

CORONERS ACT, 2003



FINDING OF INQUEST

An Inquest taken on behalf of our Sovereign Lady the Queen at Adelaide in the State of South Australia, on the 9th, 10th, 11th, 12th, 13th, 16th, 17th, 19th and 23rd days of April 2018, the 9th day of May 2018 and the 10th day of February 2020 by the Coroner's Court of the said State, constituted of Jayne Samia Basheer, Deputy State Coroner, into the deaths of Graziella Dailler and Wayne Dion Muir.

The said Court finds that Graziella Dailler aged 48 years, late of 23 Nicolas Baudin Drive, Encounter Bay, South Australia died at Encounter Bay, South Australia on or about the 15th day of May 2014 as a result of the combined effects of blunt head trauma, along with multiple sharp force injuries, including a stab wound to the left external jugular vein.

The said Court finds that Dion Wayne Muir aged 44 years, late of 23 Nicolas Baudin Drive, Encounter Bay, South Australia died at Encounter Bay, South Australia on or about the 15th day of May 2014 as a result of neck compression due to hanging.

The said Court finds that the circumstances of their deaths were as follows:

1. Introduction

- 1.1. Graziella Dailler (aka Graziella Holly) and Dion Wayne Muir died on or about 15 May 2014 aged 48 years and 44 years respectively.¹

¹ The deceased Graziella Dailler will be referred to as 'Ms Dallier', 'the deceased Dailler' and/or 'Dailler'. The deceased Dion Muir will be referred to as 'Mr Muir', 'the deceased Muir' or 'Muir'

- 1.2. On 15 and 16 May 2014, Ms Dailler failed to attend at her work place, Authenticity Wellness Retreat, Port Elliot. Attempts to contact her were unsuccessful and family members became concerned about her welfare.²
- 1.3. At about 11:45am on 16 May 2014, Ms Dailler's two adult daughters, Natasha Palmer and Adelaide Holly, attended at 23 Nicolas Baudin Drive, Encounter Bay to check on their mother's welfare. They noticed her car in the driveway and knocked on the door. There was no response. South Australia Police (SAPOL) and the South Australia Ambulance Service (SAAS) were called for assistance.³ Senior police personnel, forensic investigators and forensic pathologist, Dr Karen Heath attended at the scene.
- 1.4. Access was gained to the house by climbing through the bathroom window. On entering the premises, two deceased persons were located who were later identified as Ms Dailler and Mr Muir. Ms Dailler was found deceased on the floor of the loungeroom. Mr Muir was found in the laundry hanging from a length of rope passed up through an open manhole in the ceiling and tied around a roof beam. The rope had a simple knot positioned behind the head and a loop passed around the neck to form a ligature.⁴
- 1.5. It is undisputed that Ms Daller died at the hands of Mr Muir. It is undisputed that Mr Muir's death was the result of suicide.

2. Post mortems and cause of death

- 2.1. *Post mortem examination of Dion Wayne Muir*
- 2.2. On 17 May 2014 Dr Heath performed a post mortem examination of the deceased Dion Muir at Forensic Science South Australia (FSSA).
- 2.3. Dr Heath noted multiple incised wounds to the neck, chest, upper and lower limbs and a large superficial incised wound to the left forearm and left wrist. No major vessels were damaged. Dr Heath concluded that none of the incised wounds were lethal injuries and were not considered to have contributed to Mr Muir's death, albeit the wounds

² Exhibit C124a, page 67; Exhibit C120, pages 11-12; Exhibit C19

³ Exhibit C120, pages 12-14; Exhibit C106, Statement of Adelaide Holly; Refer also SII Report, Exhibit C104a

⁴ Exhibit C104a, pages 67-68: Significant Investigation Inquiry Report (SII Report) into the deaths of Graziella Dailler (aka Holly) and Dion Muir. N.B. The SII Report serves as the report to the State Coroner

would have resulted in significant blood loss. Although it was considered possible some of the incised wounds could have been inflicted by the deceased's partner, there were no injuries identified which could not have been self-inflicted. Dr Heath opined that some of the injuries to the right and left hands could represent defensive type injuries, however, similar injuries have been observed on assailants involving assaults with sharp implements. No natural disease was identified that could have caused or contributed to the death.⁵ Dr Heath concluded that the cause of Mr Muir's death was neck compression due to hanging, and I so find.

2.4. *Post mortem examination of Graziella Dailer*

2.5. On 18 May 2014 Dr Heath performed a post mortem examination of the deceased Graziella Dailer.

2.6. Dr Heath noted a linear fracture of the right parietotemporal scalp and a hinge fracture of the base of the skull, along with multiple sharp force injuries, including a stab wound to the left external jugular vein. She described the hinge fracture of the base of the skull as indicative of an application of severe force to the head and one which often results in severe closed head injury and death. Dr Heath said it was likely the deceased would have been unconscious following the blow to the head.

2.7. The mechanism of death was attributed to the combined effects of head injuries, along with extensive blood loss from the stab and incised wounds. Dr Heath said it is possible that an air embolism from the stab wound to the left jugular vein may have contributed to death. Multiple sharp force incised wounds were present on both hands of the deceased, consistent with defensive injuries. There was no evidence of natural disease which could have caused or contributed to death.⁶

2.8. On 20 May 2014, Dr Heath re-examined Ms Dailer in the presence of a forensic odontologist. A piece of skin tissue was observed wedged between the teeth of the lower incisors, rather than overlying the teeth. Dr Heath concluded that the tissue was consistent with a laceration on the dorsum left index finger of the deceased Muir.

⁵ Exhibit C105b

⁶ Exhibit C105a

- 2.9. Dr Heath concluded that Ms Dailer's death was caused by the combined effects of blunt head trauma, along with multiple sharp force injuries, including a stab wound to the left external jugular vein, and I so find.
- 2.10. The date of the deaths of each of the deceased has been given as on or about 15 May 2014.
- 2.11. Toxicology summary reports were prepared in respect of each of the deceased.⁷ With the exception of approximately 20mg of salicylic acid per litre in Ms Dailer's blood, no alcohol, amphetamines, cannabinoids, cocaine, morphine, benzodiazepines and other drugs were detected in the blood samples taken from either of the deceased. The salicylic acid in Ms Dailer's blood was consistent with therapeutic concentrations.⁸

3. Overview/personal backgrounds of Graziella Dailer and Dion Muir

- 3.1. The personal backgrounds of each of the deceased and an overview of the case is succinctly summarised in the Significant Investigation Inquiry (SII) Report. This evidence is undisputed and I gratefully adopt portions of the SII Report for the purpose of this finding.⁹
- 3.2. Ms Dailer was 48 years old, born in France on 25 February 1966. In 1989 she married an Australian, Mr Kym Holly. They moved to South Australia in 1993 and purchased a home at Port Noarlunga. For the next 15 years the family resided at Port Noarlunga, Carrickalinga and various addresses at Normanville.¹⁰ The couple separated in late 2008 and in 2010 they divorced on amicable terms.¹¹ There are three adult children of the marriage, namely Adelaide, Natasha and Vincent born in 1988, 1991 and 1994 respectively. Ms Dailer obtained Australian citizenship in 1997.¹²
- 3.3. Mr Muir was 44 years old, born in Adelaide on 1 December 1969. As a youth he was exposed to a dysfunctional family environment which reportedly exhibited domestic abuse. His parents separated when he was very young. Mr Muir had no further

⁷ Exhibit C2a, C2b; See also Exhibits C3 and C4a

⁸ Salicylic acid is a keratolytic. It belongs to the same class of drugs as aspirin (salicylates). It works by increasing the amount of moisture in the skin and dissolving the substance that causes the skin cells to stick together. It is also used to remove corns and calluses.

⁹ Exhibit C104a; C120C46; Transcript, pages 74-92

¹⁰ Exhibit C104a, page 22; NB. Ms Dailer assumed the surname Holly in 1989

¹¹ On 27/8/2013 Ms Dailer changed her name from Graziella Holly to Graziella Dailer pursuant to the *Births, Deaths and Marriages Act 1996 (SA)*

¹² Exhibit C104a, pages 22-23

relationship with his biological father. His mother, Lyn Fullgrabe, commenced a defacto relationship with an Aboriginal man named Robert Muir with whom she lived for 12 years. They had three children. The deceased formed a relationship with his stepfather who was a professional Australian footballer (and presumably with his half siblings). They relocated many times. In 1990 Muir's mother and stepfather separated.¹³

- 3.4. Mr Muir met Ursula Tebby in 1991. They commenced a relationship. In 1993 the couple returned to Adelaide where Mr Muir had family and friends. They married in 2000. In May 2000 Mr Muir took his stepfather's surname and later identified as Aboriginal. The couple had one daughter from the relationship, Caitlin Jane Muir, born on 22 May 2002.¹⁴ Ms Tebby was hospitalised post-birth for a lengthy period. On returning home, Mr Muir ceased his employment and became a full-time carer for Ms Tebby and Caitlin. Over time he commenced casual employment at vineyards and as a labourer with South Coast Waste. At the time of his death, Mr Muir was unemployed and seeking work and training opportunities through Workskil Australia.¹⁵
- 3.5. Following the marriage, it is undisputed that Mr Muir commenced using illicit and prescription drugs. He became addicted to alcohol and required medication and professional intervention to deal with alcohol abuse. At times, he was hospitalised with mental health issues.¹⁶
- 3.6. Mr Muir met Ms Dailler in 2008 through a mutual friend. They commenced a relationship in about late 2008/early 2009.
- 3.7. Mr Muir and Ms Tebby separated in July 2011. Ms Tebby reported a history of domestic abuse (DA) in her relationship with Mr Muir occurring between 2009 and 2011. By 22 December 2011, Ms Tebby had obtained a Police Interim Intervention Order (PIIO). Contact and communication with Caitlin was limited by the terms of the order (i.e. phone calls and brief visits).¹⁷
- 3.8. After the separation, Mr Muir lived with Ms Dailler at Normanville. It is undisputed that their relationship was turbulent and volatile. Both parties abused alcohol and there

¹³ Exhibit C104a, page 27

¹⁴ Ibid

¹⁵ Exhibit C104a, page 29

¹⁶ Exhibit C104a, pages 28-31

¹⁷ Exhibit 104a

were reported episodes of recreational drug use (mainly by Mr Muir). It is best described as an on/off relationship. When it was 'on' Mr Muir lived with Ms Dailier at Normanville, Yankalilla, Port Elliot and Victor Harbor. He stayed elsewhere at other times.¹⁸

- 3.9. Ms Dailier's children disliked Mr Muir. Several of her friends also disliked him. The unchallenged evidence suggests that Ms Dailier was secretive about her relationship with Mr Muir and, at times, she lied to her family and friends about the status of the relationship. On rare occasions, she confided in family and friends.¹⁹
- 3.10. Several witnesses, including relatives of each of the deceased, provided statements to the Court. The contents of these statements were unchallenged and provide some insight into the nature of the relationship between Mr Muir and Ms Dailier, along with the impact of alcohol abuse on their relationship. Several witnesses said Muir abused recreational and prescription drugs. The Court also received statements from doctors and other health professionals regarding Muir's ongoing mental health issues and drug-related matters. It is unnecessary to address this evidence in any detail for the purpose of this finding. Suffice it to say I have read and considered this material and accept the matters attested to by those witnesses.²⁰
- 3.11. Between 2009 and 2014 SAPOL members were frequently tasked to attend reports of domestic abuse allegedly committed by Mr Muir. These reports led to various charges being laid against Mr Muir. On nine occasions Ms Dailier subsequently requested no further police action be taken and the reported matters were discontinued. On some occasions, when SAPOL patrols arrived in response to '000' calls, Ms Dailier refused to provide a statement and no offence was disclosed.²¹
- 3.12. During the relevant period, Mr Muir was arrested on five occasions in relation to DA incidents involving Ms Dailier.²² Two PIIOs were issued. The first PIIO was active between 2012 and 2013. It was revoked at the request of Ms Dailier. The second PIIO was active in 2014 up to and including the date of her death.

¹⁸ Exhibit C104a, pages 28, 31-32

¹⁹ Exhibit C104a, pages 23-25

²⁰ For further details see Exhibits C13, C14, C19-C22, C24, C26-C29, C31-C34, C37, C40, C41, C44, C51-C58, C106, C107

²¹ Exhibit C104a, pages 3-4

²² 22 December 2011, 30 June 2012, 3 July 2012, 6 January 2013 and 6 April 2014

- 3.13. Ms Dailler was referred to Junction Australia on three occasions (twice in 2012 and once in 2013) as a result of requesting no further police action and/or the withdrawal of charges.²³
- 3.14. So far as offender history is concerned, Ms Dailler had only one conviction recorded in 2011 for an offence of exceeding the prescribed concentration of alcohol (PCA).²⁴ Mr Muir had eight convictions recorded between 1989 and 2013 for various traffic offences and PCA and convictions for breach of bail and contravene intervention order relating to Ms Dailler.²⁵

4. Reason for inquest and issues for examination

- 4.1. The deaths of Mr Muir and Ms Dailler are 'reportable deaths' for the purposes of the *Coroner's Act, 2003 (SA)* because they occurred 'by unexpected, unnatural, unusual, violent or unknown cause'.²⁶ An inquest is required to ascertain the cause and circumstances of the deaths.
- 4.2. A range of issues arise for examination. The primary issues include:
- 4.2.1. The adequacy of the SAPOL response to the reported incidents.
 - 4.2.2. Observation by SAPOL members of the requirements of SAPOL General Orders (eg. Domestic Abuse, Crime Reporting).
 - 4.2.3. Whether mandatory Domestic Violence Risk Assessments (PD438) were conducted for each DA incident reported or suspected by police and, if not, why not.
 - 4.2.4. Processes relating to Risk Assessments of Victims (PD437), withdrawal of criminal charges and referral of victims to other agencies such as Junction Australia.
 - 4.2.5. The circumstances which led to Mr Muir having ongoing contact with Ms Dailler whilst in the custody of the Department for Correctional Services

²³ Exhibits C139 and C139a, Statement of Heather Gornlie

²⁴ Exhibit C104aag

²⁵ Exhibit C104aaf; Exhibit C104a, page 29

²⁶ Section 3(1) of the *Coroner's Act, 2003 (SA)*

(DCS) between 8 January 2013 and 28 March 2013, contrary to the terms of a Police Interim Intervention Order.

4.2.6. Mr Muir's opportunity for referral to domestic abuse programs whilst under the care of Community Corrections.

4.3. I turn now to a chronological examination of key events by reference to the documentary exhibits and oral evidence of witnesses. This finding will focus on the evidence pertaining to the period between May 2011 and May 2014. I do not propose to summarise the evidence of each witnesses in turn. Rather, the relevant portions of their evidence will be addressed by reference to each of the key events.

5. SAPOL Communications Centre and management of '000' calls to police

5.1. During the inquest the Court received evidence of multiple '000' calls made by Ms Dailler and others requesting police assistance. The SAPOL Communications Centre provides an emergency service for receiving South Australian '000' and police assistance (131444) calls and provides the appropriate initial policing response through radio dispatch of police resources. The Communications Centre (Comcen) primarily handles '000' telephone calls and the Police Call Centre primarily handles the Police Attendance Line (131444). Both Centres record the information received in the South Australian Computer-Aided Dispatch (SACAD) system.²⁷ If police attendance is required, Comcen manages this by dispatching a police resource via the South Australian Government Radio Network (SA-GRN) from the SACAD system.²⁸

5.2. It should be noted that for ease of reference, all telephone calls referred to in this finding will be described by reference to the identification numbers documented in the call synopsis prepared by Senior Constable Matthew Fullston.²⁹ The synopsis identifies the date, time, destination and identification numbers of the calls. There is no dispute about the accuracy of the synopsis.

5.3. The first relevant '000' call was made on 14 May 2011. The caller sounded very distressed and asked for the police. The call ended before any caller details could be taken by the operator. The call line identification (CLI) data identified the caller as

²⁷ Eg. Exhibit C104aac

²⁸ Exhibit C102, Statement of Scott Anthony Fitzgerald, pages 1-2

²⁹ Exhibit C99

Graziella Holly of 2 Clarke Street, Normanville.³⁰ Three attempts were made to return the call but it was not answered.³¹

6. 3 October 2011 - SAPOL patrol and tasking to 40 Gregory Street, Port Elliot

(‘the broken wine glass incident’)

- 6.1. On 3 October 2011, three ‘000’ calls were received. The first call was made at 7:42pm by Ms Michelle Wright who advised that a female neighbour was at her front door asking for help. The female was described as hysterical and asking for police.³²
- 6.2. A second call was made at 7:46pm. The caller was a female who was described as difficult to understand on account of her strong accent. The caller responded appropriately to questions and advised the operator that she was ‘scared for myself’ and ‘I’m outside, cursing me, abusing me and punch me...’. A male person could be heard in the background yelling. The CLI data identified the caller as ‘Graziella Holly of 40 Gregory Street, Port Elliot.’³³
- 6.3. A third call was made at 8:02pm. The CLI information again identified the caller as Graziella Holly who continued to ask for police to attend. A male could be heard in the background saying ‘you’re a fucking dog mate, you are a dog...’. The caller said ‘...I’m afraid for my life...what’s gunna happen if he come over’. The operator repeatedly requested the location of the caller, however the caller subsequently said ‘forget it’.³⁴
- 6.4. A police patrol was tasked to attend. The tasking was assessed as ‘Priority G2’ which prescribes a response time of 30 minutes or less. The tasking was accepted by a uniform mobile patrol team within four minutes (at 7:47pm).³⁵ The officers who attended were Senior Constables Robert Leach and Greg Daly.³⁶
- 6.5. Senior Constable Leach provided a statement to the Court and gave oral evidence at the Inquest.³⁷ He explained that as at October 2011, patrols received written information about taskings on a Mobile Data Terminal (MDT). The MDT was a fixed device

³⁰ Exhibit C124, page 32; SAPOL CAD/SACAD Event 111340488, MD 67

³¹ Exhibit C99, page 33

³² Exhibit C107; Exhibit C99 - Call No: 400383019550039

³³ Exhibit C124a, page 33; Exhibit C121, page 2; Exhibit C99 - Call No: 400383019550060

³⁴ Exhibit C124a, page 33; Exhibit C121, page 2; Exhibit C99 - Call No: 400383019550137

³⁵ Exhibit C121, page 1; Transcript, page 98

³⁶ Exhibit C123a, page 34; NB. The SII Report suggests that Senior Constable David Mitchell attended the incident. Senior Constable Mitchell provided a statement which confirms that he did not attend this incident: Exhibits C64a and C64b

³⁷ Exhibit C121; Transcript, pages 95-120

affixed inside of each police vehicle. It could not be removed and/or used as a mobile monitor. In his statement, Senior Constable Leach confirmed that information along the lines set out above was received by the patrol. There were some minor differences and/or omissions but nothing turns on these differences.³⁸

- 6.6. On arrival, Senior Constable Leach spoke to a person who was later identified as Graziella Dailler. He described Ms Dailler as mildly under the influence of liquor with slightly slurred speech and a person who spoke with a foreign accent. Senior Constable Leach said she was initially uncooperative, 'swearing a little bit' and did not want the police to enter the house. However, after a short conversation, entry was permitted and Ms Dailler introduced Dion Muir as her partner.³⁹
- 6.7. In accordance with police protocols, the parties were spoken to separately. Senior Constable Leach spoke with Ms Dailler in the kitchen. Mr Muir was spoken to by another officer at a separate location, out of Ms Dailler's earshot.⁴⁰
- 6.8. Ms Dailler told Senior Constable Leach there had been an argument about a broken wine glass which had been dropped on the floor. A broken glass was observed in situ on the kitchen floor. When asked by Senior Constable Leach whether she had been punched, Ms Dailler denied any such assault. Senior Constable Leach noted no visible signs of injury, obvious signs of a struggle and/or disturbance in the house. The account given by Mr Muir to Senior Constable Daly was consistent with Ms Dailler's version of events.⁴¹
- 6.9. The patrol left the scene at 8:26pm after speaking with the neighbour who had initiated the '000' call.⁴²
- 6.10. As at 3 October 2011, a SAPOL General Order entitled 'Domestic Violence' governed the responsibilities of patrol officers who attended such taskings.⁴³ The General Order deals with matters that include incident documentation. The General Order prescribed that if a substantive offence is disclosed and the matter is not being dealt with by a summons or arrest, the member is required to raise a Police Incident Report (PIR) by

³⁸ Exhibit C121, page 2

³⁹ Transcript, pages 98-99

⁴⁰ Transcript, page 100

⁴¹ Exhibit C121, page 3; Transcript, pages 98-100

⁴² Exhibit C121, page 3

⁴³ Exhibit C104aaah; The nomenclature was amended from Domestic Violence (DV) to Domestic Abuse (DA) on 30 November 2011: Exhibit C104a, page 82

the end of the member's shift. If no substantive offence is disclosed but the matter is characterised as domestic violence (as it was then called), the PIR must record the incident type as domestic violence (i.e. PIR DV related).⁴⁴ Once so characterised it followed that a PD438 risk assessment form had to be completed by the end of the shift (along with a PD437 regarding psychological/emotional observations). If the criteria existed and the victim agreed, an application for a domestic violence restraining order would be made.⁴⁵

- 6.11. Senior Constable Leach returned to the Victor Harbor Police Station (VHPS). He did not raise a PIR or conduct a PD 438 risk assessment. Rather, an Ancillary Report was raised (**AncR 12/D94543**). Ancillary Reports are generally used to record incidents where no substantive offence has been disclosed.
- 6.12. The effect of Senior Constable Leach's evidence was that he was satisfied no offence had been disclosed and there were no obvious signs of domestic violence. That is why he did not raise a PIR (DV related) or conduct a risk assessment. Under cross-examination by counsel assisting, Senior Constable Leach agreed, with the benefit of hindsight, that 'perhaps a PIR should have been prepared'. As to a risk assessment, he said it 'could have been done' however at the time he did not consider the incident 'met the criteria for a domestic abuse report'.⁴⁶
- 6.13. Under re-examination by his counsel, Mr Roberts, Senior Constable Leach said that after he completed his court statement, his branch manager gave him some 'words of advice', namely that he 'should have put on a domestic abuse report and a risk assessment'.⁴⁷ Nevertheless, Senior Constable Leach maintained there was no evidence of 'domestic abuse'.⁴⁸
- 6.14. Given the contents of the three '000' calls, along with the evidence of an argument and the broken wine glass, I consider it would have been prudent to generate a PIR (DV related). That said, it is easy to reach such conclusions with the benefit of hindsight. It may well be that Senior Constable Leach focused on the apparently innocent explanations offered by Ms Dailler and Mr Muir rather than the contents of the '000'

⁴⁴ Exhibit C104aaah (June 2011 version)

⁴⁵ Exhibit C104aaah, page 21

⁴⁶ Transcript, pages 110-111

⁴⁷ Transcript, page 116

⁴⁸ Transcript, pages 116-120

communications which, at the relevant time, were only accessible on a fixed MDT located inside the patrol vehicle.

- 6.15. Having regard to all of the circumstances, I find no basis to criticise the decision of Senior Constable Leach not to raise a PIR (DV related) or conduct a risk assessment on this occasion.

7. 20 December 2011 - SAPOL patrol and tasking to 40 Gregory Street, Port Elliot
(*'the attempted strangulation report'*)

- 7.1. At the relevant time, David Eustice worked as a chef at the Royal Family Hotel at Port Elliot. Mr Eustice provided a statement to the Court and gave oral evidence at the inquest.⁴⁹

- 7.2. Mr Eustice was acquainted with Ms Dailler. He knew her only as Graziella. At about 1am on 20 December 2011 he received a call 'from Graziella's mobile telephone'. On answering he heard a female screaming in the background and then the call ended. Mr Eustice and his housemate Robert Verco decided to walk to Graziella's house.⁵⁰ A second call was received. During this call Graziella asked Mr Eustice to call the police. Mr Eustice asked whether 'he' had bashed her, to which Graziella replied 'Yes'. During this call Mr Eustice said he could hear yelling in the background including the phrase 'it's fucking Dave'.⁵¹

- 7.3. Mr Eustice called '000' at 12:56am. He told the police that his friend had been bashed by her partner and needed police to attend at 40 Gregory Street, Port Elliot. An audio recording of the '000' call was played to the Court which confirmed the contents of the call. A police patrol was tasked to attend to conduct a welfare check. Mr Eustice was advised to return home.⁵²

- 7.4. At about 1:02am, Ms Dailler dialled '000' and told the operator she was at 40 Gregory Street, Port Elliot and that Dion Muir had tried to strangle her. She said he was outside the house.⁵³

⁴⁹ Exhibit C118; Transcript, pages 211-230

⁵⁰ Exhibit C40

⁵¹ Exhibit C124a, page 36; Transcript, pages 231-237

⁵² Exhibit C118; Transcript, pages 214-216; Exhibit C99A-Call 400383019954949

⁵³ Exhibit C99-Call No:400383019954969

7.5. Two patrols attended, namely Senior Constable Jessica Arnold (on solo patrol) and Senior Constable David Jury and Constable Holland (in a separate patrol car). The three officers provided statements to the Court. Senior Constables Arnold and Jury also gave oral evidence at the Inquest.⁵⁴

7.6. *Evidence of Senior Constable Jessica Arnold*

7.7. Ms Arnold is a senior constable of police. Senior Constable Arnold provided a statement to the Court and gave oral evidence at the inquest.⁵⁵

7.8. The tasking was received at around 1:15am. On arrival, she said the second patrol was already on the scene and speaking with Ms Dailler. She was present at the scene when Senior Constable Jury and Constable Holland searched the rear yard of the premises but Muir was not located. The two person patrol then left in the fleet car to search the surrounding areas while Senior Constable Arnold remained at the scene with Ms Dailler.⁵⁶

7.9. Senior Constable Arnold spoke with Ms Dailler. She made notes of the conversation in her police notebook. Ms Dailler disclosed a three-year relationship with Mr Muir and mentioned they had been separated for several weeks. She said Mr Muir had arrived at her house in the afternoon. She left him asleep on the lounge room floor and went to bed. Sometime later she woke up 'to have him strangle her stating he will kill her and bash her head off'. Ms Dailler said she pushed him off and ran outside. She called her friend Dave and then the police. She told Mr Muir to leave as the police were on their way.⁵⁷

7.10. After searching the surrounding area, Senior Constable Jury and Constable Holland returned briefly to the scene and then they resumed patrol duties. Muir had not been located. Senior Constable Arnold remained at the scene.

7.11. Notwithstanding the seriousness of the allegations, Ms Dailler did not want Mr Muir charged. Senior Constable Arnold said Ms Dailler was happy that Mr Muir had gone and just wanted to sleep because she was working on the following day. Senior Constable Arnold advised Ms Dailler to consider seeking an intervention order and she

⁵⁴ Exhibits C65, C122 and C108y; Transcript, pages 121-173 and 231-264

⁵⁵ Exhibits C65, C65a; Transcript, pages 231-264

⁵⁶ Transcript, page 122

⁵⁷ Exhibit C124a, page 36

agreed to do so on the following morning.⁵⁸ Senior Constable Arnold said she contacted Mr Eustice and ensured she did not leave the scene until satisfied that Ms Dailler's friends had arrived to stay overnight. Senior Constable Arnold then left the scene and resumed her duties.

- 7.12. On return to the VHPS, Senior Constable Arnold completed the Hills Fleurieu Disposition Journal.⁵⁹ The journal is a secure SAPOL electronic internal record that must be completed by patrol officers at the conclusion of each shift. Its purpose is to record activities for the entire shift for review by the supervising Sergeant of Police. The journal entry made by Senior Constable Arnold at 0115 hours states:

'111 40 GREGORY ST PT ELLIOT RE HOLLY GRAZIELLA. EXBOYF DION MUIR RESTRAINED VICT'S WRISTS AFTER NOT TAKING BREAKDOWN OF RELATIONSHIP WELL. PATROLS UTL MUIR. VICT STATED SHE WLD APPY FOR A R/O IN THE MORN AS HAD BEEN A VICT OF ASSAULTS IN THE PAST BUT NOT REPORTED THEM. LEFT IN COMPANY OF FRIENDS WHO ATTND PREMS. PATROL PHONE USED'.

- 7.13. Two points are immediately apparent. Firstly, the entry does not refer to Ms Dailler's report that she woke up 'to have him [Dion Muir] strangle her'. Secondly, there is no reference to the alleged death threat made by Muir. If the journal is to serve its purpose, it is critical that such information is accurately recorded. Ironically, Senior Constable Arnold recorded that Muir restrained the victim's wrists, a matter to which no reference was made in her notebook statement.⁶⁰ In fact, the journal entry reflects a far less serious incident than the one reported to Senior Constable Arnold by Ms Dailler.⁶¹
- 7.14. Under cross-examination by counsel assisting, Senior Constable Arnold acknowledged the inconsistency between the two records. The witness attempted to explain it away by saying it made little difference because 'it would all still be an assault'. The explanation was unsatisfactory to say the least. It appears that Senior Constable Arnold did not appreciate the significant difference between a summary offence of assault (i.e. a restraint by the wrists without the victim's consent) and a major indictable offence such as threaten life (in this case accompanied by a report of attempted strangulation).⁶²

⁵⁸ Transcript, pages 238 and 255

⁵⁹ Exhibit C104aak

⁶⁰ Exhibit C65a

⁶¹ Transcript, page 257

⁶² Transcript, pages 255, 257-258

7.15. *Evidence of Senior Constable David Jury*

7.16. I turn now to the evidence of Senior Constable David Jury and Constable Justin Holland.

7.17. On 20 December 2011 they were on uniform mobile patrol and a tasking was received at 1:11am. Senior Constable Jury and Constable Holland each provided a statement to the Court. Senior Constable Jury also gave oral evidence at the inquest.⁶³

7.18. Senior Constable Jury gave a different account of his arrival on the scene. He said Senior Constable Arnold was already there and speaking with a female who was not known to him. He confirmed that he and Constable Holland conducted a search of the property followed by a search of the surrounding areas but no offender was located.

7.19. Where an offender is not present at the scene, the relevant SAPOL General Order requires a member to make every reasonable effort to locate the offender. I am satisfied that Senior Constable Jury and Constable Holland made reasonable efforts to locate the alleged offender. He did not recall speaking with the female

7.20. Senior Constable Jury confirmed that Senior Constable Arnold remained at the scene when he and Constable Holland departed. Senior Constable Jury had no further involvement in the matter.⁶⁴

7.21. At the completion of the shift, Senior Constable Jury said he or Constable Holland completed the Hills Fleurieu Disposition Journal. The brief entry (made at 0111 hours) confirms their attendance at the subject address. Reference is made to '106/501' which the witness said are codes for a domestic violence incident (106) and assault (501). The reference to '3VH41' is a reference to Senior Constable Arnold's identification number. The record states that 3VH41 was on the scene and 'had it in hand'. No reference is made to the circumstances of the alleged offence(s).⁶⁵

7.22. As at 20 December 2011, a General Order entitled 'Domestic Abuse' had replaced the June 2011 General Order. The new General Order commenced on 9 December 2011

⁶³ Exhibit C122; Transcript, pages 121-173; see also Exhibit C104aac (SACAD records)

⁶⁴ Exhibit C122, pages 1-2; Transcript, pages 122-130

⁶⁵ Exhibit C104aaab; Transcript, page 131

and operated until 2 October 2012.⁶⁶ This General Order governed the responsibilities of Senior Constables Arnold and Jury and Constable Holland on 20 December 2011.

7.23. The General Order requires any member attending the scene of a domestic violence incident to complete and submit a PD438 form (i.e. a risk assessment of the alleged victim). The order states that the information contained on this form is most effectively obtained through conversation with the victim, listening to and understanding the victim's circumstances and situation.⁶⁷ The form contains a number of questions with scores attached to the answers. There are three categories of risk:

7.23.1. Standard (score 0-23): No significant current indicators of risk of harm.

7.23.2. Medium (score 24-44): There are identifiable indicators of risk of harm. The offender had the potential to cause harm, but is unlikely to do so unless there is a change in circumstances, for example, failure to take medication, loss of employment, relationship breakdown, drug or alcohol misuse.

7.23.3. High (score 45+): There are identifiable risk factors which are indicators of risk of serious harm and/or death. The potential event could happen at any time and the impact would be serious and potentially life threatening.⁶⁸

7.24. In the case of a report or arrest for a substantive offence, 'a member will submit the following:

- An offence PIR (prior to the end of that shift)
- A PD438 (prior to the end of that shift)
- A PD437 (prior to the end of that shift).

7.25. Where no substantive offence is disclosed/committed, 'the member will submit:

- A Domestic Violence PIR⁶⁹
- A PD438
- A PD437'.⁷⁰

⁶⁶ Exhibit C104aaah (December 2011 version)

⁶⁷ Exhibit C104aaah (December 2011 version), page 13

⁶⁸ Exhibit C104aaah (December 2011 version), page 13

⁶⁹ This document is sometimes referred to as a Domestic Abuse Report (DAR)

⁷⁰ Exhibit C104aaah, page 16

- 7.26. All inquiries made to locate the offender must be noted in the investigation diary of the PIR.⁷¹
- 7.27. It follows from the above that on 20 December 2011, the General Order required, at the very least, an offence PIR to be generated and a PD438 risk assessment conducted to assess Ms Dailier's category of risk. *None of these officers raised a PIR or conducted a PD438 risk assessment.* This fact is undisputed.
- 7.28. There is sound reason for the above requirements. Part 11 of the December 2011 General Order applies to circumstances where an offender has not been located within the shift:

‘Where the offender had not been located within the shift, and there is a continuing risk to the safety of the victim, the member must ensure that a supervisor is advised of the investigation status and enquiries to date.

Where the victim is high risk, the member must forward a copy of the PIR, PD438 and any statement to the FVIS (Family Violence Investigation Section)/officer in charge of a country CIB in the area where the victim resides, to enable victim management work to begin.

The supervisor will ensure the PIR is passed onto the supervisor of the next shift to continue enquiries and that the relevant documentation has been sent to FVIS for high risk victims.

When the offender cannot reasonably be located within two shifts of the incident occurring, the enquiries/attempts made must be noted in the PIR investigation diary and the PIR forwarded to the CMU (Crime Management Unit)’.⁷² (Emphasis added)

- 7.29. I find that a PIR should have been generated and a PD 438 risk assessment undertaken:

Substantive offences had been disclosed which required an offence PIR to be generated along with a PD438 assessment. Given the allegations included a report of attempted strangulation and the alleged offender was still at large, if a risk assessment had been conducted, one would reasonably assume that Ms Dailier would have been classified as a medium to high risk victim. If she had received a score of 45 or above, the matter would have been escalated to the FVIS in the manner described above.

⁷¹ Exhibit C104aaah, page 15

⁷² Ibid

- 7.30. *Explanation by SAPOL members for the failure to raise a PIR or conduct a PD438 risk assessment on 20 December 2011*
- 7.31. Senior Constable Arnold said that after Senior Constable Jury and Constable Holland left the scene she assumed they were returning to the VHPS to complete the relevant paperwork. This assumption was based on ‘patrol etiquette’ which she described as an informal understanding that if a solo patrol and a two-person patrol attend the same tasking, the two-person patrol is responsible for incident documentation.
- 7.32. Senior Constable Jury made no mention of such ‘patrol etiquette’. His evidence was that the member who first speaks with the alleged victim assumes responsibility for incident documentation. Since Senior Constable Arnold was first on the scene and the first to speak with Ms Dailier, it followed that completion of the necessary documentation was her responsibility.⁷³
- 7.33. It is unnecessary to resolve the issue of who arrived first at the scene or whether there is a ‘patrol etiquette’ governing the practice of SAPOL patrol members. Both witnesses were credible witnesses who appeared to be doing their best to accurately recall the occasion. The effect of their evidence was that each patrol simply assumed the other would complete the necessary documentation. Regrettably, no effort was made to clarify the situation.
- 7.34. On my perusal of the evidence, there is no Standard Operating Procedure or General Order which covers this particular situation. Nor should there need to be. It is a matter of common sense for members to clarify who is assuming responsibility for incident documentation prior to leaving a scene. On the available evidence, I am satisfied that Senior Constable Arnold was best placed to raise the PIR and conduct the PD438 risk assessment. I reach that conclusion not on the basis that she was first on the scene. That is not relevant. Rather, she had spent a considerable amount of time with Ms Dailier, a notebook statement had been taken from the victim and she had remained with Ms Dailier pending the arrival of her friends (Mr Eustace and Mr Verco). To her credit, Senior Constable Arnold discharged her victim-liaison diligently:

In relation to the omission to raise a PIR and to conduct the necessary PD438 risk assessment I find that the three patrol members must share equal responsibility.

⁷³ Transcript, page 164

⁷³ Exhibit C122 at page 2; Transcript, pages 122, 127, 131-133 and 162-164

*The omission was caused by a failure to communicate. It is trite to say that any domestic abuse incident, let alone one that included a report of attempted strangulation, is far too serious for assumptions to be made about incident documentation. To her credit, Senior Constable Arnold acknowledged during her evidence that communication between members on this occasion was poor.*⁷⁴

I should add that the remoteness in time of this incident to the ultimate event in May 2014 leads to the conclusion that the omission to raise a PIR and/or to conduct a risk assessment did not cause or contribute to the deaths of Mr Muir and Ms Dailer.

- 7.35. Before leaving this incident, I should mention the evidence given about injuries to Ms Dailer on 20 December 2011. Two conflicting accounts were given. In his statement, Mr Eustice said, ‘Graziella had various facial injuries... *she was beaten up badly. Her face was all puffy and bruised*’.⁷⁵ However, during oral evidence-in-chief, Mr Eustice gave a less strident account stating he could vaguely recall ‘her swollen face’.⁷⁶ That discrepancy could be accounted for by the passage of time, however, under cross-examination, Mr Eustice reverted to strident the account he had given in his original statement.⁷⁷ (emphasis added)
- 7.36. Senior Constable Arnold said Ms Dailer was visibly upset and shaking, but she did not observe any physical injuries including facial injuries, swelling or a puffy and/or bruised face. If such injuries had been noted, Senior Constable Arnold said she would have called an ambulance to assess the victim.⁷⁸ I have no reason to doubt the veracity of that evidence.
- 7.37. Support for the absence of injuries was provided by Mr Verco in the statement he provided to the Court.⁷⁹ Mr Verco recalled no injuries, albeit he was not required to give oral evidence. Therefore, his recollection was not tested under cross-examination.
- 7.38. Despite the inconsistencies I have identified in Senior Constable Arnold’s written records of the incident, on balance, I prefer her evidence on this point to that of

⁷⁴ Transcript, page 252

⁷⁵ Exhibit C118

⁷⁶ Transcript, page 217

⁷⁷ Exhibit C118, page 4; Transcript, pages 216-217 and 225-226

⁷⁸ Transcript, pages 238-240, 243-244; Cf. evidence of David Eustice at Transcript, page 217

⁷⁹ Exhibit C40

Mr Eustice. My impression was that Mr Eustice was an excitable and emotional witness and I found his evidence on this particular issue to be inherently unreliable.

8. 22 December 2011 - Assault and death threat to ex-wife Ursula Ann Muir (aka Tebby) and Muir's first arrest

(‘the coffee table incident’)

- 8.1. Ursula Anne Muir is the ex-wife of the deceased, Mr Muir. Ms Muir provided a statement to the Court (in the name of Ursula Tebby) and gave oral evidence at the inquest.⁸⁰
- 8.2. Ms Muir met Mr Muir when she was 16 years old. She spent 20 years of her life in a relationship with him. The relationship formally commenced in 1991 and they married in 2000. A daughter, Caitlan Muir, was born on 22 May 2002.
- 8.3. Ms Muir described her husband as ‘alcoholic for many years’. She said he struggled with mental health issues and, on occasion, he used Ms Muir’s pain medication (oxycontin) without her consent. He also demanded access to that medication from time to time.
- 8.4. Ms Muir said there was domestic abuse during the relationship. It is unnecessary to refer to these matters in detail. Suffice it to say that from 2009 to the date of separation (17 July 2011) she said her husband’s violence and aggression worsened. He would often fly into rages. For example, on one occasion Ms Muir said Muir broke her nose and on another he threw a butcher’s knife at her. Ms Muir also mentioned a permanent scar on her forehead and between her eyes which she said was caused by Muir throwing a coffee cup at her which broke on her face.
- 8.5. Ms Muir left the family home with Caitlin several times ‘when the abuse was bad’. She kept a bag in the boot of the car in case they needed to leave quickly. The last straw for Ms Muir was the discovery of her husband’s infidelity with Ms Dailler. Then she ‘kicked him out’.⁸¹
- 8.6. After the separation Ms Muir facilitated contact between her ex-husband and Caitlan (through Mr Muir’s mother). No formal Family Court orders were in place. This

⁸⁰ Exhibit C124; Transcript, pages 179-210: NB. The witness was affirmed in Court as Ursula Muir and will be referred to as Ms Muir throughout this finding

⁸¹ Exhibit C124, pages 1-9; Exhibit C124a; Transcript, pages 182-202

arrangement was not without its problems. Ms Muir said she was frequently bullied by Mr Muir and he regularly threatened to take Caitlin away.⁸²

- 8.7. Two days after Ms Dailler had reported the attempted strangulation, Muir attended at Ms Muir's home address. He arrived at around 2:30am on 22 December 2011. He said Ms Holly (Ms Dailler) had kicked him out and demanded that Ms Muir drive him to Port Elliot to get his belongings. Ms Muir refused. She pushed him away by placing two hands on his chest. Muir responded by pushing her head first into a coffee table. The table smashed. Ms Muir said he also tried to smother her face with a cushion.⁸³ During this incident Ms Muir said she bit Muir, wrestled free and fled to a next-door neighbour for help. The neighbour called the police but when the patrol arrived he could not be located. A second patrol was called and Muir was located hiding in a neighbour's backyard. The police advised Ms Muir to change her phone number and the locks on the house. She subsequently did so and also installed security lights around the house.⁸⁴
- 8.8. Muir was arrested and charged with aggravated assault. A PIIO was also issued. Ms Muir said the intervention order prohibited any contact whatsoever with her. Contact with Caitlin was permitted through Mr Muir's mother. Notwithstanding the order, Ms Muir said he frequently breached it by telephoning her and sending text messages, however no charges were ever laid.⁸⁵
- 8.9. On 19 February 2012, Ms Muir provided a sworn affidavit to police (in the name of Ursula Anne Muir) in which she detailed the coffee table incident and a history of physical and emotional abuse by Muir.⁸⁶ However, on 2 July 2012, Ms Muir advised SAPOL that she no longer wished to pursue criminal charges and she signed a Notice of Discontinuance (PD207B). A PD207B is a police document entitled 'Supplementary Police Incident Report Domestic Abuse - No Further Action. If an alleged victim requests no further action in respect of a reported domestic abuse action, a PD207B must be completed. Although the substantive criminal charge was withdrawn, the intervention order remained in place.⁸⁷

⁸² Exhibit C124a, page 3

⁸³ Exhibit C124, page 15

⁸⁴ Exhibit C124a, pages 6-7 and 15; Transcript, pages 196-197; Exhibit C124, page 15

⁸⁵ Transcript, pages 197-201

⁸⁶ Exhibit C124a

⁸⁷ Exhibit C124b; Transcript, pages 201-202

8.10. Mr Muir continued to have telephone contact with Caitlin (up to and including 14 May 2014). On that date Ms Muir said he spoke to Caitlin on the telephone. It was her practice to record these calls. She said Mr Muir seemed happy and had made plans to see their daughter on the following weekend.

9. 24 December 2011 - Patrol and tasking at 40 Gregory Street, Port Elliot

(‘the Christmas Eve break-in’)

9.1. On Saturday 24 December 2011, Ms Natasha Palmer (nee Holly) telephoned the police to report a break-in at her mother’s rental premises at 40 Gregory Street, Port Elliot. It will be recalled that Ms Palmer is one of Ms Dailer’s three daughters. She provided a statement to the police and gave oral evidence at the inquest.⁸⁸

9.2. At the time of the Christmas Eve break-in Ms Dailer was interstate in Broome. Ms Palmer had agreed to check on the house during her mother’s absence. On this occasion, she discovered it ‘had been trashed’.⁸⁹

9.3. *Evidence of Senior Constable Samuel Richmond Teisseire*

9.4. At about 9:29am on 24 December 2011, Senior Constables Samuel Teisseire and Brenton Robinson were on mobile uniform patrol. They were tasked to attend at the subject address. Senior Constable Teisseire provided a statement to the Court. The contents of the statement were unchallenged.⁹⁰

9.5. On arrival, Senior Constable Teisseire noted that the house had been broken into. Various items had been damaged and graffiti was sprayed on the inside walls. Muir was nominated by Ms Palmer as the offender because her mother had recently ended their relationship. The damaged items included a television and washing machine. Other personal items belonging to Ms Dailer such as a passport, photographs and paintings had been cut up and slashed. The words ‘slut’ and ‘dave dead’ were spray painted on the walls.⁹¹

⁸⁸ Exhibit C120; Transcript, pages 74-92

⁸⁹ Exhibit C120, page 4; Transcript, page 81

⁹⁰ Exhibit C109; NB. Senior Constable Robinson was unable to provide a statement to the Court or give oral evidence due to medical reasons: SII report, page 38

⁹¹ Exhibit C109, page 2

- 9.6. A crime scene investigator attended and forensically examined the scene. A knife was seized and a photograph. Both items appeared to have blood on them.⁹²
- 9.7. At 9:48am a notebook statement was obtained from a neighbour, Ms Kathryn Harris, who reported that between 8:30pm and 9:30pm she heard banging, smashing and a male person yelling the word 'fuck'. Ms Harris said she did not call the police because this was 'normal behaviour for neighbours'. Ms Harris mentioned a previous incident between a male and female at the premises with lots of yelling. At about 10:30am Senior Constable Teisseire spoke to another neighbour, Ms Leah Krejcir, who said she did not hear or see anything.⁹³
- 9.8. On return to the VHPS, a check was conducted on Dion Muir who was found to be on bail and residing at Morphett Vale. Senior Constable Teisseire flagged Muir as a wanted suspect on the Police Incident Management System (PIMS).⁹⁴
- 9.9. In accordance with the December 2011 General Order (Domestic Abuse), Senior Constable Teisseire raised a PIR for offences of serious criminal trespass and property damage and marked it DA related (**PIR 12/E80227 DA related**).⁹⁵
- 9.10. On 25 December 2011, Senior Constable Robinson conducted a risk assessment (PD438). Ms Dailer's score was 30 (i.e. medium risk).⁹⁶ Since Senior Constable Teisseire was about to commence days off, arrangements were made through the shift supervisor for other members to obtain a statement from the victim and a voluntary DNA sample on her return from holidays. Upon completion of those tasks the responsible members were instructed to place the file into the tray of Sergeant Simmons for vetting. Vetting is the process whereby a member's supervisor reviews documents such as PIRs to ensure they are completed correctly and that all necessary paperwork is attached to the hard copy report. Once vetted, matters are sent to the appropriate area for investigation. Senior Constable Teisseire had no further involvement in this matter.⁹⁷

⁹² Exhibit C104s, page 8

⁹³ Exhibit C109, pages 1-3; Exhibit C38

⁹⁴ Exhibit C109, page 3

⁹⁵ Exhibit C104s

⁹⁶ Exhibit C104s: PD438

⁹⁷ Exhibit C104s, pages 8-9; See also SAPOL General Order (December 2011 version) at Item 13: Post Response - Supervisor/Crime Management Unit - Vetting of Documentation, page 17

- 9.11. On 28 December 2011 Ms Dailler provided a signed statement to Senior Constable Robinson at the VHPS. She said Mr Muir had been living with her on and off for about seven months at Yankalilla and Port Elliot. She had ended the relationship about three weeks prior to the break-in offence. Before leaving to visit her daughter in Broome, Ms Dailler had moved Mr Muir's belongings outside. Ms Dailler disclosed past acts of physical violence which included details of the attempted strangulation dated 20 December 2011. In relation to that incident she said, 'he grabbed me by the throat with one hand and stopped me from breathing and I saw all my life going before me...'. Ms Dailler added that at 11:20am on 27 December 2011 she had received a telephone call from Muir who said, 'I'm going to get you' and hung up. She returned the call but it was terminated. Ms Dailler said she also received a text message from Mr Muir which stated, 'It's done'.⁹⁸
- 9.12. On 28 December 2011, the matter was vetted by Sergeant Benjamin Simmons who transferred it to the South Coast Local Service Area (LSA) for enquiries to be made at Muir's bail address to ascertain his whereabouts.
- 9.13. On 30 December 2011, PIR 12/E80227 (DA related) was allocated to Detective Sergeant Johnson of the South Coast Family Violence Investigation Section (FVIS).⁹⁹ As I understand it, since it was an indictable matter, the file was returned on the same day to Victor Harbor CIB for investigation.¹⁰⁰

Given the alleged threat made by Muir on the previous day and the fact that he was on bail for the aggravated assault of Ursula Muir, one would assume that locating and arresting Muir would have assumed a high priority. SAPOL had received information from Ms Muir about the history of domestic abuse and information which suggested an escalation of offending by Muir. A SAPOL application for an interim intervention nominating Ms Dailler as a protected person ought to have been made. However, no such application was made and no substantive efforts were made to locate Muir until 14 January 2012.

⁹⁸ Exhibit C109

⁹⁹ For a detailed explanation of the history and development of the Family Violence Investigation Section within SAPOL refer to the Affidavit of Assistant Commissioner Linda Williams, Exhibit C123

¹⁰⁰ Exhibit C104a, page 39; Transcript, pages 297-300

9.14. I will come to these investigative efforts in a moment. Before I do so it is apposite to mention a report made by Ms Dailler to police on 12 January 2012. On that date, it was reported that her car had been damaged/vandalised between 11 and 12 January 2012.

10. 11-12 January 2012 - Ms Daller reports damage to Toyota Landcruiser

(‘the car graffiti incident’)

10.1. On return from Broome Ms Dailler stayed with Ms Palmer and her son-in-law at Normanville.¹⁰¹

10.2. At about 5:30pm on 11 January 2012, Ms Dailler had parked her blue 2000 Toyota Landcruiser in the driveway of her daughter’s house at 2 James Street, Normanville. The vehicle was secured. At about 9am on 12 January 2012, Ms Dailler discovered the car had been vandalised with the word ‘slut’ scratched on to the bonnet and several other panels of the car.¹⁰² The cost of the damage was estimated at around \$2000. Ms Dailler nominated her ‘ex-partner Dion Wayne Muir’ as the offender. She referred to the Christmas Eve break-in noting that the word ‘slut’ had been painted inside, along with attacks on her personal items.¹⁰³

10.3. The various documentary exhibits received by the Court indicate that in accordance with the requirement of the December 2011 General Order, Senior Constable Robinson generated a PIR (**12/E99436 DA related**) for the offence of damaging property. Dion Muir was listed as a suspect. A PIR investigation diary note states that ‘Suspect also wanted in relation to PIR 12E80227’ (i.e. the Christmas Eve break-in).¹⁰⁴

10.4. I have already mentioned that Senior Constable Robinson had assessed Ms Dailler’s risk on 25 December 2011 as ‘medium’ with a score of 30. On 12 January 2012, Senior Constable Robinson’s risk assessment produced the same score. Since Senior Constable Robinson did not provide a statement to the court and was unavailable to give oral evidence, the reasons for this apparent anomaly are unclear. On the face of it there was an escalation of offending by Muir which would tend to suggest that Ms Dailler was at a greater level of risk. On the available evidence, I am unable to resolve this issue.¹⁰⁵

¹⁰¹ Exhibit C46, page 4; Exhibit C120; Transcript, pages 74-93

¹⁰² PIR 12/E99436 (DA related)-Damage property

¹⁰³ Exhibit C104t: Statement of Graziella Holly dated 12 January 2012

¹⁰⁴ Exhibit C104t, PIR 12/E99436, page 7

¹⁰⁵ Exhibit C104t

10.5. I should add that it was not within the scope of this inquest to examine and/or make findings about SAPOL training in relation to the conduct of risk assessments and/or to probe the decision-making process that produced the various PD438 risk assessment scores in relation to Ms Dailer.

11. SAPOL efforts to locate Muir between 28 December 2011 and 19 January 2012

11.1. I return to the efforts made to locate Muir between 28 December 2011 and 19 January 2012. On the available evidence, it is unclear precisely what efforts, if any, were made to locate Muir between these dates. The documentary evidence indicates that on 6 January 2012, Ms Dailer told Senior Constable Robinson that Muir was likely to be in Perth on a holiday.¹⁰⁶ This may explain the initial delay in the commencement of the investigation.

11.2. *Evidence of Detective Brevet Sergeant Desmond Hudson*

11.3. Mr Hudson is a Detective Brevet Sergeant of police who was stationed at Victor Harbor CIB. Detective Hudson provided two statements to the Court and also gave oral evidence at the inquest.¹⁰⁷

11.4. Detective Hudson was on annual leave and on rostered days off (RDOs) between 15 December 2011 and 5 January 2012.¹⁰⁸ He returned to work briefly on 5 January 2012 before commencing a further period of 4 days' leave on 9 January 2012. Detective Hudson confirmed that on 7 January 2012 the Christmas Eve break-in matter (PIR 12/E80227 DA related) was allocated to him for investigation.¹⁰⁹ However, the witness candidly stated that the first time he actually looked at this PIR was on 14 January 2012.¹¹⁰ On the same date, the offence PIR relating to the car graffiti incident (PIR 12/E99436 DA related), was also transferred to him by Senior Constable Robinson for investigation.¹¹¹

11.5. Two explanations for the delay were proffered. Firstly, as at 7 January 2102, Detective Hudson said he was managing other cases that included major indictable matters

¹⁰⁶ Exhibit C104a, page 39, Information contained within PIR Investigation Diary

¹⁰⁷ Exhibits C126, C126a; Transcript, pages 268-321

¹⁰⁸ Exhibit C126a, page 2

¹⁰⁹ Exhibit C104s; Transcript, pages 296-297

¹¹⁰ Transcript, pages 142-144 and 269-270

¹¹¹ Exhibit C104t, page 13; Transcript, pages 284-285

relating to child sexual abuse and rape offences, as well as a range of other offences. Secondly, between 10 January and 13 January 2012, he was on RDOs.¹¹²

These explanations may explain the delay; however, they do little to appease my sense of unease that a suspect with a reported history of aggression, violence and domestic abuse against two women and an escalation in violence, was wandering around in the community on bail. The safety of Graziella Dailler and Ursula Muir (and the child Caitlan Muir) ought to have been foremost in the minds of SAPOL members. If Detective Hudson's workload and rostered days off were causing an inability to investigate the matter, the files ought to have been transferred to another member for urgent follow up.

- 11.6. On 14 January 2012, Detective Hudson commenced the investigation by driving from Victor Harbor to Muir's listed bail address at 14 Stirling Street, Morphett Vale. No one was at home. At about 10:45am on 16 January 2012, Detective Hudson re-attended at the address. On this occasion, he had a conversation with a female occupant who identified herself as Jodie Lang. Ms Lang said Dion Muir did not reside at the house. She said he occasionally stayed over on the couch and also had his mail delivered to the address. Consent was given to conduct a search of the house 'which confirmed that Dion Muir did not reside at the address'.¹¹³
- 11.7. It is plain there was sufficient evidence to raise a PIR for the offence of breach of bail. However, no statement was taken from the occupant and no offence PIR was raised by Detective Hudson.
- 11.8. At about 11am, Detective Hudson attempted to contact Muir by using a listed phone number. The call was answered by a female who said Muir was driving and that he was going to pull over to take the call. However, moments later, the call was terminated. Detective Hudson attempted to call the mobile number several times, but he was unable to re-establish contact. He subsequently left voice messages, the content of which he cannot now recall. At about 11:56am Detective Hudson learned that Muir had contacted the VHPS and left a message. Detective Hudson said he made numerous further attempts to contact Muir without success.¹¹⁴

¹¹² Exhibit C126a, page 2

¹¹³ Exhibit C126, page 3

¹¹⁴ Exhibit C126, pages 3-4; Transcript, pages 274-276

- 11.9. Under cross-examination by counsel assisting, Detective Hudson was asked why he did not take a statement from the occupant and raise an offence PIR for the breach of bail offence. Counsel pointed out that he had made two round road trips of around 120 kilometres and, on the second occasion, the occupant had provided clear evidence that Muir was in breach of bail. Detective Hudson properly conceded that he ought to have raised a PIR.¹¹⁵
- 11.10. On 17 January 2012, Detective Hudson requested Senior Constable Robinson to obtain an addendum statement from Ms Dailler. The matter was described as ‘an ongoing DV matter involving previous police attendance...[and] several associated PIRs’.¹¹⁶ A signed addendum statement was obtained by Senior Constable Robinson on the same day at Victor Harbor (in the name of Graziella Holly).¹¹⁷ On this occasion, Ms Dailler made disclosures of historical domestic abuse by Muir between 2009 and 2011. She said that:
- 11.10.1. In May or June of 2009, Muir became drunk and threatened her with a knife while waving it from side to side. He cut himself with the knife and then, using his finger, he drew a swastika in his own blood on the bedroom wall at the entrance to the ensuite bathroom. Ms Dailler said she was too scared and ashamed to make a report.¹¹⁸
- 11.10.2. On about 8 March 2011, it was reported that Muir entered her home at 6 Barton Street, Yankalilla in a rage. Ms Dailler said she ended up on the corner of the couch in a foetal position with her arms closed together to cover her face when Muir began to hit her. He delivered two hard punches with a right clenched fist. These punches connected with her arms causing pain and bruising to the lower arms. She hoped it was over, however Muir grabbed Ms Dailler by the hair at the back of her head and dragged her along the floor from the couch ‘all the way along the corridor’ to the bathroom and toilet while repeatedly saying ‘I will drown you in the toilet’. Ms Dailler said this incident was triggered by jealousy because Muir believed she was with other men.¹¹⁹

¹¹⁵ Transcript, pages 304-305

¹¹⁶ Transcript, pages 276-278

¹¹⁷ Exhibit C104u

¹¹⁸ Exhibit C104u, pages 1-2

¹¹⁹ Exhibit C104u, pages 2-3

11.10.3. In about May 2011, Muir smashed Ms Dailler's brand new iPhone one afternoon when she had tried to call the police. On this occasion, Muir kicked her at least twice in the stomach while she lay in a foetal position on the floor. She described the kicks as 'hard' and 'kicking kind of like football'. It caused pain to her stomach. When she went to a corner of the couch he punched her twice with a clenched fist. One punch connected on her arm and the other to her face causing a nose bleed and a bruise on the bridge of the nose.¹²⁰

11.10.4. Ms Dailler mentioned 'the night Dion grabbed me by the throat' and her friends came around to stay the night, undoubtedly a reference to the unrecorded attempted strangulation incident dated 20 December 2011.¹²¹

11.11. In relation to pressing charges, Ms Dailler said:

'I would now like police to take action against him. I am scared for my life. I'm not sleeping at all. I have palpitation of the heart, I am always anxious and I fear that he will turn up any time. I look everywhere I go in case he turns up even when I'm driving a car I look behind me to see if he is following...

I never told anyone about any of these things until now. No family or friends. I never go to doctor either. I used to hide my bruises from my family and work because I was too frightened and ashamed. I don't understand and I'm angry with myself why I give this person a chance and then a chance and then a chance, but now I am over it.'¹²²

11.12. In accordance with the December 2011 General Order (DA), Senior Constable Robinson raised a further offence PIR for aggravated assault (**PIR 12/F0599 DA related**). Dion Muir was the nominated suspect.

11.13. On 20 January 2012, the PIR was forwarded to Detective Hudson for investigation.¹²³

If there had been any doubt in the minds of SAPOL members that Muir potentially posed a serious threat to the safety of Ms Dailler, information of this nature ought to have removed any such doubts. Muir was a man with a reported history/propensity for violence, he was on bail for serious offences relating to two women and it appeared that his offending was escalating.

11.14. Detective Hudson contacted the Hills Fleurieu Family Violence Investigation Service at Mt Barker. I should mention that each Local Service Area (LSA) has an FVIS

¹²⁰ Exhibit C104u, page 4

¹²¹ Exhibit C104u, page 6

¹²² Exhibit C104u, pages 5, 7

¹²³ Exhibit C104t, PIRs 12/E80227, 12/99436, 12/F06686 and 12/F06717 were listed as associated PIRs

comprising a Detective Sergeant supervisor, uniform domestic violence investigators and CIB members whose focus is on child abuse investigations. The level of staffing varies between LSAs. It is noteworthy that at the relevant time, in country LSAs such as the Hills Fleurieu area, the CIB was required to incorporate the roles and responsibilities of an FVIS.¹²⁴

- 11.15. Senior Constable Christopher Lanchester (FVIS) contacted Ms Dailler at work to provide advice about emergency shelter options and associated matters. This was Ms Dailler's first contact with a family violence investigator. She elected to stay with her girlfriend at an address not known to Mr Muir. Any further information was to be mailed to her work address.¹²⁵
- 11.16. Detective Hudson was a forthright witness who gave a straightforward account of his involvement in the matter. That said, I consider there were shortcomings in SAPOL's investigative efforts at this time.

In my view, insufficient efforts were made by SAPOL to locate and arrest Muir between 28 December 2011 and 14 January 2012. As this Court has said on previous occasions, if deterrence is important when a court comes to sentence an offender in a domestic violence case, it is every bit as important for police to exercise their powers of arrest and charging in the exercise of their duty to prevent and deter further domestic violence offending.¹²⁶ The efforts made by SAPOL to advance the investigation during this period do not in my view reflect the degree of urgency that ought to have been attributed to this investigation.

Prior to commencing a further period of leave on 9/10 January 2012, Detective Hudson should have transferred the subject PIRs to another member for urgent follow up. It was simply not good enough for files of this nature to gather dust until his return.

On 16 January 2014, Detective Hudson ought to have generated an offence PIR (DA related) for breach of bail. It would also have been prudent to obtain an arrest warrant to ensure that Muir could be arrested on sight at any time.

¹²⁴ SAPOL General Order (DA) (December 2011 version), page 18

¹²⁵ Exhibit C104a, page 40; Transcript, pages 284 and pages 334-393

¹²⁶ Finding of Inquest into the death of Zahra Abrahimzadeh delivered 7 July 2014

11.17. It is not suggested that the delay in commencement of this investigation had any direct bearing on the ultimate deaths of Ms Dailler and Mr Muir in May 2014. That is not to the point. Timeliness of policing in DA matters is critical so that victims do not lose faith in the legal system and offenders are held to account. Clearly Muir was a man who needed no encouragement. To the contrary, it was vital that he was held accountable for his actions. An opportunity for swift justice was missed at this time.

12. Events of 19 January 2012 and SAPOL efforts to locate Muir between 19 and 26 January 2012

(‘the workplace graffiti incident’ and ‘Royal Family Hotel incident’)

12.1. *Evidence of Detective Brevet Sergeant Desmond Hudson (continued)*

12.2. At about 9am on 19 January 2012, Detective Husdon was on plain clothes investigation duties. He was tasked to attend the Authenticity Wellness Retreat at Waterport Road, Port Elliot. I have mentioned this was Ms Dailler’s place of employment. The words ‘GRAZIELLA IS A DED SLUT’ was sprayed on the entrance gateway to the premises.¹²⁷

12.3. Detective Husdon generated an offence PIR (**PIR 12/F06686 DA related**), for offences of aggravated threaten to kill or endanger life. He intended to investigate this offence in conjunction with the Christmas Eve break-in (and presumably the related matters).¹²⁸

12.4. On the same day, 19 January 2012, a male person was observed at the Royal Family Hotel spray painting a shipping container in the car park with the words ‘Dave you’re a ded c**t’. It is noteworthy that the word ‘dead’ had been similarly misspelt by the offender during the Christmas Eve 2011 break in.

12.5. It will be recalled that David Eustice was an acquaintance of Ms Dailler’s, and a chef at the hotel. He had contacted police on the night of the attempted strangulation report (20 December 2011) and stayed at her home overnight on that occasion. Detective

¹²⁷ Exhibit C104u

¹²⁸ Exhibit C126, page 4; Exhibit C104v; Transcript, pages 278-279

Hudson raised **PIR 12/F06717** and Muir was flagged as wanted on PIMS.¹²⁹ Statements were taken from witnesses and the scene was photographed.¹³⁰

- 12.6. On 20 January 2012, Detective Hudson spoke with Ms Dailler who reported that her daughter, Adelaide, had received a threatening text message from Mr Muir. Ms Dailler provided a statement and a PD438 risk assessment was conducted. It returned a score of 39. This was Ms Dailler's highest score to date, although it still fell within the medium risk category.¹³¹ This information was entered onto the PIR diary. Copies of all currently active PIRs, statements and photographs were saved to the VHPS local network to assist if and when Muir was located and arrested.¹³²

Detective Hudson had raised PIRs in accordance with the requirements of the said December 2011 General Order. That said, the events of 19 January 2012, along with the increased risk assessment score, should have raised alarm bells. On any view of the matter there was a serious escalation of activity which potentially placed Ms Dailler at risk of serious harm. In my view, urgent proactive efforts should have been made to locate and arrest Muir. That did not occur.

- 12.7. On 26 January 2012, Detective Hudson commenced another period of leave. Prior to the commencement of leave he transferred the subject PIRs to Senior Constable Robinson.¹³³
- 12.8. Under cross-examination by counsel assisting, Detective Hudson could not recall whether any checks were done on Muir's associates and he agreed that he did not consider applying to court for an arrest warrant prior to taking leave. His response to counsel was that Muir was 'already flagged as wanted'. This meant that if Muir was stopped by a patrol, it could lead to his arrest. The witness accepted, with the benefit of hindsight, that it may have prudent to seek an arrest warrant.¹³⁴
- 12.9. When Detective Hudson returned from leave he learned that Ms Dailler had requested no further police action in respect of the Christmas Eve 2011 break-in offences (PIR

¹²⁹ PIR 12/F06717; Evidence of David Eustice, Transcript, pages 214-217; Exhibit C104a, SII Report, page 44

¹³⁰ Exhibit C104a, SII Report, 45

¹³¹ Exhibit C126, page 4; Transcript, pages 278-284, 281-282, 310-316

¹³² Exhibit C126, pages 4-5

¹³³ Exhibit C126, page 6; Exhibit C126a, page 2; Transcript, pages 285-286

¹³⁴ Transcript, page 330

12/E80227).¹³⁵ For reasons that will become clear, Detective Hudson had no further involvement in the investigation of matters relating to Ms Dailler.

12.10. Detective Hudson's account of the above events was relatively straightforward albeit the concessions he made were given somewhat reluctantly. Overall, I consider the efforts made to advance the investigation from 19 January 2012 were inadequate. Prior to taking more leave on 26 January 2012, I find that the following actions should have been initiated:

12.10.1. In late December 2011 or, at the latest, on 19 January 2012, an application should have been made for authorisation to issue an arrest warrant.

12.10.2. Uniform mobile patrols should have been on alert to locate and arrest Muir. If an arrest warrant been had issued, Muir could have been arrested on sight at any place and at any time.

12.10.3. The fact that Muir had been flagged on PIMS as a wanted suspect is not to the point. Two persons had received death threats (via graffiti/damage to property) on 19 January 2012. These allegations had arisen in the context of a reported history of domestic abuse and an escalation of offending for which Muir was the only suspect.

Any reasonable person would conclude that Muir was potentially dangerous at this time. By 26 January 2012, something more than a mere transfer of PIRs to another member while the investigating officer was on a further period of leave was warranted. Proactivity and active investigation was necessary.

In reaching this conclusion, I have had regard to the pressures of modern policing, workloads and the clarity of hindsight. Nonetheless, in domestic abuse offences time is of the essence and the protection of alleged victims of abuse must be given the highest priority.

¹³⁵ Transcript, page 286-287

13. **Ms Dailler signs first notices of discontinuance (PD207B) - 6 and 9 February 2012**

- 13.1. SAPOL General Orders prescribe processes relating to the withdrawal of complaints and/or prosecution of offences. As at February 2012, the December 2011 version of the SAPOL General Order (DA) set out the requirements. Part 19 of the General Order states:

‘19. WITHDRAWAL OF COMPLAINTS AND/OR PROSECUTION

When a victim wishes to withdraw their initial complaint or does not wish to proceed with legal proceedings, the following will apply:

A PD207B Supplementary police information report domestic abuse - no police action (PD207B) will be completed by a victim contact officer, FVIS officer or country equivalent.¹³⁶

Where possible the information contained in a PD207B should include:

- confirmation that the original statement given to police was accurate (when an amendment is made to the original statement, an explanation as to the reasons for that amendment should also be included in the statement)
- the nature of the original allegation (where not fully covered in a previous statement)
- the victim’s reasons for withdrawing the allegation
- who the victim has discussed the case with - particularly anyone who has advised them (for example a defence solicitor)
- whether any civil proceedings have been instigated
- the impact on the victim’s life and that of any children where the case is continued
- whether the statement is made of the victim’s own free will (that is, the victim has not been under pressure to withdraw).¹³⁷

- 13.2. On 6 February 2012, Ms Dailler attended at the VHPS and spoke to Senior Constable Attard. She requested no further police action and signed a PD207B notice in respect of the Christmas Eve 2011 break-in offences (**PIR 12/E80227 DA related**). Ms Dailler said there had been no contact with Mr Muir, she had moved address and had no safety concerns.

- 13.3. On 17 February 2012, Ms Dailler spoke with Senior Constable Robinson and requested no further police action in respect of three further PIRs, namely:

- 13.3.1. **PIR 12/E99436** - Property damage to motor vehicle dated 12 January 2012.

¹³⁶ A PD207A Supplementary police information report - no police action (PD207A) must not be substituted for domestic violence related incidents

¹³⁷ SAPOL General Order (DA) (December 2011 version), pages 23-24

- 13.3.2. **PIR 12/F05999** - Aggravated assault offence (historical offending between 2009 and 2011) reported on 17 January 2012.
- 13.3.3. **PIR 12/F06686** - Aggravated threaten to kill or endanger life (Authenticity Wellness Retreat) dated 19 February 2012.
- 13.4. The written reasons provided by Ms Dailler provide some insight into her state of mind at the time she completed the PD207B notices. Her reasons also highlight the nature of the challenges faced by FVIS officers, SAPOL investigators and others who are involved in policing domestic abuse and supporting victims of domestic abuse. In relation to the Christmas Eve break-in dated 24 December 2011 she wrote:
- ‘I have been on medication for the past 2 years pain killer an (sic) sleeping tablet which I don’t take it properly to much (sic), I have been desoriante (sic) and confuse (sic) I do not want to go threw (sic) the charge it to (sic) much for my mental health I do appolosise (sic) for the time consuming by the constebal (sic) at the time’.¹³⁸
- 13.5. In relation to the car graffiti incident dated 12 January 2012 (PIR 12/E99436), she said:
- ‘I don’t want the police to take any more action, I don’t think it was him. I want the police to stop asking me question’.¹³⁹
- 13.6. As to the reported historical offending reported to Senior Constable Robinson on 17 January 2012 (PIR 12/F05999), the notice states:
- ‘I will like to drop the charge, I have been taken (sic) medication I am not in a good state of mind, I am very confuse (sic) and disoriented. I don’t want any more action going further I don’t want the police to be involve (sic) any more’.¹⁴⁰
- 13.7. As to the workplace graffiti death threat dated 19 January 2012 (PIR 12/F06686), Ms Dailler stated:
- ‘I want the charge to be drop (sic), I don’t want to the police to take any more action. My head is not clean due to medication’.¹⁴¹
- 13.8. The completed PD207B notices were forwarded to the Hills Fleurieu FVIS at Mt Barker for authorisation and filing. The PIRs were filed on 27 February 2012.¹⁴²

¹³⁸ Exhibit C104s, PD207b dated 6 February 2012

¹³⁹ Exhibit C104t (PD 207B dated 17 February 2012)

¹⁴⁰ Exhibit C104u (PD207B signed on 17/2/2012 (PIR F05999))

¹⁴¹ PD207B signed on 17 February 2012 (PIR 12/F06686); NB. The PIRs were vetted on 22 February 2012 by Sergeant Craig Fowler and sent to the Fleurieu Crime Management Unit; Transcript, pages 458-459

¹⁴² Exhibit C104a, C104t, C104u and C104v; Transcript, pages 458-459

13.9. On 13 February 2012, Senior Constable Robinson removed the wanted flag from PIMS citing the victim's request for no further police action.¹⁴³

14. 11 May 2012 - Royal Family Hotel graffiti offence is discontinued

14.1. On 9 April 2012, it was confirmed that an eyewitness to the alleged offence at the Royal Family Hotel was unable to identify the suspect. On 11 May 2012, the hotel manager completed a request for no further police action and **PIR 12/F06717** was filed.¹⁴⁴

14.2. For around four months, between 17 February 2012 and 30 June 2012, SAPOL received no further reports relating to Mr Muir and Ms Dailler.

15. 30 June 2012 - Muir's second arrest - assault and theft of car keys

15.1. At 2:47am on 30 June 2012 a '000' call was received by Comcen. The caller did not speak. At the end of the call a female voice could be heard saying '...give me my phone'. The CLI data listed the phone to 'Graziella Dailler of 40 Gregory Street, Port Elliot'.¹⁴⁵

15.2. At about 3:40am a patrol was tasked to attend at 40 Gregory Street, Port Elliot. The occupants at 40 Gregory Street said they had not made the call and Ms Dailler no longer lived at this address.¹⁴⁶

15.3. A second call was received at 5:01pm. The caller did not say anything, albeit a male voice could be heard in the background saying '...you're a fucking idiot man'.¹⁴⁷

15.4. At 5:06pm a third '000' call was received. Ms Dailler identified herself and reported that Mr Muir had attended at 23 Nicolas Baudin Drive, Encounter Bay and assaulted her by pushing her and holding her over the centre console of the motor vehicle. He then took her mobile phone and car keys. Ms Dailler advised the operator that she had sought refuge with a neighbor at 25 Nicolas Baudin Drive. She waited there until police arrived.¹⁴⁸

¹⁴³ Transcript, pages 326-329; Exhibits C139 and C139a; Transcript, pages 819-863

¹⁴⁴ Exhibit C104a, SII Report, page 45

¹⁴⁵ Exhibit C99: Call No: 400383020912137

¹⁴⁶ Exhibit C104a, SII Report, page 46

¹⁴⁷ Exhibit C99: Call No: 400383020914578

¹⁴⁸ Exhibit C99: Call No: 400383020914603; Exhibit C31

- 15.5. At about 5:28pm, Senior Constable Jury and Constable Holland were tasked to attend at 23 Nicolas Baudin Drive, Encounter Bay. It will be recalled that these two officers had attended at the attempted strangulation incident on 20 December 2011. On this occasion, Senior Constable Jury obtained a statement from Ms Dailler. He learned that Mr Muir was driving a white Ford utility. Checks revealed that he was disqualified from driving.¹⁴⁹
- 15.6. In accordance with the relevant SAPOL General Order (DA), Senior Constable Jury raised **PIR 13/G70023** for offences of assault and theft. However, *the PIR was not marked 'DA related'*.¹⁵⁰ As a consequence no PD438 risk assessment was conducted.¹⁵¹ It is of course essential for police to conduct risk assessments when dealing with domestic violence cases. As stated by the former State Coroner in the inquest into the death of Zahra Abrahamzadeh, 'these are not mere words'.¹⁵² Police officers must be conscientious and focused on the task at hand.
- 15.7. During his evidence, Senior Constable Jury suggested that the issue of risk was adequately addressed by ensuring that the contents of Ms Dailler's statement could support the making of an intervention order. I disagree. The answer ignores the separate role and purpose of risk assessments and the importance of this tool in assessing ongoing risk to a victim. Such a view also undermines the clear directives contained in the SAPOL General Orders.

Senior Constable Jury should have marked PIR 13/G70023 as 'DA related' and undertaken a PD438 assessment. Risk assessments are essential tools for assessing ongoing risk, particularly if there is a pattern of ongoing reported DA offending. There is need for rigour at every stage of the policing process in matters pertaining to domestic abuse, including accurate incident documentation.

I should add that although this incident is remote in time to the ultimate event (May 2014) it is nonetheless troubling that in one inquest the Court has seen repeated failures pertaining to incident documentation of significant incidents.

While the subject omission could not be said to have caused or contributed in any substantial way to the deaths of Mr Muir and Ms Dailler, that is not to the point.

¹⁴⁹ Exhibit C104w; SII Report, page 46

¹⁵⁰ Exhibit C104w (PIR 12/G70073)

¹⁵¹ Transcript, pages 133-134; Exhibit C104w (PIR 13/G70023)

¹⁵² Inquest finding delivered 7 July 2014, page 70

In other cases, the failure to properly document such matters could potentially lead to an adverse outcome. In short, domestic abuse is an insidious form of abuse. It is widespread and requires rigorous policing at every stage of the process.

- 15.8. Senior Constable Jury and Constable Holland located Muir at a Shell Service Station at Victor Harbor. He was driving a white Ford utility. Muir was unsteady on his feet, his eyes were watery and bloodshot. Slurred speech was also noted. Muir attempted to drive away, however he was physically removed from the vehicle and arrested. Ms Dailler's keys were recovered. A subsequent breath analysis test conducted at 7:42pm returned a positive blood alcohol concentration of 0.217%.¹⁵³
- 15.9. An interim intervention order was issued pursuant to section 20 of the *Intervention Orders (Prevention of Abuse) Act 2007* and served on Muir.¹⁵⁴
- 15.10. Muir was arrested for assault and theft (relating to Ms Dailler) along with exceed PCA, drive disqualified and resist arrest (**PIR 13/G70023 and AP 13/G70023**).¹⁵⁵
- 15.11. At 10:50pm on 30 June 2012, Muir was granted police bail on the following conditions:
1. I agree that I will not leave the State for any reason except as allowed under the Bail Act 1985
 2. I agree that-
 - (a) I will reside at **14 Stirling Dr, Morphett Vale SA 5162**
 - (b) I will forfeit to the Crown the sum of \$500.00 if I fail to comply with a term or condition of the bail agreement.
 - (c) **Not to assault, threaten, harass or intimidate Graziella HOLLY.**
Not to follow or keep Graziella HOLLY under surveillance.
Not to be within 100 metres of Graziella HOLLY.
Not to enter or remain in the vicinity of Graziella HOLLY, place or residence, place of employment or any other place at which she is staying or working.
Not to damage or interfere with the premises where Graziella HOLLY is staying residing or is employed.
Not to damage or take possession of personal property belonging to Graziella HOLLY.

¹⁵³ Exhibit C129, Statement of Craig Fowler; Transcript, pages 457-468; Exhibit C104w, Affidavit of Senior Constable Wayne Murray Weidenhofer

¹⁵⁴ Exhibit C130, page 3; Transcript, page 461

¹⁵⁵ Exhibit C104w (AP12/G70073)

Not to cause, allow or encourage another person to do anything forbidden by this agreement.

Not to attend on the Southern Fleurieu Peninsula bounded south of Mt Compass namely the townships of Goolwa, Middleton, Pt Elliot, Victor Harbor & Encounter Bay.

Not to be seated in the driver's side of a motor vehicle unless previously authorised to do so by a current licence.¹⁵⁶ (emphasis added)

15.12. On 1 July 2012, Senior Constable Jury met with Ms Dailler to sign her statement in respect of the alleged theft of the phone and keys. Initially she was uncooperative. Ms Dailler also expressed concern about the inclusion of the historical allegations of violence in her statement. She became argumentative. Senior Constable Jury and Constable Holland explained that an active intervention order would provide police with avenues to assist and protect her. They also explained the relevance of her statement to that process. After this discussion, Ms Dailler signed the statement.¹⁵⁷

16. 3 July 2012 - AP 13/G72879 - Muir's third arrest PIR 13/G72909 (DA related)

(‘the dragging incident’)

16.1. At 6:42pm on 3 July 2012 Mr Ross Ford called SAPOL to report that he had seen a female at 23 Nicolas Baudin Drive, Encounter Bay being dragged inside her house by a male.¹⁵⁸

16.2. At about 7pm two patrols from the VHPS attended at the address. Senior Constable Steven Brain arrived first. He located Muir inside the house in a bedroom and removed him from the premises. Senior Constable Brain said Ms Dailler was shaking and crying, her clothing was dishevelled and she had a wet patch on the front of her groin area. A statement was obtained from Ms Dailler and recorded by Senior Constable Brain in his police notebook.¹⁵⁹

16.3. Senior Constables Austin Reid and Gordon Scott also attended at this incident. Both provided statements to the Court.¹⁶⁰ Senior Constable Reid also gave oral evidence at the inquest.¹⁶¹

¹⁵⁶ Exhibit C104w Form 4 Bail Agreement 30 June 12; Exhibit C104ww, Affidavit of Senior Constable Wayne Weidenhofer

¹⁵⁷ Exhibit C104a page 48; Exhibit C122, page 6

¹⁵⁸ Exhibit C99: Call No:400383020928158; Exhibit C110

¹⁵⁹ Exhibit C111

¹⁶⁰ Exhibit C67; Exhibit C138

¹⁶¹ Transcript, pages 782-818

- 16.4. Police checks were conducted on Muir and disclosed that he had been released on bail only three days before. It was noted that he was prohibited from entering the township of Encounter Bay and/or being within 100 metres of Ms Dailler and/or entering or remaining in the vicinity of her place of residence.¹⁶²

Mr Muir's presence at Ms Dailler's home on this occasion demonstrates the ineffectiveness of bail conditions, even stringent conditions, if an offender adopts an attitude of open defiance to such orders. The same can be said of intervention orders.

- 16.5. Senior Constable Reid arrested Muir and he was charged with serious criminal trespass, breach bail, contravene intervention order and theft.¹⁶³ A PIR was raised (**PIR 13/G72909**) and a PD438 risk assessment was undertaken.¹⁶⁴ Significantly, *Ms Dailler's risk assessment score was 45 (i.e. High). (emphasis added)*

- 16.6. I should mention at this juncture that Senior Constable Lanchester (FVIS) confirmed during his oral evidence that the FVIS *was not notified of this high-risk assessment*. That evidence was not disputed. Senior Constable Lanchester confirmed that the score indicated that Ms Dailler was at imminent risk of serious harm. Ordinarily, on notification of such a risk assessment the FVIS would respond by taking immediate steps to ensure the victim's safety by referral to emergency accommodation and other support services. That did not occur. (emphasis added)

- 16.7. Since that time changes have been made to protocols to avoid such errors:

16.7.1. Firstly, all domestic abuse related incidents must be entered by the investigating officer on the Crime Management Journal and family violence members must peruse the journal each morning to ascertain what domestic abuse related incidents have occurred.

16.7.2. Secondly, there is now a protocol in place which requires the risk assessment of all domestic abuse related matters to be scanned and emailed to the FVIS. Further initiatives include the introduction in May 2013 of the Family Safety Framework Group and the Multi Agency Protection Service (MAPS). The Family Safety Framework Group facilitates regular meetings of all relevant

¹⁶² Transcript, page 783

¹⁶³ AP 13/G72879; Exhibit C138

¹⁶⁴ Exhibit C104x, PIR 13/G92909 (DA related)

interagency groups within the service areas, including regional areas. The focus of MAPS is on high risk incidents and the facilitation of information sharing between the various agencies. It is also noted that there are now two permanently appointed Family Violence Intervention Officers in the Fleurieu Peninsula region and all agencies now use the same risk assessment form.¹⁶⁵

- 16.8. These are positive and welcome initiatives.
- 16.9. Significantly, Senior Constable Lanchester mentioned in passing that few programs exist within the multi-agency approach that focus on services for male offenders to promote behaviour change. He said this is an area that still needs a lot of work. To use Senior Constable Lanchester's words, more services need to be directed at the perpetrators 'so that we're treating the cause more than the symptoms'. Detective Senior Sergeant Shearer shares this view.¹⁶⁶
- 16.10. This inquest did not examine in any detail the availability of programs and education opportunities for male offenders. There is a compelling case to be made that failure to provide education and support to male offenders perpetuates the cycle of domestic abuse. It is often said that an offender, on the break down of a relationship, simply moves on to the next victim. In my view, this is an issue which ought to be a key focus for policy makers in this vexed area.
- 16.11. ***Police bail refused - 3 July 2012***
- 16.12. Before I turn to consider this bail application I should mention that it was also beyond the scope of this inquest to examine the merits of Muir's various bail applications. The Court did not receive oral evidence relating to these applications and relied primarily on documentary exhibits tendered by consent. Any comments or inferences I draw from this material should be read with this proviso.
- 16.13. On 3 July 2012, police bail was refused for the following reasons:
1. The nature of the offences for which Muir had been arrested including aggravated sct/assault, breach bail, breach interim IO, theft.

¹⁶⁵ Transcript, pages 345-363, 384-386

¹⁶⁶ Transcript, pages 360-361, 376 and pages 732-735; See also Exhibit C141, Statement of Michael Bade regarding the availability of men's programs whilst offenders are under supervision of the Department for Corrections

2. The likelihood that if released on bail, the applicant would abscond, history of prior breaches of bail, the defendant was on police bail and an interim IO was in place at the time of the alleged offences and the defendant had allegedly forced entry to the home of a protected person and assaulted her in breach of the IO and bail.
3. The lack of a fixed address noting the defendant was living in his car which was seized after his arrest on 30 June 2012.
4. Defendant continuing to commit offences while on bail.
5. Lack of social ties.¹⁶⁷

16.14. *Christies Beach Magistrates Court grants bail - 4 July 2012*

16.15. Mr Muir was transferred to the Christies Beach Police Station (CBPS). He appeared at the Christies Beach Magistrates Court on 4 July 2012. The prosecution opposed bail. The Court granted bail on the following conditions:

1. I will not leave the State for any reason without lawful permission under the Bail Act, 1985.
2. I will forfeit to the Crown the sum of \$1,000.00 if I fail to comply with a term or condition of this Bail Agreement.
3. **I will reside at 14 Stirling Drive, MORPHETT VALE, SA 5162.**
4. **I will not approach or communicate, either directly or indirectly, with Graziella Holly.**
5. I will place myself under the supervision of a Community Corrections officer, be of good behavior and comply with the lawful directions of that officer.
6. I will undertake treatment for mental illness as directed by the officer assigned to supervise me.
7. I will report within two working days of signing this bail agreement to the Community Corrections Centre at 3 James Clark Road, NOARLUNGA CENTRE, SA 5168. (emphasis added)¹⁶⁸

16.16. If the Court had been fully informed about the history of this matter, it is difficult to see how a Magistrate could have been persuaded to release Muir on such lenient conditions of bail. Firstly, the alleged offences were serious; secondly, they had allegedly been committed within three days of being released on police bail on very stringent

¹⁶⁷ Exhibit C104x, Form 2, Written Record of reasons for refusal of bail application

¹⁶⁸ Exhibit C104x, Certificate of Record 4 July 2012

conditions; thirdly, on 3 July 2012, Ms Dailler's PD438 risk assessment score was 45, that is to say, she was considered to be at risk of serious harm and/or death; fourthly, Muir had demonstrated open contempt for the police bail conditions imposed on 30 June 2011 and, fifthly, SAPOL was aware that Muir was in breach of an earlier bail agreement which required him to reside at 14 Stirling Drive, Morphett Vale.

16.17. If all of these matters had been taken into consideration, it would be farcical to suggest that a residential condition along with a condition not to 'approach or communicate, either directly or indirectly, with Graziella Holly' and/or supervision would provide any level of protection to the victim. However, for the reasons I have mentioned, I am unable to make any definitive finding about the circumstances which led to bail being granted on this occasion.

On the face of it, bail ought to have been refused. The grant of bail sent the wrong message to Muir. It is not unreasonable to surmise that he would have been emboldened by this outcome.

16.18. Senior Constable Reid raised **AP13/G72879** in respect of the alleged offences. Regrettably, in addition to the AP, he erroneously generated **PIR 13/H07935**¹⁶⁹ and **PIR 13/G72909 (DA related)**.¹⁷⁰ The relevance of the error will become clear in a moment. The two PIRs were linked with the said apprehension report.

16.19. *Evidence of Senior Constable Janita Edwards*

16.20. On 5 July 2012, PIR 13/G72909 (DA related) was transferred electronically to the Hills Fleurieu Crime Management Unit (CMU) along with an endorsement to forward it to the FVIS for follow up enquiries with the victim. Given the high-risk assessment score of 45, prompt follow up with the victim was of course essential. PIR 13/G72909 (DA related) was sent to the FVIS for follow up. The review was conducted by Senior Constable Janita Edwards who noted that the two PIRs referred to above were linked with an apprehension report, AP13/G72879. This led her to conclude, albeit erroneously, that both the reports had been cleared by an arrest.¹⁷¹

¹⁶⁹ Exhibit C104x, PIR 13/H07935

¹⁷⁰ Exhibit C104x, PIR 13/G72909 (Domestic Abuse Report); NB. Domestic Abuse Reports should only be generated where no substantive offences have been disclosed

¹⁷¹ Exhibit C104a, SII Report, page 50

The practical effect of the error was that a victim who had been classified as being at risk of serious harm and/or death did not receive mandatory follow up from the Family Violence Investigation Service. That is a serious oversight. It undermines the work of the FVIS. An intervention by the FVIS, at any time, has the potential to change the trajectory of a domestic abuse victim. In this case Ms Dailler missed an opportunity to have the very real risk of serious harm and/or death carefully explained to her by a family violence investigator. (emphasis added)

16.21. Detective Shearer proffered an explanation for the oversight. Essentially her evidence was that, at the relevant time, Senior Constable Edwards was attempting to cover the work of other officers who were on annual leave or long service leave. The excessive workload issue led Detective Shearer to raise the issue with the Police Welfare Section.¹⁷² This explanation was unchallenged. I accept it as quite plausible that resourcing issues led to the oversight by Senior Constable Edwards. That possibility provides no solace to victims of domestic abuse or indeed the family of Graziella Dailler.

17. SAPOL patrol and tasking in early hours of 31 July 2012

(‘the window banging incident’)

17.1. At 2:44am on 31 July 2012, Ms Dailler called ‘000’ and reported a person was outside banging on her window. She sounded shaken and said ‘...can you tell someone just to come over please...’.¹⁷³

17.2. *Evidence of Senior Constables Austin Reid and John Maclay-Ross*

17.3. At about 2:50am, Senior Constables Reid and Maclay-Ross conducted a welfare check at 23 Nicolas Baudin Drive, Encounter Bay.¹⁷⁴ Ms Dailler confirmed the earlier report of banging on the window adding that she recognised the male voice as Muir’s voice. He said ‘Grazie let me in’.

17.4. Senior Constable Reid searched the house, yard and Ms Dailler’s car, but Muir was not located. Searches of neighbours’ yards and the surrounding streets were conducted, but Muir was still not located. Senior Constable Reid was aware from earlier dealings that

¹⁷² Exhibit C137a, pages 8-9; Transcript, page 728

¹⁷³ Exhibit C99: Call No: 400383021050085

¹⁷⁴ Transcript, pages 794-795

Muir was bailed to reside at a Morphett Vale address. He arranged for a patrol to attend there.

- 17.5. Senior Constable Maclay-Ross searched the surrounding streets for around 45 minutes while Senior Constable Reid remained at Ms Dailler's address. The patrol learned that there was no answer at the Morphett Vale address. The upshot of this attendance was that Ms Dailler was advised to call the police if Muir returned.¹⁷⁵ It is noteworthy that after leaving the address, Senior Constables Reid and Maclay-Ross continued to drive past the house for the remainder of their shift. This demonstrates a level of diligence to the task at hand which is commendable.
- 17.6. At 5:49am, Ms Dailler called '000' to report further banging on her window. She said '...It's Graziella Holly...' and then '...he's back, he's back, he's back oh my God...'.¹⁷⁶
- 17.7. At around 5:50am Senior Constables Reid and Maclay-Ross re-attended. Ms Dailler reported that Muir had returned and asked to be let inside. A further search of the house, backyard and vehicle failed to locate Muir.
- 17.8. Senior Constable Reid generated **PIR 13/G9907** for an offence of contravene intervention order. However, he did not identify the incident as DA related.

This is yet another example of an omission to undertake a PD438 risk assessment.¹⁷⁷ Ms Dailler missed another opportunity to liaise with skilled family violence investigators.

The system which is set up by SAPOL to provide support, advice and assistance to victims of domestic abuse is worthless if basic incident documentation requirements which trigger victim liaison are overlooked or ignored. There is no excuse for such omissions. Compliance with SAPOL General Orders is not difficult, providing the orders are fully understood and implemented by SAPOL members. Senior Constable Reid is certainly not alone in respect of sloppy incident documentation. The number of times that incident documentation has fallen short in this case is disconcerting. If SAPOL members cannot appreciate the importance of rigorous compliance with General Orders in the context of domestic abuse, there is a

¹⁷⁵ Exhibit C104a, page 52

¹⁷⁶ Exhibit C99: Call No: 400383021050368

¹⁷⁷ Exhibit C104y (PIR 13/G99087); Transcript, pages 799-800

problem. In some instances, such omissions could potentially put the lives of domestic abuse victims at immediate risk.

No comfort should be derived from the fact that the omissions I have so far identified had, in my view, no direct bearing on the ultimate deaths of Mr Muir and Ms Dailier in May 2014. To seek comfort from that fact would be to miss the point. The scourge of domestic abuse is well documented. Victims of abuse rely heavily on SAPOL and its processes. SAPOL members by and large do an excellent job in policing this notoriously challenging and difficult area of work. Nonetheless, this case has also demonstrated considerable laxity in compliance with General Orders relating to domestic abuse.

- 17.9. Muir was flagged as wanted for questioning and the oncoming patrols were briefed about the matter.¹⁷⁸ Prior to leaving the scene, Senior Constable Reid asked Ms Dailier to attend at the police station the next day to provide a statement.

18. SAPOL patrol and tasking on evening of 5 August 2012

- 18.1. At 9:24pm on 5 August 2012, Ms Dailier called '000' from the house of a neighbour and reported that Muir had entered her house and she was at a neighbour's house 'at number 25'.¹⁷⁹
- 18.2. At about 9:30pm, Senior Constable Jury along with Constables Piovesan and Mitchell from VHPS attended at 23 Nicolas Baudin Drive, Encounter Bay. Constables Piovesan and Mitchell provided statements to the Court.¹⁸⁰ As I have already mentioned, Senior Constable Jury provided a statement and gave oral evidence at the inquest.
- 18.3. Ms Dailier told Senior Constable Jury that Muir had entered through the rear door and said he wanted to talk. She ran out of the house and sought refuge with a neighbour. The house and yard were searched, but Muir was not located. Senior Constable Jury noted the intervention order contained a condition that Muir not attend at, or in the vicinity of, Ms Dailier's home.¹⁸¹

¹⁷⁸ Exhibit C104a, SII report page 53

¹⁷⁹ Exhibit C99: Call No: 4003830217707; Exhibit C31

¹⁸⁰ Exhibit C68; Exhibit C64b

¹⁸¹ Transcript, page 145

- 18.4. On this occasion Senior Constable Jury generated a PIR (**PIR 13/H04864**) for offences of serious criminal trespass and contravene intervention order. However, Ms Dailer declined to provide a statement. Constable Piovesan's evidence was that once Muir had gone, Ms Dailer no longer wanted police assistance.¹⁸²
- 18.5. Between 6 August and 13 August 2012, Senior Constable Jury continued to contact Ms Dailer to seek a statement, without success.¹⁸³ There is no basis to criticise the efforts made by Senior Constable Jury in this regard. It is fair to say that a pattern had emerged whereby Ms Dailer would call the police when she was scared, however, once the immediate crisis had passed, she demonstrated little interest in police follow up.

19. Ms Dailer signs further notices of discontinuance (PD207Bs) - 8 and 24 August 2012

- 19.1. On 8 August 2012, Senior Constable Reid spoke with Ms Dailer about the window banging incident dated 31 July 2012 (**PIR 13/G9907**) as she had not yet provided a statement. Ms Dailer said she did not want to provide a statement adding that she was not sure whether the voice she had heard was Muir's. In the circumstances, the PIR was filed without further police action. For reasons which are unclear, no PD207B was completed.
- 19.2. On 24 August 2012 Ms Dailer requested no further police action in respect of **PIR 13/H04864** (serious criminal trespass/contravene intervention dated 5 August 2012). On 28 August 2012, she signed a PD207B stating, 'Not prepare (sic) to go to court'.¹⁸⁴
- 19.3. The chain of events between 31 July 2012 and 28 August 2012 demonstrates the challenges faced by SAPOL members who attend reported incidents of domestic abuse only to find that the alleged victim is unable or unwilling to provide a statement or other evidence of the alleged offence. By way of example, on 31 July 2012 Ms Dailer reported that she had recognised the male voice banging on the window as Muir's. Yet eight days later, on 8 August 2012, she retracted that assertion and said she did not know whether it was Muir's voice. No doubt there must be a level of frustration experienced by police officers who do their best to assist victims of domestic abuse only to find they are uncooperative once the immediate crisis has passed. This observation should not be taken as a criticism of any victim of domestic abuse. It

¹⁸² Exhibit C 68; Transcript, page 151

¹⁸³ Transcript, pages 155-157

¹⁸⁴ Exhibit C104z (PD 207B) dated 28 August 2012

merely demonstrates the complexity of the cycle of violence and some of the barriers faced by police who seek to gather evidence of such offences.

20. 31 August 2012 - SAPOL tasking to 23 Nicolas Baudin Drive, Encounter Bay

(‘the choke in ten seconds incident’)

20.1. *Evidence of Senior Constable Matthew Secombe*

20.2. At 11:58pm on 30 August 2012, a ‘000’ call was made. During the call, a male voice can be heard saying:

‘...I will choke you in ten seconds and kill you...’ and then ‘...you do, you fucking dog, you fucking dare, I don’t deserve this, and you know it. I don’t deserve what you’re doing to me. I don’t deserve it and you know it. I’m on this much, I’m ready to kill, don’t you do it, I don’t want to kill you I wanna kill someone else. Right if I can’t see my daughter ‘cos you do this yeah, you fucking scumbag, you’re a scumbag, you’re a liar, you’re a scumbag, you’re a dog. You are a dog, you are a dog a scumbag, try and explain what you did to me. I’m trying to organise my shit and see my fucking daughter. You wanna bash the fuck out of me ‘cause I laughed because fucking Helen was on the phone, you fucking dog.’¹⁸⁵

20.3. During the call, the operator did not elicit a response from the caller. A Telstra call trace identified Ms Dailler’s address and contact details. At about 12:28am on 31 August 2012, a SAPOL Comcen officer called Ms Dailler’s mobile telephone. The phone was answered by a female person who was described as intoxicated. The officer obtained her address and a SAPOL patrol was tasked to attend.¹⁸⁶

20.4. At around 12:30am, Senior Constables Secombe and Camac from VHPS attended at 23 Nicolas Baudin Drive, Encounter Bay. Senior Constables Secombe and Camac provided statements to the Court.¹⁸⁷ Senior Constable Secombe also gave oral evidence at the inquest.¹⁸⁸

20.5. On this occasion, Ms Dailler told police that she had accidentally called ‘000’ whilst trying to call her son who lives in France. Senior Constable Secombe had some knowledge of Mr Muir and Ms Dailler. He silently gestured to Ms Dailler to ascertain whether she needed police assistance. He said Ms Dailler appeared to understand what he was trying to do but she insisted that everything was fine. Senior Constable Secombe

¹⁸⁵ Exhibit C99: Call No: 400383021191261; Transcript, page 616; Exhibit C104aac, page 83

¹⁸⁶ Exhibit C104a, page 55

¹⁸⁷ Exhibit C133; Exhibit C69

¹⁸⁸ Transcript, pages 614-637

then asked whether he could enter the premises. This request was denied. He returned to the patrol vehicle and waited for about ten minutes before returning to check on Ms Dailer to see if she was alone. He spoke with her again. At this time, she was even more emphatic that everything was fine and that no one else was inside. Senior Constables Secombe and Camac then resumed normal duties.¹⁸⁹

20.6. On return to the VHPS an entry was made into the Hills Fleurieu Disposition Journal.¹⁹⁰

20.7. There is no basis to criticise the efforts that were made by SAPOL to assist Ms Dailer on this occasion.

21. Ms Dailer signs further notices of discontinuance - September 2012

21.1. Between 23 September 2012 and 4 October 2012, Senior Constable Stella Hartley was relieving as a Domestic Violence Intervention Officer at the Hills Fleurieu FVIS, Mt Barker. Senior Constable Lanchester held the permanent position. At the relevant time, he was on annual leave.

21.2. On about 25 September 2012, Senior Constable Hartley received a telephone call from Ms Dailer who advised that she 'did not wish to pursue any of the outstanding charges against her partner, Dion Muir. She wanted to know how to finalise them'. Senior Constable Hartley explained the PD207B process and she also completed a PD525 referral to Junction Australia.¹⁹¹

21.3. On 27 September 2012, Senior Constable Hartley attended at Ms Dailer's home address to discuss her situation. Prior to signing the PD207B, domestic violence information pamphlets were provided to Ms Dailer with the information relating to Victim Support Services (VSS) highlighted. There was discussion about the availability of a free security audit and how to increase the security of her home. An offer to provide a duress alarm was made but it was declined by Ms Dailer. She agreed to take part in the risk and safety assessment (at Junction Australia), adding that she was familiar with the process as she had 'done it before'.

21.4. Ms Dailer then signed the PD207B requesting discontinuance of the reported theft of a mobile phone and car keys dated 30 June 2012 (**PIR 13/G70073**) and the offences

¹⁸⁹ Transcript, pages 618-621

¹⁹⁰ Transcript, page 622-623

¹⁹¹ Exhibit C132, pages 3, 5; Exhibit C104w

arising from the dragging incident dated 3 July 2012, namely, serious criminal trespass, breach bail and contravene intervention order (**AP12/G70073, PIR 13/H07935 and PIR 13/G72909 (DA)**).¹⁹² Ms Dailler stated:

‘I had no problem with Dion, no contact. I did find my phone and my keys. I don’t want to go to court. During this event, I was not well due to medication, I don’t want the stress.’¹⁹³

21.5. On return to the Mt Barker Police Station, Senior Constable Hartley placed the PD207B, along with the PD525 risk and safety report referral, in a basket at the FVIS for Senior Constable Lanchester’s attention on his return from leave. She recorded the personal attendance upon Ms Dailler in the daily journal on 27 September 2012.¹⁹⁴

21.6. These matters were ultimately discontinued.¹⁹⁵ Senior Constable Hartley had no further involvement with Ms Dailler until 2013.

22. 20 November 2012 - neighbours report a disturbance at 23 Nicolas Baudin Drive, Encounter Bay

22.1. On 20 November 2012 a neighbour, Ms Pamela Ritchie, telephoned police to report a disturbance at 23 Nicolas Baudin Drive, Encounter Bay. She described ‘...a lot of shouting and banging going on over there...’. Ms Ritchie went to Ms Dailler’s house to see if she was alright. Ms Dailler said she was skyping France and she was fine.¹⁹⁶

22.2. Senior Constables Reid and Nightingale were tasked to attend.¹⁹⁷ Senior Constable Reid spoke to Ms Dailler who appeared intoxicated. She said that she had been on Skype to her family in France and yelling at them online. Senior Constable Reid requested permission to enter the house. Ms Dailler refused entry. Senior Constable Reid asked Ms Dailler why she had refused to provide statements to police regarding the incidents dated 31 July 2012 and 5 August 2012 so as to hold Muir accountable. He said Ms Dailler became annoyed with him. She became rude and obnoxious and asked the police to leave.¹⁹⁸

¹⁹² The latter two PIRs were the reports that were erroneously generated by Senior Constable Reid in addition to the Police Apprehension Report. PIR 13/H07935 was not required because the defendant had been arrested and an AP had been generated. PIR 13/G72909 (Domestic Abuse Report) was not required. A DAR is only generated in circumstances where no substantive offence has been disclosed in a DA matter. Muir had been arrested for substantive offences.

¹⁹³ Exhibit C104w

¹⁹⁴ Exhibit C132, page 6

¹⁹⁵ Exhibit C134; Transcript, pages 638-667

¹⁹⁶ Exhibit C99: Call No:400383021569856; Exhibit C136

¹⁹⁷ Exhibit C113

¹⁹⁸ Transcript, pages 804-805

22.3. On 21 November 2012, Ms Ritchie contacted police again to request a welfare check as the house had become quiet since the last call.¹⁹⁹ At 9:17pm Senior Constables Scanlan and Maclay-Ross attended. Ms Dailer said she had been sleeping and that she was home alone. She appeared calm and said she had to start work early the following morning.²⁰⁰

23. 26 November 2012 - Ms Dailer applies to revoke interim intervention order

23.1. It will be recalled that on 30 June 2012, SAPOL had issued and served an interim intervention order on Muir. On 26 November 2012, Ms Dailer attended at the VHPS and applied for a revocation of this order. An affidavit in support of this application was completed and signed. It is noteworthy that at the time, the Commissioner of Police had no standing to oppose such an application. That situation has since changed by legislative amendment.²⁰¹

24. 15 December 2012 - Ms Dailer reports theft of Landcruiser

24.1. On 15 December 2012, Ms Dailer contacted the SAPOL Call Centre to report the theft of a Landcruiser, registration number SA BB597B from an enclosed carport at 23 Nicolas Baudin Drive, Encounter Bay. She did not nominate a suspect.²⁰²

24.2. By this time, the December 2011 version of the SAPOL General Order (DA) had been replaced by an amended version.²⁰³ In accordance with the General Order, **PIR 13/J39578** was raised and the vehicle was flagged as stolen.

25. Muir's fourth arrest - 6 January 2013 / remand in custody

25.1. At about 9:28pm on 6 January 2013, Senior Constable Kieran Moran was conducting uniform static driver testing station duties on Diagonal Road when a Toyota Landcruiser disobeyed the direction of another officer to stop. Senior Constable Moran observed the registration number on the vehicle as SA BB597B. A check was conducted and the vehicle was identified as stolen.²⁰⁴

¹⁹⁹ Exhibit C99: Call No: 400383021574372

²⁰⁰ Exhibit C70

²⁰¹ Exhibit C130a; Transcript, pages 474-476, 489, 536; Exhibit C130, page 3; Exhibit C132

²⁰² Exhibit C71Exhibit C104a, page 57

²⁰³ See Exhibit C104aaah: General Order (DA) (3 October 2102 to 14 May 2013)

²⁰⁴ Exhibit C104aa, Statement of Kieran Moran, pages1-2; See also Exhibit C104aa: Statements of Jason Ashley Crowe, Jade Lavina Hill, Geoffrey John Malpas and Record Of Interview conducted at Sturt Police Station at 11:37pm on 6 January 2013

- 25.2. It is unnecessary to detail the circumstances of the alleged offences. Suffice it to say that the vehicle was located by Senior Constable Moran and another officer at around 10:39pm at Glengowrie. Muir was the driver. He was conveyed to the Sturt Police Station and charged with offences including aggravated acts to endanger life (a major indictable offence), drive in a manner dangerous, fail to comply with direction, illegal use of a motor vehicle, drive disqualified, exceed prescribed concentration of alcohol and breach bail. A breath analysis test was conducted which returned a reading of 0.177 grams of alcohol in 210 litres of breath. At 3:05am police bail was refused.²⁰⁵
- 25.3. Senior Constable Moran generated **AP13/J61760**.²⁰⁶
- 25.4. Ms Dailer provided a statement by telephone regarding the theft of her motor vehicle, however the statement was never signed.
- 25.5. On 8 January 2013, Muir appeared in the Adelaide Magistrates Court. The certificate of record indicates that he appeared ex custody via video link and was represented by counsel. Bail was refused. Muir was remanded in custody at the Adelaide Remand Centre (ARC) where he remained until 28 March 2013.²⁰⁷
- 25.6. Whilst Muir was in custody, the terms of his previous bail conditions and the interim intervention order prohibited any contact, directly or indirectly with Ms Dailer. On 12 February 2013, Sergeant Stephen Andrews spoke to Ms Dailer about her application to revoke the interim order. He said, ‘she was adamant she wanted the order revoked and stated she would not attend court to support the prosecution.’²⁰⁸
- 25.7. On 3 April 2013, Sergeant Andrews authorised a charge discontinuance notice (PD108) recommending withdrawal of the original intervention order and forwarded it to Senior Sergeant Craig Wolfe for consideration and endorsement.²⁰⁹ On 21 May 2013 the PD108 was returned to Sergeant Andrews with ‘discontinuance authorised’.²¹⁰

²⁰⁵ Written Reasons for Refusal of Bail Application (Form 2 Bail Act, 1982, section 12)

²⁰⁶ Exhibit C104aa, SAPOL General Order (DA) (October 2012 version) commenced operation on 3 October 2012 and continued in operation until 14 May 2013. The provisions relating to incident documentation remained unchanged.

²⁰⁷ Exhibit C104aa, Written Record of Reasons for Refusal of Bail Application

²⁰⁸ Transcript, pages 476-478, 489

²⁰⁹ Exhibit C130b; Transcript, pages 478-483

²¹⁰ Exhibit C130, pages 3-4; see also evidence of Stephen Andrews, Transcript, pages 469-499 and evidence of Craig Gregory Wolfe, Transcript, pages 500-543

26. 28 March 2013 - Muir is released on home detention bail

26.1. On 22 March 2013 Muir appeared ex custody via video link at the Adelaide Magistrates Court.²¹¹ A bail enquiry report and a bail enquiry (home detention) report was requested with respect to premises at 14 Stirling Drive, Morphett Vale. Muir was remanded in custody to 28 March 2013 pending receipt of the reports. On 28 March 2013, the Court bail was granted on home detention conditions:²¹²

1. I will not leave the State for any reason without lawful permission under the *Bail Act, 1985*.
2. I will forfeit to the Crown the sum of \$2,000.00 if I fail to comply with a term or condition of this Bail Agreement.
3. I will wear an electronic transmitter and comply with the terms of electronic monitoring for the term of this Bail Agreement.
4. I will remain at 14 Stirling Drive, MORPHETT VALE SA 5162 throughout the period of home detention bail and must not leave that address at any time (except for the purposes of undertaking employment) unless I have the prior permission of an assigned Community Corrections officer to be absent for a particular purpose, or to avert the risk of injury or death to myself or others, or to obtain urgent essential medical treatment.
5. I will not consume alcohol or any other drug which is not medically prescribed or otherwise legally available and then only at the prescribed or recommended dosage and I will submit to any breath test or urine analysis as directed by a Community Corrections officer and sign all required forms and comply with the requirements of the testing procedures.
6. I will be subject to home detention and obey all the lawful directions of any supervisor designated to supervise home detention.
7. Immediately on release I will travel to the Nominated Address 14 Stirling Drive, MORPHETT VALE SA 5162 and upon arrival I will contact the Home Detention Unit of the Department for Correctional Services by telephoning (08) 8411 7259.
8. I will not drive a motor vehicle or occupy the driver's seat of any motor vehicle whilst I am on this Bail Agreement.
9. I will not possess a firearm, ammunition or any part of a firearm.
10. I will submit to tests (including testing without notice) for gunshot residue.

²¹¹ AMC 13-214 (Endanger Life - Aggravated offence/Fail to comply with Direction To Stop Vehicle (Alcotest)/Drive at a Dangerous Speed/Drive or Use Motor Vehicle Without Consent/Drive under Disqualification 92)

²¹² Exhibit C104aap, page 4

27. Muir's bail conditions are varied at the Christies Beach Magistrates Court - 12 April 2013

27.1. The Christies Beach Magistrates Court certificate of record confirms that on 12 April 2013, Muir's bail was varied. The learned Magistrate revoked the home detention bail agreement (AMC 13-214) and varied bail (on 12/G70071). The varied bail agreement reads as follows:

1. I will not leave the state.
2. I will continue to reside at 14 Stirling Drive, Morphett Vale tonight but from tomorrow, 13/4/13 I will reside at Unit 6/22 Water Street, OLD NOARLUNGA, I will remain at the residence between 11pm-6am each day, to commence this day.
3. I will forfeit to the Crown the sum of \$500.00 if I fail to comply with a term or condition of this bail agreement.
4. Not to assault, threaten, harass or intimidate Graziella HOLLY. Not to follow or keep Graziella HOLLY under surveillance. Not to be within 100 metres of Graziella HOLLY. Not to enter or remain within the vicinity of Graziella HOLLY, place of residence, place of employment or any other place at which she is staying or working. Not to damage or interfere with the premises where Graziella HOLLY is staying, residing or is employed. Not to damage or take possession of personal property belonging to Graziella HOLLY. Not to cause, allow or encourage another person to do anything forbidden by this agreement. Not to attend on the Southern Fleurieu Peninsula bounded south of Mt Compass namely the townships of Goolwa, Middleton, Pt Elliott, Victor Harbor & Encounter Bay. Not to be seated in the driver's side of a motor vehicle unless previously authorised to do so by a current licence.
5. I will not possess a firearm, ammunition or any part of a firearm.
6. I will submit to tests (including testing without notice) for gunshot residue.²¹³

27.2. No doubt the removal of home detention conditions and the varied bail conditions would have given Muir enormous confidence. To my mind, it is likely that Muir considered himself to be above the law and unaccountable for actions.

28. 15 April 2013 - Patrol and tasking to 25 Nicolas Baudin drive, Encounter Bay - AP 13/K62933 - alleged assault and breach of intervention order

28.1. On 15 April 2013 Ms Dailer called SAPOL from a neighbour's house. The neighbour, Ms Hallion, said that on the evening of 15 April 2013 she was at home with her

²¹³ Exhibit C104w

husband. The doorbell rang and it was Ms Dailler who said ‘please, can I come in, will you call the police’. She was described as ‘crying, frightened and really upset’.²¹⁴

- 28.2. At 8:13pm Ms Dailler called ‘000’ and reported that ‘...Dion Muir came to my place, he slapped me...’ and ‘...Dion Muir came to my place and threatened me *he’s got AV, a restraining order against him* can you please come over...’ and ‘...I’m at the neighbour’s place not 23 Nicolas Drive...’. Ms Dailler remained at the neighbour’s home until the police arrived.²¹⁵ (emphasis added)
- 28.3. Senior Constables Reid and Nightingale responded to the tasking. Senior Constable Reid provided a statement to the Court and gave oral evidence at the inquest.²¹⁶
- 28.4. On arrival, a male person was seen walking in the middle of the road and then into Ms Dailler’s house. Muir was located hiding in the backyard under a bush. Muir was arrested for breach of bail and contravene intervention order.²¹⁷ Police bail was refused and Muir was transferred to the Christies Beach Police Station.²¹⁸ He subsequently appeared ex custody at the Christies Beach Magistrate Court and was remanded in custody.²¹⁹
- 28.5. It is noted that *no PIR was raised on this occasion*. I will not repeat the remarks I have already made about incident documentation. Clearly, a PIR should have been raised. (emphasis added)
- 28.6. On 16 April 2013, Ms Dailler contacted Senior Constable Hartley at the Hills Fleurieu FVIS expressing anger at police for arresting Mr Muir. Ms Dailler said she believed the intervention order had already been revoked. I do not accept this belief as genuine because on the previous evening she told police ‘he’s got an AV, a restraining order against him, can you please come over’.

Ms Dailler’s reaction to Muir being remanded in custody is entirely consistent with a continued pattern of behaviour whereby she would involve the police when frightened, however, once the immediate crisis had passed, Ms Dailler wanted no further police action. No criticism of Ms Dailler is intended by this observation.

²¹⁴ Exhibit C29, Exhibit C38

²¹⁵ Exhibit C99: Call No: 400383022242001; Exhibit C29

²¹⁶ Exhibit C138; Transcript, pages 782-818

²¹⁷ Transcript, page 806

²¹⁸ Exhibit C138, Statement of Austin Reid;

²¹⁹ Exhibit C104a pages 58-59

Indeed, this kind of behaviour is well-known to police and those who deal with victims of domestic abuse. The psychological reasons for such counter-intuitive behaviour are complex and were not within the scope of this inquest to examine.

29. 18 April 2013 - Ms Dailer signs further notice of discontinuance

- 29.1. On 18 April 2013, Senior Constable Hartley (FVIS) attended at Ms Dailer's home. They sat in the kitchen and discussed the incident that had occurred on 15 April 2013. Senior Constable Hartley explained that the prosecution for the offences dated 3 July 2012 (breach bail, contravene intervention order) were likely to proceed because the case against Mr Muir did not rely on her providing a statement or cooperating with the police. There was independent evidence (e.g. eyewitnesses). Senior Constable Hartley said Ms Dailer was still angry with the police. She attempted to explain that the action police had taken was reasonable and they were duty bound to arrest Muir because he was found on the premises. This explanation did little to appease Ms Dailer. She informed Senior Constable Hartley she would provide no evidence in relation to the incident and asked to sign the relevant discontinuance paperwork.
- 29.2. In relation to the current intervention order, Ms Dailer insisted that it had been revoked. Senior Constable Hartley repeated that it had not been revoked adding that SAPOL would not support any application for the order to be revoked. Ms Dailer then completed and signed the PD207B in the presence of Senior Constable Hartley stating that:
- ‘I dont want to court. I believe dion can be rehabilitate (sic) he came to explain to me I believe everyone deserve a second chance. I thought the AVO was finish (sic), and I don't want it. I still get support for my psychologist. This is my decision an (sic) no body force me to make that decision.’²²⁰
- 29.3. Ms Dailer agreed to attend a further risk and safety assessment at Junction Australia, albeit she declined the offer of information leaflets.
- 29.4. The exchange between Senior Constable Hartley and Ms Dailer on 18 April 2013 provides another snapshot of the nature of the challenges faced by SAPOL members when working with victims of domestic abuse and the need for a high level of patience

²²⁰ Exhibit C132, page 136

and skill in managing these difficult conversations. SAPOL members such as Senior Constable Hartley should be commended for the work they do in this difficult area.

- 29.5. It is noted that on the same day, the contravene intervention order and breach of bail charges (PIR 13/K62933) were listed in the Christies Beach Magistrates Court. The matter was adjourned to 29 May 2013.²²¹
- 29.6. On 19 April 2013, Senior Constable Hartley completed a risk and safety report referral (PD525) to Junction Australia and advised the South Coast Criminal Justice Section that Ms Dailler had signed a PD207B. A detailed narrative of the offence was provided in the referral as follows:

‘There is a long standing domestic issue between the two parties. Police first became aware in October 3 2011. As a result, the victim applied for the [intervention] order in June 2012. Previous risk assessments for the DV incidents have scored medium to high. The victim has discontinued many of the charges initially laid against the offender. The offender currently has 4 lots of current bail to protect the victim against him. Previous charges relate to unlawful threats, assaults, serious criminal trespass, breach of IO, property damage most of which occurred in 2012 where police were attending at the address of the victim fairly regularly. It appears that the offender has an extensive offence history however little of this relates to the charges laid by the victim as she often withdraws.

Both parties appear to have alcohol/mental health issues.’

- 29.7. Senior Constable Hartley’s enquiries revealed that no PIR or risk assessment had been raised for the contravene intervention order report dated 15 April 2013. Accordingly, she raised **PIR 13/K66108** along with completing a PD438 risk assessment. The risk assessment score had now fallen to 6 (i.e. low risk).²²²
- 29.8. On 13 May 2013, Senior Constable Hartley received Ms Gormlie’s risk and safety report. A copy was forwarded to the Christies Beach prosecution section along with a copy of the PD207B, the PD438 risk assessment and the risk and safety report.²²³ Senior Constable Hartley did not have any further involvement with Ms Dailler until early 2014.

²²¹ Exhibit C134, Statement of Darren Rathband; Transcript, pages 639-642

²²² Exhibit C104ab

²²³ Exhibit C132, page 9

30. 2 May 2013 - Ms Dailler signs a further notice of discontinuance (PD207A)

30.1. On 2 May 2013, Ms Dailler signed a PD207A notice. On this occasion, she requested discontinuance of PIR 13/J39578 which related to the reported theft of the Landcruiser between 14 December 2012 and 15 December 2012 stating:

‘I told the officer who rang me I want no further action in this matter, he was very abrupt to me emotiona (sic) stressed me to go to court, he insisted I had to, I say no more then (sic) once. I am here now to officially stop the court to take no further action.’

30.2. On 21 May 2013, Senior Sergeant Wolfe authorised the discontinuance of the intervention order application.²²⁴

31. 29 May 2013 - Muir is sentenced for breach of intervention order and breach of bail

31.1. On 29 May 2013 Muir pleaded guilty in the Christies Beach Magistrates Court to a range of offences including the intervention order and bail offences committed on 15 April 2013 (PIR 13/K62933). The other offences for which he was sentenced did not involve Ms Dailler.

31.2. In sentencing for the two offences, the learned Magistrate noted that the breaches were committed soon after Muir had been released on a bond for identical offending (on 3 April 2013).²²⁵ Muir was convicted of both offences. In light of the two months he had spent in custody on remand, no further penalty was imposed.²²⁶

31.3. For the next few months, Ms Dailler and Mr Muir did not come to the attention of police. The next significant incident occurred on Christmas Day 2013.

32. SAPOL patrol and tasking Christmas Day 2013

(‘the Christmas Day incident’)

32.1. At 11:04am on 25 December 2013, a ‘000’ call was made by a female who sounded as if she was running and breathing hard. Due to the sound of wind, the operator had difficulty obtaining the name and location of the caller. Near the end of the call, a male voice could be heard arguing with the caller who he referred to as Graziella.²²⁷ At

²²⁴ Exhibit C131, pages 3-6; Transcript, pages 500-506

²²⁵ Exhibit C104aa, Magistrate’s Reasons for Decision

²²⁶ Exhibit C104ab; Exhibit C130; Transcript, pages 469-499

²²⁷ Exhibit C99: Call No: 400383022242001

11:10am, a SAPOL Call Centre operator telephoned the number used in the previous call. Ms Dailler answered and an address was obtained. A male could still be heard yelling in the background.²²⁸

- 32.2. At 11:21am Ms Dailler called '000' and said, 'everything has cooled down now... everything seems good, you don't need to send the police, everything's calmed down'. She did not disclose the nature of the original problem.²²⁹
- 32.3. At 11:24am on 25 December 2013, Senior Constable Paul Waye attended at Ms Dailler's address for a welfare check.²³⁰ On arrival, he noticed a large amount of blood in areas including the driveway, the front window of the house, around the front door and also on the sides of a Toyota 4WD vehicle which was parked in the driveway. He knocked on the door and spoke with Ms Dailler. There is no dispute that blood was observed on her clothing. When questioned by Senior Constable Waye, Ms Dailler said 'he' had left, however she would not name the male person. When asked whether she was injured, Ms Dailler said she had smashed a window and the blood was her own. Senior Constable Waye asked to see her arms. He observed scratches but no significant injuries. Ms Dailler would not allow Senior Constable Waye to enter the premises to examine the damaged window. At this point, Ms Dailler became agitated. When pressed for more information she became aggressive and told Senior Constable Waye to leave the property. Ms Dailler went inside the house, locked the front security door and the main front door behind her.
- 32.4. A second patrol arrived comprising Senior Constables Barry and Attard. Both officers provided statements to the Court.²³¹ On the way to Ms Dailler's property, Senior Constable Attard attended at the South Coast Hospital to see if any person had presented with lacerations. No person had presented with such injuries.
- 32.5. Ms Dailler was questioned by Senior Constable Barry. Initially she claimed to be alone that morning. When further questioned, Ms Dailler said a man called 'Wayne' had been at the premises. A mobile telephone number for 'Wayne' was provided, however when Senior Constable Barry called the number the male who answered said he did not

²²⁸ Exhibit C99: Call No: 400383023264746

²²⁹ Exhibit C99: Call No 400383023264757

²³⁰ Exhibit C72

²³¹ Exhibit C114; Exhibit C125

know Ms Dailler. Senior Constable Barry asked to enter the house, but entry was refused.²³²

- 32.6. Senior Constable Attard also spoke to Ms Dailler with similar responses. When told that a crime scene examiner would be attending, Ms Dailler became confrontational, raised her voice and demanded that police leave the property. When crime scene investigator (CSI) Brevet Sergeant Brian Watkins arrived, he too was challenged by Ms Dailler who he described as 'aggressive'. He said she stepped towards him 'in a threatening manner.' Ms Dailler would not allow photographs to be taken.²³³

The conduct as described by the SAPOL members is consistent with Ms Dailler's increasing hostility towards police.

- 32.7. Senior Constable Attard spoke with neighbours who confirmed there had been a disturbance at the house prior to the police attendance. Senior Constable Attard retrieved Muir's phone number from SAPOL records, however when she called the number there was no answer.²³⁴

- 32.8. Ms Dailler subsequently admitted (to Senior Constable Hartley) that Muir had been inside the house on that occasion. It follows that she had lied to Senior Constable Barry about 'Wayne'. It is also likely that she lied about smashing the window. Her explanation about the events was illogical and implausible. Clearly, a serious altercation had occurred and Muir was involved. Notwithstanding the seriousness of the situation, sadly, Ms Dailler was unwilling to cooperate with the police.

- 32.9. In accordance with incident documentation requirements of the May 2013 SAPOL General Order (Domestic Abuse) Senior Constable Waye raised **PIR 14/N08205 (DA Report)** and conducted a PD438 risk assessment. It returned a score of 5, presumably because no offence had been disclosed.²³⁵ On return to the VHPS, Senior Constables Attard and Barry added further information to the police investigation diary. The matter was forwarded to the Hills Fleurieu CIB, Crime Management Unit and the Hills

²³² Exhibit C114

²³³ Exhibit C125; Exhibit C115

²³⁴ Exhibit C125

²³⁵ Exhibit C104ac; NB. SAPOL General Order, Domestic Abuse (May 2013 version) commenced operation on 9 May 2013 and continued until 21 January 2014

Fleurieu FVIS for follow up with Ms Dailer.²³⁶ In the circumstances, I find no basis to criticise the efforts of the attending officers.

33. Muir attends at the Millhouse Medical Centre, Middleton - 31 December 2013

33.1. Dr Salisbury provided a statement to the Court. The account was provided by reference to records held at the Millhouse Medical Centre, Middleton. There was no challenge to the contents of these records.

33.2. On 31 December 2013 Dr Joe Levy treated Muir in relation to a cut sustained to his right middle three fingers which he said occurred while working with a plate glass window on Christmas Day. Given Ms Dailer's disclosure on 2 January 2014 to police that Muir was present at her home on Christmas Day and the presence of blood at the premises, I reject that account. It is far more likely that the laceration to Muir's fingers occurred at Ms Dailer's home on Christmas Day. I am satisfied that when Ms Dailer dialled '000' on that day a serious incident was unfolding and she was in fear for her safety. I am also satisfied that, if the blood had been forensically examined, Muir would have been a contributor.

34. 2 January 2014 - Family Violence Intervention Officer contacts Ms Dailer

34.1. On 2 January 2014, Senior Constable Hartley (FVIS) contacted Ms Dailer by telephone regarding the Christmas Day incident. She had conducted checks on SAPOL systems and noted that the interim intervention order had been revoked and that Muir had no bail conditions relating to Ms Dailer.²³⁷

34.2. Ms Dailer said she was fine. Initially she denied that Muir was linked to the Christmas Day incident. When challenged by Senior Constable Hartley, Ms Dailer admitted that Muir had been present with her on 25 December 2013, adding that she had not seen him or had contact with him since Christmas Day. Senior Constable Hartley reassured her that the police were simply trying to keep her safe. She explained that although the intervention order had been revoked and she had previously withdrawn charges against Muir, she was happy to assist her to seek a new order. Senior Constable Hartley emphasised that the police just wanted her to be safe and would try to protect her in whatever way they could, however, she needed Ms Dailer to tell her what had

²³⁶ Exhibit C104ac, PIR 14/N08205, pages 3-6

²³⁷ Exhibit C132, page 10

happened on Christmas Day. Although Ms Dailler admitted that Muir had been present on Christmas Day, she maintained that she had cut herself on a window and had 'panicked'. The panic has caused her to call the police.²³⁸ Senior Constable Hartley told Ms Dailler she did not believe the explanation and it did not make sense. She asked whether Ms Dailler would like to attend domestic violence counselling (at Junction Australia) but she declined. Senior Constable Hartley then requested permission to visit Ms Dailler at home but this offer was declined as Ms Dailler said she was busy with work and would not be available. The matter was left on the basis that Senior Constable Hartley would call her in a few days to follow up and the following steps were taken to check on Ms Dailler:

- 34.2.1. On 9 January 2013, Senior Constable Hartley attended at Ms Dailler's home address. There was a vehicle in the driveway and it appeared someone was at home. However, after knocking several times, no one came to the door. Senior Constable Hartley noted the attendance in the daily log book.²³⁹
- 34.2.2. On 10 January 2013, Senior Constable Hartley telephoned Ms Dailler, but there was no answer.
- 34.2.3. On 11 January 2013, Senior Constable Hartley spoke to Ms Dailler by telephone. Ms Dailler said she was fine, but she declined to provide any further information about what had happened on Christmas Day. Senior Constable Hartley reassured Ms Dailler that it was 'no problem' to have the intervention order put back in place, but she would need to disclose the details of these recent events to police. No further information was provided.
- 34.3. Since no offences had been disclosed, Senior Constable Hartley had no option but to finalise the PIR relating to the Christmas Day incident.
- 34.4. It is difficult to fault the efforts of Senior Constable Hartley. In my view, her persistence and efforts to engage with Ms Dailler show police work at its best. Senior Constable Hartley should be commended for her efforts.
- 34.5. I should add that I have perused the evidence of other FVIS members, namely Senior Constable Bruce²⁴⁰ and Senior Constable Lanchester.²⁴¹ Although a further referral to

²³⁸ Exhibit C132, pages 10-11

²³⁹ Exhibit C132, pages 11-12

²⁴⁰ Exhibit C128; Transcript, pages 397-453

²⁴¹ Exhibit C127; Transcript, pages 334-393

to Junction Australia in mid-February 2012 (see below) would have been prudent, there is no basis to criticise the performance of FVIS members. It is unnecessary to address the evidence of Senior Constable Bruce and Senior Constable Lanchester in detail. I am satisfied that they discharged their duties well and the Court was provided with a clear explanation of the various initiatives and new protocols that have been introduced to improve service delivery since the tragic deaths of Ms Daller and Mr Muir.

34.6. I should mention here that in relation to staffing of the FVIS and related issues, the Court received into evidence two statements from Detective Shearer.²⁴² Detective Shearer also gave oral evidence at the inquest.²⁴³ It is also unnecessary for the purpose of this finding to repeat that evidence. Suffice it to say that the Court was appraised of FVIS workloads and the adverse impact on the staff who are required to manage those workloads. This evidence was not challenged. It is noted that in June 2012 Senior Constable Lanchester was appointed to a permanent position within the FVIS along with an additional uniformed member. In July 2014, an FVIS position was created for Victor Harbor.²⁴⁴ These are positive steps and it is accepted that the Hills Fleurieu LSA continues to work to improve the management of DA incidents. Nonetheless, it is clear from the undisputed evidence that workloads in this area continue to be challenging.

35. SAPOL patrol and taskings to 23 Nicolas Baudin Drive, Encounter Bay on 6 April 2014 - Muir's fifth arrest

35.1. At 7:20am on 6 April 2014, Mr Ian Thomas contacted the SAPOL Call Centre. Mr Thomas reported a domestic dispute occurring at 23 Nicolas Baudin Drive, Encounter Bay which involved a male trying to pull a female out of a vehicle. He said the incident had been continuing for around 30 minutes or so. Whilst on the phone he said the male had managed to get the female out of the car and they were struggling.²⁴⁵

35.2. At around 7:27am, Senior Constables Matthew Fegan and Andrew Bradley were tasked to attend. Both members provided statements to the Court.²⁴⁶ Senior Constable Fegan also gave oral evidence to the inquest.²⁴⁷

²⁴² Exhibits C137 and C137a

²⁴³ Transcript, pages 698-770

²⁴⁴ Exhibit C137a, pages 1-4

²⁴⁵ Exhibit C99: Call No: 400383023705420; Exhibit C116

²⁴⁶ Exhibit C104ae; Exhibit C135; Exhibit C73

²⁴⁷ Exhibit C104ae; Exhibit C135; Transcript, pages 669-691

- 35.3. Senior Constable Bradley spoke to Ms Dailler, however she declined to provide a statement to police. The only information she provided was that she had been drinking with her partner Dion Muir and a friend on the previous evening. She said an argument had developed about various matters after she had been speaking with her family via Skype. Then she went to sleep. On waking at about 7am, the argument had continued. She said Muir kept harassing her. She pushed and scratched him to keep him away. Ms Dailler declined to disclose further details stating that she did not want to get Muir into trouble as it might affect his relationship with his children.²⁴⁸
- 35.4. Senior Constable Fegan spoke with Muir. He appeared to have fresh scratches on his neck and ear area which he said were accidentally caused by Ms Dailler during an argument.²⁴⁹
- 35.5. Although no substantive offence/s had been disclosed, the May 2013 version of the relevant SAPOL General Order prescribes that the member will submit a domestic violence PIR, conduct a PD438 risk assessment and a PD437 and consideration should be given to the issue of, or application for, an intervention order. *On this occasion, no PIR was raised and no risk assessment was conducted.* I will not repeat the remarks I have already made about lax compliance with General Orders relating to incident documentation. Clearly, the incident should have been documented. (emphasis added)
- 35.6. A Police Interim Intervention Order was raised and served on Muir. It included a condition that Muir stay away from the subject address until 5pm. The rationale for the inclusion of this condition was that it would allow time for the effects of the alcohol to wear off.²⁵⁰ The conditions of the order included:
- ‘The defendant must not:
1. assault, threaten or harass or intimidate the protected person(s); and
 13. NOT RETURN TO 23 NICOLAS BAUDIN DRIVE ENCOUNTER BAY PRIOR TO 1700HRS on SUNDAY 06/04/2014.’²⁵¹
- 35.7. Initially when the order was served on Muir he said ‘this is crap’. Then he said, ‘yes I understand and it is good’.²⁵² It is likely that once Muir read the order he realised it

²⁴⁸ Exhibit C104ae, pages 1-2

²⁴⁹ Exhibit C135, pages 2-3; Transcript, pages 669-679

²⁵⁰ Exhibit C104aaah, page 18

²⁵¹ Exhibit C135, pages 3-4

²⁵² Exhibit C104ae, page 49

permitted him to return to Ms Dailler's home by 5pm. In my view, the order was not worth the paper it was written on.

- 35.8. Two hours later (at around 9:33am), Senior Constables Bradley and Fegan were tasked to re-attend at 23 Nicolas Baudin Drive, Encounter Bay. Another neighbour had reported 'a huge ruckus next door'. She heard a female screaming 'at the top of her lungs', 'get out of here, get out get out, I'm going to call the police'.²⁵³
- 35.9. Senior Constable Bradley knocked on the door and spoke with Ms Dailler. Ms Dailler denied that Muir was inside. However, on entering the house (by consent), Muir was found standing in the shower recess of a bathroom. He was arrested for breach of the PIIO and conveyed to the VHPS. A record of interview was conducted. Muir elected not to answer questions.²⁵⁴ On this occasion, Senior Constable Bradley completed a **PIR 14/P05333 (DA related)** and a PD438 risk assessment which returned a score of 30 (medium risk).²⁵⁵
- 35.10. Muir was transferred to Christies Beach Police Station. His application for police bail was refused.²⁵⁶
- 35.11. At 2:05pm on 28 April 2014, Ms Dailler attended at the VHPS and spoke with Constable Stephanie Kluske. Ms Dailler blamed herself for Muir's attendance at her home on 6 April 2014. She told police she had telephoned Muir for medication and cigarettes. Her version of events was that when he arrived she verbally abused him because he had been cheating on her. An argument had followed. Ms Dailler wanted to clarify that Muir 'did not lay a hand on her' and 'it was only a verbal disagreement'.²⁵⁷ Clearly, Ms Dailler was trying to protect Mr Muir from being charged with any offence.
- 35.12. In light of Ms Dailler's lack of co-operating with police, I am satisfied that the omission to raise a PIR or conduct a PD438 assessment had no bearing on the ultimate fate of Ms Dailler. On the available evidence, it is fair to conclude that even if it had been raised, Ms Dailler would not have provided a statement in support of any offence.

²⁵³ Exhibit C136; Exhibit C135, pages 4-5

²⁵⁴ Exhibit C104ae, page 3; Exhibit C135; Transcript, pages 679-682

²⁵⁵ Exhibit C104ac (PIR 14/P05333); Transcript, pages 682-684

²⁵⁶ Exhibit C104ae (PD438); Exhibit C119, page 22

²⁵⁷ PIR 14/P50333; Exhibit C119

36. Muir's bail application at Christies Beach Magistrates Court - 7 April 2014

36.1. On 7 April 2014, Muir applied for bail at the Christies Beach Magistrates Court in respect of an offence of contravene intervention order contrary to section 31 of the *Intervention Orders (Prevention of Abuse) Act 2009*. The prosecutor opposed bail. The brief allegations read to the Court from the police apprehension report included an allegation by the alleged victim that Muir had 'pinned her to the ground and held her down'.²⁵⁸

36.2. Ordinarily, a person commences a bail application with a presumption in favour of release on bail in his/her favour. Section 10 of the *Bail Act, 1985* states:

'Where an application is made to a bail authority by an eligible person who has been charged, but not convicted of, an offence in respect of which he or she has been taken into custody, there is a presumption in favour of releasing an applicant on bail unless, having regard to the matters set out in section 10(1) of Act, the bail authority considers that the applicant should not be released on bail: Section 10(1). (emphasis added)

36.3. In certain circumstances however, there is a presumption against a grant of bail and the onus shifts onto the applicant to establish the existence of 'special reasons' justifying release on bail. Section 10A of the Act states:

'Despite section 10, bail is not to be granted to a prescribed applicant unless the applicant establishes the existence of special circumstances justifying the applicant's release on bail'. (emphasis added)

36.4. The section 10A (2) definition of a 'prescribed applicant' includes an applicant who has been taken into custody in relation to an offence against section 31 of the *Intervention Orders (Prevention of Abuse) Act 2009* and the act or omission alleged to constitute the offence involves physical violence or a threat of physical violence: section 10A (2) (ba). Muir met both criteria. *It follows that for the purposes of the bail application on 7 April 2014, Muir was a prescribed applicant.*²⁵⁹ Thus the presumption against bail applied and the onus was on Muir to establish the existence of 'special reasons' justifying his release on bail. (emphasis added)

36.5. I have reviewed the transcript of the bail hearing proceedings of the Christies Beach Magistrates Court. The prosecutor's opposition to bail rested primarily on the blatant nature of the contravention noting that the intervention order was issued at 8:17am on

²⁵⁸ Exhibit C140a

²⁵⁹ See Exhibit C74, Statement of Hans Minchin

6 April 2014 and Muir was located inside the victim's home at 9:43am. It was suggested by implication that Muir's conduct amounted to open contempt for the order. The prosecutor pointed to relevant convictions on 3 April 2013 (contravene intervention order, breach bail) and 29 May 2013 (contravene intervention order, breach bail).

36.6. On the topic of whether Muir was a prescribed applicant, the following exchange occurred:

'HIS HONOUR: Is there anything else that you want to say in relation to the matter at all?

APP HUDSON Just that he's got a total disregard for the intervention orders your Honour. He's got priors for breaching bail conditions and intervention orders, sir he was on a bond for it but we're just two days out of time for that - or three days out of time. Just total disregard for the order and the order it there to protect the victim your Honour.

HIS HONOUR Now you say he's a prescribed applicant?

APP HUDSON: The order allows contact but asks the defendant not to assault or harass the protected person, *can't say*-

HIS HONOUR: *That he's a prescribed applicant.*

APP HUDSON: *No.*' (Emphasis added)

36.7. It is noted that the learned Magistrate interrupted the prosecutor before she finished explaining what it was she 'can't say'. The learned Magistrate finished the sentence and the matter proceeded on the basis that Muir was not a prescribed applicant. His Honour then intimated that he was minded to grant bail and asked whether the matter should be transferred to Victor Harbor or remain at Christies Beach.

36.8. Bail was granted on the following conditions:

1. I will not leave the State for any reason without lawful permission under the Bail Act, 1985.
2. I will forfeit to the Crown the sum of \$500.00 if I fail to comply with a term or condition of this Bail Agreement.
3. **I will reside at 14 Stirling Drive, MORPHETT VALE SA 5162.**
4. **I will not approach or communicate, either directly or indirectly, with Graziella DAILLER.**
5. **Permission is granted to attend at 23 Nicolas Baudin Drive, Encounter Bay on one occasion and in the company of a police officer, at a time convenient to that police officer, for the purpose of collecting personal belongings.**

6. I will not possess a firearm, ammunition or any part of a firearm.
7. I will submit to test (including testing without notice) for gunshot residue as directed. (emphasis added)

36.9. The prosecutor subsequently explained (in an addendum affidavit) dated 25 April 2018, that at the time of the court hearing she did not think Muir was a prescribed applicant ‘because while the offending had involved an allegation of physical violence, Muir had not been charged over that matter’.²⁶⁰ The prosecutor acknowledged she was in error and that Muir was a prescribed applicant.²⁶¹

36.10. Courts rely on prosecutors to inform the court of such important matters. It is incumbent on SAPOL when it sends prosecutors to court to represent the interests of the Commissioner of Police that they have a sound knowledge of all aspects of the *Bail Act, 1985 (SA)* and sufficient experience to conduct these important applications. For obvious reasons, the need for vigilance in bail applications is particularly acute in applications which arise in the context of alleged domestic violence offences and contravention of intervention orders. The wrongful release of a prescribed applicant can potentially have fatal consequences.

36.11. As it transpired, the learned Magistrate heard the application on a misconceived basis. Indeed, the application proceeded on the basis that Muir had a presumption in favour of bail and His Honour was persuaded by the submissions of the duty solicitor who represented Muir on that occasion that it was appropriate to release him on bail. The matter was remanded to 2 June 2014 at 11:30am. That date of course post-dates the deaths of Ms Dailler and Mr Muir.

36.12. It is not possible to say with any level of certainty whether, if Muir had been treated as a prescribed applicant, he would have been remanded in custody. That would depend on the instructions he provided to the duty solicitor and whether the Court accepted that special reasons existed which justified his release on bail.

36.13. It could be argued that if bail had been refused on 7 April 2014, the deaths on 15/16 May 2014 would have been prevented. Logically, if Muir had been in custody on that particular date the deaths would not have occurred. In my view that type of reasoning is unhelpful. I consider it imprudent to place undue focus on one particular decision

²⁶⁰ Exhibit C140a; See also Exhibit C140

²⁶¹ Exhibit C140a, pages 1-2

and one single point in time to thereby reason that the deaths were necessarily preventable. That is an overly simplistic approach which ignores the inherent complexity of the domestic abuse and the pattern of the relationship between Graziella Dailler and Dion Muir.

37. 5 May 2014 - further involvement of the FVIS

37.1. On 5 May 2014, Senior Constable Hartley telephoned Ms Dailler to discuss the recent events. Ms Dailler said there had been no further issues and she was okay. She declined further domestic violence support services and said she did not want further assistance from the police.²⁶²

38. 16 May 2014 - SAPOL tasking to investigate discovery of deceased

38.1. On 16 May 2014, Ms Natasha Palmer tried to call her mother at 8:49am, 11:03am and 11:45am, but the calls went to voicemail. She contacted her mother's employer, Mr Gregory Damaskos who said Ms Dailler had not arrived for work on either 15 or 16 May 2014. He too had been unable to contact her.²⁶³

38.2. Ms Palmer telephoned her sister, Ms Adelaide Holly. They went to their mother's home and noticed her car parked in the driveway. As I have previously mentioned, there was no response to doorknocking and a call was made to '000'.²⁶⁴

38.3. The SAAS crew arrived at 12:14pm. A SAAS officer climbed through the bathroom window and located the deceased Muir in the laundry. She unlocked the laundry door. SAAS members entered the house and observed blood on the floor in the kitchen, hallway and master bedroom. A large carving knife was located on the bedside table. The deceased Ms Dailler was found on the floor of the loungeroom covered in blood. SAAS officers remained at the scene until the police arrived.²⁶⁵

38.4. At about 12:22pm, a two-person SAPOL patrol was tasked to attend at the scene.²⁶⁶ Superintendent Robert Williams arrived a short time later and assumed the role of Police Forward Commander.²⁶⁷ Thereafter other officers arrived. The scene was

²⁶² Exhibit C132, pages 13-14

²⁶³ Exhibit C19

²⁶⁴ Exhibit C7

²⁶⁵ See Exhibits C8, C9a, C11, C12a

²⁶⁶ Exhibit C76; Exhibit C9a

²⁶⁷ Exhibit C78

inspected, a video recording of the scene was made and the scene was forensically assessed by SAPOL forensic investigators in the present of forensic pathologist, Dr Karen Heath.²⁶⁸ Two mobile telephones were seized. A subscriber check confirmed that one phone was subscribed to Ms Dailler and the other to Mr Muir. An analysis of the call charge records for both phones was consistent with the evidence of other witnesses. There were no outgoing calls from Mr Muir's phone on 15 or 16 May 2014. The last outgoing call from Ms Dailler's phone was made at 7:07pm on 14 May 2014 to Ursula Muir's phone. This call corroborates Ms Muir's evidence that Muir had called their daughter Caitlin on 14 May 2014.²⁶⁹

38.5. At 9:14pm on 16 May 2014 an incoming call was received on Ms Dailler's phone from one of Ms Dailler's friends. Mr Taylor provided a statement in which he explained that Ms Dailler had contacted him. Given the time of the call, Mr Taylor is clearly mistaken about that.²⁷⁰

38.6. Before turning to the summary, conclusions and recommendations, I will address some discrete topics which arose in the course of the inquest. I turn first to the issue of the undisputed telephone contact which occurred between Muir and Ms Dailler between 6 April 2013 and 28 March 2013 whilst he was at the Adelaide Remand Centre in the custody of the Department for Correctional Services. It is undisputed that the contact amounted to a breach of Muir's bail conditions and conditions of the intervention order.

39. Contact between Muir and Ms Daller whilst at the Adelaide Remand Centre - 6 January 2013 to 28 March 2013

39.1. *Evidence of Michael Reynolds (Department for Correctional Services)*

39.2. The Court received a statement from Michael John Reynolds. Mr Reynolds has been employed by the Department for Correctional Services (DCS) for 27 years and has been in the role of Director of the Safety and Security Services Unit for around 10 years. Mr Reynolds provided an overview statement which addressed the general admission process for prisoners and the custodial management of prisoners.²⁷¹ His evidence was unchallenged.

²⁶⁸ Refer statements of SAPOL members: Exhibits C77, C79a-C81, C83-C85a, C87-C91, C93-C98 and C100a-101a

²⁶⁹ Exhibit C104a pages 76-77

²⁷⁰ Exhibit C104a, page 77

²⁷¹ Exhibit C142

- 39.3. The salient feature of Mr Reynolds' evidence relates to the processes that were in place for prisoners regarding telephone and email communication and receiving visitors. As part of the general admission process, the supervisor at the correctional institution will receive any paperwork that comes with the prisoner. As I understood the evidence, that paperwork is 'usually the court paperwork and police paperwork', however, *at the relevant time, it did not necessarily include copies of bail conditions and/or intervention orders.* (emphasis added)
- 39.4. A number of forms are completed by the prisoner which include a stress screening form, a security classification assessment and a prisoner telephone system form.²⁷² A declaration is signed by the prisoner to the effect that they will 'behave and use it appropriately, and only stick within the guidelines'.²⁷³ A further form is subsequently completed with the nominated persons and numbers they wish to contact. It is implicit from the evidence that Graziella Dailer and her contact number was provided as a requested contact by Muir to the DCS.
- 39.5. Mr Reynolds explained that every DCS staff member has access to the computer based Justice Information System (JIS), however the system restricts access to certain information depending on an employee's role. All staff have access to warning flags such as 'suicide, self-harm, gang member, escape, etc'. Other persons such as supervisors and case management coordinators who work in the accommodation areas and with the prisoners have access to a broader range of information on JIS. That information includes SAPOL records, courts, movements, visits, prisoner history, prisoner information, pending court hearings, etc. However, Mr Reynolds said that apart from one person, at the relevant time, '*No one in the prison [ARC] had access to PIMS*'. In other words, they did not have access to intervention orders held in the SAPOL system.²⁷⁴

In practice, this meant that that a prisoner such as Muir who was on remand for offences that included breaching an intervention order, was able to put the name of a protected person onto the prisoner telephone form without any checks being done through SAPOL or SAPOL records. That is an extraordinary situation. It undermined the core objective of the Intervention Orders (Prevention of Abuse) Act,

²⁷² Muir was classified as medium security (Score 25). A score is reached by reference to a series of questions which, significantly, include the charges for which the prisoner is on remand. One of the charges for which Muir was on remand was breach of bail.

²⁷³ Exhibit C142, page 3

²⁷⁴ Exhibit C142, page 5

2009. It amounted to the DCS facilitating, albeit unwittingly, ongoing breaches of an intervention order. In fact, there was contact between Muir and Ms Daller on 41 occasions.

39.6. It is not possible to say with any level of certainty what effect, if any, this ongoing contact had on Ms Daller's psychological state, her decisions to sign PD207B notices of discontinuance, the continuation of her relationship with Muir and her rejection of police attempts to provide assistance. Plainly, such contact should never have occurred.

39.7. ***Evidence of David Brown, Chief Executive Officer, DCS***

39.8. David Brown provided a sworn affidavit to the inquest.²⁷⁵ He was not required to give oral evidence.

39.9. Mr Brown has been the CEO of DCS since September 2012. His evidence was directed at the steps taken by DCS to prevent a recurrence of such a situation. The contents of the affidavit are self-explanatory and need no elaboration. The key points can be summarised as follows.

39.10. On 19 June 2014, Mr Brown initiated correspondence with the Commissioner of Police regarding improvements to information sharing arrangements between their respective agencies. In particular, he sought advice on the scope for wider access by DCS to the PIMS/SHIELD computer systems so that the existence of intervention orders could be identified, the conditions verified, and the orders appropriately managed by DCS.²⁷⁶

39.11. The discussions led to the development of a Memorandum of Understanding in July 2015. The relevant legislation was amended so that the JIS system enabled DCS access to intervention orders and related information.

39.12. On 30 November 2015, the *Intervention Orders (Prevention of Abuse) (Miscellaneous) Amendment Act 2015* resulted in the following changes. The DCS is now notified of intervention orders by two methods:

39.12.1. The Courts Administration Authority (CAA) notifies DCS by email of all IO notifications issued in the State regardless of whether it relates to a DCS client.

²⁷⁵ Exhibit C144, Affidavit of David Martin Brown dated 10 April 2018

²⁷⁶ Exhibit C104avv, Letter to Commissioner of Police from Chief Executive, DCS dated 19 June 2014

- 39.12.2. SAPOL's database, via JIS, now has the effect of automatically matching current DCS clients with an IO and this generates an automatic 'IO flag' with intervention order information on JIS.
- 39.12.3. All DCS staff have access to JIS and can now access IOs and PIIOs in relation to any DCS client via the SAPOL's database.
- 39.12.4. The IO and PIIO information on JIS includes details such as the defendant, protected person(s) and the conditions of an IO.²⁷⁷
- 39.12.5. On 1 August 2015, an instruction entitled 'Managing prisoners and offenders who are subject to intervention orders' was distributed to all DCS staff. The instruction outlines the relevant changes and processes which includes cross checking a prisoner's phone, visiting records and mail with the names of protected persons.²⁷⁸
- 39.13. The changes are of course welcome. It is unfortunate that such a ludicrous situation was able to occur before the problem was identified and rectified.

40. Junction Australia - risk and safety referrals

- 40.1. I turn now to the role of Junction Australia in this matter and the risk and safety report referrals made by SAPOL to that agency.
- 40.2. *Evidence of Jessica Stevens*
- 40.3. Ms Stevens is the Regional Manager of Fleurieu and Kangaroo Island at Junction Australia and she provided a statement to the Court.²⁷⁹ The statement provided an overview of the service and its processes.
- 40.4. Junction Australia is a service which supports women and children in all matters relating to domestic violence in the Alexandrina, Victor Harbor and Yankalilla Council areas. The services provided include sourcing safe accommodation, counselling services, preparing safety plans and risk and safety reports on referral from SAPOL.²⁸⁰

²⁷⁷ Exhibit C144

²⁷⁸ Exhibit C144, pages 3-8 and annexures

²⁷⁹ Exhibit C139a

²⁸⁰ Exhibit C139, pages 1-2

Junction Australia has been delivering services to the Fleurieu Domestic Violence Service since October 2011. The history of the service is set out in the statement.²⁸¹

- 40.5. Ms Stevens explained that on 21 November 2013, the Fleurieu Family Safety Framework was implemented as part of the South Australian Office for Women's initiative which established a state-wide Family Safety Framework to improve integrated service responses to violence against women and children in South Australia. The Framework involved the government and other agencies sharing information about high risk families, at meetings to which various agencies engaged in supporting the families are invited. The Fleurieu meetings occur fortnightly.
- 40.6. Referrals are mandatory for victims of domestic violence where a government or non-government agency has completed a Domestic Violence Risk Assessment (DVRA) in relation to a victim and has assessed the victim as at 'high risk'. A victim can also be referred without a high-risk rating if an agency considers, in its professional judgment, that the victim is nevertheless a high-risk victim.
- 40.7. Ms Stevens attended most of the said meetings from 21 November 2013 until June 2014. She does not recall Graziella Dailer being discussed at any meeting or her name being included on any referral agenda.²⁸²

41. ***Evidence of Heather Kaye Gormlie***

- 41.1. Ms Gormlie is a domestic violence support worker in the employ of Junction Australia. Ms Gormlie provided a statement to the Court and gave oral evidence at the inquest.²⁸³
- 41.2. Ms Gormlie completed three risk and safety reports for 'Graziella Holly' (i.e. Ms Dailer).²⁸⁴ The referrals were received on 9 February 2012, 25 September 2012 and 19 April 2013 respectively.²⁸⁵
- 41.3. The first referral was received from Senior Constable Elizabeth Bruce who was stationed at the Hills Fleurieu FVIS.²⁸⁶ I have perused the document (PD525) and find that limited information was provided on the referral. The information essentially

²⁸¹ Exhibit C139a, pages 1-2

²⁸² Exhibit C139a, pages 2-3

²⁸³ Exhibit C139; Transcript, pages 819-867

²⁸⁴ NB. I will continue to refer to the victim as Ms Dailer unless directly quoting from Ms Gormlie's report

²⁸⁵ Exhibit C139; Transcript, page 822

²⁸⁶ Exhibit C104s; Transcript, pages 823-824

comprised the victim's name, date of birth, address, the date of the alleged offences and the charges the victim was seeking to withdraw, along with a brief narrative of the subject incident.

- 41.4. Ms Gormlie assessed Ms Dailler on the basis that she wanted no further police action in respect of two charges that arose from an incident on Christmas Eve 2011, that is to say, serious criminal trespass and property damage. The PD438 risk assessment score on the referral form was left blank. During her evidence, Ms Gormlie candidly stated that even if that section had been completed by SAPOL, at that time she would not have understood its meaning. It was not until the development of a common risk and safety report sheet between Junction Australia and SAPOL in late 2013 that a common understanding was reached about the interpretation of risk assessment scores.²⁸⁷
- 41.5. Ms Gormlie contacted Ms Dailler on 13 February 2012. They met for one hour on 20 February 2012.²⁸⁸ The most salient features of the written report which she produced are that Ms Dailler said her relationship with Mr Muir was over and, with the exception of one push, *she denied any previous incidents of violence in the relationship*. Ms Dailler said Mr Muir 'had a temper' but 'he did not take it out on her'.²⁸⁹ Plainly, those statements were untrue.

These assertions stand in stark contrast to the violent incidents Ms Dailler had disclosed to Senior Constable Robinson on 17 January 2012 (the historical offences) and the vivid accounts she had given to police about the report of attempted strangulation on 20 December 2011. The overwhelming inference is that Ms Dailler minimised the seriousness of the abuse and omitted reference to significant acts of abuse to facilitate the discontinuance process.

- 41.6. Ms Gormlie explained that 'unwillingness to engage' is quite common in clients who are referred to the service by SAPOL. It is not uncommon for these clients to minimise violence that has actually occurred. She said these clients rarely choose to engage further with the service.²⁹⁰

²⁸⁷ Exhibit C104s, page 2; Transcript, pages 823-824

²⁸⁸ Transcript, pages 825-828

²⁸⁹ Exhibit C138, page 4; C102s, pages 1-2

²⁹⁰ Exhibit C139, pages 2-3; Transcript, pages 827

- 41.7. The reasons given by Ms Dailler for discontinuing the matter were recorded as follows.
- 41.7.1. She does not want to be involved in court proceedings.
 - 41.7.2. She has ceased all contact with the defendant which she intends to be permanent.
 - 41.7.3. The defendant has not been contacting or harassing her since the damage occurred.
 - 41.7.4. She just wants to put it all behind her and get on with her life.
 - 41.7.5. She considers herself mentally fragile since the death of her father in recent years and does not need more stress in her life.
 - 41.7.6. She is planning a trip to France to see her family soon and does not want to be tied up with court proceedings.²⁹¹
- 41.8. Ms Gormlie explained the various types of domestic violence and the cycles of violence to Ms Dailler by reference to a booklet produced by the Southern Domestic Violence Action Group. Ms Dailler said she had already read a similar book provided by the police. She insisted there was no pattern of domestic violence in her relationship.²⁹² She was aware of the option of seeking an intervention order should the situation change. The role of the court system was discussed and the benefits of some defendants being subjected to court related action. Ms Dailler responded by saying she understood the police were 'just trying to protect women from serious harm' however she reiterated that she held no fear for her safety or of the defendant and just wanted to be left alone.
- 41.9. Based on the interview, Ms Gormlie concluded on 20 February 2012 that:
- 'Providing Ms Holly continues to have no contact with Mr Muir, my assessment of her risk of experiencing further violence was low.'²⁹³
- 41.10. It will be recalled that on 17 February 2012, the Hills Fleurieu FVIS had received the three further completed PD207B notices relating to the car graffiti incident (PIR 12/E99436), aggravated assault (historical offending PIR 12/F05999) and the charge of aggravated threaten to kill or endanger life arising from the graffiti offence at

²⁹¹ Exhibit C139, page 5

²⁹² Exhibit C139, pages 4-5; Transcript, pages 822, 826-827

²⁹³ Exhibit C139, page 6; Transcript, pages 827-828; Exhibit C104s

Ms Dailier's workplace (PIR 12/F06686). However, as I have already mentioned, no further PD525 referral was made.

- 41.11. Senior Constable Elizabeth Bruce explained that since Ms Dailier had already indicated a willingness to attend at Junction Australia, it was assumed she would have informed the counsellor about these other matters.²⁹⁴ That assumption proved incorrect and Ms Gormlie remained unaware of those matters.

In my view, the FVIS ought to have made a separate PD525 referral for a risk and safety report or, at the very least, contacted Junction Australia to alert them to the nature of these three incidents. The actions Ms Dailier was seeking to discontinue included reports of historical acts of domestic abuse which involved extreme physical violence. Some of the acts were accompanied by death threats. Furthermore, there had been the recent death threat via graffiti at the victim's workplace. If the risk and safety referral process is to have any meaning, it is essential that SAPOL members provide all such information pertaining to risk assessment and safety planning to agencies such as Junction Australia.

- 41.12. During her sworn evidence, Ms Gormlie confirmed that 'evidence of a significant history' would be relevant to her assessment of risk. To her credit, Senior Constable Bruce acknowledged that, with the benefit of hindsight, she would have done the referral to Junction Australia again.²⁹⁵ It is not suggested that the omission had any bearing on Ms Dailier's ultimate fate.

- 41.13. Ms Gormlie received the second referral on 25 September 2012. She met with Ms Dailier on 5 October 2012 and completed a risk and safety report on 8 October 2012.²⁹⁶

- 41.14. On this occasion, Ms Dailier repeated her earlier claim that the relationship with Mr Muir was over. She said there had been no contact since July 2012. Throughout the interview Ms Dailier insisted she was 'mentally unwell' at the time of the July offences and 'does not believe that Mr Muir should be blamed for her erratic behaviour'.²⁹⁷ Ms Dailier reported that her mental health was now stable and she was

²⁹⁴ Evidence of Elizabeth Bruce, Transcript, pages 411-414

²⁹⁵ Transcript, pages 411-414

²⁹⁶ Exhibit C104w

²⁹⁷ Exhibit C104w; Exhibit C139, pages 7-8

seeing a psychologist.²⁹⁸ She admitted to there being 'heated arguments' in the relationship, but she continued to deny any significant past domestic abuse. The reasons provided by Ms Dailler for the requested discontinuance of these charges were recorded as follows.

41.14.1. She was mentally unwell at the time after ceasing antidepressant medication abruptly and consuming alcohol.

41.14.2. She telephoned Mr Muir on 1 July 2012 (thus encouraging a breach of the intervention order) and his attendance at the house arose out of his concern for her wellbeing. He confiscated her car keys to prevent her from driving whilst intoxicated.

41.14.3. She had exaggerated her report to police on 3 July 2012 and said the defendant did not force his way into her house.

41.14.4. On 5 August 2012, the defendant was not present at her house at all and she had imagined he was there due to her mental state.

41.14.5. She has had no concerns about the defendant's behavior since 3 July 2012.²⁹⁹

41.14.6. No pressure had been placed on her by the defendant 'to drop the charges'.

41.14.7. The intervention order would remain in place and she was not in fear of Muir.

41.14.8. She would inform SAPOL if Muir contacted her.³⁰⁰

41.15. Essentially, Ms Dailler blamed herself for the events of early July 2012. Her willingness to take all responsibility for the situation is indicative of the vulnerability of victims of domestic abuse and also the challenges faced by SAPOL investigators, particularly when victims choose not to pursue criminal charges against the alleged perpetrator.

41.16. Ms Gormlie conducted the third and final risk and safety assessment with Ms Dailler on 10 May 2013. A risk and safety report was completed on 13 May 2013.

41.17. A perusal of the report reveals that Ms Dailler continued to deny any physical violence in the relationship, minimised the reported abuse and blamed herself for it, citing poor

²⁹⁸ Exhibit C132, page7; Exhibit C104w

²⁹⁹ Exhibit C104w

³⁰⁰ Exhibit C139, pages 8-9

mental health and alcohol dependency.³⁰¹ Ms Gormlie noted that her comments were inconsistent with the past reports she had made against Mr Muir. Ms Dailler said she wanted to remain friends with Mr Muir and believed that he was currently working on his alcohol issues. She expressed hope that they could be of mutual support to each other. Ms Dailler said she had applied to have the intervention order revoked.³⁰²

41.18. Ms Gormlie concluded that Ms Dailler's risk of further violence was high:

*'Although Ms Holly stated she does not feel her safety is at risk from Mr Muir, I would rate her risk of experiencing further violence as high. This is due to the significant history of abuse in their relationship, the concurrent mental health/alcohol issues admitted by Ms Holly and her admission that she wants to continue some form of relationship with Mr Muir.'*³⁰³ (emphasis added)

41.19. Given the relatively limited information provided to Junction Australia by SAPOL and Ms Dailler's lack of positive engagement with the service, I find there is no basis to criticise the risk and safety assessment process or the contents of the risk and safety reports of Ms Gormlie. It is plain that Ms Dailler did not give an honest account to Ms Gormlie. This was undoubtedly done to facilitate the discontinuance process. The alternative is that eyewitnesses to various events fabricated their accounts and Ms Dailler herself fabricated reports to police about historical acts of extreme physical violence. The likelihood of such a scenario is so implausible that it can be rejected.³⁰⁴

41.20. I am satisfied that at least 12 months prior to her death, Ms Dailler viewed attempts by SAPOL to investigate reported offences against Muir as unwanted interference in her private affairs. This lack of cooperation placed SAPOL investigators and Junction Australia in a difficult position. That said, Ms Dailler was also in a difficult position. She had developed a fatal attraction to Mr Muir and the relationship appears to have been characterised by unhealthy co-dependency. Ms Dailler's enmeshment in this dangerous relationship was so deep that she repeatedly rejected ongoing efforts by SAPOL to provide, support, assistance and protection. Given this complex situation, I find there was little more that could have been done by SAPOL to protect Ms Dailler from Muir.

³⁰¹ Exhibit C104ab, page 1

³⁰² Exhibit C104ab, page 2

³⁰³ Exhibit C104ab, page 2

³⁰⁴ Exhibit C104ab, pages 2-3

42. Summary and conclusion

- 42.1. Between 2011 and 2014 police attended multiple taskings relating to domestic abuse involving Ms Dailler and Mr Muir. In the course of this finding, I have identified various matters relating to delays in investigation of offences and laxity in incident documentation. As stated in 2014 by the former State Coroner, Mark Johns, one of the most powerful influences that police can have in a context where a person has been violent or threatened to be violent, is the power of arrest and charging. If that power is not exercised expeditiously or, worse still is not exercised at all, there is a real danger that the offender will think he or she has ‘gotten away with it’.³⁰⁵ As to incident documentation, I do not intend to repeat the observations/findings I have made. Suffice it to say that the policing of domestic abuse requires rigour at all stages of the process. There is no room for complacency or laxity regarding the investigation of alleged offences, incident documentation and compliance with SAPOL General Orders more generally. The potential consequences are simply too serious. In some cases, it could be fatal.
- 42.2. That said, in the particular circumstances of this case, I do not consider the shortcomings I have identified caused or contributed in any substantial way to the tragic deaths of Graziella Dailler or Dion Muir in May 2014. To suggest otherwise would be to ignore the complexity of their relationship and the impact of Ms Dailler’s determination to discontinue charges and intervention orders on the ability of SAPOL to protect her from harm. Sadly, in most instances, SAPOL was reliant on Ms Dailler’s cooperation and willingness to produce evidence in order to hold Muir accountable for his actions in a court of law. Neither Ms Dailler nor any other victim of domestic abuse should be criticised for such decisions. On the contrary, the factors which lead victims of abuse to reject SAPOL assistance and to discontinue legal proceedings are varied and complex and include psychological factors which were beyond the scope of this inquest to explore.
- 42.3. In relation to the bail application dated 7 April 2014 the failure to identify that Muir was a prescribed applicant was a significant oversight by the prosecutor. Nonetheless, for the reasons I have expressed, I consider it inappropriate to focus on one particular error at one point in time and to thereby reason that the deaths were necessarily preventable deaths. In my view, this inquest has demonstrated the necessity of an

³⁰⁵ Finding of Inquest into the Death of Zahra Abrahamzadeh at [1.6]

ongoing performance management framework in which SAPOL managers actively monitor what is occurring in the work place and ensure compliance with SAPOL expectations.

42.4. The relationship between Ms Dailler and Mr Muir was complex and volatile. It was compounded by alcohol abuse on the part of both. One of the sad features of this case is that, notwithstanding Ms Dailler's courage in finally reporting acts of domestic abuse, including historical offending, attempted strangulation, savage beatings and the like, she was unable to maintain her resolve to hold Mr Muir accountable for his actions. That is one of the sad realities of the cycle of domestic abuse.

42.5. I express my condolences to both families.

43. Recommendations

43.1. Pursuant to Section 25(2) of the *Coroners Act 2003 (SA)* 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 events that were the subject of the inquest.

43.2. Given the conclusions I have reached in this case and the recommendations made by the former State Coroner in the inquest into the death of Zahra Abrahamzadeh, it is unnecessary to make any recommendations.

43.3. Suffice it to say it would be prudent for SAPOL to implement an ongoing performance management framework in which SAPOL managers actively monitor what is occurring in relation to the policing of domestic abuse and ensure compliance with SAPOL expectations.

Key Words: Domestic Violence; Homicide/Suicide; SAPOL

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

Seal the 10th day of February 2020.

Deputy State Coroner