CORONERS ACT, 2003

SOUTH  *AUSTRALIA*

FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 17th and 20th days of May 2016, the 16th day of June 2016, the 21st day of July 2016, the 26th day of August 2016, the 12th day of October 2016, the 21st, 22nd, 23rd, 24th, 27th and 28th days of February 2017 and the 28th day of June 2017, by the Coroner's Court of the said State, constituted of Mark Frederick Johns, State Coroner, into the death of Brenton Winton McConnal.

The said Court finds that Brenton Winton McConnal aged 47 years, late of 7B, 58 William Street, Norwood, South Australia died at Marksman Indoor Firing Range, 163 Franklin Street, Adelaide, South Australia on the 15th day of December 2015 as a result of a gunshot wound of the head. The said Court finds that the circumstances of his death were as follows:

1. Introduction and cause of death

1.1. Brenton Winton McConnal died on 15 December 2015 at the Marksman Indoor Firing Range in the central business district of Adelaide. He was 47 years of age at the time of his death. His cause of death was gunshot wound of the head[1] and I so find. Mr McConnal used a firearm at the shooting range to shoot himself in the right side of the head thus causing the fatal wound.

1.2. Mr McConnal had been arrested and charged with three counts of aggravated assault against his ex-partner in August 2013. Mr McConnal was remanded in custody in James Nash House. While at James Nash House Mr McConnal was under the care of

[1] An autopsy was conducted by Dr Wills of Forensic Science South Australia who gave a post-mortem report (Exhibit C6a) giving that cause of death

psychiatrist Dr Paul Furst. Dr Furst said that from the beginning it was difficult to arrive at a precise diagnosis for Mr McConnal. However, over time he was able to conclude that Mr McConnal was suffering from a delusional disorder - mixed grandiose and persecutory type. Dr Furst explained that this delusional disorder is one of the psychotic disorders where the patient breaks from reality and cannot tell the difference between reality and his or her own thoughts. Dr Furst explained that in contrast to schizophrenia where delusions are broad and illness is obvious, a delusional disorder relates to one group of delusions and usually other areas of a person's functioning appear normal.

1.3. Dr Furst said that in Mr McConnal's instance his delusions centred around a grandiose belief that he had a special intelligence and was responsible for solving world problems such as climate change and the world derivatives market. Dr Furst said that Mr McConnal was not otherwise disorganised and took care of himself and his personal appearance and his presentation on the ward was controlled. The diagnosis of delusional disorder was supported by Dr Jules Begg and Dr Craig Raeside and in due course reports to that effect were tendered to the Court. The result was that on 12 January 2015 Mr McConnal was by order of a Magistrate discharged from James Nash House pursuant to section 269O of the Criminal Law Consolidation Act 1935. He was ordered to be under supervision for a limiting term of three years with a number of conditions. Condition 10 of the order[2] stated:

> 'The defendant is prohibited from possessing a firearm or ammunition (both within the meaning of the Firearms Act 1977) or any part of a firearm.'

1.4. Following his release from James Nash House, Mr McConnal moved into residential accommodation at Manningham. In the ordinary course the Eastern Community Mental Health Service would have been responsible for his primary care. However, Dr Furst decided that he would continue to keep Mr McConnal under his care because as a senior psychiatrist he was familiar with the case and did not feel that it was appropriate to hand the matter onto another psychiatrist or someone less experienced. Mr McConnal was prescribed paliperidone by way of a monthly 100mg depot injection. Dr Furst noted some improvement in Mr McConnal under this regime of medication. He said that overall he noticed that the delusional thoughts had not subsided however Mr McConnal was not as guarded and was a little less agitated due to the paliperidone.

[2] Exhibit C21c

Mr McConnal regularly attended at Howard House to receive his monthly depot injection. As time went by Dr Furst noted that the symptoms were not being expressed as intensely and were not as all-consuming as when Mr McConnal first presented. However, the delusional disorder did not further improve and it was Dr Furst's belief that Mr McConnal's primary motivation for complying with the order was to ensure that he did not return to prison or to James Nash House. In short, Dr Furst had limited success in gaining any rapport with Mr McConnal. He noted some limited improvement in his mental state while taking the paliperidone, and significantly Dr Furst had no immediate concerns of any danger to Mr McConnal from himself or the broader community. Dr Furst said that the last consultation he had with Mr McConnal occurred on 6 October 2015 when he continued to remain guarded and lacked insight. Dr Furst concluded that the medication was of limited usefulness[3].

1.5. Mr McConnal was also subject to a police interim intervention order under the Intervention Orders (Prevention of Abuse) Act 2009 that was issued shortly after his arrest in 2013. I note that it was a condition of that order that he be prohibited from possessing a firearm.

1.6. The interim intervention order was confirmed by order of the Adelaide Magistrates Court on 27 March 2015[4] and the order provided that any firearm in the possession of the defendant and any licence or permit held by the defendant authorising possession of a firearm must be surrendered to the Registrar of Firearms forthwith and also that for so long as the intervention order remains in force, any licence or permit held by the defendant authorising possession of a firearm is suspended and the defendant is disqualified from holding or obtaining a licence or permit authorising possession of a firearm including in the course of his or her employment.

2. <u>Marksman Training Systems Pty Ltd (Marksman)</u>

2.1. Marksman Training Systems Pty Ltd (Marksman) operates a commercial firing range at 163 Franklin Street, Adelaide. Mr McConnal attended at the range in the late afternoon of 15 December 2015. He was in the company of Mr Pickering who was a casual acquaintance. Mr Pickering said that he had not seen Mr McConnal for two or three years, but two weeks prior to the attendance at Marksman he had cause to speak

[3] Exhibit C16
[4] Exhibit C32

to Mr McConnal who had said that he would like to catch up. On 14 December 2015 Mr McConnal rang Mr Pickering and suggested that they go to the Marksman Firing Range in the city the following day to which Mr Pickering agreed. As a result a booking was made by Mr Pickering for 4pm on 15 December 2015.

2.2. Mr Pickering said that it was not unusual for Mr McConnal to suggest that they go to a firing range as they had done this once or twice before, the most recent time having been some five years prior. Mr Pickering said that he arrived at the range first and Mr McConnal arrived about ten minutes before the scheduled time of the booking. A sign-in card was completed and they watched the required range safety DVD which lasted for about five or ten minutes. They selected a shooting package under which they would get a Glock pistol each and a number of rounds of ammunition to fire at the range. They entered the range and the instructor gave them a safety demonstration which took a few minutes and they proceeded to their respective booths. Mr Pickering was in the fourth booth and Mr McConnal was to his left in the third booth. Mr Pickering could not see Mr McConnal once they had entered the booths. The instructor gave them permission to fire and they engaged in some shooting. Mr Pickering said that he estimated that Mr McConnal would have fired a number of rounds before Mr Pickering heard the instructor shout 'no' and then was yelling in an anguished manner. Mr Pickering then looked around to see that Mr McConnal was lying on the ground and was bleeding from the head. It was plain from his statement that Mr Pickering had no idea what Mr McConnal was planning to do that day[5].

3. The Firearms Act 1977

3.1. The following provisions of the Firearms Act 1977 are relevant. Section 5(1):

> '***commercial range operator*** means a person who carries on the business of providing—
>
> (a) a shooting range (not being a shooting gallery) for use by members of the public; and
>
> (b) firearms for use by members of the public at the range.'
>
> '***licensed dealer in firearms or ammunition*** means a person who is licensed under this Act … to carry on the business of dealing in firearms or ammunition.'
>
> '***recognised commercial range operator*** means a commercial range operator declared to be a recognised commercial range operator by the Minister pursuant to this Act.'

[5] Exhibit C9a

3.2. Section 6 of the Act provides that the Commissioner of Police is the Registrar of Firearms and the Registrar is the principal administrative functionary under the Act.

3.3. Part 3 of the Act deals with possession and trafficking of firearms and licensing of dealers.

3.4. Division 1 deals with possession and use of firearms and provides that a person must hold a firearms licence in order to possess firearms and Division 2 deals with trafficking in firearms. Division 2AA deals with permits for acquisition of firearms and Division 2A deals with transfer of possession of firearms. I will not analyse these Divisions because they are not presently relevant.

3.5. Division 3 of Part 3 provides that a person who carries on the business of dealing in firearms must hold a licence for which an application may be made under section 17 of the Act.

3.6. Division 6 of Part 3 deals with firearms clubs, paint-ball operators and commercial range operators. This Division permits the Minister to declare a firearm club to be a recognised firearm club (section 21C).

3.7. Section 21E provides for recognised commercial range operators. The Minister may declare the operator of a commercial range to be a recognised commercial range operator. Section 21F provides that if an activity involving the use of a firearm takes place on the grounds of a recognised firearms club and those grounds are not approved under that section, recognition of the club is automatically revoked. The section also provides for the Registrar to approve the grounds of a recognised firearms club for use in connection with its proposed activities. Section 21G provides that if any activity involving the use of a firearm takes place on the range of a recognised commercial range operator and the range is not approved in relation to that activity, recognition of the operator is automatically revoked. The section also provides that the Registrar can approve the commercial range for use in connection with its activities. An approval is subject to conditions prescribed by the regulations and any conditions imposed by the Registrar. Subsection 9 of section 21G provides that the Registrar may, for the purposes of determining an 'application for approval' under this section 'enter and inspect the range of a recognised commercial range operator at any reasonable time'.

3.8. In Part 4 provision is made for the registration of firearms.

3.9. The Act makes provision in Part 4A for the Registrar to cancel licences in certain circumstances and for an aggrieved person to appeal against decisions of the Registrar to the District Court.

3.10. Section 36(fa) of the Act provides for the making of a certificate in aid of proof by the Registrar certifying that the range of a recognised commercial range operator was or was not approved under the Act. Such a certificate will be taken in legal proceedings as being proof of the matters so certified in the absence of proof to the contrary.

3.11. Regulation 54 of the Firearms Regulations 2008 provides, and at all relevant times has provided:

> 'A recognised paint-ball operator or a recognised commercial range operator must not alter the grounds or range used by the operator without first obtaining the approval of the Registrar.'

And, secondly, regulation 46 of the Regulations provides:

> 'A recognised firearms club must not alter the range or ranges used by the club without first obtaining the approval of the Registrar.'

4. Background relating to Marksman

4.1. In this section I have borrowed heavily from the reasons for ruling of His Honour Judge Tilmouth in **Marksman Training Systems Pty Ltd v The Registrar of Firearms** [2014] SADC 150. Marksman operates a family owned and operated business as a firearms dealer from its premises in the Adelaide CBD. It is also a recognised commercial firing range operator which is housed adjacent to, but within the same property as the dealership and from which it conducts regular firearms activities. Mr Andrew Marks is Principal Director of Marksman. Marksman is required to hold a firearms licence in order to store firearms on the premises for use by the operator or by others on its firearms range. However, when services are provided by the range operator to licensed firearms holders who bring their own firearms to the range, then no firearms licence is required. This occurs at Marksman's premises with respect to members of the Adelaide Indoor Firearms Association and the Sporting Shooters Association of Australia who regularly use and shoot at the range. Because the members of those clubs are licensed firearms holders, their activities do not of themselves require Marksman to hold a firearms licence because the member's individual firearms licences authorised them to possess their respective firearms.

However when the commercial range is being operated for unlicensed members of the public to use firearms at the range, the firearms licence is required. Because Marksman offers both of these services from the Franklin Street premises it must hold a firearms licence to cover unlicensed members of the public coming to the commercial range.

4.2. In addition to the firearms licence, Marksman holds a dealer's licence under which it sells firearms to appropriately licensed persons.

4.3. As I have said, Marksman is a recognised commercial firing range operator and the evidence at Inquest showed that it is one of only two recognised commercial firing range operators in the State. The other range is called The Gunnery, Gun Shop and Shooting Range and it is located at Christies Beach.

5. The Morris and Jast Inquest

5.1. In 2010 and 2011 this Court conducted an Inquest into the deaths of Julia Hisae Morris and Raymond Glen Jast[6]. Each of those persons died from a gunshot wound to the head and in each case they had attended at the Marksman range to purchase a shooting package. Each of them turned the weapons against themselves while they were in the course of shooting on the indoor range. I will refer to the Inquest as the Morris and Jast Inquest. The finding was handed down on 8 June 2011 and the Court made the following recommendations:

> '1) That the Attorney-General consider the amendment of the Firearms Act to require that commercial range operators, including firearms clubs, be obliged to install suitable tethering and/or bullet proof screening for use by persons who are not the holder of a firearms licence or member of a club. The requirement should be subject to such exceptions as may be prescribed, including the provision of training to security organisations where the trainees may not hold firearms licences. There may be other necessary exceptions;
>
> 2) That the Attorney-General consider the material contained in this finding with a view to deciding whether it is necessary to amend the Firearms Act to make the situation clearer regarding the application of the prohibition order regime to mental health notifications.'

As at the last day sitting day of the present Inquest, namely 28 February 2017, the simple legislative amendment recommended by the Court in June 2011 had not become part of the law of the State. There is no doubt that if the Firearms Act had been amended

[6] Inquest 22/2010

as recommended at any point during the four and a half years between 8 June 2011 and 15 December 2015, Mr McConnal's death would have been prevented, at least by that method. That is because the Firearms Act would have required the installation of equipment that would have prevented him from turning the weapon upon himself. It is a poor reflection on the Government of this State that such an amendment was not put before Parliament. As will be seen, the responsibility for that omission rests on SAPOL. SAPOL gave wrong information to Ministers about tethering at Marksman. In Ministerial briefings SAPOL informed the Minister for Police that tethering was to be implemented during 2012. Yet SAPOL was well aware by July 2012 that tethering had not been implemented, and that SAPOL had itself embarked on a course that effectively prevented Marksman from implementing tethering thereafter, until the intervention of this court in May 2016.

6. Steps taken by Marksman and SAPOL to progress the approval of tethering after June 2011

6.1. On 9 June 2011 Senior Sergeant Pippos of the Firearms Branch contacted Marksman to arrange a meeting to discuss the Morris and Jast findings. Marksman agreed to the meeting subject to the availability of its solicitor. The arranged time became unsuitable but Mr Marks inadvertently neglected to inform Senior Sergeant Pippos[7]. The meeting did not take place. By letter dated 13 August 2011[8] Chief Inspector Ralphs (now Chief Superintendent), who was in charge of the Firearms Branch and was the delegate of the Registrar of Firearms, wrote to Mr Marks advising that he was concerned that the meeting had not occurred and that he was considering imposing a condition on Marksman's licence to ensure firearms must be tethered or bullet proof screening installed for use by persons who are not the holder of a firearms licence or member of a club. The letter requested a response in writing by 9 September 2011.

6.2. Marksman arranged to meeting with Chief Inspector Ralphs on 8 September 2011. In a facsimile letter prior to that meeting[9] Marksman's solicitor noted that Mr Marks did not have expertise in designing a tethering system and would be reliant upon the Registrar to nominate a tethering system. The meeting duly took place as scheduled. In a follow-up email from Marksman's solicitor to Chief Inspector Ralphs dated

[7] Exhibit C29
[8] Exhibit C27a, Tab 4
[9] Facsimile dated 6 September 2011, Exhibit C27a, Tab 7

22 September 2011[10] the meeting is discussed. The solicitor prefaced the email by advising that Marksman would cooperate fully with any lawful directions of the Registrar to implement any modifications to the firing range the Registrar considered desirable. Furthermore, Marksman was keen to ensure that its operational procedures and practices would provide a safe and enjoyable environment for staff, patrons and club members. The solicitor noted that Marksman had expressed concern that the Registrar did not appear to be aware that the Morris and Jast findings were directed at all firing ranges and not just at Marksman. The email specifically addressed the issue of tethering. It noted that the meeting had agreed that Mr Marks would identify the proposed specifications for a tethering system for consideration and approval by the Registrar. It then set those tentative specifications out in some detail as follows:

'• must be designed by a recognised expert in the field of ballistic design & ballistic engineering related to indoor firing ranges;

- must be approved by Safeshot USA (the company that manufactured & designed the current MIFR[11] range system) as being suitable for use in the MIFR;
- MIFR to arrange for manufacturers of firearms used on the range to 'sign off' on the proposed system to ensure warranties & insurance clauses are not voided;
- must be manufactured by a recognised tethering system manufacturer to the final design standard;
- must be readily attachable/detachable/adjustable to suit the variety of makes & models & types of firearms (e.g. air rifles, handguns, shotguns etc) and variety of persons using the range;
- must be designed so that ejected cases are not deflected back towards the firer;
- allow shooters to operate firearms from a natural standing position;
- allow range safety officers or instructors to safely and efficiently handle or clear firearms (e.g. in the event of stoppages);
- must be capable of readily being installed or removed so as to suit non licenced persons (tethered) and licenced persons (not tethered);
- the Registrar to proof the system (note, currently MIFR insurance does not cover the proofing of the proposed system at the MIFR. MIFR do not wish to provide the personnel or firearms to proof the proposed system so as not to incur potential liability);
- the Registrar to indemnify MIFR once the system is designed, built, proofed & installed.' [12]

[10] Exhibit C27a, Tab 9
[11] Marksman Indoor Firing Range
[12] Exhibit C27a, Tab 9

The email went on to detail other steps that had been taken by Marksman to improve procedures. This included the introduction of a buddy system whereby a minimum of two people would be required to make a booking to undertake shooting activities and that both people must be known to each other. It also included a no entry policy where if the staff were not comfortable with taking a person into the range they could refuse entry. It included a watchlist maintained by Marksman of persons not to be granted access based on Marksman's own records and those provided by SAPOL via the public access register. It included staff meetings and staff training. Finally the email advised that Mr Marks was proposing to travel to Queensland and Western Australia in order to visit ranges using a tethering system and get a better understanding of operational issues and safe design for such systems.

6.3. The email included reference to the introduction of a cooling off period under which customers who had not made a booking would be required to wait an hour prior to undertaking a shooting activity. As it happens, the reference to a cooling off period was incorrect. Its genesis was in discussions on 8 September 2011 in which Mr Marks indicated a willingness to implement such a requirement, however Mr Marks did not make a note of it and evidently overlooked that he had indicated that he would implement it. It never was implemented and did not form part of Marksman's procedures at the time of Mr McConnal's death. In any event, becfaause Mr McConnal and Mr Pickering had made a booking, if there had been a one hour cooling off period it would not have applied in their case as it was only intended to apply to 'walk-in' customers as is evident from the email.

6.4. The next communication was a letter from Marksman's solicitor dated 2 December 2011 to Chief Inspector Ralphs[13]. The letter was to advise of Mr Marks's intended travel to Perth and/or Brisbane to follow-up inquiries about the tethering of firearms. The letter said that in the interim Mr Marks would welcome input from the Registrar as to tethering systems that the Registrar considered efficacious or desirable. The letter then advised as follows:

> 'It is anticipated that, following his return, Mr Marks will endeavour to design a tethering device or system suitable for implementation at the Marksman commercial range. Once again Mr Marks would welcome input from the Registrar as to the suitability of the device or system so designed and formal approval of its implementation.'

[13] Exhibit C27a, Tab 10

The letter was received by Chief Inspector Ralphs on 6 December 2011 and that day he sent an email to his counterparts in other jurisdictions seeking information about whether commercial ranges within their jurisdictions used tethering systems[14]. The outcome of this inquiry was a table, apparently prepared by Chief Inspector Ralphs, noting the status of a number of issues about such matters concerning commercial firearms ranges in the other jurisdictions[15]. On 16 December 2011 Chief Inspector Ralphs replied to the letter dated 2 December 2011 noting that Mr Marks would be undertaking site visits of other installations. The letter stated that Chief Inspector Ralphs would like to have the matter resolved as soon as possible, preferably in early 2012 in order for a report to be prepared for the Coroner 'thus demonstrating Marksman's social responsibility amongst other reasons'[16]. It is notable that this letter did not contain any guidance as to design features or the nature of the tethering system and left the matter entirely to Marksman.

6.5. By letter dated 6 January 2012 Marksman's solicitor wrote to Chief Inspector Ralphs to advise that Mr Marks was in Queensland solely for the purpose of visiting commercial firearms ranges which utilise tethering systems. The letter advised that Mr Marks would endeavour to design a tethering device with professional assistance. The letter repeated that Mr Marks would welcome input from the Registrar as to design features and, in particular, what the tethering system should be designed to achieve. The letter advised that once the design had been developed and approved by the Registrar, Mr Marks would then arrange for a tethering device to be constructed, tested and installed. Significantly, the letter said:

> 'Mr Marks is undertaking this project himself and is doing so in good faith with the aim of developing, constructing and implementing a system which enhances the safe handling and use of firearms at the MTS[17] range.' [18]

6.6. By letter dated 11 January 2012 sent on behalf of Chief Inspector Ralphs, Marksman's solicitor was informed that the Chief Inspector was on leave[19]. I note that the letter forwarded on behalf of Chief Inspector Ralphs did not provide any guidance as to the nature of a tethering system or the objective it was intended to achieve.

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[14] Exhibit C27a, Tab 11
[15] Exhibit C27a, Tab 12
[16] Exhibit C27a, Tab 13
[17] I believe this was another reference for the range and probably is an acronym for Marksman Training System. In any event it is of no moment.
[18] Exhibit C27a, Tab 14
[19] Exhibit C27a, Tab 15

6.7. The next development was a letter from Marksman's solicitor to Chief Inspector Ralphs dated 2 March 2012[20] advising that Mr Marks had undertaken the site visits in Queensland and that upon returning to Adelaide he had obtained the assistance of Mr Steven Burgan, a gunsmith, and had developed a prototype of a firearms tethering system. The letter advised that the tethering system had been tested at the range on Friday 3 February 2012 and that it was concluded that the prototype required some modifications. The letter advised that a modified prototype will be delivered to the range for further testing in the near future and once a good working model was developed Mr Marks would welcome testing of the prototype by the Registrar and subsequent formal approval of the same for use in the commercial range, and that Mr Marks would then require further time in order to manufacture, install and test the requisite number of devices.

6.8. On 14 March 2012 Marksman met with Chief Inspector Ralphs and discussed its progress in relation to tethering. Marksman indicated that it expected that a prototype would be developed and tested by the end of April 2012[21].

6.9. Mr Burgan was not further involved in the production of prototype devices. Mr Marks instead engaged Mr Kevin Stubber to produce a revised prototype. Once he was satisfied with that prototype and in order to facilitate the expeditious installation of the devices after approval was given, Mr Marks arranged for the manufacture by First Call Welding Services, of 20 copies of its prototype. Ten were for use with .357 revolvers and ten were to be for use with Glock 9mm handguns[22].

6.10. On 29 June 2012 Marksman's solicitor telephoned SAPOL apparently to set up a meeting with Chief Inspector Ralphs with the object of arranging for Chief Inspector Ralphs to attend at Marksman's premises to inspect the prototype tethering device[23]. Marksman's solicitor was informed that Chief Inspector Ralphs was on leave until 2 July 2012. In any event a meeting was arranged for Chief Inspector Ralphs to attend at Marksman's premises on 10 July 2012 at 10am[24].

[20] Exhibit C27a, Tab 18
[21] Exhibit C27a, Tabs 19-20
[22] Exhibit C29, Paragraph 38
[23] Exhibit C2, letter dated 7 March 2016 from Marksman's solicitor to Superintendent Hand at Paragraph 1.6
[24] Exhibit C28a, Tab 22

6.11. On 5 July 2012 Chief Inspector Ralphs' assistant advised Marksman's solicitor by email[25] that the meeting scheduled for 17 July 2012 (this was a mistaken reference and should have read 10 July 2012) would have to be cancelled 'at this time' and stated that 'please note that another appointment will be set up in due course'. As a matter of record, no further appointment was ever arranged.

6.12. On the same day, 5 July 2012, Marksman was served with a letter delivered by a police officer dated 5 July 2012 addressed to Marksman and signed by Senior Sergeant Pippos as the delegate of the Registrar of Firearms from which I infer that he was acting for Chief Inspector Ralphs who was then on holidays[26]. From this it can be seen, and I find, that the email cancelling the meeting that had been scheduled for 10 July 2012 was disingenuous to say the least. In suggesting that the meeting would have to be cancelled and that a further meeting would be arranged in due course, the email was quite misleading. It is clear that the proposed meeting for 10 July 2012 was cancelled because of the contents of the letter served upon Marksman. That letter was to advise that the Registrar was considering suspending Marksman's firearms licences pending investigations as to whether the licences should be cancelled. The letter made reference to audits that had been conducted by the Firearms Branch at Marksman's premises and noted that a number of firearms were 'unaccounted for'. The letter also referred to the deliberate removal by an employee of a weapon from Marksman's premises that was subsequently stolen and was believed to be in the possession of persons associated with an outlaw motorcycle gang and that the theft had not been reported to police in good time. Furthermore the letter referred to the issue of tethering and implied that a further ground for possible cancellation of the licence was Marksman's failure to have implemented a tethering system as at the date of the letter.

6.13. Full details of SAPOL's case against Marksman with respect to the suspension and cancellation of Marksman's licences under the Firearms Act 1977 can be found in four judgments of Judge Tilmouth[27]. It is not necessary for the purposes of this finding for me to comprehensively describe the detail of the litigation before Judge Tilmouth. The parties were Marksman and the Registrar of Firearms. In the result Judge Tilmouth did not uphold the Registrar's ultimate decision to cancel the licences of which I will

[25] Exhibit C17j

[26] Exhibit C27a, Tab 21

[27] [2014] SADC 150 Marksman Training Systems Pty Ltd vehicle The Registrar of Firearms - 29 August 2014
[2015] SADC 5 Marksman Training Systems Pty Ltd vehicle The Registrar of Firearms - 22 January 2015
[2015] SADC 16 Marksman Training Systems Pty Ltd vehicle The Registrar of Firearms - 20 February 2015
[2016] SADC 154 Marksman Training Systems Pty Ltd vehicle The Registrar of Firearms - 15 December 2016

provide further detail hereafter. Nevertheless, Judge Tilmouth did accept that Marksman was responsible for significant failures, although not sufficient to justify cancellation of its licence. In particular Judge Tilmouth was critical that Marksman showed no sufficient reason as to why a report was not made within 14 days of the allegation of the theft. He stated that Marksman acknowledged that its systems were not well equipped to deal with the extraordinary circumstances of theft or fraud by a dishonest employee. Judge Tilmouth found that there were system failures in the auditing systems which made it possible for firearms to be stolen or removed and that the appellant had admitted certain inadequate or erroneous record keeping with respect to firearms[28]. Judge Tilmouth gave particular weight to the undoubted fact that twelve firearms requisitioned to Marksman remained unaccounted for and that three were later detected in the hands of convicted criminals or accused persons and that these facts served to impinge directly on the safety of the public[29].

6.14. While the findings of fault against Marksman that were upheld by Judge Tilmouth are undoubtedly serious issues, the fact remains that at no time between 5 July 2012 and the ultimate completion of the litigation in 2016[30] was Marksman's business of operating a commercial firearms range interrupted, stayed or prevented. That was because interim orders were made by consent in the District Court pending the determination of the litigation that permitted Marksman to continue to carry on its business. Thus, for all practical purposes, it remained highly desirable for tethering to be implemented. However, it is apparent that from 5 July 2012 onwards, if not earlier, Chief Inspector Ralphs determined not to engage further with the consideration and approval of a tethering system. Despite this no indication was given to Marksman that the meeting had been cancelled because a licence suspension and cancellation process had begun, nor that Chief Inspector Ralphs regarded the process of dealing with tethering as having been 'suspended'[31].

6.15. By letter dated 3 December 2012 Chief Inspector Ralphs notified Marksman of proposed decisions to cancel Marksman's firearms licence and firearms dealer's licence

[28] [2014] SADC 150 at paragraph 119 and 180
[29] [2015] SADC 5 at paragraph 4
[30] After the commencement of this Inquest
[31] The first communication of this fact to Marksman seems to have been in Exhibit C27a, Tab 31 at Appendix K as part of the findings in support of Chief Superintendent Ralphs' decision on 8 April 2013 to cancel Marksman's firearms licence and firearms dealer's licence

and to revoke approval of Marksman's range[32]. The letter contains the following allegations with respect to the issue of tethering:

> 'On 8 June 2011 the State Coroner made a finding in relation to two deaths at Marksman Indoor Firing Range and made recommendations to prevent similar incidents in the future.
>
> On 13 August 2011 Marksman were served a letter considering the imposition of conditions on the commercial range licence including consideration of the imposition of additional conditions to ensure that firearms be tethered and/or bullet proof screening installed. Marksman were asked to provide a written response to these matters. Marksman requested that a consultative approach be undertaken by the Registrar to identify a suitable response to the Coroner's recommendations. Despite a number of meetings and correspondence this issue remains unresolved. I am particularly concerned in relation to this matter that in circumstances where Firearms have taken a consultative approach, an approach often advocated by Marksman in relation to the relationship with the Registrar of Firearms, that no positive action or resolution has been proposed or taken by Marksman.'

6.16. As at the date of that letter in December 2012, some six months had passed since the licence suspension process had commenced. In fact it would be fair to say that one of the earliest casualties of the commencement of that process was the progression of the matter of tethering because Chief Inspector Ralphs, or someone on his behalf, cancelled the proposed meeting on 10 July 2012 which was intended to advance the implementation of tethering. Even if Chief Inspector Ralphs was not aware before returning from leave that the meeting had been cancelled, he was certainly well aware of it shortly after his return from leave in early July 2012. Thus for a period of six months Chief Inspector Ralphs and SAPOL generally were content to not progress the issue of tethering because they were pursuing another objective, namely to prevent Marksman from continuing to carry on its business by the licence suspension and cancellation process. However, it should have been obvious to Chief Inspector Ralphs and other relevant SAPOL employees that during that process Marksman were continuing to carry on business as a commercial firing range and that they were absolutely entitled to do so until SAPOL could made a valid decision preventing them. All the while, the risk of a repetition of the tragedies referred to in the Morris and Jast Inquest was on the cards. All the while, a tethering system was to the knowledge of SAPOL and Chief Inspector Ralphs available for inspection and approval. As a matter of public safety I cannot understand why SAPOL would not have continued to pursue the issue of tethering. It appears that Chief Inspector Ralphs and others were of the

[32] Exhibit C27a, Tab 26

view that it would be inconsistent to pursue the issue of tethering while at the same time pursing the cancellation of Marksman's licences. It appears that they were concerned that to pursue the issue of tethering might in some way prejudice the process of cancelling Marksman's licence. I am strongly of the opinion that SAPOL could at all times from 5 July 2012 onwards have progressed the issue of tethering without prejudicing the process it was engaging in with respect to cancellation of the licence. It could have made it plain at all times in all correspondence with respect to tethering and in all dealings with Marksman with respect to tethering that it was acting strictly without prejudice to the process of licence cancellation which was separately underway. I have no doubt that a Court would have found that such an approach would not have the effect of prejudicing the outcome of the licence cancellation process. That process would continue and would ultimately have been determined on its own merits. That is because the Court would have reached the sensible conclusion that it was clearly in the public interest that tethering be implemented while the range was open to the public pending the outcome of the licence cancellation process.

6.17. The letter giving notice of the proposal to cancel the licence by suggesting that 'no positive action or resolution has been proposed or taken by Marksman' was plainly false. Chief Inspector Ralphs was himself well aware that prototypes had been developed, a meeting had been arranged to test them, and that meeting had been cancelled by SAPOL. It reflects very poorly on Chief Inspector Ralphs that he would consider it appropriate to assert a lack of positive action by Marksman when he knew, or must have known, that that allegation was completely false.

6.18. Chief Inspector Ralphs' letter required a response from Marksman by Monday 17 December 2012. On 7 December 2012 Marksman wrote to Chief Inspector Ralphs requesting an extension to 18 January 2013 on the grounds that the time allowed by Chief Inspector Ralphs was inadequate[33]. Chief Inspector Ralphs through his solicitor agreed to an extension of time to 24 January 2013[34]. Again it should be noted that throughout that time Marksman was free to continue its business and SAPOL was well aware that a continued danger, which was apparently preventable because of the existence of a tethering prototype, remained at the range. On 24 January 2013 Marksman provided a 76 page submission showing cause why their licence should not

[33] Exhibit C27a, Tab 27
[34] Exhibit C27a, Tab 28

be cancelled. This letter disputed the assertion by Chief Inspector Ralphs that Marksman had taken no positive action with respect to the tethering issue and it pointed out that it was SAPOL that had cancelled the proposed meeting and that modifications to the range could not be made without the approval of the Registrar[35] and pointed out that Marksman had caused to be manufactured a prototype at its own considerable time and expense. The letter noted that the framework for the prototype tethering apparatus was in-situ at the range during an inspection carried out by four officers on 22 August 2012 and that none of those officers made any inquiries about Marksman's progress in developing a tethering prototype[36]. Finally, the letter enclosed a series of photographs of the tethering and rigging prototype developed by Marksman and stated that Marksman 'remains ready and willing to demonstrate this prototype to you'[37].

6.19. Indeed, the submission did include a series of photographs which clearly depicted a tethering apparatus. It also included photographs depicting frames for the booths to hold the apparatus and cables threaded through brackets neatly displayed and clearly to be associated with the frames attached to firearms that were also depicted in the photographs. Even the most cursory inspection of those photographs would have demonstrated that there was not one, but some 20 devices that on the face of the photographs appeared to be feasible tethering devices and that these were available for inspection and installation at Marksman. Thus as at 24 January 2013 or soon thereafter, Chief Inspector Ralphs had cogent information from which he must have realised, had he looked at the photographs attached to Marksman's letter, that there were not one but some 20 devices present at Marksman's premises. If Chief Inspector Ralphs had any knowledge of the Firearms Act 1977 and the Regulations under the Act, he would have realised that the devices could not be installed without the approval of the Registrar. Thus, the only thing preventing the installation of this important potentially life-saving safety measure was Chief Inspector Ralphs' own unwillingness to pursue the matter.

6.20. On 8 April 2013 Chief Inspector Ralphs wrote to Marksman notifying that he had determined to cancel Marksman's firearms and firearms dealer's licences. He determined not to revoke approval of Marksman's range[38]. Chief Inspector Ralphs

[35] Exhibit C27a, Tab 29 page 63
[36] Exhibit C27a, Tab 29 page 64
[37] Exhibit C27a, Tab 29, page 64
[38] Exhibit C27a, Tab 31

acknowledged that the meeting of 10 July 2012 was cancelled at the instigation of SAPOL and had not been rescheduled and said:

> 'I note that in July 2012 a show cause process in relation to Marksman's licences which was later terminated had commenced and this was the reason for the cancellation of the meeting scheduled to discuss the tethering. I note Marksman's submission in relation to its endeavours regarding tethering … I note the process of dealing with the Coroner's recommendations has effectively been suspended during the course of this present decision making process and the SAPOL inquiries supporting this process. In any event I note the Coroner's recommendations are not binding in and of themselves.'

This text proves that SAPOL had suspended consideration of tethering from the commencement of the process in July 2012. It is notable that Chief Inspector Ralphs said that the Coroner's recommendations are not binding 'in and of themselves'. He is quite right. He had no legal obligation to pursue the Court's recommendations. However, there was no reason why he could not have continued to pursue the issue of tethering with Marksman at all times in the previous ten months without prejudicing the licence cancellation process. Furthermore, for the previous three months since late January 2013 Chief Inspector Ralphs had been in possession of clear evidence that not one, but 20 tethering devices were available and ready for installation.

6.21. As at April 2013 Marksman had been in a position to continue to operate the commercial firing range for ten months and nothing SAPOL had done in pursuance of the licence cancellation process had prevented it from doing so. Thus to the knowledge of SAPOL, and as a result of SAPOL's own decision, tethering was not implemented at Marksman during this period.

6.22. It might have been thought that as at 8 April 2013 Chief Inspector Ralphs would have been comforted by the thought that due to his cancellation of Marksman's firearms licences, Marksman could no longer operate as a commercial firing range and thus there was no need for the matter of tethering to be pursued as a matter of public safety. However Marksman sought, and Chief Inspector Ralphs granted, a stay of the licence cancellation decisions pending Marksman's appeal to the Firearms Review Committee[39]. Subsequently Marksman and SAPOL consented to orders staying Chief Inspector Ralphs' decision pending the determination of Marksman's appeal to the District Court on conditions agreed between Marksman and the Registrar[40]. The effect

[39] Exhibit C27a, Tab 31
[40] Exhibit C37c Marksman Training Systems Pty Ltd v Registrar of Firearms [2014] SADC 150

was to enable Marksman's business to operate during the period of the District Court appeal. As a matter of fact, these stay orders continued in force until the determination in Marksman's favour of the litigation on 20 February 2015. At that time SAPOL instigated an appeal to the Supreme Court. The appeal was allowed and the matter was remitted to the District Court on 22 July 2016. The Full Court made orders unconditionally staying the decision of the Registrar pending the determination of the appeal by Judge Tilmouth[41]. Judge Tilmouth again determined the proceedings in favour of Marksman on 15 December 2016[42]. The effect of all of this is that from the commencement of the litigation Marksman was entitled by law to continue to operate the commercial firearms range at its premises. It was continuously entitled as a matter of law to operate the range from July 2012 when the licence cancellation process began until the litigation was finally disposed in favour of Marksman in December 2016 (and of course, thereafter, because of its success in that litigation). At all times SAPOL consented to the relevant orders and thus facilitated the continued operation of the firearms range without the installation of tethering devices to safeguard members of the public.

7. Chief Superintendent Ralphs (previously Chief Inspector Ralphs)

7.1. Chief Superintendent Ralphs is a very senior police officer holding a rank immediately below that of Assistant Commissioner. He is presently the Human Resources Coordinator for the whole of SAPOL's Operations[43]. Between 2011 and early 2014 he was the Officer in Charge of the Firearms Branch and was involved in the events concerning Marksman's licensing while he held that role.

7.2. It will be recalled that an email dated 22 September 2011[44] from Marksman's solicitor to Chief Inspector Ralphs, as he then was, included a dot point under the tentative specifications for a tethering device that referred to the Registrar indemnifying Marksman once the system was installed. Chief Superintendent Ralphs gave evidence that he did not think that SAPOL would agree to an indemnity[45], but that at no stage did he ever tell Marksman that SAPOL was concerned about the issue of an indemnity[46],

[41] Registrar of Firearms v Marksman Training Systems Pty Ltd (2) [2016] SASCFC 72 at [332]
[42] Marksman Training Systems Pty Ltd v Registrar of Firearms (4) [2016] SADC 154
[43] Transcript, page 287
[44] Exhibit C27a, Tab 9
[45] Transcript, page 298
[46] Transcript, page 337

nor that SAPOL would either favour or oppose such an idea[47]. The significance of this evidence is that something was made by SAPOL of the request for an indemnity to support SAPOL's decision not to pursue the issue of tethering at any time prior to Mr McConnal's death. In my view that is a weak argument. Had the issue of indemnity figured so prominently in SAPOL's thinking, it would have been a matter that could readily have been raised with Marksman. It never was. Furthermore, to Chief Superintendent Ralphs' knowledge, Marksman had developed not just one but many prototypes which were available for inspection for the purposes of approval for installation at all times after July 2012. Marksman never again raised the request for an indemnity. I do not regard the brief mention of an indemnity in one early email as a sufficient basis for SAPOL to dismiss the issue of tethering out of hand thereafter.

7.3. Chief Superintendent Ralphs gave evidence about the telephone call from Marksman's solicitor on 8 May 2012 in which he was told about the removal of firearms from Marksman and the possibility that they had been stolen[48]. He regarded this as extremely significant[49]. It appears that this was a matter of considerable significance because some eight weeks later SAPOL had moved to consider the suspension of Marksman's licences, a process which it initiated on 5 July 2012.

7.4. Chief Superintendent Ralphs gave evidence about the letter. He was on leave when the letter was sent and it was sent under the hand of Senior Sergeant Pippos who also held a delegation as Registrar of Firearms. Chief Superintendent Ralphs returned from leave very soon after 5 July 2012 when he became aware that the letter had been sent and that it gave notice that Senior Sergeant Pippos was considering suspending Marksman's firearms licences[50].

7.5. As I have previously mentioned the meeting that had been proposed for 10 July 2012 for SAPOL to inspect the tethering prototypes did not go ahead and was cancelled on 5 July 2012, the same day as the letter from Senior Sergeant Pippos was delivered. Chief Superintendent Ralphs said that he did not go ahead with the meeting because of his responsibilities as the delegate and 'requirements of procedural fairness'[51]. Chief Superintendent Ralphs agreed that from July 2012 until he decided on 8 April 2013 to

[47] Transcript, page 345
[48] Transcript, pages 302-303
[49] Transcript, page 304
[50] Transcript, page 306
[51] Transcript, page 307

cancel Marksman's firearms and firearms dealer's licences, he was of the view that he could not, because of considerations of 'procedural fairness', take any steps in relation to tethering. He explained that he did not wish to 'infect at all the process that needed to be followed in terms of natural justice'. He said he kept at arm's length in relation to that[52]. He agreed however that he knew that the meeting for 10 July 2012 had been set up so that he could view a demonstration of a prototype tethering system. He knew that there was such a system available to be viewed at the range and that the meeting was to enable him to approve it or give other feedback on it. He was aware of all of these things as soon as he returned from leave following the cancellation of the meeting[53].

7.6. It was notable that the facsimile transmission from the Administrative Assistant, Ms Beck cancelling the meeting stated that another appointment would be set up instead. Chief Superintendent Ralphs said that it was never his intention to set up a new appointment[54]. Chief Superintendent Ralphs was very vague as to whether he knew that the letter of 5 July 2012 was going to be sent in advance of that occurring. Eventually he conceded that he was anticipating that it would be sent and that he had some knowledge of it before it was sent. That is hardly surprising. It is unimaginable that the Officer in Charge of the Firearms Branch would not have prior knowledge about, and accede to the commencement of, a significant administrative process such as that[55]. In summary, Chief Superintendent Ralphs agreed that at the latest on 10 July 2012 he had effectively suspended consideration of the issue of tethering for his and SAPOL's part[56].

7.7. Chief Superintendent Ralphs gave evidence that he received legal advice in relation to the interaction between the processes relating to the suspension and cancellation of the licence and the issue of tethering[57]. Initially his evidence on that topic was given in the context of the stage at which Marksman had appealed to the District Court. However, he was then questioned about the allegation in his letter to Marksman dated 3 December 2012 that no positive action had been taken by Marksman in relation to the subject of tethering[58]. He was then asked how he could write a letter in December 2012

[52] Transcript, page 309
[53] Transcript, page 345
[54] Transcript, page 347
[55] Transcript, pages 347-348
[56] Transcript, page 372
[57] Transcript, pages 312-313
[58] Exhibit C27a, Tab 26

complaining that Marksman had not advanced the issue of tethering when as at that date he had himself resolved to put the issue to the side some six months earlier in July 2012 and not to advance the issue himself having 'suspended' the issue at that time[59]. He responded by saying that he was acting on legal advice in not advancing the issue of tethering at that time[60]. This of course placed the legal advice at an earlier time than the institution of the District Court proceedings which did not occur until after April 2013. He clarified that he received the legal advice about the relationship between the issue of tethering and the licence cancellation before sending the letter of 5 July 2012[61]. He was asked if he was sure about that and he stated that he was[62]. He said that he did not recall ever receiving legal advice in writing on that topic[63]. He also said that prior to sending the letter of 3 December 2012 six months later, he again received advice about the relationship between tethering and licence cancellation[64]. Chief Superintendent Ralphs repeatedly asserted that he acted on legal advice in treating the issue of tethering as suspended from July 2012 onwards[65] and he specifically disagreed that such legal advice was only provided at the point where the District Court Appeal had been instigated and a stay was being negotiated[66]. In relation to a further question from the Court, he affirmed that he was acting on legal advice 10 July 2012 about suspending tethering[67].

7.8. Chief Superintendent Ralphs was closely questioned about the issue of the legal advice. He was asked why inspecting a tethering device to determine if it was safe to use on the range would in some way affect his impartiality in relation to licence issues. He simply said that the advice that he received was that it might infect the process and said that he honestly did not see that he should disregard the advice. He said it was a very complex issue and he said that he was receiving advice from Ms Dellit of the Crown Solicitors Office[68]. He said that the issue of tethering was raised again at the time of the negotiations about the conditions under which a stay of the licence cancellation would be agreed after the institution of the District Court Appeal[69]. However, he

[59] Transcript, page 361
[60] Transcript, page 361
[61] Transcript, page 363
[62] Transcript, page 363
[63] Transcript, page 363
[64] Transcript, pages 364-365
[65] Transcript, page 372
[66] Transcript, page 373
[67] Transcript, page 374
[68] Transcript, page 376
[69] Transcript, page 384

repeated that it had been raised previously[70]. He was asked whether, given that tethering was a serious safety issue and that if there was another suicide on the range and tethering was not in place there would be serious ramifications for SAPOL, why did he not ask that the advice be put in writing and he simply responded that he was accepting of the advice given to him and he did not ask for it to be in writing[71].

7.9. Chief Superintendent Ralphs was asked whether he was aware that a commercial range operator could not modify or alter their range without the approval of the Registrar of Firearms. Although he appeared to have a poor understanding of the legislation he responded that he believed that he would have been aware of that when he was the Officer in Charge of the Firearms Branch[72]. He acknowledged and agreed that the recommendations of the Coroners Court in the Morris and Jast Inquest had not applied only to the Marksman range but were general recommendations that applied to all ranges[73]. However, he acknowledged that he did not arrange meetings in relation to the institution of tethering with other clubs that had ranges but focussed only on Marksman[74].

7.10. Chief Superintendent Ralphs acknowledged that Marksman consistently requested in the early stages prior to July 2012 that SAPOL provide input into the nature of a suitable tethering system. He agreed that SAPOL did not provide such input at any time and stated that he thought SAPOL could provide the input once they had something 'definitive before us'[75]. It was pointed out to Chief Superintendent Ralphs that it would not be necessary for him personally to attend at the range to approve the tethering system but that it could be left to somebody else who might not be involved in the licence suspension process. He seemed quite reluctant to concede this and was ultimately asked who would have been an appropriate person to conduct such an inspection had an inspection ever occurred in 2012 and his response was:

> 'I would have had to have considered that on advisement, what expertise the person had in relation to that, bearing in mind this was a new process we were evolving, and there is obviously a lot of engineering specifications, and there was quite a lot of consideration, so…'

[70] Transcript, page 384
[71] Transcript, page 385
[72] Transcript, page 324
[73] Transcript, page 326
[74] Transcript, page 327
[75] Transcript, pages 339-340

He later added:

> 'That would have been people who have – I suppose subject matter experts, the best they could, to give some type of informed advice.' [76]

7.11. From this I infer that little or no thought was given by Chief Superintendent Ralphs when he was the Registrar of Firearms into what role he would have in approving the installation of a tethering system. There is a stark contrast between the efforts of Marksman who had actually developed a prototype and gone as far as to have twenty of them manufactured and awaiting installation, and the attitude of Chief Superintendent Ralphs who clearly would not in July 2012 have had any idea, on his own evidence, of what considerations he should bring to bear to approving the installation of a tethering system at the range. This is the more concerning when one considers the responsibility that he had under the Act, and his earlier efforts to insist that Marksman, alone of all ranges, take steps to implement a tethering system. One is left to wonder what Chief Superintendent Ralphs would have done had it not been for the licence cancellation process. If he had been unable to avoid attending the meeting on 10 July 2012 how would he have approached that meeting? His evidence leaves me with no confidence that he would have acted decisively. Even as at the time of giving his evidence he clearly had no idea about how he would have gone about approving the devices. This is hardly the level of competence that one would expect of a person who held the role of Officer in Charge at the Firearms Branch and now holds the high office of a Chief Superintendent.

7.12. Chief Superintendent Ralphs acknowledged that soon after January 2013, when he received Marksman's submissions in response to the letter of 3 December 2012, he was aware that Marksman remained ready and willing to demonstrate the prototype to him[77] and the existence of the photographs of the devices[78].

7.13. Chief Superintendent Ralphs acknowledged that it was not until his letter dated 8 April 2013 advising that the licence was cancelled[79] that he informed Marksman that the process of dealing with tethering had been suspended 'during the course of this present decision making process and the SAPOL enquiries supporting this process' and that

[76] Transcript, page 351
[77] Transcript, page 366
[78] Transcript, page 367
[79] Exhibit C27a, Tab 31

prior to that Marksman had not been informed that dealing with tethering had been suspended[80].

7.14. It was strongly put to Chief Superintendent Ralphs that once the litigation had commenced it was likely to take a very long time to complete. He was asked if he accepted that it would take at least some months if not years to resolve, but he said that he did not agree with that proposition because of his involvement in another case which had been resolved quite promptly. However, it turned out that the other case involved an individual who had a licence for recreational purposes, and did not involve the suspension of a licence supporting a significant business enterprise such as Marksman. Over several pages of transcript, it took a great deal of effort to finally have Chief Superintendent Ralphs concede that there is a world of difference between the cancellation of a hobbyist's licence and the cancellation of a business licence that would have significant financial ramifications. Finally he conceded that he ought to have expected that the litigation would take weeks or months[81]. Unfortunately, this unwillingness to concede the obvious does not reflect well on Chief Superintendent Ralphs' candour.

8. Assistant Commissioner Newitt

8.1. Before becoming an Assistant Commissioner, Mr Newitt was the Officer in Charge of the Firearms Branch following Chief Superintendent Ralphs. He was in charge from January 2014 until May 2015. Superintendent Hand took over in mid October 2015[82]. Although he ceased to be Officer in Charge in May 2015, Assistant Commissioner Newitt was responsible for the Firearms Branch when he became an Assistant Commissioner in July 2015. Therefore he has held a consistent level of responsibility in relation to the Firearms Branch since January 2014 and was involved in matters relating to Marksman during that period. He was briefed by Chief Superintendent Ralphs in January 2014 about the Marksman matter and the District Court proceedings. He was made aware that as at January 2014 orders staying the licence cancellation were in place and Marksman were still operating without any tethering of firearms at that time[83]. Assistant Commissioner Newitt said that he was given advice in relation to the effect of tethering on the litigation by Ms Dellit of the Crown Solicitors Office. He

[80] Transcript, page 370
[81] Transcript, pages 379-383
[82] Transcript, page 416
[83] Transcript, page 430

summarised the advice as stating that if the tethering issue was to be proceeded with, it may compromise the matters currently in front of the Court. He was told there may be unintended consequences that might compromise the object of the litigation namely to cancel Marksman's licence[84]. He accepted that he was aware that two people had taken their lives at the firing range by turning firearms upon themselves but said that he had to balance what had occurred against the need to cancel the licences and not jeopardise the litigation[85].

8.2. Assistant Commissioner Newitt was asked about the staged delivery of judgments by Judge Tilmouth in the litigation. He was asked whether when the first judgment found that there were twelve errors in the decision making process to cancel the licence he perceived that the ultimate result for SAPOL may be less favourable than he first thought. He accepted that proposition but noted that further litigation was to follow[86]. He was also asked about the delivery of the second judgment on 22 January 2015 under which the licence cancellation decisions were set aside and a question arose as to whether any, and if so what, conditions ought to be imposed. He accepted that he appreciated that Marksman would be able to continue to operate its licence as a commercial range at that point but added that this would only be so until SAPOL decided to appeal the matter, which it ultimately did[87].

8.3. Assistant Commissioner Newitt confirmed that he was aware about the development of the tethering system although his response characterised the availability of the tethering system as being in the nature of a demand made by Marksman to SAPOL:

> 'I was aware there had been correspondence received requiring the Crown to inspect, view, test, then indemnify some type of prototype system or a system that was intended to be put in place. That was the demand made of them.' [88]

He referred to a demand or a request for an indemnity. He was asked whether he was aware that an appointment had been made with Chief Superintendent Ralphs to come and view the device but that appointment had been cancelled by SAPOL and he replied that he was not aware of that[89]. However, he acknowledged that he had seen some images of a tethering system at some point[90]. Presumably these were the images that

[84] Transcript, page 432
[85] Transcript, pages 432-433
[86] Transcript, pages 450-451
[87] Transcript, page 452
[88] Transcript, page 455
[89] Transcript, page 455
[90] Transcript, page 456

were contained in Marksman's submission of January 2013. However, Assistant Commissioner Newitt did not know whether the images depicted a system that was actually present at the Marksman premises. This means that he clearly could not have properly read Marksman's submissions and the text that accompanied the photographs in that submission. One would have thought that Assistant Commissioner Newitt, who had direct responsibility for the Marksman matter and the litigation for a period of some sixteen months, would have taken the trouble to properly read the materials that were passed on to him by Chief Superintendent Ralphs. I say that having regard to the seriousness of the potential consequences if tethering were not implemented and furthermore to the apparent seriousness with which SAPOL took its efforts to cancel Marksman's firearms licences. Unfortunately Assistant Commissioner Newitt demonstrated the same tunnel vision and narrowness of thought that characterised Chief Superintendent Ralphs' handling of the matter, and for that matter, the handling of the matter by SAPOL as an organisation. SAPOL was committed to one course and one course only, namely to put Marksman out of business as a commercial firing range. That remained the SAPOL mindset over four years and remained so despite SAPOL's consent to orders of the District Court permitting Marksman to continue to operate the firearms range commercially throughout the protracted litigation. The whole episode demonstrates a lack of original thought and a lack of inquisitiveness. There was no preparedness to question the existing status quo or depart from the existing policy of dogged persistence in eliminating Marksman as a commercial firing range to the exclusion of all other thoughts.

8.4. Assistant Commissioner Newitt was evasive in his answers about whether he had a personal awareness that Marksman had developed a prototype[91]. He was evasive when asked if it would have been useful for him to have known that a prototype was available for inspection during the period that he was the Officer in Charge of the Firearms Branch. He responded that no specific requests had been made of him personally to inspect anything. That is an unacceptable diversion of responsibility. The most he was prepared to do was to concede that it would have been relevant for him to know that there was a tethering prototype. His best evidence on the topic was that the likelihood was that he was not aware that a prototype existed during his tenure as Officer in Charge of the Firearms Branch[92]. Of course, he would have been aware had he read the material

[91] Transcript, pages 459-460
[92] Transcript, page 461

that was readily to hand. Even a cursory inspection of Marksman's submissions of January 2013 would have caused an attentive reader to wonder about the photograph depicting a number of devices. The obvious question an intelligent reader actively thinking about the matter would ask is: 'where are those tethering devices now and are they available to be installed?'[93].

8.5. Assistant Commissioner Newitt was asked whether he agreed that it would have been possible for Marksman to have been asked whether it would agree to approach the questioning on a 'without prejudice basis'. In other words, that they might install tethering without prejudice to SAPOL's position in relation to the District Court proceedings. It was apparent from his answers that this thought had never crossed his mind and he returned to the theme that the cancellation of the licences would have 'mitigated the need for tethering anyway'[94].

8.6. Startingly, Assistant Commissioner Newitt said that if Marksman had agreed to install tethering on its range that would have provided Marksman with an opportunity to demonstrate that it was being co-operative by doing what was asked. He said that an outcome of this might be that the District Court would take into account Marksman's cooperation as a matter tending in favour of not cancelling the licence and that in that manner, the District Court proceedings could be compromised by taking some action in relation to tethering[95]. I agree with Marksman's submission that to approach the issue of tethering in that way was to treat the risk of people like Mr McConnal committing suicide as mere 'collateral damage' in the attempt to shut down Marksman's business[96].

9. Ms Katherine Dellit

9.1. Ms Dellit gave evidence at the Inquest. It was necessary that SAPOL waive its claim to privilege in respect of the advice given about tethering, and that occurred. There was really no other alternative given that Chief Superintendent Ralphs had introduced Ms Dellit's advice as one of the main reasons why he suspended consideration of tethering from July 2012 onwards.

[93] Transcript, page 461
[94] Transcript, page 469
[95] Transcript, page 476
[96] See written submissions of Marksman Training Systems Pty Ltd dated 27 February 2017, paragraph 63

9.2. Ms Dellit's advice was that she was aware that a prototype had been developed and that she would have been aware of that from as early as June 2012[97]. She was not however entirely appraised of the extent of the development of the tethering system[98]. However, by January 2013 when she read Marksman's submissions prepared in that month, she certainly did become aware of the extent of Marksman's efforts about tethering by virtue of the photographs and the corresponding text[99].

9.3. In her affidavit[100] Ms Dellit referred to an understanding that she had that the installation of tethering at the Marksman range would cost Marksman in the order of $20,000. In her oral evidence she could not recall where that figure came from and assumed that it was provided by the police during the course of the proceedings[101]. This matter remains something of a mystery. It is clear that the vast bulk of the expenditure incurred by Marksman had been incurred prior to Ms Dellit's first involvement in June 2012. If the figure of $20,000 came from SAPOL, there was certainly no basis for it. It is difficult to see where else it could have come from. Certainly, it would not have been claimed by Marksman, as the expenditure had already largely been incurred before Ms Dellit became involved.

9.4. Ms Dellit said that from January 2013 and onwards, despite seeing the photographs contained in Marksman's submissions, she did not make a connection from what was depicted in the photographs that there were a number of devices at the Marksman range ready for installation[102]. Furthermore, she was not aware that Marksman had already outlaid the expenditure necessary to manufacture the devices that were present at the range[103].

9.5. She emphasised that the advice she gave in relation to the matter of tethering was given on the understanding that the installation of tethering devices would require a significant outlay of money by Marksman[104]. Clearly therefore, her advice was

[97] Transcript, page 529
[98] Transcript, page 532
[99] Transcript, page 533
[100] Exhibit C34
[101] Transcript, page 536
[102] Transcript, page 539
[103] Transcript, page 540
[104] Transcript, page 541

provided on a wrong factual basis. As to the substance of the advice she gave, it is summarised in her affidavit[105] in paragraph 22. Her advice was to the effect that:

> '(a) While the appeal was ongoing the Registrar should not seek to impose conditions of tethering on Marksman as the stay was only temporary and we were of the opinion that on balance the decisions to cancel would be upheld having regard to the case law interstate on how strictly firearms licences are dealt with by the Courts; and
>
> (b) While the Registrar had power to impose tethering, any imposition of conditions on the range as to tethering would more than likely result in judicial review proceedings or a widening of the scope of the appeal to include the issue of tethering; and
>
> (c) The imposition of conditions as to tethering was something that Marksman had complained was going to cost $20,000 and they had previously demanded SA Police give them an indemnity in relation to it. Consequently in circumstances in which the Registrar was contending for the cancellation of Marksman's firearms licence, it was incongruous of them to demand the expenditure of money to implement a system which would place their livelihood under further strain. Livelihood is a very real issue and consideration in licensing, disciplines and appeals.'[106]

9.6. Of course, the advice that the imposition of conditions or some other requirement as to tethering would more than likely result in judicial review proceedings or a widening of the scope of the appeal is at odds with the fact that Marksman had agreed in principle to the installation of tethering as early as September 2011[107]. Furthermore, Marksman had also taken active steps to make tethering a reality by commissioning the manufacture of a number of devices and having them delivered to its premises. SAPOL was of course well aware of all of this at all times after September 2011. Indeed, in a briefing paper from the then Commissioner of Police, Mr Hyde, to the then Minister of Police, The Honourable Jennifer Rankine MP, dated 24 February 2012[108], the Minister was informed that the proposal to impose tethering had been accepted by Marksman and would be implemented during 2012. That briefing paper had been created because the Attorney-General had asked the Minister of Police about the matter of tethering. It is probable that the Attorney-General was informed by the Minister of Police that tethering would be implemented soon after the Minister of Police received that advice in February 2012. There is absolutely nothing to show that the Minister of Police and the Attorney-General were ever informed that tethering had not subsequently been implemented, and that SAPOL had itself cancelled the appointment that was intended to provide a demonstration and seek approval for installation of tethering in July 2012.

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[105] Exhibit C34
[106] Exhibit C34, paragraph 22
[107] Exhibit C27a, Tab 9
[108] Exhibit C27a, Tab 47

Nor apparently were the Ministers ever informed that SAPOL had thereafter 'suspended' consideration of the issue of tethering because of its fixation upon the cancellation of Marksman's firearms licences.

9.7. In her affidavit[109] Ms Dellit said that she did not recall, and her file did not record, any legal advice provided on the question of tethering in July 2012. She said that she did not recall being asked to advise on the question of whether Marksman should be required to install tethering prior to 3 December 2012 although she accepted there was a possibility. Given that Ms Dellit is obviously a very competent solicitor, I think it unlikely had she provided advice about a matter as significant as tethering, bearing in mind its ramifications for public safety and the recommendations of this Court about that issue, she would not have made a file note of the advice. If anything were raised I find that it would have been so oblique and so vague as to not to constitute legal advice at all.

9.8. In stark contrast stands the evidence of Chief Superintendent Ralphs that he obtained legal advice from Ms Dellit in July 2012, some six months prior on the issue of tethering and that it was in reliance on that advice that he abandoned the issue of tethering thereafter. Both Ms Dellit and Chief Superintendent Ralphs were represented by Mr Henchliffe SC. Mr Henchliffe SC submitted that I should prefer the evidence of Ms Dellit and that I should find that prior to May 2013 Ms Dellit did not provide advice to Chief Superintendent Ralphs about suspending the process of requiring Marksman to install tethering[110].

10. Findings as to the effect of the legal advice

10.1. I have set out above Ms Dellitt's evidence as to the advice she tendered about tethering. I accept her evidence. It is however difficult to square her evidence with that of Chief Superintendent Ralphs. I find that he was wrong in asserting that the advice was given as early as July 2012. I find that it was not given until sometime well into 2013. By then, Chief Superintendent Ralphs had already made up his mind about the interaction between tethering and the administrative process he had set in train. His clear evidence was that consideration of the issue of tethering had been suspended from July 2012. That is evident from what he said in the letter to Marksman dated 8 April 2013. I find

[109] Exhibit C34
[110] Transcript, page 586

that he was not relying on legal advice in his view that he could no longer engage Marksman about tethering once he had set about suspending and cancelling the licences. On the evidence that was his own conclusion and he alone bears responsibility for it. Ms Dellitt's advice, when it was given, was generally supportive of the approach Chief Superintendent Ralphs had already adopted and maintained for some ten months. However, the advice was not to the effect that to pursue tethering would 'infect' the process, nor that it would even jeopardise the litigation in and of itself. The advice was that the tethering requirement would require Marksman to spend a sum of $20,000 and it would be incongruous to demand this of Marksman while contending for the cancellation of their licences. That advice might have been sound if the factual basis were correct. It was not. Marksman had already spent the bulk of the cost of developing and manufacturing the tethering system long before Ms Dellitt's advice was given. The advice was not, as claimed by Chief Superintendent Ralphs, that to press for tethering would in and of itself prejudice the administrative process of cancelling the licences. Moreover, Ms Dellitt said that the advice included the warning that to impose tethering would likely induce a judicial review. Once again, this was predicated on an incorrect understanding of the facts. Marksman were hardly likely to institute a judicial review to challenge a decision requiring them to install devices that they had already acquired and the installation of which they had pressed SAPOL to approve ten months previously, and repeated only three months previously their desire that SAPOL attend and inspect.

10.2. I find that Chief Superintendent Ralphs' evidence about the legal advice was merely an attempt to deflect responsibility for his own decision on to his legal advisor.

10.3. Assistant Commissioner Newitt also had a wrong understanding of the advice. His evidence was that the tethering issue might compromise the litigation or have unintended consequences. That is not consistent with Ms Dellitt's evidence as to the advice she gave. I prefer Ms Dellitt's evidence to that of Assistant Commissioner Newitt. I find that Assistant Commissioner Newitt continued the course that had been set by Chief Superintendent Ralphs. He did not look closely at the materials. Had he done so he might have seen the photographs of the tethering devices, and seen that they were already available for installation at Marksman's premises. He might then have made inquiries as to why they could not be installed with little or no cost and inconvenience to Marksman. Indeed he could have seen from Marksman's submission

of January 2013, which was available in the materials he had to hand, that Marksman had repeated then its invitation for SAPOL to inspect the devices and approve their installation. All of these matters would have led him to question the basis on which the legal advice was being provided, and that in turn may have led to a reconsideration of the advice. Armed with the true facts Ms Dellitt may, and probably would, have changed her advice.

11. Events following Mr McConnal's death

11.1. On 16 December 2015, the day after Mr McConnal's death, Marksman caused its solicitor to write to Superintendent Kym Hand, who was then Officer in Charge of the Firearms Branch. The letter[111] referred to the history of the matter including that Marksman had taken positive steps to introduce tethering at its range. The letter pointed out that Marksman could not install the tethering apparatus until it received the approval of the Registrar. In my opinion that assertion was absolutely correct. The letter referred to the submissions made in January 2013, and particularly paragraph 225 of the submission which repeated Marksman's readiness and willingness to demonstrate the prototype. The letter correctly stated that Marksman had done all it could to introduce the tethering system. The letter said that Marksman would make itself available for the purpose of enabling Superintendent Hand to inspect and approve the tethering apparatus for it to be installed without further delay and requested that he arrange a time in the near future.

11.2. Nearly a month later on 14 January 2016 Superintendent Hand replied to Marksman's solicitor. In that letter Superintendent Hand noted Marksman's submissions in relation to its endeavours regarding tethering. The letter acknowledged that the meeting in July 2012 was cancelled by the Firearms Branch and not rescheduled. The letter stated:

> 'The process of dealing with the Coroner's recommendations has effectively been suspended as a result and during the course of the decision to cancel your client's licences, subsequent appeal action and stay of the cancellation decision as ordered by the Court. As the matter is now before Supreme Court and parties are currently awaiting a decision, I do not propose to meet with your client for the purpose of progressing tethering options prior to the Court handing down its decision.' [112]

[111] Exhibit C27a, Tab 37
[112] Exhibit C27a, Tab 38

11.3. As will be apparent that letter was written at the point at which all issues had been decided by Judge Tilmouth in Marksman's favour, and SAPOL had appealed to the Full Court against Judge Tilmouth's decision. At the time the letter was written the appeal had been argued and the parties were awaiting judgment.

11.4. On 5 February 2016 Mr Marks wrote to the Commissioner of Police personally. His letter said that his purpose in writing was to seek the Commissioner's approval to alter the range by installing the tethering devices. The letter included photographs of the proposed tethering system and invited the Commissioner to attend at the range and examine and test the system. The letter pointed out that the tethering system had been ready to be installed on the range since July 2012[113].

11.5. On 15 February 2016 Superintendent Hand replied to Mr Marks on behalf of the Commissioner of Police. The letter again maintained the well-rehearsed response:

> 'As you will be aware parties are awaiting judgement in the Supreme Court Appeal action concerning Marksman's range and dealer's licences. In light of this, I reiterate my position to decline a meeting with Marksman prior to the Court handing down its decision. Given the uncertain context in which this matter currently sits, you may wish to consider suspending business practices allowing unlicensed persons access to the commercial range until such time as the appeal process has run its course, and in that regard I urge you to consider adopting such a policy.' [114]

11.6. On 7 March 2016 Marksman's solicitors again wrote to Superintendent Hand. The letter correctly stated that the issue of tethering and the approval of the alteration of Marksman's range required to implement tethering is '*legally unconnected with the Appeal proceedings or the subject matter thereof*'[115]. The letter correctly stated that the fact that the appeal proceedings were on foot was not a proper reason to refuse to meet with Marksman for the purpose of approving the proposed tethering system. The letter correctly stated that the proceedings were irrelevant to the question of whether the tethering system should be approved. The letter correctly pointed out that the tethering of firearms was primarily a safety issue and that SAPOL's persistent refusal to engage with Marksman on the issue potentially put further lives at risk. The letter rejected the suggestion that Marksman consider suspending its business practices until the appeal processes had run their course. The letter formally requested pursuant to regulation 46 of the Firearms Regulations that Superintendent Hand grant Marksman approval to alter

[113] Exhibit C27a, Tab 39
[114] Exhibit C27a, Tab 40
[115] Exhibit C27a, Tab 41

the range. Approval was also sought pursuant to regulation 54 of the Regulations for that purpose. The letter warned that Marksman may commence proceedings seeking a writ of mandamus to compel consideration of its application if SAPOL persisted in its refusal to do so.

11.7. That letter provoked a response dated 24 March 2016 from the Crown Solicitors Office. The letter noted that Marksman requested that the Registrar grant approval to alter the 'grounds and range' by installing the proposed tethering devices pursuant to regulations 46 and 54 of the Firearms Regulations 2008. The letter referred to section 21G (7) of the Firearms Act 1977 which deals with the approval of a range of a recognised range operator[116]. The letter then stated:

> '… to date no such application has been lodged by your client. I note that it is the range operator that is entirely responsible for the operation of the commercial range … should your client (as range operator) wish to have conditions of the range approval varied, an application pursuant to Section 21G (7) of the Firearms Act 1977 will need to be lodged. I am instructed that an application may be made by letter together with supporting documentation including any photograph and specifications. Your client may wish to submit an application to the Firearms Branch or alternatively to me and I will provide it to my client. Any application once made will be considered on its merits.' [117]

The letter also stated:

> 'It would have been incongruous for the Registrar to engage with your client for the purpose of assessing a tethering device once the determination had been made that your client was not a fit and proper person to hold a firearms licence'.

11.8. I cannot be critical enough of that letter. It is no more than an exercise in obfuscation. It could not be more unhelpful. Let us set it in the correct frame of reference: Marksman was a business that was carrying on an activity sanctioned by Parliament pursuant to licences granted by Government. Those licences were cancelled by the Registrar of Firearms, but under a legislative framework that provided for an appeal to the court. Marksman instituted an appeal, as it was entitled under the legislation to do. Then the cancellation decision was suspended pending the outcome of the appeal. That was only to be expected, because there would be no point in an appeal if the subject matter of the appeal, namely the business, was destroyed by being closed for the three and a half years the appeal took to finalise. Having experienced two suicides at its range, and in the spirit of the recommendations made by this Court in the Morris and Jast Inquest,

[116] 'The Registrar may, on his or her own initiative or on application by a recognised commercial range operator, vary or revoke conditions of an approval'
[117] Exhibit C27a, Tab 42

Marksman wished to implement a tethering system to improve the safety of its operation. To that end it needed the approval of the Registrar of Firearms. Even without that approval it went ahead at its own expense and developed a number of tethering devices ready for testing and installation within twelve months of delivery of the coronial findings in Morris and Jast. Marksman was unable to install the tethering devices between July 2012 and 15 December 2015 when Mr McConnal committed suicide at the range. This would not have been possible had the tethering systems been implemented. The Registrar of Firearms had consciously decided not to pursue the requirement that Marksman install a tethering device on and from July 2012. After Mr McConnal's suicide Marksman very properly renewed its efforts to have the Registrar grant approval for the installation of tethering. In the meantime the Registrar's decision had been set aside by the District Court, and although the Registrar had appealed to the Supreme Court, the Registrar continued at all times to be in a position to facilitate the safer use of the firearms range by Marksman. He had consented to orders permitting the range to continue without the installation of those safety measures.

11.9. For the Crown Solicitors Office to write in the manner that they did deserves particular censure. I do not agree with the interpretation of the legislation set out in the letter. The provision cited, 21G (7) is not relevant. The relevant provisions are section 21G (1) and (2), and regulations 46 and 54. Even if Marksman's formal application for approval to alter the range incorrectly cited the provision empowering SAPOL or the Registrar of Firearms to grant its application (which it did not) that was neither here nor there. There is abundant legal authority for the proposition that an administrative decision maker should not place obstacles of form in the way of a substantive result. This is particularly so where the administrative decision maker is making decisions that can have life threatening consequences. It truly beggars belief that after Mr McConnal's death in December 2015 an officer of the Crown Solicitor would write such a foolish letter and furthermore that SAPOL would apparently have instructed him to do so.

11.10. On 17 May 2016 I opened this Inquest. A directions hearing was held on that day and the Court was informed that only the day before the Firearms Branch had contacted Marksman to arrange an appointment to inspect the tethering system. That inspection was scheduled for 19 May 2016 at approximately 2pm. After some discussion and deliberation in the Courtroom, and indeed outside of it, the inspection actually occurred at 1pm on Tuesday, 17 May 2016. In other words on the day this Inquest was opened.

At the resumption of Court at 2:15pm that day I was told that the inspection had indeed taken place and took approximately 20 minutes to complete. As a result of that inspection the Registrar of Firearms made some suggestions as to potential improvements. The suggestions were committed to writing in letters between Senior Sergeant Mark Gallagher of the Firearms Branch and the solicitor for Marksman.

11.11. A further directions hearing was convened on 20 May 2016 at 2:15pm when the Court was informed that Marksman was in a position to achieve almost all of the suggestions made by SAPOL by the middle of the following week. The Court reconvened on 16 June 2016 for a further directions hearing and was informed that Marksman had then installed the tethering devices and they were operational for all commercial customers at the indoor firing range.

11.12. Thus with that announcement it became apparent that what had not been achieved in some four years and eleven months from the handing down of this Court's findings in June 2011, up to 17 May 2016 when the Inquest into Mr McConnal's death was opened, had now been achieved inside a period of one month. The Registrar finally granted the necessary approvals for Marksman to alter its range for the installation of the device during that month between 17 May 2016 and 16 June 2016.

11.13. With that intervention one might think that the work of the Court was done. At least tethering devices had finally been fitted.

12. Other issues raised at the Inquest

12.1. A number of other issues were raised, particularly by Marksman. I have considered all of the material, but I have decided not to traverse it in this finding. That is because it is clear that Parliament has recently considered the Firearms Act and has enacted entirely new legislation. In that light it is difficult to see that any further reforms are likely to be entertained in this area. I have therefore refrained from making any recommendations in the areas that were addressed. The findings I have made about the circumstances in which the tethering devices were not installed do not require the making of recommendations.

13. Conclusions

13.1. The installation of tethering of the kind now approved and installed on Marksman's range was a modification of the range such that it could not be done without the approval of the Registrar under regulations 54 and 46 of the Firearms Regulations and sub-section 21G (1) and (2) of the Firearms Act 1977. This was the position that was accepted by Chief Superintendent Ralphs in his evidence and was absolutely clear on a proper interpretation of the legislation in any event.

13.2. By September 2011 Marksman had determined actively to research and develop its own tethering system to be installed on its range.

13.3. Despite multiple clear requests from Marksman for guidance from the Firearms Branch for assistance in the development of a tethering system it was Marksman that developed all of the necessary specifications to develop a tethering system. It is true that the Firearms Branch made some suggestions for further refinement in May and June 2016, however I find that those refinements were of a minor nature only. Despite SAPOL's awareness that a meeting had been arranged for the very purpose of approving a tethering system in July 2012, Chief Superintendent Ralphs asserted in a letter requiring Marksman to show cause as to why their licence should not be cancelled that '*no positive action or resolution had been proposed or taken by Marksman*'[118] in respect of tethering. I agree with Marksman's counsel that it is impossible to reconcile that assertion with the history of dealings and Chief Superintedent Ralphs' admitted belief as to the development of the tethering system. I accept Marksman's submission that there can be no serious suggestion that the approval and use of the tethering system as it existed in July 2012 would not have vastly reduced the risk of an unlicensed person such as Mr McConnal using a firearm to harm himself at the range. I accept this in the knowledge that the minor refinements were made in May and June 2016 with input from SAPOL. No suggestion was made by or on behalf of SAPOL that those minor refinements would have been the decisive factor in preventing Mr McConnal's suicide. On any view, the installation of the system which Marksman had developed by mid 2012 would have almost certainly prevented Mr McConnal's death bearing in mind the presence of a range officer at all times on the range. At the very least the system as devised by mid 2012 would have caused Mr McConnal to be unable, without

[118] Letter dated 3 December 2012 (Exhibit C27a, Tab 26)

considerable effort, to turn the firearm upon himself. Undoubtedly there would have been time for the range officer to intervene and prevent his death.

13.4. For as long as the range continued to operate in fact as a commercial range (including while the licence cancellation decisions were stayed and while the Registrar's appeal to the Supreme Court was pending) the risk to which tethering was directed continued to exist and there was no reason why any proposed or actual decision to cancel the licences should have impacted on the consideration and approval of tethering in the meantime. There is no sense in which immediate approval of a range modification, or even the imposition of a condition, could possibly have undermined the Registrar's position in the District Court litigation. The suggestion acceded to by Assistant Commissioner Newitt that it might improve Marksman's position in the litigation by operating as an acknowledgement that Marksman had acted responsibly in developing an appropriate tethering system is abhorrent.

13.5. It was always on the cards that the appeal process would be a lengthy one given the number and complexity of the issues. For so long as Marksman's range continued to be open to the public, the Registrar ought to have concerned himself with ensuring that it was safe by approving the proposed tethering system. The suggestion that Marksman had demanded that SAPOL give an indemnity in relation to tethering affords no basis on which the Firearms Branch could defend its decision not to actively pursue the issue. In reality Marksman had proceeded to develop the system and it was ready for installation and Marksman never made any further demand for an indemnity. Certainly it was no impediment in May and June 2016.

13.6. It was unacceptable that Assistant Commissioner Newitt was apparently unaware of Marksman's progress in relation to the development of its tethering system. Assistant Commissioner Newitt's file on Marksman must have included the photographic evidence of Marksman's progress in developing its tethering system and the accompanying text.

13.7. I accept Marksman's submission that the speed with which, under the supervision of this Court, Marksman was able to obtain approval from SAPOL and install a satisfactory tethering system suggests that there were no significant barriers to this occurring earlier apart from the stance that:

(a) Marksman's licences should be cancelled; and

(b) Consequently it would be '*incongruous*' to approve any alterations to the Marksman range (including alterations directed solely to the safety of the public) while proceedings in the District Court were ongoing.

In fact the proceedings were still on foot when the tethering system was ultimately approved in June 2016 because the Full Court did not hand down its decision until sometime thereafter.

13.8. The persistent position of SAPOL that it would be inappropriate for SAPOL to deal with the issue of tethering while the litigation was on foot represented a fundamental misunderstanding of the role of the Registrar and the Firearms Branch as a regulator. I accept Marksman's submission that it is almost certain that had the Marksman range been fitted with tethering devices of the kind subsequently approved by SAPOL and now installed on the range, and had such a device been in use during Mr McConnal's shooting package on 15 December 2015, he could not have committed suicide in the manner that he did on that day.

13.9. I also accept Marksman's submission that if the prototype device which was available for inspection in July 2012 had been installed in the range its presence would have prevented Mr McConnal from being able to shoot himself as he did, and deterred him from attempting to commit suicide, or at least impeded his attempt to such an extent that the range officer present (Mr Healy), would likely have been able to react and prevent Mr McConnal from harming himself. I accept that it is not possible to conclude whether the presence of a tethering device at the Marksman range would have prevented Mr McConnal's death by suicide altogether.

13.10. As at the last day sitting day of the present Inquest, namely 28 February 2017, the simple legislative amendment recommended by the Court in June 2011 had not become part of the law of the State. There is no doubt that if the Firearms Act had been amended as recommended at any point during the four and a half years between 8 June 2011 and 15 December 2015 Mr McConnal's death would have been prevented, at least by that method. That is because the Firearms Act would have required the installation of equipment that would have prevented him from turning the weapon upon himself. It is a poor reflection on the Government of this State that such an amendment was not put before Parliament. As will be seen, the responsibility for that omission rests on SAPOL. SAPOL gave wrong information to Ministers about tethering at Marksman. In

Ministerial briefings SAPOL informed the Minister for Police that tethering was to be implemented during 2012. Yet SAPOL was well aware by July 2012 that tethering had not been implemented, and that SAPOL had itself embarked on a course that effectively prevented Marksman from implementing tethering thereafter, until the intervention of this Court in May 2016.

13.11. Chief Superintendent Ralphs did not act in reliance on legal advice in deciding to suspend consideration of tethering from July 2012 onwards. I find that he was not relying on legal advice in his view that he could no longer engage Marksman about tethering once he had set about suspending and cancelling the licences. On the evidence, that was his own conclusion and he alone bears responsibility for it.

13.12. Unfortunately Assistant Commissioner Newitt demonstrated the same tunnel vision and narrowness of thought that characterised Chief Superintendent Ralphs' handling of the matter, and for that matter, the handling of the matter by SAPOL as an organisation. SAPOL was committed to one course and one course only, namely to put Marksman out of business as a commercial firing range. That remained the SAPOL mindset over four years and remained so despite SAPOL's consent to orders of the District Court permitting Marksman to continue to operate the firearms range commercially throughout the protracted litigation. The whole episode demonstrates a lack of original thought, and a lack of inquisitiveness. There was no preparedness to question the existing status quo or depart from the existing policy of dogged persistence in eliminating Marksman as a commercial firing range to the exclusion of all other thoughts.

13.13. As a matter of public safety I cannot understand why SAPOL would not have continued to pursue the issue of tethering. It appears that Chief Superintendent Ralphs and others were of the view that it would be inconsistent to pursue the issue of tethering while at the same time pursing the cancellation of Marksman's licences. It appears that they were concerned that to pursue the issue of tethering might in some way prejudice the process of cancelling Marksman's licence. I am strongly of the opinion that SAPOL could at all times from 5 July 2012 onwards have progressed the issue of tethering without prejudicing the process it was engaging in with respect to cancellation of the licence. It could have made it plain at all times in all correspondence with respect to tethering and in all dealings with Marksman with respect to tethering that it was acting strictly without prejudice to the process of licence cancellation which was separately

underway. I have no doubt that a Court would have found that such an approach would not have the effect of prejudicing the outcome of the licence cancellation process. That process would continue and would ultimately have been determined on its own merits. That is because the Court would have reached the sensible conclusion that it was clearly in the public interest that tethering be implemented while the range was open to the public pending the outcome of the licence cancellation process.

Key Words: Gunshot Wound; Suicide; Firing Range; Tethering of Weapons

In witness whereof the said Coroner has hereunto set and subscribed his hand and Seal the 28th day of June, 2017.

State Coroner

Inquest Number 25/2016 (2275/2015)