



**STATE CORONER'S COURT
OF NEW SOUTH WALES**

Inquest: Inquest into the death of KS

Hearing dates: 21 to 24 May 2018 at Ballina Court House

Date of findings: 22 June 2018

Place of findings: NSW State Coroner's Court at Glebe

Findings of: Magistrate Derek Lee, Deputy State Coroner

Catchwords: CORONIAL LAW – police operation, siege, containment and negotiation, third party intervention, constant communication, [REDACTED], fatigue of subject, information gathering, communication with family

File numbers: 2016/0087470

Representation: Ms E Raper, Counsel Assisting, instructed by Ms J Murty, Crown Solicitor's Office

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Non-publication orders: Pursuant to section 74(1)(b) of the *Coroners Act 2009*, the following material is not to be published:

1. The affidavit of Assistant Commissioner Mark Murdoch.
2. Tabs 68, 69, 70, 80, 81 and 81A of Exhibit 1 tendered in the inquest.
3. The oral evidence of any of the police officers (including former Negotiation Commander) given during the course of the inquest.

Pursuant to section 75(2)(b) of the *Coroners Act 2009*, the name and/or identifying information (including any photograph or other pictorial representation) of KS is not to be published

Findings: I find that KS died on 18 March 2016 at East Lismore NSW 2480. The cause of KS's death was gunshot wound to the head. KS died as a consequence of actions taken by him with the intention of ending life, during the course of a police operation.

Recommendation: *To the NSW Commissioner of Police:*

I recommend that consideration be given to using the experience of KS's family during the events of 16 to 18 March 2016 (with appropriate anonymization, and conditional upon consent being provided by KS's family) in an appropriate case study as part future training packages provided by the NSW Police Negotiation Unit to police negotiators to address the issues of adequate and appropriate information gathering from, and impartation of information to, family members of subject persons involved in a high-risk incident.

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Introduction

1. On the afternoon of 16 March 2016 KS went to the house of his former partner with a plan to take his own life. Over the subsequent 39 hours KS's loving and supportive family, and a number of police officers, attempted to intervene to protect KS from the risk that he posed to himself, and preserve his life. Despite their best efforts, they were ultimately unable to prevent KS from self-harm.

Why was an inquest held?

2. Under the *Coroners Act 2009 (the Act)* a Coroner has the responsibility to investigate all reportable deaths. This investigation is conducted primarily so that a Coroner can answer questions about the identity of the person who died, when and where they died, and what was the cause and the manner of their death.
3. At the time of KS's death, he was armed with a firearm. He had used the firearm to discharge two rounds into the floor of a residential house where his former partner lived. In the 39 hours preceding his death, KS had expressed an intention to use the firearm to cause his own death. Tragically, this is what ultimately occurred. During KS's period of crisis a number of police officers attempted to persuade KS to resolve the situation without injury or loss of life; these police officers continued to do so right up until the moment of KS's death. Due to these circumstances KS was regarded as having died in the course of a police operation. This meant that, according to the relevant section of the Act which applied at the time¹, an inquest into KS's death was mandatory. This mandatory requirement exists to ensure that the actions of police officers involved in operations of the kind that KS found himself in are carefully and independently examined and that the process of examination is a transparent one.
4. The coronial investigation into the death of a person is one that, by its very nature, occasions grief and trauma to that person's family. The emotional toll that such an investigation, and any resulting inquest, places on the family of a deceased person is enormous. A coronial investigation seeks to identify whether there have been any shortcomings, whether by an individual or an organisation, with respect to any matter connected with a person's death. It seeks to identify shortcomings not for the purpose of assigning blame or fault but, rather, so that hopefully lessons can be learnt from such shortcomings and so that, hopefully, these shortcomings are not repeated in the future. If families must re-live painful and distressing memories that an inquest brings with it then, where possible, there should be hope for some positive outcome.

KS's life

5. Inquests, and the coronial process, are as much about life as they are about death. Recognising the impact that the death of person has had on their family can only serve to strengthen the resolve we share as a community to strive to reduce the risk of preventable deaths in the future. Understanding the impact that a death of a person has had on their family only comes from knowing something of that person's life and how the loss of that life has affected those who

¹ *Coroners Act 2009*, section 23(1)(c) (since amended).

loved that person the most. Therefore it is extremely important to recognise and acknowledge KS's too brief, but important, life.

6. KS was the third child of GS and AS. He had two older siblings, SD and KES. At a young age KS was heavily involved in the work of his family's blueberry farm in Caniaba, near South Lismore. KS was an industrious worker and well-respected within his local community. He designed and created many systems to improve the operation of the farm; systems which his father describes as remarkable and which were of great pride to him as a father of such a talented son.
7. KS's father fondly recalls that his son often took on responsibilities that belied his youth. At the age of 12 KS frequently helped his sister to manage the family's fruit and vegetable shop and often accompanied his father on work trips to Brisbane. At the age of 15 KS began helping to buy stock for the business' customers, something which he continued doing as the years passed. In fact, KS's father said that even many years later he would still receive calls from former customers who remembered KS as a cheeky young boy, always negotiating prices with customers.
8. The precociousness that KS showed at a young age meant that it came as no surprise to anyone who knew him that he was able to buy his first house at the age of 18. Despite owning his own home KS continued to live with his parents at their farm so that they would not feel alone. The devotion that KS had to his family was apparent from his close relationships with his siblings, in particular SD, but probably most obvious from his special bond with his two nephews, SD's sons, JD and LD.
9. SD recalls that when LD was 18 months old he began experiencing behavioural difficulties. It was at this time that KS intervened and took over much of the responsibility for LD. The impact of KS's positive influence on LD was enormous as SD recalls that from that point on LD experienced no further issues.
10. As a devoted uncle KS always went to his sister's house, even if he had been working all night into the early hours of the morning, to help prepare lunch for his nephews and ensure that they had a good lunch for their day ahead. This is but one example of the fact that KS always made time for his nephews even when he himself was busy and had little time. KS patiently helped his nephews with their homework, he taught JD how to drive and took him to his school formal, and he taught LD how to ride a mini motorcycle which he had bought for him. Indeed, LD (who was 10 years old when KS died) describes the day that KS gave the motorcycle to him as the best day of his life. It is distressing to hear of LD's profound sadness at the fact that KS will now never be able to take him to his first day of high school, to take him to his school formal, or to teach him how to drive.
11. It is equally heartbreaking to hear LD say that he no longer feels strong in KS's absence. LD described KS as someone who had a presence that made everyone around him feel safe. In such circumstances it is heartbreaking to know that despite the best efforts of his loving family KS was unable to keep himself safe from harm.

Background to the events of March 2016

12. In late 2014 KS met AB who had begun working as a picker on the S family farm. After several months KS and AB formed a relationship. Prior to this KS had previously had only one serious relationship when he was about 25 years old and which lasted about two years.
13. Over time, KS began to have concerns regarding his relationship with AB. He believed that his family would not be accepting of him marrying someone who was not of Indian heritage as he was. Due to this belief KS was reluctant to disclose the full nature of his relationship with AB to his family and much of it was kept secret by KS. Despite this, and despite KS's concerns about the perceived non-acceptance by his family, it eventually became apparent to KS's family that he was in a relationship. However, even when KS's family enquired about the relationship, KS continued to deny its existence.
14. The relationship between KS and AB can fairly be described as a volatile one. Whilst at times the relationship was loving and affectionate, at other times it was strained. Much of the tension seems to have been caused by KS's desire to keep the relationship private, which in turn meant that he did not want to go out with AB and be seen with her in public together. KS would often tell his family that he was with his good friend, James Farquarson, when he was in fact with AB. Further tension in the relationship arose in around mid-2015 when AB fell pregnant to KS. AB later decided to terminate the pregnancy as she believed that KS was not ready to have a baby. Ultimately, the strain placed on the relationship by these various factors resulted in AB ending the relationship in January 2016.
15. Despite this, KS continued to contact AB, usually by text message. The content of the text messages which KS sent to AB reveals that he was unaccepting of the end of the relationship and sought to renew it on many occasions. However, AB maintained that the relationship had ended, that there was no opportunity for reconciliation, and that she wanted to maintain some distance from KS. Unfortunately, KS did not respond well to AB's views regarding the end of their relationship and he often sent her text messages conveying his anger, disappointment and frustration at the situation.
16. In January and February 2016 it was obvious to KS's family that he was struggling to cope with the breakdown of the relationship. Sometime in February 2016 KS spoke to Mr Farquarson about killing himself and said that he had researched different methods to do so.
17. It was also during this time that KS spoke to his sister about the possibility of reconciliation with AB and, if that occurred, how that might be perceived by his family. SD attempted to reassure KS that his family, and in particular KS's parents, would be accepting of the relationship. SD attempted to comfort KS by reminding him that his happiness was of great importance to his family and that the main consideration was whether being with AB made KS happy.
18. Between Sunday, 13 March 2016 and the afternoon of Tuesday 15 March 2016 KS sent AB a number of lengthy messages in which he sought to discuss aspects of their past relationship and the possibility of reconciliation. AB was largely unresponsive to the messages apart from informing KS that she was not interested in any reconciliation. The last message sent by KS was at 5:38pm on Tuesday, 15 March which AB did not respond to. It was not until later that night at 10:21pm that AB sent KS an unexpected message which upset him, and he responded by saying,

"I'm as well as one can be about to top emselves (sic)".² . The following morning AB apologised to KS for sending the message. Despite the apology it was clear that KS was still struggling to cope with his feelings for AB.

Wednesday, 16 March 2016

19. Throughout the morning and early afternoon of 16 March 2016 KS continued to send a number of text messages to AB. The messages continued the past theme of KS seeking reconciliation and asserting that AB did not view their relationship with the same degree of importance that KS did.
20. At about 1:55pm KS sent his nephews, LD and JD, the following group message: *"I love you buddy, thanks for being you! U r both great kids and I had (sic) any part of helping you become the people u r so far then that's something I'm proud of! The rest is up to you"*.
21. Sometime prior to 2:51pm KS drove to AB's home at 133 Dally Street, East Lismore. On the way he actually passed AB in her car as she was on her way out with her sister, Josie. At about 2:51pm KS sent a message to AB asking her to come outside, indicating that he was outside her home. AB lived at the address with her father, John, and her sister. When AB did not immediately reply, KS attempted to call AB a number of times between 2:54pm and 2:57pm before eventually sending a message to Josie who replied by saying that she and AB were out and would return home soon.
22. At 2:57pm KS sent a message to SD in which he asked her tell everyone that he was sorry and that he hoped that they would understand how he reached this point in his life. He also thanked his sister and expressed his inability with being able to live with the fact that he had ruined his relationship with AB. Finally, KS said that he hated the thought of leaving his loved ones but that life had become too hard and that this was his opportunity to be free.
23. AB and Josie arrived home at about 3:15pm and saw that KS was standing by his parked vehicle. AB invited KS inside and asked why he had come to talk to her. Initially AB did not notice that anything was amiss but as KS remained at the house he began speaking again about their past relationship. AB recalls that on a number of occasions KS said, *"It's really unfair that I have to feel like this and you get to go on with your life"*.
24. The conversation between KS and AB became repetitive, ventilating issues concerning their past relationship that had been raised previously in text messages. At one point AB told KS that she had to leave the house soon to attend a prior engagement. By this time, AB's sister had left the house. KS left AB's room (where much of the conversation had been taking place) for a short time, went to his vehicle and re-entered the house. AB subsequently heard some noise coming from the sun room.
25. When she went to investigate AB found KS in the room, sitting down and holding a shotgun under his chin. AB attempted to persuade KS to put down the shotgun and attempted to take it away from him. As this was occurring KS moved from the sun room to AB's bedroom where he again placed the shotgun under his chin. AB continued to plead with KS to put the shotgun down. At one point when KS was still in AB's bedroom, and AB was just outside of her room, KS fired two rounds from the shotgun into the timber floorboards of AB's room.

² Exhibit 1, tab 79, page 550.

26. Mr B called his daughter at around this time. AB told her father to come home immediately and went to the kitchen to wait for him. A short time later AB told KS that her father had arrived home but KS remained in AB's bedroom and closed the door. AB ran from the house, got in her father's car, and they drove away from the scene.
27. Between 4:20pm and 4:22pm KS sent his sister a number of further messages. SD expressed her concern for KS and said that she would come to see him. However, KS initially said that he had not meant to send his message earlier that afternoon, that he had panicked and that he was being silly. However, in later messages KS referred to the fact that he had been mistaken about AB giving him a reason to live and made reference to the police arriving soon and it being too late.

The start of the siege

28. Subsequent events in the chronology took place over a period of some 39 hours. It is not possible to recount in complete detail the occurrences and conversations during this period of time as there were many of them. Instead, what is set out below is a summary of those events most relevant to the issues which the inquest considered.
29. At 4:28pm Mr B called triple 0 and passed on information regarding KS as told to him by AB. The first police officers arrived on scene at 4:33pm and established a perimeter. SD arrived at the house a short time later. Further police continued to arrive on scene up to about 5:00pm as residents from neighbouring houses were evacuated, and a command post was established at an intersection near AB's house. During this time, at about 4:40pm, KS took a photo of himself with the barrel of the shotgun in his mouth.
30. Initial attending police officers attempted to make contact with KS to ensure that he was safe and well. At 5:05pm Inspector Nicole Bruce, one of the Duty Officers on shift, contacted Northern Region Operations in relation to activating and deploying a tactical and negotiation response.
31. NEG 4 and NEG 6 arrived on scene at about 5:15pm as members of the negotiation team. NEG 6 knew both KS and SD, having previously met them through her past personal dealings associated with the S family farm. At around this time an initial briefing was held between the Duty Officers, Inspectors Nicole Bruce and Susan Johnston, and the State Protection Support Unit (SPSU) Field Supervisor, FS1 who had also arrived on scene. Other SPSU operatives arrived on scene at 6:08pm and NEG 8, another member of the negotiation team, arrived at 6:20pm. As NEG 8 was the most senior negotiator on scene he was allocated the role of negotiation Team Leader.
32. It is important at this point to explain the organisational structure within the command post and regarding the police operation generally. The Duty Officer was designated the role of Forward Commander and bore the ultimate responsibility for all decisions regarding the negotiation. The Forward Commander received advice from the Negotiation Team Leader in relation to matters concerning negotiation strategy, and from the SPSU Field Supervisor (or Tactical Commander) in relation to any possible tactical response.
33. The negotiation team itself is usually comprised of four members:
 - (a) a Team Leader, responsible for overall team management;
 - (b) a Primary Negotiator, responsible for the actual negotiation and intelligence gathering;

- (c) a Secondary Negotiator, responsible for supporting and relieving the Primary Negotiator; and
- (d) a Recorder, responsible for maintaining running sheets and recording functions, and general support.
34. Shortly after the initial briefing the police within the command post devised a surrender plan at about 6:40pm. This plan contained instructions for KS to leave the firearm inside the house, remove his shirt, exit the front door and walk down the front steps of the house with his hands in the air, obeying the instructions of the police.
35. After establishing a perimeter around the house the attending police made their first attempt to contact KS. This was made at 7:04pm by NEG 4 who was acting as Primary Negotiator. After two missed calls, KS answered the third call. He and NEG 4 spoke briefly about KS's relationship with AB and how it had not gone well. NEG 4 told KS that his family were at the scene however KS responded with words to the effect of, *"You want to get rid of them because they don't want to hear what I'm about to do"*.
36. During his conversation with NEG 4 KS made it clear that he had decided some time ago that he was going to take his own life, that he was not leaving the house, and that he was going to *"finish it off"*. KS ended the call at 7:16pm. For the next 20 minutes, there were numerous calls made to both KS's mobile phone and the landline phone at the house phone, together with a number of text messages sent to KS, as the negotiation team tried to contact him. However, all the calls and text messages went unanswered. During the course of the negotiation, the police activated sirens from a police vehicle, a loudhailer, and a long range acoustic device (LRAD)³ in an attempt gain KS's attention in order to engage him in conversation.
37. At 11:12pm a police armoured response vehicle (ARV) arrived on scene. Negotiators and SPSU operatives moved into the ARV at about 11:30pm and it was positioned in front of the house and parked so that its headlights were directly in line with AB's bedroom where KS had remained.
[REDACTED]
38. After initially being unable to make contact with KS, NEG 4 was eventually able to have a number of conversations of varying duration with him. Over time, the conversations began to take on a repetitive cycle where KS would speak about leaving the house, then saying that he needed more time, before eventually indicating that he would not be leaving the house and that he would do what he came to do. Both the police and KS recognised the cyclical nature of the conversations, with KS at one point saying, *"We're just going around in circles. We're talking about the same things. I'm not coming out of the house. I need time to think. No matter how many times you ask me to come out of the house, I'm not going to do it. I will only come out if and when I'm ready"*.

Thursday, 17 March 2016

39. At 12:24am on Thursday, 17 March 2016 NEG 6 took over as Primary Negotiator. It appears that initially NEG 6 was able to make some positive progress with KS as they spoke about getting KS

³ An acoustic hailing device capable of sending directional audible messages at longer distances and at louder volume than normal loudspeakers.

help, KS making changes in his life and thinking about his future. However, by around 1:09am when there was further discussion about the surrender plan, KS remained adamant that he did not want to talk about, or even consider, the plan.

40. At around 3:30am KS ended one his calls with NEG 6 by saying that he wanted police to enter the house and shoot him. At around this time, SD asked police near the command post where she had remained whether she could speak with KS. She indicated that KS had not slept much the previous night and that he would be getting irritable due to his lack of sleep.
41. SD left the scene a short time later to return to the family farm and inform her parents of what was occurring. At around 3:37am SD noticed that she had a missed call from KS. She rang KS back and when KS answered he asked SD to return to the scene, and mentioned that the use of sirens by the police was irritating him. SD asked KS if he wanted to come out and if he would do so. KS indicated that he would come out when he was ready but that every time the police used the siren "*the clock starts again*". SD returned to the scene and informed the police of what KS had said: that he wanted to come out on his own terms but that the clock would restart every time the police attempted to contact KS.
42. At 3:55am KS said that if the police continued to push him he would do something that would be regrettable. At 4:07am KS told the police that he had the shotgun in his mouth with the safety off. At around 5:00am KS began speaking again about leaving but also continued to ask for more time. By 6:50am no further progress had been made and NEG 6 returned to the command post and passed on duties as Primary Negotiator to a member of the relieving negotiation team.
43. At 6:56am enquiries were made with [REDACTED]. The purpose of this was to [REDACTED]
[REDACTED] By 7:53am it was thought that isolation [REDACTED]
[REDACTED]
[REDACTED]
44. At 7:45am police within the command post began to give consideration to changing the strategy that had been deployed up to that point. This was due to the view that the negotiation had progressed little over the previous night and had again begun to take on a cyclical nature, as referred to above. As a result, contact was made with Negotiation Commander, the Commander of the NSW Police Negotiation Unit at the time, to seek his advice and input.
45. At 8:40am SPSU operatives gave consideration to [REDACTED] and [REDACTED] to the house. However, by 8:50am it was determined to not [REDACTED] due to the location of the [REDACTED] at the house (which made it difficult and unsafe to access) and because KS needed to keep his mobile phone charged so that the negotiators could contact him. However, the Forward Commander at the time, Inspector Douglas Connors, later made the decision to [REDACTED] house.
46. At 9:19am it was apparent that KS was unhappy with the continued use of the sirens and loudspeaker as he began yelling abuse from the bedroom at the negotiators.
47. At 9:34am David Whalley sent KS a text message. Mr Whalley had known KS's family for more than 15 years and had known KS personally for about 4 years. Mr Whalley also knew AB and

that she had previously worked on KS's farm. Mr Whalley, who was aware that the siege was occurring, sent the message to KS without knowledge of KS's predicament. Once Mr Whalley came to realise what was occurring he attempted to persuade KS to relinquish the firearm and leave the house. However, KS told Mr Whalley that whilst he wanted to leave the house, he wanted to do so on his terms and not on the terms set by the police, or because they wanted him to leave.

48. Mr Whalley also asked if there was anything he could do for KS who replied by telling Mr Whalley that he could tell the police to back off and give him some more time, as he needed to think. Following the call Mr Whalley called SD and told him what KS had said regarding asking the police to back off. SD confirmed to Mr Whalley that KS had said the same thing to her.
49. When SD returned to the command post at around 11:00am she informed police that Mr Whalley had spoken to KS earlier. It was then that the police came to the realisation that the [REDACTED] had not been completely effective. When enquiries were made with [REDACTED] the information provided was that due to technical issues [REDACTED] [REDACTED]. Rather than [REDACTED], which would have left KS uncontactable to police, Inspector Connors decided to [REDACTED].
50. Shortly before 12:00pm the negotiators attempted to speak to KS face-to-face from the bedroom window. However, KS refused to communicate in this manner and asked for contact to be by phone only. At around the same time KS said that he was not leaving the house and that the police would have to enter the house to reach him.
51. Shortly after 12:00pm a decision was made to contact Dr Michael Diamond, a consultant psychiatrist who had previously been consulted and provided advice to police in relation to previous incidents of a similar kind. NEG 5, the negotiation Team Leader at the time, spoke to Consultant Psychiatrist.
52. At 1:07pm KS dropped his mobile phone out of the window. KS became uncontactable by phone at this time [REDACTED]. As a result there was some face-to-face communication between KS and the negotiators during this period although both sides encountered difficulties being able to hear each other whilst attempting to talk through the open bedroom window. At one point KS told the negotiators that he was not going to kill himself but that instead he would get the police to do so.
53. At around this time, further advice was sought from both Negotiation Commander and Consultant Psychiatrist in relation to possible ways to overcome the resistance that KS had been demonstrating. As KS appeared closed and stubborn, and did not like talking about his family, the decision was made to take what was described as a more "softly, softly" approach with KS; in other words, to speak with him in a way that would be met with less resistance and to be less direct in attempting to persuade KS to take certain actions.
54. Part of the advice provided by Consultant Psychiatrist was that it might be helpful to police to obtain [REDACTED] from AB which could then be [REDACTED]. Arrangements were made for this to be done and it was completed by about 6:20pm. However, a decision was later made to not [REDACTED].

55. Just before 8:00pm Mr Farquarson arrived at the command post with SD. He informed police that he wanted to talk to KS to see whether he would be able to assist the negotiations. With the approval of NEG 8, the negotiation Team Leader at the time, a [REDACTED] was taken from Mr Farquarson and completed at about 9:25pm.
56. By about 9:45pm NEG 4 noticed a difference in KS's willingness to engage with police compared to when he had last spoken with KS the previous night. NEG 4 described KS as relaxed and calm, easy to engage in conversation, and happy to talk about what had happened during the day. Although engaging KS in conversation had become an easier process, the conversations themselves regarding the prospect of leaving the house still retained their cyclical nature as before.

Friday, 18 March 2016

57. Up to 12:06am NEG 4 had some lengthy conversations with KS (one lasting about 20 minutes and another about 50 minutes) and appeared to be making positive progress. KS himself confirmed this to NEG 4, saying that he felt good about where things were going. Further, KS offered to throw some ammunition that he had out the window, in order to demonstrate that he was not a threat to the police. NEG 4 attempted to have KS throw out all the ammunition in his possession but KS declined and indicated that he would throw out all the ammunition except for a single round which he said he was keeping for himself. At 1:16am KS placed four rounds of ammunition in a bag and threw it out the window.
58. By 2:00am NEG 4 noticed that KS was tired and that it would take eight rings before KS would answer the phone. It was NEG 4's intention to only allow KS to have breaks of [REDACTED] minutes between phone calls and he told KS this. KS responded by saying that one of the earlier Primary Negotiators that he had spoken to had told him the same thing.
59. At around 2:46am KS spoke with NEG 4 about throwing his pocket knife out the window which he later did. By this time KS appeared fatigued to NEG 4 as he was complaining of being tired and finding it difficult to stand. NEG 4 repeatedly asked KS what needed to be done in order to have him leave the house. KS replied by referring to the fact that he needed a "kicker", in other words, something to push him over the edge to convince him to leave the house. NEG 4 continued to talk with KS in an attempt to identify the kicker that KS needed. However, KS did not specifically indicate what kicker he needed and continued to tell NEG 4 that he needed more time to think about the matter.
60. After KS initially indicated that he did not want to hear [REDACTED] with Mr Farquarson, NEG 4 persisted and KS eventually agreed to it [REDACTED]. However, after it [REDACTED] KS indicated that the [REDACTED] did not mean anything and that it had had no effect on him.
61. At about 6:15am a briefing was held at the command post involving, relevantly, Inspector Conners, Inspector Bruce, NEG 8, and NEG 4. Although NEG 4 indicated that he was building rapport with KS he believed that little progress was still being made with respect to persuading KS to leave the house. It was therefore decided to adopt a change of tactics.
62. Whilst NEG 4 was attending the briefing, KS told NEG 3, who was acting as Primary Negotiator at the time, that he promised that he would let the police know if he was going to harm himself. He said that he had made the same promise to the other negotiators.

63. At around 6:40am KS again repeated that if he was going to make any decision regarding the next course of events it would be the one that he intended to make when he arrived at the house on Wednesday. In a subsequent conversation, NEG 4 said to KS that sunrise was approaching and that perhaps the kicker which KS had mentioned was a number of things taken collectively; that is, the fact that a new day was beginning, that the nearby school would be beginning soon, and that there was still time to attend to paperwork to ensure that KS was brought before a court that day before the weekend.
64. However, KS remained resistant and said that the only way the situation was going to end was if it was done his way. He acknowledged that the police had managed to build some rapport with him during the night but reminded them that if he was pushed to make a decision he would simply do what he came to the house to do.
65. At around 7:15am KS indicated that he would leave the house and during a subsequent phone call NEG 4 attempted to discuss the terms of the surrender plan with KS. However, during this discussion KS again reverted back to his previous position and said that he was not coming out and that he would do what he came to the house to do. At around this time KS began to question the movements of some of the SPSU operatives. As the negotiators were only wearing [REDACTED] protective gear in the form of bulletproof vests and helmets, each time they moved to and from the ARV a SPSU operative was required to escort them for safety reasons. As this movement was occurring within KS's line of sight it appears that he believed that some unusual activity was occurring. To the contrary, no order had been issued to any SPSU operative to take any deliberate action. NEG 4 attempted to reassure KS by identifying the location of the SPSU operatives and indicating that the situation up to that point had remained unchanged.
66. However, KS remained agitated. He told NEG 4 that he had agreed to let the police know if was going to harm himself, and that this was him letting the police know. NEG 4 repeated a number of times that KS needed to stay on the phone and that the police were there to help him and for KS to continue to talk to him. However KS instead thanked NEG 4, told him that he had been good to him, and that he did not need to hear what was about to occur.
67. At 7.35am a single gunshot was heard by the police followed by a loud thud. NEG 4 attempted to ascertain KS's welfare by calling out to him and by calling his phone. However, the phone line was engaged and there was no response. Accordingly, following approval being given, SPSU operatives entered the house at 7:48am and found KS lying on his back in AB's bedroom with a significant gunshot wound to the head, and with the shotgun on his chest. Paramedics, who had been on standby outside, entered the house a short time later and confirmed that KS was deceased.

What was the cause of KS's death?

68. KS was later taken to the Department of Forensic Medicine at Newcastle where a postmortem examination was performed by Dr Rexon Tse on 22 March 2016. Dr Tse found that KS had suffered a single gunshot wound to the head, with the entry point in the mouth, causing significant craniofacial injuries including a burst skull fracture and complete disruption of the brainstem. Dr Tse concluded in his autopsy report dated 21 April 2016 that the cause of death was gunshot wound to the head.

What was the manner of KS's death?

69. Given the gravity of a finding that a person has intentionally inflicted their own death it is well-established that such a finding cannot be assumed, but must be proved on the available evidence. Taking into account KS's previous suicidal ideation, the content of his text messages to AB, and the totality of his actions and communication with police between 16 and 18 March 2016, I conclude that the evidence is sufficiently clear, cogent and exact⁴ to allow a finding to be made that KS died as a consequence of actions taken by him with the intention of ending his life.

Issues examined by the inquest

70. Prior to the start of the inquest a list of issues was circulated to the interested parties, KS's family and the NSW Commissioner of Police. That list identified the following issues:
- (a) The negotiation procedure adopted by NSW Police when dealing with KS;
 - (b) The various negotiation strategies deployed by NSW Police including:
 - (i) choice of negotiators;
 - (ii) [REDACTED];
 - (iii) [REDACTED];
 - (iv) [REDACTED];
 - (v) the adequacy of information gathering from KS's family and friends;
 - (vi) continued communication throughout the day and night to bring about a resolution;
 - (vii) the impeding of KS's [REDACTED];
 - (viii) decisions concerning whether the tactical team would enter the house; and
 - (ix) changing tactics and/or placing of pressure on KS.
 - (c) The timing and extent to which the Police obtained and/or followed the advice of psychiatrists.
71. Consideration of each of these issues is set out below.

The negotiation procedure

72. The NSW Police Force has a principle operating strategy of resolving high risk situations by containment and negotiation.⁵ The *Australia New Zealand Guidelines for Deployment of Police to High Risk Situations 2013* identifies that one of the criteria that may be used to define a high risk

⁴ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

⁵ Exhibit 1, tab 68, page 8; Exhibit 1, tab 38 at [11].

situation is where there are reasonable grounds to believe that a person may use lethal force, or there is an expressed intention by a person to use lethal force.⁶

73. The NSW Police *Negotiation Unit Management – Operational Guidelines 2011 (the 2011 Guidelines)* provide that the Negotiation Unit is to be used in conjunction with the Tactical Operations Unit in the resolution of high risk situations and that, specifically, police negotiators should be used in any situation where a person is threatening to make an attempt to take their own life.⁷ Negotiation is defined in the guidelines as “a planned intervention on behalf of the Police Forward Commander to resolve an incident and to achieve a peaceful resolution through the use of skilled communication”.⁸ Containment refers to both physical containment of a subject person, together with aspects of mental containment that may arise as part of the overall strategy.
74. In evidence Negotiation Commander explained that the strategy of containment and negotiation has been used by law enforcement agencies worldwide for many years. He explained that the strategy was adopted in NSW following a number of deaths of persons who were the subjects of siege-like situations, and where more deliberate police action had been used in these situations.
75. Current Negotiation Commander, the current Commander of the Negotiation Unit (since December 2016), explained that development of negotiation strategy is not prescriptive and not guided by individual policy or procedures. Instead, the development of strategy is dependent on the nature of the incident in question, situational awareness, and the aim of the negotiation which is ultimately achieving peaceful resolution of the situation.⁹ As such, [REDACTED] and [REDACTED] are examples of tools or techniques that may be used to support a negotiation strategy, but are not themselves an actual negotiation strategy. Due to the large number of variables in the factors that may impact on any high-risk situation, the strategies developed are “infinitely variable” and there is no checklist which a negotiation team may work through.¹⁰ Negotiation Commander explained it succinctly in this way: the negotiation, and any strategy developed as part of it, is focused on the subject person’s agenda, and not on any agenda held by the police.
76. The evidence established that the negotiation strategy is developed by the negotiation Team Leader in consultation with the negotiation team as part of the overall strategy adopted by the police. Ultimately, the decisions made and the strategy implemented are matters for the Forward Commander, who is also in receipt of advice from the Tactical Commander.

77. **Conclusion:** The negotiation strategy employed in KS’s case was one of containment and negotiation. As the incident involving KS was properly regarded as a high-risk incident, it was appropriate for the NSW police to adopt and follow such a strategy. Negotiation with KS was conducted by trained officers from the NSW Police Negotiation Unit. As part of the overall strategy KS was physically contained in the Dalley Street house by use of a cordon of SPSU operatives, and other police, surrounding the premises. It is evident from the conduct of the involved police officers that the strategy of containment and negotiation had an overall objective of achieving peaceful resolution of the incident. Within that overall objective were three aims:

⁶ Exhibit 1, tab 69, page 4.

⁷ Exhibit 1, tab 68, page 8.

⁸ Exhibit 1, tab 69, page 5.

⁹ Exhibit 1, tab 81 at [17].

¹⁰ Exhibit 1, tab 81A at [9].

ensuring KS's safety, ensuring the safety of the police officers involved, and ensuring the safety of members of the community.

Choice of primary negotiator

78. During the evening of 16 March 2016, when negotiations with KS began, there were two trained negotiators available to fulfil the role of Primary Negotiator: NEG 4 and NEG 6. NEG 8, the negotiation Team Leader at the time, made the decision to utilise NEG 4 as the Primary Negotiator.
79. NEG 8's decision was examined during the inquest because of two factors:
- (a) NEG 6 had known KS and his family for about 15 years (even though she had not had any contact with KS in recent years);¹¹ and
 - (b) NEG 4 initially had difficulty building rapport with KS and productively advancing the negotiation; however, this situation improved following NEG 6 subsequently taking the role of Primary Negotiator at 12:24am on 17 March 2016.
80. SD said that when she arrived on the scene she saw NEG 6 and spoke to her. NEG 6 asked SD whether she thought KS would feel embarrassed, or whether it would worsen the situation, if she (NEG 6) spoke to him. SD told her not to let anyone who did not know KS talk to him, and that KS would trust NEG 6 and be willing to talk to her.¹²
81. Given the above it is evident that KS's family have legitimate reasons to query the reason why NEG 6, who knew KS and who SD believed KS would trust, was not used as the initial Primary Negotiator. NEG 8 explained in evidence that his decision was based on the fact that he had worked with NEG 4 previously and formed a positive impression of his competency as a negotiator. He described NEG 4 as someone who communicated, and built rapport, well with subjects. Further, NEG 8 explained that because of NEG 6's previous relationship with KS's family, he wanted her to perform the role of gathering information from KS's family. NEG 8 went on to explain that this way, the option to use NEG 6 as the primary negotiator would still be available at a later time. Indeed, this is what ultimately occurred.
82. During the inquest Negotiation Commander was asked whether he thought it was a significant factor for a Primary Negotiator to have a pre-existing relationship with the person who was the subject of a negotiation. He said that in certain instances this might be regarded as an advantage; however, at other times, because of the emotion that may be involved, such a situation may not be beneficial to the overall negotiation. Negotiation Commander explained that in such instances a negotiator with no previous personal relationship may be a more suitable option.
83. At the time of the change of Primary Negotiator, NEG 4 had been unsuccessful in building any rapport with KS. NEG 4 describes the progress in this way: *"....it felt like my efforts with him weren't, weren't going anywhere. They weren't going backwards but they weren't going forwards"*.¹³

¹¹ Exhibit 1, tab 14 at [10].

¹² Exhibit 1, tab 47, Q/A 233.

¹³ Exhibit 1, tab 9, Q/A 105.

84. However, once NEG 6 began talking to KS she was able to engage KS into talking about why he had gone to the house and “*within the first five or ten minutes [of talking to KS] she was able to, to get well beyond a point that...[NEG 4] got to within the first few hours*”.¹⁴ It appears that the use of NEG 6 as primary negotiator also proved to be beneficial in the sense that she was able to talk KS out of a critical point when he spoke about being close to taking his own life. At one point KS said that he had placed the firearm in his mouth and was preparing to use it. However, NEG 6 was able to talk KS through the crisis; KS agreed to take the gun out of his mouth and place the safety on, although he would not agree to unload it.¹⁵
85. Nonetheless, even though talking to NEG 6 appeared to make KS more comfortable with the strategy utilised by the police, the same pattern that had been occurring with NEG 4 still continued until the morning; that is, KS made it very clear that he was a stubborn person and was not coming out of the house until he was ready to.¹⁶

86. **Conclusion:** NEG 6’s previous relationship with, and knowledge of KS, and SD’s confidence in her ability to gain KS’s trust, provided a sound basis to potentially consider using her as the initial Primary Negotiator. However the evidence establishes that there was an equally sound basis underlying NEG 8’s decision to use NEG 4 in the role instead: he was a competent negotiator, it was thought that NEG 6’s pre-existing relationship with the family would facilitate in gathering information from them, and the option to utilise NEG 6 at a later stage remained available. Further, the evidence established that the advantages and disadvantages that may be occasioned by the use of a negotiator with a pre-existing relationship with a subject can often be finely balanced. With the benefit of hindsight it is evident that NEG 6 was able to build rapport with KS more successfully than NEG 4. However, despite this, KS maintained his resistance to leaving the house and following the surrender plan. There is no evidence to suggest that the decision to utilise NEG 4 over NEG 6 was unreasonable, or that it adversely contributed to the eventual outcome.

87. Inspector Conners and NEG 5 both explained that [REDACTED] was a tool deployed as part of the strategy of containment and negotiation. NEG 5 explained that its purpose was to ensure that police were able to control the situation at hand and [REDACTED].
88. Inspector Conners said that it was his understanding that a basic principle of any negotiation is to [REDACTED] with the person the subject of the negotiation. To this extent, KS’s [REDACTED] so as to allow the police to effectively control the negotiation process.¹⁷ He explained that if KS could [REDACTED].
89. As an example, Inspector Conners referred to the fact that he was aware that KS and spoken to SD in the early hours of the morning on Thursday, 17 March 2016, and following that call KS had become agitated. The command post log records that at 3:30am KS had “*hung up really agitated*

¹⁴ Exhibit 1, tab 9, Q/A 109.

¹⁵ Exhibit 1, tab 9, Q/A 123.

¹⁶ Exhibit 1, tab 9, Q/A 120.

¹⁷ Exhibit 1, tab 7A at [4B].

wants police to go in and shoot him".¹⁸ During the inquest there was some debate about whether KS's agitation was a product of the call itself, or whether it was related to his reason for calling his sister. This issue will be discussed further below.

90. **Conclusion:** The available evidence indicates that the principle of containment and negotiation was a sound strategy to follow in KS's case. It follows from this that in order to fulfil the objective of containment and allow negotiation to occur, there was a need for the police to take control of the situation. One of the means by which this control was taken was to [REDACTED] [REDACTED] that were available to KS. On this basis, it is reasonable to conclude [REDACTED] [REDACTED] was warranted.

[REDACTED]

91. Inspector Conners explained that the purpose of [REDACTED] was to make KS feel that he was in fact contained, and not merely comfortable inside the house. It was thought that this would, in turn, encourage KS's continued communication with the negotiators and enable the negotiation to work towards a resolution.¹⁹

92. Inspector Conners acknowledged that there were some safety concerns implicit in denying KS [REDACTED]. However, the evidence establishes that KS still had access to [REDACTED] which [REDACTED]. Inspector Conners indicated that on one occasion KS appeared at the window drinking a bottle of lemonade.²⁰

93. **Conclusion:** The decision to [REDACTED] to the house that KS was legitimately made in furtherance of the strategy of containment and negotiation. It formed part of the principle of containment and was used as a means to attempt to focus KS's attention on the result the police were trying to achieve. Any inherent risks to KS's well-being that were associated with such a step being taken were recognised and considered by the police. There is no evidence that this action adversely affected KS's health in any way; to the contrary, it was evident that he still had access to [REDACTED].

Third party intervention

94. KS's immediate family, and in particular SD, were present at the scene throughout much of the negotiation. SD²¹ and KS's parents²² all indicated that they wanted to talk to KS but were informed that this could not occur. KS's family were aware that [REDACTED] with AB and Mr Farquarson so that they could be [REDACTED].

95. In such circumstances SD said that she essentially begged the police to be allowed to make a similar [REDACTED]. However, she said that she was informed that there would be no point in doing so because KS said that he did not want to talk to her.²³ SD said she found this difficult to believe because she was the first person that KS rang to ask her to intercede on his behalf.

¹⁸ Exhibit 1, tab 58, page 93.

¹⁹ Exhibit 1, tab 7A at [4C].

²⁰ Exhibit 1, tab 7, Q/A 31.

²¹ Exhibit 1, tab 47, Q/A 303.

²² Exhibit 1, tab 47, Q/A 345.

²³ Exhibit 1, tab 47, Q/A 387-393.

96. The question that arises from this evidence is whether sound reasoning was applied to the decision to not accept the offer of KS's family and utilise a member of the family to communicate with him, either directly or indirectly.

97. The 2011 Guidelines applicable at the time provided that:

[REDACTED]

98. Negotiation Commander was invited to comment on the use of third party intervention generally and:

(a) explained that the intervention of what are termed civilian negotiators is a topic that has been discussed in crisis negotiation courses worldwide and that "*the general consensus of opinion is that it should not be done without careful consideration and in exceptional circumstances*";²⁵

(b) described it as a "*high-risk proposition*" and a tactic that is "*generally unsuccessful*";²⁶

(c) explained that when under stress, third parties often revert to their most comfortable behaviour which is not always conducive to good negotiation and a peaceful resolution;²⁷

(d) said that it should not be assumed that family members have a moderating effect on the level of anger or frustration being experienced by a subject person and explained that family members are often under the perception that because of their closeness to the subject they are in a better position than police to understand the problems experienced by the subject and are therefore more likely to resolve the situation;²⁸ but that

(e) if this were the case then the advice that police have received from psychiatrists and psychologists is that family members would have identified and resolve the problem prior to the subject being in a crisis situation.

99. In evidence Negotiation Commander said further that the question of third party intervention is often raised in many negotiation situations like the one involving KS, which are termed suicide interventions. He said that in general third party intervention is detrimental to an ongoing negotiation, so much so that specific training, including the use of exercises, is conducted, and the opinion of appropriate experts sought, to identify the ways in which a negotiation might be adversely affected.

²⁴ Exhibit 1, tab 68, page 16.

²⁵ Exhibit 1, tab 38 at [23].

²⁶ Exhibit 1, tab 38 at [24].

²⁷ Exhibit 1, tab 38 at [26].

²⁸ Exhibit 1, tab 38 at [25].

100. NEG 8 similarly explained that, from his training and experience, third party intervention can be detrimental to negotiations. He explained that any such intervention means that police do not know the [REDACTED] [REDACTED] [REDACTED] for both negotiators and the Forward Commander.²⁹
101. NEG 4 was asked whether there was any discussion regarding using a member of KS's family in a [REDACTED]. He said that this option was considered but he did not consider it to be appropriate because he was aware that KS was agitated after speaking to SD early on Thursday morning, and by that stage the negotiation had progressed enough so that the police had an understanding of the reason underlying the situation KS was in. Further, NEG 4 said that from his discussions with KS he formed the view that it was KS's perception that he would not be supported by his family and would be ostracised. From this, NEG 4 formed the belief that KS's family were a contributing factor (this is not said critically) to the situation that KS was in and that whilst he would consider an uncomplicated intervention from a friend, he considered a family intervention to be fraught with risk.
102. Inspector Connors said that he was aware that KS's family were at the scene at 11:00am on Thursday, 17 March 2016 and had asked for an opportunity to speak with KS. He agreed in evidence that there was no absolute prohibition on contact and that the question of contact would always be raised with senior officers from the Negotiation Unit. However, Inspector Connors said that he advised that request made by KS's family would not be accommodated. This is because he said that based on a conversation that NEG 4 had had with KS earlier that morning he formed the view that KS was angry with his family and blamed them for the circumstances he was in and the breakdown of his relationship. On this basis, Inspector Connors said that their involvement presented too many risks and he was not prepared to introduce them into the equation.
103. KS's family have queried the decision not to utilise a family member to speak with KS, either directly, or indirectly [REDACTED]. This is because in their view there was no family disharmony which would have led to any communication from them being adversely received by KS. In support of this KS's family points to:
- (a) the fact that SD had reassured KS prior to 16 March 2016 that his relationship with AB would be accepted (should they reconcile); and
 - (b) that KS had intentionally reached out to SD and sought her assistance in intervening on his behalf when he called her early on the morning of Thursday, 17 March 2016.
104. The evidence established that there was a degree of misapprehension between the police on the one hand, and KS's family, on the other, regarding the above two issues. The view held by the police was that KS's motivation in attending AB's house, and him remaining inside the house, was related to his belief of how his relationship with AB had been (and potentially would be) viewed. It appears that this view was based on information gathered by police from KS himself and also AB.³⁰

²⁹ Exhibit 1, tab 11, Q/A 111.

³⁰ Exhibit 9, page 11; Exhibit 1, tab 14, Annexure A.

105. In relation to KS's agitation following his call to SD on 17 March 2016, NEG 4 said that he did not understand KS's agitation to be due to the use of sirens but rather to the call itself. NEG 4 said that he received no direct information from the command post as to how the call to SD had come about or its content. The evidence established that information between the command post and the negotiation teams in the ARV was usually shared via [REDACTED] or by using a fourth negotiator. However, this created difficulties with real-time communication.
106. It should be noted that the negotiation teams did not have the benefit of the command post logs, and those in the command post did not have the benefit of the negotiation logs. Further, the negotiation logs were not updated on 18 March 2016 due to the unavailability of a negotiator to act as a Recorder. Since KS's death Current Negotiation Commander referred to the fact that in the Negotiation Unit's new Standard Operating Procedures (SOP) there are clearer guidelines regarding the documentation and logs that are to be maintained during the course of a negotiation. Further, the SOP provides for the negotiation Team Leader to assume responsibility for accurate record-keeping and the recording of details of conversations. In evidence Current Negotiation Commander also referred to use of the police VKG radio system to assist real-time communication as well as provide a permanent record of such communication, along with a computer-based tool which can provide real-time updates (similar to a social media feed) and thereby facilitate the flow of information.

107. **Conclusion:** The relevant section of the *2011 Guidelines* applicable to the issue of third party intervention is not rigidly stated. It contemplates consideration being given to, and the actual use of, third party intervention in negotiation situations. Importantly, in KS's case, the evidence established that appropriate consideration was given to third party intervention, and it was actually utilised in the form [REDACTED] from AB and Mr Farquarson. What is clear from the *2011 Guidelines* is that there is potential risk associated with third party intervention and the potential benefit of intervention must be weighed against such risk.

108. In the case of intervention by KS's family, it was considered by police that the potential risk outweighed the potential benefit. This consideration was based on a belief that some earlier disharmony within KS's family regarding his relationship with AB existed and might cause any intervention to be adversely received by KS. In forming this belief, the police relied on information obtained from AB, and from information that NEG 4 and NEG 6 elicited from speaking to KS himself. Whilst KS's family legitimately held a different view regarding such matters, there is no basis to conclude that the belief which NEG 4 and NEG 6 held were not genuine; Further, there is also no basis to conclude that their belief was not reasonable based on the information known to them.

109. It appears that the disconnect between the views of KS's family and the belief of the police was due in part to obstacles associated with the facilitation of information between the command post and the negotiators speaking with KS. Due to the close proximity of the negotiators to KS, their need to remain in constant communication with him, and the difficulty associated in physically moving negotiators between the ARV and the command post, the transfer of direct information proved to be problematic. Further, there were difficulties associated with the documentation of information gathered from KS himself and other sources and reconciling such information. However, the evidence during the inquest established that the new Negotiation Unit SOP has established improved systems for record keeping, and there have been similar

technological improvements to assist with the exchange and reconciliation of information between police in the field.

110. There is no doubt that the desire held by KS's family to intervene and communicate with him was founded on positive intentions, their love for him, immense concern for his welfare, and a belief that such intervention might have made some difference to the eventual outcome. It is of course not possible to reach any conclusion about this and it was difficult and upsetting to hear during the inquest that KS's family feel a sense of remorse in that they believe that they could have done more for him. However it is clear that they did all that they could and supported him in every way possible during his 39 hours of crisis.

Adequacy of information gathering

111. SD said that when police spoke to her on the night of 16 March 2016 they were primarily asking questions relating to whether KS had a previous criminal history, whether he had been to Queensland, whether he had been in trouble with the police before, and where he obtained the firearm from.³¹ However SD said in evidence that the focus of the police questioning the following night on 17 March 2016 took on a different focus, with greater emphasis in trying to learn about KS's personality and his train of thought.

112. Overall, SD describes the police as being not very responsive to, or interested in, input from KS's family. Further, SD said that to her the police seemed surprised that she and her mother had remained near the command post for much of the first night.³² SD also said that she and her parents expressed difficulty in being updated on the evolving situation and that during the night of 17 March 2016 they were asked to leave the command post area.³³

113. One of the pieces of information which KS's family felt that it was important for the police to be aware of was the fact that KS had only slept for about three hours during the early hours of 16 March 2016, that is, the morning before he drove to AB's house. This is because he had been working late at the farm with Mr Farquarson.³⁴ However, NEG 4 said in evidence that he could not recall ever being told this. It is also apparent that none of the police officers in the command post were aware of this either. This issue regarding KS's fatigue as the negotiation unfolded is discussed further below.

114. **Conclusion:** It is clear that during the initial stages of the siege the police were focused on gathering information to understand the reason the reason for KS's presence in AB's house. Given that the information available to police established that KS was armed with a firearm and had discharged it twice in AB's presence, there were legitimate reasons to be concerned about all three aspects of the overall objective of achieving a peaceful resolution of the matter; that is, ensuring the safety of KS, the police officers involved, and the community. To this end, it is not unexpected that the police sought to gather information about any possible involvement KS may have had with the police and the origin of the firearm. Once this information was obtained and the reasons for KS's presence at the house more clearly understood, the information-gathering necessarily focused on KS's personal relationships and personality.

³¹ Exhibit 1, tab 47, Q/A 303-319.

³² Exhibit 1, tab 47, Q/A 362-363.

³³ Exhibit 1, tab 47, Q/A 379-381.

³⁴ Exhibit 1, tab 47, Q/A 265.

115. It has already been noted above that there were some impediments to the gathering and flow of information between the command post and the negotiators. It appears that the lack of awareness of KS's lack of sleep during the night of 15 March 2016 was a result of these impediments. However, again it should again be noted that procedural improvements have been made in this regard.

116. The perception by KS's family that they were being dismissed and that the police were not receptive to any input which they might have offered is regrettable. Clearly the police were confronted with a dynamic, stressful, and difficult situation and it is not possible on the available evidence to reach any firm conclusion regarding the extent to which the perception held by KS's family translated into reality. However, the mere fact that KS's family held such a perception (and the evidence does not positively confirm that it was unjustified) suggests that possibly greater attention ought to have been given to ensuring that the gathering of information from, and the imparting of updates and information to, KS's family was a more inclusive one.

117. As will be discussed further below, the evidence during the inquest established that aspects of the events of 16 to 18 March 2016 have been used in the training of police negotiators. Most of this training concerns application of the principles relevant to the strategy of containment and negotiation. However, it seems to me that highlighting and learning from the experience of KS's family in this case would be beneficial to the overall management of similar negotiation situations in the future. I therefore consider it desirable for the following recommendation to be made.

118. **Recommendation:** I recommend to the NSW Commissioner of Police that consideration be given to using the experience of KS's family during the events of 16 to 18 March 2016 (with appropriate anonymization, and conditional upon consent being provided by KS's family) in an appropriate case study as part future training packages provided by the NSW Police Negotiation Unit to police negotiators to address the issues of adequate and appropriate information gathering from, and impartation of information to, family members of subject persons involved in a high-risk incident.

Continued communication

119. During the initial stages of the negotiation KS was not interested in talking to the negotiators at all. The conversations with police were brief, KS frequently terminated the calls, and it reached a point where he stopped answering the calls entirely.³⁵ This resulted in police going forward to the house and using a loudhailer in an attempt to engage KS face-to-face.³⁶ In addition to the loudhailer, the evidence established that bursts of a siren from a police vehicle were frequently used to attract KS's attention when there was no response to messages sent, and calls made, by the police.

120. The LRAD was a more extreme method of establishing contact. It appears that it was first deployed at 7:49pm³⁷ when it was moved from the command post to a position under the house next door to AB's house before the arrival of the ARV. The LRAD was used between 7.49pm and 11:35pm as a loudhailer to get in contact with KS.³⁸ During the time that the LRAD was used NEG

³⁵ Exhibit 1, tab 9, Q/A 84.

³⁶ Exhibit 1, tab 9, Q/A 85-86.

³⁷ Exhibit 1, tab 58, page 95.

³⁸ Exhibit 1, tab 72.

4 did at times make attempts to defuse its use by sending text messages to KS as a prompter before it was used, explaining that it was his preference to speak to KS.

121. NEG 4 said that during the night of 16 March 2016 the conversation was one-sided with police doing most of the talking and KS giving very little back. Therefore NEG 4 explained that using the sirens placed "a little bit of pressure" on KS [REDACTED] talk to the police.³⁹ NEG 4 explained that even if any eventual conversation was only about how the sirens were annoying KS and why the police were using it, his view was that at the very least its use elicited some sort of response from KS.⁴⁰
122. The use of the sirens, loudhailer and LRAD was part of the overarching strategy of containment and negotiation. As part of this strategy there was a need for constant communication with KS. Inspector Connors explained that there were three reasons for this:
 - (a) to provide for the ability of negotiators to negotiate with KS;
 - (b) to ensure that KS was safe and had not harmed himself; and
 - (c) to ensure the safety of the community by reducing the likelihood of unpredictable action.⁴¹
123. The negotiators in this case acknowledged that constant communication can have the effect of agitating a person. But the view of the negotiators is that [REDACTED]. Therefore there is a need to balance the risks associated with its use against the need to give a subject considerable time to reflect on their next actions. It should be noted that in other previous inquests, including the *Inquest into the deaths arising from the Lindt Café siege* (May 2017), adverse comment has been made against the police for not attempting to engage constantly with the subject of a siege.
124. The use of sirens agitated KS and he did not like them.⁴² Even though the use of the sirens annoyed KS and he asked to be left alone, the evidence establishes that each time it was used it elicited a response from KS. From there, it allowed police to talk to KS on the phone and confirm that he was well, even though KS frequently ended the call shortly afterwards.⁴³
125. Inspector Connors was asked about the consideration to be given to the fact that constant communication can have the effect of agitating a subject and impede rapport building. Inspector Connors acknowledged the need to strike a balance between adopting strategies to ensure constant communication that would inherently agitate a subject. When asked how those considerations are balanced he said that the critical issue for a suicide negotiation is to pay attention to the language used by a person; that is, although a person may be agitated they may not have made any reference to the fact that if the strategy continued (that is, if the use of sirens and other acoustic devices continued to be used) that this would result in them harming themselves. Instead, Inspector Connors noted that in response to the use of the sirens, KS only made references to the clock resetting or starting again, and made no reference to being prompted to self-harm.⁴⁴

³⁹ Exhibit 1, tab 9, Q/A 128.

⁴⁰ Exhibit 1, tab 9, Q/A 128.

⁴¹ Exhibit 1, tab 7A at [4E].

⁴² Exhibit 1, tab 9, Q/A 118.

⁴³ Exhibit 1, tab 9, Q/A 90.

⁴⁴ Exhibit 1, page 4.

126. NEG 4 was also asked in evidence about whether any consideration was given to the fact that KS was clearly agitated by the use of the sirens. Like Inspector Connors, he explained that the decision regarding when to use the siren is a balancing exercise. He said that the negotiators needed to be in contact with KS in order to progress the situation and work towards a resolution, and that the sirens were not used flippantly; they were used for good reason, depending on the situation at the time. In this regard, Negotiation Commander explained that negotiators are provided with specific training by the distributor of the LRAD as to its use, how to operate it, and its inherent dangers of using it in confined spaces or too close to a subject.
127. NEG 4 said that he told KS that he would only allow [REDACTED] breaks between calls and explained that this was to ensure that KS was safe and that he had not done anything to harm himself. In response KS said that he was aware of this and had been told the same thing by other negotiators.⁴⁵

128. **Conclusion:** There is no evidence to suggest that the sirens, loudhailer and LRAD were used for any other purpose than to encourage KS to remain in communication with the negotiators. These tools were utilised in furtherance of the strategy of containment and negotiation; prompting KS to begin any type of communication created opportunities for that communication to continue with the aim of ultimately resolving the situation. The constant communication also provided confirmation that KS was safe and mitigated the possibility of unexpected and unpredictable actions which may have been detrimental to all concerned. Whilst the use of these tools irritated KS and he did not like them, the evidence establishes that they were utilised only when required. Further, appropriate consideration was given to their use and the possibility of an adverse response from KS was gauged and monitored, thereby mitigating the risk of escalation of the situation.

Impediments to KS's ability to sleep

129. The evidence established that the police officers involved in this matter had not experienced a protracted negotiation of this kind previously. Negotiation Commander was asked whether he considered the duration of 39 hours to be more protracted than normal. He said that because each situation is different there is no timeframe which could be considered as "normal". However, he did indicate that there would likely be a difference of opinion between negotiators in metropolitan areas versus those working in rural areas; the former would be less likely to regard a three day negotiation situation as uncommon. Ultimately Negotiation Commander indicated that whilst the length of the negotiation was unusual for the involved officers in KS's case, this did not reflect the position of the NSW Police Force more generally. Nevertheless, the nature of this matter was clearly different to the ordinary experience of the police involved. This in turn raised questions regarding KS's fatigue, whether it impacted upon his decision-making ability, and whether his sleep was intentionally impeded.
130. It was apparent to NEG 4 that by the night of 17 March 2016 KS was very tired and showing signs of increasing fatigue.⁴⁶ KS even told NEG 4 that he was sleeping in between their conversations.⁴⁷ NEG 4 said that KS was always given time if he needed it or requested it. On the one hand he said that fatigue was a by-product of the strategy of containment and negotiation;

⁴⁵ Exhibit 1, tab 9, Q/A 241.

⁴⁶ Exhibit 1, tab 9, Q/A 244.

⁴⁷ Exhibit 1, tab 9, Q/A 268.

on the other hand, he also said that it was part of [REDACTED]. When asked why fatigue formed part of such a tactic NEG 4 explained that fatigue [REDACTED]. However, NEG 4 acknowledged that deprivation of sleep did not form part of any deliberate strategy and that it was simply his own view that it was an element of mental containment.

131. Further, NEG 4 said that although KS was tired he believed that KS was still alert and making rational decisions. NEG 4 was asked in evidence whether he had any concerns about the lack of sleep carrying with it an increasing risk of KS's thought processes being impeded. NEG 4 responded by explaining that the collective decision within the negotiation team was that the best strategy to progress forward was to engage KS in conversation. NEG 4 said that on the morning of 17 March 2016 KS was positive and rational and that there was nothing about his conversations which gave NEG 4 any concern about KS's ability to think, comprehend the gravity of the situation, or comprehend what was being discussed.
132. The issue of KS's increasing fatigue was most relevant to the decision to change tactics on the morning of 18 March 2016. Inspector Connors said that when considering the possibility of a change in tactics he took into account KS's fatigue and sought the advice of NEG 4, NEG 8 and FS1. Inspector Connors said that based on their collective advice there was agreement that there was no increased risk to KS and that therefore he considered it worthwhile to change tactics.
133. Negotiation Commander was asked whether sleep deprivation formed part of the training for negotiators. He said that he did not use words "sleep deprivation" and instead referred to the issue in terms of fatigue. He explained that fatigue is a by-product of constant communication in the sense that [REDACTED]. Negotiation Commander expressed the opinion that fatigue was not a contributing factor in KS's case. He referred to previous instances where a subject had given an indication that because of their fatigue there was a risk of self-harm or harm to others. In such situations negotiators would have to [REDACTED].

134. **Conclusion:** The evidence establishes that fatigue is a consequence of constant communication and part of the [REDACTED]. In KS's case, it was considered that as a by-product it contributed to an aspect of KS's containment and [REDACTED] and leave the house. Whilst it is clear that KS was growing increasingly tired as the negotiation progressed, there is no evidence that KS made any request to the police that he be allowed to sleep. There is also no clear basis to conclude that any fatigue which KS was experiencing played a causative role in his decision to self-harm. It is evident that there were a number of factors at play and the evidence of NEG 4 and Inspector Connors is that KS was alert at the relevant time, and that the possibility of any increased risk to KS was appropriately considered and monitored. It is evident that managing KS's fatigue was a balancing exercise and that there would be circumstances where re-evaluation was required if the degree of fatigue inhibited KS's ability to function. However, there is no evidence that such re-evaluation was required.

135. What the evidence does reveal is that there is no guideline or policy document which addresses fatigue that the subject of a negotiation may be experiencing. It is accepted that, like the overall

strategy of containment and negotiation, a prescriptive guideline or policy regarding the potential impact of fatigue as a by-product of constant communication would not be a viable option. However, evidence during the inquest established that expert opinion used in negotiator training can provide guidance in relation to issues such as suicide ideation and drug and alcohol issues, which commonly form part of negotiation situations.

136. I have considered whether it is necessary or desirable for a recommendation to be made that consideration be given to similar expert opinion being gathered as to how a person's functioning may be affected by fatigue. However in evidence Current Negotiation Commander referred to the fact that the incident involving KS had provided the basis for a scenario which formed part of the SPSU regional training package. In using the scenario to conduct a training exercise, consideration was given to the use of third parties, maintenance of negotiation logs, and also the effects of fatigue. Accordingly, given that the issue of fatigue as a by-product of constant communication has been appropriately addressed in training packages, I conclude that a recommendation is no longer necessary or desirable.

Tactical decision-making

137. SPSU operatives entering the house where KS was contained would have constituted deliberate action on the part of the police. Such deliberate action could only occur [REDACTED]. The option to employ deliberate action always remains an available option as part of the overall strategy of containment and negotiation. The evidence established that it was an option which was continually considered. Indeed, NEG 5 discussed the possibility of exercising this option on the morning of 17 March 2016. Negotiation Commander's advice was sought on this issue and he advised against its use.

138. FS1 said that the police were prepared to follow the strategy of containment and negotiation for as long as it took to achieve the goal of having KS leave the house safely.⁴⁸ Further, Inspector Connors gave evidence that a directive was issued to the SPSU operatives that [REDACTED]. This directive was issued in order to preserve KS's life.

139. **Conclusion:** The possibility of deliberate action remained an available option to police throughout the incident. The evidence indicates that it was considered as an option [REDACTED] but deemed to be unwarranted. There is no evidence to suggest that the change in tactics on the morning of 18 March 2016 (discussed further below) was prompted by a need for some kind of deliberate action. Indeed, the evidence established that to the contrary the strategy of containment and negotiation was to continue for as long as was required. Further, directives had been established to minimise the possibility of deliberate action resulting in any harm to KS.

Changing tactics and/or placing pressure on KS

140. A briefing was conducted at 6:15am on the morning of Friday, 18 March 2016. The command post log indicates that the Forward Commander, Tactical Commander and negotiation team were present. It records: "*Pros/cons discussed @ escalating...greater emphasis on resolving*

⁴⁸ Exhibit 1, tab 12, Q/A 256.

matter peacefully".⁴⁹ Further, it also records: "6:17am Consult Negotiation Commander (sic) in regard to placing emphasis on resolution. Negotiation Commander agreed that tactic to be adopted".

141. Inspector Connors explained that in his view there had been little progress in the negotiation and therefore he sought advice about using the start of a new day as providing the impetus for KS to leave the house. Inspector Connors explained that the change was not so much a change in pressure but a change in emphasis, and said that both NEG 4 and NEG 8 agreed with this change. Inspector Connors described it as "just a slight variation" of the strategy that had been adopted for the previous 36 hours of the negotiation.⁵⁰ He explained that the intention going forward was for the police to be [REDACTED]

[REDACTED] Inspector Connors said it was raised during the briefing whether a change of tactics was likely to increase the risk of self-harm by KS, or harm to the involved police. It was agreed amongst those present that no additional risk was created and Inspector Connors said that NEG 8 had sought advice from Negotiation Commander who agreed that it was a suitable tactic to adopt.⁵¹

142. Inspector Connors agreed that Consultant Psychiatrist was not consulted about the change of tactic. When asked whether any consideration was given to consulting Consultant Psychiatrist, Inspector Connors indicated that he was content with the advice he received from Negotiation Commander, NEG 4, NEG 8 and FS1; he said that their collective wealth of experience was sufficient for him to make an informed judgment regarding what he termed as a slight adjustment in the strategy. Finally, Inspector Connors said that there was no feeling on Friday morning that the matter had to be brought to some resolution. He said that the surrounding cordon was in place, the nearby school had been closed and that, indeed, additional police resources were making their way to the scene.

143. NEG 4 said in evidence that following the meeting there was not much difference to the strategy that had been used up to that point. He explained that instead of asking KS what the police could do to have him leave the house, the intention was to be more [REDACTED]

[REDACTED] NEG 4 said that it was thought that the change in tactic probably would not accomplish anything. However, at the same time, it was considered worth trying as it was still felt that despite the rapport that had been built with KS, the negotiation was not progressing in the sense that KS was not leaving the house.⁵²

144. In contrast to some of the above, Negotiation Commander said in evidence that he had no recollection of his advice being sought in relation to the proposed change in emphasis on Friday morning. He said that if it had been sought he would have advised that further advice be sought from Consultant Psychiatrist. However, ultimately Negotiation Commander said that with the benefit of hindsight he would not have done anything differently, nor would he have suggested that anything be done differently.

⁴⁹ Exhibit 1, tab 58, pages 113-114.

⁵⁰ Exhibit 1, tab 7, Q/A 115.

⁵¹ Exhibit 1, tab 7A at [5].

⁵² Exhibit 1, tab 9, Q/A 277.

145. **Conclusion:** The difference between Negotiation Commander's recollection, on the one hand, and the command post log along with the recollection of Inspector Conners, on the other, cannot be resolved on the available evidence. However, notwithstanding Negotiation Commander's opinion, it is clear that the ultimate decision regarding any change in tactics rested with the Forward Commander and not a consulting psychiatrist.

146. That decision appears to have been made following appropriate consideration. There is no evidence to suggest that it was made based on some motivation to resolve the situation according to a defined timeframe. To the contrary it appears to have arisen following the collection of appropriate advice in circumstances where the change to the "softly, softly" approach had yielded little progress (despite the rapport that had been built with him) in the previous 15 hours in terms of persuading KS to leave the house. The evidence indicates that the change in tactics was subtle and involved a shift in emphasis rather than overt pressure being applied to KS and his circumstances. Although neither the command post log nor the negotiator's log contain precise details regarding this shift in emphasis, this deficit in the documentation appears to have been now addressed by the introduction of the new Negotiation Unit SOP.

Advice from psychiatrists

147. NEG 5 spoke to Consultant Psychiatrist at around 3:05pm on 17 March 2016. He said that the advice from Consultant Psychiatrist was that KS had a stubborn personality and that it would be no use pushing him.⁵³ This correlated with the feedback that the negotiators had provided up until that point in time which indicated that KS was very closed and did not like talking about many topics, particularly about his family. Therefore the decision was made to take a "softly, softly" approach and to attempt to allow the progress of the matter to appear to be KS's idea.

148. Consultant Psychiatrist had no direct recollection of the events of March 2016. In order to prepare a statement as part of the coronial investigation, Consultant Psychiatrist spoke to both Negotiation Commander and NEG 5, and relied on information provided by them. At the time of the first call from NEG 5, Consultant Psychiatrist was involved in a patient consultation. He advised the police to back off from the position of suggesting that KS should do something, and to instead broaden the content of the dialogue with him.⁵⁴ This was suggested to allow for more open ended dialogue rather than allowing KS to refuse each suggestion made by the negotiators.⁵⁵ Secondly, Consultant Psychiatrist suggested that a [REDACTED] in an attempt to encourage KS to resolve the situation peacefully.⁵⁶ Later that same afternoon Consultant Psychiatrist received a second call from the police during which there was some further discussion regarding the content of the recording with AB.

149. Negotiation Commander explained in evidence that over time the Negotiation Unit saw value in using mental health professionals to provide advice regarding negotiation scenarios. Used in this way, advice is obtained from a psychiatrist in relation to aspects of human behaviour. This advice is provided to negotiators, and ultimately the Forward Commander, for their

⁵³ Exhibit 1, tab 8, Q/A 64.

⁵⁴ Exhibit 1, tab 53 at [14].

⁵⁵ Exhibit 1, tab 53 at [19].

⁵⁶ Exhibit 1, tab 53 at [15].

consideration. However, the negotiation remains a police operation and so decisions made regarding it rest ultimately with the Forward Commander and not any psychiatrist.

150. In evidence Current Negotiation Commander referred to recommendations made following the *Inquest into the deaths arising from the Lindt Café siege* provided for the development of the new SOP to provide guidance regarding the use of psychiatrists in negotiation situations. As part of these changes advice received from psychiatrists is to be clearly documented. Current Negotiation Commander also indicated that the incident involving KS had been reviewed (along with other similar incidents) and it provided the foundation for scenario-based training provided to negotiators during reaccreditation training to ensure that such training is both realistic and relevant.

151. **Conclusion:** It is difficult to reach any conclusion regarding the nature of Consultant Psychiatrist's advice on the afternoon of 17 March 2016 due to the paucity of evidence regarding the specifics of what advice was actually given. Similarly it is not possible to speculate as to whether the change in tactics on 18 March 2016 might have been pursued if Consultant Psychiatrist's further opinion had been sought at that time. What is clear is that in each instance the advice provided by Consultant Psychiatrist could only be given in his capacity as an expert in the field of human behaviour. He could not give advice regarding the strategy to be deployed by the police; that was always a matter for the Forward Commander on advice from Consultant Psychiatrist and others with experience and training in negotiation and tactical operations.

152. What is also clear is that changes that have been made since March 2016 now provide for increased and more informative documentation of advice received from psychiatrists in negotiation situations, and the manner in which such advice is applied to an overall strategy. Such improvements should allow for a clearer and more transparent review of the conduct of such negotiations as a whole.

Findings

153. Before turning to the findings that I am required to make, I would like to express my gratitude to Ms Elizabeth Raper, Counsel Assisting, and her instructing solicitor, Ms Jessica Murty. I am extremely appreciative not only of their tireless efforts and valuable assistance (both before and during the inquest), but also for the compassion, sensitivity and empathy that they have shown throughout the coronial investigation and inquest process. I also thank Detective Senior Constable Kurt Edmonds for his efforts during the investigation and for compiling the comprehensive initial brief of evidence.

154. The findings that I make under section 81(1) of the Act are as follows:

Identity

The person who died was KS.

Date of death

KS died on 18 March 2016.

Place of death

KS died at East Lismore NSW 2480.

Cause of death

The cause of KS's death was gunshot wound to the head.

Manner of death

KS died as a consequence of actions taken by him with the intention of ending life, during the course of a police operation.

Epilogue

155. In KS's last message to his nephews he expressed how proud he was of them and that he himself was proud of any contribution that he had made in helping them develop into the fine, young men they had become. The overwhelmingly loving and positive contribution that KS made is clearly self-evident. Whilst KS's death is a devastating loss to his family and loved ones, it is clearly apparent that his life has left an indelible and positive legacy on each member of his family.
156. On behalf of the Coroner's Court, and the counsel assisting team, I offer my deepest and most respectful condolences to KS's parents, George and Anne; his siblings, SD and KES; KS's nephews, JD and LD; and KS's extended family and friends for their tragic and overwhelming loss.
157. I close this inquest.



Magistrate Derek Lee
Deputy State Coroner
22 June 2018
NSW State Coroner's Court, Glebe

