



## **FINDING OF INQUEST**

*An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup> and 25<sup>th</sup> days of March 2010 and the 27<sup>th</sup> day of September 2010, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Barry Michael Daly.*

*The said Court finds that Barry Michael Daly aged 53 years, late of 5 Queens Lane, Glen Osmond, South Australia died at the Royal Adelaide Hospital, North Terrace, Adelaide, South Australia on the 21<sup>st</sup> day of April 2008 as a result of burns to 75% of the body surface and severe lower airway inhalation injury. The said Court finds that the circumstances of his death were as follows:*

### **1. Introduction and background**

- 1.1. Barry Michael Daly died on 21 April 2008. He was 53 years of age. Mr Daly died from the effects of serious burns and lung damage that he sustained during a house fire in premises situated at Glen Osmond.
- 1.2. At approximately 0150 hours on 20 April 2008 Police Communications were advised by the Metropolitan Fire Service (MFS) of a house fire at 5 Queens Lane, Glen Osmond. This was the address of the private rental accommodation that Mr Daly occupied. Police patrols attended the scene at 0154 hours and were there told by MFS personnel that the fire had been contained but that the premises was extensively damaged. At 0219 hours Mr Daly was located inside the premises alive but with extensive burn injuries. Ambulance officers on the scene removed Mr Daly from the house and treated him with cooling treatment and morphine. He was alert and orientated but in pain. Mr Daly was taken to the Royal Adelaide Hospital (RAH)

where he was assessed to have sustained non-survivable burn injuries. Comfort care was initiated and he was pronounced life extinct at 1235 hours on 21 April 2008.

- 1.3. It was not considered necessary for an autopsy to be performed in respect of Mr Daly's remains having regard to a clear clinical course prior to his death. However, the relevant clinical case notes were examined by a forensic pathologist, Dr John Gilbert. Dr Gilbert in his pathology review<sup>1</sup> expressed the cause of death as 'burns to 75% of body surface area and severe lower airway inhalation injury'. I find that to have been the cause of Mr Daly's death. Mr Daly was apparently residing at the Queens Lane address at the time of the fire that caused his death. However, on 11 April 2008 he had absented himself without leave from Cleland House at the Glenside Hospital where he was a detained patient. Cleland House is a psychiatric ward at Glenside and it accommodates both voluntary and detained patients. Mr Daly had been detained within that institution pursuant to the provisions of the Mental Health Act 1993 (MHA). On Thursday 10 April 2008 Mr Daly had been detained pursuant to a 3 day detention order that would have required him to stay within the institution at least until Sunday 13 April 2008 and possibly longer, depending upon his assessment towards the end of that 3 day period. This was not the first detention at Glenside for Mr Daly. He had a long psychiatric history and had exhibited a somewhat casual disregard for detention. He had demonstrated a well understood propensity to absent himself repeatedly from the institution without leave. Notwithstanding this history of absconding, clinical staff at Glenside saw fit to accommodate Mr Daly in an open environment in which there was little or nothing physically to keep him within the four walls of the institution.
- 1.4. Mr Daly walked out of Glenside unnoticed during the morning of Friday 11 April, the day after he had arrived. Given that Mr Daly absconded from the institution prior to the expiry of the 3 day detention order, there was no opportunity for any further detention beyond those 3 days to have been considered and possibly implemented and which conceivably may have still been extant and operative on the day of his death.
- 1.5. Strictly speaking, on the day of the Queens Lane fire and the day of Mr Daly's death he was no longer under MHA detention, but it is idle to suggest that his earlier detention, his subsequent escape from the institution and his remaining at large are not

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<sup>1</sup> Exhibit C3a

all relevant considerations in this case, particularly in relation to the question as to whether Mr Daly's death could have been avoided.

- 1.6. As it transpired, during the period between his absconding and the fire that was to claim his life, Mr Daly had come to the attention of police on no less than three occasions and on each occasion was released from custody. The first two of those occasions involved arrests for offences that he committed during the afternoon and evening respectively of the day he left the institution. The third occasion occurred some days later. The fact that Mr Daly very recently had been under Mental Health Act detention and the fact that he had absented himself without leave in relation to the same was a matter that, in circumstances that I will deal with during the course of these findings, was not acted upon by police at any time he was in their custody.

## 2. **The circumstances of the fire**

- 2.1. Mr Daly's most recent period of detention prior to that commencing on 10 April 2008 had occurred in March. This period had also involved accommodation at Cleland House and had been punctuated by periods of absence without leave. There had been earlier periods of detention over the course of several years. Mr Daly's diagnosis involved mood disorders and psychotic illnesses. His most recent diagnosis in March 2008 had been one of bipolar mood disorder with a current episode of manic behaviour. The incident that had given rise to his earlier detention in March 2008 had also occurred at the Queens Lane premises and had involved fire. Police and the MFS on that occasion had responded to a fire that on a total fire ban day had been set, apparently by Mr Daly, in the rear yard of the premises. Evidently Mr Daly claimed that he had set it in order to cremate a dead possum. Other evidence suggests that Mr Daly had a habit of deliberately allowing a tap or taps to run in and outside the premises and on occasions this had unsettled an elderly next door neighbour. This habit is described in the statement of Mr Elio Carrabs<sup>2</sup>, an employee of the nearby Jacksons Motor Inn on Glen Osmond Road. Mr Daly was well-known to Mr Carrabs. I understood from the evidence that there was some connection between Mr Daly's lease of and occupation of the premises in Queens Lane and his occasional accommodation within the Jacksons Motor Inn complex itself. The motor inn was situated at the junction of Queens Lane and Glen Osmond Road and I understand that the management of the motor inn had a proprietary interest in the Queens Lane house.

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<sup>2</sup> Exhibit C7a

As will be seen, Mr Daly from time to time variously gave his residential address as either the Queens Lane house or a room at the Jacksons Motor Inn. In his statement, Mr Carrabs suggests that on at least fifteen occasions Mr Daly had left the tap running in the front yard of the Queens Lane premises causing water to flow into the neighbour's premises and down the street into Glen Osmond Road.

- 2.2. At about 1:30am on the morning of the fatal fire, Mr Carrabs heard and observed the tap running. Mr Carrabs approached the premises at 5 Queens Lane and saw that the tap was on full bore. He turned it off and at that point thought he could smell kerosene. Having turned the outside tap off, he thought he could hear taps running inside the house and water gushing. Mr Carrabs could also hear what he thought was noise being made by a person inside the house. There were lights on within the house notwithstanding the time of the morning. At one point he heard a door slam shut and for a moment thought he could smell smoke. He thought no more of that as there had recently been fires at a nearby conservation park. Mr Carrabs yelled out words to the effect of 'what are you doing?' but there was no reply and no further noise emanated from within the premises. Mr Carrabs returned to the manager's quarters at the Jackson Motor Inn and in due course was alerted to the fire within the Queens Road premises.
- 2.3. The burnt out premises was examined by a SAPOL fire cause investigator, Brevet Sergeant Andrew Bosley<sup>3</sup>. Mr Bosley's report reveals that Mr Daly was located in the bathroom on the eastern side of the premises. He was the only person located in the house. The bathroom door was locked from the inside. The roof of the house had collapsed at that location and Mr Daly was found lying on the floor next to the toilet cistern, semiconscious and with burns to his lower torso. Mr Daly had locked himself in the bathroom for reasons that are not clear. Although Mr Bosley was unable to ascertain whether the premises had been secured prior to the fire starting, there was no sign of forced entry. Mr Bosley concluded that the fire had been deliberately lit with its origin being the south-western side of a kitchen situated on the western side of the premises. The exact cause of the fire could not be determined, but accelerant-like burn patterns were located on the kitchen floor. I accept Mr Bosley's conclusions that no accidental reason for the fire could be established and that human involvement was

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<sup>3</sup> Exhibit C20a

required for the fire to have occurred. To my mind the conclusion is inescapable that the fire had been deliberately lit.

- 2.4. In my opinion it is more probable than not that Mr Daly deliberately lit the fire himself. In coming to that conclusion I have had regard to Mr Daly's mental instability, both recent and chronic, and to his undoubted erratic behaviour as perceived by Mr Carrabs shortly before the fire took hold that had involved, in accordance with Mr Daly's habit, his deliberate turning on of the outside water supply and leaving it running. I have also taken into consideration Mr Daly's recent incident involving the setting of a fire in the rear yard of his premises and which, incidentally, had also involved him in locking himself in the bathroom. However, I am unable to conclude whether or not when Mr Daly deliberately set the fire within the premises on the morning of 20 April 2008 he did so with any intention of harming himself or of ending his life. Mr Daly's propensity to indulge in eccentric and attention seeking behaviour in my view means that no safe conclusion can be drawn about the nature and quality of Mr Daly's intentions. Why Mr Daly chose not to leave the premises after the fire took hold and why he locked himself in the bathroom is something that cannot sensibly be explained.

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

- 3.1. 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 provides for a regime for the detention of persons who exhibit a mental illness. However, what took place in relation to Mr Daly 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 1993 Act.
- 3.2. Section 12(1) of the MHA enabled a medical practitioner to make an order for the immediate admission and detention of a person in an approved treatment centre where the medical practitioner was satisfied of a number of matters: firstly that a person had a mental illness that required immediate treatment, secondly that such treatment was available in an approved treatment centre and thirdly 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 for the protection of other persons. Section 12(2) of the Act provided that such a detention order expired 3 days after the day it was

made unless it was earlier revoked. A person thus detained had to be examined by a psychiatrist within 24 hours of the patient's admission to the approved treatment centre or, where that was not practicable, as soon as was practicable after that admission. The examining psychiatrist was required to consider whether the continued detention of the patient was justified or not. If the psychiatrist was not satisfied that the continued detention of the patient was justified, the psychiatrist was required to revoke the order. Otherwise, the psychiatrist was required to confirm the order. If the psychiatrist confirmed the order, this had the effect of continuing the 3 day period that had been activated by the original detention order. Mr Daly's detention order was both made and confirmed on Thursday 10 April. Before the expiry of that 3 day period, a further order for detention for another period of up to 21 days could be imposed. A second 21 day order could be imposed upon the expiry of the first such order. Mr Daly had been subjected to the regime of detention that I have just described and was detained under a 3 day order at the time of his decamping from Glenside, his place of detention. A first 21 day order was not considered as he absconded before he could be examined for that purpose.

- 3.3. 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.
- 3.4. 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.

- 3.5. In my view the police powers under section 23 of the MHA could be exercised irrespective of whether the person apprehended was in police custody or not.
- 3.6. The liability to apprehension of a detained patient unlawfully at large remained extant only during the currency of the period of detention, in Mr Daly's case, until Sunday 13 April 2008. Mr Daly had been in police custody over two separate periods spanning Friday 11 April and Saturday 12 April. This power to apprehend Mr Daly and return him to Glenside could have been exercised during those periods. Consideration was not given to the utilisation of this power in Mr Daly's case as police responsible for his custody assert that they were unaware that Mr Daly was a reported missing person or that he had been detained at Glenside and had absconded. Mr Daly was again arrested for an alleged offence during the night of 15 and 16 April and was taken into police custody. He was again bailed by police in the early hours of the morning of 16 April. By then Mr Daly's detention had expired and there would have been no power to apprehend him as a detained patient at large. The new Mental Health Act 2009 perpetuates this undesirable lacuna.
- 3.7. 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.

#### **4. Mr Daly's detention and accommodation at Glenside**

- 4.1. It is pertinent briefly to discuss something of Mr Daly's previous psychiatric history. Mr Daly's illness had been in existence for several years. More latterly, on 10 March 2008, following the incident involving the fire in the rear yard of his premises, he had been taken by police to the Emergency Department of the RAH exercising their powers under Section 23(1) of the MHA. On that occasion he was then formally detained by medical staff of the RAH under Section 12 of the MHA and was transferred to Cleland House at Glenside where he was ultimately placed on a first 21 day detention order. He was kept in an open environment. Mr Daly absconded from

Cleland House on three occasions during that admission. He first absconded from the hospital on 14 March 2008 and he was brought back by police from his home address on 19 March 2008. He absconded again on 20 March 2008 and was found at home and returned by police on 21 March 2008. He then left the facility without leave on Saturday 22 March 2008 but returned voluntarily after approximately 3 hours.

- 4.2. On 25 March 2008, while still at Cleland House, Mr Daly was assessed as having demonstrated some improvement and indicated that he did not want to be an inpatient. He agreed to take prescribed medication. He expressed an interest in moving to Palm Lodge which is a supported residential facility. Accordingly, he was discharged to Palm Lodge on 27 March 2008. In the event, Mr Daly spent only a short time in the Palm Lodge accommodation and ultimately returned to the Jacksons Motor Inn on Glen Osmond Road. It appears that the premises at 5 Queens Lane was also available to him. A community treatment order imposed by the Guardianship Board under the provisions of the MHA was also set in place for Mr Daly so as to ensure his compliance with medication. In fact on the afternoon of Monday 14 April 2008 a further application would be made to the Guardianship Board for the continuation of the order. By then, however, Mr Daly had decamped yet again from Cleland House and did not attend the hearing.
- 4.3. There had been other instances in the past of Mr Daly having been reported as a missing person.
- 4.4. In the early hours of the morning of Thursday 10 April 2008 Mr Daly presented at the Emergency Department of the RAH where at 2:10am he was detained pursuant to Section 12 of the MHA on the grounds that Mr Daly was exhibiting hypomania, brittleness, agitation, impulsivity and was noted to be an absconding risk<sup>4</sup>. This order was confirmed by a psychiatrist at the RAH at 10:15am on 10 April 2008<sup>5</sup>. The stated grounds for his detention were a history of bipolar disorder, that he was currently pressured, irritable and imperious with no insight. There is no suggestion other than that the initial order for detention and its confirmation were anything other than appropriate. Mr Daly was then transferred to Cleland House at Glenside and the

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<sup>4</sup> Exhibit C39a, page 17

<sup>5</sup> Exhibit C39a, page 18

necessary transfer documentation cites that Mr Daly was in need of ‘inpatient stabilisation of manic phase of bipolar mood disorder’ which he undoubtedly was<sup>6</sup>.

- 4.5. Mr Daly arrived at Cleland House at approximately 3pm on the afternoon of Thursday 10 April 2008.
- 4.6. As indicated earlier, Cleland House is a ward of the Glenside Hospital that accommodates both detained and voluntary patients. It is an open ward and Mr Daly was accommodated accordingly. The fact that Mr Daly’s original detention had occurred at 2:10am on 10 April 2008 meant that, unless a further 21 day order was imposed, it would have expired at 2:10am on Sunday 13 April 2008. In practice this would have required Mr Daly to have been psychiatrically evaluated and examined sometime during Saturday 12 April 2008 if his detention was to have been extended. In the event, as already indicated, consideration in respect of further detention was not given as by 12 April 2008 Mr Daly had absconded thereby making himself unavailable for further such evaluation and examination.
- 4.7. Mr Daly’s truncated stay at Glenside was described to me in evidence by the resident medical officer, Dr Olivia Bruja, who was essentially responsible for Mr Daly’s management on a day to day basis, and also by a registered psychiatric nurse, Ms Kathleen Snewin. Both witnesses gave oral evidence before me.
- 4.8. Dr Bruja explained that the majority of detained patients are admitted to an open ward, as was Mr Daly, and only a small number of patients who ‘*are at very high risk for themselves or others*’ will be admitted to a closed ward<sup>7</sup>. She told me that if a person was very unwell, if they were at high risk for themselves or others, or if they were very aggressive patients that could not be managed safely in an open ward they would be transferred to a closed ward<sup>8</sup>. Although Dr Bruja was a resident medical officer at the time with which this Inquest is concerned, she was by the time she gave her evidence before me a psychiatric registrar based at the Modbury Hospital. The views that she expressed in her evidence have to be looked at not only in the light of her experience at the time of these events, but also in the light of her training and experience since. Dr Bruja gave me to understand that an individual patient’s history of absconding is not regarded as relevant as the patient’s perceived risk to themselves

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<sup>6</sup> Exhibit C39a, page 19

<sup>7</sup> Transcript, page 32

<sup>8</sup> Transcript, page 33

or others. She told me that if detained patients were perceived to be at high risk of absconding then that would be a matter that would be taken into account in assessing whether or not a closed ward was the most appropriate environment, but was not in itself determinative of a patient's level of accommodation. Dr Bruja told me that when she saw Mr Daly during the afternoon of the day of his admission to Cleland House, he did not express any suicidal or homicidal ideation, he was not aggressive or agitated and did not require any PRN medication. In her view he was suitable for an open ward at that time, although as a RMO she alone would not have been able to decide whether Mr Daly should have been transferred from an open ward to a closed ward. She believed that there were no acute risks that would have made him suitable for a closed ward. When Dr Bruja was asked in cross-examination to what extent the perceived inevitability or even likelihood of absconding would be taken into account in deciding whether a person should be accommodated in a closed ward she said:

'I think you have to consider that on a case-by-case basis. If he was an extreme risk of absconding, sometimes instead of transferring the patient to a closed ward, especially if there are no beds available, you can try and organise a nurse special, but in my experience I haven't seen that being done just for risk of absconding, it was mainly being done for serious self harming thoughts rather than just the risk of absconding.'<sup>9</sup>

- 4.9. Ms Snewin was the nurse who conducted Mr Daly's mental health risk assessment which is reflected in a proforma document that forms part of Mr Daly's clinical record<sup>10</sup>. The form caters for various level of risk, including low, moderate, significant and extreme. Ms Snewin recorded Mr Daly's risk of harm to self (suicidality) as low, his risk of harm to others as moderate and his risk of absconding as moderate. Ms Snewin told me in evidence that having regard to the fact that Mr Daly had only recently arrived at the facility, there was very little risk of him absconding whereas the risk perhaps becomes greater the longer the patient is housed within the facility. The risk of absconding was regarded as moderate, presumably as opposed to low, because of his history of absconding. That said, Ms Snewin also told me that moderate would be the lowest that she would rate a detained client in any event<sup>11</sup>. Ms Snewin cited examples of what might be characterised as a significant risk of absconding that included that presented by someone who was heavily into drugs or someone who might be belligerent or showing signs of aggression. Ms Snewin told me that Mr Daly's having been reported as a missing person from

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<sup>9</sup> Transcript, page 69

<sup>10</sup> Exhibit C39a, page 20

<sup>11</sup> Transcript, page 93

Glenside on at least two prior occasions would not really have affected her decision as to how she would have rated him. She said '*not really, each time they present is different*'<sup>12</sup>. Ms Snewin also revealed in her evidence that Mr Daly had a propensity of 'going walkabout' in the grounds and I took it from that description that on occasions he had been difficult to locate but had eventually turned up. She said this in the context of her stated expectation that when Mr Daly went missing on the morning of 11 April 2008 she fully expected him to return.

- 4.10. Ms Snewin candidly told the Court that in her 10 years at Glenside it was not a question of how many patients might abscond in a year, it was a question of how many would abscond in a week. She said there were many absconders.
- 4.11. There was one matter that was imposed upon Mr Daly in terms of his perceived risk of being absent without leave and that was that he was placed upon a half-hourly observation regime as distinct from the usual hourly regime.
- 4.12. In light of Mr Daly's recent and repeated episodes of absconding from Glenside, the fact that he did so yet again on 11 April 2008 could have come as no real surprise. That of course is to look at the matter with the benefit of hindsight. However, Mr Daly's propensity to leave the institution without leave and remain at large for extended periods of time, together with his habit of wandering around the grounds and not be immediately locatable were matters that when looking at his circumstances prospectively, augured very poorly for compliance. It is difficult to see how Mr Daly's risk of absconding could have been viewed as moderate as opposed to significant or even extreme. His absconding was very much on the cards. He had amply demonstrated that he had no compunction about leaving the facility if so inclined. Any desire on his part to stay at the facility was clearly based upon whimsical considerations only. Confidence that Mr Daly would remain within the institution in an open environment without almost constant scrutiny was misplaced in my view.
- 4.13. In the event, after Mr Daly absconded from Cleland House not to be returned, the 3 day detention order expired and Dr Bruja formally discharged Mr Daly from the hospital on Monday 14 April 2008. Dr Bruja compiled Mr Daly's discharge

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<sup>12</sup> Transcript, page 95

summary<sup>13</sup>. Dr Bruja has recorded in the discharge summary that on arrival at Cleland House Mr Daly was found to have been:

'Elevated, grandiose and irritable and dishevelled. His speech was pressured and he lacked insight.'

She also recorded that Mr Daly admitted non-compliance with medication since his previous discharge from Cleland House, that he had failed to attend to follow-up appointments with his general practitioner and had absconded from the facility on 11 April 2008. Accordingly, Dr Bruja ended her summary in the following way:

'As Barry is a high risk for absconding (x3 last admission and current admission) he would benefit from management in a closed ward if readmitted.'<sup>14</sup>

Some might say that this was a conclusion that was available at the time of Mr Daly's admission to the facility on 10 April 2008, not only having regard to his recent history of absconding, but also to his erratic presentation on that day.

- 4.14. On the afternoon of Monday 14 April 2008 Dr Bruja attended the Guardianship Board and in the absence of Mr Daly a community treatment order was granted for 12 months. This would have involved Mr Daly having to submit himself to the administration of appropriate medication but would not in itself have involved him being detained in any approved treatment centre. That is not to say, however, that he might not again have been detained had his presentation at any give time dictated it.

## **5. Mr Daly leaves Glenside Hospital**

- 5.1. Mr Daly was last sighted at approximately 9:30am on Saturday 11 April 2008 when he said he was going for a walk in the Glenside Hospital grounds. Given that he was subject to half-hourly observations he should next have been sighted at 10am. However, a note timed at 10:40am that was made by Nurse Snewin suggests that the next attempt to establish his whereabouts occurred at that time. He was detected as not being on the ward when staff endeavoured to locate Mr Daly in order to interview him. A note was made that if he did not return 'in a few hours' a missing persons report would be put in. In the event, a missing persons report was not transmitted to the Adelaide Police Station (APS) until approximately 2:30pm when a report purportedly timed at 1:05pm was faxed to the APS. Ms Snewin told me that having

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<sup>13</sup> Exhibit C39a, pages 53 and 54

<sup>14</sup> Exhibit C39a, page 54

regard to Mr Daly's habit of going walkabout in the grounds but eventually turning up, they decided to wait until lunchtime to see if he would return for lunch and that if he did not return they would then lodge the missing persons report. Ms Snewin had a personal expectation that he would return. Confidence in Mr Daly's habit of 'going walkabout' in the hospital grounds but eventually returning has to be examined against his more worrying history of leaving the facility entirely and remaining at large. On a scale of likelihood, the chance of Mr Daly returning to the ward sometime during the course of that day would be very low on that scale and the delay in reporting him missing is all the more perplexing when the supposed half-hourly regime of observation is taken into account.

- 5.2. Indeed by the time Mr Daly's missing status was reported to police, he had already been arrested for alleged shoplifting in Harris Scarfe in the city and was in police custody. When Mr Daly arrived at the City Watch House (the CWH) to be kept in custody there, there was no record in existence that police had on any database or on any other information source that Mr Daly was a missing person or indeed that he had absconded from detention under the MHA. The reason for that was that Glenside had yet to report him missing. The CWH charge book extract<sup>15</sup> shows that Mr Daly was charged at 12:18pm. Incidentally, I add here that the officer who processed Mr Daly when he arrived at the CWH, a Constable Attenborough, noted that among Mr Daly's property was a hospital wristband. This, together with the other items of property, were placed in a plastic bag and deposited for safekeeping.
- 5.3. At that stage Police at the CWH were very unenthusiastic about Mr Daly being released on bail. This attitude was perfectly understandable. Mr Daly's candidacy for bail, it must be said, was a poor one. The shoplifting offence that day at Harris Scarfe for which Mr Daly had been arrested had allegedly been committed whilst he had been on bail for alleged offences he had committed in the past but for which he had yet to be dealt with. Furthermore, his mere presence in Harris Scarfe that day was in contravention of bail conditions that already existed in respect of Mr Daly that prohibited him from entering the area bordered by King William Street, North Terrace, Pulteney Street and Grenfell Street in the CBD. There were other difficulties confronting Mr Daly's release on bail that I shall mention later. In any event, irrespective of the attitude of the police to bail, police were precluded at law from

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<sup>15</sup> Exhibit C38f

releasing him on bail that afternoon by virtue of the operation of Section 18 of the Bail Act 1985. Section 18(3) of the Bail Act 1985 stipulates that a person who is arrested without a warrant for having contravened or failed to comply with a bail agreement must, after having been delivered into the custody at a police station, be brought as soon as practicable before the Magistrates Court. This provision would have precluded the police, of their own initiative, from releasing Mr Daly on bail even if they had regarded him as a good candidate for it, which he clearly was not. However, at that point in the legislative history of the Bail Act, the Magistrates Court had an unfettered discretion to grant bail. Contrary to evidence that was given during the course of the Inquest, at that time there was no presumption against bail where the applicant was a person alleged to have been in contravention of, or had failed to comply with, a condition of a bail agreement. Such a presumption against bail now exists by virtue of section 10A of the Bail Act. The presumption that now exists in those terms did not apply then to Mr Daly's circumstances, although the fact that he was alleged to have been in contravention of, and had failed to comply with, a condition of his previous bail agreement ought not, even then, have generated much hope for a successful bail application before a Magistrates Court. Notwithstanding all of that, and against police opposition, Mr Daly was granted bail in the Adelaide Magistrates Court later that afternoon. This resulted in his release. I pause here to observe that a proper understanding of the bail legislation as it then existed ought to have signified to all police who knew of his arrest for contravening the conditions of his bail agreement that there was a high degree of likelihood, if not certainty, that Mr Daly would be taken to the Adelaide Magistrates Court from the CWH sometime during the course of the afternoon of Friday 11 April 2008. And so it could not have been thought or said with any degree of certainty that he would necessarily be kept in custody beyond a Court appearance that afternoon. Thus it would have been erroneous for police to suggest to any person enquiring in regards to Mr Daly's fate on that day that Mr Daly would, as a matter of certainty, be kept in the CWH over the entire ensuing weekend and not be eligible for release until the Monday. I return to this aspect of the matter shortly.

- 5.4. It is pertinent here to say something more about the interaction between the provisions of the MHA that impose detention on a patient with a mental illness and the application of criminal procedure following the arrest of such a person for an offence and their subsequent release on bail. Firstly, to my mind a confirmed detention order

such as Mr Daly's operated for the entire period of 3 days notwithstanding his absence from the approved treatment centre without leave. A person who was absent without leave from the approved treatment centre, and therefore unlawfully at large, was liable to be apprehended by police and returned to the centre pursuant to Section 23(2) of the MHA. To my mind that liability to apprehension only existed during the currency of the period of detention such that if the period of detention expired whilst the person was still at large, the person no longer remained liable to be apprehended by police pursuant to Section 23(2) of the MHA. That is not to say that the powers of apprehension that I have described under Section 23(1) might not have been invoked depending upon the person's then presentation and circumstances. In those circumstances the detention process would have to be, as it were, started all over again.

- 5.5. In Mr Daly's circumstances, in my opinion he remained liable to be apprehended by police under Section 23(2) of the MHA until the early hours of the morning of Sunday 13 April 2008. Thus, subject to two qualifications I shall mention in a moment, he could have been apprehended under that power and immediately returned to Glenside Hospital at any time during Friday 11 April 2008 and Saturday 12 April. The first qualification is this. When Mr Daly was arrested for theft and for being in contravention of the bail condition restricting his presence in the CBD, Section 18 of the Bail Act 1985 in my view for the time being dominated the position insofar as his arrest without warrant meant that he had to be taken to a Magistrates Court as soon as practicable. If it were not for that particular requirement, police would have been at liberty to release Mr Daly on bail if they were so minded and then have exercised their power under Section 23(2) of the MHA and returned him immediately to Glenside Hospital. Alternatively, it was suggested in argument that one measure that may have been open to police would have been to have 'unarrested' Mr Daly without charging him, thereby obviating the necessity for him to be taken before a Court. Police could then have apprehended him under Section 23(2) of the MHA and returned him to Glenside Hospital. It should be said here that such a course of action, although arguably possible on a theoretical basis, might not have been considered to be in the public interest having regard to the offence that Mr Daly allegedly committed and his alleged contravention of his bail conditions.

- 5.6. As it was, however, in both legal and practical terms having regard to the nature of the charges Mr Daly faced, Mr Daly's arrest and delivery to the CWH on the afternoon of Friday 11 April 2008 meant that he was required to be taken to Court as soon as was reasonably practicable, and not be returned immediately to Glenside Hospital. However, if Mr Daly were to have been released by the Court, as he ultimately was, police could then have exercised their power under Section 23(2) of the MHA and immediately have returned him to Glenside. That did not happen owing to circumstances that I will discuss in a moment. On the other hand, if the Court had remanded him in custody, to my mind that custody would have to have been, at least for the duration of the detention period, administered in a MHA approved treatment centre that catered for custodial circumstances, such as James Nash House.
- 5.7. It is against the above background that the circumstances surrounding the report of Mr Daly's having absconded, how that report was dealt with and how his custody was managed comes to be evaluated. I say here at the outset of this discussion that in my view it is beyond question that whatever permutation of possible custodial outcomes may have come to pass during the course of that day, Mr Daly should have been replaced into an approved treatment centre, either by having him returned to Glenside if he was released by the Court on bail or, if he had been remanded in custody, by having him transferred to another approved treatment centre that catered for persons in custody.
- 5.8. The missing persons report compiled at Glenside Hospital was received at the APS by a SAPOL employee, Mr David Broomhead. The facsimile transmission that consisted of 5 pages of information concerning Mr Daly stated quite clearly that Mr Daly was a missing person and a 'detained patient'<sup>16</sup>. The report explained that at 9:30am Mr Daly had stated that he was going for a walk in the grounds of the hospital and that he had failed to return to the ward. It also made it plain that he had been admitted on 10 April 2008 on 'detention form 2'. It went on to state that Mr Daly 'has history of ABSCOUNDING (sic)'.
- 5.9. At the time of these events Mr Broomhead was aged 20 years. He was a civilian, that is to say not a sworn police officer. He was a police administrative services officer (ASO). Mr Broomhead had been working as an ASO1 for approximately 2 or 3 months. In April 2008 he was a participant in a program known as the 'Police Youth

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<sup>16</sup> Exhibit C39a, page 9

Recruitment Program'. This program was an initiative designed to recruit suitable applicants as sworn police officers but who, at that point in their lives, had limited 'life experience'. The participants took part in a training program that was designed to augment certain life skills and also to provide basic training in relation to police operational matters. At the end of the training period suitable applicants were recruited to take part in the orthodox police training program as cadets with the view to them becoming sworn police officers. By the time of the Inquest Mr Broomhead, who gave oral evidence, had completed his training and cadetship and was a Probationary Constable. The curriculum document relating to the Police Youth Recruitment Program as it existed in 2008 was tendered to the Inquest<sup>17</sup>. It is a lengthy document and sets out the recruiting program curriculum in great detail. The document contains nothing about training in respect of MHA detention or SAPOL involvement in the same. Nor does it explain bail or custody procedures or requirements. Mr Broomhead, although a civilian, was supervised during the course of his duties within the APS by the officer in charge of that station and, in respect of this particular shift on Friday 11 April 2008, that person was Senior Constable Geoffrey Grocke who had been a member of the police force for approximately 41 years. Senior Constable Grocke had worked at the APS continuously for 23 of those years. Mr Broomhead, in his evidence before me, satisfied me that as of April 2008 he had a quite limited understanding of matters relating to missing persons and in particular those who may have absconded from detention under the MHA. In particular, Mr Broomhead had only an imperfect understanding of a person's detention status as distinct from a voluntary patient's status and did not especially understand the importance of, or implications of, the detention status of a missing person. Mr Broomhead held an assumption that all persons who had been reported as missing from Glenside were detained. This in my view resulted in Mr Broomhead not recording in the SAPOL missing persons report that he had the responsibility of compiling that Mr Daly was the subject of MHA detention, a matter I will return to shortly. Mr Broomhead also appears to have held an assumption in April 2008 that a person who had been arrested in Mr Daly's circumstances would more than likely, if taken into custody on a Friday afternoon and not have been bailed, remain in police custody over the entire weekend until the Monday morning<sup>18</sup>. In my view Mr Broomhead's training and level of understanding of these matters was such that it

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<sup>17</sup> Exhibit C32a

<sup>18</sup> Transcript, page 129

meant that he did not ask the right questions and direct his mind to the necessary matters that required consideration as far as Mr Daly was concerned. In addition, in my view it also led him unwittingly to mislead Glenside staff into believing that Mr Daly would remain in police custody over the ensuing weekend and not to take any steps to secure his return. I acknowledge that there is some dispute about the circumstances surrounding that matter and I will come to that in a moment. However, I do not wish it to be understood that I regarded Mr Broomhead, either in 2008 or now, as either lacking in competence or integrity. Mr Broomhead was in essence a civilian doing the work of a sworn police officer and whose training was limited and whose supervision was imperfect. Although Mr Broomhead was at loggerheads with the evidence of another witness in respect of an important matter, and that I preferred the evidence of that other witness, I concluded that Mr Broomhead was an honest witness but was a mistaken one as to the particular issue. I come to the circumstances of that in a moment.

- 5.10. At the time Mr Broomhead received and processed the report from Glenside Mr Daly was already in police custody and was in fact in the CWH. This fact was not known to Mr Broomhead at that time nor to his supervisor Senior Constable Grocke.
- 5.11. When Mr Broomhead received the Glenside report he compiled a SAPOL missing persons report<sup>19</sup>. This report was compiled at 2:54pm. It recorded that Mr Daly was a 'RESIDENT' of Cleland House at Glenside Hospital, that he had been missing since 1430 hours on 11 April 2008 and that he was 'AN ABSCONDER'. Mr Broomhead's report also referred to his 'history of ABSCOUNDING' which repeats the incorrect spelling that is contained in the original report from Glenside. The report in two places incorrectly describes Mr Daly as 'FEMALE', an error that was never corrected even after so-called vetting by Mr Broomhead's supervisor. The document does not state in terms that Mr Daly was a detained patient at Glenside, but it does refer to him as an absconder and refers to his history of absconding. In addition, one section of the document states:

'Return to : CLELAND HOUSE  
GLENSIDE CAMPUS'

One can only assume that endorsement is meant to be an instruction to any officer who might find or encounter Mr Daly. It is worthwhile observing that although Mr

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<sup>19</sup> Exhibit C51b

Daly is described in the document as an absconder, neither the fact of nor the duration of his period of detention is spelt out. This would have meant that any officer who might have encountered Mr Daly at large and who might do so some days after the report was compiled, could not have been certain of Daly's detained or voluntary status. Mr Daly's detention status and the duration of his detention should unquestionably have been spelt out in the document. I note that the Glenside report referred to Mr Daly being on detention under 'form 2'. This description in itself could have alerted police to the fact that Mr Daly was on a 3 day detention order from Thursday 10 April 2008 as form 2 under the Mental Health Regulations relates solely to a 3 day detention order. There is no reference to form 2 on the missing persons report compiled by Mr Broomhead.

- 5.12. Mr Broomhead also began a computerised missing persons investigation diary. This is also a document that is created within the SAPOL computerised system<sup>20</sup>. The first entry is timed at 1509 and refers to the missing persons report. The next entry refers to the fact that at 1518 a KLOF (keep lookout for) was broadcast by Police Communications. A transcript of the KLOF transmission by the Police Communications Branch at 1518 was tendered to the Court and formed part of the statement of a Constable Heidi Somerville who conducted this transmission<sup>21</sup>. The KLOF transmission referred to the fact that Mr Daly was "missing from Glenside", but did not mention anything about his detained status. It is evident from the transmission that the KLOF caused an immediate response from a police patrol who had knowledge of the fact that earlier in the day Mr Daly had been arrested in the mall for theft and that he ought to be at the CWH. The communication then reveals that there was a further communication with another patrol who were in the process of preparing some bail papers. The transcript reveals an attempt by the Police Communications officer to contact the CWH during the course of that transmission but there does not appear to have been any response from the CWH. It has to be said that the attempt appears to have been a cursory one and was not persisted with once the second patrol communicated and established that Mr Daly was in fact located.
- 5.13. The broadcast is referred to in another police computer generated document<sup>22</sup>. It records the fact that at 1518 the broadcast was made by Police Communications at the

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<sup>20</sup> Exhibit C51a

<sup>21</sup> Exhibit C29a

<sup>22</sup> Exhibit C51c

instigation of Senior Constable Grocke and that Barry Michael Daly, with a description, was 'missing from Cleland House Glenside since 0930 hrs 11/4 after failing to return from a walk'. It also refers to the fact that his current whereabouts were unknown. The document then records the fact that a police patrol had responded with the information regarding Mr Daly's custody. At 1522 hours it is recorded in the document that the APS in the person of Senior Constable Grocke was advised by Police Communications of the fact that Mr Daly had been located, that bail had been refused and that they might wish to advise Glenside of his having been located<sup>23</sup>.

- 5.14. Senior Constable Grocke advised Mr Broomhead of these developments and the missing persons report was amended to show that Mr Daly had been located, that Police Communications had advised that he had been arrested for theft and breach of bail and that he was currently at the CWH. It is clear and I so find that both Senior Constable Grocke and Mr Broomhead knew that Mr Daly was at that point in time at the CWH.
- 5.15. Mr Broomhead then contacted Glenside by telephone and spoke to Ms Snewin. The terms of the telephone conversation are in dispute. Within Mr Daly's clinical record, which is an apparently genuine and continuously recorded document, Ms Snewin has recorded the following entry timed at 3:30pm on 11 April 2008:

'Police contacted ward he is in city watch house for stealing will be there until Monday when case comes before Court as form 2 will lapse he has been discharged.'

Ms Snewin's signature then appears below that entry. In her evidence Ms Snewin swore to the accuracy of that note insofar as it recorded that she was told by SAPOL that Mr Daly would be in the CWH until the Monday. Ms Snewin also told me in evidence that, although it is not recorded in her note, she challenged the officer as to whether police were going to return Mr Daly to them. She told me that she and colleagues with whom she discussed the matter afterwards took at face value the officer's word that Mr Daly would remain in custody and that, in essence, police custody between then and Monday would prevail over any MHA detention. Her attitude was that the police ought to know what form of custodial circumstances '*took preference*'<sup>24</sup>. Ms Snewin gave me to understand, without saying so in terms, that this note was made contemporaneously with the telephone conversation that it purports to

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<sup>23</sup> Exhibit C51c, page 2

<sup>24</sup> Transcript, page 105

record. There is no independent evidence that it was contemporaneously made. However, Dr Bruja was brought into the matter and she told me in evidence that on Saturday 12 April 2008 she recorded a retrospective note of her understanding of the position regarding Mr Daly's whereabouts over the weekend and of his likely fate on the Monday. Dr Bruja's note immediately follows Ms Snewin's note purportedly of the day before. Dr Bruja has recorded in her own note that she herself understood that the phone call from the APS at 3:30pm the day before had involved an assertion by police that Mr Daly would remain at the CWH until the Monday when the case would go before the Court. Dr Bruja has also recorded that she had discussed the matter with a senior registrar, Dr Chieu, who had advised Dr Bruja to contact the CWH on the Monday to establish whether Mr Daly was still there having regard to the fact that the community treatment order application hearing was scheduled for the Monday afternoon. Dr Bruja's note was purportedly made at 1:30pm on Saturday 12 April 2008. Ordinarily Dr Bruja would not have been on the ward on a Saturday and the circumstances in which she came to make that note are not entirely clear, but I am satisfied that she made the note at that time based upon information that had already been noted by Ms Snewin. In my view the evidence demonstrates that on 11 and 12 April 2008 there was a genuine understanding on the part of staff at Glenside that Mr Daly would remain in the CWH until the Monday morning when he would go to Court. In addition, I am also of the view that Glenside staff deferred to police in this regard and viewed the police as having a more sound understanding of the legal requirements relating to Mr Daly's continued custody. Thus it was that staff at Glenside took no steps to see that Mr Daly was returned to Glenside to undergo what remained of his period of detention. Glenside staff acknowledged that the 3 day order would lapse before the Monday morning and in effect believed that they had been presented with a *fait accompli* as far as their not having further access to Mr Daly during his period of MHA detention was concerned.

- 5.16. The question is whether Glenside's understanding of the position was reasonably held and whether it had been based upon information actually imparted by police. Mr Broomhead denied that he had told Ms Snewin in the telephone conversation or had otherwise given her to understand that Mr Daly would remain in custody in the CWH until the Monday morning when he would go to Court. All he recalled saying in the telephone conversation was something similar to:

'You reported Barry Daly missing this afternoon. We have located him, he was actually - he was arrested today by police and he is at the city watch house.'<sup>25</sup>

The only response that he obtained to that piece of information was a mere thank you. In my view Mr Broomhead is mistaken when he denies that he told Snewin that Mr Daly would remain in SAPOL custody until the Monday when he would go to court and I prefer Ms Snewin's evidence on the topic. To my mind Mr Broomhead's version of the conversation is inherently unlikely for a number of reasons. Firstly, Ms Snewin told me that she challenged the officer as to whether they should be returning Mr Daly to them. To my mind that is a very understandable question for Ms Snewin to have asked in the circumstances and it is very likely that Mr Broomhead gave a response. Given what Mr Broomhead thought was his understanding of the situation, namely that in all probability Mr Daly would remain at the CWH until Monday, it is very likely in my view that that is exactly what he said to Ms Snewin. Ms Snewin has recorded her version of the conversation and even if it was not recorded contemporaneously, I have no reason to doubt its accuracy. Furthermore, it appears that Dr Bruja was advised about Mr Daly's remaining in custody until the Monday in terms exactly the same as those recorded by Ms Snewin. It is in my opinion unlikely that Ms Snewin over the weekend, whenever her note was compiled, would record a detailed assertion to the very specific effect that Mr Daly would remain in custody over the weekend until Monday when he would go to Court unless she had specifically been told that. There is no evidence that Ms Snewin could have derived any such understanding other than from what the SAPOL employee told her. I find that Mr Broomhead did tell Ms Snewin that Mr Daly would remain in the CWH until the Monday and that he would go to court on that day. That assertion by Mr Broomhead was significantly misleading, although unwittingly so, insofar as it led staff at Glenside to believe that Mr Daly would not be released, would not be returned to Glenside and that there was nothing that staff at Glenside could do about that. Had he had a better understanding of MHA and bail and court procedures he would have been better equipped to have imparted accurate information to Glenside.

- 5.17. After Mr Broomhead advised Glenside that Mr Daly had been located, he made an entry into the investigation diary timed at 1548 hours that stated that they had been advised by Police Communications that Mr Daly had been arrested for theft and breach of bail and that as of 1345 hours he was still at the CWH. It was noted that Glenside had been advised. There is nothing there said as to what the precise nature

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<sup>25</sup> Transcript, page 115

of the advice to Glenside consisted of. There is a similar entry to that recorded in the missing persons report itself.

- 5.18. Mr Daly was taken before the Adelaide Magistrates Court on the Friday afternoon. Before his Court appearance he was transferred from police custody in the CWH into the custody of staff of GSL. GSL is a private entity that has responsibility for the transfer of prisoners including the escorting of them to the Adelaide Magistrates Court. The CWH records reveal that Mr Daly was handed over to GSL custody at 3:53pm. He then went to Court. Irrespective of what might have been the eventual outcome of his Court appearance, and whether the Court would have released him on bail or not, his being handed over to GSL marked the last thing that police would have to do with Mr Daly that day, save and except for his unexpected later arrest that I will discuss in a moment.
- 5.19. Police at the CWH who had responsibility for Mr Daly's release into GSL custody assert that they were unaware either of Mr Daly's status as a missing person or that he was a detained patient at large. When Mr Daly was placed into the custody of GSL his property was given to him which by then would have been in a plastic bag. Nobody appreciated the significance of his possession of a hospital wristband either at that time or when the property had originally been handed over.
- 5.20. The documentation that relates to Mr Daly's period of custody in the hands of the police, either at the time of his arrest or whilst in the CWH that afternoon, variously records his address as either Room 56 at the Jacksons Motor Inn or 5 Queens Lane, Glen Osmond as the case may be. None of the documentation that was generated at that time suggested that Mr Daly's address was Cleland House at Glenside Hospital.
- 5.21. I am not privy to what took place in the Adelaide Magistrates Court at Mr Daly's hearing other than that he was granted bail and was released. I do infer, however, that in accordance with the already formulated police attitude towards opposition for bail, that the police prosecutor opposed bail but that the Court granted bail notwithstanding. I have already referred to Mr Daly's poor candidacy for bail for the reasons I identified above. In opposing or refusing bail the police also relied on a number of other matters. There was Mr Daly's prior history of breaches of bail and a prior estreatment of a bail agreement. There was the fact that at the time he was on a number of different bail agreements that had been entered into in February and March 2008. He had no fixed address. On his own assertion he was living in temporary

accommodation at a motor inn in Glen Osmond and this was also said to be in contravention of an earlier bail condition relating to residency. There was also the question of the perceived likelihood that Mr Daly might reoffend having regard to the alleged offence that he was currently being dealt with, it having been committed whilst on bail.

- 5.22. The fact that Mr Daly was released on bail was not communicated to the APS, in particular to Mr Broomhead or to his supervisor Senior Constable Grocke. Indeed, there was no reason for CWH staff to have advised the APS of that fact as they assert that they were completely unaware of the fact that Mr Daly had earlier been reported as a missing person. While it was understood that when Mr Daly came into the CWH he had a history of psychiatric disorders, and while to an astute person an inference of recent hospitalisation may have suggested itself from the fact that he was wearing a hospital bracelet, as far as the staff at the CWH that afternoon were concerned Mr Daly's arrest and custody for a few hours and his being taken to Court was a simple routine matter that required no further action on their part once his placement into the custody of GSL was secured.
- 5.23. Meanwhile, as a result of the fact that Mr Daly had been located and Glenside advised of that fact, a warning or flag that Mr Daly was a missing person that would have alerted anyone conducting a Police Incident Management System (PIMS) check upon him was taken down. This meant that any PIMS check that would have been conducted by police either in the CWH or elsewhere would not have alerted them to the fact that Mr Daly had been a missing person. Thus, even if the CWH staff had conducted a PIMS check on Mr Daly prior to his placement into the custody of GSL, it would not have revealed the fact that he was wanted as a missing person.
- 5.24. There was a clear need in my view for staff at the APS, once it was known that Mr Daly was in the CWH, to let the CWH staff know that Mr Daly had been reported as a missing person and in particular missing from a psychiatric institution, irrespective of whether or not it was understood by all staff that he was actually detained within the institution. The responsibility for such a simple and straightforward communication between two arms of the police force was, I find, that of Senior Constable Grocke. It is true that Senior Constable Grocke only saw a missing persons report as compiled by Mr Broomhead that revealed Mr Daly's residency of Cleland House at Glenside but which did not state in terms that he was detained there. Although this was an important omission for which, in my view, Mr Broomhead cannot be blamed because

of his lack of training, there was in any case sufficient information in his missing persons report to have alerted Senior Constable Grocke to the possibility that Mr Daly was in fact a detained patient and not a voluntary patient and who was, therefore, liable to police apprehension under Section 23(2) of the MHA and liable to be returned to the institution. The fact that Mr Daly was described in Mr Broomhead's missing persons report as an absconder was clear information that ought to have triggered an inquiry on Senior Constable Grocke's part as to whether or not Mr Daly was detained. In the event, Senior Constable Grocke told me that he did not 'vett' the missing persons report until 1610 hours by which time Mr Daly had already been placed into GSL custody and conceivably may even have been released by the Court. Even the most cursory vetting ought to have resulted in the gender of Mr Daly being corrected from female to male. Such vetting also should have engendered in Senior Constable Grocke's mind the possibility that Mr Daly was a detained patient and also in my view that he might at some point in time that day be released, either by police or by the Court. It will be noted that the vetting process of a missing persons report at 1610 hours did not occur until after Senior Constable Grocke himself understood that Mr Daly, the subject of the report, had been located. The report was in existence from 2:54pm onwards. It should have been vetted then.

- 5.25. As to whether or not it was incumbent upon Senior Constable Grocke to have communicated with the CWH to alert them to the fact that Mr Daly had been reported as a missing person, Senior Constable Grocke in his evidence suggested that staff at the CWH should have heard and acted upon the Police Communications KLOF radio transmission requesting all police to keep a lookout for Mr Daly as a missing person from Glenside. Senior Constable Grocke gave me to understand that there was no need for him to have advised the CWH staff of the fact that Mr Daly was a missing person as it could be assumed that staff at the CWH would themselves know that from the KLOF transmission. There was no evidence that any person at the CWH heard that transmission. It appears to have been a very brief transmission and by its nature it is conceivable that it may have gone unheard in the CWH. Such a means of communication could not be relied upon by Senior Constable Grocke as relieving him of the need to directly communicate with the CWH staff about the matter and would, in any event, depend too much on the exigencies of workloads and staff levels within the CWH at any given point in time and leave too much to chance. Nothing in this communication would obviate the desirability, if not necessity, for staff of the APS to have communicated directly with staff of the CWH about Mr Daly's status. What

was required in my view was direct communication between the APS and the CWH that involved a two-way exchange of information. Firstly, there was a need for CWH staff to be advised that Mr Daly had been reported as a missing and detained person and that there might be implications in terms of the operation of the MHA to that person. On the other hand, such a direct communication would also have enabled staff in the APS to learn that Mr Daly was to appear in Court that afternoon and was not going to spend the entire weekend at the CWH. This would have in turn enabled APS staff to furnish Glenside with accurate advice as to what was going to happen or what had happened in respect of their detained patient Mr Daly.

- 5.26. Rather than relying on an imprecise idea of what Mr Daly's custodial circumstances might be over the ensuing weekend, in my view proper advice between the APS and Glenside staff on the afternoon of Friday 11 April 2008 should have consisted of advice to the effect that Mr Daly was going to Court that afternoon and that if he was bailed by the Court he would be apprehended under Section 23(2) of the MHA and returned to Glenside, or that if he was remanded in custody that Glenside could then take whatever steps they considered necessary to ensure that he was kept within a facility that was an approved treatment centre having regard to his still-detained status at that point in time.
- 5.27. Mr Broomhead in my view had been placed in an invidious position. His training was not that of an operative sworn police officer who might have been expected to have a working knowledge of the procedures under the MHA as well as of bail and court procedures. In essence, Mr Broomhead was something of an ad hoc conduit of information between Glenside and his supervisor, Senior Constable Grocke. All this in my view brings seriously into question the appropriateness of civilian staff performing operational duties that would more appropriately and more efficiently be conducted by sworn police officers.
- 5.28. There is one other aspect of the matter that I should mention in regards to Mr Daly's custody on the Friday afternoon. Although the fact that Mr Daly was an absconded detained patient from Glenside would have made no difference to the attitude of police towards his release that afternoon, it may have made all the difference to the attitude of the presiding Magistrate who granted Mr Daly bail. Irrespective of one's view of his being bailed in the face of compelling material to suggest that an alternative course of action was open, if the Court had been advised that Mr Daly had a psychiatric history and that his current status was that of a detained and absconded

patient from a psychiatric institution, it is very difficult to see how a Court could have released him on bail, at least without any form of enquiry being made of the mental health authorities as to what their intention was in respect of Mr Daly's further detention. As well, Mr Daly's absconding from detention would at least have signified to the Court that he had a very cavalier attitude towards compliance with regimes in respect of his place of living and his medical treatment. It would also have raised a very significant doubt in the Court's mind, if it did not exist already, as to whether Mr Daly would not only fail to comply with his bail agreement by attending Court when required, but whether he would inevitably commit further offences. Thus it was that it was imperative for staff at the CWH as well as police prosecutions to have been informed, and accurately so, as to Mr Daly's precise status relative to the Glenside Hospital as of the afternoon of 11 April 2008.

**6. Mr Daly is again arrested on Friday 11 April 2008**

- 6.1. At about 9:20pm on the Friday evening a police patrol was tasked to attend at the Air Restaurant on North Terrace in Adelaide. This occurred in response to a complaint that a customer had refused to pay for his meal. That person was Mr Daly. The officers approached Mr Daly in the restaurant and he identified himself correctly as Barry Michael Daly and gave his address of 5 Queens Lane, Glen Osmond. Mr Daly said that his reason for refusing to pay was that he did not like the food but it was clear that he did not have the means to pay for it. Mr Daly became belligerent and offensive and he was arrested for deception. A PIMS check was conducted by police but it revealed nothing relevant to Mr Daly's earlier missing persons status nor his detention under the MHA. This is not surprising having regard to the fact that he had been since reported as located and any warning or flag that might have alerted police to the fact that he was missing had been taken down.
- 6.2. Mr Daly was taken to the CWH where he was recognised by one of the staff who had been on duty when he had been released earlier in the day. That officer was Constable Christine Dunn.
- 6.3. Notwithstanding the fact that Mr Daly had once again been located within the area in the CBD that he had been prohibited from attending, it does not appear that he was charged with breach of bail or that his repeated contravention of that condition was otherwise brought into account by police. He was charged with deception and disorderly behaviour. On this occasion his property did not include the hospital

wristband. When Mr Daly was charged, a computer generated document that is entitled 'General Enquiries - Enquire on person details'<sup>26</sup> was printed and attached to the CWH paperwork. The document revealed an address for Mr Daly of Cleland House, Glenside Campus, 226 Fullarton Road, Glenside SA. It is not known how it was that this address came to be printed out in respect of Mr Daly. I observe that the equivalent document that was raised and printed when Mr Daly had been arrested on the first occasion that day had cited the Queens Lane address only.

6.4. Mr Daly remained in the CWH from approximately 10:23pm until his eventual release on bail by police at 7:40am the following morning. He did not have to go to court as he had not been charged with contravention of bail conditions. At no time during that period was it revealed to CWH staff that on the Friday Mr Daly had been reported as a missing person from Glenside or that he was a detained patient. I observe that a close examination of the document to which I have just referred might have caused an astute observer to connect the address of Cleland House, Glenside Campus to a warning cited within the same document that Mr Daly suffered from a psychiatric disorder and might have prompted a conclusion that Mr Daly was a patient at that facility, or at least have prompted an enquiry as to whether he was or not. Constable Dunn told me in evidence that she noticed this address when Mr Daly was processed at the CWH after his second arrest. She told me that she asked Mr Daly whether he was still a resident at Glenside to which he had replied 'no comment'. Unfortunately, the penny did not drop. It did not occur to her that Mr Daly had a very recent connection with Glenside as they encounter many people out of that facility. She did say, however, that if she had known that Mr Daly was still under detention at that facility, she would have taken the necessary steps to ensure that he was returned there. In any event the connection was not drawn<sup>27</sup>. Constable Attenborough, who was to organise Mr Daly's release on bail on the Saturday morning, told me that he did not notice the Cleland House, Glenside address on the document, but if he had so noticed it, it would have prompted him to make further enquiries about Mr Daly's current circumstances<sup>28</sup>.

6.5. In fact Constable Dunn formulated a view that Mr Daly ought to be released on bail. This attitude was at odds with the earlier stance adopted by police during Mr Daly's first period of custody, namely that Mr Daly should not be released on bail. It appears

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<sup>26</sup> Exhibit C38o

<sup>27</sup> Transcript, page 188

<sup>28</sup> Transcript, page 294

that during Mr Daly's second period of custody, police regarded the offences for which he had most recently been arrested in the restaurant on North Terrace as relatively minor and had taken the compassionate view that keeping him in custody until the Monday morning, when he would be taken to Court, would be a disproportionate response to his alleged offending. And it will also be remembered that on the Friday afternoon the Magistrates Court had granted him bail over their objections. However, that police should regard the more recent alleged offending as relatively minor is surprising. Mr Daly had exhibited aggressive behaviour towards a female David Jones security officer and had to be physically restrained in relation to her and had uttered 'I'll fucking get you bitch'. In his time in the cells overnight he had yelled obscenities to female staff in the CWH and even as late as 7am on the Saturday morning he had exhibited aggression towards staff. I add here that the suggestion that Mr Daly was in reality bailed because he was too much of a nuisance has been rejected by police. Ironically, the officer who arranged for Mr Daly's release on bail on the Saturday morning, Constable Attenborough, was the very same officer who had formulated the objections to Mr Daly's bail the day before.

- 6.6. Based purely on the obvious lack of merit of Mr Daly's case for bail on the Saturday morning, some might regard as questionable the decision to bail Mr Daly at that time. However, there is no evidence to suggest that either his arresting officers or those responsible for his custody in the CWH knew of Mr Daly's erstwhile missing person status or of his then current status as a detained patient under the MHA.

7. **Events following Mr Daly's release on Saturday 12 April 2008**

- 7.1. It is not known exactly how and where Mr Daly spent his time between the morning of Saturday 12 April 2008 and the early hours of the morning of 20 April 2008 when the fire occurred at the Queens Lane premises. However, what is known is that he was again arrested for theft during the night of 15 and 16 April 2008. From the papers that were tendered to the Court in respect of this arrest,<sup>29</sup> the alleged offence was committed at Parisi's Restaurant in Hyde Park. It was made a condition of his bail on this occasion that he not attend that premises. Mr Daly was bailed yet again in the early hours of the morning of 16 April 2008. His address was given as 5 Queens Lane, Glen Osmond. I note that it had been made a condition of his bail when he was released on 12 April 2008 that he reside at Room 56 Jacksons Motor Inn at 373 Glen Osmond Road, Glen Osmond.

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<sup>29</sup> Exhibit C38x - Exhibit C38ae

- 7.2. Earlier that week on Monday 14 April 2008 Dr Bruja had contacted the CWH to check if Mr Daly was still there and was informed that he had been bailed out on the Saturday. She made a number of telephone calls attempting to establish his whereabouts that included calls to his home phone, to the Jacksons Motor Inn and to Palm Lodge, all with no success. It will be remembered that Mr Daly's hearing before the Guardianship Board in respect of the application for the community treatment order was to be held that afternoon. Dr Bruja attended the hearing and Mr Daly did not appear. A community treatment order was granted for 12 months.
- 7.3. Also on 14 and 15 April 2008 Dr Bruja made a number of enquiries in order to establish Mr Daly's whereabouts. Of course by then the detention order had lapsed but there was the matter of the enforcement of the community treatment order. It appears that there were no new plans ever formulated to re-detain Mr Daly were he to be located. At one point in time the Felixstow Mental Health Services, otherwise known as the Homeless Team, had contact with Mr Daly. On 1 April 2008 when Mr Daly was meant to have been residing at Palm Lodge, the Homeless Team had established that he had left the facility. Between 1 April and 7 April 2008 the Homeless Team had no contact with Mr Daly and his whereabouts were then unknown. Thus he was discharged from the Homeless Team's responsibility on 7 April. They made what is known as a 'client of concern' entry into the mental health computer system. The client of concern notification went out to all Acute Crisis Intervention Service (ACIS) teams. That would mean that if the client were to present at an Emergency Department of a hospital, ACIS would be made aware of that. Mr Daly did so present at the Emergency Department of the RAH on 10 April 2008. The client of concern classification still remained on foot, even after Mr Daly's presentation at the RAH and detention at Glenside that prematurely culminated on 11 April 2008.
- 7.4. The record of interview of Ms Nicole Galea<sup>30</sup>, who was the social worker for the Homeless Team attached to the Felixstow Mental Health Service, reveals that when contacted by Glenside after Mr Daly had absconded, and when it was revealed to Glenside that he had been released by police, the Homeless Team's recommendation was that Glenside put out another missing persons report having regard to the fact that Mr Daly was now subject to the community treatment order that had been made on

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<sup>30</sup> Exhibit C9a

Monday 14 April 2008. The Homeless Team did not regard themselves as having any responsibility to endeavour to enforce that order or to contact Mr Daly.

- 7.5. I note here that Section 23(4) of the MHA empowered a member of the police force to apprehend a person who is the subject of a treatment order, such as Mr Daly was, and who had without reasonable excuse refused or failed to comply with the order. I am unable to say why it was that consideration does not appear to have been given to the exercise of this power. There is no evidence before me as to whether or not, and if not, why not, an attempt was made by any authority to contact or approach Mr Daly at either of the two addresses that they had for him, namely the Queens Lane address and the Jacksons Motor Inn address.

## **8. Conclusions**

- 8.1. Mr Daly was admitted as a detained patient to Cleland House at Glenside Hospital on Thursday 10 April 2008. He had a clear recent history of leaving the campus without leave. Nonetheless, his risk of absconding was assessed as being moderate. He was accommodated in an open environment in Cleland House. His frequency of observation was determined to be half hourly. However, in practice, on the morning of Friday 11 April 2008 when Mr Daly indicated he was going for a walk in the hospital grounds, there was no attempt made to sight him until more than an hour had passed. Mr Daly left the facility without leave and a missing persons report was not made at Glenside or referred to police until several hours later.
- 8.2. The decision to place Mr Daly in an open environment and the level of scrutiny accorded to him did not properly take into consideration Mr Daly's propensity to leave the facility without leave, or his propensity to remain at large for extended periods.
- 8.3. When Mr Daly was arrested on two occasions on Friday 11 April 2008, SAPOL procedures were inadequate insofar as officers responsible for his custody were not made aware of the fact, on either occasion, that Mr Daly was a missing and detained patient from Glenside Hospital and that he was therefore liable to be apprehended by police and returned to Glenside Hospital upon his release from custody or, if remanded in custody by the Court, that arrangements would need to be made for him to be accommodated in an approved treatment centre that could cater for persons in custody. In addition, SAPOL procedures were inadequate to ensure that those persons

responsible for the administration of his detention at Glenside Hospital were made aware of the precise custodial circumstances that would apply to Mr Daly.

- 8.4. In my view, while no personal criticism can be directed at Mr Broomhead, it has to be said that his training and experience did not furnish him with the necessary skills to carry out the responsibilities assigned to him. Mr Broomhead had a limited understanding of the nature of detention under the MHA and an inadequate understanding of procedures that were likely to be implemented in respect of Mr Daly's continuing custody or his release on bail. In my view also Mr Broomhead was inadequately supervised. All this to my mind brings into serious question the appropriateness of untrained civilian personnel performing duties that would be more appropriately assigned to fully trained and sworn police officers.
- 8.5. I find that staff at Glenside Hospital were incorrectly informed by Mr Broomhead that Mr Daly would be kept at the CWH over the entire weekend and would not go to Court until the Monday morning. This information caused staff at Glenside Hospital to refrain from taking any further action in respect of Mr Daly being returned to Glenside.
- 8.6. Mr Daly was released on bail by the Adelaide Magistrates Court on the afternoon of Friday 11 April 2008. He was thereby enabled to remain at large when he should have been apprehended and returned to the Glenside facility. Mr Daly was arrested again in the evening of that same day and was released on bail the following morning. He thereafter remained at large until his period of detention expired on Sunday 13 April and thereafter until his further arrest during the night of 15 and 16 April 2008. When Mr Daly was released on the morning of Saturday 12 April 2008, again steps ought to have been taken to ensure that he was apprehended and returned to the Glenside facility.
- 8.7. The reason Mr Daly was not returned to the Glenside facility at any point in time on Friday 11 April 2008 or on Saturday 12 April 2008 was that those responsible for his custody were unaware of his detained status.
- 8.8. Mr Daly's period of detention expired in the early hours of the morning of Sunday 13 April 2008.
- 8.9. Apart from a further brief period of police custody during the night of 15 and 16 April 2008, Mr Daly remained outside the purview of the detention provisions of the MHA

having regard to the fact that his period of detention had expired and he had been discharged from Glenside Hospital.

- 8.10. Mr Daly died from burns sustained in a house fire that occurred in the premises at 5 Queens Lane, Glen Osmond in the early hours of the morning of 20 April 2008. I find that Mr Daly had deliberately set that fire. I am unable to reach any conclusion as to whether Mr Daly did so with any intention of harming himself or ending his life.
- 8.11. If Mr Daly had been returned to Glenside Hospital on either 11 or 12 April 2008, as he should have been following either release from police custody, in my opinion he undoubtedly would have been subject to further psychiatric review, the purpose being to determine whether Mr Daly should have been further detained for a period not exceeding 21 days. If Mr Daly had been further detained beyond Sunday 13 April 2008, in my view it is more than likely that Dr Bruja's stated opinion in her discharge summary, namely that Mr Daly would benefit from management in a closed ward if readmitted, would have been acted upon and that he would have been accommodated in a closed ward environment. Clearly the decisions as to whether Mr Daly would be further detained and then have been kept in a closed or open environment, would have needed to take into consideration his departure from the facility without leave on the morning of Friday 11 April 2008 and the fact that he had allegedly committed offences during the course of that day for which he had been arrested and taken into custody. Although it cannot be determined with absolute certainty that Mr Daly would have been detained beyond Sunday 13 April 2008, in my view the fact that Mr Daly was not returned to Glenside Hospital on either 11 or 12 April 2008 meant that Mr Daly lost any chance that he might have had of being further detained and kept in a safe environment. In my view there was a missed opportunity for Mr Daly to be properly psychiatrically evaluated over the weekend of 12 and 13 April 2008. That in turn meant that there was a missed opportunity for Mr Daly, on the morning of the fire in which he sustained his fatal injuries, to have been housed in safe and therapeutic accommodation at Glenside Hospital.

## **9. Recommendations**

- 9.1. 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.

- 9.2. I received in evidence the affidavit of Dr Elias Rafalowicz<sup>31</sup> who is the Executive Director of the CNAHS Mental Health Directorate. In his affidavit Dr Rafalowicz asserts that the risk of ‘absconding’, which is the word used by Dr Rafalowicz in his affidavit, is a factor which must be taken into account when determining the appropriate unit within an approved treatment centre in which a detained consumer should be placed during their detention. He also asserts that the treating team will also look for the most appropriate and least restrictive option when determining the treatment regime for each consumer. However, he states that there is no imperative that a detained patient be placed within a locked unit due to the fact of their detention, even if they have a history of absconding. Dr Rafalowicz also explains in his affidavit the outcome of a root cause analysis that was conducted under the confidentiality provisions of Section 64D of the Health Commission Act 1976 in respect of Mr Daly’s death. A number of recommendations were made following that analysis. Included among the recommendations was that all clinical staff be reminded of the requirement to complete a management plan for any risk of absconding rated at moderate or above. One would like to think that any person with Mr Daly’s clear and recent history of absconding would, if kept in an open environment, be subjected to very frequent scrutiny and not be allowed to virtually come and go as he pleased within the grounds of any approved treatment centre.
- 9.3. The affidavit of Assistant Commissioner Neil Smith<sup>32</sup> was also tendered to the Inquest. His affidavit explains that as a result of the internal review that was conducted following Mr Daly’s death, a number of recommendations were made that include modification of a missing persons report to identify any detention status of the missing person, remembering that Mr Broomhead’s report did not mention that in terms.
- 9.4. Assistant Commissioner Smith gave oral evidence before me and explained a procedure whereby the ‘wanted missing flag’ that is raised during the currency of a persons status as missing, and an ‘active detention order flag’ will only be taken down when it is clear that the person reported as missing has been returned to the approved treatment centre. This measure, together with another measure that would require staff at the CWH to perform regular PIMS checks as to the status of their prisoner, should mean that any person in custody who is a detained patient at large should be identified as such at a time prior to their release from the CWH. I would add to this

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<sup>31</sup> Exhibit C53

<sup>32</sup> Exhibit C52

that such measures should be regarded as mandatory in their compliance and that they should therefore be included in police General Orders. I would also add that this Inquest has identified a need for direct communication to take place between those officers whose responsibility it is to maintain a missing persons report and staff at a police custodial facility regarding the current status of a missing person in custody.

- 9.5. The Inquest has also in my view highlighted a need for the Commissioner of Police to reassess the desirability or appropriateness of civilian staff performing duties that might more appropriately be performed by sworn officers.
- 9.6. The Inquest has also highlighted the fact that once a detained person's period of detention has expired, the police power of apprehension of a person at large (in the new legislation referred to as a power to take a person 'into his or her care and control') is no longer applicable. The new Mental Health Act 2009, on my reading, would perpetuate this undesirable state of affairs.
- 9.7. I make the following recommendations:
  - 1) That the Minister for Mental Health and Substance Abuse cause the continued development of protocols relating to treatment centres under the Mental Health Act 2009 to ensure that detained patients who are considered to be at risk of absconding from treatment centres are prevented from doing so;
  - 2) That the Minister for Mental Health and Substance Abuse consider introducing an amendment to the Mental Health Act 2009 to empower a member of the police force to apprehend, or take into his or her care and control, a patient at large who has absconded from an approved treatment centre during the currency of a period of detention, notwithstanding that that period of detention has expired;
  - 3) That the Commissioner of Police amend police General Orders in the following manner:
    - a) to direct police officers not to remove a wanted missing flag and the active detention order flag at any time prior to it being established that the person has been returned to the approved treatment centre;
    - b) to require staff of a police custodial facility to conduct a check when releasing a person in custody as to whether that person has been reported as

missing and whether an active detention order flag is in existence in respect of that person;

- c) to ensure that officers responsible for compiling and maintaining missing persons reports communicate with staff of a police custodial facility when it is revealed that the missing person has been taken into police custody;
  - d) to ensure that missing persons reports are immediately vetted by a more senior officer and, in any case, vetted during the period in which the person is still regarded as missing.
- 4) That the Commissioner of Police review the desirability or appropriateness of civilian staff performing duties that might more appropriately be performed by trained and sworn police officers.

*Key Words: Psychiatric/Mental Illness; Burns; Inhalation of products of combustion; Police*

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

*Seal the 27<sup>th</sup> day of September, 2010.*

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*Deputy State Coroner*