



MAGISTRATES COURT *of* TASMANIA

CORONIAL DIVISION



RECORD OF INVESTIGATION INTO DEATH (WITH INQUEST)

Coroners Act 1995
Coroners Rules 2006
Rule 11

I, Michael Brett, Coroner, have investigated the deaths of Benjamin Mark Aherne and John William Clements.

JURISDICTION:

Because I suspected homicide in respect of the death of Benjamin Mark Aherne and because his death occurred in Tasmania, by virtue of the provisions of section 24, *Coroners Act*, I was required to hold an Inquest into his death. I decided to hold an Inquest into the death of John William Clements, because of the close temporal and circumstantial connection to the death of Mr Aherne.

On 11 June 2013, pursuant to section 50, *Coroners Act 1995*, the Chief Magistrate directed that both deaths be investigated at the one Inquest.

The Inquest was held in Devonport on 2 June 2014.

FORMAL FINDINGS:

In respect of Benjamin Mark Aherne, I find as follows:

- (a) The identity of the deceased is Benjamin Mark Aherne;
- (b) Mr Aherne died in the circumstances described below;
- (c) The cause of Mr Aherne's death was a gunshot wound to the head;
- (d) Mr Aherne died on 8 October 2011 at 128 Watkinson Street Devonport;
- (e) Mr Aherne was born in Devonport, Tasmania on 18 March 1981; and,
- (c) The identity of any person who contributed to the cause of Mr Aherne's death is set out in the detailed findings below.

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In respect of John William Clements, I find as follows:

- a) The identity of the deceased is John William Clements;
- b) Mr Clements died in the circumstances described below;
- c) The cause of Mr Clements' death was suicide by gunshot wound to the head;
- d) Mr Clements died on 8 October 2011 at 128 Watkinson Street Devonport;
- e) Mr Clements was born in Devonport Tasmania on 16 April 1965; and,
- f) The identity of any person who contributed to the cause of Mr Clements' death is set out in the detailed findings below.

CIRCUMSTANCES SURROUNDING THE DEATH

1. The evidence establishes that at some time between 7:34 am and 7:49 am on 8 October 2011, the deceased John Clements took a firearm to premises at 128 Watkinson Street, Devonport. Within minutes of arriving at those premises, he shot and killed Benjamin Aherne, and shot and seriously wounded Christina Rowlands. He then immediately turned the weapon on himself and caused his own death by a single shot through the roof of his mouth.
2. John William Clements was born on 16 April 1965. He worked as a builder before acquiring qualifications in aged care. Those qualifications entitled him to work as an extended care assistant in a nursing home. He commenced working in this capacity at the aged care facility operated by Meercroft Care Inc in Devonport in 2007. He was still working there in that capacity at the time of his death. Fellow workers invariably describe him as a reliable and respected work colleague. At least one colleague describes his caring and respectful nature with the residents of the aged care home.
3. The context in which these events occurred relates to the relationship between Mr Clements and two women, Kylie Hales and Helen Scott. Ms Hales and Mr Clements had been in a de facto relationship between May 2008 and May 2011. During this time they resided at 9 Allambie Crescent, Ulverstone. Mr Clements continued to reside there until his death. After their relationship ended in May 2011, Ms Hales returned to her former matrimonial home at 128 Watkinson Street Devonport, where she resided with her three children until the events in question.
4. The evidence suggests that Ms Hales and Mr Clements maintained a good relationship after their separation. According to Ms Hales, Mr Clements visited her and her children

regularly and assisted her with household tasks. It seems that they continued a casual sexual relationship. Ms Hales asserts that they last had sex about two weeks before 8 October. A co-worker of Mr Clements says that he told her that he had spent the night with Ms Hales on the night of Wednesday, 6 October 2011.

5. Despite this, there is evidence to suggest that Mr Clements was not coping well emotionally with his separation from Ms Hales. Ms Hales' evidence is that Mr Clements told her shortly before 8 October that he still loved her and was emotionally attached to her. Colleagues of Mr Clements describe sentiments of a similar nature in respect of his feelings towards Ms Hales, expressed by Mr Clements in the period leading up to the events in question.
6. Some months before 8 October, Mr Clements commenced a relationship with a fellow worker, Helen Scott. Ms Scott is an extended care assistant employed at Meercroft. Ms Hales says that Mr Clements informed her of this relationship shortly before 8 October. He told her that it was a purely sexual relationship, that he was still emotionally tied to Ms Hales and that he intended to break off the relationship with Ms Scott. The fact that the relationship was based on occasional sexual contact is consistent with the evidence of Ms Scott.
7. Prior to 8 October, a proposal emerged in discussions between Mr Clements and Ms Hales, and separately between Mr Clements and Ms Scott, that the three would be involved in a simultaneous sexual encounter. (For ease of reference, I will throughout these findings, refer to the proposed sexual encounter by its colloquial term "*a threesome*"). According to the evidence of both Ms Hales and Ms Scott, the proposal originated from Mr Clements. Both women provided tentative agreement to the proposal. They did not know each other. The proposal crystallised on 7 October when Ms Hales agreed that Mr Clements could give her telephone number to Ms Scott.
8. Telephone records confirm that Mr Clements provided Ms Hales' telephone number to Ms Scott by text message sent at 4:11 pm on 7 October. Immediately after this message, Ms Scott sent a text message to Ms Hales asking if she was interested in "*some mischief with me tonight*". Ms Hales responded with a tentative agreement. Thereafter, the records reveal an ongoing conversation by SMS between Ms Scott and Ms Hales. The tenor of the conversation suggests clearly that Ms Scott was proposing a sexual encounter between the two women. Whilst Ms Hales' responses seem tentative and noncommittal, it is equally clear that she has understood that Ms Scott's proposal to meet her involved the potential for sexual activity.

9. At about 7 pm, Ms Hales sent a message to Ms Scott inviting her to come to her house later that night, after visitors had left. The visitors in question included Benjamin Aherne and Christina Rowlands.
10. According to Ms Hales, her visitors left the house sometime after 10 pm. Throughout the evening, Ms Hales and Ms Scott continued to exchange text messages which have become progressively more sexually explicit. At 9:56 pm, Ms Scott asked if she could come to Ms Hales' house. Ms Hales replied in terms which clearly demonstrate that she anticipated and consented to having a sexual encounter with Ms Scott that night, with the knowledge of Mr Clements.
11. Ms Scott arrived at Ms Hales' house shortly after this message.
12. The records also reveal that during the course of the day, both women exchanged text messages with Mr Clements. It is clear from these messages that Mr Clements maintained an intense interest in the development of the relationship between the women and was also anticipating that they would engage in sex that night. Although it is not explicitly stated, the messages suggest a vague expectation on the part of each participant that he also will be involved in the sexual encounter. This is not surprising when regard is had to the fact that the proposal for the two women to meet was initially Mr Clements' idea based on his proposal that they become involved in a "*threesome*".
13. After Ms Scott arrived at Ms Hales' house, the women consumed alcohol and sat talking until the early hours of the next morning. Mr Clements had started a shift at Meercroft at 10 pm. The shift was scheduled to end at 7 am on 8 October. The record of messages reveals that both women continued a conversation by text with Mr Clements throughout the night. The conversation has a clear sexual theme. The content of the messages sent by Mr Clements support the conclusion that he believed that there was an understanding between the three of them that a "*threesome*" would take place between them at some time during the encounter between the women. In evidence at the Inquest, Ms Scott indicated that she and Mr Clements had discussed that he would call at the house if she was there, after he had finished his shift at work. I am satisfied that Ms Hales also expected that Mr Clements would arrive at the house after he completed his shift of work. Although Ms Hales was reluctant to concede this, I am satisfied from the tenor of the messages, and her knowledge of him, that she must have understood that Mr Clements would expect that he would be involved in the sexual encounter if it in fact eventuated.

14. At some time in the early hours of the morning of the 8 October, the women did engage in sexual activity with each other. It is clear from the records that they each continued a text conversation with Mr Clements during the course of that activity, in which they advised him of details of the encounter. Once again, the tenor of the messages suggests an underlying assumption on the part of all parties that he is a participant in the sexual conduct, although not available to participate physically until after he has finished work for the night. Mr Clements' interest in the sexual contact between the women during the time that they are actually engaged in sex, as revealed by the content of a number of messages sent by him at this time, is lurid and intense. They strongly confirm that he considered himself to be vicariously involved in the encounter.
15. Mr Clements' preoccupation with the activity taking place between the women is also consistent with observations by fellow workers of his mood during this shift of employment. A worker on shift with him recalls that "*he was not himself, wasn't concentrating on our job, and was preoccupied with his phone the entire night*".
16. The text messages reveal that throughout the course of the night, Ms Scott has also been engaged in a separate conversation, largely by text message, with her former husband, Timothy Scott, then a police officer stationed in Launceston. I am satisfied, having regard to the content of those messages, that Timothy and Helen Scott, at some point before or during the evening, formed a common intention that Mr Scott would attend Ms Hales' premises for the purpose of engaging in a "*threesome*" with the two women. Mr Scott drove his vehicle from Launceston to Ms Hales' premises, arriving there between 4:13 am and 4:45 am. His purpose in doing so was to engage in sex with one or both of the women, and he did so with the knowledge and co-operation of Ms Scott. After he arrived, he engaged in sexual conduct with Ms Hales which included sexual intercourse. Mr Scott left Ms Hales' premises just before 7am. It is the evidence of all three that Mr Scott left when he did because he did not want to be present when and if Mr Clements arrived, as expected.
17. There is considerable conflict between the evidence of Ms Hales on the one hand and Mr and Ms Scott on the other as to whether Ms Hales knew about Mr Scott's potential involvement before he actually arrived at the premises. There is also a clear issue as to whether she was a willing participant in the sexual encounter between her and Mr Scott. I do not need to resolve these issues to comply with my duty as Coroner and I expressly decline to do so.

18. The evidence of both Ms Hales and Ms Scott is that within a very short time of Mr Scott leaving, Mr Clements arrived at the house. Initially, he knocked on the front door and then on a bedroom window. He was yelling to be let in, and was clearly agitated. Ms Hales called to him to come in via the unlocked backdoor. He then immediately entered the house, and then Ms Hales' bedroom.
19. What happened next is relevant to an assessment of Mr Clements' likely mental state at that time. Both Ms Hales and Ms Scott give a generally consistent version of his conduct. They both describe a man who was clearly agitated and angry from the moment he entered the room. He undressed immediately and attempted, without invitation, some rough sexual contact with Ms Scott. Within a very short time, he had turned his anger on Ms Hales. He assaulted her, and she defended herself by kicking out at him. This prompted a further, more violent assault upon her. He struck her to the head on a number of occasions. Ms Scott yelled at Mr Clements to desist but he continued to assault Ms Hales. While he was doing so, he was verbally insulting and abusing her. Eventually, one of the women managed to call the police. In the course of these events, Mr Clements smashed Ms Hales' mobile telephone. Throughout this incident, he maintained and displayed significant anger towards Ms Hales in particular. Eventually, he stopped his physical and verbal attack on Ms Hales, and immediately left the room and then the house. As he left, Ms Hales heard him say "*You are going to burn in hell*". According to Ms Scott, he said, "*I'll see you in hell*". Ms Scott believes he also said something that included the word "*kill*" but she did not hear the full sentence.
20. After Mr Clements left the house, Ms Scott looked out the window onto the street. She saw Mr Clements get into his car which was parked "*on the house side of the road up towards the intersection*". She made a telephone call to Mr Scott, who she knew would still be in the vicinity and asked him to return. Mr Clements' vehicle was still parked in the street when she made the call.
21. Mr Scott immediately returned to the house. He believes he arrived there at about 7:20 am. As he approached the house, he could hear a vehicle accelerating in a nearby street. Investigating police have concluded and I accept that it is likely that this was Mr Clements' vehicle.
22. In the meantime, Ms Hales made a call to Mr Aherne and requested his assistance. Mr Aherne lived a short distance away at 2 Toorak Place Devonport. He and his partner, Ms Rowlands had been close friends of Ms Hales for some time. They knew Mr

Clements through his relationship with Ms Hales. There is no evidence to suggest that the relationship between Mr Clements on the one hand and Mr Aherne and Ms Rowland on the other went beyond this casual acquaintanceship, nor that there was any animosity or dislike between them.

23. Ms Rowlands was present with Mr Aherne at his house when he received the telephone call from Ms Hales. She believes the call was received at about 7:30 am. She recalls the conversation being less than a minute and Mr Aherne saying “*Okay, I’ll be there*”. Mr Aherne then told Ms Rowlands that Mr Clements had hit Ms Hales and that he would have to go down there. Ms Rowlands was ready to leave to go to work. Mr Aherne urged her to go to work and not to worry. He then left in his vehicle.
24. Ms Rowlands was due to start work at 8 am. After Mr Aherne left, she decided to follow him to check that everything was okay, before she went to work. She drove to Ms Hales’ residence in Mr Aherne’s white Commodore. She received a text message from Mr Aherne during the course of the journey, telling her that everything was okay, not to stress, and have a good day at work. Because she was close to Ms Hales’ house when she received that message, she decided to continue her journey there.
25. Ms Rowlands’ evidence is that upon arrival at Ms Hales’ house, she drove into the driveway and stopped on the front lawn. She saw Mr Aherne’s vehicle parked on the other side of the road. As she stepped out of her vehicle, she saw Mr Clements’ vehicle, “*a big 4 wheel drive with a tray on the back*”, parked at the end of the driveway in front of the garage. Her evidence is that she saw Mr Clements standing beside the driver’s side door. He was holding what appeared to be a rifle and told her to leave, addressing her by her first name. He then walked into the house and she got back into her vehicle.
26. It is clear from the evidence and I find that Mr Clements, after he left Ms Hales’ premises after the events in the bedroom, drove to his house at 9 Allambie Crescent, Ulverstone, collected one of his firearms, a Marlin .44 Remington centre fire rifle, with a loaded magazine, together with a blanket, gun belt and extra ammunition, and returned immediately to Ms Hales’ house. Police investigation reveals that the return trip would have taken about 25 minutes. After the events which led to the deaths in question, police found Mr Clements’ Triton utility parked in James Street. The access to Ms Hales’ house from this location is via a common area. It is clear that Mr Clements’ vehicle could not have been parked in the driveway when Miss Rowlands arrived, and that Mr Clements has in fact walked from the location of his vehicle to the house in Watkinson Street. Ms Rowlands has been challenged about this on a number of

occasions, including in evidence at the Inquest, but maintains her evidence that she saw Mr Clements standing beside his vehicle in the driveway of the house when she arrived. I am satisfied that she did not actually see his vehicle there at that time, although I have no doubt that she did see Mr Clements in that location, holding a rifle, before he went into the house. I am satisfied that Ms Rowlands has an honest but mistaken recollection of seeing the vehicle. A mistaken recollection of that detail is completely understandable given the significant injury and associated trauma suffered by Ms Rowlands within minutes of her arrival at the house and generally as a result of the events of that day.

27. Mr Aherne had arrived at the house some minutes before Ms Rowlands. Mr Scott and Ms Scott were still present at that time. There was some brief conversation between them and Mr Aherne and then they left. Mr Aherne then made a call to the police to report the assault by Mr Clements upon Ms Hales. This call was logged by police at 7:34 am.
28. Within minutes of this call, Mr Clements, after seeing and telling Ms Rowlands to leave, has entered the house with the loaded rifle through the back door. What happened next is described by Ms Hales in her statutory declaration as follows:

“Bob stayed with me in my bedroom. A short time later, Bob said, “Chrissie’s back”. I’m not sure if he heard a car, or how he knew. Bob walked out of my bedroom. I heard the back sliding door slam open, and then John saying ‘where is she, where the fuck is she’. I could hear Bob talking to John trying to calm him down. He said something along the lines of ‘take it outside’. I stayed in the bedroom and didn’t go and have a look at what was happening. I heard banging in the hallway and Bob yelling. I wasn’t sure what he was saying. The next thing I heard were gunshots. There seemed like so many shots. I kept thinking that he doesn’t have a semi-automatic rifle. I don’t know how many shots there were. I could hear Bob screaming, sort of in pain. I don’t know and couldn’t make out what he was saying.”

29. In evidence at the Inquest, Ms Hales confirmed this description, although she did add that she also heard Mr Clements say, *“I’m going to kill the bitch”* after he had entered the house. I accept the evidence of Ms Hales about these events.
30. A few minutes after she had seen Mr Clements enter the property, Ms Rowlands, who had got back into her car, saw Mr Aherne running towards her. He banged on the car window and screamed at her to leave. He then continued to run in the direction of his

vehicle. Ms Rowlands then saw Mr Clements appear. He was still holding the rifle. He fired a shot towards her, which struck her. She then heard Mr Clements say *in a matter of fact way* “I’m not going to jail”. He then fired another shot at her, which also struck her. She then heard screaming and further gunshots, but could not see what was happening.

31. The events that followed can be inferred from the observations of neighbours and physical evidence found at the scene. Ballistics examination of the weapon established that six shots were discharged. The ballistics expert, Constable Taylor, expresses the following opinion based on the location of firearm related exhibits, including spent cartridges, the position of the bodies of Mr Aherne and Mr Clements and their injuries, the injuries to Ms Rowlands and the damage to her vehicle:
 - (a) Two bullets were fired into Ms Rowlands, the first hitting her left shoulder and the second, her left arm/torso;
 - (b) Three bullets were fired into Mr Aherne. The likely sequence of shots is that the first struck his torso, the second his leg and the third his head. The opinion of the forensic pathologist who examined Mr Aherne’s body is that the gunshot wound to the right side of his face is likely to have resulted in instantaneous death. The pathologist also expressed the opinion, based on the presence of soot and char adjacent to the entrance wound, that this shot was administered by a near contact range of fire;
 - (c) The final shot was fired through the roof of Mr Clements’ mouth into his head. It caused instantaneous death. The injuries are consistent with Mr Clements shooting himself after placing the barrel of the weapon into his mouth.
32. It is clear Mr Clements committed suicide with this last shot, after shooting Mr Aherne and Ms Rowlands. In respect of the first five shots, I agree with Mr Stanton’s submission that it is likely that the first, non-fatal shot at Mr Aherne occurred either shortly before or immediately after the first shot directed at Ms Rowlands. Although Ms Rowlands’ evidence would suggest that the first two shots were fired at her, had this occurred, it is likely that Mr Aherne would have reached his vehicle before being shot. The evidence of eyewitnesses is that he had fallen to the ground and was attempting to crawl away when he was approached by a person with a rifle, Mr Clements. More than one of those witnesses heard and/or saw two shots in quick succession fired by Mr

Clements at Mr Aherne, whilst Mr Aherne was lying on the ground, and Mr Clements was standing over him. One of the witnesses heard the man on the ground, Mr Aherne, say “*I don’t deserve this*”, or words to that effect. I conclude, therefore, that Mr Aherne was felled by a shot fired by Mr Clements before or immediately after the first shot fired at Ms Rowlands. He then shot Ms Rowlands a second time before approaching Mr Aherne and shooting him twice whilst he lay wounded on the ground. The last of those shots was into Mr Aherne’s head with the muzzle touching or extremely close to the head. It was clearly intended to cause Mr Aherne’s death. Mr Clements then placed the muzzle of the weapon into his own mouth and fired one shot with the intention of killing himself.

33. Emergency calls were made to police by Ms Hales and by neighbours who witnessed these events. The first of these was made at 7:49 am. Having regard to the timing of Mr Aherne’s call to police, it can be concluded, and I find, that Mr Clements arrived at the house and committed the acts described above between 7:34 am and 7:49 am.
34. The above summary is derived from the evidence obtained during the investigation and placed in evidence at the Inquest. I am satisfied that it is an accurate summary of events insofar as it is possible to determine same.
35. I will now deal with a number of specific issues arising from these events.

Mr Clements’ motivation.

36. There is no evidence to suggest that Mr Clements had been suffering from mental illness prior to the events in question. Medical records obtained from his general practitioner are unremarkable although on 20 August 2010 he did consult his doctor because he was “*feeling depressed*”. The general practitioner who saw him noted that there was no family history of depression and he had not had it before. He noted a reference to him having low libido and erectile dysfunction. The doctor prescribed antidepressants.
37. There is some anecdotal evidence concerning the expression by Mr Clements of suicidal thoughts in the week before his death. Pauline Scott, a co-worker, says that on the Tuesday of that week, Mr Clements was upset and stated to her that he was thinking of killing himself. He said that he had a gun out and that it would be easy to shoot himself. Ms Maloney describes Mr Clements that night as “*an emotional mess*” over his relationship with both Ms Hales and Ms Scott.
38. My impression from the evidence of Ms Hales and Ms Scott is that Mr Clements was a person who had a problematic relationship with his sexuality. He seems to have been

inexperienced sexually, at least before he commenced his relationship with Ms Hales. It is clear that he obtained little emotional satisfaction from his relationship with Ms Scott and was suffering ongoing emotional upset as a result of the breakdown of his relationship with Ms Hales. His actions attempting to bring about the proposed threesome between the two women and him suggest a relationship between his emotional problems and his desire for sexual gratification.

39. I am satisfied taking into account the content of the text messages referred to above, his apparent pre-occupation with his telephone during his shift at Meercroft and his mood and conduct when he arrived at Ms Hales' house, that Mr Clements had a clear expectation that he would be included in the proposed sexual activity between the two women, in particular that they would participate in a threesome with him. According to Ms Hales, he was not normally a violent person or a person who expressed anger. I am satisfied, however, that he was unusually agitated and angry when he arrived at Ms Hales' premises, and that this anger quickly manifested in violence against Ms Hales in particular. It is impossible to determine whether he knew or suspected that another male had already been involved in sexual activity with the women. However, I am satisfied that, at the very least, his expectation of sexual gratification by means of the proposed threesome was disappointed either shortly before he entered the bedroom or immediately upon entering the bedroom. Although he made some brief and crude attempts to engage the women in sexual activity, it is likely that he quickly sensed that the opportunity for enthusiastic participation in the threesome was gone.
40. The temporal proximity between the departure of Mr Scott from the house and the arrival of Mr Clements, after completing his shift raises the prospect that Mr Clements may have actually seen Mr Scott emerge from the house. Considerable attention was devoted to this question during the investigation. Although Pauline Maloney says that Mr Clements left work at 6:40 am, he was seen at Meercroft by a nurse, Gail Turner, at 7 am. Nurse Turner is sure of that time because she checked her fobwatch.
41. Police tests confirm that the journey between the car park at Meercroft and Ms Hales' house would have taken between three and four minutes. Having regard to the time involved in walking to and from the vehicle at each end of the journey, Mr Clements could not have arrived at Ms Hales' house before 7:05 am. Surveillance footage obtained from a nearby service station shows Mr Scott entering the store of the service station at 6:50 am. This confirms his evidence that he had left the home before 7 am. It is clear from this evidence that Mr Clements was still at work when Mr Scott left. I conclude therefore that Mr Clements did not see Mr Scott leaving Ms Hales' house.

42. However, this evidence does not exclude the possibility that Mr Clements sensed or suspected the recent presence of a third person when he entered the bedroom. If he did, then it is likely that he concluded that the person may have been engaged in the earlier sexual activity.
43. One factor with the potential to lead to such a suspicion is a text message sent to Mr Clements by Ms Scott at approximately 4:45 am. This message was sent approximately 30 minutes after Mr Scott had arrived and engaged in sexual activity with Ms Hales. The message simply said, "*We have enjoyed x 3*". In evidence at the Inquest, Ms Scott denied that she was intending by this message to inform Mr Clements that the women had been engaged in a threesome, which would have been tantamount to informing him that another male had been part of the threesome. Given her knowledge of Mr Clements' aspirations in that regard, she would have understood that such a communication would be likely to upset Mr Clements. Ms Scott's explanation of this message is that she was informing Mr Clements that she had had three orgasms during the course of the sexual activity with Ms Hales. I find it difficult to accept this explanation. Although the lead up conversation between Mr Clements and Ms Scott is sexually explicit and makes reference to orgasm, the timing of the message and the reference to "*we*" suggests that it was a reference to sexual activity involving more than one person, and not a personal reference to Ms Scott. The timing of the message, 30 minutes after Mr Scott had arrived and effectively engaged in a threesome with the two women, and the fact that the message was the first communication between Mr Clements and Ms Scott for over an hour, also suggests that the activity with Mr Scott is the subject of the reference. In any event, irrespective of Ms Scott's motivation, there is a reasonable degree of probability that Mr Clements understood or at least suspected that the message was a reference to a threesome, and accordingly, at the very least, was suspicious that someone else had been involved in that sexual activity. The demeanour of the women when he arrived may have, in his mind, confirmed that suspicion.
44. It is clear that Ms Hales was the focus of Mr Clements' emotional reaction to these events. This is consistent with his emotional attachment to her, and the absence of any strong emotional bond with Ms Scott. He assaulted Ms Hales brutally and left in a rage. His comments upon leaving manifest a clear intention to harm her. In fact, the comments, interpreted with the benefit of hindsight, express an intention to kill her.
45. I am satisfied that Mr Clements formed an intention to cause harm to Ms Hales at about the time that he left the bedroom and muttered the said comments. He may well have formed an intention to kill her at that time. His actions in travelling directly to his house

to collect the weapon and other items, immediately returning with them, and then parking some distance away and walking to the house, support that conclusion. I am satisfied that he told Ms Rowlands to leave and then entered the house in order to carry out that intention.

46. I accept the evidence of Ms Hales that Mr Aherne emerged from her bedroom as Mr Clements entered the house. It is impossible to know whether, in his irrational frame of mind, Mr Clements linked Mr Aherne to the earlier sexual activity. What is abundantly clear, however, is that Mr Aherne's actions in diverting Mr Clements and possibly forcing him outside the house effectively prevented Mr Clements from harming Ms Hales or her daughter, who was hiding in another bedroom. At some point in their interaction, Mr Aherne must have appreciated that Mr Clements was likely to use the firearm against him and it is likely that that understanding caused him to flee from the house.
47. By the time Mr Clements commenced to fire his weapon, he was clearly in an irrational mental state. The police investigation suggests the possibility that Mr Clements may have heard police sirens approaching, hence prompting his comment to Ms Rowlands, "*I'm not going to jail*". At the time that the shooting commenced, a police unit was already on its way to the house in response to Mr Aherne's call, but this unit had not activated its siren. Police were also dispatched immediately upon the first call to 000 after the shooting commenced. Whilst it is possible that Mr Clements may have heard sirens from these vehicles, I think that possibility is extremely speculative. The timespan over which of the shots were fired must have been relatively brief, and the comment to Ms Rowlands is simply consistent with a rudimentary appreciation by Mr Clements of the consequences of the initial shots fired by him.
48. Although the sexual activity and surrounding circumstances described above were the catalyst for Mr Clements' emotional reaction and his subsequent decision to collect and use the firearm, that reaction could not reasonably have been anticipated by any person concerned. It is impossible to explain his conduct in any rational way. He deliberately shot both Ms Rowlands and Mr Aherne. I am satisfied that he intended to kill each of them. Any attempt to understand why he turned his attention away from Ms Hales and towards them can only involve speculation. It is probable that his decisions at that time were not the product of an ordered mind.
49. It is appropriate to make special comment concerning the courage displayed by Mr Aherne when he was confronted by Mr Clements in the house. He faced an angry man

brandishing a weapon and expressing an intention to do harm to Ms Hales. He was successful in diverting Mr Clements from this course of action and removing him from the house. He only attempted to escape when he realised that he was under direct and immediate threat from Mr Clements and even then attempted to warn off Ms Rowlands. His intervention, in all probability, saved the life of Ms Hales and prevented any harm to her daughter. His death is a tragic consequence of events that were not of his making and in which his only involvement was the selfless provision of assistance to his friend, Ms Hales.

50. Although Ms Rowlands fortunately survived the physical wounds inflicted by Mr Clements, she also was a victim of events not related to her and was present only because of her concern for the welfare of Mr Aherne and Ms Hales. Her selflessness also deserves acknowledgement.

Access to firearms by Mr Clements.

51. In addition to the Marlin firearm used by Mr Clements on this occasion, police found three other firearms at his residence in Ulverstone. Mr Clements had held a firearms licence continuously since 1993. In 1998, the licence was upgraded to include category B firearms. The licence was renewed in 2001 and 2007. One of the firearms located at the Ulverstone address was not registered under the *Firearms Act 1996*, although the firearm used by Mr Clements on the day in question was registered. The storage facilities for the firearms at Mr Clements' home did not comply with legislative requirements
52. It seems that the storage facilities at the Ulverstone home had not been inspected for a considerable period of time, if at all. If inspection had taken place, then the deficient storage facilities and perhaps Mr Clements' possession of the unregistered firearm may have been discovered. Having said this, these breaches of the Act do not seem to have relevance to the events of the day in question.
53. This case manifests the danger that is present when a person who is in the grip of emotional distress, and perhaps undiagnosed mental illness, has access to firearms. If Mr Clements had not had access to a firearm, then it is unlikely that his death or the death of Mr Aherne would have occurred. However, my understanding of the usual system by which police deal with instances of family violence is that if the police had had the opportunity to respond to Mr Aherne's call in respect of the assault by Mr Clements on Ms Hales, consideration would have been given to the issue of a police family violence order, and that would almost certainly have resulted in a check of the

firearms register, the suspension of his firearms licence and the immediate removal of his firearms. It is clear that police responded quickly to Mr Aherne's call reporting the act of family violence. Mr Aherne made the call at 7:34 am. At 7:38 am, Acting Sergeant Lyons had tasked an officer, Constable Blackwell, to attend the house and commence investigation. She left the police station a few minutes later and was en route when she heard a report of shots being fired, over her police radio. Accordingly, although police responded diligently to the report of family violence, and the system would have prioritised the removal of weapons from the alleged perpetrator, in this case there was simply not time for that system to achieve that outcome.

54. Short of removing firearms completely from society, there seems little more that could have been done either in terms of prospective precautions in relation to the provision of firearms licences, or the response to family violence, that would have avoided Mr Clements' actions. He had no recorded history of mental illness, or of being a perpetrator of family violence. Accordingly, although the system and precautions described above could not have changed the outcome in this case, the circumstances reinforce the wisdom of a system of registration of firearms, and acting on a precautionary basis to remove firearms as soon as an allegation of family violence arises. Had Mr Clements not acted as quickly as he did, the usual system would have identified him as being in possession of firearms because of the requirement registration, and would have in all probability resulted in the removal of his firearms.
55. Accordingly, I endorse the current requirements of the firearms legislation, and the existing system by which police act in a precautionary way to remove firearms as soon as an allegation of family violence is identified. It is a timely opportunity to review that system to ensure that it is applied efficiently and comprehensively throughout the State. I recommend that consideration be given to such a review.

The identity of any person who contributed to either death

56. Section 28(1) (f), *Coroners Act* requires me to find, if possible, the identity of any person who contributed to the cause of death. It is clear that Mr Clements contributed to Mr Aherne's death. He contributed to his own death by committing suicide.
57. The question arises as to whether there should be a finding that any other person has contributed to either death, particularly as a result of the circumstances which led to Mr Clements' emotional upset and his subsequent actions. This question arises because the section is normally interpreted as requiring the coroner to find whether known people have or have not contributed to the cause of death. Cases of superior courts, both in this

jurisdiction and others, in which provisions of this nature have been the subject of contention, have generally focused on what is meant by contribution in this context.

58. However, in my view, the section does not require me to determine whether a particular person has or has not contributed to the cause of death. It does require me, as part of my fact finding role, to identify any person who has contributed to the cause of death. The section is concerned with identification of relevant persons, not with determination of matters of legal or moral responsibility.
59. This view is consistent with authority. In *R v Tennent; ex parte Jager* [2000] TASSC 64, Cox CJ at para 7 said that the coroner's function is the "*ascertainment of facts without deducing from those facts any determination of blame....*" In *Keown v Kahn and Anor* [1999] 1 VR 69, Callaway J, with whom the other members of the Victorian Court of Appeal agreed, said, in respect of an identical provision in Victorian legislation:

"It follows that a person who kills necessarily contributes to the cause of death and that that is nonetheless true where the killing is in lawful self-defence . A coroner is not concerned with the latter question but will ordinarily set out the relevant facts in the course of finding how death occurred and the cause of death. The facts will then speak for themselves, leaving readers of the record of investigation to make up their own minds about lawful self-defence or any similar issue. (That was the point made by Sir John Norris in para. 153 of his report.) It is of the first importance that, where a person's reputation is at stake, the relevant facts are clearly brought out. It might well be thought that, as para. (e) adds nothing to paras (b) and (c) and a finding of contribution is likely to cause injustice if its significance is misunderstood, s.19 (1) (e) should be repealed."

60. Although in *Keown v Kahn*, the discussion seemed to assume that a formal finding of contribution will be made in purported compliance with the section, it seems to me that that discussion in fact makes it clear that the finding envisaged by the section is a factual determination identifying persons involved in the chain of circumstances leading to the deaths in question, and does not and should not involve the coroner making judgements about the existence or extent of the legal or moral contribution of the persons concerned. A finding that a person, whose identity and role in the relevant events is otherwise appropriately identified by the coroner's findings as to how the death occurred and its

cause, has or has not contributed to the death involves a determination of legal or moral culpability which is beyond the intended role of the coroner. Such a determination is a matter for the reader of the report of the investigation and in appropriate cases the criminal courts. If the focus of the enquiry is understood as identification of persons relevant to the circumstances which have led to the death, rather than determination of the extent of their contribution, then it seems to me that the section serves its intended function. This interpretation is entirely consistent with Callaway J's comment at para 16:

“The findings by a coroner as to how death occurred and the cause of death should, where that is possible, identify any person who contributed to the cause of death. Section 19(1) (e) serves no purpose other than to ensure that that is done.”

61. Accordingly, I am satisfied that I have ascertained the facts in respect of how the deaths occurred and the cause of death. I have also identified all persons involved in the circumstances which surrounded the deaths. The evaluation of the extent of contribution by any person so identified to the cause of the deaths in question can be determined by others by reference to the facts found by me. It is neither permissible nor appropriate for me to comment further, or make any further formal finding in respect of that question.
62. The only recommendation I make is that consideration be given by the appropriate authorities to a review of the matter described in paragraph 55.
63. I acknowledge the work of the emergency services personnel who responded to the initial incident, and the police who investigated the matter. I am satisfied that the police and emergency services' response to this major incident was efficient and professional. The subsequent investigation was extremely thorough and has enabled the circumstances surrounding these deaths to be established as far as possible. An incident such as this takes a heavy toll on all involved, including the professionals who deal with the aftermath, and their service deserves public acknowledgment and gratitude.
64. I express my appreciation to counsel assisting, Mr K Stanton, and the coroner's associates who assisted him, for the thorough and helpful manner in which they discharged their functions.

65. Finally, I take this opportunity of conveying my sincere condolences to the families and loved ones of both deceased.

DATED:
Tasmania

at _____ in the State of

Michael Brett
CORONER