

*SOUTH*



*AUSTRALIA*

## **FINDING OF INQUEST**

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on 26 February, 27 February, 28 February, 1 March, 2 March, 5 March, 6 March, 7 March and 29 March 2001 before Wayne Cromwell Chivell, a Coroner for the said State, concerning the death of Grant Alistair MacLeod.*

*I, the said Coroner, find that Grant Alistair MacLeod, aged 38 years, late of Unit 5, 7 Waterman Terrace, Mitchell Park, South Australia died at the Marion Hotel, 849 Marion Road, Mitchell Park, South Australia on 9 October, 1999 as a result of internal haemorrhage complicating large calibre gunshot wounds to the neck. The circumstances of death were as follows.*

### **1. Introduction**

- 1.1. Grant Alistair MacLeod was born on 30 January 1961 in Scotland. He died at about 11:10am on 9 October 1999 as a result of having been shot by a police officer, Constable Mark Buckingham, following a confrontation in the carpark of the Marion Hotel at Mitchell Park, South Australia.
- 1.2. Mr MacLeod sustained a severe injury as a result of a gunshot wound, and he died at the scene almost instantly. Death was formally certified by Dr R A James, Chief Forensic Pathologist, at 2:35pm that day.
- 1.3. Cause of death  
A post mortem examination of the body of the deceased was performed by Dr James during the afternoon of 9 October 1999 at the Forensic Science Centre. Dr James found that the cause of death was 'internal haemorrhage complicating large calibre gunshot wound to the neck'. (Exhibit C2b, p2).

1.4. Dr James commented, inter alia, as follows:

‘7. No treatment was apparently undertaken to the deceased after the shooting occurred. Given the disruption of the carotid artery and the massive chest injuries there is no reasonable expectation that treatment would have been helpful’. (Exhibit C2b, p9).

1.5. The Deputy Commissioner of South Australia Police (SAPOL), Mr N J McKenzie, directed that this incident should be the subject of an extensive investigation by a team led by Detective Inspector J N Tank. This process is known locally as a ‘Commissioner’s Inquiry’.

1.6. It is arguable whether Grant MacLeod’s death constitutes a ‘death in custody’ within the meaning of Section 12(1)(da) of the Coroner’s Act 1975. A protocol for investigation of deaths in custody has been developed between my office and the Commissioner of Police, and this treats such cases as deaths in custody. Since I decided that an inquest into the death was desirable in the public interest, the strict definition is somewhat academic in the circumstances of this case. There is no doubt that the investigation was of the standard required in such cases in any event.

## **2. Background**

2.1. Grant MacLeod was born in Scotland, as I have said, on 30 January 1961. His father described him as a ‘very gregarious and intelligent child’. (Exhibit C.42a, p1).

2.2. When he was 11 years old, Grant suffered very serious injuries when he fell 50 feet into a gorge from a rope tied to a tree. He suffered a fractured skull, brain and liver injuries. He came very close to death. He survived after extensive and repeated surgical operations.

2.3. Mr MacLeod said that Grant was ‘more peaceful and placid’ after the incident. He said that the doctors did not tell them that Grant would suffer any long-term effects as a result of his head injuries. (Exhibit C42a, p2).

2.4. It is clear, however, that Grant suffered permanent organic brain damage. The post-mortem examination carried out by Dr R A James, forensic pathologist, confirmed that there was ‘old post traumatic necrosis on the under-surface of his right frontal lobe’. (Exhibit C2b, p9).

- 2.5. The family moved to Australia in 1973. They lived in Melbourne initially, and moved to Adelaide in May, 1974.
- 2.6. Grant left school at 16, and was in regular employment, eventually gaining permanent employment in the pest-control industry. He married in 1982 and a daughter was born in 1986. He separated from his wife and they were divorced in 1989. He married again in 1994 but they separated in May 1997. The evidence indicates that he remained on good terms with both of his former wives.
- 2.7. Mr MacLeod (snr) tends to minimise the extent of Grant's difficulties following his injuries, saying:
- ‘I remember times when Grant went through periods of depression and I know that at one stage he was put on anti-depressant tablets. These periods of being depressed would only last short periods of time and he would bounce back to his normal out-going self.’  
(Exhibit C42a, p5)
- 2.8. In contrast, Grant's sister Sheena, who has a degree in psychology, said:
- ‘... he had no control of his emotions, lack of impulse control and was prone to angry outbursts in keeping with the trauma associated with a head injury ... I noticed there was dramatic changes in his cognitive function and very significant short-term memory loss. Anything he learned he did not always retain. He would not problem-solve and he would take a very long time to problem-solve a new situation.  
Even though Grant had all these difficulties he was always happy go lucky. He was a hard worker, he loved older people and children and he always wanted to help people ...’. (Exhibit C48a, p2-3).
- 2.9. Grant MacLeod seemed to be able to control his condition well, particularly at work. His supervisor, Mr Brian Calvert, described him as ‘always on time’, and ‘a consistent worker’. (Exhibit C1a, p2).
- 2.10. However, his friend Richard Bright said that Grant suffered ‘mood swings’, and that he became verbally abusive when drunk. (Exhibit C32a, p1-2).
- 2.11. Richard's sister, Sandra Bright, who was Grant MacLeod's second wife, also spoke of Grant's mood swings, particularly when he was under stress of undergoing significant life changes, such as getting married. She said he would suffer panic attacks, and periods of being down, and that this would often follow a ‘high’. (Exhibit C33a, p5).

- 2.12. Heidi Jeffery, Grant's first wife, confirmed that Grant often had severe headaches, sometimes so bad that a doctor would be called to give him an injection. Interestingly, Mrs Jeffery also said that Grant had a negative attitude to police. She said:

'... I know that Grant had a general dislike to police. I mean he wasn't paranoid about them and that his feeling towards the police didn't occupy much of his time. He was just distrustful of the police, the governments, taxation and that sort of thing. I believe that attitude stemmed from his father who had the same attitude.'  
(Exhibit C39a, p2-3).

- 2.13. The general impression I have from the evidence is that Grant MacLeod's mental state deteriorated during 1999. Lynne Jeffries, who was the last woman with whom Grant had a substantial relationship, described increasingly bizarre behaviour when he was affected by alcohol, to the extent that she terminated their relationship in May 1999. (Exhibit C40a, 5).

- 2.14. Grant MacLeod was banned from the Marion Hotel twice in 1999, the last time for three months in July of that year. The manager, Mr Peter Spears, said that this was a result of his aggressive and offensive behaviour, particularly towards the female bar staff, and his aggressive behaviour when intoxicated. (Exhibit C59a, p1-2). He had also been banned from the Tonsley Hotel for similar reasons (Exhibit C56a, p1).

- 2.15. Grant's father also noticed this deterioration. He said:

'During the last 6 months I did notice a change in Grant's personality. He started smoking again and I noticed that he started drinking more than usual. He told me that there was one occasion recently where he had been banned from a hotel but he could not tell me the circumstances leading to why he had been banned. He told me that he could not remember why the hotel had taken this approach with him'.  
(Exhibit C42a, p4-5).

- 2.16. Grant had been discussing setting up his own pest control business, and his father had offered to lend him some money. However, Mr MacLeod said:

'We had a further telephone conversation on Friday, 8 October 1999, he also spoke to my wife Barbara and he told her that he had decided not to go ahead with the business. He seemed very flat and I remember my wife saying that Grant was not his normal cheery self. I also formed the same opinion and became concerned about him as a result of this conversation.'  
(Exhibit C42a, p5).

- 2.17. It would appear that the only time Grant MacLeod had ever sought or obtained treatment for his mental state was in 1994 when he was referred to Dr John Truman, a psychiatrist. Dr Truman saw him urgently, and diagnosed a Major Depressive Disorder with significant suicidal ideation. He prescribed Sertraline (Zoloft), but Grant complained of the side effects when he saw the doctor 3 days later. He failed to attend his next appointment, and Dr Truman has not seen him since. (Exhibit C53a, p2-4).

### **3. Events of the week preceding 9 October 1999**

- 3.1. Over the weekend of 2-3 October 1999, Grant MacLeod visited a number of friends and mixed with them without displaying major symptoms. He had a workout at Christopher McGinley's home gymnasium on the Saturday, and Mr McGinley described him as 'very happy'. (Exhibit C43a, p2). He was also 'happy enough' on the Sunday.
- 3.2. On the Saturday night, Grant MacLeod had dinner with Michelle Brown and her brother Matthew. Matthew said that he seemed a 'normal type of guy with a Scottish accent and a good sense of humour'. (Exhibit C34a, p2). He said that they talked about various things, including ghosts, martial arts (and the use of knives therein), witches, spiritualism and aliens.
- 3.3. Interestingly, Grant MacLeod told Matthew that he did not like to take his T-shirt off, because of the scarring on his torso from the operations. (Exhibit C34a, p6). This comment contrasts with Grant's behaviour on 9 October 1999 when he was conspicuously naked from the waist up on a relatively cool day.
- 3.4. On Sunday, 3 October 1999 Grant MacLeod drove to Freeling to collect his daughter Amanda, whom he was taking out for the day. Heidi Jeffrey, his first wife, thought he was his 'normal self'. (Exhibit C39a, p4).
- 3.5. On Monday, 4 October 1999 Grant MacLeod visited another friend, Anthony Webb. Referring to his dinner with the Browns, Grant told Mr Webb that he thought they were trying to 'get into his head', and Mr Webb thought that he appeared 'quite disturbed' about Matthew Brown's discussion of knives. (Exhibit C49a, p3). If, as the Browns assert, their conversation had been innocuous banter, it could be that

Grant MacLeod was becoming paranoid. He made similar comments to Richard Bright on Tuesday, 5 October 1999. (Exhibit C32a, p3-4).

3.6. On Wednesday and Thursday, 6 and 7 October 1999, Keith Worrall, a work colleague, noticed a change in Grant's mood, in that he was no longer the 'same bubbly person that he normally was'. (Exhibit C51a, p2). He appeared to be in the same mood on the Thursday.

3.7. By Thursday, 7 October 1999, Grant MacLeod's behaviour seemed to become even more bizarre. He went to the home of Mrs Sandra Rowan, a psychiatric nurse, in the course of his pest control duties. Mrs Rowan said:

'When I first saw him, I noticed that his eyes appeared to have a fixed stare and he didn't seem to blink very often. I also noticed that the whole time he was here he continually had a grin on his face and a full grin showing all his teeth. He was also singing a song to himself quite quietly ... as a psychiatric nurse of 32 years experience, I formed the opinion that the male was someone who was disturbed, and possibly needed some medication and someone to talk to him. He appeared to be not in complete control ...' (Exhibit C46a, p2).

3.8. By the time Grant MacLeod attended upon the premises of Mrs Florrie Reid at Largs North, Grant MacLeod appears to have improved again. She described him as 'efficient' and pleasant'. (Exhibit C45a, p2).

3.9. When Grant MacLeod visited Sandra Bright, his second wife, at about 5:00pm on 7 October, she described him as 'very agitated' and said that he 'desperately wanted to speak with someone'. He told her that he had not had a drink of alcohol for 6 weeks. (Exhibit C33a, p9). Ms Bright said that he appeared 'frightened' about his conversation with the Browns, he told her he was 'frightened that he was going to do something bad', that his deceased grandfather has 'been around a lot lately', and that he was worried about his brother Alistair (who also suffers from a mental illness). (Exhibit C33a, p9-10).

3.10. Later that evening Grant MacLeod cancelled a planned night out with Sandra's brother, Richard Bright, for the following night. Mr Bright was sceptical of the excuse he gave. (Exhibit C32a, p4).

3.11. Friday, 8 October 1999

Grant MacLeod did not attend work on this day. Patrick Kerton, his supervisor, spoke

to him on the telephone at between 12:30pm and 2:00pm. He said that Grant complained of the 'flu. He said that he did not know if he would be in on Monday. They shared a joke about a work issue. Mr Kerton observed:

'Grant seemed to me a little bit down due to the fact that he was suffering from the flu but he was able to joke and be his usual self to me. Grant was always immaculately dressed at work and had a happy go lucky nature and was very honest'.  
(Exhibit C41a, p2).

- 3.12. Richard Bright spoke to Grant MacLeod on the telephone at about 5:30pm that day. He said that Grant told him:

'He said that he was feeling dizzy, very tired and work was getting him down and stressing him out. I noticed that he spoke slowly as if he had just woken up'.  
(Exhibit C32a, p4).

- 3.13. The clear impression to be gained from this evidence is that during the time leading up to 9 October 1999, Grant MacLeod became increasingly introspective, ruminative and paranoid, although he managed to keep this within bounds until 9 October when he became frankly psychotic.

#### **4. Events of 9 October 1999**

- 4.1. The first that is known of Grant MacLeod's movements on 9 October is the observation of Ms Renea Jones. At about 10:50pm she was standing in Waterman Terrace, not far from the eastern footpath of Marion Hotel at Mitchell Park, a short distance north of the Marion Hotel, waiting for a friend to pick her up. Ms Jones said that she heard a voice calling out 'Oye. Oye. Oye.' When she looked up, she saw a man walking up and down along the roof of a two-storey block of flats on the southern side of Waterman Terrace. (Exhibit C5a, p1-2).

4.2. Ms Jones described her observations as follows:

‘The man was pacing up and back on the roof of the flats. I saw that the man was wearing a pair of grey trackies (track suit pants) and had no top on. It looked like he had gloves on and because of him wearing gloves I thought that he might have been fixing the roof. I saw that he was holding something in one of his hands, but I didn’t know what it was and which hand it was. The object in his hand looked like a knife but I wasn’t sure because I thought it might have been some sort of tool.

I tried not to look at this person because I didn’t want to attract his attention because I thought he was a bit of a weirdo. I thought this because he had not top on, it wasn’t hot this morning and with him being on top of the roof as well’. (Exhibit C5a, p2-3).

Ms Jones added that the man looked ‘agitated’. (Exhibit C5a, p3).

4.3. Mr Timothy Walsh saw Grant MacLeod run out of Waterman Terrace, and then south along Marion Road. He was still naked above the waist, wearing gloves and carrying the knife. (T66).

4.4. At about 11:00am, Grant MacLeod entered the shop which is part of the BP Express Service Station at 843 Marion Road, Mitchell Park. Again, his extraordinary appearance attracted attention. Mark Willoughby and Jonathon Peterson were working behind the counter. Mr Willoughby noted the lack of a shirt, the old scars on the man’s chest and abdomen, and the fact that he was carrying a large knife, ‘8 or 9 inches long’. (Exhibit C6a, p2). He also noted fresh scars on his arms which appeared to have been deliberately inflicted. They were not bleeding, although they appeared ‘fresh’. (Exhibit C6a, p4).

4.5. Grant MacLeod asked the attendants to call the police, saying:

‘You guys are okay. I’m not going to hurt you. I just want the police.’

When asked what the problem was, he said ‘It’s a long story’. (Exhibit C6a, p2).

4.6. Mr Willoughby dialled 11444 and Grant MacLeod spoke to the operator in the SAPOL Communications Centre (ComCen). The conversation was as follows:

Operator: ‘Police attendance Good Morning’

MacLeod: ‘Yes umm, I am holding up the BP Service station, ah, where is it  
(male voice is heard to say Mitchell Park), Mitchell Park.’

Operator: ‘Sorry, what are you doing?’

MacLeod: ‘Holding it up.’

Operator: ‘What do you mean you are holding it up?’

MacLeod: 'Um well I, I want some police to come down here basically.'

Operator: 'Which service station are you at.'

MacLeod: 'Uh BP Mitchell Park.'

Operator: 'BP Mitchell Park .... Do you work there?'

MacLeod: 'Thank you.'

(Transcript, part of Exhibit C102).

The call was noted as commencing at 11:01am and concluding at 11:01:40am, or 40 seconds later.

- 4.7. The two men did not feel threatened by Grant MacLeod's behaviour. Jonathon Peterson said:

'I did not believe what he said to the other person on the other the end of the line because there was nothing in his behaviour that indicated to me that he was holding the service station up. He made no demands and I don't know why he said this. I gained the impression that he was agitated and that he was not his normal self. While he was standing at the counter the knife was hanging loosely at his left side and was never thrust in anger. A few seconds later he hung up the phone and said something to the effect, 'Well, I have to try somewhere else', turned away and walked out of the store, in a southerly direction towards the Marion Hotel. I would estimate that this person was in the shop for no more than 5 minutes'.

(Exhibit C7a, p5).

Indeed, Mr Peterson thought that Grant MacLeod may have been attacked, he said:

'Because of what he said and his general attitude I got the impression that he had been attacked and was pumped up emotionally because he had been in a knife fight. My first reaction was to look into the forecourt into the direction that he came from to see if anyone was chasing him'. (Exhibit C7a, p3).

- 4.8. Grant MacLeod's actions in the service station were captured on videotape, (Exhibit C90). This confirms the evidence of the two witnesses.
- 4.9. Mr Walsh, whom I mentioned earlier, had walked on towards the Marion Hotel, and was standing in the northern carpark talking to a friend when he saw Grant MacLeod again. He saw MacLeod run through bushes on the boundary, near Quick Road, past Mr Walsh and his friend and then around towards the front of the hotel on the western (Marion Road) side. Mr Walsh commented that MacLeod 'had no emotion on his face and actually looked a bit spaced out and oblivious to anyone around him'. (Exhibit C89, p3).

4.10. At about 11:03am, Grant MacLeod entered the shop attached to the Liberty Service Station situated on the western side of Marion Road, opposite the Marion Hotel. He walked in and stood next to Ms Marcia Sanderson, a customer. Ms Sanderson noted the lack of a shirt, his gloves and what she thought was a small crowbar, but which was clearly the knife. Not surprisingly, Ms Sanderson felt 'quite threatened' by Mr MacLeod's presence. (Exhibit C9a, p2).

4.11. The console operator, Mr Daryoush Afarinesh, also noted the gloves, the knife and the cuts and blood on Mr MacLeod's left arm. Both he and Ms Sanderson state that the man said:

MacLeod: Can you call the police because I'm possessed by a witch.

Afarinesh: Excuse me?

MacLeod: Do you want to mess with me?

(Exhibits C8a, p2 and C9a, p2).

Mr Afarinesh then pressed the robbery alarm and asked Grant MacLeod to leave, whereupon he 'calmly' walked out of the shop.

4.12. Again, Mr MacLeod did not directly threaten anybody, nor brandish the knife, although Ms Sanderson was understandably put in fear, as I have said. Clearly, his object was to attract the attention of the police, and he seemed satisfied and left when Mr Afarinesh activated the robbery alarm.

4.13. This incident was also captured on videotape which, subject to its poor quality, confirms the oral evidence of the witnesses. (Exhibit C91).

## **5. Police response**

5.1. A police patrol, designated 'Sturt 11', consisting of Constables Sharon Beebee and Mark Buckingham, responded to the call from ComCen following Grant MacLeod's telephone call from the BP Service Station. At 11:07am, they received a high priority call from ComCen arising from Mr Afarinesh's activation of the robbery alarm. As a result of this, they diverted to the Liberty Service Station. The radio transmission I have just mentioned, and subsequent transmissions which occurred up to and following Mr MacLeod's death, were transcribed and provide a chilling account of what occurred:

“COMS: ‘VKA to all patrols. Got a Priority A, 401 Hold up at 734 Marion Road at Marion. Business prems of Liberty Service Station, 401 from the counter. Patrol to the scene thanks.’

Female: ‘Eleven, is that the Liberty?’

COMS: ‘Roger, Liberty Service Station.’

Female: ‘Tell ‘em we’re just a couple down the road.’

COMS: ‘Roger thanks and Sturt 10 did you want to make your way down there as well.’

Male: ‘We’re on our way.’

COMS: ‘Roger thanks.’

Male: ‘Vixen 10 monitoring and sitrep thanks.’

Male: ‘13 as well.’

COMS: ‘13 Roger.’

Male: ‘Sturt Baron location of that job please’

Female: ‘11 away’

COMS: ‘11 Roger thanks and Sturt Baron that was at Liberty Service Station down at Marion Road at Marion.’”

Male: ‘Sturt Vixen 10.’

COMS: ‘Vixen 10 send.’

Male: ‘Vixen 10 I’ll be making my way down there.’

COMS: ‘Roger thanks Vixen 10.’

Female: ‘11 Have we any dogs? Something has happened here, we’re just getting further details.’

COMS: ‘Roger, we’ll organise one.’

Female: ‘Yeah, Roger, we’ve got a male, no shirt, he’s walking east across Marion Road. He’s got a knife on him. No shirt, grey tracksuit pants, he’s got some blood all over him as well.’

COMS: ‘VK to all patrols. A male has been sighted with blood all over him heading east on Marion Road, no shirt, wearing a grey tracksuit pants and also in possession of a knife. Last seen heading east on Marion Road.’

Female: ‘Sturt 11 can we have backup. Lutana Crescent by the Marion Hotel. He’s got a knife, he’s threatening, we’re backing off but we’re just trying to contain him.’

COMS: ‘Roger thanks. Patrols to go down to Lutana Crescent near the Marion Hotel thanks where the male is with a knife.’

Male: ‘Sturt 10 we will be then seconds.’

Male: ‘13 we are away.’

COMS: ‘Sturt 10 and 13 Roger back.’

Male: 'Sturt Baron advise STAR Division please.'

Female: 'He's moving on my partner.'

Male: 'Transit 22, we'll back him up as well.'

COMS: 'Tango 22 Roger.'

Female: 'Sturt 11 one shot fired, can we have ambos to location. We're in the Marion Hotel carpark.'

Male: 'Vixen 10 be there shortly.'

Male: 'Offender's been shot, we need ambulance.'

Male: 'Sturt 10 receive.'

COMS: 'Sturt 10 Roger. We're arranging for the ambos to attend now and the person that's injured please.'

Male: 'Offender with a knife. He had to be shot. All the police are OK. We need ambos here in the Marion Hotel carpark.'

COMS: 'Sturt 10 Roger that.'

Male: 'Vixen 10. Received that about 2 away.'

COMS: 'Roger that.'

Male: 'Vixen 10 is Sturt Baron advised of that?'

Male: 'Can we have all patrols here to seal off the area please.'"

(Part of Exhibit C102).

5.2. I will set out this sequence of events in greater detail in due course, but there are several points to note from this transcript:

- Constable Beebee requested the presence of a dog patrol as she correctly apprehended trouble;
- Beebee requested 'backup' as the man was 'threatening' Constable Buckingham, she said that they were 'backing off', and they were 'just trying to contain him';
- The man was 'moving' on Buckingham;
- From the time Beebee reported that they had arrived at the Liberty Service Station (11:07:45am) to the time she reported that a shot was fired (11:09:29am) was a period of only 1 minute and 44 seconds. This very short time frame should be borne steadily in mind when considering the actions of those involved.

5.3. Constable Buckingham gave oral evidence at the inquest, as did Constable Beebee.

5.4. I will now set out a summary of Constable Buckingham's evidence:

- He and Beebee commenced work at 7:00am, and proceeded according to routine;
- They responded to the initial radio call to the BP Service Station. They received no information that the man involved was mentally ill, or any information about his identity;
- On the way to BP, they received another message that a holdup was occurring at the Liberty Service Station (a '401'). This was given a priority 'A' (higher than the first tasking). They advised ComCen that they would proceed to the Liberty instead;
- They activated lights and sirens on the police car and drove quickly to the Liberty, parking near the shop section of the premises;
- As Buckingham alighted, he was approached by the proprietor, Mr Afarinesh, who told him that the man had a knife, had no shirt on, and was wearing a glove, and that he 'took off' in a southerly direction down Marion Road (T496). He said that he had been frightened of the knife;
- Mr Afarinesh then indicated Mr MacLeod, who was by then walking north towards the Liberty, on the western side of Marion Road;
- Buckingham advised Beebee, then followed MacLeod across Marion Road, MacLeod crossing 20 to 30 metres south of him;
- Buckingham gave directions to the traffic to allow MacLeod safe passage across the road (T497);
- Buckingham tried to attract MacLeod's attention but did not succeed, although MacLeod looked at him several times;
- Buckingham said he used words such as:

'Excuse me, I just want to have a talk with you'. (T498);
- MacLeod walked along the northern footpath of Lutana Crescent (which forms the southern boundary of the hotel) and stopped near an ETSA transformer box. Buckingham said:

‘I was talking with the male and in a quiet, calm voice trying to relate to him a bit because he appeared very agitated at the time. I maintained a distance and the box was between the both of us and he just stayed behind the box’. (T498);

- While talking, Buckingham said he had both arms out, palms outward in a ‘calming down’ motion (he said he thought it was possible MacLeod may have had a hearing impediment). (T501);
- MacLeod then came out from behind the transformer box, and Buckingham then ‘arced’ around to the east and began walking backwards. He said that he had trouble making eye contact before that, but at this point MacLeod ‘locked on to me visually’. (T501);
- Buckingham was aware that Beebee was talking on the radio throughout;
- As Buckingham was walking back, MacLeod was advancing towards him, gaining on him as they went. Buckingham said he still had both hands out in front of him at this stage. (T503);
- Buckingham said he was continually talking to MacLeod as he retreated, saying ‘put the knife down’, ‘calm down’, and the like, as he was retreating. (T523);
- As Buckingham crossed a small ‘speed hump’ in the eastern carpark, he stumbled, and then turned and took about 5 steps away from MacLeod, then yelled at him to ‘Stop’. He said that MacLeod was advancing on him, he had his hand holding the knife extended, and was making jabbing motions at him. Buckingham said that his yelling seemed to stun MacLeod momentarily and he stopped. He then began advancing again;
- Buckingham said that, at the time he yelled ‘Stop’, he had his right hand on the handle of his pistol, which was still holstered. (T506);
- Although Buckingham was aware of other police officers in the carpark at the time, he was concentrating on MacLeod and could not pinpoint their precise positions. However, he knew they could not assist him. He said that an approach to MacLeod in that situation would have ‘jeopardised everybody’s safety totally’. (T507);

- When MacLeod started advancing again, Buckingham said that he undid the safety clips on his gun, then took some further steps back, then, because MacLeod continued to advance, drew the gun from its holster. MacLeod continued to advance, waving and jabbing the knife. He said:

‘I started to arc around to my left; I crossed the median strip; and took a few more steps back; he followed; I drew my revolver; I kept taking a few more steps back; anchored my feet as he kept coming; and as he lunged at me from the median strip I fired one shot’. (T508);

- Buckingham said that MacLeod was 2.5 to 3 metres away when he started to lunge at him. He said that, before he fired, he said:

‘Stop or I’ll shoot’. (T508);

- Buckingham said that MacLeod did not say anything to him throughout the episode, although he was making a ‘grunting’ sound from time to time (T529);
- Buckingham said that he discharged his gun at the last possible moment to protect his life and wellbeing. (T552).

5.5. Some points arising from Beebee’s evidence are as follows:

- Beebee followed Buckingham across Marion Road, talking on the radio as she ran. She confirmed that they were trying to ‘contain’ MacLeod as best they could by spreading out – she remained to the west of MacLeod facing east, while Buckingham moved clockwise around through north to finish east of him. She was also talking to MacLeod, telling him to ‘sit down’ and ‘relax’. (T463-4);
- Beebee said that MacLeod began to ‘chase’ Buckingham across the carpark. She saw no reason for his actions. She described his eyes as ‘very glassy’. (T465-6);
- Beebee pulled out her gun and yelled ‘Stop or I’ll shoot’, but MacLeod did not react. (T466);
- Beebee confirmed that Buckingham had not unholstered his gun as he backed east across the carpark, he remained calm and he was still trying to communicate with MacLeod. (T467);

- Beebee reholstered her gun only a moment before Buckingham fired because both Buckingham and MacLeod were in the line of fire. (T467-8);
- Beebee confirmed Buckingham's stumble on the speed hump, and the fact that he turned and ran several steps;
- Beebee also confirmed that Buckingham did not unholster his gun until after he had crossed the grassed median strip in the middle of the eastern carpark. (T470);
- Beebee collected a first aid kit after the shot was fired, but did not attempt first aid as:

‘he had quite a large wound to the neck area and appeared to be deceased’.  
(T471);

- Beebee confirmed that she unholstered her gun because of her apprehension that Buckingham's life was in danger. She said:

‘Q: Did you intend to shoot?;

A: If I had a clear shot, yes I would have;

Q: Why would you have shot?;

A: I thought he was going to kill my partner.’

(T484);

5.6. There were many other eye witnesses to the incident, both police and civilian. Understandably, memories about such a short but extremely shocking incident will vary, and there is probably little to be gained from trying to reconcile them all. However, I will set out the main points arising from the evidence of the main eye-witnesses, with some comments.

#### 5.7. Other police witnesses

Constable Jason Wheeler arrived in a patrol car as Buckingham and MacLeod were in the eastern carpark and witnessed what happened in the final few seconds before the shot was fired. He said that Buckingham had his gun out when he first saw him and they were already east of the median strip by then (T431). He saw MacLeod lunge at Buckingham immediately before he was shot (T349). He confirmed his belief that Buckingham's life was at risk. (T350);

- 5.8. Constable Paul Tiekstra, Wheeler's partner, gave similar evidence. He also saw Buckingham retreating backwards, saw him stumble, and heard the requests to 'stay back' and 'drop the knife' (T318-9). He provided a good description of the events in his statement, exhibit C95a, pp4-6:

'I then saw Buckingham increase his pace in moving backward. I would describe Buckingham's movement at this time as 'moving quickly'. This occurred simultaneously with the male wielding the knife towards Buckingham and walking forwards in the direction of Buckingham.

I recall that Buckingham had his firearm drawn and pointed directly towards the male with the knife from the first time that I sighted Buckingham. I recall that Buckingham was initially holding his firearm directly in front of his body and pointed slightly downwards from the sighting position. I saw the male with the knife lunge forwards towards Buckingham and at this time the male was holding the knife with his right arm extended with a slight bend. I estimate that the point of the knife came within a distance of about 1½ metres of Buckingham's mid torso. This was the closest that the knife came to Buckingham's body and occurred after the male person lunged forward.

At about the same time of the lunge I recall that Buckingham appeared to slightly lose his balance due to his rapid movement backwards. I saw Buckingham regain his balance and within a period of about one second I heard and saw Buckingham discharge one round into the direction of the male carrying the knife. I saw the male stop moving forward and stand up into an erect stance. He took one or two steps backwards and fell to the ground on his back. I am uncertain what happened with the knife at this stage. I estimate that Buckingham was located about 4 metres from a brush fence that was located across the rear boundary of the Marion Hotel car park at the time he discharged his firearm.

I then walked over to Buckingham's position within the car park and I saw that he was still holding his firearm and I told Buckingham to return his firearm to his holster as he appeared to be in shock. I saw Buckingham reholster his firearm and at this stage I saw that Jason Wheeler had approached the male who had been shot and I told Buckingham to come onto the northern footpath of Lutana Crescent and he told me that he was scared and I reassured him and told him that he had no choice. I then saw Beebee in possession of a First Aid Kit approach the male victim just after I had heard her call for an ambulance via the police radio and advise communications that a male had been shot and that no police had been injured. I heard this call from the police handset that I was wearing on my belt. I then walked over to the male who had been shot and spoke to Constable Simon Nash and Nash stated that the male 'was gone'. I saw that the male had a wound to the front of his neck and his eyes were partly open and he was motionless and did not appear to be breathing. At the time of the discharge of Buckingham's firearm I saw a large spurt of blood spray out from the male person's neck area which travelled a distance of about a metre horizontally through the air and fell to the ground.'

5.9. First Class Constable Simon Nash arrived in his patrol car to see Buckingham running backwards with MacLeod chasing him with the knife. Buckingham's gun was still holstered then (T361). Nash ran towards them, yelling, trying to distract MacLeod, but to no avail. He confirmed that Buckingham only drew his weapon '1 or 2 seconds' before he fired it (T363). This was at odds with the statement he gave on the day, in which he stated that Buckingham had his gun drawn the first time he saw him (see Exhibit C97, p5 and T367), while he was still near the speed hump, at the south-eastern corner of the hotel. Nash said that he would have shot MacLeod if he had the chance, because he thought that Buckingham's life was in danger and that:

'I thought that Mark should have shot the deceased a lot earlier ... (because) ... the deceased was too close and it was obvious that he was going to hurt him'. (T380);

5.10. Constable Jason Blucher was in the same car with Nash. He also said that Buckingham's gun was drawn when he first saw him (T431). He said he saw Buckingham walking backwards being pursued by MacLeod, who was carrying the knife. He also ran towards them, unclipping his firearm as he went. The shot was fired before he got there (T433). In all other respects, his evidence corroborated that of Buckingham and the others.

5.11. Civilian witnesses

Mr Mark Lampshire saw the police arrive at the Liberty Service Station when he was standing outside the TAB, which is south of the Marion Hotel. He then moved to the southern footpath of Lutana Crescent where he witnessed the rest of what occurred. He said that Buckingham had his gun out at an early stage, when MacLeod came out from behind the electricity box (T36), although he didn't see him draw it (T41). In cross examination by Mr Illingworth, counsel for the Commissioner of Police, Mr Lampshire was less sure that he saw the gun at that early stage (T53). In all other respects, Mr Lampshire confirmed Buckingham's evidence of MacLeod's movements, the fact that he was challenging Buckingham with the knife, he was crouched 'commando style' and forcing Buckingham back (T55), and that Buckingham stumbled on the speed hump as he did so (T56).

5.12. Mr Lampshire was alone among all the witnesses when he said that he saw MacLeod get up on one elbow, point at Buckingham and say, 'you've shot me', or words to that effect (T46).

- 5.13. Mr Timothy Walsh, whom I have mentioned previously, also saw the events in the eastern carpark. He confirmed Buckingham's directions to 'drop the knife', etc, saying that Buckingham was 'yelling' at the time (T76). He confirmed that Buckingham did not take the gun out of its holster until after he had stumbled on the speed hump, and only shortly before he fired (T77, T85). He was in no doubt that MacLeod was attempting to stab Buckingham before the shot was fired (T86).
- 5.14. Ms Lynette Lynch saw some of these events from a car in which she was a passenger, which was stationary on Marion road, and then from a carpark on the western side of Marion Road. Ms Lynch did not see the shot fired, as she had closed her eyes. She saw the man lunging at the police officer several times, and then:
- 'The male gentleman seemed to make a very frenzied abrupt dash at the police officer and I just shut my eyes at that point because I felt as if something was going to occur and I then heard what I believe was a gunshot'. (T94).
- 5.15. Ms Lynch did not see a gun in the police officer's hands prior to shutting her eyes, but she didn't see the knife in MacLeod's hand either (T95). She was impressed by the apparently calm manner in which Buckingham was trying to deal with MacLeod (T103), and was surprised that he had not taken his gun out at an earlier stage (T104).
- 5.16. Mr Terry Spencer had his car parked in the eastern carpark of the Marion Hotel, and was helping his elderly friend out of the car when he witnessed these events. He saw the police officer moving backwards, and then the man with the knife, as they came around the south eastern corner of the hotel, moving east. He said that the police officer had the gun in his hand when he first saw him (T110), although he conceded that it may not have been until they reached the median strip in the eastern carpark that the weapon was drawn (T118).
- 5.17. Mr Ernest Thomas saw the events in the southern carpark, near the transformer box, through a window from the front bar of the Marion Hotel. He saw the man with the knife, saw the police officer speaking to him with his hands up, palms facing out, and the man menacing him with the knife (T122). When they moved to the eastern carpark, Mr Thomas moved to another window, and witnessed the events from there. He said that by the time the police officer withdrew the gun, he had stopped moving east, and they were well into the eastern carpark by then (T125). He saw MacLeod

'lurch' at the police officer before the shot was fired (T127). He said that they were only a metre or so apart at that time (T128).

- 5.18. Mr Stefan Bizilis was also in the front bar of the Marion Hotel, and saw the man through the window in the southeast carpark. He described him as 'panicking ... confused ... distressed ... quite angry' (T136). He later described him as 'scattered' (T148). He said that three police officers were present, talking to him, and that the man then 'started attacking' one of the officers. He saw that the police officer had his hand on his gun, but did not withdraw it until they went into the eastern carpark, just before the shot was fired (T136, T140).
- 5.19. Mr Bizilis said that the man was 'dangerously close' to the police officer before the shot was fired (T141). He said that he had adopted a very threatening stance prior to this, crouching, moving like a 'crab', passing the knife from hand to hand, intimidating the officer (T149).
- 5.20. Mr Malcolm Black, an ambulance officer, saw some of the events from his ambulance, in which he had been travelling south on Marion Road. He saw the man advancing on the police officer in an aggressive way, menacing him (T162). The police officer had not withdrawn his gun by the time the ambulance moved off with the traffic, and Mr Black lost sight of the two men.
- 5.21. Mr Dennis Madigan was in the northern carpark of the Marion Hotel, and saw the man cross Marion Road followed by the male police officer, then the female officer. He heard the police officer yelling at him to 'drop it', while he was behind the transformer box. He said:

'Then he come out - eventually come out in a crouched manner, crouched out and then I noticed he had the knife and he started like gesticulating and poking and prodding at the policeman (who) still kept his distance and he was sort of backing off as this fellow sort of - well just kept coming at him and just not rushing at him at the time, he was just dancing around poking the knife out, crouched over, in the agitated manner, and the policeman just kept going backwards and telling - still yelling out to drop it. So was the lady policeman, she was telling the same, but he never dropped nothing but he just kept going back till he come to a .. - a median strip type thing - and the policeman .. was still backing off and backed up over this median strip and in doing so he sort of stumbled a bit and this chap still come at him with a knife and he's still yelling out to drop it and the next thing I know the policeman's got his two hands with the gun pointed at the fellow and he just lunged at the policeman and the policeman shot him. (T178).

- 5.22. Mr Madigan said that the two men were quite close to each other before the shot, and that ‘if he had a decent old lunge he would have got to him ...’ (T181). He was sure that the police officer did not have the gun out at the time he stumbled on the speed hump in the eastern carpark, and it was the next time he looked at him that he noticed the gun out (T182). He did not actually see Buckingham remove the gun from its holster (T192).
- 5.23. Ms Carol Fowler was standing in the supermarket carpark on the western side of Marion Road when she saw the man in the middle of Marion Road on the median strip. She saw the police arrive and the man walk towards the Marion Hotel, followed by the police officer. She saw the confrontation near the transformer box, and the man stabbing something at the police officer (T204). She saw them move into the southern carpark, and then heard the gunshot.
- 5.24. Ms Fowler was unable to say when the police officer took the gun from its holster (T207), and her evidence about when and where events occurred was rather confused. She was, after all, more than 100 metres away, on the opposite side of Marion Road, when witnessing these events, so it is not surprising that her view was less than perfect.
- 5.25. Mr Lincoln McInnes was also in the front bar of the Marion Hotel. He saw the man cross Marion Road followed by a male police officer, and saw the stand-off near the transformer box. He said the male police officer was trying to get the man’s attention by speaking to him but he was not responding. He said that at no time did the police have him ‘contained’ (T230). He confirmed that the man followed the police officer, who was walking backwards, across the carpark, saw him lunge at the police officer four or five times (T235). He said that the police officer did not remove his gun until he crossed the median strip in the eastern carpark, after the man lunged and ‘just missed him’ with the knife (T231).
- 5.26. Mr Scott Weekly was also in the bar of the Marion Hotel and witnessed these events. In his statement, he described the man’s demeanour as being as if he was in a ‘trance’. (Exhibit C30a, p4). Mr Weekly confirmed that it was ‘almost instantaneous’ between the police officer taking out his gun and the time the shot was fired (T242). There was some concern that Mr Weekly made contradictory statements to the police during the investigation (see, for example, Mr Anders’ cross examination at T244-246) and it

seems that Mr Weekly's best recollection is that the police officer took his gun out at an early stage, but did not level it at the man until just before he shot (T260). I accept that Mr Weekly was a basically honest witness, making due allowance for discrepancies which must be expected when witnesses recall a distressful situation.

- 5.27. What particularly interested me was that Mr Weekly clearly noticed a change in the man's demeanour, from 'cowering' behind the transformer box, to standing up and 'leering' at the police officer, as if he was no longer scared, and then pursuing him across the carpark, lunging with the knife (T257).
- 5.28. Mr Leo Caltabiano was unloading his truck in the supermarket carpark on the western side of Marion Road, and so he was more than 100 metres away from the events in the Marion Hotel carpark. His evidence is quite a bit different from other witnesses. He said that the police officer was obscured from his view by a bush when the shot was fired. He had seen the man with no shirt lunging at the police officer, who circled around the man through 180° (T273). He said that the man did not lunge at the police officer immediately before the shot was fired (T275). He said there were two other officers nearby, and that the man was standing in the centre of a circle, like 'piggy in the middle', and was stationary when he was shot, not threatening any of them (T283-4). He was also confused about whether the police officer ran backwards or not (T286).
- 5.29. Mr Caltabiano said that a police officer went over and touched the man after the shot was fired, and then ran away, and as he ran his equipment belt fell off (T276). No other witness saw this occur and I reject Mr Caltabiano's evidence on this point in favour of the other witnesses who were much closer, and who saw the man lunge at the police officer just before the shot was fired.
- 5.30. Ms Elaine Stone was the most unsatisfactory of all the witnesses. She said she had been driving south on Marion Road when she saw a man with no shirt standing in the eastern carpark of the Marion Hotel. Even this is difficult to believe, since she was the driver, her car was still moving (T293), and she would have needed to look back over her left shoulder in order to see the man in the position she indicated (T296).
- 5.31. Ms Stone said that there were four police officers standing east of the man, and she thought that he was shot from behind on the right-hand side, because he slumped to the left (T294). She said that the only officer she saw with a gun was behind the man

and to his right, and 25 metres away. This is quite bizarre, since if an officer shot from that distance, from that angle, the four other officers would have been in the line of fire (T301).

- 5.32. Ms Stone stopped her car, parked it, and went into the hotel and had a beer. She came out of the hotel, gave a television interview, went back inside and had another beer.
- 5.33. I reject Ms Stone's evidence as a complete fabrication. I believe she may have glimpsed the police officers in the carpark to her left after she heard the shot, and has reconstructed the rest.

## **6. Conclusion**

- 6.1. The overwhelming weight of the evidence I have just outlined supports Constable Buckingham's version of these events. As I have said, there are some discrepancies, particularly about the precise moment when he withdrew his firearm from the holster. I do not find these discrepancies surprising, or in the least bit sinister. These were stressful, tragic events, and happened within a very short time frame. It is to be expected that witnesses will disagree on points of detail.
- 6.2. Buckingham was adamant that he did not withdraw his gun until after he had retreated across the southern and eastern carparks of the Marion Hotel, and had crossed the median strip in the centre of the eastern carpark. Even after he had said, 'stop or I'll shoot', MacLeod lunged at him again, and it was only then that he fired the weapon.
- 6.3. That being the case, the conclusion is inescapable that Buckingham waited until the 'last possible moment', as he said (T552), before he fired. Several of the witnesses were surprised and anxious that he waited so long - Constable Nash thought he waited far too long.
- 6.4. I note that Mr Borick QC, counsel for Grant MacLeod's mother and father, did not suggest otherwise and conceded that:

'Thirdly, I don't believe anyone could sensibly suggest that Buckingham was not entitled to defend himself by shooting at Mr MacLeod at the end when Mr MacLeod was coming at him with a knife. There's a consistency in the evidence about that.' (T613).

- 6.5. Mr Borick concentrated instead upon Buckingham's decision to pursue MacLeod across Marion Road in the first place. He pointed out that Buckingham knew that

backup patrols were not far away. He said that Buckingham failed to confer with Beebee, who was more senior to him on the day, and failed to develop a plan for containment of MacLeod before he pursued him, particularly since they knew nothing about MacLeod except that he was behaving strangely (T529).

- 6.6. Buckingham rejected these suggestions. He pointed out that he was obliged to act when he first arrived at the scene. He said:

‘Because I needed to take control of the situation as much as I could. There were people on Lutana Crescent, there were people in the hotel. I needed to interact, or intervene at some point to, if you would like, deter him from entering the hotel or going across the road to members of the public. On my arrival I have to do something. It is the nature of my job. I can’t just sit back and think, “well, maybe nothing is going to happen”’. (T533).

He did not agree that he had time to formulate a plan with Beebee (T534).

- 6.7. Putting hindsight to one side, as best I can, I think that Buckingham’s decision to cross the road and try and speak to MacLeod was quite appropriate in the circumstances. He was not to know that MacLeod would react the way he did. Clearly, the police needed to find out, if they could, what had happened to MacLeod, why he was acting in that way. He was partially undressed, covered in blood, carrying a knife, and clearly agitated. Perhaps he had been in a fight as Mr Peterson had wondered. Perhaps he was ill. Perhaps he was scared of something. Experience suggests that police regularly encounter people who are agitated in this way. He said:

‘Because had I not acted the way that I did, Mr MacLeod would have been free to roam the streets. He may have entered the hotel and created a siege situation. He may have injured other people in the hotel. There were people shopping on the day, there were people on the street, pedestrians, there were a number of people in the vicinity’. (T546).

- 6.8. Chief Inspector Peter Hoadley is very experienced in the Special Tasks and Rescue (‘STAR’) Division of SAPOL, and was Officer-In-Charge of that division for several years. In his statement Mr Hoadley said:

‘In all the circumstances I believe that Buckingham adhered to the Operational Safety Philosophy and Principles, the Incident Management Flow Chart and the Tactical Options Model as described in Operational Companion issued by South Australia Police.

This incident was High Risk but Buckingham had no option but take action. He did not have the ability to wait until the arrival of STAR Group.’

(Exhibit 87b, p2).

- 6.9. I also heard evidence from Sergeant John Hardwick, a Training Officer at the Fort Largs Police Academy in the Operational Safety Training Unit. He also agreed with Constable Buckingham's evidence. He said:

'It depends on how far you are from the person with the knife and how much you will back off and how much the public is in danger – police officers do have to do certain things and part of that is to protect the public and themselves; they could always take the easy way out and just leave the whole situation but they won't and they can't, if they do that is neglect of duty. So they must do something. When they go into a situation they make an assessment if they can, if they have time cordon and contain, call for backup and react to what the person does.' (T403).

- 6.10. I accept this evidence. I see no grounds to criticise Constable Buckingham for his decision to follow Grant MacLeod across Marion Road and try and ascertain what was troubling him. Once he was within reasonable proximity, he had no control over the situation once Mr MacLeod attacked. He did nothing to provoke or antagonise him, and he did everything in his power to retreat and avoid the confrontation before he was given no option other than to resort to lethal force.

## **7. Was this 'suicide by police'?**

- 7.1. Dr John Truman, the psychiatrist who saw Grant MacLeod in 1994, ventured the opinion that his behaviour in the week before 9 October 1999 suggests that he was losing contact with reality. He said:

'The final factor, suggesting that Grant MacLeod was psychotic, was the delusional statement made at the second service station, that he was "possessed by a witch". At this point it is probable that he was suffering from Psychotic Depression and was out of touch with reality.

I also note that when the police were initially talking to him, that he appeared to be angry and made no intelligible verbal response.

The next significant event is the pursuit of the male police officer by Grant MacLeod, and the lunging with the knife towards the officer. This raises the question, was he attempting suicide by provoking the officer to shoot him? Or was he having paranoid delusions regarding the officer and was attempting to assault or harm the officer?

On the balance of probabilities I believe this to be the latter, because of the bizarre, non rational events that led up to his death.'

(Exhibit C53a, p5).

7.2. If Dr Truman is correct about that, then the fact that Constable Buckingham was armed was not central to Mr MacLeod's decision to attack him with the knife. I must say, though, that I find Dr Truman's opinion on this topic surprising. It seems to me that Grant MacLeod's behaviour at the two service stations was directed towards bringing the police to him. Whether he contemplated his own death by doing so cannot be known.

7.3. The English Experience

I heard evidence from Superintendent George Rogers, an English police officer from Thanet in Kent who is on an exchange program in Adelaide. I did so because Mr Borick raised the question whether the fact that general duties patrol officers carry guns in South Australia may be responsible for the deaths of people like Grant MacLeod.

7.4. Superintendent Rogers told me that, although English police officers do not carry firearms, each area has a number of armed response vehicles which are on the road and available 24 hours a day. He said:

‘Generally speaking, we are not .. armed officers ourselves. The intention would be to identify, locate, contain and neutralise that situation. Our officers that are unarmed are clearly trained not to enter dangerous situations such as that, but would call on an armed response vehicle, that is available 24 hours a day, within the whole county itself.’ (T565).

He said that the decision to enter a particular situation or not is a matter for the judgement of individual officers. If they find themselves in a situation with an armed offender, they have a continuum of force, ranging from communication, their training in combat, OC (capsicum) spray, batons, and any other means at their disposal, including their motor vehicle, to defend themselves. (T567).

7.5. Superintendent Rogers pointed out that, in his experience, it is not common for people to carry offensive weapons in England, and there are strong legislative provisions against it (I note that a similar legislative policy has recently been adopted in South Australia with the enactment of The Summary Offences (Offensive and Other Weapons) Amendment Act 1998 and Regulations).

7.6. Superintendent Rogers conceded that if an English police officer was faced with the situation faced by Constable Buckingham here, the outcome might have been different. He said:

‘Q. So, in a situation, if this was to have occurred in England, would it be correct that there would be more likelihood that you could finish up with a dead police officer, in these circumstances, rather than a dead defendant?’

A. I think absolutely right in the circumstances that because we are not armed per se, the officer stands a very high chance of physical injury to himself.’ (T572).

7.7. On the basis of that evidence, it is not realistic to argue that South Australian police officers should revert to being unarmed. Whether Dr Truman is right or wrong about Grant MacLeod’s motives, I am not prepared to recommend that police officers’ lives should be put at risk by reverting to the English approach. Australia is geographically very different from England. It would not be possible to have armed response units mobile 24 hours a day throughout the state to deal with such situations.

## **8. Other options**

8.1. Mr Borick did not submit that Constable Buckingham should have resorted to other defensive measures before resorting to lethal force. However, in case it might be suggested elsewhere that other options were available to Buckingham, I will briefly discuss them. I have already rejected the suggestion that doing nothing was a feasible alternative.

8.2. Constable Buckingham explained why he was unable to simply run away from MacLeod when he realised MacLeod was attacking him. He said:

‘I considered the point, to run, because there were other police officers there, but he was too close and had I decided to turn I think Mr MacLeod was in much better position to chase me, run me down, than what I would have had to run with all that equipment on me.’ (T548).

8.3. Constable Buckingham explained why he was unable to use OC spray:

‘Because at that time there was a breeze, a wind swirling about the back of the hotel and it was my opinion that it was unsafe to use; with the effects of blow-back with the wind swirling it may have affected me more than it may have affected that male.’ (T510).

I accept that explanation, and would add that OC Spray is not effective in all cases, even in ideal conditions such as inside a house (see the case of Luke Donaghey, inquest 29/2000).

- 8.4. Operational Safety Training teaches officers that a baton is not an effective defence against an edged weapon (knife). (See the evidence of Hardwick at T416). This is also accepted in England (see the evidence of Rogers at T570).
- 8.5. Training is also against the suggestion that Buckingham could have shot at Grant MacLeod to injure him, rather than at his chest where there is a higher chance of a fatality. Sergeant Hardwick explained that such wounding may not incapacitate the person sufficiently (particularly if they are psychotic, I would add). There is also a higher likelihood of missing, perhaps hitting a bystander. This policy is also accepted in England (see the evidence of Rogers at T572).
- 8.6. It would not have been feasible for Buckingham to wait so that the other officers present could physically tackle Grant MacLeod . Buckingham said:

‘Because you don’t tackle people with knives, especially (since) they would need both of their hands to tackle him, they would be defenceless. They would be openly exposing themselves to considerable danger.’ (T530).

I accept that explanation.

- 8.7. Unfortunately, the inescapable conclusion in this case is that none of the non-lethal options were available to Constable Buckingham that day because Grant MacLeod’s attack upon him with the knife was overwhelming and was not predictable. Mr MacLeod gave him no chance to contain the situation. I have no doubt that if Mr MacLeod could have been contained, Constable Buckingham would have called in all the other resources necessary to deal with the situation. He waited, after all, until the last possible moment, long after others would have done, before discharging his weapon.
- 8.8. In those circumstances, I can see no ground for criticism of Constable Buckingham for his actions. I find that he showed courage and forbearance in the face of great danger until he was placed in a situation where he had no alternative other than to resort to lethal force.
- 8.9. The outcome of this incident is a tragedy for all concerned, both for Mr MacLeod’s family and friends, and for the police officers concerned. It is yet another illustration of the extremely serious consequences that severe mental illness can have if it remains untreated. Unfortunately, in this case, I am unable to see how the situation could have

been avoided once Mr MacLeod's illness placed him in a psychotic state, in circumstances where he did not receive the appropriate treatment.

**9. Finding**

I find that Grant Alistair MacLeod, aged 38 years, late of Unit 5, 7 Waterman Terrace, Mitchell Park, South Australia died at the Marion Hotel, 849 Marion Road, Mitchell Park, South Australia on 9 October, 1999 as a result of internal haemorrhage complicating large calibre gunshot wounds to the neck.

**10. Recommendations**

- 10.1. In the case of Luke Donaghey (Inquest 29/2000) there were a number of factors which could have led to a different outcome. I therefore made a number of recommendations pursuant to Section 25(2) of the Coroner's Act 1975 in the hope that a similar occurrence might have been avoided.
- 10.2. In this case, I do not think that any recommendations can be made which would avoid a similar outcome. The best hope was that Mr MacLeod would have received treatment for his mental illness. In the circumstances of this case, I cannot see how that would have been achieved unless he had sought such treatment himself, or others had done so on his behalf. Hopefully, with growing public awareness of mental illness, more people in Mr MacLeod's position will seek help in the future.

*Key Words: Death in custody; police shooting; mental health/psychiatric issues.*

*In witness whereof the said Coroner has hereunto set and subscribed his hand and*

*Seal the second day of June, 2001.*