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**FINDINGS and RECOMMENDATIONS of Coroner  
McTaggart following the holding of an inquest under the  
*Coroners Act 1995* into the death of:**

**Robert Edward McInerney**

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# Record of Investigation into Death (With Inquest)

*Coroners Act 1995*  
*Coroners Rules 2006*  
*Rule 11*

I, Olivia McTaggart, Coroner, having investigated the death of Robert Edward McInerney with an inquest held at Hobart in Tasmania make the following findings.

## **Hearing Dates**

22, 23, 24, 25 July and 28 August 2019, final written submissions received on 9 September 2019.

## **Representation**

Counsel Assisting the Coroner: J Ransom

Counsel for Senior Constable William Flynn and Police Association Tasmania: G Wood

Counsel for Commissioner for Police, Sergeant Steven Keiselis, Senior Constable Nicholas Lomman, Senior Constable Cameron Little, Constable Sarah Bosch, Constable Caroline McGregor, Constable Andrea Perry, and Constable Elmar Van Breda: M Miller and E Stone

## **Introduction**

1. On Tuesday 25 May 2016 Robert Edward McInerney, aged 48 years, died as a result of being shot by a police officer, Senior Constable William Flynn, who attended an incident at about 7.45pm on 24 May 2016 at Mr McInerney's residence at Unit 3, 15 Stitz Street in Cooe (the premises). At that time, Senior Constable Flynn along with seven other officers, attended as the result of Mr McInerney having called '000' demanding police attendance. In that call, Mr McInerney stated, among other things, that he was armed with knives and was hoping to be shot by police after throwing the knives at them. He also suggested that he would throw knives at any other person who might be present. When the police officers arrived outside of the premises, Mr McInerney did, in fact, throw knives at the attending officers, forcing several to retreat and seek cover. Senior Constable Flynn, an experienced, trained police negotiator, attempted to pacify Mr McInerney and have him disarm himself. However, Mr McInerney was

not receptive to negotiation and moved into an elevated and concealed position in the poorly-lit backyard of the premises. Upon being visually identified, he brandished a large knife in a menacing manner and advanced down the hill towards Senior Constable Flynn and other officers who were a short distance away. Senior Constable Flynn warned Mr McInerney that he was armed and would shoot. Mr McInerney was also not receptive to this warning. Senior Constable Flynn then fired four shots at Mr McInerney at close range with his service issue 9mm Glock 26 pistol. The injuries sustained to Mr McInerney resulted in his death the following day, 25 May 2016.

## **Investigation**

2. As the incident involved a police officer discharging a firearm at a person, Tasmania Police Professional Standards, in accordance with protocol, became involved immediately after the event with four investigators attending the scene. The coroner on duty, Coroner Duncan Fairley, was notified and also attended the scene. Professional Standards retained carriage of the coronial investigation into Mr McInerney's death, with the officers involved in the incident being interviewed and the scene forensically examined over several days. In accordance with procedure, the evidence gathered was submitted by Professional Standards to the Director of Public Prosecutions in respect of consideration of charges arising from the incident. On 15 June 2016 Professional Standards received advice from the Director of Public Prosecutions that no charges would be laid in respect of Mr McInerney's death on the basis that it was reasonable for Senior Constable Flynn to believe that he and Acting Sergeant Lomman (standing close to Senior Constable Flynn) were going to be stabbed and therefore suffer serious injury. The Director of Public Prosecutions advised that, in all of the circumstances, the evidence indicated that Senior Constable Flynn was acting in lawful self-defence and therefore had not committed any crime.
3. The investigation continued for the purpose of completing the coronial requirements, with Senior Sergeant (now Inspector) Troy Morrisby of Professional Standards obtaining further evidence over the following twelve months. This included material pertaining to Mr McInerney's family background and health; medical records and involvement with services in the period before his death; affidavits of civilian witnesses and police witnesses relevant to the incident; the opinion of the State Forensic Pathologist regarding cause of death, scene walk-throughs, drone footage and virtual tour of the scene; photographs of the scene and Mr McInerney; toxicological evidence, biological examination of scene exhibits by Forensic Science Service Tasmania; opinion of police ballistics experts; results of forensic analysis of mobile

phone usage; affidavits of investigators; and evidence of police policies and training regarding operational tactics.

4. On 16 April 2017, Senior Sergeant Morrisby submitted the evidence to the Commander of Internal Investigations together with a comprehensive report summarising and analysing the evidence. On 17 April 2018, after review by the Commander, Sergeant Morrisby's report and the files of evidence were submitted to the Coroner.
5. Upon receipt of the report and evidence, I directed further investigations, principally in respect of a review of the actions and tactics employed by officers of Tasmania Police in the incident. I therefore sought an opinion from a qualified officer of Victoria Police.

### **The role of the Coroner**

6. Section 21(1) of the *Coroners Act 1995* ("the Act") gives a coroner jurisdiction to investigate a death where it appears to the Coroner that the death is reportable. Mr McInerney's death was a reportable death. The death occurred in Tasmania, and was an unnatural death resulting from injury, and occurred while police attempted to detain Mr McInerney.<sup>1</sup>
7. There is little doubt that, at the time the officers arrived at the premises and engaged with him, they were attempting to detain him. It is inconceivable that, having encountered him wielding knives, they would not have had such intention.
8. The *Mental Health Act 2013* allows a police officer to take a person into protective custody without warrant upon holding a reasonable belief regarding the following three matters:
  - (a) *the person has a mental illness; and*
  - (b) *the person should be examined to see if he or she needs to be assessed against the assessment criteria or the treatment criteria; and*
  - (c) *the person's safety or the safety of other persons is likely to be at risk if the person is not taken into protective custody.*<sup>2</sup>

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<sup>1</sup> Section 3 of the *Act*.

<sup>2</sup> Section 17 of the *Mental Health Act 2013*.

9. Further to the protective custody powers, when Mr McLnerney encountered the officers and threw knives at them, this amounted to an assault for which he was liable to arrest him without warrant and detention pending consideration of bail on the charge (or charges).
10. In my view, the death of Mr McLnerney is one in which a coroner is required to hold a public inquest under section 24 of the Act. Section 24(1) provides relevantly that:

*“... a coroner who has jurisdiction to investigate a death must hold an inquest if the body is in Tasmania or it appears to the coroner that the death, or the cause of death, occurred in Tasmania or that the deceased ordinarily resided in Tasmania at the time of death and –*

*...*

*(b) the deceased was immediately before death a person held in care or a person held in custody; or*

*(c) the death occurred in the process of a police officer, correctional officer, mental health officer or prescribed person, within the meaning of section 31 of the Criminal Justice (Mental Impairment) Act 1999, attempting to detain a person; or*

*...”.*

11. It is possible that Mr McLnerney, at the time he was shot, fell under the definition of “person held in custody” as he was effectively unable to freely move away from the numerous armed police officers in his close proximity. On this basis, it might be said that he was in the “control” of police officers (being part of the definition of “person held in custody” under section 3 of the Act). The fact that section 24 distinguishes between the case of a person held in custody and the act of a police officer attempting to detain a person suggests that there are situations involving attempted detention that do not fulfil the definition of “person held in custody”.
12. The distinction has some significance in terms of the required Coronial functions, however is academic in this case. Section 28(5) requires a coroner to report on the care, supervision or treatment of the person while the person was a person held in custody. Whilst the same requirement does not necessarily apply to a person whom a police officer was attempting to detain at the time of death, the circumstances of the attempted detention of Mr McLnerney are required to be scrutinised, hence the requirement for a mandated public inquest. In these circumstances I do not need to determine whether Mr McLnerney fell within the definition of “a person held in custody”.

## Scope of Inquest

13. Under section 28(1) a coroner investigating a death must find, if possible:
  - “(a) the identity of the deceased; and*
  - (b) how death occurred; and*
  - (c) the cause of death; and*
  - (d) when and where death occurred; and*
  - (e) The particulars needed to register the death under the Births, Deaths and Marriages Registration Act 1999.”*
14. Further, by section 28(2) a coroner must, whenever appropriate, make recommendations with respect to ways of preventing further deaths and on any other matter that the coroner considers appropriate.
15. By section 28(3) a coroner may comment on any matter connected with the death including public health or safety or the administration of justice.
16. With respect to my functions set out above, the scope of the inquest into the death of Mr McInerney was formulated as follows:
  1. *Circumstances surrounding death*
    - (a) The state of Mr McInerney’s mental and physical health in the months prior to his death, including his suicidal ideation and support and assistance afforded to him.
    - (b) The contact between Mr McInerney and support services in the days before his death.
    - (c) The contact between Mr McInerney and police in the months and days before his death.
    - (d) The circumstances surrounding his death upon police arrival at the premises.
  2. *Police tactics and strategies at the scene*
    - (a) Whether the attending officers should have held a “rendezvous” (before making contact with Mr McInerney at the premises) to communicate the situation and develop a

response plan based on indicated risks, as detailed in the report of expert Sergeant Matthew Hargreaves.

- (b) Issues surrounding the attendance at the scene by off-duty Sergeant Steven Keiselis, primarily his absence of weapons and protection, as well as the effect of his attendance upon Acting Sergeant Lomman's "span of control".
  - (c) The adequacy of training for officers of Tasmania Police in respect of police provoked shootings, at the time of Mr McInerney's death, currently, and any intended future training.
17. In formulating the scope of the inquest as above, it is important to state that from the time of the completion of the investigation, the following matters were apparent and not in issue at inquest:
- (a) That all officers involved in the incident were acting in good faith and with the intention of resolving the incident without harm to Mr McInerney;
  - (b) That Senior Constable Flynn exercised a high level of skill in his attempted negotiations with Mr McInerney;
  - (c) That, at the time of discharging his firearm, Senior Constable Flynn had no option but to shoot Mr McInerney in defence of himself and other officers;
  - (d) That it was necessary for Senior Constable Flynn to discharge his firearm four times in order to avert the threat posed by Mr McInerney; and
  - (e) That the numerous health care professionals and support services engaged to treat and assist Mr McInerney before his death undertook their respective roles competently, in a well-co-ordinated manner and with his care and welfare as the paramount consideration.

## **Background**

18. To give context to the event leading to his death, I now outline from the evidence significant aspects of the life of Mr McInerney, including his struggles with his mental and physical health. As will be apparent, his poor mental health, apparent chronic pain and dependence upon alcohol caused him ongoing distress over many years. His behaviour arising from these conditions, perhaps combined with problematic personality traits, also caused great distress

and fear in those close to him. Such behaviour, particularly pronounced when intoxicated, comprised episodes of mood instability and irrational thought processes, anger, violence and intimidation, and suicidality.

*Personal details and life of Mr McInerney*

19. Mr McInerney was born Nicolaas Bodde on 5 January 1968 in Victoria and was formally adopted by Ronald John McInerney and Dorothy Marion McInerney.
20. There is little evidence, in the exhibits before me, of Mr McInerney's early family life or education. Mr McInerney, however, told one of his counsellors before his death that his parents divorced when he was about six years of age and from then on, he lived with his father who held long-term employment as a security officer at Monash University. He said he did not see his mother for many years and he had an older sister who moved out of the family home when his parents separated. He reported that he had been expelled from three schools and, as a result, his father required him to obtain employment. Mr McInerney said that he obtained his first job at the age of 14 years with a plaster firm, and he started to drink alcohol at the commencement of this employment.
21. In early adulthood, he led an itinerant existence across several states, working as a cook, plasterer, welder and carpenter. Mr McInerney gave a history to treating doctors of commencing to suffer back pain since a football injury in 1984, with such pain progressing to chronic and severe during his life.
22. In 1993 Mr McInerney met Sue Wenn in Western Australia and formed a relationship with her. I assume Ms Wenn's surname at that time was Lintott, although I have not been able to obtain this information. Within a month of the commencement of the relationship, Ms Wenn became pregnant with their first child. Their daughter, Emma Leigh Lintott, was born on 29 July 1994. Their second child, Pamela Jane Lintott, was born on 3 October 1997. Mr McInerney married Ms Wenn in 2003.
23. The relationship was unstable due to Mr McInerney's poor mental health and violent tendencies. In her affidavit in the investigation, Ms Wenn stated that Mr McInerney drank alcohol excessively from very early in their relationship. She also said that he had suffered a back injury which required him to take pain medication. She said that he was diagnosed with adult ADHD and received a prescription for dexamphetamine. She believed that this medication tended to make him more violent. As their relationship progressed, Mr McInerney

suffered a serious downturn in his mental health, consumed alcohol in even larger quantities and became increasingly threatening and intimidating in his behaviour. She saw that it was uncommon for him to be actually physically violent.

24. Mr McInerney ultimately ceased employment due to his back pain. The reason for his subsequent receipt of a disability pension was that he suffered chronic pain due to arthritis.
25. In her affidavit, Ms Wenn stated that in 1998 police were called to their address and were required to tackle Mr McInerney in the front yard before he was transported to the psychiatric ward at the Royal Perth Hospital where he remained for four days. Subsequently, Ms Wenn said that Mr McInerney would consistently contact the psychiatric ward of the hospital or the “rapid impact” assessment team of the hospital and request to be collected. She said that when he was not collected to go to hospital he would become very angry. In her affidavit she stated *“he’d go crazy in order to get me to call police and then ultimately they’d take him for assessment. He’d do all kinds of crazy and violent things”*. Ms Wenn described Mr McInerney, on one occasion, picking up a large toolbox full of tools, holding it above his head and then throwing it, only narrowly missing their daughter’s head. Ms Wenn stated that Mr McInerney’s behaviour over time became irrational and delusional. She described Mr McInerney, in 2003, telling her that he was psychic, could astral travel and speak to dead people.
26. Ms Wenn further described coming home from work on one occasion, in 2005, with Mr McInerney having shaved his entire body, including his eyebrows, claiming he was *“Jesus reincarnated”*, had spoken to God and had knelt at God’s feet. He also claimed he could speak to a wizard.
27. Ms Wenn said that she was concerned about the children’s safety in the presence of Mr McInerney and therefore moved out of the family home with them, separating from Mr McInerney.
28. Ms Wenn last saw Mr McInerney in 2005 and refused his request to reconcile. She had final text message contact with him in 2006. In that text message Mr McInerney told Ms Wenn that she was a *“mass murderer”* and that he would cause a tsunami, in the context of Ms Wenn forming a new relationship.
29. Despite the permanent separation, Mr McInerney and Ms Wenn have not formally divorced. Mr McInerney’s daughters, Emma and Pamela, had no contact with him at all, until 6 April

2016 when Emma initiated contact with him via Facebook and then spoke to him on the telephone. However, the subsequent contact by messages became persistent and accusatory on the part of Mr McInerney, and Emma terminated contact on 21 April 2016.

30. In 2006 Mr McInerney moved to Kalgoorlie and it seems that he had employment there. His movements in the following years are somewhat uncertain on the evidence. However, he moved from Western Australia to Hobart on 10 January 2011 and obtained emergency accommodation at Flint House in New Town. On 21 March 2011 police attended Flint House and spoke to Mr McInerney who stated that he wished to end his life. Police officers took him to the Royal Hobart Hospital (RHH) for psychiatric assessment. On 16 April 2011 police officers again attended Flint House where Mr McInerney complained of being assaulted and had an obviously dislocated shoulder. He was highly intoxicated at that stage and was transported to the RHH for treatment. He was not able to provide police with any coherent information for a complaint.
31. In about 2013, Mr McInerney met Ms Anne Gallagher whilst he was living in Hobart and he formed a relationship with her. Mr McInerney did not work and continued to be in receipt of a disability pension due to his back pain. In her affidavit for the investigation, Ms Gallagher said that she and Mr McInerney moved in together after knowing each other for three months. She said that after approximately two months of living with Mr McInerney she left to get away from him and stay at a women's shelter. She said that he had become physically and verbally abusive towards her. She stated that his moods were "scary" because he would "snap" so easily. She attributed his violent, unpredictable moods to the combination of his excessive drinking combined with his prescription Valium medication.
32. Ms Gallagher said that after being in the shelter, she moved to Ulverstone where two of her children lived. Although she had separated from Mr McInerney, she stated that he would keep trying to contact her and often sent her abusive messages when she did not respond. Nevertheless, Mr McInerney persisted in wanting to see Ms Gallagher and she said that she gave in to his persistence and started seeing him again on 31 July 2015. Mr McInerney had been visiting her from Hobart from time to time but after that date, likely late 2015, he moved into her house in Ulverstone where she lived with two of her children- a twin son and daughter. Ms Gallagher again commenced receiving carer's payments for Mr McInerney. Her care included ensuring that he attended his appointments, providing transport and helping him around the house. She said that after about three months, the relationship and Mr

McInerney's mood deteriorated, as it had in Hobart, although she described his behaviour as being even more physically abusive.

33. Ms Gallagher described the breaking point of the relationship as being an incident occurring on 20 February 2016 when Mr McInerney assaulted her son on his 17<sup>th</sup> birthday by punching him in the back and jaw. She said that Mr McInerney was so intoxicated with alcohol that he fell over on multiple occasions hitting his head causing a wound. Ambulance personnel and police officers attended the incident and Mr McInerney refused to leave. He was arrested, handcuffed and taken in the ambulance for treatment to the North West Regional Hospital ("NWRH"). At the hospital he started to damage property and police were called. The attending officers considered taking Mr McInerney to emergency accommodation as Ms Gallagher did not wish him to come back home. However, he started punching and head-butting the divisional van and smearing his blood on the interior. He was then placed in the cells of the Burnie police station and commenced hitting his head on the walls of the cell and the corner of the concrete bed, actively trying to make his head bleed. Ambulance officers attended and, due to Mr McInerney's behaviour, he was placed in protective custody under the *Mental Health Act 2013* and transported back to the NWRH.
34. Ms Gallagher did not have any further face-to-face contact with Mr McInerney since that evening, although there was text messages between them, mostly emanating from Mr McInerney. She said that during her relationship with Mr McInerney, he made attempts to take his own life through overdosing on medications whilst he was intoxicated with alcohol. She said that when he was drunk, he would talk about dying or suicide. Relevantly, in the fortnight before Mr McInerney's death, he sent a number of text messages to Ms Gallagher outlining his apparent intention to end his life. These text messages included an instruction to Ms Gallagher that she would need to arrange his funeral soon and collect his body.

*Mr McInerney's physical and mental health, and contact with services prior to his death*

35. Mr McInerney suffered chronic pain and was dependent upon alcohol. As previously discussed, he was very unstable in mood and suicidal when intoxicated. Between 2012 and 2016 Mr McInerney was admitted on five occasions to the In-patient Withdrawal Unit for detoxification from alcohol. His abuse of alcohol and its consequences upon him were particularly acute in the months prior to his death. In her affidavit, Ms Gallagher said that, apart from his back issues and arthritis, she was not aware of any other issues or mental health condition with which Mr McInerney had been diagnosed. It is clear upon all the evidence, however, that his

dependence upon alcohol and his very poor state of mental health prevented him from functioning adequately in his life.

36. Mr McInerney was heavily engaged with numerous support services. The investigation revealed, for example that since January 2016, Mr McInerney attended or had contact with health or support personnel on a very frequent basis, on some occasions multiple incidences of contact on one day. It is unnecessary to describe all of the dates upon which these incidents of contact occurred or the content of the discussions. Suffice it to say that Mr McInerney was comprehensively supported in terms of his medical, housing and mental health needs. It is also apparent that the work undertaken by the services in coordinating the support was also significant. The records of Mr McInerney's discussions with doctors and counsellors during this period are comprehensive and, in general terms, contemporaneous. They indicate that Mr McInerney's mood ranged from being positive and motivated to make changes to frustrated with the services assisting him as well as angry and suicidal. In particular, in October 2015 he commenced a "Personal Helpers and Mentors Scheme" with Mission Australia, initially with a support worker, Ms Janine Brown, and then from 20 November 2015, Mr Patrick Booth.
37. I outline below chronologically, some of the main incidents of medical treatment and professional assistance provided to Mr McInerney in the months before his death. These occasions illustrate well the state of Mr McInerney's health and his complex issues.
38. On 4 December 2015 Mr McInerney underwent a comprehensive assessment with the Alcohol and Drug Service (North West). He was diagnosed as meeting the criteria for a severe substance use disorder in relation to alcohol.
39. From 17 December 2015 Mr McInerney attended counselling appointments with Alcohol and Drug Service (North West) every one to two weeks, the last being 16 May 2016.
40. In February 2016, Mr McInerney's support workers, particularly from Mr Booth of Mission Australia, had commenced the process of assisting Mr McInerney apply for entry into a detoxification program in Hobart.
41. Mr McInerney was also referred to a psychologist, Mr Michael O'Donnell, and had four sessions with him between 25 January and 19 February. Mr O'Donnell's report for the investigation stated that the focus of his sessions with Mr McInerney was generally around managing his choices and attempting to keep him gainfully occupied. Mr O'Donnell said that Mr McInerney denied any suicidality during the sessions.

42. On 3 March 2016 Mr McInerney was admitted to the NWRH after a suicide attempt whilst staying at the Menai Hotel in Burnie. The attempt to end his life was made by drinking alcohol and consuming excessive medication. Ambulance officers attended after being advised of the situation by the hotel manager. As a result, Mr McInerney was admitted for five days and, whilst admitted, underwent a psychiatric assessment.
43. On 8 March 2016, as a result of his suicide attempt, Mr McInerney was able to enter the detoxification program. He was discharged from that program on 10 March but, on the way back to Burnie from Hobart, he consumed alcohol and was therefore not permitted to enter his temporary accommodation at Serenity House. Later that day, Mr McInerney telephoned and messaged Mr Booth and said that he was walking along railway tracks and he “*would be dead*”. Mr Booth called police to conduct a welfare check, although Mr McInerney subsequently took a taxi back into Burnie.
44. On 11 March 2016 he was again admitted to the NWRH after falling over, intoxicated. He was assessed by the Crisis Assessment and Treatment Team (“CATT”) and discharged. It appears that this fall may have exacerbated Mr McInerney’s pre-existing back pain.
45. The last psychiatrist to have seen Mr McInerney was Dr Christopher Robinson. Mr McInerney consulted Dr Robinson on 22 March 2016 at the NWRH as a result of a referral from his general practitioner, Dr Karl Bright. Dr Robinson, in his report to Dr Bright of 26 March 2016 described Mr McInerney as “*a bearded, unkempt and scruffy looking 48-year-old*” who appeared much older than his years. Dr Robinson described him as cooperative and calm during interview with no indication of irritability or aggression. He stated that there was no evidence of current perceptual abnormalities or thought disorder, and that his mental content was “*appropriate but vague*” with no suggestion of delusional ideas. Dr Robinson stated that Mr McInerney had poor recollection of his psychiatric history and denied current suicidal ideation. Dr Robinson noted that Mr McInerney had a long history of alcohol misuse, consuming approximately 21 standard drinks per day in the form of a bottle of spirits. Dr Robinson reported that Mr McInerney did not believe he was able to reduce his alcohol consumption at that time. He also reported that Mr McInerney was preoccupied with obtaining stable accommodation and that various services were involved with him. In summary, Dr Robinson indicated that Mr McInerney presented with a history consistent with Alcohol Use Disorder and that it was difficult for him to ascertain the existence of any specific mental health diagnoses due to his current social instability and ongoing alcohol consumption.

46. On 18 April Mr McInerney telephoned a suicide helpline indicating that he wished to harm himself. Police officers attended the Ocean View Caravan Park where Mr McInerney was then staying and found him to be highly intoxicated. Acting Sergeant Lomman, one of the officers who subsequently attended at the incident involving Mr McInerney's death, attended at the caravan park. Mr McInerney told the police officers that he wished to harm himself because of ongoing back pain. The officers transported him in the early hours of 19 April, using protective custody powers, to the NWRH. Upon assessment, Mr McInerney reiterated that he was suicidal due to his pain. He remained at the hospital until less intoxicated and then discharged with a proposal for review by the CATT team once he was sober.
47. On about 2 May, Mr McInerney moved into 3/15 Stitz Street. He was provided with considerable assistance in his move by Catholic Care, the organisation tasked to assist with his housing issues. His Catholic Care housing worker was Jo-Anne Benson, who gave evidence at inquest of the efforts made by that organisation to obtain stable accommodation for Mr McInerney. Ms Benson gave evidence that Mr McInerney was engaged with the required services for a person with "complex needs". Ms Benson gave evidence that she had never seen Mr McInerney in an intoxicated state and he always seemed happy in his interactions with her. Ms Benson said that she presumed that Mr McInerney consumed alcohol during the evening but was able to function during the day.
48. On 10 May Dr Robinson saw Mr McInerney for review, at which appointment Mr McInerney told Dr Robertson that he had become suicidal and had been seen by the CATT team. Mr McInerney said that his suicidal ideation was precipitated by increasing pain. Although the written notes of the consultation were brief, it appears that Mr McInerney discussed with Dr Robinson the efficacy of his medication. Mr McInerney also told Dr Robinson that he was continuing to drink a bottle of whiskey every day. Dr Robinson did not prescribe him psychiatric medication due to concerns about his continued alcohol consumption but encouraged him to improve his lifestyle with exercise and activity now that he was in his own accommodation.
49. Mr Booth of Mission Australia last saw Mr McInerney on Friday 20 May at his new premises at Stitz Street. In his affidavit he described the meeting as "a good one" and they discussed the fact that Mr McInerney had found stable accommodation and could return to working on his goals for rehabilitation. Mr Booth's notes were recorded on the Mission Australia system three days later on 23 May 2016. Those notes indicate that there was no suicidal ideation expressed by Mr McInerney and that Mr McInerney appeared enthusiastic about the various

activities, such as swimming, that were proposed for him. He told Mr Booth that he was waiting to hear from his neurosurgeon regarding his back and that the new medication he was taking was helping with pain management. He also discussed the assistance he was receiving from his other support services.

50. It seems that, in the several days before his death, the evidence indicates that Mr McInerney perceived that his chronic pain had increased. On 20 May, Mr McInerney spoke with a counsellor from On-the-Line Mensline crisis service. In that discussion, a transcript of which was in evidence, he stated that he was not suicidal at that time but did not want to be “*palmed off*”. He spoke of the incident of 20 February with Ms Gallagher’s son. He also raised the issue of the dispute with his former landlord concerning a rental bond, a matter with which he was preoccupied. He told the counsellor that he was trying to control himself but felt that he was going to lose control sooner or later. He indicated frustration at always talking to different people and retelling his situation. Towards the end of the call he told the counsellor that he was drinking and was starting to get “wound up” when thinking of the situation with his landlord.
51. On the same date, 20 May, Mr McInerney attended his general practitioner, Dr Olumide Odebajo, who described the consultation with him as “long and difficult”. Dr Odebajo gave evidence at the inquest concerning his treatment and prescribing for Mr McInerney. He described taking over the care of Mr McInerney from Dr Bright. He gave evidence that the aim in latter consultations, upon Dr Robinson’s advice, was to assist Mr McInerney reduce his alcohol intake, possibly by medication. However, he stated that Mr McInerney was required to reduce his opioid analgesics before this could be achieved. This matter was discussed on 20 May, with Mr McInerney expressing unhappiness regarding the proposal not to renew a prescription for an opioid analgesic. It is clear from the evidence of Dr Odebajo that Mr McInerney had strong, forceful views upon the medication he wished to take and that Dr Odebajo was concerned to ensure safe and appropriate prescriptions, and to limit doses in light of his alcohol consumption. The treatment by Dr Odebajo was diligent and careful. Mr McInerney was obviously a challenging patient in terms of his complex mental and physical health conditions as well as his lack of ability to assist himself. At this particular consultation, Dr Odebajo formulated a plan to refer Mr McInerney to a pain specialist and physiotherapist.
52. Immediately after his general practitioner’s appointment on 20 May, Mr McInerney had a discussion with a counsellor from Catholic Care. He discussed the referral to the pain specialist and said that he was looking into medication suggested by the psychiatrist to assist

with alcohol withdrawal and was weighing that against the need for him to take opiate-based pain relief medication. In this discussion, his proposed transport provided by Anglicare to his dentist on 24 May was discussed. Mr McInerney also told the counsellor that Patrick (assumed to be Patrick Booth of Mission Australia) had arranged for him to attend a group session with “peers” on Wednesday (likely the following Wednesday 25 May) to encourage social interaction and Mr McInerney said that he would enjoy participating. There was no indication in this discussion that Mr McInerney was in a poor state of mind or suicidal.

53. From 12.53am on 21 May 2016, Mr McInerney sent a series of accusatory text messages to Ms Gallagher apparently attempting to have her reply to him. In particular, his messages at that time intimated that he was considering suicide, including advising Ms Gallagher that he had “had enough” and “goodbye”. At 2.23pm the same day he sent further text messages to Ms Gallagher referring to his own death and indicating that she would be needed as a witness in his coroner’s inquiry. Ms Gallagher did not respond to any of Mr McInerney’s messages. I observe that Mr McInerney expressed to Ms Gallagher that, if he ended his life, it would occur by overdose of medications.

### **Circumstances surrounding death**

#### *Mr McInerney’s movements before his death*

54. At 9.00am on 24 May 2016, Mr McInerney attended an appointment at the NWRH with dentist Dr Gerhard Van De Merwe to review previous dental surgery which had occurred on 9 May 2016. After the appointment, Mr McInerney made numerous phone calls during the day to a variety of persons, mainly support workers and staff of helplines. I now set out the main calls and their content. At the outset, I am satisfied that Mr McInerney did not indicate to any of the persons to whom he spoke on the telephone that he intended to imminently cause his own death. Specifically, he did not mention or suggest that he intended to arm himself with knives and call the police to his premises with a view to being shot by police officers.
55. At 11.08am Mr McInerney spoke with a counsellor, Ms Carolyn Burford, from On-the-Line Mensline for in excess of one hour. The recording of the call and transcript was in evidence. In the conversation with Ms Burford, Mr McInerney describes his back pain and recent dental procedure as well as his childhood and family background, his alcohol problem and issues with his medication, and the assistance he was receiving from Anglicare. In the call, Mr McInerney said that he had had suicidal thoughts earlier in the year but was not suicidal at this time. In the recording, Mr McInerney sounded calm and was responsive to Ms Burford’s questions and

comments. The call concluded with Mr McInerney enthusiastically arranging with Ms Burford to have a further telephone counselling session at 7.00am on 31 May 2016.

56. At 12.53pm Mr McInerney called Alcohol Drug Information Service Tasmania (ADIS) helpline. In his statement, the telephone counsellor, Mr David Ring, indicated that a male caller from Cooe in Tasmania (subsequently identified in the investigation as Mr McInerney) stated that he had benzodiazepine issues and wanted assistance with detoxification immediately. The call lasted four minutes. Mr Ring told Mr McInerney that there would need to be information retrieval from the organisation's database and that process would not be immediate. Mr Ring described the caller as becoming angry and believed that this was due to him hearing that his needs would not be immediately met. Mr McInerney then disconnected the call. Mr Ring does not recall Mr McInerney making threats of self-harm or harm to others during the call. Mr McInerney did not disclose his alcohol abuse issues to Mr Ring in the call.
57. At 1.04pm, Mr McInerney called Medibank Health Solutions Telephone Health Services. He was seeking information regarding his medication and its effects in conjunction with alcohol. He told the triage nurse answering the call that he drank and took medication every day. Upon questioning, he outlined his medications to the triage nurse. He said that he was trying to get a referral to a pain clinic to be "weaned off" opiates. This would allow him to take medication to help withdraw from alcohol. The triage nurse could not provide specific advice regarding alcohol interaction with particular medication but advised Mr McInerney that it was not a good idea to consume alcohol when medicating. She also asked if his doctor was aware of his drinking and he said that his doctors were aware of the issue. He also informed the triage nurse that he was seeing a psychiatrist. He indicated that he was an alcoholic and had been drinking since he was 13 years old.
58. In the call, Mr McInerney asked the nurse whether alcohol would make his medication more or less potent. He was informed that it would not make his medication stronger but may cause light headedness. Mr McInerney further advised that he had had an addiction to Panadeine Forte for eleven years and had a script for 240 Panadeine Forte tablets. He indicated that he had had an adverse reaction to paracetamol and could no longer take Panadeine Forte or paracetamol. The nurse told him to see his general practitioner regarding the issue.
59. The duration of the call was 11 minutes. The recording and a full transcript was tendered in evidence. In the recording, Mr McInerney's manner is calm, compliant and responsive.

Nevertheless, there was no rational need for Mr McInerney to seek such advice given the treatment plan already put in place by his treating psychiatrist and general practitioner.

60. At 2.17pm, Mr McInerney called Ms Jo-Anne Benson from Catholic Care in Burnie to confirm an “exit plan” appointment for Wednesday 25 May 2016. I assume in this context that an “exit plan” is a plan implemented to discuss alternative supports upon the cessation of the involvement of Catholic Care (as the housing objective had been fulfilled). In this phone call, Ms Benson said that Mr McInerney sounded happy and appeared to be looking forward to his future appointments with various services.
61. At approximately 3.00pm, Mr McInerney had a telephone discussion with Ms Gallagher regarding the transfer of money for payment of a car. Mr McInerney had, from 12.44pm that day, sent a series of texts, mainly requesting that Ms Gallagher deposit \$50 into his account that day. The texts continued, with the same demand, until 6.08pm. In evidence at inquest, Ms Gallagher explained that Mr McInerney had previously lent her \$500 that she was repaying by instalments. Ms Gallagher said that she had tried to pay instalments but he had become angry when she suggested meeting to arrange payments, and he did not facilitate the repayment. Ms Gallagher noted that Mr McInerney was highly agitated at the time that she spoke to him on the phone.
62. At 3.11pm Mr McInerney telephoned the NWRH to query a dental procedure that he had been scheduled to undergo in Hobart. There was nothing unusual in Mr McInerney’s query, according to the notes, except that he appeared to be confused about the procedure itself.
63. At 5.30pm, Mr McInerney was seen by Ms Lavina Alderson-Ferguson, who was visiting her boyfriend, Dylan Slatter, a resident of the Stitz Street units. She saw Mr McInerney, whom she knew, sitting on a chair at the rear of the units. In her affidavit, she said that he was smoking and seemed happy. She said he was not drinking alcohol when she saw him, however I am satisfied that shortly after this time he started to consume alcohol.
64. At 6.36pm Mr McInerney telephoned the number of his estranged sister, Cheryl Bishop. The very short duration of the call indicated that Mr McInerney was not successful in speaking to her.
65. At 6.42pm Mr McInerney left a message with his Anglicare support worker, Ms Tracey Ann Gunston. However, Ms Gunston did not receive this message until the following morning. In this message Mr McInerney stated: *“This is Robert McInerney. I want to leave a message to Tracy*

to say I am fed up with the landlord and my ex-carer lying to me. I will pay up the \$220 to the landlord otherwise I will have to pay the whole bond back to Anglicare. Will talk tomorrow when we see Jo.” Ms Gunston stated in her affidavit that Mr McInerney’s voice sounded slightly slurred in the voice message.

66. At 6.52pm Mr McInerney called the number of a friend in Hobart, Ms Lena Mets who he had also tried to call earlier in the afternoon. However, he was not successful in speaking to her. Ms Mets stated in her affidavit that she last spoke to Mr McInerney on an earlier date when he was living in backpacker’s accommodation. Ms Mets said, at that previous time, Mr McInerney was very upset, saying that he was being treated poorly by several women and that he wanted to kill himself.
67. At approximately 7.00pm, a tenant of the Stitz Street units, Mr Patrick Conelli, attended Mr McInerney’s unit. He described Mr McInerney in his affidavit as drinking red wine and being “under the weather”. Mr McInerney said to Mr Conelli that he (Mr Conelli) should leave as he (Mr McInerney), would probably get shot by police when he called them. Mr Conelli said that Mr McInerney threw some knives on the ground and stated that he intended to throw those knives at police when they arrived. Mr Conelli immediately left the building, believing Mr McInerney’s threats to be real.
68. At approximately 7.10pm, Ms Gallagher called Mr McInerney, who answered his phone but indicated that he was involved with the police and did not want to talk. The call lasted a few seconds, with Ms Gallagher stating that he seemed “in a really bad mood and pissed off”. Ms Gallagher did not try and call him back or text him. She heard nothing further until police attended her address at 2.30am the following morning, 25 May, to advise of the incident involving Mr McInerney. Later that morning, police advised her of Mr McInerney’s death.

#### *The incident leading to death*

69. At 7.35pm on 24 May 2016, Mr McInerney called ‘000’ from a mobile phone. The call was answered by a police officer in Radio Dispatch Services (RDS) who spoke with Mr McInerney for 10 minutes 17 seconds. The call was recorded and was played during the inquest. In the course of the call, Mr McInerney told the officer, among other things, that he had been “ripped off” by his former landlord and ex-carer (Ms Gallagher); that he was willing to give up his life because he had “had enough”; that he was armed with knives; and that he hoped that police would shoot him after he threw knives at them. Any further summary of the call cannot

capture adequately the content and its sequence, and therefore it is important to set out the full transcript of the call.

RDS *Police Emergency — Go ahead.*

M *Yeah I've had enough of being ripped off by people.*

RDS *Sorry?*

M *I've had enough of being ripped off by people.*

RDS *Right, you need to ring on 131 444 please.*

M *I'm coming out with knives.*

RDS *Sorry?*

M *I'm coming out with knives.*

RDS *Where are you? What's going on there? You're being ripped off by people?*

M *Yep.*

RDS *Yep. So we can deal with it can you please ring us back on 131 444?*

M *No. I'm letting you know I'm coming out with knives.*

RDS *Well where are you with your knives?*

M *Well I'm at number 15 Stitz Street in Cooe. I'm mentally unstable, I'm in a shit load of pain and I don't fuckin' care about anything.*

RDS *Alright, what number street were you?*

M *15 Stitz Street.*

RDS *Stig?*

M *Stitz. S T I T Z.*

RDS *Sorry mate I'm not a street atlas. I don't know every single street in Tasmania I'm afraid.*

M *Yeah I know.*

RDS *What was your name?*

M Does it matter?

RDS Well yeah.

M You've got me phone number anyway.

RDS Well if you want police to come and speak to you I need to know who I am going to send them to.

M Robert.

RDS And your surname Robert?

M McInerney

RDS Who have you been ripped off by?

M An ex-landlord and an ex-carer.

RDS And you'd like police to...

M And I've had enough.

RDS And you'd like police to come out and see you?

M I'm pretty sure the police will be standing back from me because I'm, I've loaded me self with knives.

RDS Oh well police aren't really going to help you very much if you are going to have knives and stuff, are they?

M No. I'm hoping they are going to fucking shoot me after I throw me knives at 'em. Got it?

RDS Yep, so do you want to see police or not? I don't think I'll send police if you reckon you're going to throw knives at 'em.

M No I'm going to throw knives at fucking somebody and if it's not the police turn up then I'm going to throw them at somebody else. I don't care. I honestly don't fucking care anymore. I've asked for a police report and everything uh from what has happened in the past and I still haven't got it and I requested it fucking like three months ago or two months ago and I still haven't got it. I've been on the phone to Mental Health Line and fucking everything and all I've done is got the run around. I've got ten thousand fucking phone numbers on my fucking, on all the paperwork that I've got. Mental

Health Service and, and then um, um nurses and all that stuff (inaudible) to see what fuckin' alcohol like I'm trying to find out what alcohol does.

RDS Mmm.

M With me medication and then the nurses are saying, "Oh go back to your doctor." So how, what the fuck is that, what the fuck is that phone number for?

RDS I don't know I'm not...

M When they're not full of any information whatsoever. I, I've fucking had enough of this. Send police around here. I'll throw knives at 'em. I want them to shoot me because if they don't, if they don't come around here right, if the police don't come around here and I'm living right opposite the Senior Sergeant, I know. He's got a black four wheel drive and he's a Senior Sergeant and he's had police turn up at his fucking place and everything right just to get signatures or anything like that, yeah and the next door neighbour to him is a cop as well. I don't care. Right? He probably won't even fucking know what the fucks going on.

M I just don't care. I've got no reason to care.

RDS Alright, so can you guarantee the safety of the police if they, if I send them round?

M Um, oh not really. I am armed with...

RDS What type of knives have you got?

M Oh kitchen knives.

RDS How many?

M Um, eh?

RDS How many?

M I'm not going to let you know that. I'm a chef by trade so I have more than one set, put it that way. You're typing all this down aren't yah? I can hear yah.

RDS Yeah I am.

M Well yeah I know, yeah. I'm pissed off with landlords that think they're fucking above people that just pay rent and everything like that and one's taken me to court and taken all me bond where he's sending me text messages on me phone and saying put \$220 in my account and then you'll get the

*\$520 back in bond. So how, how did it go up fucking \$300 over just like putting \$220 into his account? It, this pisses me off. I lent my ex-carer \$500, right, and she's not even fucking, she told me today that she was going to put \$50 into my account and let me know when she put it in and then I haven't heard from her and now I know that her daughter, her daughter won't fucking answer me and she doesn't and she's turned off her phone. She doesn't even want to explain why, right, why she won't even pay me back.*

RDS *Yeah I'm not 100% sure mate. I don't know.*

M *Yeah I know you don't know. I know that.*

RDS *What's her name?*

M *Anne Gallagher and she's in Devonport at the moment with her boyfriend which I really don't care about. She was just my carer. For fuck's sake and she doesn't understand this. She thinks I'm treating her like I was her partner or something and I'm thinking well fuck you're getting on with your life just pay me back what you owe me!*

RDS *Yeah the court system is not very uh fair with that type of stuff is it?*

M *Right, she took me for everything I had. All the furniture I bought for her kids and for her and all the stuff I moved up from Hobart from my own, own unit through Housing, right, all the stuff I moved up from there she's got. I've had enough of this shit.*

RDS *Mmm.*

M *I've had enough of being ripped off by people and the landlord of the fucking house, that we were living in, right, he's kind of ripped me off with all my bond.*

RDS *Yeah.*

M *Well, as far as I'm concerned I'm quite willing to fucking give up my life because I've had enough of this shit. If people just want money well I'll, I don't want to give anybody any money any more. I don't want to be in debt to anybody.*

RDS *No well no one does I don't think. I know I certainly don't.*

M *Yeah well I can't afford to buy a house. I'm on Disability Support Pension, you know I can't afford to buy a house and then I get all me top teeth ripped out like you know in December/November, right, last year.*

RDS *Mmm.*

M *And because one of the roots of me tooth has gone through to me sinus, uh there they are. You've already sent them out haven't yuh? Bye.*

RDS *You there?"*

70. Due to the threats made by Mr McInerney, the RDS operator tasked police units to the premises whilst still speaking to Mr McInerney. As is apparent from the transcript above, Mr McInerney terminated the call upon becoming aware of the arrival of the first unit. The following police officers attended at the Stitz Street units; Acting Sergeant Nicholas Lomman, Constable Andrea Perry, Senior Constable William Flynn, Constable Cameron Little, Constable Caroline McGregor, Constable Elmar Van Breda, Constable Sarah Bosch and Sergeant Steven Andrew Keiselis. All eight officers in attendance were involved in the encounter with Mr McInerney and all gave evidence at inquest.
71. I now set out the sequence of events that followed with reference to the affidavits, interviews and oral evidence given by these officers as well as supporting documentation. There is little divergence or inconsistencies in the evidence of the officers as to the important events at the scene. This is the case notwithstanding that, the protocols of Professional Standards, meant that there was no opportunity for discussion of the events between the officers prior to being interviewed. There is, of course, some divergence in the order of events, positions of officers at the scene and statements made by persons present.
72. Acting Sergeant Lomman and Constable Andrea Perry were the first police unit to arrive at 15 Stitz Street. They arrived at 7.45pm in police vehicle Bravo 22. It was dark at that time.
73. The property, 15 Stitz Street, comprises a moderate-sized, 1960s-style, two storey block of six units. There is a large concrete forecourt at the front of the units adjacent to the street for parking. The individual units have large windows facing the street but residents can only access or exit their unit from the rear. The western side of the property has unobstructed access to the rear by a wide concrete driveway. The eastern side only has a very narrow space between the side of the unit block and the boundary of the neighbouring property. On this side, there is no realistic pedestrian access, as this is prevented by a fence and a raised garden bed. The property has a modest-sized back yard with a concrete and grassed clothesline area directly outside the rear of the building. However, the back of the property borders, seemingly without physical barriers or fencing, onto a very large and steep uphill

portion of wooded bushland consisting of large trees and rough terrain. The upper boundary of the bushland is not able to be seen and the side boundaries are also difficult to determine. There are outside lights at the back of the unit block but the illumination at the time was limited. There were no lights in the main part of the back yard and the bushland area was completely dark.

74. Upon arrival at the property, Acting Sergeant Lomman and Constable Perry observed Mr McInerney to be either sitting or crouching near bushes at the eastern boundary of the unit complex. Mr McInerney was of Caucasian appearance with grey hair and heavy build. He was 191cm in height and weighed 139.9 kilograms. They heard him yelling something unintelligible and saw him holding at least one large knife.
75. Acting Sergeant Lomman attempted to engage Mr McInerney in conversation from his police vehicle and asked him to put the knife down. Mr McInerney made mention of problems with his landlord. It appears that Acting Sergeant Lomman then saw that Mr McInerney had another knife. At this point the two officers lost sight of him.
76. Senior Constable Flynn then arrived at the scene, in police vehicle Charlie 74, at a time suggested by the evidence to be a matter of minutes after the arrival of Acting Sergeant Lomman and Constable Perry.
77. Senior Constable Flynn was at his home when he overheard the tasking for officers to attend Stitz Street where a man had said he was armed with knives and wanted to be shot by police. Senior Constable Flynn, an experienced police negotiator, left his home and proceeded to travel the short distance to the Stitz Street address. He was guided by directions from Radio Dispatch Services. Senior Constable Flynn, in his account to police subsequently, said that he recognised an immediate need for a negotiator as well as to provide backup to the two members initially tasked to attend. He said that he believed, upon receiving the information about the incident, the most likely strategy would be one of containment and negotiation.
78. Senior Constable William Flynn joined Tasmania Police on 14 October 2013 after completing a fast track course at the Tasmanian Police Academy. He completed his probationary period in May 2014 and was assessed with high levels of performance in all areas. He had previously served as a police officer in the New South Wales Police Force from 2000 to 2004 and subsequently as a police officer in the Queensland Police Service from 2004 until October 2013. He completed a standardised negotiator training course whilst in the Queensland Police Service in 2012. In 2013, he obtained a Bachelor of Counselling from the Australian Institute

of Professional Counsellors. He was appointed a member of the Tasmania Police Negotiation Unit on 15 June 2014. On 28 March 2016, Senior Constable Flynn transferred to the Criminal Investigation Branch in Burnie. He has no prior convictions and no sustained matters of misconduct as a police officer in Tasmania. His policing records in each of the three states in which he served have been thoroughly scrutinised by Professional Standards in this investigation and reveal no issues of concern. There is no need for further comment upon Senior Constable Flynn's competence and integrity as a police officer, including a negotiator, as it is not in issue in this inquest.

79. At the time of the incident, Senior Constable Flynn had current operational validations, including the use of firearms, OC spray and the Multi-Use Integrated Protection Vest (MIPV). He had not consumed alcohol, illicit drugs or prescription medication, as confirmed by subsequent testing of his blood samples.
80. Upon arrival at the premises, Senior Constable Flynn parked his vehicle. He noted that there was ample street lighting at the front of the unit complex. Senior Constable Flynn asked Acting Sergeant Lomman what was going on. Acting Sergeant Lomman said that a male was present at the premises, that he and Constable Perry had tried to engage with him, that he had become angry and he had knives. He told Senior Constable Flynn that the male had just ran off up the side access of the property and out of sight. As Senior Constable Flynn received this information from Acting Sergeant Lomman, Constable Cameron Little and Constable Caroline McGregor arrived to assist in police vehicle Bravo 74. The officers shone torches down the side of the unit block to try and locate Mr McInerney. At this point an elderly male came out from one of the units and, upon being questioned, said that he had not seen anyone. He was directed to return to his unit.
81. After a short time, Constable Little saw what appeared to be a person at the eastern side of the property near a fence separating the front and rear yards. Senior Constable Flynn also noticed what appeared to be a body, presumably Mr McInerney, lying face down on a raised garden bed, the head facing towards the rear yard. The garden bed was approximately the head height of the police officers who were standing on the ground level forecourt in front of the unit complex. It was at this point that Senior Constable Flynn first attempted to establish contact with Mr McInerney. He said to him "*my name's Will, I'm a negotiator with the police – I just want to talk*". He repeated this statement several times as there was no response from Mr McInerney. However, Mr McInerney eventually replied "*I heard you the first three times*" or words to that effect. At this point Acting Sergeant Lomman saw a knife in Mr McInerney's

hand. Senior Constable Flynn continued to try and engage Mr McInerney, including asking him about his back pain, using known information conveyed to him by Constable Perry. Mr McInerney stated that he did not want to discuss his back pain. Upon further attempts by Senior Constable Flynn to engage him, he started to talk about people “*ripping him off*”. Senior Constable Flynn stated in his interview that, mid-sentence, Mr McInerney began throwing knives, with two or three knives being thrown and landing close to him and Constable Little. It appears that one of the knives may have landed on the roof of a parked police car.

82. Senior Constable Flynn yelled to the other officers to take cover and that Mr McInerney had knives. The officers present retreated and took cover. Senior Constable Flynn went to the other side of the road, assessing that position as being out of range of the danger. Senior Constable Flynn had initially drawn his firearm during this incident but re-holstered it as he assessed that there were residences in the line of fire. He therefore drew his OC spray and held it by his side. Acting Sergeant Lomman was of the view that Mr McInerney was deliberately aiming at police and advised RDS that a knife had been thrown.
83. A comment was made by Senior Constable Flynn to the other officers after the knives had been thrown that it appeared Mr McInerney was not in possession of further knives. However, Mr McInerney, who was still present in the area of the eastern boundary, responded by saying words similar to “*you want a bet?*”
84. Senior Constable Flynn then saw Mr McInerney bend down, retrieve two knives and then stand again. One of the knives was similar to a butter knife but the second appeared to be a much larger carving knife. Mr McInerney threw the butter knife towards Senior Constable Little’s position and transferred the carving knife into his right hand. Senior Constable Flynn tried to re-engage with Mr McInerney, stating that he was there to help and he would not approach him or require him to move, and that police were not there to hurt him.
85. During this incident, Constable Little was in close proximity to Mr McInerney and drew his firearm. Senior Constable Flynn told investigators subsequently that he saw that Constable Little had drawn his firearm, indicating that Mr McInerney only had to descend a set of stairs to reach Constable Little’s position. Constable Little shouted at Mr McInerney “*drop the weapon, drop the weapon*”. In his interview, Constable Little described the knife remaining in Mr McInerney’s possession as being a kitchen knife with a 20 centimetre blade. Senior Constable Flynn also gave evidence of Mr McInerney holding this knife.

86. At 7.50pm off-duty officer, Sergeant Steven Keiselis, then a resident of Stitz Street, received a message or call from an on-duty police officer advising that there was an incident close to his residence involving a person armed with a knife. At the time of the call, Sergeant Keiselis was not at home but he promptly returned to Stitz Street to assist the officers present. He arrived at the scene several minutes later in plain clothes, unarmed and without any of his issued protective equipment.
87. At this point, I observe that all officers at the scene, except Sergeant Keiselis, were wearing their Multi Use integrated protection Vests (MIPV). This vest comprises a high visibility outer garment with inner protection and plates that withstand high calibre ammunition. The evidence indicates that the officers were correctly wearing their vests and that they were equipped with the required accoutrements, including firearms and OC spray.
88. Sergeant Keiselis, upon arrival, saw Mr McLnerney illuminated by the officers' torch light, still at the front of the eastern side boundary of the property. Sergeant Keiselis told police in his subsequent interview that, at that stage, Mr McLnerney was armed with a "couple of knives", was agitated and that Senior Constable Flynn was attempting to negotiate with him. Sergeant Keiselis was informed that Mr McLnerney had already thrown knives.
89. Sergeant Keiselis, having familiarity with the area, obtained a torch from Constable McGregor and walked to the eastern side of the units near Constable Little. I agree with the submission of counsel assisting, Mr Ransom, that it was quite likely that the torch was a spare, and further, given Constable McGregor's position in a group of officers on the western side, her effectiveness was not reduced by providing Sergeant Keiselis with a torch.
90. Mr McLnerney then moved from the front of the unit complex towards the rear of the unit complex via the eastern boundary fence – in other words, he retreated from his position on the boundary and apparently into the back yard. All attending police officers lost sight of him at this time.
91. In recounting the initial part of the incident to this point, it is difficult to reconcile the accounts of the officers present so that a completely accurate sequence of events can be related. It is understandable that the accounts varied in some minor respects, given the very short period of time over which it occurred. The darkness, the differing positions of the officers and the dangerous nature of the situation might have been factors leading to discrepancies in evidence. I am satisfied, having heard the officers giving evidence and

reviewing their accounts, that all provided honest, forthright and comprehensive accounts of the whole incident.

92. Based upon the evidence, I am therefore satisfied that, at the front of the property, there were two separate episodes of knife-throwing by Mr McInerney which placed the attending officers in danger; that Mr McInerney was impervious to continuing attempts at negotiation by Senior Constable Flynn; and that, at the conclusion of these two episodes, he had likely not exhausted his supply of knives.
93. As a result of Mr McInerney's disappearance, Constable Little and Sergeant Keiselis also moved from the front to the rear of the unit complex along the eastern boundary.
94. At Sergeant Keiselis' request, Constable Little provided Sergeant Keiselis with a can of capsicum spray. Sergeant Keiselis was unarmed upon arrival at the scene. While there appeared to be some uncertainty in the accounts of Sergeant Keiselis and Constable Little as to where this occurred, (namely, towards the front of the property or in the rear yard) nothing turns on that matter.
95. At about 8.00pm Constable Elmar Van Breda and Constable Sarah Bosch arrived at the scene in police vehicle Bravo 23. Their arrival coincided with the time of Mr McInerney disappearing to the rear of the property. Constable Bosch stated that when she and Constable Van Breda arrived, Constable Perry advised that the officers present were looking for Mr McInerney.
96. Upon Mr McInerney disappearing, Senior Constable Flynn and Acting Sergeant Lomman moved together towards the rear of the property via a concrete laneway on the western side of the units (adjacent to 17 Stitz Street). Upon all the evidence, it seems that it was only a very short period (estimated by Acting Sergeant Lomman as about 30 seconds) of searching for Mr McInerney by torchlight before he was located.
97. Mr McInerney was sighted, initially by Acting Sergeant Lomman, upon an area of the embankment at the rear of the yard some 30 metres away and behind a tree. He was lying on his side in the wooded, steep bushland with his feet downhill and head uphill. Mr McInerney was illuminated by Constable Little and also by Senior Constable Flynn with their torches.
98. Senior Constable Flynn called out to Mr McInerney who came out from behind the tree. Mr McInerney was observed to be making slashing gestures and slashing at a nearby tree branch with a knife while passing the knife between his left and right hand. During this time, Senior

Constable Flynn made efforts to engage Mr McInerney that have been described by all officers present. Again, the various officers have provided slightly different evidence of the words spoken by Senior Constable Flynn at this stage. I find that Senior Constable Flynn, upon sighting Mr McInerney, tried to engage him by stating words such as “drop your knife, Robert”, “we just want to talk”, and “we care and want to help”. He also said “stay where you are - we will not come closer”. Senior Constable Flynn also tried to engage Mr McInerney by asking him about his back pain. The evidence of all officers was that Mr McInerney did not respond positively and continued waving the knife. During this process of attempted negotiation, Senior Constable Flynn drew his firearm. Senior Constable Flynn gave evidence that he had told Mr McInerney on several occasions that he had his firearm out and to stay where he was or he would shoot. The best evidence of what next occurred comes from the account of Senior Constable Flynn in his interview:

*“...Mr McInerney only at that point, walked a few, a few steps doing his slashing motion and he did stop at, at my command and then I stopped and I actually put one, one hand up and my left hand up um, and I was putting my firearm away and I put it away um, and I just said, look again, “Stay where you are Robert. I’ll stay here. Let’s just talk.” So I just wanted to get something simple, plain out there to him that we weren’t coming in and he wasn’t required to come to us. Um, and I started to um, try and communicate with him again and as I started the next sentence, he’s raised the knife up again in his left hand um, and, and started ah, walking towards us again and I drew the firearm again and pointed it towards him and repeated again, “Robert I’m armed so do not move or I will shoot you.” Um, but he was still walking um, and, and picking up the pace and I then heard Sergeant um, Keiselis who um, lives nearby um, who hadn’t been at the job um, from my left call out um, something like, “Spray him Nick”. Or, “Nick spray him” and Nick Lomman then um, ran in front of me as Mr McInerney still um, still, still advancing and at that point Mr McInerney um, began running at, at the same time Nick has gone forward and Nick has, has let go some OC, deployed some OC spray and moved off to the left but um, and um, and tried to and he actually turned his back um, to Mr McInerney who was, at this point, now running and he turned his back to, to run away, effectively, to get out of the spray and I started then again to say um, you know, “Stop.” Um, you know, um, “Robert I’m, I’m armed. Stop or I will shoot you.” But I didn’t get all of that out, I only got um, I think it was um, “Robert I’m...” Or, “Robert I’m armed.” I only got a couple of words out the, the third time and, and um, at that point because he was now running, he had come in line with um, Nick Lomman and as he was running, he had put his, let me think, his right arm up in front of his eyes, I assume to block the spray and he was slashing side to side with his left, left hand with the carving knife and as he had drawn even with Constable Lomman his arm*

went back and so the next strike was Constable Lomman and, and I had started walking backwards um, because he was coming at us and to prevent the knife going into Constable Lomman I, I then discharged the first shot.

I don't know where it hit, I didn't even know if it hit but um, he, he was still running um, really quickly. I let another shot off, still walking backwards and at the time, I, I could appreciate he was getting close to me and I knew there was some sort of garden bed or, or step or the building or something, I knew I was coming to a close in terms of where I could go um, and I was walking backwards and I, and I think my arms were actually starting to come back towards me because I'm running out of space with him running. I let a third shot out, again I still don't, he's still running and as I let the fourth go um, I had my, I actually had my gun really quite close to me and as I squeezed it out, he, he dropped and I remember thinking because he'd dropped as the fourth one went out um, I remember thinking shit I've shot him in the head and I'm, I'm not sure why that was a concern to me at the time more so than being shot anywhere but I remember that thought going through my head and, and sort of having half a panic in my head, that I'd shot him in the head but he dropped at my feet um, literally and his, his um, his head was ah, on, like um, facing my, say right hand and his feet off to my left and we were very, very close to um, to um, well we were right on the corner of um, some hedging...

So immediately um, obviously the, as, as I, as I was aware that he was falling um, you know, we're taught to um, continue that particular use of force until the threat is removed and, but he was falling so far as I was concerned, when it comes to a gun, the threat's been removed. So um, he, he hit the deck and I just um, sort of dropped down to secure him, restrain him, not that he was fighting but um, he still had a knife um, I then heard rustling and Cam Little um, ah, came out of the garden, bushes or wherever he was to my left and, and in front and he um, squatted down, I guess in front of Mr McInerney who was on his right side or somewhat on his right side and Nick Lomman, who had run off to the left, he came down and secured Mr McInerney's feet or certainly sat at his feet."

99. The account of all other officers supports the account of Senior Constable Flynn. Obviously, there are variations in perspective but it is unnecessary to set out the individual accounts of the incident by each officer present. I add that Ms Alderson- Ferguson (a civilian witness previously referred to as being present in the units) further corroborated the accounts of the officers. In her affidavit she described in detail the statements made to Mr McInerney to try and pacify him and the multiple requests for him to drop his knife. She also said that she heard Mr McInerney yell "just shoot me" which I accept he may well have uttered.

100. At the time that Mr McInerney was shot by Senior Constable Flynn, all officers witnessed the incident from a close distance in the rear yard. Acting Sergeant Lomman was standing very close to Senior Constable Flynn. Sergeant Keiselis and Constable Little were positioned closer to the fence on the eastern side. Constable Bosch and Constable Van Breda were in the driveway area on the western side, although it seems that Constable Van Breda may have been a little further into the property. Constable Perry and Constable McGregor were also positioned in the driveway area but further back towards the road.
101. Two factual matters regarding the incident require discussion.
102. Firstly, as described by Senior Constable Flynn, Sergeant Keiselis called for Acting Sergeant Lomman to use OC spray at the time when Mr McInerney had commenced advancing downhill towards them with the knife in his left hand. Although there is no doubt that Sergeant Keiselis called for Acting Sergeant Lomman to spray Mr McInerney, Acting Sergeant Lomman told the investigators in his interview that he did not hear those words and it was his independent tactical decision to deploy the spray at the moment he did. He stated that even had those words been uttered he would not have taken it as an order as it was his tactical choice whether to do so or not. In his evidence at inquest, Acting Sergeant Lomman reiterated that he did not hear the words of Sergeant Keiselis and made the decision independently. Acting Sergeant Lomman was an articulate, helpful and credible witness. I fully accept his evidence. In a situation of heightened threat, as this was, it is not surprising that he did not hear the words, and also not surprising that he made the decision to spray, as it represented the last occasion to resolve the situation without Mr McInerney being shot. Acting Sergeant Lomman made the decision to spray, notwithstanding that Mr McInerney was advancing down the hill at close distance to himself and Senior Constable Flynn and that the deployment of spray involved moving across the line of fire where Senior Constable Flynn had his firearm trained upon Mr McInerney.
103. Secondly, there was some conflict on the evidence as to the position of Acting Sergeant Lomman in deploying the OC spray. Although Acting Sergeant Lomman and at least one other officer present gave evidence that he did not move across Senior Constable Flynn's line of fire, I prefer the evidence of Senior Constable Flynn on this point, as he was in the best position to make this observation having his firearm trained directly in front of him onto Mr McInerney. I find, understandably, that Acting Sergeant Lomman was mistaken in this regard.

104. The evidence suggested that Mr McInerney was only 4-6 metres away from Acting Sergeant Lomman and Senior Constable Flynn at the time of deployment of the spray. While the spray appeared to hit Mr McInerney in the face, it had no effect upon his forward movement. Mr McInerney raised his right arm over his face and continued to rapidly approach both officers armed with the knife in his left hand.
105. Before and during this period further demands were made for Mr McInerney to drop the knife at this time. Senior Constable Flynn shouted "*Stop there or I'll have to shoot*", but Mr McInerney continued to advance while threatening with a knife.
106. All of the comprehensive evidence in the investigation allows me to find that Mr McInerney was approximately 3–4 metres from Senior Constable Flynn's position when Senior Constable Flynn fired the first shot. The remaining three were fired in quick succession. Senior Constable Flynn was retreating as he fired. Mr McInerney continued to advance towards Senior Constable Flynn as he fired the shots.
107. All shots appeared to strike Mr McInerney who, only after the fourth shot, fell to the ground effectively at the feet of Senior Constable Flynn. Although obviously suffering multiple gunshot wounds, Mr McInerney remained conscious. The knife was removed from his possession, he was restrained and first aid was then applied by the attending officers as per proper protocols. Ambulance Tasmania personnel were immediately called to attend, the call being placed at 8.08pm. Two ambulance crews arrived at 8.15pm. The wounds appeared to the paramedics to be to the right hand and arm, as well as the right thigh and buttock and right lower quadrant (abdomen). Pressure was applied to stem what was observed to be considerable blood loss. The paramedics noted that Mr McInerney was lucid, moaning and slightly uncooperative in his demeanour. He was removed from the scene by the paramedics and transported to the NWRH where he underwent emergency surgery, including blood transfusion, but the massive blood loss in the abdomen and right thigh could not be controlled. Mr McInerney died at 3.50am on 25 May 2016. Mr McInerney was later formally identified by Ms Gallagher.

### Medical findings at autopsy

108. On 25 May 2016 Dr Christopher Lawrence, State Forensic Pathologist, conducted an autopsy upon the body of Mr McInerney. Dr Lawrence also gave oral evidence at the inquest. He provided a detailed analysis in his report of the gunshot wounds suffered by Mr McInerney. He summarised those as follows:
- a) *An indeterminate range gunshot wound in the right abdomen perforating the external right iliac vein, the ileum, the caecum and the sigmoid colon with recovery of a projectile in the left buttock.*
  - b) *Indeterminate range gunshot wound in the right thigh with perforation of the superficial right femoral vein and exit wound in the right buttock.*
  - c) *Through and through gunshot wound in the right hand perforating the right third finger, the base of the right thumb and lodging in the subcutaneous tissue of the right upper arm.*
  - d) *Gunshot wound through the posterior right elbow with apparent extension into the right flank ending in the right buttock superficially and laterally.*
109. Dr Lawrence formed the view that the cause of death was the gunshot wounds to the right thigh and abdomen. Dr Lawrence concluded that the two gunshot wounds described in (a) and (b) above caused death due to blood loss by striking the right iliac vein and the right superficial femoral vein.
110. Dr Lawrence also opined that the pattern of gunshot wounds was consistent with a single shooter firing four shots towards Mr McInerney in the circumstances of the incident as described to him, and as outlined in this finding. In this regard, it would seem that Mr McInerney was likely to have sustained the gunshot wounds set out in (c) and (d) above whilst his right hand and arm were raised to protect his face from the OC spray delivered by Acting Sergeant Lomman.
111. Dr Lawrence also observed evidence of OC spray on the face of Mr McInerney.
112. Toxicological results from post-mortem blood testing revealed that Mr McInerney had a very high blood alcohol level of 0.174 grams of alcohol per 100 mm of blood and a therapeutic level of the anti-depressant Citalopram.
113. First Class Constable Simon Taylor and First Class Constable Stephen Denholm, both ballistics experts, undertook comprehensive analyses of the scene, firearm, and clothing and body of Mr McInerney. Their examination and conclusions were consistent with the findings of Dr Lawrence, the forensic scientists and the eye-witnesses.

114. In summary, First Class Constable Taylor confirmed the presence of four spent cartridge cases at the scene in a position consistent with having been ejected from the firearm in the position described by Senior Constable Flynn and other officers. One unfired cartridge was found in the breach of the gun. Comparisons of the firearm, cartridges and bullets confirmed that the 9mm Glock firearm issued to Senior Constable Flynn was that which was used to shoot Mr McInerney. The garments worn by Mr McInerney had previously been examined by scientists at Forensic Science Service Tasmania during which time a small number of burnt/unburnt propellant particles were discovered on his clothing. As a general rule, the type of particles that were located travel a maximum of 1 to 1.5 metres from the muzzle and their presence indicates discharge of the firearm at close range. In his affidavit, First Class Constable Taylor stated that the low number of particles on the clothing indicate that at least one of the four shots was discharged at approximately this range to Mr McInerney. The evidence does not permit me to make a finding regarding which shot was fired at this range.

#### **Comments upon the incident and investigation**

115. The evidence in this investigation into the circumstances of Mr McInerney's death was gathered in a comprehensive, professional and impartial manner. As coroner investigating this death I am fortunate to be able to have full confidence in the quality of the evidence. The importance of integrity in the investigation was apparent to all officers involved in the incident, from the time Senior Constable Flynn handed over his firearm immediately after he shot Mr McInerney until the Inspector of Professional Standards, Inspector Mark Wright, provided to the coroner the complete evidence and comprehensive report compiled by Sergeant Morrisby. Significant credit must go to the officers of Professional Standards assisting at all stages in this investigation. The importance of integrity of the process to the coronial functions, and therefore to the community, is paramount in these situations. I fully acknowledge that, in serving the crucial goal of integrity of investigation, there may be consequences to individual officers involved in an incident such as this. For example, in her evidence Constable Bosch articulately described her distress arising from what she said was a prolonged isolation of the officers in the initial phase of the investigation, as well as the ongoing personal consequences of the traumatic incident itself.

116. When considering Mr McInerney's difficult life and issues from a hindsight perspective it is unsurprising, maybe even inevitable, that his life ended at an early age through actions instigated by himself. His entrenched personality issues, depression and alcoholism, combined with his chronic pain, created the preconditions for regular episodes of aggression and actual

or intended self-harm. There is no indication on the evidence that he was approaching the stage of reducing or ceasing his alcohol consumption. He was a person constantly preoccupied with his own perceived pain, medical treatment and life issues. It does not appear that he was capable of genuine empathy for others. He drew heavily upon the resources of numerous health and other services who, with patience and goodwill, provided him with comprehensive support, treatment and the means to assist himself. Mr McNerney repetitively contacted these services to discuss his health and other grievances, but was not able to take the opportunities offered to change his situation. His personal distress was particularly obvious when he was intoxicated, manifesting in irrational, intimidatory, violent and suicidal behaviour.

117. Whilst the possibility of Mr McNerney ending his life was expressed by him regularly, it could not have been foreshadowed that, on 24 May 2016, he would take the action that he did. Perhaps his multiple calls to services that day may have been, for him, a cry for help. However, in those calls, there was no indication of his imminent intention to end his life, let alone in the manner that transpired. In particular, the discussions involved plans for future appointments and specific statements that he was not, at that time, suicidal. As he became intoxicated, his mood dramatically changed and he formed the intention to die. He formulated a clear plan to arm himself with multiple knives and to call police officers to attend and shoot him dead. Although he was able to form and execute this plan, it is clear that he had no regard to the obvious danger and consequences to all others who were necessarily forced to become involved.
118. Senior Constable Flynn's actions throughout the incident were exemplary. His skill as a negotiator had previously enabled him to successfully resolve many prior situations in which he was involved. However, Mr McNerney was utterly impervious to negotiation and requests to disarm himself. He was intent upon dying. Mr McNerney was shot only when there was no other choice but to do so. A courageous attempt by Acting Sergeant Lomman to use less than lethal force at the final moment was unsuccessful to prevent the danger. The firearm was required to be discharged at Mr McNerney on four occasions to prevent officers present being attacked with his knife. There is ample evidence that the belief of the officers at the scene, particularly Senior Constable Flynn, Acting Sergeant Lomman, Constable Little and Sergeant Keiselis, was that Mr McNerney was intent upon killing or seriously injuring them. I am satisfied that anything less than that degree of lethal force may not have prevented such an attack.

119. Briefly, I make particular mention of the evidence at inquest given by Acting Sergeant Lomman and Senior Constable Flynn, upon whose accounts and testimonies I have relied heavily in this finding. Both gave clear, helpful, impartial evidence in response to questioning. Both impressed me as highly effective, diligent and respectful officers.
120. Whilst Senior Constable Flynn's use of lethal force was not an issue contested at inquest it is appropriate, for completeness, to note that in the investigation I received an affidavit of Sergeant (now Inspector) Marco Ghedini, then the Officer in Charge of the Operational Skills Unit at the Tasmania Police Academy. His duties in that position involved review, development and training in all areas of the Operational Skills portfolio, which relevantly includes defensive tactics, firearms, OC spray, and use of force theory and practical application. Relevantly to this finding, Sergeant Ghedini comments upon the appropriate training and procedures around use of firearms. He states that Tasmania Police does not encourage nor endorse the practice of "shooting to wound" primarily because in the extreme cases where a firearm is used to protect life, it is necessary to incapacitate the subject immediately. He also provides detailed reasons why shooting to wound carries with it a number of significant risks. Therefore, police training involves shooting at the body mass of the subject.
121. Sergeant Ghedini states that police officers must comply with the *Australia New Zealand Police Use of Force Principles*. He provides in his affidavit that, in Tasmania, these guidelines apply, via the Tasmania Police Manual, as follows:
- "Police officers will not use firearms against another person except:
1. In self-defence or defence of others against the imminent threat of death or serious injury;
  2. To prevent the perpetration of a particularly serious crime involving grave threat to life;
  3. To arrest a person presenting such a danger and resisting their authority or to prevent his or her escape;
  4. When less extreme means are insufficient to achieve these objectives.
122. In any event, the intentional use of a firearm by a police officer is only appropriate when strictly unavoidable in order to protect life.
123. In the circumstances provided above police shall, where the circumstances permit:
- (a) Identify themselves as police;

- (b) Give a clear warning of their intent to use firearms – for example “*Armed police, don’t move*” or “*Police, don’t move*”;
- (c) Ensure there is sufficient time for the warning to be observed before using firearms unless it would –
  - (i) Unduly place the police at risk;
  - (ii) Create a risk of death or serious harm to other persons;
  - (iii) Be clearly inappropriate or pointless in the circumstances of the incident;
- (d) Not to fire warning shots.”

124. I am satisfied that Senior Constable Flynn acted in full compliance with the above guidelines and principles.

### **Review of tactics and strategy at the scene of the incident**

#### *General comments*

125. In any case of the death of a citizen at the hands of police, it is appropriate to consider whether there was any reasonable opportunity to have prevented the death by adopting different procedures, tactics or strategies other than those actually used. Notwithstanding the manner chosen by Mr McInerney to bring about his own death, this case also requires such consideration by virtue of the coroner’s function to consider the question of “how” death occurred and to make appropriate comments and recommendations. In making the following comments, I am nevertheless satisfied that all of the police officers who responded to the incident acted with *bona fides* and in accordance with their training delivered by Tasmanian Police and in accordance with the provisions of the Tasmania Police Manual.
126. I initially observe that Sergeant Morrisby, in his report, raised the issue of what, on the evidence, appeared to be an “ad hoc” response by the attending officers to the circumstance of Mr McInerney disappearing to the rear of the property after having thrown knives at the front. Sergeant Morrisby observed, however, that if police had disengaged after Mr McInerney headed to the rear of the units and then established an “outer cordon”, there was no way to evacuate any of the residents in the units at 15 Stitz Street as all access and egress points to the units are from the rear on both the ground floor and first floor. Without police having observations on the rear of the units they could not guarantee the safety of those residents. Whilst I fully accept that the officers had no option but to take assertive action to locate Mr McInerney in the rear yard at that time, his comments raised the possibility of exploring whether a more co-ordinated approach to the search and tactics at that stage was required.

Inspector Wright also suggested that this matter was one that the coroner might wish to further explore.

127. Secondly, the evidence in my view raised a possible issue regarding the apparent direction given by Sergeant Keiselis to Acting Sergeant Lomman to deploy OC spray towards Mr McInerney in circumstances that involved Acting Sergeant Lomman placing himself in Senior Constable Flynn's line of fire and in excessively close proximity to Mr McInerney.
128. In these circumstances, I decided that it was appropriate to seek a review independent of the Tasmania Police structure regarding the tactics and strategies of the police officers involved. I am grateful to the Victorian Commissioner of Police for making available Senior Sergeant Matthew Hargreaves of the Centre for Operational Safety, People Development Command, to provide that review. Senior Sergeant Hargreaves was well qualified to provide his opinion. Counsel for the interested parties at inquest did not submit to the contrary. Senior Sergeant Hargreaves has been a member of Victoria Police for 29 years, holding various roles and qualifications within that organisation, including Coordinator of Operational Safety and Tactics Training. He is knowledgeable in the experience of Victoria Police in responding to incidents of police provoked shootings and familiar with the research concerning such incidents.
129. Senior Sergeant Hargreaves provided two affidavits dated 6 May 2019 setting out his opinions upon review of the relevant evidence and he gave oral testimony at the inquest.
130. The four necessary criteria for a "police provoked shooting", upon the evidence of Senior Sergeant Hargreaves and a research paper tendered in evidence, are as follows; (a) the presence of suicidal intent on the part of the subject as assessed by communication or gestures; (b) evidence that the subject wished to be shot by police; (c) the possession by the subject of a potentially deadly weapon; and (d) evidence that the subject escalated the encounter in order to provoke the police into shooting.<sup>3</sup>
131. The incident resulting in the death of Mr McInerney satisfies the above criteria.
132. Senior Sergeant Hargreaves said in his affidavit that in 2015 Victoria Police delivered force-wide training to assist in managing police provoked shootings based on research conducted. He indicated that the training was designed to raise awareness among operational officers of

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<sup>3</sup> Kesic and Thomas "Examining the prevalence and management of attempted police provoked shootings in Victoria", Centre for Forensic Behavioural Science, School of Psychology and Psychiatry, Monash University, December, 2012.

the term and its criteria, as well as principles for appropriate response. Whilst the details of how the training is delivered was not explored in this inquest, Senior Sergeant Hargreaves emphasised that the key factors in such training included: the need to gather all available information and intelligence to identify and manage the situation, ensuring a known command and control structure, formulating and communicating a plan, options for tactical disengagement, isolation and containment through a cordon, and the use of time, distance and negotiation.

133. It appears from the evidence of Senior Sergeant Hargreaves that the training of officers in Victoria specifically in respect of police provoked shootings is sophisticated, resource-intensive and subject to ongoing review. The increasing prevalence of such incidents in that state has caused particular focus upon the requirements for research and officer training.<sup>4</sup> I accept the submission of counsel assisting that Senior Sergeant Hargreaves' review should be considered in such context, with due regard to be paid to relevant variables and conditions in this state.

134. I turn to the specific criticisms made by Senior Sergeant Hargreaves in his review.

*The failure of attending officers to hold a rendezvous*

135. Senior Sergeant Hargreaves stated that the "initial supervisor response" in Bravo 22 did not involve initiating a rendezvous with other attending units to communicate the situation and develop a response plan based on indicated risks. He said that a rendezvous would have also allowed members to discuss various other matters including; nominate a member in charge of the scene, nominate a member in charge of negotiations rather than implied, prepare themselves relative to operational safety equipment, disseminate relevant information, discuss risks associated with known police officers living nearby, prepare a method of approach and deployment and consider requesting support services such as Ambulance Tasmania.

136. Senior Sergeant Hargreaves gave evidence that gaining time is a most valuable asset when responding to such incidents. I accept that, if time for a rendezvous between all or most attending officers can be safely taken, then a discussion (even brief) to communicate information, consider risks and develop a plan, will necessarily be invaluable in achieving a good outcome. However, in the circumstances as they actually unfolded, I am satisfied that

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<sup>4</sup> Kesic and Thomas (2017) "Attempted suspect-provoked shootings in Victoria; prevalence and characteristics" Policing: An International Journal of Police Strategies and Management Vol 40 Issue 4, pp704-718

there was no time to rendezvous. When Acting Sergeant Lomman and Constable Perry arrived, Mr McInerney was at the front of the property armed with knives, leaving them no option but to respond as they were trained to do. Although Mr McInerney disengaged from the RDS operator upon arrival of these two officers, the RDS operator told them whilst they were travelling to the premises that he was trying to keep Mr McInerney on the phone and “distracted” until they arrived. This indicated a correct approach on his part.

137. One possible option for de-escalation of the situation may have been for the officers in Bravo 22 to position their vehicle away from the property so as not to herald their arrival to Mr McInerney, thus making time to have a discussion with other officers imminently arriving and so as not to trigger Mr McInerney to disengage from the call. However, this option was not appropriate in the circumstances. The holding of a rendezvous of all attending police officers would have delayed their engagement with Mr McInerney, who they knew had threatened to use knives to hurt others. Therefore, the delay would have placed the occupants of the units and adjoining properties at risk. The attending police officers were all firmly of that view and I accept their assessment in that regard.
138. I also accept the submission of counsel assisting and counsel for the police officers, Mr Miller, that the essentials of Mr McInerney’s suicidal plan, involving him having knives and wishing to be shot by police, were known to all attending officers. Similarly, all officers were aware that Acting Sergeant Lomman was in command of the incident and that Senior Constable Flynn was responsible for negotiation. I am also satisfied that a wider cordon around the property was not an option given the geography, insufficient officer numbers and risk to other civilians.
139. The failure to hold a rendezvous did not breach any existing Tasmania Police training protocols, nor was it likely to have altered the tragic outcome. Mr McInerney, being intent upon his objective of death, deliberately did not engage with Senior Constable Flynn over the whole period of attempted negotiation even when Senior Constable Flynn raised the issue of his back pain, a matter that would be expected to draw Mr McInerney into a discussion. I am satisfied that any planning that could have flowed from a formal rendezvous would not have changed Mr McInerney’s intent or actions.
140. Senior Sergeant Hargreaves did not express concerns in his review regarding any lack of coordination between the officers when embarking upon searching for Mr McInerney at the rear of the property. I make no criticism of the officers’ actions at this point in time. Again, they were confronted with a situation where Mr McInerney had already thrown knives at

them and was in possession of at least another knife. Residents were still within the units and he had disappeared. The immediate imperative was to locate and contain him. I also note that it was likely to have been under one minute between his disappearance and subsequent location. If it had been a lengthy period of time, a rendezvous may have been desirable.

141. In summary, whilst I accept that every effort should be made to hold a rendezvous involving all attending officers before the incident, or during it (depending upon risk and opportunity) for the reasons indicated by Senior Sergeant Hargreaves, it was not possible in this instance and the outcome would have been the same.

*The presence of Sergeant Keiselis at the incident*

142. Sergeant Keiselis provided two affidavits and gave oral testimony at the inquest. Sergeant Keiselis was initially off-duty and at the Somerset Basketball Stadium when he first received the information concerning the incident. He then travelled to his nearby home which was directly opposite the units. He felt he could assist the other police officers with “local knowledge” relating to the occupants and geography of the Stitz Street units.
143. He gave clear evidence that he considered himself on duty once he attended the Stitz Street units. That position is also consistent with his understanding of the Constables Oath. Further, in his oral evidence he confirmed lodging an overtime claim.
144. The main issue raised against Sergeant Keiselis by Senior Sergeant Hargreaves was the fact that the presence of Sergeant Keiselis diminished the span of command and control as some staff defaulted to him as the senior member at the scene, rather than the appointed officer in command.
145. I agree with counsel assisting that, while there was potential for this to be the case, this criticism is not sustained on the evidence. There is no evidence that Sergeant Keiselis attempted to formally take command from Acting Sergeant Lomman. All attending police officers gave oral evidence that they understood Acting Sergeant Lomman to be the officer in charge at all relevant times. I fully accept their evidence.
146. The main incident suggesting the possibility of diminished span of control was Sergeant Keiselis shouting to Acting Sergeant Lomman to deploy OC spray. In his oral testimony, Sergeant Keiselis stated that his motivation in saying those words was because of the threat posed to those officers, and to save Mr McInerney’s life, as it was becoming increasingly likely that Mr McInerney would be shot by Senior Constable Flynn. I accept his evidence.

147. As previously discussed, Acting Sergeant Lomman gave sworn evidence that he did not hear the specific words of Sergeant Keiselis and his decision to use the OC spray was one of an operational nature, and made by him alone. The evidence also indicates that Senior Constable Flynn had his firearm drawn but was not endeavouring to shoot Mr McInerney. He made the decision to do so after Acting Sergeant Lomman deployed his capsicum spray and turned his back on Mr McInerney as he disengaged from the action of spraying. In all such circumstances it is not appropriate to criticise Sergeant Keiselis regarding his interjection.
148. While Sergeant Keiselis did play a significant role in operational matters after the shooting, his leadership at that point was appropriate.
149. Senior Sergeant Hargreaves was critical of Sergeant Keiselis in receiving from two other officers items of equipment which potentially reduced their effectiveness. I have already found that the torch obtained was likely to be a spare one and that it had no impact upon the effectiveness of Constable McGregor. Sergeant Keiselis stated that his decision to seek the OC spray from Constable Little was based on self-protection given his lack of protective equipment. Sergeant Keiselis stated that Constable Little had previously drawn his firearm and therefore was able to effectively respond if Mr McInerney had approached their location whilst continuing to present a risk to safety. He said that he was then also in a position to use the OC spray if it was necessary. Had Mr McInerney changed direction towards Constable Little and Sergeant Keiselis, he said that both secondary and lethal force options were available. The request for OC spray by Sergeant Keiselis to Constable Little in a rapidly escalating situation was understandable and underpinned by proper risk assessment.
150. In summary, I acknowledge the potential for significant issues to have arisen by virtue of the presence of Sergeant Keiselis – unarmed, unprotected and of more senior rank than the other officers. Senior Sergeant Hargreaves has clearly set out the pertinent matters, which will no doubt be considered by Tasmania Police in subsequent reviews and training. I do acknowledge that Sergeant Keiselis displayed fortitude and solidarity with his fellow officers in attending the scene, a decision which he had to make within minutes. His presence did not result in any worse outcome and it is not appropriate to make further comment regarding aspects of his involvement.

### **Training for officers of Tasmania Police in respect to police provoked shootings**

151. Assistant Commissioner Jonathan Higgins provided an affidavit in the inquest and oral evidence. His portfolio includes responsibility for Education and Training in the Tasmania Police Service. He stated in his affidavit that the Operational Skills Unit continually reviews incidents, research, practices and operational tactics as well as training delivered in other jurisdictions in order to maintain best practices and to enhance and develop training for Tasmania Police officers. He described relevant aspects of the current training regime, including active armed offender and operational skills training. In his affidavit he sets out policies upon which such training is based, such as the *Australia and New Zealand Guidelines for Deployment of Police to High Risk Situations (2018)*, *Operational Response Policy (2016)* and the *Tasmania Police Force Continuum* model. In his evidence, Assistant Commissioner Higgins also indicated that current training embraces internet based education. He also projected that virtual reality training will be used in the relatively near future. He was of the opinion that current training was adequate to deal with police provoked shootings, and that such training is under constant review.
152. Senior Sergeant Andrew Bennett, Assistant Secretary of the Police Association of Tasmania, also provided an affidavit and oral evidence to the inquest concerning the issue of training. He stated in his affidavit that it is the submission of the Police Association of Tasmania that there is a need for greater post-graduation training in the advanced use of force, particularly dynamic, scenario-based training.
153. While there was a clear conflict between the evidence of Senior Sergeant Bennett and Assistant Commissioner Jonathan Higgins as to the desirable form and frequency of such training in different policing regions, the issue is obviously complex and it cannot be resolved without consideration of a great deal more evidence.
154. It is, however, common ground that Active Armed Offender training has been prioritised by Tasmania Police. I note, though, that Senior Sergeant Hargreaves' evidence was that at the time Mr McInerney was speaking to the RDS operator, he did not fall within the definition of an active armed offender. I would nevertheless assume that many aspects of such training would be relevant to the handling of a potential police provoked shooting incident.
155. Assistant Commissioner Higgins gave evidence that Tasmania Police has never offered a discrete training module specifically tailored to police provoked shooting situations, as a need has not been identified for such training to be given by reason of very low numbers of such

incidents. He gave evidence that his assessment of low numbers is based upon his personal experience and advice from other specifically experienced officers. I accept, from knowledge of coronial records that his assessment of this incident being the only one in the past 21 years, is likely to be correct. However, there should be gathered accurate statistical information to confirm this conclusion and, in particular, statistical information regarding incidences of attempted or potential police provoked shootings.

156. In the circumstances, the position of Tasmania Police that a specific policy and training response to police provoked shootings in Tasmania is not presently necessary, seems to be reasonable. As is illustrated by the research upon which the Victorian response is based, Victoria Police was required to respond to a marked rise in such events, particularly those involving persons with mental health issues. Tasmania Police will no doubt examine the Victorian experience and response in some detail should there be a marked rise in police provoked shootings within Tasmania in future years.

### **Summary of findings required by s28 (1) of the Coroners Act 1995**

- (a) The identity of the deceased is Robert Edward McInerney;
- (b) Mr McInerney died in the circumstances described in this finding. At the time of his death he had the specific intention of ending his life. For the purposes of statistical categorisation in the Tasmanian Suicide Register, his death was as a result of suicide;
- (c) The cause of death is gunshot wounds; and
- (d) Mr McInerney died on 25 May 2016 in Burnie, Tasmania.

### **Recommendations**

1. I **recommend** that Tasmania Police consider and record criteria for the category of incidents amounting to police provoked shootings, which definition should include incidents of potential or attempted police provoked shootings.
2. I **recommend** that Tasmania Police maintain a record of those incidents fulfilling the defined criteria for police provoked shootings and potential or attempted police provoked shootings occurring in Tasmania involving officers of Tasmania Police.

3. I **recommend** that, in the event of a marked rise in police provoked shootings and potential or attempted police provoked shootings Tasmania Police reviews the need for formulation of a specific policy and training response.

I am grateful to counsel assisting, Mr Ransom, and all other counsel involved. I also appreciate the assistance provided by the coroner's associates, Sergeant Lisa Heazlewood and Constable Bridget Tyson. I also thank Senior Sergeant Hargreaves for his valuable review.

Finally, I acknowledge the efforts of all officers attending this incident, particularly Senior Constable Flynn. I am conscious that the lengthy process of investigation and inquest must necessarily be a difficult one. I hope that, with the delivery of this finding, there will be closure for the officers, family members and all who have been affected by this incident and Mr McInerney's death.

**Dated: 6 December 2019 at Devonport in the State of Tasmania**

**Olivia McTaggart**  
**Coroner**