CORONERS COURT

OF NEW SOUTH WALES

Inquest:	**Inquest into the deaths of John, Jack and Jennifer Edwards**
Hearing dates:	7-11, 14-17 and 21-24 September 2020, 16 October 2020 and 12 November 2020
Date of findings:	7 April 2021
Place of findings:	Coroners Court of New South Wales, Lidcombe
Findings of:	State Coroner, Magistrate Teresa O'Sullivan
Catchwords:	CORONIAL LAW – manner of death – creation and verification of COPS Events re domestic violence incidents – NSW Police Force Domestic Violence Standard Operating Procedures - firearms licensing P650 scheme – "Commissioner's Permits" – gun club membership – family law proceedings - information sharing between federal family law courts and NSW Police Force
Non-publication and non-access orders:	Annexure B contains the details of non-publication and non-access orders and is available upon request from the Court Registry
File numbers:	2018/209420, 2018/208842, 2018/208843

Representation:	Ms Kate Richardson SC, Senior Counsel Assisting, Mr Christopher Mitchell, Counsel Assisting instructed by Ms Jennifer Hoy and Ms Emily Azar of the Crown Solicitor's Office Mr Adam Casselden SC and Dr Claire Palmer, instructed by Mr Stuart Robinson, Office of the General Counsel, NSW Police Force, for the NSW Commissioner of Police Mr Brent Haverfield, instructed by Mr Ken Madden for Sergeant Richard Jackson, Senior Constable Brooke Cooper and Mr Rowan Kingdon Mr Paul Madden, instructed by Mr Ken Madden for Sergeant Sean Ronning, Sergeant Rodney McCaffery and Sergeant David Lowden Mr Thomas Buterin, instructed by Mr Darren Kane for Pistol Australia Inc, NSW Amateur Pistol Associated Incorporated and the Ku-Ring-Gai Pistol Club Inc ("the Pistol Sport Parties") Mr Ian Fullagar for the National Rifle Association of Australia, NSW Rifle Association and the Hornsby RSL Rifle Club ("the Rifle Entities") Mr Stephen Mainstone for the Sporting Shooters Association of Australia Pty Ltd, St Marys Pistol Club and SW ("St Marys Parties") Ms Shanna Mahony for Ms Debbie Morton Mr David Lloyd SC and Mr Nicholas Simone, instructed by Clyde & Co for RB Mr Bede Kelleher and Mr Gordon Babe instructed by Colin, Biggers & Paisley for RS and RC

Findings:	**Findings in relation to the death of Jennifer Edwards:** ***Identity of deceased*** The deceased person was Jennifer Edwards ***Date of death*** Jennifer died on 5 July 2018 at approximately 5:00pm ***Place of death*** Jennifer died at her home at 107 Hull Road, West Pennant Hills ***Cause of death*** Multiple gunshot wounds to the head, chest, abdomen and extremities ***Manner of death*** Jennifer died from traumatic injuries after being shot with a Glock 17A pistol by her father John Edwards **Findings in relation to the death of Jack Edwards:** ***Identity of deceased*** The deceased person was Jack Edwards ***Date of death*** Jack died on 5 July 2018 at approximately 5:00pm ***Place of death*** Jack died at his home at 107 Hull Road, West Pennant Hills. ***Cause of death*** Multiple gunshot wounds to the chest ***Manner of death*** Jack died from traumatic injuries after being shot with a Glock 17A pistol by his father John Edwards **Findings in relation to the death of John Edwards:** ***Identity of deceased*** The deceased person was John Edwards (date of birth 12 July 1950) ***Date of death*** John died on 5 July 2018, shortly after 6:00pm ***Place of death*** John died in his home at 33A Harris Road, Normanhurst

	Cause of death Single gunshot wound to the head ***Manner of death*** John died from injuries suffered as a result of a self-inflicted gunshot wound using a .357 Magnum Smith & Wesson revolver
Recommendations:	See [1136] in Section G of these findings

The Coroners Act 2009 (NSW) in s. 81(1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the deaths. These are the findings of the inquest into the deaths of John, Jack and Jennifer Edwards.

INTRODUCTION

1. Jennifer and Jack Edwards died on 5 July 2018 after their father, John Edwards, used one of his legally obtained firearms – a Glock 17A semiautomatic pistol - to fatally shoot Jack, aged 15, and Jennifer, aged 13, in the home that they shared with their mother, Olga, at 107 Hull Road, West Pennant Hills. Approximately one hour later, John took his own life at his home at 33A Harris Road, Normanhurst.

2. Because John, Olga, Jack and Jennifer all share the same last name, and to avoid any confusion that might be caused by referring to them as Mr, Mrs or Ms Edwards, these findings will generally refer to them by their first name without intending any disrespect.

3. In preparing these findings, I have been assisted by the written submissions of senior counsel assisting, Kate Richardson SC, and counsel assisting Christopher Mitchell.

4. These findings are structured as follows:

    a. **Section A** contains information as to the nature of the coronial proceedings, the scope of these proceedings and other introductory matters.

    b. **Section B** sets out the factual background and context for this inquest and the findings I have made in relation to that background and context.

    c. **Section C** sets outs the findings and recommendations I have made in relation to the police response to domestic violence allegations made by both John and Olga.

    d. **Section D** sets outs the findings made in relation to the processes and procedures of the NSW Firearms Registry (“the Registry”) which enabled John Edwards to obtain firearms permits and licences, and the recommendations made in relation to the Registry and the relevant legislative framework.

    e. **Section E** sets outs the procedures by which John Edwards obtained membership of a gun club and the findings and recommendations made in relation to gun clubs and the relevant legislative framework.

f. **Section F** sets out the findings and recommendations I have made in relation to the family law proceedings and the role of various actors in and associated with that proceeding, including mandatory reporters, such as psychologists, and the Independent Children's Lawyer.

g. **Section G** contains a summary of the formal findings and recommendations made in this inquest pursuant to ss. 81 and 82 of the *Coroners Act 2009* (NSW) ("the Coroners Act"), as well as some closing remarks.

A. THE NATURE OF AN INQUEST

5. This inquest is a public examination of the circumstances of the deaths of Jennifer, Jack and John Edwards. Unlike some other proceedings, the purpose of an inquest is not to blame or punish anyone for the death. The holding of an inquest does not itself suggest that any party is guilty of wrongdoing. Rather, the primary function of an inquest is to identify the circumstances in which the deaths occurred.

6. The role of a Coroner, as set out in s. 81 of the Coroners Act, is to make findings as to the identity of the person who died, the date and place of the person's death, and cause and manner of death. The manner of death refers to the circumstances in which the person died.

7. Pursuant to s. 82 of the Coroners Act, a secondary purpose of an inquest is for the Coroner to consider whether it is necessary or desirable to make recommendations in relation to any matter connected with the person's death. This involves asking whether anything should or could be done to prevent a death in similar circumstances in the future. These recommendations are made, usually, to government and non-government organisations, in order to seek to address systemic issues that are highlighted and examined during the course of an inquest.

8. The scope of an inquest is not limited to examine only the evidence that is directly relevant to determine findings pursuant to s. 81. However, unlike some other types of inquiries (eg. a Special Commission of Inquiry), any findings and recommendations made at inquest must be relevant to the issues arising, rather than a broad examination of all related issues or systems. Therefore, in the context of this inquest, only those aspects of the police response to domestic and family violence, the regulatory framework in relation to firearms licensing, and the family law proceedings that were relevant to the

factual background, may properly be the subject of findings and recommendations. Notwithstanding this, the deaths of Jennifer and Jack serve as a stark reminder of broader systemic problems that face too many women and children every day.

Procedural background

9. This inquest was held at the Coroners Court of NSW at Lidcombe from 7 to 24 September 2020. Further evidence was heard on 16 October and 12 November 2020.

10. Numerous non-publication and non-access orders pursuant to ss. 65 and 74 of the Coroners Act were made in this matter both before and during the hearing. Many of these orders pertain to the names of family members and witnesses who gave evidence in the proceedings. A copy of those orders is annexed as **Annexure B** to these findings. Annexure B will not be published online but is available upon request from the Court Registry. Annexure B sets out the pseudonym regime adopted for persons whose names are subject to non-publication orders and who are referred to in these findings.

11. An Issues List was circulated to the interested parties in advance of the inquest, which is annexed as **Annexure A** to these findings. A reference to an "Issue #" in these findings relates to that Issues List. My findings and any recommendations in relation to each issue are dealt with below.

The scope of these proceedings

12. During the coronial investigation, sufficient documentary evidence was gathered as to the identity of the deceased, the date and place of their deaths and the medical cause of their deaths. Instead, the inquest focused on the manner of the deaths of Jack and Jennifer. In particular, the inquest focused on four areas of interest to consider whether, and the extent to which, any of those areas contributed to, facilitated, or failed to prevent, John's ability to join a gun club, obtain a firearms permit and licence, and purchase a number of firearms, despite his history of domestic abuse and the existence of acrimonious divorce proceedings between he and Olga.

13. These four areas of interest were:
    (a) the policies and procedures applied by the police in recording and responding to allegations of domestic violence and stalking made by Olga against John;
    (b) the processes and procedures applied, and the investigations undertaken, by the Registry in granting firearms permits and licences to John;

(c) the processes and procedures applied by each of the Hornsby RSL Rifle Range, the Ku-Ring-Gai Pistol Club and the St Marys Pistol Club in determining whether John ought to be granted membership of their respective clubs; and

(d) the role and conduct of mandatory reporters and the Independent Children's Lawyer associated with the family law proceedings between John and Olga.

Exception to general prohibition on identifying a 'known person'

14. As noted above, it is not the function of a coroner to determine guilt in the criminal sense, but rather to investigate and ascertain the facts surrounding an unexpected or sudden death. Indeed, the Coroners Act prohibits a Coroner from suggesting that a 'known person' has committed a criminal offence due to the scope and nature of the evidence adduced in inquisitorial proceedings, some of which would be inadmissible in criminal proceedings, as well as the differing standards of proof in criminal and coronial proceedings.

15. Consequently, if a Coroner forms a view during an inquest that a known person may be found to be guilty of homicide in a criminal proceeding, they are obliged to suspend the inquest and refer the matter to the Office of the Director of Public Prosecutions. However, it appears to me that if that known person is also deceased by the time of the inquest, the prohibitions in ss. 78, 81(3) and 82(3) of the Coroners Act, the purpose of which are to ensure that a person's reputation and right to a fair trial are maintained, cease to have legal effect. This is because there is no prospect of that known person being placed on trial, nor found guilty (or not guilty) of an indictable offence in relation to the death/s the subject of the inquest.

16. In light of the foregoing reasons, as well as the strong public interest in a full coronial investigation into the precise circumstances of the deaths in this matter, it is appropriate to name the person responsible for the homicides of Jack and Jennifer in these findings, namely, their father John Edwards.

B. FACTUAL CONTEXT

17. Following careful review and consideration of the brief of evidence tendered at the hearing, as well as the oral evidence of the witnesses who appeared at the hearings, I make the following findings in relation to the factual background of this inquest.

Jack and Jennifer Edwards

18. Jack Edwards was born in September 2002. Witnesses at the inquest described him as a free-spirited and active child, who was interested in sport, including AFL, and computer gaming. Although he was cheeky and headstrong at times he was spoken of as an endearing child who maintained a strong sense of connection with his school friends. Despite being articulate and intelligent Jack sometimes found it difficult to regulate his "screen time". Jack was fiercely protective of his mother and sister and had looked forward to meeting his other half-siblings, which had been anticipated to occur upon the finalisation of the family law proceedings.

19. Jennifer Edwards was born in August 2004 and was a more reserved and quieter person than her brother. One teacher noted that she would "spend hours and hours being lost in literature". Jennifer was particularly proud of having been accepted into her selective high school and demonstrated strong academic performance.

20. Jennifer derived great enjoyment from ice skating and looking after animals, including her dog Max, and a pet rabbit. She had told her teachers that she wanted to become a veterinarian after finishing her studies.

John Edwards' early life

21. John was born on 12 July 1950 and grew up in Broken Hill. He had one sister, and a close friend, Paul. When John was 17, he stole his mother's car and ran away from home, leaving a letter behind in his wardrobe saying goodbye. He held a number of different jobs over the following years, including service with the Australian Defence Force that saw him qualify as a Commando Green Beret on 30 June 1983. He was discharged from the Army Reserve in 1989.

John's relationships prior to his marriage to Olga

22. In summary, the evidence before me at this inquest was to the effect that John routinely perpetrated psychological and physical abuse against the six female partners and eight children he had prior to meeting Olga. This included instances of assault, intimidation, and stalking. He sought to control the lives of his current partner, his ex-partners and his children. While most of John's abusive behaviour was never reported to the police, four of his ex-partners and one of his children did pursue apprehended violence orders against him at different points in time. The following is a summary of the findings I have made in relation to John's domestic relationships prior to his marriage to Olga.

1968 to 1977: John's relationship with Ms A

23. In 1968, then 18-year old John met Ms A, who was 17 years old at the time. They had two children together, a daughter, AJ, and a son, AA. Shortly after the birth of AA, in August 1972, John and Ms A were married. Ms A described that at around this time John began to exhibit controlling behaviour, such as limiting the amount he gave her to spend on groceries, and that he was often volatile and unpredictable.

24. In 1973 or 1974, John and Ms A went on holidays to the USA. During the holiday, Ms A discovered a love letter from an American woman whom John had met in Boston. Following this discovery, Ms A decided to leave John and return to Australia however John would only allow her to return to Australia with one child. John remained in the US with AJ, while Ms A returned home with AA. After several months, John wrote to Ms A asking her to travel to the USA to bring AJ home to Australia, which Ms A subsequently did.

25. Sometime in 1974 or 1975 John also returned from the USA with an American woman and her daughter. John had apparently married the woman in the USA, however she ultimately returned to the USA after being abandoned by John.

26. On 24 June 1977, Ms A and John were divorced. John kept everything Ms A had owned, including her clothes. Ms A was given parental responsibility for AJ and AA, with John having access every second weekend.

27. Following the divorce, AJ and AA had a troubled relationship with their father which was marked by serious physical violence and at least one episode of kidnapping where John intercepted AA on his way to school and took him to Newcastle and held him for two nights in a hotel against his will, in an attempt to obtain additional custody of AA.

28. Eventually, AJ and AA did not want to see John anymore and withdrew from contact visits with him. His anger in relation to this appeared not to diminish over time. In about 1990, some 13 years after they had divorced, Ms A received a terrifying phone call from Ms C (a later partner of John) who told Ms A that she was "lucky to be alive because she had stopped John coming to shoot me with a gun. She said he was coming to kill me and my father. He hated my father. I was terrified." Many years later, Olga was also aware of threats John had made to kill Ms A.

29. In 2002, AJ tragically passed away. At about this time, AA cut off contact with John.

1977 to 1987: John's relationship with Ms C

30. In 1977, John began a relationship with Ms C. In 1979, they had a daughter, JC. In 1982 or 1983, Ms C tried to leave John due to his violence towards her, including when she was approximately 4 months pregnant with their second child. The day after that incident, Ms C underwent a medical check and was told that she had lost the baby.

31. John and Ms C married in 1984 and had a son, CJ, in the following year. However, the relationship continued to be marred by abuse and violence. JC described an incident that particularly frightened her, when John ran a cigarette lighter along a wooden coffee table and asked Ms C if he should set fire to the house, whilst the children and Ms C were sitting on the lounge.

32. On one occasion, Ms C tried to escape from John by going to Ms A's apartment where Ms A was living with AJ and AA. Ms A advised her to leave John and try to find a safe place to stay.

33. Eventually, in late 1987, Ms C left John after he threw a rolling pin at her. JC vividly recalled that Ms C waited until John was in the shower, before putting her and CJ over the backyard fence into the neighbour's yard, before climbing over herself and contacting the police.

34. John and Ms C were engaged in family law proceedings in relation to the care and custody of their children and other matters for the next decade. In 1988, John obtained orders granting him shared parental responsibility of JC and CJ and they stayed with him for three nights a week. That arrangement remained in place for a number of years.

35. John continued to intimidate Ms C and the children for years after they separated. On one occasion, John took CJ and did not return him for a few days. The police were called but declined to intervene as there were family law proceedings on foot. On another occasion when the police were called, John parked his car across the driveway of Ms C's sister to prevent Ms C, her sister and the children from going on holidays. Eventually, in December 1993, Ms C obtained an Apprehended Violence Order against John.

36. When JC was 17 and completing her Higher School Certificate, she decided to stop seeing John and had no contact with him for the next 15 years.

1989 to 1990: John's relationship with Ms D

37. In 1989 and 1990, John had a relationship with Ms D. She was 21 years old and John was around 40. In 1990, Ms D and John had a child, DJ; however, Ms D had already ended the relationship with John by this point.

1990: John's relationship with Ms E

38. In late 1989 or early 1990, John commenced a relationship with Ms E after she answered an advertisement in the 'Strictly Personals' section of the Sydney Morning Herald. They had one son together, EJ.

39. When Ms E was five months pregnant with EJ, John told her he wanted nothing more to do with her and ended the relationship. Nevertheless, about 8 months after EJ was born, Ms E moved back in with John and was introduced to JC and CJ, his children with Ms C. Ms E recalled that John slept with a machete beside the bed and said "people like me aren't supposed to have guns", but she never understood what he meant by that.

40. In 1992, Ms E sold her house at John's suggestion and he asked for part of the sale proceeds to finance his divorce settlement with Ms C. Ms E said she felt "very frightened of him and alone" so she gave him $120,000. Ms E became physically ill due to the stress of living with John. She lost a lot of weight and weighed under 40kg. She eventually left John and moved out into a flat with EJ.

41. Over the following years, Ms E and EJ were the victims of numerous incidents of domestic abuse at the hands of John, including physical violence. On one occasion, John arrived unannounced, demanded to take 2-year old EJ and pulled him from Ms E's arms. On another occasion, John again arrived unannounced and kicked in the door after Ms E refused to open it. Ms E said "I had to let him in after this because I was completely worn down and his manner was so threatening, I feared what he would do".

42. Over the next few years, Ms E and John shared custody of EJ. At this time, some of John's other children were also living at least part-time with John. EJ recalled seeing John using his belt to whip and belt CJ, if CJ or EJ did something wrong.

43. In 1996, Ms E moved to Leichhardt with EJ. For the next four years, John continued to visit unannounced at night, and on one occasion when Ms E reached for the phone to call police, John pulled it out of the wall. On another occasion in February 1997, Ms E and EJ had to flee to the safety of Annandale Police Station in the middle of the night

after John repeatedly called her on the home phone, and she became fearful that he would turn up at the house and assault her and take EJ.

44. On 17 February 1997, Sergeant Peter Stenz at Annandale Police Station created police report number E3072113 in relation to the incident described above. The incident was recorded as “Domestic Violence - No Offence”.

45. Over the next two years, John would continue to call Ms E but not speak if EJ answered the phone. In 2001, then 10-year old EJ stopped seeing John. In 2002, John came to Ms E’s home uninvited and wanted to come in, but she refused because she feared for her safety. Ms E and John unsuccessfully attended mediation to try and re-stablish contact between John and EJ. That did not work, and EJ had no further interaction with John after about 2002.

1995 to 1998: John reunited with Ms D

46. In 1995 or 1996, John and Ms D started seeing each other again from time to time. John began pressuring Ms D to move in with him, however she declined.

47. One day in 1998, John telephoned Ms D and asked her to come to his house as he wanted to see their child, DJ. She confided in a friend who urged her not go, however, ultimately made the decision to go that evening. She arrived at around 8:00pm and was then seriously assaulted by John over the next few hours.

48. On 4 May 1998, Ms D reported the assault to Senior Constable Anton King at Eastwood Police Station. Police report number E6462589 was created for the incident, which was recorded as “Common Assault - Domestic Violence Related”. John was charged with common assault on 4 May 1998 and an Interim Apprehended Violence Order was applied for to protect Ms D against John.

49. An interim hearing for the AVO and the hearing for the assault charge were held at the Downing Centre Local Court on 2 September 1998. Both the AVO and the assault charge were dismissed. Ms D later described SC King as the only person who believed her and that he said to her: "’You cannot go back to this man in any case. He is dangerous and it will happen again’. I really took in what he said and I always remembered it.”

50. Despite the court proceeding, John continued to try to reconcile with Ms D. That included in or about 2001, after John returned from Russia when he asked if could move into

Ms D's house and "start again" with her. At the same time, John was seeking to re-establish a relationship with Ms E, and was also in the process of bringing Olga to Australia.

1998 to 1999: John's relationship with Ms F

51. In 1998, John commenced a relationship with Ms F. They were married later that year before divorcing in late 2000. Ms F described John as "extremely domineering and controlling", including in relation to her clothing and appearance.

52. In January 1999, just as he had done with Ms E, John requested Ms F move out of his home because he was in the middle of family law proceedings with an ex-partner. John and Ms F thereafter continued to live separately but remained married and in an intimate relationship.

53. In February 1999, John asked Ms F to have a baby with him and she fell pregnant in April 1999. When John discovered they were expecting a boy, his mood changed and he asked Ms F to terminate the pregnancy. When she refused John did not speak to her for weeks.

54. In July 1999, when Ms F was pregnant, John physically assaulted her at his house, including throwing a phone at her and pushing her to the extent that she worried about injuring or losing the baby.

55. Prior to the birth of their child, John was abusive to Ms F when she asked him to drive her to hospital as she was having contractions and was in labour. John reluctantly took Ms F to hospital, left her there and she went into labour on her own. Their son FJ was born early the next morning.

56. After the birth, John took Ms F to share accommodation in Ashfield. He would visit from time to time, but was increasingly abusive. By January 2000, Ms F was living in a woman's shelter in Canley Heights, where the social workers encouraged her to report the domestic violence to the police. Ms F did attend Fairfield Police Station however she said that the police did not understand her fears because John's abuse was psychological and emotional, rather than physical.

57. A few weeks later, John managed to locate Ms F and baby FJ and asked Ms F to leave the shelter and be a family with him. Despite the warnings of the social workers, Ms F

left the shelter moved into alternative accommodation before being threatened by John to agree to a "temporary divorce", or risk him taking FJ away from her. Ms F initially agreed, but then sought advice from Legal Aid who advised her "not to sign anything, not to trust him and to leave him immediately".

58. Ms F continued to be harassed by John both in person and over the telephone, wanting her to agree to sign divorce papers. On one occasion in August 2000, John located Ms F at the shops and then followed her in his car as she walked home, shouting at her that he would take the baby away.

59. On 15 August 2000, an Apprehended Violence Order taken out on Ms F's behalf against John was granted at the Parramatta Local Court for a period of 3 years. John and Ms F were divorced in September 2000 and Ms F never saw John again. In December 2003, FJ was diagnosed with Battens Disease. Tragically, he passed away in September 2008, aged 8 years old.

2000 onward: John's relationship with Olga

60. In October 2000, John (then aged 50) travelled to Russia to meet Olga (then aged 19) after corresponding via an international meeting website.

61. Olga arrived in Australia in August 2001 and on 10 November 2001, John and Olga were married. On 12 September 2002, their son Jack John Edwards was born, and on 14 August 2004, John and Olga had a daughter, Jennifer Angel Edwards. In 2004, Olga also commenced a law degree, which she finished in 2008.

62. After the children were born, John began to display controlling behaviour and intense anger towards Olga, including in relation to her clothing and appearance, and Olga said that he would often give her the "silent treatment" and she would have to cry and ask for forgiveness.

2010: John unsuccessfully applied for a firearms licence

63. On 26 August 2010, John submitted a P561 Application for Personal Firearms Licence (Category AB) to the Registry. Olga witnessed the application. In response to Personal History Question H(f) which was whether the applicant had been subject to an AVO in the previous 10-year period, John incorrectly answered "no". His application was unsuccessful because this answer was untruthful, and he was sent a refusal letter by the Registry.

2011: John stalked JC

64. In July 2010, John hired a private investigator to locate his adult daughter JC, who provided John with details about JC in November 2010, including her current name and residential address.

65. In May 2011, JC and her husband had put their house on the market in anticipation of moving overseas. On 4 May 2011, John and another male attended an open house at the property and John gave a false name to the real estate agent. He was found by one of the real estate agents in a child's bedroom looking at pictures on the wall, which the agent regarded as suspicious behaviour.

66. The following week, JC was at home when an unknown male tried to put an envelope under the front door of her house. JC opened the door and the man handed her an envelope and ran away, at which point she recognised John's handwriting on the envelope. She immediately closed and locked the front door as she was scared for her safety and that of her children. The letter from John said that a friend of his "offered to spend some of his spare time trying to find out for me just when you might be at Westfields." JC was so frightened she called her husband and asked him to come home from work.

67. JC then suspected John may come into her home during an inspection period, so she spoke with the real estate agent who described the two men who had acted suspiciously during the inspection the previous week. JC provided a photograph of John to the real estate agent, who confirmed that he had been at the property. JC felt scared and physically ill after she realised her father had been in her home and took to leaving the house during the day, until her husband came home from work.

68. Some days afterwards, when JC dropped her daughter at preschool she was approached by John. Feeling terrified and intimidated, JC quickly put her daughter into the car and got into the driver's seat and closed the doors. John attempted to open the door and JC told him to "stay away from my family", that she would take an AVO out against him, and then drove away. She spent the day away from her home and upon returning, she found a letter from John in her letterbox with the writing "[JC], regarding AVO'S please read this letter".

69. The following day, on 17 May 2011, JC made a report to police at Hornsby Police Station about being stalked by John. Police event number E44715740 was created by Senior

Constable Kane Birleson. The police concluded that stalking charges would not be pursued, as "the POI has only made 3 separate attempts to contact the [victim] and believe that an AVO will be sufficient".

70. A provisional AVO application was initiated by police. The matter was listed for hearing on 31 May 2011. On 25 May 2011, JC received a further letter from John attempting to explain why he started looking for her and asking her to forgive him.

71. On 31 May 2011, JC attended Hornsby Local Court in relation to the Apprehended Domestic Violence Order. She recalled that, at one point, the police prosecutor leaned over to her and whispered "he is your father, can't you just sort this out amongst yourselves"? John did not agree to the conditions of the order and it was adjourned for a further hearing, however JC did not attend the further hearing as she moved overseas permanently. She informed the police at Hornsby that the AVO against her father would not be required as he would not be able to find her once she had moved overseas. The provisional AVO was subsequently withdrawn at Hornsby Local Court on this basis.

2012-2015: John became violent towards Jack and Jennifer

72. When Jack was about 10 years old, John began directing his anger towards Jack, verbally and physically abusing him. On one occasion he hit Jack in the face with a book and cut him under the eye. If Jack and Jennifer were disobedient, John would do "finger treatment"; where he would bend back their finger, squash it and cause them pain.

73. When Jack was 11 (in about 2013), he tried to call the police about the abuse but Olga prevented him, apologising on John's behalf. Over the following two years, the relationship between Jack and John continued to deteriorate and involved verbal and physical abuse. Jack told Olga he had a bat in his room to protect himself against John. Jennifer told Olga she had a butter knife under her pillow and would never turn her back on John.

74. In 2015, on a family trip to Paris, John chased 13-year old Jack out of the family's accommodation and down the street. He then held Jack against the wall and was strangling him, and passers-by had to intervene.

75. In November 2015, John assaulted Jack again because Jack had touched John's phone when asked not to. John chased him, cornered him, and started to punch and kick him. Olga begged Jack not to call the police.

Late 2015 to early 2016: Olga and John's relationship deteriorated

76. In December 2015, the family relationship deteriorated even further. John continued to be controlling towards Olga about her appearance, and would go thorough periods where he ignored her and the children.

77. On 25 December 2015, Olga told John that she wanted a divorce. John apologised, promised to change and begged Olga to give him another chance. Olga said he could have another chance but if he did anything again, she would leave.

78. In January 2016, Jack was reported to the police as a missing person by John and was located at 3.30am the next day at Bondi Beach. He said he had run away from home due to family difficulties. The physical abuse of Jack by John continued, as did his psychological control of Olga. He controlled the majority of her salary and she was given a budget for groceries, but was otherwise not included in any discussion about finances or John's business, which he lied to her about for six months.

March 2016: John and Olga separate and the police become involved

79. On 4 March 2016, John attended Hornsby Police Station to report that Olga may make false allegations against him in relation to a custody claim over the family home. This attendance was recorded in COPS[1] as "occurrence only" and "record only as requested – no further police action". This incident is discussed in further detail at below in Sections C and D.

80. On 11 March 2016, Olga, Jack and Jennifer moved out of the family home and went to stay with a friend in Thornleigh. Olga said she was worried that John would do something to her because she had taken the children away, and was aware of threats he had made to previous partners.

81. The same day, John changed the locks to the house, which Olga reported to the police. He also then sent a letter to the home address of the friend with whom Olga was staying, thanking her for looking after his family, indicating to Olga that John knew where her friend lived.

82. On 14 March 2016, police attended 33A Harris St Normanhurst where Olga and John were having a verbal argument. The police subsequently created an event in the COPS database (E614175508) which recorded the incident as "Domestic violence – no offence

[1] NSW Police use the Computerised Operational Policing System, abbreviated as "COPS", to record everyday operations.

– verbal argument". Jack and Jennifer were recorded as children at risk. The risk rating was deemed No Significant Risk of Significant Harm.

March to September 2016: John was diagnosed with anxiety and extreme depression

83. In 2016, John began seeing a psychologist who "assessed John with moderate levels of stress and anxiety combined with extreme levels of depression relative to the population" and assessed his overall suicide risk as "high".

84. In May and June 2016, John attended six sessions with another psychologist who stated that John was "feeling quite depressed" and that "[h]e does have suicidal ideations while he doesn't necessarily want to die". On 15 September 2016, that psychologist wrote to John, stating he was "clinically depressed" in relation to his wife leaving him, and subsequently said that "during the time I saw him, John had ongoing suicidal ideation however he has no history of suicidal attempts and during the course of counselling we put measures in place to help him manage these thoughts".

April to June 2016: family law proceedings commenced

85. On 6 April 2016, Olga initiated proceedings in the then Federal Circuit Court relating to the children and the property at 33A Harris Road, Normanhurst.

86. On 28 April 2016, John made a "Child at Risk" report to the former Department of Family and Community Services ("FaCS") now known as the Department of Communities and Justice ("DCJ"). He made two further "Child at Risk" reports to FaCS between April 2016 and 7 March 2017.

87. On 1 June 2016, John filed an affidavit in the proceedings, stating that he had been seeing a psychologist since the separation and been diagnosed with post-traumatic stress disorder.

88. On 2 June 2016, his Honour Judge Jarrett issued orders in the family law proceeding. His Honour agreed to disclose Jack and Jennifer's address to John on the condition that he stay 500 metres away from their house. John did not agree.

89. On 24 June 2016, Olga filed a Notice of Risk which contained numerous allegations of assaults by John against Jack and Jennifer. The Notice indicated that these allegations had not been reported to any external agencies, including police.

June 2016 to February 2017: police notified of instances of violence and stalking

90. On 5 June 2016, John attended Hornsby Police Station to report an alleged assault by Olga's employer David Brown after Olga attended the Normanhurst house to collect property. John said that Mr Brown punched him then entered the house. In contrast, Mr Brown said he unintentionally brushed John's left shoulder when entering the house and John stumbled backwards. Olga said John was pushing Mr Brown to prevent him from entering the house. The police concluded there was insufficient evidence to proceed with any charges.

91. On 21 June 2016, John called the police assistance line to report a break in, with the suspect named as Olga.

92. On 8 September 2016, Jack was listed as a missing person after an argument with John. Jack was found by police early the next morning. A Child at Risk incident was created. Jack did not disclose any offences to police. Jack stated that he ran away from home due to family difficulties and arguments between his parents.

93. Between October 2016 and January 2017, the family attended counselling with a psychologist pursuant to a notation made by Monahan J of the Federal Circuit Court. During this counselling, Olga disclosed that John was a perpetrator of family violence and child abuse, and was a risk to her and the children.

94. Throughout this period, John would show up unannounced and uninvited at places where he knew Jack or Jennifer would be. He went to Jack's school; he went to Jennifer's school; he went to Jennifer's Year 6 graduation and tried to give her a dog; and he "bumped into" Jack at the train station and tried to give him a letter. On or about 13 December 2016, John hired a private investigator to follow Olga at her work and home to establish if she was seeing someone else.

95. On 22 December 2016, Jack attended a consultation with a family consultant at Headspace, where he disclosed assaults by John.

96. On 29 December 2016, Olga attended Hornsby Police Station and reported three assaults by John against Jack and Jennifer. The incident category was recorded as "Domestic Violence - No Offence Detected". This incident is discussed in further detail at Section C of these findings.

97. On 8 February 2017, John appeared unannounced at Olga's 6:00am yoga class. Olga immediately reported the incident to Hornsby Police Station. Police subsequently contacted John who denied stalking Olga and alleged that Olga was stalking *him* at yoga. The COPS entry recorded an "Occurrence Only" and John was not recorded as a Person Named. This incident is discussed in further detail at Section C of these findings.

December 2016 and May 2017: John obtains firearms permits and licences

98. In December 2016, John attended Ku-Ring-Gai Pistol Club and Hornsby RSL Rifle Club and indicated a firm interest in becoming a member of each club.

99. On 13 December 2016, John completed a P650 form (Use of an Approved Range by Unlicensed Persons) and ticked "no" to the following questions:

> Have you in NSW or elsewhere within the last ten years been the subject of a Family Law or Domestic Violence Order or an Apprehended Violence Order (other than an order which was revoked)?
>
> Are you suffering from any mental illness or other disorder that may prevent you from using a firearm safety?"

100. John ticked "no" to the same questions in all subsequent firearms applications notwithstanding the disclosures he had made to various psychologists in relation to his mental state in 2016.

101. On 8 February 2017, John submitted two applications for Firearms Permits to the Registry, one for a rifle permit and one for a pistol permit.

102. On 18 March 2017, Commissioner's Permits were issued by the Registry to John for firearms training at Hornsby RSL Rifle Range and Ku-Ring-Gai Pistol Club.

103. On 29 March 2017, Ku-Ring-Gai Pistol Club notified John he would not be offered membership after they developed concerns about him. The following day, Ku-Ring-Gai Pistol Club informed Hornsby RSL Rifle Range it had declined John's application.

104. In April and May 2017, John applied for and was granted membership at the St Marys Pistol Club, and the Registry amended and reissued his Commissioner's Permit in relation to his pistol licence to allow him to attend the St Marys club for safety training.

105. On 11 and 22 May 2017, John submitted application forms to the Registry for a rifle licence and a pistol licence, respectively.

April to July 2017: Olga, Jack and Jennifer disclosed John's violence

106. On 28 March 2017, Olga, Jack and Jennifer moved to 107 Hull Road, West Pennant Hills. Olga said "I did not think John knew where we lived. I always reminded the children not to tell their father where they lived."

107. Over the following year, Jack, Jennifer and Olga met with a clinical psychologist, RS, at various times. During those consultations, each of them disclosed to RS their assaults and fears in relation to John.

108. On 31 May 2017, Olga filed an affidavit in the family law proceedings alleging that John told Olga that he wanted to kill one of his former partners because she of the family law proceedings that had occurred, and because he blamed her for one of their children's deaths (which occurred in 2002). The affidavit also alleged that John had attempted to buy a rifle but could not do so.

109. In June and July 2017, Jack attended multiple sessions with a psychologist, RC, and disclosed that he had been threatened, punched and kicked by John resulting in bloody noses and bruising.

August to October 2017: John bought three rifles

110. Between 15 August and 23 October 2017, John attended Horsley Park Gun Shop and lawfully purchased three rifles and ammunition.

February 2018: the family law proceedings in relation to parenting concluded

111. On 14 February 2018, the family law proceedings in relation to parenting were resolved by consent.

112. The orders made by Justice Stevenson relevantly established the following regime:

    a. Olga had sole parental responsibility for Jack and Jennifer;

    b. Jack and Jennifer were to live with Olga;

    c. there was no order for Jack or Jennifer to spend time with John;

    d. John was entitled to receive school reports and attend parent teacher meetings in the absence of Jack, Jennifer and Olga; and

    e. Olga was to arrange for Jack and Jennifer to have consultations with a psychologist as specified in the orders.

113. A notation in the orders stated it was the intention of the parties that any time that John had with the children in future be in accordance with the written wishes of the children.

114. On 19 February 2018, consent orders were due to be filed with the Court in relation to the property aspect of the proceedings however Olga told investigators that John stopped communicating and the property dispute was unable to be settled.

March to April 2018: John bought two pistols

115. On 13 March 2018, John attended Horsley Park Gun Shop and purchased a .357 Magnum Smith & Wesson revolver. This was the firearm John used to take his own life on 5 July 2018.

116. On 17 April 2018, John attended Horsley Park Gun Shop and purchased a Glock 17A semiautomatic pistol and ammunition. This was the firearm John used to fatally shoot Jack and Jennifer on 5 July 2018.

The deaths of Jennifer, Jack and John

117. I am unable to make a finding as to the precise point in time when John made the decision to kill Jack and Jennifer. John's last will and testament, dated 7 September 2017, named Jack and Jennifer as beneficiaries which suggests that John's obtaining a firearms licence and purchasing two rifles (which had occurred prior to September 2017) were not steps taken in relation to an intention already formed to kill the children.

118. However, I am satisfied that by the time John purchased two pistols in 2018 - including the Glock pistol that he used to shoot Jack and Jennifer - he had formed the intention to kill the children by that point, and that purchase was in preparation. In this respect, I accept the evidence of DS Phillips that John "obviously had been planning to kill his children probably six months at least prior", which places the decision at or about the time the family law proceedings concluded in February 2018.

119. I am also satisfied on the basis of the evidence before me that the logistics for the fatal shootings took John more than a week to organise, including hiring and collecting a rental car, collecting his pistols from the St Mary's Indoor Shooting Centre, writing numerous suicide notes and other correspondence, and erasing the contents of his electronic devices. The details of those logistics are set out below. I accept the submission of counsel assisting that this evidence demonstrates a detailed, labour-intensive and pre-meditated plan to kill Jack and Jennifer.

28 June to 4 July 2018: the final preparations to kill the children

120. On 25 June 2018, John called Avis Car Rentals to book a large sedan from Monday, 2 July to Saturday, 7 July 2018.

121. On 26 June 2018, John contacted a mobile information technology technician to seek assistance with transferring files and erasing information from a laptop, and deleting his hard drive. The technician attended the Normanhurst property on 3 July 2018, when John asked him to transfer material from 4 USB devices to 2 new USB devices and wipe all data and files from his old laptop, which was done. John also sought advice on deleting the hard drive on his desktop computer. The technician also installed a program on John's new computer called "CC Cleaner", which deletes internet browser history, internet copies and has the capability to clean unwanted and temporary files.

122. On 2 July 2018, John attended Avis Car Rentals in Hornsby and hired a white Holden Commodore sedan. I accept the evidence of police investigators who are of the opinion that John hired the car so as to not be recognised by his children who knew the registration, make and model of the car he owned.

123. On 4 July 2018, John attended the St Marys Indoor Shooting Centre ("the Centre") and collected two firearms from his storage locker - his Glock 17A semiautomatic pistol and his .357 Magnum Smith & Wesson revolver - as well as ammunition. John appeared flustered at the time and closed the locker so hard it became jammed and required the Centre's building site foreman to use a screwdriver to secure it.

The morning of 5 July 2018

124. Shortly before 7.30am on 5 July 2018, Olga drove Jennifer to Pennant Hills Railway Station to catch the train to school at Gosford. That was the last time Olga and Jennifer saw each other. Olga then drove back home, woke up Jack, and dropped him at school at around 8.50am. That was the last time Olga and Jack saw each other. Olga then drove to work at Woolwich.

125. At about 10.15am, John went to the home of his friend Peter Foreman and gave him a large express post envelope (with two additional envelopes stapled to the outside) and said "if anything happens to me". Mr Foreman's evidence was that he understood that he was not to open the package.

126. The envelopes were opened by police later that day. The smallest envelope contained a

key. The middle-sized envelope contained John's last will and testament. The large envelope contained a number of smaller envelopes addressed to former partners, children, friends, and persons associated with the family law proceedings, as well as $5330 in cash intended for one of John's former partners. All of the envelopes addressed to individuals contained personalised suicide notes in similar terms.

127. At about 10.30am on 5 July 2018, John spoke to his neighbour and asked him to return a spare key that John had given to the neighbour's son to enable him to access John's house and walk John's dog. The neighbour thought the request was a "bit odd", because John said he had lost his own key and needed to get spares cut, but he had seen John come and go from the house a number of times that day.

128. During the day on 5 July 2018, John went to the home of his former partner, Ms C, and dropped off a number of boxes and a wooden chest that belonged to her which John had kept for some 30 years. Ms C was not home at the time.

The homicide of Jack and Jennifer

129. At about 3.15pm, John left the house in the hire car. He had with him the Glock pistol, along with at least two 10-round magazines of ammunition. He also had a new wrecking or "jemmy" bar in the footwell of the passenger's side of the car.

130. At 3.26pm, John parked in the carpark of the Pennant Hills Hotel, adjacent to Pennant Hills Railway Station. CCTV footage shows that John parked the hire car, but then moved it to a position where he had direct line of sight to Pennant Hills Railway Station.

131. From 3.32pm to 4.46pm, John remained in or around the vehicle, appearing to look in the direction of Pennant Hills Railway Station. At or around 4.44pm, Jennifer alighted from a train at Pennant Hills Railway Station. CCTV footage shows that at around 4.44pm, Jennifer boarded Hills Bus 9350. John was recorded on CCTV leaving the Pennant Hills Hotel car park in the hire car and following Hills Bus 9350.

132. At 4.50pm, Jennifer alighted from the bus on Pennant Hills Road near Mount St and started walking home, which took approximately 8 minutes. At around 4.59pm, John drove into the driveway at 107 Hull Road. By that time, Jennifer was entering the front door of the property. Jack was already at home, sitting at his desk in his bedroom, playing the computer game "Fortnite".

133. Jennifer left her schoolbag and laptop bag near the front door and fled down the hallway to Jack's bedroom. Jennifer crouched down and hid under Jack's desk, curled up in a foetal position, while Jack also sought to hide under the desk, covering Jennifer with his body.

134. John followed Jennifer to Jack's bedroom where the children were hiding under the desk. He fired 10 shots at Jack and Jennifer from the Glock pistol then ejected the empty magazine, placed it in his pocket, put a new magazine in the Glock pistol, and kept shooting. A later examination of the crime scene located 14 fired 9mm cartridge cases and seven fired bullets.

135. Jack and Jennifer both suffered traumatic injuries that were "incompatible with life" and died in their hiding place under the desk in Jack's bedroom.

136. I accept the evidence of the forensic pathologist that the cause of death for Jack was "multiple gunshot wounds to the chest". A total of 19 gunshot wounds (both entrance and exit wounds) were observed on Jack's body. The majority of the gunshot wound tracts were from front to back. Five of the six gunshot wounds to Jack's back were entry wounds. A contact entry gunshot wound was also located Jack's left forearm, indicating that the firearm was in contact with Jack's arm when discharged.

137. I also accept the evidence of the pathologist that the cause of death for Jennifer was "multiple gunshot wounds to the head, chest, abdomen and extremities". A total of 31 gunshot wounds (both entrance and exit wounds) were observed on Jennifer's body and 16 different gunshot wound tracts were established.

138. According to CCTV footage taken from the property at 96 Hull Road (almost directly opposite 107 Hull Road), John drove out of the driveway of 107 Hull Road 2 minutes and 11 seconds after he arrived.

139. Bruce Wilson lived at 109 Hull Road, West Pennant Hills. On the evening of 5 July 2018, Mr Wilson was sitting outside the back of his house when he heard four loud bangs. He walked down his driveway and saw a male - who he later identified as John - walk down from the front door of 107 Hull Road and hop into a car parked in the driveway. Mr Wilson asked him "Is everything alright"? However John did not answer, reversed the car out of the driveway and drove away.

140. Immediately after John drove away, Mr Wilson walked up the steps to the front door of

the house, which was wide open, and could see an umbrella and umbrella stand on the floor in the hallway, and a green bag and laptop bag on the landing beside the door. He yelled inside the house “is everything okay?”, but got no response.

141. Mr Wilson then spoke with the residents of 105 Hull Road, one of whom also thought that the bangs might have been gunshots. Mr Wilson and a resident of 105 Hull Road walked back to the Hull Road property and stood near the bottom of the front steps, but did not go inside. Both neighbours were concerned that both front doors to the house were open but that the Edwards’ dog had not run out (which it generally did when the door was open). Mr Wilson decided to call the police.

142. I accept the CCTV evidence and that of the witnesses at the scene to find that John Edwards was at 107 Hull Road for approximately two minutes, during which time he had fatally shot Jack and Jennifer.

Police find the bodies of Jack and Jennifer

143. At 5.20pm, Mr Wilson called the police and said he had heard four bangs from next door which sounded like gunshots. At 5.22pm, job number 723697-05072018 was broadcast over police radio. Five police officers initially responded to the broadcast, arriving at 5.34pm and 5.36pm.

144. On arrival at 107 Hull Road, the police officers observed the front door of the house wide open, with a schoolbag and a laptop bag sitting near the front door. There were no external lights on and no lights on in the front part of the house, although there was some light from the rear of the house. At the time, the police did not know whether there was still a suspect in the house.

145. A number of officers entered the front door and proceeded into the darkened house. Immediately inside the hallway, they saw items on the ground, including an umbrella and a mobile phone. Officers briefly inspected the rooms on either side of the hallway, yelling “police” as they did so, but did not receive a response or see anyone. When the police officers reached Jack’s bedroom (the third door on the left-hand side of the hallway), Leading SC Cains opened the door and yelled “police”. The light was on and she observed a desk and computer to the left of the door, but did not see anyone.

146. The officers then made their way to the kitchen at the rear of the house, where they found a black and white border collie dog shaking and cowering in the corner of the room.

Several officers inspected the backyard and a shed before returning to the house where they joined the other officers and went back down the hallway to conduct a more thorough search.

147. At 5.40pm, SC Skinner went into the first room on the right side of the hallway, ie. Jack's bedroom. He turned the light on and saw a large desk on the left-hand side, and saw a computer monitor on the desk showing the game "Fortnite".

148. At that point, an officer noticed something under the desk. SC Skinner then saw a hand sticking up between the desk and the wall. He then looked under the desk and saw Jack lying on top of Jennifer. Jennifer was in the foetal position, resting on her knees. Jack was face down and lying across and over Jennifer's body.

149. SC Skinner immediately called for assistance from his fellow officers, who entered the room. SC Skinner said words to the effect of "we have two here" or "there are two bodies under the desk".

150. At around 5.40pm, Olga arrived home. As Olga walked towards the house, Leading SC Cains was walking through the house to the front door and heard SC Skinner say (from within the house) "I've found them". Leading SC Cains stopped Olga at the front stairs and Olga said "what are you doing in my house? Why are you here?". Olga saw Jennifer's backpack at the front door and thought the house might have been broken into. Leading SC Cains introduced herself and indicated that police had only recently arrived at the property and were investigating. Olga also tried to call Jack and Jennifer's mobile phones, but they did not answer.

151. Back inside Jack's bedroom, SC Skinner felt for a pulse on Jack and after about a minute, realised that Jack was deceased. SC Skinner then felt for a pulse on Jennifer, but could not find one. Shortly afterward officers exited the house and set up a crime scene.

152. At 5.55pm, paramedic Adam Bollinger arrived at the scene and shortly thereafter declared that both Jack and Jennifer were deceased.

153. At or around this time, Olga spoke with Mr Wilson, who said that he heard four gun shots and called the police. Olga told a number of police that she believed her husband was involved and that "we have the final Court hearing in two weeks". She also told them that she had attempted to contact Jack and Jennifer, and had left a message for John. Olga repeatedly told SC Mansfield that "it was her husband", and enquired why she could not

go into her house".

154. At about 6.12pm, Sergeant Michael Begg arrived at the scene. He subsequently informed Olga that when police searched the home they found two deceased people who they believed to be Jack and Jennifer. Olga immediately told police that she believed that John was responsible.

155. Olga made a series of telephone calls over the next hour or so, including to Peter Foreman who confirmed that he had seen John that morning and that John had "just come to say hi". Olga then told police "Peter is John's best friend, he saw him this morning, he thought it was weird, John never shows up out of the blue".

156. Mr Foreman's evidence was that John had alluded that he already knew where Olga, Jack and Jennifer lived, prior to following Jennifer home that afternoon. Despite exhaustive enquiries, the police investigation was unable to determine how John found out Olga and the children's address, which Olga had tried to keep secret from him.

John Edwards' death

157. At about 5.12pm, John arrived back at 33A Harris Street Normanhurst. Shortly after 6.00pm, John placed the muzzle of his .357 Magnum Smith & Wesson revolver into his mouth, tilted it slightly upwards, and fired a single bullet. The bullet entered the back of his throat and exited the back of his head, passed through the bedroom wall in an upwards direction, ricocheted off the roof of the adjacent living room, then smashed through the southern glass window and outside into the adjacent driveway area. I accept the evidence of the forensic pathologist who concluded the cause of death for John was "gunshot wound to head".

158. The timing of John's suicide (at about 6.00pm) may be inferred from the evidence of a neighbour who sometimes walked John's dog. Shortly after 6.00pm, he walked down the driveway of 33A Harris Street and around the back of the house to see if the dog was there (which it was). As he walked around the side of the house, he heard a bang which "sounded as if a big tree branch had fallen on the roof." He looked up and saw bits of dirt and debris fall from the roof of the middle floor (ie. the same location where the bullet ricocheted off the inside of the living room roof) but did not see anything else, and feeling "creeped out", went back home. At around 7.40pm, the neighbour walked back down the driveway to 33A Harris St and collected the dog to take it for a walk. At around 8.30pm, when returning the dog, he noticed broken glass on the ground and a hole in the side

window.

159. At about 7.30pm, police began to covertly monitor the house and continued to do so overnight. They did not report hearing any gunshot-like sounds after covert monitoring commenced.

160. I accept the police ballistics evidence that the broken window on the side of the house at 33A Harris Street that was observed by the neighbour at 8:30pm was caused by the same bullet with which John fatally shot himself. In light of the evidence of the neighbour as to what he observed at 6:00pm, and the presence of the police from 7:30pm onwards, I find that John took his own life between 5:12pm and 8:30pm, and most likely, at or about 6.00pm.

161. At 6:18am on 6 July 2018, the NSW Police Tactical Operations Unit ("TOU") located John in a bedroom at the rear of the property. They covertly monitored him for ten minutes and formed the view that he was deceased. They entered the property at 6:30am and located John's body. He was sitting upright on the righthand side of the bed with his legs outstretched and his head titled slightly to the left. His shirt was covered in blood and his left arm was slightly bent with a .357 Magnum Smith & Wesson revolver resting in the crook of his arm. The revolver cylinder contained five unfired rounds and one fired casing. At the back of his head was a hole in the wall about the size of a fifty-cent piece.

162. In John's top left pocket was a piece of paper that contained printed text and what appeared to look like a train timetable between Gosford and Pennant Hills. There was also printed text which appeared to describe Jennifer's afternoon movements from Gosford High School to Pennant Hills.

163. Located to the right of John's body, on top of a set of drawers, was a Glock pistol with the serial number BEPH725. The magazine in the magazine well contained 7 rounds. An empty Glock 10 magazine was located on the floor along with a blue polar fleece jacket. In its pocket was a section of sisal rope, a box of matches, another empty Glock 10 magazine, and the key to the rented Holden Commodore.

164. A later search of the property located a toolbox in the garage containing burned shredded documents, a burned Windows tablet with a broken screen, and a mobile phone.

C. THE POLICE RESPONSE TO ALLEGATIONS BY JOHN AND OLGA

165. This section sets out my findings in relation to the policies and procedures applied by the police in recording and responding to allegations of domestic violence and stalking made by Olga against John in 2016 and 2017, and the actions of the relevant officers involved.

The three-pronged approach of NSW Police to respond to domestic violence

166. As at 2016 and 2017, and currently, NSW police officers were expected to respond to reports of domestic violence using the following three-pronged approach:

    a. investigate whether a domestic violence offence has occurred, and if so, place an offender before the court after making a decision to prosecute;

    b. investigate the matter with a view to determining whether an application for an apprehended domestic violence order is appropriate; and

    c. apply the Domestic Violence Safety Assessment Tool (“DVSAT”) to a 'victim' to make a preliminary determination of the risk of future harm of domestic violence and refer the 'victim' to a specified specialist support service.

167. The DVSAT in the COPS database is specifically designed for us by police, and contains questions that are mandatory for domestic violence-related events. The DVSAT is split into two parts. The first eight questions are largely directed to ensuring compliance with legislation regarding firearms and children. The second part consists of questions that relate to the threat of harm towards a victim.

The NSW Police Force Domestic Violence Standard Operating Procedures

168. The NSW Police Force (“NSWPF”) Domestic Violence Standard Operating Procedures (“DVSOPs”) outline the general expected policy and practices to be used in the police response to domestic and family violence incidents or reports. The DVSOPs also reflect relevant legislative requirements placed on police.

169. In 2016 and 2017, the 2012 version of the DVSOPs (which were updated from time to time) was in force. The 2012 DVSOPs were mandatory; all NSWPF employees were required to comply with them. In October 2018, an updated version of the DVSOPS came into force. Evidence at the inquest was that a number of changes reflected in the 2018 DVOSOPs were the direct result of the deaths of Jack and Jennifer.

170. The NSWPF Domestic & Family Violence Team ("DFV Team"), which consists of sworn and unsworn staff and provides advice to the NSWPF senior executive and officers in the field on operational, legal and corporate issues, is responsible for compiling, producing and updating the DVSOPs. I was assisted at inquest by the evidence given by Chief Inspector Sean McDermott, who is the Manager of the DFV Team.

171. On 10 March 2021, the legal representatives for the Commissioner of Police, NSW Police Force ("the Commissioner") informed those assisting me that an updated version of the DVSOPs had come into force on 25 January 2021 ("the revised DVSOPs"). On 16 March 2021, a formal application for the revised DVSOPs to be tendered at inquest was made on behalf of the Commissioner. This occurred several months after the close of the evidence and filing of written submissions, and some three weeks prior to the delivery of these findings, meaning that there was no opportunity to recall witnesses to give evidence as to the implementation of the revised DVSOPs, nor any related training.

172. I have acceded to the Commissioner's application and allowed the tender of the revised DVSOPs because:

    (a) I am satisfied that the revised DVSOPs are new evidence, and that they were not in existence in their current form at the time of the hearing; and

    (b) the material directly touches on the power available to me pursuant to s. 82(1) of the Coroners Act to make recommendations that are "necessary and desirable".

    However, in light of the timing of the Commissioner's application, and for the reasons set out above as to the inability to examine any witnesses in relation to the revised DVSOPs, I have admitted the revised DVSOPs into evidence on a limited basis, that being solely for the purpose of considering whether any documented changes to the DVSOPs affect any of the recommendations proposed by counsel assisting and ultimately made by me in these findings.

The procedure for walk-in victims

173. The 2012 DVSOPs prescribed a specific procedure when a victim attends a police station to report a domestic violence incident. These procedures are unique to allegations of domestic violence.

The requirement to create a COPS Event

174. The 2012 DVSOPs mandate that all reports of domestic violence (and other crimes) must

be recorded in the COPS system. This must occur even if the victim or the person reporting declines to support formal police action.

175. To assist officers in capturing all relevant information, there is a "generic narrative" that is to be used for all domestic violence related offences, which provides a series of prompts to ensure that the officer in charge captures the necessary information. In 2016, the generic narrative had a number of fields that were meant to reflect the requirement to look at the prior history of an alleged offender and record any relevant facts, including "prior history of violence including stalking & intimidation" and "current or previous protection orders".

The requirement to undertake a thorough investigation and reasonable enquiries

176. The 2012 DVSOPs repeatedly emphasise the importance of conducting a thorough investigation and undertaking reasonable enquiries, and state that the reluctance of a victim, or other party to provide information or a statement is not a reason to cease investigating the matter.

177. It is standard practice to speak to the alleged victim and to identify any witnesses to the alleged incident and speak to those people. It is also best practice for an officer to always search the COPS database in relation to the alleged aggressor.

The requirement to record the aggressor and the victim's details

178. Part of the incident field in a COPS Event contains specific fields for recording a person as a "person named" or "person of interest" (using drop-down options). The 2012 DVSOPs required that in the context of domestic violence, even when no offence is detected, the aggressor is to be recorded in COPS as a "person named" and the person to whom the aggression is directed as the "victim". Correctly categorising an aggressor or victim into one of these categories is important because that designated field links the COPS Event to the CNI number[2] of the person in question. If the person's details are not recorded in the specified field (including if the person's details are recorded only in the free-text narrative field), the Event will not be linked to the person's CNI number and the COPS Event will not be identified in any subsequent search of the person's CNI number. It therefore serves no purpose to record the name of a "person named" or a "person of interest" in the narrative field only in a COPS Event.

[2] CNI refers to the Central Names Index. Any person whose name appears in COPS is assigned a CNI number by the NSWPF, whether they are a suspect, or are simply providing information.

The importance of categorising domestic violence-related incidents correctly

179. The 2012 DVSOPs emphasise the importance of categorising incidents correctly, particularly in situations where a criminal offence is detected. There are some categories that must not be applied when a criminal offence is detected, including the category of "Domestic Violence – No Offence".

180. The more recent iterations of the DVSOPs contain additional instructions in relation to the creation and recording of domestic violence incidents correctly, and the use of the "Domestic Violence – No Offence" categorisation.

The irrelevance of family law proceedings

181. The 2012 DVSOPs emphasise that the existence of family law proceedings should not be used as an excuse to not respond appropriately to family violence. They further state that the potential dangers of family disputes should not be underestimated, and they identify several risk factors surrounding victims who leave an abusive relationship, as to timing, likely behaviour by an offender and matters that are likely to escalate risk.

182. I accept the submission of counsel assisting that, logically, these risk factors would commonly arise at the same time at which any family law proceedings are occurring (ie., after the abusive relationship has broken down and the victim and the perpetrator are contesting divorce, custody or property issues). I also accept the evidence of CI McDermott that the vast majority of family court proceedings (ie. close to 80%), involve family violence allegations and that the risk of family law proceedings may in fact increase the risk at that particular time.

Investigation of allegations of stalking

183. The 2012 DVSOPs set out the definition of stalking and intimidation from ss 8 and 13 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). Relevantly, s 8 states:

> In this Act, ***stalking*** includes the following of a person about or the watching or frequenting of the vicinity of, or an approach to, a person's place of residence. business or work or any place that a person frequents for the purposes of any social or leisure activity.

184. As part of an investigation into an allegation of stalking, the 2012 DVSOPs direct the officer in charge ("OIC") to conduct a search of the COPS database in relation to the alleged offender as part of the investigation and ascertain whether there is any previous

DV history that may be relevant to an investigation.

185. If the OIC suspects or believes that an offence of stalking or intimidation has recently been, or is being committed, or is imminent, or is likely to be committed against the protected person, there is an obligation to apply for a provisional or non-urgent AVO under ss 27 or 49 of the *Crimes (Domestic and Personal Violence) Act 2007*. This obligation exists for both personal and domestic violence matters.

The process for verifying a domestic violence-related COPS event

186. When a COPS Event is created by the OIC, the event must be "verified" by the shift supervisor for accuracy and appropriate action, including checking that appropriate investigative steps have been taken.

187. In 2016 and 2017, the shift supervisor was required to review (and necessarily had to click into) the relevant domestic violence event to properly verify and/or resubmit the event. That requirement still exists.

188. The 2012 DVSOPs also emphasise the role of team leaders and shift supervisors in responding to domestic-violence incidents more generally, including to identify any training needs or further support required.

189. In November 2017, a "Supervisor Checklist for Domestic & Family Violence Related Incident" ("DV Checklist") was produced and disseminated by the DFV Team as an aid for supervising sergeants to determine whether the contents of a COPS Event have been recorded correctly.

The role of the domestic violence liaison officer

190. The 2012 DVSOPs set out role of the domestic violence liaison officer ("DVLO") in 2016 and 2017. The 2012 DVSOPs relevantly state:

> DVLOs are members of Crime Management Units. This specialist role supports the LAC by providing vital linkages with community issues and concerns, information and intelligence, while forming partnerships for victim support and follow-up.

191. One of the responsibilities of the DVLO is to "conduct a quality assurance of domestic and family violence related events and identify any deficiencies by the creating officer and or any issues in the subsequent verification by the Team Leader via dip sample and bring these deficiencies to the notice of the Team Leader and creating officer."

192. In the event that a DVLO does not agree with how an officer has dealt with a particular situation, the 2012 and 2018 DVSOPS allowed for the DVLO to resubmit the Event, outline further action to be taken, advise the OIC's supervisor, or speak to the OIC and their team leader.

193. CI McDermott gave evidence at the inquest as to the steps that could be taken by a DVLO in the event that they are of the view that there is a deficiency in the response of the OIC to issues identified by the DVLO. Those steps have now been formalised and included in the revised DVSOPs (in which DVLOs are now referred to as Domestic Violence Officers ("DVOs")). The revised DVSOPs now state:

> If a DVO identifies an issue requiring further action by an officer but the officer refuses to action the request, the DVO may notify the chain of command starting at the team supervisors through the DV Team Sergeant, Crime Coordinator and Crime Manager if required.

Issues 4 to 10 on the Issues List

Issue #4: In 2016/2017, what policies, procedures and/or guidelines existed for creating and verifying a COPS event concerning an allegation of domestic violence?

194. I am satisfied that at the relevant time, the 2012 DVSOPs outlined the general expected policy and practices to be used in the police response to domestic and family violence incidents or reports, as well as the relevant legislative requirements placed on police.

Issue #5: What policies, procedures and/or guidelines presently exist for creating and verifying a COPS event concerning an allegation of domestic violence?

195. The evidence confirms that the 2018 DVSOPs set out the policies and procedures that are now to be followed in creating and verifying a COPS Event concerning an allegation of domestic violence. The DV Checklist also exists to assist supervisors to determine whether the contents of an Event have been recorded correctly in COPS.

Issue #6: In 2016/2017, what policies, procedures and/or guidelines applied when a police officer searched COPS for a party against whom an allegation is made?

196. I accept that the 2012 DVSOPs did not specifically direct police officers to search the COPS database for a person against whom an allegation was made, although the evidence indicates that it was best practice for an officer to do so. However, where the allegation involved stalking or intimidation, the 2012 DVSOPs did direct the OIC to conduct such a search of COPS as part of their investigation.

Issue #7: What policies, procedures and/or guidelines presently apply when a police officer searched COPS for a party against whom an allegation is made?

197. The evidence at inquest confirms that the current policies, procedures and guidelines are the same as those set out in relation to Issue #6.

Issue #8: As at 2016/2017, what was the role of a Domestic Violence Liaison Officer?

198. I am satisfied that at the relevant time, the 2012 DVSOPs set out the role of the DVLO (see above at [190]-[192]).

Issue #9: As at 2016/2017, what policies, procedures or guidelines applied, or what other avenues were available, to a Domestic Violence Liaison Officer who disagreed with how a police officer dealt with a situation or recorded a COPS event?

199. I accept the evidence of CI McDermott set out above as to how a DVLO (now a DVO) would respond where there was a deficiency or issue with the response of an OIC.

Issue #10: Has the role of a Domestic Violence Liaison Officer, or any of the policies, procedures or guidelines relevant to the role of a Domestic Violence Liaison Officer, changed since 2016/2017, and if so how?

200. There has been minimal change to the role since 2016, apart from the formalisation of steps to be taken as set out at [193].

The creation of COPS Event E61423616

201. The following paragraphs set out the factual findings I have made in relation to COPS Event E61423616.

202. On 4 March 2016, John attended Hornsby Police Station and spoke with Senior Constable Jenny Barnes who created Police Report Number E61423616 in the COPS database. The report was recorded as an “Occurrence Only” incident.

203. The narrative field in the report states:

> Around 4.55pm 4/3/16 PR attended Hornsby Police Station to report that his wife (PN) may make false accusations against him to obtain documentation in order to win custody claim over their family home at the A/A. PR purchased the home in Sept 2000 for approx $450,000 and signed the property over to the PN in December 2013 for a honeymoon amount of $142,000. Both PR and PN have lived at this location with their 2 children up to and including this report date. PR insisted that a record be made of his report after speaking to Sgt RONNING. Record only as requested. No

further police action.

204. SC Barnes' evidence was that she informed John that this was not really a matter for police, however he was "insistent" and "adamant" on having the incident officially recorded. She liaised with Sergeant Ronning, who was the Station Supervisor at the time, who spoke briefly to John before SC Barnes created the police report. SC Barnes said that John was "adamant in having this incident recorded".

Issues 11 to 13 on the Issues List

Issue #11: Was COPS event E61423626 created, recorded and verified appropriately taking into account all policies, procedures and guidelines in place in 2016/2017?

205. I accept the evidence of CI McDermott that no actual offence had occurred nor was there any inquiry made about family law issues or AVOs. In these circumstances, I find that it was open to SC Barnes to advise John that no report would be made. Equally, it was open to SC Barnes to make a report as an 'Occurrence Only', which was consistent with the principles set out in the 2012 DVSOPs. On the basis of the evidence before me I find that Event E61423626 was recorded in accordance with the 2012 DVSOPs. In light of this finding, Issue #12 does not require further consideration.

Issue #13: How would COPS Event E61423626 be created, recorded and verified taking into account all current legislation, policies, procedures and guidelines?

206. I am satisfied that the revised DVSOPs contain additional instructions for police regarding the making of a report, in the event that they are confronted with circumstances similar to those that led to the creation of Event E61423616. They stipulate that the "Occurrence Only" incident category is not to be used for reports of domestic violence. The revised DVSOPs also provide guidance for officers in relation to so-called "pre-emptive approaches to police" in relation to family law proceedings, and set out relevant considerations.

Recommendation regarding COPS Event E61423626

207. I note that as a direct result of the events the subject of this inquest, the 2018 DVSOPs were amended to as to make it mandatory for an officer to make a report in these kinds of circumstances.

208. CI McDermott's evidence was that although SC Barnes was entitled to decline to take a report from John on 4 March 2016, there is an advantage in doing so (as she did). However, he also acknowledged the inherent danger of that course, because of the

potential for misuse, if it is not recorded in detail and with appropriate caveats. I agree with and accept CI McDermott's evidence in relation to this risk and the need for appropriate caveats to be recorded.

209. CI McDermott gave evidence that an appropriate caveat might include language such as "*Nothing that is contained in this report has been verified or investigated to any degree and cannot be relied upon. It is simply a record of what the person said*". That suggested language is not presently recorded in the DVSOPs. CI McDermott agreed that such language could be included in a future version of the DVSOPs.

210. In written submissions, the Commissioner submitted that the evidence of CI McDermott as to the possible inclusion of an appropriate caveat in a future version of the DVSOPs obviated the need to make a recommendation proposed by counsel assisting to the effect that the DVSOPs include sample language as canvassed in the evidence of CI McDermott, and that the NSWPF takes steps to ensure officers are aware of the inherent dangers in recording pre-emptive approaches to police..

211. The revised DVSOPs have taken up the proposed recommendation in respect of sample language to be used by police in recording such a report, and a suggested form of words is now provided therein. The revised DVSOPs also require officers to provide evidence for any opinions set out in the narrative of COPS Event. However, for the reasons outlined earlier, it has not been possible to obtain any evidence as to the extent to which operational police have been educated of the inherent danger in recording such a report, nor their awareness of the amendment to the revised DVSOPs.

212. I therefore make the following recommendation to the NSW Police Force:

> **Recommendation 1:** That the NSW Police Force take steps to ensure that operational police are aware of the inherent dangers in recording pre-emptive approaches to police in the context of family law proceedings in the COPS database, and of the requirement set out in the Domestic Violence Standard Operating Procedures to record such approaches with appropriate caveats.

The creation and verification of COPS Event E6249070

213. The following paragraphs set out my findings in relation to the creation of E6249070.

214. On 29 December 2016, Senior Constable Brooke Cooper was rostered to perform day

shift station duties at Hornsby Police Station. At the time, SC Cooper usually taught bicycle and road safety to children; she had been in the bicycle and road safety unit for the whole 13 years she had been stationed at Hornby Police Station. However, on 29 December 2016, SC Cooper was working in general duties because it was school holidays and the station was short staffed.

215. Sergeant Rodney McCaffery was the mobile supervisor at Hornsby Police Station between the hours of 6.00am and 6.30pm on 29 December 2016. Sgt McCaffery gave evidence that he was aware of and had read the 2012 DVSOPs at the time.

216. At around 1.39pm, Olga attended Hornsby Police station to report allegations of assault by John on Jack and Jennifer which had allegedly occurred in 2015. The report was made to SC Cooper, who created COPS Event E6294070 the same day.

217. The narrative field in COPS event E6294070 records that Olga disclosed the following matters to SC Cooper:

    a. In March 2016, Olga and John separated and Olga moved out of the family home. She stayed with a friend for a short period before moving to her current address.

    b. In April 2016, Olga and John started family court proceedings in relation to parenting. There were, at the time, orders in place providing for Jack and Jennifer to see their father for three hours every Saturday.

    c. Olga “claims that both children do not want to go see their father and this makes him angry claiming that the VIC [Olga] is turning the children against him”.

    d. Olga called police in March 2016 after she went back to her previous home to collect her belongings. “On advice from his solicitor [John] had changed the locks so [Olga] had to force her way into the property. [John] had returned home and parked his car behind the moving truck not allowing her to take his belongings. Both parties have been to court to settle the dispute over the belongings”.

    e. On 9 October 2015, John punched and kicked Jack (then aged 13) because he was playing with John’s iPod without permission. There was no involvement of police.

    f. On an unknown date, John hit Jack because he was playing near a stack of his CDs. Olga was not a witness to this incident and again did not report it to police.

    g. In May 2015, John slapped Jennifer (then aged 10) across the face because she would not go to sleep. Olga was not a witness to this incident and again did not

report it to police.

h. All the other incidents described by Olga involved John yelling and swearing at the children because they had not completed their chores or where they spoke back to him “when he had cause to speak with them”.

218. In the concluding paragraph in the narrative details section of COPS Event E6294070, SC Cooper wrote:

> Police do not hold fears of safey [sic] and are of the belief that this maybe a premeditated attempt [to] influence some future family court and divorce proceedings.

219. SC Cooper relevantly completed the General Event Details as follows:

a. The incident type was recorded as a “Domestic Violence – No Offence”.

b. The further classification was recorded as “No Offence Detected”.

c. The clear up / status date was initially filled in as “under investigation”, and then was updated the following day as “No further investigation – 30/12/2016” and the reason given was “All Reasonable Enquiries Compl”.

d. The “AVO Applied for by” field was left empty; and

e. John was recorded as a “Person Named”.

220. The DVSAT Pre Questions 1, 2, 7 and 8 were answered “No”. This means that:

a. Q1: no Integrated Licensing System (“ILS”) check was done;

b. Q2: no enquiry was made regarding the presence of a firearm in the dwelling or any other location; and

c. Q7 and Q8: the entry erroneously recorded that no children under the age of 18 were present, a witness to, or residing with a party involved in the incident despite the fact that one or both of Jack and Jennifer were present during (and were the subject of) the alleged incidents.

221. The following answers were relevantly given to questions in Part A of the Threat Identification Checklist:

a. Q7: Is your partner jealous towards or controlling of you? A. Yes.

b. Q8. Is the violence or controlling behaviour becoming worse or more frequent? A. Unknown.

c. Q10: Does your partner control your access to money? A. No.

d. Q11: Has there been a recent separation (in last 12 months) or is one imminent? A. Yes.

e. Q14: Does your partner have mental health problems (including undiagnosed conditions) and/or depression? A. No.

f. Q21: Hs your partner ever harmed or threatened to harm your children? A. Yes.

g. Q22: Is there any conflict between you and your partner regarding child contact or residency issues and/or current Family Court proceedings? A. Yes.

222. Additionally, in Part B of the DVSAT, SC Cooper answered Questions 4-6 as follows:

a. Were there children present or witness to the incident? A. No.

b. If yes, did you sight them and check on their welfare? A. No.

c. Are there any additional factors, circumstances or details that you are aware of, which make you believe overall there is a serious threat to the safety of the victim or children? A. No.

223. The following matters were also not recorded as part of COPS Event E6294070:

a. no “Child at Risk” Incident was created; and

b. no statement was taken from Olga.

Errors in the creation of COPS Event E6249070

224. I find that COPS Event E6249070 and DVSAT contain a number of errors on their face.

225. First, the incident was erroneously recorded as “Domestic Violence - No Offence Detected”. However, Olga disclosed to SC Cooper, and the Narrative Details record, three alleged assaults by John against Jack and Jennifer. Both SC Cooper and CI McDermott agreed in their oral evidence that the incident should have been recorded as “Assault - Domestic Violence”.

226. Sgt McCaffery’s evidence, in contrast, was that the incident should not necessarily be recorded as an assault without further investigation. I am of the view that the three allegations of conduct that could amount to an assault by John against Jack and Jennifer are evident on the face of the narrative field, and I accept the evidence of SC Cooper

and CI McDermott's evidence on this point.

227. In her statement to the coronial investigation team, SC Cooper explained that she did not record the allegations as assaults at the time because she was of the view that there was a lack of evidence, and that "if Olga had returned to the Police Station with her children Jack and Jennifer, I could have gained further evidence … and started an investigation into the Incident and updated the police event".

228. SC Cooper's reasoning at the time was flawed. However she ultimately accepted in her oral evidence that what Olga disclosed was sufficient for her to have recorded the incidents in COPS as alleged assaults against Jack and Jennifer. She also accepted that, consistent with the 2012 DVSOPs, the Event was required to be recorded as an assault, irrespective of whether the investigation went any further and that if more information was needed, the obligation to undertake a "thorough investigation" and "reasonable enquiries" lay with her.

229. Secondly, Olga was incorrectly recorded as the "Victim". In her statement to investigators, SC Cooper said that she did not record Jack and Jennifer as victims because the incident was over 12 months old and they were not present at the time of the report. However, neither of those factors is relevant to determining the identity of the victim. SC Cooper now accepts, appropriately, that the victims should have been recorded as Jack and Jennifer.

230. Thirdly, the start date for the incident was erroneously recorded as 11 March 2016. The alleged assaults occurred in 2015.

231. Fourthly, Questions 7 and 8 of the DVSAT pre-questions, and Question 4 of Part B of the DVSAT, were incorrectly answered "no". They should have been answered "yes" because children (i.e. Jack or Jennifer) *were* present during the alleged assaults. I note the evidence of CI McDermott to the effect that, had these questions been answered correctly, a separate mandatory reporting guideline enquiry would have been generated. Whilst SC Cooper told investigators she "generated these answers based on the information given to me by Olga at the time" I agree with the submission of counsel assisting that this cannot be correct, because Olga did disclose that her children were present during the alleged assaults. SC Cooper properly conceded during her oral evidence that this was an error.

The failure to carry out reasonable enquiries

232. In addition to my findings as to the errors set out above, I am also satisfied that the evidence shows that reasonable enquiries and a thorough investigation were not undertaken before the Event was finalised as requiring "no further investigation". The basis for this finding is set out below.

233. First, police did not interview, nor take proactive steps to interview, Jack, Jennifer or John. SC Cooper and CI McDermott agreed that undertaking reasonable enquiries and a thorough investigation should have involved taking steps to speak with the children, whether or not Olga brought them back to the station. SC Cooper also accepted that reasonable enquiries and a thorough investigation should have involved speaking with John.

234. Sgt McCaffery agreed that Jack and Jennifer should have been interviewed, but his evidence was to the effect that the police were not required to do anything further once Olga did not return with the children.

235. Counsel for Sgt McCaffery characterised the divergence in the evidence of Sgt McCaffery and CI McDermott on this point as a "difference of opinion" as to what making "all reasonable enquiries" might entail. Whilst I accept the submission that CI McDermott and Sgt McCaffery's views may arise because of their varying responsibilities, Sgt McCaffery's evidence on this point overlooks the risk that may be involved in a victim of domestic violence going to the police. His position is also undercut somewhat by the prominence given to the need to undertake reasonable enquiries in the DVSOPs.

236. For these reasons I do not accept the evidence given by Sgt McCaffery, and rather accept the submission of counsel assisting, supported by the evidence of CI McDermott that, once Olga did not return with the children, the police were required to take proactive steps to speak with them.

237. Secondly, the audit report that shows SC Cooper's activity in the COPS database on 29 December 2016 indicates that she did not undertake a comprehensive search of John's CNI history on COPS. In short, the audit report shows that in the course of creating Event E62494070, she looked at John's CNI 4981408 on multiple occasions but only looked at the most recent events linked to that CNI, dating from 2016. However there were events linked to John's CNI 4981408, which dated from pre-2016 and which disclosed a history of domestic abuse and apprehended violence orders, albeit with no criminal convictions.

Had SC Cooper reviewed events that were linked to John's CNI 4981408 and which pre-dated 2016, SC Cooper would have seen:

a. the AVO taken out on behalf of Ms C on 17 December 1993;

b. the assault charge and AVO in relation to Ms D from May 1998;

c. the AVO taken out on behalf of Ms F in 15 August 2000; and

d. the AVOs taken out on behalf of JC on 17 and 31 May 2011.

238. CI McDermott's evidence was that a detailed search of John's history was not necessary at the initial stages of the investigation, but it would be relevant to any application for an AVO at that point. I accept this evidence but also note that his evidence was that it is best practice for a search of the COPS database to be conducted in relation to an aggressor in an alleged domestic violence incident.

The final paragraph of the narrative field

239. SC Cooper gave evidence that the only reason she included the final paragraph in the Narrative Details field was due to the existence of family law proceedings between Olga and John at the time of the report. SC Cooper rightly accepted that, in hindsight, this ought not have played any role in determining whether to undertake further investigative steps. Sgt McCaffery similarly agreed that the existence of the family law proceedings was irrelevant to investigating an allegation of assault.

240. SC Cooper presented as a credible witness, and appropriately acknowledged shortcoming in her involvement in the report made by Olga on 29 December 2016. She ultimately accepted that her rationale for including the final paragraph was flawed, in particular that she relied on both the delay in reporting the incidents and the existence of family law proceedings to conclude that the underlying allegations were false. She also accepted that there may be very good reasons why the allegations might only be disclosed after the relationship ended.

241. CI McDermott's agreed with the proposition put to him by counsel assisting that there may be very good reasons why a report of allegations of assault may be delayed until after the conclusion of family law proceedings. He also agreed that the allegations should not have been disregarded without first speaking with Jack and Jennifer, after which a notation of this kind may be warranted – ie. at the *end* of the investigation - and with appropriate detail and a rationale for the conclusion reached. His view was there was no

basis to include a paragraph of this kind based on the mere existence of family law proceedings; particularly given the early stage (or lack) of investigation.

The appraisal of Sergeant McCaffery

242. As noted above 29 December 2016, Sgt McCaffery was the mobile supervisor at Hornsby Police Station. At some point that day, SC Cooper spoke with Sgt McCaffery in relation to the report by Olga. She said that Sgt McCaffery agreed with the actions she took in relation to this event, although Sgt McCaffery did not have a clear recollection of the conversation. Sgt McCaffery gave evidence that he would expect that a sergeant would be consulted in this kind of situation: "it's in the template they use for those types of incidents. It asks a specific question about a supervisor being - either attending the scene or spoken to by phone. It's one of those things that they do have to do."

The verification process

243. On 30 December 2016, Sergeant Richard Jackson was the station supervisor at Hornsby Police Station between the hours of 6.00am and 6.30pm. He verified Event E62494070 on 30 December 2016.

244. The audit report produced by police as to Sgt Jackson's activity in the COPS database on 30 December 2016 provides that he reviewed and verified Event E62494070 in well under two minutes, and did not access it at any other point.

245. CI McDermott gave evidence that it would not be possible to verify the event properly within this time. In his estimation, it would take 10-15 minutes. CI McDermott also gave evidence that he would expect a verifier to detect: that the children were not recorded as the victims; the erroneous date of the incident; the incorrect categorisation of the incident; and the erroneously answered DVSAT questions. CI McDermott said that the verification and "clear up status" of this Event (see [219(c)]) was inconsistent with the requirements to: properly record an incident related to allegations of criminal assault; respond appropriately to the DVSAT questions; and to conduct an investigation into the allegations of criminal assault.

246. Sgt Jackson gave a statement to the coronial investigation team in which he said that he "reviewed the event, read the event narrative and went through the domestic violence checklist within the event incident and deemed this event to contain sufficient information for me to verify". However, in oral evidence, Sgt Jackson candidly accepted the above

errors, and said that he “should’ve done certain things that I didn’t do”. He also accepted that the next obvious investigative step was to speak to the children.

247. Sgt Jackson candidly accepted that the verification was “obviously rushed” and was “inadequate”. He accepted that two minutes was an inadequate period in which to verify the Event, although he did not accept that it would take 10-15 minutes as indicated by CI McDermott. Counsel for Sgt Jackson submits that I should prefer his evidence over that of CI McDermott, given his general experience and his regular work as a station supervisor, particularly in light of the competing priorities dealt with in the course of a shift.

248. Sgt Jackson said in his statement that in verifying Event E62494070, he paid “particular attention” to the final paragraph in the Narrative Details, which indicated that the officer who took the report held no fears for the safety of any party involved in the matter, and that the person reporting the matter was in some way trying to influence future family law proceedings. He accepted in oral evidence that the mere existence of family law proceedings was irrelevant, and was not an appropriate basis for that paragraph being included in the narrative. He also accepted that, without knowing the basis on which SC Cooper had included that paragraph, it was not appropriate for him to rely on it in verifying the Event. CI McDermott similarly gave evidence that this should have been irrelevant to the verification process, no weight should have been placed on it, and that it would have been appropriate for the verifier to query the inclusion of that paragraph at such an early stage of the investigation.

Issues 14 to 16 on the Issues List

Issue #14: Was COPS Event E62494070 created, recorded and verified appropriately taking into account all policies, procedures and guidelines in place in 2016/2017?

249. On the basis of the analysis and findings set out above, I find that COPS Event E62494070 was not created, recorded or verified in accordance with the relevant procedures and guidelines in place at the time.

Issue #15: If COPS Event E62494070 was not created, recorded and verified appropriately taking into account all policies, procedures and guidelines in place in 2016/2017:

(a) What additional information, if any, should have been obtained?

250. I agree with the submission of counsel assisting that in order to adhere to the relevant

policies and procedures in place at the time, officers should have interviewed Jack and Jennifer, and depending on the outcome of those interviews, then interviewed John. I also find that officers should have carried out a more comprehensive search of John's CNI history on COPS. This routine task would have revealed highly relevant information about previous domestic abuse and AVOs which may have assisted all the officers involved to make a more considered assessment as to the appropriate next steps.

(b) What additional investigation, if any, should have been carried out?

251. On the basis of the above analysis, I agree with the submission of counsel assisting that police ought to have taken proactive steps to interview Jack and Jennifer, and perhaps John.

(c) How should the Event have been recorded in COPS?

252. As set out at [224]-[231], the incident should have been recorded as "Assault – Domestic Violence", the victims should have been recorded as Jack and Jennifer, the incident date should have commenced in 2015, and several questions in the DVSAT should have been answered "yes" because children (i.e. Jack or Jennifer) were present during the alleged assaults. Additionally, I find that the last paragraph of the narrative field was pre-emptive should not have been included at all.

(d) How should the verification process have been carried out?

253. It is troubling that Sgt Jackson did not detect the various errors on the face of the Event and resubmit it for SC Cooper for correction, which is plainly the process that ought to have occurred.

254. Given the length of the narrative and the multiple allegations made therein, I find that the review and verification of Sgt Jackson was wholly inadequate in the circumstances and I accept the evidence of CI McDermott that it should instead have taken 10-15 minutes, given the analysis that was required of Sgt Jackson. This is not a finding arrived at with the benefit of hindsight (as warned against by counsel for Sgt Jackson), or as a result of the ultimate outcome. Rather, it is based on an objective analysis of the circumstances at the time, and the applicable policies and procedures, which were not adhered to by Sgt Jackson.

255. Had Sgt Jackson properly reviewed the contents of the Event he ought to also have

identified that reasonable enquiries had not been carried out, which was a requirement of the DVSOPs in force at the relevant time.

256. As already set out above, I also find that the content of the final paragraph of the narrative was inappropriate, and should have been identified as such (or at least queried) by Sgt Jackson. Given the very short period of time Sgt Jackson spent reviewing the Event, and his evidence that he paid "particular attention" to the concluding paragraph, I am of the view that the inclusion of this paragraph was material factor in Sgt Jackson failing to make a properly considered assessment of the matters alleged by Olga.

(e) What, if anything, would have occurred differently as a result of appropriately creating, recording and verifying the Event.

257. I find that had the Event been correctly recorded, it would have resulted in at least two, and potentially three, material differences:

a. First, if Questions 7 and 8 of the DVSAT pre-questions, and Question 4 of Part B of the DVSAT questions, had been answered correctly, a separate mandatory reporting guideline enquiry would have been generated.

b. Secondly, if the incident had been categorised correctly as "Assault – Domestic Violence", it would have appeared in the CNI Report for John Edwards subsequently generated by the Firearms Registry.

c. Thirdly, if Jack, Jennifer and John had been interviewed, and a comprehensive search of John's CNI number 4981408 done, it may have resulted in charges being brought against John, or an AVO application being commenced by police.

Issue #16: How would COPS Event E62494070 be created, recorded and verified taking into account all current legislation, policies, procedures and guidelines?

258. I accept the submission of counsel assisting that if COPS Event E6249070 was created today, it ought to be created, recorded and verified in the exact same way that I have found it ought to have been done on 29 December 2016.

The creation and verification of COPS Event 64217768

259. I make the following factual findings in relation to COPS Event E64217768.

8 February 2017: John stalked Olga at her yoga class

260. Olga was a regular attendee of Bikram North West Yoga at West Pennant Hills. From

late 2012 or early 2013, Olga attended around three classes a week. Yoga was a place where Olga felt “very safe, very comfortable”. She used to call it a “sanctuary”.

261. In December 2016 or January 2017, some 9 or 10 months after John and Olga separated, John also started attending classes at Bikram North West Yoga. The records show that he started attending in January 2017 and attended a total of 21 times from January 2017 until 8 February 2017. There is a minor discrepancy in the evidence on this point: John sent a letter to Olga in December 2016 (which Olga did not read) stating that he had started attending yoga. However this inconsistency is immaterial. The important point is that either date (December 2016 or January 2017), was well after he and Olga had separated.

262. Oliver Campbell has been the co-owner and a teacher at Bikram North West Yoga at West Pennant Hills since 2009. Mr Campbell’s evidence is that after John started attending yoga, Mr Campbell usually saw him in his classes on Tuesdays at 9.45am and Saturdays at 8.00am. Mr Campbell was unaware that John was Olga’s ex-husband and described John as being out of condition and noticed he struggled in the class. Mr Campbell had the impression that John was not there to exercise as he appeared to be distracted. Mr Campbell said that “as most of the students were female I got the feeling that John Edwards was a pervert and was only at the classes to look at women”.

263. On 8 February 2017, Olga attended her usual yoga class at 6.00am, entering the room and laying down on her mat. At about 6.00am, Mr Campbell entered the room and said good morning and turned on the light. He noticed that Olga was to his right in the front row, and John was in the class in the back row, behind Olga.

264. Olga described that when she stood up on her mat and looked in the mirror in front of her, she saw John standing about 2 metres behind her, staring at her in the mirror. She caught Mr Campbell’s attention and said quietly "My ex-husband is here I need to go". Olga quickly left the room, telling police she was “really freaked out and scared and I drove straight to Hornsby Police to report what had just happened”.

265. Mr Campbell had a policy that students were not to leave the room once a class started, so he knew that something serious must have occurred for Olga to leave. At the time, he thought that Olga said to him “my neck”, but in hindsight, he believes that Olga was saying “my ex”. That is consistent with Olga’s evidence, and I accept that evidence.

266. John remained in the class and Mr Campbell noticed that he appeared distracted, and was looking around the room. He decided to speak to John after the class and ask him not to return. After the class ended, Mr Campbell approached John and said, “I don't know what you are here for, but you are making people uncomfortable. Please don't come back”. At the time, Mr Campbell was still not aware that John was Olga’s ex-husband. John did not respond and left, and Mr Campbell did not see him again.

267. At about 10.00am, Olga called Mr Campbell and told him that she left the class because John was in the room. Mr Campbell said she was “very upset and teary on the phone”. Mr Campbell then made the connection that the “old man that I had asked to leave and not come back” that morning was Olga’s ex-husband, John. Mr Campbell assured Olga that John would not be returning to the class.

268. To the best of Mr Campbell’s knowledge, and according to the available records, the 6.00am class on 8 February 2017 was the first time John and Olga had attended the same class. That is consistent with what Olga disclosed to the police that morning.

Olga attends Hornsby Police Station

269. On 8 February 2017, then Constable Rowan Kingdon was rostered to perform station duty at Hornsby Police Station between the hours of 6.30am and 1.00pm. Constable Kingdon had been a confirmed constable for less than six months.

270. At 6.40am, Olga attended the police station to report that John was following her. Constable Kingdon made the following notes:

> Turned up at yoga class this morning. He didn’t talk at me. Just stared. Was there for two minutes. This is the first time.

271. Constable Kingdon’s evidence was that Olga “seemed angry but was not afraid”. He created COPS Event 64217768 that same day. The narrative field included the following information:

> About 5:55am Wednesday 8 February 2017 the [Person Reporting] was attending her Yoga class at LOI when the [Person Named] her ex-husband turned up at the class . The PR does not have a [sic] ADVO against the PN. The PN did not attempt to talk the PR or make any physical contact with the PR. This is the first time the PN has turned up at the PR yoga class.

> The PR and PN have current family law court orders in place for their two children to which the PN has not breached.
>
> Police explained to the PR that no offence had occurred. Police fully explained the ADVO process to the PR and explained to her that it did not meet the requirements for further action at this stage. The PR wanted a record that she had reported the incident.

272. Constable Kingdon relevantly completed the Incident Details as follows:

    a. The incident type was recorded as an "Occurrence Only".

    b. The clear up / status date was recorded as "No further investigation – 8/02/2017" and the reason given was "All Reasonable Enquiries Compl".

    c. John's name was included in the free-text Narrative Field, but not in the specific "Person Named" / "Person of Interest" fields.

273. On 9 February 2017, Constable Kingdon telephoned John and asked him what he was doing at the class. John claimed that Olga was stalking *him*. He claimed Olga must have known he had gone into the class before her, but still attended. John also told Constable Kingdon "he had been going to the class before their divorce and had continued after". All of the available evidence indicates that this was untrue. Indeed, even on John's own account, provided elsewhere, he had started attending in late 2016.

Errors on the face of COPS Event 64217768

274. I am satisfied that Event E64217768 contains three errors, as set out below.

275. First, John's name was only recorded in the Narrative Field, not in the "Person Named" field. The failure to record John's name correctly in the "Person Named" field meant that Event E64217768 was not linked to any of John's CNI numbers, with the consequence that any future search of John's name in COPS would not return any link to this Event. As at 8 February 2017, John had 9 separate CNI numbers.

276. Secondly, Constable Kingdon did not record all relevant information in the Event. He accepted in oral evidence that the fact that John had been staring at Olga, and Olga left after two minutes (matters he recorded in his notebook) were important parts of the interaction. There is also no reference to Constable Kingdon's conversation with John. The only references to that conversation appear in correspondence from John's lawyer

to Olga's lawyer, an affidavit filed by John in the family law proceeding, and in Constable Kingdon's later statement to the coronial investigation team.

277. Thirdly, Olga was not recorded correctly in the Event. Her name was only recorded as a Person Reporting and not a Victim.

The failure to carry out reasonable enquiries

278. In addition to the errors which appear on the face of the Event, I agree with the submission of counsel assisting that the available evidence indicates that reasonable enquiries and a thorough investigation were not undertaken before the Event was finalised as requiring "no further investigation".

279. Constable Kingdon did not conduct any searches of John's name in the COPS database, a matter that he conceded in his oral evidence at the inquest. This is consistent with the audit report of his activity in COPS on 8 February 2017. In fact, an audit of COPS confirms that no employee from the NSWPF conducted any checks on any of John's CNI numbers in the period from 8 February 2017 to 28 February 2017.

280. If a COPS search on John had been carried out by Constable Kingdon, it would have shown four previous AVOs against John taken out by three of his previous partners between 1993 and 2000, and crucially, the provisional AVO taken out to protect JC in 2011 in response to allegations of stalking against John. CI McDermott said that John's behaviour in attending JC's open house was "quite unusual", and "that to me would indicate this guy is a bit of a worry". He also said that his behaviour at the yoga studio was "not innocuous". Constable Kingdon accepted that, had he seen the prior stalking allegation in relation to JC, it may have sent the investigation "in a completely different avenue".

281. Further, there was an obvious inconsistency in the information Constable Kingdon had been given by Olga (that this was the first time she had seen John at yoga) and the information provided by John (that he had been attending yoga since before the divorce). CI McDermott agreed that as part of carrying out his investigation, Constable Kingdon should have sought to ascertain the respective yoga attendance patterns of Olga and John. A reasonable next step would have been to speak to the yoga studio.

282. Had that been done, Constable Kingdon would have learned that, in contrast to Olga, who had attended yoga almost 800 times since 2012 or 2013 almost 800 times, John

had only been attending yoga for a month. Constable Kingdon said that it would have been a “red flag” if he had known that John had only started attending in the past couple of weeks, and had not attended before the divorce, and that he had been asked not to return to the studio because of his behaviour in class. Constable Kingdon would also have learned that John lied about the length of time had had been attending yoga since before his divorce from Olga.

283. Constable Kingdon acknowledged that, had he become aware of these matters, as well as the prior allegation of stalking by JC, his investigation would have gone in a completely different direction because once those factors were taken into account, the incident Olga had described should “absolutely” be characterised as stalking. CI McDermott similarly agreed that with the benefit of those additional pieces of information, the Event would be recorded as a stalking/intimidation offence.

284. Constable Kingdon accepted that, had he formed a suspicion or belief at the time as to the stalking/intimidation offence, he was obliged to take steps to apply for an AVO. CI McDermott similarly said that while he did not consider there was sufficient information for a charge to be brought, the additional information that would have been uncovered (had reasonable enquiries been undertaken) would have been sufficient for an AVO.

The appraisal of Sergeant Ronning

285. Constable Kingdon spoke to his supervisor, Sergeant Sean Ronning in the course of creating Event 64217768 to determine whether the incident should be escalated, whether there was more investigation required, and how it should be recorded in COPS. Constable Kingdon said that he would have told Sgt Ronning what had been presented by Olga, Sgt Ronning would have asked him a series of questions to make sure that he covered all bases, and then Constable Kingdon would have asked for guidance as to how to characterise the incident in COPS.

286. Sgt Ronning agreed that when approached by a junior officer in relation to a domestic incident, his role was to “say mental checklist in the head, and I know a checklist came in 2017 but have you done this, this, this and this as well”. Sgt Ronning’s evidence was that, in investigating an incident, he would speak to the parties and attempt to speak to any other witnesses. He agreed checking someone’s background history was “very relevant” and that any prior allegations of stalking should be looked at.

287. There is a tension between the evidence of Constable Kingdon and Sgt Ronning as to

the precise content of the appraisal. On the one hand, Constable Kingdon said that he would have run Sgt Ronning through the information presented by Olga. On the other hand, Sgt Ronning said that, if he was aware that John had been staring at Olga, that she left after two minutes and came straight to the police station, those would have been "red flags" as to John's conduct. The inference I draw from Sgt Ronning's evidence is that he was not told those particular matters (which, tellingly, are the same matters Constable Kingdon noted in his notebook but did not transfer to the narrative). However both witnesses were credible and readily made appropriate concessions in their oral evidence. Given the brevity of the encounter, as well as the time that has passed, I am not able to find that Constable Kingdon's witness's recollection was sufficiently clear as to warrant the acceptance of his account, nor the rejection of Sgt Ronning's evidence on this point.

Errors in the verification of COPS Event 64217768

288. At 11.22am, Sgt Ronning resubmitted the event to Constable Kingdon and asked if Constable Kingdon had explained the ADVO process to Olga. At 5.05pm, Sgt Ronning verified Event 64217768 as an "Occurrence Only". He said he could "only go off what was written in the event which wasn't much".

289. Sgt Ronning candidly accepted that it was an oversight that he verified the event without asking Constable Kingdon to record the details of John in the "Person Named" field. He explained that the verification was completed at 5.05pm, towards the end of the shift when it is usually extremely busy. CI McDermott's also gave evidence that the Event ought not have been verified without John being identified as a 'Person Named'.

Issues 17 to 19 on the Issues List

Issue #17: Was COPS Event E64217768 created, recorded and verified appropriately taking into account all policies, procedures and guidelines in place in 2016/2017?

290. On the basis of the factual findings I have made above, I am of the view that COPS Event E64217768 was not created, recorded or verified according to the procedures and guidelines in place at the relevant time. I also find that officers failed to undertake reasonable enquiries or a thorough investigation, both of which are underpinning principles of the DVSOPs.

Issue #18: If COPS Event E64217768 was not created, recorded and verified appropriately taking into account all policies, procedures and guidelines in place in 2016/2017

(a) What additional information, if any, should have been obtained?

291. I agree and accept the submission of counsel assisting that Constable Kingdon ought to have spoken with the yoga studio once he identified the discrepancy in John and Olga's accounts as to their respective attendance. He should also have conducted a CNI check on John.

(b) What additional investigation, if any, should have been carried out?

292. I find that the investigative steps set out above in [291] should have been carried out.

(c) How should the Event have been recorded in COPS?

293. I am satisfied that had reasonable enquiries and a thorough investigation been carried out: the Event should have been recorded as a "Stalking/Intimidation" offence, (see [278] to [284] above); John should have been recorded as a "Person Named" or "person of interest"; and the narrative field should have included all of the information Constable Kingdon obtained from Olga and recorded in his notebook, as well as the information obtained from John and the yoga studio.

(d) How should the verification process have been carried out?

294. As conceded by Sgt Ronning, he should have identified during the verification process that John was not recorded as a "Person Named" in the incident field. In relation to the failure to undertake further and reasonable enquiries, because the narrative of the Event did not contain all relevant facts which might otherwise have raised "red flags" for Sgt Ronning, I am of the view that no criticism ought to be made of him for failing to resubmit the matter to Constable Kingdon to undertake those enquiries.

(e) What, if anything, would have occurred differently as a result of appropriately creating, recording and verifying the Event?

295. I agree with and accept the submission of counsel assisting that two things would have occurred differently if the Event had been created, recorded and verified correctly:

a. First, if reasonable enquiries had been carried out, the additional information then obtained would have been sufficient for an AVO (although not a charge). As set out later in these findings, an AVO in place against an applicant for a firearms licence is a reason for a mandatory refusal.

b. Secondly, if the matter been characterised correctly as “stalking/intimidation” and if John had been correctly identified as the "Person Named” in the incident field, the matter would have shown up in the CNI Report generated by the Firearms Registry, reviewed as part of the consideration of John’s licence application.

Issue # 19. How would COPS Event E64217768 be created, recorded and verified taking into account all current legislation, policies, procedures and guidelines?

296. I find that if COPS Event E64217768 was created today, it should be created, recorded and verified in the exact same way that it ought to have been done on 8 February 2017.

Analysis and recommendations re the police response to domestic violence allegations

297. Based on the documentary and oral evidence, I find that the errors in the investigation, recording and verification of COPS Events E62494070 and E64217768 were numerous and significant. Errors by the OICs (SC Cooper and Constable Kingdon, respectively) were compounded by further errors by the verifying supervisors (Sgt Jackson and Sgt Ronning, respectively).

298. The cause of these errors is explored below, along with recommendations that are made in an effort to minimise the likelihood of similar errors in the future. I note and wish to acknowledge that the officers involved in these incidents have expressed their support for recommendations directed to this purpose.

Policies and procedures were in place

299. As will be evident from these findings, the evidence does not suggest that the errors were caused by an absence of appropriate policies or procedures. The 2012 and 2018 DVSOPs are clear, extremely comprehensive and available to all police on their intranet. As to procedures, the two-stage verification process was designed to detect and prevent the types of errors that occurred in the investigation and creation of COPS Events E62494070 and E64217768.

300. Rather, I find that the failures in this case involved non-compliance with, or failures of, these existing policies and procedures.

The OIC's errors were not caused by excessive workload

301. CI McDermott gave evidence that workload of police officers assigned to the front counter, who complete extensive administrative duties, including taking bail reports and answering the phone, as well as dealing with requests and reports from the public, can impact on the service provided to victims of domestic violence. CI McDermott's evidence was that this often inhibits the creation of full and complete records, or speaking with the offender, or taking immediate action.

302. Whilst I accept this evidence, I am not satisfied that this was a factor in these particular instances. Neither SC Cooper nor Constable Kingdon said their workload contributed to the errors in the investigation and recording of the respective COPS Events.

303. Even if that had been an issue, CI McDermott gave evidence that police are in the process of co-locating support services at police stations to increase the support and response provided to victims of domestic violence. This will provide an additional, non-police resource to assist a domestic violence victim when they came into a police station, and is a welcome initiative.

304. CI McDermott also gave evidence that police have improved their internal messaging to remind police officers of the importance of offering an appropriate response to victims of domestic violence who report at police stations, including the display of a poster inside police stations to remind officers of the importance of their response.

The OIC's errors were not caused by the complexity of the COPS database

305. Whilst I accept the evidence of CI McDermott that at the relevant time, the COPS database required a significant quantity of data to be captured and was not conducive to a quick search of an persons' domestic violence history, there is no evidence this was a factor in any of the deficiencies in the creation of Events E62494070 or E64217768.

306. In any event, the NSW Police Force has made a number of changes to COPS since 2018 as a result of recommendations made in 2017 by the NSW Domestic Violence Death Review Team, including the introduction of a "DV Summary" in 2018, which allows an officer to click on a single field to obtain a concise overview of a person's prior involvement in domestic violence matters, including domestic violence events, AVOs and ADVOs. This search function may have prompted SC Cooper to look further into John's history of domestic abuse allegations and AVOs, although it would have made no

difference in the case of Constable Kingdon, who did not perform a search for John's CNI number in the first place. CI McDermott gave evidence that further changes are planned as part of the phasing out of COPS and the introduction of the "Integrated Policing Operations System".

The training received by SC Cooper and Constable Kingdon

307. NSW police officers are trained at the Academy in the fundamentals of domestic violence, as reflected in the DVSOPs. Police officers also undertake ongoing training in relation to the DVSOPs, by two means. First, training is provided by the Domestic and Family Violence Crime Prevention Training Unit, Secondly, the DFV Team provides training in relation to specific initiatives such as the DVSAT. A number of additional domestic violence-related courses are also available, one of which is the two-day investigation and domestic violence workshop.

308. The evidence at inquest did not suggest that either SC Cooper or Constable Kingdon lacked appropriate basic training in dealing with a walk-in complaint of domestic violence. Rather, it exposed a lack of familiarity with the specific contents of the DVSOPs, and highlighted the need for greater knowledge and more regular, rigorous training in this area.

309. SC Cooper had completed online and face-to-face training in relation to domestic violence allegations, including taking details, investigating further and taking action when necessary. She said she was aware of the existence of the DVSOPs in 2016 but was "not 100% familiar with it", although she was aware that the procedures in it were mandatory. Initially, SC Cooper said "I haven't really read through the whole thing" but then said she would not have read *any* part of the DVSOPs in 2016. Nor had she read any part of the DVSOPs since 2016.

310. I am satisfied that SC Cooper was familiar with at least some of the *substance* of the DVSOPs, albeit not with the document itself. For example, she knew of the requirement that an allegation of domestic violence should be thoroughly investigated. She also understood that a thorough investigation involved talking to other people, asking for documents, and doing a search for the alleged perpetrator's name on COPS to identify that person's CNI number/s and then review any linked events. She understood that the way to identify a prior history of violence, including stalking and intimidation, is through a search of the alleged perpetrator's CNI number on COPS. She also knew that

searching the alleged perpetrator's CNI number was a way to identify whether there were any protection orders in place.

311. SC Cooper was aware that the unwillingness of a victim or other person reporting to provide a statement was not a reason to stop investigating. She knew there were other steps that could be taken. SC Cooper was also aware that the most dangerous time for a victim of domestic violence was after the domestic violence had been disclosed; and that the risk was heightened when the police were involved. She knew that a factor relevant to assessing risk was the fact that the victim had left the abusive home. She also knew that after a victim left an abusive relationship or home, the offender's behaviour may escalate. I am satisfied that she knew all of these matters as a result of her training.

312. SC Cooper was also familiar with the use of COPS, how an Event should be recorded, and the importance of recording the incident correctly in COPS. She understood, for example, that where a person reported an alleged assault, that must be recorded in the COPS database as an assault, even if the investigation goes no further or the victim does not want it to go any further. Relevantly, she understood that the incident category "Domestic violence - no offence detected" should not be used to record an Event containing an allegation of a criminal offence.

313. Despite SC Cooper's familiarity with some of the contents of the DVSOPs and with COPS, the fact that she had not read the DVSOPs, and her erroneous reliance on the existence of family law proceedings (addressed further below), is of significant concern. It indicates that despite the training officers receive in dealing with allegations of domestic violence, there remains (at least in some cases) a gap between the prescribed procedures and the knowledge and implementation of those procedures by officers on the front line.

314. I agree with the submission of counsel assisting that SC Cooper's evidence highlights the need for ongoing, regular and mandatory training to ensure that all police officers are aware of, and comply with, the DVSOPs when responding to allegations of domestic violence. I also agree that SC Cooper's evidence underscored the need to increase accountability measures, such as an audit process that assesses compliance with the DVSOPs across a range of domestic violence cases, including those recorded in COPS as "Domestic violence - no offence".

315. Constable Kingdon gave evidence that he was aware of the 2012 DVSOPs and had read them in February 2017 when Olga attended Hornsby Police Station. As a probationary constable, he received training on domestic violence incidents, including training on the DVSOPs. If he was not sure about something, he would either go to the DVSOPs or speak to a supervisor.

316. Constable Kingdon understood that the 2012 DVSOPs were mandatory. He was aware of the walk-in procedure. He was aware of the obligation to undertake reasonable enquiries and understood that reasonable enquiries included speaking to the alleged victim, the alleged perpetrator and other witnesses. He also understood that as part of undertaking reasonable enquiries, he should review any previous events relating to the alleged offender. He also understood that, if he formed a suspicion or belief than an offence of stalking had occurred, he was obliged to apply for an AVO.

317. Whilst Constable Kingdon was obviously more familiar with the contents of the DVSOPs than SC Cooper, his misinterpretation of the fact pattern described to him by Olga, and his failure to carry out reasonable enquires indicate that further training in responding to allegations of domestic abuse is required – particularly where the conduct alleged involves a contextual crime such as stalking, where there may be no physical violence or even any physical interaction between the victim and the perpetrator.

318. CI McDermott acknowledged the importance of education and training projects, and a culture of continuous improvement in ensuring appropriate investigative responses to allegations of domestic violence. CI McDermott also suggested that there would be “great learning benefit” in using the circumstances that have been analysed in this inquest as a case study to educate officers.

319. The Commissioner’s submissions provide extensive detail as to relevant training that is currently scheduled in relevant areas, and the resources already available to officers in relation to domestic and family violence (which appear to have been available to the officers involved in the incidents analysed above). I accept that there is a need for training to be directed to changing priorities and for resources to be carefully directed, and I also note the review underway as to the mode of delivery of training more generally.

320. However, I also note the information contained in Annexure 3 to the Commissioner’s submissions as to the increase of incidents of domestic and family violence responded to by police in recent years. This indicates a year on year increase of incidents in

2018/2019 of approximately 7%, and in 2019/2020 of approximately 9%. This trend suggests that the ability of officers to adequately respond to incidents of domestic violence will continue to be an important aspect of front-line policing, and lends further weight to the evidence of CI McDermott about the importance of a culture of continuous improvement.

321. Accordingly, I make the following recommendations to the NSW Police Force:

> **Recommendation 2a:** That the NSW Police Force continue to prioritise the inclusion of training modules related to domestic violence and the DVSOPs in annual Mandatory Continuing Police Education training packages.
>
> **Recommendation 2b:** That the NSW Police Force give consideration to the development of a mandatory training package targeted at general duties constables in relation to the DVSOPs and use of the Domestic Violence Safety Assessment Tool.

322. In light of the evidence given by CI McDermott at inquest, counsel assisting proposed a recommendation to the effect that police use the circumstances the subject of this inquest as a training case study to illustrate the importance of accurately recording allegations of domestic violence and stalking, adhering to key provisions of the DVSOPs, accurate and thorough communication between OICs and supervisors, and thorough verification.

323. The Commissioner's submissions provide that, following his evidence at inquest CI McDermott "drafted a suitable case study based upon the factual circumstances of this inquest, which has been submitted to the Education and Training Command for consideration in future D&FV training". In light of this, I am satisfied that the proposed recommendation is not required.

324. Counsel assisting has submitted that in order to ascertain the extent of compliance with the DVSOPs that I make a recommendation in relation the establishment of an independent auditing process, with the results to be published, including information as to any material variation between police area commands and any appropriate remedial steps, if required.

325. The Commissioner submits the evidence at inquest did not indicate that the deficiencies

with compliance with the DVSOPs evidence in this matter are reflective of systemic issues across police area commands more generally. He further submits that independent audits are likely to be burdensome to facilitate, and that the NSWPF "already has internal teams with the capacity to execute audits when necessary". The Commissioner's submissions further note that the DFV Team already carries out limited auditing in relation to domestic violence matters, and that DVLO's complete 'dip sampling' as required by the DVSOPs.

326. Given that the current dip sampling is only used to identify trends and patterns within a particular Police Area Command, and in light of the importance of continuous improvement in the handling of reports of domestic violence, I am of the view that there is merit in that processes being enhanced. Accordingly, I make the following recommendation to the NSW Police Force:

> **Recommendation 3:** That the NSW Police Force give consideration to implementing an annual, comprehensive audit process of officer compliance with the DVSOPs, which includes the results of 'dip sampling' conducted by Domestic Violence Officers in each Police Area Command. The results of the audit should be published and should include information as to any material variations or trends between Police Area Commands, and measures that will be taken to resolve any concerns.

The cause of the errors by SC Cooper and Constable Kingdon

327. For the reasons that follow, I find that the errors in the investigation, creation and verification of COPS Events E62494070 and E64217768 were primarily the result of SC Cooper and Constable Kingdon's failure to comply with the DVSOPs, as well as their lack of practical experience in dealing with walk-in complaints of domestic violence.

The actions of SC Cooper

328. Counsel assisting submits that whilst SC Cooper did not deliberately minimise the alleged assaults against Jack and Jennifer, her approach to the investigation and recording of Event E62494070 was unjustifiably influenced by the view she formed that Olga's report was potentially an attempt to influence the future of the family law proceedings between her and John. As will be plain from the foregoing, that approach was directly contrary to the DVSOPs.

329. SC Cooper gave evidence that she was aware that the mere existence of family law proceedings was not an excuse not to respond appropriately to an allegation of family violence. Nevertheless, SC Cooper conceded that was the only reason why she included the final paragraph in the narrative field, in the absence of any other information to support this assessment.

330. I accept the submission of counsel assisting that SC Cooper's erroneous focus on the family law proceedings is most apparent from the fact she misrecorded the identity of the victims in COPS, as it reflects the fact that she was considering the issue through the prism of an attempt by Olga to influence family law proceedings, rather than Jack and Jennifer being the victims of three alleged assaults. I also accept that SC Cooper's erroneous focus on the family law proceedings is apparent from the fact that she recorded the date of the incident as 11 March 2016 (which was when Olga, Jack and Jennifer moved out of 33A Harris St Normanhurst), rather than the date of the alleged assaults. I am in turn satisfied that these two errors also caused SC Cooper to mischaracterise the incident as "Domestic Violence – No Offence", and to wrongly put the onus on Olga to facilitate interviews with Jack and Jennifer.

331. Similar to SC Cooper, Sgt Jackson accepted in oral evidence that the mere existence of family law proceedings was not an appropriate basis for the final paragraph being included in the narrative field, and that it was not appropriate for him to rely on it in verifying the Event, although he plainly did. Given that both SC Cooper and Sgt Jackson were aware of the substance of the 2012 DVSOPs on this point, and yet still allowed themselves to be influenced by the existence of family law proceedings, I find that the evidence indicates that there is still not complete alignment between the principles set out in the DVSOPs on this point, and the decisions being taken by frontline police officers dealing with allegations of domestic violence by victims involved in family law proceedings.

Constable Kingdon

332. Constable Kingdon gave evidence that he formed the view that no incident had occurred on 8 February 2017 because:

> There was no interaction between each parties, it was alleged it was the first time that they had encountered each other at the yoga class, as I said, there was no argument, no physical confrontation. As soon as she saw him there, I was aware she left.

333. I am of the view that this reflects a fundamental misunderstanding of the facts described by Olga, given that Olga had told Constable Kingdon that John was staring at her. Moreover, there was no opportunity for an argument or physical confrontation because Olga left the yoga studio almost immediately and went straight to the police station. I am also of the view that Constable Kingdon misconstrued the relevance of the fact that this was the first time John and Olga had encountered each other at yoga. I agree with counsel assisting that this particular fact should have supported, not undermined, a conclusion that John was stalking Olga. Constable Kingdon ultimately accepted in his oral evidence that the fact that John was staring, and Olga left after two minutes were important parts of the interaction.

334. The effect of the assessment made by Constable Kingdon at the time was that he failed to undertake the further enquiries that would have exposed the true significance of the information Olga had provided. Constable Kingdon also accepted that it was "oversight" on his part that he had not done a search for John's CNI to review any relevant Events, which was contrary to the approach prescribed by the DVSOPs.

SC Cooper and Constable Kingdon were both relevantly inexperienced

335. In relation to the individual errors made by SC Cooper and Constable Kingdon, I am of the view that their lack of experience in dealing with walk-in domestic violence matters was a contributing factor, a matter that was conceded by their counsel in written submissions.

336. SC Cooper was not an experienced General Duties officer. She had been in the bicycle and road safety unit for the entire 13 years she had been stationed at Hornby Police Station, and was only filling in on 29 December 2016 because the station was short staffed. Her lack of specific DV-related experience contributed to her erroneous focus on the family law proceedings and her mischaracterisation of the incident as has been set out above.

337. Constable Kingdon had been a confirmed constable for less than six months. He did the right thing in seeking assistance from Sgt Ronning, but as set out at [283] above, I am of the view that Constable Kingdon did not provide Sgt Ronning with crucial details when doing so. I agree with the submission of counsel assisting that this was another individual, rather than systemic, error, and one that was practically impossible for Sgt Ronning to detect.

338. CI McDermott gave evidence that, ultimately, the most important thing in addressing allegations of domestic violence is that officers on the front line are properly recognising and investigating domestic violence incidents. To achieve this it is necessary that individual police officers are properly trained and their workload is not excessive, and that appropriate policies and resources are in place. The issues arising in this matter also highlight the importance of not placing junior officers with limited experience in a position where they make significant investigative decisions without appropriate input and oversight from their superior officers (including supervisors and/or the DVLO). This was the central deficiency in the police response to Olga; namely, that she interacted with two inexperienced officers who failed to recognise or investigate the domestic violence and staking allegations made by her. This was then compounded by supervisory failures which did not detect and correct those errors.

339. Counsel assisting has consequently proposed that I make a recommendation to the effect that police take steps to ensure that walk-in reports of domestic violence or stalking/intimidation are investigated by officers with appropriate experience in domestic violence-related matters.

340. The Commissioner submits that the proposed recommendation is unworkable due to the procedures that govern the allocation of complaints to officers. The Commissioner also submits that the evidence of CI McDermott as to initiatives already in train recognises the importance of ensuring that 'walk-in' domestic violence reports are appropriately handled. In this regard, I particularly note the information in relation to the pilot program commencing in 2021, wherein advocates from the Women's Domestic Violence Court Advocacy Service are co-located at four to six police stations in NSW to assist people in relation to reports of domestic and family violence. In light of the commencement of the pilot program and the other recommendations made to the NSWPF in relation to reports of domestic violence, I decline to make the proposed recommendation.

341. In light of the findings I have made in relation to the erroneous focus on the existence of family law proceedings by all the officers involved in the recording and verification of COPS Event E62494070, I agree with the submission of counsel assisting that a recommendation ought to be made to amend the DVSOPs to give greater prominence to the so-called 'warning' in relation to family law proceedings. The Commissioner endorsed this proposed recommendation in his submissions, and I note that the introductory paragraphs of the "Domestic Violence and Family Law" chapter of the

revised DVSOPs now include a more extensive version of the 'warning', as follows: .

> Where allegations of domestic violence co-exist with family law issues, police should respond appropriately and investigate the allegations. If an officer wants to express an opinion about the motivation or actions of a person reporting/alleging domestic violence within the event narrative, that officer MUST provide evidence for forming that opinion. Narratives should not contain opinions that are unsubstantiated or without an evidence base (noting that sometimes such opinions appear to only exist to justify the lack of action by police). Unsubstantiated opinions will bring a risk of other police incorrectly using the previous narratives as a basis for their action/inaction despite the lack of an evidence base for the previous comments. The belief that women often make false or exaggerated claims of domestic violence to gain a tactical advantage in parenting proceedings is not supported by research.

342. Whilst this is a welcome enhancement, I remain of the view that the 'warning' ought to be given significantly greater prominence in the DVSOPs by being referenced at an earlier stage therein. For example, the "Initial Complaint Procedures" Chapter (that appears some 120 pages earlier in the DVSOPs) makes brief reference to the relevance of obtaining information as to the existence of any family law orders, and may be an appropriate point at which to set out the 'warning', or at least a cross-reference to it. Consequently, I make the following recommendation to the NSW Police Force:

> **Recommendation 4**: That the NSW Police Force amend the DVSOPs to give significantly greater prominence (and at a much earlier point in the document) to the warning as to the existence of family law proceedings that appears in the "Domestic Violence and Family Law" chapter.

The cause and impact of the errors by Sgt Jackson and Sgt Ronning

343. I am of the view that the errors in verification of COPS Events E62494070 and E64217768 were partly the result of individual errors by Sgt Jackson and Sgt Ronning in failing to comply with the verification procedures set out in the DVSOPs, and partly the result of a broader issue of busy supervisors balancing their obligation to verify Events with other tasks.

344. The errors made by Sgt Jackson in relation to E62494070 are significant and concerning. This was not an incident in respect of which he had any prior knowledge. Unlike Sgt McCaffery, Sgt Jackson had not been appraised of the matter by SC Cooper and was

looking at it for the first time in the verification process. Despite this, Sgt Jackson verified the Event in under two minutes. He therefore cannot have reviewed the narrative, the incident details nor the DVSAT questions with anywhere near the level of attention, or care, that was required. As a result, Sgt Jackson did not detect the numerous errors on the face of the Event; he did not query the lack of investigative steps taken; and as a result of the conclusion arrived at by SC Cooper, he allowed himself to be unduly influenced by the existence of family law proceedings. Sgt Jackson candidly admitted that it was "obviously rushed", and explained that "verifying events in the supervisor's, is not the only thing we do.

345. I accept the submission of counsel assisting that the verification error by Sgt Ronning in relation to E64217768 was more limited, in that he failed to ensure that John was recorded as a "Person Named" in the Event. And whilst I also accept the submission made on Sgt Ronning's behalf as to the limited information available to him during the verification process, it is not the case that the error would necessarily have been avoided by the provision of further detail.

346. Counsel assisting submits that although the error was singular, it nevertheless had significant implications, because it resulted in the Event not being linked to John's CNI number, and would not be revealed by searching his name in COPS. Counsel for Sgt Ronning and counsel for Mr Kingdon submit that this characterisation is imprecise because: the pattern of risk posed by John Edwards was readily apparent from the CNI report ultimately generated by the Registry even in the absence of the information provided by the Event; and that a search for Olga's CNI would have revealed the information.

347. I do not accept this submission made on behalf of Sgt Ronning and Mr Kingdon. Witnesses from the Registry gave evidence to the effect that they effectively discounted (or chose not to review at all) information in COPS that they regarded as "historical". Had this Event E64217768 been linked to John Edwards, it is more likely that it would have been regarded as relevant by adjudication officers at the Registry, given it referred to a report closer in time to John's firearms licence applications. I pause to acknowledge that at the relevant time, the linking of this Event to John Edwards' CNI COPS is unlikely to have had any practical effect on the subsequent adjudications of his licence applications because the overwhelming evidence given by Registry staff was that they only considered matters that were related to mandatory refusal criteria (this is examined in

further detail in Section D).

348. As to the second part of the submission, there was no evidence before me that it was common practice of the Registry to examine the COPS or CNI history of any person other than an applicant. The fact that the Event was linked to Olga's CNI was not of any utility in the context of the review of John's criminal history as part of the licensing application process.

349. Similar to Sgt Jackson's evidence concerning the competing priorities of supervisors, Sgt Ronning explained that the verification was completed at 5.05pm, towards the end of the shift when it is usually extremely busy. When looked at in totality, this evidence points to a systemic issue that, at least in part, contributed to the errors that both supervisors made in the verification process.

350. CI McDermott gave evidence that use of the DV Checklist has never been mandatory because the mandatory fields are already contained in COPS and because it was "not a one-size-fits-all" checklist. CI McDermott further suggested that there might be issues in assessing compliance with the DV Checklist if it was mandatory. However, he ultimately accepted that the DV Checklist could assist with compliance, and that it could be made mandatory so that supervisors understand that they are expected to use it as part of the verification process.

351. Sgt Jackson was shown the DV Checklist during his evidence and said he had never heard of it or seen it before. Nevertheless, after reviewing the DV Checklist, he agreed that it was useful; that it would assist in reducing errors in a verification process; and would have assisted him in detecting and correcting the errors in E62494070.

352. Counsel assisting submitted, consistent with Sgt Jackson's evidence, that the DV Checklist is likely to enhance compliance in a practical, not merely theoretical, way and that to make it mandatory would enhance the likelihood of supervisors using it, even if full compliance cannot be guaranteed. They consequently proposed a recommendation for the DVSOPs to be amended to make it mandatory for supervisors to use the DV Checklist when verifying domestic violence related incidents.

353. The revised DVSOPs have given effect to the proposed recommendation, and a similar version of the DV Checklist is now annexed to the DVSOPs "as a guide to be used by supervisors verifying domestic violence related incidents in COPS". Whilst it is not

explicitly stated that the DV Checklist is mandatory, I note that supervisors are to verify domestic violence related events *if* they are satisfied that all of the matters in the DV Checklist have been completed to a satisfactory level. Further, supervisors are to "resubmit domestic violence matters if they do not comply with expected … standards". In light of this recent amendment, I am of the view that the recommendation proposed by counsel assisting in relation to the inclusion of the DV Checklist in the DVSOPs is now not required.

354. Relatedly, counsel assisting proposed a recommendation that the NSWPF implement regular mandatory training for shift supervisors in relation to the appraisal and verification process for domestic violence incidents in COPS. The Commissioner submits that this is unnecessary because there is "currently no separate training for shift supervisors regarding verification of incidents". The Commissioner also submits that there is no evidence to suggest that supervising officers do not understand how the appraisal and verification process works on a daily basis.

355. Whilst I accept the latter submission, I am of the view that the proposed recommendation is more limited in scope than the submission suggests and there is merit in targeted training being implemented similar to that suggested by counsel assisting, particularly in as the DV Checklist has now been included in the DVSOPs and there appears to be an expectation that it be applied when verifying domestic violence related incidents. The evidence of Sergeant Jackson suggests that this is not currently common practice.

356. Accordingly, I make the following recommendation to the NSW Police Force:

> **Recommendation 5:** That the NSW Police Force develop and deliver a mandatory training module for shift supervisors in relation to the verification of incidents of domestic violence in COPS, including the application of the Supervisor's DV Checklist annexed to the DVSOPs.

357. Based on the evidence of Sgt Jackson and Sgt Ronning regarding the competing priorities of supervisors undertaking the verification of domestic violence related events, counsel assisting has proposed that a recommendation be made to ensure that domestic violence or stalking/intimidation reports are verified by officers with appropriate experience and sufficient time. The Commissioner submits that the NSWPF is already "taking all steps to ensure that its officers and their supervisors are completing COPS Events appropriately and in accordance with policies and procedures", and, in particular

that the DFV Team is in the process of changing verification questions to "put more onus on the supervisors to … sign off that they have checked on the events." In light of this information, the relevant changes documented in the revised DVSOPs, and the other recommendations made in relation to the further training for supervisors, I am of the view that it is not necessary to make a recommendation as proposed.

D. THE FIREARMS PERMIT AND LICENSING PROCEDURE

The firearms licensing regime in NSW

358. The licensing process in NSW is prescribed by the *Firearms Act 1996* (NSW) ("the Act") and *Firearms Regulation 2017* ("the Regulation"). The previous version of the Firearms Regulation ("the 2006 Regulation") was in force until 30 September 2017 and was then replaced with the Regulation (which has been amended over time). Unless otherwise specified, references to clauses in these findings refer to the Regulation, and references to sections relate to the Act.

359. The NSW Firearms Registry ("the Registry"), part of the NSW Police Force, is the regulator charged with the responsibility of administering the requirements of the Act and Regulation.

360. I was assisted at inquest by the evidence of Superintendent Anthony Bell, who commenced as the Commander of the Registry in September 2018. SI Bell provided two statements that were tendered at inquest and also gave oral evidence. All of the other Registry witnesses who provided statements and oral evidence at inquest are or were civilian staff. There are non-publication orders in place in relation to the names of all these civilian staff and they will be identified by their initials in these findings.

361. Since July 2019, SI Bell has led a project initiated by the NSWPF to "transform" the operations of the Registry, in large part in response to the events that are the subject of this inquest. The submissions filed on behalf of the Commissioner state that the aims of the project are to: improve public safety and service delivery for licence holders; improve interaction between the Registry and industry stakeholders; and implement digital solutions in relation to the licensing scheme and various reporting obligations.

Licence categories

362. Division 2 of the Act sets out the licensing scheme for firearms in NSW and prescribes

various categories (s. 8). In each category, a licensee is authorised to possess or use a registered firearm of the kind to which the licence applies, but only for the purpose established by the licensee as being the "genuine reason" for possessing/using the firearm. The categories relevant to these findings are:

a. Category A – air rifles, rimfire rifles (other than self-loading), shotguns (other than pump action, lever action or self-loading) and shotgun/rimfire rifle combinations;

b. Category B – muzzle loading firearms (other than pistols), centre-fire rifles (other than self-loading), shotgun/centre-fire rifle combinations, and lever action shotguns with a magazine capacity of no more than 5 rounds; and

c. Category H – pistols.

Applicable "genuine reasons" for licence categories

363. Section 12 provides that the Commissioner must not issue a licence authorising the possession and use of a firearm unless satisfied the applicant has a "genuine reason" to do so. The genuine reasons include sport/target shooting, recreational hunting or vermin control and vertebrate pest control. The Regulation sets out requirements and stipulations for each genuine reason category.

Additional restrictions on issue – Category B licences

364. Subject to the evidence prescribed by the Regulation, the Commissioner must not issue a Category B licence unless satisfied that there is a "special need" for an applicant to possess a Category B firearm (ss. 13 and 17). The nature of any "special need" is not prescribed by the legislative scheme.

Additional restrictions on issue – Category H licences

365. The Commissioner must not issue a Category H licence unless the genuine reason is one or more of: sport/target shooting; business or employment; or firearms collection (s.16(1)(a)). The applicant must also produce satisfactory evidence that they have a "special need" to possess or use a pistol (ss. 16(1)(b) and 17).

366. A first-time applicant for a Category H licence must have already been issued with a probationary pistol licence ("PPL") and have satisfied the requirements specified in s. 16A. In the first six months of holding a PPL, a licensee is restricted to supervised use of a pistol. In the second six months, a licensee may only acquire a maximum of two pistols (see s. 31(3B)(b)).

367. There are further obligations on the holder of a Category H licence for the genuine reason for sport/target shooting – the holder of such a licence must be a member of at least one approved pistol club and must, during each compliance period, participate in a prescribed number of shooting activities at that club (cl. 106).

Restrictions on issuance of licences applicable to all categories

368. In addition to the establishment of a "genuine reason" and a "special need", a licence must not be issued:

a. unless the Commissioner is satisfied the applicant is a fit and proper person and can be trusted to have possession of firearms without danger to public safety or to the peace: s. 11(3)(a);

b. unless, for a new applicant, the applicant has completed the training and safety courses prescribed by the Regulation in respect of the licence concerned, to the satisfaction of the Commissioner: s. 11(3)(b);

c. if the Commissioner has reasonable cause to believe that the applicant may not personally exercise continuous and responsible control over firearms because of (*inter alia*):

i. the "applicant's way of living or domestic circumstances": s. 11(4)(a), or

ii. the "applicant's intemperate habits or being of unsound mind": s. 11(4)(c);

d. if the applicant comes within any of the restrictions set out in s. 11(5) of the Act (referred to in these findings as the "mandatory refusal factors"). These include:

i. within 10 years of the application being made, the applicant having been convicted of an offence prescribed by the Regulation or subject to a bond in relation to such an offence: ss. 11(5)(b) and (d). Clause 5 of the Regulation prescribes the commission of offences relating to: firearms or weapons; prohibited drugs; public order; assaults against law enforcement officers; sexual offences; fraud, dishonesty or settling; robbery, riot and affray; terrorism; and offences of violence including the infliction of actual bodily harm, kidnapping or abduction, stalking or intimidation or attempts of threats to commit such offences; and

ii. an applicant who is subject to an apprehended violence order or interim apprehended violence order or who has, at any time within 10 years before the application for the licence was made, been subject to an apprehended

violence order (other than an order that has been revoked): s. 11(5)(c).

369. A number of the restrictions set out in s. 11 of the Act are reflected in cl. 129(2) of the Regulation (previously cl. 100(2) of the 2006 Regulation). Clause 129(2) pertains to the requirements in place relating to the exemption for unlicensed persons to undertake firearms safety training courses, and the P650 scheme, which is further explained below.

370. The Commissioner retains a discretion as to whether to issue a licence: s. 11(1).

371. As set out earlier at [224]-[231] of these findings, on the basis of the evidence at inquest I am satisfied that the report Olga made on 29 December 2016 to Hornsby Police ought to have been recorded in COPS as "Assault - Domestic Violence". Such an offence would not be captured by cl. 5.

372. Counsel assisting has consequently submitted that a recommendation be made that the offences in cl. 5 of the Regulation be supplemented because as currently framed, cl. 5 does not capture a domestic violence-related common assault. This submission and proposed recommendation is supported by the Pistol Sport Parties.

373. The St Marys Parties submit that cl. 5 ought be supplemented to include domestic violence offences but that, should personal violence offences also be included in cl. 5 there ought to be a qualification similar to current cl. 5(d)(i), so as to guard against "the most minor personal violence offence, which may not even involve the infliction of any physical contact between parties" being caught by the provision. I have carefully considered the way in which "personal violence offence" is defined in s. 4 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) and am of the view that the provision is already appropriately framed so as to exclude offences of the kind described in the St Marys Parties' submissions.

374. Accordingly, I make the following recommendation:

Recommendation 6: That the NSW Government take steps to update the list of prescribed offences in cl. 5 of the Firearms Regulation 2017 to include any personal violence offences or domestic violence offences defined in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

Firearms Safety Training Courses and the P650 form

375. Prior to submitting an application for a firearms licence, an applicant must complete a firearms safety training course relevant to the category of licence.

376. To be authorised to handle firearms during the training course, a customer must complete a P650 form, which is in the form of a declaration. If the answers to all the questions pertaining to risk on the P650 are 'No', a customer can participate in the safety training course without involvement of the Registry.

377. Section 6B of the Act provides the necessary exemption for an unlicensed person to handle firearms during the training course provided the necessary supervision requirements are met, those being set out in the Regulation at cl. 128 and 129(7) (cf. cl. 109A and 110(6) in the 2006 Regulation).

378. The "Personal History Questions" asked in the P650 form are derived from cl. 129(2) of the Regulation (cl. 110 of the 2006 Regulation). If a person answers "Yes" to any of those questions the trainer must prevent a person from possessing a firearm, and record the name, address and date of birth of the person (see cl. 129(4) of the Regulation (previously cl. 110(4) in the 2006 Regulation). Should the customer wish to undertake the training, the P650 form is sent to Registry for further processing.

379. I agree with the observation made by counsel assisting in their submissions that there appears to be a discrepancy between the questions about mental health as put in the P650 form as opposed to those in the applications for a permit ("P634") or a licence ("P561"), where the questions are broader and appear more appropriate.

Permits

380. Sections 28-32 of the Act deal with the issuance of permits. Permits may be issued, *inter alia,* in order to authorise a person to acquire a firearm, or to authorise possession or use of firearms in circumstances prescribed in the Regulation (eg. paintball, safari, or theatrical purposes).

381. Most relevantly, s. 28(g) provides that the Commissioner may issue a permit "to authorise the possession or use of firearms in such circumstances as the Commissioner considers appropriate". A permit is subject to such conditions as the Commissioner thinks fit to impose (see cl. 25(1) (cf. cl. 24 of the 2006 Regulation)).

382. The threshold requirement for issuance of a permit mirrors that of a licence, centrally, whether the Commissioner is able to be satisfied that the person meets the "fit and proper" and "trusted" criteria (see s. 29(1)).

383. Section 29(3) sets out the same mandatory refusal factors for permits as are applicable to licences (cf. ss. 29(3) and 11(5)).

384. Pursuant to s. 81 of the Act, the Commissioner may delegate a range of functions permitted by the Act and Regulation, including the power to issue permits under s. 28(g). At the relevant time, this power was delegated to the then General Manager of the Registry, who could further delegate the power.

385. At the time John Edwards made his applications for firearms licences, s. 28(g) was the power relied upon by Registry employees to issue a "Commissioner's Permit" to a person who had answered "Yes" to a Personal History Question on the P650. Such a permit enabled that person to undergo safety training at an approved range whilst unlicensed.

2010: John's application for a firearms licence

386. I make the following factual findings in relation to John Edwards' 2010 application for a Cat A/B Firearms Licence ("the 2010 Application").

387. On 10 August 2010, John signed a P561 in relation to the 2010 Application:

    a. In relation to Personal History Question H(f), John answered "No", that he had not, "within the last 10 years been the subject of an Apprehended Violence Order (other than an order which was revoked) or an injunction ordered by the Family Court".

    b. The P561 included a Genuine Reason Form P661 signed by Michael Shepherd, permitting John to shoot on his property in Goulburn; and

    c. Olga witnessed John's signature on the application.

388. On 27 September 2010, John was notified by the Registry that his application was refused pursuant to s. 11(5)(c) of the Act ("the 2010 Refusal Letter"). The basis for the refusal was that John had in fact been subject to an AVO in last 10 years (namely, from 15 August 2000 to 15 August 2003) ("the 2000 AVO").

389. The application for the 2000 AVO (pertaining to Ms F) was served on John by a police officer on 1 August 2000. John was listed as being "present in Court" on 15 August 2000

when he signed the orders that were put in place for a period of three years, ie. until 15 August 2003.

390. When John completed and signed the 2010 Application on 10 August 2010, the 2000 AVO had only been expired for a period of 7 years. I accept the evidence of SI Bell that John provided misleading, and probably false, information in the 2010 Application, and that that conclusion was "obvious" when the 2010 Application and the 2010 Refusal Letter are considered together.

391. I also agree with the submission of counsel assisting that in light of the fact that John was personally served with the 2000 AVO application, was present when the final orders were made, and had a history of manipulative behaviour, it is unlikely that he innocently or accidentally ticked "No" to Personal History Question H(f).

392. However, even though it was "obvious", the evidence at inquest was that no entry was made in the ILS by the Registry to the effect that John had submitted misleading, and probably false, information, nor was it otherwise followed up, notwithstanding that it may have been a breach of s. 70 of the Act, which makes it an offence to "make a statement or provide information that the person knows is false or misleading" in connection with an application under the Act or Regulation. The only "Adverse Licensing History" on the ILS was the bare fact that John had been refused a licence on 27 September 2010.

Issue #20: Did John Edwards make a false or misleading statement in his 2010 application for a firearms licence?

393. On the basis of the evidence I am satisfied that John made a misleading statement in his 2010 Application for a firearms licence.

Issue #21: If John Edwards did make a false or misleading statement in his 2010 application, what actions should Firearms Registry officers have taken in or about 2010 after that licence application was refused?

394. SI Bell gave evidence that there was no written policy or guideline in place at the time as to the steps the Registry should take when an applicant made a misleading or false statement.

395. BW first commenced working at the Registry in 2001. At the time that John made his firearms applications and at the time of the inquest, BW was the Manager, Licensing Permits and Authorities, and the supervisor of a significant number of Registry staff. BW

gave evidence at the inquest that up until 2017, it was her view that it was not important to record such information on the ILS. SI Bell agreed with senior counsel assisting that the fact that BW held this view indicated that there was, at least up until 2017, a systemic problem at the Registry.

396. I agree with an accept the submission of counsel assisting that BW's view described above, coupled with the absence of any relevant written policy or procedure, reflected a systemic failure at the Registry, particularly in light of BW's position as a supervisor of a significant number of Registry staff. I am also satisfied that the lack of follow up that occurred in relation to John's misleading declaration was unlikely to have been an isolated instance of inaction.

397. Given that s. 70 is an offence provision directed at protecting the integrity of the application process, it is difficult to understand why an investigation did not take place as to whether a breach had occurred. I agree with the submission of counsel assisting that this was the first step that the Registry should have taken. The Registry was, and remains, the sole entity with access to the suite of information to facilitate such an investigation.

398. I am of the view that the failure of the Registry to record information in the ILS as to John having made a misleading statement on the 2010 Application was significant. That practice ought to have been mandatory and the subject of written policy. The question of whether a person is likely to be truthful in his or her dealings with the Registry is significant because aspects of the application process rely on an applicant to provide information and answers which the Registry cannot readily cross-check (eg. re mental health and Family Court injunctions).

399. Any suggestion that an applicant has previously been untruthful is a matter of fundamental relevance to the licensing decision, given that s. 11(3)(a) of the Act requires that the Commissioner be satisfied an applicant is a fit and proper person and can be "trusted" to have possession of firearms. The effect of the Registry's failure to record details in relation to the 2010 refusal meant that, upon the 10-year limitation period expiring, John was treated by the Registry as though he had a 'clean slate'.

400. In his evidence at inquest SI Bell agreed with counsel assisting that a search of COPS holdings in relation to John should have occurred when the 2010 Application was refused. He also agreed that, had this occurred, the adverse history revealed ought to

have put staff on notice that any further application by John was potentially problematic.

401. Registry staff now utilise an Adjudication Decision-Making Tool ("DMT") and associated Business Rules in such a situation, and to guide their decision-making in relation to the issuance of permits and licences. SI Bell gave evidence that if the same situation occurred now, it would be listed as an 'adverse notation' on ILS and the circumstances of the refusal would be referred to in the relevant correspondence. In the event that "there are significant adverse holdings on COPS" in relation to an applicant, the DMT also instructs Registry staff to sight the earlier application/s to assess whether they have previously made a false application.

402. However, the evidence of Registry staff was that despite the DMT, in order to see any notation in ILS about a prior false application, staff would have to "look for it". Counsel assisting submitted that this evidence indicates that "it is still not obvious enough to later adjudicators that an applicant may have made an earlier false or misleading application" and that the Registry's systems should be further improved, and additional training provided, in relation to the procedures to be followed in such a situation. The Pistol Parties support the submissions of counsel assisting in relation to the proposed recommendations.

403. The evidence of BW and SI Bell in relation to the failure of the Registry to record or follow up on the fact that John provided misleading information in relation to his 2010 application also provides support for the suggestion that further training is required in this area.

404. The Commissioner also endorsed the recommendation proposed by counsel assisting that the Registry provide additional training in relation to this aspect of the adjudication of licences and noted that there is an intention to develop and implement formal training on an annual basis. This is a welcome initiative and one which appears to be long overdue.

405. In relation to the proposed recommendation for improvement of Registry systems in the manner proposed above, the Commissioner submitted that "there are significant system and business constraints that limit the capacity of staff to compare all past applications to new applications". SI Bell gave evidence about what might be best described as the "digitisation" of the Registry's regulatory capabilities, which I accept is likely to greatly enhance the Registry's capability to identify earlier false and misleading applications.

406. On the basis of the evidence given at inquest as to the recent practices at the Registry, the apparent limitations of the DMT, and the fact that ascertaining the character and honesty of applicants for firearms permits and licences is of fundamental importance to the statutory tests to be applied in the licensing process, I make following recommendations:

> **Recommendation 7:** That the NSW Firearms Registry clarify its systems so that it is obvious to an adjudicator that an applicant may have made an earlier false or misleading application.
>
> **Recommendation 8**: That the NSW Firearms Registry provide additional training in relation to the protocol that must be followed where an applicant may have made an earlier false or misleading application.

Issue #22: Were the circumstances of the refusal of the 2010 Application recorded in Firearms Registry databases (such that those circumstances would be apparent to Firearms Registry officers who assessed later applications)?

407. As already established, it is not in dispute that the circumstances of the refusal of John's 2010 application were not recorded by the Registry or otherwise followed up. SI Bell gave evidence that, in order to establish John had made a misleading statement, it would have been necessary to review the 2010 Application alongside other documentation on his file. Registry staff gave evidence that both the application and the 2010 Refusal letter were easily accessible by those who considered John's applications in 2017.

408. I agree with the submission of counsel assisting that given it was evident to both BW and SI Bell (from a comparison of the 2010 Application with the 2010 Refusal Letter) that John had made (at least) a misleading application in 2010, it should also have been evident to Registry staff who dealt with John's 2017 applications, and then triggered a closer review of those applications.

409. On the basis of the evidence at inquest, I am satisfied that none of the Registry staff who reviewed or adjudicated John's applications for permits and licences in 2017 identified that he had likely lied in his 2010 Application. Rather, the evidence establishes that the 2010 refusal was only considered in the context of confirming that the 2000 AVO (that was the basis of the 2010 refusal) was now more than 10 years old, and therefore that the restriction set out in s. 11(5)(b) of the Act was not applicable.

2017: The Registry's decision to grant John a Commissioner's Permit

410. I make the following factual findings in relation to the issuance of Commissioner's Permit to John Edwards in 2017.

411. On 9 January 2017, the Registry received an email from the Secretary of the Ku Ring Gai Pistol Club ("KGPC"), David Dean. The email attached a P650 Declaration completed by John to apply to undertake a Safety Training Course at KGPC in relation to a Category H (pistol) licence, in which John had truthfully answered "Yes" to question B(a); ie. "[Have you] been refused or prohibited from holding a firearms licence or permit or had a firearms licence or permit suspended, cancelled or revoked?" The P650 was annotated by Mr Dean to the effect that John was "not authorised to shoot". Mr Dean requested a "brief conversation" with Registry about "how to progress the matter".

412. Whilst SI Bell gave evidence that it is likely that the Registry would have contacted Mr Dean in response to his request for a conversation, and that such conversations would ordinarily be recorded, there is no record of this in the Firearms Management System ("FMS") or the ILS.

413. Separately, on 11 January 2017, Douglass Caple, who was President of the Hornsby RSL Rifle Club at the time, emailed the Registry attaching a P650 from John to undertake safety training for a Category A/B firearms licence, in which John had again truthfully answered "Yes" to question B(a); ie. "[Have you] been refused or prohibited from holding a firearms licence or permit or had a firearms licence or permit suspended, cancelled or revoked?". Mr Caple requested confirmation that John was permitted to join, and shoot at, the club.

414. On 12 January 2017, Mr Caple emailed the Clubs Section within the Registry (attaching the same P650 from John) to follow up as to whether John was permitted to use a firearm at the Hornsby Club. On the same date, HR, an employee of the Clubs Section of the Registry replied "this P650 will be processed as soon as possible" and confirmed that a person who had answered "Yes" to a Personal History question must not handle firearms and the P650 must be sent to the Registry for further investigation.

415. On 16 January 2017, Mr Caple emailed the Registry again attaching John's P650 from John, asking whether John could use a firearm. Mr Caple gave evidence that he emailed the Registry with the P650 three times because John was being "*a bit pushy*" about

getting his licence.

First step - decision whether a person may apply for a Commissioner's Permit

416. The first step is an assessment as to whether a person is allowed to *apply* for a Commissioner's Permit (at which point they are sent a blank permit application form).

417. Registry staff gave evidence that if a Commissioner's Permit was being applied for because an applicant had answered "Yes" to a Personal History question in a P650, then a CNI Officer must conduct a COPS check before indicating on the FMS that it was "OK" for the person to make an application.

418. On 17 January 2017, a Registry employee completed a National Names Index ("NNI") check on John. On 20 January 2017, Central Names Index ("CNI") check was then done by LM, a CNI officer at the Registry whose supervisor was BW. LM stated that she conducts CNI checks on applicants and existing licence holders to ensure they do not have a criminal history that includes a prescribed offence under the Act or are adversely known to police, and that they are a suitable person to hold or continue to hold a licence.

419. SI Bell gave evidence that at the relevant time, John had a total of nine separate CNI numbers on COPS. As a result, these findings will refer to various CNI numbers all of which pertain to John Edwards. SI Bell noted that the existence of duplicate CNI records for individuals is a system-wide issue which is being addressed by a project focused on removing duplicate CNI's for individuals, and merging the relevant information under a single number.

420. LM gave evidence that BW gave her "a copy of a P650" and emphasised certain matters that she was "to look out for" whilst doing CNI checks. BW denied having done so, however agreed that the CNI Officer carrying out this role was only searching COPS in order to look for mandatory refusal factors. SI Bell also agreed that the "list of things to look for" by the CNI officer included only the mandatory refusal factors, and that this was the extent of the COPS check done by LM on 20 January 2017.

421. This evidence was confirmed by the COPS audit tendered in evidence which confirmed that when LM accessed COPS she only did so to check whether the 2000 AVO was more than 10 years old, and to check there were no other mandatory refusal factors present. LM says that if a review was occurring because a person had answered "Yes" to the Personal History Question pertaining to an AVO, she would review the dates of

issue and expiry of the AVO. If 10 years had lapsed, as was the case with John, the P650 was placed in an "OK" pile.

422. In taking this approach, LM ignored significant information in COPS that was centrally relevant to the issue of whether it was "appropriate" under s. 28(g) to allow John to apply for a Commissioner's Permit and whether he was a fit a proper person (s. 29(1)). In her oral evidence, LM agreed she would have clicked on the "Events" link in COPS and then scrolled past all Events linked to John's name (in reverse chronological order) until she reached the 2000 AVO. In doing so, she did not take into account:

    a. A report from 14 March 2016 pertaining to domestic violence and a verbal argument between Olga and John;

    b. The interim AVO put in place in 2011 in relation to JC; and

    c. The interim AVO put in place in 1993 in relation to Ms C.

423. More broadly, an analysis of the holdings on COPS in relation to John Edwards at the time reveals that 15 out of the 18 events linked to CNI #1 for John (ie. 4981408) related to AVOs, stalking, or other adverse interactions in various domestic relationships, including the allegations of assault against Jack and Jennifer made by Olga in December 2016. Three Events linked to CNI #2 for John related to AVO's, intimidation or other adverse interactions in domestic relationships, namely the 1997 threat to Ms E and her child, and the 1998 assault allegations and interim AVO in relation to Ms D.

424. LM's evidence was that she did not review these Events because she did not think it was part of her role. It did not occur to her that an application with so many adverse COPS Events ought to be escalated to a manager for review, notwithstanding there were no mandatory refusal factors. LM also neglected to investigate why John's licence application was refused in 2010, and was therefore not aware that he had likely provided misleading information to the Registry at that time. LM was unsure of whether a full COPS check would be completed by the Registry officer responsible for adjudicating John's permit applications.

425. Consequently, on 24 January 2017, John was sent two letters from the Registry, largely identical in content, one relating to his proposed pistol training at KGPC and one in relation to long arms training at Hornsby RSL Rifle Club. They stated that John was "no longer being subject to mandatory grounds for which a firearms licence is refused" and should he still wish to undertake firearms safety training, he was authorised to lodge a

P634 to obtain a Commissioner's Permit to enable him to do so.

Second step - decision to grant a person a Commissioner's Permit

426. On 8 February 2017, the Registry received two P634 forms from John, one for a rifle permit (Category A/B) and one for a pistol permit (Category H). In each of those applications, John truthfully answered "Yes" to the question that he had previously been refused a firearms licence, and "No" to the question pertaining to AVOs (given that the 10-year period had concluded in August 2013).

427. MI was an Adjudication Officer at the Registry in 2017. On 18 March 2017, she adjudicated John's applications for Commissioner's Permits to allow him to participate in safety training for both his Cat A/B and his Cat H firearms licences.

428. MI stated that, in doing so, she confirmed via the FMS that a CNI check had previously been completed. MI also ensured an NNI check had been completed. MI was unsure whether the CNI Officer (ie. LM) had looked at the entire COPS holdings in relation to John or just the "AVO event". She stated "I assume the CNI officer [LM] should have been aware of John's COPS history". However, as set out above, LM did not understand that to be her role. In the end, neither LM nor MI reviewed the COPS holdings in relation to John Edwards.

429. Later on 18 March 2017, MI issued two Commissioner's Permits to John: one for long arm training at the Hornsby RSL Rifle Range (41174357); and the other for pistol training at the KGPC (411743520).

430. The evidence at inquest was that there was no written guideline or policy to guide Registry staff in exercising the discretion under s. 28(g) of the Act to grant a Commissioner's Permit if "appropriate" (and by implication, to determine whether the applicant met the "fit and proper" and "trusted" criteria in s. 29(1)). BW's evidence was that there was "*ambiguity*" about how Registry staff were supposed to exercise the discretion. However, SI Bell's evidence was in effect that there was no such ambiguity, because Registry staff, including LM and MI in relation to John's P634 applications, had a practice of (erroneously) limiting themselves to checking whether a person had triggered any of the mandatory refusal factors in s. 29(3) of the Act.

431. I am of the view that BW's reference to "ambiguity" refers to her understanding about what was required of the various Registry officers in relation to the processing and

adjudication of P634 applications, as well as the scope of matters to be taken into account when doing so. The confusion or "ambiguity" as to role and tasks no doubt contributed to the erroneous approach referred to by SI Bell.

2 May 2017: request for re-issuance of Category H Commissioner's Permit

432. On 28 April 2017, John emailed the Registry requesting his Category H Commissioner's Permit be amended and re-issued so he could attend safety training at St Marys Pistol Club ("SMPC") instead of KGPC. He said it was more convenient, and that he "*didn't get along with*" the KGPC President and had observed there were "cliques" among the members. John had already applied and paid for membership of SMPC and booked a safety training course on 21 and 22 June 2017.

433. It is not disputed that Registry staff did not follow up with KGPC (or John) as to the circumstances behind this request. BW initially disagreed with a proposition put by counsel assisting that such follow up action should have been taken, and said she would be content to accept such an email at face value. She later changed her evidence and agreed that follow up action should have been taken.

434. On 1 May 2017, John emailed the "Permits Department" at the Registry (which at the time consisted only of MI) indicating that he now wished to attend the safety training course at SMPC on 17 and 18 May 2017 instead, and requested that the re-issued Commissioner's Permit reflect these dates. The following day, MI amended and re-issued Permit #411743520 as requested by John and sent him email confirmation.

435. MI says that KGPC did not contact her at any stage to raise concerns about John, therefore at the time the Permit was amended the Registry was unaware that KGPC had found John to be "*pushy and aggressive*" and had refused him membership on 29 March 2017 (see further below at [639]). However I also acknowledge SI Bell's evidence, that in the emails it *did* send to the Registry, KGPC did not indicate that it had any particular concerns about John.

Issue #24: When determining whether John Edwards ought to be granted Commissioner's Permits to allow him to participate in firearms training prior to being licensed, did Firearms Registry officers have access to adequate information?

436. I am satisfied that Registry staff did have *access* to adequate information, because it is not disputed that they could have reviewed the COPS holdings in relation to John, which revealed an "obvious" pattern of domestic violence incidents. However, those COPS

holdings were not reviewed. I am satisfied that the "unduly narrow" process followed by Registry staff in adjudicating the Commissioner's Permits led to a failure to review and take into account that information. This was a significant failure, and was inconsistent with the terms of the Act.

Issue #25: Should John Edwards have been granted two Commissioner's Permits in March 2017 to allow him to participate in firearms training in respect of rifles and pistols while unlicensed?

437. As already set out, the threshold requirement for issuance of a permit mirrors that of a licence, centrally, whether the Commissioner is able to be satisfied that the person meets the "fit and proper" and "trusted" criteria.

438. SI Bell's evidence was that the erroneous and narrow approach LM and MI took to assessing John's permit application was not isolated. I am satisfied that in this case, LM and MI's approach to the consideration of the permit application was one that occurred across the Registry, at least up until late 2018 when SI Bell commenced in his role.

439. This is further supported by the content of the letters sent to John on 24 January 2017, which described his situation (ie. that he could not be permitted to shoot by way of a P650 declaration because he had previously been previously refused a licence/permit but was "no longer subject to mandatory grounds" for refusal of a licence) as an "anomaly".

440. I agree with the submission of counsel assisting that this characterisation overlooks the fact that, whilst the Registry may be satisfied that an applicant is not subject to mandatory refusal factors pursuant to s. 29(3), they must also be satisfied that the applicant meets the threshold statutory tests set out in s. 29(1) (ie. that the person is "fit and proper" and can be "trusted"). The evidence before me is that this, separate, threshold test for the issuance of a permit was not considered when John Edwards made his applications for Commissioner's Permits.

441. I am satisfied that the systemic approach to the issuance of permits at the Registry at the time that John Edwards' applications were assessed was inadequate, demonstrated a misunderstanding among Registry staff as to the nature of the statutory tests in s. 29(1), and was inconsistent with the terms of the Act.

442. Having considered both the applicable statutory tests and the information available to Registry staff at the time of his applications (and in light of the fact that I have also found that John ought not have been granted firearms licences – see below at [511]) I find that it was not "appropriate" for John to be issued Commissioner's Permits pursuant to s. 28(g) of the Act.

Issue #26: Should John Edwards have been granted an amended Commissioner's Permit in May 2017 to change the location of the pistol firearms training from Ku Ring Gai Pistol Club to St Marys Pistol Club?

443. For the reasons set out above, I am also satisfied that John should not have been granted an amended Commissioner's Permit in May 2017 to change the location of the pistol firearms training from KGPC to St Marys Pistol Club.

444. I note that whilst SI Bell conceded that so-called 'club shopping' is a real risk, he was not of the view that Registry staff needed to make enquiries to or verify John's reasons for requesting amendment to the conditions of his permit. Counsel assisting submitted that such enquiries were warranted, given the terms of the email that John sent to the Registry requesting the change on 28 April 2017, which ought to have put the Registry staff member on notice of the potential for risk.

445. Whilst recognising the benefit of hindsight, I agree with and accept this submission. Such an enquiry would not have been time consuming and would likely have revealed the true circumstances of the request (ie. that John had been refused membership at KGPC because of concerns about his personality and behaviour). However, it is open to question whether this information would have had any bearing on the ultimate determination made by the Registry, given that the threshold statutory tests were not being correctly applied at the time in any event.

Issue #27: Was the regulatory regime and/or Firearm Registry policy that was in place in 2017 governing the grant of Commissioner's Permits appropriate?

446. I am satisfied that the regulatory regime that was in place in 2017 governing the discretionary grant of Commissioner's Permits was appropriate (namely, s. 28(g)).

447. However, I find that the absence of any written policies to guide Registry staff in the exercise of the discretion to grant Commissioner's Permits was wholly inadequate. There was no formal training provided to Adjudication, CNI and Support Officers at the time. Rather, training was provided "informally" on the job via a "buddy" system, where

Registry staff were encouraged to learn from their supervisor.

448. These deficiencies contributed to a foreseeable systemic failure in relation to decision-making that had a direct bearing on public safety. This situation has been rectified, at least in part, by the introduction of the DMT and related Business Rules described earlier in these findings.

Issue #28: Is the current regulatory regime and/or Firearm Registry policy governing the grant of Commissioner's Permits (now known as 'General Permits') appropriate?

449. I note the evidence of SI Bell to the effect that the practice of issuing Commissioner's Permits to persons answering "Yes" to any of the Personal History Questions on the P650 ceased on 26 July 2018 (being a few weeks after the deaths of Jack and Jennifer Edwards). SI Bell also gave evidence that a review of permits and licences that were issued prior to this date was in train, as part of the work being undertaken to merge CNI profiles.

The nature and use of the CNI Report in determining licensing applications

450. Registry staff use a "CNI Report" (sometimes called a "CNI Weekly Report") to assist them to adjudicate licence applications and renewals. This report is produced by an automated software process that selects a subset of material from the COPS database for inclusion in the CNI Report. The material falls within certain pre-defined categories which are seen as important to the Registry's task of deciding whether to grant a person a firearms licence. DP, a civilian IT officer with the NSW Police Force who has been responsible for the CNI Report for the last 15 years, gave evidence at inquest.

451. The creation of the CNI Report is automated because, as at 2017-2018, the Registry received approximately 500 applications per week. Currently, the number of applications is 300 per week, mostly for recreational shooting licences.

452. At the relevant time, the COPS material coded to be included in the CNI Report were 'charges' (not 'Events'), meaning that 'Occurrence Only' events would not appear on the report, nor any entries in COPS where the applicant was listed as a 'Person Named'. However, there are four exceptions where an 'Event', rather than a 'Charge', appears in the CNI Report:

    (a) when the applicant is a defendant in an AVO event;
    (b) a mental health event where an applicant or licence holder is listed as a

patient, or has attempted self-harm);

(c) where a licence holder is named in a FPO (firearms prohibition order) or WPO (weapons prohibition order); and

(d) Child Protection Registry Reporting cases.

453. DP said that this coding has been in place since the early 1990's (although the inclusion of the FPO or WPO information is more recent), and that he had never been contacted by anyone from the Registry to enquire about, or seek to understand, what types of Events were coded for inclusion in the CNI Report, including those connected to domestic violence.

454. It is not disputed that the coding of the CNI Report meant that some information held in COPS about John Edwards was excluded from the CNI Report. In 2017, when Registry staff were adjudicating John's licence applications, the following was some of the information that was *not* included in the CNI Report:

a. A domestic violence incident involving Ms E and EJ on 17 February 1997, recorded as '*Domestic Violence No Offence*'.

b. The attendance of police at Olga and John's home on 14 March 2016 during a verbal argument, which was recorded as "*Domestic violence – no offence – verbal argument*". Jack and Jennifer were recorded as "Child/Young Person at Risk".

c. The report made by Olga at Hornsby Police Station on 29 December 2016, when she disclosed three separate assaults by John against either Jack or Jennifer in 2015. This was recorded as "*Domestic Violence - No Offence*".

455. I agree with the submission of counsel assisting that the above Events were relevant to John's suitability to hold a licence. So much was accepted by SI Bell in his oral evidence. Having reviewed the evidence I am also satisfied that, had these additional Events been included in the CNI Report, the following information would have been revealed in June 2017: that four previous domestic partners had made allegations of violence and intimidation against John; one adult child had obtained an interim AVO to protect her and her children in 2011; and two other children had recently been recorded as being "at risk".

456. The Registry was unable to provide any written policy or guidelines explaining or justifying, or even recording the reason for, the scope of the coding that sat behind the

CNI Report. In his witness statement, DP stated that the scope of the coding was relatively narrow because the Registry did not want information included that they "could not base a revocation on", meaning that the material chosen for inclusion was focused on mandatory refusal factors. However, in his oral evidence DP said that it was "speculation" for him to say why the Registry did not want certain information included in the CNI Report.

457. I agree with the submission of counsel assisting that the scope of information included in the CNI Report reflected the approach taken by the Registry to the adjudication of both permits and licences – that is, an almost exclusive, but erroneous, focus on the mandatory refusal factors in the decision-making process.

458. SI Bell accepted that the parameters guiding the information included in the CNI Report were too narrow. The week before the inquest commenced, changes were implemented that expanded the coding of the CNI Report so that it now includes, among other things, all domestic violence incidents recorded in COPS, regardless of their status or the action taken. SI Bell told the inquest that the implementation of this change had not occurred sooner because of the significant number of other systemic issues that had to be addressed at the Registry.

Issue #31: When determining whether John Edwards ought to be granted firearms licences in accordance with the requirements of the Firearms Act 1996, was the scope and nature of information that Firearms Registry officers had access to adequate?

459. For the reasons set out above, I am satisfied that the scope of information contained in the CNI Report that Registry staff relied upon to adjudicate firearms licences was unduly narrow, and accordingly, inadequate. This is best illustrated by the fact that since the coding changes took effect in September 2020, the number of applicants who now appear on the CNI Report has increased by about 75%, from about 100 each week, to about 180-200 per week.

460. Notwithstanding my finding in relation to the scope of information contained in the CNI Reports at the time that John Edwards made his licence applications, I am satisfied that the information they *did* contain ought to have put an Adjudicator on notice that there was a serious question as to whether John could be said to meet the threshold tests of being "fit and proper" and "trusted" in s. 11(3), so as to require thorough review of the holdings linked to his main two CNI's before a licence could be granted.

11 May 2017: John's application for Category A/B (Rifle) Licence

461. I make the following factual findings in relation to John Edwards' application for a Category A/B firearms licence.

462. On 15 April 2017, John attended Hornsby RSL Rifle Club and completed his long arms safety training. On 11 May 2017, the Registry received a P561 application for Category A/B Licence signed by John on 5 May 2017, along with supporting documentation. John answered 'Yes' to the question about the previous refusal of a firearms licence, and 'No' to all other questions.

1. Initial Adjudicator, Licensing - HT

463. HT is an Adjudicator in the Licensing section at the Registry, dealing with new applications for Category A, B, C and H Licences. John's Category A/B application was reviewed by HT, who confirmed it contained all the necessary documentation for the application to be approved, subject to a criminal record check. HT's practice was then to initial the application to indicate it was complete and met the legislative requirements. The documents were then scanned and uploaded to the ILS.

464. In her statement, HT said that because John answered 'Yes' to Personal History Question H(a) (ie. that he had been previously refused a licence) she would have checked in FMS/ILS as to the reason for the refusal, and if it was AVO-related, check if the mandatory 10-year period has passed.

465. HT's evidence was that she would just check the AVO and that "there was no need for [her] to check other events". If the AVO was over 10 years, she would sign off that the application was valid. She said she would just rely on the "CNI process to hit" (ie. the automated process producing the CNI Report) and to "uncover any other issues".

466. HT said that in reviewing John's 2010 licence refusal she would not have interrogated whether it involved him providing false or misleading information. As set out above, there was no notification on the system to this effect.

467. HT's evidence was that she would not look at any other Events in COPS while reviewing the AVO information, because although she accepted that it was a "very easy thing to do" she was never trained to do so. She also agreed that, when scrolling through the Events, you could quickly get a sense of the nature of various Events and that it was "obvious" if an Event related to, for example, domestic violence.

468. HT said that John's application did not ring any "alarm bells". This is not surprising given the limited amount of information she reviewed in COPS. She agreed that this gave her an "extremely distorted" position about John. It was plain from HT's evidence that she had only a basic understanding of COPS, at least in part because any training provided to her was informal and rudimentary.

469. Following HT's review of John's Category A/B Application, it was scanned and uploaded to the ILS on 12 May 2017.

2. Support Officer - HD

470. On 15 May 2017, Support Officer HD completed a NNI check to confirm that John had no criminal or other information interstate which would preclude the issue of a licence.

471. FMS was then updated with FMS with "NNI OK – NSW Adverse" and sent the file to the FMS Adjudication Tray, meaning that there was no interstate information that would preclude John having a licence, but that he had an adverse record on the ILS system, which was the refusal of his 2010 Application.

3. Licensing and Permits Adjudicator - TM

472. When the NNI was "OK", the next stage of the process was a "quality assurance check", whereby a further Registry officer confirmed that the initial adjudicator or various data checks had not missed anything. In this instance, that check was performed by TM. He did not recall processing John's applications given the high work volume and the time that had elapsed since May 2017.

473. TM gave evidence that the extent of his role was to check that the "Genuine Reason" documentation in the application was complete. TM's supervisor BW gave evidence there was no written policy that explained what was required of someone at this stage of this process. However, BW was of the view that, given the "NSW Adverse" notation, TM was required to investigate the circumstances of that notation (namely, the circumstances of the refusal of the 2010 Application). TM denied this was part of his role and gave evidence that he did not even know what the notation "*NSW Adverse*" meant on the system. BW agreed this was "pretty concerning".

474. I found TM to be an unimpressive witness who, despite his position as an Adjudicator with the authority to grant licences under the Act, displayed scant knowledge of his own role, let alone the wider processes of the Registry. The divergence in his evidence and

that of BW in relation to the particular nature of his role is a stark example of the lack of clarity and responsibilities that plagued the Registry at the relevant time.

475. TM said once he was satisfied with regard to the "Genuine Reason" documentation, he updated the licence application in ILS to "01 Recommend to Issue", which indicates that the licence "may be approved" subject to the ordinary criminal and CNI checks.

476. The application was then subject to a 28-day cooling off period, which commenced on the date of the received stamp on the application, namely 11 May 2017. Following the cooling off period the application would be subject to the weekly "automated probity process", namely the CNI Report system.

4. Adjudicator of CNI Reports, Probity Section - HP

477. At the time of John's applications, HP worked as an acting clerk 3/4 in the Probity Section of the Registry and her manager was BW. HP adjudicated both the Category A/B and Category H licence applications of John Edwards, following the 28-day cooling off period. HP was not available to give oral evidence at the inquest, however I was assisted at inquest by a detailed written statement and other material that served to illustrate how she had performed the adjudications.

478. Following the cooling off period, a CNI Report is generated in relation to all new licence applications. John's Category A/B licence application 'hit' the CNI Report for the period 3 to 9 June 2017.

479. BW agreed that there was no written policy about the role of an Adjudicator in assessing a firearms licence application. However, BW stated that HP was also required to interrogate the circumstances of the "NSW Adverse" notation. She acknowledged that HP would "possibly" have assumed that TM had done so, which was why it had been received for adjudication.

480. HP's evidence was that if an applicant 'hit' the CNI Report, the Probity Adjudicator would conduct a 'person enquiry' in COPS (also known as a 'PERFIND') and review "all CNIs" connected to that applicant to decide whether to approve or refuse the application.

481. BW's evidence was that the Probity Adjudicator was required to look at the COPS entry for each Event connected to each of the CNIs. As will be evident from the factual findings below, I am satisfied that whilst HP did review the two main CNI numbers connected to

John Edwards, she did not review and number of the COPS Events listed under those CNI numbers.

482. In relation to each CNI number that appeared on the CNI Weekly Report, HP's evidence is that she would check the contents of each report in COPS, and assessed the "associated risks". If an AVO was listed she would check the date of issue and expiry, but that if the AVO had been revoked or the 10-year period had expired, there was no cause for concern. HP also said if the check revealed a "history of major violence" in the last 5 years or a "lengthy history" of AVOs, she "might consider" refusing on a "public interest ground". If there was nothing "adverse" recorded in COPS, then a licence would be issued.

483. The CNI Report relevant to John Edwards' Category A/B application was the subject of detailed consideration at the inquest.[3] Two CNI numbers linked to John Edwards ("the two CNIs") appeared on that Report and a summary of the information that appeared on the Report linked to each CNI is set out below.

484. CNI #1: 4981408 - 8 events were listed on the CNI Report for this CNI number:[4]

i. Interim orders re the 2011 AVO application for John's adult daughter, JC
ii. Provisional orders re the 2011 AVO application for JC
iii. Final orders for the 2000 AVO in relation to Ms F
iv. Interim orders for the 1998 AVO in relation to Ms D
v. COPS Event re the assault on Ms D in 1998
vi. Application for the 1993 AVO in relation to Ms C
vii. An historic charge of assault/malicious damage against John in 1969
viii. Details of the charges laid in relation to the assault described in (v)

485. CNI #2: 611220740 – two events were listed on the CNI Report for this CNI number, both of which pertained to interim orders made in relation to the 1998 AVO for Ms D.

486. What is plain from the above summary is that whilst the coding that applied to the CNI Report at the time appears to have been deliberately narrow, the Report nonetheless did reveal multiple holdings in relation to AVOs, assault and intimidation across a period of 24 years. Those holdings related to three former domestic partners, and an adult child.

[3] See also the aide memoire detailing the 'events' listed in Annexure V within Exhibit 8.
[4] This was the 'primary' CNI for John Edwards. It was the one with fingerprints attached to it and was created as in 1969: SM of Anthony Bell, Ex 1, Vol 4/163, [49].

487. However, when HP annotated the report, she noted only the 2011 AVO application, the 1998 assault charge and a separate Event relating to a 1997 incident involving Ms E (a fourth former domestic partner) as being what BW described in her evidence as 'holdings of interest'. BW said that there was no recent policy or guideline available to adjudicators as to what should be regarded as a 'holding of interest'.

488. A COPS Access Audit Report confirms that HP did a series of checks on COPS on John on 14 and 15 June 2017 (which appeared to have taken about six minutes). The Audit shows that HP accessed the two CNIs that appeared on the CNI Report, however she did not review all the Events in COPS that appeared in the CNI Report. Rather, she chose to access only the following events:

    a. the AVO taken out by John (as a PINOP) against David Brown in 2016;

    b. the 14 March 2016 verbal argument between Olga and John; and

    c. the 'Occurrence Only' Event, analysed earlier in these findings, where John attended Hornsby Police Station in March 2016 and insisted that a notation be made that Olga may make a false allegation against him as part of family law proceedings.[5]

489. The evidence of Registry witnesses is that HP was required to review the information on COPS for each Event that was included on the CNI Report. SI Bell agreed with counsel assisting that to do so was a "pretty straightforward" task. I agree with the proposition put by counsel assisting that this was a "basic function" that was not being carried out, at least in 2017. So much was conceded by SI Bell in his evidence. BW also agreed that in reviewing COPS, you had a "bird's eye view" of all the information, so one could quickly get a sense of each Event and that it was "obvious" if an Event was likely to be relevant.

490. In her evidence, BW made a number of important and candid concessions about the information available to HP, and how HP had approached the adjudication of this application. BW agreed that HP did not check some of COPS holdings that were "obviously relevant" to domestic violence or assault. And that in focussing on more recent assaults and AVOs, she failed to recognise that the CNI Report revealed a "lengthy history" of AVOs and an "obvious pattern" of domestic violence. She also agreed there was a "significant amount of adverse information" in COPS about John. BW also agreed that COPS entries from 2016 that revealed that John was in the midst of a bitter and acrimonious divorce should have caused HP to approach her task with a "heightened

[5] See the aide memoire detailing the 'Events' listed in Annexure W at Exhibit 8.

sense of risk". I accept BW's evidence in relation to these matters, which is supported by the relevant CNI Report and the COPS Audit.

491. BW agreed with the characterisation of counsel assisting that the COPS Audit revealed that HP had, in fact, focused on the three "least relevant" COPS Events linked to John, and that this suggested that she had little or no understanding of what she was looking for in terms of risk.

492. When BW was asked to explain how the Registry could have formed the view that John was a fit and proper person to be granted a licence, her answer was: "I'm not able to. Sorry".

493. SI Bell agreed that the approach taken by HP and other Registry staff at the time appeared to be that if there were no mandatory refusal factors present, a conclusion would be made that it was appropriate to grant a licence. He also agreed that approaching an adjudication this way was "definitely" much easier.

494. On 16 June 2017, the ILS record in relation to John's Category A/B application was updated to "recommend to issue", meaning that the application was approved. The following day ILS generated a notification to Services NSW to send John a letter in relation to the issuance of his licence card.

22 May 2017: John's application for a Category H (Pistol) Licence

495. I make the following factual findings in relation to John Edwards' application for a Category H firearms licence.

496. On 17 and 18 May 2017, John attended St Marys Pistol Club and successfully completed his pistol safe handling course. SW, who gave evidence at inquest, was the Assistant Instructor when John completed this course.

497. On 22 May 2017, John submitted a P561 Application for his Category H licence along with the required supporting documents. John truthfully answered 'Yes' to the question about previous refusal of firearms licence, and 'No' to all other questions.

1. Initial Adjudicator - NW

498. NW was the adjudicator who first reviewed John Edwards' Category H application. NW gave evidence that when she reviewed an application, she checked that the name and

address were complete; that a genuine reason had been provided; whether any fee exemption applied; whether the Personal History questions were answered; and that the declaration was signed and dated. NW's role was not to conduct NNI or COPS checks.

499. On 23 May 2017, the application was scanned and uploaded to the ILS. On the same date, Support Officer HD forwarded the application to TM.

2. Licensing and Permits Adjudicator - TM

500. As noted above, TM's evidence was that the limit of his role was to check that the "Genuine Reason" documentation in the application was complete. Upon performing this check, on 30 May 2017, TM updated the description to "PPL – NNI OK" and updated the licence in ILS to "Recommend to Issue". Once this status was updated, the application was subject to a 28-day cooling off period, which commenced on the date of the received stamp, namely 22 May 2017.

Issue #29: Did John Edwards have an applicable Genuine Reason for requiring a pistol licence and, separately, a rifle licence?

Issue #30: Did John Edwards have a 'special need' to posses or use a pistol?

501. I am satisfied that as per the requirements of the legislative scheme at the time, John had an applicable Genuine Reason for requiring a pistol licence; namely sports shooting. Because of the structure of the legislative scheme, this constituted his "special need" for a pistol (see ss. 16(1)(b) and 17 of the Act). I am also satisfied that John had an approved Genuine Reason for obtaining his Category A/B licence, namely recreational hunting.

3. Adjudicator of CNI Reports, Probity Section - HP

502. HP adjudicated John's Category H application at the conclusion of the mandatory 28-day cooling off period. John's Category H licence application hit the CNI Report for the period 17 to 23 June 2017.

503. The CNI Report relevant to John Edwards' Category H application was the subject of detailed consideration at the inquest. The same two CNI numbers linked to John Edwards that appeared on the CNI Report in relation to his Category A/B application also appeared on this CNI Report, which contained the same information from COPS as summarised at [484]-[485].

504. When HP reviewed this CNI Report, the Events that she annotated as being 'holdings of

interest' were different in some respects from the earlier CNI Report, despite the legislative tests that she was obliged to apply being identical.

505. The holdings of interest identified by HP in this CNI Report related to incidents relating to two former domestic partners in 2000 and 1998, and the 2011 AVO application involving an adult child of John Edwards. It is of note that the 1997 incident involving Ms E - that was identified by HP as a holding of interest when she adjudicated John's Category A/B application - was not so identified here.

506. However, the totality of the information available to HP from the CNI Report and on COPS revealed allegations of AVO, assault or intimidation or other adverse interactions in relation to four former domestic partners, one adult child and two other children (Jack and Jennifer).

507. A separate COPS Access Audit Report shows that HP conducted a search on COPS in relation to John on 28 June 2017 lasting about 20 minutes, during which she accessed the two CNI's included on the CNI Report. From this, it is apparent that HP's approach to the Category H application was more thorough than that employed for the Category A/B application. However, during that search of COPS, HP did *not* review the following Events included in the CNI Report: assault allegations and a related AVO application from 1998 in relation to Ms D; an AVO application from 1993 in relation to Ms C; and the 1997 incident involving Ms E and her son, EJ. BW agreed that these were "highly relevant" to the question of risk in relation to a firearms licence application. She also conceded that there was "actually a very clear pattern of risk" in relation to John.

508. Both BW and SI Bell agreed that the fact that HP had approached her adjudication task for each of John's applications differently when provided with identical CNI Reports (for the rifle application and then the pistol application) within the space of only 2 weeks showed there was "no consistency" in the approach taken to the task. BW also agreed that in the case of both adjudications "there had been a complete failure to appreciate a pattern of domestic violence going back 24 years".

509. On 26 June 2017, HP recorded the following notation on John's Category H application: "CNI check OK – reset to 01", meaning that the application was approved.

4. The CNI Support Officer - AH

510. CNI Support Officers provide assistance to CNI Officers. A CNI Support Officer is not

involved in any adjudication or decision. Their role is to do what is requested by a CNI Officer and to update the ILS. Consequently, on 30 June 2017, AH updated the ILS in relation to John's Category H application as per the annotation made by HP. On 1 July 2017, ILS generated a notification to Services NSW to send John Edwards a letter in relation to the issuance of his licence card.

Findings in relation to the grant of firearms licences to John Edwards

Issue #32: Was the grant of rifle and pistol licences to John Edwards in 2017 consistent with the requirements of the Firearms Act 1996?

511. For the reasons set out below, I am satisfied that the grant of both the Category A/B and H firearms licences to John in 2017 was contrary to the requirements of the Act.

512. As already noted, s. 11(3)(a) of the Act is a threshold, mandatory requirement that a licence not be issued unless the Commissioner (or their delegate) is satisfied that the applicant is a *fit and proper person* and can be *trusted* to have possession of firearms without danger to public safety or to the peace.

513. I agree with and accept the evidence given by BW and SI Bell that when HP adjudicated John's Category A/B application, she focussed on information in COPS that was the least relevant to the assessment she had to make. Given that HP was unavailable to give oral evidence at the inquest, it was not possible to ascertain the extent to which (if any) she understood how to assess the risks posed by an applicant; however the fact that HP chose not to review COPS holdings in relation to AVO matters in 2000, 1998 and 1993 is of significant concern, and suggests, at the least, a lack of awareness as to the significant public safety issues involved when assessing applications of this nature.

514. On the basis of the material before me, I am satisfied that in her adjudications, HP was almost entirely focused on identifying any mandatory refusal factors, to the exclusion of the other threshold tests mandated by s. 11. She was even inconsistent in the way in which she (erroneously) focussed on the mandatory refusal factors. That is evident on the face of the varying annotations on the two CNI Reports.

515. I accept the candid evidence given by SI Bell to the effect that when he arrived at the Registry, the majority of staff displayed a lack of understanding about the threshold criteria set out in s. 11(3)(a), that there was "confusion" about those criteria among staff, and that most of them "struggled" to apply the test. I also accept his evidence to the effect

that Registry staff who gave evidence at the inquest appeared to incorrectly regard the "fit and proper" and "trusted" criteria in s. 11(3)(a) as discretionary considerations.

516. I am satisfied that SI Bell's evidence is an accurate reflection of the operation of the Registry more generally, at least up until mid-2018. In this regard I accept and agree with the submission of counsel assisting that the grant of firearms licences to John Edwards was an inevitable consequence of the fact that the majority of Registry staff had an inadequate understanding of the fundamental planks of the legislation that they were charged with administering.

517. I am of the view that this inadequate understanding extended to the way in which applications were adjudicated, as is evidenced by the material that illustrated how HP interpreted and relied on the CNI Reports in June 2017, set out in detail earlier in Section D of these findings.

518. The evidence confirms that HP's approach to this task was not isolated to her. This was made apparent by the very frank evidence of BW at inquest that, if she had been the adjudicator of John's rifle and pistol licences, she too would likely have granted them. That is because, as she said, there was "no mandatory ground" and the "last incident" did not "go to a full order" (ie. the last incident was not a final AVO). She said the "thought processes" of Registry staff were that only a 'final' AVO counted (and, in this respect, the last 'final' AVO was the 2000 AVO).

519. BW was a supervisor of a significant number of decision-makers at the Registry. She agreed that her reasoning in 2017 as to the requirements of s. 11 of the Act had "*flaws* in it". It is plain from the evidence of other Registry witnesses that she passed this flawed reasoning on to a number of the staff she supervised.

520. In this respect, SI Bell confirmed that, when he commenced at the Registry, he found that the practice of adjudicators across the Registry was consistent with HP's approach.

521. I therefore find that at the relevant time, and in 2018 when SI Bell arrived at the Registry, Registry staff were erroneously fixated on the mandatory refusal factors in s. 11(5) to the extent that they failed to apply the central statutory test (ie. the "fit and proper" and "trusted" person test). That is, they failed to perform one of the key responsibilities of the Registry under the statutory scheme.

522. As a result of these failures, BW agreed with senior counsel assisting that "a long history of other [adverse] matters was not enough to prevent you getting a licence". In particular, BW agreed that the approach of Registry staff during that period demonstrated that they misunderstood the risks posed by domestic violence, and that in the case of John Edwards, "there had been a complete failure to appreciate a pattern of domestic violence going back 24 years". I am satisfied that this is an accurate characterisation of the general approach of the Registry in assessing licence applications at the time that they assessed John Edwards' applications in 2017.

523. Counsel assisting submitted that the approach of Registry staff showed an unwarranted focus on whether final orders had been made in relation to an AVO. I agree with and accept this submission. I find that this was the main reason that interim and provisional AVOs that appeared on the CNI Report and in COPS in relation to John were ignored, despite the pattern of domestic violence that they revealed.

524. In this respect, SI Bell agreed that the words "other than an order that has been revoked" in s. 11(5)(c) should be removed. He gave evidence that in his experience, persons who are the subject of AVOs may pressure victims to revoke the order so that they are not precluded from obtaining a firearms licence. I also agree with and accept the submission of counsel assisting that if this qualification were to be removed from s. 11(5)(c), as they have proposed, it would necessitate that Registry staff address and evaluate any patterns of domestic violence that may be revealed by a history of interim and provisional AVOs.

525. SI Bell confirmed in his oral evidence that he has already introduced a policy that reflects the recommendation proposed by counsel assisting, namely that a final AVO that has been revoked after the making of the order (whether current or expired) is to be considered an AVO and the prescribed 10 year exclusion period in s. 11(5)(c) is to apply. I understand this to mean that any applicant in this category is now refused a licence pursuant to the threshold test in s. 11(3)(a).

526. The Pistol Sport Parties submit that "special care" ought be taken in relation to any amendment of s. 11(5)(c). The St Marys Parties submit that AVOs are revoked prior to their expiry "for many and varied reasons", including for example, the death of one of the parties, or a scenario where parties "have resolved their differences". They oppose the making of the recommendation as proposed by counsel assisting on the basis that "to impose a blanket 10 year exclusion … is too onerous". The St Marys Parties further

submit that it is open to the Registry to make enquiries as to the circumstances of the revocation as part of their decision-making process.

527. I am not of the view that any of the examples provided in the submissions of the St Marys Parties could be said to necessarily indicate that the person the subject of the AVO that has been revoked does not pose a risk. This is particularly so in relation to an AVO that is revoked because of the death, or change in personal circumstances, of the person in need of protection.

528. In light of the evidence of SI Bell in particular, I am of the view that legislative amendment should be considered, so that the statute reflects what appears to be the current practice of the Registry. I accept the submission made by both the St Marys Parties and the Pistol Sport Parties that there may be instances where an order is revoked because it was made on the basis of false, misleading or vexatious claims or information, however I am not of the view that this is a sufficient reason, of itself, to maintain the status quo. Rather, in the event that the words “other than an order that has been revoked” are removed from s. 11(5)(c) of the Act, consideration could be given to whether there ought to be any exceptions. I therefore make the following recommendation:

> **Recommendation 9**: That the NSW Government take steps to remove the language “other than an order that has been revoked" in s. 11(5)(c) of the *Firearms Act 1996* (NSW).

529. In conclusion, both BW and SI Bell accepted that it should have been an easy decision to conclude that John was not a fit and proper person to hold a licence. Likewise, BW agreed that looking at John’s history ought to have made it “obvious” that he was not a fit and proper person to be granted a licence. I accept their evidence and am of the view that their assessment, made in hindsight is, sadly, correct.

530. Had the adjudicators of John Edwards’ Category A/B and Category H applications properly understood s. 11(3) of the Act and adequately interrogated and analysed the material that was readily available to them in COPS, the Registry would have had no choice but to refuse the applications.

531. At the relevant time, the Registry received 500 applications per week, largely for recreational licences. I accept the submission of counsel assisting that the systemic problems outlined above are highly likely to have adversely affected the adjudication of

a very significant number of recreational licence applications (at least up until late 2018).

532. I understand from evidence given by SI Bell at inquest that as part of the CNI Improvement and Data Cleansing Project that as duplicate CNIs are merged on COPS, adverse records linked to those CNIs will appear on the Daily CNI Report (presumably in line with the expanded coding that is now applied). This will trigger a review of the merged CNI profile by an adjudicator and a determination as to whether the statutory test is met by the licence or permit holder.

533. Given the extent of systemic failures that have been identified at the Registry, this process is vital to ensuring that licence holders who were granted a licence during the period when Registry staff were proceeding on the erroneous basis set out above do not pose an ongoing risk to public safety. The importance of this approach is perhaps best illustrated by the fact that the Quality Assurance Strategy implemented by the Registry in August 2019 that is directed towards the determination of refusal, suspension and revocation of licences and permits has resulted in an immediate increase in the number of applications being refused by the Registry.

Findings in relation to the general operation of the Registry

Issue #33: Was the training that Firearms Registry officers had (in terms of adjudicating applications for firearms licences) adequate?

534. I make the following findings in relation to the general operation of the Registry at the time that John Edwards' firearms permit and licence applications were being processed and assessed.

535. The inquest heard evidence from a number of Registry staff in relation to the nature and extent of their roles. SI Bell agreed that the overall tenor of this evidence was that confusion reigned. Registry staff had differing views about the tasks that they, and others, were responsible for, and, alarmingly, several mistakenly assumed that another was undertaking a critical task that involved the assessment of risk. The evidence also illustrated that the majority of the witnesses who were involved in the adjudication of John Edwards' licences (at least) did not have a basic understanding of the nature of the adjudication task actually involved and the statutory tests underpinning that task.

536. It is of significant concern that this state of affairs was not readily apparent to any Registry staff who gave evidence to the inquest, and appears only to have been identified after events the subject of this inquest, when SI Bell was appointed to the Registry in late

2018. And further, that up until late 2018, the Registry granted firearms licences in circumstances of such widespread confusion and incompetence.

537. This state of affairs was a result of the fact that there were no recent policies or direction available to Registry staff as to how to undertake any step of the assessment of a permit or a licence application. Further, there was also no guidance from senior Registry staff or management as to these matters. None of these matters were in dispute at the inquest, and SI Bell properly conceded that the lack of policies, guidelines and guidance in relation to this critical regulatory function were systemic failures.

538. It was also not disputed that there was no formal training provided to Adjudication, CNI and Support Officers at the relevant time. As indicated above, the informal "buddy system" in place at the time was wholly inadequate, and notably, was regarded as insufficient by some staff when asked about it at inquest. Indeed, there was evidence that the "buddy" system actually involved the passing on, or perpetuation, of an erroneous approach by a manager to more junior staff.

539. As is set out in some detail earlier in these findings, there was also no training provided to staff to understand domestic violence, longitudinal risk or the risks associated with family law proceedings. BW agreed that the COPS audits showed that none of the Registry staff who provided evidence to the inquest displayed "any understanding" of domestic violence or indicators of risk.

540. Accordingly, I am satisfied that the training offered to Registry staff in relation to the adjudication of applications for firearms licences at the time that John Edwards' applications were being determined was grossly inadequate.

541. It is important to record in these findings that considerable improvement has occurred in relation to training and implementation of written policies since that time. One of the most significant changes is the introduction of the DMT to guide decision-making in relation to the issuance of permits and licences. Training has been provided in relation to its use.

542. If an applicant appears on the weekly CNI Report, the DMT requires decision-makers to conduct a comprehensive review of their profile and holdings in COPS to determine suitability pursuant to s. 11 of the Act. A checklist of all the components of s. 11 of the Act must be considered as part of that process.

543. The DMT also stipulates that when an applicant is linked to certain adverse holdings on

COPS related to domestic and personal violence, mental health or terrorism matters their application is to be escalated to a Senior Adjudicator (a newly created position), or, if necessary, the recently-established Licensing Adjudication Review Panel ("Review Panel").

544. In addition to the DMT, the Firearms Registry Decision Making Guidelines ("DMG") were released in August 2019 and are publicly available on the NSWPF website. The DMG is designed to assist decision-makers to make consistent and legislatively compliant decisions.

545. SI Bell also gave evidence of the use of "dip-sampling" by Adjudication Officers to monitor compliance and improvement in the determination of what he called "low-risk matters" in addition to the informal auditing that occurs when matters are reviewed by senior adjudicators and the Review Panel.

546. Evidence was given by staff of the Registry that, since the deaths of Jack and Jennifer, they had received training in relation to domestic violence. However, I agree with the submission of counsel assisting that the evidence given by Registry staff at the inquest indicates that further guidance and training is required to ensure that adjudicators properly understand the extent and nature of those risks.

547. In particular, counsel assisting submitted the DMT should be updated to provide improved, more specific, guidance around decision-making in relation to applicants and licence holders who are the subject of adverse holdings in relation to domestic violence, including the risks they may pose after a relationship ends, and to future partners. They submitted that the DMT and DMG should be updated to ensure that an applicant's domestic violence history, including the detail of non-finalised charges and non-finalised ADVOs, is considered within the rubric of the "fit and proper person" or "public interest" tests.

548. I agree with and accept these submissions. It is self-evident that the proposed approach will be a more time-consuming task for the Senior Adjudicators to whom such applications are currently escalated. Nevertheless, the Commissioner's submissions acknowledge the need for this additional guidance and endorse the above proposal of counsel assisting. Accordingly, I make the following recommendation:

Recommendation 10: That the Adjudication Decision-Making Tool used by the Firearms Registry be updated to include improved, and more specific, guidance in relation to domestic violence.

549. Relatedly, counsel assisting have also proposed a recommendation that that the adjudication process of the Registry should include the review of a DVSAT linked to any COPS event involving an applicant (including a "DV - No Offence" event) to further inform decision-making and assessment of the statutory tests in s. 11. They further submitted, and I accept, that any update of the DMT to this effect should be accompanied by specific training for adjudicators in how to interpret the DVSAT.

550. The Commissioner endorses the proposed recommendation but cautions that "although the DVSAT contains useful information, it does not contain all relevant information and occasionally can include incorrect entries" (as was in fact the case in relation to the DVSAT created on 20 December 2016 in relation to COPS Event E6249070). I accept the submission that the DVSAT cannot be relied upon in isolation, but nor do I understand that to be the gravamen of the recommendation proposed by counsel assisting.

551. Notwithstanding, the Commissioner's submissions indicate that the "next version of the DMT will include explicit reference to the DVSAT". I am therefore satisfied that the following recommendation ought to be made:

Recommendation 11: That the Adjudication Decision-Making Tool used by the Firearms Registry be updated to include review of any Domestic Violence Safety Assessment Tool (DVSAT) attached to a COPS Event involving an applicant for a permit or licence.

552. In relation to the operation of the Registry more generally, it is plain that considerable efforts have been made in the last two years to implement formal training and workshops across various Registry functions, including mental health and domestic violence.

553. However, I accept the submission of counsel assisting that regular training should be conducted to ensure that all adjudicators who exercise delegated functions under the statutory scheme have knowledge and awareness of issues related to domestic and family violence, including knowledge around separation risks, risk of future violence and non-physical domestic violence behaviours. They propose a recommendation to this effect, which is endorsed by the Commissioner

554. Accordingly, I make the following recommendation:

> **Recommendation 12**: That the Firearms Registry conduct regular training to ensure that all adjudicators who exercise delegated functions under the statutory scheme have knowledge and awareness of issues related to domestic and family violence, including knowledge around separation risks, risk of future violence, non-physical domestic violence behaviours and review of the Domestic Violence Safety Assessment Tool.

Interrelationship between firearms licensing scheme and family law proceedings

555. In light of the complex factual background the subject matter of this inquest, and the scope of the issues explored at the hearing, it is appropriate for these findings to address in some detail the interplay between the provisions of the statutory scheme for firearms licensing in NSW and the *Family Law Act 1975* (Cth) ("Family Law Act").

556. There are a number of questions asked of applicants in firearms licence and permit application forms that are connected to family law proceedings (hereafter, "the family law questions"):

> P650 Declaration
>
> **Question B(d)** *Have you in NSW or elsewhere, within the last 10 years been the subject of a Family Law or Domestic Violence Order or an Apprehended Violence Order (other than an order that was revoked)?*
>
> P634 - Application for firearms permit
>
> **Question G(f)** *Have you in NSW or elsewhere, within the last 10 years, been the subject of an Apprehended Violence Order (other than an order which was revoked) or an injunction ordered by the Family Court, or presently subject to an interim Apprehended Violence Order?*
>
> P561 - Application for a firearms licence
>
> **Question H(f)** *Have you in NSW or elsewhere, within the last 10 years been the subject of an AVO (other than an order which was revoked) or an injunction ordered by the Family Court?*

557. The formulation of Question B(d) in the P650 is drawn from cl. 129(2)(a)(v) of the Regulation (cf. cl. 110(2)(a)(v) in the 2006 Regulation). The questions in the P634 and P561 set out above do not appear to have a statutory basis, although they are directed at the same subject matter.

558. It was not disputed at inquest that neither the gun clubs nor the NSWPF have the ability to verify any answers to the family law questions, unless independent information is provided or there has been a notification pursuant to s. 68P of the Family Law Act.

The family law proceedings between John and Olga

559. As set out in Section B of these findings, on 6 April 2016 Olga commenced proceedings in the Federal Circuit Court ("the FCC), and they were subsequently transferred to the Family Court of Australia ("the Family Court") (together, "the federal family law courts"), on 5 September 2017. During the course of the proceedings, John was in the process of applying for and obtaining multiple firearms permits and licences.

Relevant legislative provisions

Definition of "apprehended violence order" in the Firearms Act

560. Section 121 of the 2006 Regulation (in force at the time that the Registry was assessing John Edwards' firearms applications) provided that the definition of "apprehended violence order" in s. 4(1) of the Act is taken to include, *inter alia*, an injunction under s. 68B or s. 114 of the Family Law Act. The same definition was carried over in the 2017 Regulation, at s. 143.

Application of sections 68B and 114 of the Family Law Act

561. A court with appropriate jurisdiction may grant an injunction pursuant to s. 68B of the Family Law Act "for the welfare of a child". An injunction granted under this section may operate to provide personal protection for a child or person with responsibility for that child, or to restrain a person from entering particular places or areas.

562. Injunctions granted pursuant to s. 114 of the Family Law Act appear to be much broader in scope. Whilst the granting of an injunction pursuant to s. 114(1) is limited to particular proceedings (ie. some matrimonial cause proceedings), s. 114(3) enables *any court* exercising jurisdiction under the Family Law Act to grant an injunction in *any case* in which it appears to the court to be just or convenient to do so.

Scope of the relevant questions in licensing forms

563. Questions G(f) and H(f) in the P634 and the P561, respectively, limit the obligation upon an applicant to disclose whether they have been the subject of "injunction ordered by the Family Court" in the previous 10 years. However, the definition of "apprehended violence

order" adopted in the firearms legislation (set out above) also requires an applicant to disclose whether they were the subject of any injunction granted pursuant to s. 68B or s. 114 of the Family Law Act, as opposed to the Family Court itself, within the same period.

564. The effect of this is that the relevant questions asked in the P634 and the P561 require an applicant to disclose whether they have been the subject of *any* injunctions granted by the Family Court, as well as any injunctions granted by the FCC pursuant to s. 68B or s. 114 of the Family Law Act.

565. Separately, Question B(d) asked in the P650 requires an applicant to disclose *not only* if they have been subject to injunctions granted pursuant to s. 68B or s. 114 of the Family Law Act (in light of the extended definition of "apprehended violence order"), but also whether they are subject to "a Family Law Order". The phrase "Family Law Order" is not defined, and does not appear, in the Family Law Act or the firearms legislation.

566. Counsel assisting submitted that it is arguable that the phrase "Family Law Order" is broad enough to include *any* order made by a judicial officer in relation to family law proceedings. On this reading of Question B(d) in the P650, an applicant could be regarded as "subject to a Family Law Order" if they are, for example, a party to family law proceedings in which orders are made requiring parties to file material. I agree with the submission of counsel assisting that it is unclear, but unlikely, that the question is intended to be this broad in scope (particularly in light of the surrounding subject matter).

Analysis of the family law questions and the firearms applications of John Edwards

Were any "injunctions ordered by the Family Court"?

567. The family law proceedings between John and Olga were not transferred to the Family Court until after John had been granted his firearms licences. Therefore, he could not have been subject to an "injunction ordered by the Family Court" (see Question G(f) in the P634 and Question H(f) in the P561) at the time he made applications to the Registry.

Any s. 68B or s. 114 injunctions?

568. As already set out, the definition of an "apprehended violence order" in the Firearms Act is taken to include injunctions granted pursuant to ss. 68B or 114 of the Family Law Act.

569. I agree with the submission of counsel assisting that none of the orders in the family law proceedings up to 22 May 2017 (when John Edwards submitted his application for a

PPL) could be regarded as having been made pursuant to s. 68B of the Family Law Act, being an "injunction that is appropriate for the welfare of the child".

570. As to orders made pursuant to s. 114 of the Family Law Act, counsel assisting submitted that the evidence at inquest is that at the time John Edwards made applications to the Registry, orders in the nature of s. 114 had been made by the FCC, on 2 June 2016 and 20 October 2016 (namely orders for the return of personal property to Olga, and orders for exclusive possession of the Normanhurst property which prohibited John from being present at that property at certain times). I accept this submission.

John Edwards' answer to the question in the P650

571. In light of the above, I find that John Edwards was subject to "Family Law Orders" from 2 June 2016 onwards, and therefore should have ticked "yes" in answer to Question B(d) on the P650 declaration. However, I also find that the phrase "Family Law Orders" in the P650 is ambiguous. I am therefore not satisfied that John Edwards' answer to that question was necessarily deliberately false or misleading. Further, it is unlikely that John Edwards, or any other applicant, would appreciate that the definitions of "domestic violence order" and an "apprehended violence order" in the Act encompass injunctions granted pursuant to ss. 68B or 114 of the Family Law Act.

572. It is not possible to determine whether a different answer to this question would have had any bearing on the way in which John's applications for Commissioner's Permits and, ultimately, his licences were adjudicated by the Registry. But in light of the practice of the Registry at the time, which was almost entirely focused on the presence (or otherwise) of mandatory refusal factors it is highly unlikely, particularly given there was (and still is) no mechanism by which the Registry itself can verify or further clarify the nature of any family law orders to which an applicant is subject.

John Edwards' answers to the questions in the P634 and the P561

573. Counsel assisting submitted that whether John Edwards should have ticked "yes" to the relevant questions on these applications depends upon the way in which the orders made by the FCC on 2 June 2016 and 20 October 2016 are characterised (noting the extended definition of "apprehended violence order" outlined above).

574. An injunction is ordinarily regarded as an order of a court which *prevents* a person from doing a certain act or thing, or *requires* a person to do a certain act or thing. Counsel assisting submitted that the orders in June and October 2016 are of this character, and

it is therefore at least arguable that at the time John Edwards made his licence applications, he had been subject to an injunction imposed by the FCC within the last 10 years.

575. I agree with and accept these submissions. However, the observations above as to the awareness of John Edwards or any other applicant about the extended definition of "apprehended violence order" also apply here. I am therefore not satisfied that John's answers in the P634 or the P561 were deliberately false or misleading.

Findings and proposed recommendations

576. In light of the above analysis, I find that the nature and extent of the orders imposed by both the federal family law courts that are required to be disclosed in the firearms licensing progress requires clarification. In particular, it is difficult to imagine how any applicant could be alive to the extended definition of an "apprehended violence order" in the relevant legislation, which has the effect of making relevant, and disclosable, injunctions imposed pursuant to ss. 68B and 114 by both the Family Court and the FCC.

577. Further, and in light of the jurisdiction exercised by the federal family law courts, I am of the view that plainly, questions in licensing applications ought not be framed in terms of orders made by "the Family Court". Broader language should be adopted such as "family law proceedings" or "orders made under the Family Law Act".

578. In a statement provided shortly before the commencement of the inquest, SI Bell gave evidence in relation to the differing nature of injunctions captured by s. 114 of the Family Law Act. He is of the view that the current reference to s. 114 in the Regulation is "too broad" and states that a proposal has been submitted to the NSWPF Legislation & Policy Branch to amend the Regulation so that the automatic disqualification only relates to injunctions made under ss. 68B and 114(1)(a). Section 114(1)(a) specifically refers to injunctions for the "personal protection of a party to the marriage" ("PPIs"). SI Bell states that refusing applicants pursuant to s. 114(b)-(f) injunctions is to refuse admission to the licensing system where personal or family violence is not a factor.

579. SI Bell also provided detail of ongoing work being progressed by various working groups to achieve a national agreement to introduce criminal penalties for people who breach PPIs. He also confirmed that following "significant negotiation" the federal family law courts have agreed to provide the NSWPF with detail of PPIs for firearms licensing

purposes, but that the Registry has postponed the receipt of that information to allow for system development of COPS and further work to improve identity verification.

580. Counsel assisting submitted that a recommendation ought to be made that the Commissioner standardise and clarify the questions in all Registry application forms that relate to the disclosure of orders in family law proceedings to which an applicant has been subject in the last 10 years. This recommendation is supported by the St Marys Parties, who in fact propose a recommendation in broader terms, namely that "all Firearms Registry forms are consistent in their questions", not just those pertaining to the disclosure of family law proceedings. Whilst it may be the case that other questions in the application process could be improved, this is not a matter in relation to which the interested parties have had an opportunity to make submissions, so I am not minded to broaden the scope of any recommendation made.

581. The Commissioner submits that it would be premature to make a recommendation of this kind because the Family Court was not represented at the inquest and has not had the opportunity to make submissions in relation to it. I am of the view that the proposed recommendation, as currently framed, is not a matter for any entity other than the Commissioner of Police, as it is directed towards improving the internal processes of the Registry and ensuring that all applicants are left in no doubt as to the family law matters they are required to disclose as part of the relevant applications. Pleasingly, the evidence of SI Bell indicates that aspects of this work are already in train.

582. Accordingly, I make the following recommendation:

> **Recommendation 13**: That the NSW Police Force and the Firearms Registry standardise and clarify the questions in all Firearms Registry application forms that relate to the disclosure of orders in family law proceedings to which an applicant is subject or has been subject in the last 10 years.

583. Counsel assisting also proposed a recommendation that the Registry implement a mechanism to enable it to verify information provided by applicants relating to family law proceedings.

584. The Commissioner again submits that such a recommendation would be premature, because the Family Court has not had an opportunity to make submissions and because there has not been thorough evaluation of the practical, privacy and resource impacts of

recommendations in relation to information sharing between agencies and institutions such as the Family Court.

585. Whilst this may be the case, it ought not be overlooked that this aspect of reform is largely directed towards the Registry being able to properly and independently verify a range of information it seeks of applicants as part of its own processes and in response to the statutory framework. This is a key responsibility of the agency which it continues to be unable to fulfil. Consequently, "incorporating family law considerations into the assessment process" (as it is described in the Commissioner's submissions) is a long overdue procedural reform that is of critical importance from a public safety perspective.

586. I note the progress that has already been made by the Registry and counterparts from the federal family law courts to facilitate information sharing in relation to PPIs. I also accept the evidence of SI Bell as to the further work required to enable the Registry to properly link and rely upon information provided pursuant to a PPI which is, to a limited extent, dependent on the enhancement of identity verification by federal family law courts.

587. In light of the practical considerations raised by SI Bell, I make a recommendation in slightly different terms from that proposed by counsel assisting, as follows:

> **Recommendation 14**: That the NSW Police Force and the Firearms Registry continue to liaise with representatives of the Federal Circuit Court and Family Court of Australia with the view to the Firearms Registry implementing a mechanism by which information provided by applicants relating to family law proceedings in the P650, P634 and P561 forms is able to be verified.

Information exchange between federal family law courts and the Firearms Registry

Issue #46: Should there be information sharing between the federal Family Court and State firearms licensing authorities in relation to allegations of family violence and/or family law court orders or injunctions?

588. Multiple Notices of Risk in relation to the children Jack and Jennifer were filed in the family law proceedings between John and Olga. Additionally, Olga's affidavit evidence contained extensive allegations in relation to physical assaults by John and other forms of harm in relation to the children. At the time the Registry was adjudicating John's various licence applications they were unaware of these matters. Further, and as is plain from the findings in Section C, COPS Events linked to John Edwards' CNI numbers made

it readily apparent that John and Olga were in the midst of acrimonious family law proceedings, however adjudicators at the Registry did not understand the significance of that information in terms of assessing risk.

589. Counsel assisting submitted that there is a clear need for information sharing between the federal family law courts, the NSWPF and the Registry in relation to allegations of family violence made and injunctions pursuant to the Family Law Act, beyond that outlined in relation to Recommendation 14, which is directed towards verification of information provided by applicants. Counsel assisting observed that similar arrangements exist between the federal family law courts and DCJ (formerly FaCS) – eg. where a *Notice of Risk* is filed in the FCC or a *Notice of Child Abuse, Family Violence or Risk of Family Violence* is filed in the Family Court.

590. SI Bell confirmed that the Registry has access to the terms of apprehended violence orders issued in New South Wales courts. However, the Registry does not receive information concerning family violence disclosed in family law proceedings, as these are typically litigated in federal family law courts exercising federal, not state, jurisdiction.

591. SI Bell gave evidence that the Firearms Registry is currently engaging proactively with senior representatives from the Parramatta Registry of the Family Court to determine ways in which information that relates specifically to violence and/or concerns held by the federal family law courts can be notified to the Firearms Registry.

592. SI Bell gave evidence that the same issues in relation to the verification of identity outlined earlier also obtain to this initiative. Another issue arising is the need to filter the information and orders received, so that the Registry only receives that relevant to risk (as opposed to orders relating to property or parenting arrangements). A solution currently under consideration is whether orders relating to risk or violence can be made separately, so that they can be readily identified by police.

593. However, SI Bell indicated that once those issues are resolved, there would be no impediment to information about risk, in relation to a properly identified person, being included in COPS in the same way as occurs for an AVO. He agreed with senior counsel assisting that this would be a positive change for the Registry.

594. Counsel assisting submitted that, at a minimum, the NSWPF ought to be automatically notified as to the occurrence of any of the following in a federal family law court (together "a federal DV event"):

    (a) when a *Notice of Risk* is filed in the FCC that discloses domestic or family violence, or child abuse;
    (b) when a *Notice of Child Abuse, Family Violence or Risk of Family Violence* is filed in the Family Court; or
    (c) when a federal family law court imposes an injunction relating to the protection of a spouse or child.

595. Counsel assisting further submitted that where a federal DV event reveals adverse information in relation to an applicant for a firearms licence, this should constitute a basis for the mandatory refusal of an application by the Registry, or, in the case of a current licence holder, an automatic suspension. In the alternative, they submitted that the occurrence of a federal DV event should, at a minimum, lead to a temporary suspension of the processing of a licence application or an existing licence, during which time "extensive due diligence should be done on the applicant and the nature of the federal DV event" in order to determine whether the event has any bearing on the threshold statutory tests in s. 11 of the Act. They submitted this approach would complement that which applies to the imposition of an apprehended violence order, where revocation of licences or refusal of applications are possible consequences.

596. In light of the above, counsel assisting proposed following recommendations:

    (a) That a system be implemented by NSW Police to ensure that where a federal DV event occurs, the event is notified by the relevant family law court to NSW Police and then featured in the COPS database in a way that makes the event readily apparent to an adjudicator at the Firearms Registry; and
    (b) That the NSW Government take steps to amend the regulatory regime so that a federal DV event will constitute a basis for the mandatory refusal of a firearms licence application or the automatic suspension of a current firearms licence.

597. In relation to proposed recommendation (a) above, the Commissioner repeats the submissions made in relation to Recommendations 13 and 14. As to proposed

recommendation (b), the Commissioner submits that this is a matter for NSW Government, and therefore does not wish to make any submissions.

598. The St Marys Parties do not support proposed recommendation (b), on the basis that there ought to be qualification of the nature of a federal DV event if it is to constitute grounds for the mandatory refusal of a firearms licence application. They instead propose that a federal DV event ought to "constitute a suspension of a current firearms licence whilst the circumstances of the event are investigated" by the Registry, which I understand to be akin to the alternative formulation posited by counsel assisting.

599. I accept that the federal family law courts have not had an opportunity to make submissions in relation to this issue, however I do not consider this, of itself, to mean that the making of a recommendation is premature. In particular, I note the evidence as to the consultation that is already in train with representatives of the Family Court in an effort to refine the scope of information provided to the NSWPF, from which I infer that the Family Court is prepared to work productively with police to achieve reform in this area.

600. As already indicated, I am of the view that procedural reform of this area of the Registry's operations is of critical importance from a public safety perspective, largely because the Registry has no effective mechanism by which to verify or interrogate the answers to the family law questions posed in the various Registry application forms.

601. For these reasons, as well as the evidence of SI Bell as to the likely benefit to the Registry of information sharing with the federal family law courts, I am satisfied that it is appropriate to make the recommendation set out below. The optimal manner in which to utilise information shared by the federal family law courts in relation to a federal DV event is primarily a matter for NSWPF and the Registry, however I adopt the proposal of counsel assisting that any such information should be included within the new "DV History" summary within COPS, so that the information is readily available to an adjudicator or other decision-maker at the Registry.

Recommendation 15: That the NSW Police Force and the Firearms Registry continue to liaise with representatives of the Federal Circuit Court and Family Court with the view to NSWPF implementing a system to ensure that when any of the following occur in family law proceedings (together "a federal DV event"):

(a) a Notice of Risk is filed in the Federal Circuit Court that discloses domestic

or family violence, or child abuse;

(b) a Notice of Child Abuse, Family Violence or Risk of Family Violence is filed in the Family Court of Australia; or

(c) a federal family law court imposes an injunction relating to the protection of a spouse or child;

the relevant federal family law court notifies the NSW Police Force, and the federal DV event is recorded in COPS by the NSW Police Force in a way that makes it readily apparent to an adjudicator at the Firearms Registry.

602. I accept the submission of counsel assisting that federal DV events ought to be taken into account by the Registry in a similar way as apprehended violence orders. However, I am mindful of the fact that information contained in a Notice of Risk is likely to be untested, and, potentially (as was the case in relation to allegations made by John in the family law proceedings with Olga) unfounded.

603. For this reason, I am of the view that it would be inappropriate for the mere filing of a Notice of Risk to constitute a mandatory refusal of an application for a firearms permit or licence. Consequently, I make the following recommendation:

Recommendation 16: That the NSW Government take steps to amend the regulatory regime in relation to firearms licensing so that the occurrence of a federal DV event (as defined in Recommendation 15) gives rise to:

(a) a suspension of the processing of a licence application or of an existing licence; and

(b) consideration as to whether the information relating to the federal DV event has any bearing on the suitability of the applicant or licence holder pursuant to s. 11 of the *Firearms Act 1996* (NSW).

604. As a corollary of the above, counsel assisting proposed that a recommendation be made that where a federal DV event reveals adverse information in relation to a current applicant for a firearms licence or permit, or a current licence holder, NSWPF or the Registry should automatically notify the relevant federal family court of that fact.

605. As to that proposed recommendation, the Commissioner repeats the submissions made in relation to Recommendations 13, 14 and 15, to the effect that it would be premature to make a recommendation of this nature.

606. For the reasons set out above in relation to Recommendation 15, I agree with and accept the submissions of counsel assisting and therefore make the following recommendation:

> **Recommendation 17**: That the NSW Government take steps to amend the regulatory regime in relation to firearms licensing so that where the NSW Police Force is notified of a federal DV event (as defined in Recommendation 15) in relation to a person who is either an applicant for a firearms licence or permit, or the holder of a firearms licence or permit, the NSW Police Force or the Firearms Registry must automatically notify the relevant federal family law court of that fact (so that the court will inform the parties of the application or current licence).

Issue #47: Should a person engaged in Family Court proceedings be required to disclose this to the Firearms Registry when applying for a firearms licence?

607. Counsel assisting submitted that the evidence of the Registry witnesses, and the actions of the adjudicators which are evident from the material tendered, show a distinct lack of understanding of the risks posed by the fact that John was in the midst of family law proceedings with Olga whilst he was applying for multiple firearms licences.

608. Consequently, counsel assisting submitted that I make a recommendation that a person engaged in family law proceedings be required to disclose this to the Registry when applying for a firearms licence or permit, so as to increase the likelihood that an adjudicator will focus on the existence of those proceedings, and the significance of any risks posed by an applicant. They also proposed a recommendation that the DMT be amended so that adjudicators take into account whether family law proceedings are on foot, and "consider the implications of this for risks that may be posed by the applicant".

609. The Pistol Sport Parties support the recommendation proposed by counsel assisting in relation to the amendment to the regulatory scheme. The Commissioner of Police submits that the proposed recommendation is a matter for the NSW Government, and does not wish to make any submissions in relation to it.

610. I am of the view that the existence of family law proceedings is a matter of which Registry staff should be aware when they are making determinations about the suitability of persons to hold firearms permits and licences. This recommendation would clarify the disclosure obligations of applicants and put the Registry on notice about the existence of proceedings absent any PPIs or a federal DV event. The proposed recommendation

also appropriately complements those made in relation to information sharing and notifications between the NSWPF, the Registry and the federal family law courts.

611. Accordingly, I make the following recommendation:

> **Recommendation 18**: That the NSW Government take steps to amend the regulatory scheme in relation to firearms licensing so that a person engaged in family law proceedings is required to disclose this to the Firearms Registry when applying for a firearms licence or permit.

612. In relation to the recommendation proposed by counsel assisting as to the amendment of the DMT, the Pistol Sport Parties submissions provide in-principle support. They caution that should the DMT be amended as is proposed, it ought not operate so as to automatically disqualify an applicant from holding a licence because they are a party to family law proceedings, in other words, that "the mere existence of current family law proceedings is an inappropriate threshold to be introduced into the [DMT]". I agree with and accept this submission, which I do not understand to be incompatible with the recommendation as formulated by counsel assisting.

613. The Commissioner partially endorses the proposed recommendation, with reference to the submissions made in relation to Recommendations 13, 14, 15 and 17. I take this to mean that they wish to record that their ability to implement this recommendation depends on the outcome of their consultation with the federal family law courts. I also accept that the Commissioner's ability to implement this recommendation is contingent on the implementation of either the above recommendations in relation to information sharing, or Recommendation 18, which would require applicants to disclose the information to the Registry.

614. I therefore make a recommendation in the following terms:

> **Recommendation 19**: That the Adjudication Decision-Making Tool used by the Firearms Registry be amended to require that adjudicators take into account any available information as to whether family law proceedings are on foot and consider the implications of this for risks that may be posed by an applicant.

Issue #48: Is it appropriate that a person engaged in Family Court proceedings be informed that their partner/ex-partner has made an application for a firearms licence? Would such a requirement be practicable?

Issue #49: Where a person has made an application for a firearms licence, should the partner/ex-partner of that person be interviewed (or be asked to provide information) as part of the application process? Would such a requirement practicable?

615. Counsel assisting submitted that Recommendations 15, 16 and 17 are a practical and effective way to bridge information gaps in relation to the intersection between family law proceedings and firearms application process. They further submitted that this is the appropriate mechanism by which to address the matters raised in Issues #48 and #49 because it places the responsibility for considering the significance of those matters on the Registry, as the agency responsible for administering the regulatory framework, rather than on an individual who may not be in a position to take any action in relation to the information they receive (as to Issue #48) or may have access to (as to #49). I agree with this submission. It is the Registry that is entrusted under the statutory scheme with the responsibility of assessing whether a person is "fit and proper" and can be "trusted" with a firearm.

616. Further, if Recommendation 17 is implemented, a party to family law proceedings where a federal DV event has occurred would, in any event, learn that their partner or ex-partner has made an application for a firearms permit or licence.

617. There was consideration given at inquest in relation to Issue #49. Whilst it was directed to slightly different matters, I note that SI Bell gave evidence as to the risks and difficulties that may pertain when a defendant who is the subject of an AVO pressures a victim to revoke the AVO, so that the defendant is not precluded from obtaining a firearms licence. I am of the view that those same risks and difficulties may well pertain to the process considered in Issue #49.

618. I therefore agree with and accept the submissions of counsel assisting that such a requirement is not practicable, and may in fact escalate the risk to a person, including an ex-partner or partner providing information.

E. JOHN EDWARDS' GUN CLUB MEMBERSHIPS

Hornsby RSL Rifle Club

619. I make the following factual findings about John Edwards' activities at Hornsby RSL Rifle Club.

620. In early December 2016, John attended the Hornsby RSL Rifle Club and indicated a firm interest in becoming a member. John spoke to Heather Smith, who at the time was the membership secretary of the Club. Ms Smith says he was "quite insistent" on joining the club. From her first interactions with John, she "immediately thought he would not be a good fit for membership of [their] club".

621. On 10 December 2016, John again attended the Hornsby RSL Rifle Club range and met with the President, Douglass Caple. John wanted to shoot at the range and Mr Caple says that he would have sent John back to the club house to fill out a P650.

622. Mr Caple does not recall seeing John shoot that day, but club records confirm that he *did* shoot at the club on 10 December 2016. This was despite the fact that he had answered "Yes" to the first Personal History Question (see Section D of these findings). Mr Caple says he would have checked the P650 form completed by John, and that "[i]f I had noticed he had marked 'yes' to the first question or any question I would have not let him shoot that day". Mr Caple's evidence is that he discovered that John had marked "Yes" to the first question on the P650 later that day, after John had already participated in shooting. Mr Caple said that, nonetheless, he thereafter ticked "Authorised to Shoot" on the bottom of the P650 form. His explanation is that he ticked "Authorised to Shoot" because John had already shot that day.

623. Ms Smith accepted that it was an "inexplicable error" that John was allowed to shoot at the club on 10 December 2016. Her evidence was that, at the time, the practice was for the "training person" to check P650; however since the deaths the subject of this inquest, either the club captain or membership secretary now also countersigns the P650.

624. On 14 December 2016, John emailed Ms Smith requesting an application form for membership of Hornsby RSL Rifle Club, which she sent him.

625. In late January 2017, John attended Hornsby RSL Rifle Club and handed a letter from the Registry to Heather Smith. This was one of the two letters from the Registry to John dated 24 January 2017 in relation to the "anomaly" that prevented the Registry from

approving the P650, and enclosing application forms for Commissioner's Permits. The letter referred to the fact that John had previously been subject to an AVO which had expired more than 10 years ago. Ms Smith says she showed the 24 January letter to Mr Caple, who stated he was going to call the Registry. She was unclear as to what occurred after that. Mr Caple does not recall Ms Smith showing him the letter.

626. As set out in Section D, on 18 March 2017 the Registry issued two Commissioner's Permits to John, including one for long arms (Category A/B) training at the Hornsby Rifle Range.

627. On 28 March 2017, Drew Thornton (Club President of the KGPC) telephoned Ms Smith to discuss John Edwards, stating that KGPC had found John to be "aggressive". Mr Thornton's evidence was that Ms Smith "echoed David [Dean]'s and my thoughts and referred the matter to the [Hornsby] RSL President".

628. On 30 March 2017, Ms Smith received an email from KGPC stating they had declined John's membership application. Mr Caple was CC'ed into that email.

629. On 15 April 2017, John attended the Hornsby Rifle Range and completed a rifle Firearms Safety Awareness Certificate. Ms Smith's evidence was that she was "surprised" to see him participating in shooting that day.

630. On 22 April 2017, John completed a temporary membership form for Hornsby RSL Rifle Club. However, Ms Smith did not have the forms signed off by the Club Captain and this was never followed up by John. Ms Smith's said she was "still not confident that John Edwards was an appropriate person to join our club".

631. John never made an application for full membership at the Hornsby RSL Rifle Club, obviating the need for the club to make a decision whether to decline him membership or not. Mr Caple's evidence is that, at the time, he did not have any concerns about John obtaining a firearms licence.

Ku-Ring-Gai Pistol Club

632. I make the following factual findings in relation to John Edwards' interactions with KGPC.

633. In early December 2016, John also attended KGPC[6] and spoke with Mr Thornton, indicating a firm interest in becoming a member. Mr Thornton said that while talking to John "he was verging on demanding on his need for an application for membership",

[6] The KGPC is also located at the Hornsby Rifle Range.

saying on a number of occasions “I want to become a member of your club”. Mr Thornton quickly came to the conclusion that John “may not be a suitable person to join” their club.

634. Mr Dean was with Mr Thornton while he spoke with John that day. Mr Dean says that John was not particularly interested in the club, and gave the impression he just wanted to get on quickly with the process of becoming a member. John told Mr Dean that the AVO to which he had been subject was connected to a former wife, but that his current wife was very supportive of his application for a gun licence. John told Mr Dean he was also making an application to the Hornsby RSL Rifle Club. Mr Dean’s immediate impression of John was that he was “pushy and aggressive” and that he may not be a great fit for the club.

635. On 13 December 2016, John attended KGPC and handed Mr Thornton a completed P650 form, a P561 application for a Category H licence, and P660 form (Genuine Reason form – Sport Target Shooting), as well as a letter stating that he wanted to “clear up an issue pertaining to a perception you seem to have taken about me, ie. that I am ‘pushing to join’”. He requested KGPC send the P650 to the Registry prior to Christmas.

636. When he reviewed the P650 Mr Thornton noticed John had answered “Yes” to the first Personal History Question, being “Have you in NSW or elsewhere been refused or prohibited from holding a firearms licence or permit or had a firearms licence or permit suspended, cancelled or revoked”. Mr Thornton’s evidence was that a “Yes” answer is “alarm bells for us”.

637. On 14 December 2016, KGPC held their monthly meeting and discussed John’s interest in joining the club. The Minutes reflect that his P650 was to be sent to the Registry, and that John would not be able to shoot at the Club until a determination was made by the Registry.

638. On 7 January 2017, Mr Dean reviewed John’s P650 declaration and noted he was “Not Authorised to shoot” (because he had answered “Yes” as to the previous licence refusal). Accordingly, Mr Dean did not allow John to undertake a Firearms Safety Training Course.

639. On 9 January 2017, Mr Dean sent an email to the Registry regarding John’s application to undertake training at KGPC, and requested a conversation with Registry staff about “how to progress the matter”. The email attached John’s completed P650. Mr Dean believed it was his “obligation to send this document to the Registry in light of the fact

that John had answered “Yes” to one of the Personal History Questions.

640. Mr Dean cannot recall if he spoke to anyone at the Registry after sending this email, but thinks he might have had a ‘generic’ conversation with HR, who worked in the Clubs section, about the process. His evidence is that he would not have communicated “concerns” about John during such a call, as he did not hold any at that point.

641. In 2017, there were no policies or guidelines in place in relation to a situation where a gun club had concerns about a person applying for membership, safety training or a firearms licence.

642. On 18 January 2017, KGPC held their monthly meeting and discussed John’s interest in joining the club.

643. On 8 March 2017, Mr Dean emailed Mr Thornton to inform him that John had confirmed his Commissioner’s Permit was being processed by the Registry. On 18 March 2017, the Registry issued two Commissioner’s Permits to John, including one for pistol training at KGPC.

644. On 28 March 2017, Mr Thornton emailed the KGPC committee members outlining John’s concerning behaviour and recommended his membership application should be declined. He stated “you know the old adage that first impressions are usually the correct impression, David [Dean] and I feel the same. David and I have had a couple of calls each today; David spoke to him, I rejected his call”. Mr Thornton concluded by saying “we don’t need any aggressive people within our club, I believe RSL [Hornsby] will do the same”.

645. On 29 March 2017, Mr Dean emailed the other KGPC committee members and expressed his concerns about John, including that he was trying to “railroad” KGPC and that he was a “PITA” (ie. pain in the arse). Mr Dean concluded in the email: “I would strongly recommend he not be offered membership”. Later that day, Mr Thornton emailed the executive of the club agreeing that John’s membership should be rejected.

646. Between 11.30am to 12.30pm on about 29 March 2017, John pulled out behind Mr Thornton at the KGPC car park and began sounding his horn and flashing his head lights. Mr Thornton stopped and got out of the car. John approached him and began questioning him in an aggressive manner regarding his possible club membership. Mr Thornton said he was “extremely aggressive”. Later that day, Mr Dean sent a letter

to John advising him that he would not be offered membership of KGPC.

647. On 30 March 2017, Mr Thornton sent Hornsby RSL Rifle Club an email stating that KGPC had declined John's membership application. This was despite the fact that, at the relevant time, there was no procedure requiring the club to notify the Registry, or any other person or entity, that the club had rejected John's membership application.

648. It is not in dispute that no one from KGPC communicated their concerns about John's behaviour to the Registry. Mr Thornton's evidence is that, although John was very aggressive in his nature, he did not believe that John posed a threat to himself or to any other person (noting the mandatory reporting obligation placed on clubs by way of the Regulation if they are of the view that an applicant "may pose a threat to public safety" or to themselves if in possession of a firearm: see below at [712]).

649. Even though Mr Dean's immediate impression of John was that he was "pushy and aggressive", his evidence is that he did not have concerns about John obtaining a firearms licence. Rather, his concerns were about John's "ability to fit the culture of our club". Mr Dean's evidence was that he had not previously experienced a "failed" P650.

650. Mr Dean gave evidence that, since the deaths of Jack and Jennifer, KGPC policy is that if they hold "significant concerns" in relation to a potential member they notify either the Clubs Section at the Registry, or the local licensing officer.

St Marys Pistol Club

651. I make the following factual findings about John Edwards' membership of the St Mary's Pistol Club ("SMPC").

652. A number of gun clubs, including SMPC, use the St Marys Indoor Shooting Centre ("the Centre"). The Centre is owned by the Sporting Shooters Association of Australia (NSW) ("SSAA (NSW)") and the Sydney Branch of the SSAA (NSW) and trades under the name "St Marys Indoor Shooting Centre". The Centre is also a licensed firearms dealership.

653. SW was the Compliance Officer at the Centre at the relevant time. He was responsible for writing procedures and processes, internal auditing, checking of firearms movement and record keeping. He resigned from the Centre in 2019.

654. AP was a Range Safety Officer and Firearms Instructor at the Centre at the relevant

time. He was also the Secretary of SMPC, and still holds that position. AP gave evidence at the inquest.

655. AN also gave evidence at the inquest. At the time that John Edwards was a member of SMPC she was the Club Captain, and was also employed as Operations Manager at the Centre. She resigned as Club Captain in 2019, after holding the position for many years, but remains the Operations Manager. AN does not recall any specific dealings with John Edwards.

656. On 24 April 2017, John attended the Centre and paid fees to join the SSSAA (NSW). On 28 April 2017, he attended the Centre again and submitted an application for SMPC to become a "new trainee member", paying his membership fee, as well as $380 to complete a Pistol Safe Handling Course. John also provided two character references. The evidence at inquest was that those referees were not contacted or otherwise checked, nor is there any requirement under the Regulation to do so.

657. I am satisfied that the evidence establishes that SMPC was not informed by either Hornsby RSL Rifle Club or by KGPC as to any concerns regarding John, nor, in respect of KGPC, that it had refused him membership based on those concerns.

658. As set out in Section D, following the reissuance of his Commissioner's Permit on 2 May 2017, John successfully completed the Safe Handling Course at SMPC on 18 May 2017. On 22 May 2017, the Registry received his Completion Certificate and P561 for a Category H licence (ie. a PPL). The application was approved by HP on 26 June 2017.

659. Once a person holds a PPL, it is a legislative requirement for them to complete three supervised shoots within the first six months of their PPL. They may not purchase a Category H firearm within that six-month period. Notwithstanding, SMPC requires a PPL holder to complete *six* shoots within the first six months in order for a Completion Certificate to be issued (three as a 'novice' and three as 'trainee'). On the basis of the records produced by the Centre and SMPC I am satisfied that John Edwards fulfilled both the legislative requirements in relation to the PPL and those of the SMPC.

660. On 28 December 2017, John hired pistol locker PL 104 at the Centre for the minimum three-month period (this was renewed for a further three months on 28 March 2018). John had previously hired a rifle locker at the Centre. Hirers are given an electronic access card and key to access the lockers which are in a secured area, and can do this

independently of staff. The Centre is not required to keep records of the removal of firearms from safe storage, nor the reasons for that removal. The only records available are CCTV of the relevant area, and records noting the use of the hirer's access card.

661. On 31 January 2018, John undertook a graduation assessment conducted by AP, and was issued with a Completion Certificate from SMPC. AP's evidence is that he does not remember John during his graduation which tells him that John "was safe" and that he was able to follow the range commands as given. I accept this evidence.

662. On 2 February 2018, John sent a P563 (Application for a permit to acquire a handgun) to the Registry that had been signed by AP. The P563 nominated the Safe Storage Address as "Locker PL104" at the Centre. On 29 March 2018, he made a further P563 application to the Registry, dated 13 March 2018, also signed by AN. Consequently, and as set out in Section B, John lawfully acquired a Smith & Wesson revolver on 13 March 2018 and a Glock 17A pistol on 17 April 2018.

663. On 23 April 2018, John also completed a coaching session with SW with the Glock and the revolver. SW stated that John had a box of 100 rounds of ammunition and there might have only been a few rounds left at the end of that session. SW's evidence is that John commented that he did not like the "recoil" of the Smith & Wesson revolver, and that it was much harder to control. He told SW during the session that his goals were to become more accurate and to "not have [bullets] spraying everywhere". John later used the Glock pistol to shoot Jack and Jennifer.

664. On 23 May 2018, a membership renewal letter was sent to John by SMPC (noting all memberships coincide with the financial year, and expire on 30 June).

665. On 21 June 2018, John attended the Centre where he undertook target shooting and purchased 100 x 9mm ammunition for the Glock, (ie. 10 magazines each containing 10 bullets).

666. On 28 June 2018, the payments on locker PL104 at the Centre expired, and on 30 June 2018 John's SMPC membership expired. The payments on the pistol locker were therefore overdue on and after 28 June (including when John later accessed the pistol locker on 4 July 2018).

667. It was not disputed at the inquest that at the relevant time, the Centre allowed hirers access to their locker when their payments were in arrears, so long as they were not

"months" overdue. This practice is no longer employed by the Centre, and ceased as at the membership year ending 30 June 2019. It was reassuring to hear evidence about the new accounting system now in place that automatically denies a person access to their firearms locker is they are in arrears in respect to either locker hire fees or membership fees.

668. The Pistol Parties have, relatedly, submitted that in the event that a person who stores firearms at a club falls more than one month behind in the payment of storage fees and other related costs, the relevant club should be required to inform the Registry and the approve association to which it is affiliated, pursuant to cl. 97(3)(d) of the Regulation. I do not accept this submission and am of the view that it would be preferable, and far more straightforward and effective for all clubs to amend their contractual arrangements and policies as the Centre has done.

Decision of St Marys to allow John to collect two handguns on 4 July 2018

669. On 4 July 2018, John attended the Centre at about 11.30am, having made an appointment with the administration officer to access his locker about an hour before he arrived. This appointment was necessary because the Centre was undergoing renovations and those persons with lockers were not able to access the secured area as per the usual practice.

670. SW escorted John to his pistol locker with the building site foreman. SW did not know that John was in arrears both on his locker and his membership dues.

671. John collected the Glock pistol and the Smith and Wesson revolver from his pistol locker. SW observed that John "appeared flustered" at the time and closed the locker so hard that the sound "startled" SW. In fact, John closed the locker door so hard that it jammed and the foreman had to fix it with a screwdriver.

672. SW also observed that John was "getting a bit flustered and frustrated" with the fact that he was having difficulty putting a cable lock on the Glock pistol. In the end, SW had to assist him. John also tried to use the wrong key to open the locker safe again. John then locked both firearms into cases and then put both cases into a steel galvanized box and locked that.

673. Although SW agreed John was "flustered" at various points during this process, he said that John was, overall, calm and polite and he had no concerns about him taking

possession of the firearms. I accept SW's evidence, noting that the SMPC was not on notice as to any concerns held by other entities in relation to John Edwards.

674. Because the electronic access system was not in use at this time, the Centre kept handwritten notes of the appointments made to access lockers, which, in relation to John on 4 July 2018 record: "2 handguns out".

675. The Safe Storage address recorded by the Registry for the two handguns owned by John was locker PL104 at the Centre. The Centre does not have a policy in relation to the removal of firearms from a safe storage address. Further, the Centre was unaware, and not obliged to enquire, whether John had approved safe storage at another location when he removed his firearms from the locker. Consistently, SW did not ask John any questions when he did so. However, John did tell SW he was taking them home.

676. Neither ILS nor COPS indicate that there was a safe storage inspection carried out by police at John's home. Sergeant Kerry Barnard, the Licensing Supervisor at Ryde Police Area Command gave evidence that she was not aware of John having had any safe storage facilities at his home.

Issue #33: Are the requirements of section 6B of the Firearms Act 1996 (NSW) and the P650 form (allowing an unlicensed person to undergo a firearms training without involvement from the Firearms Registry in certain circumstances) appropriate?

Issue #34: Are the arrangements under section 6B of the Firearms Act 1996 (NSW) and the P650 form (allowing an unlicensed person to undergo a firearms training at a gun club without involvement from the Firearms Registry in certain circumstances) appropriate?

677. As already established, s. 6B(1)(b) of the Act exempts a person from any requirement under the Act to be authorised by a licence or permit to possess or use a firearm (other than a prohibited firearm) so as to allow them to possess or use a firearm while participating in a supervised firearms safety training course.

678. This amendment was introduced in 2008 with the aim to enable persons to commence firearms safety training without the need to wait 28 days for police to conduct background checks in relation to their criminal history, and any history of domestic violence or mental illness ("the 2008 amendment"). SI Bell's evidence at inquest was that this amendment was as a result of "lobbying by the industry". Prior to the 2008 amendment, the form that was the precursor to the P650 (and in similar terms) was sent to the Registry to enable verification of the information provided.

679. Some Registry staff, including BW and HT, stated that they disapproved of the changes because there is no oversight of the process by the Registry in the event that a person answers "No" to all the Personal History Questions in the P650.

680. Mr Thornton's evidence was that the P650 requirements are very "onerous" on a club because it is left to club officials to work out if a person is fit and proper to commence unlicensed shooting. In this respect, it was apparent from the evidence at inquest that those club officials are likely to be volunteers.

681. As set out at [622], volunteer officials at the Hornsby RSL Rifle Club allowed John to shoot unlicensed under a P650. The fact that he had ticked "Yes" to one of the P650 questions should have been easy to identify. Nonetheless, it was overlooked by the relevant official at the Hornsby RSL Rifle Club and this was not able to be explained by the witnesses who gave evidence.

682. SI Bell gave candid evidence at inquest to the effect that his view is that the process now in place pursuant to the 2008 amendment presents a risk to public safety. SI Bell stated that "the effective administration of this process remains a challenge and concern for the Registry", and articulated, *inter alia*, the following concerns:

    (a) that persons suffering from mental illness may gain access to firearms through this process and commit self-harm and/or attempt to harm others;

    (b) that the process is reliant on an individual answering the questions honestly, providing scope for persons at risk and those engaged in criminal activities to get obtain to firearms;

    (c) that fraudulent ID documents may be used to disguise a person's identity;

    (d) that the P650 allows for an individual to effectively bypass the regulatory scheme and engage in unlicensed shooting activities undetected across NSW, without limit on the frequency of such activities; and

    (e) that because P650 forms are retained by clubs and other industry stakeholders, the Registry has "no vision" over who is engaged in unlicensed shooting, nor whether they have been authorised or prevented from engaging in unlicensed shooting, unless an issue is brought to the attention of the Registry.

683. SI Bell also stated that despite the benefit of the current arrangements to clubs, there

are “genuine concerns” across the industry as to the “risks of giving someone access to a firearm without being able to validate the individual’s identity”. This was supported by evidence from AN to the effect that a club has no ability to check whether a person’s answers on a P650 are truthful.

684. SI Bell’s evidence was that there would be a benefit to public safety in “returning to some form of formal regulation” of the P650 process. He foreshadowed that, as part of the planned digital transformation of Registry operations, a P650 system could be completed using an online portal, which would address at least some of the risks identified above, including identity verification and the verification of answers to the Personal History Questions. It would also enable the Registry access to real time information about the refusal of a person to engage in unlicensed shooting activities by a gun club. A number of gun club witnesses gave evidence supporting the proposed digitisation of the P650 process and consequent oversight of the Registry.

685. I accept SI Bell’s evidence and the evidence of the other witnesses in relation to the issues and possible solutions related to the P650 scheme. It was candid and thorough, and has greatly assisted me to better understand the scope and seriousness of the risks and issues that are posed by the scheme. I find that the P650 scheme that is in force pursuant to the 2008 amendment poses extensive risks to both public safety in general as well as to the safety of those working within gun clubs and club members,

686. In light of the evidence of SI Bell and the other witnesses, counsel assisting have proposed a recommendation to the effect that the NSW Government take steps to revoke both s. 6B of the Act and the use of the P650 form.

687. The Commissioner has declined to make submissions in relation to this proposed recommendation on the basis that it is a matter for the NSW Government.

688. The St Marys Parties do not support the proposed recommendation. They submit that the practice of “Try Shooting” facilitated by the P650 scheme is an important mechanism in the promotion of sports shooting. They note the evidence of AN to the effect that the Centre does not accept “walk-ins”, in that a person wishing to participate in unlicensed shooting must pay a fee and complete the P650 in advance of the date that they undertake the activity.

689. The St Marys Parties further submit that the Registry is the entity that determines those

persons who are ineligible to use or possess firearms and that a recommendation be made that the Registry develop a “live” register of such persons for use by clubs. Whilst I agree that this would be a welcome initiative, it would not serve to cure the very likely scenario that a person that is hitherto unknown by the Registry or a club seeks to participate in unlicensed shooting. This proposal therefore does not address the extent of the concerns that have been raised in relation to this issue.

690. The Rifle Entities do not support the recommendation proposed by counsel assisting as to the revocation of the P650 form. They submit that the current form be retained but changes made to enable club officials to have access to all appropriate information and timely communication with the Firearms Registry if necessary.

691. I do not accept this submission. Without intending any disrespect to the many club officials who currently administer the P650 scheme and supervised unlicensed shooting, I am of the view that any proposal that they be given access to all the information necessary to verify information in a P650 is inappropriate and impractical, given that it would necessitate an unknown number of persons across the State to have access to information held securely by the police.

692. The Pistol Sport Parties support the proposed recommendation noting that the current process “places a heavy burden on clubs and the primarily volunteer base of individuals”. They submit that the introduction of an online portal for use by industry stakeholders would be a welcome development, although it may not be a practical way to facilitate one-off unlicensed participation in shooting by school and corporate groups.

693. The Pistol Parties further submit that if such a portal is developed, any approval by the Registry for a person to undertake unlicensed shooting ought to be club-specific and for a finite time frame. They further submit that various notifications should occur as between the Registry and the club in relation to refusals or previous training at other clubs, and that the club ought to retain overriding discretion to prevent a person from participating in unlicensed shooting at that club, notwithstanding any decision by the Registry. I agree with these submissions.

694. The Rifle Entities have submitted that they support the development of an online portal that would enable “real-time, prompt checking of P650s”. The Pistol Parties support this submission to the extent that any new system must be designed to “ensure that conclusive answers are provided within a short timeframe of no longer than two days”.

This submission is predicated on their experience that applications for new licences and permits and renewals can take weeks to be determined by the Registry, so any reform ought to be directed at curing these delays.

695. The Rifle Entities do not support the recommendation proposed by counsel assisting in relation to the revocation of s. 6B of the Act. In particular, Hornsby RSL Rifle Club submit that the current arrangements under s. 6B, that allow for unlicensed shooting without Registry oversight, "are appropriate". This submission is surprising given that, had there been Registry review of the P650 submitted by John Edwards at the relevant time (noting that he participated in shooting on 10 December 2016 and the Registry was only contacted in relation to his P650 a later time, in January 2017), it would likely have alerted club officials to the fact that John was ineligible to participate in any shooting activities without further consideration of his status by the Registry (because he had answered "Yes" to the Personal History Question relevant to a previous refusal).

696. Notwithstanding the particular submission made by the Hornsby RSL Rifle Club, the Rifle Entities collectively submit that s. 6B be amended, rather than revoked, "to ensure the P650 process is more robust". They also submit that it "makes no sense to take away the ability of clubs to supervise 'beginners' under controlled conditions".

697. On my reading of the legislative provisions, any enhancement to the P650 process does not require amendment to s. 6B, but rather to cl. 129 of the Regulation, given that the purpose of cl. 129 is to "prescribe requirements relating to the exemption under s. 6B of the Act of persons from the requirement to be authorised by a licence or permit to possess or use a firearm": cl. 129(1). This was what I understood to be the gravamen of SI Bell's evidence in relation to this issue.

698. I accept the submissions made as to the need for the clubs and entities represented at this inquest to promote their sport and provide an appropriate 'gateway' for people who wish to engage in recreational shooting. However, I am also of the view that these activities should only occur once a person has been appropriately vetted by the agency that retains the responsibility for oversight of the regulatory scheme, namely the Firearms Registry.

699. I encourage the Registry and the legislature to consult widely with clubs and other stakeholders in relation to any proposed change to the P650 scheme, and to consider some of the constructive proposals that have been put forward in the submissions of the

interested parties at this inquest.

700. In the event that the P650 scheme does remain in place, the NSW Rifle Association ("NSWRA") (one of the Rifle Entities) proposes that the form be modified so as to require a person to disclose whether they have ever been refused membership of a gun club. As will be evident from the recommendation below, I am of the view that the P650 scheme is not adequate. However, this proposal is worthy of further consideration in relation to any alternative scheme that is implemented, albeit that the underlying issue of verification of such information would remain.

701. Given my findings as to the extensive risks posed by the existing P650 scheme, and the views expressed by the most senior police officer at the Registry and other club officials as to the risks associated with the P650 scheme, I make the following recommendation:

> **Recommendation 20:** That the NSW Government take steps to revoke the use of the P650 form (which currently allows an unlicensed person to undergo firearms training without involvement or vetting by the Firearms Registry), with the view to amending cl. 129 of the Firearms Regulation 2017 and implementing an alternative scheme which provides for adequate verification of information and oversight by the Firearms Registry.

Issue #35: What are the obligations on gun clubs to inform the Firearm Registry if they have refused a person membership?

702. The evidence at inquest plainly indicated that there is currently no obligation on a gun club to inform the Registry if they have refused a person membership, but that it would be an easy task for them to do so.

703. As already stated, I am satisfied that the evidence at inquest established that SMPC was not informed by KGPC that it had refused John Edwards membership. SMPC therefore made the decision to grant him membership (and the Registry made the decision to grant John an amended Commissioner's Permit and final licences) without knowing that KGPC had refused him membership based on its concerns about him.

704. A number of gun club witnesses were supportive of a change to the legislative framework so as to impose an obligation on clubs in this respect. They were of the view that whether a person had been refused membership of another club would be "important information" to take into account in their own decisions about membership, as it is relevant to the

assessment of risk, including AN who stated that her view was that such information would cause a club to have a "much closer interaction" with the person before making a decision about whether to grant membership.

705. SI Bell and BW also supported a regulatory change by which gun clubs would be required to notify the Registry if they refuse membership to someone.

706. Counsel assisting submitted that such an obligation ought to be imposed and have proposed a recommendation to this effect. They further submitted that an obligation imposed in this way would protect clubs in relation to any privacy concerns that may arise when making such a notification. I agree with and accept these submissions. Such an initiative would also have the benefit of the Registry having this information to hand for consideration in any relevant licensing decisions and for use in other verification processes.

707. The Commissioner has indicated support for the recommendation proposed by counsel assisting, but has submitted that it is ultimately a matter for the NSW Government.

708. The Pistol Parties support the proposed recommendation but submitted that to the extent that a gun club is required to notify the Registry if it has refused a person membership, it ought also be required to inform the approved association to which it is affiliated pursuant to cl. 97(3)(d) of the Regulation. There was no evidence before me as to the practical effect that this further notification would have, so I am not able to make a recommendation to this effect. However, this is not to say that it is not a proposal worthy of further consideration, should a system of notifications be put in place.

709. The Rifle Entities also support the proposed recommendation but submit that there must be consultation with affected entities in formulating any related regulatory obligation. I accept and agree with this submission. They further submit that any failure to comply with the proposed obligation ought not leave a club or other entity open to any offence or sanction. I do not agree with this submission. For any obligation of kind that is proposed to have maximum utility and effectiveness, there must be a consequence for non-compliance.

710. The St Marys Parties support the proposed recommendation, and further propose that the reason for the refusal ought to be provided to the Registry on the basis that such a refusal may not, of itself, be indicative of a person's unsuitability to possess and use

firearms. I agree with and accept this submission.

711. Accordingly, I make a recommendation as follows:

> **Recommendation 21:** That the NSW Government take steps to implement a regulatory change under which gun clubs are under an obligation to inform the Firearms Registry if they have refused a person membership, and the reasons for that refusal.

Issue #36: What are the obligations on gun clubs to inform the Firearm Registry if they have concerns about a person who has sought, or obtained, membership?

Issue #37: Are regulations governing obligations on gun clubs to inform the Firearm Registry about risks or concerns in relation to a prospective or current member appropriate, and if not, how should they be changed?

712. As to Issue #36, the Regulation imposes a mandatory reporting obligation on a pistol club (as opposed to gun clubs more generally) where it is of the view that a prospective member "may pose a threat to public safety" or to themselves if in possession of a firearm: see cl. 94(d) of 2006 Regulation (now cl. 101 of the Regulation).

713. As set out earlier in Part E, KGPC did not communicate their concerns about John's behaviour to the Registry, because despite their immediate impressions, they did not have concerns about him obtaining a firearms licence, and did not think he posed a threat to himself or others. Notwithstanding, Mr Thornton accepted that, in hindsight, the concerns that KGPC had were important for the Registry to be aware of when determining whether John was fit and proper person to hold a licence. It is positive that KGPC has amended their own policies in this regard (see above at [650]).

714. Counsel assisting submitted that the threshold in cl. 94(d) of 2006 Regulation (now cl. 101) is a high one. As AN, formerly of SMPC, said in her evidence, it is a "*big call*" to form the view that a person may pose a threat to public safety or to themselves. AN gave evidence of a number of examples from her time as Club Captain where the threshold in cl. 94(d) was not met, but the concerns she had about certain individuals were such that she was of the view that the Registry ought to be notified.

715. A number of witnesses, including club officials from KGPC and SMPC, as well as SI Bell and BW of the Registry, supported a regulatory change by which the threshold at which pistol clubs are required to report to the Registry pursuant to cl. 94(d) is lowered to

include a situation where, for example, a club has concerns in relation to risk posed by a prospective or current member. However, some witnesses also raised issues about privacy law obligations, which may create a lack of clarity as to the ability of a club to inform the Registry of such concerns.

716. Counsel assisting submitted that in light of the evidence of both the industry witnesses and of the senior staff at the Registry, a recommendation be made to amend cl. 101 of the Regulation so that the reporting threshold is lowered from the current test of "may pose a threat to public safety" or to themselves, to include a situation where a club holds concerns as to any risk posed by a member or prospective member. They further submit that the reporting obligation ought to apply to all gun clubs, not just pistol clubs.

717. The Rifle Entities support the submissions of counsel assisting in relation to the proposed recommendation. The National Rifle Association of Australia ("NRAA") (one of the Rifle Entities) further submits that in order for clubs to be able to fulfil this function, the Registry ought to develop and deliver a "process for identifying 'personnel' and 'identity' risks" to be made available to all clubs. I agree with and accept this submission.

718. The St Marys Parties support the proposed recommendation but also note concerns in relation to its implementation, specifically as to the determination of the threshold for a report to be made, how that threshold is interpreted, and the personnel that would be subject to the mandatory reporting obligation.

719. The Pistol Parties also support the proposed recommendation in principle, as well as the submissions made by counsel assisting. However, similar to the submissions of the other clubs, they submit that cl. 101 would need to be amended with due specificity as to the types of risks and concerns upon which a club must act, and the persons responsible for forming a view as to the risks posed by a prospective member of the club.

720. In relation to the submissions made as to the need for specification of the particular persons responsible for "forming a view" and notifying the Registry, it is to be noted that this is a matter which already falls to the clubs to determine and cl. 101(d) provides guidance in relation to it. I see no reason to deviate from the way in which this matter is currently framed in the Regulation.

721. I accept the submissions of both these parties, and am of the view that should cl. 101 be amended, the Registry ought to take the lead in developing the requisite policy or

guidelines, as proposed above by the NRAA, and I intend to amend the proposed recommendation accordingly.

722. The Pistol Parties further submit that, to the extent that a club is required to make a notification to the Registry pursuant to cl. 101, it ought also be required to inform the approved association to which it is affiliated pursuant to cl. 97(3)(d) of the Regulation. There was no evidence before me as to the practical effect that this further notification would have, so I am not able to make a recommendation to this effect. However, this is not to say that it is not a proposal worthy of further consideration, should a system of notifications be put in place.

723. The Commissioner has submitted that he supports the proposed recommendation, but notes that it is a matter for the NSW Government.

724. I agree with and accept the submission of counsel assisting that all clubs, not just pistol clubs, should be subject to the obligation set out in cl. 101 of the Regulation and note that none of the clubs made any submissions to the contrary in respect of this proposal. I also agree with counsel assisting's submission that the threshold of the test set out in cl. 101 ought to be lowered. Having carefully considered the submissions made by the interested parties, I make the following recommendations:

Recommendation 22a: That the NSW Government take steps to amend cl. 101 of the Firearms Regulation 2017 to impose the mandatory reporting obligation therein on any type of gun club (not only a pistol club).

Recommendation 22b: That the Firearms Registry undertake consultation with industry stakeholders and the NSW Government with the view to lowering the reporting threshold in c. 101 of the Firearms Regulation 2017 from the current test of "may pose a threat to public safety (or a threat to the person's own safety) if in possession of a firearm", to include a situation where the club has concerns in relation to risk posed by a prospective or current member, and developing appropriate parameters to assist in assessing any such risk.

Issue #38: What are the obligations on gun clubs to inform other gun clubs if they have refused a person membership or otherwise have concerns about a person who has sought, or obtained, membership?

725. There is currently no obligation on a gun club to inform another club that they have refused a person membership, or otherwise have concerns about a person.

Issue #39: Are regulations governing the obligations (if any) of a gun club to provide information to other guns clubs appropriate, and if not, how should they be changed?

726. On the basis of the evidence at inquest, I am satisfied that there are no regulations in place that govern the information exchange set out in Issue #39. A practical issue that would arise by imposing such an obligation is the difficulty with identifying which clubs would need to be informed, given that the refusing club would be unlikely to know other club/s a person may later approach for membership.

727. AN gave evidence that she would support a regulatory reform that would allow gun clubs to send out a 'club-wide' alert (or enter information on an online register) so that all clubs were on notice of concerns about a particular person. Conversely, in his evidence SI Bell indicated that he would support the Registry sending an alert out to clubs about persons of concern.

728. Counsel assisting have submitted that both the proposed 'club-wide' alert system and the proposal of SI Bell have merit and ought to be considered. However, they alternatively submitted that a more effective regulatory reform would be for clubs to be required to notify the Registry should they refuse a person membership or otherwise have concerns about a person. I accept and agree with this submission and note that I have given effect to it by way of Recommendation 21.

Issue #40: Should applicants for membership of a gun club be required to inform the club whether they have previously been refused membership of another club?

729. A number of witnesses, both from gun clubs and from the Registry, were supportive of a proposal put to them by counsel assisting about reform that would require gun clubs to enquire of potential members whether they have previously been refused membership of another club.

730. In line with Recommendation 21, I am of the view that any the most effective mechanism in relation to previous refusals is that it be mandatory for clubs to inform the Registry if

they refuse membership to a person, with the obvious benefit that the Registry then has that information at its disposal for future consideration. Should individual clubs see fit to amend their application forms to include a question requiring disclosure of any previous refusals there would be a further benefit to the reform proposed by way of Recommendation 21, namely that clubs could verify the accuracy of the information provided by the applicant with the Registry.

Issue #41: Should John have been granted membership of the St Marys Pistol Club?

731. Counsel assisting have submitted that the evidence does not support a conclusion that John Edwards should not have been granted membership of SMPC based on the information that it had available to it. They submit that the evidence established that SMPC was not informed by KGPC that it had refused John membership, nor were they on notice of any particular matters relating to John Edwards' suitability (or otherwise) to hold a licence. They further submit that there was no regulatory requirement for SMPC to check John's references (nor is there any evidence that the checking of those references would have altered events). As is evident from the factual findings above, I accept these submissions.

732. Lastly counsel assisting submitted, as did the St Marys Parties that in light of the fact that, on 2 May 2017, the Registry saw fit to issue John with a Commissioner's Permit for pistol training at SMPC, and had also issued him with a permit for rifle training, it was unsurprising that SMPC would have relied on that fact in their decision to grant him membership. I accept and agree with these submissions and make no adverse findings in relation to the relevant personnel at SMPC or the SMISC in relation to the granting of membership to John Edwards.

Issue #42: What regulations govern the circumstances in which a person (whose Safe Storage Address for a firearm is a locker at a gun club) may collect that firearm and remove it from the premises?

733. As is plain from the factual findings set out above, the legislative scheme does not regulate the removal of firearms from the registered safe storage address, including when that safe storage address is in a secure locker at a gun club. That is the case even though, as was the case in relation to John Edwards, there may be no available information as to safe storage available to the owner at any other location.

734. Further, I am satisfied that, in this case, there was no legal requirement for the Centre to

advise the Registry that John had removed his firearms from the registered safe storage address at the Centre. Clause 17(3) of the 2017 Regulation only requires a licence holder who *changes* the address where the person keeps the firearm to notify the Registry within 14 days.

Issue #43: What guidelines or rules at St Marys Pistol Club governed the circumstances in which a person whose Safe Storage Address for a firearm was a locker at that Club may collect that firearm and remove it from the premises?

735. SW did not ask John any questions about where he was taking his firearms when he collected them from the Centre on 4 July 2018. However, I am satisfied that there were no guidelines in place at the Centre at the relevant time in relation to the removal of firearms from safe storage by their owners, nor any requirement for staff at the Centre to ask those questions of a person accessing their firearms.

736. Counsel assisting submitted that the approach taken by the Centre (via SW) to the collection of his two pistols on 4 July 2018 was not inconsistent with any regulatory requirement. On this basis, the St Marys Parties have submitted that I would find that SW acted in accordance with the applicable legislative regime in place at the time and make no adverse findings against him. I accept and agree with these submissions and make no adverse findings in relation to SW and the circumstances in which John Edwards removed his firearms from the Centre on 4 July 2018.

Issue #44: What were the circumstances in which John was allowed to collect two pistols from a gun locker St Marys Pistol Club on 4 July 2018 and remove them from the premises?

737. The circumstances in which John was allowed to collect two pistols from a gun locker at the Centre on 4 July 2018 and remove them from the premises are set out above in the factual findings at [669]-[676].

Issue #45: What regulations, guidelines or rules ought to govern the circumstances in which a person whose Safe Storage Address for a firearm is a locker at a gun club may collect that firearm and remove it from the premises?

738. On the basis of the evidence before me, I am satisfied that a gun club or shooting centre currently has no power to prevent a person from collecting firearms from safe storage at a club or other shooting centre, even if, as was the case with John Edwards, they appear “flustered”, agitated, or there are other factors suggestive of risk.

739. SI Bell gave evidence that there should be regulatory change to give gun clubs the power to refuse to allow a person to collecting firearms if they hold concerns about any risk that might be posed by that person as a result. He further stated that if such a regulatory change was put in place, the kind of assessment required was an extension of those already made by club officials under the current P650 scheme, where they undertake assessment of persons variously seeking to participate in unlicensed shooting at, or to become a member of, a club.

740. Counsel assisting has consequently submitted that I make a recommendation that there be regulatory reform to provide gun clubs with the power to refuse to allow a person to access or remove firearms from safe storage at that club or centre, if it has any concerns about risk posed by that person.

741. The St Marys Parties have submitted that they do not support the proposed recommendation on the basis that the proposed change would ultimately be counter-productive, because those individuals who currently avail themselves of storage at clubs and other venues would make arrangements to store their firearms at home, and avoid any such regulation. They further submit the proposal would be "inconsistent" because it could not apply to those licensed firearm holders who store their firearms at home.

742. This issue was canvassed with SI Bell in his evidence and he agreed that any such reform may be a deterrent for firearms holders to store firearms at clubs, and it may be "just moving the problem on to another area and, you know, back into a family home". I accept SI Bell's evidence on this point.

743. The St Marys Parties also submit that the recommendation, as currently framed, overlooks other safe storage locations, such as the Centre as well as general storage facilities not controlled by industry stakeholders or entities.

744. The Pistol Parties have provided support for the proposed recommendation, however they again submit that to the extent that a club is in a position to refuse access or removal of firearms, it should notify the approved association to which it is affiliated pursuant to cl. 97(3)(d) of the Regulation. Again, as there is no evidence as to the practical effect this further notification would have, I am not able to make a recommendation to this effect, but the proposal appears to be worthy of further consideration.

745. In their submissions, the NSWRA notes that it does not generally recommend storage of

firearms at clubs. It is in the process of reviewing club membership policies and processes, with the view to developing a uniform policy for all affiliated clubs in NSW, including ongoing attention on the issue "safe storage of firearms when travelling and when away from 'home'". Notwithstanding, the Rifle Entities have expressed support for the recommendation proposed by counsel assisting.

746. In line with other proposed recommendations directed at the legislature, the Commissioner has declined to make submissions, but has expressed support for the proposed recommendation.

747. I accept that any regulatory reform in the nature of that proposed by counsel assisting will not capture firearms owners who do not store guns at gun clubs or similar locations. However, I am not of the view that this, of itself, means that the proposal is not worthy of consideration as a means to enhance public safety. At the same time, I note the evidence given by SI Bell as to the possible unintended consequences of the proposed reform, which may, of itself, have a detrimental effect on public safety if it results in a greater number of firearms being stored at residential properties.

748. In light of the submissions and evidence given, I am of the view that it would be inappropriate to make a recommendation in the terms proposed without further analysis and evidence as to the likely effect. I regard the Registry as the entity best placed to undertake that further analysis.

749. Therefore, on the basis of the submissions and evidence received, I make the following recommendation:

> **Recommendation 23:** That the Firearms Registry undertake research and analysis in relation to the likely impact of a regulatory change to confer on gun clubs and other commercial safe storage providers the power to refuse to allow a person to access or remove guns if that club or provider has any concerns about risk posed by that person.

F. FAMILY LAW PROCEEDINGS

Introduction

750. This section of the findings sets out the factual background, findings and recommendations I have made in relation to the family law proceedings, and the roles of various persons associated with those proceedings.

751. At the outset, I wish to acknowledge that by its very nature, family law litigation is often complex and emotionally charged, not only for the parties to the proceedings, but also the practitioners, clinicians and judicial officers who work in the jurisdiction. It was plain that the experience of giving evidence in this inquest was stressful for many of the witnesses who were connected with the family law proceedings and I am grateful to all of them for their considerable assistance.

752. Unlike other areas of law where the details of court proceedings are widely available, s. 121(1) of the Family Law Act makes it an offence to publish or disseminate any account of family law proceedings or any identifying information in relation to any party to proceedings, subject to certain exceptions. One of those exceptions is any publication that has the approval of the appropriate court, pursuant to s. 121(9)(g) of the Family Law Act.

753. By letters dated 3 August and 7 September 2020, the Chief Justice of the Family Court, the Honourable Justice Alstergren, gave approval pursuant to s. 121(9)(g) for persons who were involved in the family law proceedings between John and Olga to give evidence about those proceedings, and for an account of the proceedings to be published in these findings. The fact of the approval granted by the Chief Justice was noted by senior counsel assisting when this inquest opened on 7 September 2020.

754. The purpose of the prohibition in s. 121(1) of the Family Law Act is the protection of the privacy of persons, including children, who are party to such proceedings. Because of the tragic circumstances the subject of this inquest, such concerns have a more limited remit, however that is not to say that the account which follows is set out without careful consideration of those matters and a concern to preserve the dignity of the family that is the subject of this inquest. However, for the reasons which follow, I am of the view that it is important to record the detail of the proceedings as part of a full examination of the deaths of Jennifer, Jack and John.

755. The account which follows is of central importance to this inquest, for two reasons. First, because the inquest examined the roles of individuals and agencies who interacted with members of the Edwards family, the information held by those individuals or agencies concerning risks to Jack and Jennifer, whether and how that information was shared, and how information sharing might be improved. The account is therefore essential to understanding how these issues were of relevance in this inquest.

756. Secondly, it is impossible to appreciate the significance of the timing of key events in the lead up to the deaths of the children, and the Edwards family relationships more generally, without understanding the family law proceedings. It was the primary forum through which Olga and John interacted following their separation, and in which Jack and Jennifer expressed their wish not to see John. It also provides important context for some of the events already examined in these findings – for example, the fact that Olga went to Hornsby Police Station on 29 December 2016 to report assaults on the children. This was one week after a directions hearing in the family law proceedings, at which John's history of abuse against Jack and Jennifer appears to have been minimised because Olga had not reported those allegations to police. Similarly, it may explain why John stalked Jennifer on the afternoon 5 July 2018: by that time he had had no contact with the children for months, and their new address had been withheld from him because he refused to agree to orders preventing him from approaching the property if it was disclosed to him.

April to June 2016: family law proceedings commence

6 April 2016: proceedings commenced

757. On 6 April 2016, Olga initiated proceedings in the Federal Circuit Court ("FCC") seeking orders in relation to the property at 33A Harris Road, Normanhurst. There were no orders sought in relation to parenting in the initiating application.

758. On the same date, Olga filed an affidavit in support of her initiating application, in which she disclosed, under oath: incidents of emotional abuse and financial control towards her by John; displays of anger and threats by John towards Jack, which made Olga fearful that "one day I would come home and find my child dead, because John could never control his temper"; physical assaults against Jack and Jennifer by John; and specific incidents of violence by John towards Jack, including kicking him, yelling at him, hitting him just under his eye with a book, and chasing him through a street in Paris and pushing him against a wall, which resulted in passers-by intervening. Olga also stated

that John had been in the military and special forces, and that he kept a machete under his bed (a photo of the machete was annexed to the affidavit). Olga stated that neither Jack nor Jennifer wanted to see John.

759. Olga annexed a letter to the affidavit which was to her from John, dated 10 October 2015, in which John admitted hitting Jack on one particular occasion but characterised it as a "clip over the earhole" and "kick up the bum".

28 April 2016: John made a "Child at Risk" report

760. On 28 April 2016, John made a "Child at Risk" report to FaCS (now DCJ). He made two further "Child at Risk" reports to FaCS between April 2016 and 7 March 2017.

1 June 2016: John's affidavit and Notice of Risk

761. On 1 June 2016, John filed an affidavit in the proceedings, in which he admitted to hitting and yelling at Jack on a number of occasions. He admitted that Jack had been injured near the eye by a book but said it was while they were having a "tug of war". He admitted chasing and restraining Jack in Paris, but said he was afraid of Jack being lost and alone. He also admitted dealing with Jack's behaviour by "yelling and screaming etc", and having hit Jennifer in the face, but said it was an accident.

762. In the affidavit, John also stated that he had been seeing a psychologist since his separation with Olga, and had been diagnosed with post-traumatic stress disorder.

763. On the same day, John filed a Notice of Risk with the FCC in which he ticked "no" to questions asking whether any children were at risk of abuse, or whether there had been or was a risk of any family violence. John was required to file this notice because it is a mandatory document required to be filed by any party to parenting proceedings, and John had sought parenting orders in his Response to Olga's initiating application.

2 June 2016: Court orders

764. On 2 June 2016, his Honour Judge Jarrett agreed to disclose Jack and Jennifer's address to John on the condition that he stay 500 metres away from their house. John did not agree.

24 June 2016: Olga filed a Notice of Risk

765. On 24 June 2016, Olga filed a Notice of Risk which contained numerous allegations of assaults by John against Jack and Jennifer. In the Notice of Risk, Olga ticked "yes" to

the following questions:

a. “Has a child to whom the proceedings relate been abused or is a child to whom the proceedings relate at risk of being abused”?

b. “Do you allege that a child to whom the proceedings relate has been abused by a party to proceedings or any other person who is relevant to these proceedings”?

c. “Has there been family violence or is there a risk of family violence by a party to the proceedings or any other person who is relevant to these proceedings”?

766. The specific allegations by Olga reflected the incidents described her affidavit of 6 April 2016, including physical assaults on both children, repeated bullying and threats towards Jack by John, an incident where John kicked and punched Jack in the presence of Olga and Jennifer because Jack touched John’s mobile phone, and a description of the incident in Paris that was included in Olga’s affidavit of 6 April 2016.

767. The Notice of Risk indicated that these allegations had not been reported to any external agencies, including police. Olga also alleged that John had mental health issues and had a problem with alcohol.

30 June and 13 July 2016: Court orders

768. On 30 June 2016, his Honour Judge Monahan issued orders in the proceedings, listing the matter for interim hearing on 20 October 2016, and directing the filing of consolidated affidavits by Olga and John.

769. On 13 July 2016, a Registrar confirmed that a Conciliation Conference had taken place between Olga and John, however the matter had not settled and would require judicial determination.

July to September 2016: John filed further affidavits and notices of risk

770. On 22 July 2016, John filed another Notice of Risk and supporting affidavit, alleging Jack and Jennifer were “being continually and severely psychologically and emotionally abused and emotionally manipulated and emotionally blackmailed by [Olga]”.

771. On 25 August 2016, John filed a further Notice of Risk, again alleging that Jack and Jennifer had been, or were at risk of being, abused by Olga because of the “extreme mental manipulation and blackmail” she was allegedly inflicting upon them. The Notice

of Risk also made extensive allegations that Olga had "destructive tendencies" and was suffering from a range of mental health conditions.

772. John's Notice of Risk was sent to FaCS by the Clerk of the FCC. On 2 September 2016, a representative from FaCS responded and informed the Clerk that the information provided had been assessed and a decision had been made that it did not meet the statutory reporting threshold of "risk of significant harm".

The Child Inclusive Memorandum

8 September 2016: the CIC Memorandum

773. On 8 September 2016, PR, a Family Consultant appointed by the FCC, completed a "Child Inclusive Conference Memorandum to Court" following interviews conducted with each of Olga, John, Jack and Jennifer ("the CIC Memorandum"). The CIC Memorandum identified three risk factors in relation to Olga, Jack and Jennifer: (a) family violence; (b) physical and psychological abuse; and (c) parental alienation.

774. Under the heading "family violence", the CIC Memorandum said:

> The mother alleges that the father was emotionally abusive to her during their relationship but particularly in the year or two prior to separation. She described the father swearing at her, calling her derogatory names and not speaking with her for long periods of time when angry. The father denies emotional abuse of the mother.

775. Under the heading "physical and psychological abuse", the CIC Memorandum said:

> The mother alleges that the father was physically violent, threatening and emotionally abusive to Jack and Jenny prior to their separation. She claims that the father: would suddenly become angry over trivial issues with both children, would threaten to hit Jack and did hit and kick Jack on occasions, once called Jenny a derogatory name, and once slapped Jenny.
>
> The father agrees that, prior to separation, he threatened to hit Jack and that he has kicked and smacked him on a few occasions. He claims, however, that he did not hit Jack hard and once that he stopped doing this and resolved the issue with Jack prior to separation. He agreed that in an argument with Jenny on one occasion he may have called the mother a derogatory name and said Jenny was being like her (the mother). He denies that he was otherwise emotionally or physically abusive to the children.

776. Under the heading "coparenting relationship", the CIC Memorandum said:

> [Olga] claims that she is happy for the children to spend time with their father as per

their wishes. She said, however, that she also has concerns about the children spending time with their father due to his alleged physical and emotional abuse of them.

777. Under the heading “the Children”, the CIC Memorandum said this in relation to Jack:

> Jack said that he has not seen his father for several months and does not wish to spend any time with his father in the future. Jack's reasoning for this is that his father can become easily angry and has been physically violent to him.
>
> …
>
> Jack said that he could not remember any positive times with his father although he acknowledged that it was only in recent years that his father had been prone to anger with him. Based on what Jack described about his father's physical harm of him, Jack may have some very understandable reasons for being reluctant to spend time with his father, although his complete denial of any positive times with his father does seem extreme.
>
> Despite Jack stating that he does not want to spend time with his father because of his father's violence towards him, Jack gave an account of events that occurred following separation which seem to suggest that his mother's feelings about his father have caused/contributed Jack to feeling unable to have a relationship with his father.
>
> …
>
> In reasoning why he does not want a relationship with his father, Jack also mentioned that his father "steals" his mother's clothes and indicated a view that his father has mistreated his mother. Such information may further suggest that Jack's views about his father have been influenced by the mother.

778. In relation to Jennifer, the CIC Memorandum said this:

> Jenny said that she has not seen her father for several months and does not wish to spend any time with him in the future. Jenny's reasoning for this was that, prior to separation, her father was always getting angry easily for trivial issues. She said that the father was physically violent to Jack and she said that he once called her a derogatory name and once called her obese.
>
> Jenny said that she saw her father on occasions after the parents' separation because he had animals at his home and she felt responsible for caring for these animals. She claimed that the father was starving the animals and said she felt pressured and "trapped" into visiting him to take care of them.
>
> …

> Jenny denies that her mother has influenced her feelings about her father at all but did mention that her father stole her mother's clothes. She said that she saw this happen prior to the relationship ending.
>
> Although some of the descriptions Jenny offers about her father's behaviour could cause Jenny to feel upset and angry with her father, her complete rejection of a relationship with him and denial of any positive aspects of their relationship seems somewhat out of proportion to her father's behaviour.

779. In relation to "Future Directions", the CIC Memorandum said this:

> While the children may have some valid reasons for [being] upset with their father, their complete rejection of a relationship with him seems extreme and could lead to emotional difficulties in later life if they are not provided the opportunity to attempt to repair the relationship with their father. It seems that the children's reluctance to have a relationship with their father may also be tied to their mother's feelings about their relationships with their father. To provide the children an opportunity to re-establish or repair their relationship with their father and remove the potential to become partisan in the parents' dispute, the children may benefit from interim orders for time with their father to be made.
>
> If the children are to repair their relationship with the father, he will need to be sensitive to the hurt he has caused them and the mother may need to ensure the children are protected from her feelings about the relationship. Both parents and children may benefit from engagement with a psychologist to help the relationships to be re-established.
>
> …
>
> If orders are made for the children to spend time with their father, day time only for a limited period may reduce the risk of the children suffering physical or emotional abuse from the father.

6 October 2016: John's response to the CIC Memorandum

780. On 6 October 2016, John filed an affidavit in support of the interim and final orders he sought in the proceedings. In the affidavit John described the breakdown of his relationship with Olga and set out examples of what he described as Olga's "rude and abusive" behaviour towards him. He set out details of his and Olga's financial affairs, including the contributions made to the purchase of the house at 33A Harris Road Normanhurst. He also set out allegations concerning personal property that had allegedly been removed by Olga and described his desire to remain involved in Jack and Jennifer's lives.

781. In the affidavit, John also responded directly to matters set out in the CIC Memorandum. Relevantly, John made admissions about being “short tempered at times” with Jack, and having given him a bloody nose, but said that had occurred whilst wrestling, and was not intentional. He also admitted having given Jack a “flick” on the top of his left ear with an open hand and kicking him “lightly” on his left buttock. However John denied “any real physical violence towards Jack save three occasions when I smacked him”, which were “aimed at scaring rather than hurting him”.

782. John admitted having called Jennifer a “derogatory name” and “pushing” her in the face, which he said was an accident. John said in his affidavit “as previously stated, there was no heavy-handed corporal punishment of the children by me”.

783. In the affidavit, John denied being emotionally abusive to Olga, or “being ‘violent’ as alleged” and said that “Olga never saw fit to report any ‘violence’ to authorities”.

20 October 2016: consent orders made and Independent Children’s Lawyer appointed

784. On 20 October 2016, consent orders were made in the proceedings. They relevantly provided that an Independent Children’s Lawyer (“the ICL”) be appointed and that within 48 hours of the notification of appointment of the ICL, the parties provide to the ICL “copies of all documents thus far filed in these proceedings by the party together with all existing orders and copies of any relevant reports”. An order was also made that the ICL fulfil the requirements set out in ‘Guidelines for the Child’s Representative’ as published on the Legal Aid Commission website. At the relevant time, the operative version of the Guidelines was from 2013 (“the ICL Guidelines”).

785. The Court also noted, *inter alia*, that the parties had agreed to undergo confidential family therapy, and the parties “have the benefit of” the CIC Memorandum produced following the Child Inclusive Conference attended on 1 September 2016 with [PR]”.

786. Debbie Morton was subsequently appointed as ICL in the proceedings.

787. As will be evident from this account, the names of many of the clinicians and professionals who were involved in the family law proceedings are the subject of non-publication orders. Whilst counsel acting on behalf of Ms Morton also made an application for the non-publication of her name, this did not occur until after the commencement of the evidence at the inquest, at a stage when there had already been extensive publicity of Ms Morton’s name. In this respect, a letter of sufficient interest had

been served on Ms Morton on 17 July 2020, which formally put her on notice that she may be the subject of adverse comment at the inquest. A subpoena for Ms Morton to give evidence at the hearing was then served on her on 23 August 2020, along with a witness list. Upon those assisting being advised that Ms Morton had briefed counsel to appear for her, the witness list was also sent to Ms Morton's counsel, on 31 August 2020. A detailed Issues List was subsequently circulated to all interested parties on 2 September 2020, the week prior to the inquest commencing. Issues 52 to 55 were specifically directed to Ms Morton's role and obligations, her knowledge of the risks to Jack and Jennifer, and whether she properly took those risks into account and disclosed them to the Court.

788. In her written submissions, Ms Morton states that "[counsel assisting] vigorously opposed the making of a non-publication order on each occasion that it was made with catastrophic consequences. As far as I am aware, [counsel assisting] did not oppose such an Order for any other witness involved in these proceedings".

789. Whilst it is the case that counsel assisting made submissions that tolled against the making of a non-publication order in relation to Ms Morton's name, I am satisfied that the bases upon which they did so were in keeping with their role to provide assistance to me in relation to the applicable legal principles. This was in keeping with their approach in relation to all applications of this nature made during the hearing. I note in that respect, that counsel assisting did oppose the making of similar orders in respect of other two other witnesses in the proceedings, doubting the availability of such an order due to material published online.

790. In relation to the application made by Ms Morton's counsel, counsel assisting properly drew my attention to the significant media coverage that had already occurred naming, discussing the role of Ms Morton in the proceedings. That plainly meant that the making of an order as sought by counsel acting on behalf of Ms Morton would have been futile by that point. The same difficulty pertained to the application made by counsel on behalf of Ms Morton some days later.

Obligations of the Independent Children's Lawyer

791. As noted above, one of the orders made on 30 October 2016 was that the ICL fulfil the requirements set out in the ICL Guidelines. Ms Morton was aware of the ICL Guidelines at the time and accepted that they ought to be adhered to when acting as an ICL. Ms

Morton also knew, at the time of her appointment as ICL, that one of the orders made on 30 October 2016 required her to comply with the ICL Guidelines.

The role of the ICL

792. The ICL Guidelines emphasise the unique and special role played by an ICL in family law proceedings. In light of their significance in this matter, I have set out parts of the ICL Guidelines in the following paragraphs. Section 2 states:

> The role of the ICL is unique. The lawyer appointed to represent and promote the best interests of a child in family law proceedings has special responsibilities.
>
> Decisions in particular cases as to how the ICL progresses the case and how s/he involves the child in the case are ultimately, subject to the statutory requirements in Division 10 Part VII, in the ICL's discretion.
>
> The ICL is expected to use his/her professional judgment and skill, subject to any directions or orders of the court. The availability of funding is a practical constraint.
>
> The way in which the ICL acts may not always meet with the approval of the parties or the child, but this does not mean that the ICL has failed in his/her professional responsibilities.

793. Section 3 of the ICL Guidelines underscores the importance of the role of the ICL as a means of giving effect in family law proceedings to the following aspects of the United Nations Convention on the Rights of the Child:

> In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. (Article 3.1)
>
> States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (Article 12.1)
>
> For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body consistent with the procedural rules of national law. (Article 12.2).

794. Section 4 of the ICL Guidelines sets out the role of the ICL. It states (in full):

> The best interests of the child will ordinarily be served by the ICL enabling the child

to be involved in decision-making about the proceedings. However, this does not mean that the child is the decision maker. Among the factors that indicate the appropriate degree of involvement in an individual case are:

- the extent to which the child wishes to be involved; and
- the extent that is appropriate for the child having regard to the child's age, developmental level, cognitive abilities, emotional state and views.

These factors may change over the course of the ICL's appointment.

The ICL is to act impartially and in a manner which is unfettered by considerations other than the best interests of the child.

The ICL must be truly independent of the court and the parties to the proceedings.

The professional relationship provided by the ICL will be one of a skilful, competent and impartial best interests advocate. It is the right of the child to establish a professional relationship with the ICL.

The ICL should seek to work together with any Family Consultant or other relevant expert involved in the case to promote the best interests of the child.

The ICL should assist the parties to reach a resolution, whether by negotiation or judicial determination, that is in the child's best interests.

The ICL should bring to the attention of the court any facts which, when considered in context, seriously call into question the advisability of any agreed settlement.

The ICL is to promote the timely resolution of the proceedings that is consistent with the best interests of the child.

The ICL does not take instructions from the child but is required to ensure the court is fully informed of the child's views, in an admissible form where possible.

The ICL is to ensure that the views and attitudes brought to bear on the issues before the court are drawn from and supported by the admissible evidence and not from a personal view or opinion of the case.

The ICL is expected and encouraged to seek peer and professional support and advice where the case raises issues that are beyond his or her expertise. This may involve making applications to the court for directions in relation to the future conduct of the matter.

The ICL must, if satisfied that the adoption of a particular course of action is in the best interests of the child, make a submission to the court suggesting the adoption of that course of action.

795. Section 5.2 of the ICL Guidelines sets limits on the role of the ICL. It states:

> The ICL should guard against stepping beyond his or her professional role and should seek guidance from a Family Consultant or other professional when necessary.
>
> While the Family Law Act 1975 and the Family Court Act 1997 in Western Australia provide some basis for a confidential relationship between the ICL and the child, there are circumstances where the ICL cannot guarantee the child a confidential relationship. In addition to explaining this limitation at the commencement of the relationship, it may be necessary to periodically remind the child.
>
> It is not the role of the ICL to:
>
> - conduct disclosure interviews;
> - become a witness in the proceedings; or
> - conduct therapy or counselling with the child.

The obligation to inform the Court of the child's views

796. Section 5.3 of the ICL Guidelines outlines their role in ascertaining and putting the child's view before the Court. It states:

> The ICL should seek to provide the child with the opportunity to express his or her views in circumstances that are free from the influence of others.
>
> A child who is unwilling to express a view must not be pressured to do so and must be reassured that it is his or her right not to express a view even where another member of the sibling group does want to express a view.
>
> The ICL should ensure that there are opportunities for the child to be advised about significant developments in his or her matter if the child so wishes and should ensure that the child has the opportunity to express any further view or any refinement or change to previously expressed views.
>
> The ICL must take into account that the weight to be given to the child's views will depend on a number of factors and is expected to be familiar with case law on the subject.
>
> In preparing to make submissions on the evidence as to the weight to be placed on the views of the child, the ICL may consult with the single expert, Family Consultant or other relevant expert in relation to:
>
> - the content of the child's views;
> - the contexts in which those views both arise and are expressed;
> - the willingness of the child to express views; and

- any relevant factors associated with the child's capacity to communicate.

The ICL is to ensure that any views expressed by the child are fully put before the court and so far as possible, are in admissible form. This includes views that the ICL may consider trivial but the child considers important.

The ICL is to also arrange for evidence to be before the court as to how the child would feel if the court did not reach a conclusion which accorded with the child's wishes.

797. Ms Morton's evidence was that generally speaking, the older the children are, the more weight their wishes are given.

Obligations when acting contrary to the child's views

798. Section 5.4 of the ICL Guidelines outlines the ICL's obligations when the ICL considers that the evidence indicates that the best interests of the child will be promoted by orders that are contrary to the child's view. In those circumstances, the ICL is to:

- advise the child that s/he intends to make submissions contrary to the child's views;

- ensure that the child's views are before the court, together with the arguments which promote the adoption by the court of the child's views;

- make submissions which promote the adoption by the court of orders which are in accordance with the child's best interests;

- provide clear and cogent submissions as to why the child's views do not promote the child's best interests; and

- explain to the child at the conclusion of the proceedings why s/he made a submission that was contrary to the child's views (if there has not been an opportunity to do so prior to the conclusion of the proceedings).

The obligation of independence

799. Section 6.4 of the ICL Guidelines sets out the ICL's obligations of independence and the relationship between the ICL and other parties to the proceeding. It states:

The ICL is to remain independent, objective and focused upon promoting the child's best interests in all dealings throughout the proceedings.

The parties and their legal representatives should be encouraged to be non-adversarial where possible and to maintain a focus on the child's best interests. The ICL should promote this approach whenever appropriate. […]

> The ICL must at all times be and be seen to be independent and at arm's length from any other party to the proceedings.
>
> The ICL is to act as an "honest broker" on behalf of the child in any negotiations with the other parties and their legal representatives.
>
> Once the ICL has formed a preliminary view as to the outcomes which will best promote the child's best interests, the ICL will consult with the child and take into consideration any expressed views of the child, as may be appropriate in all the circumstances. The ICL will then communicate his/her views and details of proposed orders to the parties where possible.

The obligation to prepare a case plan

800. Section 6.5 of the ICL Guidelines sets out the obligation to develop a case plan, which should, among other things, “consider the evidence available to the court in relation to any allegations of child abuse or family violence raised in a Form 4 Notice and identify and gather as appropriate relevant evidence in admissible form”.

801. The strategy in the case plan outlining the involvement of the child in the examination/assessment process has, among its primary aims:

> …to be in accordance with the Family Violence Best Practice Principles issued by the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia and other relevant best practice guidelines and applicable protocols for dealing with matters involving family violence. No process should be pursued which departs from these guidelines.

Obligations at an interim hearing

802. Section 6.8 of the ICL Guidelines sets out the obligations of an ICL at an interim hearing. It states:

> Time constraints and the circumscribed nature of interim hearings may result in the ICL not having the opportunity to fully investigate the child's circumstances. However, where possible, the ICL should have issued subpoenas to relevant agencies and be in a position to tender relevant material. Such evidence is particularly helpful to the court where allegations of unacceptable risk are present in the case.
>
> In circumstances where little is known about the child's situation the ICL should be circumspect and should not feel compelled to make a submission as to the child's best interests, presenting rather an analysis of the available options to the extent

> possible. Where the court is to make interim or procedural orders, the ICL should consider whether they adequately promote the best interests of the child and make submissions as appropriate.
>
> The ICL should ensure so far as is possible, that the child's wishes are made known to the court in admissible form.

Obligations where allegations of family violence and abuse are made

803. Section 7 of the ICL Guidelines sets out the obligations of an ICL where allegations of family violence and abuse are made. Section 7 states:

> Like all practitioners, the ICL is expected to be familiar with the relevant provisions of the Family Law Act 1975, the Family Law Rules, the Family Violence Best Practice Principles of the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia. The ICL must also be familiar with other relevant best practice guidelines and where relevant, the protocols between the court and state and territory departments responsible for the investigation of child abuse.
>
> Family violence and abuse are serious issues whenever they have occurred and should always be presented as being so. They are considerations pursuant to section 60CC of the Act of which a court must take account. Their degree of relevance in a particular case should be considered with the assistance of a counsellor or other mental health professional who has knowledge of family violence and abuse issues. In appropriate cases a full assessment should be conducted by such a counsellor or other mental health professional prior to the matter being settled or heard by a court.
>
> …
>
> The ICL is expected to be alert to any risk of harm to a child that may arise from the other parties, or the physical environment in which the child may be. It will usually be inappropriate for the ICL to bring the child into proximity with an alleged perpetrator of harm. Where this does occur, visual or verbal contact with a party may be harmful and it will be necessary to carefully consider whether interview arrangements and the physical setting need to be structured in particular ways in order to protect the child and/or accompanying family members.

804. Ms Morton gave evidence that it was not part of her role to assess risk. Her evidence was that “that’s something that the people with that specialised expertise do, so the family consultant or the family therapist or the judge does that. It’s not my role to assess

the risk".

The Family Violence Best Practice Principles

805. Edition 4 of the Family Violence Best Practice Principles (referred to in Section 7 of the ICL Guidelines) came into force in December 2016 and were an exhibit in these coronial proceedings. Ms Morton was aware of the content of the Family Violence Best Practice Principles ("the Principles") in December 2016, and the fact that they applied to her in her role as an ICL at the directions hearing in the family law proceedings at which she appeared on 22 December 2016 and thereafter.

806. Page 7 of the Principles relevantly states:

> Importantly, the FLA [Family Law Act] does not require independent verification of allegations of family violence (such as police or medical reports) for a court to be satisfied that it has occurred. As the Full Court of the Family Court said in *Amador & Amador* (2009) 43 Fam LR 268:
>
> *Where domestic violence occurs in a family it frequently occurs in circumstances where there are no witnesses other than the parties to the marriage, and possibly their children. We cannot accept that a court could never make a positive finding that such violence occurred without there being corroborative evidence from a third party or a document or an admission.*
>
> *The victims of domestic violence do not have to complain to the authorities or subject themselves to medical examinations, which may provide corroborative evidence of some fact, to have their evidence of assault accepted*.

807. Ms Morton gave evidence that she was aware of this principle at the time she was appointed as the ICL in the family law proceedings between John and Olga.

808. Page 10 of the Principles also relevantly provides that:

> Orders concerning parental responsibility, with whom a child will live and with whom a child will spend time (and how much time), are parenting orders. The child's best interests are the paramount consideration for the courts when making a parenting order. In deciding the arrangements that will promote the best interests of a particular child, the courts must consider the factors set out in Part VII of the FLA. These factors comprise a series of statutory objects and principles, two primary and 14 additional considerations.
>
> The first primary consideration is the benefit to the child of having a meaningful relationship with both of the child's parents. The second primary consideration is the

> need to protect the child from physical or psychological harm from being subjected or exposed to abuse, neglect or family violence. There is sometimes tension between these concepts in cases involving allegations of family violence. However, as a result of the recent legislative amendments, a new provision has been inserted into the FLA (section 60CC(2A)) that requires greater weight to be given to the safety of the child than to the benefit to the child of having a meaningful relationship with both parents.

809. Ms Morton confirmed in her evidence that at the time she was appointed as the ICL in the Edwards family law proceedings, she was aware that greater weight is required to be given to the safety of the child than to the benefit to the child of a meaningful relationship with both parties.

October to December 2016: family therapy with RB, psychologist

October and November 2016: family therapy sessions

810. In October 2016, a psychologist, RB, was engaged by John and Olga to oversee confidential family therapy. Whilst the occurrence of the therapy was noted in the Court orders of 20 October 2016, the sessions were not court-ordered. John paid for all sessions for all family members, but was only made aware of appointments attended by Olga, Jack or Jennifer after they had occurred.

811. RB saw John three times, first on 21 October 2016 and for the final time on 25 November 2016.

812. RB saw the children once, on 11 November 2016. The notes record:

    a. Jack “does not really want to talk about father or his r’ship with him”;

    b. Jenny “does not want a r’ship with father at present. Does not believe therapy would change this view. Resistant to talking about why or giving examples about aspects of father’s behaviour”.

813. RB saw Olga twice, on 3 November 2016 and 11 January 2017. Olga made it “very clear that, from her perspective, the father is dangerous, controlling, perpetrator of family violence and child abuse and is a risk to her and the children”. Olga also told RB that she believed the children were “of an age that they can make their own opinion” about their relationship with John, and participation in therapy.

814. On 24 November 2016, Ms Morton sent correspondence to RB via email in which she

said she had not yet met with Jack and Jennifer and asked for a "brief summary as to how the family therapy was progressing. On the same date, Ms Morton and RB spoke on the telephone. Ms Morton's file note of the conversation records that RB told Ms Morton that, among other things, John had "a lot of other children that he has nothing to do with". Ms Morton agreed in her evidence that she must have known this on and from 24 November 2016, as she file noted it.

815. On 30 November 2016, Mr Brown sent a letter to Ms Morton noting that she had caused a subpoena to be issued to the NSWPF. He enclosed a copy of JC's AVO application from May 2011.

816. On 30 November 2016, RB responded in writing to Ms Morton's correspondence of 24 November 2016. RB reported that there was a clear divergence between the parents' views as to the purpose and aims of therapy, stating:

> It is noted that despite Mr Edwards and Ms Edwards having entered into Consent Orders with regard to "family therapy", they each presented as having different views about the purpose/aims of such therapy. Mr Edwards sought that the family engaged in therapy in order to help him reconnect with Jack and Jenny and repair these relationships. Ms Edwards indicated that she believed therapy was to "assess" (and report back to the father and the Court) that reconciliation and repair of children's relationship with the father is neither realistic or possible.

817. RB concluded:

> It is my opinion that family therapy, whilst possibly the right course of action, is unlikely to be beneficial at this point in time due to [the] nature of allegations being made by each of the parents and also, it would seem, by Jack and by Jenny. Issues and concerns around family violence, child protection matters, alienation and realistic estrangement have all been raised.
>
> Additionally, Ms Edwards has expressed the view that Jack and Jenny are both old enough to make their own decisions about their relationship with their father as well as their involvement in any therapeutic process.
>
> It is suggested that family therapy be put on hold until a Family Assessment/Expert Report can be completed about risk, protection and resilience factors and the aims of therapy are clearly stipulated - specifically, whether it is for the purpose of reintroduction of time spent by the children with the father or processing the cessation of that relationship, with the involved parties. Any findings made by the Court in relation to family violence and child protection issues would also be

considered important determinative factors in stipulating the aims of therapy.

818. Counsel assisting have submitted that, under section 7 of the ICL Guidelines, Ms Morton was required to take into account RB's views in 'assessing the degree of relevance' of allegations of family violence. They further submit that in her 30 November 2016 letter, RB expressed clear concern that because allegations of family violence and issues pertaining to child protection had been raised, family therapy was unlikely to be beneficial.

819. It is clear from her correspondence that RB considered the concerns to be of sufficient gravity to warrant a pause of any family therapy until a report in relation to the matters set out in her letter could be completed. I accept the submission of counsel assisting that RB's views should have played a significant role in influencing the position Ms Morton took when she appeared before the Court some three weeks later, on 22 December 2016, and that Ms Morton should have brought to the Court's attention that the view of the requisite expert was that family therapy was not in the children's best interests, at least until after the completion of the report. This issue (including whether Ms Morton's submissions at the 22 December 2016 hearing concerning family therapy contravened the ICL Guidelines) is explored in further detail later in these findings in the context of the directions hearing held on 22 December 2016.

5 to 13 December 2016: correspondence between RB and Ms Morton

820. On 5 December 2016, Ms Morton and RB had a further conversation in which RB expressed her view that no further therapy was useful. Ms Morton's file note of the conversation records the following: "mum not thinking of impact on children and their adult relationships".

821. On 13 December 2016, RB emailed Ms Morton and said that Olga had contacted her and indicated she would like to make a further appointment, "despite having sent an email a couple of weeks ago indicating that she saw no point in continuing with therapy". RB said that, given Olga's prior position, she wanted to see Olga first before she agreed to see the children.

822. Ms Morton replied by email on the same date, saying "thanks for keeping me in the loop". She asked RB whether she thought the children would benefit from spending time with their father on Christmas Day and indicated she was going to canvass that with the children. Ms Morton also confirmed she had not advised the other parties of the existence

of RB's letter of 30 November 2016. (There is no dispute that Ms Morton provided a copy of the letter to the parties at Court on 22 December 2016.)

823. Later on 13 December 2016, RB responded to Ms Morton and said:

> I think it is worth canvasing with the children the idea of seeing their father on or around Xmas day to see what their response is. If they are agreeable, then I don't see a problem with it. I would limit it to a couple of hours max. I also don't think it has to be on Xmas day but could be on a day either side if they found that more to their liking.

824. Counsel assisting have submitted that this evidence shows that it was Ms Morton who initiated the proposal for Jack and Jennifer to spend time with John at Christmas. In the evidence at inquest, there was no reference by any other person to the proposal that the children spend time with John at Christmas that pre-dated Ms Morton's email to RB on 13 December 2016. The proposal plainly did not come from either Jack or Jennifer, as Ms Morton had not "canvassed" it with them yet.

825. Ms Morton submits that the question of who initiated this proposal is "immaterial", and the evidence demonstrates that she was seeking the opinion of RB, who supported canvassing with the children the idea that they spend time with their father at Christmas.

826. I accept and agree with the submission of counsel assisting that the only reasonable inference, in all the circumstances, is that the idea came from Ms Morton. Whilst I accept Ms Morton's submission that the evidence demonstrates that she consulted RB about this issue, as I understand it, the gravamen of counsel assisting's submission is largely related to the events which followed, namely that after having obtained qualified support for the proposal from RB, Ms Morton then made submissions to extend the contact with John without further consultation. In this regard, the question of how the proposal first came about is relevant.

827. In relation to RB's response set out above, it is apparent that RB was unaware of the children's attitude to Ms Morton's proposal and had not asked them about it herself. It is also apparent that RB's agreement to the proposal was qualified and if the children did not agree with it, then RB did not support it either. It is also plain that RB's advice was that the proposed visit be limited to "a couple of hours max", and there was no contemplation by RB of extending this into a regular contact regime.

828. On 15 December 2016, John's lawyers wrote to Ms Morton with a proposal that they

seek a report from RB concerning “all attendances to date”. It appears that this was being sought from RB because Ms Morton had not yet shared RB’s letter of 30 November 2016 with the other parties.

829. Ms Morton replied to John’s lawyers the same day, as follows:

> May I say from the outset that you do your client an enormous disservice by attempting to dictate to me, the Independent Children's Lawyer, how I should conduct myself in these proceedings. Further, you are clearly unfamiliar with the Family Law Rules.
>
> If I thought that a 'report' was warranted and [RB] was prepared to provide same then [RB] would essentially become a witness in the proceedings.
>
> Then, for [RB]’s evidence to remain admissible - pursuant to Rule 15.5(1)(a)(iii) — any opinion must be "limited to the reasons for carrying out or recommending treatment and the consequences of the treatment, including a prognosis". It is not uncommon for reports of this nature to inadvertently breach the restrictions in Rule 15.5(1)(a)(iii) and make the report inadmissible.
>
> As you may, or may not, be aware [RB] is a former Family Consultant … and she would be entirely familiar with these rules and would, accordingly, decline to provide a `report'.
>
> Finally, Notation C of the Orders made on 20 October 2016 provides that the confidentiality of the Family Therapy is entirely at the discretion of [RB].
>
> Whether or not you forward your proposed letter to [RB] is entirely a matter for you however, you will be simply wasting your client's funds, in terms of legal costs, as it would be a hollow request.
>
> As you have not seen fit to copy the Mother's solicitor on your letter I have done so by this reply. As previously requested can you please ensure that you do not attempt to engage in ex−parte discussions with me either in writing or by telephone.

830. On 16 December 2016, Mr Brown informed Ms Morton that Olga was to resume family therapy in January 2017 provided John continued to pay for the sessions.

December 2016: the ICL received documents alleging family violence

28 November 2016: subpoenas issued to the police and schools

831. On 28 November 2016, Ms Morton had subpoenas issued to the Commissioner of the NSW Police Force, Gosford High School and Pennant Hills High School, each of which was returnable by 16 December 2016. The issuance of these subpoenas was consistent

with Ms Morton's obligations under the ICL Guidelines. On the basis of all the evidence, I am satisfied that Ms Morton's purpose in issuing the subpoenas was to obtain material to inform her views prior to the directions hearing listed on 22 December 2016.

832. The Schedule to the subpoena issued to the Commissioner of Police ("the November 2016 subpoena") required production of copies of all records held by the NSWPF, including all COPS entries in relation to John, Olga, Jack and Jennifer.

1 December 2016: correspondence and documents sent to Ms Morton

833. On 1 December 2016, John's lawyers sent a letter to Ms Morton enclosing a number of documents filed in the proceedings. The letter was received by Ms Morton on 6 December 2016. The CIC Memorandum is number 9 on the list of enclosed documents set out in this correspondence. Separately, John also gave Ms Morton a document entitled "Information requested by the Independent Children's Lawyer concerning Jennifer Angel Edwards". On the final page of that document, John quotes directly from the recommendations of the CIC Memorandum.

834. In her oral evidence, Ms Morton initially did not accept that the CIC Memorandum was enclosed with the 1 December letter, nor that she otherwise received it prior to the directions hearing on 22 December 2016. She subsequently gave evidence that she thought she had it by 22 December 2016, but could not recall. Ms Morton gave evidence that she had a "very clear recollection" that she obtained it either from the Court itself, or by following up with the parties whilst at Court on 22 December 2016.

835. Counsel assisting have submitted that, for four reasons, I should reject Ms Morton's evidence on this point and find that she did, in fact, receive the CIC Memorandum on 6 December 2016, enclosed with the 1 December 2016 letter:

    a. The 1 December 2016 letter is clear on its face that the CIC Memorandum is attached, and it was a critical document that Ms Morton required to perform her role as ICL properly. They have submitted that it is "implausible that John's lawyer sent correspondence purporting to attach the CIC Memorandum but failing to do so"; and in the unlikely event that such an error was made, that Ms Morton failed to follow up and ask for the document.

    b. None of the documents before me at inquest include any contemporaneous evidence that Ms Morton asked for, or received, a copy of the CIC Memorandum at any other time.

c. On 23 December 2016, Ms Morton emailed John and Olga's lawyers stating that her office was closed until 9 January 2017, but she would ensure she sent documents to RB in advance of RB's appointment with Olga on 11 January 2017. On 9 January 2017, Ms Morton sent RB various documents by email, including the CIC Memorandum. In circumstances where Ms Morton's office was closed between 23 December 2016 and 9 January 2017, and she did not request a copy of the CIC Memorandum on 9 January 2017 before forwarding it to RB, counsel assisting submit that the following inferences may be drawn: Ms Morton must have had the CIC Memorandum before going on leave on 23 December 2016, and because the CIC Memorandum was in her possession prior to 23 December 2016, there is no reason to doubt that she obtained it by way of an attachment to the letter from John's lawyers dated 1 December 2016, as the letter indicates on its face.

d. On 9 January 2017, Ms Morton sent an email to John's lawyers noting that she was compiling information for RB, but did not appear to have John's 6 October 2016 affidavit among the documents sent to her under cover of the 1 December 2016 letter. The affidavit was the only document Ms Morton asked for.

836. Counsel assisting have therefore submitted that the evidence establishes that Ms Morton received the CIC Memorandum on 6 December 2016, attached to a letter sent by John's lawyers on 1 December 2016. They submit that the evidence also establishes that Ms Morton read it because on 8 December 2016, Ms Morton emailed John and Olga's lawyers stating, "I have now read all of the documents provided to me by each of the parties". They have further submitted that this conclusion receives support from Ms Morton's submission to the FCC, on 22 December 2016, that she had two volumes of documents, all of which "I've had to read".

837. Ms Morton submits that her email of 9 January 2017 to John's lawyers requesting a copy of his 6 October 2016 affidavit suggests that she was not aware of that document being missing at an earlier date. She further submits that the fact that the affidavit was not attached to the correspondence of 6 December 2016 precludes a finding that John's lawyers had attached all of the documents listed in their letter.

838. Ms Morton further submits that the absence of any written correspondence following up on provision of the CIC Memorandum does not necessarily mean that she received it on 6 December 2016. Ms Morton's oral evidence provides support for this proposition, given that she indicated she had a recollection of either obtaining it from the Court Registry or

from the parties when she attended Court on 22 December 2016.

839. Whilst I accept counsel assisting's submission as to the inference available in relation to the email Ms Morton sent to John's lawyers on 9 February 2017 requesting the affidavit (but not the CIC Memorandum), in light of Ms Morton's oral evidence and her recollection of having followed up with either the parties of the Court to obtain the document, I am not satisfied that the CIC Memorandum was enclosed with the letter she received on 6 December 2016. However, I note the evidence Ms Morton gave before me on 12 November 2020, in which she appeared to accept both that she had received the CIC Memorandum before appearing at the directions hearing on 22 December 2016, and that it was highly likely that she had read it before that hearing. The effect of this evidence is that ultimately there is little dispute, and I find, that Ms Morton was aware of the contents of the CIC Memorandum prior to her appearing in Court on 22 December 2016.

12 December 2016: material produced by the NSW Police Force

840. On 12 December 2016, the NSWPF produced material to the FCC in response to the November 2016 subpoena. The file produced by police was 12 pages, including a two-page summary that listed 20 'events' and 10 pages of material setting out detail of those events. Ms Morton agreed with counsel assisting in her evidence that at the time, she would have been of the view that the material produced would be very important to her role as an ICL in terms of understanding any risks faced by the children.

841. The material produced revealed a number of matters. First, the two-page summary listed '20 events' in respect of John Edwards. Ms Morton agreed that she was familiar with reading the summary produced at the front of police material, which provides an overview of the material. I am satisfied that the summary listed:

    a. four separate AVO's in which John was a person of interest;

    b. an assault charge where John was a person of interest; and

    c. a "Domestic Violence - No Office" matter where John was listed as a person of interest.

842. The summary readily showed that those AVOs, assault charge and domestic violence matter had occurred over an 18-year period, between 1993 and 2011. I am also satisfied that the narrations included in the 12 pages of event details revealed the following information:

a. violence and stalking allegations against John in relation to Ms E in 1997;

b. an interim AVO and assault charge in relation to Ms D in 1998; and

c. provisional and interim AVOs in relation to John's daughter, JC in 2011.

843. I am further satisfied that the narrations included in the 12 pages of event details set out allegations in respect of a number of children:

a. Jack and Jennifer were listed as a "Child/Young Person at Risk", in the context of a verbal argument between Olga and John in March 2016;

b. in an entry from 2011, JC's children were referred to in the context of AVOs sought to protect JC and her children from John; and

c. John's son EJ was referred to in the incident involving Ms E in 1997.

844. I am of the view that the 2011 matter referred to above in relation to JC and her children was objectively serious and highly relevant to Ms Morton's role as the ICL in the Edwards family matter. The narrative for that event contained allegations by JC that she had been abused by John as a child and, as a result, had severed contact with him for many years. The timing of the incident that led to the AVO, in 2011, was also 10 years after John had married Olga, and within the period during which John had told the Court, on oath, that they had enjoyed a happy relationship.

845. Ms Morton agreed with counsel assisting in her oral evidence that it was part of her role as an ICL to read all the material produced on subpoena. She said she recalled accessing the subpoena material, in particular, the COPS events produced by the NSWPF, at the relevant time. Counsel assisting have submitted that there were discrepancies in Ms Morton's evidence as to precisely how much of the subpoena material she read, because initially her evidence was unequivocal, in that she stated that she had gone to the Court and read "all the subpoena material". Ms Morton also stated that if material was produced by the NSWPF to the FCC, she had read it.

846. However, Ms Morton then stated that "nothing" was in the material produced by the NSWPF in December 2016 other than the JC AVO allegations, and that there was no information concerning John's prior partners. As is plain from the summary above, this is not the case. After being taken through the material in detail, including the individual entries relating to John's prior partners, Ms Morton stated she could not recall having read any such information. Nevertheless, she agreed that the incidents were relevant or "highly relevant" to her role as ICL.

847. Ms Morton gave evidence that she thought she read the narrative in the police subpoena material regarding the verbal argument between John and Olga on 14 March 2016. She also "definitely remembered" reading the 2011 narrative concerning JC. Her initial recollection of that incident during her oral evidence was that John came to JC's house wanting to see his grandchildren and he "was an annoyance and she [JC] wanted him to go away". However, after reviewing the narrative, Ms Morton agreed with counsel assisting that it described an "extremely serious allegation of stalking and fear on behalf of JC in relation to John".

848. Ms Morton agreed with the proposition put to her by counsel assisting that it was "very relevant" if other children refused to spend time with John because of family violence. She also agreed that it was "highly relevant" to her role that one of John's other children had taken out an AVO against him. She further agreed that this matter was significant, because at least one of John's children did not want contact with him because he abused her during childhood. Ms Morton accepted in her oral evidence that this was a matter to which weight ought to be given.

849. Ms Morton also accepted in her evidence that she had, separately, been sent the material in relation to the 2011 AVO for JC under cover of a letter from Olga's solicitor, Mr Brown. Ms Morton conceded in her oral evidence that on no reading of that material could one come to the view that JC's allegations involved a slightly annoying grandfather.

850. Counsel assisting have submitted that I would accept Ms Morton's initial, unequivocal, evidence that she read all of the material produced by police under subpoena in December 2016. They submit that whilst Ms Morton subsequently gave evidence that she does not recall having read the details of John's violence towards his prior partners, her lack of present recollection does not undermine her initial evidence. They have further submitted that even if Ms Morton's alternative position were accepted, it meant she was at least familiar with JC's relatively recent and significant allegation of stalking against John, JC's allegation that John had abused her as a child, and that she had cut off any contact with him as a result.

851. Ms Morton has submitted that there are no discrepancies in her evidence on this point, and that her evidence was consistently that she read the entirety of the documents produced on subpoena. This submission appears to be predicated on Ms Morton's belief, set out in her submissions, that the material produced "did not include any narrations prior to the incident with [JC] in 2011". Ms Morton submits that "it cannot conclusively be

determined that all of the records in respect of John were produced on subpoena".

852. I reject this submission. The material produced by the NSWPF in response to the November 2016 subpoena is before me at this inquest, exhibited to an affidavit affirmed by an employee of the NSWPF Infolink Unit. The deponent affirms that the exhibited material is that which was produced in response to the November 2016 subpoena. That material includes all the information set out above at [841]-[843]. Ms Morton and her counsel were both present (via AVL) on 12 November 2020 when the affidavit of the employee of the NSWPF Infolink Unit ("the NSWPF affidavit") was described, and then read, in Court. In particular, that affidavit was described by senior counsel assisting as establishing what material was produced by police on subpoena to the FCC. Ms Morton's counsel did not object to the NSWPF affidavit being read; nor was a request made that the deponent be called to give evidence at the inquest, or be made available for cross-examination. Neither Ms Morton nor her counsel sought to adduce any other evidence during the evidentiary phase of the inquest that would lead me to doubt the veracity of the contents of the NSWPF affidavit. In all the circumstances, I am satisfied that the material produced by NSWPF in December 2016 was in the form exhibited to the NSWPF affidavit.

853. I am also satisfied that, consistent with her evidence that she read the entirety of the material produced on subpoena, this means that Ms Morton read all of the material produced by the NSWPF in the form exhibited to that affidavit. However, I also agree with and accept the submission of counsel assisting in relation to the alternative position taken by Ms Morton in her evidence, that even if Ms Morton was only appraised of the detail of the incidents relating to JC in 2011, that information was sufficiently serious, in and of itself, to put Ms Morton on notice that John posed a risk to Jennifer and Jack.

854. Separately, I note that on 11 March 2021, Ms Morton (in written submissions filed in relation to a separate issue), asserted that there were additional documents that she wished to tender, namely a file scanned by the Parramatta Registry of the Family Court. Ms Morton asserted that, were it to be tendered, it would show the format in which subpoenaed police documents are produced to family courts. I rejected that request to tender documents, made almost four months after the conclusion of Ms Morton's oral evidence, and only a few weeks prior to the delivery of these findings. As set out above, both Ms Morton and her counsel were present when the NSWPF affidavit was read and did not seek to object to it, nor adduce any other evidence in relation to this issue during

the evidentiary phase of the inquest. In this respect, Ms Morton's application was of a different nature than that of the Commissioner of Police to tender the revised DVSOPs (also made at a late stage), given that the latter pertained to material that was not in existence when the relevant witnesses gave evidence at inquest.

855. I also note that, in her submissions of 11 March 2021, Ms Morton asserted she had not received the NSWPF affidavit prior to giving evidence on 12 November 2020 (and referred to her evidence at T 902.45 in this regard). The material that would become the exhibit to that affidavit (being the police subpoena material) was provided to Ms Morton and the other parties well before 12 November 2020. However, the affidavit itself was only provided to the parties' legal representatives, including Ms Morton's counsel, relatively proximate to the hearing, as it was sworn on 10 November 2020. Even if it were the case (which I do not need to determine) that only Ms Morton's counsel received the affidavit before the 12 November 2020 hearing (and Ms Morton only had the exhibited material beforehand), I make the following observations. When asked questions about the police subpoena material on that day, Ms Morton did not assert that she had not had adequate time to review its contents. To the contrary, it was plain from the evidence Ms Morton gave that day she had had access to, and had read, the police subpoena material exhibited to the NSWPF affidavit prior to giving evidence. Ms Morton's counsel also did not raise any issue or objection in relation to counsel assisting's questions that were put to Ms Morton in relation to the contents of the exhibit of the NSWPF affidavit.

856. I am therefore not of the view that any procedural fairness issues arise in relation to these aspects of the proceedings.

19 December 2016: Ms Morton met with Jack and Jennifer

857. On or about 19 December 2016, Ms Morton met with Jack and Jennifer. Ms Morton described the meeting in her oral evidence as follows:

> Jack was quite keen to be able to see his dad, but he was also conscious that - that his mum didn't want him to do that. Jennifer was a bit - I guess, ambivalent. The concerning part with Jennifer was that she - she knew the content of her mother's affidavits really thoroughly. She knew all of the - everything that - that her mother had included in the affidavit for the Court, what the - the nature of the complaints that her mother made, and some of the things that she was telling me were things that the mother alleged the father had done but not when Jennifer was present, and she had - she was, like I say, ambivalent, but she would go and spend time with the

> father if Jack was there, like, she wanted to accompany Jack.

858. Ms Morton also said this:

> I can remember my conversation with them, and I can remember - I can remember asking them how they felt about going to see Dad. I can recall that - I can recall that neither one of them said that they were afraid of him, and I can recall that Jack was pretty keen. Jennifer was a bit more ambivalent. She - like I said before, she understood completely all of her mother's affidavit material and she was telling that to me as a reason why she wasn't real keen on spending time with him but that she wanted to go if Jack was going.

859. In her oral evidence, Ms Morton denied that Jack and Jennifer told her during the meeting that they did not want to see their father because he was violent. Counsel assisting have submitted that Ms Morton's evidence that (a) Jack was keen to see John, (b) Jennifer was ambivalent about seeing John, and (c) that neither Jack nor Jennifer disclosed John's history of violence, should not be accepted for the following reasons.

860. First, counsel assisting have submitted that the evidence is inconsistent with other evidence that bears on this point, namely:

a. Olga's affidavits (which Ms Morton had read by this point);

b. RB's letter of 30 November 2016 (which Ms Morton had read by this point);

c. the CIC Memorandum (which Ms Morton had read at the latest by 22 December 2016, just three days after this meeting);

d. and the subsequent disclosures made by the children to RS in April 2017.

Counsel assisting have submitted that it is implausible that Jack and Jennifer gave Ms Morton a different account of their wishes concerning John as compared to the uniform, and documented, accounts they gave to other persons with whom they spoke about this issue.

861. Secondly, and relatedly, counsel assisting have submitted that Ms Morton's subsequent conduct is inconsistent with Jack and Jennifer disclosing a different account from those given to Olga, PR and RB. Ms Morton was aware of her obligation under the ICL Guidelines not to be a witness in the proceedings. Therefore, if Jack and Jennifer had told her something that was materially inconsistent with Olga's evidence, the CIC Memorandum or RB's letter, Ms Morton had an obligation under clause 4 of the ICL Guidelines to obtain that evidence in an admissible form, so it could be relied on before

the Court. Ms Morton took no such steps, which is consistent with her not being told anything different from Olga, RB or PR.

862. In relation to this submission, Ms Morton gave evidence that, in her view, it was sufficient that she included the information in her Case Outline and "that's how it's done in the Family Court". I agree with the submission of counsel assisting that that evidence should be rejected. The ICL Guidelines stipulate that evidence be obtained in "admissible form". This stipulation would serve no purpose if the ICL could simply provide evidence in a Case Outline.

863. Thirdly, Ms Morton was unable to locate a file note of the meeting with Jack and Jennifer, despite her evidence that it was her practice to keep file notes of meetings with children she was representing and she "would have" made one that day.

864. In relation to this, Ms Morton submitted that the fact that a file note of the meeting cannot be located "does not automatically lead to a conclusion that my evidence was untruthful". I agree with this submission. Nevertheless, I am of the view that Ms Morton's inability to produce the contemporaneous file note which she says she took (particularly in circumstances where she produced file notes of other conversations relevant to this inquest) does not assist Ms Morton's position on this point.

865. On the basis of the evidence before me, the reasoning and submissions of counsel assisting set out above, and in the absence of any contemporaneous file note corroborating Ms Morton's oral evidence, I do not accept Ms Morton's oral evidence as to what she was told by Jack and Jennifer in December 2016.

22 December 2016: the hearing before Judge Monahan

866. On 22 December 2016, the matter was listed for directions before Monahan J in the FCC. Mr Brown appeared for Olga; Mr Bell of counsel appeared for John; and Ms Morton appeared as ICL.

867. I am satisfied that by the time of this directions hearing, Ms Morton had received and read a significant body of information putting her on notice of John's history of violence and making clear Jack and Jennifer did not want to see John, namely the following:

    a. The CIC Memorandum, which identified that Jack had made allegations of family violence against John and did not wish to see John. It also said that Jennifer had alleged John was violent to Jack and that she did not wish to see

John. This information put the reader, including Ms Morton, on notice of both children's wishes and of allegations made by the children in relation to John's violence;

b. RB's 30 November 2016 letter, in which RB raised concerns around family violence and child protection matters. RB also noted allegations were being made by "each of the parents and also, it would seem, by Jack and by Jenny".

c. Olga's 6 April 2016 affidavit, which detailed incidents of John's violence against Jack. Ms Morton acknowledged in her evidence that she read Olga's affidavit and Notice of Risk before she went to Court on 22 December 2016.

d. John's affidavit of 1 June 2016, in which he admitted to hitting and yelling at Jack on a number of occasions, but downplayed the incidents as either parenting, playful or accidents. Ms Morton agreed that this was important.

e. The material produced in response to the November 2016 subpoena, which included COPS Event narratives detailing allegations of violence made by two prior domestic partners and an allegation of stalking by JC.

868. Counsel assisting have submitted that, against that backdrop, I should find that at the directions hearing on 22 December 2016, Ms Morton (a) misled the Court concerning the contents of the police subpoena material; (b) did not accurately inform the Court of RB's views and the reason why family therapy had not worked to date; and (c) did not inform the Court of the true nature of the children's wishes, nor that the contact orders she proposed were contrary to their wishes. In light of this seriousness of this submission, and Ms Morton's submissions to the contrary, I address those matters in detail in the following paragraphs and make various findings in relation to them.

Ms Morton submissions to the Court regarding the NSWPF subpoena material

869. During the hearing on 22 December 2016, Ms Morton made the following submission about the allegations of violence against John and the contents of the police subpoena material:

> MS MORTON: Your Honour, I subpoenaed the police file. They put it down to parenting. Maybe a bit heavy-handed parenting, but there has been no action taking - I can't see any report to JIRT. There's no apprehended violence orders. I can't see any charges. I'm not suggesting that if there is family violence that it ought to be taken lightly. I'm just saying, on what I've seen so far, I don't have any concerns - and I put to you that that would be a good arrangement, for that few hours, for the

father to see the children.

870. This submission was made in response to Mr Brown raising allegations of family violence as a reason why the children did not want to see their father.

871. Counsel assisting have submitted that Ms Morton's submission to the Court was misleading in two respects. First, none of the material reveals any reference to "heavy-handed parenting" (or anything that could be so described). Secondly, when Ms Morton told the Court that "on what I've seen so far, I don't have any concerns", the gravamen of her submission was that the Court ought not be concerned by Mr Brown's submissions, or Olga's allegations of violence, because Ms Morton had personally reviewed the material and had no concerns.

872. Turning first to the reference to "heavy-handed parenting". Ms Morton gave evidence that the basis of her submission referring to "heavy-handed parenting" "would have been something that I read in the police file". Her evidence was that she was "sure" she "got it from the police material" and that she read something to this effect because it is not language she would use. I do not accept this evidence. Having reviewed the November 2016 subpoena material for myself, I am satisfied that it contains no reference to any assaults or physical contact against Jack and Jennifer by John. Nor is there any reference to "heavy-handed parenting", or anything similar. The only reference to Jack and Jennifer is them being listed as "Child/Young Person at Risk" in relation to the verbal argument between John and Olga in March 2016. I am satisfied that there is no basis, in the November 2016 subpoena material, upon which Ms Morton could have formed the view that the police were aware (at that stage) of any allegations that John had been violent towards Jack and Jennifer, let alone that the police had put John's behaviour down to heavy-handed parenting.

873. I agree with counsel assisting that, when viewed in context, the submission by Ms Morton was not only factually inaccurate; it was materially misleading. By responding to Mr Brown's submission in the way that she did, Ms Morton gave the Court the clear, but false, impression that police were aware of the allegations against John and had dismissed them as "heavy-handed parenting". It is of note that Ms Morton accepted in her evidence before me that the Court would put weight on her submission concerning the contents of such material. That seems obvious, given the nature of her role as an ICL in the proceedings.

874. As to Ms Morton's further submission at the directions hearing that, on the basis of what she had seen so far, she didn't have "any concerns" in relation to family violence, the transcript reveals that Ms Morton did not direct the Court's attention to material filed in the proceedings (such as Olga's affidavit or the CIC Memorandum), or to which she otherwise had access (such as RB's letter of 30 November 2016) that contradicted the view she had formed. In particular, I am satisfied that Ms Morton did not draw the Court's attention to the following matters of which she was aware at the time:

    a. Jack and Jennifer had told PR, independently of Olga, that John was violent towards Jack and this was recorded in the CIC Memorandum;[7]

    b. Olga had raised issues of violence and child protection with the family therapist RB, and RB had recorded those matters in her 30 November 2016 letter to Ms Morton;

    c. John had essentially admitted each of the incidents alleged by Olga, Jack and Jennifer but characterised them as less serious or accidental;

    d. John had a history of violence against ex-partners and a serious stalking allegation had been made against him by his daughter JC; and

    e. John had children from his previous domestic relationships, none of whom had any contact with him.

875. Ms Morton accepted in her evidence that as an ICL making submissions in a proceeding involving allegations of family violence, it was part of her role to bring the Court's attention any salient areas of risk in the case. I agree with counsel assisting that it is not to the point, as was submitted by Ms Morton, that at least some of that evidence was located within the Court file and available to the presiding judge, particularly when the submissions made by Ms Morton were to the effect that she had reviewed that material and come to a view that the content did not raise any concerns.

876. In her written submissions to this inquest, Ms Morton states that, as at 22 December 2016, the children had met and made disclosures to PR, "but that [PR] questioned the veracity of those disclosures", and had made no disclosures to RB or Ms Morton herself. In my view, that submission is not to the point. The issue at hand is in relation to the documents to which Ms Morton had access, and what she told the Court about those documents. In any event, I do not accept Ms Morton's characterisation of the CIC Memorandum or what the children had told RB. In the CIC Memorandum, PR does not question the veracity of the children's disclosure of John's violence; indeed, PR records

[7] See paragraphs [773]-[779] re the CIC Memorandum.

that John had admitted some of those allegations, albeit downplaying them. PR also recommended in the CIC Memorandum that if orders were to be made for the children to spend time with John, she suggested that "day time only for a limited period may reduce the risk of the children suffering physical or emotional abuse from the father". Similarly, RB's letter of 30 November 2016 refers to allegations made by Olga and John "and also it would seem, by Jack and by Jenny". That letter does not support a submission that the children made no disclosures to RB.

877. Ms Morton also submits that it is "highly relevant" that Olga's legal representatives did not seek to tender any of the material produced by the NSWPF and notes that this was not raised with Mr Brown or Mr Fowler in their evidence at inquest. Again, in my view, those submissions are not to the point. The reason Ms Morton's analysis of the material produced by NSWPF in response to the November 2016 subpoena is relevant in this inquest is the impact that it had upon *her* submissions to the Court, as the ICL, in relation to the risks posed to Jack and Jennifer. Ms Morton's submission also does not deal with or acknowledge her particular responsibility as ICL to tender relevant material produced pursuant to subpoenas issued to relevant agencies (see 6.8 of the ICL Guidelines). Ultimately, the fact that no other party sought to correct Ms Morton's misrepresentation of the contents of the material produced by NSWPF is no answer to the fact that Ms Morton mischaracterised the material to the Court in the first place.

878. I am conscious that, in examining the events the subject of an inquest, I have the benefit of hindsight, and access to a large amount of other evidence. It is a feature of this jurisdiction of which I remain cognisant in every inquest. However, this is not an issue that is better understood in the fullness of time and with the benefit of other evidence. I have considered the material to which Ms Morton had access to at the relevant time and her evidence that she read that material. I have also considered Ms Morton's evidence as to her understanding of her role and its associated responsibilities (including her obligation to bring to the attention of the Court any risks to the children). In light of those considerations, and the foregoing analysis, I find that the submissions made by Ms Morton on 22 December 2016 as to the contents of the material produced by police in response to the November 2016 subpoena, John's history of violence, and the risk John posed to the children, were incomplete and materially misleading.

Ms Morton's submissions about the views of RB

879. At the directions hearing on 22 December 2016, Ms Morton also made the following

submission as to why family therapy with RB had not worked, and the way forward:

> MS MORTON: We have had some discussion because I've met with the children - - - - and I've had some discussions with [RB], who is the family therapist in this matter. They haven't been very fruitful – and perhaps I could just tell your Honour what my view is.
>
> HIS HONOUR: Yes.
>
> MS MORTON: I have had some lengthy discussions with [RB] - and I had written to her and she did provide me with a letter. If I can put it this bluntly. The mother has not been very cooperative in respect to the family therapy. I understand there was one attendance and she wouldn't make any further appointments. She has now done so.
>
> HIS HONOUR: Yes.
>
> MS MORTON: So there is - and that has only happened, I think, in the last week. She now has done so and she has made an appointment for herself on 11 January. […] For that situation to work the mother has to participate. She has got to actively participate in that and encourage the children to participate in that because otherwise we're running the risk that the children will lose a relationship with their father forever. I would - there are already orders for family therapy. So I don't know what we can do in terms of another order, but what I would ask - and I have had some discussions with [RB] about this.
>
> My view is that she would be assisted by seeing some of the material that has been filed in this court. I do not mean the whole two volumes of material. I mean the matters that are relevant in respect of the children - and I would be happy to perhaps do a letter; settle it with my friends, as to what she should be provided with.

880. Counsel assisting have submitted that this submission was materially incomplete in that whilst there is no doubt that Olga expressed difficulty in participating in therapy with RB, that was only part of the picture. They further submit that Ms Morton did not draw the Court's attention to two related matters which provided important context to understanding why family therapy had not worked, why, in RB's view, it should not have continued at that stage, and why the parties had nevertheless agreed for family therapy to continue. Those matters are set out below.

881. First, Ms Morton did not inform the Court of RB's view set out in her 30 November 2016 letter that therapy was "unlikely to be beneficial at this point in time due to nature of allegations being made by each of the parents and also, it would seem, by Jack and by

Jenny. Issues and concerns around family violence, child protection matters, alienation and realistic estrangement have all been raised".

882. Secondly, Ms Morton did not inform the Court of RB's view that family therapy should be put on hold until a report or assessment could be completed in relation to the matters raised in her letter. It is apparent that, by this point, Olga had agreed that family therapy could continue because she did not want the children to undergo a risk assessment twice (one being required for the family report of PR).

883. Ms Morton submits that both John and Olga were legally represented in the proceedings, and their legal representatives had a copy of RB's letter when they appeared at the directions hearing. She further submits that they were, therefore, free to advise his Honour if their client was not in favour of continuing with family therapy with RB, and to tender a copy of the letter, but that neither did so, "rather, by consent they continued to engage in family therapy with [RB]". So much may be accepted. However, this submission again overlooks the particular responsibility that Ms Morton had in her capacity as ICL protect the children from possible physical or psychological harm from being subjected or exposed to abuse, neglect or family violence as per the Principles. Again, the fact that other parties did not inform the Court of RB's views (which were set out in a letter that Ms Morton only disclosed to them at Court that day) does not relieve Ms Morton of her own obligation to do so.

884. I agree with and accept counsel assisting's submissions that it was inappropriate for Ms Morton to submit that Olga had not been cooperative without disclosing RB's view as to why the family therapy had not worked up until that point. I also agree with their submission that Ms Morton's obligations required her to tell the Court that RB had recommended against further therapy due to the allegations of family violence, but that the parties had agreed to continue for the reasons set out above. For these reasons I find that Ms Morton did not accurately inform the Court of RB's views and the reason why family therapy had not worked to date.

Contact arrangements between Jack, Jennifer and John proposed by Ms Morton

885. After addressing family therapy, Ms Morton then made submissions concerning future contact between John, Jack and Jennifer. Ms Morton said:

> That then leaves - there are no current orders about the father seeing the children. I would be happy for them to spend a few hours - perhaps the 27th. And I pick that day having spoken to the children.

> That will need some encouragement from the mother, at least in respect of Jenny. Not so much in respect of Jack, but at least in respect of Jenny – to attend. What I suggested to the parties is that maybe - and I know the mother doesn't want to disclose her address. So maybe they could agree on somewhere where he could take them for lunch - and maybe the mother could drop them off and, you know, they could have lunch, or something like that, for a few hours. I think we have to tread lightly initially, but it would be good for the children to at least spend a few hours. The mother will then - I don't know after that. We're going to have to see how that goes, I think.

886. Mr Brown, in response, said that Olga was not discouraging the children from seeing John; it was simply that they did not want to see him. Mr Brown said, "my friend [Ms Morton] says that she spoke to them and they say quite the opposite". His Honour acknowledged Olga's position, namely that the children were free to communicate with John in accordance with their wishes and observed that "but, of course, at the moment they don't want to spend time with him, would be the evidence before me".

887. Rather than "treading lightly" as she had initially submitted to the Court, the transcript indicates that Ms Morton then expanded the plan for contact between John and the children, from one visit on 27 December 2016, to three hours a week going forward. She said this:

> MS MORTON: My proposal now is for this three hours of time. […] I mean, I'm not - given it's school holidays … I mean maybe there could even - that lunch or few hours could even be once a week between now and, you know, when they go to school or in the meantime, if they're having some family therapy. I just think it can continue with no time and I'm – I don't – having me[t] with the children I'm not seeing any reason why they can't be spending time with the father.
>
> HIS HONOUR: And it's not uncommon, we find, that children often say one thing to parents - or they often say to parents what they think the parent wants to hear.

888. In the following exchange with the Court, which is set out in full, Mr Brown indicated that the proposal was likely to be problematic because he understood the children did not want to see John, and pointed out the inconsistency between what Ms Morton claimed that the children had told her and what they had told their mother.

> MR BROWN: No, no, no. Sorry. The one where - on the one hand, there's something on the 27th and then it was three hours every week thereafter, or something to that effect.

HIS HONOUR: That the children shall spend time with the father for three hours, from Noon each Saturday.

MR BROWN: Yes.

HIS HONOUR: What, she doesn't agree with that?

MR BROWN: Just - --

HIS HONOUR: She agrees to them spending time as the children wish - - -

MR BROWN: No. Just briefly - just briefly, your Honour. My instructions are that the children don't want to see him. Ms Morton says that she spoke to the children and they say they do. Well, let's do the 27th, as I'm saying. If there's no problem ---

HIS HONOUR: I'm not back until May. We need to make some orders that go beyond the 27th.

MR BROWN: A matter for your Honour, but I'm just saying that's the problem.

HIS HONOUR: Yes. But your client is happy to facilitate the children spending time with [him]. That's what I've been told, as - --

MR BROWN: And if they don't want to, your Honour?

HIS HONOUR: That's what she says. I would have some problems giving a 12- year-old that ability, but it's not a final decision today - but your client ..... that she wants to facilitate that time if they want to spend the time. She's saying they don't want to spend the time. The ICL - they told the ICL something else.

MR BROWN: That's so.

HIS HONOUR: So I'm going to take a leap of faith and assume that the children tell the ICL the truth - and they may not necessarily tell your client the truth.

MR BROWN: That may be.

HIS HONOUR: So I can't see any particular - it's very minimal time; you would agree with me there.

MR BROWN: Well ..... have to leave to come back fairly shortly if there's any problem. Let' s otherwise leave it as it is.

889. There is no evidence before this Court that Ms Morton ever sought the views of RB, PR, or the children in relation to the proposed ongoing contact regime. It follows that Ms Morton could not have known whether they supported the proposal when she made submissions in relation to it on 22 December 2016. When Ms Morton spoke with RB it was only in relation to her views about the children seeing John on one occasion, at

Christmas.

890. Ms Morton contends in her written submissions that the proposal was discussed with the parties' solicitors at Court prior to the directions hearing. Whether or not this occurred, in my view it is not to the point. Ms Morton's responsibilities as the ICL required her to "ensure that any views expressed by the child are fully put before the court" and to consult with any relevant experts in relation to those views and 'the contexts in which [they] arise and are expressed" (Section 5.3, ICL Guidelines). As I observe above, there is no evidence that Ms Morton consulted any expert, or the children, on this proposal.

891. Counsel assisting have submitted that this was the first time that an ongoing, weekly contact regime between John and the children had been formally raised by any party. They have also submitted that, on a fair reading of the transcript, it appears that Ms Morton thought of it on the spot. Ms Morton submits, and I accept, that this was not put to her in her evidence at inquest and I am not in a position to make a finding in this regard. I do not make a finding about whether Ms Morton thought of the contact regime on the spot or not. I am nevertheless satisfied, based on the material set out above, that the contact regime was developed by Ms Morton without an evidentiary basis and without consultation with any expert or the children themselves.

892. Ms Morton did not inform the Court that the proposed regime had not been canvassed with PR, RB, or the children themselves. She also did not inform the court that the proposal was contrary to the wishes of the children as expressed to PR and RB. Instead, Ms Morton invited his Honour to proceed on the basis of her submission that the children had positively told her that they wanted to see John, without drawing his Honour's attention to significant evidence to the contrary which had been expressed to third parties other than Olga, and was in admissible form.

893. It is true that Mr Brown indicated to the Court that Olga was happy to facilitate John spending time with the children and did not submit that this ought not occur. Mr Brown also conceded, in response to his Honour, that it may be the case that "the children tell the ICL the truth … and may not necessarily tell [Olga] the truth". I am of the view that this exchange, rather than providing support for the submissions Ms Morton made on 22 December 2016, underscores why it was necessary for the Court's attention to be drawn to the range of issues the children had raised with PR and RB, so that the Court understood that the issue was not simply a contest between what Olga had alleged and

what Ms Morton had been told by the children. On my reading of the ICL Guidelines, the responsibility to do so lay with Ms Morton, as the ICL.

894. Counsel assisting have submitted the exchange set out above "exemplifies the privileged position occupied by the ICL in family law proceedings, and underscores the particular importance of ICLs making full, frank, and evidence-based submissions to the Court". I agree with this submission. Given that the contact regime proposed by Ms Morton was ultimately put in place, I infer that the Court must have placed significant weight on Ms Morton's submissions and preferred her version of events to Olga's, despite the fact that it was given from the bar table, rather than by way of admissible evidence. In doing so, the Court was entitled to assume that it had been given accurate (or, at least, non-misleading) information by Ms Morton in her capacity as the ICL.

895. In light of the above findings and analysis, I am satisfied that Ms Morton proposed a contact regime to the Court that was contrary to the children's wishes and without consulting any relevant expert, without informing the Court of those facts.

Did Ms Morton contravene the ICL Guidelines?

896. Counsel assisting have submitted that the submissions made by Ms Morton at the directions hearing on 22 December 2016 outlined above contravened aspects of the ICL Guidelines. Ms Morton disputes that she failed to act within the ICL Guidelines, however all of her submissions in relation to this issue are confined to matters that post-date the directions hearing on 22 December 2016. On the basis of the factual findings and reasoning that follow, I agree with the submission of counsel assisting in relation to this issue.[8]

897. Sections 4 and 5.3 provide that the ICL does not take instructions from the child, but is required to ensure the Court is fully informed of the child's views, in an admissible form where possible. On 22 December 2016, Ms Morton failed to ensure that the Court was fully informed of Jack and Jennifer's views, or alternatively, to the extent she relied on her own discussions with them, failed to ensure that material was in an admissible form. She also failed to bring to the Court's attention the views Jack and Jennifer had expressed to PR and RB by that time.

898. Sections 4 and 5.3 further provide that the ICL is to ensure that their views and attitudes brought to bear on the issues before the Court are drawn from, and supported by, the admissible evidence, and not from a personal view or opinion of the case. I am satisfied

[8] All of the references to "Sections" in this part of the findings are references to the ICL Guidelines.

that Ms Morton's submission concerning "heavy-handed parenting" was an opinion without factual basis. Her submission that the children spend 3 hours each week with John, on an ongoing basis, similarly constituted a personal view that had no evidentiary basis, and was contrary to the views expressed by the children to PR and RB.

899. Section 5.2 provides that the ICL should guard against stepping beyond his or her professional role and should seek guidance from a Family Consultant or other professional when necessary. I am satisfied that Ms Morton contravened Section 5.2 by failing to seek guidance from PR or RB concerning her proposal that the children spend time with John on an ongoing basis. Section 5.2 also provides that the ICL ought not to become a witness in the proceedings. However, Ms Morton did so, by placing the Court in a position where it had to weigh Olga's evidence against Ms Morton's statements from the bar table concerning whether the children wanted to see John.

900. The fact of this was noted by Mr Brown in an email that he sent to Ms Morton on the afternoon of 22 December 2016, after the conclusion of the hearing, in which he stated:

> With reference to our discussion today, it became abundantly apparent to me that you had formed the view (not being prepared to countenance, consider or engage in discussing any other) that the children wished to see their father. I was at pains to explain (notwithstanding your constant interruptions) that my client was of a totally different understanding. I am a little concerned that this reflects on a possible lack of objectivity or understanding on your part.

901. Section 5.3 provides that the ICL is to arrange for evidence to be before the Court as to how the child would feel if the Court did not reach a conclusion which accorded with the child's wishes. I am satisfied that Ms Morton did not put any evidence before the Court as to how Jack and Jennifer would feel if they were required to see John for three hours each week on an ongoing basis.

902. Section 5.4 provides that the ICL is to advise the child that they intend to make submissions contrary to the child's views. Counsel assisting have submitted, and I so accept and find, that there is no evidence that Ms Morton told Jack and Jennifer that she intended to propose the ongoing contact regime to the Court on that date.

903. Section 5.4 also provides that the ICL is to ensure that the child's views are before the Court, along with supporting arguments. It is plain that Ms Morton failed to ensure that the Court was fully informed of Jack and Jennifer's views, and also failed to make

submissions that promoted the adoption by the Court of those views. In fact, I find that Ms Morton's submissions were directly contrary to the views of Jack and Jennifer as expressed to PR and RB.

904. Section 7 provides that family violence and abuse are serious issues and should always be presented as being so. As I have already set out above, I am the view that because Ms Morton mischaracterised the extent and nature of the information contained in the police subpoena material, her submissions on 22 December 2016 did not properly articulate the objective risk of family violence that was present. Nor did she consider the relevance of the allegations of violence with the assistance of a counsellor. To the contrary, Ms Morton disregarded the views expressed by PR and RB and did not draw the Court's attention to them.

905. Section 7 further provides that the ICL is expected to be alert to any risk of harm to a child that may arise from the other parties, or the physical environment in which the child may be. It states that it will "usually be inappropriate for the ICL to bring the child into proximity with an alleged perpetrator of harm". Ms Morton had a clear obligation not to promote orders that sought to bring Jack and Jennifer into contact with John as an alleged perpetrator of harm. That is particularly the case in circumstances where Ms Morton had not sought, or obtained, any expert evidence on whether it was in Jack and Jennifer's best interests to have contact with John, an alleged perpetrator of violence, for three hours a week on an ongoing basis.

Orders made by the Court

906. At the end of the hearing on 22 December, Monahan J made orders, including:

(a) the preparation of a Family Report (Order 3);

(b) that both parties participate in, and facilitate Jack and Jennifer participating in, family therapy with RB (Order 6);

(c) the children spend time with John for three hours from 12.00pm on 27 December 2016 (Order 8); and

(d) that Jack and Jennifer spend three hours with John each Saturday from 31 December 2016 until further order (Order 11).

Summary of findings re the directions hearing on 22 December 2016

907. On the basis of the foregoing, I find that at the directions hearing on 22 December 2016,

Ms Morton misled the Federal Circuit Court concerning the material produced by NSWPF in response to the November 2016 subpoena. This had the effect of providing the FCC with an understated, and inaccurate, picture of the risk posed by John to Jack and Jennifer.

908. I am also satisfied that Ms Morton did not accurately inform the Court of RB's views and the reasons why family therapy had been unsuccessful; she did not inform the FCC of the nature of the children's wishes as expressed to others involved in the proceedings; and she did not inform the FCC that the contact orders she proposed were contrary to those wishes. As a result, the FCC was not aware that Ms Morton had proposed those orders without any evidentiary basis for doing so.

Late December 2016 to February 2017: family therapy with RB concluded

909. As already noted, on 23 December 2016, Ms Morton emailed John and Olga's lawyers in relation to the closure of her office and preparation for RB's appointment with Olga on 11 January 2017.

910. On 27 December 2016, Jack and Jennifer refused to spend time with John either that day or on any Saturday thereafter, in contravention of the regime proposed by Ms Morton and ordered by the Court.

911. On 29 December 2016, Mr Brown sent an email to Ms Morton stating:

> I have today spoken to my client and she advises that she;
>
> - asked both children to go and see their father on the 27th of December and that she has been asking them for 3 days prior and both said that they would not go.
> - offered to drive the children to their father, both again said "no I will not go. I don't want to see him"
> - also asked them if they would spend time with dad every Saturday for three hours, and both said "no".
> - then asked if she could do anything to change their minds, they again said "no".
>
> My client cannot physically force the children into this.
>
> I do not propose to go into any further detail until my client and the children have seen the family therapist.

912. On 9 January 2017, Ms Morton sent the following documents to RB by email: Olga's 6 April 2016 affidavit; the CIC Memorandum; John's affidavit of 1 June 2016; John's

6 October 2016 (noting that Annexure 1 appeared to be missing"); and orders dated 22 October 2016.

913. On 10 January 2017, an administrator on behalf of RB wrote to Ms Morton to ask her whether RB's 30 November 2016 letter been provided to the parties. Ms Morton responded the same day, as follows:

> To be clear - the parties' solicitors were each provided with a copy of [RB]'s letter prior to submissions being made to His Honour on 22 December 2016 and, in fact, the Order for ongoing therapy was one that was agreed to by the parties however the totality of the Orders were ultimately not made by Consent as the balance of the Orders proposed were not agreed.
>
> I have inspected the subpoenaed material and there is nothing in any of the material that causes me any risk concerns. The only real concern that I have is that that Jack is missing an enormous amount of school because both children are left to get themselves to and from school every day.

914. Counsel assisting have submitted that Ms Morton's email to RB is "deeply problematic". They submit, and I accept, that contrary to Ms Morton's email the subpoena material did, in fact, contain information that corroborated Olga's allegations of family violence and ought to have put Ms Morton on notice of risk. They alternatively submit that if Ms Morton did in fact review the police subpoena material and did not hold any risk concerns, that supports a different finding, namely, that Ms Morton was wholly unsuited to perform the role of protecting the children's best interests.

915. I do not need to consider the second submission. That is because Ms Morton accepts that, at the very least, she read the material produced on subpoena by the NSWPF which concerned the AVO put in place to protect JC. That fact alone was a sufficient basis upon which Ms Morton should have held risk concerns for Jack and Jennifer. Ms Morton accepted the seriousness of the incident in her oral evidence. I am therefore satisfied that there was no reasonable basis for Ms Morton's conclusion that nothing in the material caused her "any risk concerns".

916. On 11 January 2017, Olga met briefly with RB. She told RB that she felt she had said all she needed to say in respect of family therapy and she expressed her dissatisfaction with both RB and the process.

917. On 11 January 2017, RB responded to Ms Morton's email of 10 January 2017, and in relation to risk she stated:

> Whilst I appreciate your comments regarding risk - in my opinion the issue of risk is still live in that the mother continues to allege the children are at significant risk of harm should they spend time with their father and issues of family violence. The father, as I understand it, continues to allege the issue of alienation. These are unresolved risk issues which significantly impact on therapy.

918. RB also indicated that the form of Order 6 dated 22 December 2016, and the purpose of the therapy that was ordered, was unclear. She stated:

> As I discussed with you at length and as noted in my letter regarding ongoing therapy – the aims of therapy need to be clearly stipulated in any orders made by consent or by the judge – they are not – Order 6 states the parties participate in and facilitate the children partaking in family therapy – it does not stipulate for what end/purpose.
>
> Olga attended her appointment with me today. She presented as upset and unhappy to have to attend the appointment, believing it unnecessary. In her opinion she could have explained her position and her concerns (about me, about ongoing family therapy, about myself and you; the ICL. lying to the Court etc), over the phone. She stated that she is not going to attend any further appointments with me, although she will facilitate the children attending any appointments. She does not believe that that she needs any therapy (from me in particular). She also expressed concern about my practice and conduct. She elected to leave the appointment early, believing that she had said all she needed to say.
>
> Whilst I am willing to continue to see the children and father, I have concerns about how successful it will be given the points raised above and in my original letter.

919. On 12 January 2017, Ms Morton responded to RB as follows:

> Sorry that we weren't able to touch base yesterday and I do know that you are now on leave. I do hope that you don't think that I was trying to usurp your role.
>
> Unfortunately, it seems that the mother presents very differently to you than she does to the Court. It was in fact the mother's proposal to continue with you and you will recall that she contacted to make an appointment before the matter went back to Court, The father had proposed a different therapist with the prospect of obtaining a risk assessment as well as undertaken the therapy and the mother was opposed to that - most likely because it was the father's proposal. There was lengthy discussion at Court about your role which the mother's solicitor then explained to her so she should have been in no doubt in that regard.

> Despite the Orders that were made on 22/12/2016 the Mother has not facilitated any time at all between the father and the children.
>
> I'm really in your hands. Would it be better for me to source another professional to provide a risk assessment prior to further therapy and, if that is your view, can you make a suggestion as to who that should be? I can approach His Honour for an Order from Chambers.

920. On 12 January 2017, RB responded by email as follows:

> Perhaps it is best to go back to the mother's solicitor and ask them what they want to do given the mother's presentation to me…
>
> Olga was very clear with me that she had only contacted me (prior to the matter going back to Court) only to make an appointment for the children continuing with me - not herself. She was very upset that I wanted to see her, (before I would see the children again) even when I tried to explain to her that it was in order for me to understand her changed position/views about therapy and to talk to her about her role in supporting the children to just attend therapy but to repair (if possible) their relationship with their father.
>
> When I mentioned that the orders about therapy were made on 22 Dec by consent, Olga disagreed - I showed her the orders - she made some comment about the Court having cut and pasted them.

921. On 27 January 2017, Ms Morton wrote to John and Olga's lawyers as follows:

> I refer to the above and now respond to the plethora of correspondence that I have received from both of you over the past month. I am also attaching to this email a copy of the LAC Brochure in respect of my role in these proceedings as neither of you seems to understand what that is.
>
> Whilst I have read the correspondence that has passed between the two of you in respect of the mother's non−compliance with the Orders of 22 December 2016 I am not in a position to take any action. It is the mother's obligation to both encourage and facilitate the time between the children and their father and in accordance with the Court Orders and I would expect that the father would be advised by his solicitors as to the appropriate steps to take where a party is contravening orders.
>
> …
>
> What I am presently concerned with is that when the mother attended upon the family therapist on 11 January 2017 she advised [RB] that she did not understand why she was there or the purpose of the family therapy notwithstanding the extensive

> discussions that took place at Court on 22 December last. Further, the mother left the appointment early and would not make any further appointments.
>
> I have discussed this issue with [RB] and whilst she will continue sessions between the father and the children if requested to do so she sees little benefit in doing so given the mother's attitude. [RB] has suggested that the parties and the children attend upon another professional for the purpose of a Risk Assessment
>
> ….
>
> Could you both let me know your views in this regard within the next 7 days after which I intend to contact His Honour's Chambers to either have the matter relisted or obtain an Order in Chambers (this can only be done by consent).
>
> As you are both no doubt aware the current waiting time in the FCCA system is anything up to three years from the filing of an Application to finalisation by fully contested hearing. Surely neither of the parties wants this situation to continue for that period of time and I would urge you to advise your clients to do the following:
>
> 1. Undertake the Risk Assessment.
>
> 2. Continue with Family Therapy — both parties and the children — with [RB] in accordance with the Court Orders.
>
> 3. The Mother comply with the Court Orders in respect of the children spending time with the Father.
>
> 4. Consider alternative dispute resolution such as private mediation. This could be for both property (once you have an agreed asset pool) and parenting (preferably after a period of family therapy).

922. On 3 February 2017, RB emailed Ms Morton and asked for an update in relation to the proceedings. Ms Morton responded the same day, stating:

> Welcome back. Both lawyers have been engaging in an absolute cat fight via email which I am unfortunately copied on. I gave them until today to agree on the risk assessment and advised that after that time I would contact the Judge's Chambers to have the matter relisted and get the Order. I also advised them both that Olga has declined to make further appointments so depending on when John left the messages he should know that.

923. Later that morning, Ms Morton sent RB a further email, forwarding a letter from Mr Brown, and stating:

> I am forwarding this letter to you so that you can see what we are dealing with! You will see in one paragraph of the letter Olga's solicitor states that at her first visit to

> you she read from a piece of paper given to her by her Counsel (Peter Fowler) advising as to the purpose of family therapy and yet she and her lawyer advised me and the Judge on 22/12/2016 that she had not received any advice from her Counsel on the previous Court attendance (Mr Brown was not present) in relation to the family therapy.
>
> I find Olga generally to be a little disingenuous particularly as, despite her complaints of family violence, she wants the therapy to go ahead without a risk assessment.

924. That afternoon, RB responded to Ms Morton, reaffirming her prior view. She stated:

> In my opinion a family report would address the risk issues and allegations made by the parties and would be a suitable assessment, especially if the family report written is specifically asked to address these issues.
>
> I stand by my recommendation that, due to the nature of the allegations and concerns, a family report/risk assessment needs to take place prior to family therapy. I also believe that the report (and its conclusions) should be released to whoever is the therapist, should the assessor recommend family therapy. As I have stated previously purpose of therapy also needs to be clearly outlined.
>
> Given the mother's views about myself and what she alleges I have said during sessions I am not certain that I remain a viable option as the therapist in this matter - particularly if it emerges that the children have a perception that my neutrality has been compromised and/or that I have upset their mother or disbelieved her concerns and complaints about the father. If the children perceive me to be biased then they may not be as open and forthcoming with their thoughts and feelings as they otherwise would be with someone they perceive to be untainted and/neutral. If this is the case then, in light of the children's perceptions, it may be that a different family therapist should be appointed.

925. Ms Morton responded that a family report could not be completed “until the end of the year” and asked if another therapist should be recommended.

926. RB followed up with another email to Ms Morton later that afternoon, stating:

> Obviously this email is written to you in confidence, but I think you have two or three options to consider:
>
> 1: suggest an alternative therapist to the parties, but first check with the family therapist being suggested that they are willing and able to take on the referral in light of the nature of allegations that are being made, the unresolved family law court proceedings and the mother's reluctance to participate in therapy. You would also need to confirm with the parties and the therapist whether any therapy should be

reportable or confidential.

2: suggest to the parties that they agree to and pay for a private family report […] in order to get an assessment done sooner

3: hold off on any family therapy until after a report has been completed (whenever that might be) but organise for the children to engage in individual therapy (with a qualified therapist in their local area so they do not miss out on too much school), for the purpose of support and helping them explore their feelings etc surrounding their family and their parents separation.

With the parties written permission (or a Court Order) I am more than happy for any new therapist to contact me to discuss the matter - although I suspect that at least one of the parties would not consent to this occurring.

927. On 3 February 2017, Mr Brown responded to Ms Morton's letter of 27 January 2017. The letter stated, in relevant part:

It is our client's view that, considering the past abuse inflicted by the father, it would be traumatic for the children to undergo the risk assessment twice this year, firstly for the purposes of a specific risk assessment referred to in your letter dated 27 January 2017, and then again for the purposes of the family assessment/expert report in accordance with the Court Orders.

As you have already been informed, our client has no issue with bringing the children to [RB] for the therapy in accordance with the Court Orders. However, the appointment has not yet been made, because our client has been informed that [RB] will be on an extended leave throughout February this year. The appointment will be made upon [RB]'s return to the office. […]

I reiterate that our client has no objection of bringing the children to the therapy in order to assist the children with past negative experiences from the father and possibly reconcile their relationship with him.

In relation to point 3 of your last paragraph of your letter dated 27 January 2017, we confirm that the mother is complying with the Orders dated 22 December 2016, as pointed out to you previously:

- She told the children to go and see their father on the prescribed dates,
- She told them that she will drive them to see their father and take them to the train station.
- However, the children refused to go.

We are instructed that our client followed the instructions by the Judge given on the

> 22nd of December. However, she has no wish nor ability to physically force these two teenagers into that which they are clearly resisting. However, they are both perfectly capable of walking, taking a train, bus or by bicycle to see their father at any time when they wish to do so.

928. On 23 February 2017, Ms Morton sent an email addressed to an assistant of RB, which stated:

> … I am advised that the Mother will not do a risk assessment. She will, however, undertake family therapy with another therapist. Her solicitor is going to provide some names. I'm in a bit of a quandary here when that is the Mother's attitude.

929. On 31 March and 4 April 2017, respectively, John filed another affidavit and Notice of Risk in the proceedings, detailing Olga, Jack and Jennifer's non-compliance with the orders of 22 December 2016.

4 April 2017: family theory with RS, clinical psychologist, commenced

930. On 29 March 2017, John contacted RS to arrange an appointment for court-ordered family therapy between him, Olga, Jack and Jennifer.

931. RS provided copies of her clinical progress notes for each member of the Edwards family to the coronial investigation team, as well as a detailed statement. On 8 September 2020, RS was served with a letter of sufficient interest and the Issues List, following which, on 11 September 2020, RS provided further material, comprising handwritten notes of two telephone conversations she had with Ms Morton, on 28 April 2017 and 13 June 2017 ("the RS notes"), and a further typed document titled "Addendum" (hereafter referred to as such). The Addendum contained further detail of those two telephone conversations. The RS notes and the Addendum were exhibited in the coronial proceedings and are dealt with in detail below. I note that there were some discrepancies in the evidence at inquest as to whether this second telephone call occurred on 13 or 15 June 2017. While the difference in dates is not material, I am satisfied that it occurred on 13 June 2017.

4 to 26 April 2017: family therapy sessions

932. On 4 April 2017, RS had her first therapy session with John. RS said she believed what John was saying in that session. In short:

> He presented as a poor helpless victim who was separated from what he said was a nasty, vindictive wife. He portrayed to me that he had a perfect marriage up until the point in which they separated. While I believed his version, I still had some

> questions, in that I knew that his story couldn't be completely true but whether he believed it to be true was another thing.

933. On 11 April 2017 RS had her first session with Olga. Her evidence was as follows:

> I found her version to be believable and made me question John's version of events. The descriptions of incidents were very descriptive and believable. I also questioned, to myself, why a 19-year-old would marry a 50 year old, and suspected that it was to get out of Russia.

934. On 12 April 2017, RS had her first therapy session with Jennifer. She said this:

> I found Jennifer to be smart and articulate. The incidents she described were consistent with Olga's version of events and different to her fathers. She was very clear that she never wanted to see John again and there was no indication that this was interfering with her functioning. She was not open to family therapy.

935. On 20 April 2017 RS had her first therapy session with Jack. She said :

> During this session it was clear that Jack didn't want to talk about the family separation. I believed Jack's version of events, which was consistent with his sister and mother's. I was concerned for his mental health because he was not cognitively with it. He appeared sleepy and he seemed a bit off. He blamed himself for his parents arguing but was happy about the separation. He felt that he deserved his father's harsh treatment because he behaved so badly but he was very clear that his life was better without his father and he didn't want a relationship with him.

936. RS's clinical notes from the session with Jack record the following:

a. 'he used to beat me in the past'; John used 'his fists…his hands… he'd slap me … he used to threaten me with a fist";
b. "He used to threaten to give me a clip over the ear … he had a lot of anger in him … he gets angry at me a lot";
c. In relation to the Paris assault, Jack said that John chased him and grabbed him by the throat … "I was really scared".
d. In relation to a separate incident: "I picked up his phone and he ran at me, pushed me .... multiple times he's hit me in the face, I've had a lot of bleeding noses".

937. On 26 April 2017, RS had her second session with John. John admitted doing the "finger treatment", a technique he learned in the army, on Jack. RS also started to question where Jack learned to be violent. She began to suspect that John may be more aggressive than he made himself out to be, but did not say this to him so as to not

damage their rapport.

938. On 26 April 2017, RS received an email from John and had a telephone conversation with him. RS told John that Jack was considering having a joint session with his father present, but that Jennifer was refusing a joint session. RS obtained consent from John to speak with Ms Morton.

24 to 27 April 2017: Ms Morton asked John to bring Jack to see her

939. On 24 April 2017, Ms Morton asked for Jack to be brought to see her at her office in Gymea. She specifically requested that the children be brought by John because “the Mother bought both children last time and I usually alternate”.

940. On 26 April 2017, Mr Brown wrote to Ms Morton and informed her that Jack and Jennifer had seen RS over the past two weeks. He said that RS told Olga that neither child wanted to see or communicate with John and there would be no point in continuing the therapy. Mr Brown concluded by asking Ms Morton to speak with RS before following up on Ms Morton’s proposal that John bring Jack to her office.

941. On 26 April 2017, Ms Morton wrote to John and Olga’s lawyers as follows:

> As previously advised, I require that Jack is brought to my office by the Father before 12 May 2017. Please make those arrangements and contact me for an appointment day/time.

942. On 27 April 2017, Mr Brown responded as follows:

> Considering that:
>
> 1. The documented history of physical violence and emotional abuse by the father, specifically against Jack; details of which are recorded in my client's Affidavit dated 6 Apri1 2016;
> 2. The children's consultant [PR] wrote in her report that "for the children to spend time with their father, day time only for a limited period may reduce the risk of the children suffering physical or emotional abuse from the father";
> 3. The children expressed their views and reasons for them, as to why they don’t want to see their father, to [RS] notwithstanding have been asked to do so;
> 4. You were told the children’s views by them;
>
> Further relevant matters will be provided by my client in her Affidavit next week.

> Is there any reason why you disregard the matters raised by my client and the children.
>
> My client tells me that she will ask Jack to come to your office either with the father or with her (it being his choice), at any time suitable however she cannot and will not physically force him do so.
>
> Is it you [sic] wish that she put this to Jack?

943. Counsel assisting have submitted that Mr Brown's email is important for three reasons. First, because it summarised a number of 'red flags' concerning John, and clearly set out the children's wishes not to see John. Secondly, because it makes available the inference that the matters set out in this email were discussed by Ms Morton and RS the following day. Thirdly, because the email also serves to undercut Ms Morton's evidence that various 'red flags' about the risk posed by John only arose from the middle of June 2017.

944. I accept and agree with those submissions. I am also of the view that the email was important because it served to summarise the various persons to whom the children had expressed their views and an indication that Mr Brown, at least, was of the opinion that Ms Morton was disregarding the views of the children. The contents of the email also indicate that the children had understood, and presumably told their mother, that they had told Ms Morton in December 2016 that they did not want to see John. That is inconsistent with Ms Morton's evidence of that meeting, which I addressed earlier.

945. On 27 April 2017, Ms Morton responded to Mr Brown as follows:

> I am not going to debate with you the discharge of my duty as the Independent Children's Lawyer. If your client does not facilitate Jack being bought to see me by the Father, then she will leave me with no alternative but to advise His Honour of that and/or to recommend that Jack or perhaps both children are removed from her care.
>
> I will not communicate with you further on this issue.

946. Mr Brown responded on 27 April 2017 as follows:

> Noted. I might point out though that your duty clearly extends to objectively take relevant account of all that is put before you. Also by all means bring whatever you think need be put before the court but threats don't help.

947. On 27 April 2017, Ms Morton spoke with Jack over the phone. She subsequently sent an email to the lawyers for Jack and Olga, stating:

> I have spoken with Jack by telephone. The father is to collect him from Hornsby railway station to drive to my office. This will be after school so presumably about 3.45pm. I have told Jack that I would prefer that he didn't take a day off school to attend.

948. On 27 April 2017, Jack told Olga about the call with Ms Morton. Olga's evidence was that Jack told her that Ms Morton was not listening to him, talking over him, and requiring him go with John to meet Ms Morton. Jack also told RS that Ms Morton did not listen to him. RS's evidence is also that Jack told her that he did not want to be in a car with his father and he did not want to see Ms Morton. He reiterated that "I don't want to be around him". The next day, 28 April 2017, Jack called Ms Morton back and said he did not want to go.

949. Ms Morton accepted, in her oral evidence before the inquest, that she did not properly consider the travel time in the car. Ms Morton also accepted that it was not appropriate to threaten to make an application to the Court to remove a child from care on the basis that a contact regime she had proposed was not complied with.

27 April 2017: RS obtains consent to share information with Ms Morton

950. On 27 April 2017, RS called Olga to seek her consent to share information with Ms Morton. Olga said she would ask the children to call RS.

951. Later that day, RS spoke with Jennifer, who gave consent for RS to disclose to Ms Morton everything she had told RS in their first session. Jennifer reiterated that she did not want to ever see her father again or continue with family therapy. RS's evidence was that Jennifer also told her she had spoken with Ms Morton, and that she had told Ms Morton 'most' of what she had told RS, but she did not think Ms Morton had listened to her.

952. That same day, RS also had a telephone conversation with Jack. He too consented to RS disclosing to Ms Morton everything he had told her. He also confirmed that he did not want a joint therapy session with his father.

28 April 2017: telephone call between Ms Morton and RS

953. On 28 April 2017, Ms Morton and RS had a telephone conversation concerning the Edwards family, which lasted for over an hour. The contents of the telephone call on 28 April 2017 are in dispute. RS's evidence, as set out below, is that she disclosed Jack

and Jennifer's allegations of John's violence to Ms Morton during the call. In her oral evidence at inquest, Ms Morton denied that RS ever told her that Jack and Jennifer had made allegations of violence against John, and that RS believed them.

954. Ms Morton took a contemporaneous file note which was produced at the time that she provided her file to coronial investigators in September 2018.

955. In her oral evidence, RS stated that she took the RS notes of this call at the time that she spoke with Ms Morton. RS also stated that the Addendum, containing a more detailed summary of this call, was prepared shortly before her oral evidence at inquest, and after refreshing her recollection by reading the RS notes. RS was not able to explain why she had not provided the RS notes to coronial investigators at the time she produced her file. She said she had found the RS notes in the course of preparing to give evidence, and that they had "triggered my memory", at which point she created the RS Addendum. It is therefore not in dispute that the Addendum was not prepared contemporaneously, rather it was created more than three years after the conversations took place. I accept RS's evidence as to the circumstances of the creation of both the RS notes and the Addendum. It follows that I do not accept Ms Morton's submission that RS "had no record of our 28 April 2017 telephone conversation prior to 11 September 2020, being the day after I was initially a witness in these proceedings".

956. In her contemporaneous file note, Ms Morton recorded the following statements she says were made by RS during the call:

    a. "Mum hasn't come to any sessions." (RS denied saying this because she had already had one session with Olga and one session with each of the children, and Olga brought them to that session.)

    b. "Mum changed appointments". (RS agreed that Olga had changed the appointments, because Olga feared for the children's safety and she did not want John to know the times, or where they were living.)

    c. "Said would only bring children if dad didn't know when and only if he paid". (RS agreed that she said these words.)

    d. "Mum was very controlling". (RS said it was possible she said something like this to Ms Morton, although she recalled having said that Olga was more "controlled" than controlling.)

    e. "Jack had said he would consider seeing Dad then phoned at Mum's

instigation to change his mind." (RS gave evidence that she does not believe she said this, nor does she believe that it is what Jack told her.)

f. "Mum said that Jenny and Jack fight a lot." (RS said it was possible she said that because Olga had told her this.)

g. "If Jack went to live with dad think that Mum will walk away." (RS denied ever saying this to Ms Morton. She has no recollection of discussing the option of Jack going to live with his father.)

h. "Mum said 'it's important for kids to have a relationship with the father'". (RS said she believes that Olga said that to her during the first session, so it is "likely" that she said this to Ms Morton during the call.)

i. "But then mum does exactly the opposite." (RS denied saying words to this effect to Ms Morton.)

957. In the RS notes, RS recorded the following statements purportedly made by Ms Morton:

a. "Jennifer dominant – spoke clearly."

b. "Jack said three words."

c. "[Morton] asked to see just him".

d. "He [Jack] called her yesterday afternoon: 'Hi it's me' and started talking."

e. "I asked him [Jack] whether he would come and see her".

f. "Jack suggested that Dad picked him up from Hornsby Station".

g. "Jack called again today like he was reading a script".

h. "[RB] - Mother refused to go after a couple of sessions".

i. "21/Dec mother to be present to [RB] and continue."

j. "Court order requires her to go family therapy."

k. "Mother raise". (RS could not recall what this meant when she gave evidence at the inquest.)

l. "Suggested getting a risk report and mother said no".

m. "[RB] tied her hands of it." (RS gave evidence that this meant RB had said family therapy was not going to continue and she was not going to have any more to do with it.)

n. "Mother not complying with orders for kids to see Dad."

958. In her oral evidence, RS said she disclosed the following additional matters to Ms Morton during the 28 April 2017 call:

a. RS told Ms Morton about the physical abuse that Jack had reported had occurred from his father. Ms Morton questioned whether the reported abuse had been exaggerated and RS said the events reported to her were consistent and she had no reason to believe they were exaggerated.

b. RS had concerns about John driving Jack to see Ms Morton. RS said "I told Debbie what Jack had consented to me telling her about how he didn't feel safe with his father and he didn't want to be in the car alone with him". RS expressed her concern that Jack would be psychologically and/or emotionally abused in an hour-long car trip each way. She said "I remember telling her my concerns about John Edwards and concerns about the violence, and I definitely didn't agree to him being in the car. When Debbie - when Debbie Morton [told] me that she was like an hour south of Sydney, I certainly didn't agree to Jack being in the car with him for that period, and I remember that". RS said Jack had told her he felt pressured into agreeing to the trip and did not feel safe going with his father in the car, and Ms Morton agreed to make other arrangements.

c. Ms Morton raised the option of Jack living with his father. RS did not agree with that proposal. She said in her evidence "I never felt Jack was safe with John and I would not have supported him going back to live with his father".

d. RS told Ms Morton that she had concerns that John might have narcissistic personality disorder traits, that he might be more dangerous than he looks, and that Ms Morton should not record that in the documents because RS feared that John might attempt to denigrate her professionally.

959. In general terms, Ms Morton submits that she made an effort to consult with RS and seek her input over the period of 4 months during which members of the Edwards family attended upon RS. I accept that submission. Ms Morton also submits that RS's "records of our telephone conversations were sparse and in some instances non-existent". She further submits that RS did not make any reference in her police statement to the three telephone conversations that she and Ms Morton had had prior to that on 13 June 2017, nor are these any records of these conversations in her clinical records. I also accept

those submissions. However, I do not accept or agree with the inference underlying this and her related submissions, to the effect that the RS notes and the Addendum are inherently unreliable.

960. These issues were canvassed by Ms Morton during her cross-examination of RS at inquest, where Ms Morton suggested to RS that she had created the Addendum after becoming aware of the evidence Ms Morton gave to the inquest on 10 September 2020. RS disputed this suggestion and stated that when she provided the material on 11 September 2020 she was not aware that Ms Morton had given evidence the previous day. RS submits that there is no evidence to support Ms Morton's proposition or submission that the Addendum was created by RS in response to Ms Morton's evidence on 10 September 2020. I accept and agree with this submission, in line with my findings as to the creation of both the RS notes and the Addendum. I am also satisfied that the production of both the RS notes and the Addendum to those assisting me was in response to RS having been issued a letter of sufficient interest in the proceedings in the days prior, rather than in response to Ms Morton's oral evidence.

961. As to the issue of reliance upon the Addendum in preference to Ms Morton's contemporaneous file note, whilst I am of the view that the creation of the Addendum does not represent best practice, I do accept that it was prepared in good faith by RS in the course of her preparation to give evidence. However, in the findings I have made as to RS's evidence as to the content of the telephone conversations on 28 April and 13 June 2017, I have primarily had regard to the RS notes, RS's oral evidence at inquest, and most importantly, the context in which this conversation took place.

962. As to the substance of the matters discussed in the telephone call on 28 April 2017, RS's evidence is that she told Ms Morton on this date that Jack had disclosed that John was physically abusive towards him and that he didn't feel safe with John.

963. Ms Morton submits "there is no evidence to suggest that [RS] at any time communicated to me that the children had made disclosures to her" and that Ms Morton only surmised that at a later point, in August 2017, after reading the Family Report prepared by PR. I take this submission to mean that there is no *contemporaneous* evidence, because as is plain from the foregoing, RS gave oral evidence to this effect at inquest. Ms Morton further submits that there is no record of RS contacting her to discuss or raise issues in relation to disclosures made by the children or the action taken by Ms Morton.

964. This last submission is not in dispute; however, in my view it does not follow from this that Ms Morton's evidence as to the content of the telephone call on 28 April 2017 is to be preferred. Rather, in part, it speaks to the nature of the communications in proceedings of this kind, namely the fact that experts and clinicians such as RS do ordinarily not attend court, and are, properly, not privy to the communications between the parties to the proceedings (such as the email sent by Ms Morton on 2 May 2017, set out below).

965. Counsel assisting have submitted that I would prefer RS's version of the 28 April 2017 conversation, and in particular the fact that RS told Ms Morton about John's past violence towards Jack, for the reasons set out in the following paragraphs.

966. First, the clinical progress notes of RS show that the children had disclosed John's violence, and the fact that they did not want to see John, to RS by 28 April 2017.

967. Secondly, RS had obtained permission from Jack and Jennifer to disclose to Ms Morton everything that they had told her. One purpose of the phone call with Ms Morton, from RS's perspective, was for her to disclose those matters. Counsel assisting have submitted it is inherently unlikely that RS actively sought permission from the children to disclose certain information to Ms Morton, only to fail to do so the very next day.

968. Thirdly, Mr Brown's email of 26 April 2017 expressly asked Ms Morton to speak with RS before following up on Ms Morton's proposal that John bring Jack to her office. Mr Brown followed up with the further email to Ms Morton on 27 April 2017, reproduced above, which referred to John's history of physical and emotional violence and reiterated the children's wishes that they did not want to see John. Ms Morton agreed that in light of Mr Brown's email, it was "very important" for her to speak with RS and ascertain whether the children had told her they did not want to see John. She also agreed that, by this point: Olga had raised issues of violence in her filed material; the children had told PR John had been physically and verbally abusive towards them; and now Mr Brown indicated the children had told RS; and that this was a 'red flag' for her.

969. Counsel assisting have therefore submitted that I should reject Ms Morton's evidence that these matters were not discussed by her and RS, given that they were raised by Mr Brown only 24 hours earlier.

970. In relation to the submissions made by counsel assisting, Ms Morton has submitted that

they ignored relevant information. Ms Morton states that in relation to whether RS told Ms Morton that Olga was "controlling", counsel assisting have "accepted [RS]'s evidence" as truthful whilst rejecting my evidence in this regard". In my view, this is not a fair reading of the submissions. Counsel assisting did not "reject" Ms Morton's evidence – rather they noted that RS said it was possible she said something like this to Ms Morton, although she recalled having said that Olga was more "controlled" than controlling.

971. In support of the above submission, Ms Morton refers to notes made by RS to the effect that she had concerns that Olga might be lying about positive changes in Jack's behaviour". Whilst this issue would no doubt be concerning I do not accept that it is materially relevant to the central issue in dispute in relation to this telephone call; namely whether RS told Ms Morton that the children had made disclosures about John being violent towards Jack.

972. Ms Morton's submissions do not grapple in any detail with the matters set out in counsel assisting's submissions as to the disclosures of violence made by the children, and instead appear designed to make a generalised attack on the credibility on the totality of RS's evidence, who I found to be a credible and candid witness.

973. One of the most telling aspects of the evidence in relation to this telephone call relates to the proposal that John drive Jack to see Ms Morton, which was discussed by RS and Ms Morton. I am satisfied that in doing so, RS would have raised the associated safety concerns with Ms Morton.

974. In light of this finding, the analysis of counsel assisting set out above, the various communications that had been sent to Ms Morton by this date, and in circumstances where RS had obtained permission from the children to speak to Ms Morton about these very same matters and in light of Mr Brown's communications to Ms Morton, I am satisfied that RS told Ms Morton, at least, about John's past violence towards Jack during the 28 April 2017 conversation.

975. In making that finding, I have carefully considered the fact that RS's disclosure was not recorded in any contemporaneous file note, and Ms Morton's oral evidence that no such disclosure was made. Ultimately, I preferred RS's oral evidence because I found it to be consistent with the context and perspective from which both participants took part in this telephone call. Conversely, I found Ms Morton's evidence to be inconsistent with the broader context. In particular, I agree with counsel assisting's submission that it is

unlikely that RS failed to disclose John's violence after actively seeking permission from the children the previous day to disclose that very information. I consider it equally as unlikely that Ms Morton, for her part, would not have raised the issue of John's violence towards Jack after Mr Brown expressly raised it with her, just 24 hours earlier.

2 to 5 May 2017: further correspondence regarding therapy

976. On 2 May 2017, Ms Morton emailed the lawyers for John and Olga, stating that she had spoken with RS "at length" on 28 April 2017 and they had agreed on the following plan:

> 1. The children are to continue to attend upon [RS].
>
> 2. The mother is to make and ensure that such appointments are kept. In this regard, please notify me by (the close of business on Thursday, 4 May 2017 as to when the next appointment will occur. I note that the mother changed the initial appointments that had been made by the father.
>
> 3. The father will be introduced to the sessions with the children either together or individually at [RS]'s discretion. The mother is not to take any steps to thwart this.
>
> 4. I will speak with [RS] again shortly before the Interim Hearing date.
>
> With respect, if the mother either continues to be uncooperative and/or takes steps to thwart the possible restoration of the relationship between the father and the children she will leave me with no other alternative but to recommend that both children, or at least Jack, are removed from her care and placed in the father's care.

977. RS's evidence was that she agreed to the first point of the proposed plan but she "absolutely [did] not" agree to the second and third points. RS said while the introduction of John was "the general plan of family therapy", it was "my call and that was only when I felt the children were safe, if the children agreed".

978. Mr Brown responded to Ms Morton's email some 20 minutes later, stating:

> My client refutes absolutely that she made any effort to thwart your endeavours and your threats are not appreciated.
>
> If you have an application to make, that's a matter for you, but please don't threaten my client again. Your reported conversation with [RS] is at odds with our client's discussion with her.
>
> Our client is more than happy for the children to see [RS] if that is their wish, and in that event our client will take them to appointments and cooperate absolutely, and to suggest that she has not cooperated in the past is simply a ridiculous fabrication.

> You [sic] behaviour in relation to this matter has become untenable and it is my client's intention to make application that you be removed or replaced.

979. On 4 May 2017, Ms Morton sent a lengthy email to the parents' lawyers concerning the provision of further materials to her, the parties' interactions with RS, stating that "I oppose any report at this time" by RS, and asking that the parties not speak to the children in relation to the proceedings. Ms Morton also recorded her view that Jack was "quite obviously 'reading from a script'" when he told her that he did not want to go in a car with John from Hornsby to Gymea to see Ms Morton.

980. On 5 May 2017, Mr Brown responded to advise that Olga had arranged a further appointment for Jack and Jennifer with RS, and stated:

> In accordance with the recommendation of [RB] in her letter of the 30th of November 2016, in our view the purpose of the children's appointment with [RS] is for the children's personal therapeutic support and not for family therapy and noting that [RB] recommended the family therapy be put on hold until the family report is completed.

981. Later that day, Ms Morton replied by email to John and Olga's lawyers as follows:

> Mr Brown is incorrect. Family Therapy was meant to involve both parties and the children. [RB's] letter was prior to the December Orders and as you are both well aware we have engaged in further communication since that time. [RB] had recommended a Risk Assessment prior to any therapy taking place but the Mother declined to engage in that course. Mr Brown you might like to re-read your letter to me of 3 February 2017 where you clearly acknowledge that the Risk Assessment proposed by [RB] was entirely different to the Family Report that may happen towards the end of this year. To suggest otherwise now is, quite frankly, disingenuous. As you are also well aware [RS] would no longer work with the family because of the position taken by the Mother.
>
> In so far as [RS] is concerned neither solicitor should be in touch with her. If any communication is required it will come from the me as the ICL and, if necessary, I will ask His Honour, Judge Monahan, to Order so on the next occasion.

31 May 2017: Olga filed a further affidavit

982. On 31 May 2017, Olga filed a further 'trial affidavit' in the proceedings, responding to John's affidavit of 31 March 2017. Olga deposed to the following matters:

    a. John had no contact with any of his seven other surviving adult children;

b. John conduct toward Olga during their marriage was very controlling;

c. John verbally abused Olga during their marriage;

d. John stalked Olga at yoga;

e. John had assaulted both Jack and Jennifer during the marriage, including: squashing their "pinkie finger" to "settle" them; kicking Jack and hitting him in the eye with a book; the incident in Paris in 2015 where he held Jack up against the wall; hitting Jack with closed fist and kicking him in the garage at the Normanhurst property in October 2015; and slapping Jennifer on the face during a holiday in Europe in 2015;

f. Once a year, on the anniversary of his daughter AJ's death, John told Olga he wanted to kill one of his former wives, Ms A, because Ms A put him through the Family Court and because he blamed her for AJ's death;

g. John had attempted to buy a rifle but could not do so; and

h. John kept a large machete under his bed.

983. In the affidavit, Olga also made a series of complaints about Ms Morton, namely:

a. Ms Morton dismissed and disregarded the allegations of John's violence on the basis that Olga had not taken an AVO out against John;

b. Ms Morton disregarded the children's age and maturity;

c. Ms Morton had no understanding of Jack and Jennifer's psychology and behaviour, particularly with Jack, including by:

i. advising them to feel sorry for John and "to face" him;

ii. by failing to inform Jack and Jennifer she would inform the Court, contrary to their wishes, that they should see John for weekly visits;

iii. by failing to inform Jack and Jennifer after the hearing that their wishes had been disregarded by the Court;

iv. "manipulating" Jack into agreeing to drive with John to see Ms Morton, despite being told by Jack several times that he did not want to see her;

v. not listening to Jack, speaking over the top of him, and interrupting him during their phone conversations on 27 and 28 April 2017; and

vi. failing to communicate Jack's view to the parties after the telephone call

on 28 April 2017.

29 May to 1 June 2017: further therapy with RS

984. On 29 May 2017, RS had her third family therapy session with John. RS said:

> John only admitted to two previous relationships before Olga. John was playing the victim in this session. He was trying to convince me that Olga had turned the kids against him and was exaggerating the situation. I got the impression he was only admitting his past to me because he knew that Olga was going to bring it up. Whenever John was put on the spot in regard to violence he always minimised it and twisted it. He did however seem like he genuinely wanted to help Jack and Jennifer. He painted the picture that he had a close relationship with the kids prior to the separation.

985. On 1 June 2017, RS had her second family therapy session with Olga. RS said:

> My impression was that she was probably telling more of the truth than John was. She had evidence to back up some of her story where John did not. Olga's story made more sense than John's which made me start to question him more.

986. On 1 June 2017, RS had her second therapy session with Jack. She said this:

> Again, I believed what Jack told me in this session and he didn't come across as brainwashed by his mother. He was so sleep deprived he would have trouble lying about anything. I suggested his mother was influencing him and he was quite annoyed at that stating that his mother didn't talk about Court or his father at home. It was clear that he didn't want to see his father.

987. On 1 June 2017, RS had a second therapy session with Jennifer, and RS stated "It was again clear that she wanted nothing to do with her father". Jennifer said "he does bad stuff like beat up my brother, he watches porn… I caught him several times". Jennifer also said "she was not surprised his other families left him". Jennifer's main concern was "the dog that her father had got. She was worried that he was neglecting the dog and wanted me to tell him to give it to the RSPCA or someone else".

2 June 2017: Olga filed a further Notice of Risk

988. On 2 June 2017, Olga filed a Notice of Risk which re-disclosed the following matters:

a. John called Jennifer a "bitch" for disagreeing with him;

b. John imposed silent treatment upon the children for up to one week at a time, and completely ignored the children when he was angry at them;

c. John did "finger treatment" to Jack and Jennifer by squashing their little finger to cause pain as a form of punishment;

d. John constantly bullied and threatened to hit Jack when Jack procrastinated and/or did not follow John's demands;

e. John kicked and punched Jack in Olga and Jennifer's presence, because Jack touched his mobile phone;

f. John hit Jack with the hard corner of the book below his eye leaving a bleeding wound, and other instances of him punching Jack's leg, and kicking him when he did not tidy up his clothes;

g. John slapped Jennifer on the face very hard when she was trying to explain to him why she was arguing with Jack;

h. the incident in Paris where John pushed Jack very hard against the wall of the building, so that passers-by had to intervene;

i. instances of John intimidating Olga and Jennifer, and not allowing Jennifer to contact Olga by disconnecting the home phone and taking away Jennifer's mobile phone;

j. that the children witnessed John watching pornographic material on his computer on numerous occasions;

k. on an occasion when Jennifer was shopping John, she became separated from him. In response, John called the police, reporting to them that she had ran away and thereafter stood by whilst police unreasonably admonished her and her behaviour; and

l. John trying to persuade Jack to go to Melbourne with him on the condition that if he hurt Jack or got drunk, he'd give Jack money.

989. In terms of risk, Olga affirmed the following matters that had previously been disclosed in affidavits already filed in the proceedings:

a. that John's history of unpredictable, unreasonable, unjustifiable and inadequate angry and violent rage towards the children created risk of potential future child abuse;

b. in about December 2014 John promised not to bully Jack anymore, however he continued bullying and threatening Jack thereafter;

c. in about December 2015, John promised not to be angry with Jack anymore because “I do not want to lose your mother". However, after that he committed violent acts against Jack;

d. that Olga had told John "calling Jennifer and I ‘bitch’ and imposing silent treatment is unacceptable and is emotional abuse", however, he continued to do so;

e. that John’s actions of violence and abuse posed real risk to the children;

f. that John had amitted to suffering from Post-Traumatic Stress Disorder on one of his affidavits, which may be the cause of his “erratic and aggressive behaviour”; and

g. John has not attended any anger-management courses and did not deal with his anger issues in the past.

990. Olga also gave the following particulars of alleged family violence or risks of family violence by John:

a. repeated derogatory taunts towards Olga in front of the children;

b. that he was in turn verbally aggressive and then imposed silent treatment upon Olga, and ignored her in the presence of the children for days at the time [sic], at times because she did not wear short skirts or high heels;

c. intentionally destroying property as a threat to Olga not to ask questions about unpaid bills (John allegedly threw a bowl of spaghetti against the wall during dinnertime in the presence of the children);

d. use of implied threats against Olga to gain control over her and her behaviour, eg. threatening to throw away all her clothes, if she purchases any clothes without his permission, and not allowing her to cut, colour or style her hair;

e. threatening to kill one of his ex-wives Ms A in Olga’s presence because Ms A "divorced him and took his kids away", and his attempt to get a firearms licence, which was denied;

f. use of fear, criticism, derogatory words, threats and humiliation against Olga in order to establish control and subjugate her, at times in the presence of the children;

g. blaming Olga or the children for making him angry and lashing out at them;

h. unreasonably denying Olga financial autonomy and making her predominantly dependent on John for general expenses notwithstanding that Olga earned significant income herself, which was paid into a joint account effectively controlled by John;

i. locking Olga out of her bedroom whilst they were living together;

j. in December 2015 he made Olga speak in front of a face drawn by him on paper towel, as if it was a family therapist;

k. changing the locks of the family home immediately after Olga separated from him;

l. John stole clothing, photographs and diaries belonging to Olga and hid them at his friend's house after he and Olga separated, and he then failed to return some of those items in breach of Court orders;

m. John stalked Olga at her yoga class after they separated; and

n. demonstrated symptoms of narcissistic personality disorder and serious anger management issues.

5 to 13 June 2017: further sessions with RS

991. On 5 June 2017, RS had her fourth therapy session with John. RS's impression was that John painted himself as the good guy and Olga as the "bad guy".

992. On 7 June 2017, RS had her third therapy session with Jennifer. Her descriptions were consistent with that of Olga and Jack, so RS was "inclined to believe her". Jennifer said she was "angry and scared of her seeing her father". She also said that Jack was hitting her. Jennifer also said (in response to a suggestion by RS that Jack live with John) that "Jack wouldn't be safe with Dad".

993. On 8 June 2017, RS had her third therapy session with Jack. RS's evidence was that:

> My main goal during this session was to gauge how violent John was to Jack. John had made the [suggestion] that Jack go to live with him and Jennifer live with Olga so I put this to Jack. Jack said, "The Police would have to drag me there and even then I would run away." Jack's behaviour and story was consistent with previous sessions. His position that he not see his father also remained consistent.

994. On 13 June 2017, RS had a fifth session with John. RS described it as follows:

> During this session, John brought up an Affidavit written by Olga and presented to the Court. He said that she mentioned 14 incidents of violence by him towards Jack and Jennifer over 3 years. John said that he only ever smacked Jack 3 times and that he had slapped Jenny, describing it as his hand slipping in the dark. I realised that he was lying, particularly regarding the aggression because he previously said he had never hurt Jennifer and was downplaying the incidents mentioned by Olga in the Affidavit. The hitting of Jack 3 times was also inconsistent with what he had told me previously. He also said that Jack was being 'Physically aggressive to the women in his life'. I immediately thought where did Jack learn that from, knowing that it was probable that he learnt that behaviour from John.

995. On 13 June 2017, John filed a response to Olga's 31 May 2017 affidavit, and gave materially the same response to Olga's allegations as set out in his previous affidavits.

13 June 2017: further telephone call between Ms Morton and RS

996. On 13 June 2017, RS and Ms Morton spoke on the telephone. Again, Ms Morton took a contemporaneous file note. As I have already stated, I am satisfied that RS contemporaneously recorded this conversation in the RS notes.

997. In her file note, Ms Morton recorded that RS said the following:

a. "Saw kids three times each now. Says not sure why. [Mother] says have to".

b. "Think both lying to her." (RS gave evidence that this was a reference to Olga and John, not the children. RS said she never formed the view that either Jack or Jennifer was lying to her.)

c. "Worried Jack will run away if forced to return to father". (RS said the context of this comment was Ms Morton's suggestion that Jack live with John and Jennifer with Olga. RS recalls saying that if Jack was forced to live with John, he would run away because that is what Jack told RS.)

d. "Thinks Dad has drinking problem." (RS said it was likely she said this because the children told her that John drank a lot of beer sometimes.)

e. "Mum feels powerless with Jack". (RS agreed that it was likely she said something like this to Ms Morton.)

f. "Thinks dad should back off." (RS agreed that it was likely she said something like this to Ms Morton.)

g. “Narcissists typically abandon children and have multiple marriages.” (RS agreed that it was likely she said something like this to Ms Morton.)

h. “Recommend counselling specialises in computer addiction → male.” (RS agreed she said this.)

i. “Session Jack with dad; maybe weekend time.” (RS denied that she would have suggested a weekend session as she did not normally work then. However, it is possible that she discussed a joint session for John and Jack because there was a time when Jack was considering it.)

j. “Dad collecting Jack and taking him to school each day? [RS] thinks wld be a good option.” (RS agreed it is possible that the topic was raised, but said it was highly unlikely that she thought it would be a “good option” for John to collect Jack.)

k. “Ongoing therapy. No point in seeing Jenny.” (RS agreed it was highly likely she said this because Jennifer was completely closed to therapy.)

l. “Like to see Jack and Dad together and help dad learn to be a better parent.” (RS said it was “highly unlikely” that she said this, but it was possible Ms Morton made that suggestion. Ms Morton maintained in her evidence that the comment was made by RS.)

998. In her oral evidence at inquest, Ms Morton gave this evidence in response to questions from senior counsel assisting:

> A. It was right before we went to court on the 14th of June and even in that conversation, she didn’t say that to me about the children about what they recounted to her if that’s what you’re telling me is there, but then after - like, later - like, I know there’s that information in the notes. What I’m saying to you is that she didn’t communicate that to me at that time. I - I subpoenaed the notes for the final hearing, so - and I - look, I read them at the time but it was a couple of years ago and I know that there are some notes in there, but what I’m saying to you is that she didn’t communicate that to me at that time.
>
> Q. I’ll narrow my question. Is your evidence that [RS] - prior to the interim hearing on 14 June - did not reveal to you that she believed the children in respect of the allegations of violence? Is that your evidence?
>
> A. No, I don’t think that she ever - my conversations with her were about can we - can the children’s relationship with Dad be repaired or can it not. Is it - is it a lost

> cause? That was the nature of my conversations with her and can we - like, how do we go about doing it if it's a possibility? They were the nature of the conversations with her. I - I could look back on my file notes and I'm sure that they're in evidence but I just - I mean, if she'd have said that to me, that would of been a red flag.
>
> Q. You said that if [RS] had have said that she believed the children, that would have been a red flag to you.
>
> A. Yes, and I remember even the day before Court, the day before going to Court on 14 June, even though we were both in a bit of shock about the incident - the yoga incident, even then, she was still discussing with me her seeing Jack and his dad together, so she didn't say to me, "No, that shouldn't happen because they've told me all these stories and I believe them," because if she had, I would have said, "Well, is it a good thing for Jack and Dad to be seen together?"

999. Ms Morton also gave this evidence in response to questions from senior counsel assisting:

> Q. I'm talking about 14 June - you knew that an AVO had been taken out on behalf of the child. That he had seven children who refused contact with him, that he done at the very least something very creepy to Olga at yoga, that Olga had put on an extensive affidavit about risk, you know about the child inclusive memorandum as to what told [PR]. What I want to suggest to you that you were on notice at the very least by this point that there were significant number of red flags in relation to the risks faced by these children and that you did not outline in the case memorandum those obvious risks. Do you agree with that?
>
> A. No. Because the judge has the memorandum of [PR]. That's part of the evidence that he reads. He has the parties' affidavit, he has - or everybody who does a case outline. I'm - I'm pretty sure, and it must be part of my file that was handed up, that the day before we went to Court on 14th - so on the 13th I had a conversation with [RS]. And I think I initiated that conversation because of what I'd read in the mother's affidavit, and I discussed with her about Mr Edwards taking - taking Jack to school and make sure he got to school. And she - and she agreed that that would be a good option to get him to school. If that's the person that I'm consulting, who is - that's - she's an expert in her field, and she says that that's what she thinks can happen, I mean, why would I not present that?

1000. RS gave a differing account of the conversation. In her handwritten file note, she recorded the following matters:

a. "Holes in [Father's] previous story: "primary carer"; "perfect marriage". Why

did Jack run away previously? Why did Jack [have] problems with him? Why did Jack (sic) disrespecting women Jenny and [Mother]?"

b. "Jack reported – [Father] super strict then after divorce; word used – opposite – let [Jack] do whatever he wanted."

c. "Why [Father] has no relationship with previous children. 1 daughter has AVO."

d. "[Father] getting drunk numerous occasions."

e. "Concern: Jack will run away if forced to live with [Father]."

f. "Jenny – has no positive feelings towards [Father]. Neither child can remember [positives]."

g. "Affidavits – only released by court; I shouldn't be reading them."

h. "18 July Interview for Family Report."

i. "14 June Interim Hearing. Next court late in year."

j. "Interim orders will be made tomorrow."

k. "Family Law specialists."

l. "She presents as a hard-nosed bitch in court."

m. "Her boss – aggressive, bullying not a family law specialist; antagonistic."

n. "Jack – more able to be influenced."

1001. In the Addendum, RS set out additional matters that she said were communicated during the telephone call:

> I informed Debbie Morton of holes in John's story of him being the "primary carer" and them having the "perfect marriage for 15 years". I questioned why Jack ran away previously, why Jack had behavioural problems and where he learned to disrespect women by treating Jenny and his mother badly. I informed Debbie that in my opinion children don't behave like that for no reason and usually it's because there is serious family issues. I told Debbie that Jack had reported to me that his father John had been "super strict" then after the divorce word was used he was the opposite and let Jack do whatever he wanted. I said that this was not good parenting strategies to go from one extreme to the other.
>
> I told Debbie Morton that it was suspicious that John has no relationship with his previous children and that one daughter has an AVO against him. I informed Debbie

> that Jack and Jennifer both reported to me separately that John got drunk frequently. I reported to Debbie that neither child can remember positive experiences with their father and that Jenny has no positive feelings towards him at all.
>
> Debbie informed me that Affidavits are only to be released by the Court and that John should not be giving them to me to read. She said that the family has a interview for the Family Report on the 18 July 2017, 14 June is the Interim Hearing and the next court date will be late in the year. Debbie said that Interim orders will be made tomorrow. Regarding Olga, Debbie said that she presents as being "hardnosed" in Court and that [Olga's] boss is "aggressive, bullying, antagonistic and that he's not a family law specialist". Debbie said she thought Jack is "more able to be influenced" to see his father compared to Jennifer.

1002. In her oral evidence at the inquest in relation to the call, RS said:

a. Ms Morton raised the idea that Jack could live with John, and RS responded that if Jack was forced to live with his father, Jack would run away;

b. That she told Ms Morton that John should back off "and stop forcing the kids to try and see him when they clearly didn't want to and had good reasons not to";

c. she told Ms Morton that John was a narcissist and that narcissists typically abandoned children and had multiple marriages;

d. it was "highly unlikely" that she agreed that it was a good idea for John to take Jack to school; and

e. it was "highly unlikely" that she told Ms Morton that she would like to see John and Jack together, it was possible that Ms Morton had suggested that idea, but RS did want to observe them together in a visit that the children made to see John at Hornsby Mall on 17 June 2017.

1003. In relation to the documents produced to this inquest by both RS and Ms Morton that record this telephone call, both RS and Ms Morton recapitulate the submissions made in relation to the 28 April 2017 call. I note the findings set out above in relation to those submissions, which are not necessary to repeat here but are equally applicable.

1004. Counsel assisting have submitted that RS's account of this conversation should be preferred because her account is consistent with the information that Jack, Jennifer and Olga had disclosed to her by this point, as recorded in her contemporaneous clinical notes, as well as the adverse view of John that RS had begun to form by this point.

1005. I am of the view that the only material divergence in the accounts of RS and Ms Morton during this call in is relation to the proposal that John take Jack to school, which RS says it is "highly unlikely" that she agreed to and which Ms Morton maintains RS agreed with after Ms Morton initiated a discussion about it.

1006. In circumstances where RS believed Jack's account of John's violence, and believed John was lying to her about the extent to which he had been violent to the children, counsel assisting have further submitted that I would accept RS's evidence that it is highly unlikely that she agreed that it was a good idea for the children to be forced to see John, or that it was a good idea for John to go to Olga's house and take Jack to school.

1007. Ms Morton's submissions as to this issue do not address the substance of counsel assisting's submissions. Rather she submits that if she "had referred to Olga in such an abhorrent way, then it would have been incumbent on [RS] to make a report" in her capacity as a mandatory reporter, or to contact Legal Aid, but that RS "did not take any such action". I understand this submission to be referring to the contemporaneous file note that RS took of this conversation where she noted that Ms Morton stated that Olga presented "as a hard-nosed bitch in court". I do not accept the submission that RS, as a mandatory reporter, would have been obliged to report Ms Morton for this comment.

1008. After carefully evaluating the available evidence and the testimony of the witnesses at inquest, I accept and agree with the submissions of counsel assisting set out above. Given that RS knew of and believed Jack's account that John was violent towards him, I am satisfied that RS did not agree that it was a good idea for John to take Jack to school, or for the children to be forced to spend time with John.

13 and 14 June 2017: Ms Morton's case outline and the interim hearing

Case Outline filed 13 June 2017

1009. On 13 June 2017, Ms Morton filed a Case Outline for a directions hearing the following day. The Case Outline relevantly stated (emphasis added):

> The Mother alleges that there is a long history of family violence against the Mother and the children perpetrated by the Father. This is alleged to be primarily emotional but, in so far as at least Jack is concerned, the allegation is of some physical violence.
>
> Although the Father denies these allegations, he does agree with some of the incidents as outlined by the Mother.
>
> **There is no independent evidence to support the Mother's allegations**. The

> Mother states, in her Affidavit of 31 May 2017, that she was fearful of making a complaint to Police but has now done so.
>
> The Family Consultant in undertaking the Child Inclusive Assessment indicated some concerns as to the children's views being influenced by the Mother (CIC Memorandum dated 8 September 2016).
>
> In the Mother's Affidavit of 31 May 2017, she deposes to an incident on 8 February 2017 wherein the Father, on her evidence, engaged in behaviour deliberately designed to intimidate her - being his attendance at a 6.00am Yoga class that he knew the Mother attended. The Father concedes having attended the class and it is submitted that he has also conceded, in a roundabout way, that he was aware that the Mother regularly attends this class.

1010. In respect of the children's wishes, the Case Outline says this:

> Jack is aged 14 years and 9 months whilst Jennifer is aged 12 years and 10 months. Jennifer presents as being more mature than her age. Jack presents as being less outspoken and more inclined to keep the peace. The Orders proposed by the ICL take into consideration the children's wishes and the ICL's view as to the weight that should be placed on same.

1011. The orders proposed by Ms Morton included that the orders of 22 December 2016 continue, including the order that Jack and Jennifer continue to see John for three hours each Saturday.

1012. Counsel assisting have submitted that Ms Morton's 13 June 2017 Case Outline was factually incorrect and materially misleading in a number of respects. Those submissions and my findings in relation to them are set out in the following paragraphs.

1013. First, counsel assisting that Ms Morton's submission that "there is no independent evidence to support the Mother's allegations" was misleading because by 13 June 2017, Ms Morton knew that:

a. both Jack and Jennifer had independently told PR and RS that John was violent towards Jack;

b. Olga had raised issues of violence and child protection issues with the family therapist RB, as recorded in RB's 30 November letter;

c. John had essentially admitted the incidents alleged by Olga, Jack and Jennifer, but characterised them as less serious, playful, or accidents;

d. John had a history of violence against a number of ex-partners and a serious stalking allegation made against him by another daughter, JC; and

e. John had a number of children from numerous previous marriages, none of whom had any contact with him, and one of those children, JC, refused all contact with him because of his violence towards her as a child.

1014. In light of the above, counsel assisting have submitted that the true position that should have been put before for the Court was that Jack, Jennifer and Olga had all given independent and consistent accounts of John's behaviour. I accept this submission and am satisfied that the evidence before me is to the effect of the summary above.

1015. Secondly, counsel assisting have submitted that Ms Morton's submission that the Family Consultant had indicated 'some concerns' that the children's views were being influenced by the Mother was misleading by omission, because Ms Morton failed to inform the Court that Jack and Jennifer had both independently told PR that John was violent, which was why they did not want to see him. They submit that Ms Morton selectively quoted the parts of the CIC Memorandum that supported her position, and did not inform the Court of aspects of PR's report that undermined the contact orders she sought. Whilst I find that the matters that Ms Morton put before the Court in relation to the CIC Memorandum were correct, upon review of the evidence I am of the view that the information set out above also ought to have been included in the Case Outline, given its central relevance to the role and responsibilities of the ICL.

1016. Thirdly, the Case Outline states that Ms Morton's recommendation 'takes into consideration the children's wishes and the ICL's views as to the weight that should be placed on them". Counsel assisting have submitted that Ms Morton did not inform the Court of the children's wishes that they not see John. Nor did Ms Morton inform the Court, the children, or the other parties, that she was making a submission contrary to the children's wishes. Instead, Ms Morton recommended the 22 December 2016 orders continue (including that the children continue to see John for three hours each week).

1017. Ms Morton agreed in oral evidence that she did not set out the children's views in her Case Outline, but said that was consistent with "how it's done". In her written submissions at inquest, Ms Morton stated that "[i]t is never the case that any wishes expressed by the children are verbatim noted in a Case Outline". Whilst this might be the case, the effect of Ms Morton's evidence at inquest was to the effect that the usual practice in family law

proceedings (or her usual practice when appearing in family law proceedings) was inconsistent with the statutory requirements and the ICL Guidelines. Counsel assisting have submitted that even if Ms Morton's evidence in that respect were correct, it is not to the point, because statutory requirements and the ICL Guidelines mandate that the ICL make a child's wishes known to the Court. I agree with this submission. The fact that Ms Morton (on her own evidence) routinely did not comply with this requirement does not in any way mitigate her failure to do so in this case.

1018. Fourthly, counsel assisting have submitted that in the Case Outline Ms Morton minimised occurrence of the incident in January, where John had stalked Olga at yoga. In her oral evidence at inquest Ms Morton said she was "in a bit of shock" about it but that she did not look at the incident as a significant escalation of risk at the time. She agreed in hindsight that the incident was one factor that "definitely" changed the risk the children faced. Ms Morton also agreed that John effectively admitted in his affidavit that he had stalked Olga. However, in contrast to Ms Morton's evidence at inquest, nowhere in the Case Outline did she inform the Court of her view that the risk to the children had increased.

1019. In relation to this matter, Ms Morton gave evidence that she "listed it as a factor to be considered by the judge" and that it would not be common practice to describe an incident like this in terms of the risk it posed. I accept this evidence and am of the view that it was sufficient that Ms Morton drew the incident to the attention of the Court, particularly in circumstances where Olga was legally represented. This is reinforced by the fact that by this time, Olga had also filed a Notice of Risk with the Court that drew attention to this incident.

14 June 2017: the interim hearing before Monahan J

1020. The next day, the interim hearing took place. Mr Fowler appeared for Olga, Mr Bell appeared for John, and Ms Morton appeared as ICL.

1021. At the outset, Ms Morton informed the Court that the orders she proposed in relation to family therapy were agreed. Ms Morton said no party had requested a report from RS and that, although confidentiality was in RS's discretion, Ms Morton did not want there to be any such request for a report, so that RS could "do her job".

1022. Next, Ms Morton made submissions in support of orders that Jack and Jennifer should have ongoing contact with John, both in the course of therapy, and for three hours each

Saturday. Ms Morton's position is summarised in the following transcript extracts:

> We need dad introduced to the therapy with the kids. And we need some time happening between dad and the kids, even if it's minimal, so that the Family Report can be useful.
>
> …
>
> We're still not having the three hours that was supposed to be happening since last December. I would like to see that happening, and I would like for him to at least — Jennifer is a little bit tougher nut to crack, I think, but not so much Jack.

1023. Counsel assisting have submitted that Ms Morton's submissions on this point were inconsistent with the ICL Guidelines because, as she had at the 22 December 2016 hearing, Ms Morton continued to recommend a contact regime between John and the children that was contrary to the children's wishes. They submit that this had the effect of placing the children in regular contact with an alleged perpetrator of physical harm, and was contrary to information Ms Morton had received from PR, RS and RB.

1024. Ms Morton has submitted that counsel assisting's submissions misstate the evidence, because PR had "expressed concern about" the veracity of information provided to her by the children, Jack had "told [PR] that post-separation he was content to spend time with his father" and that the disclosures to RB were made by Olga. She also submits "there is no reliable evidence to suggest that [RS] passed on such information to me".

1025. In my view, Ms Morton's submissions fail to confront the fact that, notwithstanding that there may have been competing information available to her, she was still aware of the fact that the children had indicated on numerous occasions that they did not want to see John. On the basis of the findings that I have already made as to what the children told Ms Morton on 19 December 2016, and the content of the telephone calls between RS and Ms Morton on 28 April 2017 and 13 June 2017, I do not accept Ms Morton's submission on this point. I am satisfied that Ms Morton was aware, at this point in time, of the fact that the children did not want to spend time with John.

1026. Counsel assisting have submitted that Ms Morton's submissions also materially downplayed the risk of harm that John posed to the children. For example, Ms Morton mischaracterised John's assault of Jack in Paris as "Jack ran away when they were in Paris, and dad running after him and different things like that". In another example, Ms Morton told the Court that the concern with John was that he was "a bit overbearing". None of Olga, Jack, Jennifer, PR, RB or RS characterised John's conduct as being

merely “a bit overbearing”. Aside from his own accounts, the balance of the evidence uniformly revealed John to be abusive, controlling and violent. Ms Morton did not draw the Court’s attention to the significant body of evidence to this effect, other than Olga’s affidavits. I accept this submission. It is plain, on their face, that Ms Morton’s submissions do not accurately reflect these matters.

1027. During the course of the hearing on 14 June 2017, there was extensive debate over an order proposed by Ms Morton for John to collect Jack from Olga’s house each morning and take him to school. Whilst this proposal may have reflected Ms Morton’s appropriate concern to ensure that Jack’s attendance at school improved, counsel assisting have submitted that the solution proposed by Ms Morton was inappropriate, and ignored clear red flags concerning the risk that John posed, particularly to Jack. It is plain that the proposal would have involved disclosing Olga and the children’s address to John, and would have required Jack to be in close contact with his father on a daily basis. In her oral evidence at inquest, Ms Morton initially denied that her proposal would necessarily have involved disclosing Olga’s address to John, but ultimately conceded that “maybe” that was right. I am satisfied that Ms Morton put this proposal before the Court despite the fact that it was not supported by RS, and without revealing that it was contrary to Jack’s wishes.

1028. The proposal was not adopted by the Court after Olga’s counsel raised concerns that John did not know where Olga and the children lived, and submitted that the proceedings involved allegations of abuse and controlling behaviour, including that John had stalked Olga at yoga, and had previously dropped notes in Olga’s letterbox. He submitted that if John became involved in getting Jack to school, Jack might not go at all. Instead, his Honour accepted Olga’s alternative proposal to change her work schedule so she could personally take Jack to school.

1029. There then followed a lengthy exchange between Olga’s counsel and the Court which, in counsel assisting’s submission, exemplified the difficulties caused by the decisions taken and submissions made by Ms Morton in the proceedings. They submit that it is important to consider this exchange in full to appreciate the extent to which Ms Morton’s submissions (in both the 22 December 2016 and the 14 June 2017 hearings) had led the Court by this point to misapprehend that Olga - rather than John’s history of abuse and a contact regime designed by Ms Morton that was contrary to the children’s wishes - was the cause of the children not wanting to spend time with John:

HIS HONOUR: She has got to have a letter from her employer. Misses two days each term. The father can take the child to school. Okay. I find it remarkable that she has been able to do that today. I congratulate her for being able to do it today. She's way late in doing it. We need to have that issue of the counsellor sorted out by Friday. If we don't you're coming in and someone is going to pay costs. Okay. Because I want that sorted out.

I want the children spending time with their father on the weekend. I'm - I have not seen anything today that suggests that they shouldn't, okay, apart from "The children don't want to go." Now, I've got a counsellor to talk to them, but if there's no time being spend [sic], I'm going to have to make some orders that will remove the mother from the home, have some else with the children, we will see whether they want to spend time with him then. Something has to be done. Something.

MR FOWLER: The mother is living in rental accommodation, your Honour. The father is in the home.

HIS HONOUR: Right. Well, I don't think she's trying hard enough, with the greatest respect. And I think it's convenient that she's also simultaneously now seeking orders to have him leave the house. What's the timing of that?

MR FOWLER: Your Honour, that application was sought at an earlier time as well.

HIS HONOUR: She wants him to vacate the house.

MR FOWLER: For the purpose of the sale, your Honour.

HIS HONOUR: All right. So it's all about the money, isn't it, at the end of the day.

MR FOWLER: Well, that aspect is, your Honour. The mother receives $7.90 a week in child support.

HIS HONOUR: Absolutely.

MR FOWLER: That's a different aspect, your Honour, we're — that isn't linked to the parenting. It's a different aspect.

HIS HONOUR: Well, we hope the two are not linked. All right.

MR FOWLER: And, your Honour, with respect, the mother, of course, supporting these two children on $7.90 a week isn't doing a bit job, but it requires her to work full time which then, of course, impacts on what's occurring in relation to Jack. But

HIS HONOUR: But we can't even have three hours spent on the Saturday despite orders to that being made by a court.

MR FOWLER: That's so, your Honour.

HIS HONOUR: All right.

MR FOWLER: The mother will continue, your Honour, to do what

HIS HONOUR: All right.

MR FOWLER: − − − encourage and try to ensure the children attend.

HIS HONOUR: Right. Well, I'm going — so is she actually getting them to Westfield Hornsby?

MR FOWLER: No, your Honour, she's — no.

HIS HONOUR: Well, she's going to have to, okay. This idea that they can choose whether they get into the car or not — is that what I'm hearing?

MR FOWLER: It is, your Honour.

HIS HONOUR: All right. You see, if that had been a contravention and she hadn't been turning up with the children, there would be an arguable breach. So it's not a matter of them choosing to go. I have ordered the children to go. Okay. The children spend time, three hours, 12 each Saturday, commencing last December at the food court at Westfield Hornsby. Has there been one occasion they've been there at 12 o'clock on a Saturday?

MR FOWLER: No, your Honour.

HIS HONOUR: All right. What does that tell me? When were these orders made?

MR FOWLER: I wasn't here but I understand the one occasion— the first occasion, 27 December, from reading your Honour's orders, was by consent. The other subsequent occasions your Honour imposed.

MS MORTON: That's correct, your Honour. It was my proposal; it was my minute.

HIS HONOUR: Right.

MS MORTON: The 27th was an agreed and that was at a different place because we anticipated Westfield would be crazy at Christmas sale time and then the other occasions were going to be Westfield, and that was the minute that I proposed.

HIS HONOUR: Should I consider my position about this family report and bring this forward to consider whether those orders should be complied with?

MS MORTON: Bring the − − −

HIS HONOUR: Because we've got a situation where I can't — I'm being told there may be no compliance with those orders before the interviews for the family report.

MS MORTON: I think mum can try a bit harder, frankly. I think— I think, you know,

> as your Honour says, the kids are 12 and 14. They get told to get in the car and they get taken to that stop and they don't get - if, in fact, that's what they're saying, then they don't get to say that. They're 12 and 14 years old. They're kids.

1030. Ms Morton has submitted that the submissions of counsel assisting "misstate the evidence and the events … which cannot always be accurately gleaned from the transcript". In particular, Ms Morton submits that Mr Fowler stated that Olga would continue to "encourage and try to ensure the children attend" in line with the contact regime that was in place. Ms Morton submits that Mr Fowler "did not seek for those orders to be discharged, nor did he seek to tender documents produced by NSW Police which you would expect him to do in Olga's case". She further submits that Mr Fowler did not tell the Court that the children were refusing to attend. Whilst this submission is factually correct, in my view it overlooks the fact that Ms Morton's role in the proceedings was to ensure, as far as possible, that the best interests of the children remained paramount, regardless of the forensic decisions made by other parties to the proceedings.

1031. Counsel assisting have submitted that the submission made by Ms Morton in the above extract was inappropriate, and revealed a significant misunderstanding of her role as the ICL, as set out below.

1032. First, counsel assisting submit that Ms Morton again disregarded the children's wishes. Jack and Jennifer had made it clear that they did not want to see John and had refused to see him every week for six months. Yet despite this, and her knowledge of John's history of violence, Ms Morton submitted to the Court that the children must be told to "get told to get in the car and they get taken to that stop" and they "don't get to say" anything to the contrary.

1033. In relation to this, Ms Morton has submitted that "counsel assisting … seems to have forgotten that his Honour, Judge Monahan, made Orders. The ICL does not make Orders". I understand this submission to be directed at the fact that the children were obliged to abide by the orders that were in place in relation to contact with John. If this is the case, then I am of the view that Ms Morton's characterisation of how that might be achieved was problematic. I agree with counsel assisting that the position urged on the Court by Ms Morton was materially inconsistent with her duties as an ICL because it was contrary to the children's wishes, it did not provide them with any independent decision-making capacity, it was not supported by any of the clinicians who had spoken with the

children, and it knowingly brought the children into contact with an alleged perpetrator of harm.

1034. Secondly, they submit that by the time of the interim hearing, the primary issue in the proceedings had become Olga's ongoing inability to force Jack and Jennifer to comply with the orders that they see John for three hours a week, which was the regime that Ms Morton proposed at the 22 December 2016 hearing, contrary to the children's wishes. They have consequently submitted that the intractable difficulties that arose underscore the need for contact orders to be based on admissible expert evidence, not on the personal views or opinions of the ICL.

1035. In this regard, Ms Morton has submitted that the submission by counsel assisting as to the reliance on admissible expert evidence is unrealistic at an interim hearing because there is "no cross-examination" and "these usually take place in very busy lists" and so the only material available would be "sworn affidavits of the parties, the Notices of Risk, subpoenaed material and the CIC Memorandum". I accept Ms Morton's submission as to the practical limitations. However, the material to which Ms Morton refers was all available at this juncture, and the CIC Memorandum, in particular, clearly indicated that the children did not want to spend any time with John. It is therefore plain that there was ample material upon which Ms Morton ought to have relied in order to make her recommendation to the Court as any appropriate contact orders.

1036. Counsel assisting have submitted that the cumulative effect of Ms Morton's submissions, both in the Case Outline and at the 22 December 2016 and 14 June 2017 hearings, was to create a "materially distorted view of the case for the Court". They further submit that the allegations of violence against John and relevant supporting evidence were either "materially downplayed or not put before the Court at all". They also submit that the Court was consistently told that Olga, rather than John's history of violence, was the reason why Jack and Jennifer had failed to comply with the contact regime, which had put in place without evidentiary support and against their wishes. For the reasons set out above, I accept and agree with these submissions.

1037. At the end of the hearing, Judge Monahan made the following orders:

a. Olga was to provide confirmation from her employer that she was able to take Jack to school in the mornings (rather than rely on him going to school of his own accord after Olga left for work) and for the parties to agree on a computer addiction specialist to treat Jack.

b. Liberty was granted liberty to Ms Morton to re-list the matter on short notice if no time was spent by the children with John, or if Jack missed school, or was late to school on more than two occasions.

Did Ms Morton contravene the ICL Guidelines at the hearing on 14 June 2017?

1038. Ms Morton submits that the content of the Case Outline she filed is "standardised and does not in any way mislead the Court or breach the ICL Guidelines".

1039. In light of the analysis and factual findings set out above, I am satisfied that Ms Morton's Case Outline and oral submissions at the 14 June 2017 hearing involved several breaches of the ICL Guidelines, as set out below:

- Ms Morton failed to ensure that the Court was "fully informed" of Jack and Jennifer's views (Section 4 of the ICL Guidelines);
- Ms Morton made submissions contrary to what PR, RB and RS had all said were the children's wishes not to see their father (Section 5.2);
- Ms Morton did not put any evidence before the Court as to how Jack and Jennifer would feel if forced to have contact with John (Section 5.3);
- There is no evidence that Ms Morton told Jack and Jennifer that she intended to make a submission that they continue to see John for three hours a week on an ongoing basis, despite their obvious and ongoing refusal to do so (Section 5.4); and
- Ms Morton disregarded the views of PR, RB and RS, and instead advocated for orders that required the children to have weekly contact with an alleged perpetrator of harm. She had no expert or other admissible evidence on which to base those submissions (Section 7).

June to September 2017: further family therapy and the Family Report

June to August 2017: further sessions with RS

1040. On 16 June 2017, RS had her sixth session with John. A plan was made for RS to meet with John and the children at Hornsby Westfield. RS felt she needed to be there to protect Jack at least against psychological abuse.

1041. On 16 June 2017, RS wrote an email to Ms Morton saying that Jennifer was not planning to attend, as she did not want to see her father.

1042. Later that day, Ms Morton replied to RS, attaching court orders for contact to occur and explaining that the judge was very unhappy that the contact had not been occurring; that the judge was "very critical" of Olga's parenting; and that the judge told Olga he expects the children spend time with their father each Saturday.

1043. On 17 June 2017, RS accompanied Jack and Jennifer to see their father at Hornsby Westfield. Her evidence was that Jennifer was "stony faced and wanted to get it over as soon as possible". Jack was "laid-back and seem half interested in seeing his father". She said that during the meeting neither child wanted John to get close to them. They kept their distance from him and refused to let him hug them. During the meeting Jennifer said to her father "I don't want to see you ever again". At one stage John apologised to Jack but Jack did not believe it. RS's perception was that "John did not listen to them. He did not hear what they were saying to him and he talked over the top of them". RS formed the view that there was no point continuing family therapy because "everything was about what John wanted and not what the children wanted".

1044. On 19 June 2017, RS received a phone call from Ms Morton, as detailed earlier in these findings.

1045. On 3 July 2017, RS had her ninth therapy session with John. She recorded that "he was still not accepting the reality that his children did not want to see him and family therapy between him and the children was not going to happen".

1046. On 3 July 2017, RS wrote to Ms Morton saying that "just between you and me for now I am not hopeful for future therapy". Ms Morton wrote back the same day stating that even though she thought Olga had influenced the children's views, the reality is those views were quite firm.

1047. On 24 July 2017, RS had her tenth family therapy session with John. In this session, John was upset with the Family Report prepared by PR.

1048. On 1 August 2017, RS had her eleventh therapy session with John. RS's view was that John was seeking to control her and was becoming more pronounced in his desperation to change a situation that he could not accept.

1049. On 7 August 2017, RS had her twelfth therapy session with John. Her evidence was that by this point, she no longer wanted to see John. She realised that family therapy was futile and she was waiting for the Family Report to confirm this so she could close the

file. RS said:

> I didn't think the children were safe with him from an emotional and psychological abuse aspect. I had concerns that he may physically harm Jack in terms of smacking him or clipping him over the ear but I didn't think he would ever use a weapon. I had no concerns that he would physically harm Jennifer.

1050. On 17 August 2017, RS had her thirteenth therapy session with John. John was not accepting the situation. He stated that he was becoming more controlling and dictating to RS what she should say and do.

1051. On 17 August 2017, RS's evidence is that she called Ms Morton to ask whether she (RS) would need to do a report for the Court. Ms Morton told RS that she would not need to do a report. Whilst it is not material, Morton has submitted that this conversation occurred on 29 August 2017, apparently because she does not have a file note of a conversation with RS from 17 August 2017.

1052. On 28 August 2017, RS sent Ms Morton an email informing her that she had ceased seeing Jack and Jennifer. In the email, RS said that both children had no desire to see their father, that they had been physically and emotionally abused by their father in the past and did not want him "to have any part in their lives". RS also said she had told John she did not think there was "any benefit for him or the children to continue to force them to see me with a focus on restoring their relationship" given the children were so firm in their decision. RS again stated that she felt she should write a short report for the Judge and asked Ms Morton for her advice.

24 August 2017: Family Report by Family Consultant, PR

1053. On 24 August 2017, PR completed her Family Report. PR concluded that Jack was demonstrating challenging behaviours because of his exposure to violence from his father. PR noted that RS had provided details of incidents in which the children reported John behaving violently or abusively, which matched the interviews PR conducted with the children. PR also recorded that the children firmly refused to be observed with John.

1054. PR further noted that both children had given consistent accounts to different people that their father was physically violent and verbally abusive to them. PR then noted that John gave a different account of things while accepting that he did smack/kick the children once or twice.

1055. PR said it was difficult to determine who was telling the truth in this case given the contradictory and inconsistent accounts, and that RS had opined that both parents had "stretched the truth". However, PR said that the consistency of the children's account seemed to add legitimacy to their version of events.

1056. PR concluded that Jack was demonstrating challenging behaviours because of his exposure to violence from his father. Importantly, PR noted the fact that John had reportedly not maintained relationships with his older children and that one of his children may have taken out an AVO against him was also "quite concerning" and may support Olga and the children's accounts.

1057. PR considered whether the children were giving an exaggerated account of John's behaviour because they were very protective of their mother. PR also stated that, regardless of whether John was violent and abusive to the family, "there is still the dilemma that the children appear extremely opposed to John and adamant that they do not want a relationship with him". She noted that notwithstanding court orders, both therapists had suggested that ongoing therapy was not suitable.

1058. PR said that it was likely that neither child would comply with any orders ordering them to live with their father. PR then listed the reasons why she recommended that the children spend no time with their father. She discounted a proposal that the children see their father as per their wishes, as it was likely to lead to John putting pressure on them and this had caused problems in the past.

1059. I agree with the submission of counsel assisting that PR's Family Report, with the benefit of the input she received from RS, provided a perceptive analysis of the Edwards family dynamics and an accurate analysis of risk. While PR had concerns as to "who was telling the truth" she found the children's accounts to be plausible and sounded a note of concern about John's relationships with his other children. She further noted that, irrespective of whether John was violent, the children were "extremely opposed" to having a relationship with him, that sole parental responsibility should therefore be given to Olga, and that she recommended that the children spend no time with John.

1060. On 30 August 2017, Judge Monahan ordered that the Family Consultant's report to be given to the parties and their lawyers as well as to Ms Morton.

August to September 2017: final sessions with RS

1061. On 29 August 2017, RS had her fourteenth therapy session with John.

1062. On 29 August 2017, RS had a telephone conversation with Ms Morton and advised she would only consider further therapy sessions if Jack and Jennifer wanted to continue. RS told Ms Morton that "the children have no wish to see their father". RS also said that either during this conversation, or the earlier conversation that her file notes indicate occurred on 17 August, she noted her concern that John had a narcissistic personality disorder and believed the children would not be safe from psychological, and possibly physical, abuse if they were made to see him. RS said in her witness statement that Ms Morton expressed disbelief as he presented as a "harmless poor old man". RS agreed that this was how John presented initially, however as her experience with him continued she had noted "a lack of empathy, a lack of remorse, lying, self-centred and controlling behaviour".

1063. In her written submissions Ms Morton states that the opinions expressed by RS above were not file noted by RS in her clinical notes, and only appear in the statement that RS made to coronial investigators, "a year after the alleged conversation with no written record". I accept those submissions. However, the absence of a contemporaneous note, in and of itself, is not grounds to reject RS's evidence. I also note my earlier finding that RS expressed similar concerns in her conversation with Ms Morton on 28 April 2017, and said that Ms Morton should not record that in the documents because RS feared that John might attempt to denigrate her professionally. It is relevant to note at this point that Ms Morton did subpoena RS's clinical records of her treatment of the Edwards family, which were available to the parties prior to the final hearing in February 2018. In the circumstances, I accept RS's account of this conversation.

1064. On 7 September 2017, RS had her fifteenth therapy session with John. John was upset about the Family Report from PR because it indicated that RS had told PR she thought John was lying.

September 2017 to February 2018: proceedings in the Family Court

1065. On 5 September 2017, an order was made, by consent, transferring the proceedings from the FCC to the Family Court. An order was also made requiring Olga to deliver Jack to school each day, unless she or Jack were incapacitated, with medical evidence to support that incapacity.

22 November 2017: Olga's parenting questionnaire

1066. In November 2017, Olga and John answered parenting questionnaires issued by the Family Court. In her questionnaire Olga again disclosed many examples of physical violence, controlling behaviour and verbal abuse by John towards her and the children, including: swearing at Olga over the phone; imposing silent treatment; calling Jennifer a "bitch" and slapping her on the face in front of Olga; kicking and punching Jack after Jack touched John's mobile phone; the incident in Paris where John chased Jack and squeezed him around the neck; verbal abuse of Jack; and use of the "finger treatment" on the children. The affidavit also disclosed the following matters:

> 1. Jack kept a [cricket] bat in his bedroom for self-defence from the Respondent.[9]
> 2. Jennifer slept with a knife under her pillow for self-defence from the Respondent.
> 3. I slept in Jennifer's bedroom with boxed and chairs against the door for self-defence from the Respondent for several days prior to leaving the matrimonial house.
> 4. After the separation, the Respondent informed the Court that he is not aware where the children and I live. However, the Respondent has certainly been stalking us, as he wrote a letter to the woman who was sheltering us for the first 10 days after we left the matrimonial house, which confirms that he knew where we lived. The Respondent has also been referring to her and my first landlord in his letters to me after the separation throughout 2016.
> 5. Then the Respondent has been seen driving past my residence under pretence that he was visiting the shops at the Pennant Hills shopping centre. However, at the time of living with the Respondent for over 15 years, he was usually visiting Normanhurst shops and news agencies, which re much closer to his residence.
> 6. The Respondent was stalking me by leaving letters near my rented accommodation and/or sending an old friend (the Respondent's neighbours) to deliver his letters to me on regular occasion s throughout 2016, at the time when the Respondent was told by my solicitor that I will not accept his correspondence, emails and phone calls, and that all correspondence should be sent through my solicitors. The contents of the Respondent's correspondence were rude, inappropriate, angry and/or Court related.
> 7. The Respondent called my office to speak to me personally, at the time when he was told on multiple occasions that all communication with him could be

[9] References to "The Respondent" in this extract from the affidavit refer to John Edwards.

only through my solicitor .

8. In about May 2016 the Respondent yelled at Jennifer and scarred [sic] her threatening to throwaway Jennifer 's budgies.

9. In 2016 the Respondent was stalking Jack at the train station before school to pass an envelope to Jack, at the time when the Respondent maintained that he was not aware about our location.

10. In 2016 the Respondent suddenly appeared on the school ground at the Normanhurst West Public School trying to pass on some envelope to Jennifer. The Respondent scared Jennifer to the extent that she had to hide in the school toilet from him.

11. In December 2016 the Respondent suddenly appeared on the oval where Jennifer was present with her class mates, and let his dog chase Jennifer.

12. Jennifer stopped participating in basketball games, because the Respondent was constantly attending them after the separation.

13. Jack stopped participating in AFL training because the Respondent was part of the Pennant Hills AFL Club and would have been present at every game if Jack continued going there.

14. In February 2017 the Respondent was stalking me at my yoga studio at Pennant Hills, which I have been visiting since about 2013. He parked his car around the corner from the main car park, stayed lying down a couple of meters behind me in the dark studio until the teacher came in, switched on the light, and then the Respondent stood behind me giving me a fright. I was not aware at that time that he was visiting my studio, and I did not know he was in the room until he stood behind me. I left the studio immediately and reported this to the Hornsby Police. Prior to the separation, the Respondent has never visited the yoga studio, he was always against yoga, he criticised it and me for going there over the years and forbid me from going there.

15. Police issued an AVO against the Respondent on behalf of one of the Respondent's daughters ([JC]) from previous marriage. She alleged abuse by the Respondent towards her during childhood. The Respondent was stalking [JC], set up surveillance outside her house, went into her house while she was not at home under false name pretending to be a potential purchaser of her house and then approached her when she was collecting her children from childcare.

23 November 2017: John's parenting questionnaire

1067. In his Parenting Questionnaire for the Family Court, under the heading "about safety issues", John said this:

> In 2011, due to a misunderstanding with my daughter [JC], who was aged 32 at the time, applied for an APVO. However, my daughter then chose not to proceed with the application and it was dismissed.

1068. John also said this:

> Since separation Olga has continued to propagate a false and exaggerated narrative of "past family violence and abuse" which seems to become more exaggerated with each document she lodges in the court. I believe that her actions are detrimental to the emotional wellbeing of the children.

20 December 2017: Ms Morton issued further subpoenas

1069. On 20 December 2017, Ms Morton issued the following subpoenas: to the NSWPF for updated records in relation to the Edwards family; to RS for her notes; and to RC for his notes.

1070. Each recipient produced material to the Court which was accessed by Ms Morton. That meant, prior to the final hearing in February 2018, Ms Morton had access to:

- updated NSWPF records, showing that on 29 December 2016 Olga had reported assaults against Jack and Jennifer, and that on 8 February 2017 Olga reported the incident where John stalked her at yoga;
- RS's clinical notes, meaning that Ms Morton had access to all of RS's notes recording disclosures by Jack and Jennifer about John's abuse and their wishes that they did not want to see him; and
- RC's notes from his three sessions with Jack, when Jack described his father as violent and that physical abuse by John left him bloodied and bruised.

February 2018: the family law proceedings concluded

1071. On 18 January 2018, Olga filed a further affidavit in the proceedings. It set out, at length, the same allegations of controlling behaviour, silent treatment, verbal abuse, and family violence that Olga had described in previous affidavits and notices of risk. Olga also annexed photos of the machete that John kept under his bed.

1072. On 7 February 2018, John's lawyer circulated a proposal that Jack live with him during

the week and spend weekends with Olga, while Jennifer live with Olga during the week and with John on the weekends. Ms Morton replied to John's lawyer later that day, asking "How does the father propose that the children be forced into an arrangement that they have categorically stated they don't want?". The evidence before me at inquest does not indicate that Ms Morton received a response to that question.

1073. Prior to the hearing scheduled for 14 February 2018, Ms Morton filed a Case Outline setting out submissions and proposed orders. In relation to family violence, Ms Morton continued to characterise the allegations as the "Mother's claims" and relied on the absence of complaints to police as a basis to minimise the claims. She said this:

> On the Mother's evidence here [sic] is a history of family violence against the Mother and the children perpetrated by the Father. This is scant independent evidence to support the Mother's claims – specifically complaints to police.
>
> Both the Mother and the children have described instances that would be characterised as family violence to the Family Consultant and [RS].

1074. Counsel assisting has submitted that Ms Morton's submission that there was "scant independent evidence" was misleading because: not only had the children made the same complaints as Olga, but by this time Olga had attended Hornsby Police Station and reported assaults against the children (on 29 December 2016) and the stalking incident at her yoga studio (on 8 February 2017). I am also satisfied that information was contained in the material that the NSWPF produced in response to the subpoena issued by Ms Morton on 20 December 2017. Ms Morton conceded in her oral evidence that this was independent evidence that supported Olga's claims. Ms Morton also had RC's notes by this point, which recorded allegations made by Jack that John had been violent.

1075. As is evident from the transcript reproduced above, Ms Morton did draw the Court's attention to the allegations of family violence that had been made to PR and RS. In respect of the children's wishes, Ms Morton said:

> There is very strong evidence from the Family Report and the subpoenaed documents from RS, as well as the incident occurring on 17 June 2017 that the children have expressed a wish, including directly to him, not to spend time with the Father.
>
> The ICL has met with the children and spoken with them by telephone on a few occasions and the recommendations of the ICL are made are in accordance with their wishes.

1076. Ms Morton also submitted that "on the evidence currently available, neither party has demonstrated a responsible attitude to parenthood". Despite this, Ms Morton acknowledged that a change of residence would not be in the children's best interests, that they had been with Olga for two years and "appear to be well cared for".

1077. Ultimately, Ms Morton submitted that an order for sole parental responsibility in favour of Olga was appropriate, in accordance with the recommendations of PR.

1078. On 14 February 2018, following the filing of case outlines by John and Olga, the family law proceedings concluded with the making of consent orders by Justice Stevenson. The consent orders established the following regime:

- Olga had sole parental responsibility for Jack and Jennifer;
- Jack and Jennifer were to live with Olga;
- there was no order made for Jack or Jennifer to spend time with John;
- Jack and Jennifer's passports were released, and Olga was able to apply for further passports and take Jack and Jennifer overseas;
- John was entitled to receive school reports and attend parent teacher meetings in the absence of Jack, Jennifer and Olga;
- the Independent Children's Lawyer was discharged; and
- Olga was to arrange for Jack and Jennifer to have consultations with RS (psychologist).

1079. A notation in the orders stated that it was the "intention of the parties" that any time that John had with the children in future be in accordance with the written wishes of the children.

1080. In their written submissions, counsel assisting made comment as to one further aspect of the 14 February 2018 consent orders. They submit that Ms Morton gave evidence at inquest that, whilst at Court on 14 February 2018, she told the other parties that in her view a positive injunction under s. 68B of the *Family Law Act* prohibiting contact between the children and John was warranted, in accordance with Jennifer's wishes.

1081. In her written submissions to the inquest, Ms Morton stated that the recommendations set out in the Family Report were adopted by her in her Case Outline for the final hearing. She submits that the orders she later proposed to the other parties "went further than

[PR]'s recommendations to include s. 68B injunctions which were not sought by either parent of their legal representatives". She further submits that she discussed this proposal with the children, in line with the ICL Guidelines.

1082. However, Ms Morton said in her oral evidence that "the mother said it wasn't necessary. She was happy with those orders" (ie. orders that provided for no time to be spent with John, rather than orders that prohibited contact).

1083. Counsel assisting have submitted that, if Ms Morton had formed the view that a positive injunction prohibiting contact was in the best interests of the children (which she repeatedly told the inquest was the view she held on 14 February 2018), she was obliged to bring that to the attention of the Court instead of agreeing to a consent regime that she did not consider to be in the children's best interests. They further submit that Section 4 of the ICL Guidelines mandates that approach in those circumstances.

1084. Ms Morton submits that an order to the effect that "the children shall spend no time with the father" is "simply a parenting order", not an injunction pursuant to s. 68B of the *Family Law Act.* She further submits "this was my evidence [at inquest] on 10 September 2020. The transcript of proceedings from that date reveals the following exchange between senior counsel assisting and Ms Morton in relation to this point (emphasis added):

> Q. But I'm just trying to work out your evidence is that **you formed the view, you say, that the appropriate order was an injunction preventing any contact under 68B. Is that your evidence?**
> **A. Yes.**
>
> Q. You formed that view before you went to court on the 14th of February. Is that your evidence?
> A. Yes.
>
> Q. Why then did you not articulate that view in the case outline that you presented to the court?
> A. I didn't attach a minute of orders to the case outline. Is that what you're asking me?
>
> Q. I'm saying why didn't you articulate in your case outline which you agree was filed before any negotiation between male barristers, why didn't you articulate, "I have a different view. **In my view these children need an injunction under s 68B and I've set it out in the case outline." Why didn't you do that?**

A. I didn't know what the parties' proposals were when I did my case outline.

Q. Ms Morton, your evidence is you formed the view that what the children required in their interests prior to going to that hearing when you did your case outline was that they needed an injunction. My question is why didn't you set that out in your case outline that you had formed the view, acting for them, that that is what was required to protect them. Why isn't it in the case outline?

A. Because I didn't say that was what required to protect them. **I said my primary motivation is that order was because that was very firmly what Jennifer wanted.**

1085. I am therefore satisfied that Ms Morton's sworn evidence before me was that the view she held on 14 February 2018 was as set out by counsel assisting in their submissions. In light of this, I do not intend to deal with the submissions Ms Morton has made as to the effect of an alternative order "that the children spend no time with the father".

1086. In relation to the terms of the consent orders ultimately made by the Court, Ms Morton stated that she acquiesced in the making of the "no time" orders, rather than telling the Court that a positive injunction was in the best interests of the children, because:

> You had four male, either solicitor or counsel, first of all, telling me I couldn't be a part of the negotiations, and I should just toddle off, and they'll let me know when they need me. Then, when I raised that as an issue, that all the things that I'd asked to be in there weren't there, I'm told, "All you need to do is sign them. The parties have agreed." I - I signed them.

1087. Counsel assisting have submitted that Ms Morton's evidence on this point should not be accepted and that there are "numerous examples in the evidence of Ms Morton conducting herself assertively in her communications with the other practitioners". In their submission, I would reject any suggestion that Ms Morton was pressured into agreeing to the final orders.

1088. I accept that, overall, the evidence tends to support the submission made by counsel assisting. The evidence shows Ms Morton was accustomed to dealing with both parties' lawyers in robust terms. That said, I also accept that a party may feel pressure to agree to consent orders to which all other parties have agreed. However, in my view I do not need to make a finding as to whether Ms Morton was in fact pressured into agreeing to final orders that she did not believe were in the children's best interests. That is because Ms Morton was an experienced practitioner with special obligations as the ICL to protect the best interests of the children. It was contrary to her role as the ICL to acquiesce to the making of orders that were contrary to what she believed were in the best interests

of the children. In this respect, if Ms Morton believed that the proposed orders were not in the children's best interests, and she was shut out from meaningful discussions with the other legal representatives, she had the ability to raise the issue with the Court in her Case Outline or orally at the final hearing. She did not do so.

1089. On 19 February 2018, consent orders were due to be filed with the Court in relation to the property dispute, but Olga told investigators that John stopped communicating; that he disappeared after that date and the property dispute was unable to be settled.

1090. On 22 February 2018, John's lawyers emailed Ms Morton and Mr Brown concerning obtaining sealed copies of the parenting orders. Ms Morton replied as follows:

> I truly don't understand how someone who is supposed to be experienced in family law could not know how the system works.
>
> Her Honour has the original signed Terms, including my signature which is not on this copy, and it has been marked as an Exhibit. She doesn't need another copy. The typescript that you provide has to be exactly the same as that document.
>
> The Court ceased sending out sealed Orders around 12 months ago. All sealed Orders are now made available via the CCP for everyone to download. Accordingly, you don't have to undertake to provide Orders to anyone. Once they are uploaded we will all receive an email advising of same − if you have marked the application on the CCP to be notified by email.
>
> Why, when my Notice of Address for Service and all correspondence that you have received from me has my name as Debbie Morton, have you decided to consult the Law Society website and include my name as Debra Joyce Morton? I find this incredibly intrusive and offensive especially given that the Law Society website also notes my preferred name as Debbie.
>
> You actually don't have to prepare a Form of Order I assumed that there must have been a direction for you to do so. All you need do is provide the typescript in word format. The Associate will prepare the Form of Order and integrate the typescript before converting it to the format required to upload to the CCP.
>
> Your email to the Associate is entirely unnecessary. All you have to do is email the typescript advising the Associate that that is what you are doing.
>
> Could you please advise me of the status of the property proceedings.

1091. Orders were finally made to settle the property proceedings on 19 July 2018, two weeks after the deaths of Jack and Jennifer.

Issues 50 to 55 on the Issues List and Recommendation

Issue #50: Where the Family Court has either ordered (or noted in court orders) that a family will undergo therapy while the proceedings are on foot, what is the role of the family therapist vis-a-via the Court; particularly where allegations of risk to children are raised during that therapy?

1092. A Court-ordered, or Court-noted, family therapist does not have a direct role in the proceedings and no automatic right to raise issues of risk directly with the Court. In the family law proceedings outlined above this was evident, when RS enquired whether she could put on a report for the Court outlining her concerns, but did not do so.

1093. Nevertheless, a family therapist may put on a report for the Court if requested by one or more parties. This was the subject of discussion at the 14 June 2017 interim hearing. Moreover, a family therapist can consult with the ICL and provide information to the family consultant. In this case, RS disclosed allegations of family violence to PR in connection with the preparation of PR's Family Report. In addition, as I have found, both RB and RS spoke with Ms Morton and disclosed allegations of family violence against Jack and Jennifer to her.

Issue #51: What is the proper role of an Independent Children's Lawyer in terms of gathering information and forming a view about what is in a child's best interests, particularly where there are allegations of violence and potential risks to a child?

1094. I am satisfied that the proper role of an ICL in terms of gathering information and forming a view about what is in a child's best interests is set out in the ICL Guidelines summarised above. The particular obligations that apply where allegations of violence are made against a child are set out in section 7 of the ICL Guidelines and in the Principles.

Issue #52: What are the obligations of an Independent Children's Lawyer in terms of receiving information from, and taking into account information provided by, other persons connected to Family Court proceedings (for example, from a family therapist or a Family Report writer engaged by the Court)?

1095. The ICL's obligations in this respect are prescribed by the ICL Guidelines.

1096. Section 4 of the ICL Guidelines provides that "The ICL should seek to work together with any Family Consultant or other relevant expert involved in the case to promote the best interests of the child." Section 4 also provides that "the ICL does not take instructions from the child but is required to ensure the court is fully informed of the child's views, in an admissible form where possible." Similarly, "the ICL is to ensure that the views and

attitudes brought to bear on the issues before the court are drawn from and supported by the admissible evidence and not from a personal view or opinion of the case." As a practical matter, these Guidelines require the ICL to utilise the family consultant, or another relevant expert, to obtain the child's view in an admissible form so that the ICL does not become a witness (see Section 6.4). Section 5.3 of the ICL Guidelines is set out in similar terms.

1097. Section 5.2 of the ICL Guidelines provides that the ICL should "ICL should guard against stepping beyond his or her professional role and should seek guidance from a Family Consultant or other professional when necessary."

1098. Section 7 of the ICL Guidelines set out earlier in these findings prescribes the obligations of an ICL when issues of family violence are raised. It effectively mandates that such issues be considered with the assistance of an appropriate expert.

Issue #53: What is the proper role of an Independent Children's Lawyer where concerns are raised by other persons connected to Family Court proceedings about risks to a child? In particular, is an Independent Children's Lawyer required to disclose to the Court that other persons connected to Family Court proceedings have concerns regarding risk?

1099. On the basis of the analysis above, I am satisfied that an ICL is required to disclose to the Court that other persons connected to the family law proceedings (for example, a family therapist or family consultant) have concerns regarding risk to a child, pursuant to the following sections of the ICL Guidelines:

(a) Section 7 of the ICL Guidelines notes that family violence and abuse are mandatory considerations for the Court. To the extent that the ICL becomes aware that a person connected to the proceeding (such as a family therapist or a family consultant) has formed a view that there is a risk to a child due to family violence or abuse, the ICL is obliged to consider that information with a counsellor or other mental health professional and then place that information before the Court; and

(b) Section 6.5 of the ICL Guidelines sets out the ICL's obligation to develop a case plan, which should (among other things) "consider the evidence available to the court in relation to any allegations of child abuse or family violence raised in a Form 4 Notice and identify and gather as appropriate relevant evidence in

admissible form". While section 6.5 is more limited in scope than section 7 (in that it relates particularly to issues raised in a Form 4 Notice), once such issues have been raised, it is incumbent on the ICL to identify and gather relevant evidence in admissible form and place it before the Court. I am satisfied that this obligation extends to identifying and gathering information from persons who have concerns regarding risk (to the extent they have relevant and admissible evidence).

Issue #54: Was the Independent Children's Lawyer in the Family Court proceedings between Olga and John Edwards informed by others about concerns regarding risks to Jack and Jennifer?

1100. Counsel assisting has submitted that I would be satisfied that Ms Morton was informed about concerns regarding risks to Jack and Jennifer by the following persons, or through the following means, at least:

- Olga Edwards, in her various affidavits, notices of risk and parenting questionnaire filed in the proceeding;
- PR, through the CIC Memorandum and the Family Report;
- RB, in a phone conversation on 24 November 2016, in a letter of 30 November 2016 and in her email of 11 January 2017;
- material received under subpoena from the NSWPF in December 2016;
- 2011 AVO material regarding JC sent under cover of a letter dated 30 November 2016 from Mr Brown;
- Mr Brown in his email of 27 April 2017;
- RS in her conversation with Ms Morton on 28 April 2017;
- material received under subpoena from the NSWPF in January 2017;
- RS's notes, received by Ms Morton pursuant to subpoena in January 2017; and
- RC's notes from his three sessions with Jack.

1101. Ms Morton submits that counsel assisting's submission "is in a vacuum" and notes that relevant information became available to her in stages. I accept that Ms Morton obtained relevant evidence in stages; those stages are referable to the dates and documents identified above. Ms Morton again submits that, by the interim hearing on 14 June 2017, she had not received information from RS as to any disclosures made by the children. For the reasons I identified earlier, I do not accept that is the case.

1102. As I have already found, there was sufficient evidence available as at 22 December 2016 (including by way of the material produced by police in response to the November 2016 subpoena, the CIC Memorandum and Olga's affidavits) to put Ms Morton on notice of the risks that John posed to his children. I am also satisfied that during 2017, additional material became available to Ms Morton that ought to have compounded these concerns, well before what became the final hearing on 14 February 2018.

Issue #55: If the Independent Children's Lawyer in the Family Court proceedings between Olga and John Edwards was so informed, did she properly take into account, and inform the Court of, those concerns regarding risks to Jack and Jennifer Edwards?

1103. In relation to this issue, Ms Morton disputes counsel assisting's submission that she did not properly take into account and inform the Court of the concerns about risk "given that a recommendation for the final hearing was that there be orders that the children do not spend time with John, and further, the s. 68B orders were made at my request".

1104. On the basis of the findings I have made above, including at [866] to [905], [1005] to [1008], [1009] to [1039], and [1073] to [1088], I am satisfied that Ms Morton did not properly take into account the objective evidence (such as the police subpoena material) and concerns expressed by others (including Mr Brown, Olga, PR, RB and RS) regarding risks to Jack and Jennifer in a timely way, which meant that she was not in a position to inform the Court of those risks. I accept that by the final hearing, Ms Morton had reconsidered her position as to the appropriateness or otherwise of the children having contact with John. However, even at this stage, as I have already identified, there were deficiencies in Ms Morton's presentation of these concerns to the Family Court. In particular, contrary to Ms Morton's submission set out above, no order was sought or made under s. 68B, despite Ms Morton's evidence that she believed that to be in the best interests of the children.

1105. It is appropriate to acknowledge at this juncture that regardless of the risks that may have been identified, or the steps taken, by any person involved in these family law proceedings, John Edwards carefully planned his actions on 5 July 2018 over an extended period of time, and was able to successfully navigate the firearms licensing process in a way that was not discernible to any actors in the family law proceedings.

Recommendation

1106. For the reasons outlined in Section F, and in particular the paragraphs identified

immediately above, counsel assisting have submitted that pursuant to ss. 82(1) and 82(2)(b) of the Coroners Act, the Coroner should make a recommendation to the Office of the Legal Services Commissioner in the following terms: that the Office of the Legal Services Commissioner investigate whether any disciplinary action ought to be taken against Ms Debbie Morton in connection with any aspect of her role as the ICL in the family law proceedings between John and Olga Edwards.

1107. It is evident upon review of the material before me at inquest that the family law proceedings between John and Olga were challenging for all those involved. In her written submissions, Ms Morton accurately observed that the written communication between John and Olga's solicitors contained in her file and tendered at inquest, "shows the level [of] animosity that existed between the two solicitors". The role of the ICL is a delicate one and Ms Morton came to her appointment in this matter with a deal of experience in the role, but also in the jurisdiction more generally.

1108. Ms Morton did not agree to provide a statement to coronial investigators in relation to this matter, however she gave oral evidence in my Court on 10 September 2020. This date was at her request, her having initially being due to appear on 23 September 2020. In light of her evidence having been interposed on this earlier date, it became necessary for Ms Morton to give further evidence on 12 November 2020. Ms Morton also provided detailed written submissions after the close of the evidence, which have assisted me in the preparation of these findings.

1109. In those submissions, Ms Morton states that she has had to prepare them "without the benefit of transcript that I am only entitled to if purchased" and proposes that in future all parties "have access to the same information and transcripts both for procedural fairness and efficiency". After receiving those submissions, those assisting me indicated to Ms Morton and the other parties that it was proposed to tender correspondence with Ms Morton dated 30 October 2020 ("the October correspondence"), purporting to show that by the time she gave her second tranche of evidence on 12 November 2020, those assisting me had, at my direction, provided her with the transcript of her evidence on 10 September 2020, as well as those of the evidence of David Brown and RS (those being the witnesses who gave evidence that bore directly on the interests of Ms Morton). In written submissions in response to that proposed tender, dated 11 March 2021, Ms Morton objected to the tender of the correspondence. I decided to allow the tender of the October correspondence, notwithstanding its lateness, as it was of narrow compass, was

material that had been provided to Ms Morton at the time and was in response to a submission only made by Ms Morton on 4 February 2021.

1110. Whilst I appreciate that these proceedings have been arduous for Ms Morton in a number of respects, her statement in relation to her lack of access to transcripts is incorrect. I am satisfied that the October correspondence establishes that by the time Ms Morton gave her second tranche of evidence on 12 November 2020, those assisting me had, at my direction, provided her with the transcript of her evidence of 10 September 2020, as well as those of the evidence of David Brown and RS. Ms Morton was also provided with a detailed list of potential topics of examination as part of the October correspondence, and was represented by counsel when she gave her evidence. These matters were noted on the record by senior counsel assisting on 12 November 2020. I am therefore not of the view that any procedural fairness issues arise in relation to Ms Morton's participation in these proceedings.

1111. In relation to the inquest proceedings more generally, Ms Morton has submitted that counsel assisting failed to challenge Mr Brown on any of his evidence, and "appears to have accepted any evidence contrary to mine". I do not accept this submission. As has been averted to above, the scope of an inquest and the nature of the enquiries made in the course of a hearing is initially captured in an Issues List that is distributed to the interested parties in advance of the hearing. Further, any person who might be the subject of criticism or adverse comment is formally notified of that possibility by way of letter prior to the hearing commencing. In this inquest, Ms Morton was so identified and was further notified in light of the scope of issues that were set out in the Issues List. Those issues, in turn, were identified as being sufficiently proximate to the manner and cause of the deaths of Jack and Jennifer, and as is evident from a review of the Issues List that appears at Annexure A of these findings, the issues identified relating to the family law proceedings are focussed on the conduct of the ICL.

1112. As to the recommendation and referral proposed by counsel assisting, Ms Morton submits that there is no basis for such a referral, and that this course of action is not available to me because she was provided with a certificate pursuant to s. 61 of the Coroners Act prior to giving her evidence.

1113. Whilst there is no dispute that s. 61(7) of the Coroners Act precludes the receipt or use of the evidence given by Ms Morton at this inquest by any NSW court or other body authorised to hear, receive and examine evidence, I am of the view that the power

available to me to make recommendations pursuant to s. 82 of the Coroners Act is not limited by the exercise of the power under s. 61. The findings I have made in relation to Ms Morton are serious. I have found that she misled the FCC, both positively and by omission. I have also found that her conduct in this matter contravened numerous aspects of the ICL Guidelines, over an extended period of time. In all of the circumstances, having given the matter careful consideration and with particular regard to the submissions of both counsel assisting and Ms Morton on this point, I make the following recommendation:

> **Recommendation 24**: That the Office of the Legal Services Commissioner investigate whether any disciplinary action ought to be taken against Ms Debbie Morton in connection with any aspect of her role as the ICL in the family law proceedings between John and Olga Edwards, including in relation to the matters set out at paragraphs [866] to [905], [1005] to [1008], [1009] to [1039], and [1073] to [1088] of Section F of these findings.

Mandatory reporters

Mandatory reporting obligations

1114. The *Children and Young Persons (Care and Protection) Act 1998* (NSW) ("Care and Protection Act") provides that in particular circumstances a registered psychologist (see s 27(1)(d)) has a mandatory obligation to make a report to the Secretary of the DCJ.

1115. Section 27(2) of the Care and Protection Act sets out the circumstances in which a report must be made, namely:

> If—
>
> (a) a person to whom this section applies has reasonable grounds to suspect that a child is at risk of significant harm, and
>
> (b) those grounds arise during the course of or from the person's work or role specified in subsection (1),
>
> it is the duty of the person to report, as soon as practicable, to the Secretary the name, or a description, of the child and the grounds for suspecting that the child is at risk of significant harm.

1116. "Significant risk of harm" is defined in s 23 of the Care and Protection Act to mean (emphasis added):

> (1) For the purposes of this Part and Part 3, a child or young person is at risk of

significant harm if **current concerns exist** for the safety, welfare or well-being of the child or young person because of the presence, to a significant extent, of any one or more of the following circumstances—

(a) the child's or young person's basic physical or psychological needs are not being met or are at risk of not being met,

(b) the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive necessary medical care,

(b1) in the case of a child or young person who is required to attend school in accordance with the Education Act 1990—the parents or other caregivers have not arranged and are unable or unwilling to arrange for the child or young person to receive an education in accordance with that Act,

(c) the child or young person has been, or is at risk of being, **physically** or sexually **abused or ill-treated**,

(d) the child or young person is living in a household where there have been incidents of domestic violence and, as a consequence, the child or young person is at risk of serious physical or psychological harm,

(e) **a parent** or other caregiver **has behaved in such a way towards the child or young person that the child or young person has suffered or is at risk of suffering serious psychological harm,**

(f) the child was the subject of a pre-natal report under section 25 and the birth mother of the child did not engage successfully with support services to eliminate, or minimise to the lowest level reasonably practical, the risk factors that gave rise to the report.

RB, psychologist and family therapist

1117. As outlined above, between October 2016 and January 2017, the Edwards family attended counselling with psychologist RB, pursuant to a notation in orders made by Monahan J of the FCC. During this counselling, Olga disclosed issues around family violence and child protection matters. On 11 January 2017, RB also wrote in an email to Ms Morton that (emphasis added):

> Whilst I appreciate your comments regarding risk, in my opinion the issue of risk is still live in that **the mother continues to allege the children are at significant risk of harm should they spend time with their father and issues of family violence**. The father, as I understand it, continues to allege the issue of alienation. These are unresolved risk issues which significantly impact on therapy.

1118. RB was aware of her mandatory reporting obligations and turned her mind to whether the reporting threshold was met in this case. She said this:

> A. I considered the information that had been directly obtained in terms of my interactions with the four family members. I also referred to the Mandatory Reporter Guide decision tree online, and I spoke with a work colleague.
>
> Q. So I'll just break that down. You referred to - what is the mandatory reporting tool? What is that?
>
> A. So there's an online decision-making tree that is developed, I believe, by - they're now called Department of Community and Justice - doesn't roll off the tongue as easily as FACS - and that is an online tool to assist mandatory reporters to think about when they may contact the department and - and make a concern or to make a report about a concern, and to think about what they might - what steps they might take in assessing risk and supporting the family.
>
> Q. So is that an online tool that's made available by the government department that you can step through online in terms of you assisting you make your decision-making about whether you need to report?
>
> A. It's freely available online. You just have to google it. […]
>
> Q. So did you go online and answer all the questions that the tool posed you in relation to what you knew about the Edwards children at that point?
>
> A. Based on the information I had available to me at the time.
>
> Q. And do you recall what the tool suggested to you in terms of advice as to what you should do?
>
> A. Document and monitor.

1119. Counsel assisting and counsel for RB have submitted that RB acted appropriately in the circumstances, and that the tenor of her correspondence with Ms Morton demonstrated she was alive to the risks that the allegations of family violence raised, and took those risks seriously. They further submit that it was appropriate that RB sought assistance from the online mandatory reporting tool and that she was entitled to rely on the outcome it recommended.

1120. I agree with and accept the submissions of counsel assisting and RB and make no adverse findings in relation to her conduct.

RS, clinical psychologist

1121. As outlined above, Jack, Jennifer and Olga met with clinical psychologist, RS, at various times. Each of them disclosed to RS assaults and fears in relation to John. RS gave the following evidence concerning her mandatory reporting obligations in respect of those allegations:

> Q. Are you aware - you're a registered psychologist, are you?
>
> A. Yes.
>
> Q. Are you aware of the mandatory reporting obligations that psychologist have?
>
> A. Yes.
>
> Q. And - what are they, in short, to your understanding?
>
> A. If I suspect a child is at risk of harm, whether it be emotional, psychological, sexual or neglect or I am - or the child is at risk because the carer has mental health issues, I need to report to FACS.
>
> Q. And did you have that understanding of your reporting obligation in 2017 and 2018?
>
> A. Yes.
>
> Q. Did you turn your mind at the time you were dealing with the Edwards children as to whether or not you should or should not make a - reporting to FACS? Did - did you consciously think about that at the time?
>
> A. I don't know. If I didn't, it's because I've - believed the children were safe because they had no legal access. The father no legal access to them.
>
> Q. So - sorry, you thought the children were safe because--
>
> A. The father had no legal access to them. He didn't know where they lived. He didn't know when they were coming to see me. They weren't seeing him so - and they were living with a safe parent 100% of the time, so I didn't see the child at risk of harm - children.
>
> Q. It's the case, isn't it, that you did not report these matters to FACS at the time. That's correct, isn't it?
>
> A. That's correct.

1122. The statutory test directs attention to whether "current" concerns exist, although it also makes clear that a current concern may exist in respect of harm that has already occurred. Counsel assisting have submitted that it was not unreasonable for RS to form

the view that no current concerns existed, and no mandatory report was therefore required, in circumstances where: she knew that John was no longer seeing the children; her understanding was that John did not know where the children lived; and she knew that measures had been adopted so that John did not know when the children were coming to see her for therapy. Further, the tenor of her contemporaneous clinical notes demonstrates that she was alive to the risks that the allegations of family violence raised and took those risks seriously. Counsel assisting have further submitted, and I accept, that RS also communicated her concerns about the risks of family violence to both the ICL and the Family Consultant, PR.

1123. Ms Morton has submitted that RS's evidence as to John having "no legal access" to the children misstates the position because there were orders in place for the children to spend time with John prior to February 2018, although they were not complied with. Whilst I accept that the factual premise underlying Ms Morton's submission is correct, I accept RS's evidence as to the reasons that she arrived at the view that there were "no current concerns" during that period.

1124. Ms Morton further submits that following the conclusion of the proceedings on 14 February 2018, because RS continued to meet with John and he discussed "future plans for spending time with the children to commence as early as August 2018", if RS "held the serious concerns … she has deposed to" then she ought to have made a mandatory report as she was, by then, "the only independent person involved with the children". I am of the view that this submission is misconceived, given that RS's evidence indicates that in the period following the conclusion of the family law proceedings she formed the impression that John was displaying a more accepting attitude in relation to the views of the children. I am not of the view that it was incumbent upon RS to make a mandatory report in response to an indication from John that he hoped that he "might get to see the kids" and I do not accept this submission.

RC, psychologist

1125. From 21 June 2017 to 12 July 2017, Jack attended sessions with psychologist RC. RC said Jack and Olga disclosed the following information during their first appointment:

> During our first conversation I remember Olga and Jack told me that between the time when Jack was 10 years old, to about the age of 13, John used to punch, kick and verbally threaten Jack. Jack told me that John had left bruises on him on several occasions and he had also given Jack a bloodied nose a number of times during this

> period. I remember that during the conversation, Jack also told me that he was having an argument with John, when Olga intervened one day. I do not know what date this occurred however it was also within the time that Jack was 10 to 13 years old. I remember this specifically because I was informed that when Olga tried to intervene, John turned his anger towards her.

1126. RC's handwritten history dated 21 June 2017 records the following: "violent father"; "moved home; father stalking"; "previous marriages → other half siblings have AVO on father"; "John – violent – kicked, bruised; age 10-13; threats, punched on several occasions, bloody nose on several; hit - numerous occasions elbowed occasions; he assaults Jack as gets drunk"; "father – alcohol - violent – controlling".

1127. RC said this about his next session with Jack:

> On the 26th of June 2017, I had another therapy session with Jack. During this session I discussed that the domestic violence towards Jack was escalating prior to Jack, his sister and Olga moving away from John. I remember that the rest of the family had split with John in 2016 however I do not recall what date this was. This was all that was said in relation to family violence in this session and the rest of the conversation was focussed around other topics, such as school attendance.

1128. RC diagnosed Jack as follows:

> From what Jack had told me, I made the opinion as a psychologist that Jack was displaying an addiction due to his relationship with John. By this I mean that Jack was using his on-screen time as an avoidance technique, helping him to avoid the reality of his life situation, including the situation with his father. I believe this had been bought on by the physical abuse he had received at the hands of John and I believe that Jack's school attendance was also related to this same issue. Furthermore, due to the domestic violence related issues being exhibited by Jack, I suggested that Jack come and see me through "Victim Services" which is a part of the Attorney General's office.

1129. RC gave the following evidence concerning his mandatory reporting obligations:

> Q. So what is your understanding of your obligations as a psychologist in terms of reporting concerns you might have about a child at risk?
>
> A. I understand that I need to report if a child's been harmed or there is a risk - a threat of harm.
>
> Q. Sorry, I missed the last bit. If there are at risk of harm or a threat of harm, is that what you said?

A. “Threat”. I said “threat”.

Q. A threat of harm.

A. But risk as well, yes.

Q. And did you have that understanding in 2017 when you were seeing Jack Edwards?

A. I didn’t feel like there was an immediate threat, no.

Q. I - I'll just break down the question. I'm just trying to understand what your understanding was in 2017 of your obligations--

A. Okay.

Q. --you’ve given evidence that you understood your obligation as a psychologist was to report if you understood a child was at - there was a threat of harm to a child, correct?

A. My understanding is not - was not as good then as it is now.

Q. So are you able to isolate what your understanding was at the time as to when you were required to report concerns about risk in respect of a child?

A. I thought if there was a risk of harm or a threat of harm, that I was to report.

Q. So that’s what you thought in 2017?

A. Yes.

Q. Did you turn your mind in this case to whether that benchmark had been reached in relation to Jack Edwards?

A. I - I can't remember.

Q. So you may have turned your mind to it but you can’t remember?

A. Yes.

Q. Isn’t it the case that given what Jack Edwards had described to you, that you believed, firstly, that he had been physically assaulted by his father in the past?

A. Yes.

Q. And you formed the view that the nature of those assaults were serious from your perspective?

A. Yes. Yes.

Q. And you knew that Jack and Olga feared that they were being stalked by John?

A. They thought they may be.

Q. And you knew that they were currently keeping their address secret from John?

A. Yes.

Q. Did you form the view based on all of those things you knew at the time, that Jack was at risk of harm from his father, given those matters?

A. Yes.

Q. And you agree that he - you were of the view that he was at risk of being physically assaulted by his father going forward?

A. I wasn't sure.

Q. Well, you agreed he was at risk. What - what was the risk you thought he faced from his father?

A. I thought that as long as they were separated, that every - the violence had been contained.

Q. So did you turn your mind to the fact that they were living physically separate from John and that their address was secret?

A. Yes.

Q. Did you turn your mind to the nature of the risk given that they feared they were being stalked which would suggest John in fact knew where they lived?

A. No, I didn't.

Q. Do you agree that in hindsight, the information that you were told was such that you should have reported to FACS that Jack was a risk, a child at risk, of significant harm?

A. Yes.

1130. Counsel assisting have submitted that, as was the case with RS, it was not unreasonable for RC to conclude that there was no current risk of significant harm to the children as they were not living with John and as far as he was aware, their address was not known to him. RC presented as a thoughtful witness and his concession that, in hindsight, he should have reported to FaCS that Jack was at risk of significant harm, was candid and appropriate.

1131. I agree with counsel assisting that it is regrettable that RC did not form the view at the time that John's stalking undermined the very factor that he relied upon to satisfy himself that there was no concern (namely, that Olga and the children's address was a secret). However, I am satisfied that counsel assisting have properly characterised RC's error as

an error of judgment, rather than a failure of duty. RC's evidence was to the effect that he understood his mandatory reporting obligations, but misinterpreted the significance of certain aspects of the factual matrix. I am also satisfied that any failing on RC's part in relation to his mandatory reporting obligations is unlikely to have had a material consequence, because detailed notices of risk had already been filed in the family law proceedings and sent to FaCS, including a notice of risk filed by Olga on 2 June 2017, which specifically identified as a point of concern the incident where John stalked Olga at yoga.

G. FORMAL FINDINGS, RECOMMENDATIONS AND CONCLUDING REMARKS

Findings required by s. 81(1) of the Coroners Act

1132. Having considered the documentary evidence and the oral evidence heard at the inquest, I make the following findings in relation to the death of Jennifer Edwards:

Identity of deceased

The deceased person was Jennifer Edwards (date of birth 14 August 2004)

Date of death

Jennifer died on 5 July 2018 at approximately 5:00pm

Place of death

Jennifer died at her home at 107 Hull Road, West Pennant Hills

Cause of death

Multiple gunshot wounds to the head, chest, abdomen and extremities

Manner of death

Jennifer died from traumatic injuries after being shot with a Glock 17A pistol by her father John Edwards

1133. Having considered the documentary evidence and the oral evidence heard at the inquest, I make the following findings in relation to the death of Jack Edwards:

Identity of deceased

The deceased person was Jack Edwards (date of birth 12 September 2002)

Date of death

Jack died on 5 July 2018 at approximately 5:00pm

Place of death

Jack died at his home at 107 Hull Road, West Pennant Hills.

Cause of death

Multiple gunshot wounds to the chest

Manner of death

Jack died from traumatic injuries after being shot with a Glock 17A pistol by his father John Edwards

1134. Having considered the documentary evidence and the oral evidence heard at the inquest, I make the following findings in relation to the death of John Edwards:

Identity of deceased

The deceased person was John Edwards (date of birth 12 July 1950)

Date of death

John died on 5 July 2018, shortly after 6:00pm

Place of death

John died in his home at 33A Harris Road, Normanhurst

Cause of death

Single gunshot wound to the head

Manner of death

John died from injuries suffered as a result of a self-inflicted gunshot wound using a .357 Magnum Smith & Wesson revolver

Recommendations pursuant to s. 82 of the Coroners Act

1135. When an incident such as this occurs, it is important to identify and implement reforms in order to prevent future harm. I acknowledge that the tragic events of 5 July 2018 have been the catalyst for significant practical reform, particularly by the Firearms Registry. I hope that the families of Jack, Jennifer, John and Olga are able to find some comfort in relation to this response. However, notwithstanding the changes already made, the coronial investigation process has identified areas still in need of improvement.

1136. Accordingly, I make the following recommendations in this inquest:

Recommendation 1: That the NSW Police Force take steps to ensure that operational police are aware of the inherent dangers in recording pre-emptive approaches to police in the context of family law proceedings in the COPS database, and of the requirement set out in the Domestic Violence Standard Operating Procedures to record such approaches with appropriate caveats.

Recommendation 2a: That the NSW Police Force continue to prioritise the inclusion of training modules related to domestic violence and the DVSOPs in annual Mandatory Continuing Police Education training packages.

Recommendation 2b: That the NSW Police Force give consideration to the development of a mandatory training package targeted at general duties constables in relation to the DVSOPs and use of the Domestic Violence Safety Assessment Tool.

Recommendation 3: That the NSW Police Force give consideration to implementing an annual, comprehensive audit process of officer compliance with the DVSOPs, which includes the results of 'dip sampling' conducted by Domestic Violence Officers in each Police Area Command. The results of the audit should be published and should include information as to any material variations or trends between Police Area Commands, and measures that will be taken to resolve any concerns.

Recommendation 4: That the NSW Police Force amend the DVSOPs to give significantly greater prominence (and at a much earlier point in the document) to the warning as to the existence of family law proceedings that appears in the "Domestic Violence and Family Law" chapter.

Recommendation 5: That the NSW Police Force develop and deliver a mandatory training module for shift supervisors in relation to the verification of incidents of domestic violence in COPS, including the application of the Supervisor's DV Checklist annexed to the DVSOPs.

Recommendation 6: That the NSW Government take steps to update the list of prescribed offences in cl. 5 of the Firearms Regulation 2017 to include any personal violence offences or domestic violence offences defined in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW).

Recommendation 7: That the NSW Firearms Registry clarify its systems so that it is obvious to an adjudicator that an applicant may have made an earlier false or misleading application.

Recommendation 8: That the NSW Firearms Registry provide additional training in relation to the protocol that must be followed where an applicant may have made an earlier false or misleading application.

Recommendation 9: That the NSW Government take steps to remove the language "other than an order that has been revoked" in s. 11(5)(c) of the *Firearms Act 1996* (NSW).

Recommendation 10: That the Adjudication Decision-Making Tool used by the Firearms Registry be updated to include improved, and more specific, guidance in relation to domestic violence.

Recommendation 11: That the Adjudication Decision-Making Tool used by the Firearms Registry be updated to include review of any Domestic Violence Safety Assessment Tool attached to a COPS Event involving an applicant for a permit or licence.

Recommendation 12: That the Firearms Registry conduct regular training to ensure that all adjudicators who exercise delegated functions under the statutory scheme have knowledge and awareness of issues related to domestic and family violence, including knowledge around separation risks, risk of future violence, non-physical domestic violence behaviours and review of the Domestic Violence Safety Assessment Tool.

Recommendation 13: That the NSW Police Force and the Firearms Registry standardise and clarify the questions in all Firearms Registry application forms that relate to the disclosure of orders in family law proceedings to which an applicant is subject or has been subject in the last 10 years.

Recommendation 14: That the NSW Police Force and the Firearms Registry continue to liaise with representatives of the Federal Circuit Court and Family Court of Australia with the view to the Firearms Registry implementing a mechanism by which information provided by applicants relating to family law proceedings in the P650, P634 and P561 forms is able to be verified.

Recommendation 15: That the NSW Police Force and the Firearms Registry continue to liaise with representatives of the Federal Circuit Court and Family Court of Australia with the view to the NSW Police Force implementing a system to ensure that when any the following occur in family law proceedings (together "a federal DV event"):

> (a) a Notice of Risk is filed in the Federal Circuit Court that discloses domestic or family violence, or child abuse;
>
> (b) a Notice of Child Abuse, Family Violence or Risk of Family Violence is filed in the Family Court of Australia; or
>
> (c) a federal family law court imposes an injunction relating to the protection of a spouse or child;

the relevant federal family law court notifies the NSW Police Force, and the federal DV event is recorded in COPS by the NSW Police Force in a way that makes it readily apparent to an adjudicator at the Firearms Registry.

Recommendation 16: That the NSW Government take steps to amend the regulatory regime in relation to firearms licensing so that the occurrence of a federal DV event (as defined in Recommendation 15) gives rise to:

(a) a suspension of the processing of a licence application or of an existing licence; and

(b) consideration as to whether the information relating to the federal DV event has any bearing on the suitability of the applicant or licence holder pursuant to s. 11 of the *Firearms Act 1996* (NSW).

Recommendation 17: That the NSW Government take steps to amend the regulatory regime in relation to firearms licensing so that where the NSW Police Force is notified of a federal DV event (as defined in Recommendation 15) in relation to a person who is either an applicant for a firearms licence or permit, or the holder of a firearms licence or permit, the NSW Police Force or the Firearms Registry must automatically notify the relevant federal family law court of that fact (so that the court will inform the parties of the application or current licence).

Recommendation 18: That the NSW Government take steps to amend the regulatory scheme in relation to firearms licensing so that a person engaged in family law proceedings is required to disclose this to the Firearms Registry when applying for a firearms licence or permit.

Recommendation 19: That the Adjudication Decision-Making Tool used by the Firearms Registry be amended to require that adjudicators take into account any available information as to whether family law proceedings are on foot and consider the implications of this for risks that may be posed by an applicant.

Recommendation 20: That the NSW Government take steps to revoke the use of the P650 form (which currently allows an unlicensed person to undergo firearms training without involvement or vetting by the Firearms Registry), with the view to amending cl. 129 of the Firearms Regulation 2017 and implementing an alternative scheme which provides for adequate verification of information and oversight by the Firearms Registry.

Recommendation 21: That the NSW Government take steps to implement a regulatory change under which gun clubs are under an obligation to inform the Firearms Registry if they have refused a person membership, and the reasons for that refusal.

Recommendation 22a: That the NSW Government take steps to amend cl. 101 of the Firearms Regulation 2017 to impose the mandatory reporting obligation therein on any type of gun club (not only a pistol club).

Recommendation 22b: That the Firearms Registry undertake consultation with industry stakeholders and the NSW Government with the view to lowering the reporting threshold in c. 101 of the Firearms Regulation 2017 from the current test of "may pose a threat to public safety (or a threat to the person's own safety) if in possession of a firearm", to include a situation where the club has concerns in relation to risk posed by a prospective or current member, and developing appropriate parameters to assist in assessing any such risk.

Recommendation 23: That the Firearms Registry undertake research and analysis in relation to the likely impact of a regulatory change to confer on gun clubs and other commercial safe storage providers the power to refuse to allow a person to access or remove guns if that club or provider has any concerns about risk posed by that person.

Recommendation 24: That the Office of the Legal Services Commissioner investigate whether any disciplinary action ought to be taken against Ms Debbie Morton in connection with any aspect of her role as the ICL in the family law proceedings between John and Olga Edwards, including in relation to the matters set out at paragraphs [866] to [905], [1005] to [1008], [1009] to [1039], and [1073] to [1088] of Section F of these findings.

The death of Olga Edwards

1137. The circumstances of Olga Edwards' death were not the subject of this inquest. Nevertheless, it is appropriate that her tragic passing is acknowledged in these findings.

1138. Olga died at her home in Hull Road, West Pennant Hills on 12 December 2018, where she had continued to reside alone following the deaths of Jack and Jennifer, aside from periods when her mother visited from Russia.

1139. A separate coronial investigation, diligently undertaken by Constable Lee Ryan, conclusively indicated that Olga had taken her own life. As there were no related systemic issues connected to her death it was not necessary for an inquest to be held.

1140. Whilst Olga made every effort to overcome the tragic and unbearable loss of her children, she was not able to envisage a life without them. Whilst the immediate cause of her death is clear, it is important to acknowledge that it occurred against a background of sustained domestic and family abuse, and in the aftermath of a violent crime perpetrated by the father of her two beloved children.

Concluding Remarks

1141. It is difficult to imagine the pain that Olga felt when she returned home from work on 5 July 2018 to find police at her home and that her two children, whom she loved dearly, had been killed. This moment was the crystallisation of the fear she had harboured as a victim of domestic abuse, as the mother of two children who had been the victims of domestic violence at the hands of their father, and as a wife and mother involved in protracted, acrimonious family law proceedings.

1142. Evidence at the inquest highlighted that Olga, Jack and Jennifer disclosed their experiences of violence and abuse perpetrated by John to multiple agencies, entities, and professionals in the police and within the family law system. Sadly, none were able to effectively mobilise to protect Jack, Jennifer, or Olga. Similarly, the regulatory framework did not prevent John from obtaining firearms licences, lawfully purchasing firearms, or from meticulously planning, and carrying out, the killing of his children.

1143. The deaths of Jack and Jennifer are an unimaginable loss. It is most distressing that they were both lost at such a young age, with their potential still unfulfilled, and in such violent circumstances. It is common within this jurisdiction to describe such deaths as a tragedy. It is unquestionable that their deaths, and the subsequent death of Olga, have caused unbearable suffering for many family, friends, and all those whose lives they touched. However, to describe this as a tragedy is to import a sense of inevitability, that nothing could have been done to change the outcome. Instead, the evidence before this Court plainly reveals that the deaths of Jack and Jennifer Edwards were preventable.

Acknowledgments

1144. I wish to thank all those involved in the coronial investigation into these deaths. In particular, I acknowledge the meticulous and independent police investigation, led by Detective Sergeant Tara Phillips and assisted by Detective Inspector Glyndwr Baker, Sergeant Kerry Barnard, Detective Senior Constable Scott Tindale, Detective Senior Constable Sezgin Ugur, Senior Constable Michael Dimech, Senior Constable James Gunther, Plain Senior Constable Chloe Best, Plain Clothes Senior Constable Simon Elliott and Senior Constable Andrew Campbell. This was a complex undertaking that necessarily scrutinised the actions of a number of police officers and was conducted with unwavering commitment and integrity.

1145. I also convey my gratitude to the legal representatives of the interested parties for their assistance and for the sensitivity they have shown in what has been a particularly distressing matter. At the commencement of the inquest, senior counsel for the Commissioner of Police conveyed an apology to the family on behalf of the Commissioner. Sergeant Ronning also directly addressed the Edwards family at the conclusion of his evidence to express his condolences, and recognise the loss and trauma they have suffered. This gesture exemplified the therapeutic purpose that lies at the heart of this jurisdiction and I commend him for his courage.

1146. Throughout the conduct of this inquest and in preparing these findings I have been afforded the invaluable assistance of counsel assisting Ms Kate Richardson SC and Mr Christopher Mitchell, and their instructing solicitors, Ms Jennifer Hoy, Mr James Pender and Ms Emily Azar of the NSW Crown Solicitor's Office. I am grateful to each of them for the dedication, professionalism and compassion that they brought to their roles during this very complex inquest.

1147. Finally, I wish to recognise the extraordinary grace and dignity displayed by many of the ex-partners of John Edwards and their children during their participation in the coronial process, notwithstanding how difficult it must have been to engage with the nature and scope of the evidence that was given over several weeks of hearing. Some family attended the hearings in person, whilst others participated remotely from various locations in Australia and Europe, in light of the restrictions in place due to the COVID-19 pandemic. At the conclusion of the evidence in September 2020, family members spoke movingly about the effect that the deaths of Olga and the children have had on their families, and their desire for these circumstances to prompt changes that will prevent the possibility of other similarly tragic deaths.

1148. On behalf of the Coroners Court of NSW and the assisting team, I offer my deepest sympathy and respectful condolences to the families of Jack, Jennifer, John and Olga, and to their many friends for this heartbreaking loss.

1149. I close this inquest.

Magistrate Teresa O'Sullivan
State Coroner
Coroners Court of New South Wales, Lidcombe

Date: 7 April 2021

ANNEXURE A: LIST OF ISSUES

Section 81 of the *Coroners Act 2009*

1. Determination of the statutory findings required under section 81 of the *Coroners Act 2009*, including as to manner and cause of death.

Police officers dealing with the Edwards family in 2016-2017

The COPS database

2. In 2016/2017, what training did police receive in the use of the Computerised Operational Policing System (**COPS**) database?

3. What training do police presently receive in the use of the COPS database?

Creating and verifying COPS entries

4. In 2016/2017, what policies, procedures and/or guidelines existed for creating and verifying a COPS event concerning an allegation of domestic violence?

5. What policies, procedures and/or guidelines presently exist for creating and verifying a COPS event concerning an allegation of domestic violence?

Searching the COPS database

6. In 2016/2017, what policies, procedures and/or guidelines applied when a police officer searched COPS for a party against whom an allegation is made?

7. What policies, procedures and/or guidelines presently apply when a police officer searched COPS for a party against whom an allegation is made?

The role of the Domestic Violence Liaison Officer

8. As at 2016/2017, what was the role of a Domestic Violence Liaison Officer?

9. As at 2016/2017, what policies, procedures or guidelines applied, or what other avenues were available, to a Domestic Violence Liaison Officer who disagreed with how a police officer dealt with a situation or recorded a COPS event?

10. Has the role of a Domestic Violence Liaison Officer, or any of the policies, procedures or

guidelines relevant to the role of a Domestic Violence Liaison Officer, changed since 2016/2017, and if so how?

COPS Event E61423616

11. Was COPS event E61423626 created, recorded and verified appropriately taking into account all policies, procedures and guidelines in place in 2016/2017?

12. If COPS event E61423626 was not created, recorded and verified appropriately taking into account all policies, procedures and guidelines in place in 2016/2017:

a. what additional information, if any, should have been obtained;

b. what additional investigation, if any, should have been carried out;

c. how should the event have been recorded in COPS;

d. how should the verification process have been carried out; and

e. what, if anything, would have occurred differently as a result of appropriately creating, recording and verifying the event.

13. How would COPS event E61423626 be created, recorded and verified taking into account all current legislation, policies, procedures and guidelines?

COPS Event E62494070

14. Was COPS event E62494070 created, recorded and verified appropriately taking into account all policies, procedures and guidelines in place in 2016/2017?

15. If COPS event E62494070 was not created, recorded and verified appropriately taking into account all policies, procedures and guidelines in place in 2016/2017:

a. what additional information, if any, should have been obtained;

b. what additional investigation, if any, should have been carried out;

c. how should the event have been recorded in COPS;

d. how should the verification process have been carried out; and

e. what, if anything, would have occurred differently as a result of appropriately creating, recording and verifying the event.

16. How would COPS event E62494070 be created, recorded and verified taking into account all current legislation, policies, procedures and guidelines?

COPS Event E64217768

17. Was COPS event E64217768 created, recorded and verified appropriately taking into account all policies, procedures and guidelines in place in 2016/2017?

18. If COPS event E64217768 was not created, recorded and verified appropriately taking into account all policies, procedures and guidelines in place in 2016/2017:

a. what additional information, if any, should have been obtained;

b. what additional investigation, if any, should have been carried out;

c. how should the event have been recorded in COPS;

d. how should the verification process have been carried out; and

e. what, if anything, would have occurred differently as a result of appropriately creating, recording and verifying the event.

19. How would COPS event E64217768 be created, recorded and verified taking into account all current legislation, policies, procedures and guidelines?

Firearms Registry

2010 application for a firearms licence

20. Did John Edwards make a false or misleading statement in his 2010 application for a firearms licence?

21. If John Edwards did make a false or misleading statement in his 2010 application, what actions should Firearms Registry officers have taken in or about 2010 after that licence application was refused?

22. Were the circumstances of the refusal of the 2010 application recorded in Firearms Registry databases (such that those circumstances would be apparent to Firearms

Registry officers who assessed later applications)?

P650

23. Are the requirements of section 6B of the *Firearms Act 1996* and the P650 form (allowing an unlicensed person to undergo a firearms training without involvement from the Firearms Registry in certain circumstances) appropriate?

Commissioner's Permits (allowing safety training by unlicensed persons)

24. When determining whether John Edwards ought to be granted Commissioner's Permits to allow him to participate in firearms training prior to being licensed, did Firearms Registry officers have access to adequate information?

25. Should John Edwards have been granted two Commissioner's Permits in March 2017 to allow him to participate in firearms training in respect of rifles and pistols while unlicensed?

26. Should John Edwards have been granted an amended Commissioner's Permit in May 2017 to change the location of the pistol firearms training from Ku Ring Gai Pistol Club to St Marys Pistol Club?

27. Was the regulatory regime and/or Firearm Registry policy that was in place in 2017 governing the grant of Commissioner's Permits appropriate?

28. Is the current regulatory regime and/or Firearm Registry policy governing the grant of Commissioner's Permits (now known as 'General Permits') appropriate?

Firearms licensing

29. Did John Edwards have an applicable Genuine Reason for requiring a pistol licence and, separately, a rifle licence?

30. Did John Edwards have 'special need' to possess or use a pistol?

31. When determining whether John Edwards ought to be granted firearms licences in accordance with the requirements of the *Firearms Act 1996,* was the scope and nature of information that Firearms Registry officers had access to adequate?

32. Was the grant of rifle and pistol licences to John Edwards in 2017 consistent with the requirements of the *Firearms Act 1996*?

33. Was the training that Firearms Registry officers had (in terms of adjudicating applications for firearms licences) adequate?

Guns Clubs

Safety training

34. Are the arrangements under section 6B of the *Firearms Act 1996* and the P650 form (allowing an unlicensed person to undergo a firearms training at a gun club without involvement from the Firearms Registry in certain circumstances) appropriate?

Obtaining membership

35. What are the obligations on gun clubs to inform the Firearm Registry if they have refused a person membership?

36. What are the obligations on gun clubs to inform the Firearm Registry if they have concerns about a person who has sought, or obtained, membership?

37. Are regulations governing obligations on gun clubs to inform the Firearm Registry about risks or concerns in relation to a prospective or current member appropriate, and if not, how should they be changed?

38. What are the obligations on gun clubs to inform other gun clubs if they have refused a person membership or otherwise have concerns about a person who has sought, or obtained, membership?

39. Are regulations governing the obligations (if any) of a gun club to provide information to other guns clubs appropriate, and if not, how should they be changed?

40. Should applicants for membership of a gun club be required to inform the club whether they have previously been refused membership of another club?

41. Should John Edwards have been granted membership of the St Marys Pistol Club?

Removal of firearms from gun clubs

42. What regulations govern the circumstances in which a person (whose Safe Storage Address for a firearm is a locker at a gun club) may collect that firearm and remove it from the premises?

43. What guidelines or rules at St Marys Pistol Club governed the circumstances in which a person whose Safe Storage Address for a firearm was a locker at that Club may collect that firearm and remove it from the premises?

44. What were the circumstances in which John Edwards was allowed to collect 2 pistols from a gun locker St Marys Pistol Club on 4 July 2018 and remove them from the premises?

45. What regulations, guidelines or rules ought to govern the circumstances in which a person whose Safe Storage Address for a firearm is a locker at a gun club may collect that firearm and remove it from the premises?

Family Law proceedings, firearms and concerns regarding risk

Licensing

46. Should there be information sharing between the federal Family Court and State firearms licensing authorities in relation to allegations of family violence and/or family law court orders or injunctions?

47. Should a person engaged in Family Court proceedings be required to disclose this to the Firearms Registry when applying for a firearms licence?

48. Is it appropriate that a person engaged in Family Court proceedings be informed that their partner/ex-partner has made an application for a firearms licence? Would such a requirement be practicable?

49. Where a person has made an application for a firearms licence, should the partner/ex-partner of that person be interviewed (or be asked to provide information) as part of the application process? Would such a requirement practicable?

Persons involved in Family Court proceedings to whom risks are disclosed

50. Where the Family Court has either ordered (or noted in court orders) that a family will undergo therapy while the proceedings are on foot, what is the role of the family therapist vis-a-via the Court; particularly where allegations of risk to children are raised during that therapy?

51. What is the proper role of an Independent Children's Lawyer in terms of gathering information and forming a view about what is in a child's best interests, particularly where there are allegations of violence and potential risks to a child?

52. What are the obligations of an Independent Children's Lawyer in terms of receiving information from, and taking into account information provided by, other persons connected to Family Court proceedings (for example, from a family therapist or a Family Report writer engaged by the Court)?

53. What is the proper role of an Independent Children's Lawyer where concerns are raised by other persons connected to Family Court proceedings about risks to a child? In particular, is an Independent Children's Lawyer required to disclose to the Court that other persons connected to Family Court proceedings have concerns regarding risk?

54. Was the Independent Children's Lawyer in the Family Court proceedings between Olga and John Edwards informed by others about concerns regarding risks to Jack and Jennifer Edwards?

55. If the Independent Children's Lawyer in the Family Court proceedings between Olga and John Edwards was so informed, did she properly take into account, and inform the Court of, those concerns regarding risks to Jack and Jennifer Edwards?