



## FINDING OF INQUEST

*An inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 24<sup>th</sup> day of January 2018, the 1<sup>st</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup>, 12<sup>th</sup>, 13<sup>th</sup> and 15<sup>th</sup> days of February 2018 and the 28<sup>th</sup> day of June 2018, by the Coroner's Court of the said State, constituted of Anthony Ernest Schapel, Deputy State Coroner, into the death of Rodney Ian Clavell.*

*The said Court finds that Rodney Ian Clavell aged 46 years, late of no fixed abode, South Australia died at Marilyn's Studio, 327A King William Street, Adelaide, South Australia on the 5<sup>th</sup> day of June 2014 as a result of shotgun wound to the head. The said Court finds that the circumstances of his death were as follows:*

### **1. Introduction and reason for inquest**

- 1.1. Rodney Ian Clavell was 46 years of age when he died on Thursday 5 June 2014. The place of his death was a premises known as Marilyn's situated on the first floor of the building at 327A King William Street, Adelaide. Marilyn's was a brothel. Mr Clavell died from a shotgun wound to the head. I find that to have been the cause of his death. The evidence establishes beyond doubt that Mr Clavell shot himself with a cut down pump action shotgun that he had brought with him to Marilyn's. The evidence also establishes beyond doubt that he turned the gun on himself in a deliberate act with the intention of killing himself. Aside from the round that killed Mr Clavell, there were another five live rounds in the weapon's chamber.
- 1.2. At the time of Mr Clavell's death, which occurred at approximately 11:35am on 5 June 2014, the building in which Marilyn's was situated was the subject of a cordon and call manoeuvre by members of South Australia Police (SAPOL). This manoeuvre was

designed to facilitate the capture of Mr Clavell on arrest warrants in respect of certain alleged offences. For several days prior to 5 June 2014 Mr Clavell had been sought by police for the purpose of his arrest. Much publicity had been generated in respect of their desire to take Mr Clavell into custody. There can be little doubt that Mr Clavell was aware that he was wanted by police and had chosen not to surrender. Even before the publicity was generated, Mr Clavell had told his brother that in the period since his release in February of that year from his latest period of custody, *'the bastards have been following me 24/7'*<sup>1</sup>.

- 1.3. Mr Clavell's whereabouts became known to police during 5 June 2014. He was ultimately followed in secret by police to Marilyn's where he was dropped off in a car. The time was approximately 12:50am. The police cordon was set up.
- 1.4. Four women were on the Marilyn's premises. Mr Clavell had an existing association with one of those women. At first there was another male person on the premises. This person was confronted by police when he exited the building at about 12:57am. He confirmed that Mr Clavell was inside the premises and that women were present.
- 1.5. It is apparent that after entering Marilyn's, Mr Clavell became aware of the fact that police had cordoned the premises and were intent on effecting his arrest. Mr Clavell was equally intent on avoiding it. Something of a siege situation developed in the several hours preceding Mr Clavell's death. Efforts by members of SAPOL to peacefully secure Mr Clavell's surrender by way of attempted negotiation were not successful. Police failed to achieve any direct line of communication with him prior to his death. What communication there was occurred between police and one of the female persons present within Marilyn's. While there can be little doubt that police were prepared to take Mr Clavell by force had it become necessary, and that it would have been understood by Mr Clavell that they had the means on hand to do so, there is no suggestion that during the event any member of SAPOL administered any force or specific threat of force to Mr Clavell.
- 1.6. At the time of Mr Clavell's death he had substances including methamphetamine, cocaine and steroids in his system. Complicating this was the fact that over a period of years prior to 2014 Mr Clavell had shown himself to be capable of irrational, unpredictable and dangerous behaviour.

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<sup>1</sup> Statement of Wayne Clavell, Exhibit C5, page 4

- 1.7. Mr Clavell's death was a death in police custody. The definition of death in custody as set out within the Coroners Act 2003 includes the death of a person where there is reason to believe that the death occurred while the person was evading apprehension by a person authorised to effect an apprehension under a law of the State of South Australia. Such an authorised person would include a member of SAPOL<sup>2</sup>. Pursuant to section 21(1)(a) of the Coroners Act 2003 an inquest into the cause and circumstances of Mr Clavell's death was therefore mandatory. These are the findings of that inquest.
- 1.8. A number of issues were examined during the course of this inquest. They included whether the correct strategy had been adopted by police in respect of Mr Clavell's arrest and in particular whether the tactic of cordoning him in a premises and negotiating a surrender, as distinct from attempting to apprehend him in a less controlled environment such as a public place, was appropriate. In addition there was a question as to whether media publicity that was generated during the period leading up to the incident of 4 and 5 June was reasonable or whether it was excessive, unnecessarily hyperbolic and provocative and for all those reasons, counterproductive. Also, the circumstances of the siege and those immediately surrounding Mr Clavell's death were closely examined.
- 1.9. In assessing those issues I am conscious of the need to guard against being unduly critical of the behaviour of law enforcement entities especially in situations of complexity as this situation was. And one matter that has to be steadily borne in mind is that Mr Clavell chose to end his own life. He had another choice, and that was to surrender. Why he did not do so has a readily available explanation. He was a man who had an intrinsic irrational streak and the fact that he had illicit substances in his system would not have helped him to make a properly considered decision.

## **2. Mr Clavell's post-mortem examination**

- 2.1. The post-mortem examination was conducted by Dr Karen Heath, a forensic pathologist at Forensic Science South Australia (FSSA). Dr Heath attended the scene at Marilyn's at 3:44pm on 5 June 2014. She was shown Mr Clavell's body in situ. She observed that the deceased was seated upright on a sofa, slumped slightly over to the left side. He was clothed in a grey long-sleeved T-shirt, grey track pants and brown slip-on shoes. A black cap was on the sofa next to the body. A large amount of blood was evident on

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<sup>2</sup> Coroners Act 2003 section 3 - definition of 'death in custody' sub-paragraph (c)

the clothing of the deceased, on the adjacent sofa and on the floor. There were obvious injuries to Mr Clavell's head. The left eyeball was protruding markedly from its socket. There were extensive palpable comminuted fractures of the face and skull. A gunshot entry wound was observed on the hard palate. No exit wound was identified.

- 2.2. Dr Heath performed an autopsy at the FSSA premises. She concluded that death was due to a shotgun wound to the head. There was a near-contact gunshot entry wound in the midline of the hard palate facing very slightly to the left side. The wound track passed approximately upwards and slightly backwards and resulted in extensive fracturing of the hard palate, disruption of the maxillary sinuses, extensive comminuted fractures of the base of the skull in the right and left anterior cranial fossae with destruction of both orbital plates and the ethmoid plate. There were extensive comminuted fractures of the facial bones. There were other extensive comminuted fractures to the bones of the skull. There was extensive disruption, laceration, contusion and haemorrhage within the brain tissues. Multiple shotgun pellets were recovered from within the cranial vault, cerebral tissue and below the scalp. The plastic shotgun wadding was recovered from within the cerebral tissue<sup>3</sup>.
- 2.3. It will be seen from Dr Heath's description of the injuries to Mr Clavell's head that they were consistent with having been caused by the muzzle of the shotgun being placed against, or nearly against, the palate, further suggesting that the muzzle of the weapon was within Mr Clavell's mouth at the time it was fired. This is in keeping with other evidence that I will describe which suggests that the shotgun wound was self-inflicted.
- 2.4. There was an incidental finding by way of CT imagery of multiple metallic fragments within the left thigh of Mr Clavell. On dissection multiple metallic fragments were recovered. Dr Heath suggests that it is possible that these metallic fragments resulted from previous gunshot injury. Mr Clavell had elevated blood lead levels, also consistent with the retention of metallic fragments within Mr Clavell's thigh from a previous gunshot injury. Noted during the autopsy were scars to his left thigh. These were also in keeping with a previous gunshot injury to that part of his body. In fact, in another incident involving police that had occurred in 2004, Mr Clavell had sustained such an injury. This incident will later be described in some detail as it is relevant to the matters with which this inquest is concerned.

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<sup>3</sup> Exhibit C2a

- 2.5. Analysis of a specimen of blood obtained at autopsy showed levels of methylamphetamine and amphetamine consistent with illicit drug use. In addition, the substance benzoylecgonine was detected in the blood. This is a major metabolite of cocaine. Alcohol and other common drugs were not detected. Analysis of a specimen of Mr Clavell's urine obtained at autopsy revealed the presence of a substance that was highly suggestive of the exogenous administration of testosterone and stanozolol which is a synthetic anabolic steroid. The metabolite of the anabolic steroid nandrolone was also detected in the urine, although this may have been the result of metabolism of a naturally produced steroid. To my mind it is obvious that Mr Clavell had been consuming steroids.
- 2.6. Mr Clavell's amphetamine and steroid usage had already been well documented in police records. His amphetamine usage in particular was discussed in a psychologist's report prepared for court purposes in which it was recorded that Mr Clavell had described himself as an extremely heavy user and that when he was affected by the substance he readily acted out aggressively. The statement of a witness by the name of Jessica McKewen<sup>4</sup>, who was with Mr Clavell at Marilyn's during the siege, asserts that after Mr Clavell's arrival at Marilyn's on the night of the siege she and Mr Clavell had both injected 40mls of methamphetamine into their arms. This had been in addition to the methamphetamine that she said they had earlier smoked and '*shot up*'.
- 2.7. Mr Clavell and his behaviour exemplified everything that is wrong with amphetamine consumption and the indiscriminate use of steroids.
- 2.8. A post-mortem finding, the significance of which is difficult to determine, was that Mr Clavell had apparently experienced a recent myocardial infarction, or heart attack, of two to three days in origin. It is possible that in the days prior to his death Mr Clavell had been experiencing symptoms of this including chest pain, shortness of breath, light-headedness or nausea. However, according to Dr Heath it is possible for a person to suffer an acute myocardial infarction without noticeable symptoms. There is no objective evidence from any source that Mr Clavell had experienced any symptomatology of that kind or that if he did it had any impact on his ability to function or had affected his behaviour. There is no suggestion that a myocardial infarction contributed to his death. Death was clearly the result of a non-survivable shotgun wound to the head.

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<sup>4</sup> Exhibit C12

### 3. **Rodney Clavell's antecedents**

- 3.1. Mr Clavell's offender history<sup>5</sup> details a number of different aliases and dates of birth, but it is believed that he was born in March 1968. At one time Mr Clavell had been a Corrections Officer. His criminal record commences in 2002 when he was 34 years of age. To begin with his offences were not of a particularly serious nature and for the most part involved driving offences for which he received fines and licence disqualifications.
- 3.2. However, on 9 May 2006 in the Adelaide Magistrates Court Mr Clavell was convicted of a number of offences that included non-aggravated serious criminal trespass, threaten another person with a firearm and driving in a reckless or dangerous manner. The only penalty that appears to have been imposed consisted of a conviction and a driving licence disqualification of 18 months. In the same year Mr Clavell was convicted of failing to truthfully answer questions and failure to comply with a bail agreement. The latter of these two offences attracted a one month suspended sentence of imprisonment.
- 3.3. The most serious matter in respect of which Mr Clavell was convicted involved offences that included driving at a dangerous speed, possessing a firearm with intent to commit an offence, carrying a loaded firearm and possessing a firearm without a licence. These offences which were committed on 8 September 2004 occurred in the context of a police investigation into Mr Clavell's then suspected recent criminal activities and the desire on the part of police to locate and apprehend him. This set of circumstances was not dissimilar to those that would exist ten years later in 2014 and which ended in Mr Clavell's death. The 2004 incident involved a high speed police pursuit of Mr Clavell. Mr Clavell's driving would later be characterised by a court as having been extraordinarily dangerous and as having put the lives and welfare of many people at risk. This pursuit was followed by an incident in which when confronted by police a shotgun that he had in his possession discharged. He then took possession of a grader that was in a shed, started it and used it to intimidate and keep police at bay. The incident culminated in police shooting Mr Clavell in the thigh and then taking him into custody. The wound accounts for the metal fragments and scarring found in and on his thigh at autopsy. As will be seen, it is of note that Mr Clavell was prosecuted not in respect of the discharge of the shotgun, but in respect of its possession. In the

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<sup>5</sup> Exhibit C63d

event, on 23 July 2007 Mr Clavell was sentenced to imprisonment for a total of 4 years and 4 months with a non-parole period of 2 years and 6 months backdated to 12 April 2007. This sentence also took into account offences that Mr Clavell had committed on 2 and 4 September 2004 that included illegal use, dangerous driving and failure to comply with a police direction, as well as breaches of bail that had taken place in March and April of that year. Also of note is that at the time of Mr Clavell's sentencing the Court observed that his multi-substance abuse had led to him engaging in significant risk-taking behaviour for himself and others. As part of his sentence Mr Clavell was unsurprisingly disqualified from holding or obtaining a firearms licence until further order. This disqualification was still in force at the time of Mr Clavell's death. His possession of the shotgun that he brought with him to Marilyn's was in clear breach of that disqualification.

- 3.4. The incident of 8 September 2004 was the subject of detailed evidence adduced in this inquest. I shall describe the matter in more detail presently.
- 3.5. Mr Clavell was released from prison in October 2009.
- 3.6. In 2011 Mr Clavell was again imprisoned, this time in respect of convictions for driving dangerously to escape a police pursuit and making off without payment. The term of imprisonment was 14 months with a non-parole period of 9 months dating from 12 August 2011. There was a driver's licence disqualification of 3 years.
- 3.7. On 25 February 2014 in the District Court, Mr Clavell was acquitted of charges of Aggravated Causing Serious Harm with Intent to Cause Serious Harm and Aggravated Causing Serious Harm with Intent to Cause Harm, both charges arising out of an incident on 14 December 2012. He had been in held in custody since his arrest on 26 December of that year. He was released on the day of his acquittal. I shall return to this matter in a moment as well.

#### **4. The incident of 8 September 2004**

- 4.1. I have already referred to this incident and how it culminated in Mr Clavell being shot by police and ultimately being imprisoned. It is worthwhile dwelling on this incident in some detail as its circumstances and background, together with certain other subsequent events involving Mr Clavell, would understandably shape the attitude of police towards him in June 2014. In addition, its circumstances were not dissimilar to

the events of June 2014 in that they involved efforts on the part of police to locate and arrest Mr Clavell in relation to suspected criminal activity and their having to deal with his tendencies to resist police by force and intimidation. Due to the fact that the incident had involved a shooting by police, the incident was the subject of a Commissioner's Inquiry. The Commissioner's Inquiry report of Superintendent Paul Schramm dated 11 November 2004 was tendered in evidence at this inquest<sup>6</sup>. In the executive summary of the report it is stated as follows:

'Mr Clavell has an extensive criminal history which apart from instances of domestic violence against his wife and family, was incurred predominantly in the latter part of his Correctional Service employment up to the date of the shooting in September 2004. This criminal behaviour included threatening to cause harm, threatening another with a firearm, assault occasioning actual bodily harm, aggravated robbery with a weapon, non-aggravated serious criminal trespass and failing to comply with restraining orders. He served a short term of imprisonment whilst on remand between 7-11<sup>th</sup> June 2004.

During this period of criminal offending, he became involved with criminal associates and his use of drugs including steroids and amphetamine became more prolific as did his signs of aggression and mood swings. He developed a reputation as a 'standover' man and was reputed to be assisting members of an outlawed motor cycle group to enforce the collections of debts.

Prior to the September 8<sup>th</sup> incident he had come under increasing police attention to such a level that he was considered to be extremely 'high risk' and was the number one priority for members of the Star Group and other Local Service Areas, particularly the South Coast Local Service Area due to his criminal offending and their requirement to apprehend him.'

- 4.2. The events of 8 September 2004 had been preceded by an alleged theft by Mr Clavell of a Toyota Prado and a boat and trailer on 2 September 2004 followed two days later by an unsuccessful police pursuit in which he had allegedly driven dangerously. On the following day while driving a stolen vehicle, Mr Clavell had allegedly failed to comply fully with a breath test stop and had accelerated away to avoid police. On 8 September 2004 Mr Clavell is said to have stolen a motor vehicle and to have threatened an accomplice with a shotgun, demanding that he be driven to Callington. The accomplice managed to escape in the stolen vehicle whereupon Mr Clavell stole another vehicle. He was seen by detectives driving the stolen vehicle near the township of Dawseley in the Adelaide Hills. Police pursued Mr Clavell from the Callington area to Peake Road at Mount Pleasant where he abandoned the vehicle and fled on foot in possession of the shotgun. Other sections of the police force, including the STAR Group, were mobilised. After abandoning the vehicle and while climbing over a fence

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<sup>6</sup> Exhibit C69

to escape police, the shotgun discharged. The issue as to whether Mr Clavell had discharged the shotgun deliberately or accidentally, or whether it had been discharged at or in the direction of police, would become a matter of diverse opinion. The fact that Mr Clavell had discharged this weapon would also be the subject of a SAPOL press release that was created in the period prior to the June 2014 incident wherein Mr Clavell lost his life. More of that later. However, what is clear is that in the 2004 incident Mr Clavell only discharged the shotgun once, although it became apparent that on this occasion he had only possessed the one live round in any event.

- 4.3. After the shot was fired mobile cordons were coordinated and Mr Clavell was followed to a nearby shed which was cordoned. Police repeatedly called on Mr Clavell to put down his firearm to which Mr Clavell's consistent response was '*get fucked*'. Mr Clavell then took control of a grader that was parked in the shed and proceeded to drive it through fences until it became stuck on an embankment. A cordon was formed around the grader and unsuccessful communications were attempted in the hope that Mr Clavell would surrender and put down the firearm. In the event a decision was made that non-lethal fire could be directed at Mr Clavell as a result of which he was shot in the thigh. Another shot was fired by police which resulted in fragments of a bullet hitting him in the shoulder and neck. Mr Clavell eventually dropped the shotgun and despite the fact that he had been shot twice he continued to resist. He was then disabled with a police Taser and was restrained.
- 4.4. Mr Clavell was hospitalised and recovered from his wounds.
- 4.5. It is evident from Superintendent Schramm's report that Mr Clavell had been a target of police in 2004. He had a reputation of associating with known criminals and of being involved in debt collecting using standover tactics. As well, shotgun shells had been located in a vehicle he was driving. A loaded revolver had also been associated with him as had a .22 rifle and ammunition. Regular warnings had been placed in the South Coast Local Service Area (LSA) daily circulars warning members of SAPOL that Mr Clavell was likely to be armed with firearms. This information was also circulated widely through SAPOL in general. In addition, further information had been obtained that Mr Clavell was a heavy amphetamine user and had been acting irrationally in 2004. He had allegedly claimed to associates that he would not surrender himself to police and would not entertain the thought of being remanded in custody at any prisoner establishment. Further information was to the effect that Mr Clavell had previously

stated that in any confrontation with police he would create a situation which would result in him being shot by police, a situation commonly referred to as '*death by police*'. The arrest of Mr Clavell in relation to his suspected involvement in a serious aggravated robbery at McLaren Flat in which a member of the public had received extensive head injuries was deemed to be '*high risk*' and this fact was communicated widely through SAPOL.

- 4.6. In a section of Superintendent Schramm's report entitled '*STAR Group Intelligence*' it is recorded that critical information included within STAR Group information dissemination was that Mr Clavell had expressed to associates his intention to use firearms to avoid apprehension, that he would not go to prison and that if confronted by police he would be taking hostages and that it would be '*death by police*'. It was also recorded that prior to 8 September 2004 the Inspector in charge of STAR Group had received briefings concerning Mr Clavell's propensities to use firearms, to evade apprehension at all costs, to resort to violence, to use amphetamines and steroids and about his preparedness to engage in a siege with police and take hostages. It is recorded that the Inspector considered Mr Clavell to be '*one of the most dangerous people at large*'. At a meeting on 7 September 2004 involving South Coast LSA members, surveillance personnel and STAR Group members, numerous tactical options were discussed in relation to the method by which Mr Clavell could be located and safely arrested. The unanimous agreement was that due to Mr Clavell's possession of firearms, to his statements that he would take hostages and his asserted preparedness to die at the hands of police, he was extremely dangerous. The Inspector had indicated that he preferred an '*open air*' capture at a time when Mr Clavell was alone and unarmed. The Inspector indicated that he would only authorise a cordon and call manoeuvre if it could be guaranteed that no hostages could be taken.
- 4.7. In June 2014 at Marilyn's a cordon and call strategy would be deployed by police, including STAR Group, for several hours prior to Mr Clavell's death. This was the tactic that in 2004 had been strongly advised against unless it could be guaranteed that no hostages would be taken. It will be seen that on the day and evening in question in 2014 police would have had some opportunity to attempt to stop the vehicle in which Mr Clavell was a passenger and to effect his arrest. It is apparent that at a time prior to his entry into the Marilyn's premises that evening police knew that he was in possession of a shotgun. It could also have been anticipated that within Marilyn's there would be

persons present whom Mr Clavell could possibly take as hostages. Considering the nature of the business conducted therein, unsurprisingly there were such persons present. Having regard to police tactics which at the time of the 2004 incident had eschewed the hostage scenario, this set of circumstances prompted criticism of the manner in which police approached the task of apprehending Mr Clavell on the day that he died in 2014. I return to this issue later. A point was also made during this inquest that in 2014 police did not consult the Schramm report when formulating the tactical course in relation to the apprehension of Mr Clavell and that this was a significant omission. I indicate here that while I agree that it would have been wise to refer to a document such as this when considering the appropriate measures to be taken in respect of a known individual who has been the subject of police action in the past, I do not believe that it would have informed police tactics in 2014 except to the extent that it would have demonstrated that Mr Clavell was a person who needed to be dealt with in a controlled environment and that ad hoc measures such as a snatch or an attempted vehicle stop with a subsequent pursuit were to be avoided. If anything, the lesson to be learned from previous experience with Mr Clavell was that such measures would be likely to end badly. As will be seen, on 4 June 2014 police did elect to avoid such scenarios, opting to utilise the control that a cordon and call measure could provide.

- 4.8. Mr Clavell was prosecuted in relation to the events of 8 September 2004. Following the incident a police apprehension report was created in which offences of attempted murder and endangering life were envisaged. The basis of such a prosecution would have been the discharge of the shotgun allegedly at police. However, charges of this nature were not proceeded with. Rather, Mr Clavell was tried on and ultimately convicted of less serious firearm offences. A key element of the prosecution case was Mr Clavell's possession of the shotgun. The District Court trial ultimately took place in January 2007.
- 4.9. Police officers who were in the immediate vicinity when the shotgun was discharged gave witness statements. These statements were tendered to this inquest. The police officers who provided those statements had given oral evidence at Mr Clavell's trial in the District Court. A transcript of that evidence was also tendered to the inquest. One officer, a Detective Senior Constable Paul Simmonds, had asserted in his witness statement dated 13 September 2005<sup>7</sup> that when confronted Mr Clavell had commenced

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<sup>7</sup> Exhibit C67a

to walk backwards holding the shotgun. Commands were yelled at him to drop the weapon. Detective Simmonds had his police service revolver pointed directly at Mr Clavell. Other officers had their revolvers drawn. Mr Clavell walked backwards towards a grass verge and a wire boundary fence. Simmonds stated that as Mr Clavell stood alongside the fence the shotgun which he was carrying discharged. Detective Simmonds immediately ducked for cover. Detective Simmonds' statement asserts that he recalled seeing the shotgun pointing in the general direction of himself and his colleague Detective Sergeant Hansberry just prior to the shot being fired. In his oral evidence in the District Court Detective Simmonds stated that Mr Clavell had commenced to climb over the fence with the sawn-off shotgun in his possession and had pointed it in the general direction of himself and Hansberry. As he climbed over the fence the shotgun discharged.

4.10. Detective Sergeant Gerald Mark Hansberry compiled a witness statement dated 7 October 2004<sup>8</sup>. Hansberry's statement suggests that at one point Mr Clavell was contemplating turning the shotgun on himself. Detective Hansberry saw that Mr Clavell had his left thumb on the trigger of the shotgun. Mr Clavell was holding the shotgun in his left hand with the barrel firmly pressed to his chest. When Mr Clavell reached the fence he appeared to reach across his body towards the fence with his right hand and lean forward slightly. As he did so the shotgun came away from his chest and discharged in the general direction of Hansberry and other police. From his observation of the muzzle flash Hansberry believed that the shot had passed over his head. In his oral evidence in the District Court he made assertions to a similar effect.

4.11. A uniform police officer, Constable Michael Lamborn, asserted in his witness statement dated 10 September 2004 that Mr Clavell turned away from police to his left in order to climb over the wire fence and that at that time the barrel of the firearm came away from his chest. As he got to the other side of the fence he appeared to stumble and the firearm discharged. The statement asserted:

'I am not sure whether the shot was fired into the air or into the ground, but it was not fired in our direction. I believe that the discharge of suspect's firearm was accidental, due to his stumbling.'

When Constable Lamborn gave oral evidence in the District Court he described the incident in which the shotgun was discharged. In cross-examination he asserted that

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<sup>8</sup> Exhibit C67b

Mr Clavell had never pointed the weapon at police and that the only direction, or only person, that the firearm was pointed in or at was at himself. He said that Mr Clavell had difficulty getting over the fence and it was when he stumbled that the gun went off. He believed that Mr Clavell had his back to police at the time that the gun discharged. He told cross-examining counsel that he adhered to the view expressed in his witness statement that the gun had gone off accidentally due to Mr Clavell stumbling.

- 4.12. In January 2007 Mr Clavell was convicted by a District Court jury of carrying a firearm for the purpose of committing an offence, namely, wilfully obstructing a police officer in the execution of his duty. The officers to whom I have referred in the previous paragraphs gave oral evidence. Mr Clavell came to be sentenced on 23 July 2007. It is clear from the trial judge's sentencing remarks that he dealt with Mr Clavell on the basis that during the course of the incident he had indicated to police that he would shoot himself and that when he walked backwards away from police and climbed over a fence the gun went off accidentally. He also sentenced Mr Clavell on the basis that he did not point the firearm at police at any stage. These findings appear to have been based upon the evidence of Constable Lamborn to which I have referred. Naturally, any finding that Mr Clavell had deliberately fired at police, or had deliberately fired the weapon at all, or had pointed the firearm at police, would have required findings beyond reasonable doubt. In any event the firing of the weapon was not the core element of the offence of which he was convicted. Rather, the offence of which he was convicted involved his possession of the shotgun as distinct from its discharge.
- 4.13. Regardless of whether or not Mr Clavell had deliberately fired the shotgun at police, at the time it went off he was holding what undoubtedly was a loaded and cocked firearm and had held it at least with the intent to obstruct if not intimidate police. Its potential lethality was real and obvious. And the fact remained that notwithstanding the factual basis upon which Mr Clavell had been dealt for the purposes of sentencing, for the purposes of assessing any risk that he might pose to both the general public and to police in the future, the issue as to whether or not he had deliberately fired at police to my mind could still legitimately be viewed as an open question. In addition, nothing about Mr Clavell since the 2004 incident would have in any way altered the SAPOL mindset that he was a dangerous individual.

- 4.14. I have already referred to the ultimate penalty which was a significant term of imprisonment. It is evident that this period of incarceration did nothing to arrest Mr Clavell's drug habit.

**5. The assault of which Mr Clavell was acquitted**

- 5.1. I have referred earlier to an assault matter in respect of which Mr Clavell was acquitted in February 2014. It was alleged that on 12 December 2012 Mr Clavell had punched a woman several times with his fist covered by a metal studded glove, thereby causing severe facial injuries including fractures that required corrective surgery. When police arrested Mr Clavell on 26 December 2012 at premises at Kidman Park following a siege, they located on the premises an armoured glove on which the DNA of both Mr Clavell and the complainant were located. The issue at trial had been whether the prosecution had proved that Mr Clavell had been the assailant. Mr Clavell himself did not give evidence. Nor did he adduce any other evidence. The Court found Mr Clavell not guilty, the trial judge indicating that he had been left with a reasonable doubt whether Mr Clavell had been the assailant. It is evident from a perusal of the trial judge's reasons for verdict that although the judge had entertained a reasonable doubt as to his guilt, Mr Clavell's innocence of these alleged offences had by no means been positively demonstrated. Notwithstanding the acquittal, police would still legitimately have regarded this episode as a matter that was relevant to any risk assessment involving Mr Clavell. I note from the statement of SAPOL officer John Michael Quinn that police believed that the acquittal was due to a number of factors including a lack of cooperation from a material witness, an alteration in the testimony of another material witness and the fear of Mr Clavell that the complainant maintained and for that reason her reluctance to identify him as her assailant with sufficient positivity. In short, it is evident that police believed that Mr Clavell had been the assailant despite the acquittal.
- 5.2. The other relevant aspect of this unsuccessful prosecution is that Mr Clavell's arrest had taken place after a siege at the Kidman Park residential premises. The premises had been cordoned by STAR Group officers and police negotiators had attended. One of the negotiators, Senior Sergeant Annemieke Lyndy Baker, would participate in the ultimately unsuccessful negotiation attempts that took place on the day of Mr Clavell's death in June 2014. On this earlier occasion, however, the negotiations had been successful, Mr Clavell had agreed to come out of the premises and had been taken into

custody without incident. Police could legitimately give some weight to this successful outcome when contemplating the tactical course in their endeavours to secure Mr Clavell's apprehension in 2014.

- 5.3. Following this arrest he remained in custody pending the finalisation of his trial on 25 February 2014. Upon that finalisation Mr Clavell was released from custody. It is evident that this period of incarceration did nothing to arrest Mr Clavell's drug habit.

**6. Events following Mr Clavell's release from custody in February 2014**

- 6.1. Apart from the imposition of and the need for service upon him of an intervention order, at the time of Mr Clavell's release from custody on 25 February 2014, he had a clean slate. The intervention order was duly imposed and then served on him by police without incident. Notwithstanding that Mr Clavell was now not wanted for anything, he was treated by police as a monitored person of interest due to the perceived high risk of his continuing to engage in serious criminal activity. There were intermittent interactions between police and Mr Clavell and one arrest but no continued prosecution. The firearms prohibition order against Mr Clavell would remain in force during 2014 such that any possession of a firearm on his part, or the suspicion of the same, would inevitably have attracted police attention. In fact it did. During 2014 the perception that Mr Clavell would reignite his criminal lifestyle would become reality, at least in the eyes of police. They set out to arrest him in circumstances that I will mention shortly.
- 6.2. The monitoring of Mr Clavell as a person of interest was initially conducted through the Holden Hill LSA and in particular through the Holden Hill Criminal Investigation Branch. During the course of the evidence it was explained to the Court that the MPOI<sup>9</sup> measure was a pilot program conducted under the umbrella of the Serious and Organised Crime Branch (SOCB). One of the taskforce groups within that SAPOL branch was the Serious Crime Task Force (SCTF). It was this task force that effectively conducted and oversaw the MPOI program. The officer in charge of the SOCB was Detective Superintendent Peter Harvey. Mr Harvey is now an Assistant Commissioner of SAPOL. In due course the SCTF, due to its greater resources, would take over the investigation of and attempts to locate and arrest Mr Clavell.

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<sup>9</sup> Monitored Person of Interest

- 6.3. On 11 March 2014 Mr Clavell was stopped by police at a bus stop. He was spoken to by a police officer and it was noted that he was polite and calm.
- 6.4. On 15 March 2014 a Toyota Rav4 was stolen from an address in Victor Harbor. The theft of the vehicle was preceded by and facilitated by a break-in via the rear door of the premises. In the next few weeks this vehicle would be involved in a motor vehicle accident following which the occupants fled on foot. Mr Clavell would become the suspected driver of the vehicle.
- 6.5. Meanwhile Mr Clavell came under the notice of police on 30 March and 1 April 2014 during police stops of vehicles in which Mr Clavell had been a passenger on both occasions. He was not arrested, but the intervention order that I have referred to was served upon him on one of these occasions.
- 6.6. On 3 April 2014 Mr Clavell was stopped by police as he was walking on Grange Road at Findon. He was carrying a food bag which had two knives protruding from it. He was arrested for carrying an offensive weapon and was bailed to attend court in May. However, police ultimately were prepared to regard his explanation for the knives as plausible and court proceedings therefore did not proceed.
- 6.7. On 5 April 2014 the stolen Toyota Rav4 was involved in a collision and two occupants were witnessed to run from the scene. Although there was no identification of Mr Clavell as one of the persons running from the scene of this collision, a body of evidence was discovered that strongly linked him to the vehicle and its contents. These items included the intervention order documentation that had recently been served on him. Other documentation including Centrelink documents that could be linked to Mr Clavell were also found in the vehicle. A later search of the vehicle resulted in an air rifle and 50 pellets for that air rifle being found in the vehicle. In the vicinity of the driver's seat of the vehicle blood was located. DNA testing revealed that the blood was from Mr Clavell. All of this evidence gave rise to a reasonable suspicion that Mr Clavell had been responsible for the illegal use of the Rav4. Furthermore, although the weapon found in the vehicle was an air rifle, it nevertheless satisfied the definition of '*firearm*' set out in section 5 of the Firearms Act 1977 (since repealed and replaced) in that it was a device designed to be carried by hand and to fire projectiles by means of compressed air. The 50 air rifle projectiles also satisfied the definition of ammunition as contained in the Firearms Act 1977. There was in my view a reasonable

suspicion that Mr Clavell had been in possession of the air rifle. Any case of possession of the weapon by Mr Clavell would have been strengthened by the operation of section 5(14) of the Firearms Act 1977 which stipulates that for the purposes of that Act a person has possession of a firearm if the person is in charge of a vehicle where the firearm is found. Mr Clavell's possession of that weapon would have been in contravention of the disqualification order that in 2007 had been imposed by the District Court and which was still in force. For Mr Clavell, possession of the firearm would therefore have been unlawful as he was an unlicensed possessor of the rifle. This offence would have been aggravated by the breach of the order that I have identified. Any possession of that firearm by Mr Clavell would have been regarded as a serious offence. I say this notwithstanding the fact that the weapon was an air rifle, the lethality of which would not be as great as a firearm that fired projectiles by means of burning propellant. However, an air rifle could be used to intimidate, particularly in the context of a robbery, and for that reason Mr Clavell's possession of the air rifle would have been regarded as a serious matter having regard to his criminal history. The other aspect of the Rav4 incident that was important was that it tended to signify that Mr Clavell had returned to his criminal ways and that there was a need for the public to be protected from him.

- 6.8. This notion would have been reinforced when on 28 April 2014 a Holden VE Commodore that had been stolen on 11 April 2014 was recovered with a wallet and bank cards in it that could be linked to Mr Clavell. Mr Clavell's fingerprints were located on the exterior of that vehicle. The fingerprints of a known female associate of Mr Clavell were also located on the exterior of that vehicle. Indeed, that same person's fingerprints had been located on the outside of the Rav4 after it was involved in the collision. At the end of April and the beginning of May 2014 Holden Hill police, who still at that point in time had responsibility for monitoring Mr Clavell, classed him as '*high risk*' as far as any arrest was concerned. This would have meant that an arrest would be effected by STAR Group officers. However, at that time the tactic of choice was that any measures to locate and arrest Mr Clavell would be taken covertly so as not to alert him or his associates to the fact that he was now actively wanted by police.
- 6.9. As things were to transpire Mr Clavell again came under the notice of police on 11 May 2014 but in benign circumstances. On that day a Senior Constable Wallis was tasked to attend a broken down vehicle on a property in the Adelaide Hills. When he arrived

at the scene three people were present. One of the persons was Mr Clavell. Senior Constable Wallis conducted a check in relation to Rodney Clavell and while it was recorded in police holdings that he was an MPOI, there was nothing to indicate to Wallis that he was wanted as such or that he should be arrested. Ironically, Senior Constable Wallis generously gave Mr Clavell and his female companion a lift into Lobethal. When Wallis later conducted further checks on the system he noted that Mr Clavell was a suspect in an illegal use offence. When Wallis again went to Lobethal to look for Mr Clavell there was no trace of him. Mr Clavell had been cooperative and civil during his encounter with Senior Constable Wallis but having regard to Wallis' magnanimity, Mr Clavell probably had no reason to be otherwise.

- 6.10. The difficulty adhering to this incident was that there had been insufficient information on the system to alert Senior Constable Wallis to the need for Mr Clavell to be apprehended. At that time there were no warrants for Mr Clavell's arrest in existence. One can only speculate as to what Mr Clavell's reaction would have been if Senior Constable Wallis, on his own, had attempted to apprehend him.
- 6.11. Superintendent Peter Harvey was the officer in charge of the SOCB at the time with which this inquest is concerned. I will refer to Mr Harvey by his current rank of Assistant Commissioner (AC). AC Harvey provided a witness statement dated 29 September 2014<sup>10</sup> and also gave oral evidence at the inquest. In his statement he asserts that on or about 15 or 16 May 2014 he became aware of apparent difficulties concerning attempts to locate Rodney Clavell as a suspect for two illegal uses of motor vehicles and the breach of a firearms prohibition order. AC Harvey questioned the effectiveness of LSA based activities to locate Mr Clavell. As a result he requested Detective Senior Sergeant Gillan of the SOCB to make an assessment of the circumstances with a view to potentially shifting responsibility to the SCTF which as seen is a section of the SOCB.
- 6.12. On Monday 19 May 2014 AC Harvey became aware of further suspicions attaching to Mr Clavell. These suspicions extended to a serious criminal trespass connected with the original theft of one of the motor vehicles that Mr Clavell was suspected of illegally using. Additionally, Mr Clavell was also suspected of being in the process of planning a robbery in company with another person. That day a decision was made for SCTF to

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<sup>10</sup> Exhibit C64

assume responsibility for a coordinated search for, and for the investigation of criminality suspected of, Mr Clavell. Mr Clavell remained as a high risk target. Of relevance to that classification was further suspicion that he was in possession of a handgun and a knife. Having regard to the definition of *'high risk'* as contained in police General Orders, namely where there is a reasonable belief that the behaviour of the suspect or the circumstances would place the life of employees or members of the public in jeopardy or expose them to serious bodily harm, Mr Clavell's classification of being at high risk was appropriate. This is especially so when one takes into account the specific factors that need to be considered when a classification of high risk is contemplated, namely a history of violence, the seriousness of the offence which is the subject of the suspect's behaviour, expressed intentions by the suspect to use lethal force, reasonable grounds to believe that the suspect may use lethal force, may cause injury or death or that the person has issued threats to kill or injure any persons.

- 6.13. AC Harvey took steps to arrange for two warrants of apprehension to be issued by the Holden Hill Magistrates Court. This occurred on Tuesday 20 May 2014.
- 6.14. From the following day forward the desire on the part of police to locate and apprehend Mr Clavell was widely publicised in the media. In another section of these findings I will deal with the involvement of the media in SAPOL's quest to locate and arrest Mr Clavell.
- 6.15. It was explained in evidence led before the Court that Mr Clavell was classified as being at *'high risk'* in two different ways. He was classified as being at high risk in respect of the possibility that he would continue to commit serious crime and it was for that reason that he had been regarded as an MPOI since his acquittal and release in February 2014. The second manner in which he was classified as a high risk individual was as a result of the application of the High Risk General Order, a matter that I have explained in the preceding paragraphs. There is no question but that Mr Clavell's classification as being at high risk in respect of both bases for such classification was warranted.
- 6.16. After the Clavell investigation was taken over by SCTF, AC Harvey assumed responsibility for that investigation. The operation commander would be Chief Inspector John Gerlach who was the officer in charge of SCTF, that arm of the SOCB that would be directly responsible for the investigation, location and apprehension of Mr Clavell. CI Gerlach had been a member of STAR Group for many years, from the

ranks of Constable through to Acting Inspector. He was a qualified tactical commander and had acted in that role and that of deputy tactical commander in numerous incidents. He would act in that capacity during the siege of 4 and 5 June. CI Gerlach also gave oral evidence at the inquest and produced a witness statement.

6.17. On 23 May 2014 AC Harvey signed and authorised a Tactical Operation Order. This document of twelve pages was tendered to the inquest<sup>11</sup>. The document set out the current situation in relation to Mr Clavell. It mentioned the stolen Rav4 and the other stolen vehicle. The order also referred to the two warrants of apprehension issued by the Holden Hill Magistrates Court, to the suspicion that Mr Clavell was in possession of a firearm, possibly a hand gun, and to the suspicion that Mr Clavell was planning a robbery with another individual. The objective of the Tactical Operation Order was stated to be:

- Locate and safely arrest Mr Clavell;
- Prevent/detect/deter further criminal activity by Mr Clavell'

6.18. The Tactical Operation Order also referred to the 2004 incident in these bland terms; *'he has previously been involved in shootings with police where a shotgun was discharged'*. It will be noted that this assertion did not contain any reference to whether the shotgun had been discharged accidentally or not. However, in another section of the document it is stated that Mr Clavell was subject to a firearms prohibition order as a result of the incident in 2004 and goes on to assert that Mr Clavell *'was shot by SAPOL members in a long running siege - during which Mr Clavell also shot at police'*. This suggested that Mr Clavell had deliberately fired the shotgun during the course of the incident in question which is not in accordance with the factual basis upon which the District Court had dealt with him in respect of that incident.

6.19. The order also stated that the media section of SAPOL would actively be utilised to deliver information regarding public safety measures and would be an avenue to foster community support.

6.20. As would be expected, the Tactical Operation Order referred to the high risk assessment in respect of Mr Clavell and that STAR Group had been briefed.

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<sup>11</sup> PJH1 attachment to the statement of AC Harvey

- 6.21. Significantly the Tactical Operation Order dealt with the type of police response that would be implemented in the event that Mr Clavell was located. It stated that if the SCTF investigation established that Mr Clavell was suspected of being present at a location or premises, the response would be managed as a high risk incident. Specifically, one of the instructions was that if Mr Clavell's presence within a vehicle was established, consideration of the use of a helicopter would be made to safely maintain observations until a safe location for a cordon and call could be identified. A cordon and call involves the suspect being located and isolated at a particular location; the subject premises is cordoned by police and the suspect is called to surrender following negotiation if necessary. The order also dealt with the situation where Mr Clavell might be identified as actually driving a motor vehicle. In those circumstances, where possible and safe, the Surveillance Section would maintain observations of Mr Clavell until an opportunity arose to safely implement a cordon and call. The document made specific reference to Mr Clavell's history of driving vehicles to evade police such that if he was located driving a vehicle the safety of the public was to be accorded the highest priority. Surveillance Section would assist in following the vehicle to a location where cordoning and containment could be safely established and that a helicopter would be used for that purpose.
- 6.22. As will be seen the tactic of cordon and call in respect of the apprehension of Mr Clavell, if not set in concrete, would be the much preferred tactic in respect of his arrest. This would be so virtually to the exclusion of all other tactics including a snatch which would involve physical apprehension in the open without any prior warning and/or apprehension either when driving or as a passenger in a motor vehicle. I will come to the testimony of the three senior police officers involved in Mr Clavell's planned apprehension in which the tactic of cordon and call as a preferential method of securing Mr Clavell's apprehension was sought to be justified.
- 6.23. In addition to the Tactical Operation Order a number of SAPOL Operational Alerts were prepared in respect of the Clavell matter. They were respectively dated 27 May 2014, 30 May 2014 and 4 June 2014. The Operational Alert dated 27 May 2014 recorded updated information in the possession of SAPOL that Mr Clavell was currently in the company of a male and female person who on the afternoon of 25 May 2014 had allegedly assaulted a female at an address in the northern suburbs. The male and female reportedly had returned to that same address 12 hours later in the company

of Mr Clavell who at that time was armed with a shotgun. The occupants of the house were then robbed, terrorised and threatened. The Operational Alert of 30 May 2014 recorded new intelligence to the effect that information had been received that Mr Clavell would resist police to avoid capture. The Operational Alert of 4 June 2014 reported that recently received information had confirmed that Mr Clavell was in possession of a sawn-off shotgun. The various Operational Alerts also referred to the siege in 2004 wherein it was said that Mr Clavell had '*endangered the lives of police*' and also to the siege in 2012 where Mr Clavell had been located in possession of a shotgun and ammunition.

- 6.24. Other relevant events prior to the day of Mr Clavell's death included an incident on 22 May 2014 where it was suspected that Mr Clavell had alighted and fled from a vehicle near the South Parklands which had resulted in both the Pulteney Grammar School and the Gilles Street Primary School being shut down. However, from the material that this Court gathered about that incident, evidence that this incident had actually involved Mr Clavell was unconvincing.
- 6.25. There were also two robberies, one of which I have referred to a moment ago wherein Mr Clavell was allegedly in possession of a shotgun. The other had occurred on 24 May 2014 in which the complainant had confronted a man attempting to steal his son's car. When the complainant restrained that man a second male approached and discharged a firearm which enabled the first male to flee. The suspicion was that the male who had approached and discharged the firearm was Mr Clavell.
- 6.26. The intelligence that Mr Clavell had been armed with a shotgun during a robbery on 25 May 2014 is supported by the fact that on the day of his death he was in possession of such a weapon. In any event, police really had no option but to act on the basis that on 4 and 5 June 2014 he was in possession of such a weapon. I was satisfied by the evidence that was adduced in this inquest that police believed on more than reasonable grounds that in late May and early June, including on 4 and 5 June, Mr Clavell had a shotgun and ammunition and that any tactic that would be deployed to apprehend him would have to take his possession of such a weapon into account, both in terms of the safety of apprehending police and that of the public. Mr Clavell did in fact have that shotgun. He would use it to kill himself<sup>12</sup>.

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<sup>12</sup> As things would transpire the male and female who had been responsible for the underlying robbery were ultimately prosecuted and sentenced on the basis that Mr Clavell, armed with a shotgun partially wrapped in a blanket or a doona, had demanded money from the complainant in that robbery.

## **7. Police tactics to apprehend Mr Clavell**

- 7.1. In this section I shall discuss the police tactics that were used in order to apprehend Mr Clavell. I have already referred to the fact that the preferred tactic as documented in advance of 4 June 2014 was that of cordon and call.
- 7.2. Three witnesses were called at the inquest to deal with this issue. Each of the three witnesses, Chief Inspector John Gerlach, AC Harvey and AC Dickson were called. I will deal with the evidence of each witness in turn.
- 7.3. The evidence of Chief Inspector John Gerlach  
CI Gerlach was the Officer in Charge of the Serious Crime Task Force which was part of the Serious and Organised Crime Branch. His superior at the time was AC Peter Harvey.
- 7.4. CI Gerlach provided a statement to the inquest and gave oral evidence.
- 7.5. CI Gerlach told the Court that on 26 May 2014 he returned to work after three weeks' leave. He was then briefed by Senior Sergeant Gillan on the details of the Clavell investigation. This included the fact that warrants for Mr Clavell's arrest were in existence. The warrants had been issued some days prior to CI Gerlach's return from leave. He was also informed of the alleged offences to which the warrants related.
- 7.6. CI Gerlach agreed with the assessment that Mr Clavell would be treated as being at high risk. CI Gerlach was aware of the confirmation of the fact that Mr Clavell was in possession of a sawn-off shotgun. It was CI Gerlach who would primarily be responsible for the operations on 4 and, for a period, on 5 June 2014.
- 7.7. CI Gerlach told the Court that on 4 June 2014 police became aware that Mr Clavell had been located. At that time he assumed the role of Forward Commander in respect of the ensuing operation to effect Mr Clavell's arrest. It became apparent that Mr Clavell was in a vehicle and that during the course of the afternoon and early evening he was attending at a number of different locations. Having received that information CI Gerlach's first task was to brief all of the relevant agencies including the SCTF, STAR Group and the State Technical Response Group. The Surveillance Group was also briefed. Surveillance had the task of endeavouring to locate Mr Clavell and to follow him. Mr Clavell was mobile and was reportedly travelling from place to place. The information was that Mr Clavell was in a KIA sedan. CI Gerlach explained to the

Court that there had been some difficulty in maintaining surveillance in respect of Mr Clavell. He told the Court that one difficulty was that it was night time and that for that reason it had been difficult for police to get close enough to the vehicle to see who was inside. As the vehicle was moving it would go from place to place and it had to be confirmed and reconfirmed whether Mr Clavell was in fact in the vehicle, whether he was in a premises or whether he had left premises in another vehicle. There were other vehicles involved in the observed activities. CI Gerlach said:

'So it was really difficult to get confirmation as to what was happening when.'<sup>13</sup>

- 7.8. Although it had been agreed that the strategic plan was to cordon and call, CI Gerlach considered other possible arrest plans including a vehicle stop or a snatch from the street or a premises. He indicated to the Court that he dismissed the vehicle stop possibility as this was intrinsically less safe than a cordon and call. He explained that vehicle stops are difficult to control as the suspect could take hostages or fire shots. As well, an attempted stop might precipitate a high speed pursuit thereby putting members of the public at risk. The risk associated with this scenario was much greater than if Mr Clavell was confined in a premises in respect of which police had total control of the cordons. Impacting upon these decisions was the knowledge that as a matter of certainty Mr Clavell was in possession of a firearm which meant that a shooting could have resulted. In addition, he had engaged in high speed chases in the past.
- 7.9. CI Gerlach explained that cordon and call measures were not attempted at any of the premises at which Mr Clavell was seen to stop. In fact, when CI Gerlach had ordered a cordon and call at a particular premises, no sooner had he given that order than the target vehicle left the premises. This was also the case at other different premises that Mr Clavell attended. On each occasion Mr Clavell stayed at the premises only for a short time and on each occasion the vehicle left giving police no time to put any plans into place.
- 7.10. In his evidence CI Gerlach explained his tactical thinking in this way:

'... even though surveillance section have identified him in the vehicle on North East Road like you are saying, it takes time for surveillance to actually achieve that. It takes time then to get that message to us, decisions need to be made. It then takes time for people to get into position to activate a vehicle stop if that was to occur. All these things take time and as we know from that, from what occurred is that the vehicle was travelling from place to

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<sup>13</sup> Transcript, page 112

place very quickly. Each time it left each individual place those confirmations had to be re-made by surveillance that he was in the vehicle, whether he was in a house or another vehicle. Everything took time. There was very limited time to actually instigate any tactical option, but I still submit that to undertake a vehicle stop is quite risky because they are difficult to control and to have someone cordon and called in a premises is a far safer option to undertake an arrest than doing a vehicle stop in a limited time frame where things could go wrong and then we have people with access to weapons running around the street doing whatever they are going to do without being under control. So it might have indicated that there was plenty of time to do a vehicle stop, but that actually wasn't the case. It was there was very limited time.'<sup>14</sup>

He added that although there would have been sufficient STAR Group human resources to have conducted a vehicle stop<sup>15</sup>, the time taken to deploy STAR Group officers to a suitable location where a still moving vehicle could be stopped depended upon certain critical factors including the STAR Group members' location. He stressed that a vehicle stop cannot occur just anywhere. A location has to be selected where a vehicle can actually be boxed in. He said it was not a case of simply driving up and pulling over a car. There were certain tactics that had to be employed and all of the critical elements involved required time and space in order to execute the appropriate action<sup>16</sup>. CI Gerlach conceded that while a vehicle stop probably could have been undertaken, the tactical decision made was that there would be a cordon and call in preference.

- 7.11. CI Gerlach then described the strategy that was put in place in King William Street in the city. Ultimately the vehicle believed to contain Mr Clavell was followed to Marilyn's. The vehicle stayed in the vicinity of that premises for a short time and left travelling down Wright Street in the city. At that time it was confirmed that there was only one person in the driver's seat and it was not Mr Clavell. The conclusion was correctly drawn that Mr Clavell had entered the premises. CI Gerlach asserted that police had information that he had previously visited Marilyn's and that he was acquainted with the proprietor, adding weight to the suggestion that on entering the building he had probably gone inside that premises in particular. When CI Gerlach was satisfied that Mr Clavell was inside the premises he instructed inner and outer cordons to be placed.

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<sup>14</sup> Transcript, page 150

<sup>15</sup> Transcript, page 152

<sup>16</sup> Transcript, page 152

- 7.12. At about 12:57am on 5 June 2014 a male person exited Marilyn's and was challenged by officers. This person, Baldacchino, who was the proprietor of the premises, confirmed that a number of female persons were inside with Mr Clavell.
- 7.13. In due course at about 7:30am the following morning, after briefing persons who were relieving both himself and other managers, CI Gerlach handed over his responsibilities to Acting Superintendent Denise Gray.
- 7.14. CI Gerlach was extensively cross-examined by counsel assisting, Mr Kalali. Mr Kalali challenged CI Gerlach about the fact that surveillance had established that Mr Clavell was not the driver of the KIA vehicle and that for that reason there was no risk of a high speed pursuit if police engaged the vehicle and attempted to stop it. To this CI Gerlach suggested that there was no guarantee that Mr Clavell would not get into the driver's seat if an attempt to stop the vehicle was made. In this context CI Gerlach also reiterated that regardless of whether Mr Clavell had been driving or not, a cordon and call was the safest option. He said:

'At the end of the day it still would have been a cordon and call because we wouldn't have wanted to pursue the vehicle and create the other risk to the community.'<sup>17</sup>

For the Court's part it would also be legitimate to observe that even without Mr Clavell actually driving the vehicle, there would still be a risk of a pursuit depending upon the level of influence that Mr Clavell had over the driver of the vehicle. It will be remembered that police information was that as a matter of certainty Mr Clavell was in possession of a shotgun and this proved to be the case. He had it with him in the car. There would also be a possibility that the driver of the vehicle, being an associate of Mr Clavell, would have his own motives not to stop when directed to do so by police. In short, the fact that Mr Clavell was a passenger could not provide any guarantee that a dangerous pursuit would not ensue. Further, if the vehicle did stop, this would not of itself present as a reliable indicator that either occupant, especially Mr Clavell who had a shotgun, would meekly surrender. Indeed, the 2004 experience would rather suggest otherwise.

- 7.15. Also in cross-examination CI Gerlach told the Court that he became aware that the vehicle that Mr Clavell had been in before being dropped at Marilyn's had returned. It was confirmed that the shotgun was not in that vehicle, although another firearm was

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<sup>17</sup> Transcript, page 146

in it. The inference was that Mr Clavell had taken the shotgun into Marilyn's. CI Gerlach also inferred that due to the fact that the vehicle had left, Mr Clavell would be in the Marilyn's premises for an extended period of time. It was for that reason that CI Gerlach believed that this was a good opportunity to implement a cordon and call strategy in respect of that premises<sup>18</sup>.

- 7.16. CI Gerlach was cross-examined about other options that he may have had aside from cordoning Marilyn's and making it known to Mr Clavell that police were on the scene. CI Gerlach told the Court that the decision to cordon and call was made at a time before Mr Clavell would have had any realisation that police were in the vicinity. However, he acknowledged that the fact of cordoning would ultimately and inevitably have led Mr Clavell to an understanding that police were present. Asked by me as to whether consideration was given not to cordon and call but instead to covertly lie in wait for him to emerge from the premises and take him by surprise, CI Gerlach responded by saying that there was no way of knowing how long Mr Clavell would remain in the premises. For all anyone knew he may have stayed there all night. As well, once Mr Clavell left the premises, and depending on the circumstances of his leaving, one could not be confident that control of the situation could be retained. CI Gerlach said:

I guess I felt as though it was safer for the operation to cordon the premises and start negotiations and bring out everyone through negotiations. I guess if you allow anyone to walk out with a weapon - and I understand what you say about we could put cordons in and do certain things but it causes a direct confrontation between the police and the offender with a weapon in a surprising situation and I've got no control over that, things can go horribly wrong.<sup>19</sup>

CI Gerlach also added that if Mr Clavell remained in the premises for an extended duration, the circumstances were such that in any event Mr Clavell would probably become aware of the presence of police from the lack of traffic and from the other measures that police would have had to implement in order to secure the area<sup>20</sup>. One could also make the observation that there would also be no guarantee that there would not be other means by which Mr Clavell could be made aware of police presence including media, social media and phone. In short, police could not have been confident that when confronting Mr Clavell as he emerged from the building, he was not well

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<sup>18</sup> Transcript, page 159

<sup>19</sup> Transcript, page 163

<sup>20</sup> Transcript, page 164

prepared for this eventuality. There could be no guarantee that he would not be emerging with an intent to engage police in a violent encounter.

- 7.17. Asked by counsel assisting Mr Kalali as to whether when Mr Clavell ultimately left the premises surveillance could have been maintained until he moved to a different premises where the risk of hostage taking might not be as acute, CI Gerlach pointed out that the circumstances at Marilyn's were such that Mr Clavell would be in the premises for some time which gave them a present opportunity to implement the cordon.
- 7.18. Asked by Mr Kalali as to the level of consideration he had given to the risk that cordoning might have posed to any persons who were inside the Marilyn's premises with Mr Clavell, CI Gerlach said that he did not know if anyone was in there or how many persons were in there when he made the decision to cordon<sup>21</sup>. He added that if hostages were to be taken, the matter would hopefully be resolved by way of negotiation<sup>22</sup>. When further vigorously challenged about the risk that was presented to the occupants of Marilyn's at the time and after the premises was cordoned, CI Gerlach asserted that he knew that Mr Clavell had visited that premises in the recent past, that it could be assumed that he had some familiarity with the occupants and that this tended to mitigate the risk to persons inside.
- 7.19. Asked in evidence whether he knew that Mr Clavell had indicated that he might use a firearm upon himself, CI Gerlach said that he had a recollection of that having been asserted, but was not sure when he had heard that said. However, he said that this information probably would not have affected his decision making.
- 7.20. CI Gerlach acknowledged that alternative tactical decisions such as vehicle intercept or snatch may have mitigated the danger that Mr Clavell might use the firearm on himself, but he added:
- 'In both of those situations you need to put other people's lives at risk to achieve those tactics and I didn't think the circumstances warranted undertaking a tactic which was more dangerous than the one we undertook.'<sup>23</sup>
- 7.21. Chief Inspector CW, the on-call STAR Group Tactical Commander on 4 June 2014, indicates in his witness statement<sup>24</sup> that due to the high risk to the community, to police and to Mr Clavell himself, he cautioned CI Gerlach against STAR personnel attempting

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<sup>21</sup> Transcript, page 165

<sup>22</sup> Transcript, page 170

<sup>23</sup> Transcript, page 168

<sup>24</sup> Exhibit C32a

to stop the vehicle that Mr Clavell was suspected of occupying. Similar considerations applied to the tactic of snatch. A collective agreement was reached that attempting to stop a mobile vehicle was a tactic that should not be employed. CW's recommendation was that the safest option was to employ the cordon and call approach when Mr Clavell's presence in a premises could be confirmed.

7.22. The evidence of Assistant Commissioner Peter Harvey

In his oral evidence AC Harvey told the Court that he had become aware that police had been successful in identifying a vehicle that contained Mr Clavell as a passenger. He was at home when he received that information. On 5 June 2014 AC Harvey assumed the role of Police Forward Commander in the incident. AC Dickson also arrived at the forward command post which had been set up at the Police Operations Centre in Carrington Street in the city. AC Harvey concentrated his efforts on media communication and on the attempts by negotiators to transmit the message to Mr Clavell that police desired a safe resolution and that he should come out.

7.23. As with CI Gerlach, AC Harvey was cross-examined extensively by counsel assisting Mr Kalali in relation to police tactics on 4 and 5 June 2014. AC Harvey told the Court that it was always his priority to use a cordon and call tactic as in his view it was the safest option.

7.24. AC Harvey said that at the time he was not aware of statements made by Mr Clavell that he would use a shotgun on himself if he was caught by police<sup>25</sup>. He said that if he had been in possession of that knowledge his first preference would still have been cordon and call. He explained that the hope was that through competent negotiation Mr Clavell would emerge safely which he had done before, this being a reference to the siege of 2012. Questioned as to whether a vehicle interception ought to have been the preferred method of arrest AC Harvey said:

'Absolutely not. I am very firm belief that vehicle stops are more dangerous and, in fact, one of the most dangerous options that we could ever take because the possibility of a high speed pursuit. There is no control over the environment if that happens. And by far, negotiation, cordon and call is the safest preferred operation which works most times.'<sup>26</sup>

7.25. AC Harvey was also questioned as to whether waiting until Mr Clavell emerged from the Marilyn's premises would be a preferable tactic to which he replied that there would

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<sup>25</sup> Transcript, page 257

<sup>26</sup> Transcript, page 259

be difficulty insofar as there would be uncertainty as to how long police would have to wait. He said that this would be difficult to manage. Any attempt to apprehend the man would have to occur as soon as he exited the premises, and if he was armed such an apprehension would be extremely difficult. He said that one would need the element of surprise. Police presence around the building would have to be kept secret from Mr Clavell in order to maintain the element of surprise. Tactically and logistically this would be very difficult because it would not take long for Mr Clavell to come to the realisation that police were present either from television coverage or from mobile telephone calls. Another difficulty associated with waiting for Mr Clavell to emerge from the premises would be that in order to maintain secrecy police would have to allow any people into the premises whom Mr Clavell was expecting. Otherwise suspicion would adhere to their failure to arrive.

- 7.26. AC Harvey also said that a snatch undertaken in order to effect the arrest of a person in Mr Clavell's position was an extremely rare occurrence and that high risk situations are normally managed through cordon and call. He said:

'The snatch presents problems, not as many as a mobile stop presents, that is a difficult prospect. It doesn't work very well at all and presents more danger than safety.'

- 7.27. AC Harvey was also questioned about why it was that previous mental health assessments of Mr Clavell were not taken into account in arriving at the preferred tactic. He said this might assist, but it would not dictate the final tactical option<sup>27</sup>.

- 7.28. The evidence of Assistant Commissioner Paul Dickson

Mr Dickson is an Assistant Commissioner of Police, Crime Service. He is in charge of a number of specialised crime branches which include Serious and Organised Crime and Major Crime branches. Superintendent Peter Harvey (AC Harvey's then rank) reported to him.

- 7.29. AC Dickson spoke of a regular Monday morning meeting within SAPOL that is convened to discuss operational issues. At one such meeting AC Harvey advised him about the situation regarding Mr Clavell. As a result of the meeting a decision was made that Serious and Organised Crime would investigate the matter as SOCB have a greater capacity to manage and implement the strategies that might be required to effect an apprehension.

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<sup>27</sup> Transcript, page 260

- 7.30. In his oral evidence before the Court AC Dickson explained that in a high risk scenario where a person is believed to be in possession of a firearm and it is known that an individual is to be located at a particular location, there was a requirement for STAR Group to become involved and to cordon the premises. He said that such a scenario was usually dealt with by way of a cordon and call.
- 7.31. On 4 June 2014 AC Dickson was advised by CI Gerlach that his investigators had received information concerning Mr Clavell. The two senior officers discussed strategy. AC Dickson explained in his evidence that he held the view, as he had held from mid-May, that the appropriate strategy in dealing with Mr Clavell was that any police interaction with him had to be conducted in the safest way possible. He did not believe that it would be safe to confront Mr Clavell in a motor vehicle because of the strong, and as it turned out accurate, belief that Mr Clavell was in possession of a firearm. AC Dickson spoke of the need to avoid a pursuit in a vehicle such that cordon and call was to be the preferred strategy. He told the Court that he and CI Gerlach agreed on that strategy<sup>28</sup>.
- 7.32. AC Dickson commented that a snatch would have been a very unwise thing to undertake having regard to the information that was in existence about Mr Clavell and in particular the fact that he was in possession of a firearm. He said:
- 'The chances of that snatch working without that firearm being discharged was pretty unlikely.'<sup>29</sup>
- For the Court's part it is hard to disagree with that observation.
- 7.33. Ultimately on June 4 AC Dickson became aware that Mr Clavell was in a vehicle and that he was moving from address to address. AC Dickson stated that in the usual course of events it would take some time to enable STAR Group officers to effectively install an inner cordon at a premises. Although police were looking for such an opportunity on the day in question, it did not eventuate until Marilyn's. When AC Dickson became aware that Mr Clavell had entered Marilyn's he stated that it was agreed that the best option was to ensure that he did not escape from that location and then to negotiate. At that point he did not consider any other options<sup>30</sup>. He attended the Police Operations Centre during the early hours of the morning. AC Dickson explained that although he

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

<sup>29</sup> Transcript, page 295

<sup>30</sup> Transcript, page 297

did not have '*minute by minute*' responsibility, he was the senior officer present and had responsibility for the strategic command of the entire incident<sup>31</sup>.

- 7.34. In cross-examination AC Dickson pointed out that Mr Clavell had been shown to carry loaded firearms and that he had a criminal history. He argued that any person in the community who carries loaded firearms is at risk to the community. He said:

'History has shown that when we have tried to apprehend him for a particular matter, that there has been a conflict between the police and him.'<sup>32</sup>

- 7.35. AC Dickson summed up his opinions as to the appropriate tactics in relation to the Clavell arrest in the following way:

'Without repeating myself the fact that he believed he was in possession of a firearm. The fact that when he is confronted by the police he doesn't - historically he hasn't complied with the actions of the police. The issue is around him having committed serious offences. So when you boil that down, is that when you look at what the other options were - so this is about - you might have three or four different options and working out which option is the safest. So if you take a vehicle stop as an example you might get him in a vehicle and say 'Well, is there an opportunity here to actually stop him in a vehicle?' Well you can't control the vehicle. If he uses a firearm in a vehicle at police there's obviously the impact on the police, the greater community, there may be a second person in that vehicle. They may be armed. So you have very limited control of the situation. In policing when you're dealing with an incident which is risk, which is high risk, what you really need to do as best is you can is put strategies in which controls - that you have control of the situation. In a vehicle stop or a snatch, you can use that terminology, you really have limited control of the situation.'<sup>33</sup>

- 7.36. In cross-examination AC Dickson strongly resisted the contention that different tactics ought to have been adopted in the light of statements made by Mr Clavell that he would use the shotgun on himself rather than be captured. To this contention AC Dickson made the legitimate point that if Mr Clavell had been prepared to use the shotgun on himself, he would probably not hesitate to use it in respect of a police officer. He did not believe that a vehicle stop would have worked because he thought it unlikely that a vehicle would stop. As to the fact that the information was that Mr Clavell had not been driving, AC Dickson pointed out that there would be no guarantee that Mr Clavell would not pressure the driver to refuse to stop the vehicle, particularly bearing in mind that Mr Clavell was in possession of a shotgun. In any case AC Dickson stated that one would not have control of such a situation as there were so many variables that needed

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<sup>31</sup> Transcript, pages 297-300

<sup>32</sup> Transcript, page 315

<sup>33</sup> Transcript, pages 331-332

to be managed. To the suggestion that a vehicle stop was a more appropriate tactic than cordon and call he said '*I totally disagree*'<sup>34</sup>. He said that in his view there was much more risk and more potential impact on the community if police attempted to effect a vehicle stop as distinct from implementing a cordon and call<sup>35</sup>.

- 7.37. AC Dickson acknowledged in cross-examination that he had not read the Schramm report in respect of the 2004 incident. He was asked to consider that part of the report that had identified that if the opportunity arose an open air capture of Mr Clavell would constitute the preferred tactical choice. However, AC Dickson pointed out that the salient feature of that advice had been that open air capture would only be attempted if he was alone and unarmed. He said it would be almost impossible to be completely satisfied that Mr Clavell would ever be unarmed, and that in this instance police information was that Mr Clavell was in possession of a shotgun and that this in fact proved to be the case. As well, even if a weapon such as a shotgun was not obviously in a person's possession, the person could still be in possession of a concealed handgun<sup>36</sup>. Certainly, he was not aware of any circumstance where it could safely be assumed that Mr Clavell was not armed.
- 7.38. As to the possibility that hostages could have been taken when the cordon and call was established at Marilyn's, AC Dickson reiterated that when one examined the different tactics available, the cordon and call was still the preferred tactic. He believed that in the circumstances in which Mr Clavell was within Marilyn's it was clear that he was known to the individuals inside the premises and that to a certain extent this would have mitigated the risk. In any event he was of the opinion that the risks presented would have been far greater in effecting a vehicle stop<sup>37</sup>.
- 7.39. In his oral evidence AC Dickson discussed the tactical options open to police once the cordon and call had been established at Marilyn's. As far as allowing Mr Clavell to remain at the premises and then allowing him to leave with surveillance being maintained, AC Dickson asserted that there was a limit to how long a person could be the subject of successful surveillance having regard to the fact that suspects can become surveillance aware. As well, there would be a risk of losing the suspect; and finding

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<sup>34</sup> Transcript, page 336

<sup>35</sup> Transcript, page 337

<sup>36</sup> Transcript, page 341

<sup>37</sup> Transcript, page 345

Mr Clavell again would be a difficult task<sup>38</sup>. As to the option of raiding the premises, this would significantly increase the risk to the persons inside the premises, bearing in mind that Mr Clavell was armed<sup>39</sup>.

7.40. In my opinion no criticism can be levelled at police in relation to the choice of strategy by which Mr Clavell was sought to be apprehended. For all of the reasons identified by CI Gerlach, AC Harvey and AC Dickson I have accepted that a vehicle stop would not have been appropriate having regard to the dangers to the public and to police that this would have presented. For the same reasons a snatch would also not have been appropriate. I accept their evidence that a cordon and call was the most appropriate and safest tactical course of action. I also accept the evidence that there had been no real opportunity to effect a cordon and call strategy prior to Mr Clavell's arrival at the Marilyn's premises. What may have singled out this premises for the implementation of the cordon and call strategy was the fact that the vehicle that had deposited Mr Clavell at this location left the vicinity, a circumstance from which police reasonably and rightly concluded that Mr Clavell would be present within the premises for a period of time sufficient for cordons to be set up. I also accept the evidence that it would not have been reasonable for police to have decided to confront Mr Clavell when he ultimately left the premises, given the uncertainty as to whether any element of surprise would still be in existence at the time he came to leave. As well, to my mind to require police to wait for Mr Clavell to leave the premises but then allow him to leave the area either on foot or in a vehicle, most likely in a vehicle, and to maintain surveillance upon him would not have been reasonable.

7.41. The sole difficulty in relation to the decision to cordon the Marilyn's premises in particular and then to alert Mr Clavell to the presence of police was in respect of the possibility that Mr Clavell might take persons inside the premises as hostages. This is a very difficult matter to assess. I accept the evidence of CI Gerlach and AC Dickson that one circumstance that mitigated the risk to occupants of the premises was Mr Clavell's known association with the premises and presumably to those within it. In all of the circumstances the decision to cordon Marilyn's and to seek to negotiate Mr Clavell's surrender was a fine judgment call which to my mind cannot in be the subject of criticism. All alternative measures were unattractive, could have resulted in

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<sup>38</sup> Transcript, page 348

<sup>39</sup> Transcript, page 350

a grave danger to the public and/or to police or may have resulted in Mr Clavell being lost and then remaining at large for a further extended period of time.

- 7.42. Further, although Mr Clavell's taking of his own life was not entirely unforeseeable having regard to statements that he had historically made in relation to his attitude to again being arrested by police, I do not believe that it can reasonably be argued that the tactic of cordon and call at Marilyn's contributed to his death. He had a very clear option and that was to surrender. Moreover, no other tactic would necessarily have ensured either his safety, that of the general public or of police. And if the cordon and call tactic had been deployed at any other premises the outcome may well have been the same in any event.

## **8. The events leading to the death of Mr Clavell**

- 8.1. It is not necessary to recite every detail of the events that occurred in or in the vicinity of Marilyn's on the night of 4 June 2014 nor during the early hours of the morning of 5 June 2014 and into the day. The police strategy of cordon and call with the objective being to negotiate a safe outcome did not change throughout the entirety of the incident. The negotiations were conducted through a number of SAPOL negotiators including Senior Sergeant Baker to whom I have already referred. None of the negotiators were successful in achieving a direct dialogue with Mr Clavell. Rather, any communication took place through the medium of Ms Jessica McKewen who was one of four women in the company of Mr Clavell throughout the event within Marilyn's. I have already referred to Ms McKewen in another context.
- 8.2. The negotiation strategy involved utilising a female negotiator, one of the considerations being that female negotiators are often seen as less challenging or authoritative. From the text of the negotiations that were tendered in evidence it is clear that nothing of a threatening nature was conveyed by any negotiator nor through the medium of television or radio at any stage during the course of this incident. The statement of Ms McKewen<sup>40</sup> does not suggest otherwise. According to the statement of Ms McKewen, Mr Clavell told her to inform the police that he needed some time. At that stage it was around 8am or 9am on the morning of 5 June. An arrangement was made that a negotiator would call periodically. According to Ms McKewen, at some stage during the morning Mr Clavell started to talk to her about committing suicide,

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<sup>40</sup> Exhibit C12

saying words to the effect that if he could go another way he would, but that he was not going to let the police shoot him. He also indicated that he did not want to go back to gaol. The situation between Mr Clavell and Ms McKewen became quite emotional. According to Ms McKewen, Mr Clavell kept talking about suicide and in this context she noticed that he had the pump action shotgun. She saw him load the weapon in front of her. He said words to the effect that he did not want to have an open casket at his funeral because he it was his intention to shoot himself in the head.

- 8.3. At a time after 10am Ms McKewen advised the negotiators that the other women would be emerging from the premises.
- 8.4. At 10:55am Senior Sergeant Baker telephoned Ms McKewen who said that at that stage they were not ready to come out and wanted more time. During this conversation Ms McKewen, although hesitant and guarded, said that Mr Clavell would come out. Ms McKewen said that she would send the other three women out first, that she would then come out herself and that this would be followed by Mr Clavell. An arrangement was made that there would be further contact in about 20 minutes.
- 8.5. At 11:10am STAR Group members were deployed to the corner of John Street and Wright Street to receive any persons who would emerge from the premises.
- 8.6. At 11:11am Senior Sergeant Baker again called Ms McKewen who promised to come out in 10 minutes. There was some discussion about the women's heads being covered as they emerged. There was also further discussion about the desire of police to resolve everything peacefully, and even discussion about Ms McKewen being able to visit Mr Clavell in custody. At 11:15am Senior Sergeant Baker and another negotiator moved to the park at the north-western corner of Wright and King William Streets.
- 8.7. At 11:20am, in another phone call between Senior Sergeant Baker and Ms McKewen, there was discussion about how the women would emerge. The women began emerging at 11:25am through the rear door of the premises into John Street. Each woman in turn was received by police. The three women who emerged were emotional and distressed upon leaving the premises. Senior Sergeant Baker continued talking with Ms McKewen by phone. Baker encouraged Ms McKewen to stay on the phone and to keep talking. Baker informed Ms McKewen that each female had come out safely. Ms McKewen asked for another 5 minutes to which Senior Sergeant Baker

agreed, the expectation being that Ms McKewen and Mr Clavell would then both emerge. That phone communication ended at about 11:29am.

- 8.8. At about 11:34am Senior Sergeant Baker again called Ms McKewen who agreed to come out. Ms McKewen also stated that Mr Clavell would come out as well.
- 8.9. The narrative is then taken up within the statement of Ms McKewen who indicates in that statement<sup>41</sup> that the final thing that she saw of Mr Clavell was him placing the shotgun under his chin while begging Ms McKewen to leave. She then walked downstairs and out the back door. As she exited the building she heard a gunshot. This sequence of events is confirmed by police statements. During all of this, Ms McKewen was still on the phone to Senior Sergeant Baker.
- 8.10. The gunshot was heard in a number of quarters. There was only the one report. This was undoubtedly the sound of the shot that killed Mr Clavell.
- 8.11. There was some initial uncertainty about what had transpired inside of Marilyn's even after Ms McKewen exited the premises. Attempts were made to communicate with Mr Clavell by way of a loud hailer, but nothing was heard from within the premises.
- 8.12. In the event a remotely controlled robot was inserted into the premises and the attached camera confirmed that Mr Clavell was unresponsive and slumped on a couch inside the staff area. This vision indicated that Mr Clavell appeared to be deceased.
- 8.13. A decision was made for STAR Group officers to enter the premises through the front door. At 1:45pm a STAR Group officer coordinated an entry of an arrest team into the premises. As the team moved into the staff area of Marilyn's the coordinating officer saw Mr Clavell who was obviously deceased due to visible injuries. He was sitting in the middle of a couch with his head slumped to the left with blood present around his mouth. It was also running down the left side of his torso and pooling on the ground next to his left foot. I have already referred to some of the obvious injuries that he had sustained. A 12-gauge shotgun was resting on the couch between his legs with the muzzle pointed towards the ceiling. Mr Clavell was confirmed deceased.
- 8.14. I was satisfied, in particular from the statements of Ms McKewen and the STAR Group officer who first saw the deceased slumped and unresponsive on the couch, all of which

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<sup>41</sup> Exhibit C12, page 5

evidence I accept, that Mr Clavell had shot himself and had done so intentionally with the objective being to end his own life.

- 8.15. I should say something of the events during the course of the preceding night within Marilyn's. I have carefully read the statements of the four women who were with Mr Clavell during this incident. I have already referred to Ms McKewen. There were three other women. Each of the women described something of Mr Clavell's demeanour during the course of this incident. I have already referred to Ms McKewen's assertions that she and Mr Clavell used amphetamines during the course of 4 June 2014, the last occasion being sometime after 9pm on the evening in question. She also assisted Mr Clavell to place a cupboard against the entrance door so that no access could be gained to the premises. I have already referred to Mr Clavell's statements about committing suicide, an outcome that eventuated. According to Ms McKewen, at times during the night Mr Clavell was crying and emotional. Ms McKewen indicates that she was never threatened by Mr Clavell or held against her will during this incident. She indicates in her statement that in her view the longer the situation went on the more upset Mr Clavell became and the more convinced he was that he had no way out and that killing himself was the only viable option.
- 8.16. One of the other women asserts in her statement that Mr Clavell became aggravated and just sat watching the security camera. At one point Mr Clavell ordered persons not to answer telephones as the calls were from the police. She asserts that Ms McKewen and Mr Clavell moved furniture in order to barricade the doors. At one stage Mr Clavell told them to stay away from the doors and the windows. He was sweating profusely. This woman asserts that just before she left the premises, Mr Clavell took her hand and was crying. He thanked her and apologised and told her to take care of herself. She told Mr Clavell that this did not need to happen, which was a reference to what appeared to her to be a present intention on his part to end his life.
- 8.17. In the statement of one of the other women it is said that she felt scared and trapped during the course of this event. Just prior to leaving she heard one of the other women tell Mr Clavell that he should just surrender, to which Mr Clavell said that he did not want to go back to gaol as it would be maximum security and he would never see daylight again. Mr Clavell was crying, upset and agitated. In another statement the same woman asserts that when one of the other women asked to go to the toilet Mr Clavell had said to her *'yeah, if you want to get shot'*. Mr Clavell also made

statements about wanting the women to remain there because he believed that the police would not come in while the women were present. In addition, he had said that if he was to let them go they would make statements against him, and that if they did so it would upset him and it would not be good for them. This woman indicates that she felt as though they were hostages. At one stage Mr Clavell screamed at her to hang up her phone because he believed it would be the police. This woman asserts that she was intimidated by Mr Clavell's presence, was too scared to leave the building and felt trapped.

- 8.18. The fourth woman indicates in her statement that although she did not believe she was being held against her will, she did not leave the premises as she thought it might worsen the situation. When they were released Mr Clavell thanked the girls for their support. She believed that Mr Clavell had entertained a concern that if he left the building he would be shot by police. In an addendum statement the same woman indicates that when she asked Mr Clavell if she could go to the toilet he said '*no, if you go, I'll shoot you and I'm not joking*'. Save for that threat she asserts that he seemed like a reasonable man. She states that Mr Clavell never said that they could not leave and if there was any reference to them being 'hostages' this was due to Ms McKewen's characterisation of the situation. The woman does say that at one point Mr Clavell said something about losing his collateral or negotiating ability once the girls were released. She believed that Mr Clavell was calm and relaxed as if he had made up his mind to shoot himself. Just prior to leaving Marilyn's, the woman spoke with Mr Clavell about giving himself up but he expressed a belief that he would be shot on sight by police and that if he did not die he would be in a high security facility; so he would rather shoot himself. This woman asserts that she believed that Ms McKewen made the situation worse for Mr Clavell as she was paranoid and saying things to him like '*you can't give yourself up*'. This addendum statement of the woman is unsigned.

**9. Was Mr Clavell's death preventable at Marilyn's on the night of 4 June and on 5 June 2014?**

- 9.1. There is no specific evidence that in any communication between negotiators and Ms McKewen that Mr Clavell was contemplating ending his own life. The negotiations culminated in Ms McKewen indicating that Mr Clavell would come out of the premises with them, but of course in the event this did not occur.

- 9.2. At one point there was a suggestion made by a psychologist, Ms Black, based upon three Department for Correctional Services reports, that in her view Mr Clavell was potentially at acute or imminent risk of suicide or homicide. It is not clear to me what action was required to be taken based upon any such opinion being expressed. Failing successful negotiation, and having regard to the circumstances that prevailed throughout this event, it seems the only way that Mr Clavell could have been prevented from taking his own life was if police stormed the premises and was able to take Mr Clavell before he had an opportunity to shoot himself. To my mind storming the premises, for the reasons expressed by the officers in charge of the event, would have been out of the question. Even if Mr Clavell's suicide may have been prevented in this way, the risk of him shooting another person first, either one of the women inside the premises or a police officer, was too high to be discounted. In addition, it will be remembered that on occasions Mr Clavell had indicated that he desired '*death by cop*' if it came to that. This would have given rise to the distinct possibility that Mr Clavell's response to police storming the premises would be a violent one, calculated to provoke police into shooting him.
- 9.3. Once Mr Clavell was inside the Marilyn's premises, in my view his death could only have been prevented if police had not made their presence known to Mr Clavell and he had been allowed to leave the building unchallenged. However, having regard to the need to apprehend Mr Clavell and to the opportunity to do so that his entering Marilyn's presented, to my mind this would not have been an appropriate course of action for police to have taken.

## **10. Media publicity relating to Mr Clavell**

- 10.1. In the course of the operation to locate and apprehend Mr Clavell a number of media releases were promulgated by SAPOL. As a result there were a numerous newspaper, radio and television items relating to Mr Clavell. For the most part they were initiated by AC Harvey to whom I have already referred. The series of releases commenced on Wednesday 21 May 2014 which was the day after the warrants for Mr Clavell's arrest were obtained and when the search for Mr Clavell was made overt.
- 10.2. It is not necessary to refer to all of these media releases. However, in the light of the criticism that has been made in relation to the content of some of these media releases it is necessary to examine some of them.

- 10.3. Some of the releases precede the siege that began on 4 June 2014 and others occurred during the course of that event.
- 10.4. I should add here that the fact that a media release was promulgated by police did not necessarily imply that media publicity was given to each and every facet of the release. However, there was always the potential for such publicity to occur.
- 10.5. A common theme of all releases was that Mr Clavell was wanted by police and that he was considered to be dangerous. Another common thread was that Mr Clavell, if reading, viewing or listening, should seriously consider surrendering.
- 10.6. On 22 May 2014 AC Harvey created a media release in his name. The release referred to the search for Mr Clavell, to the fact that there was a warrant for his arrest in existence and to the fact that the warrant related to a breach of a firearms prohibition order. The release stated as follows:

'Now that order stems from an offence that happened in 2004 when Rodney Clavell fired at Police and was himself also shot. It is that incident that resulted in a firearms prohibition order.'

The release twice asserted that Mr Clavell was dangerous. There was also reference to the belief held by police that Mr Clavell was in possession of, or had access to, firearms and for that reason he should not be approached by anyone at any time. Reference was also made to the incident in the vicinity of the south parklands in which it was said that Mr Clavell had been seen in the city area, had dumped his car near South Terrace, had taken off on foot and that he had again '*evaded capture*'.

- 10.7. This release also referred to a belief that people were assisting Mr Clavell to avoid arrest and that this activity constituted a very serious offence which could carry up to seven years imprisonment. AC Harvey indicated that persons helping Mr Clavell would attract the scrutiny of police.
- 10.8. During the course of the inquest a number of critical comments were passed by counsel about the contents of that release. Firstly, the assertion that Mr Clavell '*fired at police*' in the 2004 incident contradicted the findings of the District Court judge that Mr Clavell had not at any stage pointed the gun at police and that the gun had gone off accidentally. Secondly, the assertion that Mr Clavell had been seen in the vicinity of South Terrace and had taken off on foot had no evidentiary foundation. It is argued that if these

assertions were untrue and were seen by Mr Clavell, they could have heightened his paranoia and strengthened his determination not to cooperate with police. Thirdly, the reference to persons assisting Mr Clavell to avoid arrest could have been counterproductive in that it would only serve to inhibit any such persons from coming forward.

- 10.9. The consequent media reporting in respect of this release and which was tendered to the inquest does not refer to AC Harvey's assertion that Mr Clavell had fired at police in the 2004 incident. There is no evidence that Mr Clavell would have seen any report of AC Harvey's assertions in this regard. The same applies to the reference to the South Terrace incident.
- 10.10. The reference in the release to persons assisting Mr Clavell and committing offences in doing so was designed to deter people from undertaking any such activity in order to make it more difficult for Mr Clavell to remain at large. The reference was not specifically designed to encourage people to come forward with information concerning Mr Clavell. There is nothing in the criticism that was levelled at this aspect of the release. It was a legitimate tactic designed to flush Mr Clavell out.
- 10.11. The headline of an Advertiser report of 23 May 2014 described Mr Clavell as a '*dangerous fiend*'. The article also referred to the incident near South Terrace. The article stated that it had caused the Pulteney Grammar School and Gilles Street Primary School to be quarantined. It assigned the blame for that to Mr Clavell who had '*forced city schools into lockdown*'. The article quoted AC Harvey and included reference to Mr Clavell being a danger to the community, that there was a suspicion that he had access to firearms and that he should not be approached. There is also reference to the penalties for persons assisting Mr Clavell.
- 10.12. There was nothing untoward about the reference to Mr Clavell being a danger to the community, to the suspicions regarding firearms, to the warning that he should not be of a '*brutal and cowardly*' attack on a woman who had been punched in the face with a studded leather glove, an incident to which I have already referred. This article dwelt on that incident in considerable detail as well as on the judgment of the District Court judge. It also referred to the 2004 incident involving the grader. There is also reference to Mr Clavell's involvement in a riot at the Port Augusta Prison in 2008. All of this of course was placed in the context of the police manhunt in relation to Mr Clavell that

was on foot at the time. The article speaks in very uncomplimentary terms about the perpetrator of the assault, although for the most part the report takes its colour from the judgment of the trial Judge. It refers to the trial Judge having entertained a reasonable doubt about Mr Clavell's guilt and the resultant acquittal. The article also refers to Mr Clavell's DNA and the DNA of the complainant having been found on the glove located at the Kidman Park premises. The article could have raised in the minds of some the distinct possibility that Mr Clavell was guilty of this dreadful assault after all. There is no evidence that police were responsible for this media release. The article does not purport to suggest that. The trial judge's reasons for verdict was a publicly available document. There is no evidence that Mr Clavell read this article.

- 10.13. Another Advertiser report of 24 May 2014 referred to police frustrations in respect of their inability to locate and arrest Mr Clavell and how they had recently come close to catching him. AC Harvey is quoted extensively in this article. Among other things he stated that the chase was on for Mr Clavell and that the police would not give up. There was further reference in the article to the city lockdown in recent days which was again attributed to Mr Clavell's activities in that district. It is not known whether Mr Clavell read or was made aware of this report.
- 10.14. A transcript of what appears to have been a television interview with AC Harvey on 1 June 2014 was tendered to the inquest<sup>42</sup>. AC Harvey is recorded as having said that they are sure that Mr Clavell has access to or is in possession of a firearm. There is also reference to police having raided more than 80 premises across the State in the previous 14 days. An unidentified interviewer presciently asked AC Harvey whether *'it could come to an ugly end if perhaps he's cornered'*. To this AC Harvey referred to police having conducted a number of incidents in which they had cordoned and contained a number of premises and that this was a tactic that he believed would achieve *'the safest result'*.
- 10.15. Finally, I should refer to a television interview with AC Harvey that occurred on the morning of 5 June 2014 which was the day of Mr Clavell's death. This interview occurred during the siege and appears to have been conducted in the hope that Mr Clavell would listen to or be able to view the interview from the building in King William Street. It is known that a television was in Marilyn's and that it was on from

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<sup>42</sup> Exhibit C58e, Appendix E

time to time if not incessantly. In the interview AC Harvey made an appeal to ‘Rodney’ to answer the phone and to speak to the police negotiators who were present ‘*to try and resolve this evening and early morning peacefully and safely*’. He urged Mr Clavell to respond to the attempts to communicate with him that were being made by police negotiators. AC Harvey stated that police believed that there were people with Mr Clavell inside the premises ‘*who cannot leave*’, but that there was no evidence that they were at risk personally. Asked by an interviewer as to Mr Clavell’s background, AC Harvey is recorded as having said that Mr Clavell had a violent past ‘*where he’s been involved in shoot-outs with police and has himself been shot by police*’. There was also reference to his general propensity for violence. The interview with AC Harvey concluded with him saying:

‘Rodney we know that you have concerns about your safety, they are probably understandable because you are on the run. The reality is like I’ve been saying since 14 days ago, we want to end this peacefully. I am here to make sure it ends peacefully: we’re totally committed to that. All we need is for you to speak to us and come out and everything can end safely this morning, and be resolved to everyone’s satisfaction. We desperately seek that.’

- 10.16. I have not seen each and every media report in respect of the Clavell matter. The criticism levelled at the material that was drawn to the Court’s attention is that it contained excessive hyperbole. The most egregious examples are alleged to be the references to Mr Clavell having ‘*fired at police*’, although as indicated there is no evidence that this claim was reported, and his having been involved in ‘*shoot-outs with police*’, the latter assertion containing the implications that Mr Clavell had willingly engaged in deliberate and possibly protracted courses of action in which he had fired shots at police with malicious intent, that multiple shots had been exchanged with police in any such shoot-out and that he had been involved in more than one shoot-out. It is maintained that these assertions were false, inappropriate and potentially counterproductive. Mr Clavell had been involved in one incident involving police in which a weapon of which he had been in possession had discharged and had discharged in circumstances which had not been proven as having been deliberate.
- 10.17. In this regard when the police negotiator Senior Sergeant Baker gave oral evidence in the inquest she quite strongly asserted that in her experience and in her opinion, which I give weight to having regard to her role, that a person police are seeking to arrest might be aggravated by what was said about them in the media, especially if it is not

fair or not the truth<sup>43</sup>. She gave as an example the undesirability of the women inside the premises with Mr Clavell being characterised as virtual hostages which would likely create in the mind of a person in Mr Clavell's position an enhanced perception of his criminality in the view of police and that he was being accused of something more serious than what was actually occurring. In the view of Senior Sergeant Baker the other undesirable aspect of referring to persons as being hostages or being held against their will is that it might actually implant the idea of taking hostages in the mind of the person sought to be arrested.

10.18. In other parts of her oral evidence Senior Sergeant Baker suggested that truth in media reporting and in police media releases was important because matters that are not accurate or truthful might aggravate the target because it *'can be very difficult for them and they sometimes don't see a way out, they don't think anybody will believe them because that's what's being said'*<sup>44</sup>. Senior Sergeant Baker also suggested that in a siege situation it would be undesirable for a broadcast to contain an exaggerated description of the criminality of the behaviour in respect of which the person's apprehension was being sought. This was because the person was cornered and if the media is asserting matters that are inaccurate, it may involve the person forming a belief that they would not receive fair treatment at the hands of the judicial system. Senior Sergeant Baker also asserted that the same level of undesirability would adhere to exaggerated statements being made in relation to criminality from the past. She suggested it would be counterproductive<sup>45</sup>. As well, Senior Sergeant Baker suggested that it was undesirable for the persons who are sought to be apprehended to form the belief that police are lying about them publicly<sup>46</sup>. She said:

'The sensational doesn't help.'<sup>47</sup>

It has to be said that Senior Sergeant Baker is a most impressive individual whose evidence made a lot of sense. She is experienced in her craft and her evidence about the effect that public statements might have upon a person whose arrest is sought by police accords with what we all understand about the human condition. I accept her evidence.

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<sup>43</sup> Transcript, page 373

<sup>44</sup> Transcript, page 395

<sup>45</sup> Transcript, pages 396-397

<sup>46</sup> Transcript, page 398

<sup>47</sup> Transcript, page 398

10.19. In his oral evidence AC Harvey was questioned by counsel assisting, Mr Kalali, about a number of the statements that he made in media releases. AC Harvey told the Court that his assertions to the effect that Mr Clavell had fired at police during the 2004 incident accorded with his belief as to what had actually taken place and had been supported by the contents of the Tactical Operation Order which he said he had no reason to doubt<sup>48</sup>. His understanding had been that Mr Clavell had fired at police. However, he also conceded that his statements did not reflect what the District Court Judge had found, namely that the gun had gone off accidentally and that at no stage had Mr Clavell pointed the firearm at police during the 2004 incident. He further agreed that a statement that a wanted person had shot at police in an earlier incident portrayed the person as an extremely dangerous criminal<sup>49</sup>. However, AC Harvey suggested that Mr Clavell's actions of having been in possession of a loaded weapon was in any event a matter of concern. Although AC Harvey did not suggest in terms that it would be to split hairs to draw any distinction between being in possession of a loaded firearm that went off accidentally on the one hand and deliberately discharging it at police on the other, that was the effect of his evidence. AC Harvey did accept the proposition that any false statement about Mr Clavell involving his having deliberately shot at police in an earlier incident might have angered Mr Clavell. He also acknowledged that if he had known that Mr Clavell had been sentenced on the basis that the gun had gone off accidentally and that he had not fired at police in the 2004 incident, he would not have said anything to the contrary in his media release<sup>50</sup>. He told the Court that he would have tailored the language of his media release simply to say words to the effect that '*a firearm was discharged during engagement with police*' and to make no comment about where it had been pointed<sup>51</sup>. To my mind these acknowledgements were well made. Naturally, exaggerated assertions as to the number of occasions in which Mr Clavell had supposedly been engaged in '*shoot-outs with police*' would also require acknowledgement as being inappropriate.

10.20. The same topic was the subject of cross-examination of Assistant Commissioner Paul Dickson who had been involved in the Clavell matter in May and June 2014. AC Dickson was not responsible for any media releases or interviews until after Mr Clavell's death. In his evidence before the Court AC Dickson emphasised that the key consideration arising from the 2004 incident was that Mr Clavell had been in

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<sup>48</sup> Transcript, page 239

<sup>49</sup> Transcript, page 245

<sup>50</sup> Transcript, page 247

<sup>51</sup> Transcript, page 248

possession of a loaded firearm and that it had discharged. Regardless of whether the weapon had been deliberately fired at police or not, the point was that any person in the community in possession of a loaded firearm posed a high risk to that community<sup>52</sup>. AC Dickson told the Court that he did not really know the detail of the 2004 incident except that a firearm had been discharged. He did not know whether or not Mr Clavell had deliberately fired at police during that incident. AC Dickson agreed with the proposition that in media releases which contain a description of a person's previous criminality there was no place for hyperbole or stretching of the truth<sup>53</sup>. AC Dickson told the Court that he did not see the telecast of AC Harvey's interviews, but had there been information to the contrary, he would not have countenanced a media release that suggested that Mr Clavell had deliberately fired at police<sup>54</sup>. AC Dickson agreed that rather than acting on folklore and anecdotal material, source material should be referred to before a media release occurs<sup>55</sup>. Again, this concession was well made in my view.

10.21. In principle the media campaign had legitimate objectives including:

- Photographically depicting Mr Clavell so that he could be recognised by the public,
- Alerting the public to the need not to approach Mr Clavell,
- Warning those who were assisting Mr Clavell with a view to making it difficult for Mr Clavell to remain at large,
- Encouraging Mr Clavell to surrender, and
- Reassuring Mr Clavell and the public that he would be dealt with fairly upon his apprehension.

10.22. However, the content of the SAPOL media releases had the tendency to lead to the demonisation of Mr Clavell in the eyes of the public. Similarly, it could have engendered in the mind of an irrational and excitable Mr Clavell, were he to see any of it, that police would stop at little to secure his capture. But that of itself does not mean that it was inappropriate if it truly served the legitimate purposes identified above. To my mind there is no evidence to suggest that the quantity of media coverage relating to Mr Clavell as generated by police was other than reasonable. That said, it was not appropriate for police to have engaged in making statements other than in accordance with established fact. While it was reasonable from a risk management perspective for

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<sup>52</sup> Transcript, page 317

<sup>53</sup> Transcript, page 321

<sup>54</sup> Transcript, page 323

<sup>55</sup> Transcript, page 323

police privately to view the 2004 events as having involved Mr Clavell possibly shooting deliberately at police, especially as there had been uncertainty and diverse opinion about that issue, it was a different matter for police to have shared those views with the public in circumstances where it may have aggravated an already demonstrably irrational target in Mr Clavell. To suggest publicly that he had in fact deliberately fired at police when had had been dealt with by the courts on a much more lenient basis could have had that tendency. It would have been far better if a formula along the lines suggested in hindsight by AC Harvey had been utilised in relation to the discharge of the shotgun in the 2004 incident, namely a bland assertion that in 2004 Mr Clavell had been in possession of a loaded shotgun which had discharged during attempts to apprehend him. And of course, the assertion that Mr Clavell had engaged in shoot-outs with police should not have been made at all. If Mr Clavell had seen that reference, it would have hardly inspired confidence that he would be dealt with fairly if he gave himself up.

- 10.23. However, there is no evidence one way or the other as to whether Mr Clavell's mindset at any stage was affected by any assertions made by police as broadcast or reported by media. It is worthwhile pointing out that Mr Clavell's reaction to many things could not be expected to be wholly rational in any event.

## **11. Conclusions**

- 11.1. The Court drew the following conclusions in relation to the cause and circumstances of the death of Mr Clavell.
- Mr Clavell died on 5 June 2014. The cause of his death was a shotgun wound to the head. The shot which caused Mr Clavell's death was fired by himself. It was a deliberate act accompanied by an intention of ending his own life. No other person was involved in the act of shooting. Police did not enter Marilyn's or attempt to enter Marilyn's at any time prior to Mr Clavell's death.
  - Mr Clavell had been released from a period of remand in custody on 25 February 2014 which was the day on which he had been acquitted in the District Court of an alleged assault upon a woman. He lived within the community from that date until the date of his death. During that period Mr Clavell was regarded as a monitored person of interest by the South Australian Police (SAPOL). Also during this period Mr Clavell came under suspicion for having committed a number of alleged offences including a suspected breach of a firearm order. There is nothing in the

evidence to suggest that any of these suspicions were not well-founded. Warrants for his arrest were issued by the Magistrates Court on 20 May 2014.

- Prior to and on 4 and 5 June 2014 Mr Clavell had been regarded by police as high risk both in respect of the risk of him seriously offending and of the risk that would adhere to any attempt to arrest him. His classification of high risk on both grounds was well-founded.
- The involvement of the SAPOL Serious and Organised Crime Branch, the Serious Crime Task Force and STAR Group in the attempts to locate and apprehend Mr Clavell was appropriate.
- Following the issuing of warrants for his arrest SAPOL embarked upon a media campaign that was designed to alert both Mr Clavell and the public to their intention to arrest Mr Clavell. Notwithstanding this, Mr Clavell remained at large until his whereabouts were detected on 4 June 2014. Save and except for the following, there is nothing to suggest that the media campaign, having as it did legitimate objectives, was not reasonable. However, the campaign made references to previous incidents in which Mr Clavell had been an offender or had been suspected of having been an offender, which contained assertions of fact that did not accord with court outcomes. Although from a risk management perspective it was legitimate for police to have had regard to what they may have believed Mr Clavell had been capable of as far as violent criminal offending was concerned, statements in media releases should not have contained assertions which were either untrue, not supported by sufficient evidence or which were inconsistent with issues that had been resolved in his favour in the courts. I refer in particular to claims made in media releases that Mr Clavell had shot at police, engaged in shoot-outs with police, or had been responsible for the locking down of two schools in the central business district of Adelaide. If seen by Mr Clavell, such assertions could only have been counterproductive in any attempt to publicly persuade Mr Clavell to surrender. There is no or no sufficient evidence demonstrating how much of this publicity, if any, Mr Clavell actually saw.
- The plan on the part of SAPOL senior officers to apprehend Mr Clavell by way of cordon and call in respect of a premises in which he would be situated was appropriate. All other tactical options were unpalatable and unacceptably dangerous.
- Notwithstanding the fact that it was known that the Marilyn's premises contained a number of women, there is nothing to suggest that cordoning Mr Clavell and

attempting to negotiate his surrender with him was not the most appropriate and safest way of attempting to apprehend him. The risk to the women was in the eyes of police mitigated by the belief that Mr Clavell had an existing association with the premises and therefore had a likely existing association with its occupants or some of them. There is nothing to suggest that this belief, and any risk assessment based upon this belief, was unreasonable in the circumstances. In all of the circumstances the decision to cordon the premises notwithstanding the possible presence of persons present within it was unavoidable. Police were entitled to take the view that it would have been highly undesirable either to attempt to apprehend Mr Clavell upon his exiting the premises or allow him to proceed to another destination that may have presented equal or even greater tactical challenges.

- The attempt at negotiations conducted by SAPOL were appropriate. There was nothing intimidating or threatening about any of the attempts that were made to negotiate with or otherwise communicate with Mr Clavell. At all times Mr Clavell remained resistant to police attempts to negotiate with him. At no stage was direct communication achieved between police and Mr Clavell.
- At the time of his death Mr Clavell was under the influence of amphetamines. He elected to take his own life. To my mind Mr Clavell was not in any way influenced by any undue pressure placed upon him by police.
- There is no evidence that police activity in respect of Mr Clavell contributed to his death.
- Other than police allowing Mr Clavell to leave the Marilyn's premises and to remain free for a period that could not be controlled or predicted, a course of action that in all of the circumstances would not have been appropriate, Mr Clavell's death was not preventable.

## **12. Recommendations**

- 12.1. Pursuant to section 25(2) of the Coroner's Act 2003 I am empowered to make recommendations that in the opinion of the Court might prevent, or reduce the likelihood of, a recurrence of an event similar to the event that was the subject of the Inquest.
- 12.2. I agree with counsel assisting Mr Kalali that the Court should appropriately make the following recommendations. I observe that the making of these recommendations does

not imply that any of the underlying measures would necessarily have prevented the death of Mr Clavell, but they may do so in a future similar event. I direct these recommendations to the attention of the Commissioner of Police:

- 1) In compiling and releasing information to the public about an identified target, police officers must be accurate and precise in describing factual matters. Facts asserted in media releases should only in the rarest of circumstances, if ever, conflict with the findings and outcomes established in a court of law. The use of exaggerated and hyperbolic assertions of fact in media releases should be assiduously avoided.
- 2) Police internal reports in relation to the previous offending of an individual and to the court outcomes relating to the same should reflect not only the basis upon which the prosecution had presented its case against that individual, but also the factual basis on which the individual was dealt by the court.
- 3) When considering tactical measures in respect of the apprehension of high risk offenders, consideration should be given, where possible, to obtaining any historical mental health reports or psychological opinions concerning the offender. In some instances it may also be desirable to consult with officers who in the course of a previous incident have acted as negotiators in respect of the particular offender.
- 4) Relevant internal reports such as those compiled in respect of a Commissioner's Inquiry should be made available to investigating officers and to those officers who are involved in tactical decision making in respect of the apprehension of high risk offenders.

*Key Words: Death in Custody; Police; Siege; Suicide*

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

*Seal the 28<sup>th</sup> day of June, 2018.*

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*Deputy State Coroner*