



**CORONER'S COURT  
OF NEW SOUTH WALES**

**Inquest:** **Inquest into the death of CD**

**Hearing Dates:** **19 – 20 February 2020 at Newcastle Local Court**

**Date of Findings:** **28 April 2020**

**Place of Findings:** **Newcastle Local Court**

**Findings of:** **Magistrate Stone, Deputy State Coroner**

**Catchwords:** **CORONIAL LAW - manner of death, arising from police operation, s23, adequacy of planning of arrest, risk assessment, appropriateness of police actions in locating and arresting deceased, intentional self-inflicted death.**

**File Number:** **2018/00369349**

**Representation:** **Mr J Downing, Counsel Assisting, instructed by Ms L Nash, Crown Solicitor's Office**

**Mr M Spartalis for the NSW Commissioner of Police, instructed by Mr M Price, Office of the General Counsel (NSW Police Force)**

*Section 81(1) of the Coroners Act 2009 (NSW) ("the Act") requires that when an inquest is held, the Coroner must record in writing his or her findings as to various aspects of the death. These are the findings of an inquest into the death of CD.*

### **Non-publication orders**

*I make a non-publication order pursuant to s 74(1) of the Act prohibiting the publication of the whole of the evidence in this inquest including the transcript of the evidence.*

*I make a further order under s 75(2)(b) of the Act prohibiting the publication of any material that seeks to identify the deceased CD, his wife or their sons or any of their relatives.*

*Further, pursuant to ss 65(4) and (5) of the Act a notation is to be endorsed on the court's coronial file prohibiting a copy of the whole of the file or any part of the file to be supplied to any person other than these findings. The reasons for that include consideration of the deceased's family and the significant impact the disclosure of the material would have on them; the need to protect the identity of child sexual assault victims, who are referred to within the brief of evidence; and evidence of certain protocols/checklists and operational orders of NSW Police that are contained in the brief and the need to keep safe that material in the public interest and for proper and effective operation of police duties.*

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## Introduction

1. CD died on 29 November 2018, in the course of a police operation and pursuant to sections 23(1)(c) and 27(1)(b) of the Act, this inquest is mandatory. The purpose of this type of inquest is to fully examine the circumstances of the death in which police have been involved, in order that the public, the relatives and the relevant agency can become aware of those circumstances.<sup>1</sup>

### The Inquest

2. Section 81(1) of the Act requires a coroner to make findings as to:
  - (a) the identity of the person who has died;
  - (b) the date and place of the person's death; and
  - (c) the manner and cause of the death.
3. In addition, under s 82 of the Act, the Coroner may make recommendations in relation to matters connected with the death, including matters that may improve public health and safety in the future.

## Social History

4. CD was married to AB. They had two children X and Y. At the time of CD's death they were all residing together on a semi-rural property. CD was employed as an IT specialist and consistent with his job, he had particular skills in information technology, as he was responsible for installation and maintenance of specialist computer and video mediums utilised by an NSW Health facility.
5. During 2018, CD was the subject of an internal investigation arising out of an allegation that he had misused his position to facilitate the purchase of services and products from a company in which he had a financial interest. The allegation was serious. In its final investigation report dated 4 October 2018, the NSW Health facility determined that the allegation was substantiated and consequently, their report was submitted to the NSW Independent Commission Against Corruption ("ICAC") for further investigation.
6. The following is a combination of agreed facts (as prepared by Counsel Assisting who I acknowledge as the author of that document) and the evidence of witnesses that were called to give evidence. There are no issues of credit. Each witness who gave evidence in my opinion did so to the best of their ability and did so to assist the inquest.
7. On 21 November 2018, ICAC Senior Investigator Michael Riashi obtained a search warrant permitting a search to be undertaken of CD's property. CD lived at the property with AB, and his children X and Y. Prior to executing the search warrant, ICAC Senior Investigator Riashi ascertained from the Firearm Integrated Licensing System that CD had a firearm licence and a

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<sup>1</sup> See *Waller's Coronial Law and Practice in New South Wales* (2010) Abernethy J et al, 4<sup>th</sup> Ed., 23.7, p.106

number of firearms registered to him at the address to be searched. Consequently, arrangements were made for NSW Police Force (“NSWPF”) officers to accompany the ICAC officers executing the search warrant.

### **Search Warrant and Events on 23 November 2018**

8. At approximately 7.25am on 23 November 2018, the ICAC search warrant was executed at the property of CD, with ICAC Senior Investigator Riashi, ICAC Investigator Thomas, ICAC Electronic Evidence Analyst Frewen and ICAC Investigator Ionnidis in attendance. Later in the day, ICAC Technical Officer Leeson also joined them. Additionally, NSWPF officers Senior Constable Nevil and Senior Constable Proctor attended the residence and conducted an inspection and audit of CD’s firearms.
9. After the NSWPF officers found CD’s firearm safe door open, with a rifle standing outside it and one firearm in a caravan on the property, they seized CD’s firearms and ammunition and informed him that his firearms licence was being suspended. The NSWPF officers departed CD’s residence at approximately 9.13am, taking with them all known and accounted for firearms. At this point the ICAC Investigators began their search.
10. During the hearing, ICAC Senior Investigator Riashi was taken to his statement and to the transcript of the audio captured on his body worn camera, which he wore during the entire search. His statement and the transcript detail his interaction with CD and with Detective Senior Constable Walker.<sup>2</sup> ICAC Senior Investigator Riashi confirmed that he held some suspicion about CD’s conduct during the search, in particular once a particular mobile phone was located. Initially CD maintained that the mobile phone belonged to one of his children, however ICAC Senior Investigator Riashi described that CD displayed some reticence about unlocking this phone. It later became clear that the phone was in fact CD’s and not his child’s.<sup>3</sup>
11. In the course of the search, the ICAC Investigators searched a detached shed and located a small safe which had a lock secured by a digital pin combination. CD complied with a request to open the safe and knew the combination to open it.
12. When CD opened the safe, he reached inside to pull items out, but was stopped by ICAC Senior Investigator Riashi. ICAC Senior Investigator Riashi then looked inside the safe and located a large, clear resealable bag with underwear in it. CD claimed that the underwear was related to a fetish his wife had. CD then quickly departed the shed.
13. There were a number of similar resealable bags inside the safe, each labelled with a different female Christian name. ICAC Senior Investigator Riashi reviewed the bags and noted that the underwear appeared to be very small. In the investigator’s opinion, in view of the small size of the female underwear and the patterns on them, he suspected they belonged to children.<sup>4</sup> He

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<sup>2</sup> Statement of ICAC Senior Investigator Riashi: BoE, Vol 3, Tab 15; Transcript of footage: BoE, Vol 3, Tab 14

<sup>3</sup> Transcript, 19/02/20; T38, line 1 onwards

<sup>4</sup> BoE, Vol 3, Tab 15, p. 19 at 61

was concerned that he had located child exploitation material, which likely belonged to CD. Also within the safe was a condom, some photographs and a letter.

14. In his evidence at the hearing, ICAC Senior Investigator Riashi noted one photograph was of an adult woman, clothed but the picture was focused on her chest area. The other photographs were of two female children and an adult female, clothed. It appeared that they had posed for the camera.<sup>5</sup> ICAC Senior Investigator Riashi thought the condom was still sealed. Some of the underwear was flattened out in the bag. Because of the names on labels attached to each bag, he had a suspicion that they were kept as “trophies”. He also read the letter. The contents appeared to be a letter to a female work colleague and he saw that it was signed with CD’s initials. He didn’t open the plastic bags as he did not want to contaminate potential evidence.
15. ICAC Senior Investigator Riashi asked ICAC Investigator Thomas to locate CD. ICAC Senior Investigator Riashi telephoned his supervisor, ICAC Chief Investigator Dubois and also telephoned Detective Senior Constable Bottrell. He asked both Chief Investigator Dubois and Detective Senior Constable Bottrell to attend the premises in order to inspect the items found in the safe.
16. ICAC Investigator Thomas located CD in the house. He and ICAC Senior Investigator Riashi then continued their search in the shed and at approximately 11.49am, ICAC Investigator Thomas found what he suspected to be child abuse material in a plastic storage box located in the shed. They were cassette film tapes. At that point, ICAC Senior Investigator Riashi determined that the search of the box should be suspended, pending the arrival of the NSWPF officers. ICAC Investigator Thomas returned to the residence and observed that CD appeared to be unwell and was lying down on the lounge. His wife, AB, who had returned home, was comforting him.
17. At approximately 1.38pm, Detective Senior Constable Walker from Cessnock Police Station arrived at the premises and ICAC Senior Investigator Riashi and ICAC Investigator Thomas briefed him as to what they had discovered.
18. From the evidence of both Detective Senior Constable Walker and ICAC Senior Investigator Riashi, the briefing occurred as they were walking towards the shed from where Detective Senior Constable Walker parked his vehicle. They had been talking for some minutes when CD was observed to depart the house from the rear and walk with “pace” through a gate and up a hill on the property.<sup>6</sup>
19. ICAC Senior Investigator Riashi and ICAC Investigator Thomas expressed concern regarding CD’s safety to Detective Senior Constable Walker, although Detective Senior Constable Walker does not recall this conversation. Detective Senior Constable Walker asked ICAC Senior Investigator Riashi what CD was doing. ICAC Senior Investigator Riashi of course did not know.<sup>7</sup>

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<sup>5</sup> Transcript, 19/02/20; T38, line 20 onwards

<sup>6</sup> Transcript, 19/02/20; T65, line 19 onwards

<sup>7</sup> Transcript, 19/02/20; T65, line 27 onwards

20. At about the same time, AB departed the house and started running after CD. She said words to the effect that the situation had “turned” and she thought something was going to happen. ICAC Senior Investigator Riashi could not remember if he had briefed Detective Senior Constable Walker about CD’s firearms. He remembers Detective Senior Constable Walker asking him if CD had access to firearms and him replying they had been taken away earlier that day.<sup>8</sup>
21. ICAC Senior Investigator Riashi called out to CD who turned around and, after apparently seeing ICAC Senior Investigator Riashi and others, started to run. ICAC Senior Investigator Riashi and ICAC Investigator Thomas then ran after CD, who ran out of sight. Detective Senior Constable Walker saw CD take off and then joined ICAC Senior Investigator Riashi and ICAC Investigator Thomas in running after CD.
22. ICAC Senior Investigator Riashi’s described CD’s conduct as “bizarre”. After initially running away, he then stopped cold, turned around and walked back towards him and the other officers chasing him, eating an apple, as if nothing had happened.<sup>9</sup> ICAC Senior Investigator Riashi was concerned that CD may try to self-harm, but also that he might try to dispose of something.<sup>10</sup> In his opinion, the nature of the material, the change of behaviour by CD once the contents in the safe were found in the shed, and his conduct in walking and then running away concerned him.
23. Ultimately, when ICAC Senior Investigator Riashi, Investigator Thomas and Detective Senior Constable Walker caught up with CD, he denied that he had taken off and suggested that he “just wanted to get away, get out of the house”.
24. At approximately 2.08pm, the ICAC Investigators found explicit child exploitation material on a hard drive. ICAC Senior Investigator Riashi informed Detective Senior Constable Walker that ICAC was not permitted to possess child exploitation material and would therefore not be able to continue with further previews or acquisitions. Detective Senior Constable Walker declared the premises a crime scene and informed CD that other NSWPF officers would be attending soon and further, that a police search warrant was being sought.
25. Detective Senior Constable Walker did not know who the owner of the hard drive was, and the material he briefly looked at did not depict CD. It did depict naked images of children and he determined it looked like child abuse material of some kind.<sup>11</sup>
26. ICAC Senior Investigator Riashi was taken to his statement and he recalled having a discussion with Detective Senior Constable Walker and CD, where CD said words to the effect “no one else had access to the safe”.<sup>12</sup> The Detective then asked CD who put the material in the safe and he declined to answer.<sup>13</sup>
27. At about this time, ICAC Senior Investigator Riashi said words to the effect of “I’m not prepared to leave CD because I have concerns for his welfare” to Detective Senior Constable Walker.

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<sup>8</sup> Transcript, 19/02/20; T40, line 24 onwards

<sup>9</sup> Transcript, 19/02/20; T42, line 30 onwards

<sup>10</sup> Transcript, 19/02/20; T42, line 47 onwards

<sup>11</sup> Transcript, 19/02/20; T68, line 34 onwards

<sup>12</sup> Transcript, 19/02/20; T44, line 42 onwards

<sup>13</sup> Transcript, 19/02/20; T45, line 1 onwards

ICAC Senior Investigator Riashi sat with CD pending the arrival of more police officers and CD said words to the effect of “I can’t see farther than today”. Detective Senior Constable Walker does not recall these conversations. The Detective in his evidence thought ICAC Senior Investigator Riashi was more concerned about CD having disposed of something when he ran.<sup>14</sup>

28. Detective Senior Constable Walker determined at this point that he did not have enough evidence to hold CD, as the suspected child abuse material on the hard drive may not necessarily belong to him. Detective Senior Constable Walker and ICAC Senior Investigator Riashi informed CD that he was not under arrest and asked him why he had taken off earlier that day. They specifically questioned him as to whether he intended to harm himself. CD said that he had “nothing to harm himself with unless I ran into a tree”. Under direct questioning, CD denied that he wanted to harm himself.
29. At approximately 3.19pm, Detective Senior Constable Sweeney, Detective Senior Constable Wilks and Senior Constable Murphy from the Cessnock Police Station arrived at the scene and Detective Senior Constable Walker briefed them. Detective Senior Constable Walker and Senior Constable Murphy then went to Kurri Kurri Police Station to seek a search warrant. A search warrant was issued by Maitland Local Court at approximately 5pm, after which time Detective Senior Constable Walker and Senior Constable Murphy returned to CD’s property.
30. Before NSWPF officers began carrying out the search under the search warrant, CD stated that he wanted to leave. Detective Senior Constable Walker informed CD he was not under arrest and could therefore leave, but also asked that a record be made of police serving him with an Occupier’s Notice. The NSWPF officers searched CD and his vehicle before he left. On the search of CD they located a small SD memory card in his wallet. He said to the officers he couldn’t remember what it contained but thought it was old trail footage of wild dogs on the property.<sup>15</sup>
31. After CD left the premises, the search was suspended pending the arrival of Chief Inspector Vromans as an “independent” officer. When Chief Inspector Vromans arrived, the search resumed and a number of exhibits were seized, as well as two firearms, which had not been located earlier by the NSWPF officers who accompanied the ICAC officers. The rifles were not on the list of known rifles owned and registered to CD. The search concluded at approximately 9pm. By that time, CD had not returned to the property.
32. Following the conclusion of the search, Detective Senior Constable Walker spoke to Chief Inspector Vromans and discussed CD having run away earlier in the day. Detective Senior Constable Walker suggested that it could be due to CD seeking to dispose of evidence or because he was considering self-harm. Following on from the discussion, Chief Inspector Vromans and Detective Senior Constable Walker decided that a “keep a look out” job should be created for CD and his vehicle covering the period Friday 23 November 2018 to Monday 26 November 2018.

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<sup>14</sup> Transcript, 19/02/20; T67, line 47 – T68 line 2

<sup>15</sup> Transcript, 19/02/20; T72, line 19 onwards



## **Issue 1: The basis for the decision to charge CD on 28 November 2018 and whether there was any delay in making that decision**

33. In the five days following the execution of the search warrant on 23 November 2018, NSWPF officers reviewed the exhibits seized, including the video and digital material. There was some delay to this review, as the material was on a variety of mediums, including old VHS tapes, and Detective Senior Constable Walker explained that he had to source suitable equipment to view the material.<sup>16</sup>
34. On 26 November 2018, Detective Senior Constable Walker telephoned AB and enquired about CD. AB indicated that CD had been in and out of the house over the weekend. She added that she did not fear he would self-harm, though she also stated that he seemed “a little off”. Detective Senior Constable Walker informed AB that she should contact triple zero if she had any concerns about CD’s safety.
35. On 28 November 2018, and having further reviewed some of the exhibits that were seized, Detective Senior Constable Walker concluded that there was sufficient evidence of child abuse for CD to be arrested and charged. The older material, the VHS tapes, showed footage filmed covertly in public, described colloquially as “upskirting” – taking film of females under their skirts around their genital areas.<sup>17</sup> However, one of the hard drives Detective Senior Constable Walker reviewed had footage that depicted CD sexually assaulting some young female children.<sup>18</sup>
36. He then consulted with Detective Sergeant Sargent somewhere between 5.00pm and 5.30pm about the best path forward.<sup>19</sup>
37. In his evidence at the hearing, Detective Senior Constable Walker gave sound, sensible reasons why he did not arrest CD on 23 November 2018. He concluded he did not have reasonable grounds to effect an arrest.<sup>20</sup> In respect of the items in the safe, he considered those on their own would not be enough to establish a criminal offence<sup>21</sup>. Similarly, the material on the hard drive located in the shed did not depict CD and there was no admission by CD that he was the owner of the hard drive. The cassette tapes located in the separate box in the shed were unable to be viewed at the time the search warrant was executed, due to specialist equipment being required. Again Detective Senior Constable Walker was not aware as to who owned or possessed these tapes. Ultimately, Detective Senior Constable Walker gave evidence that he was not comfortable charging CD, as he had formed the view that there was not enough evidence to do so.<sup>22</sup> I am satisfied with those reasons.
38. However, by 28 November 2018 and upon reviewing a substantial portion of the seized material, that opinion had changed, and after consultation with Detective Sergeant Sargent, a

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<sup>16</sup> Transcript, 19/02/20; T85, line 14 onwards

<sup>17</sup> Transcript, 19/02/20; T85, line 39 onwards

<sup>18</sup> Transcript, 19/02/20; T85, line 45 – T86, line 6

<sup>19</sup> Transcript, 19/02/20; T86, line 46

<sup>20</sup> Transcript, 19/02/20; T82, lines 47 – 48

<sup>21</sup> Transcript, 19/02/20; T83, line 12 onwards

<sup>22</sup> Transcript, 19/02/20; T84, line 1 onwards

decision was made to effect the arrest of CD. Given the lateness in the day, it was determined that CD's arrest would take place the following morning on 29 November 2018. Detective Sergeant Sargent also agreed with the reasoning not to attempt an arrest on 28 November 2018. He gave evidence stating there was insufficient staff present and that by the time appropriate arrangements could be made, the arrest would occur during darkness, which was of some risk to police.<sup>23</sup>

39. In my opinion, no criticism could be made in relation to Detective Senior Constable Walker's reasoning and his decision not to arrest CD prior to, or late on the afternoon of, 28 November 2018.

**Issue 2: The arrangements made to arrest CD on 29 November 2018 and whether planning for the arrest was adequate**

**Issue 3: Further to Issue 2 above, whether any form of risk assessment was undertaken in respect of the planned arrest in light of the nature of the charges to be laid against CD and his behaviour on and after 23 November 2018**

40. On 29 November 2018 at 9.30am, Detective Senior Constable Walker, Detective Sergeant Sargent, Detective Senior Constable Cooper and Detective Senior Constable Sweeney met at Kurri Kurri Police Station in order to discuss attending CD's residence and arresting him.
41. In his evidence at the hearing, Detective Senior Constable Walker told the inquest that the briefing of the other officers took about 20 minutes. Detective Senior Constable Walker determined that two officers would proceed to the front of CD's property and two officers would go around to the back of the property. It was not planned to inform CD of the police's intention to come out to the property to arrest him.<sup>24</sup>
42. Prior to the briefing, Detective Senior Constable Walker undertook a location search regarding CD on the police COPS system. This was to ascertain whether there were any warnings for CD's address, whether any firearms were known to be at the address, and to ascertain who else may live at the address. The COPS system also records whether there have been any recent incidences of violence or mental health attendances by police.<sup>25</sup> Detective Senior Constable Walker also conducted a search called "PerFind". This tells police about the criminal history of a person and other relevant intelligence such as their RTA details, previous and current addresses etc.<sup>26</sup> As part of the searches conducted, it appeared that CD had one old break and enter charge recorded in his criminal history from the 1980s. However nothing in the searches indicated to Detective Senior Constable Walker that CD had a propensity for violence, or that CD had any recorded offences involving violence.<sup>27</sup> He had no known history of any mental health issues and no record of having either a drug or alcohol problem where he had any interaction

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<sup>23</sup> Transcript, 20/02/20; T8, line 44 onwards

<sup>24</sup> Transcript, 19/02/20; T87, line 29 onwards

<sup>25</sup> Transcript, 19/02/20; T113, line 1 onwards

<sup>26</sup> Transcript, 19/02/20; T113, lines 44 – 45

<sup>27</sup> Transcript, 19/02/20; T87, line 5 onwards

with police. Detective Senior Constable Walker knew that firearms had been removed and his major concern was that CD may attempt to flee.

43. Detective Senior Constable Walker was asked in some detail about whether or not he has used the search warrant risk assessment tool. His evidence was that he had used the risk assessment tool previously in respect of a number of search warrants and found the use of the tool very time-consuming. In his opinion, having a similar risk assessment tool and guide to use for a planned arrest would delay him in going and performing that planned arrest, as this would necessitate working through a multi-page document in an attempt to factor in risks that may or may not crystallise.<sup>28</sup> He added that there was already an informal process for undertaking a risk assessment.<sup>29</sup>
44. It was difficult to understand Detective Senior Constable Walker's reasoning. On the one hand he acknowledged that the search warrant risk assessment tool had some benefit as it forced a police officer to record that a risk assessment was undertaken, the factors considered and what the conclusion was.<sup>30</sup> He also acknowledged that the tool can assist in 'jogging' a police officer's memory to consider a particular risk.<sup>31</sup> However on the other hand, Detective Senior Constable Walker stated that the tool did not assist in identifying risks, as attempting to identify every risk was a "*guessing game*"<sup>32</sup>
45. He stated that overall, creating a risk assessment tool for planned arrests would not be of assistance, as a police officer would be attempting to record risks that are unable to be fully identified; it would be like "*trying to foresee the future*".<sup>33</sup> This response appears somewhat illogical. Precisely because of the variability of risk, it would, in my view, be a very sensible idea to have a checklist to ensure that a police officer does consider various risks and their competing level of possibility/probability when proposing to undertake a planned arrest. However, this was not a view shared by Detective Senior Constable Walker or any of the other police officers who gave evidence at the hearing.
46. Detective Senior Constable Walker did not use the risk assessment tool and checklist for search warrants when he obtained his own search warrant on 23 November 2018. He said that he spoke to his superior officer and it was decided that it was not needed in view of the fact that he had already been out there, had some idea of what was going to be involved, had met CD and that all known firearms had been taken from him.<sup>34</sup>
47. Given there is no equivalent document regarding "planned" arrests, Detective Senior Constable Walker did not formally record, nor did he need to, what risks he considered, prior to CD's arrest on the morning of 29 November 2018. However, he had already been out to the property, had

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<sup>28</sup> Transcript, 19/02/20; T103, line 25 onwards

<sup>29</sup> Transcript, 19/02/20; T103, line 31 onwards

<sup>30</sup> Transcript, 19/02/20; T100, line 46 onwards

<sup>31</sup> Transcript, 19/02/20; T100, line 30

<sup>32</sup> Transcript, 19/02/20; T100, line 40

<sup>33</sup> Transcript, 19/02/20; T104, line 20 onwards

<sup>34</sup> Transcript, 19/02/20; T117, line 16 onwards

already had an interaction with CD and had undertaken a variety of searches regarding CD on the COPS system. In view of these investigations, he was satisfied that he had covered all known risks. He said that he took into account his initial concern about CD running away from the home on 23 November 2018, but in view of his conversation with AB on 26 November 2018, he didn't feel at the time that self-harm was likely to be a factor.

48. Detective Sergeant Craig Thomas Sargent gave evidence at the inquest. He confirmed that he was Detective Senior Constable Walker's supervising officer and confirmed that they had discussed arresting CD on the afternoon of 28 November 2018 after Detective Senior Constable Walker had determined, of his own volition, that an arrest would take place.<sup>35</sup> Detective Sergeant Sargent agreed with the decision to arrest and charge CD, and he then had a discussion with Detective Senior Constable Walker about the logistics of undertaking the arrest. Given it was already quite late in the afternoon, there were insufficient staff present to effect an arrest of CD. By the time additional staff could be summoned, there was a heightened risk to any attending police officers, as it would then be dark.<sup>36</sup> A plan was reached to arrest CD on the morning of 29 November 2018.<sup>37</sup>
49. Detective Sergeant Sargent also recalled various searches that he and Detective Senior Constable Walker conducted on the afternoon of 28 November 2018, which included searches on the COPS system, a "PerFind" search, as well as a location search.<sup>38</sup> They also discussed the layout of the property and any potential hazards that may be there for police.<sup>39</sup> They also accessed Google Maps to work out the best point of entry to CD's property.<sup>40</sup>
50. Detective Sergeant Sargent also remembered that he discussed CD's firearms with Detective Senior Constable Walker. They spoke about CD's firearms being removed during the execution of the search warrant on 23 November 2018 and that this included two unregistered firearms. They considered the possibility of further firearms being present at the property, but concluded that there was no intelligence or information to suggest that CD had firearms at another location.<sup>41</sup>
51. Detective Sergeant Sargent confirmed that a briefing meeting took place the following morning on 29 November 2018 and that Detective Senior Constable Cooper, Detective Senior Constable Sweeney and Detective Senior Constable Walker were present at that briefing. He confirmed that the plan to arrest CD involved using two sets of police officers; one set of police were to enter the rear of the property and one set were to enter through the front.<sup>42</sup> He believed that the overall briefing that took place prior to going out to CD's property on the morning of 29 November was reasonable and sensible.

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<sup>35</sup> Transcript, 20/02/20; T7, line 1 onwards

<sup>36</sup> Transcript, 20/02/20; T8, line 44 onwards

<sup>37</sup> Transcript, 20/02/20; T7, line 10 onwards

<sup>38</sup> Transcript, 20/02/20; T8, line 6 onwards

<sup>39</sup> Transcript, 20/02/20; T8, line 21 onwards

<sup>40</sup> Transcript, 20/02/20; T9, line 19 onwards

<sup>41</sup> Transcript, 20/02/20; T8, line 25 onwards

<sup>42</sup> Transcript, 20/02/20; T7, line 36 onwards

52. Detective Sergeant Sargent was asked his opinion in relation to the use of the search warrant risk assessment tool. He was familiar with its use and had completed the forms on many previous occasions. He did not accept that the tool has any benefit for the purposes of assessing risk, explaining that the risk factors it asks you to consider, were factors that were already being considered prior to the introduction of the tool.<sup>43</sup> He was quite frank in saying, in his view, it was of significant hindrance, as it was extremely time-consuming to complete.<sup>44</sup> He explained that for a simple search warrant, the risk assessment tool took at least two hours to complete, and for more complex matters, it could take four to five hours, sometimes even longer.<sup>45</sup> Even if the search warrant risk assessment tool was shortened, Detective Sergeant Sargent still thought it would be of little benefit. Any potential benefit would be outweighed by the negative impact the tool has on the workload of police officers.<sup>46</sup>
53. Detective Sergeant Sargent accepted that there was no standard checklist for a “planned” arrest, even though he conceded that the risks that might present during a search warrant and an arrest are similar, as are the risks for persons of interest, the public and known associates of the person of interest.<sup>47</sup> He maintained that there would be no particular benefit to having standardised treatment options to assess risk before undertaking an arrest, explaining that every police officer, whether formally or informally, undertakes a risk assessment prior to carrying out an arrest; police do not “*just rock up at a place and kick a door in*”.<sup>48</sup> His considered view was that treatment options to mitigate risk were “*common sense things that we do anyway*”.<sup>49</sup>
54. Detective Senior Constable Ashley Cooper also gave evidence and confirmed his recollection of the briefing and planning that occurred on the morning of 29 November 2018. He was informed that CD was to be arrested and that a plan was put into place about how to approach the property, i.e. two police officers to go through the front of the property and two through the back.<sup>50</sup> Detective Senior Constable Cooper also recalled a discussion about various risk factors, including the nature of the charges being laid against CD, that firearms had been seized, and general background details relating to CD.<sup>51</sup> He was aware that Detective Senior Constable Walker had been investigating CD and that a search warrant had been conducted.<sup>52</sup>
55. Detective Senior Constable Cooper was asked his opinion in relation to the search warrant risk assessment tool and he confirmed what his colleagues had said, explaining that the tool was an onerous document and time-consuming to complete.<sup>53</sup> In his view, the informal risk assessment

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<sup>43</sup> Transcript, 20/02/20; T12, line 37 onwards

<sup>44</sup> Transcript, 20/02/20; T13, line 1 onwards

<sup>45</sup> Transcript, 20/02/20; T14, line 2

<sup>46</sup> Transcript, 20/02/20; T15, line 23 onwards

<sup>47</sup> Transcript, 20/02/20; T15, line 49 – T16, line 16

<sup>48</sup> Transcript, 20/02/20; T16, line 34

<sup>49</sup> Transcript, 20/02/20; T16, line 25

<sup>50</sup> Transcript, 20/02/20; T22, lines 36 – 37

<sup>51</sup> Transcript, 20/02/20; T22, line 42 onwards

<sup>52</sup> Transcript, 20/02/20; T23, line 11 onwards

<sup>53</sup> Transcript, 20/02/20; T24, line 26

process of going through police holdings and contacting relevant agencies to get an overview or picture of the person, can be achieved in five to ten minutes. It is the formalisation of the document, or as he bluntly stated, “*regurgitate[ing] that information into a document*”, that is the time consuming part.<sup>54</sup> He understood why the search warrant risk assessment tool was in place, but it was only formalising a process that was occurring anyway. He reiterated that police receive adequate training so as to perform their duties, including, by inference, about how to undertake risk assessments. This applied also to junior police. He believed that “*having a tick list or a check sheet is only adding to the red tape, adding more documents that need to be completed*”.<sup>55</sup>

56. When asked about whether he saw any benefit in there being a similar standardised approach regarding “planned” arrests, unsurprisingly, he, as his colleagues before him, explained that he did not see any benefit in a similar tool being created for that purpose. He explained that planned arrests are happening all the time. He was concerned that introducing a risk assessment tool for “planned” arrests would take more time out of the a police officer’s day and prevent them from doing what is required, namely “*trying to arrest people, trying to keep the community safe*”.<sup>56</sup>
57. Detective Senior Constable Nathan Sweeney gave evidence about his involvement with CD on 23 November and 29 November 2018. He confirmed he attended CD’s property on 23 November 2018 at approximately 3pm and remained there until the completion of the search warrant some hours later. Over the time he was there, he observed CD as co-operative towards police and he did not display any concerning behaviour.<sup>57</sup> He was asked about his recollection in relation to his attendance at CD’s property on 29 November 2018. He recalled attending the property and CD not being present. He then had a discussion with one of CD’s children, as well as AB, who indicated in which vehicle they thought CD was.
58. Overall I am satisfied and find from the evidence that the planning and arrangements made on the morning of 29 November 2018 were reasonable and adequate. Some days had passed since 23 November 2018 and Detective Senior Constable Walker had spoken to AB on 26 November 2018. She expressed no concerns and there was no other evidence of any concerning behaviour by CD. The use of two sets of police officers, one set intending to proceed to the front of the home and the other to the rear of the home as a precautionary measure, appear adequate and reasonable.
59. The evidence demonstrated, and I find, that an informal risk assessment was undertaken by Detective Senior Constable Walker prior to arresting CD. There was no formal requirement to undertake a risk assessment. The involved police officers had considered information in relation to CD’s possible access to firearms and on the evidence they believed all weapons had been seized. They took CD’s behaviour on 23 November 2018 into account as well as AB’s

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<sup>54</sup> Transcript, 20/02/20; T24, line 31

<sup>55</sup> Transcript, 20/02/20; T25, lines 35 – 37

<sup>56</sup> Transcript, 20/02/20; T26, line 13

<sup>57</sup> Transcript, 20/02/20; T34, lines 11 – 12

observations on 26 November 2018. There was no significant history of violence or propensity for violence. The officers well knew the environment they intended to approach to effect an arrest. They concluded the arrest was not of high-risk and that the arrest was, as Chief Inspector Parker described, “*a business as usual deployment*”.<sup>58</sup>

60. I find on that basis that all of the planning and risk assessments undertaken by police in preparation for the arrest of CD were reasonable and acceptable.

**Issue 4: the appropriateness of the police actions to locate and arrest CD on 29 November 2018 when he was not found to be at home**

61. On 29 November 2018, at approximately 9.30am, Detective Senior Constable Walker, Detective Sergeant Sargent, Detective Senior Constable Cooper and Detective Senior Constable Sweeney attended the house of CD. Detective Senior Constable Walker and Detective Senior Constable Cooper entered from the front of the property and Detective Senior Constable Sweeney and Detective Sergeant Sargent entered through the rear. The NSWPF officers spoke to one of CD’s children, X, who at that stage was the only person at the property, and ascertained that CD was not at home. X was unsure of CD’s location. X also indicated that X’s mother, AB, was attending Y’s school.
62. Detective Sergeant Sargent and Detective Senior Constable Sweeney departed CD’s residence to travel to Y’s school. As they were driving, they passed AB, who appeared to be driving back towards CD’s property. Detective Sergeant Sargent and Detective Senior Constable Sweeney turned around and followed AB back to the property.
63. Detective Senior Constable Walker spoke to AB once she arrived back at the property and informed her that Police intended to arrest CD and charge him with sexual assault of a minor, indecent assault of a minor, possession of child abuse material and filming a person’s private parts without consent. AB was upset by the news, but offered to contact CD via mobile phone. This request was declined. Detective Senior Constable Walker asked AB and X not to inform CD of his impending arrest.
64. At 10.15am, Detective Senior Constable Walker telephoned CD and requested that they meet in person without disclosing what was planned. CD suggested meeting at Cessnock Police Station in an hour’s time. Detective Senior Constable Walker agreed. Detective Senior Constable Walker did not have any concern about CD’s demeanour, believing that he sounded calm, with no signs of distress during the telephone conversation.
65. Detective Senior Constable Walker, Detective Senior Constable Cooper, Detective Senior Constable Sweeney and Detective Sergeant Sargent then departed CD’s residence and returned to Cessnock Police Station. At approximately 11.15am, CD had not arrived at Cessnock Police Station. Detective Senior Constable Walker made two unsuccessful attempts to telephone him. CD then called back and told Detective Senior Constable Walker that he would arrive at the

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<sup>58</sup> Transcript, 19/02/20; T28, line 39 onwards

police station within 10 minutes. Detective Senior Constable Walker did not believe CD sounded distressed during the conversation. CD said he had been on the phone and held up.<sup>59</sup>

66. In my opinion, from the evidence that I have heard, the actions of the police officers when they attended CD's residence were all reasonable and appropriate. They made enquiries of both CD's child, X, and his wife AB, and in a reasonable and considered way informed AB of the nature of the charges that they intended to lay against CD. They also made suggestions as to how to deal with CD if he was to contact her. In my opinion, they approached AB in a considered and sensitive manner. Further, in light of the way in which CD appeared to sound over the telephone, namely that he was calm, cooperative and volunteered to turn up at the police station, there was no evidence to suggest that the police should have thought some tragedy was about to unfold.

**Issue 5: Whether the police response to the information obtained from CD's friend was adequate**

67. At approximately 11.25am, CD telephoned his long term friend EF, who was a former NSWPF detective. During that call, CD said words to the effect of "*I've fucked up big time*" and "*You won't see me again*". EF was concerned that CD may harm himself and he telephoned his local police station, where he spoke to Senior Constable Foley. At 11.35am, Senior Constable Foley telephoned Senior Constable Heymans at Cessnock Police Station, stating that CD had contacted EF to say goodbye and was possibly armed.
68. At 11.37am, CD telephoned another friend, GH. During the call, CD seemed to break down. He insisted to GH that he go on the hunting trip the two of them had planned and said words to the effect of "*I love you like a brother*". At 12.03pm, GH texted CD to express his concern for him. He also indicated he was coming out to see him. GH drove to CD's property, where he met CD's wife and child, AB and X. They informed him that police were looking for CD.
69. After Senior Constable Heymans received the call from Senior Constable Foley, he informed Detective Senior Constable Cooper and Detective Senior Constable Walker of what he had been told. The two officers then departed Cessnock Police Station in an unmarked Holden Commodore Police vehicle "*Hunter Valley 103*". Detective Senior Constable Walker gave evidence at the inquest that the focus then became a concern for welfare rather than a focus on arrest, though the intention was still to arrest CD provided he was detained and found to be uninjured.<sup>60</sup>
70. The information they had received from Senior Constable Heymans, led Detective Senior Constable Walker to believe that "vesting-up" might be appropriate. He said that there was no significant discussion about where they would meet and put on their police vests prior to getting into their police vehicles. He remembered that this occurred as part of a conversation they had over the radio as they were travelling towards CD's property.<sup>61</sup> Detective Senior Constable

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<sup>59</sup> Transcript, 20/02/20; T80, lines 31 – 33

<sup>60</sup> Transcript, 19/02/20; T109, line 38 onwards

<sup>61</sup> Transcript, 19/02/20; T111, line 9 onwards



Sweeney also overheard what Senior Constable Heymans had said and very soon afterwards, Detective Senior Constable Sweeney and Detective Sergeant Sargent departed Cessnock Police Station in an unmarked Hyundai Santa Fe Police vehicle "*Hunter Valley 104*".

71. Another Police officer, Senior Constable Garvey was present at Cessnock Police Station and recalls hearing Senior Constable Heymans say that CD was about to commit suicide. Senior Constable Garvey spoke to Senior Constable Petheram, who was a family friend of AB and CD. Senior Constable Petheram asked Senior Constable Garvey to attend CD's house. Consequently, Senior Constable Garvey departed Cessnock Police Station in a fully caged marked Police vehicle "*Cessnock 28*". She was accompanied by Senior Constable Jeanes and Senior Constable Chapple.
72. While the three police vehicles were en route to CD's house, it was agreed that the officers would meet at a designated intersection so that they could "vest up".
73. Within a few minutes of Senior Constable Heymans informing the other officers at Cessnock Police Station of the concerns Senior Constable Foley had expressed about CD's welfare, Senior Constable Heymans heard a CAD job (created by Senior Constable Foley) broadcast over police radio. In addition to Hunter Valley 103, Hunter Valley 104 and Hunter Valley 28, the CAD job was responded to by Cessnock 12 (a police vehicle driven by Sergeant Bojkowski).
74. The NSWPF officers remaining at Cessnock Police Station considered whether CD's phone may be triangulated and accordingly, Senior Constable Petheram made enquiries of CD's friend EF, who had contacted his local police station after receiving a call from CD, to try and ascertain what phone CD had used. EF thought that CD had been using his wife's phone. At 11.52am, Senior Constable Heymans updated the CAD with information to the effect that CD did not have his own mobile phone and may be contactable on his wife's mobile phone.
75. Initially, Hunter Valley 103 proceeded with lights and sirens, though the siren was turned off after Hunter Valley 103 passed certain road works en route and neared the property of CD. As Hunter Valley 103 approached a bend on the road they were travelling, Detective Senior Constable Cooper observed a vehicle coming in the opposite direction, although he did not believe that the driver looked like CD. Detective Senior Constable Walker and Detective Senior Constable Cooper continued to drive and shortly afterwards, overheard Cessnock 28 broadcast a message to the effect that a vehicle had driven into a tree. Detective Senior Constable Walker and Detective Senior Constable Cooper stopped Hunter Valley 103 at the intersection the police officers had designated as the meeting point to put on their bullet proof vests. A further broadcast was made regarding the vehicle that had collided with a tree, querying whether a firearm was in the car. At that point, Detective Senior Constable Walker concluded that the vehicle involved in the collision was likely CD's. Hunter Valley 103 then turned around and drove towards the crash site.
76. When Hunter Valley 104 departed Cessnock Police Station, it initially followed Hunter Valley 103. However, at some stage Hunter Valley 104 lost contact with Hunter Valley 103. Hunter Valley 104 proceeded with dash lights on only (no siren) in order to not alert CD to the fact that police were approaching.

77. While Hunter Valley 104 was en route, Detective Sergeant Sargent broadcast on police radio where he was heading. As Hunter Valley 104 made its way towards CD's residence, Detective Senior Constable Sweeney observed a utility vehicle driving in the opposite direction and he observed that it was being driven by CD. Detective Senior Constable Sweeney said to Detective Sergeant Sargent "*that's him*" and after travelling a further 300 to 400 metres, Hunter Valley 104 did a U-turn and began to try and catch up to CD.
78. When Hunter Valley 104 first departed Cessnock Police Station, Cessnock 28 followed close behind. At some point, Cessnock 28 seems to have lost contact with Hunter Valley 104. Cessnock 28 had initially proceeded under lights and sirens, but Senior Constable Chapple turned off the siren as Cessnock 28 neared CD's property (in order to not alert CD to the Police presence).
79. When the police officers at the police station had conveyed to them the possibility of CD self-harming, the primary focus then was on attempting to prevent serious or even fatal injury to CD, and to ensure the safety of CD's family. There was rapid deployment from the police station. In those circumstances, I find that the response to the information obtained from CD's friend via Senior Constable Foley and Senior Constable Heymans, was appropriate and adequate.

#### **Issue 6: Whether CD's death was self-inflicted**

80. As Cessnock 28 came around a right-hand bend, Senior Constable Chapple who was driving, noticed a vehicle coming towards them. Senior Constable Chapple observed the vehicle come around the corner and then suddenly veer across the road, directly in front of Cessnock 28, so as to collide head on with a tree. Senior Constable Chapple, doing the best she could, gave evidence that she thought CD's vehicle was doing approximately 80 km an hour.<sup>62</sup> She said CD's utility vehicle did not erratically veer across the road, but rather that it was a sudden and controlled action that caused the vehicle to change direction.<sup>63</sup> She also gave evidence that the vehicle appeared to speed up and travel directly towards the tree.<sup>64</sup> In her opinion, it appeared to be a deliberate action.<sup>65</sup> Similarly, Senior Constable Jeanes gave evidence that after the utility vehicle came around the bend towards Cessnock 28, it took a "fairly sudden" move across the road towards the tree. She was of the view that the driver "*knew where it was going and what it wanted to do*".<sup>66</sup>
81. After witnessing the collision, Senior Constable Chapple stopped Cessnock 28 about 15 metres from the crashed vehicle and Senior Constable Jeanes called for urgent ambulance assistance via police radio.
82. Senior Constable Chapple and Senior Constable Garvey quickly got out of Cessnock 28 and proceeded to the crashed vehicle. Each noticed that CD was not wearing a seatbelt and that it

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<sup>62</sup> Transcript, 20/02/20; T40, line 18

<sup>63</sup> Transcript, 20/02/20; T40, line 38

<sup>64</sup> Transcript, 20/02/20; T40, line 46 onwards

<sup>65</sup> Transcript, 20/02/20; T41, line 7 onwards

<sup>66</sup> Transcript, 20/02/20; T45, lines 11 – 12

was in a retracted position. CD was observed lying across the front seat. Senior Constable Garvey observed CD to have glassy eyes, with his mouth open and grey in colour. Senior Constable Garvey gave CD a slight shake and squeezed his upper arm in order to see if he was responsive. Senior Constable Garvey observed CD's eyes to slightly blink and he also groaned, before motioning as if he intended to get up. Senior Constable Garvey told him not to move. CD also seemed to be gasping for air.

83. Hunter Valley 103 and 104 also arrived at the scene. Detective Sergeant Sargent, Senior Constable Garvey, Detective Senior Constable Cooper and Detective Senior Constable Sweeney lay CD down on the roadway and began giving CPR via chest compressions. CPR continued for about 20 minutes as the NSWPF officers awaited the arrival of an ambulance. CD seemed to have a faint pulse.
84. A road ambulance arrived at approximately 12.23pm and the paramedics took over CD's treatment. Soon after, a Westpac Rescue helicopter landed and further paramedics and a doctor arrived and assisted in CD's treatment. At approximately 12.40pm, the paramedics informed the NSWPF officers that CD was deceased.
85. Chief Inspector Vromans and Chief Inspector Robinson arrived at the scene at 12.40pm. At 12.48pm, a Critical Incident was declared by Assistant Commissioner Mitchell and a Critical Incident Investigation Team created, with Detective Chief Inspector Parker appointed the Senior Critical Incident Investigator. At 3.01pm, members of the Critical Incident Investigation Team arrived at the accident site.
86. I am satisfied on the balance of probabilities from the evidence of police officers Chapple, Garvey and Jeanes that the utility vehicle driven by CD came around a bend approximately one hundred metres away from their approaching vehicle and then intentionally moved across the road in a controlled movement. There is no evidence of any screeching of brakes, no marks on the road to indicate efforts to try and break the speed or momentum of the vehicle, and on inspection of the vehicle subsequently, there were no motor vehicle defects that could have provided a reason for the vehicle to move across the road as it did. There is also independent evidence from a witness who lived close to the scene of the accident and who heard the collision. This witness did not hear any screeching of brakes or anything of that nature before impact. Although of course the witness did not physically see what occurred, what he heard corresponds with the evidence given by the police officers who witnessed the collision.<sup>67</sup> In light of the other evidence, including that CD was not wearing a seatbelt at the time of the accident, and the calls to his two close friends immediately prior to the collision, I am satisfied that CD made a decision, and intended to end his life. His death was self-inflicted, knowing that he was facing arrest and serious criminal charges.

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<sup>67</sup> BoE, Vol 5, Tab 60

### Detective Chief Inspector Parker

87. Detective Chief Inspector Scott Anthony James Parker is a crime manager attached to Newcastle City Police District. He was appointed the Senior Critical Incident Investigator for this matter on 29 November 2018 at 12.47 pm. He was the first witness to give evidence at the hearing and the five volume brief of evidence was tendered through him as Exhibit 1.
88. Detective Chief Inspector Parker was asked a number of questions concerning his enquiries with the relevant police officers and their involvement in the initial investigation that took place by investigators from ICAC on 23 November 2018. He was not critical of the decision not to arrest CD on 23 November 2018. While he would have come to a different decision, he acknowledged that the decision was made with the benefit of hindsight.<sup>68</sup> He outlined several factors that he took into account, which included CD admitting to the sole possession of the safe that was located in the shed a little distance from the main house, as well as CD also having knowledge of the access code to the safe. He also outlined that he perceived there to be evidence of consciousness of guilt by CD, which was evident from CD's behaviour on the day, including the evidence of flight by CD and his lies in relation to the non-existence of the safe. However, he acknowledged that this assessment was reached after sitting down to look through all of the material and in particular, he was able to review the complete audio and transcript of Senior ICAC Investigator Riashi, which assisted him greatly.<sup>69</sup>
89. He also explained that in hindsight, it was unlikely that CD's children would have been suspects. He stated that the sealed bags containing children's underwear looked quite historical. In addition, the tapes found, being 8mm and VHS tapes, were equally historical. He considered it unlikely that CD's children would have known what they were. Other electronic material found in the house during the later execution of the search warrant suggested a level of expertise in computer peripherals, which CD had. Detective Chief Inspector Parker believed that the circumstantial evidence pointed to one person, but again acknowledged that he was able to reach his conclusion with the "benefit of a helicopter view and hindsight".<sup>70</sup>
90. He remained of the view that even if CD had been arrested on 23 November 2018, CD most likely would have been granted bail, given the limited material uncovered by that date would not have amounted to a 'show cause' event, CD had no criminal antecedent history, there was no evidence CD had any propensity to violence, and did not suffer from any known mental health or drug and alcohol issues.<sup>71</sup>
91. He was asked about his understanding as to police efforts to try and determine the location of CD on 29 November 2018 by way of a triangulation using what was thought to be CD's mobile number at the time. The inspector confirmed that it was not successful and believed it was because there had not been enough time between the request and CD's death.<sup>72</sup>

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<sup>68</sup> Transcript, 19/02/20; T26, line 27 onwards

<sup>69</sup> Transcript, 19/02/20; T27, line 6 onwards

<sup>70</sup> Transcript, 19/02/20; T27, line 26

<sup>71</sup> Transcript, 19/02/20; T27, line 31 onwards

<sup>72</sup> Transcript, 19/02/20; T25, line 34 onwards

## Post Mortem

92. Dr Lorraine du Toit-Prinsloo, forensic pathologist, completed an autopsy on CD at the Department of Forensic Medicine, Newcastle on 3 December 2018. In her autopsy report she concluded that the direct cause of death was chest injuries<sup>73</sup>, with numerous rib fractures, bilateral pneumothoraxes, and a haemothorax on the left. Further she identified a fracture dislocation between the 9th and 10th thoracic vertebra, with severing of the spinal cord.<sup>74</sup> The report was tendered as part of the brief of evidence and the findings of Dr du Toit-Prinsloo were not challenged in any way. Accordingly, I am able to find the cause of death as set out in her autopsy report.

## Observations

93. In compiling the brief of evidence and as part of an exchange of correspondence between the Crown Solicitor and the Office of General Counsel acting for the Commissioner of Police, it was identified that there was a risk assessment tool for search warrants that also contained some ancillary information regarding arrests. It became clear that there was no separate equivalent risk assessment tool for “planned” arrests, although it was accepted that there are similar risks facing police officers for both scenarios. Detective Sergeant Sargent and Detective Senior Constable Walker both gave evidence to that effect. Counsel Assisting submitted that there was no obvious basis and logic to have a risk assessment tool and guide for search warrants but not for planned arrests. I agree with that submission.

94. From the evidence provided by the police officers who attended the inquest, there appeared to be considerable resistance regarding the use of the search warrant risk assessment tool and any potential equivalent tool for planned arrests. Counsel Assisting acknowledged that this resistance arose out of the current form of the search warrant risk assessment tool, which is time consuming to complete and therefore takes time away from active policing duties.<sup>75</sup> This notwithstanding, Counsel Assisting submitted that the resistance put forward by various police witnesses went further than that and was better described as a form of apparent institutional resistance.<sup>76</sup> Various different bases were put forward by police - other than the time consuming nature of the document - as to why a risk assessment tool for planned arrests was not required. Some of this opposition was surprising and not easy to follow. As mentioned above, as an example, Detective Senior Constable Walker stated that a document cannot assist in predicting the future about what risks are likely to take place.

95. However as Counsel Assisting submitted:

*“the whole point of a standardised risk assessment is to try and assist those who are coming to do, carry out a particular activity, [to work] out what factors might be relevant and assist*

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<sup>73</sup> BOE, Volume 1, Tab 5, p.2

<sup>74</sup> *Ibid*, p.3

<sup>75</sup> Transcript, 20/02/20; T82, line 38 onwards

<sup>76</sup> Transcript, 20/02/20; T83, lines 2 – 3

*them to then work out how you might apply those factors in coming up with an [risk] assessment. I would have thought that, at a common sense level, there would be at least an acceptance that that might have some benefits....”<sup>77</sup>*

96. From my experience, I am aware that airline pilots and surgeons all use a form of checklist no matter the complexity of the situation. It is very easy to forget even the simplest of things. In their occupations, it is a standard part of the performance of their task to undertake and check a procedure before it commences to ensure that they have thought of everything. It was my view that a police officer may find a checklist to have been of some benefit, to assist that officer in keeping safe and also, perhaps, to consider associates of the person to be arrested and other members of the public. The possibility envisaged was a simple format aimed at ensuring that a police officer had gone through a list and thought of all the possibilities including searches that should be undertaken before proceeding to an arrest. It was not thought necessary to have it completed and signed off by a senior officer. Obviously such a checklist was not proposed for instances where an immediate arrest was required, that being a situation that is unfolding before a police officer’s eyes and would require immediate action.
97. Detective Chief Inspector Parker gave additional evidence on day two of the inquest. He was also of the view that a checklist was not needed. He was of the opinion that police officers are constantly risk assessing and that is what they are doing as part and parcel of their job on a day-to-day basis. Because of the large number of arrests that are undertaken – estimated by Counsel appearing for the Commissioner of Police to be in the hundreds of thousands in New South Wales – and because of the extensive training given to police officers, he did not consider such a checklist necessary. He indicated that they received training at college and then further field training and mentoring and then ongoing training as they progress in seniority. Detective Chief Inspector Parker has been a police officer for 24 years and is in a senior position within the police force. His evidence and opinion carry great weight.
98. At the conclusion of the inquest, I made particular mention to signify my appreciation to the attending police officers about the way they had attempted to help and provide aid at the scene of the accident. They were met with a scene of significant trauma. Their sense of duty came to the fore and they attempted CPR and gave other assistance to ambulance officers, paramedics and ultimately a doctor who attended the scene. I commend the officers on the way in which they have acted throughout in this matter and in particular at the scene of the accident. The manner in which they dealt with AB showed compassion and sensitivity to her predicament.
99. I would also like to thank Detective Chief Inspector Parker for his thoroughness and investigative efforts related to this incident. The brief was of a high standard and contained material that reflected his efforts in insuring that all relevant material had been brought to the attention not only to the Commissioner of Police but also to this Court.

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<sup>77</sup> Transcript, 20/02/20; T83, line 24 onwards

100. I also acknowledge and appreciate the assistance that I received from Counsel Assisting Mr Jason Downing, his instructing solicitor Ms Lena Nash from the Crown Solicitor's Office and also from Counsel for the Commissioner of Police and his instructing solicitor.
101. I again pass onto AB and her family my very sincere and genuine condolences over what can only be described as a very painful and traumatic event.

**Formal Findings**

102. I find CD died:

- (i) On 29 November 2018**
- (ii) The time of death was 12:40pm**
- (iii) The place of death was Richmond Vale Dr, Richmond Vale NSW 2323**
- (iv) The cause of death was Chest Injuries**
- (v) The manner of death was Chest Injuries sustained in a single motor vehicle accident, which was self-inflicted.**

103. There are no recommendations to be made in this matter.

104. I close this inquest.

Deputy State Coroner Magistrate RG Stone  
Newcastle Local Court  
28 April 2020