



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Christopher McGrail
File number:	2017/256693
Hearing dates:	17 - 19 February 2020 in Grafton Local Court
Date of findings:	10 June 2020
Place of findings:	Coroner's Court, Lidcombe
Findings of:	Deputy State Coroner E. Truscott
Catchwords:	Coronial Law - Cause and manner of death – s. 23 death as a result of a police operation - police tactical training - police mental health training – gunshots - substance induced psychotic episode
Publication Restrictions	<p>Pursuant to s. 74 of the Coroners Act 2009 (NSW), there is to be no publication of:</p> <ul style="list-style-type: none">• Exhibit 2, being the sensitive evidence; and• The identity of [REDACTED] (referred to in these findings by the pseudonym, Frank Samuel). <p>Pursuant to s. 65 of the Coroners Act 2009 (NSW), there is to be no access to Exhibit 2.</p>

<p>Representation:</p>	<p>Counsel Assisting the Coroner : Mr R. Ranken instructed by Ms K Lockery of the Crown Solicitor's Office</p> <p>The McGrail-Skinner family: Mr P. Johnson instructed by Ms T Randall of Randall Law</p> <p>NSW Commissioner of Police: Ms C. Melis instructed by Stuart Robinson Office of General Counsel (Police)</p> <p>Sergeant D. Leven, Senior Constable A Crouch, Senior Constable S Bennett (directly involved officers): Mr P Madden instructed by Mr K Madden of Walter Madden Jenkins</p>
<p>Findings:</p>	<p>Identity Christopher Peter McGrail</p> <p>Date of Death 6 August 2017</p> <p>Place of Death Gold Coast University Hospital, Southport, Queensland 4215</p> <p>Cause of death Gunshot wounds to the chest and right thigh</p> <p>Manner of death Mr McGrail died from the effect of significant blood loss associated with two gunshots inflicted by a NSW Police Officer who was acting in the course of his duties when Mr McGrail advanced on him in North Street, Grafton. Mr McGrail was holding a large kitchen knife and had refused to drop it, despite many commands and requests to do so. The officer fired two shots after Mr McGrail raised the knife and lunged at him. At the time, Mr McGrail was experiencing a complex interaction of the effects of methamphetamine and alcohol intoxication, a substance induced psychotic episode and a severe disturbance of mood with expression of suicidal thoughts.</p>

In the Coroners Court, Lidcombe
Sitting in Grafton NSW

Section 81, Coroners Act 2009

REASONS FOR DECISION

INTRODUCTION

1. Christopher Peter McGrail died at Gold Coast University Hospital on 6 August 2017 after being shot by police during a confrontation with officers outside a duplex in North Street in Grafton earlier that afternoon. Mr McGrail was 44 years of age at the time of his death.
2. The inquest into Mr McGrail's death was conducted in accordance with the provisions of the *Coroners Act 2009 (Act)*. The coroner's role pursuant to s. 81 of the Act is to hand down findings as to the identity of the deceased, date and place of death; and the manner and cause of death. Under s. 82 of the Act, a coroner is empowered to make recommendations, if necessary or appropriate.
3. The brief of evidence prepared during the course of the coronial investigation into Mr McGrail's death included the formal interviews of the involved officers, statements from many eyewitnesses, forensic crime scene evidence, and reports prepared by expert witnesses. The brief also included video footage of the incident captured on both the camera of the Taser used by police and the mobile telephones of civilian witnesses. This material was sufficient to determine Mr McGrail's identity, where and when he died, and the medical cause of his death. As a result, the inquest was primarily focused on the manner of Mr McGrail's death.
4. To this end, the inquest examined the circumstances surrounding Mr McGrail's state of mind and his intentions over the course of the events leading up to and resulting in his death, and the appropriateness of the actions of the police officers involved in the incident with Mr McGrail on 6 August 2017.

Inquest is required and must be conducted by a Senior Coroner

5. A coroner has jurisdiction to hold an inquest if it appears to the coroner that the death is “*a reportable death*”.¹ Mr McGrail’s death was a reportable death as it was a sudden, and violent or unnatural death.² Furthermore, the death occurred in unusual circumstances.³
6. The circumstances surrounding Mr McGrail’s death also attract the provisions of ss. 22, 23 and 27 of the Act.
7. Pursuant to s. 27(b) of the Act, an inquest is mandatory when jurisdiction to hold an inquest arises under s. 23 of the Act. One of the circumstances that are prescribed is when the death is a result of, or in the course of a police operation.⁴ Further, s. 22(1) provides that any inquest arising under s. 23 can only be heard by a senior coroner, defined as the State Coroner or a Deputy State Coroner.
8. As the learned authors of *Waller’s Coronial Law and Practice in New South Wales* (4th Ed) have observed, “[t]he purposes of a s 23 inquest are to fully examine the circumstances of any death in which police ... have been involved, in order that the public, the relatives and the relevant agency can become aware of those circumstances”.
9. In the present case, the police operation was initiated when the involved officers attended the duplex at 1/202 North Street, Grafton in response to a broadcast over the Police VKG radio regarding a triple-0 call reporting that a bloke called “Hoppy” (a nickname for Mr McGrail) was “*going off his head*” and acting violently.

The Coronial Investigation – Role of Investigators

10. Where a death is reported to the coroner, a police officer is assigned to investigate the death and prepare a brief of evidence.

¹ s. 21(1), *Coroners Act 2009*.

² s. 6(1)(a), *Coroners Act 2009*.

³ s. 6(1)(c), *Coroners Act 2009*.

⁴ s. 23(c), *Coroners Act 2009*.

11. When the death occurs as a result of a police operation, the police response and investigation is required to comply with the Guidelines for the Management and Investigation of Critical Incidents prepared by the NSW Police Force (**NSWPF**). These are commonly referred to as the “Critical Incident Guidelines”. One of the reasons the Critical Incident Guidelines have been developed is to address any concerns that an investigation by police of fellow officers would be conducted with absolute impartiality.
12. This matter was immediately recognised by NSWPF as a critical incident and by about 5:30pm on 6 August 2017, steps had already been taken to form what is described as the Critical Incident Investigation Team (**CIIT**). In accordance with the Critical Incident Guidelines, the CIIT was initially headed by Detective Sergeant Paul Fredericks from the Richmond Local Area Command (separate to the Coffs/Clarence Local Area Command). Following Mr McGrail’s death, arrangements were made to transfer responsibility for the critical incident investigation to Detective Chief Inspector Grant Taylor of the Homicide Squad.

Non-Publication Orders

13. The brief of evidence provided by investigators contained an amount of audio, video and photographic material, some of which is both sensitive and distressing. This material has been removed from Exhibit 1 and placed in a separate folder marked as Exhibit 2, over which I have made a non-publication order pursuant to s. 74 of the Act and a non-access order pursuant to s. 65 of the Act.
14. Additionally, the events at 1/202 North Street on 6 August 2017 immediately prior to police arriving have been the subject of a criminal investigation that resulted in the person known in these proceedings by the pseudonym Frank Samuel being charged with a number of serious offences that are yet to be finally determined by the Courts. For that reason, I order that there be no publication of his name under s. 74 of the Act, until such time as his matters are concluded.

FACTUAL BACKGROUND

Personal History

15. Mr McGrail was born in Sydney on 6 October 1972. His parents separated when he was four years old, and Mr McGrail lived with his mother. Mr McGrail had a difficult progression through the education system and attended a special educational facility for children with behavioural or disruptive issues for part of his schooling. In his

teenage years, he was placed in specialised care for troubled youth. Ultimately, he was expelled from school in year 10 and did not undertake any further education.⁵

16. When he was 16 years old, Mr McGrail moved to Brisbane to reside with his grandmother for a short time. This arrangement did not work out and he returned to live in NSW.⁶ In 1990 and 1991, Mr McGrail spent time in juvenile detention centres.⁷
17. In April 1992, at age 19, Mr McGrail was charged with malicious wounding and assault occasioning actual bodily harm arising out of a fight in which he was stabbed in the thigh. He was later sentenced to terms of imprisonment for these offences.⁸ As a result of the limp he developed due to his injury, Mr McGrail became known as Hoppy.⁹
18. After being released from custody, Mr McGrail met Amanda Skinner and they commenced their relationship. They had four children together, a son followed by three daughters, born between 1997 and 2003.¹⁰ Mr McGrail's youngest daughter was born with significant disabilities requiring particular medical care and support. Mr McGrail's last steady employment as a labourer ceased around the time of her birth.¹¹
19. Mr McGrail had commenced intravenous drug use prior to meeting Ms Skinner. During their relationship, he was a frequent cannabis user. He was also known to use amphetamines and consume large amounts of alcohol.¹²
20. Mr McGrail and Ms Skinner remained together for around 23 years. The relationship was marred by domestic violence, resulting in Mr McGrail serving a number of sentences of imprisonment for offences committed against Ms Skinner.¹³ Both as a result of his domestic violence and substance abuse issues, Mr McGrail spent a substantial portion of his adult life in custody.¹⁴

⁵ Ex 1, Tab 5: Statement of Detective Chief Inspector Taylor dated 27.02.2018 ("DCI Taylor 27.02.2018") at [3]-[9].

⁶ Ex 1, Tab 5: DCI Taylor 27.02.2018 at [10].

⁷ Ex 1, Tab 143: Criminal History – Bail Report, pp. 1-4.

⁸ Ex 1, Tab 143: Criminal History – Bail Report, pp. 6-7.

⁹ Ex 1, Tab 5: DCI Taylor 27.02.2018 at [22].

¹⁰ Ex 1, Tab 5: DCI Taylor 27.02.2018 at [15].

¹¹ Ex 1, Tab 136: Transcript of Recorded Interview with Amanda Skinner on 22 August 2017 ("Skinner 22.08.2017") at Q&A 73-95.

¹² Ex 1, Tab 136: Skinner 22.08.2017 at Q&A 10-13 and 43-51; Tab 5: DCI Taylor 27.02.2018 at [14].

¹³ Ex 1, Tab 5: DCI Taylor 27.02.2018 at [14]-[16].

¹⁴ Ex 1, Tab 143: Criminal History – Bail Report.

21. In March 2015, Mr McGrail returned to custody for domestic violence offences against Ms Skinner. This marked the end of their relationship.¹⁵
22. On 27 June 2015, whilst Mr McGrail was in custody for these offences, his son, Clinton, committed suicide. Clinton was 18 years old.¹⁶
23. Clinton's death had a profound effect on Mr McGrail, evidenced by his Facebook posts and the statements made by his family and friends.¹⁷ Despite Ms Skinner's continued support, Mr McGrail struggled to cope. His mental health declined and his drug use escalated following his release from custody in November 2015.¹⁸

Mental Health History

24. Mr McGrail was a patient at the Bulgarr Ngaru Aboriginal Medical Centre ("Bulgarr Ngaru") in Grafton from 2004 onwards.¹⁹
25. In August 2008, Mr McGrail presented to Bulgarr Ngaru with depression and was prescribed Aropax, 20 mg daily.²⁰ He presented with depression again in October 2010, also reporting heavy daily cannabis use, regular intravenous amphetamine use and alcohol abuse.²¹
26. In August 2014, Mr McGrail was referred to Annaliese Grace, psychologist, under a Mental Health Treatment Plan as part of his parole supervision by Community Corrections. He attended sessions in September and October 2014.²² Mr McGrail sought a further referral to Ms Grace in February 2015 and attended one session in March 2015, before being incarcerated.²³
27. In February 2016, three months after his release on parole, Mr McGrail presented to Bulgarr Ngaru with hypertension and depression. He again reported cannabis and intermittent methylamphetamine use. Mr McGrail was commenced on Amlodipine for

¹⁵ Ex 1, Tab 136: Skinner 22.08.2017 at Q&A 146-164.

¹⁶ Ex 1 Tab 5: DCI Taylor 27.02.2018 at [21], [31].

¹⁷ Throughout June 2017, Mr McGrail made numerous posts on Facebook referring to the anniversary of Clinton's death (see, for example, posts made on 18 June and 29 June 2017 – Ex 1, Tab 154: Facebook Records, pp. 1536, 1540).

¹⁸ Ex 1, Tab 5: DCI Taylor 27.02.2018 at [27].

¹⁹ Ex 1, Tab 149: Records of Bulgarr Ngaru Aboriginal Medical Centre ("Bulgarr Ngaru Records").

²⁰ Ex 1, Tab 149: Bulgarr Ngaru Records, p. 582.

²¹ Ex 1, Tab 149: Bulgarr Ngaru Records, p. 582.

²² Ex 1, Tab 149: Bulgarr Ngaru Records, pp. 580-581.

²³ Ex 1, Tab 149: Bulgarr Ngaru Records, pp. 579-580

his hypertension and was referred to Richard Miller, psychologist. Mr McGrail attended a single session with Mr Miller on 2 March 2016, which focused on Clinton's death.²⁴

28. On 27 July 2016, Mr McGrail presented to Bulgarr Ngaru with stress related to his recent incarceration and his relationship with Ms Skinner. He refused a referral for counselling.²⁵
29. Mr McGrail again presented to Bulgarr Ngaru 10 May 2017 and 1 June 2017 for depression. On 1 June 2017, he was prescribed Cipramil 20mg.²⁶ Throughout June 2017, Mr McGrail made numerous posts on Facebook referring to the anniversary of Clinton's death.²⁷
30. On 12 July 2017, Mr McGrail posted on Facebook asking for a firearm and stating, "*My son needs me*".²⁸ On 14 July 2017, Mr McGrail made a further Facebook post alluding to suicide.²⁹

Relevant Events Leading up to 6 August 2017

31. Shortly after 6:28pm on 15 July 2017, Police responded to an incident broadcast over VKG radio at the Clocktower Hotel in Grafton. Staff had reported that Mr McGrail had been requested to leave due to his intoxication, and that he was now on the road being verbally abusive to patrons.³⁰ Upon arrival Police observed Mr McGrail leaving the area and did not approach him.³¹
32. Later that night, Mr McGrail made three calls to 000 making nonsensical requests for police to return his "*family history*". Police attended Mr McGrail's last known address but did not locate him.³²
33. A few hours later, shortly after 1am on 16 July 2017, Mr McGrail ordered a taxi to collect him from an address in Bacon Street, Grafton. During the journey, Mr McGrail was belligerent and accused the driver of being a police officer. At one point,

²⁴ Ex 1, Tab 149: Bulgarr Ngaru Records, pp. 577-579.

²⁵ Ex 1, Tab 149: Bulgarr Ngaru Records, p. 576.

²⁶ Ex 1, Tab 149: Bulgarr Ngaru Records, pp. 574-575.

²⁷ Ex 1, Tab 154: Facebook Records, pp. 1536 and 1540.

²⁸ Ex 1, Tab 154: Facebook Records, pp. 1523-1524.

²⁹ Ex 1, Tab 154: Facebook Records, pp.1514-1515.

³⁰ Ex 1, Tab 105: CAD Log for Incident 764097 on 15 July 2017, p. 1111; Ex 1, Tab 103: 000 Call Transcripts, pp.1128-1130.

³¹ Ex 1, Tab 106: Statement of Senior Constable Tim Bentley dated 28 September 2017 (Bentley 28.09.2017) at [5]-[7]; Ex 1, Tab 107: Statement of Constable Ryan Martin dated 27 September 2017 at [4]-[6].

³² Ex 1, Tab 105: CAD Logs and VKG Broadcasts for Incidents 765208, 765288 and 765720 on 15 July 2017, pp. 1113-1119; Ex 1, Tab 103: 000 Call Transcripts, pp. 1133-1140.

Mr McGrail asked the taxi driver to drive the taxi into the side of a bridge. The taxi driver stopped the vehicle and requested that Mr McGrail get out. Mr McGrail began to speak of his son's suicide, at which point the taxi driver agreed to take him home. However, at the end of the journey, Mr McGrail swung his arm and hit the taxi driver in the face with his phone. After he exited the taxi, Mr McGrail threatened to kill the driver. As the taxi drove off, Mr McGrail punched the driver's side window.³³

34. Police were called and attended the location where Mr McGrail had been dropped off. Senior Constable Tim Bentley and Constable Ryan Martin observed Mr McGrail to be acting aggressively, alleging police corruption and looking towards Constable Martin's firearm. A decision was made to schedule Mr McGrail pursuant to s. 22 of the *Mental Health Act 2007 (MH Act)* and he was conveyed to Lismore Base Hospital.³⁴
35. Records of Lismore Base Hospital note that Mr McGrail was, "*Brought in by police for concerns re paranoid delusions from Grafton*".³⁵ He was examined by Dr Khosa-Halait who concluded that he was not demonstrating any abnormality of perception. Mr McGrail was given a sedative and referred for psychiatric consult.³⁶
36. At 1:24pm on 16 July 2017, Dr Owens assessed Mr McGrail and noted that Mr McGrail had readily admitted to intravenous methamphetamine use several days prior. Dr Owens concluded that it seemed "*likely that Mr McGrail's behaviour and altered mental state were the result of methylamphetamine intoxication. Psychosis, drug-induced or otherwise, is a differential diagnosis, but his absence of documented psychiatric presentations and his admission of recent methamphetamine use makes intoxication a more likely explanation at this time.*"³⁷ Dr Owens recorded that Mr McGrail reported no thoughts of self-harm or thoughts of harming others at the time of the assessment. Mr McGrail was discharged and given a train ticket to Grafton.³⁸
37. At 7:50pm, police attended the Lismore Transit Centre in response to a report of a male causing trouble. On arrival, they saw Mr McGrail sitting on one of the seats and spoke with him. Mr McGrail was hostile and uncooperative with police, who issued him with a move on direction.³⁹

³³ Ex 1, Tab 104: Statement of Mark Ruthven dated 16 July 2017 at [3]-[14].

³⁴ Ex 1, Tab 106: Bentley 28.09.2017 at [8]-[13]; Ex 1, Tab 107: Statement of Constable Ryan Martin dated 27 September 2017 at [7]-[18].

³⁵ Ex 1, Tab 150: Lismore Base Hospital Medical Records, 16 July 2017, pp. 824, 841.

³⁶ Ex 1, Tab 150: Lismore Base Hospital Medical Records, 16 July 2017, p. 842.

³⁷ Ex 1, Tab 150: Lismore Base Hospital Medical Records, 16 July 2017, p. 830.

³⁸ Ex 1, Tab 150: Lismore Base Hospital Medical Records, 16 July 2017, p. 826.

³⁹ Ex 1, Tab 109: Statement of Senior Constable Mark Hartcher dated 24 November 2017 at [2]-[8].

16 July 2017: Petrol tanker incident and re-admission to Lismore Base Hospital

38. At about 11.30pm that same evening, Mr McGrail approached the Mobil service station on Ballina Road in Lismore. At the time Mark Moroney, a fuel tanker driver, was refuelling the service station. Mr Moroney heard a male voice say, *"I love the smell of fuel"*. He was shortly thereafter approached by Mr McGrail who said, *"How about I light it up?"* Mr McGrail was holding a cigarette lighter and, when warned by Mr Moroney about the volatility of the area, said *"I don't give a fuck. I will do it man. I am a head case."* Mr McGrail was also heard to say, *"I don't care if I do it cause then I can see my son"*. Mr McGrail then approached the dip hole where the tanker was filling. Mr Moroney wrestled him to the ground and prised the lighter from his hand. He then held Mr McGrail on the ground, with the assistance of the service station attendant, until the police arrived.⁴⁰
39. Police attended and handcuffed Mr McGrail. A search of his person located a number of used and unused syringes. During their interaction, police observed Mr McGrail to be delusional, stating that the service station was not a real service station and that he wanted to blow it up because he believed it was part of a greater conspiracy involving corruption within the church. The officers determined to deal with Mr McGrail under s. 22 of the MH Act and conveyed him back to Lismore Base Hospital.⁴¹
40. Upon arrival, Lismore Base Hospital staff observed Mr McGrail to be hostile, uncooperative and paranoid, noting that he claimed that *"he saw some things last night and our lives would be in danger if he told us"*.⁴² Hospital records also indicate that upon his admission to the High Dependency Unit, Mr McGrail stated that he believed police were playing tricks on him, and that the service station staff were police officers in disguise. The records note that he denied thoughts of self-harm or harm to others.⁴³
41. On 19 July 2017, Dr Bhuyan completed a Form 1 - Clinical Report as to Mental State of Detained Person. The report noted that Mr McGrail had been *"admitted as an involuntary patient due to drug induced psychosis"* and was observed by Dr Bhuyan to be *"thought disordered, agitated"* and *"delusional"* with *"poor insight and judgement"*.

⁴⁰ Ex 1, Tab 110: Statement of Mark Moroney dated 26 September 2017 at [8]-[19]; Ex 1, Tab 111: Transcript of 000 Call on 16 July 2017.

⁴¹ Ex 1, Tab 112: Statement of Sergeant Craig Ahrens dated 27 September 2017 at [5]-[9]; Ex 1, Tab 113: Statement of Senior Constable McPhie dated 8 September 2017 at [7]-[13].

⁴² Ex 1, Tab 150: Lismore Base Hospital Medical Records, 16 July 2017, pp. 861-862.

⁴³ Ex 1, Tab 150: Lismore Base Hospital Medical Records, 16 July 2017, p. 848.

Dr Bhuyan concluded that Mr McGrail was mentally ill and suffering from a thought disorder. He assessed Mr McGrail's risk of harm to others as significant.⁴⁴

42. Mr McGrail remained an inpatient until 24 July 2017. On that day, Dr Bhuyan completed a further mental health risk assessment for Mr McGrail. He noted that Mr McGrail's drug induced psychosis had resolved and recorded a diagnosis of antisocial personality disorder. Dr Bhuyan further recorded that Mr McGrail was not expressing suicidal ideas or hopelessness/despair, and was not exhibiting self-harming behaviour. Mr McGrail was discharged later that day. It was noted in the Mental Health Discharge / Transfer Summary that Mr McGrail had "*been very settled on the ward*", and had "*no more delusions around the police*". It was also noted that he understood he had suffered from drug induced psychosis and had "*nil suicidal/homicidal thoughts*". The document recorded that Mr McGrail had discussed his profound sorrow and grief concerning Clinton's suicide.⁴⁵

25 July 2017 to 3 August 2017: Events following discharge from Lismore Base Hospital

43. On 25 July 2017, Mr McGrail reported to Grafton Community Corrections as required by the terms of a good behaviour bond imposed in July 2016. Mr McGrail expressed a wish to sue the police for being detained against his will. He stated that he had not used methylamphetamine for nine days and was adamant that he would not enter a rehabilitation facility. He expressed an interest in going to visit his mother in Tasmania.⁴⁶
44. Later that day, Mr McGrail attended an appointment at Bulgarr Ngaru and was informed that he had tested positive for Hepatitis C. The clinical notes indicate that Mr McGrail reiterated his claim to have not used methylamphetamine for nine days and stated that he was planning to attend Balund-a, a residential diversionary program run by Corrective Services NSW.⁴⁷
45. Despite this intention, on 26 July 2017, Mr McGrail travelled to Queensland and stayed with a friend. It appears that Mr McGrail thought this would assist him to abstain from drug use.⁴⁸

⁴⁴ Ex 1, Tab 150: Lismore Base Hospital Medical Records, 16 July 2017, pp. 863-864.

⁴⁵ Ex 1, Tab 150: Lismore Base Hospital Medical Records, 16 July 2017, p. 849.

⁴⁶ Ex 1, Tab 145: Records of Community Corrections, 25 July 2017, pp. 2956-2957.

⁴⁷ Ex 1, Tab 149: Bulgarr Ngaru Records, p. 572.

⁴⁸ Ex 1, Tab 145: Records of Community Corrections, 25 July 2017, p. 2957; Ex 1, Tab 136: Skinner 22.08.2017 at Q&A 198; Ex 1, Tab 140: Statement of Leanne Herbert dated 23 August 2017 at [13].

46. On 30 July 2017, Mr McGrail returned to Grafton. He was observed at Grafton railway station rambling and swearing. Mr McGrail was heard to say that he was being followed.⁴⁹ Mr McGrail then caught a taxi to Ryan Street in Grafton. During the journey, Mr McGrail displayed erratic behaviour and spoke of another taxi being an undercover police car. As he was getting out of the taxi at Ryan Street, Mr McGrail suggested that his guitar case contained an M16 and told the taxi driver, “*I’ve got a few scores to settle*”.⁵⁰
47. Later that day, Ms Skinner collected Mr McGrail from Ryan Street and drove him to her house. He remained living with her until 4 August 2017.⁵¹ Over the course of the stay, Ms Skinner observed Mr McGrail to have mood swings and to be in states of agitation. He expressed thoughts that everyone was a police officer and watching him. Ms Skinner believed Mr McGrail may have relapsed into drug use.⁵²
48. At 7:47am on 1 August 2017, Mr McGrail posted a picture of a skull on his Facebook page with an associated quote, “*Death is not the greatest loss in life. The greatest loss is what dies inside us while we live*”.⁵³ At about 8:16am, he posted a childhood photograph of Clinton together with a video of himself playing a song he wrote for Clinton.⁵⁴
49. Later that day, Mr McGrail presented to Bulgarr Ngaru. He reported to Dr Leaver that he had been abstinent from drugs for 15 days, and agreed to commence medication for his Hepatitis C. He advised Dr Leaver that he was going to Balund-a to address his substance abuse the following week.⁵⁵
50. On 2 August 2017, Mr McGrail attended an appointment with Community Corrections. Case notes record that Mr McGrail completed a referral form to Balund-a. His recent drug induced psychotic episode and placement into a psychiatric unit appeared to have motivated him to complete the program. Mr McGrail also expressed an intention to visit his mother in Tasmania after completing treatment.⁵⁶ This was Mr McGrail’s last contact with Community Corrections.

⁴⁹ Ex 1, Tab 115: Statement of Darryl Egginns dated 25 September 2017 at [6]-[10].

⁵⁰ Ex 1, Tab 117: Statement of Robert Colling dated 30 July 2017 at [5]-[16].

⁵¹ Ex 1, Tab 136: Skinner 22.08.2017 at Q&A 198-205.

⁵² Ex 1, Tab 136: Skinner 22.08.2017 at Q&A 207-209.

⁵³ Ex 1, Tab 154: Facebook Records, p. 1501.

⁵⁴ Ex 1, Tab 154: Facebook Records, pp. 1500 and 1747.

⁵⁵ Ex 1, Tab 149: Bulgarr Ngaru Records, p. 571.

⁵⁶ Ex 1, Tab 145: Records of Community Corrections, 25 July 2017, p. 2958.

51. At 3:26am on 3 August 2017, Mr McGrail posted an image with a reference to police corruption on his Facebook page. At 5:36am, he posted a meme comprising an image of the actor Jared Leto in the character of the Joker from the film, *Suicide Squad* together with the words *"I will remember and recover, not forgive and forget"*. Mr McGrail posted a message accompanying the meme again referencing police corruption.⁵⁷ This was the last Facebook post by Mr McGrail.
52. Later that day, Ms Skinner and Mr McGrail exchanged telephone calls and text messages to arrange a meeting on 4 August 2017. The purpose of the meeting was for Mr McGrail to repay Ms Skinner money he owed her from his time in Queensland.⁵⁸

4 August 2017 – Assault on Amanda Skinner

53. At about 10:30am on 4 August 2017, Ms Skinner met Mr McGrail at the ANZ Bank at Grafton Shopping World. A dispute arose between them regarding how much money Mr McGrail owed Ms Skinner, and Mr McGrail hit Ms Skinner twice in the face with his fist, causing an injury above her right eye. He also told her that he had an axe and would use it.⁵⁹ Ms Skinner hit and kicked Mr McGrail to defend herself. She tried to give the money to a bystander, asking him to count it, but the bystander did not want to get involved.⁶⁰ Mr McGrail then became aggressive towards the bystander. During the altercation, Ms Skinner saw the strap of an axe on Mr McGrail.⁶¹ Ultimately, a security guard intervened, and Ms Skinner attended Grafton Police Station to report the incident.
54. Mr McGrail followed Ms Skinner to Grafton Police Station. When he first arrived, Mr McGrail told police he wanted Ms Skinner charged with assault. When asked to recount what happened, he said, *"I have my right to silence"* and told police to *"check the footage"* (presumably a reference to CCTV footage from the shopping centre). Mr McGrail was subsequently arrested for the assault upon Ms Skinner, at which point he again urged police to watch the footage and alleged they were *"all corrupt, taking her side fabricating evidence"*. Mr McGrail was asked whether he had anything on his person that he should not have, to which he replied that he had a tomahawk under his

⁵⁷ Ex 1, Tab 154: Facebook Records, pp.1494 and 1753.

⁵⁸ Ex 1, Tab 136: Skinner 22.08.2017 at Q&A 222-230.

⁵⁹ Ex 1, Tab 122: Transcript of Recorded Interview with Amanda Skinner on 4 August 2017 (Skinner 04.08.2017) at Q&A 26-29.

⁶⁰ Ex 1, Tab 122: Skinner 04.08.2017 at Q&A 31-33; Ex 1, Tab 124: Statement of Clifton Prior dated 4 August 2017 at [9].

⁶¹ Ex 1, Tab 122: Skinner 04.08.2017 at Q&A 52-59.

shirt, “for [his] protection”.⁶² Police took possession of the tomahawk and took Mr McGrail into custody.

55. Whilst at Grafton Police Station, Mr McGrail complained of chest pain to the custody manager and was taken to Grafton Base Hospital for assessment. He was later returned to police custody after he became aggressive, refused to be examined and walked out of triage stating he no longer had any pain.⁶³
56. Following his return to Grafton Police Station, Senior Constable James Callegari continued the process of charging Mr McGrail with offences arising from the assault of Ms Skinner and completed an application for a Provisional Apprehended Domestic Violence Order (**ADVO**) to protect Ms Skinner.⁶⁴
57. Shortly after 3:00pm, Sergeant Christopher Goodman completed a Risk Assessment Report and determined to grant Mr McGrail conditional bail. Mr McGrail was released from police custody at about 3:20pm.⁶⁵
58. At about 11:36am on 5 August 2017, Mr McGrail videorecorded himself whilst a passenger in a car driven by a friend, Braiden Ward. In one of the recordings, Mr McGrail stated:

“This is Chris McGrail’s journal and last testament... Got all me belongings cause Braiden Ward, helped me out... with the interim AVO order by Amanda Skinner and Grafton Police which is probably the 100th one issued over a twenty odd year period... be rendered in lies ... aiding and abetting of lies...”

*Braiden here is a witness to these journals and my last will and testament... just saying my little good byes there... I need to turn off now cause I’m going to have a bit of lunch and I don’t want you looking at me cause I got no teeth... Stay tuned for the next part of the journal, thank you.”*⁶⁶

59. Sometime that day, Mr McGrail attended Grafton Police Station in order to collect medication he believed Ms Skinner was going leave at the station for him. Mr McGrail entered the station and began filming the conversation he had with Senior Constable Stephen Bennett and Detective Senior Constable Geoffrey Dean. He was told to stop filming by Detective Senior Constable Dean. He apologised and apparently deleted the

⁶² Ex 1, Tab 125: Statement of Senior Constable James Callegari dated 22 September 2017 (“Callegari 22.09.2017”) at [3]-[9].

⁶³ Ex 1, Tab 151: Records of Grafton Base Hospital, p. 671; Ex 1, Tab 106: Bentley 28.09.2017 at [19].

⁶⁴ Ex 1, Tab 125: Callegari 22.09.2017 at [17]-[18]; Ex 1, Tab 134: Provisional ADVO dated 4 August 2017.

⁶⁵ Ex 1, Tab 129: NSWPF Risk Assessment Report, 22 August 2017, pp. 1392-1393; Ex 1, Tab 131: Bail Acknowledgement Form, 4 August 2017.

⁶⁶ Ex 1, Tab 135: Transcript of “Last Will and Testament” Video of Mr McGrail on 5 August 2017.

footage. According to Senior Constable Bennett, Mr McGrail was at the police station for about twenty seconds and spoke in a normal voice.⁶⁷

60. It is not known where Mr McGrail spent the evening of 5 August 2017. At 9:58pm, he sent a text message to a contact saved in his mobile phone as “Granny” stating, “*Got taste here*” followed shortly thereafter by another text message sent to “Granny” stating, “*Over in a sec*”.⁶⁸ Shortly prior to 1:00am on 6 August 2017, Mr McGrail sent a further text message to “Granny” that simply stated, “*Granny*”.⁶⁹ This was the last text message sent from Mr McGrail’s telephone, although there were a number of further telephone calls to and from his service after that message.

EVENTS OF 6 AUGUST 2017

Events Prior to Confrontation with Police

61. On the 6 August 2017, Mr McGrail attended a residence in Mary Street, Grafton where he was observed by Frank Samuel to be fidgety and talking very fast. Mr Samuel considered this to be consistent with Mr McGrail’s usual demeanour after he had consumed methylamphetamine. Mr McGrail stayed for about an hour and a half, drinking wine with Mr Samuel and others. Whilst there, Mr McGrail showed his phone to his friends saying, “*Hey boys, have a look at this red rabbit on my mobile phone. It’s a tracker or something*”. He became increasingly upset and it appeared to anger him when the others told him that they could not see any red rabbit.⁷⁰
62. Shortly after midday, Mr McGrail asked Mr Samuel if he wanted to come with him for a walk to get some money from a friend. Mr Samuel agreed and they walked to 1/202 North Street, Grafton (**the duplex**). Mr McGrail took a full bottle of wine with him.⁷¹

⁶⁷ Ex 1, Tab 8: Directed Interview of Senior Constable Stephen Bennett on 8 August 2017 (“Bennett 08.08.2017”) at Q&A 79-80 and 237-243.

⁶⁸ Ex 1, Tab 155: Cellbrite Download Report (SMS Messages Items 17 and 18), p 1789. According to a schedule of telephone communications prepared by police (Ex 1, Tab 156: Phone Records), the service identified in Mr McGrail’s phone under the contact “Granny” was subscribed in the name Virginia Polley.

⁶⁹ Ex 1, Tab 155: Cellbrite Download Report (SMS Messages Items 13, 17 and 18), p. 1789.

⁷⁰ Ex 1, Tab 19: Statement of [REDACTED] dated 9 August 2017 (“[REDACTED] 09.08.2017”) at [12]-[16].

⁷¹ Ex 1, Tab 19: [REDACTED] 09.08.2017 at [17].

The Incident at the Duplex

63. The duplex was the residence of Justin Kay and his partner Thresa (known as Tess or Tessa) Holmes. Sara Sullivan, a friend of Tessa Holmes', was also staying in a spare bedroom.⁷²
64. Shortly before 3:00pm, Justin Kay was working on his truck, which was parked outside the duplex. He was in the company of his younger brother Dylan Kay, their cousin Stephen Wedmaier, and their friend Jason Taylor. Ms Sullivan was inside the duplex, but Ms Holmes was not home at that time.⁷³
65. Witness accounts of what occurred next vary, and it is difficult to determine the precise details and sequence of events. I do not consider it necessary to resolve the factual differences, but summarise the witness accounts to provide some insight into the nature of Mr McGrail's mental state and behaviour prior to the attendance of police that later that afternoon.
66. According to Justin Kay, Mr McGrail arrived in a highly agitated state and became angrier when Justin Kay did not initially recognise him. Mr McGrail then sought the attention of Mr Taylor, who initially ignored him. Shortly thereafter, Justin Kay heard a loud bang and soon saw that Mr McGrail's knuckles were bleeding. Mr Taylor attempted to calm Mr McGrail, but he continued to act aggressively towards everyone. Mr McGrail accused Justin and Dylan Kay and Mr Wedmaier of being undercover police officers, asking them about their police ranks and badge numbers. Mr McGrail spoke about the police being responsible for Clinton's death and at one point said, *"Today is the day I'm going to meet up with my son"*.⁷⁴
67. According to Dylan Kay, when Mr McGrail arrived, he was drinking what smelled like wine and *"smelt like grog pretty bad"*. Mr McGrail was asking for Ms Holmes and *"started to get cranky"* when he was told she was not home. Mr McGrail began kicking tools and other items around the truck and tried to open the diesel cap while operating his lighter to get an open flame. Mr McGrail could not get the cap open.⁷⁵

⁷² Ex 1, Tab 18: Statement of Thresa Holmes dated 9 August 2017 ("Holmes 09.08.2017") at [3].

⁷³ Ex 1, Tab 14: Statement of Justin Keith Kay dated 8 August 2017 ("J Kay 08.08.2017") at [6]-[9]; Ex 1, Tab 15: Statement of Dylan Kay dated 8 August 2017 ("D Kay 08.08.2017") at [12]-[13]; Ex 1, Tab 16: Statement of Stephen Wedmaier dated 9 August 2017 at [5]-[11] ("Wedmaier 09.08.2017"); Ex 1, Tab 17: Statement of Jason Taylor dated 9 August 2017 ("J Taylor 09.08.2017") at [5]-[7].

⁷⁴ Ex 1, Tab 14: J Kay 08.08.2017 at [8]-[14].

⁷⁵ Ex 1, Tab 15: D Kay 08.08.2017 at [17].

68. According to Mr Wedmaier, Mr McGrail approached him in an angry state, knocked his hat off his head, and began asking questions about Mr Wedmaier's identity, police rank and mobile phone. Mr McGrail went over to the truck and kicked a number of toolboxes and plastic tubs over, stating, "*Where the fuck is Tess? I am not leaving anywhere until I see Tess*".⁷⁶
69. According to Mr Taylor, Mr McGrail approached Mr Wedmaier in an aggressive manner, accusing him of doing something with his phone. Mr McGrail had an angry look on his face and was shaking his arms in an agitated manner. Mr McGrail mentioned his son, Clinton, a number of times and at one point said, "*Clinton's dead and he's not coming back*". When they all started to ignore Mr McGrail, he became angrier and punched the door of the truck, cutting his hand in the process. Mr Taylor tried to calm Mr McGrail down, but Mr McGrail accused them all of being "*copper dog informants*" and accused them of lying.⁷⁷
70. Around this time, Ms Holmes arrived home with grocery shopping and Mr Wedmaier helped her take the bags into the house.⁷⁸ According to Ms Holmes, she saw blood on the tiled floor of the duplex and noticed that items had been smashed. When she asked Mr McGrail (who had followed her inside) what was wrong, he turned to Ms Sullivan and said, "*I wouldn't expect you to be living with these informant dogs*" before waving his arms around violently. He then came up close to Ms Holmes and screamed, "*I know you're a Police informant dog! A police woman. Show me badge number, your school photos, your Facebook... I Googled you and know that you're an informant copper dog and all your family are copper dogs!*"⁷⁹
71. Ms Holmes cowered in the corner of the kitchen, crouched down with her arms up towards her face. She heard Mr McGrail say to Mr Samuel, "*Go and get something out of the garage so I can kill this bitch and put her out of her misery*". Mr Wedmaier told police that he heard Mr McGrail say things like, "*No one's going anywhere until it's sorted*". Mr Samuel went towards the garage and returned with a hammer. Mr Samuel handed the hammer to Mr McGrail, who raised it above his head while standing over Ms Holmes.⁸⁰

⁷⁶ Ex 1, Tab 16: Wedmaier 09.08.2017 at [11]-[14].

⁷⁷ Ex 1, Tab 17: J Taylor 09.08.2017 at [7]-[15].

⁷⁸ Ex 1, Tab 14: J Kay 08.08.2017 at [16]; Ex 1, Tab 16: Wedmaier 09.08.2017 at [20].

⁷⁹ Ex 1, Tab 18: Holmes 09.08.2017 at [14]-[16].

⁸⁰ Ex 1, Tab 18: Holmes 09.08.2017 at [17]-[21]; Ex 1, Tab 16: Wedmaier 09.08.2017 at [20].

72. Mr Wedmaier thought that Mr McGrail was going to hit Ms Holmes with the hammer and tried to intervene. Mr McGrail accused Mr Wedmaier of being a “dog” and chased him from the house with the hammer. Mr Wedmaier ran outside and continued home.⁸¹
73. According to Dylan Kay, Mr McGrail told Ms Holmes that he had proof of her talking to “the dogs”. Mr McGrail said to Ms Holmes, who was crying, “*If you don’t shut the fuck up, I’m going to kill you.*” He then raised the hammer above his head and said to Ms Holmes, “*Today is the day you’re going to die.*” Ms Holmes said, “*I don’t understand why you’re here and why you’re doing this.*” Mr McGrail replied, “*We will all be dancin’ in heaven tonight with my son.*”⁸²
74. At about this time, Justin Kay entered the house. He stood between Mr McGrail and Ms Holmes. He yelled at Mr McGrail to stop, who replied, “*No. Today is the day she’s going to die.*” Justin Kay pulled Ms Holmes up off the floor and told her to get help. Ms Holmes and Ms Sullivan then ran out the front door.⁸³
75. Mr McGrail followed Ms Holmes and Ms Sullivan outside. At that time, Kayla Cowan was standing in the yard. Mr McGrail grabbed Ms Cowan by the hair and began screaming abuse at her. Ms Cowan freed herself, or was let go, and Mr McGrail went back into the house. Ms Sullivan offered Mr McGrail the keys to one of the cars and said, “*Just take one of the cars and go.*” Mr McGrail said, “*No. It all ends here today.*” He then turned to Mr Samuel and said, “*Make sure them two bitches don’t go anywhere*”. Mr McGrail then went back inside the duplex.⁸⁴
76. Mr Samuel stood between the women and the road, initially preventing them from leaving. After some discussion, Mr Samuel agreed not to tell Mr McGrail if they left.⁸⁵
77. Whilst this was occurring, Mr Taylor had secreted himself in the bathroom of the duplex. At 3:44pm, Mr Taylor telephoned Triple-0 and anonymously reported that a bloke called “Hoppy” was “*going off his head*” and was violent. Mr Taylor requested

⁸¹ Ex 1, Tab 16: Wedmaier 09.08.2017 at [22].

⁸² Ex 1, Tab 15: D Kay 08.08.2017 at [25]-[26]; Ex 1, Tab 18: Holmes 09.08.2017 at [21].

⁸³ Ex 1, Tab 18: Holmes 09.08.2017 at [22]-[24]; Ex 1, Tab 14: J Kay 08.08.2017 at [21]; Ex 1, Tab 15: D Kay 08.08.2017 at [27].

⁸⁴ Ex 1, Tab 18: Holmes 09.08.2017 at [24]-[26]; Ex 1, Tab 14: J Kay 08.08.2017 at [21].

⁸⁵ Ex 1, Tab 18: Holmes 09.08.2017 at [27]-[32].

police assistance. After he was told the police were on their way he left the duplex, jumping over the rear fence.⁸⁶

Further Events at the Duplex

78. Justin Kay and Dylan Kay recall the further events prior to the arrival of police differently.
79. According to Dylan Kay, whilst Mr McGrail was outside (during the incident with Ms Cowan), Dylan sent a text message to his sister asking her to call the police. When Mr McGrail saw him on his phone, he head-butted Dylan and threatened, *"If I catch you on your phone again I'll slit your throat"*. Mr McGrail then pushed Dylan into the garage, where Justin was, knocked something out of Justin's hand and smashed a fluorescent light tube that had been on the bench. He told Justin and Dylan to go back into the duplex.⁸⁷
80. Mr McGrail followed them back inside the duplex and said, *"You two are up to something"*. He locked the doors, shut the blinds and said, *"You two are going to die here tonight"*. Mr McGrail then began to talk about the police saying, *"All the police in New South Wales are corrupt and they can't keep getting away with it. I'm going to expose them"*.
81. Mr McGrail demanded Justin remove his shirt, threatening to slit his throat if he did not comply. Dylan told Justin to do as Mr McGrail said, at which point Mr McGrail kicked Dylan in the genitals. Mr McGrail then put his arms around Justin and said, *"You don't have any idea what it's like to lose your son"*. Dylan saw that Mr McGrail had two knives in one of his hands.⁸⁸
82. Mr McGrail put one of the knives to Dylan's throat and said, *"You are gonna die today... Do you know what SBP is? It's called suicide by police. They are gonna put a bullet in my head and the only way they'll do that is if I kill you"*.⁸⁹
83. About this time, Mr Samuel came back inside the duplex and suggested that Dylan was hiding something. Mr McGrail threatened Dylan with the knife saying, *"What do you know? I could cut your jugular and you'd bleed out instantaneously... You'll bleed out in*

⁸⁶ Ex 1, Tab 17: J Taylor 09.08.2017 at [19]; Ex 1, Tab 93: Transcript of 000 Call from Jason Taylor at 15:44 on 6 August 2017, p. 3844.

⁸⁷ Ex 1, Tab 15: D Kay 08.08.2017 at [28]-[31].

⁸⁸ Ex 1, Tab 15: D Kay 08.08.2017 at [34]-[36].

⁸⁹ Ex 1, Tab 15: D Kay 08.08.2017 at [39].

two minutes... Or I can just stab you in the heart." Mr McGrail then ordered Mr Samuel to leave and told Justin and Dylan to *"write on a piece of paper what your family will get after we die here today"*. When Dylan had difficulty finding a pen, Mr McGrail said, *"Hold your wrist out so I can cut your wrist and you can write it in blood?"* Dylan begged him not to. Mr McGrail just laughed and walked away.⁹⁰

84. Mr McGrail then turned his attention to Justin Kay asking him, *"What's my son's name?"* When Justin could not answer him, Mr McGrail briefly held a knife out to Justin's chin before elbowing him in the face. Mr McGrail then asked Dylan whether he had any children. When Dylan said, *"No"* Mr McGrail said, *"Good. No one will miss you"* and lightly ran a knife across Dylan's throat.⁹¹
85. Mr McGrail asked Justin and Dylan questions which suggested he suspected them of being police officers. He accused them of lying when they said they did not know what he was talking about.⁹²
86. Around this time, Mr Samuel asked for money to buy a drink. Mr McGrail let Justin go out to his truck to find his wallet. Whilst Justin was outside, Mr McGrail and Mr Samuel bailed up Dylan and asked him who was hiding in the roof. They accused Dylan of lying when he said, *"No one"*.⁹³
87. After Justin returned, Mr Samuel walked Dylan out to his car so he could also retrieve his wallet. As Mr Samuel and Dylan started to walk back inside the duplex, Mr McGrail said to Dylan, *"You got three seconds to get out of here"* at which point Dylan ran back to his car. Mr McGrail approached him with a knife, and Dylan drove away. At that stage, the only persons then remaining at the duplex were Mr McGrail, Mr Samuel and Justin Kay.⁹⁴
88. Dylan drove to the home of his sister, Christy Kay. Dylan was hysterical and told Ms Kay that Justin was in danger. Despite Dylan pleading with her not to go, Ms Kay drove to the duplex.⁹⁵
89. According to Justin Kay, after Ms Cowan had managed to get free from Mr McGrail, Justin went back inside to have a look at the damage that had been caused. At that

⁹⁰ Ex 1, Tab 15: D Kay 08.08.2017 at [40]-[46].

⁹¹ Ex 1, Tab 15: D Kay 08.08.2017 at [47]-[48].

⁹² Ex 1, Tab 15: D Kay 08.08.2017 at [49]-[50].

⁹³ Ex 1, Tab 15: D Kay 08.08.2017 at [51]-[53].

⁹⁴ Ex 1, Tab 15: D Kay 08.08.2017 at [55]-[60].

⁹⁵ Ex 1, Tab 15: D Kay 08.08.2017 at [61]-[62]; Ex 1, Tab 23: Statement of Christy Kay dated 8 August 2017 ("C Kay 08.08.2017") at [3]-[6].

time, Mr McGrail was still outside *“ranting about dogs and coppers and how he was going to finish it all today”*. Mr McGrail came back inside the duplex and slammed the door shut, locking it behind him. Mr McGrail struck Justin on the bridge of his nose causing him to momentarily lose his bearings and his nose started bleeding.⁹⁶

90. Upon regaining his bearings, Justin saw that Dylan was leaning against the glass sliding door with his hands in front of his face saying, *“Please don’t.”* Mr McGrail raised a glass bottle above his head in a striking position and said, *“Are you ready to die today? You better get a pen and paper and write out your will.”* Mr McGrail put the bottle down and kned Dylan in the groin.⁹⁷
91. Mr McGrail then turned to Justin and saw that he was looking at a television, connected to a camera monitoring the front of the house. Mr McGrail punched the television causing it to fall to the ground and yelled at Justin, *“Who are you looking for?”* Mr McGrail then saw Dylan looking at his phone and screamed, *“Who are you calling?”* Mr McGrail then went quiet and was pacing.⁹⁸
92. Mr Samuel asked Justin and Dylan if they had any money. When Justin went to retrieve his wallet from his truck, he saw that Ms Holmes and Ms Sullivan were still outside. As he took \$10 from his wallet, Justin told Ms Holmes to get help. Ms Holmes and Ms Sullivan then drove to Grafton Police Station in Mr Taylor’s car. When Justin returned to the house, he handed the money to Mr Samuel and told him it was all he had.⁹⁹
93. Inside the house, Justin Kay saw Mr McGrail yelling at Dylan. At one point, Mr McGrail pushed Dylan up towards the kitchen cupboard ranting, *“We’re all gonna die here together and yous are coming with me”*. Shortly thereafter, Mr McGrail picked up a steak knife and a carving knife from the dish-drying rack. He was talking about his son and asked Justin, *“Do you know my son’s name?”* When Justin was unable to properly answer, Mr McGrail said, *“Well, you’re going to meet him today”*.¹⁰⁰
94. Mr McGrail walked around the room with the knives in one hand and the bottle of wine in the other. He held both knives to Justin’s left eye and said, *“The clubs are making me do this. They have my daughters and they’ll kill them if I don’t reveal the boys in*

⁹⁶ Ex 1, Tab 14: J Kay 08.08.2017 at [23].

⁹⁷ Ex 1, Tab 14: J Kay 08.08.2017 at [23]-[24].

⁹⁸ Ex 1, Tab 14: J Kay 08.08.2017 at [25].

⁹⁹ Ex 1, Tab 14: J Kay 08.08.2017 at [25]-[26]; Ex 1, Tab 18: Holmes 09.08.2017 at [33]-[35]

¹⁰⁰ Ex 1, Tab 14: J Kay 08.08.2017 at [26].

blue for who they are. Even if it means I have to take one here”, pointing to the middle of his forehead. Justin felt Mr McGrail tense up, and one of the knives stab him between his nose and his left eye causing a wound that required five stitches.¹⁰¹

95. At some point, Mr McGrail dropped the steak knife, but still kept hold of the carving knife. He also told Mr Samuel to leave saying, *“Just go bro. You don’t need to see this”*.¹⁰²
96. Mr McGrail walked over to Dylan and held the carving knife to his throat. Justin yelled out, *“Just leave him alone, Hoppy. He’s just a kid.”* Mr McGrail ran the knife across Dylan’s throat, but did not cause any injury.¹⁰³
97. Justin felt that he was losing consciousness as a result of loss of blood. In an attempt to lure Mr McGrail away from Dylan, Justin walked outside. A few minutes later, Mr McGrail came outside, followed by Dylan and Mr Samuel. Justin told Dylan to get into his vehicle and leave, which he did. As Dylan reversed out of the driveway, Mr McGrail stabbed towards Dylan through the open driver’s side window.¹⁰⁴
98. Following Dylan’s departure, Mr McGrail appeared to become more relaxed. He sat down on the front step and said, *“Won’t be long now. They’re all gone. It’ll soon be all over.”* Mr Samuel said, *“I’m going back. You coming with me or are you staying here?”* Mr McGrail replied, *“You go bro. I’m seeing this through to the end.”* Mr Samuel then left on his scooter.¹⁰⁵
99. Mr McGrail put the bottle of wine and knife on the ground in front of him, and was mumbling that his son didn’t deserve to die. At this time, Christy Kay arrived in her car. Justin gestured for her to leave, but Mr McGrail gestured for her to come towards him. Ms Kay noticed that Mr McGrail was smiling. It was around this time that police arrived.¹⁰⁶

The Confrontation with Police

100. As a result of Mr Taylor’s call to Triple-0, and the report made at Grafton Police Station by Ms Holmes and Ms Sullivan, Senior Constables Amanda Crouch and Stephen Bennett drove from Grafton Police Station to the duplex. The officers had been advised

¹⁰¹ Ex 1, Tab 14: J Kay 08.08.2017 at [27] and [37].

¹⁰² Ex 1, Tab 14: J Kay 08.08.2017 at [27].

¹⁰³ Ex 1, Tab 14: J Kay 08.08.2017 at [28].

¹⁰⁴ Ex 1, Tab 14: J Kay 08.08.2017 at [28].

¹⁰⁵ Ex 1, Tab 14: J Kay 08.08.2017 at [29].

¹⁰⁶ Ex 1, Tab 14: J Kay 08.08.2017 at [30]; Ex 1, Tab 23: C Kay 08.08.2017 at [9]-[15].

that a man named “Hoppy” had a knife and possible hostages.¹⁰⁷ They left the station at 4:03pm¹⁰⁸ and arrived at the duplex at 4:07pm.¹⁰⁹

101. Upon arrival, Senior Constables Crouch and Bennett parked in the driveway of the duplex. They observed Mr McGrail and Justin Kay standing against a parked car in the driveway of Unit 1. Senior Constable Crouch identified herself as a police officer asked, *“What’s happening here?”* Mr McGrail replied, *“It’s not happening here. It’s all going on next door.”* The officers then walked across to Unit 2. Mr McGrail picked up the bottle and knife and a shirt with the one hand and said to Justin Kay, *“This is it. Are you ready to die?”*¹¹⁰
102. Senior Constables Crouch and Bennett spoke to the occupants of Unit 2, who directed them back to Unit 1.¹¹¹ Senior Constable Crouch asked Justin about his facial injury, however Justin refused to explain what had happened. Senior Constable Crouch then asked Mr McGrail about his hand injury. Mr McGrail said, *“Don’t touch me, I’ve got Hep C”*. Senior Constable Crouch said she wasn’t going to touch him and repeated her question. Mr McGrail replied, *“None of your fucking business”*.¹¹² Senior Constable Crouch became concerned about Mr McGrail’s level of agitation and so took the wine bottle from his hand and threw it onto the lawn.¹¹³
103. Senior Constable Crouch noticed a bulge near the top of Mr McGrail’s shorts and asked what it was. Mr McGrail replied, *“None of your fuckin’ business”*.¹¹⁴ Senior Constable Bennett saw a blade sticking out of Mr McGrail’s jumper and said, *“Mate, drop the knife”*. Mr McGrail replied, *“No”*.¹¹⁵
104. Mr McGrail then produced the knife from his jumper. Senior Constable Bennett said, *“Put that down”* and Senior Constable Crouch said, *“Drop the knife.”* Mr McGrail replied, *“No”*. Senior Constable Crouch took a number of steps backwards, drew her firearm and held it in the cover position. Mr McGrail then began moving towards the

¹⁰⁷ Ex 1, Tab 7: Directed Interview of Senior Constable Amanda Crouch on 8 August 2017 (“Crouch 08.08.2017”) at Q&A 175.

¹⁰⁸ Ex 1, Tab 94: Grafton Police Station CCTV Footage.

¹⁰⁹ Ex 1, Tab 91: VKG Transcript for 6 August 2017, p. 2.

¹¹⁰ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 51; Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 36; Ex 1, Tab 14: J Kay 08.08.2017 at [31]-[32].

¹¹¹ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 51; Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 36; Ex 1, Tab 42: Statement of John McPherson dated 23 August 2017 at [7]; Ex 1, Tab 41: Statement of Lee McPherson dated 23 August 2017 at [5].

¹¹² Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 52-54.

¹¹³ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 54; Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 36.

¹¹⁴ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 54.

¹¹⁵ Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 36.

officers with his chest puffed out, looking angry.¹¹⁶ Senior Constable Crouch said Mr McGrail was holding the knife out in front of him.

105. At 4:09pm, Senior Constable Crouch made a broadcast over VKG saying, *"Yeah radio, how far off are 14? We've got a male here armed with a knife."*¹¹⁷ In her evidence, Senior Constable Crouch confirmed that she was asking about Sergeant Dallas Leven, who was using the call sign "Grafton 14". Senior Constable Crouch was aware that Sergeant Leven was on his way to the scene to provide backup.
106. Mr McGrail put the knife up to his own neck saying, *"You have to shoot me."* Senior Constable Bennett said, *"Mate, just drop the knife mate. You're not in trouble. It's alright mate, just put the knife down."* Senior Constable Bennett then addressed Mr McGrail by his name and said, *"Chris, it's all right, mate. Just put the knife down."*¹¹⁸
107. Upon seeing Mr McGrail put the knife up to his own throat, Senior Constable Crouch holstered her firearm and drew her Taser. She pointed the Taser towards Mr McGrail and deployed it.¹¹⁹ Senior Constable Crouch said she did this as she was concerned Mr McGrail was at imminent risk of self-harm.
108. Although both prongs struck Mr McGrail, it had the limited effect of causing Mr McGrail to turn backwards and stumble but not fall to the ground.¹²⁰ In her evidence, Senior Constable Crouch described seeing Mr McGrail pull off the Taser probes. As Mr McGrail continued to come towards her, Senior Constable Crouch dropped the Taser, and redrew her firearm.¹²¹
109. At 4:10pm, Senior Constable Crouch made a broadcast over VKG requesting further police assistance and advising that she had deployed the Taser.¹²²
110. It was about this time that Sergeant Leven arrived at the scene.¹²³ He exited his vehicle with his OC spray in his hand. Whilst Senior Constable Crouch had Mr McGrail covered with her firearm, Sergeant Leven approached Mr McGrath and deployed the entire can

¹¹⁶ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 54.

¹¹⁷ Ex 1, Tab 91: VKG Transcript for 6 August 2017, p. 2-3; Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 70-71; Ex 1, Tab 6: Directed Interview of Sergeant Dallas Leven on 8 August 2017 ("Leven 08.08.2017") at Q&A 31.

¹¹⁸ Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 36.

¹¹⁹ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 54.

¹²⁰ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 54; Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 36; Ex 2: Taser Camera Footage, 0-6 seconds.

¹²¹ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 71.

¹²² Ex 1, Tab 91: VKG Transcript for 6 August 2017, p. 3.

¹²³ Ex 1, Tab 6: Leven 08.08.2017 at Q&A 31.

of spray.¹²⁴ In his evidence, Sergeant Leven said he could see the arch of the spray and that it struck Mr McGrath's face, but the spray appeared to have little if any effect. Sergeant Leven noted that Mr McGrail was wearing sunglasses and queried whether they had provided protection. When it was apparent there was no effect, Sergeant Leven drew his firearm and covered Mr McGrail, who still had hold of the knife.

111. At 4:11pm, Senior Constable Crouch made a further broadcast reiterating "*we got a male armed with a knife*" and stating, "*we're at gun point.*"¹²⁵
112. Mr McGrail was moving around and yelling. The officers and the officers continued to call on him to "*drop the knife*". According to Senior Constable Crouch, Mr McGrail was saying things to the effect, "*Shoot me, kill me, straight through the head, I want to die.*"¹²⁶ According to Senior Constable Bennett, Mr McGrail was saying, "*Shoot me, shoot me. I got nothing to live for anymore. Youse have killed my son.*"¹²⁷ Sergeant Leven heard Mr McGrail say, "*Shoot me*", and "*I'm gonna be with Clinton.*"¹²⁸
113. Mr McGrail continued to move towards the officers, who retreated across the grass and down the road in an easterly direction. Senior Constable Bennett retreated across the road to the opposite footpath. Sergeant Leven and Senior Constable Crouch formed a triangular position in relation to Mr McGrail. At points throughout the incident, the two officers crossed into each other's line of fire.¹²⁹
114. As Mr McGrail advanced upon the officers, he held the knife towards his own throat in a variety of ways and repeatedly said, "*Shoot me*".¹³⁰ In their evidence, Senior Constable Crouch and Sergeant Leven both described that, a various times, Mr McGrail focussed his attention on one of them, pointing the knife and stepping quickly in that officer's direction. He would then shift his attention to the other officer, stepping quickly in their direction. Both officers reacted by stepping backwards.

¹²⁴ Ex 1, Tab 6: Leven 08.08.2017 at Q&A 34.

¹²⁵ Ex 1, Tab 91: VKG Transcript for 6 August 2017, p. 3.

¹²⁶ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 71.

¹²⁷ Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 36 and 109.

¹²⁸ Ex 1, Tab 6: Leven 08.08.2017 at Q&A 34.

¹²⁹ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 55; Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 36; Ex 1, Tab 6: Leven 08.08.2017 at Q&A 34.

¹³⁰ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 55; Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 36; Ex 1, Tab 6: Leven 08.08.2017 at Q&A 34.

115. Vehicles continued to pass down North Street and, at one point, a family drove into a nearby driveway and children got out of the car. Senior Constable Crouch called out saying, "*get them into the house*".¹³¹
116. Sergeant Leven continued to call on Mr McGrail to drop his knife. Sergeant Leven is heard on the Taser footage to say, "*Chris, put it down, put it down ... put it down mate*" and, "*Come on Chris, I've known you for 10 years.*"¹³² Sergeant Leven also recalls saying, "*I don't want to shoot you*" and "*Chris, you know me. Just put the knife down please.*" Mr McGrail said, "*I'm not your fucking mate.*"¹³³
117. By this point, Sergeant Leven had moved to a position about 60 metres from the duplex. In his evidence, Sergeant Leven stated that he was aware that there was a boat parked behind him next to a tree and he was concerned that he would be pinned against the boat. He also knew that the ground was uneven and was concerned that he could trip and fall especially, since he was walking backwards.
118. Mr McGrail held the knife out in front of him so that it was pointed at Sergeant Leven. Mr McGrail looked at him and said, "*Get ready*". He then cocked his arm and held the knife out high in a driving motion. He advanced quickly on Sergeant Leven, still pointing the knife at him.¹³⁴ Sergeant Leven fired two shots just as Senior Constable Crouch was about to fire. Mr McGrail slumped into a half kneeling position, but did not drop the knife.¹³⁵
119. Mr McGrail was holding his abdomen area and Sergeant Leven was concerned he was trying to stand up. The officers continued to call on Mr McGrail to drop the knife. Senior Constable Bennett moved forward and deployed a short burst of his OC spray in an attempt to make Mr McGrail drop the knife; however Mr McGrail did not do so. Sergeant Leven then used his foot to push Mr McGrail in the left upper arm and shoulder area. He pushed Mr McGrail to the ground in an effort to disarm him. This action had the desired effect of knocking the knife out of his hand. Senior Constable Bennett then approached Mr McGrail and kicked the knife away from him.¹³⁶

¹³¹ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 71.

¹³² Ex 1, Tab 85: Transcript of Taser Footage.

¹³³ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 688; Ex 1, Tab 6: Leven 08.08.2017 at Q&A 34.

¹³⁴ Ex 1, Tab 6: Leven 08.08.2017 at Q&A 34.

¹³⁵ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 71, 661-667, 693-702; Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 36, 165, 175-186; Ex 1, Tab 6: Leven 08.08.2017 at Q&A 34.

¹³⁶ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 71, 706-723; Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 36, 1190, 198; Ex 1, Tab 6: Leven 08.08.2017 at Q&A 34.

120. At 4:14pm, Senior Constable Crouch made a radio broadcast reporting that shots had been fired and requesting an ambulance.¹³⁷ Sergeant Leven commenced providing first aid to Mr McGrail. He saw that Mr McGrail had bullet wounds to his abdomen and upper right leg and had a Taser probe in his stomach and chest region. Sergeant Leven placed pressure on Mr McGrail's abdomen and back to stem the bleeding.¹³⁸
121. At 4:19pm, an ambulance arrived at the scene. In the course of treatment, Paramedic Young removed a Taser prong from McGrail's left chest and Paramedic Cross noticed a second Taser prong near McGrail's groin, either caught up in his shorts or pierced in his skin.¹³⁹
122. Mr McGrail arrived at Grafton Base Hospital at 4:42pm.¹⁴⁰ After further treatment, due to the extent of his injuries, Mr McGrail was airlifted to Gold Coast University Hospital. He arrived at 7:33pm.¹⁴¹ Mr McGrail underwent emergency surgery, however he was pronounced deceased at 11:50pm.¹⁴²

Eyewitness Accounts

123. A significant number of civilians witnessed the events leading up to and including the shooting. These witnesses did not give oral evidence in the inquest, but their statements were tendered as part of the brief of evidence (Exhibit 1):
- (a) Justin Kay described seeing Mr McGrail waving the knife towards the police in a threatening way. He saw the female police officer point her gun at Mr McGrail, then put it away and take out her Taser. He heard the female officer say, "*Please put it down, we will shoot you, please don't make us do it*" and Mr McGrail reply, "*Well hurry up. Do it*" or similar. He saw the officer deploy her Taser, and then saw Mr McGrail pull off the probes and keep moving towards the police. Justin heard all of the officers continually calling out to Mr McGrail, "*Put it down, we don't want to do this*". Justin saw Mr McGrail lunge at the police and thought it looked like Mr McGrail was about to hurt someone. He heard two shots and saw Mr McGrail fall to his hands and knees.¹⁴³

¹³⁷ Ex 1, Tab 91: VKG Transcript for 6 August 2017, p. 4.

¹³⁸ Ex 1, Tab 6: Leven 08.08.2017 at Q&A 34.

¹³⁹ Ex 1, Tab 68: Statement of Paramedic Phillip Cross dated 24 August 2017 at [9] and NSW Ambulance Electronic Medical Record, p. 2.

¹⁴⁰ Ex 1, Tab 68: NSW Ambulance Electronic Medical Record, p. 2.

¹⁴¹ Ex 1, Tab 71: Statement of Paramedic Lloyd James Herbert dated 23 February 2018 at [9]-[10].

¹⁴² Ex 1, Tab 14: J Kay 08.08.2017 at [33]-[36].

¹⁴³ Ex 1, Tab 23: C Kay 08.08.2017 at [15]-[29].

- (b) Christy Kay described seeing Mr McGrail produce a knife and heard the officers tell him to put the knife down. Mr McGrail was yelling at the officers saying, “*shoot me*”, “*I hate you*” and “*you took my son*”. Ms Kay observed Mr McGrail to be hit with the Taser, and then pull the prongs out. She also saw an officer attempt to subdue Mr McGrail with OC spray. Ms Kay described Mr McGrail continually lunging at the female officer and calling on the police to shoot him. When Mr McGrail was approximately one metre away from the police, she heard two gunshots and saw Mr McGrail struggling to stand. As Mr McGrail went to the ground, one of the officers came forward to assist him.¹⁴⁴
- (c) Robyn Tracey was driving along North Street. She described seeing Mr McGrail staggering on his feet and police with their weapons drawn. She heard the police attempting to negotiate with Mr McGrail, telling him to put the knife down. Ms Tracey saw Mr McGrail made slashing movements with the knife, which caused the police to move backwards. She then saw Mr McGrail lunge at one of the officers and heard two gunshots. She saw that Mr McGrail didn’t let go of the knife until the officer kicked it out of his hands and he fell to the ground.¹⁴⁵
- (d) Myles Tracey described hearing screaming and seeing Mr McGrail in the middle of the road with a knife. He heard police telling Mr McGrail to drop the knife and saw that police had their firearms drawn. He heard a male police officer say, “*Put it down now or I’ll have to shoot ya – come on Chris. I have known you for ten years. I know this is not you. You are a good bloke. Put the knife down or I’ll have to shoot*” and saw Mr McGrail lunge forward, holding the knife out. Myles then heard gunshots. He saw that Mr McGrail continued to stand on the road until police kicked his leg to make him fall. Another officer then sprayed Mr McGrail with OC spray.¹⁴⁶
- (e) Eric Tracey described hearing yelling and seeing uniformed police with their firearms drawn. He saw Mr McGrail holding something and heard police telling him to put the knife down. Mr McGrail seemed “*out of his mind*”. Eric turned away from his window and then heard gunshots.¹⁴⁷
- (f) Lesley Knight described seeing two male police officers and one female police officer with their firearms drawn. She observed that Mr McGrail had a knife, holding it down by his side, and that the officers were calling on him to drop the

¹⁴⁴ Ex 1, Tab 23: C Kay 08.08.2017 at [15]-[29].

¹⁴⁵ Ex 1, Tab 24: Statement of Robin Tracey dated 7 August 2017 (“R Tracey 07.08.2017”) at [5]-[9].

¹⁴⁶ Ex 1, Tab 25: Statement of Myles Tracey dated 7 August 2018 (“M Tracey 07.08.2017”) at [5]-[16].

¹⁴⁷ Ex 1, Tab 26: Statement of Eric Tracey dated 7 August 2018 at [9]-[27].

knife. Mr McGrail kept moving towards the police, who were stepping back. At one point, Mr McGrail held the knife out to the side and said, “*shoot me, I want to die*”. One of the male officers tried to reason with him, but Mr McGrail continued to move towards the police. Ms Knight heard a gunshot and saw Mr McGrail still standing. She then heard a second shot and saw Mr McGrail bend forwards, holding his stomach. She noticed that he still had hold of the knife. Ms Knight stated that the female officer swept Mr McGrail’s leg out from under him, causing him to fall to the ground.¹⁴⁸

- (g) Errol Kirdy observed Mr McGrail walking towards three police officers, who were stepping backwards. He heard the officers calling on Mr McGrail to drop the knife. One of the officers tried to reason with Mr McGrail, but he continued to move towards the police. Mr McGrail then raised the knife and Mr Kirdy thought that he was going to lunge at the officer, who was about two metres away. Mr Kirdy saw Mr McGrail lift the knife up and then heard a shot. Mr McGrail stayed standing and police continued to tell him to drop the knife. Mr Kirdy then heard a second shot and saw that Mr McGrail went to his knees. One of the male officers then pushed Mr McGrail over with his foot and the female police officer kicked the knife out of his hand.¹⁴⁹
- (h) Sheree Gray described hearing someone yelling, “*you killed my son*”. She observed Mr McGrail in the middle of the road with a knife, and three police officers. She heard an officer yell, “*get inside*”. The police repeatedly told Mr McGrail to put the knife down. Ms Gray heard Mr McGrail say, “*Do it. I don’t want to be here anyway*”. She saw him walk towards the police, who backed away. She heard two gunshots, however Mr McGrail remained standing. When Mr McGrail fell down, she saw the police move in to render assistance.¹⁵⁰
- (i) Heidi Robinson described seeing Mr McGrail surrounded by police with their firearms drawn. Ms Robinson took out her iPhone and began filming. She heard police yell, “*put it down*” or “*get down*”, however Mr McGrail continued walking towards them. She saw Mr McGrail lunge towards police and then she heard two shots. One of the police officers kicked the blade out of Mr McGrail’s hand once he was on the ground. Ms Robinson gave her iPhone containing the recording to the police to assist the investigation.¹⁵¹

¹⁴⁸ Ex 1, Tab 27: Statement of Lesley Knight dated 21 August 2017 at [3]-[22].

¹⁴⁹ Ex 1, Tab 28: Statement of Errol Kirdy dated 22 August 2017 (“E Kirdy 22.08.2017”) at [3]-[18].

¹⁵⁰ Ex 1, Tab 29: Statement of Sheree Gray dated 9 August 2017 at [5]-[17].

¹⁵¹ Ex 1, Tab 31: Statement of Heidi Robinson dated 9 August 2017 at [3]-[10].

- (j) Ron Skinner described seeing Mr McGrail thrusting a large knife at police and yelling, *“I will fucking kill you”*. He saw one of the officers attempt to subdue Mr McGrail with OC spray, but this had no effect. He heard the police continue to call on Mr McGrail to drop his knife. Mr Skinner described Mr McGrail as *“manic and [wanting] to hurt”* one of the police officers. He observed that Mr McGrail’s efforts *“became more aggressive, he was making real efforts to lunge and stab at one of the police officers”*. Mr Skinner then heard a loud bang. He saw the officer who had fired the shots move towards Mr McGrail and push him down with his foot. Mr McGrail still had hold of the knife until he fell down.¹⁵²
- (k) Paul McKenzie described seeing three police officers walking backwards up North Street. One of the male officers was calling on Mr McGrail to drop his weapon. Mr McKenzie described Mr McGrail as being *“really worked up and agitated towards the police”*. He heard Mr McGrail yell something like, *“do it”*. He observed Mr McGrail move quickly towards the male police officer *“in a lunging move with the knife raised in a position that it appeared that the male police officer was about to be stabbed.”* Mr McKenzie heard two quick gunshots and saw Mr McGrail fall to his knees. Mr McGrail continued to hold the knife until one of the officers kicked it out of his hand.¹⁵³
- (l) Judith Timms was being driven along North Street by her daughter. She described seeing three police officers with their firearms drawn standing around Mr McGrail. She heard police telling Mr McGrail to *“get down on the ground”*. Mr McGrail had his arms extended out to the side (like a crucifixion pose) and kept saying, *“just shoot me”*. As her daughter began to reverse the car, Ms Timms heard two gunshots and saw Mr McGrail clutch his chest.¹⁵⁴

Forensic Evidence and Video Footage

124. The video footage of the incident and the extensive crime scene investigation establish the following:

- (a) The distance that the police retreated from the duplex while Mr McGrail was moving towards them was about 90 metres.¹⁵⁵ As set out above, over that time, Mr McGrail was moving towards Sergeant Leven and Senior Constable Crouch in an erratic start/stop fashion. When Mr McGrail moved forward, it was with large

¹⁵² Ex 1, Tab 34: Statement of Ron Skinner dated 7 November 2011 at [7]-[14].

¹⁵³ Ex 1, Tab 36: Statement of Paul McKenzie dated 19 September 2017 (“P McKenzie 19.09.2017”) at [4]-[7].

¹⁵⁴ Ex 1, Tab 37: Statement of Judith Timms dated 24 August 2017 at [8]-[12].

¹⁵⁵ The distance from the centreline of the 1/202 driveway to the bloodstain location - Ex 1, Tab 74: Statement of Leading Senior Constable Mark Griffiths dated 20 October 2017 (“Griffiths 20.10.2017”) at [27].

quick steps. Sergeant Leven and Senior Constable Crouch walked backwards in an attempt to keep their distance from Mr McGrail.

- (b) Sergeant Leven was between Mr McGrail (who was in front of him) and a boat parked at the edge of the driveway (which was about 1 to 5 metres to his rear). The crime scene photographs and a computer aided design (“CAD”) analysis prepared by Senior Constable Fenton show that the ground was uneven. There were potholes on the road and a dip in the grass, near the boat. The boat was positioned on the kerb.¹⁵⁶
- (c) It is not possible to precisely state the distance between Mr McGrail and Sergeant Leven at the time Sergeant Leven discharged his firearm. However, I find the distance was likely between 1 and 5 metres. This measurement relies on both eyewitness testimony, and the crime scene measurements and analysis.
- (d) The footage of the incident recorded by Ms Robinson on her mobile phone shows that immediately following the shots, Mr McGrail pivoted slightly to his right and then put both his hands out and fell to his knees. He remained on at least one knee. Sergeant Leven is seen using his foot to push Mr McGrail on the shoulder, which caused him to drop the knife. Mr McGrail is then seen to lay on his back on the ground. It is clear from this footage that Mr McGrail did not move any significant distance from the position he was at the time the shot was fired.¹⁵⁷
- (e) The location where Mr McGrail lay down was marked by a blood stain 1.5 metres in diameter. The distances from the centre of that location to the two fired cartridges at the scene were approximately 5.6 metres and 6.2 metres respectively.¹⁵⁸ A forensic ballistics investigator conducted an ejection pattern test involving the discharge of ten cartridges from Sergeant Leven’s firearm. All ten cartridges were ejected to the right rear quadrant of the pistol¹⁵⁹ falling between 700mm and 3,850mm to the rear of the pistol and between 830 mm and 2,670mm to the right of the pistol.¹⁶⁰
- (f) That Mr McGrail was very close to Sergeant Leven is further confirmed by an optical (visual and microscopic) and chemical examination of two areas surrounding the bullet holes in the singlet worn by Mr McGrail. This examination revealed the presence of nitrates, a known chemical component of burnt

¹⁵⁶ Ex 1, Tab 74: Crime Scene Photographs; Ex 1, Tab 76: Statement of Derek Fenton dated 26 January 2018.

¹⁵⁷ Ex 2.

¹⁵⁸ Ex 1, Tab 74: Griffiths 20.10.2017 at [26.4] and Crime Scene Photographs 59, 60 and 68-74.

¹⁵⁹ Ex 1, Tab 78: Statement of Timothy Berry dated 26 November 2017 (“Berry 26.11.2017”) at [13].

¹⁶⁰ Ex 1, Tab 5: DCI Taylor 27.02.2018 at [377].

propellant, which is consistent with the distance of the muzzle of the firearm to the singlet at the time of discharge being in the intermediate range.¹⁶¹

- (g) Ballistics analysis established that the two shots were fired from a single firearm. Two fired cartridges were collected from the scene and were subject to a microscopic examination. Comparison with test fired cartridges from Sergeant Leven's firearm confirmed that the recovered and test cartridges were fired from the same weapon.¹⁶² I am satisfied that it was Sergeant Leven who fired the two shots.
- (h) The evidence of the directly involved officers and the civilian witnesses establishes that at the time Sergeant Leven discharged his firearm, Mr McGrail was in possession of the same knife he had when Senior Constables Crouch and Bennett first approached Mr McGrail and Justin Kay out the front of the duplex. The footage captured by Ms Robinson on her mobile phone depicts Senior Constable Bennett approaching Mr McGrail after he had been pushed to the ground by Sergeant Leven. He appears to kick something on the ground away from Mr McGrail, consistent with his evidence that he kicked the knife away. A crime scene officer located a black handled straight edged Avanti Infinity knife approximately 5.4 metres west of the where Mr McGrail had laid on the ground. It measured 25 cm in length, with a 13 cm blade.¹⁶³
- (i) The recordings from the Taser camera and Ms Robinson's mobile telephone establish that throughout the entire time the police interacted with Mr McGrail, including after the shots were fired, they were on him to "*Put the knife down!*". The footage also records Mr McGrail saying "*I want to be shot*", "*I want to be with my son*", "*you killed my son*", "*you have to shoot me*" and "*shoot me dead*".¹⁶⁴ This is relevantly consistent with the eyewitness evidence.

Post-mortem Examination

125. At about 10:25am on 8 August 2017, Dr Dianne Little, Forensic Pathologist, performed a post-mortem examination on Mr McGrail. Relevantly, Dr Little identified two gunshot wounds: one to the right chest and one to the right thigh. Dr Little concluded that the

¹⁶¹ Ex 1, Tab 78: Berry 26.11.2017 at [12(d)].

¹⁶² Ex 1, Tab 78: Berry 26.11.2017 at [11(d)].

¹⁶³ Ex 1, Tab 74: Griffiths 20.10.2017 at [26.2] and Crime Scene Photographs 59, 63 and 64.

¹⁶⁴ Ex 1, Tab 85: Transcript of Taser Footage.

cause of Mr McGrail's death was gunshot wounds to the trunk and right thigh and subsequent effects of significant blood loss.¹⁶⁵

Toxicology

126. Mr McGrail's post-mortem blood analysis revealed the following:

- 88mg of alcohol per 100ml of blood;
- 0.28mg/kg of methylamphetamine;
- 0.02mg/kg of amphetamine (the breakdown product of methylamphetamine);
- Diazepam and nordiazepam (the breakdown product of diazepam) were detected at a level of less than 0.02mg/kg; and
- 0.002mg/kg of tetrahydrocannabinol (THC).

127. Mr McGrail's blood analysis also identified his prescribed antihypertensive (amlodipine) and antidepressant (citalopram) medication within and below therapeutic ranges respectively.¹⁶⁶ Records obtained from the Pharmaceutical Benefits Scheme and Bulgarr Ngaru do not indicate that Mr McGrail had been prescribed diazepam by a medical practitioner.

128. Those assisting me obtained an expert report from Dr Jonathan Brett, a consultant in clinical toxicology and pharmacology, which was tendered in the inquest. In brief, Dr Brett has opined as follows:

- (1) All drugs detected at post-mortem are subject to post-mortem redistribution, making their absolute concentrations difficult to interpret;
- (2) It is not possible to determine with any accuracy how long prior to his death Mr McGrail consumed the methylamphetamine as the dose and route of consumption are not known. However, assuming the typical intravenous dose, Dr Brett opined Mr McGrail likely consumed methylamphetamine in the hours prior to his death;
- (3) It is not possible to differentiate with certainty as to whether Mr McGrail's psychosis was methylamphetamine induced or caused by an underlying psychotic disorder, however as the evidence suggests an improvement in Mr McGrail's psychotic symptoms and functioning during periods of abstinence or

¹⁶⁵ Ex 1, Tab 2: Autopsy Report dated 27 September 2017, pp. 16-17.

¹⁶⁶ Ex 1, Tab 3: Certificate of Analysis dated 12 September 2017; Ex 1, Tab 2: Autopsy Report dated 27 September 2017, p. 16.

lighter use, Dr Brett is of the view that methylamphetamine induced psychosis is more likely;

- (4) Acute methylamphetamine intoxication against a background of methylamphetamine dependence, methylamphetamine induced psychosis, antisocial personality disorder, grief reaction, sleep disturbance and alcohol intoxication all contributed to impairments in Mr McGrail's cognitive function, mental state and behaviour immediately prior to his death;
- (5) Mr McGrail's blood alcohol concentration (0.88ml/100ml) is likely to have caused a degree of intoxication (although this depends on his pre-existing tolerance), leading to disinhibition and acute cognitive impairment;
- (6) It is unlikely that citalopram would have had a significant impact on Mr McGrail's cognitive functioning prior to his death, either alone or as a result of any drug interactions with illicit drugs taken;
- (7) The diazepam and its metabolite nordiazepam (both detected in low concentrations) are also unlikely to have had a significant impact on Mr McGrail's mental state or behaviour immediately prior to his death.¹⁶⁷

ISSUES AT THE INQUEST

129. Prior to the inquest, a list of issues to be explored concerning the manner of Mr McGrail's death was circulated to the interested parties. These issues were as follows:

- (1) Did Mr McGrail engage in a deliberate and conscious course of conduct with the intent of ending his own life? To that end, what was Mr McGrail's state of mind and intentions over the course of the events leading up to and resulting in his death? In particular:
 - (a) To what extent, if any, was Mr McGrail exhibiting suicidal intent/ideation immediately prior to his death?
 - (b) To what extent, if any, was Mr McGrail's behaviour immediately prior to his death affected by the methamphetamine, amphetamine and other substances that were later detected in his blood?
- (2) Was Mr McGrail suffering from a mental illness or mental health condition immediately prior to his death? If so:

¹⁶⁷ Ex 1, Tab 160: Report of Dr Jonathan Brett dated 5 January 2020, p. 8.

- (a) What was the mental illness or mental health condition from which he was suffering?
 - (b) To what extent, if any, was Mr McGrail's behaviour immediately prior to his death affected by the mental illness or mental health condition from which he was suffering?
 - (3) Were the actions of the involved officers on 6 August 2017 appropriate? In particular:
 - (a) Were Sergeant Leven's, Senior Constable Crouch's and Senior Constable Bennett's interactions with Mr McGrail consistent with Police Protocols and Training relating to dealing with persons exhibiting mental illness or disturbances and/or intoxication?
 - (b) Were each of those police officers adequately trained in Police Protocols relating to dealing with persons exhibiting mental illness or disturbances and/or intoxication?
 - (c) Was there any alternative to the use of lethal force available to Sergeant Leven having regard to the circumstances?
 - (4) Whether there are any recommendations that are "necessary or desirable to make in relation to any matter connected with the death" arising from the evidence and findings at the inquest, pursuant to s. 82 of the *Coroners Act 2009*.
130. In addition to hearing the evidence from each of the involved officers, I received reports and heard evidence from a number of expert witnesses, including Senior Constable Adrian van der Valk from the NSWPF Weapons and Tactics Policy Review Unit (**WTPR**) and Chief Inspector Matthew Hanlon from the NSWPF Mental Health Intervention Team (**MHIT**). Dr Kerri Eagle, Forensic Psychiatrist, provided a report termed a "retrospective psychiatric assessment" in respect of Mr McGrail's mental health issues and gave evidence in the proceedings.
131. Ms Skinner raised an issue through her counsel regarding Mr McGrail being released to bail after being charged with another assault upon her. Detective Chief Inspector Taylor indicated that he had identified and referred that issue to the Region Commander. Whilst I accept that police bail would not ordinarily follow given Mr McGrail's criminal history, the seriousness of his assault upon Ms Skinner, and him threatening her with a tomahawk, that issue was not sufficiently proximate to the issues for the inquest. Additionally, given that the matter had been dealt with by the police command, I did not direct that such issue be part of the inquest.

132. Likewise, Mr McGrail's discharge from the mental health unit at Lismore Base Hospital a week after trying to set the petrol tank alight would ordinarily accompany police involvement which would include a consideration whether to proceed with an arrest and charge and bail. Detective Chief Inspector Taylor said that he had also identified that issue in his investigation and referred that matter to be dealt with at a command level.
133. I accept that had Mr McGrail been in custody on 6 August 2017 the events of that day would not have occurred but the consideration of the manner of his death or the prevention of death and public safety does not reside in his own arrest and custody. Accordingly, they were not issues pursued in this inquest.

Issues 1 and 2: Mr McGrail's state of mind and his intentions over the course of the events leading up to and resulting in his death

134. Mr McGrail's medical records indicate that he had struggled with substance abuse issues throughout much of his life, and also experienced periods of depression. It appears that at least over the course of the month leading up to his death, Mr McGrail had developed strong fixations with the police and what he perceived as their corrupt practices. In his mind, these practices appeared to be linked to the suicide of his son. Over the same period, witness accounts establish that Mr McGrail also repeatedly expressed a wish to be with his deceased son.
135. The evidence from the directly involved officers and civilian witnesses (set out in detail above) regarding the events of 6 August 2017 suggests that Mr McGrail wanted to end his life, and intended to do so by engineering a situation in which the police would be forced to take lethal action against him. Specifically, at the time of the incident, Mr McGrail repeatedly expressed a desire for police to shoot him and, according to Dylan Kay, referred to "suicide by police".
136. As part of her retrospective psychiatric assessment, Dr Eagle was asked to comment on Mr McGrail's state of mind and intentions over the course of the events leading up to this death and also on the actions of the involved police officers, as they related to their interactions with someone exhibiting signs of mental disorder and intoxication.
137. In both her report and her oral evidence, Dr Eagle acknowledged the limitations of her analysis, noting that she of course did not meet Mr McGrail and was reliant on the records of the perspective of other people rather than having the opportunity to make her own observations or hear from Mr McGrail about his own perspectives. Despite

these limitations, Dr Eagle was of the view that she had significant collateral information and clinical information upon which to found her opinions.

138. Dr Eagle's report was cogent and compelling, as was her evidence. Having regard to the available material, Dr Eagle expressed the following opinions regarding Mr McGrail's mental state generally and on 6 August 2017:

- (a) Mr McGrail had likely developed a substance induced psychotic disorder and had experienced at least one psychotic episode (characterised by persecutory delusions involving police) which developed during or soon after intoxication with methamphetamine. Whilst it is difficult to distinguish between a substance induced psychosis and a primary chronic psychotic disorder, Dr Eagle noted that Mr McGrail did not display other signs or symptoms that would be characteristic of schizophrenia or another similar disorder, and his symptoms (as exhibited on 16 July 2017) appeared to resolve following treatment in the context of abstinence from substance abuse. Further there was no evidence that Mr McGrail had experienced episodes of psychosis prior to 2017.¹⁶⁸ In her evidence, Dr Eagle expanded on this point, noting that methylamphetamine is a known drug associated with substance induced psychotic episode (**SIPE**). She explained that people become more sensitive to SIPE with increasing use of methylamphetamine and that can lead to an increasing number of episodes.
- (b) Mr McGrail had a severe substance use disorder evidenced by his inability to control his substance use, his level of dependence, his withdrawal when not using it, the impact of his use throughout his lifetime, its impact on his relationships and employment.¹⁶⁹
- (c) Mr McGrail had unresolved grief and loss and a high level of distress as a result of his son's death, which was exacerbated by other stressors and his persistent abuse of substances.¹⁷⁰ I note that it was around the time of the anniversary of Clinton's death that Mr McGrail's distressed posts on Facebook commenced together with his apparent escalating drug use.

¹⁶⁸ Ex 1, Tab 161: Report of Dr Kerri Eagle dated 4 February 2020, at [122].

¹⁶⁹ Ex 1, Tab 161: Report of Dr Kerri Eagle dated 4 February 2020, at [124].

¹⁷⁰ Ex 1, Tab 161: Report of Dr Kerri Eagle dated 4 February 2020, at [123].

- (c) Mr McGrail had previously been diagnosed with major depression by his treating doctor. Dr Eagle was of the view that she had insufficient information of the signs and symptoms he presented with to reach a firm conclusion regarding this diagnosis¹⁷¹ and noted in her evidence that it can be difficult to distinguish between that mood disorder and the symptoms of a mood disorder due to concomitant methylamphetamine and alcohol use.
- (d) Mr McGrail would likely have satisfied the criteria for anti-social personality disorder, noting his problematic behaviours of criminal offending, aggression, impulsivity and recklessness that had persisted since adolescence.¹⁷² In her evidence, Dr Eagle noted that this disorder simply describes a number of behaviours, but does not provide insight into the reasons why a person is engaging in those behaviours.
- (e) On 6 August 2017, Mr McGrail was experiencing a SIPE. He displayed signs of a mood disturbance, including high levels of distress and suicidal thoughts, and the use of drugs and alcohol would have exacerbated this mood disturbance. His behaviour immediately prior to his death was likely the result of a complex interaction between psychotic symptoms precipitated by illicit substance use, intoxication, and mood disturbance and personality factors. Overall, it is likely that the psychotic condition was the primary condition that precipitated or contributed to Mr McGrail's behaviour immediately prior to his death.¹⁷³
- (f) The evidence strongly suggests that Mr McGrail was exhibiting suicidal ideation and intent immediately prior to his death. In this regard, Dr Eagle noted the frequency of Mr McGrail's expression of suicidal thoughts in the period immediately prior to his death, as well as his distress, hopelessness and "last resort" thinking.¹⁷⁴
- (g) Mr McGrail's intoxication would have contributed to impairments in his cognitive function, as well as his mental state and behaviour immediately prior to his death. Dr Eagle noted that it is difficult to be more specific regarding the extent of the contribution of his intoxication in light of Mr McGrail's psychotic symptoms, mood disturbance and personality traits.¹⁷⁵

¹⁷¹ Ex 1, Tab 161: Report of Dr Kerri Eagle dated 4 February 2020, at [123].

¹⁷² Ex 1, Tab 161: Report of Dr Kerri Eagle dated 4 February 2020, at [125].

¹⁷³ Ex 1, Tab 161: Report of Dr Kerri Eagle dated 4 February 2020, at pp. 19-20.

¹⁷⁴ Ex 1, Tab 161: Report of Dr Kerri Eagle dated 4 February 2020, at p. 20.

¹⁷⁵ Ex 1, Tab 161: Report of Dr Kerri Eagle dated 4 February 2020, at p. 20.

- (h) Dr Eagle expanded on the effects of Mr McGrail's psychosis and intoxication in her oral evidence. Dr Eagle opined that these factors would likely have had a severe effect on Mr McGrail's judgement, resulting in adverse effects on his behaviour, communication, hearing, and ability to process what others were saying, as well as not being able to properly consider the impact or consequences of his behaviour. Dr Eagle was of the view that the police attempts to have Mr McGrail put the knife down had less chance of success due to the persecutory or paranoid beliefs, his underlying antagonism towards police, and his fixed delusion regarding the police.
- (i) Mr McGrail's overall judgement was substantially impaired and the nature of Mr McGrail's persecutory ideas seemed very fixed. It was amongst this that Mr McGrail consistently expressed an intention to end his life and acted in a manner reasonably consistent with that intention. Accordingly, it appears that he was capable of forming the intention to end his life and intended to do so by provoking police to shoot him.¹⁷⁶ Dr Eagle noted that Mr McGrail had expressed suicidal ideation immediately prior to his death and, despite suffering from a SIPE, Mr McGrail would still have been able to form an intention to end his life as these features are not mutually exclusive. However, she noted that the capacity to form an intention is fluid and whereas he previously may not have had the motivation or capability to act on that intention or may have reflected on his behaviour, on this occasion, the impairment of his judgment because of psychosis and intoxication may have contributed to him proceeding to act on that intention.

139. In cross examination, Dr Eagle agreed with Ms Melis that examples of "last resort thinking" included Mr McGrail saying to police "*Shoot me dead*", "*I want to be dead*", "*No one is getting out of here alive. This is my last option*". Ms Melis suggested that Mr McGrail engaged in behaviours to provoke the police, to which Dr Eagle responded that the longer the police interacted with Mr McGrail, the more his behaviour deteriorated. Dr Eagle noted as Mr McGrail's behaviour escalated, it became harder for police to de-escalate the situation.

¹⁷⁶ Ex 1, Tab 161: Report of Dr Kerri Eagle dated 4 February 2020, at pp. 20-21.

140. Ms Melis put to Dr Eagle that Mr McGrail's behaviours suggested that this incident had all the hallmarks a concept known by a variety of terms but the rudimentary term is "Suicide by Police" (**SBP**). She also drew Dr Eagle's attention to Dylan Kay's statement where he reports that Mr McGrail said *"It's called Suicide by Police. They are gonna put a bullet in my head and the only way they'll do that is if I kill you"* as an indication of Mr McGrail's thinking.¹⁷⁷ Dr Eagle stated that the SBP term was designed for research and she would not be drawn on describing Mr McGrail's death in those terms.
141. Mr Johnson raised with Dr Eagle that when the police first arrived and Mr McGrail directed them to the next door duplex, he appeared at that stage to be relatively calm. Dr Eagle commented that it is hard to interpret what Mr McGrail was thinking at that time, and to understand what he thought he was going to achieve by that. Dr Eagle was unable to say whether it appeared to be an opportunity for the situation to be settled.
142. The evidence from Justin Kay establishes that after the police were directed to Unit 2, Mr McGrail picked up the bottle and knife and a shirt with the one hand and said to Justin, *"This is it. Are you ready to die?"* However when the police returned, the situation did not escalate until after the contents of the bottle were discarded and Mr McGrail was asked about what he had in his pants. It was at that stage that Mr McGrail pulled the knife out, and Senior Constable Crouch drew her firearm. Mr Johnson suggested to Dr Eagle that the drawing of a firearm would have been perceived by Mr McGrail as a threat, to which Dr Eagle responded that that a drawn firearm would universally be seen as a threat.
143. I note that that after Mr McGrail was covered by the firearm, rather than threatening to use the knife against Justin Kay or the police, Mr McGrail held it to his own throat. This caused Senior Constable Crouch to re-holster her firearm and instead deploy the Taser. Although the Taser had apparent effect and Mr McGrail went to the ground, he recovered instantly and removed the wires to the prongs. Dr Eagle opined that though Mr McGrail might have sensitivities to loud noise, he may have been less sensitive to pain, due to adrenaline (which can dampen down the pain).

¹⁷⁷ Ex 1, Tab 15: D Kay 08.08.2017 at [39].

144. Taking into account the totality of the evidence from the directly involved officers, the civilian eyewitnesses, the video footage and the expert evidence, I find that at the time Mr McGrail interacted with police on 6 August 2017, he was experiencing a complex interaction of the effects of methamphetamine and alcohol intoxication, a SIPE, and a severe disturbance of mood with expression of suicidal thoughts.
145. Ms Melis, on behalf of the NSW Commissioner of Police (“the Commissioner”) submitted that I would conclude that Mr McGrail’s death was self-inflicted. Although Mr McGrail was repeatedly urging the police to shoot him throughout the incident (and prior to their arrival had indicated that he would do some harm to others to warrant the police shooting him), I do not think that an injury causing death which is inflicted by another can be described as a self-inflicted death. Further, the heightened distress and anguish and effect of intoxication whilst experiencing a psychotic episode lends a lack of clarity to Mr McGrail’s true state of mind when not in that state.
146. Whilst I accept Dr Eagle’s evidence that Mr McGrail was capable of forming the intention to end his life and forming an intention to do so by provoking police to shoot him, I am unable to positively conclude that he would have formed this intention absent the effects of his psychosis and intoxication.

Issue 3: Were the actions of the involved officers on 6 August 2017 appropriate?

147. Sergeant Leven and Senior Constables Crouch and Bennett all gave oral evidence at the inquest, which was consistent with the accounts given in their directed interviews. Their accounts have been set out in detail above. Their accounts were supported by the available video footage, eyewitness accounts and forensic evidence. There has been no submission made against the truthfulness or credibility of any of the directly involved police officers.
148. Senior Constable Bennett did not draw his firearm at any stage. Senior Constable Crouch drew her firearm in response to Mr McGrail brandishing the knife, but she re-holstered when he threatened to harm himself and she drew and deployed the Taser. When Mr McGrail pulled the Taser wires off himself and continued to advance on her, Senior Constable dropped the Taser and re-drew her firearm. Senior Constable Crouch gave evidence that she did not reload her Taser, nor did she pick her up her Taser from the ground (which housed the video recording device), as there was no time to do so and she needed both hands on her firearm.

149. Sergeant Leven arrived at about this time and exited his vehicle with OC spray in his hand. When he saw that the Taser had not incapacitated Mr McGrail, he dispensed the can of the spray. Sergeant Leven gave evidence that he saw the arch of the spray and that it struck Mr McGrath's face, but the spray appeared to have little if any effect.
150. It was from that point that the police were always in retreat and Mr McGrail continued to advance on them. It would have been apparent to Mr McGrail that the police were in retreat and the descriptions of his conduct as given by the police and eyewitnesses establish that at all times, Mr McGrail was the aggressor. Sergeant Leven gave evidence that at no time did he feel that he had control of the situation and that the police movements were constantly being dictated by Mr McGrail.
151. Initially both Senior Constable Crouch and Sergeant Leven moved about 20 metres down the road on the same side of the street as the duplex. Senior Constable Bennett was across the road, forming a triangle. At one stage, Senior Constable Crouch left her position near Sergeant Leven and went across the road to cover Mr McGrail who at that point was in the middle of the road. The officers continued to retreat down the road.
152. Senior Constable Crouch and Sergeant Leven both described Mr McGrail focusing and moving towards either of them at different times. His movements were erratic in that he would move with rapid large strides in the direction of one officer, stop and then repeat toward the other officer. Ultimately, Mr McGrail focussed on Sergeant Leven.
153. Senior Constable Crouch saw Mr McGrail advancing on Sergeant Leven with the knife held out in front of him pointing towards Sergeant Leven. She formed the opinion that Mr McGrail was going to stab Sergeant Leven and intended to fire at McGrail. However, before she fired, Sergeant Leven fired two shots causing Mr McGrail to stumble to the ground.¹⁷⁸
154. Senior Constable Bennett observed that Mr McGrail *"picked up a bit of speed really and he's come at Sergeant Leven. He got closer and closer and I think he got within three or four metres and [Sergeant Leven] pulled the trigger"*.¹⁷⁹
155. The transcript from the Taser footage indicates that from the time the Taser was deployed until the time the two shots were fired, 3 minutes and 24 seconds elapsed.

¹⁷⁸ Ex 1, Tab 7: Crouch 08.08.2017 at Q&A 71, 661-667, 693-702. ¹⁷⁹ Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 165.

¹⁷⁹ Ex 1, Tab 8: Bennett 08.08.2017 at Q&A 165.

The recording demonstrates Mr McGrail's aggression and distress, and the immediacy of the threat posed by Mr McGrail as an extremely heightened individual.

156. The recording commences with Senior Constable Crouch commanding Mr McGrail repeatedly and clearly to put the knife down. She was met with his responses such as *"you have to shoot me....I want to be with my son....You killed him"*. Senior Constable Crouch yelled at him *"Get away from me"* and he said, *"You have to shoot me...in the middle of the head, I want to be shot"*. Senior Constable Crouch repeated *"Put your knife down"*.¹⁸⁰
157. Sergeant Leven also attempted to engage with Mr McGrail. After Mr McGrail screamed that he wanted to be shot Sergeant Leven said to him, *"Put the knife down mate"*. Mr McGrail continued screaming and though many of the words Mr McGrail said are largely indecipherable due to his distress he can be heard to say *"I'm sick of this ... I'm sick of this ... you killed my son ... you killed my son"*. Sergeant Leven said *"Chris put it down"* and Mr McGrail continued screaming at him. Sergeant Leven interchanged between *"Put it down"* and *"Chris put it down"*. At one stage Sergeant Leven told him *"Put the knife down, I'm outta OC spray"*. Mr McGrail said *"... I fucking (don't) ... want to hurt any more ... I've got nowhere to live ... my daughter..."* Sergeant Leven repeated *"Put the knife down mate"* and Mr McGrail screamed something and then screamed *"...noooooooooo"*. Sergeant Leven pleaded with him *"Put the knife down, please. Please"*. The audio recording has indecipherable screaming, apart from one aspect of Mr McGrail's response being a screamed *"gooooo ... goooo"*.¹⁸¹
158. Senior Constable Crouch repeated her command *"Put the knife down"*. Mr McGrail screamed at her and Sergeant Leven told him *"Do not come near her and says Move...go! Go!"* Mr McGrail continued screaming at Sergeant Leven, who told him to *"stand back mate...stand back...stand back...stand back...stand back...stay back...stay back..."*¹⁸²
159. During this time, Sergeant Leven was walking backwards whilst Mr McGrail advanced on him. Mr McGrail called on Sergeant Leven to *"shoot now mate..."* and Sergeant Leven replied *"(undecipherable)... now Hoppy ..."* Sergeant Leven continually told Mr McGrail to *"Go back"* and to *"put the knife down"*.¹⁸³

¹⁸⁰ Ex 1, Tab 85: Transcript of Taser Footage.

¹⁸¹ Ex 1, Tab 85: Transcript of Taser Footage.

¹⁸² Ex 1, Tab 85: Transcript of Taser Footage.

¹⁸³ Ex 1, Tab 85: Transcript of Taser Footage.

160. Sergeant Leven directed Senior Constable Crouch to “*Watch him ... we’re in cross fire now*”, to which she responded “*I can’t go anywhere*”. The transcript incorrectly cites Mr McGrail saying “*Neither can I*”, however it is in fact Sergeant Leven’s voice. This is consistent with Sergeant Leven’s oral evidence, in which he stated that he was mindful of a boat parked on the kerb across the driveway behind him. He didn’t want to get pinned there, and nor did he want to keep walking backwards because the ground was uneven and he was concerned he may trip.

161. Mr McGrail ignored Senior Constable Crouch’s command to “*Drop the knife*” and the last exchange is between Sergeant Leven and Mr McGrail. The exchange between them is as follows:

Sergeant Leven: “*Put the knife down! Please! Please!*”

Mr McGrail: (screaming) “*my son ...*”

Sergeant Leven: “*Put it down! Put it down! Drop it! Drop it! Drop it mate! Put the knife down Chris! Please put the knife down! Please! Please put the knife down!*”

Mr McGrail: (indecipherable screaming)

Sergeant Leven: “*Don’t... Don’t*”

Mr McGrail: (indecipherable screaming)

Sergeant Leven: “*Put it down mate! ... Put it down ... come on Chris, I’ve known you for ten years ... Don’t... Don’t*”.¹⁸⁴

162. Two shots can then be heard on the recording, after which Sergeant Leven and Senior Constable Crouch further command Mr McGrail to put the knife down.

163. The seriousness and immediacy of the threat facing the officers is also recounted by a number of the civilian witnesses:

(a) Justin Kay stated that “Hoppy was lunging towards the police officers and it looked like he was to go [sic] and hurt somebody. It was then I heard the two shots and Hoppy fell to his hands and knees”.¹⁸⁵

¹⁸⁴ Ex 1, Tab 85: Transcript of Taser Footage.

¹⁸⁵ Ex 1, Tab 14: J Kay 08.08.2017 at [36].

- (b) Robyn Tracey stated that she estimated “the man with the knife was only a couple of metres from the Police Officer [Sergeant Leven]. I then saw the man with the knife lunge at the Police Officer. Then I heard the sounds of two shots being fired from the Police Officer’s gun at the trunk of the man’s body.”¹⁸⁶
- (c) Myles Tracey said that he heard the policeman near the boat [Sergeant Leven] say, “*Put it down now or I’ll have to shoot ya – come on Chris. I have known you for ten years. I know this is not you. You are a good bloke. Put the knife down or I’ll have to shoot*”. As Sergeant Leven said that, Mr McGrail “lunged forward – I heard the noises – Boom, Boom. There were two quick shots”.¹⁸⁷
- (d) Errol Kirdy said that Mr McGrail “just kept coming towards the male officer [Sergeant Leven]. The gap was still around 2 metres, it was pretty close. The male officer was going backwards towards the boat and then all of a sudden the man in the singlet [Mr McGrail] raised his right hand up towards his face and he was directly facing that male officer. I thought the man was going to lunge at the police officer. I don’t know if that is what he was going to do, but that is what I thought he was going to do. As the man lifted the knife up, I heard a gunshot and realised that the male police officer near the boat [Sergeant Leven] had shot the man”.¹⁸⁸
- (e) Nikolas Scroop said that Mr McGrail “was walking with the knife in his hand and was getting closer and closer to the male officer till the man was about three metres away from the male police officer when he [Sergeant Leven] discharged two shots at the man”.¹⁸⁹
- (f) Ron Skinner described Mr McGrail as “manic and wanted to hurt” one of the police officers. He said that Mr McGrail’s efforts “became more aggressive, he was making real efforts to lunge and stab at one of the police officers” before he heard a loud bang.¹⁹⁰
- (g) According to Paul McKenzie, “The police were stilling [sic] calling for the man to drop the knife when the man with the knife moved quickly towards the male police officer in a lunging move with the knife raised in a position that it appeared that the male police officer was about to be stabbed. At this stage I heard two

¹⁸⁶ Ex 1, Tab 24: R Tracey 07.08.2017 at [9].

¹⁸⁷ Ex 1, Tab 25: M Tracey 07.08.2017 at [13].

¹⁸⁸ Ex 1, Tab 28: E Kirdy 22.08.2017 at [15].

¹⁸⁹ Ex 1, Tab 33: Statement of Nikolas Scroop dated 19 September 2017 at [8].

¹⁹⁰ Ex 1, Tab 34: Statement of Ron Skinner dated 7 November 2011 at [12]-[13].

quick shots fired and the man with the knife slumped on the ground onto his knees.”¹⁹¹

164. During her evidence, Senior Constable Crouch remarked that having listened to the audio recording she realised that she had engaged in “verbal looping” repeating the phrase “*put it down*”. Though she recognised that was the result of her being under pressure, she stated that she would like to be able to change that so when under pressure she can modulate and readjust in an attempt to de-escalate or change the dynamic.
165. I was impressed by her insight and candour. Though she regretted leaving the Taser on the ground, I think given the circumstances she need not have that regret. She had far more pressing priorities. I commend Senior Constable Crouch for having the presence of mind to understand that Mr McGrail’s initial actions with the knife were a sign that he might not be a threat to others and so she re-holstered her firearm which was both an attempt to de-escalate the situation but also to use a lesser force to stop Mr McGrail.
166. Senior Constable Crouch said that there was an occasion when she had engaged with Mr McGrail at the police station a year earlier, but on this day she did not recognise him at all. It was only after the incident that she learned who he was and realised that she had met with him on markedly different terms.
167. Sergeant Leven has been in the police force for over 25 years. In his evidence, he was asked how many times he had occasion to deal with people who were mentally ill and/or affected by drugs. His response was that during the course of his career there were too many such occasions to keep count. He was also asked how many times he had discharged his firearm. He replied, “*This once*”.
168. In many ways the Taser footage transcript speaks for itself, but it was very apparent from hearing Sergeant Leven in the witness box that he is not only an experienced police officer, but that he has the qualities of a calm, considered and caring person. From listening to the transcript and hearing his evidence it is not difficult to remark that he was able to use those qualities and be mindful of his duties and his options. By doing so he lengthened the time, he kept the distance, and he was aware of his surroundings including his fellow officers. He was able to provide direction and keep

¹⁹¹ Ex 1, Tab 36: P McKenzie 19.09.2017 at [6].

more junior officers safe as he tried to engage and de-escalate Mr McGrail. He did this whilst under constant and intense life-threatening pressure.

169. Sergeant Leven said he became aware of the repetitiveness of his commands and tried to moderate his language. He said that the longer he interacted with Mr McGrail the more Mr McGrail's behaviour deteriorated. Mr McGrail became more insistent, he took deliberate long steps towards him, and he was more demanding to be shot. When Sergeant Leven said, *"Come on mate"*, Mr McGrail responded *"I'm not your fucken mate"*. When he told Mr McGrail he had known him for ten years and didn't want to shoot him, Mr McGrail was just as angry.
170. Sergeant Leven also gave evidence that Mr McGrail removed the knife from his neck saying *"Get ready! ... Are you ready?"* Mr McGrail then gripped the handle, bent his elbow like the knife was cocked, pointing it in Sergeant Leven's direction and moved quickly towards him in long quick strides. Sergeant Leven described Mr McGrail pointing the knife in his direction and *"moving purposefully, coming at me with a knife, with long quick strides, my life was in immediate danger"*.
171. Sergeant Leven considered that he had exhausted all tactical options. He had retreated about 90 metres, and the police could not disengage from the scene because Mr McGrail may have sought to harm a bystander. Sergeant Leven said that before he fired his weapon, he made sure nobody was standing behind Mr McGrail in case he missed and they were struck. He said he aimed at the chest (referred to as the centre body mass), which provided an increased likelihood of hitting him and therefore stopping him. Sergeant Leven was asked why he fired twice, to which he said that he thought that was consistent with his original training. In this regard, Senior Constable Adrian van der Valk said that the current training is to discharge one round, reassess and if necessary fire another.
172. The two shots were in such quick succession that there was no time to reassess. The rapidity of events and the threat that Mr McGrail provided may explain the two shots. Sergeant Leven said *"it was very important to me that I hit him. He stopped advancing. It was a huge relief that he stopped advancing towards me"*. The prevailing circumstances did not allow for any period of reassessment between the two shots.
173. At the time he discharged his weapon, Sergeant Leven believed that it was necessary in order to defend himself and that in the circumstances as Sergeant Leven perceived them, it was a reasonable response to the threat posed by Mr McGrail.

174. Senior Constable Adrian van der Valk of the NSWPF WTPR reviewed the actions of the directly involved police officers on 6 August 2017, including the use of lethal force by Sergeant Leven. His report was tendered as part of the brief of evidence and outlines the training given to police in relation to the tactical options police officers have when faced with situations such as involving a person armed with a knife.
175. Senior Constable van der Valk expressed the view that Sergeant Leven “*used as many reasonable force options available to him given the speed, mobility and veracity [sic] of the attack upon him by Mr McGrail just prior to the discharge of the firearm*”. He concluded that “*Sergeant Leven’s use of force option is consistent with NSWPF policy, procedure and training practice guidelines*”.¹⁹²
176. In his supplementary statement, Senior Constable van der Valk expressed the view that the various tactical options used by Senior Constables Crouch and Bennett during the course of the incident were also appropriate and in keeping with NSWPF policy, procedure, and training practice guidelines.¹⁹³
177. In particular, Senior Constable van der Valk opined that:
- (a) The commands directed at Mr McGrail by both Senior Constables Crouch and Bennett were appropriate and reasonable in the circumstances;
 - (b) Senior Constable Crouch’s deployment of her Taser was in keeping with NSWPF policy, procedure, and training practice guidelines;
 - (c) Senior Constable Crouch’s actions to draw and cover Mr McGrail with her firearm in circumstances where an armed and threatening subject was continually refusing to obey police directions was also in accordance with NSWPF policy, procedure, and training practice guidelines; and
 - (d) Senior Constable Bennett’s use of his capsicum spray was also in keeping with NSWPF policy, procedure, and training practice guidelines.¹⁹⁴
178. Senior Constable van der Valk remarked in his evidence (which was also reinforced by Chief Inspector Hanlon) that, despite all the training a police officer can undergo, when it comes to time to use that training in a scenario such as occurred on 6 August 2017, a variable and unknown factor will play a significant role and that is the individual police officer’s unique psychophysical response to stress and adrenaline. I am satisfied that

¹⁹² Ex 1, Tab 77: Statement of Senior Constable Adrian van der Valk dated 29 November 2017 at [52]-[54].

¹⁹³ Ex 1, Tab 77A: Supplementary Statement of Senior Constable Adrian van der Valk dated 20 November 2018.

¹⁹⁴ Ex 1, Tab 77A: Supplementary Statement of Senior Constable Adrian van der Valk dated 20 November 2018 at [11]-[23].

Sergeant Leven embodied his training and he demonstrated a remarkable ability to discharge his duties in the manner he is trained to do.

179. The mobile telephone footage shows that after Mr McGrail was shot he was on one or both knees on the ground. Sergeant Leven then used his foot and pushed Mr McGrail on the upper chest/shoulder area causing Mr McGrail to fall back onto the roadway. It was distressing for Ms Skinner to see Mr McGrail treated this way while wounded, however Sergeant Leven explained that he did that to disarm Mr McGrail so that the scene would be safe and so that he could provide Mr McGrail with urgent first aid (which Sergeant Leven then did). Sergeant Leven provided comforting words and support to Mr McGrail and placed pressure on his wounds to stem the bleeding. He then assisted the paramedics until he had to leave the scene.
180. Part of the review of the police actions on that day involved a review of their compliance with their education and training regarding dealing with people who are suffering from mental illness or, as in the present case, a psychotic episode. I note that each of the involved officers had previously participated in the One Day Mental Health Workshop Program conducted by the NSWPF MHIT,¹⁹⁵ although Senior Constable Bennett had no memory of having done so. The details of that program are provided in the statement of Acting Sergeant Dawn Pointon and the statement of Chief Inspector Matthew Hanlon.¹⁹⁶ Notably, Sergeant Leven and Senior Constable Crouch had undertaken that training in 2015.¹⁹⁷
181. Chief Inspector Matthew Hanlon, the Manager of the NSWPF MHIT, considered that all officers attempted to de-escalate the incident in accordance with the NSWPF mental health training guidelines. He noted that Sergeant Leven and Senior Constable Crouch, by seeking to increase the distance between themselves and Mr McGrail whilst continuing to engage him into compliance, were giving effect to the two key principles of de-escalation, namely distance and time.¹⁹⁸ Chief Inspector Hanlon also observed that Sergeant Leven endeavoured to use empathy in his verbal commands by addressing Mr McGrail by his first name and appealing to the fact that he had been

¹⁹⁵ Ex 1, Tab 83A: Statement of Chief Inspector Matthew Hanlon dated 11 April 2019 ("Hanlon 11.04.2019") at [15].

¹⁹⁶ Ex 1, Tab 83: Statement of Sergeant Dawn Pointon dated 19 December 2017; Ex 1, Tab 83A: Hanlon 11.04.2019

¹⁹⁷ Ex 1, Tab 83A: Hanlon 11.04.2019 at [15].

¹⁹⁸ Ex 1, Tab 83A: Hanlon 11.04.2019 at [18]-[19].

known him for 10 years, telling Mr McGrail he did not want to shoot him and pleading with Mr McGrail to “*just put the knife down, please*”.¹⁹⁹

182. Chief Inspector Hanlon has described the officers’ conduct as demonstrating a high level of compliance with the training and in particular with the de-escalation techniques taught during the one-day workshop.²⁰⁰
183. Independently of the NSWPF, Dr Eagle expressed the view that having reviewed the conduct of the officers, she was of the opinion that they had attempted to appropriately engage and de-escalate Mr McGrail. Mr McGrail did not respond to these attempts likely in part due to his mental state at the time, however these attempts did appear to slow the incident down to some degree. Dr Eagle concluded that, from a psychiatric perspective, it was not apparent that any other approaches or strategies would have been effective in avoiding the fatal outcome.²⁰¹
184. Both Mr Madden on behalf of the directly involved officers and Ms Melis on behalf of the Commissioner made submissions consistent with Counsel Assisting, in particular that I would find that the police acted lawfully, appropriately and according to their training in very difficult circumstances. They appropriately reiterated the difficult circumstances that the police were in and commended their handling of it. They both submitted that there was clear evidence that Mr McGrail deliberately acted the way to achieve the outcome of being shot by the police.
185. I am of the view that Sergeant Leven’s discharge of his firearm was justified, having regard to the circumstances which he faced. He was acting within his duty as a police officer and he was acting in self-defence. Sergeant Leven had every reason to believe that he was going to be seriously injured or killed. I find that Sergeant Leven exhausted all tactical options available to him and, in discharging his firearm, did so in compliance with NSWPF policy, procedure and training practice guidelines. I consider that his actions were reasonable and proportionate to the threat that he faced.

Issue 4: Whether any recommendations are necessary or desirable

186. In their evidence, Senior Constable van der Valk and Chief Inspector Hanlon were asked questions about the integration of tactical options training with mental health training, a matter which has been subject to recommendations in previous inquests.

¹⁹⁹ Ex 1, Tab 83A: Hanlon 11.04.2019 at [19].

²⁰⁰ Ex 1, Tab 83A: Hanlon 11.04.2019 at [19].

²⁰¹ Ex 1, Tab 161: Report of Dr Kerri Eagle dated 4 February 2020, at p. 22.

Senior Constable van der Valk gave evidence that police tactical training includes role playing scenarios involving sharp edged weapons. I note that now over a number of years the police force has ensured the delivery of mental health education to over more than 17,000 police officers. It is now incorporated in the Academy training so that all new recruits have undertaken the mental health training. Given the logistics involved with the rostering and size of the police force the education strategy now targets police officers who train other police officers.

187. Chief Inspector Hanlon gave evidence that his unit is in the completion stage of developing an electronic learning package which he hopes will be available to all police in July of this year and he intends to seek that it be given a mandatory status.
188. In his submissions, Counsel Assisting described the progress of the integration of mental health training with tactical training as perhaps being somewhat limited. In submissions on behalf of the Commissioner, Ms Melis submitted that this isn't the case, as weapons trainers are armed with the knowledge gained through the mental health training and are passing it on to those they train.
189. In any event, the evidence in this inquest demonstrates that Sergeant Leven had participated in mental health training and he had acted, throughout the deployment of his tactical options, in a manner consistent with his training. Accordingly, any recommendation addressing the integration of mental health training into tactical options training does not arise on the evidence in this inquest. I do not consider that there are any other matters arising from the evidence that would lead me to make a recommendation. No submissions were made to the contrary.

Findings

190. I enter findings pursuant to s. 81(1) of the Act as follows:

Identity:

Christopher Peter McGrail

Date of death:

6 August 2017

Place of death:

Gold Coast University Hospital in Southport, Queensland

Cause of death:

Gunshot wounds to his trunk and right thigh

Manner of death:

Mr McGrail died from the effect of significant blood loss associated with two gunshots inflicted by a NSW Police Officer who was acting in the course of his duties when Mr McGrail advanced on him in North Street, Grafton. Mr McGrail was holding a large kitchen knife and had refused to drop it, despite many commands and requests to do so. The officer fired two shots after Mr McGrail raised the knife and lunged at him. At the time, Mr McGrail was experiencing a complex interaction of the effects of methamphetamine and alcohol intoxication, a substance induced psychotic episode and a severe disturbance of mood with expression of suicidal thoughts.

Closing Remarks

191. I wish to extend a commendation to the police and particularly Sergeant Leven who did all he could to avoid this tragic outcome, the leadership he provided to his junior officers and their engagement in attempting to de-escalate and resolve the incident is a credit to their service. As Mr Madden stated, no police officer wants to make the decision that Sergeant Leven had to make that day.
192. At the conclusion of the inquest, Ms Skinner read a family statement to the Court. It was readily apparent that, despite a great deal of difficulty and adversity, it was very important to Mr McGrail that his children had a better childhood than he or Ms Skinner had. His love and pride for their children and the regard he had towards their education and sporting achievements was evident by both his attendance on the field and in the photographs Ms Skinner brought to court.
193. Ms Skinner said that when she saw Mr McGrail just two days earlier, he seemed to be looking to the future. I again extend my sincere condolences to Ms Skinner, to Mr McGrail and Ms Skinner's children, and to Mr McGrail's family. Mr McGrail's death after the loss of Clinton is profound. I hope that Ms Skinner's daughters have her strength and with her support they come to terms with their loss.

194. I close this inquest.

**Magistrate E. Truscott
Deputy State Coroner**

10 June 2020