



## STATE CORONER'S COURT OF NEW SOUTH WALES

<b>Inquest:</b>	Inquest into the death of Bryson Anderson
<b>Hearing dates:</b>	<b>19 June 2018</b>
<b>Date of findings:</b>	<b>19 June 2018</b>
<b>Place of findings:</b>	State Coroners Court, Glebe
<b>Findings of:</b>	Deputy State Coroner O'Sullivan
<b>Catchwords:</b>	CORONIAL LAW – cause and manner of death, death of a police officer, death in the course of a police operation
<b>File number:</b>	2012/00379965
<b>Representation:</b>	<p>(1) Counsel Assisting the Coroner</p> <p>Dr Peggy Dwyer, instructed by Alana McCarthy of the Crown Solicitor's Office</p> <p>(2) Anderson family</p> <p>Mr Stephen Russell, instructed by Ms Nadia Baker of Carroll &amp; O'Dea</p> <p>(3) NSW Commissioner of Police</p> <p>Ms Jane Needham SC, instructed by Mr Stuart Robinson of the Office of the General Counsel, NSW Police Force</p> <p>(4) Inspector Phillip Battin and Acting Superintendent David Jones</p> <p>Mr Paul Madden, instructed by Mr Ken Madden of Walter Madden Jenkins</p>
<b>Non publication order:</b>	There is to be no publication of the material listed at Annexure "A".

<p><b>Findings:</b></p>	<p><b>Identity of deceased:</b></p> <p>Bryson Anderson</p> <p><b>Date of death:</b></p> <p>6 December 2012</p> <p><b>Place of death:</b></p> <p>Hawkesbury Hospital, New South Wales</p> <p><b>Cause of death:</b></p> <p>The medical cause of death was a stab wound to the chest.</p> <p><b>Manner of death:</b></p> <p>Detective Inspector Bryson Anderson died whilst performing his duties in the course of a police operation, in circumstances where he was stabbed in the chest by Mitchell Barbieri.</p>
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## Introduction

1. This inquest concerns the tragic death of Detective Inspector Bryson Anderson who was killed on 6 December 2012, whilst on duty.
2. Detective Inspector Anderson died doing his job; a job which is challenging, often difficult and occasionally very dangerous. His death highlights the risks that police face on daily basis.
3. His death is a huge loss to his family, friends and colleagues. I extend my condolences to Detective Inspector Anderson's family.

## The role of the coroner

4. The role of a Coroner, as set out in s. 81 of the *Coroners Act 2009* ("the Act"), is to make findings as to the:
  - a) identity of the deceased;
  - b) date and place of the person's death;
  - c) physical or medical cause of death; and
  - d) manner of death, that is, the circumstances surrounding the death.
5. Pursuant to s. 82 of the Act, a Coroner has the power to make recommendations, including concerning any public health or safety issue arising out of the death in question.
6. Because Detective Inspector Anderson died "in the course of a police operation",<sup>1</sup> an inquest into his death is mandatory and must be conducted by a senior coroner.<sup>2</sup>

## The timing of the inquest

7. This Court is very mindful of the desirability, where possible, of having an inquest in a timely fashion, particularly so that a family can move beyond the legal process, and so that any recommendations that need to be made, can be. However, when someone has been charged with an indictable offence relating to the death, an inquest cannot proceed until those proceedings are "finally determined", including the determination of any appeals.<sup>3</sup>
8. In this case, Mitchell Barbieri and his mother, Fiona Barbieri, were charged with criminal offences in relation to Detective Inspector Anderson's death. Mitchell Barbieri pleaded guilty to murder and, in 2014, he was sentenced to a term of 35 years' imprisonment, with a non-parole period of 26 years. Fiona Barbieri pleaded guilty to the lesser charge of manslaughter on the grounds that she was "suffering a substantial impairment due to an abnormality of mind". She was

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<sup>1</sup> Section 23, *Coroners Act 2009* (as at the relevant time).

<sup>2</sup> Sections 23 and 27, *Coroners Act 2009*.

<sup>3</sup> Sections 78 and 79(4), *Coroners Act 2009*.

sentenced to 10 years' imprisonment with a non-parole period of six years and six months.<sup>4</sup>

9. Mitchell Barbieri appealed his sentence on grounds, amongst others, that there had been insufficient weight given to his mental health issues. In December 2016, the Court of Criminal Appeal allowed the appeal and reduced his sentence to a maximum term of 21 years and three months with a minimum of 15 years.<sup>5</sup>
10. The Director of Public Prosecutions appealed that decision, and in May 2017, the High Court refused special leave.
11. It was only at that point that the related criminal proceedings were "finally determined" and when this Court had jurisdiction to proceed with the inquest.

## Background

12. Detective Inspector Anderson was born in 1967 and was only 45 years old when he died. He had worked as a police officer with the NSW Police Force ("NSWPF") all his adult life, having attested in November 1986, when he was 19 years old. Detective Inspector Anderson started at General Duties at Parramatta Police Station and was promoted regularly, in recognition of his excellent service.
13. His was a policing family. His father, Rex Anderson, who has since passed away, was a Detective Superintendent of the NSWPF with a distinguished service until his retirement in 1993. One of Bryson's brothers, Warwick, has also served with distinction before leaving the NSWPF in 1993 to pursue a career as a lawyer.
14. In addition to his work as a police officer, Detective Inspector Anderson was a volunteer fire fighter, a coach of junior soccer and he helped to organise a Special Olympics event in Windsor. He was community minded and he applied himself in the service of others.
15. The Court has heard from Detective Superintendent Brett McFadden, a friend and colleague of Detective Inspector Anderson, who spoke about Detective Inspector Anderson's commitment to policing, his experience and the high regard in which he was held by his colleagues.
16. I have also heard from Detective Inspector Anderson's wife, Donna Anderson, about the profound effect of her family's loss of a devoted family man. It was clear to me that Detective Inspector Anderson was a dearly loved husband and father. He was also a dearly loved son, brother and uncle. The loss of such a humble, committed and loving man to the Anderson family is immeasurable.

## The evidence

17. The Court has heard oral evidence and has received extensive documentary evidence comprising of seven volumes.

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<sup>4</sup> *R v Mitchell Barbieri; R v Fiona Barbieri* [2014] NSWSC 1808.

<sup>5</sup> *Barbieri v R* [2016] NSWCCA 295.

## ***Circumstances surrounding the death of Detective Inspector Bryson Anderson***

18. On 6 December 2012, Detective Inspector Anderson commenced duties at 8:00am to carry out work within his portfolio of "Operations" at the Hawkesbury Local Area Command ("Hawkesbury LAC"). He was rostered to work a 10 hour shift. Detective Inspector Anderson was in his full police uniform with all appointments, with the exception of a Taser. He was not required to wear a Taser because he wasn't regarded as performing duties as a "first responder".
19. In addition to Detective Inspector Anderson, two other commissioned officers were on duty at Hawkesbury LAC on that day shift: Inspector Philip Battin, who was the Duty Officer, and Acting Superintendent David Jones, who was the Acting Local Area Commander. As part of his role as Duty Officer, Inspector Battin was to command and control serious incidents. A/Superintendent Jones was performing duties in his office that day at Windsor Police Station.
20. Detective Inspector Anderson was working with Inspector Battin. Sometime after midday, they left Windsor Police Station together in a police vehicle, Hawkesbury 10, to address alleged problematic behaviour at a local shopping centre. They remained there until receiving a call from Mobile Supervising Sergeant Adam Fitzgibbon, in Hawkesbury 14, about an incident at 33 Scheyville Road, Oakville, the address of Mitchell and Fiona Barbieri.
21. Police had "intel" as to an ongoing dispute between the Barbieris and their next-door neighbours, the Waters family. Although it appears that the neighbours had got along well for many years beforehand, it seems that the declining mental health of Fiona and Mitchell Barbieri and their increasing paranoia had led to hostility between the neighbours, initiated by the Barbieris. As at 6 December 2012, the NSWPF had 38 reports linked to the Barbieris and 33 Scheyville Road, Oakville. Nine of those reports directly relate to incidents between the Barbieris and the Waters family where police had been called to attend by either the Barbieris or the Waters.
22. The relationship between the neighbours appears to have deteriorated in the week leading up to the incident. On 3 December 2012, Kevin Waters was in his house when he heard a large thud at his window. He looked out and saw a light from the direction of the Barbieri property. He heard both Mitchell and Fiona Barbieri near the fence line and heard Mitchell say: "We will rebuke you". He later found a stick with a note attached saying the same thing. It was not the first time he had had sticks thrown into his property by the Barbieris. The Barbieris had two large signs attached to trees in their yard which also read, "We will rebuke you".
23. Mr Waters was becoming concerned for his safety and that of his family. He employed an electrician to install flood lights on his property to alert him to any night time intruders. Around midday on 6 December 2012, an electrician Peter Yard commenced installing flood lights near to a number of pigeon aviaries that were several metres away from the Barbieri's fence line. Soon after he started,

Fiona Barbieri came to the fence line and began to yell obscenities at Mr Yard, questioning what he was doing and yelling abuse.

24. Mr Yard was concerned for his safety and returned to the house to inform Mr Waters. Another worker, Kevin West, went with Mr Yard back to where Mr Yard had been working. On their return, they saw Fiona Barbieri armed with a baseball bat demanding that the ladder and equipment be removed. Fiona Barbieri attempted to step over the wire fence, swinging the bat at Mr West. Mitchell Barbieri, who was standing about 10 to 12 metres away, aimed a compound bow and arrow at Mr West and Mr Yard, who both sought cover immediately. Mitchell Barbieri released an arrow, which narrowly missed the men near to chest height, and lodged in a nearby wall.
25. Mr Waters and his son Kurt came to aid of Mr West and Mr Yard. They were joined by another employee, Damien Roe, who filmed the Barbieris on his mobile phone for several minutes, as did Kurt Waters. Mitchell Barbieri aimed the bow and arrow at Kevin and Kurt Waters. Again, the arrow narrowly missed, this time lodging in the ground close by the four men. The men left the area immediately and Triple "0" was called, with police requested to attend.
26. The incident was broadcast on police radio at 1402 (2:02pm) as a person shooting with bow and arrows at a neighbour. A General Duties police car crew, Hawkesbury 16, acknowledged the job at 1406 and proceeded to the location. Constable James Ghata and Hannah Watson arrived on the scene at 2:27pm and commenced taking statements from the witnesses at the Waters' property. They located three arrows in the Waters' backyard.
27. In the meantime, the Barbieris had retreated inside their home. Constables Ghata and Watson observed the area while continuing their investigation.
28. At 2:41pm, the Barbieris sent an email to numerous Federal and State Ministers titled "BARBIERI versus WATERS". In the email, they claimed that Mr Waters was intimidating and provoking them. They wrote: "Let me remind you, we have every right to defend ourselves, our family and our property". They continued with claims against the Waters family and concluded the email by writing: "How dare our politicians and police continue to support murderers over the innocent".
29. At 2:47pm, Detective Senior Constables Caulfield and Ornatowski arrived in Hawkesbury 100 with Plain Clothes Senior Constable Jonathon Hughes. Constable Ghata briefed the detectives on what had transpired. The detectives walked up to the front gate of 33 Scheyville Road and attempted to verbally engage the Barbieris from the gate, which was closed and locked. Near to the gate was a sign which read: "Autarchy in place on these premises, strictly by appointment only!" Autarchy, meaning absolute sovereignty or self-government. Police yelled out in the direction of the house, which was about 25-30 metres away.
30. Mitchell Barbieri was seen at the window with a camera, taking photographs of the police. He was asked to come out and speak with officers but gave no verbal response. The officers determined that it was too dangerous to attempt entry

without further resources. Detective Ornatowski contacted the Windsor Detectives' Office and requested that an officer commence a search warrant application for 33 Scheyville Road to allow police to search for a bow and arrow believed to be inside.

31. At 1450 (2:50pm), a Detective from inside Hawkesbury 100 broadcast on the radio that police were attempting to have the occupants come out of their house.
32. At 2:55pm the Barbieris sent another email entitled: "Our property surrounded". They wrote: "Corrupt police attempting to break in to our property whilst Waters front yard is full of his drivers and associates. We have the photographic evidence. Tell them to put it in writing we know how the corrupt system works now".
33. At 2:57pm, Detective Ornatowski requested further cars to the area. At 3:05pm, Sergeant Fitzgibbon arrived in Hawkesbury 14, followed by Hawkesbury 15 (Senior Constable Neil Constable and Constable Melissa Ellis) and Hawkesbury 175 (Plain Clothes Constables Nicholas Jenkins and Mark Camilleri). Senior Constable Constable completed COPS (Computer Operated Policing System) checks via the mobile data terminal as to the history of police interaction with the Barbieris.
34. At 3:11pm, the Barbieris sent a further email entitled: "What reinforcements arriving???" In that email they wrote: "What sending reinforcements to target/ambush the innocent mother and son that our Government offered up to be murdered? Do you know you don't sacrifice the innocent?" The reference to reinforcements appears to relate to the arrival of Hawkesbury 14, 15 and 175.
35. Around 3:12pm, Angelo Barbieri, Mitchell's father, received a text from Mitchell that read: "The police are at the front gate, for standing up for our rights". His father replied: "Don't do anything silly, see what they want." It seems that message never got through.
36. Sergeant Fitzgibbon decided to return to Windsor Police Station to obtain a Taser, as no officers present had one. Before leaving he instructed officers to maintain a safe distance from the premises, maintain a perimeter and hold their positions, making sure that no one entered or left the premises. The attending police complied with an instruction from Sergeant Fitzgibbon to put on their ballistic vests. Sergeant Fitzgibbon left with Detective Caulfield, who needed to return to get his appointments.
37. Around this time, police were informed by the men at the Waters' residence that the Barbieris had two big dogs.
38. Whilst Sergeant Fitzgibbon and Detective Caulfield were travelling back to Windsor Police Station, Sergeant Fitzgibbon called the Duty Officer's phone at 3:12pm and spoke to Inspectors Battin and Anderson on loud speaker. He briefed them that it was "a possible siege situation and the occupants were refusing to speak to police". Detective Caulfield briefed them as to the location.



39. Detective Inspector Anderson told Inspector Battin and Detective Caulfield that he had recent dealings with a person at that address. He commented that the person was “a nutter”, inferring colloquially to them having a mental illness. Days earlier Detective Inspector Anderson had had dealings with Mitchell Barbieri via the Hawkesbury LAC Facebook page, which led him to ban Mitchell from the site. Records show numerous offensive and rambling messages believed to have been written by Mitchell on the site.
40. Between 3:20-3:35pm, Inspectors Battin and Anderson arrived in Scheyville Road in Hawkesbury 10, coinciding with the arrival back of Sergeant Fitzgibbon and Detective Caulfield. A briefing commenced at the front of Hawkesbury 10, which became the Command Post situated directly outside Waters property.
41. At the briefing was Inspectors Battin and Anderson, Sergeant Fitzgibbon, Detectives Ornatowski and Caulfield and, at some point, Senior Constables Hughes and Constable. Throughout this briefing, some officers came and went from the Command Post. In fact, other than Inspector Battin, no officers were present for the entirety of the briefing. Constables Ghata and Watson had commenced duties securing the perimeter and did not attend.
42. It appears that Inspectors Battin and Anderson were informed of the names of those in the house, the facts surrounding what had just occurred, including that a bow and arrow had been shot at the neighbours, that Mitchell and Fiona Barbieri were still inside, that the phones inside were disconnected and that Mitchell had been taking photographs of police. Police at the briefing agreed that an offence had been committed regarding the shooting of the bow and arrow.
43. Detective Inspector Anderson checked Google maps of the location and from that, Inspector Battin drew a diagram of the property in his operations log, which was commenced around the time of the briefing. The first time recorded in the log is 1530 (3:30pm). Detective Inspector Anderson attempted to find further information about the Barbieris on Facebook but was unsuccessful.
44. During the briefing, Inspector Battin determined that an inner perimeter would suffice at that stage and that he would not set an outer perimeter until contact was established with the Barbieris. Inspector Battin requested that all police on the perimeter wear ballistic vests with the police insignia showing.
45. In response to an inquiry, Inspector Battin was informed that there were no known firearm licences for the premises. A location enquiry check on COPS showed a number of people linked to the address. One of those persons was Gregory Allen, an ex-partner of Fiona Barbieri who had current registered firearms, although they were not recorded as being stored at the location. It does not appear that this information was discussed at the briefing.
46. As noted, there were about 38 COPS events recorded against the Barbieris all of which related to 33 Scheyville Road. Four minor events occurred in 2002-2003, seven in 2008-2009 and 27 between 2010-2012. The seven incidents in 2008-

2009 relate to police attending an out of control party, improper use of emails, an assault, a brawl and a missing person report. The 27 that occurred in the two years before Detective Inspector Anderson's death can clearly be seen as an escalation and relate to incidents such as malicious damage, domestic violence, mental health, improper use of emails, break enter and steal, assault, self-harm concerns, and complaints against the neighbours. One of the reports recorded that Mitchell Barbieri may be suicidal and had access to hunting knives.

47. The following warnings were recorded against Fiona Barbieri on the NSWPF system:

**"Has level of Resistance: UNARMED, HINDER WITHOUT FORCE** (as a result of the scheduling and transportation to a the Psychiatric Hospital on the 8<sup>th</sup> of April 2011), and

**MAY SUFFER FROM PARANOIA OR OTHER MENTAL HEALTH RELATED ISSUES** (as a result of a phone call Fiona Barbieri made to police in August 2010 regarding her report of lost property and issues with her past employer, American Express)."

48. There were no warnings against Mitchell Barbieri's name.

49. In his statement before this Court, the officer in charge, Detective Chief Inspector Grant Taylor states that:

"... [i]t is fair to say that detailed analysis of the material contained in these reports is difficult to accurately elicit in the heat of an unplanned operation. The importance of placing warnings and intelligence reports on the police system cannot be understated when it comes to helping police identify risk. The fact that some of the police reports were inadequate or not followed up did not help in the accurateness of information available for future police use".

50. Sometime during the briefing, Detective Inspector Anderson and Detective Caulfield went into the Waters' property and attended the location of arrows. Detective Inspector Anderson took a number of photographs using his phone.

51. At around 3:45pm, at the request of either Inspector Battin or Detective Caulfield, Senior Constable Constable was asked to park Hawkesbury 16 across the front gate of 33 Scheyville Road to stop any occupants attempting to flee in a car. Mitchell Barbieri was seen at the window photographing police at this time.

52. Inspector Battin made further notes in the operations log at 1545 that read Caulfield/Ornatowski as Negotiator. The name Caulfield is then crossed out.

53. At approximately 3:46pm, Detective Ornatowski, who was at the front gate, commenced using a loud speaker attached to Hawkesbury 15 in the direction of the residence at 33 Scheyville Road. Fiona Barbieri was seen to open the curtains and at one stage a piece of paper was held up to the window. Dogs were seen at the front double French doors and were heard barking.

54. Detective Ornatowski continued to call out over the loud speaker for about 10-15 minutes, using words to the effect: "Mitchell, Fiona, it's the police. You aren't in trouble; we just need to talk to you about what happened today".
55. At that point, Senior Constable Constable heard Detective Inspector Anderson say, "Well we are getting no response from out here so we will try to knock on the door". Detective Caulfield heard Detective Inspector Anderson say something like, "Let's go and knock on the door".
56. The uniformed police had formed a perimeter around the property with a visual of the back and front of 33 Scheyville Road. These officers were Constables Ghata and Watson watching the rear/side with Constables Jenkins and Camilleri watching from the front/right side of the property. Senior Constable Constable and Constable Ellis maintained observations from the front gate. The location was contained and the negotiations with the Barbieris continued, albeit with little verbal response.
57. At 3:48pm, Inspector Battin called A/Superintendent Jones and briefed him on what had occurred prior to police arriving and that there was now a possible siege situation. A/Superintendent Jones was told that police were going to approach the house and attempt contact. Inspector Battin spoke to A/Superintendent Jones for around four minutes. Significantly, there was no discussion of the use of any specialist police, such as the State Protection Group. A/Superintendent Jones told Inspector Battin to keep him updated, but gave no specific direction to Inspector Battin regarding command and control of the incident.
58. At 1550 a notation was made in the operations log by Inspector Battin: "LAC briefed, VKG briefed by Fitzgibbon".
59. At 3:53pm, Sergeant Fitzgibbon spoke via telephone to the Penrith Operation Centre indicating that they had a siege situation and were using a loud speaker. He provided his mobile number and Inspector Battin's. At 3:54pm, Inspector Battin requested that the Duty Operations Inspector ("DOI") contact him.
60. At 1555, Inspector Battin wrote in the operations log: "Anderson/Ornatowski vested will approach M.O - Approach make audio x phone fail x mouth, if POI engages in video camera use, whilst distracted - force entry - I agree."
61. Inspector Battin has told investigators that Detective Inspector Anderson said to him: "If Mitchell Barbieri was seen again filming police that he could be arrested", and Inspector Battin agreed, and specified, "only if his hands are occupied with the video camera is he to be arrested". He further stated that this forced entry strategy would be the only exception to containing and negotiating. He said: "that is if someone can see that Mitchell Barbieri's hands were occupied that forced entry could occur to effect his arrest".
62. What happened next was tragically important in terms of revealing an important line of communication which failed.

63. At 1556 the DOI at VKG, Inspector Darren Gregor, attempted to ring Inspector Battin but the phone was engaged. At exactly the same time, Detective Inspector Anderson called Inspector Battin. It is thought that at that time, Detective Inspector Anderson was in front of 33 Scheyville Road. The call lasted 26 seconds. Inspector Gregor's call went to voicemail whilst Inspectors Battin and Anderson spoke to each other.
64. On failing to contact Inspector Battin's phone, Inspector Gregor called Hawkesbury 14 and spoke to Sergeant Fitzgibbon at 3:56pm. He asked him if the Duty Officer wanted the Tactical Operations Unit ("TOU") and Negotiators. Sergeant Fitzgibbon said that they "have the place surrounded and they are containing and negotiating and are going to attempt to make contact again, then we will definitely be looking at getting some assistance".
65. Sergeant Fitzgibbon said the Barbieris are "Captain rats", implying that they were mentally ill. Inspector Gregor asked: "So they have mental health issues?" Sergeant Fitzgibbon provided information about the neighbourhood disputes. Inspector Gregor asked again: "So do you want me to get TOU/Negs?" Sergeant Fitzgibbon said: "Well at this point, if we can negotiate, were not going to force entry in any regard, we are going to try and get contact and if that fails I'm not happy approaching the house without the, the Negs".
66. Inspector Gregor asked who was on Hawkesbury 10 and Sergeant Fitzgibbon told him it was Inspector Battin. Inspector Gregor then said "I will hold off for now but tell me when you want them".
67. Inspector Battin has told investigators that Sergeant Fitzgibbon may not have heard that forced entry was discussed at the briefing, since he was back and forth during the briefing.
68. Sergeant Fitzgibbon did not tell Inspector Battin what was said to the DOI, because Inspector Battin was with him at the Command Post and he inferred that he would have heard parts of the conversation.
69. It appears that most of the communication between the Command Post and officers at the scene was via mobile phone. There is no record of a request for a back channel for use by officers at the incident, even though two back channels were available.
70. At 1559, a call came on police radio from an officer believed to be Detective Inspector Anderson. Although the conversation is not clear, it includes the words: "Hawkesbury 10, Hawkesbury 10.. Scheyville location.. in command... crews on the ground, were about to make audio contact... possible ejection from the premises". Police radio responds including the words: "Hawkesbury 16 portable... Hawkesbury cars off at Scheyville road, Oakville, from Hawkesbury 10. Audio contact is about to be made. Crews to be aware that this is about to occur... in case someone comes from the premises".
71. Constable Ghata from Hawkesbury 16 came on the radio and said: "Thanks radio for the information of Hawkesbury 10. We are behind cover and about 12 metres

from the back door thanks, 16, copy". This is the last radio broadcast by officers at 33 Scheyville Road until the call for urgent assistance after Detective Inspector Anderson is wounded.

72. A notation in the operations log at 1559 states: "entry into fence front achieved". At this time, Officers Anderson, Ornatowski and Caulfield approached the front of the house with Detective Caulfield requesting other police to keep an eye on the sides of the house in case the occupants came out with a bow and arrow. Senior Constable Constable obeyed that direction and also entered the property walking behind the other officers down to the carport to take a position on the side of the house.
73. At 1600 the operations log records that "all police that entered now entered right up from front yard". At this time, Senior Constable Hughes was stationed with Inspector Battin at the Command Post and was watching the other officers enter the property over the front gate area. Inspector Anderson informed the other officers with him that they will skirt along the driveway down to the house.
74. Detective Ornatowski knocked on the window where the Barbieris were seen and said: "It's the police, Fiona and Mitchell we need to talk to you, we aren't going anywhere". Fiona was heard to say: "They're right out the front". She came to the window in an agitated state, and Detective Ornatowski commenced a dialogue with her that continued for a few minutes. Fiona said that she believed the police were corrupt and never did anything for them. She confirmed that Mitchell was in the house. Inspector Battin was told this by the officers at the gate watching and he wrote that in his operations log with a time entry of 1602.
75. At 1602, Inspectors Battin and Anderson spoke on the phone for around 58 seconds. Inspector Battin has told investigatorsthat Detective Inspector Anderson said words to the effect of: "We're talking to them at the front door". Inspector Battin said: "That's great, get back to it". Nothing was said about the use of TOU or negotiators.
76. Around this time, Senior Constable Constable said to Detective Inspector Anderson, "we should clear this granny flat" referring to a flat beside the house. They took a few minutes to do so and then returned to their positions. Constable Ghata, who was positioned at the rear of the house, saw Detective Inspector Anderson and Senior Constable Constable in the carport area and decided to move closer to the house, where he was joined by Constable Watson.
77. Detective Ornatowski and Fiona Barbieri continued to talk, with Fiona arguing about the perceived wrongs done to them by police. During this time, Detective Inspector Anderson used a shovel to try to jemmy open the front French doors. Fiona's attention was drawn by the sound and she looked to her right. She saw Detective Inspector Anderson and shouted to Mitchell: "they're trying to break in; they're trying to break in". She identified Detective Inspector Anderson as a senior officer, saying: "Look at him, stars and stripes".
78. Mitchell Barbieri came to the window and was seen to be shirtless and with two dogs that were barking loudly. Detective Inspector Anderson stopped trying to

break open the doors. Detectives Caulfield and Ornatowski continued to attempt engage the Barbieris. Mitchell responded: "If you have any questions, you leave them here in writing and I will get back to you". At one point, Detective Caulfield told Fiona that there was a commissioned officer, Detective Inspector Anderson, present. She replied: "I don't care".

79. Detective Ornatowski asked the Barbieris to remove the dogs from the area. Mitchell Barbieri complied. Detective Caulfield told investigators: "When he put the dogs away for the second time I thought he's not armed, I'll kick the door in and go in now, that's the type of job it was, then the dogs come back out".
80. Constable Camilleri moved further forward from the front right side of the house and saw Inspector Anderson and Caulfield near the front door. Detective Inspector Anderson was heard to say: "This is Inspector Anderson, open the front door". Up until that time, no officer had seen the Barbieris with a weapon in their hands. Detective Caulfield checked the front door and found it locked. Detective Inspector Anderson is heard to say: "Look, my name is Inspector Bryson Anderson, from Windsor Police".
81. The Barbieris asked police to leave. Fiona Barbieri told police to put their concerns in writing and she would email her replies. Detective Ornatowski told her that police were not going anywhere and that could not happen. At that point, Mitchell Barbieri held to the window an A4 size document that was a copy of Hansard, and Fiona Barbieri held an unknown document to the window.
82. Detective Caulfield told investigators that he was anxious that the Barbieris may be arming themselves and would fire an arrow through the windows towards police. Detective Ornatowski asked Fiona Barbieri "where's the bow and arrow"? She replied: "What bow and arrow...oh that's a toy". Detectives Ornatowski and Caulfield leant into the window to read the paper held up by Fiona Barbieri.
83. At 1607, Inspector Battin listened to his voicemail message and at 1608 he called the DOI and said: "We've made audio contact with the mother of the POI". Inspector Gregor was unaware that the mother was also in the house. Inspector Battin told him: "She's as mad as what he is, she's not the offender". Inspector Battin told Inspector Gregor that police had seen both Fiona and Mitchell Barbieri at the window and Mitchell had walked away in a disinterested fashion. Inspector Gregor said: "Do you want the Negs out there?", and Inspector Battin replied, "If you could get them mobile, because on his history, he has significant mental health history, he is not likely to want to come out and until we can sight the bow and arrow and any other weapon that's in there we're not going to go much beyond what we're doing now, so..".
84. Following that call, Inspector Battin did not inform any officer at the scene that the State Protection Group, TOU and Negotiators had been requested to attend.
85. At 1608, Detective Inspector Anderson sent a text message to Inspector Battin saying: "One very big dog inside and they're staying staunch". Almost immediately after he followed it with a second message reading: "Two dogs". Inspector Battin did not respond.

86. Between 4:05 and 4:08pm, Sergeant Fitzgibbon left the Command Post and went to the front gate. He took the ballistic vest from Constable Ellis and walked to the front of the house to join Detective Inspector Anderson, and Detective Ornatowski and Caulfield. Sergeant Fitzgibbon describes seeing "Bull Mastiff hunting dogs" at the front French doors barking aggressively.
87. At 4:08pm, Hawkesbury 101 arrived containing Detective Senior Constable Matthew Clancy and Constable Ryan Mitchell. They attended the Command Post to assist Inspector Battin.
88. Sergeant Fitzgibbon approached Detective Inspector Anderson and told him that he was going to go around the back to look for an access point. Detective Inspector Anderson went with him and they reached the back door at about 4:12pm. On seeing Detective Inspector Anderson and Sergeant Fitzgibbon go to the rear of the house, Officers Camilleri and Jenkins further entered the property from the front right side and maintained observations of the house. Officers Ghata and Watson came from the rear to the side of the house and Jenkins moved to the side. Detective Clancy saw Sergeant Fitzgibbon and Detective Inspector Anderson move to the rear, relayed that to the Command Post and jogged to the rear to join the other police.
89. On arrival at the rear door, Sergeant Fitzgibbon and Detective Inspector Anderson observed the rear window on the verandah and Sergeant Fitzgibbon rattled the door handle. Detective Inspector Anderson looked in the window and saw that both Fiona and Mitchell Barbieri were at the window. Detective Inspector Anderson started a conversation and Fiona Barbieri yelled: "Get off our property". Detective Inspector Anderson attempted to open the window.
90. Sergeant Fitzgibbon and Detective Inspector Anderson were joined by Officers Camilleri, Watson, Ghata, Caulfield and Constable. At a later point they were joined by Jenkins, Clancy and Ornatowski. Mitchell Barbieri took photographs through the windows.
91. Detective Ornatowski heard Fiona Barbieri say: "I think they are trying to get in the back". She closed the curtains and left the front window area. Detective Ornatowski realised he was the only officer out the front and he walked to the back. When he got there, he was told by Detective Caulfield to go back to the front and keep trying to talk to her, to distract her, and in case they come out the front door.
92. Officers Ornatowski and Jenkins went back to the front of the house. Detective Ornatowski knocked on the front window and Fiona Barbieri came and opened the curtains. At that moment, Detective Ornatowski saw Detective Clancy entering the grounds of the property and heard Fiona Barbieri say: "Look, they're trying to get into the back", while she closed the curtains again. Detective Ornatowski then started to walk around the back when he heard a loud noise and someone say "help". He and Detective Clancy ran to the back of the house. At the same time, Detective Clancy relayed that information to Senior Constable Hughes in the Command Post via phone.

93. At 4:12pm, shortly after police converged on the back door, Inspector Battin received a call from Sergeant Carl McCormack of the TOU, a conversation that is captured on a recording made by Inspector Battin. It is clear from that conversation that Inspector Battin was requesting the attendance of the TOU.
94. While that was happening, Detective Inspector Anderson was engaging Mitchell Barbieri at the rear door. Mitchell could be heard talking back in a highly aggressive manner. Detective Inspector Anderson said: "Mitchell, I am Inspector Anderson from Windsor police. We have a warrant to enter the premises as we believe that an offence has happened here". Mitchell Barbieri said: "fuck off, fuck off". Detective Inspector Anderson said: "You're under arrest", and Mitchell replied: "I am not under arrest". Fiona Barbieri was yelling and the dogs were barking.
95. Detective Inspector Anderson removed the flyscreen from the window and said again, "We have a search warrant for the premises". Mitchell Barbieri replied: "You're not coming in, fuck off". Constable Camilleri told investigators that he could feel the conflict escalating as Mitchell appeared to become more hostile to police.
96. Constable Watson, who was close to Detective Inspector Anderson also tried to speak to Mitchell Barbieri, yelling out: "Come on mate, just let us in". He could see Mitchell inside the house and could see Fiona, who at one stage came to the window and banged on it with her hands yelling: "fuck off".
97. Detective Inspector Anderson said, "Right, that screen door's got to come off". Officers Ghata and Fitzgibbon attempted to pull it off but managed to only remove half, the other half was fixed to the door by a hinge and was open and swinging. Constable Ghata says that he put his hand on his holster as he perceived the intention was to go in, and the dogs, Mitchell and Fiona were all "going off".
98. At 4:14pm, Detective Inspector Anderson and Sergeant Fitzgibbon conversed quickly about forcing entry and Inspector Anderson nodded and said: "Break the door we're going in. He's under arrest". Fiona Barbieri was heard to say: "The cunts are coming in".
99. Sergeant Fitzgibbon positioned himself to force the door. Detective Inspector Anderson was on his right hand side, between the door and the window, up against the wall of the house. Also on the verandah was Officers Ghata, Camilleri, Watson and Caulfield, behind the flyscreen door that was now open and swinging. Officers Ghata, Watson and Camilleri had their OC sprays out. On the other side of the verandah, near the stairs was Senior Constable Constable.
100. Detective Inspector Anderson called Inspector Battin at 16.14.41 for 17 seconds, at which time Inspector Battin was still on the phone to Sergeant McCormack of the TOU. It is believed that Detective Inspector Anderson said: "We're going in". Whilst Inspector Battin is on the phone to Sergeant McCormack, officers on the ground relayed a message that police are going in right now. Sergeant McCormack replied, "Are you sure about that?", and



Inspector Battin says: "We've got vested up police to go in and physically engage him. I am happy with it because one of these guys knows this bloke".

101. Sergeant Fitzgibbon kicked the door open. and saw Mitchell Barbieri about 3-4 metres inside the house bending down near a gas cylinder and tuning a dial on the top of it. This was later determined to be a weed flame thrower device. Sergeant Fitzgibbon stepped back away from the door and told the other officers to get back. Detective Inspector Anderson was near the side of the door in between it and the back window.
102. Immediately after the door flung open, two big dogs came out on the verandah towards the officers barking aggressively. OC spray was used on the dogs by Officers Camilleri, Ghata and Watson, and later by Ornatowski, and the use in this confined space incapacitated a number of the officers. Mitchell Barbieri followed the dogs out the door and in a lunging motion, struck Detective Inspector Anderson with a large knife, in the top right of his chest and then to his face. The wound to the chest was the fatal one. Mitchell Barbieri was taken to the ground almost immediately by other officers.
103. Fiona Barbieri came afterward and there was a violent struggle with the officers, the Barbieris and the dogs. It took some time to subdue Mitchell Barbieri, even after the knife was knocked from his hand. The verbal barrage of abuse from the Barbieris to the officers is distressing and not necessary to repeat. It might properly be seen as a symptom of the paranoia and hostility that was characteristic of the mental disturbances they had.
104. At 1616, Hawkesbury 14 called on the radio for urgent assistance and an ambulance for an officer down. At 1618, Inspector Battin called A/Commander Jones telling him that an officer was injured and there was great anxiety in the voices of those police informing him, but he still did not know the details.
105. After Detective Inspector Anderson was injured, his fellow officers rushed to assist him. They were able to speak with him for a short time and then he became unconscious. Urgent medical attention was called for and arrived in a timely fashion. Ambulance officers arrived on scene about 4:25pm and worked on Detective Inspector Anderson. He was transferred to hospital. Tragically, despite best efforts, Detective Inspector Anderson was declared deceased at 5:03pm.

## **Autopsy report**

106. Dr Istvan Szentmariay, Forensic Pathologist, performed an autopsy on Detective Inspector Anderson at the Department of Forensic Medicine on the morning of 7 December 2012. He concluded that Detective Inspector Anderson died as a result of a stab wound to the chest.

## **Police investigation**

### ***Critical Incident declared***

107. The death of Detective Inspector Anderson was declared a critical incident, in accordance with NSWPF guidelines that this should be done when an officer is killed in the line of duty. A Critical Incident Investigation Team ("CIIT") was formed and Detective Chief Inspector Taylor was appointed as Senior Critical Incident Investigator. The CIIT conducted numerous interviews with involved officers and witnesses. They examined extensive documentation, photographs, audio recordings and forensic evidence to compile the brief of evidence before the Court. They collected and reviewed relevant policies and procedures.
108. A comprehensive expert opinion, based on the evidence collected, was obtained from Senior Sergeant Peter Davis, Senior Instructor from the NSWPF Weapons & Tactics Policy and Review Unit which informed the conclusions of the CIIT.

### ***Conclusions of the Critical Incident Investigation Team***

109. Before addressing the conclusions reached by the CIIT, I wish to acknowledge the challenge that police investigators had in this case, and to provide a background for the conclusions reached.
110. First, the challenge. In order to learn from the tragic events on 6 December 2012, it was necessary to conduct a forensic and critical review of what occurred. That is the purpose of a Critical Incident Investigation, consistent with the aim of coronial proceedings - a frank and fearless review of what occurred so that lessons can be learnt that will save lives in the future. There is a great challenge in doing that in a sensitive way, that does not seek to blame individuals but highlights the lessons to be learnt from their individual actions.
111. With the death of Detective Inspector Anderson, police have lost a committed and gifted officer, who paid the ultimate price for his bravery and service. None of the conclusions reached as to what should be learnt from this tragedy should in any way detract from his service, or from the memory of him as an excellent police officer.
112. Other police officers involved in the siege on 6 December 2012, have survived that day and have to live with the grief of the loss of their colleague. None of the conclusions reached should be taken to be a criticism of any individual officer. It is accepted that each of the officers involved were working together in good faith, as a team, and for the sake of the safety of the community. They were brave and they were skilled.
113. In broad terms, the conclusions reached by the CIIT included the following:
- a) There was no clear understanding of who was in command and who the rank officers needed to take instructions from on the day. That impacted on the command and control of the siege.
  - b) There was no clear start and finish to the briefing in the Command Post and, as such, the plan of action was not clearly articulated to all officers.

- c) After Detectives arrived mid-afternoon, police initiated efforts to get a search warrant for the 33 Scheyville Road, when in fact a serious offence had been committed and there was no need to obtain a search warrant. There was a perception in the minds of some of the officers that they were operating in search warrant mode, rather than responding and managing a siege situation. That may have affected the way in which they rationalised the risk.
- d) The accuracy or detail of the information held on police records when relayed from one officer to another may have been distorted and whoever was in command may not have been informed of the full facts of that information.
- e) There is no evidence that police used the 2012 NSWPF Operations Manual to manage the situation they were confronted with. The section that would have been of particular use was the Incident/Emergency General Action Sheet, which outlined a step by step guide as to what to do when faced with a serious incident such as a siege. With this is a series of resource check lists, incident entry/exit logs, an operations log, a crime scene sketch plan, an incident command board template and a template called the Individual Appreciation Process. That process helps to identify the hazards, assessment of threats to life and measures to reduce potential loss to life.

The CIIT identified the most important parts of the Operations Manual to be those titled “HIGH RISK/SIEGE INCIDENTS”. In bold text it states: “NSW Police Force strategy regarding the resolution of ‘high risk’ situations is primarily one of **CONTAINMENT AND NEGOTIATION** (bold text included) with force to be used only as a last resort in proportion to the threat, after all available options have been considered”. It is followed in green text with the words: “The Tactical Operations Unit (TOU), Negotiations Unit can and **MUST** be contacted by any police officer in an emergency ‘high risk’ situation by contacting the Duty Operations Inspector (DOI)”. The rest of the pages outline a tick a box style format for what an officer in command and control should or should not do, and finishes by providing police with a definition of “high risk”. The CIIT believe that use of this manual would have greatly assisted officers who were in command and control in the day to better appreciate how to resolve the incident with minimised risk.

- f) An adequate assessment of the risk presented should have led to this incident being categorised as “high risk” with the attendant protocols put in place. A “high risk” incident is defined in the Operations Manual. The circumstances and types of situations which may be classified as “high risk” vary widely but essentially any one of the following factors may indicate “high risk”:
  - i. seriousness of the offence committed by the suspect/offender;
  - ii. expressed intention by suspects to use lethal force;
  - iii. reasonable ground to believe the suspect may use lethal force, has caused injury/death/has issued threats; and
  - iv. the suspect has a prior history of violence; is exhibiting violence.

Clearly the definition was met in this case.

In any incident where the assessment of “high risk” is made, there should usually be a Superintendent and more likely an Assistant Commissioner involved, especially if the plan involves the use of force. The CIIT identified the failure to define the incident on 6 December 2012 as “high risk” as the biggest key factor in the outcome on the day.

- g) There was no adequate risk assessment done. The CIIT point to various aspects of the risk assessment that was deficient, most notably:
  - i. There were further police records available, which would have assisted police to analyse the risk that were not assessed;
  - ii. There was a failure to include the dogs in the risk assessment;
  - iii. There was a failure to factor in the weapons that might be inside the house. After the incident, multiple weapons were found inside the house that could have been used in addition to the knife; and
  - iv. There was a failure to factor the Barbieri’s mental health issues into the risk assessment. Senior officers made references to their mental health issues, sometimes in a colloquial way, without giving adequate consideration to the way in which those mental health issues might increase the risk for officers. It appears that in planning for the response to the siege involved police failed to recognise that the Barbieris had become increasingly unstable with a dramatic escalation in the amount of police attention in the previous two years.
- h) The negotiation process was yielding important “intel”, and creating an opportunity for dialogue with Fiona Barbieri. It should have been allowed to continue.
- i) There were aspects of the negotiations that were not in accordance with best practice guidelines. For example, negotiations should have been done by one officer, not multiple. Near the conclusion of the siege, there were police officers at the front and back of the house. That created significant operational problems and made it impossible to build trust with the occupants.
- j) The “forced entry” proposal was flawed. Broadly, a decision was reached amongst some of the officers that while Fiona Barbieri was distracted, Detective Inspector Anderson and other officers would force their way into the house and effect an arrest. The CIIT outline why that was problematic, including:
  - i. There were too many variables to be factored into the equation;
  - ii. Two large dogs would hinder police entering the house without delay;
  - iii. Police would have to break open the screen door/s before forcing the main door/s;
  - iv. It would be difficult to get to any person before they could arm themselves;
  - v. There was no electricity inside the house, meaning it was very dark and navigation inside was seriously compromised;
  - vi. There was no element of surprise;

- vii. The paranoia of the Barbieris meant they may perceive police as a danger;
  - viii. There was no assessment of the ability to retreat and the back verandah allowed for very little room to retreat; and
  - ix. Police had no way to determine what weapons the Barbieris had access to.
- k) A forced entry would only be required if, for some reason, time was against police which required immediate and deliberate action. For example, if there was imminent danger to life. In the absence of that, the policy of contain and negotiate should have prevailed.
  - l) The need to force entry other than in an emergency situation requires authority and usually only from an Assistant Commissioner, especially in “high risk” incidents.
  - m) The Command Post did not have enough staff, meaning that not all communications went through.
  - n) There was a lack of clear communication between the Command Post and officers on the inner and outer perimeter. No direction was made to only use police radio for communications. No direction was made as to who was going to convey information to whom. Inspectors Battin and Anderson communicated on their mobile phones. On examination of the phone records and information available to investigators there were numerous occasions when persons on the inner perimeter were trying to communicate with persons at the Command Post and vice versa. On the day of the incident there were two back channels available on radio but no request was made to utilise them. Had police radio communication been used, all officers could have kept abreast of what was happening, and the officers on the inner perimeter could have been told that the specialist resources were being called upon to attend and deal with the situation.
  - o) On a number of occasions, Detective Inspector Anderson received an engaged signal when using his phone to communicate with Inspector Battin, so that the message went to voicemail. One of those calls, at 1614 just before the forced entry, was not answered. The message bank on Inspector Battin’s phone identifies that Inspector Anderson was informing Inspector Battin that they were going to force entry. That message was never received by inspector Battin because he was on the phone to TOU. If Inspector Anderson called over the radio to the Command Post that he had made a decision to force entry, Inspector Battin may have disagreed, or at least informed him of the call to TOU.
  - p) There was no communication from the Command Post to the inner perimeter that the TOU had been called on to attend.
  - q) About six minutes before the stabbing of Detective Inspector Anderson, Inspector Battin spoke to the DOI and requested the TOU and Negotiators.

This information was not relayed to anyone on the perimeter. That may have caused those about to force entry to reconsider.

- r) The CIIT formed the view that the decision to enter was ultimately made by Detective Inspector Anderson on the spur of the moment, although it appears that it was within contemplation as a possibility for at least a few minutes.

114. A further issue identified by the CIIT as being possibly relevant is the perception that in rural areas, police are required to sort matters out themselves as they do not have ready access to back up. They are used to relying on their own resources and taking responsibility for completing a job without calling for specialist services. That factor may well have been at play on 6 December 2012.

115. Detective Inspector Anderson was a brave man and a leader. In entering the house, he put himself in the front line, in front of other officers. He had no doubt been involved in many other incident where he was able to resolve or control a situation. It is a tragedy that this situation unfolded and resulted in his senseless death.

116. The CIIT investigated the training that the involved officers had undertaken prior to the incident. The senior officers involved had undertaken training relevant to siege situations and high risk incidents. The most relevant course for senior officers is the five day Incident Commanders Course, which aims to enhance the knowledge and skills of current and potential operations commanders. This course had been done by the senior police present on the day: A/Commander Jones, Inspector Battin and Detective Inspector Anderson.

117. In addition, a number of the involved officers, including Inspectors Battin and Anderson, had attended a mandatory lecture run in 2011-2012 entitled "Responding to High Risk Situations", which had been generated as a result of recommendations from a previous coronial inquest.

## **Changes since Detective Inspector Anderson's death**

118. The Court has heard evidence from Assistant Commissioner Anthony Crandell, Commander of the NSWPF Education and Training Command, that over the intervening six years, the NSWPF has instituted major changes affecting risk assessment and siege response that means officers have had significant training on "high risk" incidents with an emphasis on "safety first". In part, those changes have been driven by NSWPF reviews that have critically analysed other "high risk" incidents where there has been a loss of life. That includes the death of Constable Bill Crews during the execution of a drug raid in South West Sydney in 2010, and the tragic deaths in the Lindt café siege in December 2014.

119. Assistant Commissioner Crandell gave evidence that significant changes have been made to procedures for pre-planned, search warrant and "uninvited entry" operations. Assistant Commissioner Crandell gave evidence that, had those procedures been in place as at 6 December 2012, he considered that it could have resulted in an outcome different to the tragic outcome that did occur. Assistant Commissioner Crandell commented that there is an overall increased

awareness as to the risks associated with policing which, due to the changes driven by the NSWPF reviews, has led to a cultural shift.

120. As to the communications issues identified in this case, Assistant Commissioner Crandell gave evidence that NSWPF training reinforces the preference for radio communication as opposed to mobile phones.

121. Assistant Commissioner Crandell also gave evidence as to the establishment, within his Command, of the "Lessons Learnt Unit" which has been set up with the purpose of getting safety messages to operational police in a timely manner.

122. Given the changes that have occurred within the NSWPF, I do not consider it necessary to make any recommendations pursuant to s. 82 of the Act.

## **Conclusion**

123. This case, and others, serve as a reminder of the enormously difficult job that police are required to do. It is also a reminder of the value of frank and objective review after the event, so that lessons can be learnt that improve the safety of police officers and members of the public they strive to protect.

124. Detective Inspector Anderson's death was tragic. It has deeply affected his family, his work colleagues and the police directly involved in the incident.

125. I thank the officer in charge, Detective Chief Inspector Taylor and Assistant Commissioner Crandell, for the excellent work done in the investigation and in preparing such a thorough brief. I thank my Counsel Assisting, Dr Peggy Dwyer and her instructing solicitor, Ms Alana McCarthy for the enormous amount of work they have put into assisting me.

126. Finally, I offer my heartfelt condolences to Detective Inspector Anderson's family.

## **Findings required by s. 81(1)**

127. As a result of considering all of the documentary evidence and the oral evidence given at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

### **Identity of deceased:**

Bryson Anderson

### **Date of death:**

6 December 2012

**Place of death:**

Hawkesbury Hospital, New South Wales

**Cause of death:**

The medical cause of death was a stab wound to the chest.

**Manner of death:**

Detective Inspector Bryson Anderson died whilst performing his duties in the course of a police operation, in circumstances where he was stabbed in the chest by Mitchell Barbieri.

I close this inquest.

Teresa O'Sullivan  
**Deputy State Coroner**  
19 June 2018