



New South Wales

CORONER'S COURT OF NEW SOUTH WALES

Inquest: Inquest into the death of Malcolm Brown

Hearing dates: 11, 12 & 13 December 2023

Date of Findings: 9 May 2025

Place of Findings: Coroner's Court of New South Wales, Lidcombe

Findings of: Magistrate Derek Lee, Deputy State Coroner

Catchwords: CORONIAL LAW – cause and manner of death, self-inflicted death, New South Wales Police Force operation, Tactical Options Model, Negotiation Unit, Tactical Operations Unit, use of force, contain and negotiate, breach and hold, third party intervention

File number: 2022/00190663

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Findings made pursuant to section 81(1) Coroners Act 2009: Malcolm Brown died on 29 June 2022 at Leichhardt NSW 2040.

The cause of Malcolm's death was sharp force injuries of the neck.

Malcolm died as a result of deliberate action taken by him with the intention of ending his life. These actions were taken at the culmination of a NSWPF operation that, for much of the time, used negotiation with the aim of preventing harm to Malcolm and other persons. Although the culmination of the operation resulted in a transition from negotiation to use of force, the available evidence does not allow for any conclusion to be reached that this transition influenced, or accelerated, Malcolm's actions and intention.

Non-publication & non-disclosure orders: See Appendix A

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1. Introduction

- 1.1 In the early hours of the morning on 29 June 2022, NSW Police Force (**NSWPF**) officers attended the home of Malcolm Brown, a 33-year old Aboriginal man, who lived in a unit in Leichhardt. Malcolm's neighbours had called Triple Zero after concerning behaviour was heard to be coming from the unit. NSWPF officers arrived on scene at around 4:00am.
- 1.2 Over the next several hours, Malcolm was observed to be behaving erratically, to be armed with a knife, to have an injury to his arm which was bleeding, and heard to make repeated threats of self-harm. NSWPF officers, including specialist negotiators, attempted to communicate with Malcolm to check on his welfare, and the welfare of any person that may have been in the unit with him. After a period of time when Malcolm ceased communicating with the NSWPF, a decision was made to use a chainsaw to force open the front door to Malcolm's unit to see what was occurring inside and whether communication with Malcolm could be re-established.
- 1.3 At around 6:25am, the door to the unit was cut and Malcolm was seen on the ground with blood on his neck and chest and holding knife in his right hand. A NSWPF officer twice deployed a taser at Malcolm believing that he may use the knife to harm himself. However, Malcolm was in fact unresponsive and showing no signs of life. Malcolm was pronounced life extinct at 6:37am.

2. Why was an inquest held?

- 2.1 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 that are required to be answered pursuant to the Act, namely: the identity of the person who died, when and where they died, and what was the cause and the manner of that person's death.
- 2.2 Certain deaths are reportable to a Coroner. Some examples of reportable deaths are where the cause of a person's death is not due to natural causes, or where the cause or manner of person's death may not immediately be known. In Malcolm's case, his death was reported because he died as a result of a NSWPF operation. Section 23(1)(c) of the Act makes it mandatory for an inquest to be held in such circumstances. This is primarily because officers of the NSWPF are bestowed with unique powers not available to ordinary members of the community, in order to allow them to discharge their duties. The exercise of such powers, particularly in circumstances which result in the death of a member of the community, needs to be scrutinised in a transparent and independent manner. Doing so serves several important purposes, including ensuring that such powers are exercised appropriately and responsibly, and to reassure the community that where force is used, it is only used as a measure of last resort in appropriate circumstances.
- 2.3 It should also be recognised that the operation of the Act, and the coronial process in general, represents an intrusion by the State into what is usually one of the most traumatic events in the lives of family members who have lost a loved one. At such times, it is reasonably expected that families will want to grieve and attempt to cope with their enormous loss in private. That grieving and loss does not diminish significantly over time. Therefore, it should be acknowledged that the coronial

process and an inquest by their very nature unfortunately compels a family to re-live distressing memories several years after the trauma experienced because of a death, and to do so in a public forum. This is an entirely uncommon, and usually foreign, experience for families who have lost a loved one.

- 2.4 It should also be recognised that for deaths which result in an inquest being held, the coronial process is often a lengthy one. The impact that such a process has on family members who have many unanswered questions regarding the circumstances in which a loved one has died cannot be overstated.

3. Malcolm's life

- 3.1 Inquests and the coronial process are as much about life as they are about death. A coronial system exists because we, as a community, recognise the fragility of human life and value enormously the preciousness of it. Understanding the impact that the death of a person has had on those closest to that person only comes from knowing something of that person's life. Therefore, it is important to recognise and acknowledge the life of that person in a brief, but hopefully meaningful, way.
- 3.2 Malcolm was born in April 1989 to Michelle Kepkey and Mark Small. He grew up in the Central Coast region. From the age of five, Malcolm was medicated for attention deficit hyperactivity disorder. He later went to live with his father, Mark. Mark was a stepfather to Zachary Robinson. Whilst living with Mr Small, Malcolm grew close to Zachary and they became like brothers.
- 3.3 When Malcolm was around 8 years old, he went to live with his aunt, Joanne Whitehead. He developed a close bond with Ms Whitehead and her children to the point that he asked Ms Whitehead if her could call her, "Mum". Malcolm also grew close to Ms Whitehead's mother, Joan, and loved attending family gatherings, BBQs, sporting events and going away on holidays.
- 3.4 Malcolm attended Tumby Umbi High School until Year 8. When he was 14, Malcolm returned to live with his father.
- 3.5 In 2009, Malcolm commenced a relationship with Brooke Murphy. They later had a son, Connor, together who was born in 2011. In 2013, the relationship ended. In the same year, Malcolm commenced a relationship with Amber Tagg. Although that relationship ended in 2014, Amber continued to remain in contact with Malcolm. Malcolm was a very big part of Ms Tagg's life and helped her get through many personal challenges she faced. Ms Tagg describes Malcolm as having the biggest and kindest heart, someone who cared deeply for those closest to him, and who would do anything to protect his loved ones.
- 3.6 Malcolm's cousin, Jessica Hearn, who was like a sister to Malcolm, also describes him as a permanent fixture in her life and a constant, reassuring presence both in good times, and in not so good times.
- 3.7 Those closest to Malcolm knew him as someone who was selfless, always putting the needs of others before his own, and always willing to help others regardless of the burden that this may have placed on him. Malcolm showed kindness and support to others, even in the face of adversity. Mr Robinson describes Malcolm as someone who always left a lasting impact on everyone he encountered. That lasting impact is no doubt deeply felt by Malcolm's family and loved ones despite their physical separation from him.

4. Malcolm's medical history

- 4.1 Malcolm had a history of illicit drug use. He commenced using cannabis daily from Year 6. This led to bad night terrors and, according to his former partners, episodes of drug-induced psychosis.
- 4.2 On 4 January 2018, Malcolm was taken to hospital due to being under the influence of an unknown substance, or substances. On 5 December 2018, Malcolm was found to have personality disorder traits on a background of polysubstance abuse.
- 4.3 On 18 October 2020, Malcolm was taken by NSWPF officers to hospital as an involuntary patient following an incident at the premises where Malcolm was staying. He had exhibited paranoid and delusional behaviour and armed himself with a meat cleaver. Following assessment at hospital, it was considered that Malcolm had presented with paranoid ideations but with no overt psychotic symptoms. It was also noted that Malcolm's behaviour was highly changeable. He was later discharged from hospital.
- 4.4 Between September and December 2021, Malcolm attended appointments with a clinical psychologist. However, after failing to attend further appointments, Malcolm was referred back to his general practitioner, with the psychologist noting that Malcolm was "*not psychologically minded and was not engaged in therapy*".
- 4.5 During Malcolm's relationship with Ms Murphy he threatened self-harm around six times. On one occasion, Malcolm stood in a bathtub full of water holding a toaster threatening to kill himself. On other occasions, Malcolm threatened to stab himself whilst holding a knife. Ms Murphy reported that Malcolm was taken to hospital on one occasion after overdosing on prescription medication.

5. Malcolm's social history

- 5.1 Between 2005 and 2022, Malcolm was charged with 43 offences. He had been convicted of a number of offences relating to possession of prohibited drugs, dishonesty offences, property offences, personal assault offences and contravening apprehended domestic violence orders.
- 5.2 In 2014, Malcolm commenced another relationship with Zoe Hall. They had a daughter, Neveah, together in 2015. The relationship later ended that year.
- 5.3 In February 2022, Malcolm began a relationship with Shontelle Liprini. In June of that year, Ms Liprini claimed to be four months pregnant with Malcolm's child, although it is unclear whether the child was actually his.
- 5.4 On 3 June 2022, Malcolm was charged with offences of malicious damage and stalk/intimidate with intent to cause physical harm. He was granted bail in relation to these offences.
- 5.5 At around this time, Malcolm met Casey Caldwell and they later formed a relationship together.
- 5.6 At the time of his death, Malcolm had been out of custody since August 2021, which was the longest period that he had been living in the community for some time. Mr Robinson had encouraged

Malcolm to live in Sydney to get a fresh start and had suggested that he needed to be away from certain people in order to “do better”. Malcolm initially stayed with Mr Robinson for about three weeks before finding his own accommodation in Sydney. He bought himself a bed and began planning to acquire more furniture, as well as obtaining his driver’s licence. In October 2021, Malcolm commenced full-time work at a charcoal chicken shop in Surry Hills. In around early June 2022, Malcolm was made a manager or team leader and was proud of his promotion.

- 5.7 Despite these changes, Mr Robinson, and one of Malcolm’s friends, believed that Malcolm had started using methamphetamine or buprenorphine sometime in May 2022. Mr Robinson was also aware that Malcolm was using cannabis regularly in order to relax.
- 5.8 Typically, Malcolm would be in contact with Mr Robinson every two or three days. However, this contact decreased in the few weeks leading up to 29 June 2022. This led Mr Robinson to believe that Malcolm had increased his drug use, as he was known to reduce his contact when using drugs.

6. The events of 28 June 2022¹

- 6.1 On the morning of 28 June 2022, Malcolm dropped Ms Caldwell at a train station before going to work in Surry Hills at 11:00am. Malcolm's employer observed that Malcolm was behaving somewhat unusually that day and formed the view that Malcolm may have taken drugs due to his over exaggerated manner.
- 6.2 Malcolm finished work at around 10:30pm. He called Ms Tagg and told her that he was going to see a friend. Malcolm also told Ms Tagg that he was upset because Ms Liprini had told him that he would not be allowed to see her child following the child's birth.
- 6.3 Malcolm arrived home to his unit at 12/12 Carlisle Street, Leichhardt at around midnight. His neighbour later observed Malcolm to be "*stomping around the hallway for about half an hour*".

7. The events of 29 June 2022

- 7.1 At 3:25am another neighbour called Triple Zero to report that Malcolm was stomping and moving furniture around in his unit. The neighbour reported that this was the third night in a row that Malcolm was behaving noisily in this way.
- 7.2 At around 3:26am, Malcolm called Danielle Martin, Mr Robinson's partner, and asked her to call the police as there were people outside trying to get in. Ms Martin relayed this conversation to Mr Robinson and reported that Malcolm sounded normal. Mr Robinson subsequently attempted to contact Malcolm via Facebook Messenger.
- 7.3 At around 3:28am, Malcolm called Mr Robinson and asked him to call the police, but not the police at Leichhardt for reasons unknown. Mr Robinson agreed to do so and Malcolm hung up but called back about two minutes later. Mr Robinson heard the sound of furniture moving around and thumping noises in the background.
- 7.4 Mr Robinson was aware that on previous occasions when Malcolm had taken methamphetamine or buprenorphine, he would "*radically change his voice*" and stomp around making noises. Mr Robinson was also aware that during such occasions, not all of which were drug-related, Malcolm had barricaded himself inside the location he was at. While Mr Robinson previously had some success in de-escalating Malcolm during these incidents, he had been less successful in doing so during more recent incidents. Mr Robinson overheard Malcolm calling out to people and later sent Ms Martin a text message indicating that Malcolm could not even speak properly and it sounded like he was on methamphetamine.
- 7.5 At around 3:37am, one of Malcolm's neighbours contacted Triple Zero again to advise that Malcolm was screaming and calling out, "He's dead, he's dead" ("**He's Dead**" Reference).

¹ This factual background has been drawn from the helpful closing submissions of Counsel Assisting.

NSWPF officers arrive on scene

- 7.6 At around 3:45am, New South Wales Ambulance (**NSWA**) paramedics arrived on scene, shortly followed by three NSWPF car crews.
- 7.7 Leading Senior Constable² George Raffoul and Constable Louis Parker were the first NSWPF officers to attend. They were told by one of the NSWA paramedics that they had knocked on Malcolm's door but were unsuccessful in raising him. Leading Senior Constable Raffoul was aware of a NSWPF intelligence report from 25 May 2018 warning that Malcolm may have access to firearms. This report referred to a photo that Malcolm posted on Facebook of himself holding a gold bullet and a homemade gun, in circumstances where it was unknown whether he was still in possession of the firearm (**Firearm Warning**).
- 7.8 Leading Senior Constable Raffoul identified himself to Malcolm and asked Malcolm to open the door so that he could speak with him. Leading Senior Constable Raffoul heard smashing and furniture being moved around and thought that Malcolm was trying to barricade the door. He heard a male voice scream out words the effect of, "*Fuck off, I don't want to speak with police*". One of the neighbours gave Leading Senior Constable Raffoul what was purported to be a master key for all of the units in the residential block. Leading Senior Constable Raffoul subsequently called Inspector Darren Laing, the Duty Officer for Leichhardt Police Area Command, to advise that negotiators and the Tactical Operations Unit (**TOU**) would likely be required to attend the scene. From here on, the NSWPF employed a contain and negotiate tactic. In other words, establishing a perimeter and containing the scene, whilst negotiating with Malcolm to allow police to enter his unit.
- 7.9 Leading Senior Constable Raffoul attempted again to engage Malcolm, asking him if he could open the door so that police could check on his welfare. Malcolm asked for some time to think and told police to get the NSWA paramedics to leave. Leading Senior Constable Raffoul, and Constable Antonio Guarrera, who had arrived by this time, went to ask the NSWA paramedics to move their vehicles.
- 7.10 Whilst this was occurring, Malcolm smashed the kitchen window and threw one of his two mobile phones outside. He had been speaking to Mr Robinson on the phone moments earlier. Leading Senior Constable Raffoul saw Malcolm come to the window holding a large chef's knife in his hand. Leading Senior Constable Raffoul encouraged Malcolm to put the knife down but Malcolm again told him to, "*Fuck off*", and that he did not know why police were there.
- 7.11 At around this time, Malcolm was also heard to be barricading the front door to his unit with furniture. Leading Senior Constable Raffoul called Inspector Laing again to advise that Malcolm was seen to be holding a knife. Whilst on the phone, Leading Senior Constable Raffoul saw Malcolm reach out of the window and attempt to pull himself up as though he was trying to escape from the unit and climb onto the roof. Leading Senior Constable Raffoul also saw that Malcolm had lacerations to his wrist and arm, which was wrapped in a white T-shirt that was red with blood.

² The ranks of the various NSWPF officers referred to in these findings are the ranks held as at 29 June 2022. No disrespect is intended to any NSWPF officer whose rank has subsequently changed.

- 7.12 At around 4:10am, Inspector Laing arrived on scene and assumed the role of Police Forward Commander. Leading Senior Constable Raffoul told him that Malcolm's behaviour had intensified and that he may be experiencing mental health issues. After trying to engage Malcolm in conversation, Inspector Laing deemed the situation to be high risk and notified the NSWPF State Coordinator. Inspector Laing also asked for specialist NSWPF officers from the TOU and Negotiation Unit to attend the scene.
- 7.13 At around 4:26am, Constable Guarrera looked through the main window into Malcolm's unit and saw that Malcolm was moving objects in front of the kitchen window to block visibility into the unit. He then saw Malcolm, who was holding a knife at the time, move furniture away from the main window and punch it, causing glass to fall into the yard where Constable Guarrera was standing. Constable Guarrera saw that Malcolm had a laceration to his arm which was bleeding. He heard Malcolm screaming, "*I've just cut myself so bad, I'm gonna die anyway*" and, "*I'm gonna slit my own throat when you come in here*". Constable Parker, who was positioned outside Malcolm's door, heard the same comments from Malcolm. He attempted to engage Malcolm in conversation but he did not respond.
- 7.14 At around 4:34am, Constable Parker heard Malcolm say, "*I'm going to fucking kill myself, I don't give a fucking shit. I just want to save enough blood so I can fucking stab yas. That's what I am fucking doing it. I fucking love it. I'll fucking cut your head off*". At the same time, Constable Guarrera saw Malcolm wrapping up his arm with a T-shirt and belt.
- 7.15 At around 4:40am, Constable Parker heard several loud crashes and the sound of breaking glass. Malcolm was seen trying to climb out of the window again, and standing at the window with a knife, using it to break shards of broken glass.
- 7.16 At around 4:45am, Malcolm indicated that there was no other person inside his unit. However, Inspector Laing considered that this could not be confirmed given the distress that Malcolm appeared to be in, his initial "He's Dead" Reference, and his refusal to let the NSWPF enter the unit.
- 7.17 At around 4:53am, Malcolm again threatened to use his knife to self-harm. At around this time, Constable Guarrera observed what he thought might have been a second knife. The NSWPF officers asked Malcolm to let them in so that they could tend to his arm injury. However, Malcolm reported that he was "fine" and that the bleeding to his arm had stopped. An NSWA paramedic noticed that Malcolm was putting on lots of clothes and formed the opinion that he was doing this for protection, in preparation for a struggle.

Arrival of the NSWPF Negotiation Unit and Tactical Operations Unit

- 7.18 At around 5:05am, NSWPF officers from the Negotiation Unit, led by the Team Leader, Negotiator 4, arrived on scene. After obtaining a briefing, members of the Negotiation Unit set up outside Malcolm's front door and commenced communication with Malcolm at around 5:47am. Negotiator 7, the primary negotiator, attempted to engage Malcolm in conversation. When asked what he wanted to talk to police about, Malcolm referred to "*death and suicide*". This raised concerns that Malcolm was about to kill himself and that there may be a deceased person inside the unit. Malcolm also told Negotiator 7, "*I'm gonna do it. I'll put the knife in my throat from the front to the back*".

- 7.19 At around 5:41am, police became aware that Malcolm had made a phone call to his employer and had mentioned needing to see police about a kidnapping (**Kidnapping Reference**) before hanging up.
- 7.20 At around 5:43am, TOU operators arrived on scene. They set up around Malcolm's unit, including near the front door, together with members of the Negotiation Unit.
- 7.21 At around 5:44am, Malcolm used his second mobile phone to attempt to call his employer. When the employer called back, Malcolm told him to call a police station but not Triple Zero. The employer subsequently called Leichardt Police Station and was advised that NSWPF officers were already on the scene. The employer subsequently sent a text message to Malcolm advising that NSWPF officers had been sent to attend his address.
- 7.22 At around 5:50am, Chief Inspector Alexander Liouthakis arrived on scene to relieve Inspector Laing as Forward Commander. At around 6:09am, Malcolm again told the negotiators that he would slit his throat.
- 7.23 At around 6:16am, Malcolm ceased communicating with the negotiators and was unresponsive in relation to their attempts to re-establish contact.
- 7.24 At around 6:17am, Negotiator 4 and TOU Operator 136 discussed the threat level and the lack of progress towards a negotiated surrender since police had been on scene. Negotiator 4 expressed concerns that there may be an escalation as the situation continued and that Malcolm was showing symptoms which suggested that he was suffering from some type of psychosis. Negotiator 4 and Operator 136 discussed available tactical options and agreed to seek permission to implement a breach and hold tactic.
- 7.25 This involved using force to breach Malcolm's front door, which was believed to be barricaded, to gain visibility inside the unit to check on Malcolm's welfare. The proposed tactical plan involved the deployment of sound and flash distraction devices through the open window while operators used a chainsaw to enter through the front door. The breach and hold tactic was discussed with, and approved by, Chief Inspector Liouthakis.
- 7.26 As this tactical plan represented a departure from the existing contain and negotiate approach, further approval from the NSWPF Regional Commander was required. Accordingly, Operator 136 called Acting Assistant Commissioner Paul Dunstan to seek such approval.
- 7.27 At 6:20am, Acting Assistant Commissioner Dunstan approved the breach and hold tactic. At 6:23am, the negotiators were briefed regarding this tactic and instructed to cease negotiations and retreat to a safe distance.

Initiation of breach and hold

- 7.28 At around 6:25am, Operator 136 gave control to Operator 138 to commence the breach and hold tactic. Sound and flash devices were deployed through the window as a distraction device. At the

same time, TOU operators first used a key to attempt to open the door to Malcolm's door, which was unsuccessful, before resorting to both an electric and a petrol chainsaw.

- 7.29 After the front door was breached, five TOU operators entered the unit accompanied by a tactical paramedic. Malcolm was observed sitting against the opposite wall against a mattress. He had a knife in his hand and a large amount of blood on his neck and chest. Operator 226, who was the first to enter, pushed his way around a large bookcase which was barricading the front door and saw the knife in Malcolm's hand and a large laceration to Malcolm's throat. Operator 226 deployed a taser, believing that Malcolm may try to stab himself again. Operator 226 tripped as he made his way around the barricade, stood up and deployed the taser again due to uncertainty about whether the first deployment was effective, and the knife still being in Malcolm's hand. Operator 202, the second person to enter, kicked the knife away from Malcolm's hand. No other person was found in Malcolm's unit.
- 7.30 The tactical paramedic was called to assist and saw that Malcolm was unresponsive and bleeding heavily from his neck with a large amount of blood on the floor. Attempts were made to stop the bleeding with the application of pressure and packing gauze. Malcolm was found to be not breathing but exhibiting gasping agonal respiration. An electrocardiograph was applied which showed no cardiac electrical activity. Attempts at airway management and fluid replacement were also unsuccessful. At 6:37am, Malcolm was declared deceased.

8. The post-mortem examination

8.1 Malcolm was subsequently taken to the Department of Forensic Medicine where a post-mortem examination was performed by Dr Rebecca Irvine, forensic pathologist, on 5 July 2022. This examination identified the following relevant findings:

- (a) 11 sharp force skin defects on the front of the neck;
- (b) two taser darts present on the anterior lower chest with the barbs completely embedded in the skin;
- (c) incised wounds of right external jugular vein, right submandibular gland, cricothyroid ligament, and right lobe of thyroid gland;
- (d) stab wound right of larynx to a depth of approximately 6 centimetres;
- (e) pallor of mucosal membranes and liver mortis;
- (f) scattered superficial sharp force injuries; and
- (g) toxicological analysis identified methylamphetamine, cannabinoids, and a non-toxic concentration of mirtazapine (antidepressant medication).

8.2 Dr Irvine noted that post-mortem imaging revealed complications of venous injury (cardiac air embolism and intracerebral air) and there was life-threatening blood loss at the scene, "*all of which are related to sharp force injuries of the neck and which would be independently fatal*".

8.3 Ultimately, Dr Irvine opined that the cause of Malcolm's death was sharp force injuries of the neck.

8.4 Given the toxicology results, Professor Alison Jones, specialist general physician and clinical toxicologist, was instructed to provide an independent expert report in which she expressed the following views:

- (a) The concentration of methylamphetamine was found at recreational to toxic levels. Peak concentration following administration would have occurred within minutes, and the stimulant effects would have persisted for 6 to 8 hours.
- (b) The concentration of methylamphetamine would likely have contributed to Malcolm's risk of developing psychotic effects and agitation.
- (c) The concentration of cannabinoids most likely derived from recreational use of cannabis which was responsible, at least in part, for the abnormal behaviour that brought Malcolm to the attention of police.
- (d) The concentration of mirtazapine was in keeping with a therapeutic dose.

- (e) The combination of methylamphetamine and cannabis likely exacerbated Malcolm's mental state on 29 June 2022, given his background of anxiety and paranoia. However, the presence of both drugs, at the concentration seen in post-mortem blood, did not cause death due to direct toxicity.

9. What issues did the inquest examine?

9.1 Prior to the commencement of the inquest a list of issues was circulated amongst the sufficiently interested parties, identifying the scope of the inquest and the issues to be considered. That list identified the following issues for consideration:

(1) Was the conduct of the Police operation at 12/12 Carlisle Street on 29 June 2022 in accordance with applicable NSW Police policies and procedures in relation to situations such as those confronting attending Police on that date, in particular:

(a) whether the shift from a “contain and negotiate” tactic to a “breach and hold” tactic was in accordance with such policies and procedures; and

(b) whether the timing of that change was in accordance with such policies and procedures.

(2) Even if those NSW Police Force policies and procedures were followed, does a review of the circumstances of Malcolm’s death indicate that other measures should have been taken to manage his risk of self-harm?

(3) Are there any recommendations that are “necessary or desirable” to make in relation to “any matter connected with the death” of Malcolm?

9.2 Determination of the above issues has required considered of several sub-issues. These are dealt with in full detail below.

10. What was the manner of Malcolm's death?

10.1 The post-mortem examination findings clearly establish Malcolm died from sharp force injuries to the neck. Malcolm was clearly alone in his unit when he was found. Having regard to the knife found in his right hand, Malcolm's repeated threats of self-harm over several hours on 29 June 2022, and absence of any evidence that another person inflicted the sharp force injuries, the evidence establishes that the injuries were self-inflicted and that Malcolm intended to cause his own death.

10.2 The chronology of events on the morning of 29 June 2022 establishes that Malcolm ceased communicating with NSWPF negotiators at around 6:16am, and the negotiators were instructed at around 6:23am to cease attempts re-establish communications. The breach and hold tactic commenced at around 6:25am, meaning that there had been no communication with Malcolm for approximately nine minutes. As Malcolm was found with the sharp force injuries to his neck and to be unresponsive when TOU operators breached the front door of his unit, this raises the question whether the breach tactic contributed to Malcolm's intention to self-harm.

10.3 Counsel Assisting submitted that there is insufficient evidence to make a positive finding beyond the level of possibility that *"it was the effect of [the distraction] devices or the use of the chainsaw which led Malcolm to catastrophic self-harm [...] which could potentially have been avoided had Police stayed outside the unit"*. The submissions on behalf of Mr Robinson, Ms Tagg, Ms Whitehead and Ms Hearn (**Malcolm's Family**) repeated Counsel Assisting's submissions and noted that this is distressing for Malcolm's Family to consider.

10.4 On this issue, when being asked whether the breach and hold tactic *"involved a high risk of triggering [Malcolm] to end his life"*, Negotiator 4 gave this evidence:

I believe that he was already dead when we made entry, that he had already harmed himself. He had been talking constantly since police arrived. He made a threat and then we heard nothing. So, my genuine concern was that he had already harmed himself and that that reduced, I suppose, me considering the further threat because I, you know, I was - I had fear that he had already done that. And so, the need to get in there as quickly as possible outweighed, I suppose, the balance tipped in favour of us needing to get eyes in there as quickly as we could.

10.5 The available evidence does not allow for any finding to be made that supports the belief expressed by Negotiator 4. Equally, the available evidence also does not allow for any finding to be made that the breach tactic independently resulted in Malcolm forming an intention to self-harm, or accelerated an existing intention to self-harm.

10.6 **Conclusions:** As Counsel Assisting submitted, the absence of any evidence as to what was occurring inside Malcolm's unit in the nine minutes prior to the breach being effected does not allow for any finding to be made beyond the level of possibility. It is possible that the breach contributed in some way to Malcolm's intention to self-harm. It is equally possible that the reason why Malcolm ceased communicating with negotiators at around 6:16am is because he had already self-inflicted the sharp force injuries shortly prior to that time and had become unresponsive prior to the breach. Ultimately, it is not possible to reach a conclusion whether the breach contributed in any way to Malcolm's intention to end his own life.

11. Was the conduct of the police operation in accordance with applicable policies and procedures?

11.1 It is helpful to commence examination of this broad issue by outlining the relevant policy framework which existed at the relevant time, before going on to consider a number of discrete sub-issues. In doing so, it should be noted that for the purposes of the applicable policy framework, the evidence readily establishes that the events of 29 June 2022 involved a high risk situation.

Relevant policy framework

11.2 The NSWPF Handbook provides:

The preferred principal response strategy for the resolution of a high risk situations [sic] remains containment and negotiation. Non-violent means should be used as far as is reasonably possible before resorting to the use of force by Police. [original emphasis]

11.3 This statement is replicated in the NSWPF Operations Manual (**Operations Manual**) which similarly provides:

NSW Police Force preferred principal response strategy regarding the resolution of “high-risk” situations is primarily one of **CONTAINMENT and NEGOTIATION** with force to be used only as a last resort in proportion to the threat, after all other available options have been considered. [original emphasis]

11.4 NSWPF Tactical Options and Use of Force Manual (**TOU Manual**) explains that the NSWPF first adopted a tactical options model in 1998, and goes on to provide:

The current model allows for the fact that each operational situation or circumstance is unique and variable. It provides you with ten tactical options when use of force is needed to resolve a situation which poses a threat to your safety or the safety of others. It is designed to be easily understood and easily implemented.

This model also includes the risk assessment process you need to use to ensure that chosen force options and tactics are appropriate to a given circumstance.

The model:

- is non-linear, allowing you to choose force options or tactical concepts based on the unique elements present at the time
- allows you to transition between options as required
- is based on a process of risk assessment whereby you assess and reassess a given circumstance to meet ongoing potential or actual threats
- allows for rapid escalation and/or de-escalation in dynamic and changing situations
- allows for the cohesive use of multiple options to minimise injury to all involved.

11.5 The TOU Manual identifies ten tactical options including, relevantly, Contain & Negotiate, Communication, and Conducted Electrical Weapon. The TOU Manual also provides for the use of force which “describes the immediate or predetermined actions that [a NSWPF officer may] take to prevent or intervene in [...] an act of self-harm being undertaken by an individual”. The TOU Manual

notes that use of force actions involved use of physical techniques and/or use of a man-made device that applies or projects some form of physical force or other mechanism.

11.6 The TOU Manual goes on to provide:

CONTAIN & NEGOTIATE

Contain & negotiate is the principal NSWPF operating strategy for the resolution of high-risk incidents under the *National Guidelines for Deployment of Police to High Risk Situations, Deployment of Police Negotiators and the use of Lethal Force – 2013*. These are fundamental to the management and operational guidelines for the Tactical Operations Unit and the Negotiation Unit.

Circumstances and situations may vary significantly, but one or more of the following factors may be used to define high risk:

- seriousness of the offence committed
- expressed intention by subject(s) to use lethal force
- reasonable grounds to believe that the subject:
 - may use lethal force;
 - has caused or may cause injury/death
 - has issued threats to kill or injure people
- subject has:
 - a prior history of violence
 - is exhibiting violence now
 - has involved innocent participants (e.g. hostages, VIPs or bystanders).

11.7 Finally, the TOU Manual provides:

Containment

Containment is used to gain control of a situation, specifically to restrict the movement of a subject to ensure that they are isolated within a specific area.

Containment also refers to the establishment of a perimeter around a specific area to restrict access and control egress by unauthorised persons.

Negotiation

Negotiation refers to a planned intervention on behalf of the police commander to diffuse a crisis and achieve a peaceful resolution using trained negotiators. Containment and negotiation must be considered as the first option in all high-risk situations. There must also be evidence that they have been considered.

Situations requiring trained negotiators are defined as:

1. Any situation defined as high-risk in the National Guidelines for the Deployment of Police in High Risk Situations where negotiation can be used as the first option to peacefully resolve the situation

2. Any situation where a person is threatening to or it is suspected they may make an attempt to take their own life

3. Any situation where it is believed a trained negotiator will be of assistance to police in the performance of their duties; e.g. the execution of high-risk warrants / arrests.

11.8 The Standard Operating Procedure, Negotiation Unit, Counter Terrorism and Special Tactics Command (**Negotiation SOP**) provides:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] [original emphasis]

Was the conduct of the police operation on 29 June 2022 in accordance with applicable NSWPF policies?

11.9 As the TOU Manual makes clear the tactical options model available to the NSWPF officers at the scene on 29 June 2022 was non-linear. In other words, it was open to transition between options as required, based on a risk assessment process to ensure that any chosen force options and tactics were appropriate to the circumstances of 29 June 2022.

11.10 Negotiator 4 gave this evidence as to what other options might have been available prior to seeking permission to implement the breach and hold tactic:

Well, the options were to continue trying to re-engage him from outside the door which wasn't successful at all, I don't think. We could have, I suppose, put them up the ladder and spoken to him through the window which isn't a particularly safe way to do business, especially as he had the knife. And, then the option two, the only other point to get in was to try and make entry - or try and go through the front door.

11.11 Further, Negotiator 4 gave this evidence when asked about the possibility of tactical disengagement, one of options available under the tactical options model:

Well, we owed a duty of care to [Malcolm] as someone who was in a mental health crisis to assist him. So, we also owed a duty of care to other people who might have lived in or around his property. We knew he was armed with a knife.

I understood him to have threatened a neighbour prior to our arrival, or at least gone and tried to engage with a neighbour. And so, it really wasn't possible for us to just pack up our things and leave at that point.

11.12 The considerations that the NSWPF officers were weighing up at this time is perhaps best summarised in the following evidence given by Operator 136:

[REDACTED]

[REDACTED]



11.13 The evidence establishes that by 6:16am, NSWPF officers had been unable to resolve the situation to the point where a negotiated surrender with Malcolm could be achieved. By this time NSWPF officers had been communicating with Malcolm for approximately 2 hours and 31 minutes. Of this, specialist negotiators had been communicating for Malcolm for approximately 29 minutes. During the entirety of this period, the attending NSWPF officers, and in particular Negotiator 4, Operator 136 and Chief Inspector Liouthakis gave consideration to the following matters:

- (a) the “He’s Dead” Reference;
- (b) the Kidnapping Reference;
- (c) the Firearm Warning;
- (d) Malcolm being armed with one knife and possibly two knives;
- (e) Malcolm’s repeated threats of self-harm;
- (f) Malcolm’s erratic behaviour;
- (g) the injury to Malcolm’s arm which had caused bleeding; and
- (h) the lack of visibility inside Malcolm’s unit.

11.14 As to the significance of the Firearm Warning, Constable Guarrera gave this evidence:

Yeah, that’s one of the main reasons why we - like, I stayed there and - ‘cause that was a - anyone that has a warning for firearms, whether it be 20 years ago, ten years ago, five years ago, whatever, we have to take that serious [sic].

11.15 The evidence given by Negotiator 4 and Operator 136 described above also establishes that consideration was given to other options which did not involve the use of force, but none were deemed suitable. Further, the evidence of Negotiator 4 also establishes that tactical disengagement also was not an available option.

11.16 Conclusions: The TOU Manual does not prescribe the use of a particular tactical option, including the use of force, for a particular situation where resolution is required. Rather, the tactical options model is non-linear with the choice of option dependent on what is, following a risk assessment, appropriate to the circumstances of the situation at the time. Further, the TOU Manual allows for transition between options as required.

11.17 It is evident that both the contain and negotiate and breach and hold tactic were available tactical options to the NSWPF officers on 29 June 2022. The evidence establishes that the contain and negotiate tactic had been employed for approximately two and a half hours without achieving resolution of the situation. Resolution would have resulted in Malcolm surrendering his knife, or knives, and allowing the NSWPF officers to enter his unit so that they could check on his welfare, prevent the possibility of Malcolm causing harm to himself, and check that no other person had been harmed or was at risk of harm.

11.18 The evidence also establishes that other options which did not involve the use of force, including possible tactical disengagement, were appropriately considered prior to seeking permission for implementation of the breach and hold tactic. Further, the evidence also establishes that an appropriate risk assessment was conducted, weighing up, on the one hand, [REDACTED]
[REDACTED]
[REDACTED]

11.19 In the circumstances, the shift from the contain and negotiate tactic to the breach and hold tactic was in accordance with applicable NSWPF policies. Further, approximately two and a half hours had been spent on employing the contain and negotiate tactic culminating in an inability to resolve the situation and the termination of communication by Malcolm. [REDACTED]
[REDACTED]
the timing of the shift in tactical option was also in accordance with applicable NSWPF policies.

12. Should other measures have been taken to manage Malcolm’s risk of self-harm?

12.1 It was submitted on behalf of Malcolm’s Family that “*other tactical options were in fact available to police prior to implementation of the breach and hold tactic*”, namely:

- (a) contacting Malcolm’s family members to consider whether they could assist in de-escalating Malcolm’s behaviour; and
- (b) consulting a psychiatrist to seek advice about Malcolm.

12.2 In this regard, the Negotiation SOP provides:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12.3 The Operations Manual makes clear “*that force is to be used only as a last resort in proportion to the threat, after all other available options have been considered*”. Although Counsel Assisting submitted that “[t]he evidence does not suggest that there was an alternative superior tactical option [to the breach and hold tactic] available”, the Operations Manual itself only requires consideration of “*all other available options*” prior to force being used as a last resort. It was not submitted on behalf of Malcolm’s family that the above options were “*necessarily superior to that of breach and hold*”.

12.4 Rather, it was submitted on behalf Malcolm’s Family that the third person intervention (TPI) options described above were:

- (a) available and “*had the real potential to assist the police in de-escalating Malcolm’s behaviour*”;
- and

- (b) *“worthy of consideration and exploration prior to implementation of the breach and hold... In circumstances where the breach and hold tactic carried such a significant risk that Malcolm would carry out his threats of catastrophic self-harm”.*

12.5 Before going to consider the specifics of each of these matters, it is relevant to note the following matters:

- (a) *First*, consideration and exploration of the two TPI options described did not mean that either or both should be utilised, or preclude the breach and hold tactic from being implemented;
- (b) *Second*, consideration was given to the [REDACTED] and continue negotiations with Malcolm. However, neither of these options were feasible [REDACTED]. Further, [REDACTED].

Operator 136 gave evidence that without a breach and hold, the NSWPF was unable to assess Malcolm’s medical state or discount whether another person was inside the unit. If the NSWPF officers had visibility inside the unit and were able to discount the presence of another person, then Operator 136’s evidence was that *“that would have taken that consideration away and we would have then been more focused on Malcolm’s welfare and establishing negotiations with the status that we were at”.*

- (c) *Third*, the breach and hold tactic was incremental in nature, involving two distinct concepts. Inspector Laing gave evidence that the permission being sought simply allowed police to breach the front door and then hold, and that further permission would have been required to actually enter the premises. Further, Negotiator 4 gave this evidence:

So, I mean, we try and do it incrementally in the hope that, you know, we don’t have to go from nought to 100. We try to get him to do, you know, put the knife down, or whatever we choose to do, in smaller steps. So, instead of just going in there and confronting him, we wanted to try to make entry and give him the chance to have negs speak with him face-to-face and see whether or not we could effect some behavioural change that way.

- (d) *Fourth*, the visibility of Malcolm which the breach and hold tactic sought to achieve could potentially have allowed for a shift back to the contain and negotiate strategy. That is, once Malcolm’s welfare could be confirmed visibly, negotiations could have resumed with the advantage of face-to-face communication. Negotiator 4 explained in evidence:

I think it’s really helpful with someone who is so unwell, especially if they’re suffering from delusions or we don’t know whether Malcolm was hearing voices or what was going on. So, it can be really disorientating for someone who is in that state to have another voice kind of booming in from outside and they can’t see where that person’s coming from. So, we - it’s hard to, sort of, I suppose, orientate them to what’s going on if they can’t hear the person speak - can’t see the person speaking.

So, if someone is very thought disordered, it is really difficult for them to distinguish between our voice and, you know, whatever else is going on for them inside their own head. So, being able to see someone talking and make eye contact and that can be really, really helpful in, I suppose, orientating them to what's happening now. They see the reality of what's going on because they can see the police, they can see the negotiator and it is really effective sometimes in breaking through that psychosis, even for a short period.

Should Malcolm's family have been contacted?

12.6 It was submitted on behalf of Malcolm's Family that Mr Robinson was speaking to Malcolm on the phone on the morning of 29 June 2022 but the conversation was interrupted when Malcolm threw one of his two mobile phones out of the window. However, Mr Robinson remained on the call until around 4:14 AM and also attempted to get the attention of the NSWPF officer who picked up the phone by calling it, but was unsuccessful. It was also submitted that on 30 June 2022, Mr Robinson took part in an interview with police in which he relevantly provided the following information:

- (a) Malcolm had a history of illicit drug, including methamphetamine, use, and that when using methamphetamine, his voice would change, including some time screaming and talking in a girl's voice;
- (b) Malcolm had previously called Mr Robinson in the early hours of the morning worried that someone was trying to get into his home, and that Mr Robinson had been able to reassure Malcolm either over the phone or by attending Malcolm's home;
- (c) on the occasion when Mr Robinson attended Malcolm's home to de-escalate his behaviour, he heard Malcolm talking in a girl's voice and initially believed that there was a girl in the room with Malcolm; and
- (d) on 29 June 2022, he again initially believed that someone was in the unit with Malcolm due to hearing a girl's voice, but eventually came to the view that this was Malcolm's voice and that Malcolm was alone.

12.7 It was submitted on behalf Malcolm's Family that contacting family members might have assisted in two ways:

- (a) the information provided by Mr Robinson "*may have assisted police in understanding Malcolm's behaviour and determining an appropriate way to de-escalate him*"; and
- (b) "*police may have considered using Mr Robinson to reengage with Malcolm... prior to resorting to forced entry into his unit*".

12.8 *First*, it should be noted that the interview with Mr Robinson on 30 June 2022 took approximately one hour and 24 minutes. Negotiator 4 and Negotiator 5 both described the urgency in seeking permission to implement the breach and hold tactic after Malcolm stopped communicating with the negotiators. It therefore appears unlikely that NSWPF officers had sufficient time to speak with Mr Robinson in order to elicit the information described above. Indeed, the Negotiation SOP provides

that TPI poses [REDACTED]
[REDACTED]

12.9 *Second*, Mr Robinson gave evidence that whilst he had previously heard Malcolm “*go into a girl’s sort of voice*” he had never heard Malcolm “*answer himself or speak to himself like that*”. Therefore, even if the NSWPF had been able to elicit Mr Robinson’s previous observations of Malcolm talking in a girl’s voice, it is unclear whether this would have provided sufficient reassurance that there was no other person inside Malcolm’s unit to allow for a different tactical option, or continuation of the contain and negotiate approach.

12.10 *Third*, the possibility of using Mr Robinson or any other family member as part of a TPI, was not explicitly explored in evidence with any member of the Negotiation Team on 29 June 2022. Therefore, it is unclear whether the information provided by Mr Robinson in his 30 June 2022 interview would have allowed for him to be used as part of a TPI on behalf of the Negotiation Team.

12.11 *Fourth*, the initial attending NSWPF officers did attempt to use TPI. When asked whether there was any other advice he could have taken to de-escalate the situation prior to the arrival of the Negotiation Unit, Leading Senior Constable Raffoul gave this evidence:

It was more just waiting for the negotiators because I think by that time, we’d exhausted all our options in terms of trying to speak to him. We even got the ambulance officers to knock on the door, ‘cause they were there originally and then obviously he had a dislike to them, so - that was another thing, usually it’s the other way around, they want to speak to ambulance and not to us.

12.12 Leading Senior Constable Raffoul went on to give evidence that a second attempt was made to engage with Malcolm:

We tried again. We tried again probably just before he climbed out the window. I had one ambulance officer with me. We tried again. I was like, “Mate, we’ve got the ambos here.” And then he knocked on the door saying, “Hey”, and then he just started telling us to fuck off and everything like that.

12.13 **Conclusions:** The exigent circumstances on 29 June 2022 suggests that it is unlikely that the NSWPF had sufficient time to elicit information from Mr Robinson (or any other family member) which may have assisted in achieving resolution of the situation. As the nature and utility of the information which was elicited from Mr Robinson on 30 June 2022 was not expressly explored with any NSWPF officer in evidence, it is not possible to reach any conclusion as to whether it would have meaningfully assisted the contain and negotiate tactic, or allowed for Mr Robinson to be utilised to attempt to re-engage with Malcolm. This is particularly so given that there was considerable urgency in the NSWPF response after Malcolm ceased communicating with the Negotiation Team nine minutes before the breach and hold tactic was implemented.

Should a psychiatrist have been contacted?

12.14 The Negotiation SOP provides:

[REDACTED]

12.15 It was submitted on behalf of Malcolm’s Family that by 6:00am, when the NSWPF considered Malcolm’s mental health to be a significant barrier preventing de-escalation, *“a consulting psychiatrist would have been in a position to provide expert advice on how best to engage with Malcolm”*.

12.16 The evidence established that there [REDACTED]. Negotiator 4 gave evidence of the mental health training provided to negotiators, consisting of:

- (a) the initial basic negotiators course, consisting of a four week residential program supplemented by a period of in-field training, extensively covering mental illness and mental health presentations that negotiators frequently encounter;
- (b) attending an annual three-day reaccreditation training camp which typically involves *“training and instruction on various mental health illnesses and disorders”* including persons threatening self-harm;
- (c) presentations delivered by guest speakers in specialist areas such as mental health; and
- (d) the formation of a panel of independent consultant psychiatrists which is involved in the basic negotiators course, reaccreditation training, providing specialist advice during exercises to students, and reviewing training course content.

12.17 Further, Negotiator 5 gave evidence that consultant psychiatrists from time to time assist with the training packages that the Negotiation Unit provides to its negotiators, and that their mental health expertise “*is embedded in the syllabus that is taught to negotiators*”.

12.18 When asked whether any consideration was given to consulting a psychiatrist on 29 June 2022, Negotiator 4 gave this evidence:

[REDACTED]

12.19 Further, Negotiator 5 gave evidence that:

- (a) the consultant psychiatrists available to the Negotiation Unit are not tactically trained;
- (b) where time is of the essence, this is a factor that potentially militates against involving a consultant psychiatrist;
- (c) consultant psychiatrists are typically “*brought in later in the piece*” during the protracted siege situations that take between many hours to a number of days; and
- (d) on 29 June 2022, it would have been premature to involve a consultant psychiatrist because the NSWPF did not possess sufficient information regarding Malcolm’s mental health history to provide to a psychiatrist that would allow meaningful input.

12.20 **Conclusions:** Similar to the issue of potentially involving Mr Robinson or another family member as part of a TPI, the question of how a consultant psychiatrist might have been utilised to resolve the situation was not explored in detail with any witness during the inquest. Instead, the available evidence establishes that the NSWPF did not have sufficient information regarding Malcolm’s mental health history to appropriately brief a consultant psychiatrist.

12.21 The evidence of Negotiator 4 is that the Negotiation Team was already aware of any limited information regarding Malcolm’s presentation that a consultant psychiatrist might have been able to provide. In addition, the evidence establishes that consultant psychiatrists had considerable input in the training and education of NSWPF officers in the Negotiation Unit and, in particular, those that were present on 29 June 2022. Finally, the events of 29 June 2022 carried considerable urgency and did not become a protracted situation where a consultant psychiatrist is typically involved. These were additional factors which weighed against the involvement of a consultant psychiatrist. Therefore, it is not possible to reach a conclusion as to whether utilising a consultant psychiatrist is likely to have resulted in achieving a resolution of the situation on 29 June 2022.

Do the applicable NSWPF police policies provide sufficient guidance to NSWPF officers?

12.22 The TOU Standard Operating Procedure (**SOP**) identifies three types of Tactical Action Plans:

[REDACTED]

[REDACTED]

[REDACTED]

12.23 The TOU SOP also provides that [REDACTED]
[REDACTED]
[REDACTED]

12.24 It was submitted by the legal representative for Malcolm’s Family that the TOU SOP does not define “*appropriate tactics*” or describe what “*resolve the situation*” entails. In this respect it was further submitted that the “*level of generality in the available policies does not provide adequate guidance to police in relation to the steps they can and should take when responding to high risk situations*”. Whilst on the one hand it was recognised that “*given the broad range of scenarios to which police are required to respond, there is a need for polices not to be overly proscriptive*”, on the other hand, it was submitted that the absence of sufficient guidance increases the risk of error in assessing information and weighing up risks associated with tactical options, and “*may result in the implementation of plans that are ultimately not best suited to resolving a particular high risk situation*”.

12.25 Apart from the broad submissions made above, it was not expressly submitted on behalf of Malcolm’s Family that the events of 29 June 2022 demonstrated any of the above discrete matters.

12.26 Chief Inspector Liouthakis in evidence acknowledged that he needed to quickly decide whether to give permission for the breach and hold tactic given the urgency of the situation. However, he gave evidence that the discussion between himself, Negotiator 4 and Operator 136 would have lasted “*several minutes*”. Chief Inspector Liouthakis went on to explain:

I don’t feel it was rushed. I feel we were able to cover off all the points and each of us have our or give our view, and I take into account the experience of Inspector TOU 136 and Detective Sergeant Negotiator 4, I take into account their experience in this discussion because they're the experts in what they do and I have a lot of trust and faith in them and that’s - we call them to work with us to get - to try to get the best outcome.

12.27 Chief Inspector Liouthakis also gave evidence that he considered whether the breach and hold tactic may have significantly elevated the risk that Malcolm would attempt self-harm. When asked why he was prepared to take this risk, Chief Inspector Liouthakis explained:

Probably spoke earlier about trying to make that difficult decision to weigh up that information about Malcolm, his physical state, his mental state and then also the other information about the CAD information in the initial call, the information about someone being kidnapped which was another phone call that played out through the scenario, the fact that I was told he wasn't communicating with us, it was hard to know what was happening. Perhaps earlier he was communicating and he could be seen. We also didn't have any way of seeing inside the room which that was of great concern to me because there were so many things that could've been happening inside and given that information and the risks that potentially existed inside, those were the things that I considered.

12.28 Chief Inspector Liouthakis acknowledged in evidence that he did not know:

- (a) whether Malcolm had wrapped a tourniquet around his arm;
- (b) that Malcolm indicated that the bleeding to his arm had stopped and that he was not feeling dizzy;
- (c) the precise way in which the breach would be effected as he relied on the specialist resources available at the scene; and
- (d) that Malcolm had reported there was no one in the room with him and that no NSWPF officer at the scene had positively identified another person in the room with Malcolm.

12.29 Chief Inspector Liouthakis disagreed with the suggestion that the information upon which he based his decision regarding the breach and hold was incomplete and gave evidence that he thought "*the risk still existed*". Chief Inspector Liouthakis agreed that the information was relevant but disagreed with the suggestion that he was at a disadvantage in not knowing the information and that he did not "*make a full and proper balancing assessment of the risk that were at play*". Chief Inspector Liouthakis explained:

I disagree with that because I had - I had substantial information about the risks that were involved, as I've - as I've discussed at length, that I feel comfortable with the fact that when things had gone silent and we couldn't see in and all those other things that I've talked about, there had to be a strategy to - to get us to Malcolm.

12.30 Acting Assistant Commissioner Dunstan gave evidence that he was not willing to approve the breach and hold plan based solely on what he was told by Operator 136:

It wasn't a rubber-stamping exercise. I knew I had to authorise a specific power, so I wanted to double check the information I'd been told and seek the opinion of the police negotiator onsite.

12.31 Acting Assistant Commissioner Dunstan also gave evidence that he "*had a lot to do with*" Negotiator 4 in the previous 12 to 18 months in various capacities and that he "*felt comfortable when [he] spoke to that particular negotiator*".

12.32 Acting Assistant Commissioner Dunstan agreed in evidence that:

- (a) he was not told that Malcolm had threatened to kill himself if police entered his unit;
- (b) he should have been told this information;
- (c) he would have made further enquiries about this information; and
- (d) it would have factored into the weighing up exercise he had to perform.

12.33 Notwithstanding, Acting Assistant Commissioner Dunstan maintained in evidence that even if told this information it would not have changed his ultimate decision to approve the breach and hold tactic, and explained:

[I]t's a balancing act considering, you know, all the information and the - weighing up all the information. The benefit of, you know, getting in there as I was told that bleeding was quite intense, potentially another person in there, you know, the - the breach and hold not being an entry I still feel was warranted to get that better situational awareness which was absent to the TOU team and the negotiators.

12.34 It was submitted on behalf of Malcolm's Family that this information provided to Acting Assistant Commissioner Dunstan "*was at best incomplete and at worst inaccurate*", and "*failed to adequately convey...the real possibility that deployment of the breach and hold tactic would lead Malcolm to commit catastrophic self-harm*".

12.35 In his evidence, Acting Assistant Commissioner Dunstan appropriately acknowledged the inherent difficulty involved in retrospectively evaluating decisions by applying hindsight or by considering information that was not available at the material time. He observed that such an exercise is necessarily speculative and, as such, must be approached with caution.

12.36 Even if such a task were to be performed it should be remembered that Malcolm had also referred to self-harm repeatedly on other occasions without referring to police potentially entering his unit. For example, Constable Guarrera disagreed with the suggestion that all of Malcolm's threats of self-harm were "*tied in some way to the police presence*". Constable Guarrera gave this evidence:

No. There was - there was certain parts where mostly he was asking us to come in and watch him do it but there was other parts where he was just saying that he was going to kill himself or kill himself anyway.

12.37 Constable Guarrera also gave evidence that at about 4:27am, he observed Malcolm approach the kitchen window holding the knife and punch through the window, screaming with "*eight mentions of just harming himself fatally regardless*" of what actions the police might take. Constable Guarrera also said in his statement that at around 4:35am and again at around 4:45am, Malcolm repeatedly stated he was going to "*neck [him]self*" without any reference to the NSWPF entering the unit or not.

12.38 Conclusions: The available evidence does not demonstrate that the NSWPF policies that were applicable on 29 June 2022, and now, provide insufficient guidance to NSWPF officers. As noted already, the policies are intentionally not proscriptive (or prescriptive) given the need to assess the particular features of a situation and what tactical option is appropriate in the circumstances. As to the events of 29 June 2022, the evidence establishes that the implementation of the breach and hold tactic followed an appropriate approval process and that the two senior NSWPF officers involved in this process performed the balancing exercise that was necessary.

12.39 However, the evidence does establish that both Chief Inspector Liouthakis and Acting Assistant Commissioner Dunstan were not told certain information. In Acting Assistant Commissioner Dunstan's case, he should have been informed that Malcolm had made a threat to end his life if the NSWPF entered his unit. It would have resulted in further enquiries being made and factored into the balancing exercise that Acting Assistant Commissioner Dunstan had to perform.

12.40 Performing such a balancing exercise in retrospect and with the benefit of hindsight is a difficult and largely speculative task. It is not possible to reliably conclude that either Chief Inspector Liouthakis or Acting Assistant Commissioner Dunstan would have reached a different view regarding the proposed breach and hold tactic. What the evidence does establish, however, is that Malcolm had also separately threatened to end his life without referring to the NSWPF potentially entering his unit. This tends to suggest that the weight to be given to the information is not as significant as advanced by the legal representative for Malcolm's Family. Ultimately, it is simply not possible to conclude whether provision of this information would have resulted in a materially different outcome.

Was the use of a taser appropriate?

12.41 It was submitted on behalf of Malcolm's Family that *"the decision to taser Malcolm was not proportionate to the threat that Malcolm posed at the time, given that he was already unconscious and not moving"*.

12.42 On this issue, Operator 226 gave the following evidence:

I wanted to stop Malcolm from further self-harm. It was clear to me that he had stabbed himself in the neck from the nature of the blood flow and he was still holding the knife. Malcolm, he - he appeared, like, rigid, he wasn't slumped over and I believed that I needed to essentially disarm him and stop him from potentially further hurting himself because I believe that we had paramedics, the special operation paramedics, with us in the stack and as soon as they could get to him and start treating, you know, the best chance he would have or - or, you know, just do the best we could for Malcolm. That - that - that's why it occurred.

I had to weigh up in myself in that moment the risk of him further self-harming and that - and still being - I saw him sitting upright, rigid, still clenching that knife, essentially, if it was here, there was a right angle and I'm sure you're aware that movement can happen very quickly. I believe it was my duty to - to stop and prevent that from - from further happening again. I had to weight [sic] that up and that's - that's the decision I made.

12.43 Operator 226 gave evidence that this was “*just that split second decision*” that he had to make and that he immediately afterwards yelled for one of the tactical paramedics to assist Malcolm. It was not suggested to Operator 226 that the taser should not have been deployed or that its deployment was inconsistent with any NSWPF policy.

12.44 As noted already, the tactical options model is non-linear and includes the use of a conducted electrical weapon (taser), when use of force is needed to resolve a situation. The NSWPF Handbook requires NSWPF officers to, before removing a taser from a holster, assess if taser deployment “*is the best option for the prevailing situation*” having regard to, relevantly, the need to “*protect human life*”.

12.45 **Conclusions:** Operator 226 had only a very limited time to decide whether to deploy a taser. It was done so in the belief that Malcolm was potentially at risk of further self-harm. This was not an unreasonable belief given that Malcolm was seen to be in an upright position and not slumped over, and with a knife in his hand. Further, this belief was performed almost immediately after the breach was effected and it was likely to have been a dynamic situation. There is no evidence that the taser deployment was done with any other intention than to preserve life, and no evidence that it contributed to Malcolm’s death given the post-mortem examination findings. It therefore cannot be said that use of the taser was inappropriate but it is readily acknowledged that this has caused additional distress for Malcolm’s family.

13. Is it necessary or desirable to make any recommendation?

- 13.1 It was submitted on behalf of Malcolm's Family that a recommendation ought to be made *"reiterating the urgent need for the NSW Government to announce and implement an alternative model for responding to people experiencing acute mental health crises, specifically a model which prioritises the well-being of people experiencing acute mental health episodes"*.
- 13.2 It was also submitted that a copy of these findings should be provided to the Minister for Mental Health, the Minister for Police and the Commander of the NSWPF Negotiation Unit.
- 13.3 In support of the above submissions, the legal representative for Malcolm's Family referred to the NSWPF *Summary Internal Review of the NSW Police Force response to mental health incidents in the community* (April 2024) (**Internal Review**) and specifically to the key recommendation of the review that the *"NSWPF work with NSW Health to explore models for responding to mental health incidents consisted with the principles of the "Right Care, Right Person" model"*. This model is *"centred on a trauma informed response to people suffering emotional distress and mental health crisis"* and *"ensures that the agency who can help the most is the agency to respond"*.
- 13.4 It should be made clear that although the Internal Review is a publicly available document, it did not form part of the evidence tendered or considered at inquest. No witness was taken to the Internal Review itself and its contents and recommendations were not explored with any witness. Therefore, it is not proposed to consider aspects of the Internal Review in these findings. Instead, the evidence at inquest establishes the following matters.
- 13.5 *First*, in accordance with the relevant provisions in the TOU Manual, the events of 29 June 2022 represented a high risk situation which required the involvement of the NSWPF because there were reasonable grounds to believe that Malcolm had caused injury, and may cause further injury or death, had issued threats to kill or injure people, and had involved innocent participants by virtue of:
- (a) observations that he was holding a knife;
 - (b) the "He's Dead" Reference;
 - (c) the injury to his arm which was observed to be bleeding and bandaged; and
 - (d) the Firearm Warning.
- 13.6 Accordingly, as already noted above, tactical disengagement was not an available option according to the evidence given by Negotiator 4 that the NSWPF owed a duty of care to Malcolm and other people who lived near him.
- 13.7 *Second*, the Police, Ambulance, Clinical, Early, Response (**PACER**) Program was not available in the NSWPF Local Area Command where the events of 29 June 2022 took place. Further, Acting Assistant Commissioner Dunstan gave evidence that the PACER program would not have been available at the

time that events were unfolding in the early hours of the morning on 29 June 2022 and given that it was a high risk situation with Malcolm seen to be holding a knife.

13.8 *Third*, if PACER had been available appropriate consideration would have been given to how best to utilise any assistance that the program might have provided. Negotiator 4 gave this evidence:

So, if PACER was available, we'd get them down to the command post. Normally, they've got a laptop which is connected to their respective health district so that would have been - I would have tasked them to access the health file and see whether or not Malcolm had a record of the files that they had access to. We would have also spoken to them about presentation of the patient and, you know, what he was doing. We would have got their opinion and, you know, just use them as an information source, I suppose. I mean, that's different - they're being in a different capacity to being put forward so you can't obviously put them in a dangerous position or, you know, they don't wear protective equipment or that sort of thing. They're not police employees so we wouldn't put them in a dangerous position or forward but, certainly, they're of some significant benefit to us at a command level.

13.9 However, any input from PACER would not have determined the overall NSWPF response to the situation. Chief Inspector Laing explained:

I would have brought them to the scene. I would not have allowed them to speak to [Malcolm]. I would've taken whatever advice they could've given me but it's still my decision and my decision would be according to the protocols and policies and procedures that we have in place. My experience of what I'm seeing is how I would handle it. I would not - I would take the advice of the PACER but I wouldn't make tactical decisions based on what the - what the PACER is telling me.

13.10 At the time of the inquest, Negotiator 4 was the Commander of the Negotiation Unit and the most senior negotiator in the NSWPF.

13.11 **Conclusions:** The NSWPF Internal Review did not form part of the evidence considered at inquest. Accordingly, there is no evidentiary basis to make the recommendation advanced by the legal representative for Malcolm's Family. What the actual evidence did establish is that the events of 29 June 2022 required a NSWPF response and that the PACER program was not available. If it had been available appropriate consideration would have been given to how best to utilise any assistance that the program might have provided. Having regard to the above matters it is neither necessary nor desirable to make the recommendation advanced by the legal representative for Malcolm's Family.

13.12 Equally, there is no basis to otherwise direct that a copy of these findings be provided to any person or organisation, particularly in circumstances where the Minister for Mental Health and Minister for Police were not represented at the inquest and were not involved in it. It should be noted that these findings are publicly available.

14. Findings

14.1 Before turning to the findings that I am required to make, I would like to acknowledge, and express my gratitude to Ms Joanna Davidson, Counsel Assisting, and her instructing solicitor, Ms Elizabeth Leung from the Crown Solicitor's Office. The Assisting Team has provided exceptional assistance during the conduct of the coronial investigation and throughout the course of the inquest. I am extremely grateful for their commitment and tireless efforts, and for the sensitivity that they have shown during all stages of the coronial process.

14.2 I also thank Detective Sergeant Stephen Boyling, the Senior Critical Incident Investigator, for his role in the investigation and compiling the initial brief of evidence.

14.3 The findings I make under section 81(1) of the Act are:

Identity

The person who died was Malcolm Brown.

Date of death

Malcolm died on 29 June 2022.

Place of death

Malcolm died at Leichhardt NSW 2040.

Cause of death

The cause of Malcolm's death was sharp force injuries of the neck.

Manner of death

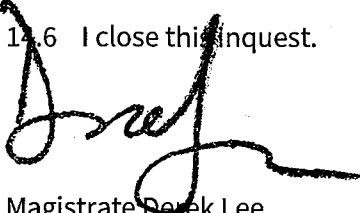
Malcolm died as a result of deliberate action taken by him with the intention of ending his life. These actions were taken at the culmination of a NSWPF operation that, for much of the time, used negotiation with the aim of preventing harm to Malcolm and other persons. Although the culmination of the operation resulted in a transition from negotiation to use of force, the available evidence does not allow for any conclusion to be reached that this transition influenced, or accelerated, Malcolm's actions and intention.

14.4 On behalf of the Coroners Court of New South Wales, I offer my sincere and respectful condolences to Mr Robinson, Ms Tagg, Ms Whitehead, Ms Hearn, Ms Kepkey and Malcolm's other family members and loved ones, for their enormous loss.

14.5 At the end of the inquest, Mr Robinson generously shared these words regarding Malcolm:

To honour you, I get up every day and take a break and start another day without you in it.
To honour you, I laugh and love with those who knew your smile and the way your eyes twinkled with mischief and secret knowledge.

14.6 I close this inquest.

A handwritten signature in black ink, appearing to read 'Derek Lee', written over the text 'I close this inquest.'

Magistrate Derek Lee

Deputy State Coroner

9 May 2025

Coroner's Court of New South Wales

Inquest into the death of Malcolm Brown
2022/00190663

Appendix A

Non-publication and non-disclosure orders

The Court Orders:

Public interest immunity

1. Pursuant to the common law principles of public interest immunity, the information marked in orange in Confidential Exhibit MW-1 to the Confidential Affidavit of Mark Walton affirmed 20 July 2023 (**the Confidential Exhibit**) shall be redacted and excluded from the brief of evidence.

Pseudonym, non-disclosure and non-publication orders

2. Pursuant to the court's implied power:

- a. the information marked in pink in the Confidential Exhibit shall be redacted and overlaid with a pseudonym, in accordance with confidential annexure A to these orders;
- b. the true identities of the officers whose names are marked in pink in the Confidential Exhibit are not to be disclosed (by publication or otherwise) other than for the purpose of this inquest;
- c. the officers whose names are marked in pink in the Confidential Exhibit are to be referred to using the pseudonyms contained in confidential annexure A.

3. Pursuant to the court's implied powers, the information marked in green in the Confidential Exhibit, and proposed Volume 5 of the brief of evidence (as at the time of the making of these orders) is not to be disclosed (by publication or otherwise) other than as permitted by these orders.

4. Pursuant to the court's implied power the information in relation to the [REDACTED]
[REDACTED]
[REDACTED] is not to be disclosed (by publication or otherwise) other than as permitted by these orders.

5. Orders 3 and 4 do not prevent disclosures to and between the following people for the purposes of this inquest:

- a. the Court, Counsel Assisting and the Solicitors Assisting;
- b. necessary Court staff;

- c. current officers of the NSW Police Force;
- d. the legal representatives of the interested parties and their administrative staff to the inquest;
- e. the family of Mr Small;
- f. the support persons of the family of Mr Small; and
- g. the Law Enforcement Conduct Commission.

Note: “the family of Mr Small” is defined as: Zachary Robinson, Joanne Whitehead, Jessica Hearn, Michelle Kepkey and Amber Tagg.

Note: “the support persons of the family of Mr Small” is defined as: Michael Rolls, Danielle Martin and Rebecca O’Brien.

6. The material the subject of orders 3 and 4 may be inspected by the interested parties and the family of Mr Small in the presence of their legal representatives **or**:

- a. at the offices of the solicitors assisting the court (the Crown Solicitor’s Office);
- b. at the offices of the legal representatives of the interested parties;
- c. at the Registry of the Coroners Court of New South Wales (by appointment with that Court);
- d. at a police station (by appointment with the Commanding Officer of that police station); or
- e. at such other place as may be proposed by the Commissioner and agreed to by the interested parties.

7. Viewing access to the material subject of order 3 in accordance with order 6 can be done by video conference, provided no screenshots, copies, videos or other recordings of the material are made and/or kept. For the avoidance of doubt, Order 7 does not require a legal representative to be present to facilitate access.

8. Order 3 does not apply to:

- a. Tab 82: Tactical Options and Use of Force Manual;
- b. Tab 86: Truncated version of the Operations Manual; and
- c. Tab 88: Statement of Negotiation One (except in relation to the green highlighted portion of it, to which order 3 does apply).

9. The Court shall be closed should any evidence, submissions or discussion occur in relation to the information subject to orders 3 and 4. For the avoidance of doubt, all interested parties, the family

of Mr Small and the support persons of the family of Mr Small are permitted to remain in the court if the court is closed pursuant to this order.

10. Pursuant to s. 74(1)(b) of the *Coroner Act 2009* the information marked in yellow in the Confidential Exhibit is not to be published.

11. Pursuant to section 74(1)(b) of the *Coroners Act 2009* there be no publication of:

- a. [Redacted]; and
- b. [Redacted].

Return of documents

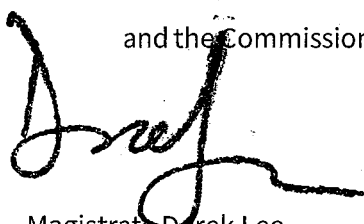
12. The Confidential Affidavit of Mark Walton affirmed 20 July 2023, the Confidential Exhibit and/or any confidential submissions (**the Confidential Material**) relied on by the Commissioner in support of this application is to be returned to her legal representatives at the conclusion of the determination of this application, with the legal representatives for the Commissioner to make them available to the Court upon request.

Access to Coronial File

13. Pursuant to s. 65 of the *Coroners Act 2009* the Court orders that access to the information the subject these orders, insofar as it remains unredacted, and any copies of the Confidential Material on the Coroner's file is not permitted without leave of the Court, and without prior notice to the Commissioner to allow her to be heard in respect of access.

Notification

14. Notification is to be given to the Commissioner should a person seek to vary or revoke these orders, and the Commissioner shall be given an opportunity to be heard in respect of any such application.



Magistrate Derek Lee
Deputy State Coroner

9 May 2025

Coroner's Court of New South Wales

Confidential Annexure A

Pseudonym	Name
TOU 136	[Redacted]
TOU 138	[Redacted]
TOU 193	[Redacted]
TOU 202	[Redacted]
TOU 203	[Redacted]
TOU 214	[Redacted]
TOU 224	[Redacted]
TOU 226	[Redacted]
TOU 227	[Redacted]
TOU 141	[Redacted]
Negotiator 1	[Redacted]
Negotiator 4	[Redacted]
Negotiator 5	[Redacted]
Negotiator 7	[Redacted]
Negotiator 10	[Redacted]
Negotiator 15	[Redacted]
Negotiator 3	[Redacted]
SOT 1	[Redacted]
SOT 2	[Redacted]
TOG Intel	[Redacted]
Dog 26	[Redacted]
TOU Officer 1	[Redacted]
TOU Officer 2	[Redacted]
TOU Officer 3	[Redacted]
TOU Officer 4	[Redacted]
TOU Officer 5	[Redacted]
TOU Officer 6	[Redacted]
TOU Officer 7	[Redacted]
Former Neg 1	[Redacted]
TOG 1	[Redacted]

