Findings of Coroner Simon Cooper following the holding of an inquest under the *Coroners Act* 1995 into the death of Benjamin Laurence Marshall

Contents

Record of Investigation into Death (With Inquest)

Coroners Act 1995
Coroners Rules 2006
Rule 11

I, Simon Cooper, Coroner, having investigated the death of Benjamin Laurence Marshall with an inquest held at Hobart in Tasmania, make the following findings:

Hearing dates

14 February 2025, at Hobart, Tasmania.

Representation

A Darcey – Counsel Assisting the Coroner
M Black – Mrs Marshall, Senior Next of Kin
J Walkom – RSL Life Care Limited
Z Maud SC and M Jackson – Commonwealth of Australia
N Willing – Dr Michael Davie

Introduction

1. Mr Marshall died on or about 5 October 2019, just over two years after discharge from the Australian Defence Force (ADF). He died as a result of self-inflicted hanging. In taking his own life, Mr Marshall acted alone, voluntarily and with the express intention of ending his own life. No other person was involved in his death and there are no suspicious circumstances associated with it. His suicide occurred against a lengthy and well documented background of mental illness and alcohol abuse for which he was being actively treated.

2. Ordinarily, an inquest (which is a 'public hearing')[1] would not be conducted in relation to the death of someone by suicide. There are several good reasons why this is so, including in particular a desire to protect the privacy of a bereaved family and a need on the part of the court to guard against the potential for copycat actions on the part of others.

3. However, I received a request from Mr Marshall's parents that an inquest be held. They were concerned that his death may in some way be related to his service as a sailor in the Royal Australian Navy (RAN). After receiving that request, and receiving

[1] See section 3 of the *Coroners Act* 1995.

and considering submissions made in its support of it, I decided, in the exercise of the discretion conferred on me by section 24(2) of the *Coroners Act* 1995 (the '*Act*') that it was desirable to hold an inquest.

4. Very briefly by way of introduction, and I will return to this issue in detail later in this finding, after an unsuccessful attempt to enlist in the RAN in May 2006, Mr Marshall was recruited as a Communication and Information Systems Sailor (CIS) in 2010. He commenced his recruit training in November of that year. Ultimately, on 1 September 2017 Mr Marshall separated from the RAN on the basis that he was medically unfit for further service.

The role of a coroner

5. Before considering the circumstances of Mr Marshall's death in further detail, it is necessary to explain the general role of the coroner. In Tasmania, a coroner is an independent judicial officer. A coroner has jurisdiction to investigate any reportable death.[2] A reportable death includes a death which occurred in Tasmania and appears to have been unexpected or unnatural.[3] The circumstances of Mr Marshall's death meet this definition.

6. When conducting an inquest, a coroner performs a role different to other judicial officers. The coroner's role is inquisitorial. An inquest might be best described as a quest for the truth, rather than a contest between parties to either prove or disprove a case. In an inquest, a coroner is required to thoroughly investigate the death and answer the questions (if possible) that section 28(1) of the *Act* asks. Those questions include who the deceased was, how they died, the cause of the person's death, and where and when the person died. It is settled law that this process requires a coroner to make various findings, but without apportioning legal or moral blame for the death.

7. A coroner is required to make findings of fact about the death from which others may draw conclusions. A coroner may, if she or he thinks fit, make comments about the death or, in appropriate circumstances, recommendations to prevent similar deaths in the future.[4]

8. It is important to recognise that a coroner does not punish or award compensation to anyone.[5] Punishment and/or compensation are for other proceedings, in other courts,

[2] Section 21 of the *Coroners Act* 1995.
[3] Section 3 of the *Coroners Act* 1995.
[4] Section 28(2) of the *Coroners Act* 1995.
[5] Section 45(3) of the *Coroners Act* 1995.

if appropriate. Nor does a coroner charge people with crimes or offences arising out of a death that is the subject of investigation.

9. As was noted above, one matter that the *Act* requires, is a finding (if possible) as to how the death occurred.[6] 'How' has been determined to mean '*by what means and in what circumstances*'[7] a phrase which involves the application of the ordinary concepts of legal causation.[8] Any coronial inquest necessarily involves a consideration of the particular circumstances surrounding the death so as to discharge the obligation imposed by section 28(1)(b) upon the coroner.

10. The standard of proof at an inquest is the civil standard. This means that where findings of fact are made, a coroner needs to be satisfied on the balance of probabilities as to the existence of those facts. However, if an inquest reaches a stage where findings being made may reflect adversely upon an individual, it is well-settled that the standard applicable is that expressed in *Briginshaw v Briginshaw,* that is, that the task of deciding whether a serious allegation against anyone is proved should be approached with a good deal of caution.[9]

11. A coroner is not bound by the rules of evidence in holding an inquest and may be informed and conduct an inquest in any manner the coroner reasonably thinks fit. To be properly received at an inquest, the evidence must be capable in some way of assisting the coroner to determine the matters under section 28(1) of the *Act* for, in appropriate circumstances, to assist in making a comment or recommendation. A coroner has significant latitude in receiving evidence. The question of weight to be given to any evidence tendered at an inquest is a question for the coroner after receiving submissions from interested parties.

12. The final matter that should be highlighted is the fact that the coronial process, including an inquest, is subject to the requirement to afford procedural fairness.[10] A coroner must ensure that any person (any person can include a legal entity) who might be the subject of an adverse finding or comment is made aware of that possibility and given the opportunity to fully put their side of the story forward for consideration. To that end, all persons and entities considered to have sufficient interest in the outcome of the inquest, and who may have been at risk of adverse comment, were identified well in advance of the inquest, provided with notice, and

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[6] Section 28(1)(b) of the *Coroners Act* 1995.
[7] *Atkinson v Morrow* [2005] QCA 353.
[8] See *March v MH Stramare Pty Ltd and Another* [1990 – 1991] 171 CLR 506.
[9] (1938) 60 CLR 336.
[10] See *Annetts v McCann* (1990) 170 CLR 596, *Attorney General v Copper Mines of Tasmania* Pty Ltd [2019] TASFC

invited to participate in that inquest. Their participation was facilitated by the complete disclosure of all material obtained as a result of the investigation under the *Act*.

Evidence at the inquest

13. In the lead up to the inquest, a number of case management conferences were held, designed to refine the issues, identify the appropriate parties and streamline the presentation of evidence. Ultimately, the only verbal evidence at the inquest I heard was from Mrs Julia Marshall. Otherwise, the evidence was in doucmentary form. The amount of material was huge, many thousands of pages.

14. The material included affidavits, Mr Marshall's ADF records and voluminous medical and associated records.

15. The correct approach to the evidence is as submitted by the Commonwealth, to have regard to the purpose for which a document was prepared, particulary in the context of medical reports and the like. Many (perhaps most) of the records of psychological counselling sessions were not prepared for diagnostic purposes, but rather as records of observations and Mr Marshall's progress. I think that more weight should generally be given to the opinions expressed by psychiatrists, if only because of their greater training and expertise, although doctors generally and psychologists and counsellors all provide important context, background and in many cases contemporaneous details of symptoms and observations, as well as accurate records of Mr Marshall's history and self reporting.

16. So far as the approach to evidence is concerned, the Commonwealth made submissions about the operation of the doctrine of Parliamentary Privilege. It was submitted that the submissions of Counsel Assisting and Mrs Marshall refer to materials that "*may raise issues of Parliamentary privilege*". It is unnecessary to rule on that submission about that issue since in a practical sense in issue simply does not arise and in any event falls well outside the scope of the inquest.

17. All of the material tendered at the inquest is annexed to this finding and marked A.

Scope

18. The scope of any inquest is a matter within the coroner's discretion. That discretion is to be exercised judicially and having regard to all the circumstances of the case.[11]

[11] *Conway v Jerram* [2011] NSWCA 319 at 47.

19. After receiving and carefully considering submissions I ruled[12] that the scope of the inquest was as follows:

    a) The circumstances of the initial recruitment of Mr Marshall into the RAN, including his suitability and assessment for retention;

    b) The continued retention of Mr Marshall with the RAN:

        i. Was it appropriate in all of the circumstances, including as it impacted upon Mr Marshall's mental health and ability to access mental health services;

        ii. The level and quality of health care and mental health care provided by the Australian Defence Force ("ADF");

    c) The circumstances giving rise to the accepted psychiatric condition which gave rise to his medical discharge;

    d) The transitional management by the ADF to assist him to navigate the medical discharge process and transition into civilian life;

    e) The assistance and advice given by both the ADF and the transitional case manager authorised pursuant to the M*ilitary Rehabilitation and Compensation Act* 2004 (Commonwealth) ("MRCA") with respect to his transitional management regarding the income support, medical treatment, rehabilitation and related matters pursuant to the MRCA post medical discharge; and

    f) The level of assistance extended to Mr Marshall by RSL NSW who provided services under the "RSL Defence Care" banner until 1 August 2020, and therefore the level of assistance provided by RSL Life Care, with respect to claims and support and advocacy as Mr Marshall was transitioning from the ADF and after discharge.

20. All of the material before me at the inquest informed these findings and was directed to addressing the scope as well as answering the questions posed by section 28(1) of the *Act*.

[12] See Ruling on Scope of Inquest 22 March 2024.

Mr Marshall's background

21. Mr Marshall was born on 30 August 1988 at the Royal Hobart Hospital, the son of Julia and Alan. He was raised and educated in Southern Tasmania having a fairly unremarkable and happy childhood playing soccer, attending Sea Scouts and making friends.

22. He relocated with his mother and her new partner to Port Macquarie in New South Wales in 2003. After completing grade 10 in 2005, Mr Marshall commenced a mechanical apprenticeship.

23. He was evidently very close to his parents and grandparents.

24. In 2006 he made an unsuccessful application to join the RAN. Following that he lived a typically social and party lifestyle, common to young people, in Brisbane. He made good friends, probably drank too much alcohol and experimented with drugs.[13]

25. In 2010 he applied again to join the RAN. That application was successful. His Navy service was the focus of this inquest. I will return to that issue and what followed later in this finding.

Circumstances of death and initial investigation

26. Because the circumstances of Mr Marshall's death were in no way contentious, and because calling witnesses to give evidence at the inquest about that would have been, in my assessment, distressing but serving no purpose, no witnesses were called about this aspect of the investigation.

27. Nonetheless, there was good deal of uncontested evidence about those circumstances and I find as follows. For the six months or so leading up to his death Mr Marshall was living in a caravan at 499 Tinderbox Road, Tinderbox a suburb south of Hobart. Other family members including an uncle, an aunt, a cousin and his grandparents lived in two other dwellings on the same property. During this time Mr Marshall was receiving treatment from Dr Davie, a psychiatrist practising in Southern Tasmania as well as his GP Dr Juliet Tate.

28. During the same period of time, that is to say the six months or so leading up to his death, Mr Marshall was hospitalised several times once as a voluntary patient at the

[13] Exhibit 7a.

Royal Hobart Hospital in March 2019 and three times at the Hobart Clinic, a Private Psychiatric Hospital outside Hobart.

29. Mr Marshall returned to Tasmania on 17 September after a brief trip to Poland where it is evident that he was drinking heavily and potentially non-compliant in relation to his prescription medication. The trip was not a success. He was apparently mugged on 11 September during which incident his phone was stolen.

30. After his return to Hobart, he refused to undergo a review of his medication at the Hobart Clinic.

31. During the day of Saturday, 5 October 2019 Mr Marshall spoke to his mother by telephone. She said that he "*didn't sound right*".[14] Later, during the evening of the same day, Mr Marshall's cousin visited him in his caravan and found he had been drinking. After a conversation with his uncle and aunt in which Mr Marshall was told that if his behaviour did not improve then he would have to leave the Tinderbox property, Mr Marshall returned to his caravan at about 11.00 pm. He was not seen alive after that time.

32. The following morning, at about 10.30 am, Mr Marshall's uncle went to the caravan to check upon him. He was unable to locate him in the caravan and after a quick search in the general area found his nephew hanging by a rope tied to a support beam in a garage attached to Mr Marshall's grandparent's home. A step ladder was next to him. Mr Marshall's uncle touched his hand which was cold and stiff. He phoned 000 and, under instructions from the emergency operator, cut the rope using a knife. He laid Mr Marshall down but did not, quite reasonably in the circumstances in my view, attempt to resuscitate him.

33. Ambulance paramedics attended in a timely way and performed end of life checks but also did not attempt to resuscitate Mr Marshall.

34. Uniform, forensic and CIB officers all attended the scene. Nothing was located at the scene which suggested there was anything suspicious about Mr Marshall's death nor that anyone else was involved.

35. Mr Marshall's body was formally identified at the scene by his uncle[15] before being transported by mortuary ambulance to the Royal Hobart Hospital. At the Royal Hobart Hospital, highly experienced Forensic Pathologist Dr Donald Ritchey

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[14] *Supra.*
[15] Exhibit C3.

performed a limited *post-mortem* examination of Mr Marshall's body. Following his examination of Mr Marshall's body Dr Ritchey authored a report which was tendered at the inquest.[16]

36. Dr Ritchey expressed the opinion, which I accept, that the cause of Mr Marshall's death was asphyxia due to hanging. He considered that significant attributing factors were bipolar affective disorder and alcoholism.

37. Toxicological analysis of samples taken at autopsy indicated extremely elevated levels of alcohol to have been present in Mr Marshall's body at the time of his death (0.381 g/100 ml of alcohol was detected in his urine).[17]

38. The circumstances in which his body was found, the results of the autopsy and Mr Marshall's medical history, all satisfy me to the requisite legal standard that his death was suicide. I am affirmatively satisfied that when he took his own life he acted alone and that there are no suspicious circumstances.

RAN Service – Recruitment and initial training

39. I return now to the history of Mr Marshall's military service and will look at the issues raised by the first item of the scope, that is his recruitment. Again, his service history, evidenced by his personnel records which were exhibits at the inquest,[18] is not anyway contentious. I make the following findings on the basis of those records. Mr Marshall, first applied to join the RAN in 2006, aged 17 years. He was assessed as being not suitable for service in either the Australian Defence Force (ADF) or the RAN and his application was accordingly refused. Mrs Marshall[19] said that when she spoke with Ben to the recruiting officer it was explained that Mr Marshall had been deemed unsuitable on account of partial colour blindness. On the other hand, ADF records indicate that he assessed as psychologically unsuitable for service. I am satisfied that the ADF records accurately record the reason Mr Marshall's application was unsuccessful.

40. On 24 February 2010, he applied to join the RAN again. The RAN recruitment process at that date was essentially the same as it had been in 2006. Objectively, all that had changed was the fact that Mr Marshall was four years older. As had happened

[16] Exhibit C5.
[17] Exhibit C6.
[18] Defence Tender Bundle – Exhibit 31.
[19] Exhibit C 22

in 2006, Mr Marshall was, again, assessed as being not recommended as suitable for service with the ADF or RAN.

41. Before that assessment was arrived at by RAN recruiters, he underwent psychological testing on 6 and 13 April 2010, following which he was given a NR (not recommended) rating. A NR rating applies where there are sufficient grounds to consider the candidate for enlistment is a high risk for military integration and/or training at that time. The psychologist who conducted that testing suggested Mr Marshall be looked at again in three months hence, because of concerns both about his academic achievement and physical fitness.

42. The assessment noted that he was an articulate young man who lacked orientation towards teamwork and had only limited interest in structured organisations. It was considered that he may struggle with discipline and operating within a structured environment.

43. On 25 June 2010, Mr Marshall underwent what was in effect a vocational assessment by another psychologist, specifically in regard to his preferred choices of first, Combat Systems Operator (CSO) or second, Communication and Information Systems Sailor (CIS). He was again assessed as NR. That psychologist also recommended a three month wait. Concerns noted included poor study ethic and below average tested ability.

44. Despite that assessment, but after confirmation of his physical fitness, Mr Marshall was recruited as a CIS and on 15 November 2010, Mr Marshall commenced his RAN Recruit Course at HMAS[20] Cerberus.[21] Just eight days after commencing his recruit training, Mr Marshall complained of difficulties breathing and suffering from left testicular pain which he said he had experience for approximately 10 years. I note there is no record of him disclosing that fact at any stage during his application for enlistment in the RAN. A medical assessment found he was suffering chlamydia. I also note Mrs Marshall does not accept that he was in fact suffering from chlamydia suggesting that if he had been he would have told her about it.[22] Respectfully, I cannot accept this was so. It is inconsistent with his medical records and inconsistent with common experience of the relationship between an adult son and his mother.

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[20] Then Her Majesty's Australian Ship, now His Majesty's Australian Ship.
[21] Despite its title, HMAS Cerberus is a shore-based facility on the Mornington Peninsula in Victoria. The practice of giving naval land-based facilities the same title of ships is one that has a long history and follows Royal Navy tradition.
[22] C22, paragraph 22.

45. Similarly, I understand Mrs Marshall to say that the issue with respect to her son's left testicle was that it occurred whilst he was training with ropes during his recruit course and slipped and fell. His personnel records do not support such a conclusion. The high ropes course in which he participated occurred after his initial recorded complaints. As Counsel Assisting submitted neither, observation in relation to the chlamydia or the testicular condition reflects in any way on Mrs Marshall's credibility. I accept she provided her evidence to the inquest on the basis of her best belief and memory. However, life experience and common sense suggest that it is inherently unlikely any mother would be privy to every personal detail of her 22-year-old son's life.

46. In any event, following treatment, Mr Marshall returned to his recruit training during which he failed weapons trade testing and a summative assessment (which he passed on retesting).

47. After further delays associated with his testicular condition (which had required surgical correction) on 28 February 2011, while still medically unfit, Mr Marshall commenced CIS training. Nine days after commencing that training, he made a request for transfer of categories to service as a submariner. He was advised he was medically unfit (something he must have known) and as a result his request for transfer of categories was denied.

48. On 8 April 2011 Mr Marshall was removed from CIS training on medical grounds. It is noted however that he had numerous training failures, was struggling academically and was due to be 'back squadded (or back classed)' which is to say moved back a class to repeat sections of the course. He re-commenced CIS training on 30 May 2011. Unfortunately, there appears to have been little or no improvement in his academic results upon his return. On 14 July 2011, he was referred to the RAN Mental Health Psychology Section – Cerberus for assistance. Notes indicate that unless there was a substantial improvement then he would likely need to be assessed as to his suitability for retention in the RAN. The initial assessment as a result of that referral took place on 18 July 2011. The psychologist who assessed Mr Marshall recorded that he presented as "*very angry, loud and asserting his anger, anxious nature, bragged a lot about his drinking prowess*".[23] The psychologist recorded concerns around anomalies in his history such that he questioned Mr Marshall's truthfulness, noted that he suspected borderline behaviour and perhaps narcissism. Concerns were also recorded about Mr Marshall's alcohol consumption. Nonetheless, he was recommended for continued

[23] Defence Tender Bundle - Exhibit 31, Tab 34.

training noting he had undergone painful surgery which may have resulted in a loss of sleep and thus impacted on his training performance.

49. By the next month, emails are exchanged at a command level seeking an urgent appointment for psychological assessment as a result of a second failure at Summative Assessment theory, refusal to sit assessments, obvious visible demonstrations of stress and what were described as "*outbursts*" in class. On 8 August 2011, Mr Marshall was removed from CIS training on the basis of "*training failure*". His personnel records indicate that the removal was "*at his own request*" owing to ongoing medical issues, inability to absorb information and personal relationship issues.[24]

50. Because he had been removed from training for CIS (the role for which he had been recruited into the RAN) it is apparent that the issue now arose as to whether he would be retained in the RAN at all and that in turn depended upon whether he was approved for transfer of category, that is to say a change of role within the Navy.

51. Accordingly, within a matter of days in mid-August 2011, Mr Marshall made a request for a transfer of category from CIS (from which he had already been removed) to Cryptologic Linguist (CTL) for which he had not been assessed for suitability and for which he did not have the appropriate security clearances.

52. He underwent assessment by another psychologist for ongoing suitability for retention for CIS, RAN and ADF on 19 and 26 August 2011. The psychologist concluded that whilst not suitable for ongoing CIS training, giving him the benefit of the doubt he was suitable for retention in the RAN and the ADF.

53. In September 2011, Mr Marshall applied for transfer of category again to CTL as well as Cryptologic Systems Sailor (CTS). His suitability for CTL was assessed in mid-October (despite not being supported by his divisional officer) but he failed his language testing and was therefore ineligible for any further consideration.

54. Mr Marshall's assessment for suitability for transfer of category to CTS took place on 21 November 2011. Following that assessment carried out by a regular RAN officer and psychologist, he was assessed as not being suitable for CTS but also unsuitable for further retention in the RAN and the ADF. It is worth setting out the relevant part of the psychologist's assessment:

[24] Defence Tender Bundle - Exhibit 31, Tab 38.

> "*I am highly concerned about this member's suitability for the RAN, for the ADF and for any continued training within the RAN. From the time of his enlistment he has been flag [sic] as having a poor training history, as underachieving and as having difficulties regulating his emotions. He has been described to present with high levels of anxiety, agitation, aggression and frustration as well as a range of depressive symptoms and having made flippant comments regarding potential thoughts of suicide and self-harm and having an inability to cope if he does not get what he wants. Additionally, there is a reported history of poor coping strategies when under stress and pressure, a poor level of commitment to therapeutic intervention and change, and a tendency to engage in risk-taking behaviours. This poor behaviour was demonstrated prior to the member leaving MHPS – Cerberus*[25] *when he commented whilst walking out the door that this [transfer of category] was his last chance and he did not know what he would do if he did not get it; I am of the opinion that this comment was bordering on emotional manipulation in an attempt to persuade outcome. The member has identified an inability to plan beyond his immediate wants, he cannot conceptualise life beyond the RAN; this lack of foresight and safeguard planning supports [a] finding that he is emotionally immature*."[26]

55. Mr Marshall's request for a transfer of category to CTS was refused on 22 May 2012. He had by now had numerous training failures and mental health referrals, been removed from training for the role for which he had been recruited and assessed as unsuitable for transfer of category on three occasions. His naval career had reached a cross roads.

RAN Service – continued retention and termination proceedings

56. Mr Marshall was issued with a notice of termination of service on 30 July 2012 and an updated notice on 18 March 2013, but on 16 July 2013 a decision was made not to terminate his service.[27] This raises squarely the issue of his continued retention in the RAN.

57. Ultimately, he was issued with a third and final notice of termination which led to his separation from the Navy on 1 September 2017 on the basis that he was medically unfit for further service in the RAN or the ADF.

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[25] The unit where the assessment took place.
[26] Defence Tender Bundle, Exhibit 31, Tab 60.Pg 2 1999.
[27] Defence Institutional Response - Exhibit 24, page 128, paragraph 3.

58. It is now appropriate to consider the evidence and circumstances of that aspect of Mr Marshall's RAN service.

59. There is a good deal of anecdotal evidence about Mr Marshall's alcohol consumption and use. However, the objective evidence is strong that during significant periods of his naval service he was drinking too much. On 26 April 2012, he failed a random alcohol breath test at 7.40 am, returning a reading of 0.106 g per 100 mL of blood. He tested positive to random alcohol tests twice more, on 8 December 2013 and 28 January 2014. These results led to him receiving a formal warning on 14 April 2014 in relation to the failed breath tests on 26 April 2012, 8 December 2013 and 28 January 2014. There is no basis as Counsel Assisting submits to reach a view other than that the action taken in relation to Mr Marshall's apparent alcohol abuse was reasonable. His advice to both instructional and divisional staff that he rarely drank and never to excess was patently not true and aside from potentially being an indication of poor acceptance of defence values also raised to my mind a lack of insight on his part.

60. At the end of the day, it seems clear to me that the RAN had evidence that one of its members was probably abusing alcohol. At the very least it had very clear objective evidence of a problematic pattern of alcohol use over a 12 month period. A failure on the part of the RAN to have addressed the issue would, quite rightly, have attracted criticism.

61. I note that Mr Marshall had access to counselling for alcohol use and misuse. He discontinued that counselling voluntarily. I also note he was not diagnosed with alcohol use disorder, a recognised psychiatric illness, at least at the time he received the formal warning.

62. In my view, the issue of his alcohol use and abuse use was only dealt with at the inquest tangentially. There is no proper basis to make any recommendation or comment about that issue, other than that which I have already made.

63. On 21 August 2012, Mr Marshall applied for transfer of category (his fourth such application) to Hydrographic Systems Operator (HSO), and was the next day referred for assessment for suitability for that role. The following week, on 27 August 2012, Mr Marshall responded to his show cause notice as to why his service as an enlisted member of the RAN should not be terminated by again seeking approval for transfer of category to HSO. He provided numerous positive references with respect to his conduct and ability for the period August 2011 to August 2012 while he served in a variety of different positions in the Personnel Support Unit and other assignments. A

decision was made, appropriately and fairly in my assessment, to place on hold any termination proceedings pursuant to the notice issued on 30 July 2012 until a decision was made about his suitability to transfer category HSO.

64. Mr Marshall was assessed by a psychologist for suitability for transfer of category to HSO on 6 September 2012. The psychologist formed the view that he was not suitable for transfer. The psychologist went on to consider his suitability for retention in the RAN and recommended that if his service were to be terminated he should not be considered for re-entry into the ADF for a minimum of 12 months. The decision as to suitability was based on amongst other things his poor academic and training record as well as concerns regarding his motivation, level of maturity and psychological resilience. Mr Marshall's response to that report was that the psychologist had "*lied*" and lacked the necessary qualifications to make the recommendations contained in their report.[28]

65. The assessment by the psychologist was referred for review. The assessment was supported upon review, something of which Mr Marshall was advised in February 2013.

66. In the wake of the assessment being upheld, an updated Notice of Termination (the second notice) was issued on 18 March 2013. The notice of termination was said to be on the basis that his retention as a member of the RAN was "*not in the interest of the Defence Force*" pursuant to regulation 87(1)(g) of the *Defence (Personnel) Regulations* 2002 (Cth). As with the first notice, Mr Marshall was provided with additional documents and an opportunity to submit a response. Mr Marshall duly responded, seeking more time to investigate the possibility that he was suffering from dyslexia (the first time this issue had been raised) and seeking a review of the psychology reports that had, *inter alia*, been relied upon to issue the second notice of termination. Again, the RAN fairly decided to hold off any decision on the second notice while Mr Marshall's claims of dyslexia were investigated.

67. Accordingly, Mr Marshall was referred for another psychological assessment to determine whether he in fact suffered any clinical and/or mental health issue or issues due to dyslexia and at the same time determine whether termination was appropriate in the circumstances.

[28] Defence Tender Bundle - Exhibit 31, Tab 84.

68. Psychologist Jackie Watkins provided a report on 27 May 2013 following her assessment of Mr Marshall. It is worth quoting from that report at some length since it contains a good summary of where Mr Marshall was at, at that time:

> *"[Mr] Marshall has a extensive background having been referred to the MHPS-CERB several times since enlisting on 15 Nov 2010. He was last assessed for TOC to HSO by Ms Meyer in September 2012 at which time she assessed him as unsuitable for TOC. He had been earlier assessed as unsuitable for continued service and Ms Meyer has stated he should not be considered for re-entry for a minimum of 12 months. [Mr] Marshall's psychology file contains no mention of any learning disorder, more specifically dyslexia. It is noted that [Mr] Marshall re-sat the selection tests and improved on the second attempt. The recruiting psychologist also noted a history of underachievement at school.*
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> *[Mr] Marshall was referred for training difficulties in Aug 2011 at which time it was noted that he was struggling to comprehend and was apathetic in class. [He] claimed to be studying a lot however he was not achieving at the expected level… Strategies for improving were identified and the trainee was offered further assistance as required. He was then referred for assistance with a medical condition and during the course of counselling [he] displayed a tendency to not complete therapeutic homework. He was also reviewed for TOC assessments and when discussing his preparation for the TOC interviews [Mr] Marshall did state he experienced difficulties [with] retaining information and wrote information on his hand. He also advised in [his] assessment in Sep 2012 that he struggled when under time pressure is and was a loner.*
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> *… [Mr] Marshall advised during the course of counselling that he had previously suffered from a mental health illness (undiagnosed) but denied suffering from this while in the ADF. During psychology sessions and assessments at the MHPS– CERB over the last [two] years he has been described as being agitated, angry, depressed and anxious and was referred to Defence Psychiatrist, Dr Cronin in October 2011, for an assessment of his depressive symptoms and overall psychological well being however it appears that the assessment did not take place.*
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> *… I cannot determine whether the member's observed behaviour, attitude and psychological well being during the last two years has been influenced by the presence of Dyslexia or if they are indeed independent of such a condition. While he has been observed to be experiencing depressive, anxiety and stress symptoms during his enlistment, it is unclear as to whether these have been a result of his current situation,*

the military environment, his personality, a pre-existing condition, a learning disorder or a combination of some or all of these factors.

… [He] claims to have suffered from depression prior to enlistment (undiagnosed) and that he has experienced significant sleep difficulties for most of his teenage and adult life including while at CEREBUS. While in the Navy [Mr] Marshall has been assessed by Defence Psychologists as being emotionally immature, depressed, anxious and angry with low psychological resilience. His training history has been poor with stated underachievement by instructors and questionable application to training and therapeutic interventions which may have been impacted by his alleged learning disorder; however he has also displayed a tendency to externalise blame for his actions rather than taking responsibility for those things he can control.

… It is recommended that Defence investigate his claims of a learning difficulty given the ongoing uncertainty that exists regarding his suitability for further training and military service. Any final decisions regarding his overall suitability will need to be made taking into account his history of training issues and temperamental suitability."

69. However, before that assessment was carried out Mr Marshall wrote to the Commanding Officer HMAS Cerberus requesting he be permitted to transfer category to either Maritime Logistics Supply Chain (ML-SC), Maritime Logistics – Chef (ML-C) or Boatswain's Mate (BM) in that order of priority. These were his fifth, sixth and seventh requests for transfer of category in less than three years.

70. Mr Marshall underwent psychological assessment as to his suitability for these roles on 11 June 2013. He submitted a number of personal references and there seemed to be a perception he may have turned a corner, matured and broadly improved in his attitude to service life. A decision was made on 16 July 2013 by the Commanding Officer of HMAS Cerberus not to terminate his service with the Navy and Mr Marshall was assessed as suitable for the role of Maritime Logistics – Chef. Accordingly, Mr Marshall commenced an Australian Apprenticeship Programme in Certificate 111 in Hospitality (Commercial Cookery) at the beginning of September 2013.

Training at TAFE in cooking

71. Mr Marshall undertook his training in cookery in a civilian environment, Holmesglen TAFE. Unfortunately, Mr Marshall's training for the role of Maritime Logistics – Chef, quickly was characterised by conduct on his part that was reminiscent of his training in

the Navy up to that time. He was disruptive and had difficulty in reaching required standards of competency.

72. In what might have proved a very serious matter indeed he deliberately refused to abide by medical restrictions when suffering diarrhea 17 February 2014. On that day he was certified as being unable to handle food from that date until 19 February, but went to TAFE, changed into his cooks' whites and attended the kitchen classroom. He was removed by TAFE staff and assigned theory training. Nonetheless, he returned the next day, ignored his restriction, handled and cooked food which was sent to an ADF mess for consumption.

73. His behaviour at the time was considered to be deliberate, evincing an intention to deceive TAFE staff but worse, potentially serving to endanger the health of other students who may have eaten contaminated food prepared by him. I think that is a fair categorisation of his conduct. Mr Marshall was advised of the seriousness of his actions (and objectively they were very serious). His response was to return to his Navy accommodation where he slashed his uniform and smashed his ADF iPad.

74. Later the same month, he claimed to be a vegetarian (something never mentioned before and if true makes his choice of training to be a Navy chef a curious one). He thus refused to prepare red meat. In a Divisional Officers Report[29] in relation to his suitability for continued training the following appeared:

> *"Since commencing [Mr Marshall] has been reported as being a disruptive influence through his apparent inability to accept guidance or direction from the civilian Chef instructional staff and his often eccentric behaviour. His inability to follow direction, particularly in the preparation of food has seen him receiving counselling from both the ADF coordinator, TAFE instructors and ADFSC staff. He has indicated that he believes that his level of cookery skills are higher than that determined by the respective TAFE instructors…. His product has consistently failed to meet the requisite standard – until he is provided with one-on-one guidance.*
>
> *On numerous occasions [TAFE staff] have contacted ADFSC with concerns regarding Marshall's medical and health situation, as well as trepidation regarding what they perceived as eccentric and disconcerting behaviour. These include things such as giving his fish carcasses names during the practical component, and continuing to refer to them by those names… Marshall indicated that he was actually a pigeon and began*

[29] Defence Tender Bundle, Exhibit 31, Tab 128.

acting this out in the kitchen. When queried later by ADF staff Marshall claimed that the only reference he made was a comment he made to another trainee indicating that the chicken being prepared was actually pigeon. When referred to this and other statements from TAFE instructors Marshall became defensive and indicated that the Chefs were referring to comments made by other trainees and had been taken as fact. [TAFE] staff have refuted this.

SMN[30] Marshall at various stages indicated to TAFE staff he was a vegetarian, adverse to touching or preparing red meat and had an allergy to seafood. Reports from [TAFE] however have indicated that despite this being personal choice, Marshall remained adamant that he could not partake… SMN Marshall has indicated that the situation was not that he was necessarily vegetarian or allergic, simply that he was averse to these foods and that TAFE staff had been incorrect in their interpretation.

… On a number of occasions where his meals have not been assessed as acceptable, he has claimed the fault lay with equipment or the recipes… He [considered] staff 'must have had access to his previous Navy training records, and reports' and were using these to make pre-judgements against him. Even when advised by myself that his personal file had not ever been made available to myself until that day, he remained firm in his claims that 'they must have still got to see them'. This attitude of transfer of blame or responsibility seems a common thread throughout interviews with the member.

… Whilst Marshall has not failed any of the individual food units to this point of training, this is because each module allows numerous attempts to achieve a passable product".

75. On 18 February 2014, Mr Marshall experienced something in the nature of an acute mental health event. He rang the Cerberus health centre requesting to speak to a mental health nurse. None were available but he spoke to a nurse on duty. The record of that conversation, in summary, was the fact that Mr Marshall felt he had been "*set up*" and was being "*bullied by the Navy*". He indicated that he was unwilling to return to training until his "*issues*" were resolved. He said he had cut his uniform up and smashed up his cabin. The nurse, appropriately, elevated the matter to the Chief Medical Officer, service police were called and ultimately Mr Marshall was charged.

[30] Seaman – the lowest rank in the Navy, equivalent an army Private.

76. As a consequence of the ongoing difficulties at TAFE, on 21 February 2014 Mr Marshall was referred for assessment, again, for his suitability to continue training. After seeing a psychologist, he was assessed and a report submitted that he was suitable to continue training (with reservations) and he recommenced his cooking training, albeit being "*back classed*", on 17 March 2014. He eventually completed the course on 3 June 2014.[31]

77. On 27 April 2014 he was convicted and punished for his conduct on 18 February 2014. For much of the rest of 2014, Mr Marshall continued to have supportive counselling sessions, assessments and at least one management plan.

HMAS Canberra – bullying?

78. On 19 January 2015, Mr Marshall was posted to HMAS Watson[32] and then on 9 February 2015 to HMAS Canberra as a Catering Watchkeeper. On 7 May 2015 he was promoted (possibly provisionally on account of dental problems) to Able Seaman Maritime Logistics – Chef. HMAS Canberra is a helicopter carrier (or landing dock) and is flagship of the Australian Fleet.

79. Whilst onboard HMAS Canberra, an issue arose with respect to an allegation of what might loosely be described as bullying, although may equally be described as interpersonal conflict. Whichever it was Mrs Marshall says this was the start of her son's '*issues*'.[33] While it may have been when her son first disclosed the problems he was experiencing, the weight of evidence simply does not support that assertion. Moreover, whatever the truth about the behaviour of the Army Corporal about whom Mr Marshall complained, it is quite clear that he was not the only target – the 'bullying' (if that is what it was) was generalised – others were treated in the same way and it does not appear that even Mr Marshall considered he was singled out for any particular attention.

80. The only incident which appears in Mr Marshall's personnel file about a problem with an Army Corporal on HMAS Canberra is recorded in a "Record of Conversation" which occurred on 2 June 2015. It appears to have related to an incident the same day, which was Mr Marshall's first day back on board the ship, where an Army Corporal spoke harshly to Mr Marshall and perhaps threatened to charge him after he, Mr Marshall, apparently woke the Corporal and other crew members who were

[31] Defence Tender Bundle – Exhibit 31, tabs 124 and 220.
[32] Like HMAS Cerberus, HMAS Watson is a shore-based facility, near South Head, Sydney Harbour.
[33] Exhibit C 22, paragraph 38.

attempting to sleep prior to night watch. Mr Marshall said amongst other things that he was uncomfortable about the way the Corporal looked at him "*sometimes*". Rather than being charged, Mr Marshall was in fact spoken to by a group of senior personnel including by supervisors, ship's chaplain and an officer and discussions were had about support mechanisms available, including psychological referral, to help "*get him into a better place*".[34]

81. The divisional officers report relating to the same incident is in the following terms:

> "*ABML-C[35] Marshall rejoined HMAS Canberra in Townsville on Tuesday 02… On his first day back, CPL Hansen approached AB Marshall in the galley to speak to him about waking him and others in the mess who were sleeping for the night watch. It would appear the discussion was largely aimed at correcting behaviour rather than just having a go, however AB Marshall did not seem to handle been corrected in this way.*"[36]

82. Significantly, it is recorded that after the incident Mr Marshall either verbally threatened self-harm or (on his version) mentioned he had thought about harming himself but that he would never do it.[37]

83. I do note that there is a suggestion, although not particularised, that Mr Marshall's difficulties on board HMAS Canberra occurred on multiple occasions.[38] It is unnecessary for me to make any particular finding as to the nature, extent and or duration of any such difficulties other than to say that I consider they are clearly indicative of an inability on the part of Mr Marshall to cope with the stresses and pressures associated with life at sea.

84. Nor is there any reliable evidence to support Mr Marshall's allegation made in November 2018 that he was "*bashed*" whilst on board HMAS Canberra or that he was put in a mailbag and pushed downstairs (as he told his father sometime in 2019). It is fair I think to say that, aside from the fact that there is no corroborating evidence contemporary or otherwise, those allegations came to light some years after his posting on HMAS Canberra at a time when on any view of it his mental state was poor and therefore their veracity is, at best, questionable.

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[34] Defence Tender Bundle, Exhibit 31, Tabs 145 and 142.
[35] Able Seaman Maritime Logistics Cook.
[36] Defence Tender Bundle, Exhibit 31, Tab 145.
[37] *Supra* and Tab 143.
[38] See for example the email from Mr Marshall to John Parker dated 21 October 2016 (DVA tender bundle, Exhibit 32, Tab 1), although that is not evidence at all but rather Mr Marshall's account given sometime later and without any details.

Posted off HMAS Canberra

85. In any event, following the incident of 2 June 2015 Mr Marshall was referred for psychological support and then, on 30 June 2015 posted from HMAS Canberra to PSU - Sydney where he was to be accommodated at HMAS Kuttabul.[39] He was medically downgraded and classed as non-deployable, a status which remained in practical terms unchanged until the RAN moved to discharge him on medical grounds in February 2017.

86. Before I deal with his medical separation a little needs to be said about what followed Mr Marshall's posting from HMAS Canberra.

87. He continued regular reviews with psychologist Ms Jessica Swain for next few months. The theme of those consultations was him expressing a desire to return to work. However, during the same period there is evidence that he was consuming considerable amounts of alcohol, demonstrating paranoid behaviours (a belief for example that the Navy had a camera in his house) and using illicit drugs.[40] He was reportedly the victim of a burglary at his apartment in Randwick, and been involved in a road rage incident. Mr Marshall's clinical notes contain clear and unambiguous threats of self-harm and suicidal ideation during this time.

88. Ms Swain recommended Mr Marshall be admitted to a private psychiatric hospital and he duly admitted on 24 November 2015.[41] Records tendered at the inquest show that he was admitted to the private facility under the care of a psychiatrist who considered initially at least he had a depressive illness with features of OCD and PTSD.[42]

89. After an apparent manic episode Mr Marshall was 'sectioned' (i.e. dealt with as an involuntary patient under section 19 of the *Mental Health Act* 2007 (NSW)) and transferred to Wollongong Hospital. By now clear to anyone dealing with Mr Marshall he was gravely unwell. Mrs Marshall made some criticism of her experience and dealings with NSW Health, but those matters are well beyond the scope of this inquest. What is clear is that during this difficult time Mr Marshall and his mother received support from a Navy Chaplain, his manager and Ms Swain, particularly during an application to the State Mental Health Tribunal to have his involuntary detention order set aside. Following the order of the Tribunal, Mr Marshall discharged himself from hospital.

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[39] HMAS Kuttabul is another shore based facility, located at Garden Island in Sydney Harbour.
[40] Exhibit C8.
[41] Exhibit C22, Par 42.
[42] See my earlier comment about PTSD.

90. Throughout all this Mr Marshall was constantly under the care of both naval and external mental health professionals. I do not accept the criticism of his medical care as disjointed or similar. On the contrary, it appears to me to have been of an appropriate standard.

91. Finally, on 9 February 2017 Mr Marshall was assessed as being medically unfit for service in the ADF and as such it was recommended that his employment should be terminated on that basis. He was provided with the opportunity to show cause. At least one of his clinicians provided a letter in support of his retention within the ADF and attempted to organise a support referral to an external psychiatrist to assist Mr Marshall in providing information necessary to support any appeal against that determination.

92. On 4 April 2017 Mr Marshall signed an acknowledgement to say he would not be seeking the opportunity to show cause or in other words challenge the decision that he be medically discharged. Instead, he requested an extension of his termination date to 31 August 2017 (which was granted) on the basis that his parents were travelling back from overseas and he would be relying upon their support to help him through the transition period. Despite his commanding officer not supporting the extension it was granted.

93. Supportive therapy continued until Mr Marshall formally separated from the RAN in 2017.

Level and quality of health care and mental health care provided by the ADF

94. Mr Marshall was treated by multiple health and mental health practitioners during his service with the Navy. The evidence tendered at the inquest supports that he had ***at least*** the following consultations and/or referrals:

    a) 39 appointments with JHC psychologist, Ms Jessica Swain between 9 June 2015 and 28 October 2016;

    b) 23 appointments with JHC general practitioner, Dr Kim Dunstan between 10 June 2015 and 12 May 2017;

    c) 17 appointments with DFPO psychologist, Ms Jackie Watkins from 29 August 2011 to 27 May 2013;

    d) Eight appointments with JHC medical officer, Dr David Chalker between 10 June 2015 and 3 August 2026;

e) Seven appointments with mental health clinician, Mr Damien Morgan between 2 April 2014 and 2 July 2014;

f) Two appointments with JHC dentist, LDCR Daniel Allen on 14 July 2015 and 29 January 2016;

g) Two appointments with JHC general practitioner, Dr Ruwan Walpola on 4 December 2015 and 16 June 2016;

h) Six appointments with rehabilitation consultant, Ms Nicole Belling between 28 July 2016 and 13 April 2017;

i) 12 appointments with psychologist, Ms Monica Kleinman between 2 November 2016 and 23 August 2017;

j) Two appointments with military doctor, Dr Richard Loizou on 4 and 5 June 2015;

k) Two appointments with psychologist, Ms Joanne Edwards on 4 and 6 January 2016;

l) Two appointments with rehabilitation consultant, Mr Brendon Craft on 5 June and 4 August 2017; and

m) Two appointments with psychologist Ms Rachel Smith on 29 and 26 August 2011.

95. In other words, he was seen ***at least*** 124 times over the course of his service or approximately once every 18 days. There is no suggestion, nor could there be, that the medical and mental health support made available to Mr Marshall was of anything other than of an appropriate standard and easily accessible. In other words, I am satisfied on the evidence at the inquest that the level and quality of health care, and in particular mental health care, provided to Mr Marshall whilst he was serving in the ADF was appropriate to his circumstances and of an appropriate level and standard.

Mr Marshall's RAN Service – some general observations

96. Counsel Assisting submitted that the RAN's decision to recruit Mr Marshall, whilst not causally connected to his death, was a bad one because it set him up to fail. Commonwealth submitted I should not accept the submission pointing out that all recruitment decisions involve risk, both the individual in the enterprise that the

individual may not succeed in the position. I reject the Commonwealth submission. The purpose of the recruitment process was to identify risk. Risk was identified but ignored. It is very difficult to understand how his application was accepted, when he had been assessed, several times, as unsuitable for service in both the ADF and the RAN. It was clear even before he was recruited that he lacked the necessary attributes to succeed in a military career. This is no criticism of Mr Marshall - but simply an unarguable fact. Identification of those people who do and do not have those attributes is precisely the purpose of the recruiting system. To have a system including sophisticated psychological assessment of aspirants and then ignoring the result of those assessments is illogical. It does not serve the RAN (and therefore the nation) or the individual at all. It is evident that many applicants (most of whom are of course very young) for a career in the ADF have little or no idea what service life is actually like. Mr Marshall was young. It is apparent that he had unrealistic expectations and probably a poor understanding of what life in the RAN was really like. The recruiting system was supposed to identify that he was unsuitable. It in fact did do that - but for reasons never satisfactorily explained that crucial fact was ignored.

97. It is also impossible to overlook the fact that the RAN recruited someone who was already, sadly, in poor mental health by reason of his suffering from BPSD. I will return to his diagnosis shortly, but in fairness I should say that the evidence is, despite the fact that someone suffering from BPSD will exhibit many symptoms of poor mental health in their 20s (as Mr Marshall consistently did throughout his service in the RAN) the diagnosis is not usually made until the person reaches their early 30s. That was the case here.

98. I must say that if this case is typical of ADF recruitment, and I have no way of assessing whether it is or not (and it is no part of my duty to assess the adequacy or otherwise of ADF recruitment), then recruitment processes and procedures need careful consideration.

99. It is equally obvious to me at least, and I do not say this viewing the matter with the benefit of hindsight (always an advantage that any coroner has over persons involved in decision-making in the lead up to a death) that posting Mr Marshall to HMAS Canberra with the stresses and pressures associated with a seagoing posting is a decision difficult to understand. By the time of that posting, Mr Marshall had demonstrated numerous training failures, been formally warned for alcohol abuse, been assessed as unsuitable for a variety of different service categories, endured a ‘rocky road’ at TAFE, been evicted from his home, had been charged, convicted and

punished in relation to two counts of intentionally damaging service property and had been the subject of constant ongoing psychological and psychiatric treatment and assessment. As with the decision to recruit Mr Marshall in the first place, the RAN decision to send him to sea simply set him up to fail.

100. A fair summary of his naval service is contained in a report after he attended the ADF Centre for Mental Health Second Opinion Clinic (for a second opinion – a process followed in complex cases) on 3 March 2016. In that report the following passage appears:

> *"It was evident that [Mr Marshall] has struggled to adjust to the demands of military life, with ongoing performance, behavioural and interpersonal problems across all the military settings he has been employed in. This includes recruit training, his initial CIS and ML-C training and within the first six months of first seagoing posting on HMAS Canberra. It was apparent that [he] has not provided a full year of effective service without incident since his enlistment.*
>
> *Review of his Personal File revealed pervasive problems throughout his Initial training as a CIS and ML-C, including multiple training failures, learning difficulties, discipline problems and ongoing interpersonal problems with peers and his supervisors. He was noted as being a disruptive influence on both these courses and his course reports highlighted a lack of motivation and poor attitude. He was removed from his CIS courses as a training failure and remained at HMAS Cerberus for nearly three years, most of which time was spent at the Personal Support Unit, where he engaged in photography, community and representational activities and computer software development."*[43]

101. The evidence does not support a criticism of the ADF's decision to terminate Mr Marshall's discharge. The decision was entirely reasonable. Nor does the evidence support the submission made by Mrs Marshall that her son's discharge should have been delayed due to his ongoing mental instability. Mr Marshall had a number of options for ongoing mental health care at about the time of his discharge. The evidence in the form of his records support only the conclusion that, for whatever reason, and most unfortunately, Mr Marshall was not willing to engage meaningfully with any of those options including treatment by an external psychologist. A file note from his regular psychologist, Ms Monica Kleinman, made a week before Mr Marshall's discharge is instructive:

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[43] Defence Tender Bundle – Exhibit 31, Tab 171.

> "*This member separates from Navy on MH grounds on 1 Sep and today is his last working day. My involvement with him has been challenging as he routinely defends against all efforts to input therapeutic solutions. This has extended to having him agree to seek MH support post separation – he refuses even to consider this. Sadly, his prognosis long term is not good as he is almost entirely socially isolated and disengaged from his family also. He does have an interest in exploring any cultural connections he may have through his grandparents and [intends] to travel to Poland to explore this. That trip will require him to divest himself of his miniature dachshund, possibly the one connection that has sustained him this long*."[44]

Mr Marshall's mental illness – the circumstances giving rise to the accepted psychiatric condition which gave rise to his medical discharge

102. Initially, to Marshall's engagement with mental health professionals while serving in the RAN was principally directed to assessments of his suitability for various roles within the Navy. However as early as November 2011, when being assessed for a transfer of category to CTS and having been interviewed by DFPO psychologist Captain Alicia Corbett Mr Marshall was assessed as not being suitable for CTS but also not suitable for the ADF or retention in the RAN.

103. The evidence at the inquest indicates the assessment to have been carried out appropriately, having regard to the applicable policy, and having regard to relevant assessment factors including psychological attributes and cognitive test standards. The recommendation seems to have been both reasonable and fair.

104. In the wake of that assessment Mr Marshall continued to access psychological treatment but did not engage with a psychiatrist. He was posted to HMAS Cerberus on 23 April 2022 and the next month, on 22 May 2012, his request for transfer of category to CTS was formally refused.

105. I have already dealt at some length with the allegation of bullying on HMAS Canberra, as well as the issues that preceded and followed that. In the event, the incident on 2 June 2015 was ultimately the basis for his medical discharge, although the path to that eventuality was not straight forward. After a series of psychiatric reviews in March 2016, following a referral to the Second Opinion Clinic he was assessed as not then suffering from a mental disorder. The possibility that he was suffering from Bipolar Disorder was unable to be confirmed (or indeed ruled out). It was confirmed he

[44] Defence Tender Bundle, exhibit C31, Tab 2.

suffered neither Aspergers nor attention deficit disorder, but was suffering from a personality disorder which contributed to the development of an Adjustment Disorder in 2015.[45] The report went on to make various, relatively unremarkable recommendations including monitoring and further reviews. Mr Marshall reportedly reacted with '*fury*' to the report, considering he had been ambushed and '*unfairly quizzed about historical matter's*'.

106. As I have said the Second Opinion Clinic was reserved for complex cases. There can be little doubt Mr Marshall was such a case. Its purpose, on the evidence, was to ensure as far as possible the correct diagnosis had been arrived at and that everything that could be done to keep a member serving was done.

107. In any event, Mr Marshall was referred as a result to an external provider Dialectical Behaviour Therapy ("DBT"), a form of psychotherapy. He was by now posted to a photography unit, where he appears to have been happy.

108. In May 2016, he was reviewed by another external consultant psychiatrist, who considered he was suffering from chronic dysthymia, with avoidant and impulsive personality traits. The same month, he failed to attend work, having been found by police in Kings Cross drunk and disorderly. He was not charged by civil police, but subsequently denied to RAN officials about being drunk or being taken home by police.

109. The following month he was evicted from his private accommodation.

110. Following his eviction, Mr Marshall continued DBT, continued to see Ms Swain for support and counselling and commencing rehabilitation sessions. He was referred for assessment and management of his alcohol use to a Navy Psychologist and in turn to the Alcohol and Drugs Program Coordinator. He was reportedly '*not overly motivated to engage in psychological treatment'* according to his DBT provider.[46]

Mr Marshall's mental illness – the correct diagnosis

111. I am satisfied that at the time of his death Mr Marshall was suffering from Bipolar Affective Disorder, something that was not diagnosed whilst he was a member of the RAN. As I have already said various other diagnoses were suggested while he was

[45] Defence Tender Bundle – Exhibit 31, Tab 171.
[46] Defence Tender Bundle – Exhibit 31, Tab 187.

serving, including possibly Post Traumatic Stress Disorder (PTSD)[47] or possibly an Adjustment Disorder, possibly Aspergers syndrome and/or possibly a Major Depressive Disorder. Interestingly, and despite the fact that not a single mental health professional had made any diagnosis, a medical officer[48] noted Mr Marshall's diagnosis on 10 June 2015 as "*Adjustment Disorder with depressed mood with some PTSD features*".[49] It is far from clear how, or why this diagnosis was arrived at, or indeed if it is in fact a diagnosis.

112. If it was a diagnosis, it was not maintained after a series of reviews of Mr Marshall by a Clinical and Forensic Psychologist on 17 June, 7 July, 5 August and 19 August 2015. Following those reviews, the Clinical and Forensic Psychologist expressed the opinion that Mr Marshall's diagnosis was sub-clinical depression with co-morbid anxiety and distress which by 20 August 2015 was in remission, a conclusion (that, in effect, Mr Marshall was well) repeated on 10 September of the same year.

113. Some serious doubt must attend both that diagnosis and the conclusion that Mr Marshall had made a recovery because in November 2015 he was admitted to a psychiatric facility on the basis that he was suffering from depression. This time he was diagnosed as suffering from a depressive illness with features of Obsessive Compulsive Disorder and, once again, PTSD. However, during his period of treatment Mr Marshall was first diagnosed with BPAD, a diagnosis with which Mr Marshall did not agree.

114. A second opinion was sought and so in December 2015 Mr Marshall saw an independent psychiatrist. That psychiatrist considered that it was unlikely that he was suffering from Bipolar Affective Disorder, but rather felt that Mr Marshall had probably experienced a "*brief*" depressive episode and that the most likely diagnosis was of a borderline type personality dysfunction.

115. On 3 March 2016, a report was produced by very experienced military psychiatrist and another mental health professional. The authors of the report had thoroughly examined Mr Marshall's mental health history. Whilst not ruling out that he may be suffering from Bipolar Affective Disorder, they express the view that they were "*unable to confirm a diagnosis of Bipolar Disorder*". A diagnosis of personality disorder with some borderline traits (e.g. a pattern of idealised and unstable relationship's, self-

[47] How a diagnosis of PTSD was arrived at escapes me. PTSD is caused by either being part of or witnessing a terrifying, often life threating, incident. It is common among service personnel who have experienced actual combat and first responders. Mr Marshall was, of course, neither of those, and there is no evidence, at all, of any history which could have caused him to develop PTSD.
[48] That is to say not a psychiatrist.
[49] Defence Tender Bundle – Exhibit C31, Tab 002.

mutilating behaviour, affectivity in stability and transient, stress-related paranoid ideation along with perfectionist traits) was preferred.[50]

116. During 2016 and through until mid-2017, Mr Marshall was variously diagnosed as suffering from:

a) chronic but mild depression;

b) anxiety disorder and depression;

c) an ongoing adjustment disorder;

d) alcohol use disorder; and

e) "features" of PTSD.

117. In June 2017, when assessed by an external (that is non-ADF) clinical psychologist, Mr Marshall was assessed as not satisfying the full criteria for BPAD. The psychologist also felt that he was not suffering from Persistent Depressive Disorder, Assistive Compulsive Disorder, Autism Spectrum Disorder, Cluster A Personality Disorder and Cluster B Personality Disorder. I think that the psychologist was right about all of those things apart from bipolar affective disorder.

118. It was not until after Mr Marshall's discharge from the RAN, that in March 2019, when he came under the care of Dr Davie, a consultant psychiatrist of some 35 years' experience, (under whose care he remained until his death) was the diagnosis of bipolar affective disorder finally and definitively arrived at. In my view it is worth repeating Dr Davies' opinion:

> *"[Mr Marshall] had been developing bipolar affective disorder (BPAD) during his [20s] as demonstrated by his episodes of significant depression with suicidal ideation and of hypomania. As is often seen initially these episodes are diagnosed as adjustment disorders, anxiety disorders and patients often self-medicate with alcohol and other drugs to try and manage their mood state. The condition of BPAD is usually diagnosed by the time the patient is in their early 30s. Mr Marshall's diagnosis of BPAD was made in [New South Wales] prior to his arrival in Tasmania and confirmed at The Hobart Clinic. Studies suggests that 25 – 50% of patients with BPAD will attempt suicide and between 6 – 20% will complete suicide*".[51]

119. Dr Davie, said, and I accept, that BPAD is predominantly genetic, although the risk of it manifesting is increased if a person suffers a brain injury (there is of course no

[50] Defence Tender Bundle – Exhibit 31, Tab 174.
[51] Exhibit C22, Attachment A.

evidence that Mr Marshall suffered a brain injury at any time, and certainly not during his naval service). Dr Davie said, and I also accept that in his opinion:

> *"[Mr Marshall's] time in the Navy was not casual in the development of BPAD and because his retiring impairments were a developing BPAD but misdiagnosed, his time in the Navy was not causal for their development either*".[52]

120. I consider Dr Davie was appropriately qualified and more than sufficiently experienced to express the view that he did. His opinion is inherently likely to be correct, consistent with all objective evidence and benefits from the fact that it is entirely objective.

121. In summary, I am satisfied on the evidence that BPAD was the principle contributing factor to Mr Marshall's suicide, but that condition was not related to his service with the RAN.

Transitional management by the ADF of Mr Marshall

122. Mr Marshall ultimately was discharged from the RAN on the basis that he was medically unfit for further service. It was not his decision to leave the Navy and as such the discharge was involuntary. So-called '*medical separation'* occurs when a service member has a medical condition which leads a medical clinician to determine that the member is not employable or deployable for the foreseeable future.

123. He attended a two-day career transition seminar with the ADF in March 2017. He was approved to complete a vocational assessment which undoubtedly would have assisted him with identifying potential employment options after he left the Navy, however there is no record of him completing that assessment. In relation to the subject of employment of veterans generally I note the recommendation of the Royal Commission in relation to the implementation of measures to increase employment opportunities for veterans and the government response to that recommendation.

124. I accept the Commonwealth submission that the inquest is not the appropriate forum to consider Mrs Marshall's submission that there be direct appointment of veterans to other Australian Public Service roles. And I observe, unfortunately, even if such a process were to be adopted it is difficult to see that Mr Marshall, with his plethora of mental health difficulties, and at the very least reluctance to countenance mental

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[52] *Supra.*

health support following separation, could have been suitable for such a direct appointment.

125. In summary, it is enough I think to say that I consider the evidence overwhelmingly supports the conclusion that the management of his transition from service to civilian life by the ADF was appropriate. Mr Marshall was plainly a very difficult case. I consider that the RAN did basically everything reasonably possible to keep him in service, which ultimately proved impossible. If there is to be a criticism it is probably that he was recruited in the first place when it is obvious he was unsuited for life in the ADF.

Military Compensation system

126. While there may be room for criticism of the military compensation system, this inquest is not the appropriate forum for a consideration of the efficacy or user-friendliness of it. Even if it was, the military compensation and landscape has changed considerably after Mr Marshall's death and in the wake of the Royal Commission.

127. I note the observations made by the Royal Commission in its final report made to the effect that the complexity of the system was a contributing factor to some veteran suicides. But there is no evidence in this case that would support a conclusion that the systems complexity or otherwise played any role in Mr Marshall's death.

128. There is no evidence that he was treated unfairly or in any way other than in accordance with the law. There is no evidence that there was any particular delays associated with his engagement with DVA. In fact, the opposite seems to be the case. Mr Marshall received a letter from the DVA three days after he separated from the RAN on 1 September 2017 outlining the situation (or determination) with respect to treatment benefits.

129. In summary, on the evidence, I do not consider there is any basis to conclude that the military compensation scheme generally, or Mr Marshall's interactions with it in particular, caused or contributed to his suicide.

The level of assistance from RSL Life Care Limited - post service support and treatment

130. RSL Life Care Limited is a not for profit charity registered with the Australian Charities and Not-For Profits Commission. All the assistance it provided to Mr Marshall – both claim support and advocacy - was provided voluntarily and without

fee. I quite satisfied that the staff who provided assistance to Mr Marshall (and to very many other veterans) are dedicated and committed. Many of them are veterans themselves.

131. It is unnecessary for me to set out at length or in any particular detail the history RSL Life Care Limited's dealings with Mr Marshall (which commenced nearly a year before he was discharged from the RAN). It is enough to say that I am satisfied that the service and support provided was both timely and professional. There is no room for any criticism of its work or the work and efforts of the various employees who sought to help Mr Marshall. In that regard, I expressly accept Mrs Marshall's submissions that her son was better off with the assistance provide by RSL Life Care Limited.

132. The submissions of Mrs Marshall concerning the recommendations of the Royal Commission relating to representation and advocacy in the future are, with respect, irrelevant, beyond the scope of the inquest and arguably in the nature of a commission of enquiry into the Royal Commission. I do not need to make any finding about them.

Formal findings

133. I make the following formal findings pursuant to section 28 (1) of the *Act*:

a) The identity of the deceased is Benjamin Laurence Marshall;

b) Mr Marshall died in the circumstances set out in this finding;

c) The cause of Mr Marshall's death was asphyxia due to self-inflicted hanging; and

d) Mr Marshall died, aged 31 years on or about 5 October 2019 at 499 Tinderbox Road, Tinderbox in Tasmania.

Conclusion, comments and recommendations

134. Sadly, people suffering from bipolar affective disorder have very high rates of self-harm and suicide. There is very little that can be done in many cases to prevent that occurring as Mr Marshall's sad case demonstrates. I do not consider that Mr Marshall's service with the Navy caused or contributed to his death. The evidence at the inquest satisfies me that as much was done for Mr Marshall as was reasonably possible to support him and address his poor mental health during his service with the RAN.

135. He was, in my view, appropriately and properly discharged. The support he received from the ADF whilst that transition process occurred was, on the evidence, in my view, not something that can be rationally criticised.

136. The evidence leads me to conclude that Mr Marshall was appropriately supported following his discharge from the ADF.

137. If there is a criticism to be made of the ADF and the RAN, it is that Mr Marshall was recruited in the first place and was permitted to keep serving for as long as he was.

138. I am satisfied that Mr Marshall's poor mental health was the cause of his death by suicide. But as I have said, I am not satisfied that his poor mental health was caused or contributed to by his service in the ADF or his dealings with the military compensation system.

139. The death by suicide of former members of the ADF is quite properly a matter of national concern as evidenced by the Royal Commission into the subject. However, the ADF is not to blame for every such death and is not to blame in this instance.

140. In the circumstances of this case, I do not consider it necessary to make any recommendations or comments pursuant to section 28(5) of the *Act*.

141. I convey my sincere condolences to the family of Mr Marshall on their loss.

Dated: 22 August 2025 at Hobart in the State of Tasmania.

Simon Cooper
CORONER

ANNEXURE A

LIST OF EXHIBITS

Record of investigation into the death of Benjamin Laurence Marshall

A. POLICE AND MORTUARIAL INVESTIGATION DOCUMENTS	
No.	**NAME**
C1	Police Report of Death for the Coroner – Investigating Officer Constable Alice Thompson, undated.
C2	Affidavit of Dr John Shawny, Royal Hobart Hospital, Registered Medical Practitioner, proclaiming life to be extinct, declared on 6 October 2019.
C3	Affidavit of Constable Alice Thompson re police identification, declared on 6 October 2019
C4	Affidavit of Anthony Cordwell of the South and Westcoast Mortuary Ambulance Service, re Mortuary identification, declared on 6 October 2019.
C5	Affidavit of Dr Donald Ritchey, State Forensic Pathologist, unsigned and undated.
C6	Affidavit of Neil McLachlan-Troup, Forensic Scientist, Forensic Science Service Tasmania, re Toxicology Report, sworn 12 February 2020
C7	Affidavit of Julia Elizabeth Marshall declared on 22 January 2020.
C8	Affidavit of Alan William Marshall declared on 23 October 2019
C9	Affidavit of Geoffrey Malcolm Seeber, declared on 11 November 2019.
C10	Affidavit of Jack Daniel Seeber, declared on 11 November 2019

C11	Affidavit of Constable Alice Jarvis (Nee Thompson), declared 10 March 2020.
C12	Affidavit of Constable Rowan Ashley Oliver, declared 11 March 2020.
C13	Affidavit of Senior Constable Rance Joseph Swinton, declared on 16 October 2019.
C14	Affidavit of Detective Senior Constable Angus John Dobner, declared on 17 March 2020.
C15	Forensic Photographs (**Graphic Content Warning**) taken by Senior Constable Rance Swinton.
C16	Diary Entries from a Blue Diary of Benjamin Marshall
C17	Tasmania Police Receipt for property received by Kingston Police Station dated 6 October 2019
C18	Royal Hobart Hospital Department of Anatomical & Forensic Pathology Inventory of Deceased property, cash and personal items on admission to the mortuary dated 6 October 2019
C19	Tasmania Police Property Seizure Record (Receipt dated 6 October 2019
C20	Tasmania Police instructions re return of hard drive dated 15 April 2020.
B. AFFIDAVITS AND RESPONSES TO COURT REQUESTS FOR INFORMATION TAKEN IN THE COURSE OF THE CORONIAL INVESTIGATION	
C21	Affidavit of Rhiannon (Rhi) Cairns, declared 9 April 2024
C22	Affidavit of Julia Elizabeth Marshall sworn 7 February 2025 with annexures as follow (as described in the affidavit): **Attachment A** is copy of extracts from the CSC file regarding Benjamin's medical discharge, reassessment of the invalidity classification to class say with the acceptance the (*sic*) Ben's death was related to his retiring impairments and Medical report of Dr Michael Davey, dated 31 October 2021.

	Attachment B is the VRB file (Ref A17/0623) following the application for review of the decision dated 18 May 2017 to reject liability for chronic dysthymia, anxiety disorder and PTSD (note this is contained in the RSL LifeCare documents) **Attachment C** is the VRB file (Ref A 18.0255) following an application for review of the determination to reject the payment for permanent impairment dated 7 March 2018 (note this is contained in the RSL LifeCare documents) **Attachment D** are the references in response to the 2012 termination notice. **Attachment E** is the documents relating to Ben's application for the roles at Hobart Barracks as a Customer Service Officer and Victoria Police. **Attachment F** is the medical records of Dr Julia Tait, at the Ochre Health Medical Centre Hobart.
C23	Affidavit of Dr Michael Davie, affirmed on 31 July 2024 **NOTE:** This affidavit refers to the Clinical notes for Hobart Clinic as C16, now EX#26.
C24	Defence Institutional Response to Letter from John Delpero, Coroner's Associate to the Australian Government Solicitor dated 30 July 2024 (MFI#3).
C25	Department of Veterans Affairs Institutional Response to Question 2.6 of Letter from John Delpero, Coroner's Associate to the Australian Government Solicitor dated 30 July 2024 (MFI#3), including Attachment A and B.
C. SELECTED DOCUMENTS PRODUCED PURSUANT TO S.59	
Medical	
C26	Bundle of Medical Records, various dates, from the Hobart Clinic, PDF file of 392 pages.

C27	Exported Patient Record of Benjamin Marshall from the Royal Hobart Hospital, generated on 11 October 2019, PDF file of 67 pages.
C28	Bundle of Medical Records, various dates, from Barrack Street Practice, PDF file of 24 pages.
RSL Life Care	
C29	Index to and bundle of records, various dates, from RSL Life Care – received 08/12/2023
C30	Index to and bundle of further records, various dated, from RSL Life Care – received 05/04/2024
Defence	
C31	Defence tender bundle (234 documents) comprised of a copy of each of the documents produced by the Commonwealth and referred to in the First Narrative Chronology (MFI#1), Second Narrative Chronology (MFI#2), Defence Institutional Response (EX#24) including the Mental Health Chronology (except where a document is already annexed to the Response), indexed and bookmarked. **NOTE:** Bundle has been redacted and pseudonym (RVA92) applied, in accordance with the *Privacy Act 1988* (Cth). Redactions include Non-SES names/contact information of DVA and Defence staff (including Defence members) where these persons were not Defence staff directly involved in supporting, assisting or supervising Mr Marshall during his time in the RAN. Tax file numbers as required by the *Taxation Administration Act 1953* and *Privacy (Tax File Number) Rule 2014* have also been redacted.
Department of Veterans Affairs	
C32	DVA tender bundle (66 documents) comprised of a copy of each of the documents produced by the Commonwealth and referred to in the First Narrative Chronology (MFI#1), Second Narrative Chronology (MFI#2) and DVA Institutional Response (EX#25) indexed and bookmarked.

	NOTE: Bundle has been redacted and pseudonym (RVA92) applied, in accordance with the *Privacy Act 1988* (Cth). Redactions include Non-SES names/contact information of DVA and Defence staff (including Defence members) where these persons were not Defence staff directly involved in supporting, assisting or supervising Mr Marshall during his time in the RAN. Tax file numbers as required by the *Taxation Administration Act 1953* and *Privacy (Tax File Number) Rule 2014* have also been redacted. **NOTE:** Additional redactions to the DVA Tender Bundle in accordance with DVA's policies regarding protecting staff and their privacy. These additional redactions have been made to DVA staff surnames, email addresses and telephone numbers in a limited number of documents where they arise (noting most of the documents only identify DVA staff by first name and position number).
Marshall Family	
C33	Excel spreadsheet "Ben Marshall - CRM Extract"
C34	VRB decision of 14 May 2024
A. DOCUMENTS CREATED TO ASSIST THE COURT AND COURT DOCUMENTS (marked for identification)	
MFI #1	First Narrative Chronology
MFI #2	Second Narrative Chronology
MFI #3	Letter from John Delpero, Coroner's Associate to the Australian Government Solicitor dated 30 July 2024