] Transcript of proceedings 5/8/19, 23.
[3] Exhibit 1.

iv. How AFP policies and procedures in relation to the use of Tasers compare to the policy and procedures that govern the use of Tasers in other police forces.
v. Whether in light of that comparative analysis and the circumstances of Mr Caristo's death, AFP policies and procedures in relation to the use of Tasers should change.

13. Detective Sergeant Dave Turner was the team leader of the Investigation team. Senior Constable Emma-Lea Beere, an experienced coronial investigator, was the principal investigator and reported periodically to the Coroner as the investigation proceeded.

14. On 5 April 2018 Justine Saunders, then Chief Police Officer for the ACT, advised the Coroner that two members of the AFP Professional Standards area of the AFP had been appointed to the investigations team. [4] One of those members was Detective Sergeant Wayne Brayshaw. The role of Sergeant Brayshaw was to ensure that, as a matter of process, the investigation was conducted in accordance with Commissioner Order 2 on Professional Standards. [5] He did not interfere with the content of the investigation. Constable Beere gave evidence that she encountered no opposition from within the AFP to the investigation she undertook.

15. The AFP as a whole did not obtain access to the brief until the coronial brief was tendered in the first part of the inquest.

16. In relation to the attending officers, steps were taken as and from the time of death on 31 October 2017 to ensure that their evidence was not contaminated. Constables Kane Love, Robert Kneen and Sergeant Nathan Macklin were interviewed soon after the events at the Woden Police Station and were isolated at the scene. [6] Parties had an opportunity to put any allegation of collusion to them during their evidence. No such suggestion was made.

17. In line with the recommended findings submitted by Counsel Assisting [7] and without opposition by submission from any other party to the inquest, I make the following findings about the independence of the investigation of the death of Anthony Caristo:

    (a) The investigation of the death was directed by Coroner Morrison and was directed to be independent of operational command of the AFP. I find that his direction was followed by the investigation team;
    (b) All relevant information defined by the terms of reference was gathered by the independent investigation team;
    (c) The investigation team were able to gather evidence on behalf of the Coroner without interference and I find that they did so; and
    (d) Statements were supplied to the Coroner without them being vetted, cleared or otherwise interfered with by operational or legal areas within the AFP.

D. STATUTORY FRAMEWORK

18. *The Coroners Act 1997* ("the Act") relevantly specifies the following provisions for death in custody matters:

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[4] See Exhibit 18.
[5] To ensure the investigation is carried out "effectively, with integrity and professionalism and without fear, favour or bias" Brayshaw & Tanner Exhibit 3C at page 16.
[6] Constable Beere Transcript of Proceedings 5.8.2019, 32.
[7] Counsel Assisting Submissions 4.3.2020, paragraph 7.

13 Coroner's jurisdiction in relation to deaths

(1) A coroner must hold an inquest into the manner and cause of death of a person who—

(h) dies in custody.

3C Meaning of *death in custody*

(1) For this Act, ***death in custody*** means the death of a person—

………..

(c) while being taken into or detained in custody, or subject to an order, under the *Mental Health Act 2015*

(g) while in, being taken into, or after being taken into, the custody of a custodial officer;

3D Who is a *custodial officer*?

In this Act:

custodial officer means any of the following:
(a) a police officer

19. The terms of s 3C and s 3D of the Act apply here. The terms of s 3C are not limited to "arrest". The stated intention of the firing of the taser was part of an agreement to restrain Mr Caristo, by placing in him in handcuffs and for medical care to be provided. There were reasonable grounds for believing that Mr Caristo had suffered physical injury and entry to his house was necessary to protect life.[8]

20. There were also reasonable grounds to believe he had committed offences involving the damage of property. There was clearly *legal* power for the officers to enter the house [9] and using as such force as was necessary [10] to place Mr Caristo under arrest or detain him. [11] They believed he was psychotic as a result of organic mental health issue or a result of the ingestion of drugs. Although the officers may not have expressly adverted to the statutory power to do what they did, I find that by restraining Mr Caristo (electronically and physically by the application of handcuffs) Mr Caristo was placed into custody for the purposes of the Act.

E. OBLIGATIONS OF THE CORONER WHEN THERE IS A DEATH IN CUSTODY [12]

21. The general obligations of the Coroner when holding an inquest are set out in section 52 of the Act, which relevantly provides:

52 Coroner's findings

(1) A coroner holding an inquest must find, if possible—

(a) the identity of the deceased; and

(b) when and where the death happened; and

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[8] *Crimes Act 1900* s 190.
[9] Ibid s 190.
[10] Ibid s 221.
[11] Ibid s 212. See too sections 80 and 263 of the *Mental Health Act 2015.*
[12] There are specific matters of process that arise in respect of deaths in custody: see sections 75 and section 76 of the Act that deal with the reporting of the Coroners findings.

(c) the manner and cause of death; and

(d) in the case of the suspected death of a person—that the person has died.

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(4) The coroner, in the coroner's findings—

(a) must—

(i) state whether a matter of public safety is found to arise in connection with the inquest or inquiry; and

(ii) if a matter of public safety is found to arise—comment on the matter; and

(b) may comment on any matter about the administration of justice connected with the inquest or inquiry.

F. POWER TO MAKE COMMENT

22. Any findings that are made pursuant to section 52(4) of the Act must be consistent with the scope of the inquest that has been conducted. The terms of reference for the investigation has, in general terms, indicated the scope of the Court's concerns and the hearing conducted stayed generally within the parameters of the terms of reference.

23. The power to make comment is further constrained by the necessity to make findings relevant to the death. Findings can also be made provided the requisite standard of satisfaction is reached. In *The Queen v Coroner Maria Doogan; ex parte Peter Lucas-Smith & Ors; the Queen v Coroner Maria Doogan & Ors; ex parte Australian Capital Territory*[13] the following passage appears:

> ***The right to make comments***
>
> 41. Subsection 52(4) also provides that a coroner "may comment on any matter connected with the death, fire or disaster including public health or safety or the administration of justice." Comments may obviously extend beyond the scope of "findings". The latter term refers to judicial satisfaction that facts have been proven to the requisite standard or that legal principles have been established. The former refers to observations about the relevant issues, and may extend to recommendations intended to reduce the risk of similar fires, deaths or disasters occurring in the future. However, conferral of the power to make comments does not enlarge the scope of the coroner's jurisdiction to conduct an inquiry. As Nathan J said, albeit in a somewhat different context, in *Harmsworth v The State Coroner* at 996:
>
>> 'The power to comment arises as a consequence of the obligation to make findings… It is not free-ranging… The powers to comment and also to make recommendations… are inextricably connected with, but not independent of the power to enquire into a death or fire for the purposes of making findings. They are not separate or distinct sources of power enabling a coroner to enquire for the sole or dominant reason of making comment or recommendation. It arises as a consequence of the exercise of a coroner's prime function that is to make "findings"…
>>
>> An inquest into particular deaths in prison is not and should not be permitted to become an investigation into prisons in which deaths may occur. A comment on the particular deaths may be pertinent, especially so if the prison facilities were

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[13] [2005] ACTSC 74 *(5 August 2005).*

> found to be inadequate. It could even be that a comment could have general application, and so much is envisaged by the Act which gives commentary and recommendatory powers in matters of public safety. But the power to comment is incidental and subordinate to the mandatory power to make findings relating to how the deaths occurred, their causes and the identity of any contributory persons.'

24. As Counsel Assisting quite rightly submits, the inquest was not conducted so as to become an investigation into the general use of tasers.

G. CONTRIBUTION TO DEATH

25. Section 74 of the Act imposes specific obligations on the Coroner when holding an inquest into a death in custody:

> **74 Findings about quality of care, treatment and supervision**
>
> The coroner holding an inquest into a death in custody must include in a record of the proceedings of the inquest findings about the quality of care, treatment and supervision of the deceased that, in the opinion of the coroner, contributed to the cause of death.

26. The obligation under section 74 of the Act arises only when issues going to the quality of care, treatment and supervision of the deceased *contributed* to the cause of death. Findings of this type must be made with care given the seriousness of the finding that is involved.

27. Guidance as to the meaning of the phrase *'contributed to*' can be found in the decision of *E & M.H. March v Stramare Pty Ltd*[14] conveniently referred to by Hedigan J in *Chief Commissioner of Police v Hallenstein*.[15] In *March v Stramare* (supra) the High Court considered the fundamentals of causation in the negligence context as follows:

> The statements of principle in relation to causation are, in my view, applicable to the concept of contribution, which, within the [Victorian] Act, is concerned with causes of death and who contributed to it. Deane J at 522 put the matter in this way:
>
> > 'For the purposes of the law of negligence the question of causation arises in the context of the attribution of fault or responsibility whether an <u>identified</u> negligent act or omission of the defendant was <u>so connected</u> with the plaintiff's loss or injury that, as a matter of ordinary common sense and experience, it should be regarded as a cause of it...'

28. In *Keown v Khan,*[16] Callaway JA said inter alia at page 9:

> The test of contribution is solely whether a person's conduct caused the death. It may have been the only cause or one of several causes in determining whether an act or omission is a cause or merely one of the background circumstances, that is to say, a non-causal condition, it will sometimes be necessary to consider whether the act departed from a norm or standard or the omission was a breach of a recognised duty...

29. The following position was taken by the Full Court of the Supreme Court of the Australian Capital Territory in *R v Doogan; Ex parte Lucas-Smith:*[17]

> A line must be drawn at some point beyond which, even if relevant, factors which come to light will be considered too remote from the event to be regarded as causative. The point

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[14] (1991) 171 CLR 506.
[15] (1996) 2 VR 1 at 17.
[16] Victorian Court of Appeal, 1 May 1998 (unreported).
[17] [2005] ACTSC 74 at [29].

> where such a line is to be drawn must be determined not by the application of some concrete rule, but by what is described as the "common sense" test of causation affirmed by the High Court of Australia in March v E & MH Stramare Pty Ltd (1991) 171 CLR 506. The application of that test will obviously depend upon the circumstances of the case and, in the context of a coronial inquiry, it may be influenced by the limited scope of the inquiry which, as we have mentioned, does not extend to the resolution of collateral issues relating to compensation or the attribution of blame.[18]

30. Section 74 conveys a narrow power to make findings in relation to a death in custody. To make such a finding here, I would have to find that there was something blameworthy or negligent or which involved a departure from an established norm in the care that was provided to Mr Caristo *and* that departure or negligence, in a causative sense, contributed to the cause of death.

31. It is not sufficient that the findings about the quality of care, treatment and supervision of Mr Caristo are merely connected with the inquest - there must be an actual and direct connection with the death before the finding may be made.

32. The question of causation in this inquest is complex. I find that it is not possible to find to the requisite standard that the use of the taser caused Mr Caristo's death on its own.

33. Further, I find that there was nothing negligent or blameworthy in the conduct of the police in using the taser (which could be said to be part of the treatment or care of Mr Caristo) that could be said to have contributed to his death.

H. BACKGROUND TO THE EVENTS OF 31 OCTOBER 2017

34. The statement of Constable Beere addresses Mr Caristo's background at considerable length. [19] There are matters that arise from Mr Caristo's background particularly in relation to some interactions with the AFP in the past that may put the events of October 2017 in an appropriate context.

I. HISTORICAL CONTACTS WITH THE POLICE

35. Mr Caristo had a history of alcohol abuse and mental health concerns [20] which led him to be in contact with police in the decade before 31 October 2017. In 2002 he served a short term of full-time imprisonment in respect of a traffic offence. That was the only period of full-time imprisonment that he served. [21] This places his criminal history into a proper context of it being at the lower end of the scale.

36. On 13 March 2009 Mr Caristo phoned police operations threatening suicide. Police went to his residence and he told police that he had sharpened two knives and walked up Mount Taylor with the intention of committing suicide. He was taken to protective custody and taken to the Canberra Hospital. Police later found a kitchen knife in a public place where he said he had left it. [22]

37. On 20 March 2010 [23] police went to 17 Larakia Street after Mr Caristo had telephoned the police and said the words "*he's dead*" repeatedly. Mr Caristo appeared highly intoxicated and was demanding to speak his daughter. He made threats to kill his own dog and himself unless he could speak to his daughter. He walked towards the police

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[18] *R v Doogan; Ex parte Lucas-Smith* [2005] ACTSC 74 at [29].
[19] See generally Beere Statement Exhibit 2.20 pages 65-72.
[20] Ibid pages 62 – 64.
[21] Criminal History Exhibit 2.59.
[22] Ibid page 71.
[23] Ibid page 70.

with a knife and said words to the effect of "*You think I'm not serious say you're going to need to shoot me*". Police continued to negotiate with him, and he repeatedly held the knife up to his throat saying he would kill himself and his dog if he didn't get to speak his daughter. Negotiation continued for some period of time. At the point where the police negotiation team were about to take over, Mr Caristo threw the knife down and lay down on the ground. He was taken into protective custody and transported to the Canberra Hospital. He was subsequently dealt with in relation to a criminal charge concerning the possession of the knife.

J. THE IMMEDIATE EVENTS LEADING UP TO POLICE ATTENDANCE ON 31 OCTOBER 2017

Events Prior to 31 October 2017

38. On 12 August 2017, [24] the police pulled Mr Caristo over for driving under the influence. The reading was 0.171. He was given an immediate suspension notice. It was clear that the event caused him great distress and it seemed to have been pivotal in leading him to the drug taking that shaped the events of 31 October. He was a 'car person' and the result of the court proceeding was likely to result in him not being able to drive for a lengthy period of time. It was not, as he may have thought, inevitable that he would be gaoled for the offence notwithstanding he had served a period of custody in respect of a similar offence in 2002.

39. On 13 August 2017, [25] Mr Caristo called the police and told the operator he could not cope, that he needs someone to bash his head in, that he had nothing to lose, and that he'd been "done" driving under the influence and needed help. He told the person taking the call that he been drinking and had attempted to call men's helpline without success and needed someone to talk to. The call was transferred to the mental health clinician on duty at police operations who later advised she was not able to make any progress with Mr Caristo and terminated the call.

40. Police went to his home. He had been drinking but not to any great extent. He communicated responsively with police who held no concerns for his welfare. No action was taken. The event suggests that at that time Mr Caristo was suffering a form of emotional disturbance. He was not sufficiently unwell to justify him being taken into protective custody.

41. The evidence suggests that he was divesting himself of possessions in the time leading up to his death. Cars were sold, along with items of personal property. Contacts with family members followed a familiar pattern of an attempt to establish contact and then communication becoming fraught. [26]

42. On 16 October 2017 he consulted a doctor at the Phillip Medical Centre. The note of the consultation read:

> *"Drinking again. DOI. Back on to Serapax and Luvox. See 1 week. Anxious and wanting to go.* [27]

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[24] Beere Statement Exhibit 2.20 page 67.
[25] Ibid page 71.
[26] See Carley Sales-Caristo Exhibit 2.9 Q 75.
[27] Beere Statement Exhibit 2.20 page 34. See too Records of Phillip Health Centre Exhibit 2.68.

43. Those drugs are relevant to the treatment of anxiety and depression. [28]

44. In the early morning of 31 October 2017 there were series of text communications to an acquaintance that suggested that Mr Caristo was, at least, incoherent:

4:51am: "Why did you come over"

4:55am: "O know who you are. Come here if you want to"

4:56am: "I know"

4:56am Jacquelyn replied: "What? Wtf r u on about?"

4:57am: "Don't you listen to radio"

4:57am: "I don't care. Come over please"

4:58am Jacquelyn replied: "Don't care about what? Wtf are you talking about? I'm not going anywhere I'm in bed"

5:01am: "Sorry"

5:03am Jacquelyn replied: "Whatever it is u think u may know, u should really do some homework before assuming things because whateva it is u have the wrong person. Ur going all weird again. Look I think it's best we go our separate ways now. Ur a bit to high maintenance for me. Sorry mate. All the best hey".

5:04am: "No worries". [29]

45. At 8.42 am on 31 October 2017 he rang 000:

Male Operator: "Emergency, Police, Fire or Ambulance"

Mr Caristo: "Hello mate can you please put me through to police in Waramanga"

Male Operator: "Can you spell that for me please"

Mr Caristo: "That's alright mate"

Male Operator: "Waramanga"

Mr Caristo: "Yep. W A R A M A N G A. They are on the left here. Larakia Street"

Male Operator: "Waramanga New South Wales. Waramanga ACT connecting police"

[Call transferring]

Mr Caristo: "Cheers mate. Take the shot, take the fucking shot mate"

[Call answered]

Female Operator: "Police emergency what's your emergency?"

Mr Caristo: "Ah hi, can you please put me through to the guys on Larakia Street mate I'm having trouble talking to them because I can't fucking tweet. Pardon my language"

Female Operator: "Sorry what are you talking about, what police?"

Mr Caristo: "I'm at the siege in Waramanga"

Female Operator: "Mmmhmm"

Mr Caristo: "Mmmhmm, oh well if you don't believe me"

Female Operator: "No I don't know what job you're talking about"

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[28] Beere Statement Exhibit 2.20 page 34.
[29] Beere Statement Exhibit 2.20 page 38.

Mr Caristo: "You wouldn't have a fucking.. Don't worry" [30]

46. Mr Caristo terminated the call. There is no evidence to suggest police attended any incidents on Larakia Street at that time. A video found on his phone after his death timed at 8.56 am was to this effect:

> *"Mate I'm just going to have a fucking cigarette because I'm just going crazy here. We gotta work out some way. I'll be back. Look I am going to try again to retrieve your messages okay. Look I know I'm fucking stupid I'll just take my time and we'll see if we can get there okay"*

47. Neighbours heard shouting and banging from the house. One neighbour reported that noise to the police.

48. It is noted that, at autopsy, a large amount of methamphetamine was in Mr Caristo's blood supply. There was little alcohol. The evidence generally suggests that prior to 31 October 2017 he had not consumed methamphetamine regularly for some time.

49. However, it appears from the evidence that Mr Caristo sourced methamphetamine from an associate and consumed significant quantities of it intravenously on the morning of 31 October 2017. The syringes that were found in the room corroborate this conclusion as do the four puncture marks on his left arm seen at autopsy.[31]

50. Mr Caristo was probably disorientated when he called 000 that morning – no doubt due to the consumption of and excessive quantity of methamphetamine. That disorientation certainly had progressed to florid psychosis some time before police arrival at his home.

51. It cannot be established whether Mr Caristo intended to do himself harm by taking so much of the drug.

52. The evidence does not generally suggest that he manufactured what might be called a 'police assisted suicide' – that is, creating circumstances that would cause police to come to his house and be involved in a confrontation that might result in the police shooting him.

53. Even if such an intent had been formed in the days leading up to 31 October 2017 Mr Caristo seems to have sourced the methamphetamine very close to the events of that day.

54. I find that Mr Caristo was too unwell in the morning of 31 October 2017 to have the capacity to put a police assisted suicide plan into action notwithstanding the mention of a "siege" in the 000 call.

K. Section 52 Findings – Identity and When and Where Death Occurred:

55. I find that Anthony Romanas Caristo died at approximately 12.11 pm on 31 October 2017 at his house at 17 Larakia Street in Waramanga in the ACT.

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[30] Beere Statement Exhibit 2.20 page 39. See too transcript at Exhibit 2.101.

[31] Duflou Autopsy Report Exhibit page 9 at pt 4. That may constitute evidence that he injected himself four times that day.

L. SECTION 52 FINDINGS – MANNER AND CAUSE OF DEATH

i. MANNER OF DEATH

Known times

56. The timing of events comes from the CAD Log, the transcript of the radio transmission and Ambulance Incident Log which were tendered in the proceedings.[32] I have gratefully adopted and reproduced Counsel Assisting's chronology below:

EVENT	TIME	REFERENCE
Neighbour calls reporting noise at "19" Larakia Street	11.11.54	Beere page 40 CAD log
WP 13 (Constables Love and Kneen) dispatched to 19 Larakia Street	11.13.16	CAD Log Radio transmissions
WP 13 arrives at 19 Larakia Street	11.25.28	CAD Log Radio transmissions
WP 13 (Kneen) requested detail of the complainant	11.27.06 [33]	CAD log Radio transmissions
Constable Kneen and Love assess the scene at 17 Larakia Street.	Between 11.26.06 and 11.28.35	CAD Log
Constable Kneen requests ACTCS attendance	11.28.35	CAD Log Radio transmissions
Constable Kneen confirms conscious male with severed finger and at 17 (not 19 Larakia Street)	11.29.08 11.29.50	CAD Log Radio transmissions
WP 13 "that's urgent for ACTAS". Age given as approximately 40 years old.)	11.29.33	CAD Log Radio transmissions
Sergeant Macklin (WP 80). Despatched	11.30.47	CAD Log
WP 13 confirms finger completely severed and that the person's name may be "Chris".	Soon after 11.32.55	
ACTAS responds to call	11.33.08	ACTAS page 1
WP 80 indicates that he will arrive in three to 4 minutes. WP 13 indicates - *"One three we haven't entered the premises yet because he's still holding a knife, or he's still got a knife right next to him, ah we will look at that once eight zero arrives with a taser"*	11.35.21	

[32] See exhibits 11, 2.100 and 2.113.

[33] Amended in accordance with submissions of counsel for the AFP at [28(i)]

WP 80 arrives at the scene	11.37.06	CAD Log
Sergeant Macklin walks to front veranda and is briefed as he walks. Assesses the situation.	11.37.06 – 11.38.43	ROI Macklin CAD Logs
Sergeant Macklin radios intention to use taser: *"Eight zero the male's got a knife, I'm going to have to taser him and we're going to have to force entry".*	11.38.43	CAD Log Radio transmissions
WP12 First Constable (FC) Daniel Neit and C/ Greg Harvey arrived[34], they heard A Sgt Macklin say words to the effect of: "Put the knife down, put the knife down, taser, taser" and the sound of the CEW discharging.	Not known.	
Taser deployed, Mr Caristo handcuffed, and Sgt Macklin enters the room to see Mr Caristo restrained.	Between 11.38.43-11.39.54	CAD Log Radio transmissions
D Sgt Rowswell (C 50) arrives[35]. [He sees the taser being holstered. This may have occurred after the cartridge was removed and handcuffs were applied. The taser remained unholstered so as to permit its further use if required][36].	11.38.56	CAD Log Radio transmissions
ACTAS arrives at scene "on scene"	11.39.44	ACTAS Incident Log
WP 80 advises (from outside) that taser has been deployed: *WP80: "Eight zero the male's been tasered he is now handcuffed, um we are going to need ACTAS here in a hurry please.* *WP80: "Disregard, ACTAS job arrive".*	11:39:54 11:39:57	CAD Log Radio transmissions

[34] They did not signal their arrival time.

[35] The calling of "arrival" might have been slightly before the car actually pulled up.

[36] Rowswell Statement Exhibit 2.42 para 16. In his first interview on 31/10/17 (Exhibit 2.52) at Q 14 page 5 Sgt Macklin indicated that as he was yelling at the guys to force entry he took his finger off the trigger and put it on the arc switch. He did this so he could give a secondary exposure if required. Once he was satisfied Mr Caristo was restrained he removed the cartridge. He didn't refer specifically to holstering the taser but it is assumed he did this very soon after removing the cartridge.

ACTAS enter room to commence observations:	Approx. 11.41. (11.39.44 plus 45 seconds to get to the door and 15 to 20 seconds to be briefed) Okay. In the response just given, you talked about it being 11.40. Where did that time come from?---We believe it - well, in working out what happened, we believe that it took us about 45 seconds to get from the car to the door without equipment. Yes?---And then talking for about another 15 to 20 seconds to the officer at the door. Okay. So it might have been 11.40, 11.41?---Possibly approaching 41, but I believe it was - within that period it was very quick	Killeen T 14/1/20 at page 7
Command to take off handcuffs	*Approx. 11.41 - 11.42.52* Now, there was some delay in getting the cuffs off because of the angle of the hand, is that right?---Yes. Was that a significant delay?---Perhaps in the order of 15 to 20, possibly 30 seconds.	Killeen T 14/1/20 at page 14
ACTAS monitor begins	*11.42.52*	ACTAS Incident Log "ECG Full disclosure"

The Scene

57. The initial complaint received from Mr Caristo's neighbour involved a misdescription of where the voice and noise were coming from. As a result of this, both the attending police and police operations were assuming that the relevant address was 19 (rather

than 17) Larakia Street, Waramanga. That assumption had been corrected by 11.28.35 when the ambulance was called. As from that time it was open for police communications to make associations between known persons and that address.

58. By that time Constables Love and Kneen had been able to make some assessment of the scene sufficient to indicate that medical attention was required. They were unassisted by information from police communications as to who Mr Caristo was and what his history of interactions with the police were. They therefore had to deal with the reality of what had confronted them at number 17.

59. What they saw was clearly shocking and an assessment of what attending police then did has to be assessed in that context. It must also be kept in mind that the reflective material on the glass windows made it difficult to see inside requiring observations to be made through an opening created by the breaking of the windows and through the empty window frame.

60. The photographs[37] taken after Mr Caristo's death with his body in situ show:

    (a) the front windows broken with jagged edges apparent;

    (b) blood smeared on the floor (over a substantial portion of the room), on the walls38 and on the facias of cupboards and the windowsill;

    (c) blood smeared over his body (although in hindsight I find he was not actively bleeding at the time of ACTPOL attendance)

    (d) cut marks on the windowsill close to the broken window and on the kitchen bench close to the sink; and

    (e) bloody rags on the floor.

61. The autopsy photographs show Mr Caristo:

    (a) had cut off his little finger on his left hand;

    (b) cut himself repeatedly on his arms and legs with a sharp object; and

    (c) suffered other injury to other parts of his body

62. Constables Love and Kneen saw "blood everywhere", [39] they saw cuts to his thighs and forearms of some length and depth [40] (they assumed these injuries to be self-inflicted), [41] and they were able to see that Mr Caristo had severed his finger at the base [42] (noted in the transmission at 11.29.08). He was seen lying on the floor and was described variously as "writhing", and "flailing his arms and legs around." [43] They saw a knife close to where Mr Caristo was lying. [44]

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[37] Exhibit 2.77.
[38] Love Transcript of proceedings 8/8/19, 284.
[39] Ibid.
[40] Ibid, 343.
[41] Ibid, 285.
[42] Ibid.
[43] Ibid, 285.
[44] Ibid, 285.

63. Constable Kneen saw plungers from syringes around him. [45] A second knife was seen by Constable Love [46] and removed by him. [47] They saw him frothing at the mouth.

64. Their initial attempts at communication produced only moaning. He propped himself up on his elbow and didn't move much from that position. [48] He did not respond to what they were saying and his speech they described as "rambling" [49] "mumbling" and "incoherent." He appeared to be looking past them. [50] His response to attempts to elicit his name were interpreted as indicating his name was "Chris." [51]

65. Both officers correctly assumed that Mr Caristo was psychotic [52] as a result of mental illness, drugs or a combination of both. [53]

The Actions of Constables Love and Kneen

66. Constable Love gave this evidence:

> Yes. And so far as your responsibility as a police officer was concerned, what did that information tell you about the situation and what you might do about it?---Yes. Obviously, Mr Caristo was injured. We needed to help that - this man, primarily physically, so we needed medical attention immediately. But also, we had to - the weaponry that I could observe from inside the house, we had to remove himself from that prior to receiving medical attention. That was my number one priority. [54]

67. How that result was to be achieved was discussed between them. The officers believed the front door was barricaded. They contemplated going through the front window and subduing Mr Caristo. [55] They dismissed this as being too dangerous – the window was narrow (they were wearing heavy vests) and they feared Mr Caristo would use the knife (or other weapons such as a knife or other sharp object) [56] on them. [57]

68. The two Constables considered their use of force options (see further below). Physical restraint was not an option as it required entry to the room. Capsicum spray may not have caused him to drop the knife and its use in a confined space, would expose both officers to the effects of the spray. [58] To use a baton required them to be in striking distance which they were not. [59] They were not in a possession of a taser and were not qualified to use one. [60] Their response was to continue to engage Mr Caristo verbally until another officer arrived with a taser. [61]

69. However, given the harm that Mr Caristo had done and may do to himself in Constable Love's view, it would take too long to get police negotiators there. [62] Constable Kneen

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[45] Kneen Transcript of proceedings 8/8/19, 243.
[46] Ibid, 287.
[47] Ibid, 362.
[48] Ibid,360 – he propped himself up a few times.
[49] Ibid, 360.
[50] Ibid, 283.
[51] Ibid. See too Kneen Transcript of proceedings 8/8/19, 358.
[52] See for example Kneen Transcript of proceedings 8/8/19 page 359.
[53] Ibid, 283.
[54] Ibid, 285. See too Transcript of proceedings 8/8/19, 338-339.
[55] Ibid, 287.
[56] Constable Love said he saw a shard of plastic in Mr Caristo's hand: Love Transcript of proceedings 8/8/19, 289.
[57] Ibid, 288.
[58] Ibid, 292.
[59] Ibid, 293.
[60] Ibid.
[61] See the communication extracted in the table above which clearly indicated that the use of a taser was contemplated before Sgt Macklin arrived. See too Kneen Transcript of proceedings 8/8/19, 365.
[62] Ibid, 321.

was of the view that once the taser arrived it may not be necessary to deploy it. Once they forced entry it could provide protection if Mr Caristo moved towards them. [63] This was, he said in evidence, discussed with Constable Love before Sergeant Macklin arrived. Constable Love ultimately agreed in his evidence that what was contemplated in his discussion with Constable Kneen was that they would go into the room before Mr Caristo was disabled. [64]

The Actions of Sergeant Macklin

70. Sergeant Macklin arrived at the scene at 11.37.06. Therefore, the two Constables were assessing what to do with Mr Caristo (on their own) between 11.26 and 11.36.06 – somewhere between 10 to 11 minutes. When Sergeant Macklin arrived, Constable Kneen briefed him as to the situation as they walked towards the house. That conversation was brief, perhaps as short as 10 seconds. [65]

71. Sergeant Macklin spoke to Constable Love on the landing. Constable Love thought it took 20 to 30 seconds. [66] He was told that "there's a man inside that got a knife and that he's self-harmed and that he severed a finger off". [67] He was not told by either officer that their plan was to go in "under cover of taser." [68] He would have dismissed such a plan as involving an unacceptable risk to everyone involved, including Mr Caristo as it may have required a firearm to be used if things did not go according to plan. [69]

72. There is sound reasoning behind this comment from Sergeant Macklin:

> Potentially putting people in a room with a man with a knife is, more than likely, not going to end very well."

73. Sergeant Macklin moved to the window.[70] He thought he saw the severed finger and saw Mr Caristo with a knife in his hand or on the ground immediately to his right. [71] He formed the view that Mr Caristo was undergoing a psychotic episode. [72] He didn't observe that most of the blood was dried but came to the view that his injuries were life threatening. [73] He described what happened then:

> You say that he made a - he started to move and move himself towards the seating - seated position. Is that right?---Yes.
>
> Trying to sit up?---Yes.
>
> Was he having some difficulty doing that?---It was a slow movement. Whether that was difficulty or not, I'm not sure.
>
> You say that at that point you moved backwards?---Yes.

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[63] Ibid, 365.
[64] Ibid, 336.
[65] Transcript of proceedings 9/8/19, 63.
[66] Ibid, 325.
[67] Ibid, 63.
[68] Ibid, 63, 56.
[69] Ibid, 56-57.
[70] Ibid, 63-64.
[71] Ibid, 66.
[72] Ibid, 67.
[73] Ibid, 68.

He had the knife in his hand at that point?---That's correct, yes.

You moved backwards and - you've given evidence today that you moved back and, in doing so, you've lost sight of him. Is that right?---Yes, that's correct.

How long did you lose sight of him?---Not very long. I'm not sure. Not long.

In that time he - you've lost sight of him because you're stepping back and you don't have that angle that can look down on the floor?---Yes, that's correct.

So he was on the floor and that's where you assume he was at that point?---Y(es).

Was there any loud noises around at that time?---No.

So would you - you were able to hear what was happening inside that room? ---Yes.

You say today that you moved away and it was at that point you made the decision to use the taser?---No.

When did you - - -?---It was at that point that I decided to draw a taser.

Sorry, yes, that's what I meant?---Yes.

That became your plan at that point?---Yes. I needed to have something to protect myself in case he came through that window or presented a threat to us.

So you made a decision at that point to draw your taser and so you took it out of your holster which is on your vest?---Yes.

At the top. And you drew the taser?---Yes.

I think you gave evidence today that at that point you have radioed through to say that, 'We're going to have force entry and taser him'?---No, not at that point it wasn't.

At what point was it?---It was - so I moved from being up against the railing.

I moved back to the right to create more distance on an angle. I then realised that I had lost sight of him. I went over to the left-hand side of the window. It was at that point that I saw him strike his leg for the first time with the knife. I then moved back. I used the radio at that point to say that we were going to use the taser and force entry.

So that's when you indicated to radio that you would force entry and you were going to use the taser?---Yes.

So just going back that, you have put - as soon as you've - you've gone back to the railing and you stepped back. You've lost sight of him. You then moved to the right. That's right towards the front door. Is that right?---Yes.

But you have drawn your taser at that point?---Yes. Sometime around there, yes.

You then move back to the window?---Yes. And you see him strike his left?---Yes.

Can you describe the position he is in when he is striking his leg?---That he has his knees bent. His head was still facing towards the door. He was probably somewhere close to a metre and a half, 2 metres from the window into the room. Yes, that would be about his position.

So is he - when you say his head was facing towards the window, he is lying back down?---So he's lying back - so he's on his back, he has his knees elevated and his head is pointed in the direction of the front door.

But his face is facing you?---Correct.

His body is in the same position as it was when he was getting up and trying to move into that seated position. Is that right?---Yes, thereabouts.

So he hasn't actually moved his body?---If he did move, he certainly moved closer back to where he was.

At that point you see him striking his leg?---Yes.

And you step back at that time?---Yes.

You make the decision then to radio through to communications?---Yes.

It is that point that you tell Constable Kneen to go down and get the entry ram?---No, it was prior to that that I had told Constable Kneen to go down to the car to get the entry kit.

When did you tell Constable Kneen?---I don't recall. It would have been - it might have been at around about the time that I had drawn my taser. Thereabouts.

And then when you look back in now you've got the taser drawn? This is when - so you've seen the first striking of the leg, you've moved back?---Yes.

And then you called communications?---Yes. It was either the - yes, I think so, yes.

And then what happens next?---I think I went back to the window. He'd either - I don't know whether I saw him strike his leg from the start, or whether it was coming back. I pointed the taser in the direction of him. I saw the red dot on his upper torso which indicated that the top probe would more than likely strike in that area, and I squeezed the trigger of the taser.

The - at what point in that process did you take the safety switch off or disengage it from safety mode?---I think it was - the moment right before I squeezed the trigger. I think it was all in the action of almost probably punching the taser out into a position to fire it from[74].

74. He was further cross examined on this chronology of events:

But he's somehow moving towards the window?---Yes.

And you could see him moving towards the window?---As I said, he got to a - like, a seated type position and then started making movement towards the window. The moment that he started moving was the moment that I moved back, fearing that he was going to come through that window.

I suggest to you that just didn't happen?---Well, those are the facts, your Honour.

That's what you have - you say that he moved towards the window and along his bottom. Is that right?---Yes.

[74] Ibid, 69-71.

And at that critical point you take your eyes off him?---Yes.

Now, you go back and then you look through the window again?---Yes.

You see him strike his leg?---Yes.

And you say that you could - you described today you can still hear the sound - - -?---That's correct.

- - - of that knife hitting his skin?---Yes.

And you say he was using his full force - his full strength, full force to hit into his leg?---Yes.

Full force?---Yes.

Your Honour, just excuse me. When you first spoke to the police on the afternoon of the 31st - I'll just find that entry for you. Question 77 page 13 right at the bottom you were asked, 'Now, you've spoken about him striking his thigh?' 'Yep'. 'And it was an overhand motion. Can you comment on the amount of force that was being' - and you say, 'Like, it was full force. Like, you - as I said before, you could hear the sound of that knife hitting his skin. Like, it was not like he was tapping it. He was - I would imagine if someone was trying to cut their leg off that that's exactly how they'd do it: that you would use as much force as you possibly could, and that's certainly what it looked like'. And then you're asked, 'Did you see the blade entering his skin?' You say, 'No'. The next question, 'Nope, okay. All right'. And you say, 'And I think that's probably what made me think 'I wonder whether it's the blunt side or the edge part' was because I didn't see the knife like penetrate and get stuck or anything like that'. 'Yeah'. 'Like, it came straight back and it was just - I don't know'. And then you say, 'But my - well, my attention wasn't what's the injury, it's that this guy's like continually trying to cut his leg off'?---Yes.

So you agree that that's what it was - that's what it looked like?---Yes.

And so you saw that happening, the first strike?---Yes.

And that's when you've decided to use the Taser?---Yes.

You make the call to the radio and you then go back and is it immediately when you go back and look through the window that you see the second strike?---I think it was in the process of me getting to a position to deploy the Taser that the second one had happened.

What do you mean by getting into a position to deploy the Taser?---Well, because after I'd seen him strike his leg the first time, I moved back to the right thinking - I don't even know what I was thinking. Like, 'What is going on here?' I think that I used the radio as a way of justifying it to myself that this was the right thing to do.

And so when you draw the Taser - you already had the Taser in your hand at that point?---Yes.

And you then go back with the Taser drawn to look through the window?---Yes.

And what do you see when you immediately look through there?---I see the knife hit his leg and then it go to - beside him on the right hand side.

What do you mean go beside him?---So his arm ends up on the right hand side of his body.

So he's got the knife in his hand?---He's just finished striking - - -

He just finished striking?--- - - - himself the second time. He still has the knife in his right hand that's by his side.

These are not consecutive strikes are they?---They're however long it would take to see the first strike, wonder what's going on, move to the right, use the radio. We're talking five seconds. I would imagine that it was probably the second strike.

And it was at that second strike that you deployed the Taser?---Yes.[75]

75. Finding: I accept as truthful and accurate Sergeant Macklin's evidence about the events leading to the deployment of the taser.

Information Given to Attending Officers

76. It was apparent that the attending officers were initially asked to investigate an event happening at 19 Larakia Street. The location of the event was established to be 17 Larakia Street. As has been noted, in respect of both addresses no information was provided to attending police that associated that:

    (a) address and prior police attendances; or

    (b) address and Mr Caristo.

77. The evidence before the Coroner suggested that on the AFP PROMIS system there was a significant amount of information:

    (a) about Mr Caristo;

    (b) that associated Mr Caristo with that address; and

    (c) with behaviour at that address and elsewhere that involved threats of self-harm requiring police attendances (including by police negotiators).

78. It was only *after* Mr Caristo had been tasered that relevant information was transmitted to officers at the scene. After 11.54.51 the following transmission was made to attending police:

    ACTPOps: "Yeah Charlie five zero the information from one three the neighbour stated the resident was Tony and earlier stated the resident said something along the lines of Chris. We've found an Anthony Caristo linked to that location first name spelt phonetically surname I spell Charlie Alpha Romeo India Sierra Tango Oscar date of birth fourth of the seventh sixty three. He is on PROMIS with alerts for self-harm, negotiators, Hep C, fixated on police and drug user. Nothing further."

    C50: "Charlie five zero copy thank you"

79. The significance of this absence of information is addressed below in the context of possible matters of public safety.

Post Taser Events

80. After discharging the taser Sergeant Macklin said "get in" or words to that effect and yelled at Mr Caristo to drop the knife.[76] The taser operated in accordance with its specifications. The barbs embedded themselves in Mr Caristo's torso. He was subject to a current of electricity. The officers who went into the room found him on his stomach.

[75] Ibid, 75-77.
[76] Ibid, 84.

They met no resistance from Mr Caristo and the handcuffs were quickly applied. [77] Mr Caristo did not say anything.

81. There was no evidence, and I find that, no significant or inappropriate force was applied to Mr Caristo's body in this process. Constable Love conceded that weight may have applied to Mr Caristo's back but that is not what he recalled.[78] There was no evidence suggesting force was applied to Mr Caristo's neck as the handcuffs were applied. [79] After the handcuffs were applied he was moved into the "recovery position" in less than five seconds. [80] Constable Love formed the view that Mr Caristo was unconscious at the time the handcuffs were applied. [81] He felt concerned about that but being unfamiliar with dealing with someone who had been tasered he wasn't sure of what "body and demeanour would be like following being tasered". [82]

82. As to how long it was between realising Mr Caristo was unconscious and the paramedics raising concerns that Mr Caristo was "going into cardiac arrest" Constable Love said it was "almost at the same time". [83] It is likely the tasering occurred *very soon after* 11.38.43 being the communication indicating an intention to use the taser. Sergeant Rowswell arrived at 11.38.56 and the tasering had occurred by then. [84] The tasering had definitely occurred by the time Sergeant Macklin communicated at 11.39.54 to say he had used the taser.

83. The observation by ambulance Officer (Paramedic) John Killeen that led to the request for the handcuffs to be removed probably happened at *about* 11.41 or 11.42. His evidence was that it took about 45 seconds to get from the ambulance to the front door and 15 to 20 seconds was spent in talking to an officer at the door. The ACTAS officers walked into the room circled Mr Caristo's body and when close to his head observed things that suggested a medical emergency. Therefore, it is likely that Mr Caristo was restrained by handcuffs cuffs for between approximately 2 to 3 minutes (being the difference between 11.39.54 and the commencement of the monitor readings at 11.42.52).

84. At the point when the paramedics requested the handcuffs to be removed Constable Love observed Mr Caristo to be "quite stiff" and his face was "very flushed". [85] Constable Love said that he was kneeling "supporting Mr Caristo" as he was on his side when the ambulance officers came in. [86] Paramedic Killeen's evidence contrasted with that of Constable Love in this regard to some degree. The diagram drawn [87] and the description given by Mr Killeen of what the police were doing does not indicate that

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[77] Transcript of proceedings, 305.
[78] Ibid, 308.
[79] Ibid, 308.
[80] Ibid, 306. Constable Kneen gave a similar estimate: Transcript of proceedings 8/8/19, 349.
[81] Ibid, 306. Constable Kneen detected no resistance on Mr Cristo's part and did not hear say anything or make any noise: Transcript of proceedings 8/8/19, 349.
[82] Ibid, 306.
[83] Ibid, 307. Constable Kneen said it was "a matter of seconds" between the application of the handcuffs and the ambulance officers being there: 349.
[84] It is noted that Constable Love was of the view that there was about 45 seconds between the actual tasering and the application of the handcuffs. Some uncertainty surrounds when Sergeant Rowswell made he observations that he did. The possibility is permitted that they made have been made some short time after his arrival. The outer limit of the timing of the taser is set by the radio transmission of Sergeant Macklin at 11.39.54. By that time he had tasered Mr Caristo, waited for the handcuffs to be applied, discharged the cartridge and gone into the room to see Mr Caristo on the floor and gone outside to make the call.
[85] Transcript of proceedings 8/8/2019, 307.
[86] Ibid, 309.
[87] See the attachment to exhibit.

police were at the time of the paramedics entering the room attending to Mr Caristo in the manner described by Constable Love. It is possible that this more active oversight of Mr Caristo's condition happened before the ambulance officers entered the room. Further, and to be fair, it was Mr Killen's impression that the officers in the room were "keeping an eye on Mr Caristo": [88]

> All right, and then you walked through?---Yes.
>
> The other two circles there, do they represent where the officers were when you first saw them?---Yes.
>
> Okay. Do you have your interview there?---Yes.
>
> Could I just invite you to turn up question 49?---Yes.
>
> I'll just read it to you, 'Okay. Was there anything noticeable with the two police officers - two AFP officers that were standing there?' Answer, 'They were going about business. I think one of them possibly had been talking on the radio and the other one was watching me come in and - but they were both - but they both were of the impression that they were standing near the patient keeping an eye on the patient and they were watching him.' Is that your recollection now of what they were doing?---Yes, yes.

85. Mr Killeen said that Mr Caristo was "substantially" in the recovery position and that Mr Caristo's face could not be easily observed:

> Okay. Now, if he was conscious and well in that position, would he have been able to breathe?---Yes.
>
> We hear things sometimes described as being in the recovery position. Was he in a recovery position?---Substantially, yes.
>
> So in relation to the use of the word 'substantially', what were the variances from the classic recovery position?---The fact that he couldn't have the lower arm brought out underneath his head due to the handcuffs.
>
> Yes?---And anybody who's handcuffed will normally roll slightly to one side because they're unable to sit up on that arm that's underneath them.
>
> Yes?---And otherwise - so he was in a recovery position but he'd moved slightly to one side.
>
> Right, now for somebody who may have been unconscious, would there have been difficulty for that person breathing in that position?---I'm unable to say that because for some people, depending on what happened - normally, there would not be any trouble breathing in that position.
>
> Right?---But there are always exceptions to the rule.
>
> You determined quickly that he was not breathing?---Yes.
>
> How did you know that?---I was unable to see his face and because he was rolled slightly over, I could not see his chest so I asked the police to roll him over onto - more onto his back and then I became aware of that he wasn't breathing.
>
> In relation to not being able to see his face, as you have described it, he was rolled over but it seemed to be that his face was still capable of being visualised?---When I saw him, I could see the edge of his face. I couldn't see all of it. His - as I said, his nose was almost touching the ground so he - and because I'd approached in the way I approached him from the bottom, trying to see his face was difficult.

86. Mr Killen found Mr Caristo was in cardiac arrest (asystole). This was determined by visual observation and by the absence of pulse. He was not able to say how long Mr Caristo had been in this condition or whether Mr Caristo's heartbeat progressed to

[88] Killeen Transcript of proceedings 14/1/2020, 13.

asystole from ventricular fibrillation. His evidence was that resuscitation attempts when the heart is in asystole are very poor (2% of cases).

87. I find that Mr Killeen and the other paramedics administered optimal care. Mr Caristo was not able to be revived. Treatment was ceased at 12.11 although life extinct wasn't pronounced until 17.20. [89]

ii. MANNER OF DEATH – ISSUES ARISING

Justification for using the Taser

88. The situation confronting the attending police was horrific. The attending officers who gave evidence said they believed the situation *was* life threatening. The presentation of the room and Mr Caristo's psychotic state and obvious injuries suggested this was so. Mr Killeen, a very experienced paramedic, regarded the distribution of blood (smeared rather than pooled) to be unusual. [90] He felt the amount of blood lost was substantial. [91]

89. Professor Duflou gave evidence that the injuries were not immediately life threatening and the amount of blood actually lost may in fact not have been substantial. However, it was reasonable for the officers on the scene to conclude that Mr Caristo:

    (a) had lost blood (and perhaps a significant amount of blood);

    (b) was at times, barely conscious;

    (c) was clearly psychotic;

    (d) was (given his altered consciousness) significantly affected by the drugs they correctly assumed he had ingested.

90. The attending police also reasonably concluded that Mr Caristo was a potential threat to himself and to others (given his psychotic state and his possession of knives and having demonstrated he was prepared to use them).

91. I find that it was reasonable for the attending police to decide that medical treatment had to be administered as soon as possible and that Mr Caristo had to be contained inside the room.

Use of Force Governance

92. In deciding how to proceed – particularly in consideration of the use of force – the attending police were bound by the terms of *The Commissioner's Order on Operational Safety (CO3)* ("CO 3"). [92] CO 3 operates on the AFP's Operational Safety Principles and Use of Force Model.

93. From these provisions the following general principles arise:

    (a) –redacted-;

    (b) –redacted-;

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[89] See Thompson Life Extinct Statement Exhibit 2.72.
[90] Killeen Transcript of proceedings 14/1/20, 14.
[91] Ibid.
[92] Exhibit 7.

(c) –redacted-;

(d) –redacted-; and

(e) –redacted-.

Use of Force – Constables Love and Kneen

94. Applying the model to the situation confronting the attending officers it is clear that they had an obligation to assess the situation which confronted them. There is no suggestion in the evidence that Constables Love and Kneen did not do this. In fact, by remaining on a small landing and approaching the open window as they did, they potentially put themselves in harm's way to make informed judgments as to what confronted them. As to negotiation, there is uncontradicted evidence that they spoke to Mr Caristo and attempted to elicit information from him. His psychotic state made negotiation attempts futile.

95. As to safety issues, the consideration applied both to Mr Caristo and the officers who attended. They did not apply force and in considering use of force options they addressed non-lethal options that were available to them. They knew that the use of taser was not an option available until another officer with one arrived.

Sergeant Macklin

96. Sergeant Macklin was at the site of 17 Larakia Street only briefly before he deployed the taser. He arrived at the scene at about 11.37.06. He signalled his intention to use the taser at 11.38.43 and had used it by 11.38.56.

97. Two issue arise as to his use of the taser:

(a) whether the decision to use it was justified; and if so

(b) whether the way it was used was justified.

(a) The Decision to Deploy the Taser

98. Sergeant Macklin gave evidence that he decided to deploy the taser because he saw Mr Caristo start to stab or strike himself with a knife. I accept his reason for deploying the taser:

(a) It is a claim that Sergeant Macklin has consistently made as to why he deployed he taser. When interviewed when he returned to the Woden Police Station that afternoon [93] he gave this version of events. He repeated the version of events during the walk through of 2017.

(b) When interviewed on 31 October 2017 Constable Kneen said he was at Sgt Macklin's request going to the car to get a ram when he heard the taser deployed. [94] Given it was deployed before he was in place to use the ram suggests circumstances had suddenly changed.

(c) On 31 October 2017 Constable Love said the taser was deployed when Mr Caristo was chopping himself in the thigh. [95] He repeated that description in very similar terms during the re-creation of 13 November

[93] ROI 31/10/17 Macklin Exhibit 2.52 Q 4 page 5.
[94] ROI 31/10/17 Kneen Q 127 Exhibit Page 1.
[95] ROI 31/10/17 Love Q 63 page 14.

2017. His notes also contained a reference to the event but described slightly differently. [96]

(d) At autopsy, marks were seen above the right leg above the knee [97] consistent, Professor Duflou opined, with a knife or sharp object being drawn across the skin but with little penetration.

(e) The evidence of Sergeant Macklin impressed me. There was no suggestion from the manner in which his evidence was given that he was inventing a justification for his actions on that day. He was subject to cross examination and remained consistent on the issue.

99. I find that Mr Caristo did strike himself with the knife just prior to the taser being deployed. There was a reasonable basis for Sergeant Macklin to have thought that acts of self-harm were being attempted and given the terms of CO 3, it was reasonable for the taser to be deployed.

100. Attempts at communication and negotiation had been tried without success. Given how unwell Mr Caristo was it was unlikely that talking to him was likely to achieve a resolution quickly. To that stage, police had not been able to establish his name. The scene (as described above) implied that medical attention needed to be provided promptly. Given the absence of other alternatives that involved less force, the use of the taser gave the attending officers an opportunity to subdue Mr Caristo and allow serious self-harming behaviour to be stopped and for medical treatment to be administered.

101. CO 3 did not alert users of tasers to the risks associated with its use in that type of situation. It is noted that Sergeant Macklin was otherwise aware of those risks.

102. I find that the use of the taser was justified by the terms of CO 3.

(b) How the Taser was Used

103. A single charge of electricity was administered to Mr Caristo. The barbs entered the body at appropriate sites (within the optimal target area for the front of the body). The taser was subsequently given to an expert, Professor Colin Grantham, who tested its functionality. It was found to be operating within expected parameters and consistent with the operation of a control taser. [98]

104. It was contemplated by Constables Love and Kneen that they would go into the room without the taser being first deployed. The idea being that if Mr Caristo acted in a threatening way the taser would be used to subdue him. For the reasons given by Sergeant Macklin the idea was unsafe. The window space was small and entry to the room may have been slower for that reason. The room was relatively small and an officer entering through the window would be near to Mr Caristo.

105. Mr Caristo had a knife that he had used (to harm himself). He was clearly psychotic, and his behaviour was unpredictable. If Mr Caristo did show a hostile intent after entry to the room had occurred, then the taser would have had to be deployed with one or more police officers in close proximity and with Mr Caristo perhaps on the move. The

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[96] See exhibit 6. He described him in the notes “hitting his right thigh”. See too, Transcript of proceedings 8/8/19 at page 326.
[97] Duflou Autopsy Exhibit 2.54.
[98] Exhibit 3B.

risk of the taser not having the desired effect of incapacitating Mr Caristo was real. The risks of an officer being tasered would also have to be considered. If Mr Caristo reacted to the police entering the room and was not subdued by the taser the risk of police having to elevate the force used to the lethal level were raised.

106. I find that the plan discussed between Constables Love and Kneen to enter the room "under cover of taser" was unsafe and inconsistent with the safety focus of CO 3.

107. I find that the timing and manner of the use of the taser was reasonable in the circumstances and consistent with the terms of CO 3.

iii. CAUSE OF DEATH

108. Professor Duflou conducted an autopsy on the body of Mr Caristo on 4 November 2017. His report was tendered in proceedings. The main features of his findings were:

    (a) Numerous incised wounds on the body (mainly the limbs) with features of the wounds being consistent with the use of a serrated edge and non-serrated knife (or glass);

    (b) The left little finger had been amputated with an object such as a knife;

    (c) There were no injuries that could be associated with the arrest – no abrasions around the wrist, no injuries consistent with neck compression and no facial or conjunctival petechiae;

    (d) Moderately advanced coronary artery disease and enlargement of the heart (consistent with repeated psychostimulant use);

    (e) No natural disease processes likely to have caused sudden death *on their own;*

    (f) Very high methamphetamine levels in blood and the presence of its likely breakdown product, amphetamine. In the absence of other factors Dr Duflou indicated he would have attributed death to that cause alone; and

    (g) A limited quantity of alcohol in the urine but none in the blood.

109. Professor Duflou in his report described the cause of death in these terms:

> Overall, the features strongly suggest the deceased was suffering from Excited Delirium Syndrome in the time leading up to his death. Excited delirium is a complex syndrome which has mainly been described in the USA, but is certainly diagnosed on occasion in Australia. I have personally considered the condition in a number of cases, and in a prior search of the Department of Forensic Medicine Sydney autopsy database the diagnosis is discussed as a possible mechanism of death in reports in about one autopsy case a year to one case every two years on average.
>
> The syndrome is typically described as sudden death in a person without obvious cause, who prior to death was involved in violent behaviour often well in excess of that normally expected with erratic behaviour and paranoia often predominating, who often is restrained in some way or other, usually with the presence of stimulants in blood (most commonly in the USA cocaine, followed by amphetamines and phencyclidine). The person is often hyperthermic (i.e. has a high body temperature), and a number of biochemical abnormalities are frequently present, indicative of a combination of high temperature and associated damage to organs in a proportion of cases. Fascination with glass, mirrors and water, and states of undress are often described as well. Use of conducted energy weapons immediately preceding death in these cases is not uncommon. There are also various forms of restraint in many of these cases.

Sudden cardiac arrest, usually in the form of asystole, during restraint of a person so affected is a not uncommon outcome. While alive, the person often has tachycardia and hypertension, and there can be acidosis and coagulopathy, but most of these conditions cannot be reliably diagnosed at autopsy. The autopsy findings in cases of diagnosed excited delirium syndrome are usually unimpressive, in that no convincing cause of death is usually identified in most cases. In part, this is reflected in the controversies relating to the condition: there is a substantial percentage of forensic pathologists, psychiatrists and emergency physicians who do not believe the condition exists, although the majority of forensic pathologists, including myself, do believe in its existence. The mechanism whereby this condition causes death is similarly disputed. The majority view, as I see it, is that it is usually the effects of psychostimulants such as cocaine and/or amphetamines which combine in some way with various law enforcement activities and excessive physical activity on a person who has often clinically unsuspected heart disease, to cause a cardiac arrest. The problem in the majority of such cases, and certainly in those that I have been involved with is that there are other factors which make the diagnosis not at all certain, and death due to excited delirium can at best only be put forward as a possibility or likelihood in these cases.

In my opinion, the present case has many features which strongly support a diagnosis of excited delirium syndrome and there are no other specific causes of death. There is certainly scene, clinical and autopsy evidence which is supportive of the diagnosis, but there are also other factors, such as the deceased's heart disease, the injuries, his methamphetamine levels and the use of a conducted energy weapon immediately preceding the cardiac arrest. In this case, the close temporal association between discharge of the weapon and death raises the possibility of some level of contribution of the electrical discharge. However, the nature and quantum of such contribution cannot be determined.

I conclude that the cause of death is best given as cardiac arrest in a person exhibiting features of excited delirium syndrome and self-harm who died following application of conducted electrical weapon and use of methamphetamine.

110. In evidence Professor Duflou elaborated upon the diagnosis of Excited Delirium Syndrome. He acknowledged:

(a) That the existence of the condition is a subject of expert controversy. [99]

(b) The use of psycho-stimulant drugs can make the diagnosis of excited delirium more complex as the symptomology associated with such use - psychotic behaviour, increased blood pressure and elevated hear rates – can also be characteristic of someone suffering from Excited Delirium. [100]

(c) Most cases of excited delirium are not fatal (90% survive). [101]

(d) The diagnosis has "political" significance and that those who advocate against the recognition of the condition point out that it can "be used as a convenient excuse type of condition opposed to the actual cause of death." [102]

111. Professor Duflou also expressed caution about describing the cause of death in absolute terms. The use of simple physical restraint in itself can be associated with adverse outcomes in cases where the person is psychotic. Death in these circumstances is not necessarily associated with asphyxia but may be the result of a cardiac arrest arising from the distress of being restrained. [103] Therefore the simple

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[99] Duflou Transcript of proceedings 7/8/19, 184.
[100] Ibid, 183-184.
[101] Ibid, 182.
[102] Ibid, 184.
[103] Ibid, 189. However, he felt that physical restraint should not be put forwards "as a strong contributor or even a potentially strong contributor".

placing of the handcuffs on Mr Caristo may of itself been the cause of death [104] (although the lack of struggle at this point may raise the *suspicion* that he was suffering some form of cardiac episode even at this stage). He concluded:

> So we have mental unwellness; significant drug use; application of force and the Taser, and the Taser was not necessarily the last event in time, because the application of the force might have been the last event in time, but it was closely associated in time?---Yes.
>
> Did he die as a result of the use of the Taser?---I don't think that he directly died as a result of the Taser being applied in that if everything else was removed and only the Taser was fired would there be a likelihood of death; and my view is that that would be an extremely uncommon event to the extent of probably vanishingly uncommon.
>
> Right?---But in combination with all the factors, I believe it may have contributed.
>
> So all of those things may have contributed to the cause of death?---Yes.
>
> You're unable to isolate them singularly as being the cause of death?
>
> ---Correct.
>
> And you're unable to say to what extent each contributed to the death?
>
> ---Correct.
>
> But the scenario suggests that each of them may have contributed to the death?---They may have, yes.
>
> Including the Taser?---Yes.

112. I find that the cause of death was as per Professor Duflou's evidence, noting the impossibility of identifying one dominant or definite cause other than cardiac arrest:

> Cardiac arrest in a person with cardiac hypertrophy and generalised atherosclerosis whilst exhibiting features of excited delirium syndrome and self-harm who died following being placed under physical restraint by AFP officers and the application of an electrical current from a conducted electrical weapon used by an AFP officer when under the influence of very high and potentially lethal levels of methamphetamine.

M. OTHER ISSUES FOR CONSIDERATION

Coroners Act – Section 52(4) – Public Safety – Comments

113. I find that there are no reasons to make negative comments or findings about the conduct of Constable Love or Constable Kneen or Sergeant Macklin.

114. There are, however, matters of public safety that arise in respect of which comment should be made.

Governance in Respect of the Use of Tasers and the Use of Physical restraint in Respect of Persons who may be Suffering Excited Delirium Syndrome

115. The submissions of the Caristo family raise justifiable concerns about the governance surrounding the use of tasers in the AFP. Whilst this shortfall in governance did not influence the outcomes in respect of Mr Caristo's case, his death does provide a catalyst for considering whether the AFP has appropriate governance in place for taser use – particularly on vulnerable persons.

[104] Ibid, 190.

116. It is clear both in Australia and overseas that police forces and justice agencies have recognised that the use of physical, electrical and chemical restraint when a person is exhibiting behavioural features similar to those seen here involves an element of risk. In the USA and the UK as well in in several Australian jurisdictions specific guidance is available to operational police that draws attention to the fact that the use of tasers or other forms of restraint carries with it risk when used upon those suffering symptoms consistent with Excited Delirium Syndrome (however labelled).

117. The Galeano Inquest in Queensland [105] made a number of recommendations as to means of minimising mortality rates of persons displaying the symptoms of Excited Delirium Syndrome by responding to the incident as a medical emergency. [106] CO 3 is silent as to these issues. The AFP has no specific manual or guidance document dealing specifically with tasers.

118. Whilst as Commander Chew noted, there are advantages in keeping operational guidance simple and streamlined, there is also an advantage in ensuring that operational police are given appropriate direction when available research indicates that questions of safety arise from the exercise of use of force options. For example, taser guidance in NSW runs to many pages and is obviously informed by outcomes of coronial outcomes and formal reviews in NSW that have addressed issue concerning risk associated with the use of tasers. To place reliance on training (as both Commander Chew and Superintendent Connell did) to fill a governance gap is inappropriate. [107]

119. Subpoenas to the AFP were issued after the hearing of the inquest in the hope of identifying the content of training as it related to taser use and Excited Delirium Syndrome. The material produced suggested that the coverage of training in respect of the risk associated with taser use particularly in the context of subjects displaying symptoms consistent with Excited Delirium Syndrome was limited. This accords with the observations made by Constable Beere that AFP training packages dealing with taser use and (separately) dealing with the mentally ill were silent as to the concept of Excited Delirium Syndrome. [108]

120. It is apparent that, as at October 2017, the AFP had taken limited advantage of the experiences in other jurisdictions and the doctrine from other policing jurisdictions to improve governance in relation to the risks associated with taser use. I acknowledge the production of a CEW Handbook post hearing and the AFP's expressed commitment to reviewing CEW governance and training after this decision is received. Counsel assisting has expressed reservations about the general lack of safety issues and specifically taser use in circumstance of EDS.

121. Comment: The AFP governance and training in relation to tasers should be reviewed with a view to enhance identifying and understanding:

    (a) The inherent risk involved in taser use in respect of vulnerable groups such as those psychotic, those intoxicated, those suffering mental ill-health, pregnant women and children;

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[105] *Inquest into the death of Antonio Carmelo Galeano* 2012 Brisbane Coroner's Court.
[106] Beere Statement No 2 Exhibit 3A page 2.
[107] See for example Chew Transcript of proceedings 15/1/20, 79 – 80, 110.
[108] Beere Transcript of proceedings 16/1/20, 144. See also Beere Statement No 2 Exhibit 3A pages 6-8.

(b) The criterion for taser use;

(c) The use of negotiators;

(d) Taser use restrictions;

(e) Post use medical care on a tasered person;

(f) Post use observation of a tasered person;

(g) Positional asphyxia risk;

(h) Post use rough handing of tasered person;

(i) What excited delirium syndrome (EDS) is and the particular vulnerabilities that may be experienced by those suffering from EDS or with some or all of the symptoms or behaviours consistent with it; and

(j) Communication strategies in all of the above situations.

122. Comment: I recommend that the AFP review the governance and training it provides in relation to taser usage and to report back to me within 12 months as to what changes have been made. [109]

Post Deployment Supervision and Care of Mr Caristo

123. Given the risks associated with the use of tasers, particularly when the subject is displaying symptomology similar to that of Mr Caristo, the person should be kept under constant watch after the taser is used. Given that there can be sudden cardiac arrest there is a need to ensure that the subject is kept under constant supervision until the person is medically assessed. CO 3 in its present form at 11.4 provides only requires the "appointee" to ensure the person receives, as soon as practicable, adequate medical attention.

124. It was obvious to Mr Killeen that Mr Caristo's breathing was compromised. It did not take medical expertise to realise that was the case. [110] Proper supervision and observation of Mr Caristo would have revealed that problem earlier although it is impossible to say how long Mr Caristo had been in cardiac arrest. [111]

125. Senior officers who gave evidence suggested that the AFP was awaiting the outcome of the inquest before examining whether operational guidance relevant to the use of tasers was in the need of review. [112] I refer to my comments above at paragraphs [121] and [122].

Use of Force Reporting

126. It was clear from the evidence at the inquest that formal use of force documentation was not filled out by Sergeant Macklin. He obviously provided in his interview of that day far more information as to use of force than the standard form requires.

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[109] Beere Statement No 2 Exhibit 3A page 6: ' Training around excited delirium should be adopted to ensure police are vigilant of the particular danger this poses to a person's wellbeing, and can incorporate this knowledge in their decision making when considering use of force options.'

[110] Mr Killen gave this evidence (Transcript of proceedings 14/1/20, 12): 'So far as the cyanosis was concerned, it was apparent to you. You are a ambulance officer of significant experience. To the untrained observer, was the cyanosis obvious?---Yes, and even to an untrained observer they would have seen it as being serious.'

[111] Ibid, 10.

[112] See for example Commander Chew Transcript of proceedings 15/1/20, 81,110.

127. Comment: I recommend that standard reporting should occur in all cases involving the use of force and that ad hoc exceptions to that requirement should not be allowed under any circumstances.

Communications

128. Information about Mr Caristo was available on PROMIS. It was relevant information that was not conveyed until after the taser was deployed. What the police on the ground might have done with such information and whether it would have affected decisions that were made is a matter of pure speculation. Even if it is possible to discern a pattern of past behaviour involving Mr Caristo engaging the police in negotiation without doing harm to himself or others he departed from that pattern on 31 October 2017. Given his psychotic state his behaviour was completely unpredictable. In any event circumstances were changing quickly and there was some urgency to do something.

129. No explanation is at hand as to why the information about Mr Caristo was not provided before it was. [113]

130. Comment: I recommend that the AFP conduct a review or audit of the communications response on that day to identify whether any systemic issues arise from the apparent failure of process and report back to me within 12 months.

Coroners Act – Section 74 – Contribution to Death

131. Whilst the use of the taser may have contributed to Mr Caristo's death in the manner described by Professor Duflou, I decline to make a finding that a shortfall in the quality of care, treatment and supervision of Mr Caristo contributed to the cause of his death.

132. The use of the taser was reasonable in the circumstances. Whilst restraint in the circumstances that presented themselves (physical or electrical) involved risk the use of restraint was a justifiable response.

133. Even though Mr Caristo's cessation of breathing was not immediately noticed by Police, he received medical treatment from ACTAS as soon as practicable in all the circumstances, and the evidence does not rise to a level where an affirmative finding could be made that any failure in supervision of Mr Caristo by police post-tasering contributed to Mr Caristo's death. No issue was taken at the hearing with the ACTAS treatment of Mr Caristo.

N. ISSUES IN DISPUTE

134. The submissions from the parties often agreed with Counsel Assisting's submissions. On the disputed matters arising from evidence and submissions, my findings are as follows.

Caristo family submissions on review of CO 3 and use of tasers

135. I have read and considered the whole of the Caristo family's submissions carefully.

136. The recommendations dealing with the use of negotiators and intelligence are well made, but I decline to make definitive recommendations about them. I think to do so

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[113] See Beere Statement No 2 Exhibit 3A page 7.

would make recommendations that interfere with on-the-ground police decision making.

137. One aspect of an inquest is the benefit of hindsight. A requirement to *always* use a negotiator unless there is 'an imminent risk of loss of human life' relies on the availability of such an asset at all operational times and places.

138. Comment: The family submissions on the review of CO 3 and use of tasers should be considered by the AFP.

Caristo family submission on establishment of a specialist mental health intervention team within the AFP

139. I consider that this is outside of the scope of the inquest. The AFP are invited to consider these submissions in the context of its ECW review.

Remaining Caristo family submissions on taser governance

140. Some of the submissions of the Caristo family are adopted in my recommendation and reporting timeline.

141. I decline to refer this matter to the Commonwealth Ombudsman. To do so would defeat the purpose of the AFP review that I have recommended.

Caristo family submissions on actions of Sergeant Macklin

142. The family provided detailed submissions on all of the evidence received including the witness evidence at hearing and their previous assertions. I am thankful for this body of work.

143. The submissions interweave a lot of the knowledge after the day such as, for example, the autopsy findings in relation to the relatively insignificant injuries caused by the knife to Mr Caristo's limbs. In this sense I have had to reflect deeply on the reality facing the officers on the day, rather than giving undue weight to the fact that I have found Mr Caristo was not actively bleeding when ACTPOL arrived.

144. As to the submission that Sergeant Macklin was inconsistent in his evidence about the use of the knife - I accept that there were differences between the evidence of Sergeant Macklin in his pre-hearing interviews and at hearing about the timing and severity of the use of the knife by Mr Caristo on his leg. One can understand why a difference in versions such as this might upset the family of Mr Caristo, but I make the following observations:

    (a) The post-mortem results are consistent with self-harm with the knife to Mr Caristo's leg – so a leg injury consistent with being inflicted by a knife *did* occur;

    (b) Constable Love saw Mr Caristo strike himself in the right thigh with the knife;

    (c) The objective reality (as perceived at the time) was a serious one with an already significant level of self-harm, suspected blood loss and obvious risk of further significant self-harm to Mr Caristo;

(d) Sergeant Macklin thought that Mr Caristo's injuries were life threatening and immediately so; [114]

(e) Sergeant Macklin was entitled to listen to his fellow officers in his own consideration of use of force on the day. He did not give any indication of sharing decision making responsibility, rather he has accepted full responsibility for his choice to deploy the taser.

(f) It is apparent from his evidence that he did see Mr Caristo strike himself with the knife [115] and that this occurred prior to the taser being used regardless of which version is accepted;

(g) He was adamant in cross-examination [116] that he did se Mr Caristo strike himself with the knife prior to deploying the taser.

145. Ultimately, I accept Sergeant Macklin's version of the evidence at hearing. In any event there was sufficient justification to use the taser prior to seeing Mr Caristo use the knife on his leg.

146. Mr Caristo was a safety threat to anyone who entered his home to assist him or take him onto custody. He was a safety threat if he emerged outside still in possession of the knife. I have found that the action taken by Sergeant Macklin was appropriate in the circumstances of the false belief in significant blood loss and active and serious self-harming – thus a 'do nothing' approach was not appropriate.

147. If Mr Caristo emerged from the home still holding the knife, then the situation may well have worsened into one where lethal use of force eventuated. In hindsight, more time was available in the sense of the urgency of treatment. It cannot be said, in my view, that there was more time in terms of the safety of those other than Mr Caristo at the scene. They could not retreat and leave him to his own devices if they were to observe any duty of care towards him.

148. I do not accept the submission that Sergeant Macklin made the decision to use the taser unduly, quickly or without regard to the relevant risk factors. He was highly trained in taser use at the time. He was aware of some of the risks associated with taser use. I cannot, and do not, accept a submission that he did not go through the process of deciding to deploy the taser without a proper consideration of risk (as he knew it) in the circumstances. Overlaying hindsight and the knowledge gathered through the hearing process about excited delirium syndrome does not affect the decision to deploy the taser in my mind.

149. The evidence showed that there was a shortfall in taser training and governance regime that existed at the time. One can only fail to consider something that they are aware of.

150. All three attending police were of the view that something needed to be done immediately. They formed the view that no was no other option than some form of use of the taser. I do not think there is a proper basis for me to find that the taser was used prematurely.

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[114] Transcript of proceedings 9/08/2019, 72
[115] Ibid, 71- 72.
[116] Ibid, 82. 83.

151. Harsh criticism was made of Sergeant Macklin by the family. I do not see any evidence in the hearing that could amount to a finding that Sergeant Macklin failed to make a proper independent assessment of the situation.

Caristo family submissions on cause and manner of death

152. I have considered these and paid close attention to the issue of the level of methylamphetamine toxicity. I prefer the evidence of Professor Duflou and, respectfully, remain unpersuaded and have found methylamphetamine toxicity as one of the circumstances of the cause of death.

AFP submissions on the chronology of 31 October 2017

153. I find that Constable Kneen requested details of the complainant at 11:27:06 hrs. [117]

154. As such, I find that Constables Love and Kneen assessed the scene for 1 minute and 22 seconds (AFP [118])

Information available to the AFP

155. On 31 October 2017, I find that police operations were informed of the address change, correcting the job location to 17 Larakia Street at 11:29:50 (AFP [119]).

AFP submissions on recommendations relating to CEW governance and training

156. I have closely considered these submissions when making my comments and/or recommendations on this topic.

Submissions on behalf of Sergeant Macklin

157. These have been considered. I agree with the ultimate point that there was no option for Sergeant Macklin to "do nothing". There is no basis to criticise him in this regard.

O. SUMMARY OF FINDINGS

AFP Investigation

158. In line with the recommended findings submitted by Counsel Assisting [120] and without opposition by submission from any other party to the inquest, I make the following findings about the independence of the investigation of the death of Anthony CARISTO:

    (a) The investigation of the death was directed by Coroner Morrison and was directed to be independent of operational command of the AFP. I find that his direction was followed by the investigation team;

    (b) All relevant information (defined by the terms of reference) was gathered by the independent investigation team;

    (c) The investigation team were able to gather evidence on behalf of the Coroner without interference and I find that they did so; and

[117] AFP Submissions 14 April 2020, page 6, para 28(i).
[118] AFP Submissions 14 April 2020, page 6, para 28(ii).
[119] AFP Submissions 14 April 2020, page 6, para 28(iii).
[120] Counsel Assisting Submissions 4.3.2020, paragraph 7.

(d) Statements were supplied to the Coroner without them being vetted or cleared by operational or legal areas within the AFP.

Custodial status of Mr Caristo

159. I find that by restraining Mr Caristo (electronically and physically by the application of handcuffs) Mr Caristo was placed into custody for the purposes of the Act.

Contribution to Death

160. I find that it is not possible to find to the requisite standard that the use of the taser caused Mr Caristo's death on its own.

161. Further, I find that there was nothing negligent or blameworthy in the conduct of the police in using the taser (which could be said to be part of the treatment or care of Mr Caristo) that could be said to have contributed to his death.

The Immediate Events Leading up to Police Attendance on 31 October 2017

162. I find that Mr Caristo was too unwell in the morning of 31 October 2017 to have the capacity to put a police assisted suicide plan into action notwithstanding the mention of a "siege" in the 000 call.

Identity and When and Where death occurred

163. I find that Anthony Romanas Caristo died at approximately 12.11 pm on 31 October 2017 at his house at 17 Larakia Street in Waramanga in the ACT.

The Scene

164. I find he was not actively bleeding at the time of ACTPOL attendance at his home.

Sergeant Macklin

165. I accept as truthful and accurate Sergeant Macklin's evidence about the events leading to the deployment of the taser.

Post Taser Events

166. There was no evidence, and I find that, no significant or inappropriate force was applied to Mr Caristo's body in this process.

167. I find that Officer Killeen and the other paramedics administered optimal care. Mr Caristo was not able to be revived. Treatment was ceased at 12.11 although life extinct wasn't pronounced until 17.20.[121]

Justification for using the Taser

168. I find that it was reasonable for the attending police to decide that medical treatment had to be administered as soon as possible and that Mr Caristo had to be contained inside the room.

[121] See Thompson Life Extinct Statement Exhibit 2.72.

The Decision to Deploy the Taser

169. I find that Mr Caristo did strike himself with the knife just prior to the taser being deployed. There was a reasonable basis for Sergeant Macklin to have thought that acts of self-harm were being attempted and given the terms of CO 3, it was reasonable for the taser to be deployed.

170. I find that the use of the taser was justified by the terms of CO 3.

How the Taser was used

171. I find that the plan discussed between Constables Love and Kneen to enter the room "under cover of taser" was unsafe and inconsistent with the safety focus of CO 3.

172. I find that the timing and manner of the use of the taser was reasonable in the circumstances and consistent with the terms of CO 3.

Cause of Death

173. I find that the cause of death was as per Professor Duflou's evidence:

> Cardiac arrest in a person with cardiac hypertrophy and generalised atherosclerosis whilst exhibiting features of excited delirium syndrome and self-harm who died following being placed under physical restraint by AFP officers and the application of an electrical current from a conducted electrical weapon used by an AFP officer when under the influence of very high and potentially lethal levels of methamphetamine.

P. SUMMARY OF COMMENTS

174. I find that there are no reasons to make comments or findings critical of Constables Love of Constable Kneen or Sergeant Macklin.

175. Comment: The AFP governance and training in relation to tasers should be reviewed with a view to enhance identifying and understanding:

    (a) The inherent risk involved in taser use in respect of vulnerable groups such as those psychotic, those intoxicated, those suffering mental ill-health, pregnant women and children;

    (b) The criterion for taser use;

    (c) The use of negotiators;

    (d) Taser use restrictions;

    (e) Post use medical care on a tasered person;

    (f) Post use observation of a tasered person;

    (g) Positional asphyxia risk;

    (h) Post use rough handing of tasered person;

    (i) What excited delirium syndrome (EDS) is and the particular vulnerabilities that may be experienced by those suffering from EDS or with some or all of the symptoms or behaviours consistent with it; and

    (j) Communication strategies in all of the above situations.

176. Comment: I recommend that the AFP review the governance and training it provides in relation to taser usage and to report back to me within 12 months as to what changes have been made.

177. The Caristo family submissions on the review of CO 3 and use of tasers should be considered by the AFP.

178. I recommend that standard reporting should occur in all cases involving the use of force and that ad hoc exceptions to that requirement should not be allowed under any circumstances.

179. I recommend that the AFP conduct a review or audit of the communications response on that day to identify whether any systemic issues arise from the apparent failure of process and report back to me within 12 months.

Q. CONDOLENCES AND THANKS

180. I take the opportunity to express the sincere condolences of the Court to the family and friends of Mr Caristo. Little that I can say or write can salve their deep grief. What I can say is that I have been mindful of their deep love and affection for Anthony and have not forgotten their sadness and concerns expressed to me during the hearing.

181. I thank Mr Archer, Counsel Assisting the Coroner, for his more than competent assistance in the hearing and comprehensive written submissions.

182. I thank the parties for their very helpful and thoughtful written submissions.

183. I thank Constable Beere and the team of investigators that she worked with who produced an independent and excellent investigation.

J M STEWART

CORONER