



## **FINDING OF INQUEST**

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 28<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> of October 2009, the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 6<sup>th</sup> of November 2009 and the 12<sup>th</sup> day of August 2010, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Ricky James Bais.*

*The said Court finds that Ricky James Bais aged 38 years, late of 36/3 Osmund Court, Christie Downs, South Australia died at Christie Downs, South Australia on the 22<sup>nd</sup> day of August 2007 as a result of ischaemic heart disease. The said Court finds that the circumstances of his death were as follows:*

### **1. Introduction**

- 1.1. Ricky James Bais died on 22 August 2007. He was aged 38 years. Mr Bais met his death in the course of being restrained by police. Police had been sent to his home address in order to return Mr Bais to the Noarlunga Health Service (NHS) where earlier that same day he had been detained pursuant to the Mental Health Act 1993 (MHA) and from which he had absconded.
- 1.2. A post-mortem examination was conducted in respect of Mr Bais by Dr Allan Cala, a forensic pathologist. Dr Cala originally reported that Mr Bais' cause of death was undetermined<sup>1</sup>. In the course of Mr Bais' restraint during the incident involving police, he had inexplicably suffered a cardiac and respiratory arrest. There was no trauma applied by police to Mr Bais that would instantly have provided any explanation for his sudden death. However, the post-mortem examination conducted

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<sup>1</sup> Exhibit C91

by Dr Cala revealed that there was a 75% narrowing of Mr Bais' left anterior descending coronary artery which, when Mr Bais was placed under physical and emotional stress, might in itself have accounted for a cardiac arrhythmia and then a cardiac arrest. Mr Bais also had a slightly enlarged heart. The degree of coronary artery narrowing that I have identified can be sufficient to cause sudden cardiac death during physical stress or indeed even at rest. For instance, if Mr Bais had died in his sleep, his cause of death could comfortably have been assigned to his coronary artery disease. In the event Dr Cala was at the time of the compilation of his original report, unable to assign a cardiac arrest of such an origin as the cause of Mr Bais' death. However, in his evidence before me Dr Cala ultimately did not disagree with the proposition that Mr Bais pre-existing heart disease had played a significant role in his death. Having regard to all of the circumstances surrounding Mr Bais' collapse and death and taking into account as I do the results of the post-mortem examination and Dr Cala's opinions, in my view it is clear that the cause of Mr Bais' death was indeed the product of his coronary artery disease. I have found that the cause of his death was ischaemic heart disease. The reasons for this conclusion will become apparent during the course of these findings.

- 1.3. For a number of years Mr Bais had suffered from paranoid schizophrenia which had been complicated by his ingestion of illicit substances including cannabis. He had an occasional history of non-compliance with and an aversion to treatment. His key worker at the NHS, a psychiatric nurse by the name of Jane De Villiers, described Mr Bais as having limited insight into his mental illness. She perceived that Mr Bais held the firm belief that he did not need to have treatment for schizophrenia<sup>2</sup>.
- 1.4. Mr Bais was 190cm in height and was 133 kilograms in weight. There had been instances of aggressive behaviour by Mr Bais in the past and on one occasion he had exhibited a high level of aggression towards police in an incident which culminated in the infliction of a serious injury upon a female officer. It appears that Mr Bais' behaviour towards police involved preparedness on his part to confront them and that once such a confrontation ensued, his resistance to police was intractable. This was certainly the case on the day of his death.
- 1.5. At the time with which this Inquest was concerned Mr Bais was the subject of a community treatment order under the MHA. The order required him to submit

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<sup>2</sup> Transcript, page 106

himself to the administration of antipsychotic medication on a regular basis. This medication was administered in a community setting not involving detention. For that reason the order needed Mr Bais' ongoing cooperation. In particular, the administration of his medication pursuant to the order involved his regular attendances at the Adaire Clinic at Noarlunga where the necessary injections were given. The community treatment order had most recently been reimposed by the South Australian Guardianship Board on 28 April 2007. Mr Bais was required to receive antipsychotic medication by way of depot injection on a 3 weekly basis at the Adaire Clinic. The Adaire Clinic is the outpatient mental health service of the NHS. Since the reimposition of the treatment order in April 2007 there had been instances of non-compliance insofar as Mr Bais on more than one occasion had failed to attend at the clinic, but he had complied as recently as 3 August 2007 and, indeed, in the late afternoon of the day of his death he had received his most recent depot antipsychotic medication at the clinic. I deal with the details of his presentation on that day presently, but what is relevant for these introductory purposes is that on that day he had exhibited behaviour at the Adaire Clinic which prompted the doctor on duty to detain Mr Bais under the MHA and require him to attend at the Emergency Department of the nearby NHS to undergo that detention and further examination and treatment. Instead of proceeding under escort to the Emergency Department which is approximately 170 metres across a carpark from the Adaire Clinic, Mr Bais simply got in his car and drove away and there was nothing anyone could do to stop him. He made his way to his home address at 36/3 Osmund Court, Christie Downs. It had been made abundantly plain to Mr Bais that he was required to attend at the Emergency Department at NHS, but for reasons that I will discuss in due course he had not been informed that he was detained as such under MHA. Regardless of whether or not Mr Bais may have deduced for himself that he had been so detained, particularly when his previous experience with the mental health system is remembered, he was not formally to be told of his detention until the police attended at his home later that evening to enforce the detention order.

- 1.6. In any event, Mr Bais' failure to comply with the direction to attend at the Emergency Department of the NHS meant that the police were brought into the matter and their powers of apprehension under the MHA were thus enlivened.

- 1.7. When police attended at Mr Bais' home address that evening they were met with resistance, both verbal and physical, from Mr Bais. In the course of their restraining Mr Bais for the purposes of transporting him to the NHS pursuant to the detention order, he suffered a cardiac arrest and died at the scene. Resuscitative efforts provided by the apprehending police officers and by South Australian Ambulance Service paramedics could not revive him.

## **2. Mental Health Act 1993 detention**

- 2.1. I have already made reference to the Mental Health Act 1993. On 1 July 2010 this piece of legislation was repealed and replaced by the Mental Health Act 2009 which also contains a regime of detention of persons who exhibit a mental illness. However, what took place in relation to Mr Bais must be examined against the requirements and legislative framework contained within the repealed 1993 Act. References in these findings to the 'MHA' are references to the repealed 1993 Act.
- 2.2. The regime of detention imposed pursuant to the MHA was to be contrasted to that imposed by virtue of a community treatment order made pursuant to the same Act. A community treatment order did not require the person who was the subject of the order to be detained in an approved treatment centre. Rather, as I have already described, the order was administered in a community setting. However, a person who was subject to a community treatment order, like Mr Bais, could also lawfully be detained pursuant to the MHA if the need arose, as it did in his case on the day in question.
- 2.3. Section 12(1) of the MHA provided that if after examining a person a medical practitioner is satisfied that the person has a mental illness that requires immediate treatment, that such treatment is available in an approved treatment centre and that the person should be admitted as a patient and detained in an approved treatment centre in the interests of his or her own health and safety or the protection of other persons, the medical practitioner may make an order for the immediate admission and detention of the person in an approved treatment centre. This is the kind of order for admission and detention that was made in respect of Mr Bais at the Adaire Clinic on the afternoon of 22 August 2007. The approved treatment centre to which he was detained was the NHS which, notwithstanding its slight geographical separation from the Adaire Clinic, encompasses that clinic. I add here that notwithstanding the fact

that Mr Bais was to be escorted to the Emergency Department, this geographical separation was instrumental in enabling Mr Bais to decamp after he was required to attend at that department. I also believe that the reason, at least in part, why Mr Bais was not informed of his detention was his possible adverse reaction to that information coupled with the lack of immediately available means to enforce the order, taking into account Mr Bais' size and his unpredictability. This state of affairs in my view is as undesirable as it is avoidable. More of that later.

- 2.4. The MHA furnished police with a number of powers that were designed to trigger or enforce, as the case may be, a regime of detention under the MHA. Section 23(1) of the MHA provided that where a member of the police force had reasonable cause to believe that a person had a mental illness and that the conduct of that person was, or had recently been, such as to cause danger to himself or herself or to others, the member of the police force was empowered to apprehend that person, using only such force as was reasonably necessary for the purpose, and take him or her as soon as practicable to a medical practitioner for examination. That power was typically invoked in the context of police encountering in the community a person who exhibited a mental illness but who was not already the subject of detention under Section 12 of the MHA.
- 2.5. More relevantly as far as the issues in this case are concerned, Section 23(2) of the MHA provided that where a member of the police force had reasonable cause to believe that a person who had been detained in an approved treatment centre was unlawfully at large, the officer was empowered to apprehend the person using only such force as was reasonably necessary for the purpose, and return the person to the approved treatment centre. It was this power that was invoked when police attended Mr Bais' residence and endeavoured to take him back to the NHS.
- 2.6. It should be noted here that the power of apprehension of a person unlawfully at large that was provided by section 23(2) of the MHA was also exercisable by an authorised employee of the approved treatment centre to which the person had been detained. Thus it was that the power of apprehension did not exclusively reside with police.
- 2.7. The other feature worthy of note is that the police power of apprehension under section 23(2) of the MHA existed quite apart from the general power of arrest that police have in respect of the commission of a criminal offence. It is not a criminal

offence for a detained person to abscond from nor be at large in relation to detention under the MHA, although a person resisting police apprehension under section 23(2) of the MHA would conceivably be committing the offence of resisting police in the execution of their duty contrary to section 6(2) of the Summary Offences Act 1953 and be liable to arrest on that basis. That said, there is no suggestion that the police involved in Mr Bais' apprehension had intended to arrest him for an offence. Their intention at all times was to convey him back to his place of detention, namely the NHS.

- 2.8. There is one other relevant power that I should mention. Pursuant to Section 23(6) of the MHA, an ambulance officer was empowered, if summoned by a police officer in relation to a particular person, to convey that person to an approved treatment centre and was entitled to use such force as was reasonably necessary for the purpose. Section 23(8) of the MHA stipulated that a member of the police force and an ambulance officer might assist each other in the exercise of their respective powers under Section 23 of the MHA.

### **3. Death in custody**

- 3.1. Pursuant to Section 21(1)(a) of the Coroners Act 2003 it is mandatory to hold an Inquest to ascertain the cause and circumstances of a death in custody. In my view Mr Bais' death was a death in custody by virtue of the fact that he was, at the time of his cardiac arrest and death, in the custody of police pursuant to Section 23(2) of the MHA.
- 3.2. Accordingly it was mandatory for an Inquest to be held into the cause and circumstances of Mr Bais' death.

### **4. Practices and procedures involving SAPOL and other agencies**

- 4.1. In June 2006 a Mental Health Memorandum of Understanding (MOU) signed by the Chief Executive Officers of the Department of Health, the South Australian Ambulance Service (SAAS), the Royal Flying Doctor Service and the Commissioner of Police was brought into existence. The MOU came into operation on 1 September 2006. This document was tendered to the Inquest<sup>3</sup>. One of the stated objectives of the document is to commit those entities to work cooperatively in order to promote a safe

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<sup>3</sup> Exhibit C68b

and coordinated system of care to meet the needs of individuals with a known or suspected mental illness or who exhibit behaviours of community concern<sup>4</sup>. A specific objective of the document is:

'To ensure individuals with known or suspected mental illness, or who exhibit behaviours of community concern, are identified, assessed, treated and if appropriate transported to a health facility in a timely manner.'<sup>5</sup>

One of the document's stated principles is an acknowledgement of the need for efficient and effective use of signatory resources and assessment, detention, safety, transport and restraint, so that the utilisation of SAPOL resources is considered an option of last resort<sup>6</sup>. To this end the document stipulates that SAPOL involvement is restricted to apprehending individuals subject to legislation where no other options exist and/or assisting where there is a risk of serious harm to people or property which is current or imminent<sup>7</sup>.

- 4.2. The MOU makes reference to transport scenarios as ideally involving agency vehicles being driven by mental health workers with a family member or mental health worker, if the individual is detained, accompanying the detained person.
- 4.3. Under a section of the MOU entitled 'Risk', there is a requirement that the involved signatory parties undertake a risk assessment in a given situation. It states specifically that SAPOL involvement may be requested where a safety risk assessment has determined that there is a current or imminent serious threat to the safety of an individual, carer, health practitioner or any other person or property<sup>8</sup>.
- 4.4. The MOU encourages exchange of information between signatory agencies and speaks of a duty to warn of imminent or foreseeable danger<sup>9</sup>. It contains a requirement that documentation that has been raised under the MHA be provided to another signatory party when their assistance is requested. This requirement would of course involve mental health services providing SAPOL with copies of the existing detention order(s) for instance.

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<sup>4</sup> Exhibit C68b, page 1

<sup>5</sup> Exhibit C68b, page 1

<sup>6</sup> Exhibit C68b, page 2

<sup>7</sup> Exhibit C68b, page 3

<sup>8</sup> Exhibit C68b, page 6

<sup>9</sup> Exhibit C68b, page 7

- 4.5. Within the document there is a section entitled '16.3 Missing Persons'. Contemplated within this rubric are individuals who are the subject of an order under the MHA and who are 'missing' from a health care facility and in respect of whom there are 'genuine and or serious safety concerns to the individual or the community'. The particular duty identified is that mental health workers shall notify SAPOL of such 'missing mental health consumers and undertake activities to locate and return them safely'. It goes on to stipulate that 'SAPOL will conduct enquiries as per their policies'. It is worthwhile observing here that when regard is had to the underlying reasons for an individual's detention under the MHA, it would be virtually axiomatic that the missing individual would be the subject of genuine and or serious safety concerns either in respect of himself, others or very possibly both.
- 4.6. There are a number of appendices to the MOU that include documentation that is required to be completed whenever police involvement is sought. Some of this documentation refers to the need for detention orders to be furnished to SAPOL in those circumstances. No such documentation was raised or furnished in Mr Bais' case.
- 4.7. Appendix K of the MOU refers to the duties and responsibilities of what is described as the 'Metropolitan Mental Health Services for Adults'. The evidence revealed that this service encompassed the various mental health services generally and was not a distinct service in its own right. However, in the MOU, the entity is said to provide a 24 hour service within metropolitan Adelaide to assist in ensuring that mental health consumers presenting in crisis situations are assessed and treated according to need. It states 'This shall include SAPOL custodial facilities and may include arranging transportation and sedation of an individual in preparation for transport'<sup>10</sup>. Another of this entity's stated purposes is to provide 'systems to support requests for assistance from other signatories to this MOU with the benchmark for response being one hour'. The entity also undertakes, pursuant to the MOU, to arrange the attendance of a legally qualified medical practitioner to undertake an assessment and coordinate and provide sedation of an individual prior to transportation, and to organise transportation. The evidence was not entirely clear as to whether in practical terms such a 24 hour service was in existence at the time at which this Inquest is concerned, or that the services of mental health practitioners were available at short notice around

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<sup>10</sup> Exhibit C68b, page 25

the clock. In any event, the service was neither sought nor utilised in Mr Bais' case. I return to the issue of available mental health services later in these findings.

- 4.8. Also within Appendix K of the MOU is a description of the duties and responsibilities of SAAS that are said to include provision of transport as may be requested by SAPOL and the assessment, treatment and sedation of persons during transport. In addition, SAAS is said to provide 'clinical direction in the safe restraint and sedation of disturbed patients'. No such service was sought or utilised in Mr Bais' case except at a time after his cardiac arrest had been detected.
- 4.9. SAPOL's duties and responsibilities are also briefly described in Appendix K to the MOU. The duties are said to include attendance at the request of one of the other signatory agencies and the acceptance of transfer of risk based on a safety risk assessment. It specifically states that SAPOL involvement is 'restricted' to compliance with legislative obligations and intervention 'where there is a risk of serious harm to people or property which is current or imminent'.<sup>11</sup> This stipulation echoes earlier sentiments as contained within the text of the MOU itself and which I have already identified above.
- 4.10. A copy of the relevant police General Order relating to the apprehension and conveyance of 'mental health persons' was also tendered to the Inquest. The General Order refers to the MOU that I have described and is clearly based upon its content<sup>12</sup>. Compliance with police General Orders is of course mandatory. Even if the MOU was to have been viewed as a collection of aspirational guidelines only, the fact that they became enshrined in SAPOL General Orders meant that the pertinent requirements I have described had to be obeyed and implemented by police in the field.
- 4.11. The relevant General Order refers to a need on the part of police officers to familiarise themselves with the MOU. The evidence in this case demonstrated that this familiarisation was, notwithstanding asserted police training in respect of the MOU in August 2006, less than perfect at the time of Mr Bais' attempted apprehension. The police General Order interprets the underlying intent of the MOU as indicating that transport, other than police vehicles, should be used 'unless necessary'. It goes on to state that, where possible, persons suspected of suffering a mental illness should be

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<sup>11</sup> Exhibit C68b, page 27

<sup>12</sup> Exhibit C76s

conveyed by ambulance or other means arranged by the Mental Health Service. It states:

'SAPOL members are to assist ambulance/mental health personnel if a safety risk assessment indicates a risk of serious harm to people or property which is current or imminent.'

The General Order requires SAPOL members to consider all relevant circumstances in deciding the method of transportation, that include the person's behaviour and such matters as the potential to cause self-injury, injury to others or damage to property. The General Order requires the completion of documentation that is contemplated pursuant to the MOU and requires this documentation to be supplied by the service that is requesting SAPOL assistance. Although the obligation is couched in terms of the non police entity supplying the documentation, it would also in my view obligate police officers in the field to ensure that they received it.

- 4.12. It will be seen from this documentation as a whole that the utilisation of SAPOL resources was considered to be an option of last resort. However, SAPOL intervention would be considered appropriate where a safety risk assessment has determined that there was a current or imminent serious threat to the safety of persons or property. In addition, the documentation suggests that missing detained patients should in normal circumstances be the subject of SAPOL action and intervention. In this case, police involvement was sought from the start. In the event, no other agency was involved in the apprehension of Mr Bais. The involvement of the SAAS only occurred by virtue of Mr Bais' collapse. Mental Health Services were not utilised at all in respect of Mr Bais' actual apprehension and transport.

## **5. Mr Bais' medical history and condition**

- 5.1. As alluded to earlier, Mr Bais had a history of mental health difficulties. He had been diagnosed as suffering from schizophrenia and was, pursuant to the community treatment order, being given depot zuclopenthixol on a regular basis.
- 5.2. It also appears that Mr Bais had a history of ingestion of illicit substances. Detected in Mr Bais' post-mortem bloods was tetrahydrocannabinol which is the active component of cannabis.

- 5.3. There is no evidence that Mr Bais had been diagnosed with any disease relating to the function of his heart, notwithstanding that at autopsy there was the significant narrowing of the left anterior descending coronary artery that I have already described.
- 5.4. Events of the evening of Wednesday, 22 August 2007 have to be examined in the light of Mr Bais' recent apparent health and also in the light of presentations that occurred that day at the Flaxmill Road Surgery and Adaire Clinic respectively.
- 5.5. In the week prior to his death a friend of Mr Bais by the name of Steven Rice, who provided a statement to the Inquest<sup>13</sup>, noticed that Mr Bais had difficulty breathing. He would start gasping for breath when he moved around and had to sit down to get his breath back. On the day of his death Mr Rice saw Mr Bais sitting outside a pharmacy at a group of shops on Flaxmill Road. Mr Bais was consuming some chicken and beverages. Mr Bais was breathing very heavily while they spoke and he did not look well, being described by Mr Rice as 'white as a sheet'<sup>14</sup>. Mr Bais said he was going to see the doctor because he was unwell. Mr Rice noticed that Mr Bais was unsteady on his feet. At one point he was bent over and breathing hard. In Mr Rice's second statement<sup>15</sup> he states that although Mr Bais had appeared unwell for the previous week, his breathing had not been as bad as it was on the day of his death.
- 5.6. Ms Angela Malliaros was one of the proprietors of the chicken shop in the Flaxmill Road group of shops at which Mr Bais had purchased the chicken. Mr Bais was a regular customer. Ms Malliaros' statement<sup>16</sup> reveals that in the time over which she had known Mr Bais as a customer, for the most part he had seemed fine as far as his health was concerned, although she appreciated that Mr Bais had mental health issues and was not enthusiastic about his depot injections. She states that Mr Bais was not seen for some time during the month prior to the day of his death, but when he reappeared he seemed very withdrawn and very quiet such that she asked him on one occasion whether he was alright. Mr Bais responded by saying words to the effect that he was. Ms Malliaros saw Mr Bais in the afternoon of the day of Mr Bais' death. She described him as appearing to be scared and he stumbled as he walked. Mr Bais failed to respond when asked whether he was alright. Ms Malliaros specifically states

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<sup>13</sup> Exhibit C81b

<sup>14</sup> Exhibit C81a

<sup>15</sup> Exhibit C81b

<sup>16</sup> Exhibit C82a

that on this occasion she thought that Mr Bais may have had a heart problem because he was holding his hands up to his chest.

- 5.7. Mr Bais attended at the Flaxmill Road Surgery that day. Ms Melanie Hennessey is a receptionist at that surgery. She gave a statement that was tendered at the Inquest<sup>17</sup>. She states that sometime during the afternoon Mr Bais came into the surgery with a friend whom it is believed was Mr Rice. According to Ms Hennessey's statement Mr Bais looked very unwell. He was sweating and could not speak properly. Although Mr Bais did not have an appointment for that day he looked so unwell that she booked him in for an appointment. Mr Bais was seen by a Dr Thomas Klaveniek.
- 5.8. Dr Klaveniek provided a statement to the police and he gave oral evidence during the Inquest<sup>18</sup>. Dr Klaveniek had seen Mr Bais as a patient from 2001 onwards. Dr Klaveniek had regularly prescribed Mr Bais with valium for anxiety. Dr Klaveniek had seen Mr Bais approximately every 4 or 6 weeks at the Flaxmill Surgery. He was also aware that Mr Bais was being seen by other health entities in relation to his mental health. Dr Klaveniek knew that Mr Bais maintained a general aversion to the antipsychotic medication that was prescribed by the Adaire Clinic.
- 5.9. Dr Klaveniek saw Mr Bais sometime on Wednesday, 22 August 2007. There is some divergence in the evidence as to the time at which Dr Klaveniek saw Mr Bais but the exact time is not of any consequence. However, it seems more than likely that it was sometime during the course of the afternoon rather than the morning if his receptionist Ms Hennessey and Mr Rice's statements are to be accepted. At any rate, when Mr Bais presented to Dr Klaveniek he requested valium. Dr Klaveniek was concerned about his presentation and so he refused to give it to him. Dr Klaveniek's statement reveals that Mr Bais seemed:

'Mumbly, more than normal and he had jerky little twitches on his face and body.'

Dr Klaveniek challenged Mr Bais as to whether he had consumed anything. Mr Bais' response was unintelligible at first, but when Dr Klaveniek put it to him as to whether or not he had taken 'speed', meaning amphetamine, he appeared to answer affirmatively. Dr Klaveniek then told Mr Bais that he was not prepared to prescribe

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<sup>17</sup> Exhibit C79a

<sup>18</sup> Exhibits C92, C92a, C92b and C92c

any valium until Mr Bais was better. Mr Bais then left the surgery having spent about 10 minutes there.

- 5.10. In his evidence Dr Klaveniek told the Court that over the years during which Mr Bais had been a patient, he had never presented with symptoms such as breathlessness or chest pain<sup>19</sup>. On the day that Mr Bais presented, being 22 August 2007, he did not appear to Dr Klaveniek to be particularly unwell. Dr Klaveniek believed that his presentation was more in keeping with Mr Bais being under the influence of some sort of drug. He gave the appearance of being unsteady on his feet and his speech was slightly slurred. He did not appear to be sweaty or breathless nor give any indication that he was suffering chest pain at all. The only matter that Mr Bais raised with Dr Klaveniek was the request for a prescription for valium. Dr Klaveniek told me that he was concerned that Mr Bais might take valium in combination with some other substance already in his system. When Ms Hennessey's observations were put to Dr Klaveniek's in the course of his evidence, he said that he had not noticed any appearance of Mr Bais being sweaty and certainly no such presentation was drawn to his attention by his staff that day.
- 5.11. If Mr Bais had intended to go to the Adaire Clinic later that day, he did not give any indication of that intention to Dr Klaveniek.
- 5.12. In Dr Klaveniek's cross-examination a letter from a Dr Jonathan Fry, a psychiatrist, was drawn to Dr Klaveniek's attention<sup>20</sup>. The letter spoke of an occasion in May 2006 in which Mr Bais had been breathless. Dr Klaveniek said that he had not conversed with Mr Bais about that fact at the time. He had not considered that Mr Bais had any cardiac related cause for any breathlessness in the past.
- 5.13. Dr Klaveniek admitted that he did not ever administer to Mr Bais an ECG, a measure that might identify a cardiac related problem, in spite of the fact that he had an ECG machine in his practice. Dr Klaveniek said he had counselled Mr Bais on his lifestyle choices including smoking, alcohol and general management. He took Mr Bais' blood pressure on a number of occasions and it appeared to have been elevated from

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<sup>19</sup> Transcript, page 57

<sup>20</sup> Exhibit C90

time to time. As to the question of whether he had examined Mr Bais' general health, Dr Klaveniek said:

'It was a problem getting Ricky to do anything for me, whether it was having a blood test or having a chest X-ray. He would only do it if he wanted to do it and I had many discussions with him trying to get him to do things.'<sup>21</sup>

- 5.14. Dr Klaveniek conceded that on the 22 August his assessment of Mr Bais had been a cursory one. However, he did not observe any evidence of psychosis at work. Mr Bais was not aggressive and there was nothing to suggest to Dr Klaveniek that there was any physical difficulty. To Dr Klaveniek the presentation was simply that of a man seeking medication and of Dr Klaveniek refusing it, the latter believing that it would be unwise to do otherwise in the circumstances. Dr Klaveniek's contemporaneous handwritten note of this presentation, as contained within Mr Bais' clinical record held at the practice, reveals that Dr Klaveniek recorded the consultation in the following terms:

'Requesting valium, under the influence of drugs, query speed, refused.'<sup>22</sup>

- 5.15. I accept the evidence of Dr Klaveniek that the sole issue, as far as he was concerned, was one whereby he was very reluctant to place medication into Mr Bais' hands that might complicate the underlying presentation that Mr Bais exhibited at that time. I accept Dr Klaveniek's evidence to the effect that Mr Bais had asserted affirmatively that he had consumed something. I do not know why Mr Bais would have indicated the same having regard to the fact that no amphetamine was found in his blood at post-mortem. However, I do note that Mr Bais had evidence of cannabis in his blood stream in addition to that as it transpires, diazepam which is valium. I do not know where Mr Bais obtained that from. In any event, there is nothing to suggest that Dr Klaveniek did suspect, or should have suspected, any acute physical episode involving Mr Bais' heart. He was not privy to any of the opinions or observations made by his receptionist or people who had seen him in the vicinity of the Flaxmill Road pharmacy, and even if he had it would not necessarily have altered Dr Klaveniek's assessment that Mr Bais' presentation was explained by his ingestion of a substance. In short, having regard to what Mr Bais was requesting, there was no reason for Dr Klaveniek to have anticipated that Mr Bais was in jeopardy of an imminent cardiac arrest, either at rest or in the course of physical activity. For

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<sup>21</sup> Transcript, page 64

<sup>22</sup> Exhibit C90, page 19

instance, in my view there can be no suggestion that Mr Bais complained to Dr Klaveniek of any chest pain or breathlessness or exhibited any other symptom that may have given rise to a suspicion that his presentation had a cardiac origin.

- 5.16. All that said, having regard to Mr Bais' later collapse and cardiac arrest, and taking into account the results of his autopsy, there is a powerful suggestion that at least part of Mr Bais' presentation that day was, in reality, the result of some cardiac difficulty. I return to this in due course.

## **6. Mr Bais' presentation and detention at Adaire Clinic**

- 6.1. In my view there is evidence to support Dr Klaveniek's assertions that Mr Bais was motivated by a need to acquire medication during his presentation to him. When Mr Bais attended at the Adaire Clinic later that afternoon it is clear that he did so in order to obtain his depot medication. It is noteworthy that this presentation was one or two days earlier than his scheduled appointment for this purpose. A conclusion is thus available that much of what was motivating Mr Bais that afternoon was a desire to seek medication. There is no evidence that Mr Bais had any appreciation of whether or not he was suffering from some underlying serious physical illness.
- 6.2. When Mr Bais arrived at the Adaire Clinic, which was at approximately 5:00pm he was agitated. Mr Phillip Sutcliffe, who is a security officer with Chubb Protective Services<sup>23</sup> and who was patrolling the grounds of the NHS, was in the vicinity of the Adaire Clinic when Mr Bais noisily arrived in the car park in his motor vehicle. He parked it at an odd angle. When Mr Bais pulled up he was very loud and abusive and continued to be so after he alighted from the vehicle. There was no apparent reason or catalyst for this behaviour. Mr Bais' arrival at the clinic was also described by others. In his statement, Mr Rob Underwood, who is a clinical psychologist at Adaire, describes Mr Bais' arrival<sup>24</sup>. He was within the clinic itself when he heard a loud noise outside which caused most of those within to run to the window to see what was going on. At that stage Mr Bais was pulling up in his car and braking hard which caused a loud commotion. He parked at an odd angle. In Mr Underwood's assessment, if Mr Bais had not braked as hard as he did he might have caused damage to himself or the building. Mr Underwood remained in the vicinity after Mr Bais was taken into the duty room to be interviewed by his keyworker, Ms Jane De Villiers. He

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<sup>23</sup> Exhibit C17b

<sup>24</sup> Exhibit C83a

did this in order to strengthen security in view of Mr Bais' agitated condition, the manner of his arrival and the level of risk that he posed. He gleaned enough from what was taking place to ascertain that there was a concern about Mr Bais' mental state at that stage. Mr Underwood also suggested in his statement that Mr Bais was not looking physically well insofar as he looked 'out of shape', 'out of sorts' and was agitated, distressed and unsettled. While in Mr Underwood's experience Mr Bais never looked particularly well, on that particular afternoon there was a difference in terms of his heightened level of agitation, his being unsettled and the sweaty look that he exhibited<sup>25</sup>.

- 6.3. Mr Bais' keyworker, Ms Jane De Villiers, gave evidence in the course of the Inquest. Ms De Villiers was preparing to leave the clinic at the end of her working hours at approximately 5pm. This was the general finishing time for work at the clinic with the exception that the Mobile Assertive Care team (the MAC team) remained until 6pm. Ms De Villiers heard Mr Bais' vehicle pull up outside and she heard his swearing in a loud voice. She went outside and saw Mr Bais walking across the verandah of the clinic. She asked him whether he was alright to which he responded with words to the effect that he just needed his injection. She noted that he said that his reason for wanting his depot injection was because he felt unwell and that he had no other medication that day. He was noted to be dishevelled in appearance with grubby clothes, was demonstrating looseness of association and was thought blocking with a fixed stare at times, but was amenable to interaction. In fact Ms De Villiers had to reopen the clinic to enable her to perform a mental state assessment in the duty room. When asked in evidence whether she had felt in fear for herself, Ms De Villiers responded by saying that she had asked the MAC team to call a security guard to the clinic because of the loud swearing.
- 6.4. Ms De Villiers conducted a mental health assessment during which Mr Bais was compliant, polite and cooperative. He said that he had not taken any ice or amphetamines. Ms De Villiers told me that as soon as Mr Bais saw her at the clinic he appeared to calm down. To Ms De Villiers, Mr Bais' only indication of any physical unwellness was the fact that he touched his left shoulder intermittently and rubbed his stomach, but at the same time he denied any pain. Ms De Villiers said that

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<sup>25</sup> Exhibit C83a

he kept glancing sideways and pausing in their conversation as if he were hearing another voice. Ms De Villiers gave Mr Bais his depot medication by way of injection.

- 6.5. Dr Leela John, a medical practitioner, was still at the clinic. Dr John obtained her medical qualifications in India in 1986. She migrated to Australia in 2003 and commenced as a medical officer at the Flinders Medical Centre with an interest in psychiatry. In 2007 Dr John commenced work at the NHS in her capacity as an outpatient medical officer with an interest in psychiatry with minimum supervision. She was working at the Adaire Clinic which is the outpatient Department of Psychiatry of the NHS.
- 6.6. Dr John first became aware of Mr Bais' presence at the clinic when she was told that Ms De Villiers was in the process of giving Mr Bais his injection. At that time she was getting ready to leave for home, it being past 5pm. Dr John decided to assess Mr Bais notwithstanding and she was also influenced by the fact that she had heard something of a disturbance prior to this and associated that with Mr Bais. Dr John assessed Mr Bais in the injection room. She had no difficulty about Mr Bais receiving his depot injection two days earlier than scheduled. When she saw Mr Bais she found him, at that point in time at least, to be quite cooperative and polite, although there was an element of restlessness and anxiety about him. She did not gain any impression that Mr Bais was hallucinating at that point which was something that Ms De Villiers had considered was taking place, but she could not discount the possibility of it particularly in light of what Dr John believed to be delusional behaviour on Mr Bais' part. Dr John became convinced that Mr Bais required hospital admission. This was based on an impression that Mr Bais was acting under some delusion, particularly concerning his girlfriend. Dr John also became concerned about the fact that Mr Bais had arrived in a motor vehicle and there was thus a question of his safety and that of the public were he to be allowed to drive away. The manner of his arrival would have only served to have heightened that concern. Dr John felt that Mr Bais' judgement was impaired in the context of what he was discussing, involving as it did dismay, sadness and some evidence of delusion. Their conversation gave her a feeling that his psychosis was worsening and there was an added possibility that he was indeed

suffering from auditory hallucinations and so it was that she said in evidence '*I can't be sure what's going on in his mind*'<sup>26</sup>.

- 6.7. I add here that Dr John did not notice anything obvious about Mr Bais' physical wellbeing such as shortness of breath, sweatiness, evidence of anaemia or a pale look. Dr John's focus was upon Mr Bais' mental health at that point in time.
- 6.8. Dr John administered Mr Bais with 10mg of olanzapine which is a quicker acting antipsychotic whereas the depot medication requires some time to have any effect. Notwithstanding that Mr Bais was now medicated, Dr John was of the view that he needed to be admitted to hospital for further psychiatric assessment and management if need be. Dr John therefore decided to detain Mr Bais under the MHA and she completed a Form 1 under the Regulations for that purpose. The grounds on which she formed her opinion were as follows:

'Psychotic, hearing voices of his ex girlfriend and other mates and is at risk of harm to himself.'<sup>27</sup>

She noted in the clinical record that there appeared to be a worsening of Mr Bais' psychosis. Dr John further told me in evidence that the delusion that Mr Bais appeared to entertain in relation to his girlfriend and in respect of his friends required further evaluation she could not provide in the setting that she was in. She determined that in order to further interrogate Mr Bais about these matters a safer environment than what the clinic was able to provide was required. She also believed that Mr Bais required some physical evaluation with testing of blood and urine as well as a complete mental assessment that would have to be organised by inpatient staff. I was satisfied that Dr John's concern was genuine and that her decision regarding Mr Bais' detention was not a mere matter of her convenience having regard to the time of the day. To my mind Dr John's decision to detain Mr Bais was justifiable in all of the circumstances. To Dr John Mr Bais was exhibiting an acute exacerbation of a chronic mental illness that required immediate evaluation and treatment. There had in her assessment been a deterioration in his condition since May and she had in her mind the fact that since then there had been episodes of non compliance with medication. She believed that Mr Bais required admission in the interests of his own health and safety or for that of others. The treatment that was required was available in the NHS,

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<sup>26</sup> Transcript, page 252

<sup>27</sup> Exhibit C76n

an approved treatment centre. It is impossible to say that Dr John's assessment of Mr Bais in this regard was unreasonable.

- 6.9. It is clear that Dr John did not inform Mr Bais that he was detained under the MHA as such. Sooner or later the law required him to be so told. Dr John speculated, however, that given Mr Bais' familiarity with the mental health system that he may have deduced that for himself in any case. There were a number of reasons why Dr John did not tell Mr Bais that he was under detention. The fact was that Mr Bais had so far exhibited an air of cooperation when she told him that she was going to admit him to hospital and she did not want to upset the status quo in that regard by unnecessarily introducing an element of compulsion. There was an added concern about the unpredictability of the level and nature of any physical reaction should he have been told of his detention. Clearly, however, he would have had to have been informed of his detention at some point in time very soon after his actual physical detention, if not in the Adaire Clinic then certainly at the Emergency Department of the NHS. As indicated earlier there was no means by which Mr Bais' detention could have been enforced at the Adaire Clinic were he to have decided to decamp or if his reaction to information about his detention had been otherwise adverse, and all of that appears to have been the reason underlying the decision not to inform Mr Bais of his detention while he was still at the Adaire Clinic.
- 6.10. At some point Dr John completed a Form 1 under the MHA Regulations that ordered Mr Bais' detention. That document was never shown to Mr Bais and at no time was it furnished to police.
- 6.11. There were a number of employees of the Adaire Clinic in attendance when Mr Bais was requested to attend at the Emergency Department of the NHS. One of those persons in fact was the security officer to whom I have already referred, namely Mr Sutcliffe. Whether or not any of these staff members understood that Mr Bais was detained under the MHA, it was certainly understood that he was to be escorted to the Emergency Department and indeed a group of them, including Mr Sutcliffe, set out with that in mind. It is clear that Mr Bais at least understood that he was required to attend at the Emergency Department and initially gave every indication to Dr John that he would do so. I make the point here that all of this finesse could have been avoided if the geographical separation of Adaire Clinic from the rest of the NHS had not existed. For instance, if at the time of his detention he had been physically within

the confines of the NHS proper or in a place relatively close to the Emergency Department, the opportunity to take off without let or hindrance would have been all the more limited. In the event, Mr Bais did not comply and he simply left in his vehicle. Even if it had been clearly understood by the members of the escorting group that Mr Bais was under detention and not free to leave, it would not have been feasible for them singly or collectively to have prevented him from doing so in the circumstances, taking into account the openness of the area and the distance that would have to have been traversed in order to physically and forcefully deliver Mr Bais to the Emergency Department. To my mind any criticism of the staff for not making some attempt to physically restrain Mr Bais in the light of his unpredictability would be idle.

## **7. Events following Mr Bais' departure from NHS**

- 7.1. Police were first informed about this matter at 5:24pm that afternoon when a call was received at the police call centre from Ms De Villiers. I am aware from the police investigation in this matter that there was some initial confusion in communications between the NHS and police as to whether or not Mr Bais was detained, and also about the fact that at first no information about any risk that Mr Bais might pose was conveyed to police. There was also mention made of deficiencies in Mr Bais latest mental health risk assessment. All of this was really beside the point in many ways as it was eventually made clear to police that Mr Bais could be potentially difficult and that he was in fact under detention. As it transpired, when police first attended at Mr Bais' home address they could not locate his specific unit within the complex in Osmund Court, Christie Downs and so the patrol, which comprised Constables Ebony Vaninetti (then Gowling) and Adam Bough, returned to the NHS for further information. It was there that certain information was imparted to the officers that suggested strongly that Mr Bais was capable of aggressive behaviour. I add here that at no point in time were any of the police who were to attend at Mr Bais' home address, and who were involved in the incident that culminated in his death, aware of Mr Bais' previous serious incident involving police in 1996, notwithstanding the fact that one of the officers had some involvement in that incident. That officer, Senior Constable Craig Warman, did not in his mind associate Mr Bais with that previous incident.

- 7.2. It was during this encounter between the two officers and NHS staff that the manner in which Mr Bais was approached could have been differently assessed and possibly changed. For instance, there is no evidence that anyone there, or at Adaire for that matter, offered to accompany or assist police in the task that was required to be undertaken. The principal focus upon the exchange of information between NHS staff and police concerned Mr Bais' propensity towards aggression and this seems to have dictated the manner in which Mr Bais was approached. Clearly, this information was of a highly relevant nature, involving as it did an assertion by the security guard, Mr Sutcliffe, among other things that Mr Bais was a big man, was very violent and that more than two police officers would be required to bring him back to the hospital with the advice that they should obtain the assistance of more officers. There was also the imparting of information by Mr Sutcliffe that Mr Bais had assaulted police in the past. No further information concerning Mr Bais was made available to police that night. In particular efforts by Constable Vaninetti to complete a PIMS check on Mr Bais via the radio was not able to be achieved because of some unspecified breakdown in the relevant means of communication.
- 7.3. The fact that police services were utilised to retrieve Mr Bais under the MHA was clearly appropriate in all of the circumstances. In my view there was nothing in the 2006 Mental Health MOU nor police General Orders that would have precluded police involvement in the matter, either by way of a role in the apprehension of Mr Bais. However, there were other considerations that needed to be taken into consideration in my view. It could have been anticipated that Mr Bais might not go quietly with police. One would not have needed the wisdom of hindsight to have anticipated that Mr Bais' reaction to intervention by police might not be a wholly rational one. To this extent the sentiments within the Mental Health MOU that suggested that other agencies who were party to the MOU could have been utilised were not met. The stark reality was that having regard to the possible need to apprehend Mr Bais in the face of resistance and the risk of harm to persons who might otherwise endeavour to persuade Mr Bais to return to the NHS or to Mr Bais himself, there was no option other than involving police. But the MOU encouraged, as one of its principles, the efficient and effective use of signatory resources in respect of the assessment, detention, safety, transport and restraint of MHA patients. Accordingly, there was in my view a strong case for saying that police should have requested the assistance of mental health authorities in the approach that was to be made to Mr Bais

and, as well, have involved SAAS at a time prior to any suggestion of a deterioration in Mr Bais' physical wellbeing. As will be seen, SAAS ambulance crews were not averse to their services being utilised in respect of aggressive patients and that this included ambulance transport.

- 7.4. It is to be appreciated that when police went to Mr Bais' home address that there was no guarantee that he would be there and so arranging for an ambulance to attend on the off chance that Mr Bais might be at home may not have been considered to be a desirable use of SAAS resources, but there was probably no reason why an ambulance could not have been sought once it was established that Mr Bais was at home.
- 7.5. The fact of the matter is that it does not appear to have occurred to any of the police officers that the service of Mental Health Services or SAAS could have been utilised at the time of the approach to Mr Bais. Although police had been given Mr Bais' sister's phone number, it also does not appear to have occurred to anyone that she, or at least some other family member, may have been of assistance as well. The focus of police thinking was more on the question of preventing breaches of the peace and/or avoiding and quelling a violent confrontation.
- 7.6. While one has to appreciate that the completion of the documentation contemplated by the MOU would have required time to complete, had it been completed in this case it would have alerted police to the need to consider alternative means of approaching and dealing with Mr Bais other than exclusively by way of police intervention. None of that documentation was completed in this case. One particularly important omission in my view was the fact that the Form 1 detention order that apparently had been completed by Dr John by that time, was not provided to police. As will be seen, one consequence of this was that police were in no position to convince Mr Bais that he was required to go with them and during the incident he persistently asserted his belief that he was not obliged to go with police back to the NHS.
- 7.7. There was in my view a missed opportunity for the outcome to have been altered at this stage of the proceedings. Had those involved in securing police involvement, including police themselves, had a better understanding of what the MOU required, and had the focus not exclusively been on Mr Bais' propensities to be difficult, it is reasonable to assume that consideration would have been given to involving mental health agencies and the SAAS.

## **8. Police attend at Mr Bais' home address**

- 8.1. Constables Vaninetti and Bough enlisted the assistance of another uniformed police mobile patrol that was manned by Constable Simon Torjul and Cadet Luke Birt, as he then was. Mr Birt is now a sworn officer. In due course, when it was plain that Mr Bais would not go quietly with police, two other officers became involved and they were Senior Constable Craig Warman, to whom I have already referred, and Senior Constable Peter Field who incidentally holds qualifications as a registered nurse and has practised as such prior to his police career.
- 8.2. All of the six officers gave evidence before me, as did a Brevet Sergeant Kevin Woods, a Crime Scene Investigator who happened to attend at the incident quite late in the piece. Brevet Sergeant Woods did not see how the incident had unfolded. He came at a point in time at which police already had Mr Bais under restraint and at a point shortly prior to Mr Bais' cardiac arrest. Aside from Senior Constable Warman, it was apparent during the course of the Inquest, and also during the course of an examination of the police investigation material, that in the immediate aftermath of the fatal incident the five uniformed officers had been kept separate and apart from each other and especially so while their initial statements were being compiled. This routine measure was undertaken in order to negate the possibility of collusion between them. Senior Constable Craig Warman in his evidence gave me the impression that he genuinely had no recollection of any instruction that he not communicate with any of the other officers prior to preparing any statement, but he told me, and I accept his evidence, that he did not discuss the events with any other police prior to him making his original statement. The officers were also subjected to lengthy and rigorous debriefing sessions that were conducted by independent police personnel and in respect of which I have read transcripts.
- 8.3. Having observed all of the officers give evidence, it was not obvious to me that any collusion had taken place between any of them as far as the contents of any original statement that they may have made or their evidence before the Court was concerned. I found them all to be truthful witnesses. What inconsistencies and discrepancies there may have been when their evidence was examined either internally or when compared with that of each other or with what each officer had said about the matter in the past, was in my view explained by differences in recollection, perception and emphasis. That said, there were two civilian witnesses called in the Inquest whose

evidence differed from that of the police officers in regard to one or two relevant matters. I will come to their evidence in due course. Suffice it to say for present purposes my confidence in the honesty and reliability of the police officers who gave evidence before me was not shaken by the evidence of these two witnesses.

- 8.4. The four officers, namely Vaninetti, Bough, Torjul and Cadet Birt, arrived at the complex at approximately 6:15pm. The officers briefly conferred before they approached Mr Bais' unit. Constable Torjul knocked on the screen door and Mr Bais came to the door, at first leaving the screen door locked. Mr Bais was not wearing anything on his top. Eventually Mr Bais unlocked and opened the screen door and came out onto the porch. It is obvious to me that what transpired for the next few minutes was an attempt on the part of the police to persuade Mr Bais to go quietly with them, although the prospect of physical confrontation was even at that time not lost on them. Nevertheless, for several minutes police endeavoured to avoid any situation of confrontation. Police of course were empowered to apprehend Mr Bais pursuant to Section 23(2) of the MHA, but the far more desirable approach of securing Mr Bais' cooperation was, I find, employed for some considerable time and at some considerable effort on the part of police.
- 8.5. There was some initial conversation between police and Mr Bais outside of his unit. The initial conversation took place for the most part between Constable Torjul and Mr Bais and it went along the lines that the doctors at the NHS were concerned about him and although he had taken his medication, there was a need for him to be monitored to ensure that he was alright. Mr Bais at that point said that he did not need to go back and the theme of his conversation from that point on was his apparent unshakeable attitude that he had already taken the necessary medication and that therefore there was no need for any further medical intervention. Furthermore, he kept expressing the view that he had done nothing wrong. In the event, Mr Bais was at least persuaded to allow the officers to accompany him inside the unit for the purpose of Mr Bais putting something on his top. Once inside Mr Bais put on a T-shirt. Police were inside the unit for several minutes and during that time a number of knives were sighted. Police appear to have taken the view that these knives presented as a source of potential danger whilst they remained within the unit and so a successful attempt was made to have Mr Bais come out of the unit once again. There had been no effort at that point to tell Mr Bais that he had been detained under the MHA as such. At one

point there was an attempt made to chat idly to Mr Bais about his stolen guitar and amplifier and for a short period of time this conversation appeared to distract him from the real reason for police presence. There had been no aggression at that point exhibited by Mr Bais, but he was nevertheless still demonstrating a large measure of reluctance to leave with police. He continued to say that he had not done anything wrong or that he did not need to go back to the hospital. In any event, Mr Bais did go outside of the unit with police but when an endeavour was made to have Mr Bais hand over his keys so that the premises could be secured prior to their departure, Mr Bais' attitude changed for the worse.

- 8.6. Once outside of the unit Mr Bais exhibited a number of behaviours that disconcerted police. When repeatedly asked for his house keys, Mr Bais would place his hand in his pocket and pull them out halfway and then remove his hand. There were other instances where he manipulated the rings on his fingers as if to place them in positions that might facilitate the infliction of injury. During all of this there were verbal attempts by police to encourage Mr Bais to go with them and these efforts were met with Mr Bais' refrain that he was not required to go to the hospital because he had already taken his medication. At one point Mr Bais adopted what has been described as a boxing stance with his hands raised and one foot forward of the other. Constable Torjul, without the keys, decided to lock the front door of the unit as he did not relish the prospect of Mr Bais going back inside where ready access to the knives that had been there seen might have been achieved.
- 8.7. Constable Torjul then told Mr Bais that he was detained under the MHA. According to Constable Torjul he had told that Mr Bais that he had the option of peacefully returning to the hospital in the back of the police car or being physically forced to do that to which Mr Bais had repeated that he had not done anything wrong and that he did not have to go<sup>28</sup>. Constable Torjul had assumed all along that Mr Bais had already been told that he had been detained, but the use of language involving the word detained prompted an aggressive demeanour on Mr Bais' part whereby he maintained this fighting stance, particularly in relation to Constable Torjul who was doing most of the talking. At about that point Constables Torjul and Bough, independently of each other, removed their OC spray canisters from their respective pouches and endeavoured to conceal them so as not to provoke Mr Bais any further. In addition,

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<sup>28</sup> Transcript, page 404

the officers positioned themselves in what could be described as a semi-circle around Mr Bais. Constable Vaninetti used her radio to call for further backup. It is not clear whether Mr Bais was aware of this at the time. Meanwhile the officers continued conversing with Mr Bais and endeavoured to calm him down, but it became increasingly apparent that Mr Bais was not going to go with police and that physical force and restraint might in the event be required.

8.8. Senior Constables Warman and Field from Christies Beach Traffic then attended the scene. They arrived at 6:33pm. They joined the officers who were already with Mr Bais. There were now six officers. Whether or not the arrival of two additional police officers further aggravated Mr Bais, the fact of the matter was that by that stage Mr Bais had become very aggressive verbally and had raised his voice at police. At that point Senior Constable Warman endeavoured to engage Mr Bais in conversation and it appears to be the case that Senior Constable Warman, who is a large individual, adopted a more assertive approach than had been exhibited by police thus far. In any event, according to Senior Constable Warman, by the time he and Senior Constable Field arrived at the scene Mr Bais was yelling and screaming<sup>29</sup>. Senior Constable Warman simply said words such as ‘mate, you’ve got to go back to the hospital’. At that point Mr Bais had his hands raised and said he was not going back to the hospital. This not unnaturally raised a level of apprehension in the mind of Senior Constable Warman. At one point, according to Senior Constable Warman, Mr Bais yelled at him that he had taken his medication and he showed the officer the bandage that had been placed over the injection site in order to demonstrate that fact<sup>30</sup>.

8.9. According to Senior Constable Field, who had arrived with Senior Constable Warman, when he first witnessed Mr Bais a number of police officers were positioned around him and he was standing in an aggressive stance and yelling at those officers. He was in what Senior Constable Field described as a fighting stance and he was agitated. His fists were clenched. According to Senior Constable Field, Senior Constable Warman attempted to calm Mr Bais down by speaking to him in a loud but quite firm, rational voice<sup>31</sup>. Senior Constable Field noticed that one of the other officers had already taken his OC spray canister out and, given that the situation involving Mr Bais did not seem to be improving, Senior Constable Field took out his

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<sup>29</sup> Transcript, page 588

<sup>30</sup> Transcript, page 592

<sup>31</sup> Transcript, page 627

canister as well. According to Senior Constable Field, Senior Constable Warman's attempt at conversing with Mr Bais had no positive effect on his behaviour.

- 8.10. According to Senior Constable Warman, Mr Bais continued to yell that he was not going back to the hospital and he raised his fist and took a step towards Senior Constable Warman. Senior Constable Field's own interpretation of this part of the incident was that Mr Bais lunged towards Senior Constable Warman with both of his fists clenched. Senior Constable Field believed Mr Bais was going to attack Senior Constable Warman<sup>32</sup>. Senior Constable Warman had a slightly different perception to that of Senior Constable Field. Senior Constable Warman himself told me that at that particular time he did not hold any fear that he might be injured in any way because of a separation of approximately 6 feet between himself and Mr Bais at the time Mr Bais took the step. He did say that the step that he saw Mr Bais take was towards him and that Mr Bais' attention was focussed on him at that time<sup>33</sup>. It is common ground among the officers present that Mr Bais was still agitated and angry at that point in time. In cross-examination Senior Constable Warman was asked whether he had apprehended any application of force to himself by Mr Bais. All that Senior Constable Warman could say was that it happened in a split second. He had stood his ground, being a large man himself, but he said that he was prepared for anything that may have eventuated. Senior Constable Warman's desire even at that point was simply to continue his dialogue with Mr Bais and to try and calm him down. To my mind there was an element of bravado in Senior Constable Warman's description of these events. Senior Constable Warman acknowledged the possibility that Mr Bais would continue to move towards him, but before he came any closer Senior Constable Field deployed his OC spray at Mr Bais. For his part, Senior Constable Field told me that he believed he had no option but to deploy the spray because of the manner in which Mr Bais had lunged towards Senior Constable Warman<sup>34</sup>. He thought he was going to attack Senior Constable Warman<sup>35</sup>. Senior Constable Warman was asked by me whether he believed it had been necessary for the officer to spray Mr Bais at that stage. Senior Constable Warman's reply was as follows:

'Well, I can't - well, in his mind probably, yes, it probably was, because he's seen this agitated person, he's probably looking after me.'<sup>36</sup>

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<sup>32</sup> Transcript, page 629

<sup>33</sup> Transcript, page 611

<sup>34</sup> Transcript, page 630

<sup>35</sup> Transcript, page 629

<sup>36</sup> Transcript, page 614

Senior Constable Warman added that from an objective viewpoint, which would obviously have to be examined with the benefit of hindsight, he thought Senior Constable Field's actions had been necessary.

- 8.11. According to Constable Vaninetti, she had noticed that when Senior Constable Warman had first spoken to Mr Bais, Mr Bais became had more aggressive and had raised his voice to a level greater than at any other point thus far<sup>37</sup>. To Constable Vaninetti, Mr Bais' behaviour was such to engender in her mind the apprehension that he could assault one of them. To her, Mr Bais had become '*jittery*' and had begun to exhibit '*bizarre behaviour*'<sup>38</sup>. It was at that point that she noted that Senior Constable Field deployed his OC spray. In her evidence Constable Vaninetti does not speak of any movement made by Mr Bais towards Senior Constable Warman, but confirms Mr Bais' generally aggressive behaviour towards Senior Constable Warman and his clenching and unclenching of his fists.
- 8.12. Constable Torjul's account of this aspect of the incident was that when Senior Constable Warman arrived on the scene, he spoke to Mr Bais in a more authoritarian style<sup>39</sup>. Mr Bais repeatedly interjected whenever Senior Constable Warman tried to rationalise with him and he adopted a boxing stance in respect of Senior Constable Warman. Mr Bais was yelling at this time. Constable Torjul makes mention of Senior Constable Warman telling Mr Bais that if he did not come quietly he would be forced to go which prompted Mr Bais to become very aggressive and yell at Senior Constable Warman<sup>40</sup>. At one point Mr Bais was very aggressive and was yelling at Senior Constable Warman and all this gave Constable Torjul the impression that Mr Bais was going to make a move towards Senior Constable Warman or punch him. Mr Bais' energy was at that time focussed entirely on Senior Constable Warman. According to Constable Torjul, Mr Bais moved towards Senior Constable Warman and it was at that point that Senior Constable Field deployed the OC spray. In cross-examination Constable Torjul elaborated on what he believed he had seen. At that point Mr Bais' hands were raised in a fighting position. Constable Torjul told me that he did not actually see a step as such taken by Mr Bais, but he perceived that there had been some movement towards Senior Constable Warman. The movement that he witnessed gave Constable Torjul the impression that Mr Bais was beginning to head

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<sup>37</sup> Transcript, page 325

<sup>38</sup> Transcript, page 325

<sup>39</sup> Transcript, page 405

<sup>40</sup> Transcript, page 407

towards Senior Constable Warman and that it had been at this point that Senior Constable Field had sprayed him. On Constable Torjul's version of events, Senior Constable Field's actions in respect of spraying Mr Bais accompanied and were immediately preceded by an aggressive movement by Mr Bais towards Senior Constable Warman. To this extent, both Senior Constable Warman and Senior Constable Field are corroborated.

8.13. Constable Bough was the other officer who had removed his OC spray from its holder. He confirmed Mr Bais' general agitated state and aggressive demeanour. He confirms the evidence of other officers in respect of Mr Bais' adoption of a '*fighting stance*'<sup>41</sup>. When Senior Constable Warman arrived on the scene and began to speak to Mr Bais, the latter became more agitated and became argumentative and was shouting at Senior Constable Warman. The fighting stance was adopted and he stood with raised fists and his legs apart. Constable Bough believed that there was going to be some sort of violent behaviour displayed by Mr Bais. Constable Bough describes Mr Bais' movement as a rush forward, that was either in the direction of Senior Constable Warman or Senior Constable Field<sup>42</sup>. Constable Bough's position relative to Mr Bais did not enable him to determine which officer Mr Bais was appearing to threaten. At that point Constable Bough himself was just about to deploy his own OC spray when he became aware of the fact that one of the other officers had sprayed. In my view Constable Bough's evidence generally corroborates that of Senior Constable Warman and Senior Constable Field in respect of Mr Bais' behaviour just before Senior Constable Field sprayed him.

8.14. The cadet, Mr Birt, confirmed Mr Bais' aggressive demeanour and also confirms Mr Bais pointing towards the bandage on his arm. To Mr Birt the efforts of the officers appeared to his relatively inexperienced eyes to be one of conciliation. He himself offered to Mr Bais that they were only there to help<sup>43</sup>. When Senior Constables Warman and Field arrived, conversation that seemed to cause Mr Bais to become even more aggressive then ensued. Mr Bais raised his fists up to shoulder level and then '*advanced on Senior Constable Warman*'<sup>44</sup>. When he did so, it was in an aggressive manner with his fists raised up towards his shoulders. It was at that point that the spray was deployed. Birt's evidence also corroborates that of Senior

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<sup>41</sup> Transcript, page 521

<sup>42</sup> Transcript, page 532

<sup>43</sup> Transcript, page 468

<sup>44</sup> Transcript, page 470

Constables Warman and Field in respect of Mr Bais' aggressive movement towards Senior Constable Warman.

- 8.15. All of the officers state that Mr Bais was exhibiting an aggressive demeanour towards Senior Constable Warman. All of the officers except Constable Vaninetti confirm that Mr Bais made a discernible movement towards Senior Constable Warman that was suggestive of an escalation of aggression towards Senior Constable Warman in particular, although Constable Bough thought it may have been towards Senior Constable Field. It may well be that Constable Vaninetti did not perceive or had not recalled an actual movement towards Senior Constable Warman, but she certainly confirmed his aggressive demeanour towards that particular officer. Notwithstanding Constable Vaninetti's failure to describe a lunge or a movement towards Senior Constable Warman, the preponderance of evidence is that Mr Bais did make some aggressive motion towards Senior Constable Warman which gave officers the impression that Mr Bais might attack Senior Constable Warman. I am satisfied that this was the case. I am particularly impressed by the fact that Senior Constable Warman himself did not in any way attempt to exaggerate Mr Bais' demeanour towards him. Had there been any collusion about what Mr Bais had done, it would have been very easy for Senior Constable Warman to have embellished his account by adding that he feared for his own safety. If anything, Senior Constable Warman tended to downplay the actions of Mr Bais in respect of him. Senior Constable Warman gave me the impression that, unlike the other officers and in particular Senior Constable Field, he did not necessarily interpret Mr Bais' actions towards him as one whereby he was necessarily going to be attacked.
- 8.16. However, in my view Senior Constable Field's actions have to be examined in the light of the fact that his perception of Mr Bais when he arrived was that Mr Bais was '*becoming enraged*'<sup>45</sup>. He was yelling and screaming and to Senior Constable Field his having become enraged was manifesting itself in worrying behaviour that included clenching his teeth, yelling more intently and the muscles in his body tensing up. In other words, to Senior Constable Field, not only was Mr Bais emotionally charged, his agitation was very much manifested in his escalating angry behaviour.
- 8.17. I accept Senior Constable Field's evidence that he believed from what he had seen and heard that Mr Bais would attack Senior Constable Warman. One also has to have

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<sup>45</sup> Transcript, page 631

regard to the obvious point that Mr Bais was not only enraged, but was acting in an irrational manner and presented as a formidable physical opponent if there was to be any form of physical aggression exhibited by him towards one or more of the officers. There is no question but that Senior Constable Field's belief that Senior Constable Warman was in some peril was justified in all of the circumstances.

- 8.18. Mr Bais' precise reaction to the deployment of the spray is not entirely clear. Senior Constable Field told me in evidence that it did not appear to have any effect on him whatsoever<sup>46</sup> except to the extent that it deterred any further approach by Mr Bais towards Senior Constable Warman. At first Mr Bais appeared to run away from police but then doubled back and ran towards Senior Constable Field at which stage Senior Constable Field sprayed Mr Bais for a second time. Mr Bais ran through the spray and continued running whereupon Constable Torjul managed to bring Mr Bais to the ground by grabbing him around the thigh area. Initially Mr Bais was brought to his knees and then onto his front. For police the purpose of the exercise then was to subdue Mr Bais and to secure handcuffs to him behind his back. Mr Bais struggled while these efforts were taking place. I heard a great deal of evidence about the efforts on the part of officers to subdue, restrain and handcuff Mr Bais. It was in the course of that activity that Mr Bais experienced his cardiac arrest. It is clear that for the whole of the time during which Mr Bais was lying on his front, he was being physically restrained by police. The individual officers were in different positions relative to Mr Bais. Mr Bais remained in this position until he experienced the cardiac arrest. At no point were officers able to effectively subdue Mr Bais while he remained overtly conscious. He continued to struggle throughout.
- 8.19. In the course of the Inquest two civilian witnesses who claim they saw differing facets of this incident were called to give evidence. The first of these witnesses was a Mr William Markerow who resided in a units situated in very close proximity to the location of the incident. Mr Markerow had no less than six CCTV cameras situated around his unit. He had installed security lighting as well. His stated reason for requiring this unusual level of electronic surveillance in a domestic setting was that items such as his letterbox and his doormat had been stolen. The CCTV system could be monitored from a television situated inside Mr Markerow's unit. Mr Markerow's surveillance system had video and audio recording capabilities. Mr Markerow was

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<sup>46</sup> Transcript, page 632

monitoring the system on his television when his attention was drawn to the incident outside involving Mr Bais and police. At some point Mr Markerow activated the recording facility. The result is a grainy set of video images that were tendered to the Inquest<sup>47</sup>. A transcript of the audio has been prepared<sup>48</sup>. I have on several occasions viewed the entirety of the footage that was secured. If the vision of the recording is less than clear, the audio is of some considerable assistance.

- 8.20. At one point Mr Markerow opened the front door of his unit and observed the incident that was taking place just outside his front door. At that stage Mr Bais was on the ground and the police were, according to Mr Markerow, '*on top of him*'<sup>49</sup>. Mr Markerow was asked by police to go back inside and he did. This aspect of the incident is clearly audible in the CCTV recording.
- 8.21. Mr Markerow's CCTV footage does not depict any of the incident before Mr Bais was situated on the ground.
- 8.22. There are two aspects of Mr Markerow's evidence that I should mention. The first is that Mr Markerow asserts that when he was using his video equipment to view that part of the incident prior to Mr Bais being brought to the ground, Mr Bais' hands had been up in a defensive position with open hands and fingers separated<sup>50</sup>. This analysis of Mr Bais' demeanour was in keeping with a typed statement that Mr Markerow had signed on 16 September 2007, approximately four weeks after the incident. The statement had actually been taken from him on the night of the incident. At that time a handwritten statement had been taken and reduced into writing in the police officer's notebook. It was subsequently typed and signed by Mr Markerow, as I say, on 16 September. In the original handwritten version of his statement, Mr Markerow was recorded as having described the stance that Mr Bais had adopted towards police as a 'fighting' stance. When Mr Markerow signed the notebook statement, he made no alteration to that description of Mr Bais' demeanour. When Mr Markerow came to sign the typed version four weeks later, it was then that he altered the description of a fighting stance to a 'defensive' stance. In his evidence before me, Mr Markerow said that he had endeavoured to make it clear on the night of the incident that Mr Bais had been acting in a defensive manner with his hands open, and not in a fighting manner

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<sup>47</sup> Exhibit C75b

<sup>48</sup> Exhibit C76q

<sup>49</sup> Transcript, page 75

<sup>50</sup> Transcript, page 85

with his fists clenched. If a defensive demeanour is a more accurate description, then Mr Markerow had for some reason on the night failed to correct the description of Mr Bais adopting a fighting stance as recorded in the officer's notebook. Whatever description Mr Markerow would now chose to adopt, I am not convinced that the vision that the CCTV afforded Mr Markerow would necessarily have enabled the viewer to distinguish a defensive demeanour from a fighting demeanour or have depicted detail such as whether Mr Bais' fists were open or closed.

- 8.23. I found Mr Markerow's explanation for the change in his description of Mr Bais' demeanour as unconvincing. I found his description in Court of Mr Bais' demeanour to be equally unconvincing. Mr Markerow's evidence does not in any way shake my confidence in the evidence of the six police officers that Mr Bais was, at all material times, aggressive and that he had adopted a posture in respect of police that was intimidating and not in any sense defensive, except insofar as he might have thought that intimidation was the best means of defence and of preventing his apprehension.
- 8.24. The other salient aspect of Mr Markerow's evidence is that when he emerged from his unit and viewed the incident on the ground firsthand, he said that one officer was pushing the side of Mr Bais' face into the ground or, if not into the ground, then towards the ground. The officer was pushing Mr Bais' head with his open hands. At this point Mr Markerow's CCTV equipment was in the recording mode and that part of the incident when Mr Markerow emerged from his unit is identifiable in the recording. One can hear Constable Bough's repeated request of an unseen person to go back inside and there is no doubt that the person he was addressing was Mr Markerow. Mr Markerow reviewed the tape and readily admits that the person addressed was himself. None of the images of the incident as recorded by the different cameras conclusively establishes whether or not an officer was pushing Mr Bais' head in the manner Mr Markerow described. This is because the camera is either too far away, poorly situated, the lighting is inadequate or the film is too grainy. However, it can be seen that an officer is in the vicinity of Mr Bais' head, but what he is doing is not clear. We know from the evidence of the officers that there was one officer at the position of Mr Bais' head. None of the officers describes any of the other officers pushing Mr Bais' head in the manner described. In any event, it is obvious from the audio that both before and after Mr Markerow emerged from his unit, Mr Bais is verbalising audibly and clearly. Thus any suggestion that pressure to

which Mr Bais' head was subjected might have compromised Mr Bais' breathing or airway would have to be rejected. In any event Mr Markerow's evidence as a whole did not impress me. I have already referred to the change in his statement concerning Mr Bais' demeanour. Mr Markerow's evidence did not in any sense affect my assessment of the officers that they were neither deliberately nor recklessly inflicting any particular discomfort to Mr Bais by way of pressure to his head.

- 8.25. The other civilian witness called was a Mr Kenny Ronald Lacey. Mr Lacey lived in one of the other units at 3 Osmund Crescent, Christie Downs. His unit was next to that of Mr Bais. Mr Lacey gave a statement to police on 7 September 2007 and it was signed on 15 September 2007<sup>51</sup>. His statement reveals that he heard Mr Bais from outside the unit yelling 'get away, leave me alone'. He heard a number of sets of footsteps and when he eventually looked out of his lounge room window he saw a number of uniformed police officers running. He could hear Mr Bais' voice. The police were talking to Mr Bais and Mr Bais was talking back to them. After several minutes he heard a thud and when he looked out of his lounge room window again it appeared to him that Mr Bais was on the ground and that the police were 'on top of him'. He could not actually see Mr Bais because of the police. He said that Mr Bais sounded distressed in his voice and he believed the police were on top of Mr Bais for 5 or 10 minutes.
- 8.26. Mr Lacey came to the Court with an attitude. He failed to respond to his summons in the first instance saying that he had mixed up the date with another court fixture involving himself. In evidence Mr Lacey at first attempted to divest himself of any memory of the incident by saying that since the incident he had been bashed over the head with a wooden mallet about 40 times. When asked whether he had any recollection whatsoever of events of that night he said '*not really, no*'<sup>52</sup>. Notwithstanding that claim, he appeared to then describe the events from his own recollection, in fact supplying more detail than had been given in his original police statement. Whereas his police statement merely described the fact that he saw the backs of police on top of Mr Bais, he said in evidence that one officer was on his legs and another officer had his knee of the back shoulder blade of Mr Bais<sup>53</sup>. He acknowledged that other officers were endeavouring to bring Mr Bais' arms behind

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<sup>51</sup> Exhibit C11a

<sup>52</sup> Transcript, page 149

<sup>53</sup> Transcript, page 153

his back in order to handcuff him. I add here that this would have been difficult if another officer had a knee forcefully in Mr Bais' back. When pressed in cross-examination about the added detail, he asserted that he was told by the police officer taking the statement that he was not going to write any of that down. Not only did Mr Lacey sign the police statement that did not contain such detail as the knee being placed on Mr Bais' shoulder blade, in September 2009 he swore an affidavit that purported to verify his original statement. Mr Lacey added that when his original statement had been taken, the officer had threatened to arrest him when he was told that it was not allowed to contain what he wanted it to say. The officer who took Mr Lacey's statement, Detective Brevet Sergeant Peter Martin, told me on oath that although he had had trouble getting things from Mr Lacey in a chronological order, he wrote down everything that Mr Lacey told him about the incident. Detective Brevet Sergeant Martin denied that Mr Lacey had told him that he had observed a police officer place a knee in the back of Mr Bais during the efforts to restrain him. He said that Mr Lacey had told him that the police had been on top of Mr Bais but did not specify the exact manner in which this had occurred. When Mr Lacey had come to sign the typed version of the statement he did not tell Detective Brevet Sergeant Martin anything about a need to include more detail. He made no corrections to it, nor did he complain that matters that on the night in question he had originally drawn to the officer's attention had been omitted. I accept Detective Brevet Sergeant Martin's evidence. I found Mr Lacey to be a poor witness. Having said that he had a poor recall of events, he then proceeded to offer more detail than ever before. The point Mr Lacey was making in essence was that, in his opinion, the action of an officer placing his knee between Mr Bais' shoulder blades was wrong and inappropriate. His reason for saying so was that in his view there had been enough officers present such that they did not have to jump on Mr Bais like they did. Insofar as Mr Lacey's evidence suggests that police deliberately placed a level of pressure on Mr Bais' back that was inappropriate and not necessary for the purpose of restraining him or handcuffing, I reject that suggestion insofar as it came from Mr Lacey. There is no other evidence that would support the notion that police deliberately and unnecessarily placed pressure on Mr Bais' back. There was some evidence that one of the officers had used his knee to pin one of Mr Bais' arms, but there was no evidence from any of the officers that they had knelt on his back. I reject the notion. As I observed earlier, such pressure with respect to Mr Bais' back would have been

quite counterproductive to their efforts to secure the handcuffs which they were undoubtedly attempting to do.

- 8.27. Having seen all of the officers give evidence and having evaluated their evidence, it is plain to me that while Mr Bais was on the ground their efforts were designed to keep him there until such time as his successful handcuffing could be effected. In my view it was within the contemplation of the officers that once that had been achieved he would be brought back to his feet and conveyed by police vehicle to the NHS.
- 8.28. In the event, handcuffing Mr Bais proved to be difficult for two main reasons. Firstly, Mr Bais continued to struggle on the ground and refused to place his arm or arms in such a position that they could be cuffed. Secondly, because of Mr Bais' size and the broadness of his torso, one set of handcuffs was insufficient to effect handcuffing behind his back. Indeed, two sets of handcuffs were required and the effecting of the cuffing proved to be time consuming and problematic. One set had to be placed on each wrist and then the two sets had to be joined to each other. This configuration of handcuffs did not lend itself to easy administration. In my view the necessity to place Mr Bais in handcuffs was overwhelmingly important. Having been captured and brought to the ground, Mr Bais continued to struggle and it would have been out of the question to have allowed him back onto his feet with his hands still free. In the event, police were able to secure the cuffs just before Mr Bais' collapse.
- 8.29. The video footage of the incident commences approximately 2 minutes and 28 seconds prior to the first indication made by a police officer that Mr Bais had become unresponsive. In that period Mr Bais is seen to be on the ground and the officers are quite clearly having difficulty putting on the handcuffs. One of the officers is endeavouring to secure Mr Bais' cooperation by asking him to relax and by endeavouring to reassure Mr Bais that nobody was going to hurt him. This is said on more than one occasion. Nevertheless, it is also obvious from what can be seen and what can be heard from comments made by officers that Mr Bais is continuing to struggle as evidenced by utterances by police that include repeated and obviously unsuccessful orders to put his arm up and a specific order to 'stop resisting'. All of this is evidenced in the audio and in a transcript of the tape<sup>54</sup>. It would be remarkable if utterances such as these were made by police if Mr Bais was not offering significant resistance. In addition, if Mr Bais was not offering resistance it appears to me that

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<sup>54</sup> Exhibit C76q

there would have been relatively little difficulty in getting his hands cuffed bearing in mind the fact that two sets of cuffs were deployed. In short, I unhesitatingly accept the evidence of the police officers that Mr Bais continued to struggle whilst on the ground, virtually to the point where he collapsed and was detected as having experienced a cardiac arrest.

- 8.30. Both the tape and the transcript of the audio reveal that Mr Bais was able to verbalise during the 2 minutes and 28 second period from the commencement of the tape to the point where it becomes obvious to police that Mr Bais has collapsed. Far from any suggestion of suffocation or asphyxiation that might have been made, Mr Bais is quite audibly verbalising and is repeatedly uttering the word 'please'. At one point the transcript reveals that Mr Bais said 'please, I'll come, alright'. For my part it is difficult to hear that utterance, although there is certainly something said. I am prepared to act on the basis that that is exactly what Mr Bais said. The transcript reveals that he continued to say 'please' in an imploring manner. At one point he said 'please don't hurt me'. None of the officers claim to have any specific recollection of what it was that Mr Bais was saying, but one aspect of his behaviour that seems to have been universally perceived was his continued struggling and his refusal to place his arms in a position that would enable his hands to be cuffed. As I have said, that appears also to be evident from the video footage and the transcript. Thus it is that Mr Bais' imploringly use of the word please and his making utterances such as 'please, I'll come, alright' and 'please don't hurt me', was belied by his behaviour in continuing to struggle. The officers were asked in evidence what their attitude would have been if they had understood Mr Bais to have said that he would come quietly after all, and whether this would have made any difference to the way police proceeded. The response was that it would have made no difference in the light of the fact that Mr Bais in any case continued to struggle. I accept that evidence.
- 8.31. The last audible utterance by Mr Bais as revealed by the footage of the incident and by the transcript was the word 'please' occurs at a time indicated on the video as being 18:46:29. I should point out that the times recorded on the video are not accurate to the minute, but they do allow time intervals between various facets of the incident to be accurately calculated. Following Mr Bais' final utterance, there are further things said by officers to Mr Bais by way of attempts to calm him down. Some of those utterances were made by Brevet Sergeant Kevin Woods of the Forensic

Services Branch who had arrived on the scene by then. The final utterance made by an officer designed to have Mr Bais calm down is timed on the video recording as having occurred at 18:46:53. I infer that at least up to that point Mr Bais had continued to move, although he had become silent. At a point described on the video footage as having occurred at 18:47:05, that is to say 12 seconds after the final urging for Mr Bais to calm down, one of the officers is heard to say 'you alright mate?'. This appears to be the first indication made by an officer that Mr Bais had collapsed and is no doubt consistent with Mr Bais not only having become silent, but having ceased moving as well. The evidence of Brevet Sergeant Woods is pertinent here. Brevet Sergeant Woods arrived at a point in time while the officers were still attempting to place handcuffs on Mr Bais. Brevet Sergeant Woods took up a position in the vicinity of Mr Bais' head. Mr Bais was raising his head and he was breathing throughout, although he appeared to be straining against the police efforts to handcuff him and was puffing. Brevet Sergeant Woods said:

'...it was a constant struggle to put the handcuffs - try and put the handcuffs on.'<sup>55</sup>

Brevet Sergeant Woods told Ms Cacas, counsel assisting, in cross-examination that while Mr Bais appeared to be straining against police, he appeared to be breathing 'okay'. He was still quite agitated as well. I add here that according to Brevet Sergeant Woods no person had been applying any pressure to Mr Bais' head; his head was free. Although Brevet Sergeant Woods had a recollection that someone was on Mr Bais' back, he could not recall any officer with his knee in Mr Bais' back<sup>56</sup>. When asked as to detail, he simply said:

'I recall seeing officers virtually all around him restraining him. So he was held down - being held in that position.'<sup>57</sup>

Again, it would seem unlikely that an officer was actually substantially placing his weight upon Mr Bais' back given the efforts that were being made to handcuff him behind his back. The video footage does also not bear out such a description of events.

- 8.32. Brevet Sergeant Woods positioned himself at Mr Bais' head because he was not personally involved in the physical efforts to restrain or handcuff Mr Bais and he thought that the vicinity of Mr Bais' head was the best location from which he could

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<sup>55</sup> Transcript, page 672

<sup>56</sup> Transcript, page 688

<sup>57</sup> Transcript, page 664

endeavour to calm Mr Bais down. Brevet Sergeant Woods was responsible for a number of the utterances recorded on the video that were designed to try and calm Mr Bais down. Brevet Sergeant Woods told me that at no time did he ever gain any impression that Mr Bais was calming down in spite of his efforts. Mr Bais was still stressed and still agitated, and indeed still breathing right up to the point where he collapsed.

- 8.33. Brevet Sergeant Woods observed from very close quarters Mr Bais' collapse. It was marked simply by Mr Bais' head falling onto the grass from a raised position. Brevet Sergeant Woods immediately thought that Mr Bais had stopped breathing and had become unconscious. It was sudden. Mr Bais did not breathe from that point onwards.
- 8.34. The detection of Mr Bais' collapse was marked by one of the officers asking Mr Bais whether he was alright and his lack of response. This occurred only about 36 seconds after Mr Bais' final audible utterance. Having regard to that and to Woods' evidence, I find that Mr Bais was able to breathe until the moment of his collapse.

## **9. Police efforts to resuscitate Mr Bais**

- 9.1. The preponderance of evidence is that Mr Bais had at no stage vomited before his lapsing into unconsciousness, nor before any efforts were made to resuscitate him by way of cardiopulmonary resuscitation (CPR). He was to vomit copiously during those efforts which made CPR very difficult.
- 9.2. The fact that Mr Bais had stopped breathing was identified by police very quickly and the action that was taken was also prompt. An ambulance was sought by radio by Constable Vaninetti at a point in time approximately 25 seconds after Mr Bais' collapse had been identified. According to the Police Communications transcript<sup>58</sup> Constable Vaninetti's request for an ambulance occurred at 1842 hours. I add here that there is a discrepancy between times revealed in the Police Communications transcript and the times displayed on Mr Markerow's video recording of about 5 minutes. The Police Communications transcript to my mind is the more accurate source on times for these purposes.

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<sup>58</sup> Exhibit C76I

- 9.3. According to a paramedic, Mr Mark Richmond, who was called to give evidence, the ambulance despatch time was 1845 hours and his ambulance arrived at the scene at 1852 hours. In the meantime the police officers present administered CPR that consisted of chest compressions and artificial respiration that was commenced by Senior Constable Field who, as I have said, was a registered nurse. Senior Constable Field utilised a laerdal mask to administer the breaths once Mr Bais had been turned on his back. When Senior Constable Field commenced administering the breaths Mr Bais at that time appeared to have a clear airway and there were no signs of vomit. When Senior Constable Field administered three quick breaths through the mask Mr Bais vomited and the vomitus entered the mask and then Senior Constable Field's mouth. Senior Constable Field was unable to continue and one of the other officers then continued to administer breaths. Chest compressions were also administered by other officers taking turns. There was a significant difficulty involved in administering artificial respiration to Mr Bais on account of the fact that he vomited. The officers had significant difficulty in achieving a clear airway for this reason. Not only that, the need to attempt to clear Mr Bais' airway interrupted their efforts at administering chest compressions. The other matter of note is that the compressions that were being delivered were being delivered at a rate of 15 compressions to 2 breaths although at that particular time it is said that a more appropriate rate would have been 30 compressions to 2 breaths. In the event nothing turns on the rate at which compressions were being administered.
- 9.4. The video footage of the efforts made by police to administer CPR has been viewed by Mr Benjamin Hollister who is the Training Services Manager for St John Ambulance<sup>59</sup>. Mr Hollister is responsible for all of the first aid training conducted by St John in South Australia, including St John personnel, members of the public and police. Mr Hollister made a number of observations based on the video. He has observed that prior to the ambulance being called Mr Bais had been verbalising in a tone that seemed to indicate that he was breathing. I have already made that same observation. Secondly, the calling of an ambulance was undertaken quickly upon noticing that Mr Bais was unconscious. Thirdly, Mr Bais had been placed into an optimal position for the checking of his status. I add here that police did not remove Mr Bais' handcuffs which had successfully been fastened just before his collapse. This meant that the CPR was delivered while Mr Bais was on his back and whilst his

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<sup>59</sup> Exhibit C41a

hands were fastened behind his back. This position is not ideal, but the evidence satisfied me that it made no difference to the effectiveness of any CPR. Mr Hollister further observes that Mr Bais had clearly vomited and that this was met with an appropriate response by police. Mr Hollister was of the view that the depth of chest compressions was effective and consistent with training but observed, as I have, that the rate of compression was not in line with then first aid recommendations. Mr Hollister regarded the SAAS response time as prompt. Mr Hollister regarded the first aid response given to Mr Bais by police as being consistent with the skills of a lay first-aider. He also makes the observation, as has been made in many other Inquests that have involved the administration of CPR by lay persons in respect of a cardiac arrest outside of a hospital, that recovery rates of people in such circumstances are low, and less than 5%. Naturally, the officers did not have access to any electrical equipment that may have reversed Mr Bais' cardiac difficulty. They did not have suction equipment at their disposal, and Mr Richmond told me in evidence that it is very difficult to clear an airway effectively just with one's fingers.

- 9.5. In my view there is no basis on which the efforts of police in attempting to resuscitate Mr Bais can be criticised.
- 9.6. When the first ambulance crew arrived, of which Mr Richmond was a member, Mr Bais was asystolic which means that there was no cardiac rhythm whatsoever. It had earlier been detected by police that Mr Bais had no pulse. The ambulance officers also noted that Mr Bais' airway was grossly soiled with vomitus and he required repeated suction in order to clear persistent regurgitation. This was in keeping with the difficulty that police had in securing a clear airway. Whether there had been any shockable rhythm such as a ventricular fibrillation before Mr Bais' cardiac output ceased is not known. The ambulance crews that attended at the scene were also unable to revive Mr Bais and he was declared life extinct at the scene.
- 9.7. There is no basis on which the efforts of SAAS personnel can be criticised.

**10. Possible contributing mechanisms to explain Mr Bais' cardio respiratory arrest**

- 10.1. I return to the evidence of Dr Cala, the forensic pathologist. The reader is reminded that Dr Cala originally recorded Mr Bais' cause of death as undetermined, but had noted the blockage of Mr Bais' coronary artery.

- 10.2. In his evidence Dr Cala was asked to consider a number of possibilities that may have accounted for, or contributed towards, Mr Bais' cardio respiratory arrest.
- 10.3. Dr Cala was asked to consider the possibility that aspiration of Mr Bais' stomach contents could have led to such an arrest. Dr Cala expressed the view that this possibility could be discounted having regard to the fact that Mr Bais was detected as having vomited only at a time after his cardio respiratory arrest had been identified. That of course accords with the observations of police officers and it also accords with what is evident from the video and audio recording and the transcript. The vomiting that took place is in keeping with the resuscitative efforts and I have already made the observation that, according to Senior Constable Field, it was his first three breaths that appeared to have prompted the first act of vomiting by Mr Bais. In my opinion the aspiration of Mr Bais' stomach contents can be discounted as a cause of the cardio respiratory arrest. That said, the vomiting hampered police efforts to administer effective CPR.
- 10.4. Next Dr Cala considered the possible effects of what is sometimes known as 'excited delirium'. Dr Cala explained the concept as being a phenomenon that might occur in a setting of an excited, violent and drug affected male individual, often under the influence of stimulant drugs such as amphetamines and/or cocaine and who may also have a history of schizophrenia or chronic drug use. The person so affected might experience a cardiac arrest. Mr Bais' presentation required such a scenario to be considered. There were in Dr Cala's view some features of excited delirium that were present. However, other features normally associated with this condition were not present. There was no evidence of hyperthermia which is a significantly raised body temperature. There was no evidence of the exhibiting of exceptional strength and endurance without apparent fatigue which is usually associated with excited delirium. As well, the assignment of a cause of death of excited delirium is usually made against a background of no natural disease that could readily account for death. This situation was to be contrasted with Mr Bais' situation where he had an underlying pathology that could readily have explained his death. I refer here of course to the coronary artery disease that he undoubtedly had. In short, Dr Cala did not favour excited delirium as explaining Mr Bais' cardio respiratory arrest or death. I accept Dr Cala's analysis in that regard.

- 10.5. Dr Cala also considered the question of the effects of police OC spray. Dr Cala believed that it probably did not have any effect at all. There was no evidence to suggest that after OC spray was delivered to Mr Bais' facial area that he complained of having breathing difficulties such as an asthma attack. As well, the spray had done very little to subdue Mr Bais. Dr Cala was of the belief that it did not play any role in Mr Bais' death. I accept that analysis.
- 10.6. Dr Cala was asked to consider the possibility that a phenomenon known as 'positional asphyxia', or 'restraint asphyxia' as it is sometimes referred to, may have had a role to play in Mr Bais' collapse and death. Positional asphyxia is a term used to describe the sudden and unexplainable death of a person shortly after they have been restrained by police and taken into custody. It is the experience of this Court that it is not necessarily confined to police restraint or activity, but the concept is often referred to in such a context. Positional asphyxia can be characterised by the individual being highly stressed, where there has been violent resistance shown by the individual and where restraint has been administered in a prone, face down position while handcuffed. In other words, there is some mechanical obstruction to breathing involved. Certainly in this case Mr Bais was placed on his front in a face down position and attempts were made to bring his arms behind his back in order for him to be handcuffed, which was ultimately effected. When officers are involved in an arrest they are trained to avoid positional asphyxia. They are trained to allow the person to breathe freely and to refrain from using weight to subdue and restrain a person who is resisting violently. They are trained to monitor and assess the person's breathing if high level restraint techniques are being used. Police IMOST courses have addressed the issue of positional asphyxia for several years and training in respect of the issue has been included in initial recruit courses for an even longer period of time. Police are re-trained in the issue regularly. Dr Cala found no evidence of an asphyxial process at work during the course of his post-mortem. There was no evidence of dot like haemorrhages on the face or eyelids of Mr Bais to indicate that he had been asphyxiated by something, for instance, by pressure around his neck or by somebody lying on his chest. However, Dr Cala said that asphyxia as a result of restraint is not necessarily identified at autopsy, but is better deduced on close examination of the circumstances surrounding the events in question. Dr Cala told me that restraint asphyxia was not 'high on my list of diagnoses' and said that he did not believe it had

been a major factor in this case<sup>60</sup>. Dr Cala saw no evidence from the statements that he had read in respect of this matter that there had been neck or chest holds applied by police to Mr Bais. For my part, I was perfectly satisfied having heard the police officers give evidence, and even taking into account the evidence of Mr Markerow and Mr Lacey, that there was no restriction placed on Mr Bais' neck and there was no undue pressure placed on his back or chest. Other than some bruising on the inner side of an upper arm and cuff marks around Mr Bais' wrists, there was nothing noted at post-mortem to his face or neck. There were other matters that rendered positional asphyxia as unlikely. The fact that Mr Bais was able to verbalise, notwithstanding the efforts by police to restrain him against his own resistance, would indicate that his breathing was not seriously impaired<sup>61</sup>. It will be recalled that Mr Bais was making audible utterances towards police and at the same time he was struggling in order to get away. It can be heard from the audio that these utterances were made with considerable volume. There is simply no evidence that there was any restraint being placed upon Mr Bais of a nature that would have caused any asphyxia and I reject that as a possible cause or contributing factor towards Mr Bais' cardio respiratory arrest. I am also of the view that even if there had been an element of police restraint that had in some way restricted Mr Bais' normal ability to breathe, which I add to my mind is highly unlikely, there was no means by which the same could have been avoided having regard to Mr Bais' size and continued resistance. In addition, there was no means by which police could have or should have foreseen that Mr Bais would experience a cardiac arrest as the result of the aggravation of an underlying cardiac condition.

- 10.7. Dr Cala also believed that in analysing the possible causes of Mr Bais' death, it was relevant that on the day in question Mr Bais had been seen to be experiencing what could have been chest pain. One is reminded of the observations made by people who knew Mr Bais and who had seen him earlier in the day. A presentation of chest pain and breathlessness on Mr Bais' part, for Dr Cala, made the possibility of an undiagnosed cardiac related condition such as angina more possible. There would have to be some explanation for shortness of breath and possible chest pain. It is not caused by nothing in Dr Cala's view. There was at autopsy a clear cut explanation for it and that was Mr Bais' coronary artery disease. In short, Mr Bais' appearance

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<sup>60</sup> Transcript, page 31

<sup>61</sup> Transcript, page 44

earlier in the day was in keeping with his experiencing acute symptoms of heart disease.

- 10.8. Dr Cala in the event said that both the slightly enlarged heart and the coronary artery disease were critical factors in an explanation for Mr Bais' death. He alluded to the fact that the cardiac arrest could well have been brought on by a lethal cardiac arrhythmia consequent upon his heart disease. Dr Cala summed up his opinion thus:

'I could offer a cause of death. It is more a narrative and it could go a number of ways as to the actual words used but I could offer something like ischaemic heart disease in an obese man during restraint and the contributing factor might be schizophrenia or I could say something like ischaemic heart disease during restraint and offer obesity and schizophrenia as contributing factors. I think though that clearly by what I have just said the ischaemic heart disease I think is a critical factor and I have mentioned restraint not necessarily to the ascribed cause but I have described it as something which occurred at the time this man died, that is during restraint, and I think that it is a factor in his death. I am not saying it is necessarily causative. I think that's probably for the coroner to decide but I think nevertheless this man was restrained and he did die at the time of restraint and I think it is an important factor that should be mentioned in the cause of death.'<sup>62</sup>

Dr Cala went on to say that the stress on Mr Bais occasioned during the incident, his size and his unknown coronary artery disease were all relevant factors as was the restraining process. He said:

'I am not totally convinced that his death was because of restraint but it certainly occurred during restraint.'<sup>63</sup>

- 10.9. In my opinion matters such as the aspiration of stomach contents, use of OC spray, positional asphyxia and excited delirium are all to be discounted as contributing factors to Mr Bais' cause of death. In my view the underlying cause of death was his coronary artery disease which resulted in a cardiac arrest or arrhythmia occurring in a context of stress and restraint. It was for those reasons that I found the cause of Mr Bais' death to have been ischaemic heart disease.

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<sup>62</sup> Transcript, pages 37-38

<sup>63</sup> Transcript, page 39

## **11. The use of defensive spray in Mr Bais' case**

- 11.1. The use of a defensive spray is covered under police General Orders. Police General Orders state that the use of defensive spray is but one tactical option available for resolving a violent situation, meaning of course that resort should be had to other tactics if more appropriate. The General Order specifically stipulates that an officer may only use spray for self defence purposes which include, of course, protection of other members of SAPOL. I have already referred to Senior Constable Field's reasonable belief that Senior Constable Warman was about to be attacked. It is impossible to say that the use of spray in those circumstances was either unreasonable or unjustified under police General Orders. The same consideration in my view applies to the second deployment of spray by Senior Constable Field given that the threat towards his own safety was still in existence.
- 11.2. In the circumstances the use of spray was not excessive and was confined to those two instances where police justifiably perceived themselves to be under attack from a large and enraged individual.

## **12. Mr Bais' physical capture and being taken to the ground**

- 12.1. I have already referred to the legislation governing the apprehension by police of persons who have absconded from detention under the MHA<sup>64</sup>. The use of force is specifically authorised by the relevant provision. Of course the amount of force used must be reasonable and proportionate. Mr Bais had resisted all reasonable and conciliatory efforts on the part of the police to have him go with them. They had endeavoured to reason with him for a considerable period of time that must have been several minutes. Given the purpose of the police being in attendance at his address, namely to bring him back to the NHS to resume his detention under the MHA, it would have been inconsistent with their duty to have allowed Mr Bais to escape from that location. In my view there was nothing unreasonable about the act of taking Mr Bais down and physically forcing him onto the ground. It was not as if Mr Bais' physical capture resulted in any level of compliance on his part. As indicated earlier Mr Bais continued to struggle and resist and this then gave rise to the necessity to handcuff him. There was no suggestion that the act of handcuffing was in any sense unreasonable either.

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<sup>64</sup> Section 23(2) of the Mental Health Act 1993

### 13. **Other alternative strategies that may have been utilised by police**

13.1. Alternative strategies that may have been considered include the following:

- 1) Tactical withdrawal at a point or points during the course of the incident;
- 2) The use of mental health services;
- 3) The use of the South Australian Ambulance Service.

#### 13.2. Tactical withdrawal at a point or points during the course of the incident

I have referred to the fact that police had noticed a number of knives in Mr Bais' unit. The presence of knives for domestic purposes would hardly be surprising if seen within a single man's domestic environment. However, the officers were somewhat unnerved by the fact that they had been displayed overtly in Mr Bais' premises. It was for that reason that they were very keen to get Mr Bais to come outside with them after they had gone inside with him. For similar reasons, once Mr Bais was again outside of the unit police were keen not to see him go back inside where the knives would have been available. To the officers the possibility of Mr Bais again emerging from the unit with a weapon could not wholly be discounted. On the other hand, if the officers had left the scene and had left Mr Bais to his own devices, it is difficult to imagine Mr Bais having any reasonable motive to exhibit aggressive behaviour to any other person and, equally, there was no real reason to suppose that Mr Bais might inflict injury upon himself. That said, it has to be acknowledged that police were not dealing with a man whose rational thought or behaviour was assured.

13.3. On the other hand, as I have already mentioned, tactical withdrawal would somewhat have defeated the purpose of the police attendance at Mr Bais' address in the first instance. They were there to execute their powers under Section 23(2) of the MHA as Mr Bais was an absconded patient under that Act. At some point in time Mr Bais had to be conveyed back to the NHS and the sooner that occurred, clearly the better.

13.4. Reasonable minds might well differ as to whether or not when Mr Bais indicated an attitude of non-compliance he should have been allowed to re-enter his unit pending further consideration of what police and other authorities, including the mental health services, might then do. It is in my view impossible to say that the decision of police not to allow Mr Bais to withdraw into his unit was an unreasonable decision having regard to the underlying purpose of their presence at his home address and the

possibility that Mr Bais might exhibit some form of irrational and dangerous behaviour.

13.5. This of course naturally brings one to a consideration as to whether other means available as supplied by other agencies, could have been utilised.

13.6. The use of mental health services

I have already referred to the broad sentiments contained within the MOU. The affidavit of Elizabeth Prowse who, at the time of the swearing of her affidavit<sup>65</sup>, was the Acting Executive Director of Southern Mental Health, Southern Adelaide Health Service, states that a mental health triage line (131 465) that was operated 24 hours per day was available to provide immediate clinical advice and assistance to persons with mental illness, concerned family members and services such as SAPOL. As of 22 August 2007 if that number had been called between 8am and 10:30pm it would have reached the Southern Assessment and Crisis Intervention Service. A mobile response team could have been tasked according to triage by clinical need and risk assessment. The affidavit also reveals that ACIS, a well-known arm of the state's mental health services, and the Noarlunga Emergency Mental Health Service (NEMHS) that consisted of a team of mental health professionals including mental health nurses and social workers who provide an emergency mobile intervention service to members of the community who have a mental illness, could have been contacted. These teams are available to respond to requests by police for attendance to assist in dealing with a person with mental illness. According to Ms Prowse's affidavit the hours of operation of those services within the Southern Adelaide Health Service were 8am to 10:30pm as of 22 August 2007.

13.7. None of the services that Ms Prowse has identified in her affidavit were utilised in this case and no attempt was made to utilise them. It did not occur to any of the officers to do that.

13.8. The use of the South Australian Ambulance Service

This was another service the use of which was contemplated under the MOU. Again, it does not seem to have occurred to any officer that an ambulance crew may have been useful at a point in time before negotiations with Mr Bais had become concerning. During the course of the evidence there was much discussion by police

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<sup>65</sup> Exhibit C109

officers who gave evidence about the appropriateness of using the services of SAAS in relation to a violent individual who was resisting all intervention, the suggestion being that an ambulance crew would be ill equipped to deal with an individual of that nature and that an ambulance would be an inadequate means of transport. However, to begin with, the use of ambulance services was not only clearly contemplated within the MOU but was in many senses mandated by police General Orders. There is of course a limit to the utility of an ambulance crew or the conveying SAAS vehicle in some circumstances. However, the evidence of the paramedic, Mr Richmond, was quite revealing as far as the issue of the use of ambulances is concerned. Mr Richmond has been a qualified paramedic since 2003. He was called to the scene ultimately when Mr Bais experienced his cardio respiratory arrest. He attended with another intensive care paramedic. Mr Richmond in my view was an impressive witness who gave his evidence candidly. I have no reason to doubt what he told me in evidence about SAAS capabilities in these mental health scenarios.

- 13.9. Mr Richmond told me that an intensive care paramedic has the ability to provide sedation to a patient. If a person was being adequately restrained then the intravenous access for sedation to be provided might well be achieved. A regular paramedic can also administer sedation via consultation through a medical consultation line. In addition, Mr Richmond told me that it was the general understanding within the SAAS that they will provide transportation of patients who are detained even if they are aggressive and that most patients who are detained either by police or by the mental health services are usually transferred by SAAS. Generally speaking SAAS attendance is organised through SAPOL, but they often attend incidents prior to SAPOL's attendance. At other times their attendance has been arranged through ACIS where there has been a MHA detention either imposed by that service or by SAPOL. His belief was that if there is a possibility of violence and aggression in a patient, SAPOL were usually notified but the SAAS role generally meant that they were the main conveyer of patients who are going to be detained and who require hospitalisation. When asked by counsel whether there was a role for SAAS in circumstances where the patient did not want to go back to hospital, Mr Richmond said:

'We play quite a big role within those situations in sort of in regards to try and get a nice outcome, safe outcome, without having to have the patient physically restrained or handcuffed or even sometimes try to avoid them being detained. But if they have

already been detained, its pretty much - the role is that they are going to go but we try to have the nicest outcome without having to physically force them.'<sup>66</sup>

Mr Richmond expanded upon this by referring to a negotiation process as a starting point with the police in the background observing in case a point was reached where the patient would physically have to be removed. SAPOL would have the responsibility of removal in those circumstances. Mr Richmond had no hesitation in saying that even in circumstances where the police had physically restrained a person and had handcuffed the person, if necessary that they would transport the person in the rear of the ambulance notwithstanding. Mr Richmond's belief was that the MOU operated such that SAAS was the responsible entity for transporting such patients because the situation involved:

'... more of a health situation and it's a safer environment to have them in the back of an ambulance. And given that we could also, if it got to the point, require sedation of that patient ...'<sup>67</sup>

Mr Richmond told me that they deal with violence quite regularly, even with persons of the size of, say, Mr Bais. He envisaged that such a patient could be accommodated in the rear of an ambulance once the man was restrained on a stretcher.

- 13.10. Mr Richmond told me that given the divergence in individual's personalities, many people unfortunately view the police as a negative thing but with the ambulance service present, individuals tend to be more compliant, seeing them as an entity that is *'trying to help'*<sup>68</sup>.
- 13.11. Mr Richmond also told me that where there is an occasion involving a risk of violence, arrangements can be made to despatch an ambulance so as to rendezvous with SAPOL at a particular location.
- 13.12. Mr Richmond told me candidly that it surprised him that SAAS had not been contacted when the initial decision was made for police to attend<sup>69</sup>. He was surprised in the light of the MOU that NHS did not also request SAAS involvement as well as police involvement.

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<sup>66</sup> Transcript, page 722

<sup>67</sup> Transcript, page 724

<sup>68</sup> Transcript, page 729

<sup>69</sup> Transcript, page 737

- 13.13. While acknowledging that an ambulance may not be available straight away, and making allowances for the fact that the authorities might be reluctant to engage SAAS services until a patient is actually located, or that an ambulance may not be despatched in those uncertain circumstances, Mr Richmond gave me very clearly to understand that SAAS regularly attend with ACIS and SAPOL upon patients who are going to be detained.
- 13.14. The conclusion that I have reached is that the services of a mental health entity and the SAAS should have been sought either prior to the officers attendance at Mr Bais' premises or upon their arrival there when it was clear that Mr Bais was not going to cooperate. One option that could have been considered was simply advising Mr Bais through his door that he was required to attend the NHS and that he should wait inside pending the arrival of an ambulance for transportation purposes. The MOU and police General Orders contemplated that a patient such as Mr Bais would normally be transported by SAAS. As to why none of this took place I am not certain. For instance, there was little evidence as to whether the decisions that were taken by police had any significant or meaningful input from more senior officers.
- 13.15. The affidavit of Chief Inspector Cybulka<sup>70</sup> attaches documentation that was brought into existence at the time the MOU was promulgated. One of these documents<sup>71</sup> purports to be a SAPOL management information package concerning the MOU and is dated 10 August 2006. The MOU came into effect on 1 September 2006. The document draws attention to one of the MOU's chief principles as involving the effective use of resources in assessment, detention, safety, transport and restraint of mental health patients and the utilisation of SAPOL resources being restricted to applicable legislation and an option of last resort. It also refers to the MOU constituting a significant advancement of SAPOL interaction with other agencies in respect of the apprehension and detention of those persons. The document goes on to say:

'It is imperative that all operational police officers have a sound understanding of the roles and responsibilities of not only SAPOL but other signatory parties prior to the commencement date of the MOU.'

There was, I find, a lack of any such sound understanding evident in this case.

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<sup>70</sup> Exhibit C111

<sup>71</sup> Exhibit C111, Attachment OC1

- 13.16. Attachment OC6 to Chief Inspector Cybulka's affidavit<sup>72</sup> also exhibits various mental health MOU training news leaflets that were presumably drawn to the attention of all officers in September and October 2006 in which attending police in a detention order absconding scenario should, among other things, consider the advice of mental health workers in relation to the individual's past/current/potential/future mental state. It also refers to what officers can do in securing mental health assistance in these scenarios that includes reference, as it so happens, to what is said to be a 24/7 telephone number that is 131 465 which is that number identified in the affidavit of Ms Prowse to which I have already referred.
- 13.17. I have examined what can only be described as a mass of documentation that relates to the MOU and police procedures that have been promulgated in the light of that memorandum. However, I have not seen any documentation that spells out in clear terms exactly what police officers were expected to do in cases involving potential apprehensions under Section 23(2) of the MHA. Nothing was drawn to my attention within this voluminous material that purported to represent a specific instruction to police officers stipulating that they must endeavour to secure the services of the mental health authorities or of SAAS or which gave any guidance as to the specific circumstances in which they should do so. It also does not specifically identify the circumstances in which it might be appropriate for police to intervene without the assistance of the services provided by those entities. The documentation provides little clear guidance as to what police officers should actually do in these kinds of cases. It may be that for those reasons the police officers in this particular case did not appear to have a sufficient understanding of what was required in a case such as this.
- 13.18. It cannot be known with certainty what the outcome for Mr Bais would have been if an ambulance crew had attended at Mr Bais' address before the deterioration in his behaviour. The same observation applies to the question of whether the attendance of mental health services may have made any difference. It is worthwhile observing that if paramedics had been present at the time of Mr Bais' cardiac arrest, they would have been on hand to more effectively administer resuscitative efforts. One cannot know whether they would have been successful ultimately, but they would at least have had suction equipment and defibrillation equipment at their disposal.

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<sup>72</sup> Exhibit C111

13.19. One of the difficulties involved in this case was the fact that police had no means of evidencing to Mr Bais that he was required to go with them. Irrespective of whether Mr Bais' questioning of their authority to apprehend him was disingenuous or not, the fact that police had nothing in writing that evidenced that authority did not make things any easier for him or police. At one point Mr Bais was heard to say that the police did not have 'proof' that the hospital had detained him<sup>73</sup>. The fact that police did not have such proof enabled Mr Bais more readily to reject police authority. To a man who was perhaps not thinking completely rationally, it may have appeared to Mr Bais that he was being arrested for no apparent or legitimate reason. One would have thought that the presence of mental health authorities and/or the SAAS may have ameliorated that difficulty. It seems clear enough that the stress and exertion involved in Mr Bais' apprehension was one of the mechanisms by which he was to suffer his cardiac arrest. If such stress could have been avoided or ameliorated, the outcome may well have been different.

#### **14. Recommendations**

- 14.1. Pursuant to Section 25(2) of the Coroners Act 2003 I am empowered to make recommendations that in the opinion of the Court might prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest.
- 14.2. I have carefully examined the newly instituted Mental Health Act 2009. So far, this Court has not had occasion to examine the implications of this new legislation in the context of any particular matter in which it has had any application. Chief Inspector Cybulka annexed the Act to his affidavit<sup>74</sup>. I observe that the 2009 Act makes provision for the transport and restraint, by force if necessary, of persons with a mental illness by authorised officers and police officers. The 2009 Act provides greater detail concerning the interaction of police and other agencies and makes specific reference to the Minister's power to approve any memorandum of understanding between the relevant authorities. I would simply point out that, as indicated earlier in these findings, even the previous legislation made specific provision enabling police and the ambulance service to assist each other in the

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<sup>73</sup> Exhibit C98 - Original notes of Constable Bough

<sup>74</sup> Exhibit C111, Attachment OC9

execution of their duties. I say no more about the possible effect of the new legislation.

14.3. Ms Sheppard, on behalf of the Commissioner of Police, told me that her instructions were that the Police Commissioner's attitude is one whereby, depending upon a risk assessment conducted in any given circumstance, ideally it would be preferable to have a health worker present to assist police in the apprehension of persons with a mental illness. To enable that to occur Ms Sheppard told me that the Commissioner supports the provision of resources to provide mental health workers after hours. Clearly that is a desirable sentiment.

14.4. I make the following recommendations:

- 1) That the Minister for Health consider ensuring that the outpatient mental health service of the Noarlunga Health Service (known as the Adaire Clinic) and the Emergency Department of the NHS are housed within the same building so as to eliminate or minimise the opportunity for patients detained at the Adaire Clinic to abscond before they are examined within the Emergency Department of the Noarlunga Health Service;
- 2) That the signatories to the Mental Health Memorandum of Understanding together continue to develop practices and procedures that promote a collaborative culture in respect of the detention, apprehension and restraint of persons with a mental illness. I direct that recommendation to the Minister for Health, the Chief Executive Officer of the Department of Health, the Chief Executive Officer of the South Australian Ambulance Service, the Chief Executive Officer of the Royal Flying Doctor Service, the Minister for Police and the South Australian Police Commissioner;
- 3) That the Minister for Health ensure that mental health services are, at short notice and at any time of the day or night, made available to assist police in the execution of their duties in respect of the apprehension of persons with a mental illness.
- 4) That the Commissioner of Police take the necessary steps to ensure that officers are provided with specific and detailed training, orders and instructions regarding their duties and responsibilities when apprehending or restraining persons with a

mental illness. Such training, orders and instructions should deal with the circumstances in which the services of the entities who are party to the Mental Health Memorandum of Understanding should be sought and utilised.

- 5) That the Commissioner of Police takes the necessary steps to ensure that officers of the rank of Inspector or above are made aware of instances where junior officers are required to exercise their powers of apprehension and restraint pursuant to the Mental Health Act 2009 at the time that those instances occur.

*Key Words: Death in custody; Psychiatric/Mental Illness;*

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

*Seal the 12<sup>th</sup> day of August, 2010.*

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*Deputy State Coroner*