



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 7th day of October 2008, the 5th, 6th and 7th days of November 2008 and the 27th day of August 2009, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Francesco Levato.

The said Court finds that Francesco Levato aged 49 years, late of 61 Barnes Road, Glynde, South Australia died at 121 Pirie Street, Adelaide, South Australia on the 2nd day of May 2006 as a result of blunt force head and chest trauma. The said Court finds that the circumstances of his death were as follows:

1. Introduction

- 1.1. The business premises at 121 Pirie Street, Adelaide (121 Pirie) consisted of a building of two floors and a basement. The building was situated on the southern side of Pirie Street in the block bordered by Pirie Street, Hyde Street, Wyatt Street and Flinders Street. To the immediate east of 121 Pirie was the building occupied on the ground floor by the Fontana Di Trevi Restaurant. To the west was a building that housed a business known as Aussie Disposals. The three buildings were immediately adjoining in the sense that there was no gap between them.
- 1.2. At the rear of 121 Pirie was an open area that was utilised as a car park for tenants of the adjacent businesses. Car parking spaces were marked out. The car parking area was directly accessible from Hyde Street. It was also connected by a laneway from Flinders Street. Vehicular access to the rear of 121 Pirie was not available from Pirie

Street itself. Nor was there any pedestrian access from Pirie Street to the rear except through the building itself.

- 1.3. Three tenants occupied 121 Pirie. The ground floor was occupied by a business known as JP's Café which was a café that provided light meals and beverages. It was open during the day, Monday to Friday. Wine Underground, a restaurant, occupied the basement. Joggers World, a sporting goods company, occupied the first floor of the building. The building itself was owned by a syndicate of individuals who as landlords leased the three sections of the building to the tenants I have identified.
- 1.4. JP's Café was operated by a corporate entity known as Saabi Pty Ltd (Saabi). Saabi held the lease to that part of the building occupied by JP's Café. The directors of Saabi at the time with which this Inquest is concerned were the deceased, Mr Francesco Levato, 49 years and his son Mr Paul Levato, 26 years. Mr Francesco Levato was effectively the proprietor of the business. At the relevant time Mr Paul Levato worked at the café as a cook. Mr Francesco Levato had recently been making unsuccessful endeavours to sell the business. As of the beginning of May 2006 his desire to sell and his engagement of an agent for that purpose had not been disclosed to other interested entities, including the landlords of the building, the co-director of Saabi, Mr Paul Levato, or the manager of the café, Ms Rose Poplizio.
- 1.5. In the early hours of the morning of Tuesday 2 May 2006 a massive explosion occurred at 121 Pirie. There was an ensuing fire. Although the building was not completely destroyed by the explosion and fire, what remained of it was subsequently demolished. A new two-storey building with a basement has since been erected on the same site. Joggers World, as before, occupies the whole of the first floor of the building. The restaurant, Wine Underground, now occupies both the ground floor and the basement. JP's Café had been trading right up to the day before the explosion. The explosion marked the sudden end of the business of JP's café. The business was never re-established at that site or at any other site.
- 1.6. Leading off the car parking area at the rear of the building was a doorway that could be locked. This doorway permitted access to a small common area from which entry to all three business premises within 121 Pirie, including JP's Café, could be gained. Although following the explosion the brickwork surrounding the rear doorway was still intact, large sections of the brickwork that had constituted the rear wall of the

building, including that of the first floor, had outwardly collapsed creating a large pile of rubble and debris immediately to the rear of the building.

- 1.7. The whereabouts of the proprietor of JP's Café, Mr Francesco Levato, could not immediately be established in the aftermath of the explosion. Members of his immediately family did not know where he was. Later that morning, during daylight hours, the pile of collapsed brickwork at the rear of the building was excavated and Mr Levato's body was located underneath the debris. He was deceased. He was positioned just outside the rear door to the building, approximately 2 metres away from it. Much of Mr Levato's clothing had apparently been blown off in the blast. Some of his belongings, including his mobile phone and wallet, were found nearby. Of particular note was the fact that, when found, Mr Levato had a cigarette lighter within the grasp of his left hand.
- 1.8. A subsequent examination of the damaged premises revealed the presence of petrol containers within the JP's Café section of the building and it was apparent that the explosion was highly consistent with the ignition of a mixture of petrol vapour and air. Burn patterns in what remained of JP's Café were consistent with the use of an accelerant such as petrol.
- 1.9. No other person, dead or alive, was located on or near the premises after the explosion.
- 1.10. The only motor vehicle located in the vicinity of the building was that belonging to the deceased, Mr Francesco Levato. The vehicle, a Mitsubishi Magna Altera, was registered in the name of Levato (SA) Pty Ltd of 61 Barnes Road, Glynde, SA 5070 which was the home address of Mr Francesco Levato and his family.
- 1.11. The vehicle was not parked in the relatively open location where Mr Levato habitually parked it during business hours. Instead, it was located in the narrow laneway that connects the parking area at the rear of 121 Pirie to Flinders Street. I infer that it would have been much less visible in that location compared to how it would be seen from Hyde Street if parked in its usual spot. The vehicle was parked facing towards Flinders Street. The keys were in the ignition and the vehicle was unlocked. Two other cigarette lighters were located in the vehicle. When police opened the lid of the boot that morning there was an obvious smell of petrol

emanating from that part of the vehicle. No containers were located within the vehicle. The vehicle was a dark coloured Mitsubishi Magna Altera 4-door sedan.

- 1.12. In this Inquest I investigated the cause and circumstances of Mr Levato's death. In particular I examined the issue as to whether the explosion and fire at 121 Pirie had been deliberately caused and whether Mr Levato's death had been caused by that explosion and fire. I also examined the issue as to whether, if the explosion and fire had been deliberately caused and Mr Levato's death had thereby been caused, the identities of the person or persons responsible could be established. I examined the issue as to whether or not the actions of Mr Francesco Levato himself were responsible for the explosion, whether or not those actions were deliberate and whether or not he caused his own demise.

2. Mr Levato's post-mortem examination

- 2.1. Dr Karen Heath, a Forensic Pathologist employed by Forensic Science SA, conducted Mr Levato's post-mortem examination.
- 2.2. Dr Heath attended the scene at 121 Pirie at about 11:50am on the morning of 2 May 2006. Mr Levato's body was indicated to her and she performed a preliminary examination in situ. The deceased was lying on his left side, covered with masonry dust and still partially covered by rubble. The clothing of the deceased was torn and melted in areas. There were multiple superficial flash-type burns involving the chest, abdomen, back and limbs. A laceration to the right scalp was evident with underlying fractured skull visible. At that point the only clothing that Mr Levato was still wearing were the right shoe (the left shoe was separate from the body); black socks with melted fabric adherent to the socks; blue underpants that were torn with fragments of melted fabric adherent to the underpants. There was also a blue, red and white patterned zip jacket that was extensively torn and partially melted and was being only partially worn.
- 2.3. The autopsy itself revealed base of skull and skull vault fractures with underlying haemorrhages associated with the brain, multiple bilateral rib fractures with a flail chest, extensive partial thickness flash-type burns involving the limbs, chest, abdomen and back, scattered parchmented superficial abrasions and superficial lacerations, a dislocated right hip, closed fracture distal right tibia and fibula.

- 2.4. The cause of Mr Levato's death as expressed in the post-mortem report¹ is blunt force head and chest trauma. I find that to have been the cause of Mr Levato's death.
- 2.5. In her post-mortem report Dr Heath expresses the view that although there were multiple flash-burn type injuries involving the chest, abdomen, back and limbs, death resulted from injuries sustained as a result of the explosion and falling rubble rather than from burns. Given the extent and severity of the injuries, death would have been rapid following the explosion.
- 2.6. In my view the conclusion is inescapable that Mr Francesco Levato was killed by the explosion and falling rubble, in particular by the brickwork of the collapsed rear wall of the building under which he was buried and then subsequently located.
- 2.7. The location in which Mr Levato was found was actually outside the perimeter of the building. From the photographs² that were taken at the direction of the police, the brickwork of the rear wall of the building had fallen outwards. The inference is clear in my view and I so find that Mr Levato was struck and then buried by the falling brickwork and mortally injured as a result. It is obvious therefore, that Mr Levato was in very close proximity to the rear wall of the building, and in particular in very close proximity to the rear exit of the building at the exact moment of the explosion.

3. Circumstances surrounding the explosion - some eye witness observations

- 3.1. Statements taken by the investigating police from a milkman and a cleaner who were both working nearby suggest that the explosion occurred sometime around 3:15am or 3:20am³. An earthquake recorder situated at Government House on North Terrace recorded a very significant event at 3:19am⁴. This was undoubtedly the explosion that took place at 121 Pirie a few blocks away. I find that the explosion occurred at 3:19am.
- 3.2. As one would imagine, activity in and around Pirie Street at that time of a Tuesday morning was minimal. However, police were able to obtain statements from the milkman and the cleaner and, in addition, from a man who had been performing general repair and maintenance work within licensed premises known as The Office

¹ Exhibits C2 and C2b

² Exhibit C14a

³ Statements verified by Affidavits of Jozefina Datko (Exhibits C9 and C9a) and Wayne Hall (Exhibits C11 and C11a)

⁴ Exhibit C13y

which is situated on the northern side of Pirie Street diagonally across from the building at 121 Pirie. This person was Mr Mark Drake⁵. Mr Drake and his co-worker had completed their work shortly before 3am and had left the Pirie Street precinct by the time of the explosion.

- 3.3. However, Mr Drake had earlier observed suspicious activity in the vicinity of 121 Pirie and its environs. On the night in question Mr Drake arrived at The Office at around 9:30pm and started work at about 10pm. The Office bar is on the ground floor of the building and has full-length windows that overlook Pirie Street towards the south. That night Mr Drake was working at a location within the premises that afforded him a clear and unobstructed view of the street. Mr Drake describes the night as being quiet, apart from taxis, with little pedestrian traffic.
- 3.4. Mr Drake states that sometime between 11pm and 12am he saw a late 1990s dark coloured Mitsubishi Magna drive by the Joggers World building (121 Pirie) several times. Mr Drake's statement describes the vehicle as a sports model in appearance with tinted windows and possibly with a spoiler on the boot and spotlights on the front. Mr Drake was able to discern that the driver of the vehicle was male and alone. He describes the male as 'skinny with greying hair' who appeared to be in his late 40s or early 50s and was 'definitely European looking'. The driver of the vehicle appeared as if he was waiting to pick someone up.
- 3.5. Later, between 12:30am and 1:30am, Mr Drake saw a male person walking around Wyatt Street and Pirie Street. He was not certain whether it was the same person who had been driving the Mitsubishi Magna earlier on. This person appeared to enter premises in a building at 197 Pirie Street. The man is described in the statement as approximately 5ft 11in and in his late 40s or early 50s.
- 3.6. At about 1:30am Mr Drake saw the same Mitsubishi vehicle that he had seen earlier with the same male person behind the wheel. After driving past 121 Pirie several times the driver stopped the vehicle directly outside that building. The driver then looked at Mr Drake several times. Mr Drake says that it was possibly the same person whom he had seen on foot earlier but was not entirely certain, as the vehicle had tinted windows.

⁵ Exhibits C10 and C10a

- 3.7. At about 2am Mr Drake saw a different male person pick up a lighter in the middle of Pirie Street and then walk in a northerly direction along Wyatt Street.
- 3.8. Just before 2:30am Mr Drake again saw the Mitsubishi Magna. This time the driver parked directly outside The Office and looked straight into the building at Mr Drake and his co-worker. The man's odd behaviour was such as to create a level of apprehension in Mr Drake. The man was shrugging his shoulders and making hand movements that disconcerted Mr Drake. That was the last Mr Drake saw of the man. At that time the man drove off from outside The Office, turned into what we know to be Wyatt Street and headed south.
- 3.9. Mr Drake and his co-worker finished work and left The Office at about 2:55am which was approximately 20 to 25 minutes before the explosion.
- 3.10. Aside from the reference to the vehicle possibly having spotlights on the front of it, Mr Drake's description of the vehicle that he saw conforms with that belonging to Mr Francesco Levato, being the vehicle that was located in the laneway at the rear of the premises at 121 Pirie after the explosion. The similarities are as follows:
- Both vehicles were Mitsubishi Magna sedans;
 - Both vehicles are dark coloured;
 - Both vehicles have dark coloured glass in the windows;
 - Mr Levato's vehicle does have a spoiler on the boot, but I note that in Mr Drake's statement he says '*I think it may have had a spoiler on the boot and some spotlights on the front*'.

It appears that Mr Drake was not entirely certain as to whether the vehicle that he saw had either a spoiler or spotlights at the front. I ignore those two aspects of Mr Drake's description. Otherwise, his description of the vehicle is very much in keeping with the vehicle that belonged to Mr Levato and which was located at the rear of the premises of 121 Pirie.

- 3.11. As far as the person or persons Mr Drake says he saw, I do not rely on his assertion that the man he saw on foot was possibly the man whom he had seen at the wheel of the vehicle. On Mr Drake's own admission, the tinted windows made his view of the driver of the vehicle less than ideal. Indeed, it appears from Mr Drake's statement

that the description of the person driving the vehicle was an impression only and it is not beyond the realms of possibility that the impression that he gained as to the driver's appearance was influenced by his having sighted the man on foot and having possibly transposed the description of that person to the person in the vehicle. I do not rely Mr Drake's description of the person behind the wheel of the vehicle except to say that it is not inconsistent with Mr Francesco Levato.

- 3.12. The milkman, Mr Wayne Hall, states that at approximately 3:15am he was driving in an easterly direction on Pirie Street and was approaching its traffic light controlled intersection with Gawler Place. He does not recall seeing any other vehicles on the road at that time. As he approached to within 10 metres of the intersection of Gawler Place he witnessed a massive orange fireball fly across Pirie Street from the southern side to the northern side. The explosion emanated from the vicinity of the Joggers World, JP's Café and Aussie Disposals buildings.
- 3.13. The statement of the cleaner, Ms Jozefina Datko, reveals that at about 3:20am she was performing general cleaning and washing duties in respect of the building that is situated at the northern corner of Pirie Street and Hyde Street. At that time she heard a very loud explosion emanating from the southern side of Pirie Street. Upon turning around to see what had taken place she saw a large fire coming from the Joggers World building. The building was burning at that time and a lot of debris had been ejected to the northern side of Pirie Street. She continued looking, saw no other people in the area, and also noticed that there were no cars. Apart from her the street was empty. The police were soon on the scene.

4. Examination of the scene

- 4.1. I have already alluded to the significant damage to the brickwork at the rear of the premises. Mr Levato's body was located beneath that brickwork. It is clear that a significant amount of explosive force had existed at that location. The rear door of the building, adjacent to which Mr Levato's body was located, had been blown off its hinges and was located on the opposite side of the car park having travelled about 21 metres. The rear interior door to JP's Café itself was shut and locked. The disposable lighter that was found in Mr Levato's left hand was in good working order and was three quarters full of lighter fluid. I note here, and I will come to the detail later, that Mr Levato was at that time a non-smoker.

- 4.2. Mr Levato's mobile phone and wallet were also located in the debris. The keys to the Mitsubishi Magna Altera were located in the ignition lock of the vehicle. As I understand the position, no keys to the actual premises were located or otherwise identified.
- 4.3. Inside the rear door of the building proper was the locked door to the café itself. In addition there was an open door that led to toilets. This door appeared to have been propped open by a brick. There were pieces of green and white material on the floor next to that brick. The material was burnt on its edges and had a strong smell of petrol. There was more of the green and white fabric on the floor leading towards the rear inner door to the café. The green and white fabric appears to have been tea towels. A red plastic container was located next to the toilet door itself. The outside of the container was marked in part 'GASOLINE 10ltr'. The container was empty but there was a strong smell of petrol from the container. On scientific analysis, residues of petrol were detected in the container⁶. A green and white tea towel was wrapped around the spout of the container. It too smelt strongly of petrol.
- 4.4. When the closed and locked door to the café itself was opened there were green and white tea towels lying on the floor. One of the tea towels was collected, apparently at random. It was singed and had a strong smell of petrol.
- 4.5. There was a kitchen in the café. On a kitchen bench was a 5 litre metal container with the writing 'BP Handycan' on it. This container was upright and still had its lid on. It was full of petrol⁷. On the kitchen floor was a 20 litre red plastic container with a spout that appears to have a green and white cloth item connected to the spout⁸. This container still had a small amount of liquid in it that smelt like petrol and on scientific analysis it was confirmed as petrol⁹.
- 4.6. At the front of the café at the Pirie Street end, near where the front windows had been situated, there was a 20 litre yellow plastic container lying on the floor. It was empty and had a strong smell of petrol. On scientific analysis, residues of petrol were detected in the container¹⁰.

⁶ Exhibit C13u

⁷ Exhibit C13u

⁸ Exhibit C14a, photograph 116

⁹ Exhibit C13u

¹⁰ Exhibit C13u

- 4.7. No identifiable fingerprints have been located on any of the four petrol containers located in the premises.
- 4.8. There was a counter in the area that had a cash register situated on it. A close examination of the counter revealed what appeared to be burn patterns consistent with an accelerant having been poured over the top of the counter and then having flowed down the front side of the counter.
- 4.9. On a stage at the rear of the café a large area of floorboards had been consumed by fire, right up to the western wall. Other sections of the stage floor were not burnt at all. Where the floor was completely consumed, the underlying joist was either fully consumed or extensively charred. There was no obvious ignition source to explain this damage. The severity of the damage and the burn marks on the floor joists were again consistent with a flammable liquid having been poured onto the stage and then having burned.
- 4.10. In the centre of the café was a small room that apparently had been used as an office. The room was almost totally destroyed by fire. The damage in this area was dissimilar to the damage pertaining to the surrounding areas which only had pressure damage from the explosion and not fire damage. Again, the office appeared to have had flammable liquid poured throughout its interior.
- 4.11. The observations to which I have referred in this section were made by Brevet Sergeant Bosley of SAPOL. Mr Bosley is a Police Fire Cause Investigator stationed in the SAPOL Physical Evidence Section. Mr Bosley has extensive experience in the examination of crime scenes. His duties have included the examination, recording and interpretation of scenes of crime as well as the collection, preservation and examination of physical evidence from such scenes. Mr Bosley has received training in fire cause investigation from Senior Fire Cause Investigators from the Physical Evidence Section and from the Metropolitan Fire Service. Up to the time of the compilation of his witness statement dated 5 September 2006¹¹ he had examined approximately 60 fire scenes. In addition, since the incident Mr Bosley has participated in a fire cause investigation course conducted by the Queensland Fire Service and after a period of approximately 12 months of training obtained a relevant diploma. In his evidence and in his statement Mr Bosley expresses a number of

¹¹ Exhibit C14

opinions about the cause and origin of the explosion and fire at 121 Pirie. I accepted Mr Bosley as qualified to express those opinions and I accepted his evidence as to those opinions.

- 4.12. Mr Bosley expressed the view in his statement¹² that petrol had been poured around the interior of the café. In addition, the tea towels that he observed appeared to have been laid out in a makeshift trail leading towards the rear door of the building. Mr Bosley was unable to locate any feature within the damaged building that would account for the ignition of a fire other than by way of accelerant. There was no evidence to indicate that an electrical or gas appliance had caused the explosion or fire. The tea towels in particular appeared to have been laid out as a wick. Mr Bosley expresses the opinion that vapours given off from the flammable liquid that had been doused in the café premises, and in particular the vapours mixed with air over a period of time before an ignition source was applied, reached a certain level to produce an explosion when that ignition source was applied. I accept that evidence.
- 4.13. Mr Bosley, however, goes on to express other opinions that are essentially matters for the tribunal. For example, in his statement he expresses the view that the deceased, Mr Levato, was the person who had poured the flammable liquid around the interior of the premises and had used the cigarette lighter to ignite the tea towels. To my mind these opinions are matters that are not the subject of any particular expertise. Naturally, however, I have regard to the facts as found by Mr Bosley in respect of the presence of Mr Levato at the scene and the presence of the lighter in his hand and I also have regard to the inferences that might arise therefrom. I return to that matter in due course.
- 4.14. In his evidence Mr Bosley indicated that there was much devastation within what used to be the café. He conceded that this had made a complete examination of the scene somewhat difficult. Suffice it to say he found no overt evidence of any forced entry. Mr Bosley was also asked whether he had located within the premises anything that resembled fresh produce, vegetables or fruit that had not been packed away. He told me that he had not specifically been looking for anything of that nature but he did not recall being drawn to anything obvious in that regard.

¹² Exhibit C14, page 16

4.15. It goes without saying that the four fuel containers that were located within the café were wholly out of place. There was no obvious need for petrol containers to be situated within a retail food and beverage outlet. As if the proposition would have required any confirmation, Mr Paul Levato, who was at the café on virtually a daily basis¹³, told me in evidence that there was no reason for his father to have kept petrol at the café. He had never seen his father in possession of any containers that were suitable for petrol. The petrol containers were therefore foreign to the café and their presence was, in my view, explicable on no basis other than that they had been introduced into the premises throughout the course of that night with a view to setting fire to the premises and JP's Café in particular. To my mind it is obvious that the petrol from three of the containers had been doused inside the café and, as well, the green and white tea towels had been used in connection with the attempt to set fire to the premises. The only person injured in the explosion and fire was Mr Francesco Levato himself. Mr Levato as we know was found outside the perimeter of the building. No deceased or injured person was located within the premises itself. I accept that the explosion occurred in the manner suggested by Mr Bosley, that is to say when the ignition source was applied to the vapour filled environment that he described. That being so, to my mind it is intrinsically unlikely that the ignition source had been applied when the person responsible was within the café premises itself. Otherwise, one would have expected to find the person who applied the ignition source injured, if not deceased, inside that premises. It is more likely in my view that the application of the ignition source occurred as close as possible to the perpetrator's desired point of exit of the building. There were indications around the area of the rear door of the building to suggest that at that location an attempt had been made by the perpetrator or perpetrators to place some distance between the ignition source and the major build-up of accelerant within the café itself. I speak here of the fact that there was an empty petrol container near the toilet door as well as the green and white tea towels. This to my mind is highly consistent with a plan on the part of the perpetrator or perpetrators to apply the ignition source to the premises in the vicinity of the rear door of the building. In my opinion this would accord with good sense and the obvious need to minimise risk. It would have been far safer for the perpetrator or perpetrators to apply the source of ignition as remotely as one could from the major build up of accelerant within the premises. In addition, it would have

¹³ Transcript, page 153

been much safer to apply the ignition source at a location where ready egress from the building as a whole was available, namely via the rear door of the building. The placement of the green and white tea towels as described by Mr Bosley is highly consistent with an effort on the part of the perpetrator or perpetrators to lay a wick, as it were, from the door at the rear of the premises to the location of the greater build-up of accelerant within the café itself. To my mind it is probable that the perpetrator or perpetrators did not anticipate an explosion as such, but merely had an expectation that the premises would catch alight.

- 4.16. When the circumstances are examined in the above light, the presence of Mr Levato's body outside the main rear entrance of the building and in close proximity to it is of obvious significance. He was clearly standing in the vicinity of the rear door at the moment of the explosion. The brickwork from the first floor rear wall of the building fell on him and immediately he was buried and incapacitated. If Mr Levato's proximity to the most desirable place from which to ignite the building gives rise to an available inference that he was the person who ignited the material that caused the explosion, that inference is only enhanced by the presence of the lighter in his hand.

5. Mr Levato's clothing

- 5.1. Residues of petrol were found within Mr Levato's shoes and socks¹⁴. This feature of the evidence was not developed to any significant degree during the course of the Inquest. I do not know, for instance, whether the possibility that petrol innocently contaminated Mr Levato's footwear at the moment of the explosion could be eliminated. In coming to my ultimate conclusion in this matter, I have not needed to have recourse to the evidence about petrol residue on Mr Levato's footwear.

6. Mr Levato's movements on the night in question – why was he at the premises?

- 6.1. Mr Levato worked at JP's Café during Monday 1 May 2006. Mr Levato's business manager, Ms Rose Poplizio, asserts in her statement¹⁵ that when she finished work at 2:30pm on the Monday, Mr Francesco Levato was stocking the fridges with drinks. He told her that he would see her in the morning. She had no further contact with Mr Levato.

¹⁴ Exhibit C13u

¹⁵ Exhibit C16

- 6.2. Mr Levato and his family lived in Glynde. Mr Levato's immediate family comprised his wife, Mrs Lucy Levato, his son Mr Paul Levato 26 years, and two other children who were approximately 16 years and 14 years respectively. At the time with which this Inquest is concerned Paul Levato was working at JP's Café as a cook. He gave a statement to the Inquest¹⁶ and also gave evidence. He told me that his father worked at the café on Monday 1 May 2006. He states that he would have finished work on that day at about 3:30pm but was not entirely certain of the time. In any event he left work with his father and they went straight home. They locked up the café and there was no one remaining at the premises when they left. In his statement he says that his father would sometimes have a reason to go back to work in the evening. He asserts in his statement that he was aware that Francesco Levato had been planning to go back to the café at about 4am in the morning to unload fruit and vegetables and other stock such as drinks. He was not aware of any other reason why his father would need to return to the café that night.
- 6.3. The last time he saw his father that night was when he saw him sleeping on the couch in the lounge room of their home. The television was still on. The time was approximately 10:30pm or 11pm. Paul Levato went to bed at about that time and went to sleep. In his statement he asserts that he slept right through until about 6am on the Tuesday morning. At about 6:30am he realised that the family car, the black Mitsubishi sedan, was not in the driveway. He then came to realise that his father was not at home either.
- 6.4. In his evidence Paul Levato was closely questioned about the assertion contained in his statement that he had been aware that his father was planning to go back to the café at about 4am to unload fruit, vegetables and other stock. He was asked how he had become aware of that plan. He responded that his father used to drop things off in the morning before breakfast. Whenever he obtained stock he would drop it off at the café in the morning. When questioned more closely, Mr Paul Levato conceded that he did not have any actual awareness that his father had an intention to go to the café at about 4am on that particular Tuesday morning¹⁷. When asked by me as to whether there were any days in particular on which his father would restock, Mr Levato suggested Monday, Wednesday or Thursday mornings, fairly early in the morning¹⁸.

¹⁶ Exhibit C15

¹⁷ Transcript, page 147

¹⁸ Transcript, page 148

He said that he never knew of his father going to the café earlier than 4am, say at around 3am, and he did not have any knowledge of any habitual attendance at the premises, say from 11pm to 3am¹⁹.

- 6.5. Mr Paul Levato was asked whether he knew of any occasion when his father had been called away urgently to the business premises at night time, to which Mr Paul Levato answered negatively. He was not aware for instance, of any need for Mr Levato to have ever attended the premises to answer an alarm call. Indeed, Mr Levato asserted in evidence that he knew nothing of any alarm at the premises. There was an alarm at the premises, but police enquiries of alarm monitoring companies would suggest that it was probably not remotely monitored.
- 6.6. Contrary to the impression that his statement to the police creates, in my opinion it is apparent from Mr Paul Levato's oral evidence before me that he was not aware of any particular intention on Mr Francesco Levato's part to attend the café during the course of that night. I add here also that although the interior of the café was subject to substantial devastation, there did not appear to be any obvious signs of the delivery of fresh produce. I also observe that there does not appear to be anything in Mr Levato's vehicle that would give any indication of the same.
- 6.7. Ms Rose Poplizio, who also gave evidence before me, was employed as the manager of the café. She told me that Mr Francesco Levato was personally in the habit of obtaining fresh fruit and vegetables for the business from the market. According to Ms Poplizio, Mr Francesco Levato generally went to the market on a Sunday. However, if anything was required during the week she would let him know and he would go to the market and shop for her as and when required. Ms Poplizio was not aware of any pattern of behaviour whereby Mr Levato would obtain fresh fruit and vegetables early in the morning and deliver them to the café before staff arrived for the day's work. Although not aware of any regular attendance by Mr Levato early in the morning during weekdays, she was aware that he would occasionally attend at the café out of business hours to do administrative work²⁰. She said that he sometimes told her that he had been in during the night if, for instance, he had been unable to sleep²¹.

¹⁹ Transcript, page 149

²⁰ Transcript, page 164

²¹ Transcript, page 164

- 6.8. Ms Poplizio told me that she was aware of the existence of an alarm in respect of the café. The alarm was operated by either Francesco or Paul Levato. As I say, there is no evidence that the alarm was remotely monitored. There is also no evidence of any audible alarm going off at any time before or around the time of the explosion.
- 6.9. Mr Levato's widow, Mrs Lucy Levato, did not give a formal statement to the police until 9 October 2006. Prior to this the only other statements that she had made about the matter of her husband's death had been made on the morning of Tuesday 2 May 2006 to a Constable Townsend. Mr Townsend did not make contemporaneous notes of his conversation with Mrs Levato that morning, but in a statement of his own made on Thursday 4 May 2006 he compiled an account of what she had told him²². Mrs Levato's utterances had been made at a time before her husband's body was discovered under the collapsed masonry at the rear of the Pirie Street premises. She told Mr Townsend that she did not know of her husband's whereabouts at that time. She had last seen him the previous night. At about 11pm he had been lying on the couch watching television. At that time Mrs Levato had gone to bed herself. Mr Levato had not said anything that had indicated any intention on his part to go out again that night. She said that he would not normally go out at night. She had said:

'No, only if there is an alarm or something at the business.'

In her formal statement of 9 October 2006²³ Mrs Levato said that it was normal for her husband to pop into JP's Café from time to time late at night, on the weekend, or at any time. She said it would not have been unusual for him late in the day or evening to buy something from Coles or the liquor store Dan Murphy's and then return to the café. She said that a normal routine for her husband might involve him taking the children to soccer training or dance classes in the evening. Sometimes he would pick up supplies for the café before training and drop them off at the café at around 10pm.

- 6.10. Mrs Levato states that on the Monday night Mr Levato had originally intended to go bowling but in the event had to take her to a medical appointment. They returned home from the doctor's appointment at about 9:30pm and in due course Mr Levato fell asleep on the couch watching television. She asserts that she went to bed between 10pm and 11pm. In this statement she states that her husband had mentioned earlier

²² Exhibits C12 and C12a

²³ Exhibits C5 and C5a

in the night that he had to drop some things off at the café. At the time she went to bed she did not know whether her husband was actually going to go back to the café.

- 6.11. It is of course known that Mr Levato did go to the café during the course of that night. While acknowledging the theoretical possibility that Mr Levato may have delivered and put away fresh stock by the time of the explosion, if he had done so in the period immediately before the explosion one has to ask why he did not encounter whoever was responsible for the explosion or see or smell at first hand the spilt petrol or the fuel containers that must have been present and obvious. If he had detected any of that one would have thought that he would have at least alerted the authorities. In any event, there is no evidence that Mr Levato delivered any stock to the premises that night. There is also no evidence that Mr Levato was called out to respond to an alarm. In short, whatever his habits may have been, there is no evidence that would identify any particular reason connected with the continued operation of the business that would explain Mr Levato's attendance at the café on this particular occasion.
- 6.12. The other matter that is unexplained in terms of Mr Levato's usual habits and movements is why he chose to park his vehicle in the laneway some distance from the rear door of the premises and not in one of the designated car parking spaces that were adjacent to the rear door through which he generally would have accessed the building. I return to this aspect of the matter shortly.
- 6.13. Examination of the call register on Mr Levato's mobile telephone indicates nothing of Mr Levato's intentions or movements during the course of the night in question. Mr Levato's mobile phone was found near his body and it appears that at the time of the explosion the phone had been switched off or had become so as a result of the explosion. Alternatively the battery had become flat.
- 6.14. No telephone calls were made from any of the Levato family's known telephones between 9:11pm on 1 May 2006 and 7:04am the following morning.
- 6.15. Police were originally alerted to the explosion by the milkman, Mr Wayne Hall, who dialled triple zero after witnessing the blast. The response of the Metropolitan Fire Service was triggered by an activation of the monitored fire alarm at Joggers World and not by advice imparted by way of a triple zero call. If any person had been aware of Mr Levato's fate at the time of or very shortly after the explosion, it would be reasonable to expect that they may have called triple zero or the emergency services.

There is no evidence of any such approach. This is consistent with, but does not entirely preclude the possibility of, no other person having been in close proximity to the premises at the time of the explosion and who knew of Mr Levato's predicament following that explosion. I acknowledge, however, that a failure to contact triple zero would not necessarily reflect the non-existence of any such other person especially if that person had an involvement in the cause of the explosion.

7. The Mitsubishi Magna Altera motor vehicle

- 7.1. As already seen the Mitsubishi Magna Altera motor vehicle, that in essence belonged to Mr Francesco Levato, was parked in an unusual location relative to the rear entrance to the premises in question. Paul Levato told me that his father habitually entered the premises through the back door and parked in one of the two reserved car parking spaces for JP's Café staff in the vicinity of that door. He would enter the car parking area via the side street off Pirie (Hyde Street). He did not know his father ever to have parked in the lane leading to Flinders Street²⁴. Thus there is no obvious reason to explain why the vehicle would not have been parked in its usual parking position relative to the rear door of the premises if the person who had driven it, in particular Mr Francesco Levato himself, had an innocent intention in respect of the premises. For instance, if Mr Levato had been delivering stock, he would naturally have parked as close as he possibly could to the rear door.
- 7.2. On the other hand, there would be a natural reluctance to park a vehicle close to a building if one was intending to set fire to that building, especially if the vehicle provided the means by which escape from the scene, and therefore from detection, was to be effected. The need to minimise the risk of an adverse event affecting the motor vehicle would naturally motivate the individual to park it a sufficient distance away from the subject building. The fact that the keys were left in the ignition of the vehicle is also consistent with a desire to minimise risk associated with an intentional setting fire to the building. In particular, one would clearly want to minimise the risk of the keys being lost or misplaced during the preparations for, and in the act of, setting fire to the building. One could readily comprehend that the loss of one's car keys in those circumstances would present as an unmitigated disaster.

²⁴ Transcript, pages 157-158

- 7.3. Even allowing for the time of night at which this incident occurred, one could also readily understand a need for the perpetrator to minimise the risk of unwanted attention being drawn to the presence of a vehicle. The lane in which police located the vehicle was less visible than the car park that led directly off Hyde Street.
- 7.4. There were two further cigarette lighters located in the vehicle. There were no cigarettes located in the vehicle.
- 7.5. For reasons that are obvious, it is more likely than not that the four petrol containers that were located in the JP's Café premises were transported to the location by way of a vehicle. The boot of the Mitsubishi Magna Altera vehicle smelt of petrol when it was opened. Mr Bosley, whose evidence I accept, told me that when he smelt the carpet on the floor of the boot from close quarters, he received a strong smell of petrol from it.
- 7.6. To my mind the strong smell of petrol emanating from the carpet of the boot of the vehicle is suggestive of the erstwhile presence of petrol in the boot itself. This of course is in keeping with a suggestion that on that very night petrol had been transported in the boot of the vehicle. There were no containers in the boot of the vehicle when police examined it, but there were containers within the premises itself. I have not overlooked an available argument in the late Mr Levato's favour that if he had transported the petrol containers in the vehicle that night he would more likely have parked closer to the rear door. All one says to that is that the position where the vehicle was eventually located in the lane leading to Flinders Street is not inconsistent with Mr Levato having first unloaded the containers in the vicinity of the rear door and then having moved the vehicle to the lane for the reasons I have identified.

8. The cigarette lighter in Mr Levato's hand

- 8.1. The cigarette lighter that was located in Mr Levato's left hand bore the logo and details of the Links Hotel in Seaton. No connection with that establishment has been made with Mr Levato. Nevertheless, I am satisfied that the lighter was located in Mr Levato's hand and that it was useable. Mr Bosley told me on oath that he was present at the scene when the bricks were removed individually from the body of the deceased and that he saw that the lighter was in his hand as his body was exposed. I accepted that evidence.

- 8.2. Try as one might, it is difficult to discern an explanation for the cigarette lighter being found in Mr Levato's left hand that would be consistent with Mr Levato not having deliberately used it to ignite the building.
- 8.3. Mr Paul Levato told me that as of May 2006 his father had quit smoking altogether. He believed that he had stopped smoking approximately 6 months prior to May 2006. He did not think that Mr Levato carried cigarettes anymore²⁵. He did not ever see cigarettes in the car. The only cigarettes he saw around the family home were those of his mother. Mr Paul Levato's knowledge that his father had given up smoking came from Mr Francesco Levato himself. Francesco Levato told Paul Levato that he had given up and at no time thereafter did Paul Levato ever see him in possession of cigarettes.
- 8.4. Ms Poplizio, who had an approximately year long business association with Mr Levato, told me that Mr Levato never smoked during that period²⁶. In fact to use her words he was 'an anti-smoker'²⁷. She believed that he was a reformed smoker.
- 8.5. I make due allowance for the possibility that Mr Levato as a reformed smoker may nevertheless have surreptitiously succumbed to the odd cigarette. Indeed, there would have been no need for secrecy in that regard on the night in question at that location and at that time of the morning. He could have smoked with complete impunity. However, there were no cigarettes found in the vehicle and there were no cigarettes or remnants of cigarettes located in the vicinity of where Mr Levato was found.
- 8.6. It is not out of the question that a former smoker might retain possession of a lighter or lighters that had been used during one's period of smoking. The presence of lighters in the vehicle might well be explained on that basis. However, it is difficult to conceive of a sensible explanation as to why Mr Francesco Levato had a cigarette lighter in his hand at the very moment of the explosion that undoubtedly caused his death other than by reference to a connection between his own activity and that explosion. Such an innocent explanation would have to address a need on Mr Levato's part either for an ignition source or a light source at the very moment at which the building erupted. It is difficult to think of one that could withstand close scrutiny. One can conceive, perhaps, that Mr Levato was innocently using the lighter

²⁵ Transcript, page 152

²⁶ Transcript, page 184

²⁷ Transcript, page 184

as a source of light, but the headlights of his car would naturally have been a better source. In addition, if it was not Mr Levato's lighter that caused the explosion, one has to ask what the source of ignition actually was and who else could have applied it. And if Mr Levato's lighter had accidentally ignited a fuel / air mixture that Mr Levato had not caused and did not know about, say in the process of using it as a torch or in lighting a cigarette, one asks why it was that the person or persons who had already doused the interior of the café in petrol had not made any attempt to set fire to the building by the time of Mr Levato's arrival on the scene. Perhaps Mr Levato was innocently using or handling the lighter at the very moment the real perpetrators ignited the scene. Perhaps Mr Levato used his lighter and unwittingly caused the explosion at the moment just before the real perpetrators were about to ignite the scene. Perhaps the perpetrator or perpetrators were waiting nearby in the hope and expectation that Mr Levato would use his lighter and thereby unwittingly set fire to the building for and on their behalf. The scenarios that can be conjured up that would explain Mr Levato's presence at the scene and his possession of a lighter have to become increasingly absurd for him to be exonerated as the perpetrator of the explosion. And none of them would sensibly explain how it was that the real perpetrators were able to get away from the scene either undetected by Mr Levato or without blowing themselves up.

9. Mr Francesco Levato's efforts to sell the business of JP's Café

- 9.1. Mr Levato had originally purchased the business in June 2005. The business of JP's Café at that time was already a going concern. Mrs Lucy Levato's statement makes it reasonably plain that her husband was quite unfamiliar with the operation of a café, but nevertheless he enjoyed the work. Mrs Levato asserts that her husband bought JP's Café with a view to their son Paul taking over the business in due course. Paul Levato himself was to tell me in evidence that this was one of his aspirations.
- 9.2. Mr Levato had originally outlaid \$231,666.81 in respect of the purchase of the business. That figure included the actual purchase price of the business of \$215,000 as well as stock of approximately \$6,500. Also included in that overall figure was a loan from the vendor in the sum of \$20,000. Of the total outlay, the sum of \$173,500 was funded by way of an already existing overdraft facility in the name of Mr Francesco Levato and his wife.

- 9.3. The lease of the premises was assigned to Saabi as part of the sale of the business. At the time of the explosion the lease was still on foot and the sale would have required the consent of the landlord, although I understood from evidence that I will discuss in a moment that this probably would not have been any impediment to the further sale of the business.
- 9.4. On 29 March 2006 Mr Levato, on behalf of Saabi, executed a business sales agency agreement with Phillis Real Estate at 97 Wright Street, Adelaide. The agent with whom Mr Levato dealt was a Mr Eleftherios Michos. Mr Michos provided a statement to the Inquest and he also gave evidence²⁸. Mr Levato and Mr Michos were not known to each other prior to this. Mr Levato told Mr Michos that he wanted to sell the business and Mr Michos explains in his statement that it appeared that he wanted to sell the business more urgently than Mr Michos' other clients. He told Mr Michos to submit all offers to him. He told Mr Michos that he wanted to sell the business because his health was not good. If that was the case, it was lost on his wife Mrs Lucy Levato, whose statement suggests quite strongly that her husband was a happy man who had plans for the future, had given up smoking, did not take any prescribed medication and was healthy and active.
- 9.5. The agency agreement of 29 March 2006 reveals that Mr Levato wanted to sell the business for \$259,000 plus estimated stock at valuation worth \$8,000, giving a total of \$267,000. This figure is somewhat in excess of what Mr Levato had apparently paid for the business less than one year earlier.
- 9.6. Mr Levato paid to Mr Michos a sum of \$330 as an establishment and administration fee.
- 9.7. Attached to the agency agreement was a schedule that set out in some detail the various financial facets of the business. Within that part of the document was a claim that the estimated turnover of the business was \$8,500 per week. It was Mr Levato himself who supplied that figure, a figure that was never substantiated.
- 9.8. Mr Michos told me that he suggested to Mr Levato that the figure of \$259,000 for the business was high. He said that he tried to explain to him that he did not think they would obtain that price.

²⁸ Exhibit C17

- 9.9. Mr Michos advertised the business in The Advertiser newspaper on two occasions, once on 19 April 2006 and then again on 2 May 2006, which was in fact the day of the explosion. The advertisement did not identify the café or its location, except to say that it was a busy city café with a turnover of \$8,500 per week with high profits.
- 9.10. Mr Michos told me that a number of people inspected the premises but no offers were made. He had approximately four or five enquiries. Mr Michos invited them to inspect the premises in their own time. None of the enquirers came back to him. Mr Michos advised Mr Levato about the enquiries. To this Mr Levato urged Mr Michos to arrange for the enquirers sign a contract and / or to make them an offer, but nothing ever came of it.
- 9.11. One matter that Mr Michos did emphasise in his evidence was that Mr Levato seemed to be unable or unwilling to substantiate his assertions as to the profitability of the business. In spite of Mr Michos' urgings, Mr Levato at no stage supplied Mr Michos with any profit and loss statements or any other information that was required when a business is offered for more than \$200,000. Mr Levato said that he was waiting on his accountant to post the information to him. What Mr Michos was naturally seeking from Mr Levato was an interim profit and loss statement for the year 2005/2006. It never came.
- 9.12. I have already alluded to the fact that Mr Levato kept his intentions to sell the business from his son and the café manager, Ms Poplizio. Mr Paul Levato, who was a cook at the café and a co-director in Saabi, said in his statement that he believed his father was planning to hand the business over to him to manage and operate. In evidence he said he had not really discussed that with his father but that he had simply aspired to walk in his father's footsteps as it were. He thought he might take the business over within probably 4 or 5 years. Mr Paul Levato told me that he would have liked to have taken over the business. The job that Paul Levato had at JP's Café was his only source of employment. He admitted that the selling of the business would have effectively meant that he was without a job.
- 9.13. Ms Poplizio had no inkling that Mr Levato was contemplating getting out of the café business²⁹. However, Ms Poplizio, who had originally contemplated purchasing the business herself at the time that Mr Levato purchased it, told me that at one point Mr

²⁹ Transcript, page 180

Levato asked her whether she was interested in purchasing the business from him. This approach had been made sometime in 2006. She told him in response that she had already passed over the opportunity to purchase it and did not want it.

- 9.14. Mrs Levato's statement is silent as to whether or not she was aware of her husband's desire to sell the business. But if she did have any knowledge of that, she did not share it with her son, Paul Levato³⁰.
- 9.15. In short, it appeared that Mr Levato had an unrealistic expectation of selling the business and realising what he had originally paid for it, if not more. He did not produce any evidence to his agent Mr Michos as to the profitability of the business. What interest there was in response to advertising was limited and in any event came to nothing.

10. The insurance in respect of the business of JP's Café

- 10.1. Prior to his acquisition of JP's Café, Mr Levato had obtained insurance in respect of other businesses that had included two hairdressing salons. He had dealt with a Mr Scott Pettman who is an agent for Wesfarmers Federation Insurance (Wesfarmers).
- 10.2. In approximately April or May of 2005 Mr Levato telephoned Mr Pettman and told him that he was purchasing a café and needed business insurance. At that time he told Mr Pettman that he was trying to get his son Paul into the hospitality industry.
- 10.3. In the first instance Mr Levato, in the name of Saabi, took out an insurance policy with Wesfarmers that covered the business for a period of 3 months to 9 September 2005. Thereafter the policy was taken out for a period of 12 months that would have expired on 9 September 2006. Thus, at the time of the explosion, the business was insured.
- 10.4. As to the nature of the insurance, Mr Pettman provided a statement to the Inquest³¹ and he gave evidence as well. A great deal of documentation connected with this insurance policy was tendered during the course of this Inquest. It was in the main attached to Mr Pettman's statement. Mr Pettman in his evidence endeavoured to explain the effect and ramifications of the policy and in particular the policy holder's entitlements in certain specified events.

³⁰ Transcript, page 413

³¹ Exhibit C20

- 10.5. The entitlements in reality, and what Mr Levato's understanding of those entitlements was at the time, might not necessarily coincide. This might especially be the case having regard to the differing permutations of insurance outcomes that, in large part, depend upon whether the business or business premises was to be regarded as a total loss and whether there was any intention to reinstate the business after a period of forced inactivity.
- 10.6. What is known is that the policy certificates relating to the business of JP's Café state that the policies covered stock in trade with the sum insured being \$5,000. Property other than stock in trade was also insured, the sum insured being quoted as \$300,000 (replacement). The policy also purported to cover 'business interruption' that covered 'loss of gross profit' with the sum insured being \$300,000 and 'accountant's fees' of \$5,000. There is 'an indemnity period' adhering to this aspect of the policy for a period of 12 months. There were other aspects of the policy that covered burglary and theft and glass breakage that would be covered to replacement value.
- 10.7. The insurance entitlements in respect of a business covered by the policy very much appear to depend upon whether or not the business is resurrected following an adverse insurance event, or whether it is intended that the business be so resurrected. To my mind it is clear that whoever poured the petrol within the JP's Café business premises did so with the intention of setting fire to the interior of the premises, thereby destroying all of the property and fittings within. Clearly, the intention would have been to cause a major disruption of the business. On one interpretation of these events the perpetrator intended to destroy the business permanently. However, it is nevertheless possible that only a temporary interruption was contemplated, even if the perpetrator had a malicious intent as opposed to a financial motive to damage the premises.
- 10.8. The entitlements under the JP Café's policy are identified in the 'Commercial plan insurance cover - product disclosure statement' that was tendered during the Inquest³². It is clear that the policy covered loss and damage by fire but naturally excluded cover for any event involving 'the deliberate application of heat'. It also covered explosion or implosion³³.

³² Exhibit C20

³³ Exhibit C20, page 12

- 10.9. As far as property damage is concerned, the document states that the insurer would pay ‘only up to the sum insured shown on the certificate of insurance for building or other property for all claims arising out of the one event’³⁴. In this case the sum insured as shown on the certificate was \$5,000 for stock in trade and \$300,000 for ‘other property’. As far as stock is concerned, the document explains that the insurer was liable to pay the wholesale cost to replace stock if the same is destroyed whereas if the item of stock is damaged it would be reinstated or repaired as far as was possible. In any event the stock insured in this case was only to the amount of \$5,000, not a huge sum. As far as ‘other property’ is concerned, if the item of property was a ‘total loss’ the insurer undertook to replace it as new. It seems clear enough that the insurer’s liability was limited to the extent of the value of the loss of property. I do not know what the value of Mr Levato’s ‘other property’ was at the time of its destruction. Mr Pettman told me that in the event of the client not wanting to go back into business, or not being able to go back into business, the insurance company would enter into a cash settlement with the client³⁵. I assume that this would only be up to the value of the property that had been destroyed with appropriate deductions for fair wear and tear and depreciation.
- 10.10. The other relevant aspect of Mr Levato’s insurance policy was the cover for ‘business interruption’. Mr Pettman gave me to understand that if there was an immediate indication from the insured person that the person was not going to reinstate the business, they would not be able to make any claim for business interruption and that their claim would be limited to property damage³⁶. The product disclosure statement seems to bear that interpretation out³⁷. An associated question is whether there would be any compensation for the loss of goodwill that the business had established. It appears that there was no cover for that³⁸. The business interruption cover would only seem to apply where the business was interrupted and then re-established in which case there would be cover up to \$305,000.
- 10.11. Mr Levato’s understanding of what his entitlements actually were under this policy is unclear, particularly in relation to business interruption cover. All that really needs to be said and considered is the fact that there was some insurance entitlement in the

³⁴ Transcript, page 14

³⁵ Transcript, page 256

³⁶ Transcript, page 260

³⁷ Exhibit C20, page 20

³⁸ Transcript, page 261

event that the business was interrupted or even destroyed for all time, but that if the business was not reinstated, there would be no cover for business interruption and in any case no cover for loss of goodwill. Whether the entitlement would have equated to what Mr Levato was seeking to obtain by way of the sale of the business is also not clear.

11. The state of the business of JP's Café and of Mr Levato's finances

- 11.1. The evidence as to this emanates from two broad sources, firstly the impressions of members of Mr Levato's family and those of his manager Ms Poplizio and secondly from an examination of Mr Levato's financial position.
- 11.2. As earlier seen, Mr Levato acquired the business in June 2005. According to Mrs Levato's statement her impression was that from a financial perspective the family was comfortable. Mr Levato states that Mr Levato ran two businesses, one being JP's Café and the other being a hairdressing salon in Salisbury. She admits that she did not have anything to do with the finances of the two businesses and what knowledge she did have about that was gleaned from her husband. Her impression was that 'both businesses were doing ok'³⁹. Mrs Levato herself worked as an education support officer at a school and so had her own source of income.
- 11.3. Mrs Levato states that her husband bought JP's Café with a view that one day their son Paul might like to take it over.
- 11.4. As far as the family income was concerned, Mrs Levato said that she did not know exactly what that was but she believed that together they earned approximately \$80,000 to \$90,000 before tax.
- 11.5. As far as their assets were concerned they owned the premises at Glynde and, as of the day of her statement in October 2006, \$368,000 was owed on the mortgage. As it happened that figure represented the size of an overdraft facility on a joint bank account that was held by Mr and Mrs Levato. She stated that they never had any difficulty making repayments on the mortgage and had no problems making day-to-day payments for usual living expenses. Her two younger children attended private schools. She states that she and her husband both realised that the mortgage was higher than what they wanted it to be. She points out that the acquisition of JP's Café

³⁹ Exhibit C5a, page 2

had caused the amount of the loan to increase. They had intended to sell the hairdressing salon to reduce the mortgage. I heard very little else about the hairdressing salon during the course of the Inquest. One thing is certain and that is that, as will be seen, no attempt had been made to reduce the mortgage from this source or any other source as at the day of the destruction of JP's Café. At that time, the overdraft facility that was secured by the mortgage on the house at Glynde was under considerable strain.

11.6. Mrs Levato valued the Mitsubishi Magna Altera sedan at about \$5,000 to \$6,000. They did not have any other financial investments.

11.7. Mr Paul Levato, who worked as a cook at JP's Café, says in his statement that he had nothing to do with the financial side of the business⁴⁰. However, he said that for the entire time he worked at the café, business was relatively busy. There were seven staff employed at the café. His impression was that his father was happy with the business. However, Mr Francesco Levato did not discuss the turnover of the business with his son. As seen before, Paul Levato was not aware that the business was for sale. Curiously, Mr Paul Levato said he did not know whether his father still had a hairdressing salon at Salisbury at the time of his death. This, notwithstanding the fact that Mr Paul Levato himself was a qualified hairdresser.

11.8. Mr Paul Levato told me that he did not believe that his father had deliberately caused the destruction of the business. He said:

'Well, I don't think that he did. To me it was a good business that I had a future in, and it's still just a shock. Just want to move on, that's all.'⁴¹

I have taken Mr Paul Levato's beliefs and those of Mrs Levato in that regard into consideration.

11.9. Ms Rose Poplizio was the manager of the business of JP's Café. She commenced her employment at JP's Café at the time Mr Levato acquired the business. In a statement to the police that was taken on the morning of Mr Levato's death, Ms Poplizio said that the way the business was going indicated that everything was running well. She said that she was not aware of any financial issues, although she knew nothing about that side of the business and could not comment on that aspect of the business.

⁴⁰ Exhibit C15

⁴¹ Transcript, page 156

However, she said that all of the employees were paid weekly and that their salaries were up to date. In her statement she alluded to the fact that she and Mr Levato would discuss the operation of the business on a daily basis and spoke specifically about endeavouring to improve things. She said that coffee sales and lunch sales had increased in recent times. She said:

'The business appeared to be doing well from what I could see of it.'⁴²

- 11.10. In her statement Ms Poplizio says that Monday 1 May 2006 had been a good day. Mr Levato had been in good spirits. That afternoon Mr Levato had been busy stocking the fridges with drinks. Ms Poplizio told me in evidence that she had made several telephone orders for food during the course of that afternoon. This had been her regular practice before finishing her shift. When Ms Poplizio made those calls, Mr Levato was still on the premises and did not interfere with her tasks in that regard.
- 11.11. In her evidence Ms Poplizio revealed that when the business had been up for sale in the middle of 2005 she had entertained the idea of purchasing it herself but had decided against it. Ms Poplizio had been influenced by her daughter's view that the business at that time was not a viable business to take on. Ms Poplizio shared that view. When contemplating purchasing the business in 2005, Ms Poplizio had been made aware of a figure quoted for the value of goodwill. Having worked in the premises for 12 months and having seen certain unfavourable changes take place, particularly in relation to kitchen staff, she was of a view that the goodwill component of the business' value would have diminished. For example, in May 2006 she would not have paid what they had been asking in 2005. She told me that the sales within the business had taken on a different and less lucrative nature in the course of the 12 months that she had been associated with the business. When pressed, Ms Poplizio revealed that although sales had improved, the kitchen was not operating like a kitchen should be operating. The café had lost its two chefs and, as a result, Paul Levato had to step in as a cook. The two chefs who had been associated with the business before Mr Levato's acquisition of it had resigned. Ms Poplizio told me that at the time of the explosion the cook was not a proper chef and was not up to what she would have regarded as a proper standard⁴³. The departure of the two chefs had an adverse effect on the business. She said:

⁴² Exhibit C16, page 3

⁴³ Transcript, page 167

'Our customers were regular customers and they enjoyed the way our chefs cooked and their cuisine and changing it, yes, I feel that in any hospitality, when you have change it is a bit hard.'⁴⁴

The food that was provided by the café upon the departure of the chefs was of a different kind and not as lucrative⁴⁵.

11.12. Ms Poplizio told me that she had discussed the business' deficiencies with Mr Levato. She urged him to employ a proper chef. This usually drew an ambivalent if not evasive response from Mr Levato. He said he would think about it⁴⁶. Ms Poplizio said that in her view they could have done much better⁴⁷. She discussed with Mr Levato the need to change and he acknowledged that there was a need for change to increase his productivity. She told him that he needed to spend money to make money. To this he would respond that he had no money. In particular, Ms Poplizio told Mr Levato that the place required renovation, a proper full-time chef and more staff. These requirements were discussed regularly and the same ambivalent response was received for the most part. The most important acquisition from her point of view was a full-time chef to which Mr Levato specifically indicated that he could not afford one.

11.13. Ms Poplizio declined Mr Levato's offer to her to purchase the business from him. She was unaware of any other efforts on his part to sell the business at the time of its destruction.

11.14. I have already referred to Mr and Mrs Levato's joint bank account. It was held at the St George Bank. This account appears to have been utilised in respect of the business of JP's Café. The account was a cheque account that had an overdraft facility with an approved credit limit of \$368,000. This is the figure revealed by Mrs Levato in her statement as being the amount of the mortgage on their home. I infer therefore that the security for the overdraft facility was indeed the family home at Glynde. When one examines the statements of the account from 1 July 2004 it is apparent that the amount of the overdraft steadily increased, for to the point where on 28 April 2005 it had reached just over \$225,000. That overdraft was reduced by way of a number of deposits in late April 2005 and early June 2005. On 2 June 2005 the overdraft was in

⁴⁴ Transcript, page 167

⁴⁵ Transcript, page 168

⁴⁶ Transcript, page 169

⁴⁷ Transcript, page 171

the sum of \$184,184.76. On 3 June 2005 there was a debit to the account in the sum of \$173,500 that increased the overdraft to \$357,684.76. There was a deposit of about \$51,000 on the same day. The account for the next 12 months was at all times overdrawn in excess of \$300,000. It is obvious from documentation that was tendered by the agent Mr Michos that the sum of \$173,500 was debited as part of the settlement in respect of the original acquisition of JP's Café.

- 11.15. The account reached its overdraft limit for the first time on 20 January 2006. The overdraft limit was again reached on 27 January 2006, 31 January 2006 and then hovered around the \$360,000 mark for some time. On Friday 28 April 2006 a cheque drawn on the account in the sum of \$5,151.40 was presented for payment. This would have taken the overdraft beyond its limit but for the fact that it was dishonoured on Monday 1 May 2006, the day before JP's Café was destroyed.
- 11.16. From late January 2006 it is evident from the documentation that was tendered in the Inquest that a number of other cheques drawn on the account in smaller amounts had also been dishonoured from time to time.
- 11.17. There is no evidence that there was available to Mr Levato any other source of funding that could have reduced the overdraft to manageable proportions other than by way of the realisation of its underlying security being the family home at Glynde. There is little doubt that the pressure on this loan facility was caused, for the most part, by the debit in the sum of \$173,500 that had been drawn down as part of the acquisition cost for JP's Café.
- 11.18. A representative of the syndicate that owned the building at 121 Pirie was called to give evidence. That man was Mr Stephen Gilbert whose wife is one of the members of the syndicate. Mr Gilbert produced documentation relating to the lease on the premises of JP's Café. Mr Gilbert's witness statement reveals that the monthly rental of the property was \$4,290 including GST⁴⁸. Payment was due on the 1st day of the month but it was accepted that Mr Levato would pay by about the 14th of the month.
- 11.19. By the end of April 2006 JP's Café was in arrears of rent for both March and April 2006. The total amount of arrears of rent at that time was \$8,580. In addition, rent in

⁴⁸ Exhibit C18

advance for the month of May 2006 was due on Monday 1 May 2006, although as indicated earlier, Mr Levato was given some leeway about that.

- 11.20. On Friday 28 April 2006 Mr Gilbert attended at JP's Café at about lunch time to discuss the issue of payment of rent with Mr Levato. Mr Levato was apparently busy at that time but Mr Gilbert waited for him and eventually Mr Levato approached him with a cheque that covered one month's rent. The cheque was undated. Mr Gilbert, who enjoyed a cordial relationship with Mr Levato, was constrained to point out to Mr Levato that he was still in arrears notwithstanding his presentation of a cheque for one month's rent. He also reminded him that he would shortly be liable for further rental for the coming month of May. Mr Levato told Mr Gilbert that he would pay another month's rent in a fortnight and then another two weeks after that so that he would have caught up in one month's time. Mr Gilbert was satisfied with that arrangement. Mr Gilbert describes Mr Levato as being a little nervous and embarrassed during this conversation.
- 11.21. Mr Gilbert explained that after he received the cheque from Mr Levato it was presented and dishonoured. According to the statement of the St George Bank account on which the cheque was drawn, the cheque was presented on the same day as it was received by Mr Gilbert, namely Friday 28 April 2006. At the beginning of Friday 28 April 2006, the account was approximately \$9,300 below the overdraft limit. However, on that day other debits were posted to the account before the presentation of Mr Levato's cheque for one month's rent. Included in these other debits was a payment from the account in the sum of \$3,636.20 to Origin Energy in satisfaction of an account to JP's Café in that exact same sum. In fact an Origin Energy 'Disconnection Imminent' notice dated 18 April 2006 with a payment due date of 27 April 2006 had been raised in respect of the café premises⁴⁹. The payment from the joint bank account on 28 April was clearly in satisfaction of that and I infer that it was paid in order to forestall disconnection of electricity to the café. This payment to Origin Energy on 28 April 2006, together with two other debits, meant there were insufficient funds remaining in the overdraft facility to support Mr Levato's cheque for rent and so when it was presented for payment later that day the account was overdrawn beyond its overdraft limit and the cheque was thus dishonoured. I infer that the cheque that I have already referred to in the sum of

⁴⁹ Exhibit C13aa

\$5,151.40 was the cheque that was given to Mr Gilbert as that represents one month's rent plus the total of some sundry expenses that were also owed at the time.

- 11.22. To make matters worse, on 30 April 2006 monthly interest on the overdraft was debited to the account in the sum of \$2,006.54.
- 11.23. At the beginning of Monday 1 May 2006 the opening balance on the account was \$3,656.56 in excess of the overdraft limit. The balance included the posting of the debit occasioned by presentation of the rent cheque on 28 April. It is therefore no wonder that the rent cheque in the sum of \$5,151.40 was dishonoured. The dishonouring of the rent cheque was posted to the account on Monday 1 May 2006, the day before the explosion, and a letter to Mr Levato explaining the same was issued by the bank on that day⁵⁰.
- 11.24. As far as the lease is concerned, Mr Gilbert had been unaware of Mr Levato's efforts to sell the business. The sale of the business would have required the landlords' consent, at least as far as an assignment of the lease is concerned. Mr Gilbert told me that they would not have withheld consent capriciously. The terms of the lease suggest that Mr Levato had at least 5 years to go on the lease commencing on 9 October 2005. However, the lease contained a clause that provided that if the premises was destroyed or damaged, and the landlord had not within one month from the date of the destruction or damage notified the tenant of the landlord's intention to restore the premises and thereafter proceed to restore it with 'all reasonable speed', then the tenant had the right to terminate the lease.
- 11.25. It was pointed out to me in evidence by a police forensic accountant who was called to give evidence, Mr Francis McMahon, that the police were not in possession of the complete financial picture as far as the Levato family's financial position was concerned. That much was always obvious and I take that into account. In particular, there is no direct evidence that demonstrates that Mr Levato or his family had no other sources of income or other funding that, for example, could have supported the joint bank account to which I have referred. Thus there are some limitations on what can be concluded from any analysis of the financial position with respect to JP's Café or Mr Levato generally. However, what can be revealed is that by 1 May 2006 the overdraft facility was at its absolute maximum and indeed beyond, but for the dishonouring of the rent cheque to which I have referred on 1 May 2006. If Mr

⁵⁰ Exhibit C19, page 329

Levato had some alternative and readily liquid means by which he could directly and immediately have satisfied his indebtedness to his landlords, or which he could have injected into the overdraft facility, it seems odd that he would not have utilised the same. In the event, by 28 April 2006 the situation regarding the possible disconnection of power from the café was no doubt critical. He managed to stave that off as the overdraft facility was still in the black. But on the same day he bounced a cheque in a significant sum on the café's landlords that was drawn on an account that was already precariously positioned. Interest on the loan was then debited over the ensuing weekend. All of this indicates in my view that as of 1 May 2006 Mr Levato realised that he had a liquidity crisis on his hands and that the cause of it was JP's Café.

- 11.26. Inside Mr Levato's wallet was a newspaper classified advertisement for a position of sales representative for a wholesaling entity within the hairdressing industry. The advertisement stated that previous experience in the hairdressing industry was preferred and that the employment conditions including salary were attractive. It is speculated that Mr Levato had been interested in this position either for himself or his son Paul and that this was another indication of his intent to end his family's association with the café. To my mind this piece of evidence is too speculative to be acted upon. I add that I do not need to have recourse to it in reaching my overall conclusion.
- 11.27. It is known that as at April 2006 Mr Levato was very keen to end his association with JP's Café and to realise from the business a sum that was commensurate with what he had originally paid for it. An intention on his part to divest himself of or at least to ease this considerable financial burden is not at all surprising in the light of the fact that the original acquisition outlay was the one factor that was placing his overdraft facility under such enormous strain by the end of April, beginning of May 2006.

12. Standard of proof

- 12.1. Findings as to the cause and circumstances of Francesco Levato's death attract the civil onus of proof, namely on the balance of probabilities. Similarly, if I were to consider a finding as to the identity of the person or persons responsible, if any, for the cause of Mr Levato's death, I would need to be satisfied of that on the balance of probabilities.

- 12.2. The cause of Mr Francesco Levato's death is clear, as are the general circumstances in which he met his death, namely that his fatal injuries were sustained as a result of the explosion that occurred at 3:19am on Tuesday 2 May 2006 at 121 Pirie Street, Adelaide.
- 12.3. As to the issue of the identity or identities of the person or persons responsible for that explosion, and hence responsible for the cause of Mr Levato's death, there is no evidence that could possibly identify any person or persons other than Mr Levato himself. There is no evidence that any other person had a motive to destroy JP's Café or any other business within the building or the actual building itself. I acknowledge that the evidence does not directly exclude the possibility of some other person having a motive to destroy the building or part of it. However, the position of the location of the petrol containers renders it more likely than not that JP's café was the target of this activity and there was no material to suggest that any person had any malicious intent towards Mr Levato at the time. Furthermore, it is difficult to see how any person outside Mr Levato's immediate circle had a financial motive to destroy or interrupt the business. In any event, as will be seen, the evidence that it was Mr Levato himself who deliberately caused the destruction of JP's Café is quite overwhelming in itself.
- 12.4. The question as to whether or not Mr Levato was responsible for the explosion, and hence his own death, would require me to consider a body of circumstantial evidence. The question in those circumstances becomes whether, from the evidence that I have heard, I am able to draw an inference from facts established to my satisfaction to the necessary degree that Mr Levato was so responsible. When considering a body of circumstantial evidence in this regard I do not need to conclude that all other reasonable hypotheses consistent with Mr Francesco Levato not having been responsible for the cause of the explosion and thereby his own death, have been excluded as would be the case if the standard of proof required was beyond a reasonable doubt. In considering the weight of circumstantial evidence in the context of a standard of proof on the balance of probabilities it is enough if the circumstances appearing in the evidence give rise to a reasonable and definite inference, but they must do more than give rise to conflicting inferences of degrees of probability so that the choice between them is a mere matter of conjecture – **Bradshaw v McEwans Pty Ltd** (unreported, High Court of Australia – Dixon, Williams, Webb, Fullager and

Kitto JJ, 27 April 1951) but reproduced in **Holloway v McFeeters** [1956] 94 CLR 470 at 480-481. If the circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusion sought then although the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise - **Bradshaw v McEwans** supra. If reasonable hypotheses exist other than that Mr Levato caused the explosion and his own death, the existence of such hypotheses is a matter to be taken into account into determining whether the fact in issue, namely whether Mr Levato did cause the explosion and his own death, should be inferred from the facts proved – **R v Doney** [1990] 171 CLR 207 at 211 per Deane, Dawson, Toohey, Gaudron and McHugh JJ. I direct myself in accordance with the above propositions.

- 12.5. There is one further consideration in respect of the standard of proof that I should mention. The suggestion that Mr Francesco Levato deliberately set about a course of conduct in which he intended to destroy his own business premises, and possibly had within his possible contemplation the destruction of other persons' business premises, would amount to a most serious allegation irrespective of whether his motivation was to secure some kind of financial benefit for himself. Although Mr Levato is now deceased, I am mindful of the fact that a finding that he did deliberately set about that course of conduct would reflect very adversely upon his character during his lifetime and possibly also have unknown adverse consequences in respect of the surviving members of his family. I have taken the view that this case is one of the cases contemplated by the High Court in **Briginshaw v Briginshaw** [1938] 60 CLR 336 (30 June 1938) where owing to the seriousness of the allegations made in the matter I should remind myself that I should not make such a finding lightly or on unconvincing evidence. The approach that I take to the question of proof in respect of whether or not Mr Levato was responsible for the explosion is encapsulated in the following dictum of the High Court in **Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd** [1992] 67 ALJR 170 per Mason C.J., Brennan, Deane, Toohey and Gaudron JJ at 171:

'The ordinary standard of proof required of a party who bears the onus in civil litigation in this country is proof on the balance of probabilities. That remains so even where the matter to be proved involves criminal conduct or fraud. On the other hand, the strength of the evidence necessary to establish a fact or facts on the balance of probabilities may vary according to the nature of what it is sought to prove. Thus, authoritative statements have often been made to the effect that clear or cogent or strict proof is necessary 'where

so serious a matter as fraud is to be found'. Statements to that effect should not, however, be understood as directed to the standard of proof. Rather, they should be understood as merely reflecting a conventional perception that members of our society do not ordinarily engage in fraudulent or criminal conduct and a judicial approach that a court should not lightly make a finding that, on the balance of probabilities, a party to civil litigation has been guilty of such conduct.'

- 12.6. In considering the responsibility of the late Mr Francesco Levato in respect of this explosion, I have also had regard to the fact that as Mr Levato is deceased I have not heard any version of events from him that would support his possible innocence. However, in the circumstances there is nothing that the Court can do about that and I have to examine the evidence as it exists before me. Nevertheless, I indicate that I have given very careful consideration to what possible explanations there might have been for Mr Levato's presence at the scene, and in particular the presence of the lighter in his hand.

13. Conclusions

- 13.1. I have reached the following conclusions:

- (1) At some time following the close of business of JP's Café on Monday afternoon, 1 May 2006 a person or persons entered the interior of the café and brought into the café four containers that contained petrol;
- (2) A person or persons liberally doused petrol from some of the containers in and around the interior of JP's Café with the intention of setting fire to the interior of the café;
- (3) The person or persons responsible for the distribution of petrol within the JP's Café premises laid a wick or a trail consisting loosely of tea towels leading to the rear door of the premises;
- (4) At 3:19am on Tuesday 2 May 2006 an ignition source was applied to the petrol that had been doused in the vicinity of the rear door of the premises at 121 Pirie Street. The intention of that person or persons was to cause a fire to commence inside the premises in the vicinity of the rear door and to spread by way of the trail or wick that I have described into the interior of the premises and then to destroy the premises of JP's Café by fire. However, at the moment the source of ignition was applied, the build-up of petrol vapour mixed with air within the

premises and the sudden application of that ignition source to that mixture caused a massive and unexpected explosion;

- (5) The proprietor of JP's Café, Mr Francesco Levato, had driven his Mitsubishi Magna Altera motor vehicle to the premises at 121 Pirie Street sometime during the course of that night and at a time before the explosion;
- (6) There is no evidence that would directly explain Mr Levato's presence at JP's Café in the early hours of the morning of Tuesday 2 May 2006 consistent with any purpose connected with the continuation of that business;
- (7) At the precise moment of the explosion Mr Francesco Levato was standing in the vicinity of the rear door of the premises. The explosion caused a large amount of brickwork and masonry to fall from the rear wall of the premises, both from the ground floor and the first floor of the building. As a result, Mr Levato was in essence buried by that material at a location approximately 2 metres outside the rear door of the building. His death was caused by injuries sustained as a result of the explosion and falling rubble;
- (8) When Mr Levato's body was later located beneath the rubble and debris, a cigarette lighter that was capable of working and lighting a fire was found in the grasp of Mr Levato's left hand. There is no evidence that would directly explain Mr Levato's need for a source of ignition or of light other than in the course of the destruction of the JP's Café premises. In my view there is no sensible explanation for the presence of the lighter in Mr Levato's hand other than that he had intended to use it and had used it as a source of ignition;
- (9) Mr Levato had parked the Mitsubishi Magna Altera motor vehicle in a laneway that connected the car park at the rear of 121 Pirie Street with Flinders Street to the south. The vehicle was unlocked and the keys were in the ignition. The vehicle was not parked in its usual parking position relative to the rear door of the premises. There is no obvious explanation as to why Mr Levato would have parked the vehicle at this unusual location if his intention in relation to the JP's Café premises was wholly innocent. It would have been far more logical for Mr Levato to have parked the vehicle in its usual place relative to the rear door of the premises if his intentions in respect of the premises were innocent and he was merely attending the premises in connection with the business;

- (10) When the boot lid of the Mitsubishi Magna Altera motor vehicle was opened, police detected an odour of petrol that appeared to emanate from the carpet lining the boot of the vehicle;
- (11) The inference is irresistible that the four petrol containers located by police within the destroyed JP's Café premises must have been conveyed to the vicinity in a motor vehicle;
- (12) No person dead or alive was located in or around the premises apart from Mr Levato.

13.2. I have reached the conclusions in the preceding paragraph on the balance of probabilities. However, I add that there is no doubt in my mind about the accuracy of those conclusions.

13.3. In my opinion the conclusions above lead to a further conclusion that is inescapable, namely that Mr Francesco Levato, while using the cigarette lighter that was to be found in the grasp of his hand, deliberately set fire to flammable material including petrol that he had laid in the vicinity of the rear door of, and within the premises at, 121 Pirie Street. To my mind this conclusion is no mere matter of conjecture. Although I am only required to reach such a conclusion on the balance of probabilities, I am totally satisfied that it is the only sensible conclusion available and that all other reasonable hypotheses consistent with Mr Levato not having deliberately set fire to the premises and caused the explosion and his own death have been excluded. The only hypotheses that could be regarded as consistent with an innocent purpose on Mr Levato's part would have to involve an attendance at the premises at about 3am for purposes connected with the business. There is no such available hypothesis and none that could be reasonably entertained. The odd and unexplained position of Mr Levato's motor vehicle only serves to reinforce my view that Mr Levato was not at the premises with any innocent or benign purpose in mind. It is impossible to conceive of any such purpose other than the most fanciful, particularly having regard to the fact that a cigarette lighter was found within Mr Levato's hand and that the apparent source of ignition was applied in the vicinity of the rear door. It must be emphasised that no other person was found dead or alive anywhere in the premises itself, a truly remarkable feature of this case if the fire had been set and the explosion thereby caused by a person within the café itself. I do not accept as a reasonable possibility that some other person or persons had doused the premises with

petrol and had somehow managed to escape at a time and in such a manner that did not involve that person or those persons being caught in the explosion themselves. There is simply no evidence of that, and everything points to the fact that such a scenario is quite absurd.

- 13.4. I therefore find that Mr Francesco Levato, at the rear door of the premises, deliberately and with an intent to destroy the premises of JP's Café used his cigarette lighter to set fire to flammable material in the vicinity of the rear door thereby causing the explosion and his own death.
- 13.5. By the time of the destruction of the business of JP's Café, Mr Levato had demonstrated a strong desire to divest himself of the business. He had unsuccessfully attempted to sell the business. He had failed to supply his agent with details that would support his assertions as to the weekly turnover of the business. Furthermore, at that time Mr Levato owed over \$8,000 to his landlords for unpaid rental on the JP's Café premises. On 28 April 2006, four days prior to the explosion that destroyed the business, he had attempted to satisfy approximately half of that indebtedness but had done so with a cheque that on 1 May 2006, the day before the explosion, had been dishonoured. On 1 May 2006 a further indebtedness for rent in the sum of \$4,290 was triggered. To my mind Mr Levato's motive in destroying the premises was to end his association with it or at least to achieve some form of temporary respite from the adverse financial position he had reached with respect to the business, and in any case to benefit from what he believed to be his entitlements from the insurance cover in respect of that business. However, if I am wrong that the evidence supports that conclusion, I would in any event, based upon the factual conclusions that I have identified in paragraph 13.1. above, be perfectly satisfied even to the **Briginshaw** level that Mr Levato deliberately set about destroying the JP's Café premises thereby causing his own death.
- 13.6. In coming to my conclusions I have not had recourse to the evidence of Mr Drake and his observations. The activities of the person whom he observed driving the Mitsubishi motor vehicle were naturally suspicious. One could possibly speculate that if this person had something to do with the explosion, the person was endeavouring to scare Mr Drake and his companion into leaving the area for their own safety. However, the behaviour of this person does not necessarily indicate any specific intention on the part of that person and it would be difficult to reach a state of

satisfaction that the person was Mr Levato. It may well have been Mr Levato as he was last seen at his home at about 11pm and Mr Drake first observed the vehicle that resembled Mr Levato's between 11pm and 12am. However, I need not make any finding that the driver was or was not Mr Levato. Mr Levato's presence at the scene of 121 Pirie Street at the time of the explosion is in any event undoubted.

- 13.7. There is no evidence that any other person acted in concert with Mr Levato either by being present and actively assisting at the scene or by conspiring with Mr Levato elsewhere. In particular, I was satisfied on the evidence that no member of Mr Levato's family had any prior knowledge of or involvement in Mr Levato's intention or plan to destroy the premises.

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

Seal the 27th day of August, 2009.

Deputy State Coroner