



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

<b>Inquest:</b>	Inquest into the death of Mr Stanley Leonard Russell
<b>Hearing dates:</b>	21 November 2022 - 2 December 2022
<b>Date of findings:</b>	14 April 2023
<b>Place of findings:</b>	NSW State Coroner's Court, Lidcombe
<b>Findings of:</b>	<b>Deputy State Coroner Carmel Forbes</b>
<b>File number:</b>	2021/319041
<b>Catchwords</b>	CORONIAL LAW-manner of death-death in the course of a police operation-police executing a bench arrest warrant-planning and risk assessment - discharges of firearm by police-requirement for wearing and activating body warn cameras
<b>Representation:</b>	<p>Dr K Stern SC with Ms N Wootton, Counsel Assisting, instructed by Ms E Trovato, and Ms B Clark, Crown Solicitor's Office</p> <p>Mr R Wilson SC instructed by Ms C Tawagi of NSW Legal Aid Commission for Mr Russell's parents, Helen and Edward 'Ted' Russell</p> <p>Ms S Callan SC instructed by Mr S Robinson of NSW Office of General Counsel for The Commissioner of Police and the New South Wales Police Force and Senior Constable Adam Bodkin and Leading Senior Constable Aaron Prior.</p>

	<p>Ms H Donaldson of the Aboriginal Legal Services representing Mr Russell’s partner Mavis ‘Vickey’ Fernando</p> <p>Mr A Jobe of the Department of Communities and Justice representing New South Wales Corrective Services</p> <p>Mr P Madden representing Constable A Asprec, Constable M Challenger, instructed by Mr K Madden</p>
<p><b>Findings:</b></p>	<p><b><i>Identity</i></b></p> <p>The person who died was Stanley Russell</p> <p><b><i>Date of death</i></b></p> <p>Mr Russell died on 9 November 2021</p> <p><b><i>Place of death</i></b></p> <p>Mr Russell died at 10 Bulah Way, Seven Hills, NSW</p> <p><b><i>Cause of death</i></b></p> <p>Mr Russell died as a result of a gunshot wound to the chest</p> <p><b><i>Manner of Death</i></b></p> <p>Mr Russell died during the course of a NSW police operation</p>
<p><b>Recommendations:</b></p>	<p><b>To the New South Wales Commissioner of Police:</b></p> <p>1. Consideration be given by the NSWPF to updating the wording of the BWV Standard Operating Procedures Version 2.4 to make clear to officers of the NSWPF:</p> <ul style="list-style-type: none"> <li>(i) when they are required to turn their BWV on to recording (as compared to turning on to standby mode);</li> <li>(ii) the scope of their discretion not to record on BWV when their activities otherwise fall within the scope of “When to Use BWV” identified on page 7 of the BWV Standard Operating Procedures.</li> </ul>

	<p>2. Consideration be given by the NSW Police Force to ensuring that that in Blacktown (and other communities with high populations of First Nations people):</p> <ul style="list-style-type: none"><li>(i) there is an Aboriginal Community Liaison Officer (ACLO) engaged at the relevant Police Area Command (PAC) or Police District (PD);</li><li>(ii) that the police within the relevant PAC or PD be required to complete a training module on aboriginal cultural competency; and</li><li>(iii) that any such cultural competency training includes specific training on the role of an ACLO and the ways in which an ACLO can assist an officer undertaking general duties in respect of First Nations people.</li></ul> <p>3. Consideration should be given by the NSW Police Force to:</p> <ul style="list-style-type: none"><li>(i) identifying appropriate ways for ACLOs to be involved prior to the execution of arrest warrants on First Nations people; and</li><li>(ii) specifying the ways identified in accordance with recommendation 3(i) in the role description of ACLOs, the training given to ACLOs, and training given to other officers in the NSW Police Force as to the role of ACLOs.</li></ul> <p>4. Consideration be given to introducing a policy or standard operating procedure requiring that:</p> <ul style="list-style-type: none"><li>(i) officers who suspect that a person may be suffering from an intellectual disability make a record of that in COPS against the individual's COPS profile.</li><li>(ii) before seeking to execute a bench warrant by entering the home of a person identified on the COPS database, or otherwise known to police officers, as possibly suffering from an intellectual disability or mental health issues, officers consider:</li></ul>
--	--

- a. available warnings and available information to ascertain the person's mental health issues, intellectual disability, and specific vulnerabilities.
- b. available information suggesting a history of self-harm, increased risk of violence or the use of weapons.

(iii) the information set out in (i) and (ii) above be taken into account in deciding whether or not to execute a bench warrant by entering a person's home to attempt to locate them, and if it is decided to attempt to effect an arrest, in planning how best to undertake an operation to arrest the person to minimise the risk of harm to the person, the police and the public; and

(iv) other than in circumstances of urgency, the NSWPF consider alternatives to arrest as a means of executing a bench warrant where there is any indication that the person of interest has an intellectual disability, and that in such circumstances the NSWPF shall attempt to contact the person directly and indirectly, and to identify if there is a means of liaising with the individual, to encourage voluntary attendance at a police station by the person of interest and to elicit information relevant to the potential risk to the person, the public, or to police arising from any attempt to execute the warrant.

5. Consideration be given to the NSWPF working with the Justice Advocacy Service to introduce a procedure whereby if the Justice Advocacy Service (**JAS**), or other similar advocacy service on behalf of persons with an intellectual disability, has notified the NSWPF that they are involved in a case or as regards a person of interest, the NSWPF shall contact JAS, or that other service, before undertaking an operation to execute a bench warrant:

- (i) to ascertain whether JAS, or the other service, can attempt to contact the person of interest to attempt to

persuade the person to attend a police station or court voluntarily; and

- (ii) to seek information from JAS, or the other service, as to any vulnerability or disability that may be relevant to the execution of the warrant.

**To the NSW Commissioner of Police and the Aboriginal Legal Service**

6. That the NSW Police Commissioner and the Aboriginal Legal Service consider jointly developing a procedure for the execution of bench warrants on Aboriginal and Torres Strait Islander defendants which encourages defendants to hand themselves in to the police and/or to the court and which involves:

- (i) the NSWPF, nominating a fixed period of time (to be determined as part of the policy and procedure) during which police will postpone execution of the warrant for the purpose of enabling the steps set out below to take place, with a view, if possible, to facilitating voluntary presentation by the person the subject of the warrant to a police station or court; and

- (ii) mandatory notification by the NSWPF to the Aboriginal Legal Service within a fixed period of time of receiving the warrant:

- a. of the fact that a warrant has been received; and

- b. nominating a police officer as a contact for the warrant.

- (iii) by the Aboriginal Legal Service, either directly or by referral to other services or persons, upon receipt of a notification by the NSWPF, seeking to communicate directly or indirectly with the person the subject of the warrant and seeking to advise about and support them in handing themselves into the police or a court, preferably by appointment;

- (iii) by the NSWPF, *additionally*, using ACLOs engaged by the NSWPF to attempt to communicate directly or indirectly

	<p>with the person the subject of the warrant to seek to encourage and support them to hand themselves into the police or a court, preferably by appointment and providing information about appropriate legal and support services to advise and assist in that process.</p> <p>(iv) by the NSWPF, to establish clearly defined circumstances in which the notification requirement and the fixed period of time as set out in (i) above may be dispensed with; and</p> <p>(v) That any protocol that is developed be called the Stanley Protocol.</p>
<b>Non-Publication Orders:</b>	<p>Orders for non-publication have been made in this inquest. The Orders may be found on the Registry file.</p>

## Introduction

1. This is an inquest into the tragic death of Mr Stanley Russell.
2. A bench warrant for Mr Russell's arrest was issued by Newtown Local Court on 5 October 2021. On 9 November 2021, police attended his house to execute that warrant. During a search of the house, the police came upon him in the garage area where he had armed himself with an axe and a knife. During the course of that confrontation, police shot and killed him.
3. Section 23 of the *Coroners Act 2009 (NSW)* ("the Act") requires a coroner to hold an inquest in circumstances where it appears that a person has died as a result of a police operation. In this case Mr Russell's death was clearly as a result of a police operation.
4. The role of a coroner, as set out in s. 81 of the Act is to make findings as to the:
  - a. identity of the deceased.
  - b. the date and place of their death.
  - c. the physical or medical cause of their death.
  - d. the manner of their death, in other words, the circumstances surrounding the death.
5. This inquest is a mandatory public examination of the circumstances surrounding Mr Russell's death. A thorough and detailed account has been provided during the inquest with a particular view as to whether there are any lessons that could be learned to try and prevent a similar situation occurring again in the future. Section 82 of the Act empowers this Court to make recommendations as are considered desirable in relation to any matter connected to the death.
6. In 2022, there were at least 15 deaths during police operations in New South Wales. It is important that any steps that might mitigate the risk to both police and the targets of those operations, are carefully and seriously considered with a view to learning from the past and hopefully reducing these numbers in the future.
7. Pursuant to section 37 of the Act, a summary of the details of this case will be reported to Parliament.

## Mr Stanley Russell

8. Mr Russell was born on 22 May 1976; he was 45 years old at the time of his death. He was a son to his loving parents, Edward (“Ted”), and Helen Russell, who live in Walgett. His lifetime partner is Ms Vicky Fernando. His sons are Christopher, Edward, Victor and Michael. His daughters are June and Sharnice. Mr Russell had nine young grandchildren. Some of these grandchildren attended Court to express how much they loved him and miss him.
9. Mr Russell had one brother, Edward (“Eddie”). When Mr Russell was young his family lived at Gingie Reserve, which is about 10 kilometres out of Walgett. The two brothers were very close and had a happy childhood growing up in a loving extended family.
10. Mr Russell completed school up to year 6. He had learning difficulties at school that were never resolved. A 2019 neuropsychology assessment concluded that Mr Russell performed in the extremely low range of intellectual functioning (0.4th percentile). His impairments were consistent with DSM-V criteria for mild intellectual disability.<sup>1</sup>
11. Mr Russell loved listening to Archie Roach and also loved to sing along.
12. As a young boy, Mr Russell was a talented sportsman. He played rugby league for the Walgett Dragons. Not long before he died, he disclosed to his family that he had been sexually abused by the coach of that team. In 2020, the coach died while he was in custody awaiting trial for 139 charges of child sexual abuse of children in many towns, including Walgett.<sup>2</sup>
13. At the time of the abuse his parents had noticed a change. He had become distant. It wasn’t until he told them all those years later that they were able to appreciate the pain and trauma that it had caused him throughout his life.
14. In 1999, his brother Eddie died by suicide in custody at Long Bay Gaol. Eddie had been apprehended by police in 1993. In 2001, the New South Wales Anti-Discrimination Tribunal found that the NSW Police Force and 9 individual officers unlawfully discriminated against and unlawfully vilified him when carrying out his apprehension in 1993.<sup>3</sup>
15. Mr Russell struggled with drug addiction. He reported to the NSW Drug Health Service that he commenced alcohol and cannabis use at the age of 13, heroin at the age of 16, cocaine at

---

<sup>1</sup> Exhibit 1 Tab 175 Annexure (a)

<sup>2</sup> Family statement of Helen and Ted Russell

<sup>3</sup> Russell v Commissioner of Police, NSW Police Service and Nine Individual Police Officers [2001] NSWADT32



the age of 20, and amphetamines at the age of 3. For many years he had participated in different opiate substitution programmes.<sup>4</sup>

16. He is also reported to have suffered from depression, anxiety and increased substance use after Eddie's death. In 2012, he was interviewed by a Justice Health nurse who reported that he became emotional during the interview while talking about his brother and that he stated that he used drugs every day since his brother had left him.<sup>5</sup>
17. In 2013 a psychiatric assessment was conducted while Mr Russell was in custody. He told the doctor that he believed the prison officers had hung his brother rather than it being a suicide. There was no available evidence to support this notion, however it is significant as it is what he believed occurred and influenced Mr Russell's fear of going into custody.
18. He also reported to that doctor that a few years prior, while he was in the Mannus Correctional Centre, he was awoken by the riot squad in ski masks who put their hands over his mouth. He told the doctor that he regularly relived this experience.
19. During a mental health assessment in 2015 Mr Russell told the nurse that he had attempted suicide in 2001 and being in gaol and the death of his brother were triggers for his poor mental health.<sup>6</sup>
20. Mr Russell was never able to learn to read or write and he relied on his daughter to complete paperwork. He had been assessed as suitable for the Disability Support Pension due to his intellectual disability.
21. Mr Russell had only just started to come to terms with his sexual abuse early in 2021. He was addressing his issues, seeking help and had been formally diagnosed with intellectual disability.
22. All of the factors that are set out above not only provide a personal history of Mr Russell but also provide important contextual information as to his response on 9 November 2021 when the police attended his house to execute the arrest warrant.
23. Mr Russell had a criminal history dating back to 1991. His most recent period of imprisonment was for reckless wounding for which he was sentenced to 5 years imprisonment commencing on 1 June 2013 with a non-parole period of two years and six

---

<sup>4</sup> Exhibit 1 Tab 147

<sup>5</sup> Exhibit 1 Tab 148A p52

<sup>6</sup> Exhibit 1 Tab 148A pp 234-238

months.<sup>7</sup> He was released from custody in November 2016. He then remained out of custody until 2021.

*Arrest in Walgett in May 2021 and self-harm in custody*

24. On 1 May 2021, Mr Russell was arrested in Walgett on a charge of intentionally or recklessly damaging property by fire. The fact sheet alleged that on the evening of 29 April 2021, he was at the house of his parents at 21 George Sands Way, Walgett NSW. Around 5:00am on Friday 30 April 2021, a witness observed Mr Russell sitting outside tending to a campfire on the front of the drive way. Around 7:00am, witnesses observed Mr Russell smash windows from the inside of the house. A witness observed Mr Russell throw a television set from the window into the front lawn. The house was on fire and 000 was contacted.<sup>8</sup>
25. On 1 May 2021, Mr Russell attended Walgett police station voluntarily and participated in an electronically recorded interview with police, denying his involvement of arson. He was charged with two offences and refused bail.<sup>9</sup>
26. He was placed in a police cell and was subsequently found on the floor of the cell with an injury to the crown of his head. He told police he had jumped onto the floor (CCTV footage showed he had climbed onto the toilet and jumped head-first onto the concrete floor).<sup>10</sup>
27. He was taken to hospital by ambulance, examined and cleared as neurologically intact, and discharged from hospital on 2 May 2021 to a “safe cell and be monitored closely”.<sup>11</sup>
28. He was remanded in custody at Wellington Correctional Centre. At 4:57pm, a registered nurse recorded a note that Mr Russell was very distressed emotionally and was only able to be assessed through a cell door window. At 6:37pm, the nurse recorded that at 6:00pm Mr Russell had tied part of his shirt around his neck and tried to hang himself. A corrective services officer cut the cord. An ambulance was called. After 10 minutes Mr Russell suddenly roused and required restraint. Ambulance officers could not assist because Mr Russell threatened them, and further intervention was deemed unsafe.<sup>12</sup> At around 8:23pm, he was seen by a psychiatrist, who advised that Mr Russell required a medical assessment in the Emergency Department and that an ambulance should be called.

---

<sup>7</sup> Exhibit 1 Tab 8 p7

<sup>8</sup> Exhibit 1 Tab 8 p 98

<sup>9</sup> Exhibit 1 Tab 144

<sup>10</sup> Exhibit 1 Tab 8 p22

<sup>11</sup> Exhibit 1 Tab 148 p7

<sup>12</sup> Exhibit 1 Tab 148 p53

29. At 8:50pm, the nurse recorded that it was not possible for Mr Russell to be sent to the Emergency Department due to his violent attitude and threats to the ambulance officers, it was noted he had taken Valium and settled.
30. On 3 May 2021, he was again assessed, and it was reported that he was threatening self-harm if not released from custody.<sup>13</sup>
31. At 3:09pm on 3 May 2021, he was seen again for self-harm, having hit his head against a wall “because the judge would not listen too [sic] him”.<sup>14</sup>
32. Mr Russell was subsequently granted conditional bail at Walgett Local Court on 15 June 2021 with conditions including, *inter alia*, to reside at 10 Bulan Way, Toongabbie, not to drink alcohol, not to enter Walgett, and to be of good behaviour.<sup>15</sup>
33. On 20 September 2021, Mr Russell was isolating at Mavis Fernando’s with a number of their children who were COVID-19 positive. Multiple calls to triple zero were made, seeking urgent police assistance. The fact sheet relevant to this incident alleges that Mr Russell had consumed approximately one bottle of Jim Beam and that Ms Fernando informed police that Mr Russell was breaching his bail conditions.
34. Police located Mr Russell, who was aggressive towards them, including stating “can I put a blade through this cocksucker” to one of the attending officers. Mr Russell then charged towards one police officer, and the officers then physically arrested him, handcuffed him and conducted a search. Mr Russell thrashed his body around on the ground whilst police officers were attempting to search him. Police then placed him under arrest for breach of bail and resisting police.
35. This arrest was captured on Body Worn Video (“BWV”) camera.<sup>16</sup>
36. He was charged with resisting police, assaulting police, and carrying out a sexual act without consent. The latter charge related to Mr Russell masturbating while in the police cells.
37. At 11:38pm, police called for an ambulance after Mr Russell threatened self-harm by way of threatening to jump from the toilet in the cell to crack his head or neck. He was assessed by paramedics at the station and then transferred to Royal Prince Alfred Hospital. A psychiatric

---

<sup>13</sup> Exhibit 1 Tab 148 pp 59-63

<sup>14</sup> Exhibit 1 Tab 148 p66

<sup>15</sup> Exhibit 1 Tab 8 p19

<sup>16</sup> Exhibit 1 Tab 132

registrar who assessed him stated that he had self-harming behaviour which is situational and directly related to incarceration.<sup>17</sup>

38. He was returned to Newtown Police Station at 8.44am on 21 September 2021. He was released from custody at 17:18 on 21 September 2021 on conditional bail, with the same conditions as had been imposed by Walgett Local Court on 15 June 2021.

39. Mr Russell was required to appear before Newtown Local Court on 5 October 2021 in relation to the alleged offences of 20 September 2021. He failed to appear, and the warrant pursuant to s 25(2) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) (bench warrant) was issued.

### **Events on 9 November 2021**

40. In her opening address, Senior Counsel Assisting, set out the undisputed account of the events of 9 November 2021 as follows.

41. On the morning of 9 November 2021, four police officers from Blacktown Police Area Command (PAC) attended at 10 Bulah Way Seven Hills. These were Senior Constable Adam Bodkin, Leading Senior Constable Aaron Prior, Constable Allister Asprec and Constable Matthew Challenger.

42. The residence at 10 Bulah Way was the home of Ms Pamela Saha. Mr Russell's mother Helen Russell is Ms Saha's sister. Ms Saha had lived there for 19 years.

43. The officers attended 10 Bulah Way with the intention of executing the warrant to arrest Mr Russell.

44. Constable Asprec remained downstairs in the house, whilst the other three officers went upstairs looking for Mr Russell. Constable Asprec, who was at that time alone downstairs, walked towards the garage of the house and as he turned towards the garage was confronted by Mr Russell who was inside the garage and was armed with an axe and a knife.

45. Constable Asprec retreated down a short hallway calling out loudly "axe, axe" and drew his firearm. Constable Challenger went to his assistance and drew his firearm. There was a confrontation between Constables Asprec and Challenger, and Mr Russell. Constables Asprec and Challenger subsequently discharged their firearms resulting in Mr Russell's death. By this point in time, both Leading Senior Constable Prior and Senior Constable Bodkin had come downstairs.

46. There is limited footage of Mr Russell prior to the discharge of firearms by the police. The footage that is available is from the BWV footage of Leading Senior Constable Prior and

---

<sup>17</sup> Exhibit 1 tab 145 p 69

Senior Constable Bodkin, as well as the footage captured on the taser issued to Leading Senior Constable Prior. The BWV footage of Leading Senior Constable Prior and Senior Constable Bodkin does not record any images of Mr Russell during the confrontation. The taser footage of Leading Senior Constable Prior records one brief image of Mr Russell in the period immediately before the fatal shooting. Leading Senior Constable Prior and Senior Constable Bodkin were originally upstairs at the time of the initial confrontation between Mr Russell and Constable Asprec and Challenger, and they had different viewpoints from Constables Asprec and Challenger.

47. Constables Asprec and Challenger made no recording on the BWV of the incident. Constable Challenger was not wearing a BWV camera. Constable Asprec believed that he turned on his BWV camera from standby to record at the point after he handcuffed Mr Russell after the shooting, but in fact he never switched the camera to record.
48. The footage from the two BWV's and the taser depicts, in broad summary, the following sequence of events relating to the confrontation.
49. At about 11:19am, Leading Senior Constable Prior's BWV camera records shouting from downstairs (whilst Leading Senior Constable Prior is upstairs in the house). At around 11:20am, Senior Constable Bodkin's BWV camera footage shows the blade of a knife poking around the corner of the t-intersection of the hallway in the house, at the laundry. The first gunshot is recorded at 11:20:12.
50. Mr Russell then speaks, saying "cocksucker", and the officers yell at him to "drop it". At 11:20:23, Constable Asprec says, "he's going to throw that one" and immediately afterwards, a gunshot is heard. Four more shots are heard in quick succession between 11:20:24 and 11:20:26.
51. At 11:20:28, Leading Senior Constable Prior edges around to the hallway and approaches Mr Russell and asks him several times whether he has anything else on him, but he only moans in response. At 11:20:57, Senior Constable Bodkin's BWV camera footage shows Mr Russell lying stomach-down, slightly on his right side, in the hallway, towards the lounge room with his feet towards the stairs to the garage and laundry of the house.
52. At 11:21:52, Constable Challenger says "we have to start CPR", the officers search Mr Russell, check for a pulse, take him out of the hallway into the living area, remove clothing, place rags on his wounds to stem blood loss and secure the weapons.
53. At 11:25:21, CPR is commenced by Constable Asprec.
54. Ambulance officers arrive at the scene at 11:29:54.

55. The BWV footage of Leading Senior Constable Prior shows the position in which Mr Russell appears to have fallen upon being shot. His legs appear on the stairs with his feet suspended either at the first step or above the bottom of the stairs (it is impossible to tell which from the image) and his torso is at the top of the stairs.

#### **Account of Ms Pamela Saha**

56. Ms Pamela Saha gave an account of the events of 9 November 2021 in a statement provided for the purposes of the inquest.<sup>18</sup> She also participated in an interview with NITV recorded on 12 November 2021. The raw footage from that interview was produced to Court under a section 53 order for production<sup>19</sup>. Further, she was recorded immediately after Mr Russell was shot having a conversation with police officers on BWV. Ms Saha did not wish to be called to give evidence in this inquest. In those circumstances, it is accepted that the written account of Ms Saha and which has not been disputed, that to the extent that the account of Ms Saha conflicts with that of a person whose evidence was tested before the Court, that tested version would be preferred.

57. In her statement Ms Saha stated that on the morning of 9 November 2021, she was sitting on the lounge. Two police officers knocked on the door and said "Is Mr Russell here". Pamela said "No, he's not" because Mr Russell had told her that "if the police come here, don't tell them I'm here". There was a cough from inside the home which the police officers heard and subsequently they entered the home.

58. Ms Saha walked out the front door to the mailbox. Around three minutes later, she heard shots. She did not hear voices or anything before the shots. She rang Helen, and said "I think they shot Stanley" and then saw Mr Russell at the bottom of the steps lying down on his back. Ms Saha says that she does not own an axe.

59. In the NITV footage, Ms Saha repeated that she didn't have an axe and stated that the police asked at the door whether Mr Russell was in the home, that she said no, and then they heard a cough and that they ran straight in her house ... none of them telling their name. During the footage, Ms Saha takes the interviewer upstairs and depicts where she says Mr Russell had been sleeping, upstairs in her bedroom.

60. Shortly after Mr Russell was shot, Ms Saha had a conversation with police officers, which was recorded on BWV, and she said that she asked pretty much "please don't hurt him, I'll come with you upstairs..."

---

<sup>18</sup> Exhibit 1 Tab 9

<sup>19</sup> Exhibit 1 Tab 9

## **Accounts of directly involved Police Officers**

61. The four directly involved officers participated in recorded directed interviews shortly after the incident. They all viewed the body worn video before being interviewed. All four officers returned negative drug and alcohol testing results. All four officers also gave evidence before the Inquest and their accounts were thoroughly tested, and further evidence was provided in the witness box.

### *Senior Constable Adam Bodkin*

62. Senior Constable Adam Bodkin participated in an interview on 12 November 2021. He affirmed the correctness of that interview in his oral evidence in the Inquest. He was the warrants officer at the Blacktown PAC as at 9 November 2021. Before 9 November 2021, he had never had a violent interaction in a house when he sought to execute a warrant.

63. He accepted that as regards bench warrants, it would be relevant to know why the person had not attended court and that there were a range of possible explanations for that non-attendance. He accepted that on 9 November 2021 he did not know why Mr Russell had not attended court in October 2021. He also accepted that without knowing why someone failed to attend court you could not know whether they would voluntarily present to police or to court.

64. He said that on about 10 occasions he had tried to call people to see if they would voluntarily present to the police station and on only one occasion did that result in a voluntarily attendance to the police station.

65. He accepted that it could be feasible for him, as a warrant officer, to work with the Aboriginal Legal Service (“ALS”) or the Justice Advocacy Service (“JAS”) to give people the opportunity to voluntarily present themselves to police or to the court, but that that was not something that he had ever done. He also said it was feasible to contact family or people who had an association with a person who is the subject of a warrant for that purpose. He also accepted, with hindsight, that the organisation “The Shed” may have been able to give him extra information about Mr Russell, but he did not know of their involvement with Mr Russell at the relevant time.

66. He stated that on the morning of 9 November 2021 he asked a supervisor about the availability of police cars to assist in finalising warrants received in the days prior to 9 November 2021 due to the Court issuing many warrants for the Blacktown area.

67. He checked the name Mr Stanley Russell, and saw some extensive warnings on Mr Russell for self-harm which raised concerns with him. He said that he had looked at the charge number that related to the warrant and noted that the charge was for a sexual assault, and that there was also a charge of assault police and resist police.

68. He stated that his “primary concern when I looked at the warnings on him, was the warnings of self-harm in, in custody”, and “I don’t even remember seeing any warnings for assaulting police being listed. I only remember warnings for self-harm”. Senior Constable Bodkin gave evidence that he was in the process of preparing a document setting out in table form the warrants for the week<sup>20</sup> and that he was halfway through preparing it when he decided to go to arrest Mr Russell. He said that he decided to arrest Mr Russell *before* releasing this document because he wanted to be involved in the arrest himself. He said that the warnings that he had read were “quite disturbing” because Mr Russell had done some drastic things in custody.
69. He was concerned that if he did not execute it, there would be more junior police officers who would do it who would not read the warnings as carefully as he did. Senior Constable Bodkin accepted he did not look at any of COPS events. He agreed he should have looked at the circumstances underneath the warning for self-harm, but he said, “time was pressing” and he did not get a chance. He accepted however, that neither the offence of assault police, nor the warning of self-harm in custody suggested that he needed to execute the warrant on 9 November 2021 as opposed to a day or a week later.
70. He accepted that looking at these warnings was no substitute for looking at the underlying COPS entries. He also said that it was always his priority to seek to ensure that he has all relevant information for the purposes of effecting an arrest as safely as possible. He accepted that if he had read the underlying information, he would have taken it into account. He also said that the warnings were inadequate to convey the risk of how Mr Russell presented, and by reason of this he did not anticipate what he found on 9 November 2021.
71. In relation to why he considered “time was pressing”, Senior Constable Bodkin stated that a car became available, and he would not have known when he could get another car that would be available. He accepted in evidence, however, that he did not know whether the car might also have been available one hour later.
72. He accepted that planning and execution of the warrant could take as long as it took and there was no particular timeframe within which it had to be executed. He did not accept that he should have taken steps to identify whether Mr Russell would be willing to voluntarily come to Court because based on the warnings, he was worried that by contacting him he would become alarmed and may self-harm. He said that he was also concerned that Mr Russell might run away if he became aware that police were looking for him. He also stated that he was aware that Mr Russell had been involved in domestic violence offences

---

<sup>20</sup> Exhibit 1 Tab 41



and so was hesitant to call his family. He accepted, however, that those offences did not involve his parents and he accepted that it was an option to involve his parents to seek to persuade Mr Russell to voluntarily attend a police station or court rather than execute a warrant.

73. He stated that it was not practical to get information over and above warnings as he had fourteen warrants that day, and that was on top of his other duties. He stated it was not practical to read through everything that was there. He agreed that the extent of his review of information for the purpose of risk assessment “could be perceived as inadequate”.
74. He agreed that information about intellectual disability would be important information to know before executing a warrant and that if he had known that Mr Russell suffered from an intellectual disability, he would have taken this into account.
75. Senior Constable Bodkin gave evidence that he was aware from reading the warnings that there was a risk of violent confrontation during the execution of the warrant but that he did not know what level of violence could be expected. He said that from the information about self-harm he was thinking that Mr Russell may seek to avoid going back into custody. He also accepted that when executing a warrant in a domestic premises any number of implements would be available that could be used as weapons, but he said that on 9 November 2021 he did not consider that there was a real risk that weapons would be used by Mr Russell. He said that he thought it would be ideal to have “three” officers in total because of the warnings about self-harm. When asked about that he stated that if it became a situation where he decided to overpower us it could be addressed with three officers. He said, “If he fought, I made sure I took more than two officers”. He said there was nothing to indicate that Mr Russell would self-harm during the execution of the warrant, and his concern was to prevent self-harm in custody.
76. Senior Constable Bodkin gave evidence that he felt that the operation on 9 November 2021 would be no different than any other warrant arrest that he had done.
77. After calling Constable Challenger, at about 11.05am Senior Constable Bodkin received a text from Constable Challenger that they were outside waiting for him. He went outside and sat in the rear of the car. He says that he remembered saying that “there could be a confrontation here, so be prepared”, and he said that he provided details of the warnings for self-harm to the other officers on the way to the premises. He said on conducting checks on Mr Russell on the way to the premises he did not see anything that related to any use of weapons or anything that raised any significant concern for attending the address. Senior Constable Bodkin maintained in evidence that he was “quite certain” he had mentioned the warning of self-harm to the other officers, although he could not verify that they had heard it.

78. Senior Constable Bodkin took charge at the start. Roles were not allocated to the police officers and no verbal plan was made. In evidence, Senior Constable Bodkin accepted that it was essential to have a plan and have communication, and that he did not communicate a plan as to what should happen. He said his plan was to find out if Mr Russell was there, explain to Ms Saha that he had the warrant, and “then I had to plan based upon her response”. Beyond that, his plan was to move quietly to where Ms Saha had indicated that Mr Russell was and to effect the arrest.
79. Senior Constable Bodkin took the lead in entering the premises and proceeded upstairs. There had been some discussion as to whether officers should go into the back yard but that was rejected. He said that it is always assumed that the first officer can go where they assume the person is, and other officers go to clear the rest of the house. He also said that in that situation it was accepted, but there was no discussion about this, that the officers would pair off, clearing the area two by two. He accepted that good planning is essential to an effective arrest in domestic premises.
80. They parked on Bulah Way about 50m from the house, then he approached the front door, which was open, but the screen door was shut.
81. Senior Constable Bodkin asked if Mr Russell was there and then the female responded, saying “Yes, he’s upstairs”. The female started calling out “Stanley” very loudly. Senior Constable Bodkin’s suspicion was increased, and he advised the female that they had a warrant and that they were going to have to come in and arrest Mr Russell. He says that the female went “OK”, opened the door and stepped aside.
82. In relation to why he did not give Mr Russell a chance to come to the front door, Senior Constable Bodkin stated that he “negated that option”, because he had concerns, he may try to corner himself or self-harm before we had a chance to get him. He stated that his “plan” changed at the point of his interaction with Ms Saha because at that point he was concerned that she was trying to alert Mr Russell and he intended to move upstairs and get control of him before he had a chance to harm himself. He stated that his plan was to move quietly to where he was and effect the arrest. He did not communicate this to the other officers but stated he would just “lead by example”, and he didn’t get a chance to explain. He accepted that he did not communicate to the officers what his plan was but did not accept that he should have communicated it to the other officers because he considered this was in their training anyway. He stated that he did not use communication (saying Mr Russell, we want to talk to you) because of the warnings he read that he may self-harm in custody.
83. In relation to section 202 of the *Law Enforcement (Powers and Responsibilities) Act 2002* No 103 (“LEPRA”), Senior Constable Bodkin rejected the proposition that he did not tell Ms Saha that he had a warrant, and said he definitely said this. He agreed he did not comply with the

obligation to give her his name, and he stated he did not consider he needed to ensure that Ms Saha fully understood the nature of the warrant.

84. Senior Constable Bodkin agreed that Ms Saha never verbally invited them in but only stepped aside. He accepted he was exercising power under section 10 of LEPRA when he entered the property.
85. He says that having entered the house, he proceeded up the stairwell, checked a number of bedrooms and realised Mr Russell wasn't upstairs, started to walk downstairs and checked a door on a landing and then heard yelling coming from downstairs.
86. He ran downstairs and saw an officer to his right pull out a firearm – he can't remember who that was – and this officer was pointing the firearm down a hallway. He heard officers saying "drop the axe", he thinks two times, and heard them say "drop the knife". He looked around the corner down the corridor and saw a very large Bowie style knife about 1.3 metres up the wall, moving as if someone was holding it and realised at this point Constables Asprey and Challenger had their firearms out and Leading Senior Constable Prior had his taser out. He said that he could see Mr Russell was just around the corner holding the knife, and he could see just an edge of the knife. He said that at that point it seemed to him that "it was contained ... that the person was contained, and it may become a contain and negotiate situation".
87. Senior Constable Bodkin didn't have a taser so took out his OC spray, but then he decided to get onto the radio because utilising spray in that confined space would have run a risk of contaminating the officers and putting them at risk. He decided to step back and let Leading Senior Constable Prior take the lead with the taser. He turned to speak on the radio and heard a number of shots – one or two at first, a pause, then five or six shots. He stepped towards the front door to try and alert radio. He turned back and saw the officers doing a search of Mr Russell and thought it was prudent to film this via his BWV camera and take the role of contact with the radio. He heard the officers say that they needed to do CPR. He recalled having stepped outside because there was a lot of noise inside and he was trying to hear what the radio was asking him. At one point he notified the radio that an ambulance was needed because Mr Russell was "fading fast".
88. Senior Constable Bodkin stated that he could not take charge of the situation or speak to Mr Russell as he did not have visual contact with him and could not get himself into a position where he had that contact without putting himself in danger, as there were firearms out. He did not consider that police could back out of the building.
89. Senior Constable Bodkin stated he had not received specific training about the execution of bench warrants but had had training with regard to arrests within domestic premises. He

stated that he had not been trained to give people an opportunity to come to the front door. He also stated he had not been trained to call people and ask why they didn't attend court but sometimes, when he had a phone number, he would do this. He stated that he had a quick handover when he took on the role of Summons and Warrants Officer. He also stated that the document at Tab 41A of the Brief of Evidence was something he inherited from his predecessor but that he has expanded it to include new information.

90. Senior Constable Bodkin explained that he had thought about what had happened on 9 November 2021 but had not been able to identify any changes that could be made on his own. Moving forward, he accepted that he could consider involving JAS or the ALS as a means of seeking to persuade people to attend court or working with an Aboriginal Community Liaison Officer ("ACLO") if one were available at Blacktown or contacting family members to encourage the person to attend voluntarily. He stated that he did not know he could contact JAS or an ALS before now, and the only concern he had about involving an ACLO would be the risk to their safety.
91. Senior Constable Bodkin also gave evidence that his general practice was to try to execute warrants in the mid-morning because the person may have been up late, and also so they can get before a court and spend the minimum amount of time in custody possible.
92. In relation to his own workload, he indicated that the range of arrest warrants on any day could vary from 1 to 2 to about 10 in one day. He also had other responsibilities as a Child Protection Register Assist Officer, a Field Protocol Officer, and as a Cellebrite analyser. He stated that he had a number of other duties in addition to arrest warrants as the Summons and Warrants Officer, in terms of serving court notices (being AVOs, Future Service CANs, and Warrants).
93. Senior Constable Bodkin accepted that he should have informed Police Radio of their attendance at 10 Bulah Way but did not agree it had any effect on the assistance rendered.
94. Senior Constable Bodkin explained that he tries to keep the document at Tab 41A of the Brief of Evidence clear and concise because it is a document that a lot of officers may use, and he wants to ensure there is not too much information so that people actually read it.
95. Finally, Senior Constable Bodkin gave evidence that he had Aboriginal family, including an aunty who is an elder in the Dharawal community. He is not directly involved in the Aboriginal community. However, he stated that he felt that he had hurt the community, even if what happened was not his fault, a tragedy had occurred. He said it was devastating and he spoke to his aunty about it, and that this was a very difficult conversation.

*Leading Senior Constable Aaron Prior*

96. Leading Senior Constable Prior participated in an electronically recorded interview on 12 November 2021. During his evidence before the Inquest, he confirmed that he was satisfied the answers he gave in that interview were true and correct.
97. He stated that sometime after 10.00am, Constable Challenger received a call from Senior Constable Bodkin about a warrant in Seven Hills. Leading Senior Constable Prior went back to Blacktown and collected Senior Constable Bodkin. Constable Asprec was driving, Constable Challenger was in the front passenger seat, and he (Leading Senior Constable Prior) was in the back with Senior Constable Bodkin. While driving, he asked for the CNI (Central Names Index) number for the person in the warrant which he was told was Mr Russell, and he looked him up in the MobiPol, and went through a brief history. He saw intelligence that Mr Russell was residing at 10 Bulah Way and had several warnings related to resist with unarmed control, and that Mr Russell was currently on bail for assault police and sexual touching. Leading Senior Constable Prior did not see anything that related to use of weapons or anything of significant concern for attending the address.
98. During his evidence, Leading Senior Constable Prior was taken through the COPS audit of his MobiPol use. He did not read the facts of any of the charges and did not look for underlying information in respect of any of the warnings. He accepted that the warnings would put him on notice that this was someone who may have a mental health presentation but added that it “tells me this is someone who does not want to be in police custody”. He accepted that he spent 8 minutes looking at MobiPol in relation to Mr Russell and his associates and accepted that knowing that Mr Russell had threatened police stating “can I put a blade through this cocksucker” in September 2021 would have been relevant information. However, he stated that having spent an extra 10 or 15 more minutes looking for information would not have made a difference to his decisions on 9 November 2021.
99. In evidence Leading Senior Constable Prior stated that his plan was to go to the house and see if he was there, and if he was there, search the house. He did not accept it was possible to plan beyond what would happen after Senior Constable Bodkin and Constable Challenger went to the front door. He also stated this was day to day policing and it was not necessary to plan what would be said at the front door. He accepted that the extent of the planning was that he looked on google maps at the house, and instructed Constable Asprec to park some distance from the house. He stated that it was not necessary to plan how the search would be conducted as the police would apply their training to the situation. In evidence, he agreed that the plan stopped when Senior Constable Bodkin and Constable Challenger got to the front door. He also said they did not need to talk about a plan as this was everyday policing.

100. He approached the address and saw Senior Constable Bodkin and Constable Challenger approach the front door. He saw a female exit the residence, did not hear the conversation but did hear the female say “yes, he’s inside, he’s upstairs”. He accepted in evidence that he never heard Ms Saha give verbal permission to enter and assumed permission had been granted because she opened the door and stood to one side. He agreed that he never heard whether Senior Constable Bodkin or Constable Challenger told Ms Saha that they were executing a warrant.
101. The female opened the door and stood aside, and Senior Constable Bodkin and Constable Challenger entered. He heard the female yell out several times “Mr Russell come downstairs” and suspected Mr Russell could be upstairs so proceeded to walk upstairs. He went upstairs and commenced looking in the rooms, then saw Senior Constable Bodkin and Constable Challenger start heading downstairs. He remained inside the room doing a more thorough search and at this point activated his BWV. He started walking downstairs and heard some yelling coming from downstairs and could hear Constable Asprec yelling “axe, axe, axe.”
102. He immediately started running down the stairs, as did Senior Constable Bodkin. When at the bottom of the stairs, he saw both Constable Challenger and Constable Asprec and their firearms drawn, facing away from the kitchen. He couldn’t see where they were pointing the firearms as it was obscured by a wall but heard both (police) yelling at a person he presumed was Mr Russell. He recalls other police yelling words similar to “drop the axe”. He approached and pulled out his taser to see if he could get in a position to use the taser but could not see Mr Russell around the corner, largely due to the confined space and not wanting to get in the line of sight of the firearms of Constable Challenger and Constable Asprec.
103. At one point either Constable Asprec or Constable Challenger yelled “he’s got an axe – don’t do it, don’t do it” and then heard a gunshot. He immediately got on his radio and believes that is when Constable Asprec yelled “he’s gonna throw it.” He believed Constable Asprec was referring to the axe. He then heard several more gunshots, so he stepped back again and tried to get on the radio – while he was doing that, he believes he heard Constable Asprec and Senior Constable Bodkin were also trying to get on the radio.
104. Subsequently, he looked around the corner and he could see Mr Russell. Mr Russell was about one metre or closer to Constables Challenger and Asprec, slumped over on his stomach and he was forward of about 3 stairs which were directly behind him. He saw that Mr Russell’s left and right hand were still under him and tried to talk to him, asking for him (Mr Russell) to show his hands. At this point Mr Russell made some groaning sounds.

105. Once Constables Challenger and Asprec re-holstered their weapons, Leading Senior Constable Prior moved forward and grabbed Mr Russell's right hand and pulled it forward and determined there was nothing in his hands. Leading Senior Constable Prior believes Constable Challenger said he (Mr Russell) still has a knife. He looked forward down the bottom of the stairs and saw a large axe with an orange handle and a large knife with a yellow handle and walked past Mr Russell and kicked these away. Leading Senior Constable Prior turned back around, started searching Mr Russell and in his pants pocket found a capped syringe and threw this down towards the laundry, then searched his other pockets but did not find anything. At this point Constable Challenger advised he (Mr Russell) still had a pulse, and he (Leading Senior Constable Prior) also did a check of Mr Russell's pulse, which he believes was relatively steady.
106. Leading Senior Constable Prior searched the garage, then returned and removed Mr Russell's shirt and found a bullet wound to the top left of his chest. Constable Asprec cut off Mr Russell's shirt and jacket. Leading Senior Constable Prior determined there were no exit wounds from the original wound he saw and could not see any other entry or exit wounds. As Mr Russell had a steady pulse, they did not start CPR straight away, but after a few seconds his pulse was starting to get lower. Due to that, the officers moved him one metre towards the kitchen to give the officers more space. Constable Challenger asked for a sheet and applied pressure to the wound while Constable Asprec commenced CPR. After some time, Senior Constable Cole and further police arrived and assisted with CPR.
107. Leading Senior Constable Prior gave evidence that if he had known that Mr Russell was armed with a knife and an axe, he would not have entered the house.
108. Leading Senior Constable Prior accepted that there were many reasons between forgetfulness and inadvertence and deliberate flouting of court orders that a person would not turn up to Court. He stated that one of the purposes of going to 10 Bulah Way was to find out why Mr Russell did not attend Court, but then stated that he did not ask Mr Russell to come to the door to answer that question because he believed Ms Saha was trying to "alert" Mr Russell that police were there.
109. Leading Senior Constable Prior could not recall receiving any training as to the risk assessments that should be conducted before executing a bench Warrant. He stated he had been given training on executing an arrest within a domestic premises which included gathering intel and information about the people who live there, about the house, and who they are going to arrest.
110. He accepted that in order to assess the risk associated with warnings it would be necessary to look at the circumstances of the charge giving rise to the warning, but said it was not possible in day-to-day policing to go through every single fact sheet for an arrest.

111. Leading Senior Constable Prior stated that he was not trained to get in touch with any organisation or person to understand why the person did not turn up to Court. It was his practice if there was a bench warrant for a very minor offence that he may contact them to arrange them to come in. There were no policies associated with this practice. Leading Senior Constable Prior could not recall engaging in any training specific to dealing or interacting with Aboriginal people. However, he stated there was no difference in executing a bench warrant to any other kind of arrest.

112. Leading Senior Constable Prior could not recall the officers calling anything out as they searched the premises. He could not recall the officers calling out Mr Russell's name and said that might have had risks because he could have been alerted to the fact we were there. He did not accept it would be a good idea to try and first communicate with Mr Russell rather than risk surprising him inside the house in a physical confrontation. He said that on the day, he believed that Mr Russell was trying to run away and that was why they went straight upstairs to arrest.

113. Leading Senior Constable Prior accepted that he failed to call off on radio at the scene but indicated that the first thing an officer said was shots fired and their address.

*Constable Allister Asprec*

114. Constable Asprec participated in an electronically recorded interview on 11 November 2021. He affirmed the correctness of that interview in evidence before the Court subject to clarifying that in his interview he had stated the floor in the house was flat, but he had forgotten about (and recalled in the days after his interview) that there were stairs leading down to the garage. He also gave evidence that he had read the transcripts of the other involved officers prior to giving evidence and some of the other material in the Brief of Evidence.

115. In his interview, Constable Asprec states that he was not told anything about Mr Russell over and above information from Senior Constable Bodkin that the warrant was for a failure to appear at Court for a charge of assault police. He was asked in oral evidence if it was not incumbent on him to undertake further checks and he stated that he was not the officer in charge, and it was not necessary for him to do so. If he felt the checks were inadequate, he would have "100%" put his hand up to do checks, but that was not the case. He considered that knowing that Mr Russell had been charged with assault police was "enough of a warning for me" and gave him "99% of the information that he needed to know". He stated that even with the benefit of hindsight, he would not do anything differently in terms of accessing further information about Mr Russell.



116. He said there was no discussion about what roles anyone would take during the execution of the warrant. He asked to see, and was shown, a photograph of Mr Russell. He does not recall who knocked on the door of 10 Bulah Way (he was standing back looking up at the windows on the top storey) but shortly after a female came to the door and started yelling "Mr Russell, Stan, Mr Russell." He did not hear any conversation between the other police officers and Ms Saha. At that stage, he believed that Mr Russell was more than likely to be home.
117. He entered the house and saw stairs to his right (where he believed all the other officers were), then saw Constable Challenger coming back down so thought Mr Russell was not up there. He concluded that Mr Russell was not upstairs but likely to be downstairs where Constable Asprec was on his own. The female was yelling out "Stan, Stan." He told her to stop because he believed she was trying to alert Mr Russell to the officers being there. He then saw a hallway on his left and an open kitchen. He walked down the hallway for about two metres and pulled out his flashlight. The hall was about 3-4 metres in length before a t-intersection opening left and right.
118. In the course of giving evidence, he did not accept that he should not have entered the corridor, stating that he was glad that nobody was behind him searching with him, as he could have tripped over them when he ran back after being confronted with the axe. He said that a police officer was more than capable of being alone within 4 metres of another officer. He also stated that he did not accept he should have left once he suspected that Mr Russell was in the garage, because "it wouldn't make sense for me to attend a house looking for someone and hear a sound and leave". He was asked if it was an option available to him *not* to commence down the hallway, but instead to regroup with the most senior officer. He said "no, we were in the middle of a search".
119. Before reaching the t-intersection, he heard a rustling noise coming from the right side. He quickly peeked around the corner and saw a laundry or storage room. He stepped forward and could see there was a garage. The lights were off, and it was very dim. He saw Mr Russell standing there staring at him, breathing extremely heavily, panting, rocking back and forth like he was on high alert. He could see something in his left hand. He could see an axe in his right hand. Mr Russell raised the axe in a threatening manner as if he was going to throw it. As Mr Russell raised the axe, he (Constable Asprec) turned to his right and quickly ran into the corner of the hallway that he had just come down.
120. As he ran, he screamed the words "axe, axe" to inform the other officers. As he reached the end of the hallway, he turned, drew his firearm and raised it toward the t-intersection of the hallway. He noticed Constable Challenger, to his left also had his firearm drawn. Mr Russell had exited the garage and was in the t-intersection of the hallway still armed with the axe.

He noticed Mr Russell had a knife in his left hand. He was holding it at shoulder height. Constable Challenger yelled for Mr Russell to put the axe down. He (Constable Asprec) yelled "drop the axe." He heard Constable Challenger yell out "Mr Russell, put the axe down". He believed Mr Russell was going to throw the axe at either him or Constable Challenger and discharged his firearm for the first time.

121. He stated during the interview that he believed that there was an immediate risk to both his life and that of Constable Challenger had Mr Russell thrown the axe. He said he had already attempted what he called "tactical disengagement", but Mr Russell had followed him down the hall when he "should have stayed in that garage". He said in his interview that Constable Challenger had told Mr Russell that "he wasn't in any trouble and to drop the axe".

122. He took a step behind the wall for cover as he believed the axe had been thrown. He then stepped out to assess the situation and saw Mr Russell still standing, half hidden by the wall but moving from side to side. He was focussing on shining his torch directly in Mr Russell's eyes. He screamed to Mr Russell to drop the axe. Mr Russell came out, lifted the axe above his shoulder and swung it towards them as if he was going to throw it. Constable Asprec then discharged his firearm again believing that Mr Russell was trying to kill them and was trying to throw the axe at them. He again stepped to the right to dodge what he believed was the axe. He stepped out to assess and at that time saw Mr Russell was now a lot closer, within about a metre, hunched forward. Constable Asprec still believed Mr Russell was a serious threat as he had not yet confirmed whether any of the shots had landed or if he had let go of the axe and knife.

123. In a split second, he decided to discharge firearm a third time, believing Mr Russell was running towards them. He took a step back and saw Mr Russell fall to the ground facing the floor. He maintained Mr Russell at gunpoint, advised radio of shots fired and their location; advised radio that the Person of Interest ("POI") was armed with an axe, has taken three shots centre mass, POI not secured, weapon not secured. Constable Asprec brought his firearm to the "sule" position (pointing it at the ground, as he saw other officers in front of him) and saw Leading Senior Constable Prior and Constable Challenger attempting to gain a response from Mr Russell and saying we need to do CPR.

124. Constable Asprec was asked whether it was possible that he never saw Mr Russell advance towards him. He stated that Mr Russell was not trying to get away and into the laundry, which he considered was clear by the direction in which Mr Russell fell (up the stairs, with his feet hovering above the first or second step). He stated that he had no doubt that Mr Russell was going to deploy the axe, as he had his right shoulder back, and it wasn't until Mr Russell raised the axe to throw it that he discharged his weapon.

125. Constable Asprec stated in evidence that he did not consider he had an ability at the point he turned having run down the corridor to “tactically disengage” by retreating backwards towards the front door, because he could trip over other officers, or his own feet. He considered that the distance to the front door was too far for him to run because Mr Russell had closed the same amount of distance as he had closed when he ran to the end of the corridor. He considered Mr Russell would have been able to close the same distance during the time it would take him to run towards the door, and that he could potentially suffer an axe in the back whilst running away. He also stated it was not a safe option in terms of his duty of care to the other officers to only scream “axe” and then leave the situation. He would have had to run past the other officers, increased the danger to them, and did not know if screaming “axe” was enough for all the officers to also get out of the way and leave the house. He stated that he initially tried to de-escalate by yelling and retreating and responded to Mr Russell’s escalation when he tried to throw the axe.
126. He was asked why he could not have simply run out the front door, and he stated that it was not police training to simply run away when faced with a threat. It was put to him that Mr Russell was not a risk to members of the public (as compared to members of the New South Wales Police Force (“NSWPF”)) and he stated that if someone is a risk to police officers, then they pose a risk to the public. He stated that he was not trained to “run away from a violent confrontation” and that what happened was tragic but was a response to Mr Russell’s escalation. He further stated that in the “fraction of a second” he had to even think about running out, he considered the axe could have been thrown at him or his partner to his left, and that somebody “could have died if I had left”.
127. Constable Asprec made the decision that Mr Russell still needed to be handcuffed as he had not yet confirmed where the weapons were or whether Mr Russell had actually received a gunshot or whether he had any weapons on his person. He placed Mr Russell in handcuffs. Constable Challenger and Leading Senior Constable Prior searched Mr Russell. Following this, they started to render first aid. They then removed the handcuffs and continued first aid.
128. Constable Asprec was in possession of a taser on 9 November 2021. He stated that it was not appropriate to use a taser because of the way Mr Russell was located behind a corridor. He did not think it was possible to successfully hit Mr Russell with one prong of the taser into his lower torso and one into the leg (which he was trained was necessary in order to achieve neuromuscular incapacitation). He stated that he only “got one shot” and if he missed, he would not be able to reload his taser or make the transition to his firearm (which he stated would take 2 seconds, based on his training) in the time that Mr Russell would be able to close the gap of about 2 to 3 metres between them. He stated that he needed “control” and that he felt he met the criteria to use his firearm, because Mr Russell was presenting an

immediate risk to his life, the life of the other officers, and serious injury to himself and the other officers. He stated there was no doubt in his mind that Mr Russell was chasing him with the axe. He further gave evidence as to the training he had received about the danger that edged weapons can pose to police and confirmed he had received training to the effect that a person with an edged weapon is just as dangerous as a person with a firearm. He also addressed in his evidence that he did not have a “gun” in Mr Russell’s face for “no reason” and stated he did not shoot “because I wanted to”. He stated that if he had the luxury of time and distance, he would have the longest conversation he could have to avoid the ultimate outcome. He stated that in the short time he had, he did not have any other option.

129. In relation to Mr Russell’s intellectual disability, Constable Asprec gave evidence that this fact was not relevant to know until Mr Russell was taken into custody and that it might change “how we handle him once in custody” but it would not have changed his approach to the execution of the warrant. He was asked if it would not have been preferable to give Mr Russell a chance to come to the door on 9 November 2021. He stated that it was a “case by case” thing, and the fact that Mr Russell has a warrant means he didn’t come to Court, and there was a chance he was going to run when they came to arrest him. He stated that Mr Russell had the opportunity to go to court of his own volition and there was no reason to give him another opportunity.

130. Constable Asprec was asked whether, with the wisdom of hindsight, he would have done anything differently. He stated that he still would not have done his own checks because he was being led by Senior Constable Bodkin, who he trusted was competent and who specialises in the execution of arrest warrants. He stated that he would not have given Mr Russell the opportunity to come to the station or the front door, because Mr Russell did not like to be in custody, but that he (as a police officer) was not the person who decided he should be in custody. He stated the two things he would have done differently were to turn his BWV camera on earlier and to have worn a protective vest that day. He added he maybe would have had a shield.

*Constable Matthew Challenger*

131. Constable Challenger participated in an electronically recorded interview on 11 November 2021. In his evidence, he affirmed that the entries in his personal notebook produced to the Court, and the answers in his electronically recorded interview, were true and correct.

132. He stated that he had not read the transcripts of the interviews of Constables Asprec, Leading Senior Constable Prior or Senior Constable Bodkin. He believed the first time he was aware of what their accounts were was during the opening address of counsel-assisting. He had read a fair amount of the material in the Brief of Evidence but had not read it in its entirety.

133. Prior to 9 November 2021, Constable Challenger had been set up and rostered on to spend the next 6 weeks roster with Senior Constable Bodkin, because he serves the position of Warrants and Summons. He stated that he had been “keen to go up there and do a bit of that”, “having been talking to Bodkin” over the prior two weeks about wanting to “learn something new”.
134. On 9 November 2021, Constable Challenger spoke to Senior Constable Bodkin over the phone, and Senior Constable Bodkin advised he had found a warrant for Mr Russell, and they had a conversation about Mr Russell. Senior Constable Bodkin said Mr Russell would either run or fight.
135. On the way to Seven Hills, he was in the front passenger seat, Constable Asprec was driving and Senior Constable Bodkin and Leading Senior Constable Prior were in the rear. He could hear Leading Senior Constable Prior doing some MobiPol checks and having a brief chat about warnings, “et cetera”. He asked what the warnings were and described them in interview as “pretty much the standard ... ‘be careful of your OS, blah, blah, blah ...”. He had not signed out a BWV that day because Leading Senior Constable Prior, Senior Constable Marshall (who ultimately did not come to execute the warrant) and Constable Asprec already had one. Constable Challenger agreed that he did not conduct any checks on a MobiPol device for himself and does not recall if there was a Mobile Data Terminal in the car on that day. His evidence was that he did not have a MobiPol device that day because another officer in the car had one.
136. In evidence Constable Challenger stated that he was told in the car on the way that there was only one warning attached to Mr Russell for self-harm. It was put to him this was not what he had indicated in his interview. He denied having no actual recollection about what was in the warning.
137. Constable Challenger gave evidence that if he had known of the information in COPS indicating that a vehicle associated with Mr Russell had been searched in 2020 and a flick knife found in a bag, and a sharpened tyre iron, knives and scissors found in the car, he would have gone to a contain and negotiate situation and never have entered the premises.
138. He thought Senior Constable Bodkin was in charge but there was no discussion about what roles the four of them would have when they arrived. He did not recall any safety concerns being discussed on the way to Bulah Way.
139. Once they reached the front of the house, Senior Constable Bodkin went straight for the front door and he was behind him, then stood to his left. He states that an “indigenous middle-aged lady” came to the door. He doesn’t know the exact words spoken but it was words to the effect of “we’re after Mr Russell, is Mr Russell home, is Mr Russell here?”. The

female immediately looked upstairs and started yelling “Mr Russell, Mr Russell, Mr Russell come down”. He recalls that when they first approached the door, Senior Constable Bodkin spoke to the female (Ms Saha) and the female motioned upstairs and started yelling, and the conversation happened very quickly between Senior Constable Bodkin and the female, and then she opened the flyscreen and “she was, pretty much invited us inside”.

140. In oral evidence, Constable Challenger agreed that it was necessary to comply with section 202 of LEPR at the time of the entry into the premises, and that he believed it sufficed if just Senior Constable Bodkin gave that information. He also agreed that the officers were not relying on Ms Saha’s consent to enter the premises but rather on their LEPR powers to enter, then stated he maintained that “we were invited into the house”.
141. The police went inside, the female went outside, and he went upstairs with Senior Constable Bodkin and Leading Senior Constable Prior. He searched a room and saw Senior Constable Bodkin and Leading Senior Constable Prior were searching other rooms and decided to go downstairs. When he got into the family room he looked outside the front door and saw the female who let them in out on the street. He called out to her and asked, “where is he?”. She was yelling in a muffled way and pointing upstairs again. He said, “he’s not there” and she said, “try the back”.
142. During oral evidence he stated that the officers were “walking through the house calling his name”.
143. He turned and walked towards the flyscreen to look out the back and heard Constable Asprec yell out. He turned and saw Mr Russell down the hallway, right on the edge of the wall. Constable Asprec already had his firearm drawn. When he saw Mr Russell, he got a look at a “big axe” and a “big Rambo-esque knife”.
144. He saw that Constable Asprec had his firearm up and he also had his firearm up. He yelled “you’re not in trouble”. He may have sworn at Mr Russell but was stunned and startled by the sight of the axe and knife.
145. He was yelling at him to put the knife down and that he was not in trouble. Constable Asprec made the comment to be careful as Mr Russell might throw it. Once the firearms came out, Mr Russell tried to hide behind the wall. Constable Asprec yelled he’s going to throw it – and “let off a shot” after Mr Russell had motioned to throw “either one of the weapons” at them.
146. Constable Challenger says that at this point everything happened extremely quickly, and he was just “glued, tunnel vision” on Mr Russell and the weapons. Mr Russell’s eyes were wide open, and he had an almost enraged look on his face and “did not look like he was on the fence whatsoever”. He believes Mr Russell may have called the officers a name at some

point. He then states that Mr Russell “rushed up the stairs, up the hallway” with both weapons in his hands. Constable Asprec started firing and he started firing. He is “nearly one hundred percent sure” he “fired two or three times”. He said Mr Russell was charging at them and they were “letting off a volley of gunfire” and Mr Russell sort of collapsed at the top of the stairs. After he stopped firing, his mind was racing as to where the weapons were. He was concerned for Mr Russell but didn’t want to go near him, not knowing where the weapons were.

147. Constable Challenger describes the incident as follows: “There was no point during the, um, the shooting that I was having a conscious ... thought, you know, it almost happened automatically. I saw weapons, he threatened to throw ‘em at us, Asprec fired first. Next minute, he’s charging up the next second, he’s charging up the hallway, up the stairs towards us and, uh, I’m letting shots go”. In evidence, he maintained that the axe was raised, and he thought the manner in which it was raised was consistent with someone who was going to throw it at me. He said there was not enough space to tell Mr Russell clearly that they were going to leave to de-escalate the situation. It was put to him that Mr Russell had not started moving up the corridor at the time he was shot, and he rejected that stating that he specifically recalled Mr Russell charging up the stairs. He was not able to explain why his feet remained beyond the bottom step when he fell.

148. Constable Challenger then says that he yelled out to Leading Senior Constable Prior “where’s the weapons”, and that Leading Senior Constable Prior said he could see them on the stairs. However, Constable Challenger couldn’t see the weapons and kept asking for affirmation. They handcuffed Mr Russell and were also trying to cut the clothes off and look for gunshot wounds and exit wounds. He sighted one gunshot wound in Mr Russell’s upper chest. He has never seen this before and when they rolled him over, he saw thick coagulated blood and didn’t know where that had come from. During this time, he was trying to call out to Mr Russell to stay with him and he thought that he was “with us for a tiny bit”.

149. Constable Challenger said that he had his pulse for a little or “assumed I what I believed to be his pulse”. Leading Senior Constable Prior said “let’s do CPR” so they dragged him into the family room. Mr Russell was haemorrhaging blood out of this one gunshot wound so he asked Senior Constable Bodkin for some rags, or anything then put as much pressure as he could on the gunshot wound.

150. In his evidence about his experience in executing warrants, Constable Challenger responded that “in all honesty, I, I had one warrant offender ... present at the front counter, and, um, took him downstairs into custody, and, uh, executed the warrant. That’s that had been my only real prior experience”. He reported that in the morning, he had seen Senior Constable Bodkin when he started his shift, and that they were “quite friendly”, and that he said to him

“you know, I’m keen to, to uh stop doing this com, COVID stuff, and, and come help you with some warrants”. In his evidence, he clarified that he took this question to be asking whether he had personally done the paperwork in relation to executing an arrest warrant. However, he had been involved in arresting pursuant to a warrant by way of assisting other officers “many times”.

151. At an earlier point in his interview, he stated “I didn’t, quite frankly, to be honest, I didn’t join the police force to simply be a COVID compliance marshal, um, and having, knowing that I was going upstairs to work with Adam Bodkin, you know, I was keen to sort of assist him in any way I could”.

152. In relation to a question about whether there was a discussion about what roles the four police officers would do when they arrived, Constable Challenger answered “No”. However, he said that if he had known that Mr Russell was going to “kick up as much of a fight as he did, there, of course, there would’ve been some kind of plan, further cars, you know, command and control of the thing”.

153. Constable Challenger gave evidence that he had not been given any training in respect of risk assessment specific to executing an arrest warrant. He agreed he was trained with how to exercise powers of arrest by entry into a domestic premises and that the extent of risk presented by the situation was relevant to the way that he would plan for an arrest. He indicated it was not mandatory for him to specifically undertake the relevant checks relevant to the risk associated with an arrest. Rather, he said he was made aware of the relevant checks on the day by Senior Constable Bodkin. He was asked whether he considered it appropriate to take part in an operation without undertaking any form of risk assessment for himself, and he responded “Yes”. He confirmed that in hindsight, he would not have done any further checks on Mr Russell than those that were conducted on the day, and he honestly did not think it would have changed the outcome.

154. He further stated that the warnings were an indicator of how someone would act, but only a very small indicator. He stated that he has dealt with people who have a warning because of a negative interaction many years ago, but then he has dealt with them, and they are a “lovely bloke”.

155. He stated that although he thought there would be a small form of struggle, he did not think he should ask any questions of the other officers to ascertain the risk he might be armed. He stated that in hindsight, he would not have entered the premises and would have entered into a ‘contain and negotiate situation’ with trained police negotiators and police at the perimeter of the premises.



156. In relation to the planning undertaken prior to entry into the premises, Constable Challenger maintained that he had engaged in the Stop, Think, Observe, Plan, Assess and Review (“STOPAR”) form of assessment prior to approaching the front door of 10 Bulah Way on 9 November 2021, and that there was “no way I could have known any of the problems or risks that we did face”. He stated that as a group the officers formed a plan by looking at the house from above on google maps and conducting relevant checks on Mr Russell and having a discussion about them. When asked what the plan was, he said that there were four “incredibly competent” police officers attending. He stated that this would “decrease the risk of the arrest going bad”. He could not identify anything by way of a plan beyond four police officers attending, identifying there was a risk that Mr Russell would jump the back fence, and conducting the checks on MobiPol. The only potential threats or dangerous situations that Constable Challenger said were identified prior to entering 10 Bulah Way were that Mr Russell would “run or fight”.

157. Constable Challenger agreed that there was no urgency in executing the arrest that day, but it would not have been reasonable to take a greater length of time in terms of how busy the command at Blacktown is. He agreed that there were a range of reasons why a person may not attend Court, ranging from inadvertence to deliberate intention to defy a Court order, and that COVID-19 restrictions may impact whether a person thought they needed to attend Court. Although he accepted there was no reason why police could not have just asked to speak to Mr Russell at the door, he stated that this would have alerted Mr Russell to the fact they wanted to speak to him. He accepted that four armed and uniformed police officers searching a premises would be quite menacing.

158. Constable Challenger was asked about what he remembered from having completed a module online about cultural sensitivity dealing with Aboriginal persons of interest. He stated that he remembered learning about difficulties that Aboriginal people may have with hearing and that a slang term for “Constable” was “Ganjabul”. Constable Challenger stated that the fact that Mr Russell was a vulnerable person was not relevant to the execution of the warrant, because “our role was to arrest him and bring him back before the Court... I can then bring any what services he needs; I can call JAS or a mental health clinician”, but “him being a vulnerable person had no bearing on my duty to arrest him”.

## **CAUSE OF DEATH**

159. The Post-mortem Report determined that the cause of Mr Russell’s death was a gunshot wound to the chest with associated significant blood loss both internal and external.<sup>21</sup>

---

<sup>21</sup> Exhibit 1 Tab 3

160. Routine toxicology showed no detectable alcohol in Mr Russell's system. Methamphetamine and metabolite (amphetamine) and cannabinoids were detected in his post-mortem obtained blood sample. A relatively low blood opiate level was reported.

161. The ballistics evidence<sup>22</sup> is that there were six fired cartridge cases recovered from the scene. Four were discharged from the Glock pistol issued to Constable Asprec, and two were discharged from the Glock pistol issued to Constable Challenger.

- a. Four bullets were found to have struck the east wall of the property, with three bullets recovered.
- b. A fifth bullet struck Mr Russell and was recovered during the post-mortem examination.
- c. The sixth bullet struck the floor of the premises and fragmented into a number of pieces whilst ricocheting. One fragment from this bullet struck Mr Russell and penetrated his lower back. The fragment was recovered during the post-mortem.

162. The ballistics examination of the recovered bullets and fragments was not able to determine which Glock pistol they were discharged from. The ballistics evidence itself does not permit a determination of whether Constable Asprec or Constable Challenger discharged the bullet that killed Mr Russell

## **EXPERT EVIDENCE**

### ***Police Expert Evidence***

163. Four expert police witnesses were called to give evidence.

#### *Sergeant Bentham*

164. Sergeant David Bentham of the NSWPF Operational Safety and Skills Command, Operational Safety Training and Governance Unit prepared a report in respect of the planning, decision and actions of the involved officers by reference to the guidelines, policies and training of the NSWPF<sup>23</sup>.

165. In his report, Sergeant Bentham makes the following observations about the conduct of the involved officers:

- a. the decision made by Constable Asprec to walk down the hallway unaccompanied was not consistent with training, and he should have waited for Constable Challenger to finish walking downstairs and obtained verbal confirmation that Mr

---

<sup>22</sup> Exhibit 1 Tab 112

<sup>23</sup> Exhibit 1 Tab 158

Russell was unaccounted for, then the two officers could have searched or cleared the remaining rooms in a methodical and controlled manner.

- b. the decisions made by Constable Asprec and Constable Challenger to draw their firearms and discharge them met the criteria for the justification for use of force.
- c. the use of OC spray in this instance would have been an unlikely means by which the officers could effectively defend themselves against the immediate threat.
- d. the use of a taser (CEW) was an unlikely means by which police could effectively defend themselves in the situation; and
- e. the actions of the directly involved officers (and other police) after the shooting were within the ambits of training provided to police.

166. In his oral evidence before the Court, Sergeant Bentham indicated that he did not consider anything additional could have been done to avoid the tragic outcome in this case.

167. In relation to training around arrest warrants, Sergeant Bentham confirmed that there is no training in the NSWPF that relates specifically to the execution of an arrest warrant. He stated that a planned arrest package was being developed but it was in its preliminary stage. He explained that in relation to training for the search of houses, police officers at the police college undertake “three separate lessons in searching buildings”. He explained that the first lesson is known as building approach entry and they are taught how to establish a perimeter, how to make observations of the property, such as the nature of the entrance whether it is a single wooden door, ‘et cetera’. They are also taught to identify key elements of that house that may pose a risk/threat, how to approach that house/property, and how to communicate to each other. They are taught how to breach doorways, which officer enters first which officer enters second. They are also taught how to systematically clear a property room by room and how to maximise the safety of each other and themselves. Following that, they undertake active armed offender one, which is in a facility at the academy in teams of four or more, where they move through a property of an active armed offender. They then go through active armed offender two, which is a combination where there is a role player with simulation pistols or an edged weapon and they are taught what to do once there is an active threat (in the training example, with an active armed offender in a school), and they are taught how to pursue the offender and neutralise the threat.

168. In relation to the planning of this arrest, Sergeant Bentham accepted that there was no degree of urgency for attending the execution of this warrant and that the officers should have engaged in some form of planning and that the officers did not do so prior to arriving at 10 Bulah Way.

169. Sergeant Bentham accepted that all the warnings available on the COPS system should have been read by at least the leading officer, and then communicated to the other officers. He was taken to a few entries on the COPS system between 2020 and 2021 and accepted that had those items been read by police, they would have assumed that it was a reasonable possibility that Mr Russell would be armed. He would not classify this arrest as high risk, but stated it was somewhere between low and high. He accepted that more information should have been sought. However, he also stated that the level of risk associated with Mr Russell would be encountered by police on a daily level.
170. Sergeant Bentham accepted that when police are planning to go to a house to execute a bench warrant, they should plan for the obvious contingency that their power to enter the property may be enlivened.
171. He did not accept that more resources should have been used to execute the warrant, noting that Mr Russell had a dislike of police and Mr Russell may well have been more distressed by an increased police presence.
172. Sergeant Bentham stated that what should have been considered to obviate the risks was perhaps having a more detailed understanding of his history, but “nothing in the form of tactical options”.
173. Sergeant Bentham was asked about Constable Asprec’s statement that ‘knowing Mr Russell had an offence of assault police gave him 99% of the information he needed’ and he indicated that he did not agree with that statement.
174. In relation to an option of not executing the warrant, Sergeant Bentham accepted that it was relevant for officers in planning to consider the risk of *not* executing the warrant. However, he stated that the issue of intellectual disability or warnings should not be considered in deciding *whether* to arrest a person, but only *how* a person is arrested. He accepted that Mr Russell’s family could have been engaged in some capacity prior to the execution of the warrant but that capacity would depend on the relationship they had with police. He accepted that if Police knew that Mr Russell had an advocate from JAS, they could have been contacted about the warrant.
175. Sergeant Bentham accepted that a person handing themselves in is the safest way that a warrant can be executed and is as “close to zero risk” as you can get. He stated there was no policy on the part of the NSWPF to try and achieve that outcome, nor any local practices of which he was aware.
176. In relation to the manner of executing this warrant, he indicated that it would not be appropriate to establish a “contain and negotiate” situation because of the multiple exits and areas of escape for Mr Russell. He accepted that police could have asked if Mr Russell

would come to the door but did not know whether it would change the outcome and doesn't think what they did was "wrong". In relation to the communication with Mr Russell during the confrontation, he stated that it was "clear and concise", with "minimal chance of it being misinterpreted", and that in his view it was appropriate.

177. Sergeant Bentham stated, in response to questioning, that it was not an available option for the officers to not walk down the hallway at all to look for Mr Russell, because they were searching the house for him and had not yet searched that portion of the house. He stated that it was not an available option for the officers to leave the house once Mr Russell had presented with weapons because at this point it became a "high risk incident" with an armed person with two lethal weapons. If the police had left the premises, Mr Russell could have left through the back door or laundry with two weapons and may have been a risk to the public.
178. Sergeant Bentham was asked about the oral evidence of Constable Asprec to the effect that he needed to keep eyesight on Mr Russell. Sergeant Bentham stated that this was necessary because of the presence of the two-edged weapons, which presented a risk of lethal injury. In those circumstances he considered it was prudent for Constable Asprec to keep visual sight on Mr Russell, so he was certain of his location and that he remained contained in that area. Had police lost sight of Mr Russell, he stated this could potentially have allowed Mr Russell access to other areas and maximised Mr Russell's ability to escape.
179. In relation to the handcuffing of Mr Russell after the shooting, he stated that he maintained the officers were justified in handcuffing him because he had just advanced with two edged weapons, the officers were uncertain as to where the axe was, Mr Russell may have had more weapons and may have had an adrenalin burst and police did not know if he was capable of getting up. He stated that Mr Russell needed to be restrained until it was clear he was no longer a threat.
180. In relation to the use of tasers, he confirmed in oral evidence that a taser was an unlikely means of defence in this case. He stated that the minimum distance for effective discharge of a taser was 2 metres and the maximum is 7.6 metres. He maintained that the use of a taser was inappropriate notwithstanding the distance was between the minimum and maximum because there was not enough visible body mass of Mr Russell to use a taser, someone with two edged weapons is unpredictable, and had a taser been deployed and unsuccessful, Mr Russell could have advanced in the time it takes to reload a taser with a fresh cartridge and it was therefore an "inappropriate tactical force".
181. Sergeant Bentham confirmed that not all officers of the NSWPF carry tasers. Rather, it is typical that only one of two officers will have one. This is for two reasons. First, the quantity of tasers available to the NSWPF. Second, to decrease "overdependency" on tasers. He

explained overdependency to mean that if both police officers opt to use a taser, then they will be “drawn to that” and will be overdependent. He accepted that in circumstances where all officers are trained on the transition from taser to firearm, it “maybe a consideration” that it would be preferable for all officers to have tasers, noting in some instances they may be separated.

182. Sergeant Bentham was also asked about the use of bean bag bullets. He explained that this is a sack of material fired through a shotgun type weapon, designed to inflict blunt force trauma but not wounds. He stated that they are used by the NSWPF in tactical units, public order and riot squads, the effectiveness of a beanbag round is not guaranteed and does not necessarily mean it will stop a person, and that whether it could have been used in this instance was outside his area of expertise.

183. In relation to the relative inexperience of Constables Asprec and Challenger, Sergeant Bentham did not accept that it was not appropriate for them to be involved in the execution of this warrant. He stated that they were still trained and suitably qualified to do this job, regardless of their seniority or experience of years in the job. He stated that this job was basic police work that all officers are trained to deal with.

*Chief Inspector Matthew Hanlon*

184. Chief Inspector Matthew Hanlon, Manager of the NSWPF Mental Health Intervention Team (“MHIT”) prepared a statement in relation to the STOPAR De-escalation principles – being Stop, Think, Observe, Plan, Assess and Review.<sup>24</sup>

185. In his report, Chief Inspector Hanlon makes the following observations:

- a. the degree of planning and preparation of the officers was relatively limited whilst in the vehicle travelling to the location. In particular, the discussions prior to entry did not provide the mechanism for substantial planning in accordance with STOPAR de-escalation.
- b. the verbal commands (comprising of around 17-20 verbal commands) given to Mr Russell to influence his actions were audible, directive and intended to convey clear instructions to Mr Russell.
- c. as to the principles of safe distance and time - the doorway and small hallway created an “obstructed tunnel effect”, and the officers would ideally need an additional three (3) or four (4) metres reactionary distance. The reactionary distance dictated by Mr Russell’s location when first seen by the police officers would

---

<sup>24</sup> Exhibit 1 Tab 159

“immediately create a hyper-aroused response by Police as the threat would seem very close whilst in the state”;

- d. the police verbal commands to disarm Mr Russell further eliminated “the second principle of de-escalation being time”. Without safe distance and time police would “likely forge an active Armed Offender Paradigm thinking”, greatly reducing the opportunity for the officer to cognitively assess other options”.
- e. both Constables Challenger and Asprec engaged in a tactical option that left little in terms of options for themselves or Mr Russell. The presence of visible weapons in Mr Russell’s hands, and his observable behaviours, would have added to the hyper-arousal of officers; and
- f. without the immediate re-establishment of “one or more of the principles of de-escalation in this instance”, it is unlikely that the outcome could have changed within the short space of time the engagement lasted.

186. Chief Inspector Hanlon gave oral evidence that the “principles of de-escalation” were time, safe distance, and effective communication. He explained that this entailed the reestablishment of time, a safe distance in terms of encountering the person slowly and not coming across them quickly, and communication in terms of speaking at a less elevated height. He stated because the interaction did not start at a low level, but immediately was at a high level with the imminent threat of weapons against the officers, there was an inability to invoke those principles of de-escalation. He referred to the alternatives of establishing time and control and ensuring there is a safe distance when officers encounter a person. If an officer comes up to a person quickly there is no time for a safe position to be established or for effective communication.

187. He agreed that speaking to Ms Saha about why they were at the property, and asking Mr Russell to come to the door, would have been more in line with the principle of effective communication and would have been consistent with the need to establish more time.

188. He accepted that planning in respect of the execution of a warrant was important to mitigate the risks.

189. In his oral evidence, Chief Inspector Hanlon was asked whether there was a discretion not to arrest on mental health grounds. He stated that the presence of mental illness alone would not preclude a person from being arrested on a bench warrant. He accepted that there was room to move around when a warrant would be executed, based on resources and the ability to locate the person.

190. Chief Inspector Hanlon was asked whether a decision could be made to defer an arrest until other options have been explored, such as ascertaining whether there could be voluntary attendance at a police station to be taken before the Court. Chief Inspector Hanlon stated

that this was not presently “police practice” and that the scope for an alternative approach like this would depend on the knowledge, capability, and experience of the particular police officers. Chief Inspector Hanlon also explained that in relation to the possibility of engagement with family, the biggest barrier to doing so would be dislike of police within a family group.

191. In his oral evidence, Chief Inspector Hanlon explained that the MHIT are a policy and training team, not a front-line team. There were three positions dedicated to the MHIT but only one is presently filled (and two have been vacant since 24 January 2022) because of difficulties with advertising and selecting staff.

192. Chief Inspector Hanlon was aware of JAS, but had not used them or needed to, and could not point to any information that is provided to officers about JAS or how to engage with JAS. He stated that the NSWPF is attempting to investigate an individual’s health background to determine risk levels before entering premises and gave an example of a person with hearing difficulties where the NSWPF will try to put a person in touch with a hearing service so that police can communicate with the person. He stated that the health-related information that police receive is limited, but he believed there was a memorandum of understanding between Justice Health and the NSWPF that provided for the sharing of information in some circumstances.

193. Chief Inspector Hanlon accepted that if it were recorded in the COPS database that a person had a Justice Advocate from JAS, there would be no real impediment to the police contacting that person. He stated that the biggest challenge with police engaging with services is that they are not available after hours (evidence from JAS stated that JAS is available 24 hours).

194. Chief Inspector Hanlon was asked whether it was appropriate to consider alternatives to arrest when someone has a disability. He stated the difficulty would be that the volume of people who police deal with who have impairments or other comorbidities. He also expressed concern that most people on a bench warrant may not want to voluntarily present to a police station. However, Chief Inspector Hanlon also accepted that there was a wide range of reasons why a person might miss a court date, ranging from the capacity to remember to deliberate avoidance of the court hearing, such that the fact of a bench warrant was not a particularly good indicator of a willingness to attend court voluntarily.

195. He also accepted that given the goal of a bench warrant was to get people to Court, considering alternative methods of execution to get people to hand themselves in would be a good thing. He also accepted that if this was a routine step in respect of Aboriginal people this might have a great benefit to police, the safety of Aboriginal people, and little downside. Chief Inspector Hanlon added that it would be linked to the goal of “closing the gap”.



196. Chief Inspector Hanlon gave evidence about the cultural competency training provided to the NSWPF in respect of Aboriginal communities. He explained that there is an Aboriginal community team that has a dedicated lecturer who presents over a calendar year at various locations. The fact that an officer has completed cultural competency training is usually recorded on their online training portal which is called “P.E.T.E”. The training involves — amongst other matters — talking about historical difficulties between police and the Aboriginal community.

197. Chief Inspector Hanlon was asked about the Certificates of Competency Compliance in evidence four each of the four directly involved officers. He indicated that of the four officers, only Leading Senior Constable Prior had completed the training. However, he gave evidence that there was resourcing difficulties and in some cases the training was not recorded on P.E.T.E even though an officer had completed it.

198. Chief Inspector Hanlon was also asked, by reference to Senior Constable Bodkin’s description in his interview of his engagement with Ms Saha, whether he agreed that the officers did not fully comply with their obligations under section 202 of LEPRA. Chief Inspector Hanlon agreed that full compliance did not occur. He considered that there was part compliance because they are uniformed officers and said they were there to speak to someone. He said there was not full compliance because he did not give Ms Saha their place of duty and there was not an explanation of the reason for the exercise of power in accordance with section 202(1)(c) of LEPRA in terms that the occupier would understand. He was asked about this in cross-examination by counsel for the NSWPF and reiterated that it did not appear that Ms Saha had legal expertise or really understood why the police were there, such that he considered their compliance “not best practice”.

199. In relation to the warnings for self-harm on Mr Russell’s profile on COPS, Chief Inspector Hanlon indicated that it was “relatively mainstream” to see warnings of that kind on a person.

*Detective Superintendent Dickinson*

200. In his statement, the Officer in Charge of the coronial investigation, Detective Superintendent Dickinson<sup>25</sup> said:

- a. it is apparent that Senior Constable Bodkin was the officer leading the attempt to arrest Mr Russell, by reason of his role as the Summons and Warrants Officer for the Blacktown PAC;

---

<sup>25</sup> Exhibit 1 Tab 7

- b. it is not feasible to undertake formal risk assessments in respect of the arrest by virtue of a warrant, which is a common daily occurrence in policing, in the absence of any specific information about the person's antecedents or the offences committed which would make the circumstances "high-risk"
- c. Police are taught to "undertake informal risk assessments on a continual basis".
- d. It appears that there was some planning and assessment of risk in relation to Mr Russell's arrest, but that there was no discussion around specific roles or functions, or a plan as to how they would enter, search the property, or engage with Mr Russell if he was located. Rather, the officers have "relied upon their usual practice in such circumstances with Senior Constable Bodkin taking the lead and other officers following". Detective Superintendent Dickinson has found it difficult to assess what impact this had on the eventual outcome.
- e. The failure of the officers to inform police radio dispatch of their attendance at 10 Bulah Way with the intention of attempting an arrest was not in accordance with police policy and training, noting that the Police Handbook states that police in mobile units should inform radio dispatch when "going off at a location".

201. Detective Superintendent Dickinson gave evidence to the Inquest on several discrete topics. His evidence can be summarised as follows.

202. First, he accepted that the reasons for non-attendance at Court could vary and before undertaking an arrest police could explore the possibility that the person could voluntarily be persuaded to attend court or a police station. He accepted that when seeking to execute a bench warrant, verbal engagement to persuade a person to present to the police is an option available to police, although there is also a degree of risk associated with that to the extent that the police declare where they are in the premises.

203. Secondly, he accepted that subject to resourcing issues, he would accept that the police should consider the risks associated with the execution of warrants and alternatives to execution. He expressed reservation about the "timeliness" of communication with a person through an ACLO, family member, JAS or the ALS, because if there was some urgency to execution then those attempts might forecast the actions of police and frustrate their attempts to arrest.

204. Thirdly, he stated that in terms of planning, the matters he was addressing in his statement included determining who was going to discuss and contact the householder or the offender. However, he stated that it was difficult for him to assess whether doing that, or undertaking a more structured search, would have avoided the same situation where Mr Russell confronted police in the garage. In oral evidence he said that further discussion would have been beneficial on 9 November 2021 in terms of all the officers knowing what their roles and

responsibilities were, as opposed to falling into the general description of one taking the lead and the rest following. He also agreed that communication can be a valuable tool in terms of avoiding a stressful and violent encounter and that it would have been beneficial to consider that by way of planning on 9 November 2021.

205. Fourthly, he accepted it was an option to verbally engage with Ms Saha and to ask Mr Russell to present himself to police. He stated there was another aspect to that, which was that police would be declaring where they are in the premises and there is a “degree of risk associated” with that.

206. Fifthly, he identified that looking at warnings is no substitute for looking at the underlying information in COPS. In expressing his opinion as to the adequacy of risk assessment here, he had understood that the officers had looked at the underlying information in COPS and not just the warnings. However, he maintained that if the officers had looked at the information on COPS indicating that Mr Russell had been found with possession of a knife and a search of his car had revealed edged weapons, that this would have been of relevance, but would not have been likely to have changed the plan of the officers that day noting it was older information, and that there was a difference between weapons being in a car versus the offender physically carrying them.

#### *Detective Senior Constable Moore*

207. Detective Senior Constable Moore was assisting Detective Superintendent Dickinson in the coronial investigation.<sup>26</sup> He prepared a statement for the purpose of the Inquest, on 21 November 2022, in which he explained the photographs from a MobiPol device which were contained in the brief.<sup>27</sup> A MobiPol is a mobile police computer device which enables enquiries to be made when police officers are away from a desktop computer terminal, and which contains details including warnings and other relevant information about persons of interest.

208. As regards 9 November 2021, the recorded interviews of the involved officers discloses that Leading Senior Constable Prior made enquiries on MobiPol on the way to 10 Bulah Way that day, and that the other officers to some extent looked at the MobiPol also. The Brief of Evidence also contained a COPS audit log which shows enquiries made by each of the four involved officers, to the extent relevant, either through a desktop terminal or a MobiPol device that morning, on the COPS system.

---

<sup>26</sup> Exhibit 1 Tab102

<sup>27</sup> Exhibit 1 Tab 51B

209. Detective Senior Constable Moore explained that there was only one warning on the MobiPol system when he prepared his statement, but there may have been alterations to the COPS system since the night of the incident. He accepted it was likely that the MobiPol contained more warnings than the one which appeared annexed to his statement, noting that there were 9 additional warnings attached to Mr Russell which were set out in the statement of Detective Sergeant Hunt.<sup>28</sup>

210. He explained that MobiPOL will only display the 10 most recent charges, and the 10 most recent events. However, the device showed the number available on COPS itself (which in relation to Mr Russell was 15 charges and 133 Events). If a police officer wanted to see the other events, they would need to use a computer or a mobile data terminal.

211. He also gave evidence explaining the detail seen on the COPS audits contained at Tab 51A of the Brief of Evidence. In particular, he explained that an iCOPS information report is an intelligence report. The relevant audits revealed that no specific event details or charges were accessed by Senior Constable Bodkin on 9 November 2021.

### ***Medical Expert Evidence***

*Professor Anthony Brown, Senior Staff Specialist, Emergency and Trauma Centre, Royal Brisbane Women's Hospital*

212. Professor Brown<sup>29</sup> gave evidence as to the appropriateness of the first aid rendered to Mr Russell by the involved officers, prior to further police officers arriving, then by those further police officers, and then by paramedics until the point that Mr Russell was pronounced deceased.

213. Professor Brown stated that in his opinion, the gunshot wound to the left side of Mr Russell's chest was immediately fatal, and that no medical interventions however timely or complex, would have saved his life.

214. He also gave evidence that at each stage appropriate first aid was rendered to Mr Russell by the involved officers, the further police officers that arrived and then by the paramedics.

*Dr Danny Sullivan, Consultant Forensic and Adult Psychiatrist*

215. Dr Sullivan, Consultant Forensic and Adult Psychiatrist, provided an independent expert review of this incident and Mr Russell's medical records<sup>30</sup>. In his opinion, Mr Russell did not have a sustained mood disorder over the course of his life. He did not find evidence of any

---

<sup>28</sup> Exhibit 1 Tab 8

<sup>29</sup> Exhibit 1 Tab 173

<sup>30</sup> Exhibit 1 Tab 174

chronic or acute mental health disorder in respect of the fire at Walgett, the detention of Mr Russell at Walgett Police Station and attempted suicide at Wellington Correctional Centre, the incident at Newtown and subsequent detention at Newtown Police Station. However, he noted that Mr Russell's diagnosed intellectual disability was likely to have reduced his capacity to exercise sound judgment, inhibit maladaptive emotional responses, or manage stressful situations competently. He considered that Mr Russell's intellectual disability and poor emotional regulation were relevant to his behaviour during the incident on 9 November 2021, reducing his inherent capacity to control his behaviour. In oral evidence, Dr Sullivan explained that the concept of "mild intellectual disability" compares with the categories of moderate, and severe and that a person with a moderate disability was likely to live in a residential community, and a severe disability would have no ability to communicate. A person with a "mild" intellectual disability is generally capable of living independently but needs assistance in their activities. He described it as a "clinically significant impairment".

216. Dr Sullivan gave evidence that he considered that a video of Mr Russell's interaction with police at Walgett<sup>31</sup> revealed quite regressed behaviour as compared to what would be expected of a mature coping adult, and that he observed a level of emotional variation, and remarkable perseverance in repeating the same topic. In his view, the presentation was quite unusual, and a lay observer would be likely to consider that Mr Russell had some form of impairment and intellectual disability based on his responses.

217. In respect of the impact of the intellectual disability on the events of 9 November 2021, Dr Sullivan gave evidence that it was relevant to the flexibility of the response that could be expected from Mr Russell. He was likely to be unable to take into account longer term consequences, as a person with a disability is far more unlikely to think about anything beyond the circumstances and the immediate impact for the future. He noted that a person with a disability is less likely to have tools to use in that situation, would be confused by complex language and have less capacity to negotiate or use verbal skills to deal with the situation. He noted that it was clear from the materials that in situations of stress, particularly with authority figures, Mr Russell's emotional self-control was significantly impaired, and he responded with inappropriate levels of aggression, became distressed and unable to calm himself. He also noted that his capacity to reason between right and wrong was reduced and although he might have understood it was "legally" wrong to arm himself with an axe and knife, he may not have been capable of thinking about it and reasoning about the consequences of that situation.

---

<sup>31</sup> Exhibit 1 Tab 144D

218. Dr Sullivan stated he would not fault the police in respect of the language that they used toward Mr Russell once they were confronted with the axe and knife and that the language used involved reassuring statements.

219. Dr Sullivan also gave evidence that Mr Russell's intellectual disability meant that he would take much longer and struggle with tasks, and that a strategy to maximise his function would be to give him lots of time. He noted that it is necessary to allow 50 to 100% more time with a person with a disability, because of the extra time taken to simplify language, break down complex sentences into shorter ones, and ensure they have understood what you have communicated.

220. He further gave evidence that demanding an immediate response from a person with a disability in a time pressured scenario was not likely to maximise their cognitive function. Time pressure increases the cognitive burden and load, and a person with an intellectual disability has an even narrower range of responses and will lack the ability to sit and think through a list of possibilities before selecting one. He concluded that "no time pressure would have been easier" for someone like Mr Russell. When asked about a hypothetical scenario in which Mr Russell was asked to come to the door of a premises rather than confronting police inside a house, he noted that emotional stability and a reduced level of stress are matters that might increase his ability to function.

221. Dr Sullivan stated that he would not regard Mr Russell's actions on 9 November 2021 as an "act of self-harm". He noted that Mr Russell did not make statements to the effect that he wished to be shot or killed.

### ***Civilian Witnesses***

#### *Ms Margo Anderson, Justice Advocate and Team Leader, Justice Advocacy Service*

222. Ms Margo Anderson was employed as a Justice Advocate and Team Leader between October 2019 and March 2022 by the JAS<sup>32</sup>. Ms Anderson had also been a registered nurse for over 40 years. She received a referral in respect of Mr Russell in May 2021 after he was referred to the ALS after he was arrested. She engaged regularly with Mr Russell and members of his family in relation to matters he had before the Local Court. These interactions are documented in case notes which were produced by the JAS.<sup>33</sup>

223. Ms Anderson explained to the Court that she had not meet Mr Russell in person but rather spoke to him over the phone. She could not recall whether she had consent to speak to police on his behalf. Her last contact with him was in September 2021 and at that time he

---

<sup>32</sup> Exhibit 1 Tab 172

<sup>33</sup> Exhibit 1 Tab 171

was difficult to engage with and focused on his intention to harm himself. She later spoke to Ms Fernando who advised that Mr Russell had settled, and no further intervention was needed.

224. Ms Anderson said she became aware around 13 October 2021 that a warrant had been issued for Mr Russell's arrest by way of her monitoring of court outcomes. She made attempts to contact Mr Russell, but these were unsuccessful. She also attempted to call Mr Rick Welsh at "The Shed", but she did not receive a call back.
225. She explained that JAS is a service provided by the Intellectual Disability Rights Service ("IDRS") which is a service based in Sydney that assists people with a cognitive impairment. JAS supports people who have matters in the criminal justice system. This includes where a person is required to make a statement to police (including if they are only a witness, not a person of interest). The clients can be referred to JAS by police, their solicitor, a family member or by way of self-referral. It is a free service, and a person does not need to have a diagnosed intellectual disability to qualify (but rather suspected cognitive impairment).
226. Ms Anderson explained that an advocate can give support to people during arrests. She was careful to explain that the level of support that JAS can give is dependent on the client's consent. She explained that her experience of assisting with arrests has been by way of her approach to police, not the other way around. She also explained she has spoken to police prior to the execution of an arrest warrant, to organise a time for the person to present at the police station.
227. Ms Anderson explained that there was a system whereby JAS can ask police to put an alert on the COPS database to notify the police that the person is a client of JAS which would give police the opportunity to call JAS if they chose to do so. However, she described this as not an established process. She understood that not all advocates knew they could ask police to do this, and sometimes police refused to add it to the COPS system. Rather, it was more of an "ad hoc" process undertaken by individual advocates.
228. She also explained that there is a Justice Advocate on call, day or night, via a 1300 number and after obtaining the client's details and where the police station is, and obtained consent from the person to provide services, an advocate (or volunteer) can be dispatched to assist. She explained that JAS relies heavily on volunteers and usually after hours, it would not be a Justice Advocate but rather a volunteer who attends (although the volunteers also undertake the same training as a Justice Advocate).
229. Ms Anderson explained that the courts are intimidating for persons with an intellectual disability, the language is formal and difficult to understand, and courts can be very rushed and hectic environments with lots of anger and loud voices. This presents additional

challenges for people with cognitive impairments. She also explained that her clients find it difficult to remember court dates. She said that it was especially difficult during the COVID-19 pandemic where it was difficult, even for JAS, to keep track of court dates and whether the client was required to appear, and information would chop and change regularly.

230. JAS would assist clients who missed Court to attend on the next occasion. Team leaders at JAS had access to the JusticeLink online system so that they could search and monitor court outcomes.

231. Ms Anderson gave evidence that if she knew the bench warrant was going to be executed, she would have tried to organise a support person to go to the police station. She made clear that a Justice Advocate would not go to a person's home. But it would be normal practice for her to contact Mr Russell to see if he was willing to attend the police station voluntarily.

*Mr Rick Welsh, Co-ordinator "The Shed"*

232. Mr Welsh is a Murrawarri man and currently the coordinator of "The Shed", an Aboriginal suicide prevention service based in Mt Druitt, NSW. It provides support to men at risk of suicide or high-stress situations. It is a referral service, but other service providers attend The Shed to provide services to clients from that location.

233. Mr Welsh had known Mr Russell since he was a child as they grew up in Redfern together. He was contacted by Ms Fernando to assist Mr Russell in May 2021 and provide support for him. He would regularly take Mr Russell and his dog 'Boy' for drives and walks. This would occur every week, or a minimum of twice a month. Mr Russell disclosed to him during one of those outings that he, and his brother Eddie had been sexually abused by a priest in Walgett. He also disclosed that he had attempted suicide.

234. Mr Welsh stated that Mr Russell had difficulties accessing services because of his mental health. Mr Russell would carry around a backpack that contained his personal documents and papers and this included the neuropsychology assessment conducted by Dr Ridley in 2019. After seeing this report, Mr Welsh took Mr Russell to a General Practitioner ("GP") to get a mental health plan and at that time, Mr Russell was prescribed Seroquel. Mr Russell also attended The Shed with Mr Welsh. It is noted that one of the bail conditions imposed on Mr Russell at the time of his death was that he attend the "Men's Shed" (which Mr Welsh gave evidence referred to his service). He stated in evidence that Mr Russell attended The Shed, and then stopped by reason of COVID restrictions but maintained contact with Mr Welsh via phone consistent with lockdown orders imposed at that time.

235. Mr Welsh gave evidence that between June and November 2021, Mr Russell was seeking help on how to better manage his mental health and to obtain access to housing. He was



having trouble sleeping and felt anxious and depressed. Mr Welsh also observed Mr Russell's intellectual disability in the sense that he was slow to process information, needed a lot more than a normal level of help with daily activities, and needed help getting to appointments

236. Mr Welsh stated in his statement that a "particular service" offered at The Shed is engagement with local police in respect of warrants. He stated that he would get members of the community to voluntarily hand themselves in where possible. In some cases, a NSWPF warrant Sergeant would come to The Shed and pick up the members to take them before the Court. In evidence, Mr Welsh explained that he had a relationship with the warrant Sergeant at Mt Druitt and when people at The Shed approached him and indicated that they had a warrant, he would contact this Sergeant who would come and pick the person up. He stated the Sergeant would wait while he wrote a letter of support for the person's bail application. He described his "working relationship" with this Sergeant as "really good" and that he had developed a trusting relationship because the Sergeant would hand up the letter in support that he had written in Court. However, police had never proactively contacted him in relation to arrest warrants: the contact was from him to police.

237. Mr Welsh gave evidence that sometimes the men who had warrants did not know they had a warrant outstanding; they were not sure of their court dates or whether they had missed it, and that they would come to him to find out the court date or whether there was a warrant. He explained to these men that if they handed themselves in, it would minimise the risk of harm to them as compared to if they encountered police in the street. He stated that of all of the men he dealt with in relation to warrants, every one of them took his advice. In his experience, a majority of the people who handed themselves in were subsequently bailed.

238. He also had contact with two ACLOs located at Mt Druitt Police Station, sporadically depending on need in the community (but not consistent in any way).

239. He indicated that he had never had contact with anyone at Blacktown Police Station in relation to arrest warrants. He also indicated that police had never contacted him to ascertain if Mr Russell was complying with his bail conditions or in relation to the warrant, and that the number for The Shed was available online and the ACLOs at Mt Druitt had his number.

240. If he had been contacted about Mr Russell's outstanding warrant, he stated that he would have contacted Mr Russell and told him to hand himself in and contacted the police. He stated that he had a high level of trust with Mr Russell who listened to his advice and guidance, and that he considers his advice about the warrant would have been received quite well.

241. Mr Welsh stated that he would be prepared to engage in a process where police actively contact him in relation to people in the community who have a warrant out for their arrest, and he would assist them to hand themselves in. In his opinion, such a program would improve the relationship of the Aboriginal community with police, would increase the level of safety of the Aboriginal community and police, and would minimise the number of people in custody.

242. Mr Welsh was asked about how he would maintain his level of trust within the Aboriginal community if he had a higher level of engagement with the NSWPF, given the level of mistrust of police in the Aboriginal community. He responded by referring to the fact that people would see there was a good relationship, like with the Sergeant at The Shed. He noted that the Sergeant from Mt Druitt would attend and not handcuff people because they were voluntarily going with him, which was positive.

*Mr Paul Saley, Senior Bail Support Officer, Front Up Program, Australian Capital Territory*

243. Mr Paul Saley gave evidence in relation to the "Front Up" program which has been implemented in the Australian Capital Territory by way of an arrangement between the Magistrates Court of the ACT and the ALS. This program involves the ALS taking a person with an outstanding warrant or breach of bail directly before the Court to have their warrant or breach dealt with. The ALS takes the person into the registry, obtains their file, and then has the warrant or breach dealt with on that same day. The role of the ALS is to reach out to the person to help them attend court in lieu of them being arrested or picked up on a warrant.

244. He stated that the ACLOs attached to the AFP email him on a fortnightly basis with the new warrants that have been issued. He also has contact with Community Corrections about breaches of conditions. He then approaches the person by way of a phone call, home visit, hand-delivered letter, or letter through the post. He notes that some clients acknowledge they had a warrant but were anxious about interacting with police, and others did not even know they had a warrant.

245. In his view, the program has caused less trauma for his clients, as rather than being arrested and locked up, they are accompanied and supported to court by the ALS. He provides statistics about the success of the program which indicates that of the people he has been successfully available to contact, 100% of them have "fronted up". Since the commencement of the program in October 2021, he has been able to contact 46% of the people with warrants who are notified by the ACLOs. The communication statistics were improving over time. In Mr Saley's opinion, this was because more people in the Aboriginal community were understanding what the Front Up program was about.

## ISSUES

246. An issues list was prepared prior to the inquest commencing to provide structure to the hearing. Some of the issues are no longer of great relevance and other issues have emerged during the inquest. I have considered all the submissions made by the parties and I am of the view that the following matters are the relevant issues that require comment.

### ***Law Enforcement (Powers and Responsibilities) Act***

247. It is not in dispute that the police had power to enter 10 Bulah Way on 9 November 2021 pursuant to s.10 Law Enforcement (Powers and Responsibilities) Act (LEPRA). Each officer believed on reasonable grounds that Mr Russell was inside the dwelling.

248. On the officers' account, Ms Saha was yelling "Stanley". On Ms Saha's account captured on the BWV she stated that he came last night and was upstairs. On Ms Saha's account to NITV she stated she said Mr Russell was not home, but the officers heard a "cough" from inside the house and that led the police to enter.

249. In exercising the power under s 10, it was necessary that the police comply with s. 202 of LEPRA. Senior Constable Bodkin accepted that he did not tell Ms Saha his name or place of duty. This was not in accordance with s 202(1)(b). I note that the officers were in uniform and that they did say they were at the house to speak to Mr Russell. I accept there was partial compliance with the section. I further note that, a failure to comply with an obligation under s 202 in respect of the officer's name or place of duty does not render the exercise of power unlawful or otherwise affect the validity of anything resulting from the exercise of the power.

250. Senior Constable Bodkin's evidence was that his compliance with s 202(1)(c) of LEPRA was by way of stating "he's got a warrant, we're going to have to come in and arrest him". I accept that this was in strict compliance with the terms of s 202(1)(c). However, Ms Saha was clearly a vulnerable member of the community, and the officers should have taken the time to explain to Ms Saha and to make sure she understood, the reason for the exercise of the power, which involved four uniformed, armed police officers entering her home.

### ***Handcuffing and Rendering of First Aid***

251. In relation to the conduct of the Officers following the shooting, including the rendering of first aid and use of handcuffs I accept Sergeant Bentham's evidence, that is, that the Officers acted in accordance with their training and policies.

### ***Body Worn Footage***

252. Three of the four officers were wearing BWV cameras at the time of the incident. Constable Challenger stated in his electronically recorded interview, that he did not sign out a BWV

camera on the day because the other officers had BWV and he was concerned of the possibility of equipment shortage.

253. Constable Challenger gave evidence that he accepted he was exercising a police power or performing a police function on 9 November 2021. He stated that in hindsight and knowing what took place, having a BWV would have been “lovely” but he stood by his decision not to have one that day. When asked how that was capable of reconciliation with the BWV SOPs, he stated that the SOPs also said police will use good judgment and common sense. He ultimately accepted not wearing a BWV was not consistent with policy but caveated that acceptance by stating that policing is difficult, and day to day there are police officers acting within and outside policy. He later said that BWV is a “nicety” but does not replace traditional methods. When asked whether he agreed that having a BWV would have been a benefit, he questioned “to whom” and asked “at what point do we not take a constable of law’s word” in relation to events.

254. The Officer in Charge, Detective Superintendent Dickinson, stated that this decision on the part of Constable Challenger not to wear a BWV camera on 9 November 2021 was not consistent with police policy. The use of Body worn Video (BWV) cameras by police is guided by the Body-Worn video Camera SOP, version 2.2 being in operation at the time of the incident.<sup>34</sup> A subsequent version came into effect on 1 December 2021.<sup>35</sup> Constable Challenger displayed a remarkable misunderstanding of the policy in relation to BWV and he should have been wearing one.

255. Constable Asprec was wearing a BWV camera, however when his device was downloaded no recording was located relevant to the incident. Craig Horsley of the NSWPF Digital Forensics Unit, High Tech Crime Branch, first attempted to recover videos from Constable Asprec’s BWV device<sup>36</sup>. A forensic extraction of the Micro SD Card was produced, and 20 video files were found. None of these were playable, but subsequently, a repair application was used to repair the video files which resulted in 18 playable video files. None of these matched the date of the incident.<sup>37</sup>

256. The BWV camera was subsequently reviewed by Mr David Williams, a BWV specialist from the NSWPF Investigative Systems Support Unit.<sup>38</sup> He reviewed the camera logs and is of the opinion that the camera was never placed into record mode.

---

<sup>34</sup> Exhibit 1 Tab 157C

<sup>35</sup> Exhibit 1 Tab 157

<sup>36</sup> Exhibit 1 tab 123

<sup>37</sup> Exhibit 1 Tab 123

<sup>38</sup> Exhibit 1 Tab 124

257. Superintendent Dickinson reviewed the statements of Mr Horsley and Mr Williams and concluded that the absence of a recording on the BWV camera worn by Constable Asprec at the time of the incident is most likely due to operator error, being a failure to commence recording, as opposed to a fault with the camera itself.
258. Constable Asprec gave evidence that he was of the belief that he had turned his BWV on, directly after handcuffing Mr Russell (after the shooting). He stated that he only became aware in the days after the incident that a recording could not be obtained. He stated that he put his BWV on standby mode as he was walking out of the car. When asked why he did not switch it on from the moment he started approaching the house, he stated that he would “generally’ leave it on standby and press the button to begin the recording “when I feel its relevant”. He stated that policy states he is not expected to record every interaction that he has, and that he did not accept it was necessary to turn it to record when walking to the house because he didn’t feel that “recording the back of them [the other officers] walking is relevant”
259. Senior Constable Bodkin and Leading Senior Constable Prior both made recordings using their BWV cameras, although they did not record their initial interactions with Ms Saha. Senior Constable Bodkin’s video commences recording as he is searching the bedrooms.
260. Leading Senior Constable Prior’s recording commences just as the police enter the property and walk past Ms Saha. Leading Senior Constable Prior gave evidence that he switched his BWV to record when he ended up alone in a room upstairs, because he did not want there to be allegations that there was property missing. He agreed that he should have had his BWV switched to record before he walked into the house and agreed that this was an element in respect of which he did not comply with applicable policy.
261. Senior Constable Bodkin gave evidence that he thought he had pressed record on his BWV earlier outside but saw inside that it was not recording as he was running down the stairs, and that he accepts that he should have turned it on earlier (but it was inadvertent that he did not). He also states that he has changed his practice since this event to ensure his BWV is on by physically checking the light prior to approaching premises.
262. Sergeant Bentham gave evidence that on his reading of the BWV policy, the use of the word “should” indicates to him that the police had a discretion as to whether to turn their body worn video to record.
263. Detective Superintendent Dickinson gave evidence that his understanding of the concept of “using” a BWV in Part 2.3 of the BWV SOPs Version 2.2 was that it should be activated, in the sense of turned on to recording. He also indicated that his understanding of the policy was that the officers should have their BWV video on in the circumstances identified in Part 2.3

of the BWV SOPs Version 2.2 unless the policy identifies a “good reason” not to. He stated that the foundational purpose of the officers attending 10 Bulah Way was to exercise a police power and it would have been prudent if they commenced recording as they were approaching the property but should have done so once they decided to exercise the power of entry to the property under LEPR.

264. Detective Superintendent Dickinson agreed that, bearing in mind the different understandings of the various officers who gave evidence, it would be desirable to amend the SOP to eliminate the use of terms like “activate” and “use” and to make clear when the policy means “switch to record”, and to clarify the scope of the discretion not to record

265. I accept Detective Superintendent Dickinson’s evidence that each of the four officers did not comply with the BWV SOPs Version 2.2 in operation at the time of the incident. They all should have been wearing BWVs and they all should have turned on their BWV prior to approaching the property and at least when they entered the dwelling and that this is what the NSWPF policy required of them. BWV is an important safeguard for police and for the community and the failure to wear and activate the BWVs was a serious breach of police policy.

In relation to BWVs, I propose to make the following recommendation to address the above issues that arose.

To the NSW Commissioner of Police.

1. Consideration be given by the NSWPF to updating the wording of the BWV Standard Operating Procedures Version 2.4 to make clear to officers of the NSWPF:
  - (i) when they are required to turn their BWV on to recording (as compared to turning on to standby mode);
  - (ii) the scope of their discretion not to record on BWV when their activities otherwise fall within the scope of “When to Use BWV” identified on page 7 of the BWV Standard Operating Procedures.

***Adequacy of police planning before entering 10 Bulah Way, Seven Hills, NSW and the appropriateness of the manner of the execution of the bench warrant***

266. In preparing to execute the warrant on Mr Russell, Senior Constable Bodkin said he arranged for the following additional resources; the car crew with Sergeant Prior, Constable Challenger and Constable Asprec. He gave evidence that his primary concern was in relation to self-harm by Mr Russell. He said that he wanted to be involved in the job himself and not let junior, less experienced officers do it on their own. Senior Constable Bodkin accessed Mr

Russell's warnings on COPS, and it was submitted that he appropriately communicated the risk posed by Mr Russell on the information available to the police to the other three officers in the car before they arrived at 10 Bulan Way.

267. Constable Asprec and Constable Challenger recalled being told that Mr Russell might run or fight. Sergeant Prior accessed information, particularly warnings, using his Mobipol. All officers felt that the warnings were quite standard.
268. No particular form of plan was made by the officers, in respect of what the officers would do once they arrived at 10 Bulan Way, which went beyond the basic concept that they would approach the front door and identify that they had a warrant relating to Mr Russell. Each of the officers variously suggested in evidence that it was not possible to plan for what they would encounter once they arrived at the property. They felt that there was little that could be sensibly planned given that they didn't even know if he would be there.
269. This is difficult to accept as it was a natural consequence of an enquiry at the property that if Mr Russell was in the property, they may need to exercise power under s 10 of LEPR and enter to locate him. Given that consequence was likely, given it was a condition of Mr Russell's bail that he reside at 10 Bulan Way, it was something to which the officers should have turned their minds to prior to arriving at 10 Bulan Way. This was particularly so given the information that was available to them of the risk of a violent interaction, knowledge that Mr Russell may wish to avoid returning to custody, and knowledge of the previous incidents of self-harm in custody.
270. Sergeant Bentham stated that the officers should have engaged in some form of planning including planning for the obvious contingency that they may need to enter the premises and search for the person. Detective Superintendent Dickinson's evidence also supports the benefits of additional steps by way of planning being considered, including further communication with Mr Russell.
271. It was not suggested that a formal documentary risk assessment or written plan was necessary. However, the planning for this arrest, in light of the warnings which were attached to Mr Russell's COPS profile should have involved *some* degree of investigation of the circumstances of the events underlying those warnings. As Senior Constable Bodkin explained, there was no particular urgency attending the execution of this warrant.
272. In the most recent event on COPS, Mr Russell had stated to a police officer who attended his former premises "Can I put a blade through this cocksucker", this interaction with police led to a charge of assault police, and the description of that event should have given rise to an acknowledgment on the part of police of the real risk of violence from Mr Russell if he was located at 10 Bulan Way on the morning of 9 November 2021. The warnings relating to

self-harm suggested a risk of impulsivity on the part of Mr Russell and a concern as to how he may respond in a situation of stress or threat.

273. There was a failure on the part of, SC Bodkin, and subsequently, the balance of the involved officers in the car, to apply the STOPAR principles of “Stop” and “Plan”, prior to arriving at the front door. Firstly, that information available to them on COPS was not investigated further than the warnings which were available, and secondly, that the officers proceeded to the front door of the property without a clear understanding between the four of them as to what they would do *if* they needed to enter the property (or if they would choose to enter the property at all). It is possible that the opportunity to plan to try and speak to Mr Russell, in light of the information about his mental state and attitude towards police, as well as the risk of violence if confronted with police, was missed, by reason of the officers’ failure to turn their minds to their intended plan on attendance at 10 Bulan Way. It is also possible that a discussion about whether it would be desirable to communicate with Mr Russell during the execution of the warrant may have led to a different approach that morning. Whilst the officers were clear in their evidence that they would not have taken a different approach, such evidence cannot displace the possibility that a careful consideration of the information in COPS underlying the various warnings may have led to a different approach to the execution of this warrant. The officers may, on reflection, have avoided an approach which led to a high risk of Mr Russell feeling threatened and stressed by being unexpectedly confronted by a number of police officers moving through the house that morning with no communication to explain to him why they were there.

274. The officers entered the property without any coordinated plan to deal with the possible risks they would face. This is significant in circumstances where the officers accepted that there was a risk of a violent confrontation, availability of weapons, risk of self-harm and a knowledge that he may take steps to avoid a return to custody.

275. The officers were not aware that Mr Russell was also intellectually disabled. Had they known, I accept that they would have done a more thorough risk assessment and undergone further planning before they executed this warrant. The evidence from JAS, ACLOs and The Shed highlights ways in which police could have access to this sort of information in the future.

276. While additional planning may not have led to a different outcome on 9 November 2021, it was clearly the best chance for a different outcome. It was submitted by Mr Richard Wilson SC that the Court could readily conclude that an example of additional planning, could have been an approach by the Officers which involved Mr Russell coming to the door, such as having Ms Saha go and talk to him, which could have possibly led to a different outcome.



This submission is accepted; however had this occurred the outcome will still remain uncertain.

277. While the officers did not comply with their training, which was to search the property in pairs and in a methodical manner, clearing each room one at a time, I accept the evidence of Detective Superintendent Dickinson and Sergeant Bentham that it is not clear that this had any particular effect on the eventual outcome, nor is it clear that if the officers had acted consistently with their training, any different outcome would have flowed.

278. Although Constable Asprec and Constable Challenger had only been confirmed in 2021, and commenced as probationary constables in 2020, I accept the expert evidence that they had received appropriate training as to the execution of warrants at the police academy and that each had been involved in several arrests, including pursuant to warrants, since they commenced general duties as probationary constables. There is no basis in the evidence to find it was inappropriate for Constables Asprec or Challenger to be involved in the execution of this warrant along with Senior Constable Bodkin.

279. It would however, have been wiser to pair up each of them with a more senior officer rather than with each other. As Chief Inspector Hanlon said in his evidence, the experience of the officers is a factor that contributes to how a scene can escalate.<sup>39</sup> A more experienced officer may not have encountered Mr Russell in such a confined space with little opportunity to withdraw and where Mr Russell was cornered.

In relation to this issue, I propose to make the following recommendation to the NSW Commissioner of Police

**To the NSW Commissioner of Police**

1. Consideration be given to introducing a policy or standard operating procedure requiring that:
  - (i) officers who suspect that a person may be suffering from an intellectual disability make a record of that in COPS against the individual's COPS profile.
  - (ii) before seeking to execute a bench warrant by entering the home of a person identified on the COPS database, or otherwise known to police officers, as possibly suffering from an intellectual disability or mental health issues, officers consider:
    - a. available warnings and available information to ascertain the person's mental health issues, intellectual disability, and specific vulnerabilities.

---

<sup>39</sup> Inquest Day 4

- b. available information suggesting a history of self-harm, increased risk of violence or the use of weapons.
  - (iii) the information set out in (i) and (ii) above be taken into account in deciding whether or not to execute a bench warrant by entering a person's home to attempt to locate them, and if it is decided to attempt to effect an arrest, in planning how best to undertake an operation to arrest the person to minimise the risk of harm to the person, the police and the public; and
  - (iv) other than in circumstances of urgency, the NSWPF consider alternatives to arrest as a means of executing a bench warrant where there is any indication that the person of interest has an intellectual disability, and that in such circumstances the NSWPF shall attempt to contact the person directly and indirectly, and to identify if there is a means of liaising with the individual, to encourage voluntary attendance at a police station by the person of interest and to elicit information relevant to the potential risk to the person, the public, or to police arising from any attempt to execute the warrant.
2. Consideration be given to the NSWPF working with the Justice Advocacy Service to introduce a procedure whereby if the Justice Advocacy Service (**JAS**), or other similar advocacy service on behalf of persons with an intellectual disability, has notified the NSWPF that they are involved in a case or as regards a person of interest, the NSWPF shall contact JAS, or that other service, before undertaking an operation to execute a bench warrant:
- (i) to ascertain whether JAS, or the other service, can attempt to contact the person of interest to attempt to persuade the person to attend a police station or court voluntarily; and
  - (ii) to seek information from JAS, or the other service, as to any vulnerability or disability that may be relevant to the execution of the warrant.

### ***Alternatives to executing the warrant***

280. It is apparent from the evidence given by each of the involved officers, as well as the expert police witnesses, that it is not the general practice of officers of the NSWPF to consider alternatives to the physical execution of warrants on persons. During this inquest possible alternatives were explored. It is not possible to conclude that these would have been successful in persuading Mr Russell to attend a police station or court voluntarily. However, while Mr Russell had said that he would rather die than go back to custody, 6 months earlier, Mr Russell had voluntarily presented to the police station in Walgett.

281. The Court was provided with a Role Description for Aboriginal Community Liaison Officers (ACLOs) and a Handbook for Commands (2021) in relation to ACLOs.<sup>40</sup> The role description indicates that a role of ACLOs is to encourage Aboriginal communities to address issues involving crime, violence and work together to close the gap and Aboriginal disadvantage within a policing environment.
282. Chief inspector Hanlon explained that ACLO's are civilians who sit in the Crime Management or Prevention Unit along with roles such as the Domestic Violence liaison officers and Youth liaison officers. He stated that an ACLO sits at Mt Druitt police station in the same area as the general duties officers and could speak to them or contact them by phone. He stated there were varying levels of interaction between general duties officers and ACLOs and it was difficult to generalise. The work of the ACLO also depended on the commitment of the individual ACLO themselves, as some were very proactive in communities whereas others were more responsive to Command needs as they arose. He explained that ultimately ACLOs report to the superintendent who oversees the Police Area Command or District, but their immediate boss would vary in different commands.
283. Chief Inspector Hanlon explained that a general duties officer could find out who the ACLO is by looking it up in the police database or asking a more senior officer. He explained that at the Police Academy there is training delivered by the Aboriginal training officer about ACLOs and how to reach them. He stated that every police officer leaving the academy should know who an ACLO is and where to find them. He stated that there was not a specific role for ACLOs in liaising with members of the community in relation to warrants, and that executing warrants is only a very small part of what a command does. He agreed, therefore, that adding to the role of ACLOs to specifically provide for involvement in the execution of warrants would not be a large burden to place on an ACLO.
284. Chief Inspector Hanlon informed the Court that there has never been an ACLO attached to the Blacktown Area Command.
285. Constable Asprek gave evidence that he was aware of what an ACLO was, but that they do not have an ACLO at Blacktown and that he had never tried to get assistance from an ACLO for his policing duties. Constable Challenger could not recall if he had ever had any interaction with an ACLO. Leading Senior Constable Prior stated that he had never had contact with an ACLO himself. His understanding was that ACLOs were to be used in "community engagement" but not arrest warrants or anything of that nature, and that their

---

<sup>40</sup> Exhibit 1 Tab 157B and 157C

role was about “community events, funerals, building relationships and support”. He could not explain what he meant by “community engagement”.

286. Sergeant Bentham stated it would be inappropriate for an ACLO to attend an actual scene because of a safety risk.

287. Leading Senior Constable Prior and Constables Asprey and Challenger did not have specific recall of the cultural competency training they had been provided in the Police Force. Each of the officers considered that it was not relevant that Mr Russell was an Aboriginal person for how they approached the execution of the warrant. Whilst it is accepted that the officers were concerned not to engage in any form of unlawful discrimination, it is also clear that the officers may not understand the historical context of the relationship between police and Aboriginal people, and why in that context, Aboriginal people might have a particular fear or distrust towards police that could manifest during the execution of a warrant.

288. Chief Inspector Hanlon explained that while there is limited resources for the delivery of Aboriginal cultural competency training, those resources could be diverted to areas of need as and when they arose.

289. It is not in dispute that Blacktown PAC has a high proportion of First Nations People. It should have an ACLO. The evidence also highlights a need for additional cultural competency training in that PAC and that training should also encompass the role of the ACLOs.

In relation to these issues, I propose to make the following recommendation to the NSW Commissioner of Police

**To the NSW Commissioner of Police**

1. Consideration be given by the NSW Police Force that in Blacktown (and other communities with high populations of First Nations people) to ensuring that:
  - i. there is an Aboriginal Community Liaison Officer engaged at the relevant Police Area Command (PAC) or Police District (PD);
  - ii. that the police within the relevant PAC or PD be required to do a training module on Aboriginal cultural competency;
  - iii. that any such cultural competency training includes specific training on the role of an ACLO and the ways in which an ACLO can assist an officer undertaking general duties in respect of First Nations people.
2. Consideration should be given by the NSW Police Force to:

- (i) identifying appropriate ways for ACLOs to be involved prior to the execution of arrest warrants on First Nations people.
- (ii) specifying the ways identified in accordance with 1(i), in the role description of ACLOs, the training given to ACLOs, and training given to other officers in their NSW Police Force as to the role of ACLOs.

### ***Aboriginal Legal Service***

290. Miss Nadine Miles, the principal legal officer of the Aboriginal Legal Service (ALS), informed this court that the ALS would welcome the opportunity to jointly develop a warrant hand in scheme with the NSW Police Force. She said that such a scheme would require the ALS to make staffing and operational changes and that it would also need to apply for funding. She did not consider this to be a barrier to the making of a recommendation of this nature. I note that the NSW Police Force also agree that this suggestion is worthy of genuine consideration.

Accordingly, I propose to make the following recommendation.

### **To the NSW Commissioner of Police and the Aboriginal Legal Service**

1. That the NSW Police Commissioner and the Aboriginal Legal Service consider jointly developing a procedure for the execution of bench warrants on Aboriginal and Torres Strait Islander defendants which encourages defendants to hand themselves in to the police and/or to the court and which involves:
  - (i) by the NSWPF, nominating a fixed period of time (to be determined as part of the policy and procedure) during which police will postpone execution of the warrant for the purpose of enabling the steps set out below to take place, with a view, if possible, to facilitating voluntary presentation by the person the subject of the warrant to a police station or court.
  - (ii) mandatory notification by the NSWPF to the Aboriginal Legal Service within a fixed period of time of receiving the warrant:
    - a. of the fact that a warrant has been received; and
    - b. nominating a police officer as a contact person for the warrant.
  - (iii) by the Aboriginal Legal Service, either directly or by referral to other services or persons, upon receipt of a notification by the NSWPF, seeking to communicate directly or indirectly with the person the subject of the warrant and seeking to advise about and support them in handing themselves into the police or a court, preferably by appointment.

- (iv) by the NSWPF, *additionally*, using ACLOs engaged by the NSWPF to attempt to communicate directly or indirectly with the person the subject of the warrant to seeking to encourage and support them to hand themselves into the police or a court, preferably by appointment and providing information about appropriate legal and support services to advise and assist in that process; and
- (v) by the NSWPF, to establish clearly defined circumstances in which the notification requirement and the fixed period of time as set out in (i) above may be dispensed with (vi) that any protocol that is developed be called the Stanley Protocol.

## CONCLUSION

291. Before discharging their weapons, both Constables Asprec and Challenger plainly feared an immediate risk to their life, or a risk of serious injury. It is apparent from the taser footage taken by Leading Senior Constable Prior, that immediately prior to the first discharge of the weapon, Mr Russell had raised an axe above his head in a motion consistent with swinging the axe towards the officers. It is also clear from the evidence that Mr Russell had advanced around the corner towards the officers by reason of the way he ultimately fell on the floor, with his feet at the bottom of the stairs, but his body facing up the stairs.
292. The conduct of each of Constables Asprec and Challenger in discharging their firearms was in response to their reasonable perception of an immediate risk to their lives.
293. We will never know, though, what was going on in Mr Russell's head at this time. He is likely to have felt cornered and agitated at the prospect of going back into custody. Mr Russell brandished the weapons, but he did not throw them
294. During this inquest, Chief Inspector Hanlon said that the NSW Police never want to see the death of a person as a result of police action. Senior Constable Bodkin spoke of Mr Russell's death as a tragedy. Constable Asprec described it in similar terms in his evidence. Constable Challenger stated in interview that he was very sorry with the way it "went down" and he felt remorse, great remorse.
295. It was submitted on behalf of the police that the officers would never have gone into the house if they had known or anticipated that Mr Russell was or would be armed with an axe and a knife.
296. It was also submitted by the representative for NSW Police that if there is a way to execute a warrant without violent confrontation that this is preferable to police. NSW Police are open to explore the options or alternatives which would achieve arrests with less chance of confrontation.

297. Hopefully, the recommendations will help to provide alternatives to confrontational arrests. Hopefully, additional planning with additional information will be involved in future arrests. Mr Russell had an intellectual disability, he had suffered the childhood trauma of sexual abuse and was drug dependant, he had suffered the loss of his brother in custody, he was so desperate not to go into custody he had taken extreme measures in the past to avoid it. The police who attended his home to execute the warrant were not, but should have been, aware of all of these matters.

298. I thank Mr Russell's family for participating in this inquest when it has been so difficult and so sad for them. Their daily attendance at the inquest is a testament to their love of Mr Russell and the ongoing grief they suffer.

### **Findings pursuant to s 81(1) of the Crooners Act 2009**

#### ***Identity***

The person who died was Stanley Russell

#### ***Date of death***

Mr Russell died on 9 November 2021

#### ***Place of death***

Mr Russell died at 10 Bulah Way, Seven Hills, NSW

#### ***Cause of death***

Mr Russell died as a result of a gunshot wound to the chest

#### ***Manner of Death***

Mr Russell died during the course of a NSW police operation

## Recommendations pursuant to s.82 Coroners Act

### To the New South Wales Commissioner of Police:

1. Consideration be given by the NSWPF to updating the wording of the BWV Standard Operating Procedures Version 2.4 to make clear to officers of the NSWPF:
  - (i) when they are required to turn their BWV on to recording (as compared to turning on to standby mode); and
  - (ii) the scope of their discretion not to record on BWV when their activities otherwise fall within the scope of "When to Use BWV" identified on page 7 of the BWV Standard Operating Procedures.
2. Consideration be given by the NSW Police Force to ensuring that that in Blacktown (and other communities with high populations of First Nations people):
  - (i) there is an Aboriginal Community Liaison Officer (ACLO) engaged at the relevant Police Area Command (PAC) or Police District (PD);
  - (ii) that the police within the relevant PAC or PD be required to complete a training module on aboriginal cultural competency; and
  - (iii) that any such cultural competency training includes specific training on the role of an ACLO and the ways in which an ACLO can assist an officer undertaking general duties in respect of First Nations people.
3. Consideration should be given by the NSW Police Force to:
  - (i) identifying appropriate ways for ACLOs to be involved prior to the execution of arrest warrants on First Nations people; and
  - (ii) specifying the ways identified in accordance with recommendation 3(i) in the role description of ACLOs, the training given to ACLOs, and training given to other officers in the NSW Police Force as to the role of ACLOs.
4. Consideration be given to introducing a policy or standard operating procedure requiring that:
  - (i) officers who suspect that a person may be suffering from an intellectual disability make a record of that in COPS against the individual's COPS profile.
  - (ii) before seeking to execute a bench warrant by entering the home of a person identified on the COPS database, or otherwise known to police officers, as possibly suffering from an intellectual disability or mental health issues, officers consider:
    - a. available warnings and available information to ascertain the person's mental health issues, intellectual disability, and specific vulnerabilities.
    - b. available information suggesting a history of self-harm, increased risk of violence or the use of weapons.



- (iii) the information set out in (i) and (ii) above be taken into account in deciding whether or not to execute a bench warrant by entering a person's home to attempt to locate them, and if it is decided to attempt to effect an arrest, in planning how best to undertake an operation to arrest the person to minimise the risk of harm to the person, the police and the public; and
  - (iv) other than in circumstances of urgency, the NSWPF consider alternatives to arrest as a means of executing a bench warrant where there is any indication that the person of interest has an intellectual disability, and that in such circumstances the NSWPF shall attempt to contact the person directly and indirectly, and to identify if there is a means of liaising with the individual, to encourage voluntary attendance at a police station by the person of interest and to elicit information relevant to the potential risk to the person, the public, or to police arising from any attempt to execute the warrant.
5. Consideration be given to the NSWPF working with the Justice Advocacy Service to introduce a procedure whereby if the Justice Advocacy Service (**JAS**), or other similar advocacy service on behalf of persons with an intellectual disability, has notified the NSWPF that they are involved in a case or as regards a person of interest, the NSWPF shall contact JAS, or that other service, before undertaking an operation to execute a bench warrant:
- (i) to ascertain whether JAS, or the other service, can attempt to contact the person of interest to attempt to persuade the person to attend a police station or court voluntarily; and
  - (ii) to seek information from JAS, or the other service, as to any vulnerability or disability that may be relevant to the execution of the warrant.

**To the NSW Commissioner of Police and the Aboriginal Legal Service**

1. That the NSW Police Commissioner and the Aboriginal Legal Service consider jointly developing a procedure for the execution of bench warrants on Aboriginal and Torres Strait Islander defendants which encourages defendants to hand themselves in to the police and/or to the court and which involves:
- (i) the NSWPF, nominating a fixed period of time (to be determined as part of the policy and procedure) during which police will postpone execution of the warrant for the purpose of enabling the steps set out below to take place, with a view, if possible, to facilitating voluntary presentation by the person the subject of the warrant to a police station or court;
  - (ii) mandatory notification by the NSWPF to the Aboriginal Legal Service within a fixed period of time of receiving the warrant:

- a. of the fact that a warrant has been received; and
  - b. nominating a police officer as a contact person for the warrant.
- (iii) by the Aboriginal Legal Service, either directly or by referral to other services or persons, upon receipt of a notification by the NSWPF, seeking to communicate directly or indirectly with the person the subject of the warrant and seeking to advise about and support them in handing themselves into the police or a court, preferably by appointment;
- (iv) by the NSWPF, *additionally*, using ACLOs engaged by the NSWPF to attempt to communicate directly or indirectly with the person the subject of the warrant to seek to encourage and support them to hand themselves into the police or a court, preferably by appointment and providing information about appropriate legal and support services to advise and assist in that process;
- (v) by the NSWPF, to establish clearly defined circumstances in which the notification requirement and the fixed period of time as set out in (i) above may be dispensed with; and
- (vi) that any protocol that is developed be called the Stanley Protocol.

I close this Inquest.

Magistrate Carmel Forbes

■ Deputy State Coroner

14 April 2023

NSW State Coroner's Court Lidcombe