



## STATE CORONER'S COURT OF NEW SOUTH WALES

<b>Inquest</b>	Inquest into the death of William Crews
<b>Hearing dates</b>	28 July -1 August 2014, 1– 5 September 2014, 2-6 February 2015
<b>Date of findings</b>	21 September 2015
<b>Place of findings</b>	NSW State Coroners Court
<b>Findings of</b>	State Coroner Michael Barnes
<b>Catchwords</b>	CORONIAL LAW – Death in a police operation; execution of search warrants; risk assessment; protective equipment; supervision by police officers; police training
<b>File number</b>	2010/436872
<b>Representation</b>	<p>Mr Dean Jordan SC, Counsel Assisting the Coroner with Ms Kirsten Edwards and Mr Jake Harris, instructed by Ms Naomi Malhotra CSO</p> <p>Mr Adam Casselden for the Crews Family</p> <p>Mr Bruce Hodgkinson SC for the NSW Police Force</p> <p>Mr Brett Longville for Detective David Roberts</p> <p>Mr Andrew Naylor for Snr Constable Richard McNally</p> <p>Mr Brendan Docking for WorkCover</p> <p>Mr Greg Willis for Assistant Commissioner Malcolm Lanyon, Detective Superintendent Deborah Wallace and Former Inspector Michael Ryan</p>

<p><b>Findings</b></p>	<p><b>The identity of the deceased</b> The deceased person was William Arthur George Crews.</p> <p><b>Date of death</b> Mr Crews died on 9 September 2010.</p> <p><b>Place of death</b> He died in the Liverpool Hospital in New South Wales.</p> <p><b>Cause of death</b> The cause of the death was gunshot wound to the neck.</p> <p><b>Manner of death</b> While executing a search warrant on residential premises in Bankstown with a number of other officers, Detective Constable William Crews was fatally wounded when he was unintentionally shot by another police officer who returned fire from a drug dealer who had mistaken the police officers for criminals come to rob him.</p>
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*The Coroners Act 2009 in s81 (1) requires that when an inquest is held, the coroner must record in writing his or her findings as to various aspects of the death. These are the findings of an inquest into the death of William Arthur George Crews.*

## **Introduction**

1. On the evening of 8 September 2010, Detective Constable William Crews and six other police officers entered the basement of a residential unit complex in Bankstown expecting to apprehend a drug dealer actively involved in drug trafficking. Detective Constable Crews was at the front of the search party when their target suddenly came out of a garage in the basement. Upon seeing the officers, the target produced a pistol and fired at them. Detective Constable Crews and another officer returned fire. Detective Constable Crews fell to the ground fatally wounded. It was later found that a shot from the drug dealer had struck his left arm, while a bullet from a colleague's gun had lacerated major blood vessels in his neck, causing un-survivable injuries. Detective Constable Crews lay dying on the floor of the basement, while his colleagues took cover in another part of the basement under the mistaken belief that the drug dealer continued to pose a danger to them. He died later that night in hospital.
2. The holding of an inquest into the death was essential but it could not proceed until the criminal charges arising from the fatal incident had been dealt with and any appeals resolved. As a result, the inquest did not commence until 4 years after the death.

## **The issues**

3. In accordance with s81 of the Act, a coroner is required to confirm that the death occurred, and to find the identity of the deceased person; the place and date of the death; and its manner and cause.
4. In this case there was little or no doubt about the general particulars of the death. The inquest focussed on whether it could have been prevented by better policing and whether any changes to police policies, procedures or training could reduce the likelihood of deaths occurring in similar circumstances. In particular:-
  - Were the policies and procedures of the New South Wales Police Force (NSWPF) in relation to the obtaining and execution of search warrants complied with for the purposes of the search of the premises concerned;
  - Were those policies and procedures adequate and appropriate to protect the safety of police officers and the public;
  - Did the conduct of any of the police officers participating in the preparation for the search or the search itself contribute to the death of Detective Constable Crews; and
  - Did inadequate training of police officers participating in the preparation for the search or the search itself contribute to the death of Detective Constable Crews?

# The evidence

## Social history

5. William Arthur George Crews was born on 29 May 1984. He was 26 years old at the time of his death. He was the son of Sharon and Kelvin Crews, and the youngest brother of Benjamin Crews, Rebecca Lancaster and Kate Elliot. He is referred to by his family as Bill.
6. Bill Crews was described by his father as a person who loved life, his family, friends and colleagues. According to his father, Bill was competent and capable of whatever he put his mind to.
7. He grew up on the family farm in Glen Innes from the age of one. According to his father he enjoyed his years on the farm and embraced the country life and all that went with it: the work, horse riding, polo cross, hunting, shooting, motorbike riding and rugby.
8. He was a New South Wales Rural Fire Service volunteer from an early age, fighting numerous bushfires and attending motor vehicle accidents that occurred in the area. He continued to volunteer any time he was at home from university or Sydney.
9. After completing year 12 at High School, Bill attended Southern Cross University at Lismore and completed a three year degree in information technology after which he returned home for a short time and then went on to Sydney in search of employment in this field.
10. He worked for a short period as a barman and lived with either his brother or his sister who were already established in Sydney. One evening he rang his parents and said; *"I got in"*. They responded; *"Where"* and were most surprised but equally proud when he answered; *"The cops"*.
11. He came from a family of former and serving police officers. His brother Ben is a current serving Senior Constable with the NSW Police Force. His father is a former police officer, as was his aunt and two of his uncles.

## Policing history

12. William Crews joined the NSW Police Force in January 2007 as a Probationary Constable attached to Campsie Local Area Command. He was confirmed as a Constable in January 2008. On 22 August 2010 Detective Constable Crews was transferred to the Middle Eastern Organised Crime Squad where he worked in the Target Action Group.
13. Detective Constable Crews was described by his superiors as a keen, competent and proactive team member. He was liked and respected by his colleagues who were impressed by his work ethic and enthusiasm. He was known to his colleagues as Bill or Crewsy.
14. At his funeral Commissioner of Police Andrew Scipione referred to Bill Crews as *"a highly regarded police officer who served his community with courage, honour, and distinction"*, and read out the following words provided to him by some of Bill's closest workmates:

*Crewsy had an aura that drew people closer to him, and a personality that made everyone around him embrace life and work hard ... He was a natural leader, but more importantly he was also a team player, who always put other people's interests before his own. Whenever the serious work was on he was either leading the way; or right there behind you when you needed his support. The love and respect that*

*Crews had for the job, his mates, and for his ever-growing family are characteristics that we thought were one in million.*

15. Detective Constable Crews was posthumously awarded a detective's designation and received the Commissioner's Valour Award, for conspicuous merit and exceptional bravery while on duty.

## **MEOCS**

16. The police officers involved in the search warrant were members of the Middle Eastern Organised Crime Squad (MEOCS) which sits within the State Crime Command. As the name suggests, this is a specialist squad dedicated to investigating organised crime associated with persons described, generically, as being of "Middle Eastern" heritage, particularly in the south western suburbs of Sydney. It is not a tactical unit, that is, its members were not specifically trained in advanced methods of overcoming resistance or forcing entry into premises.
17. MEOCS commenced operation on 1 May 2006 and took over the responsibilities of Task Force Gain, which was formed in October 2003 in response to an increase in violence being exhibited by Middle Eastern organised crime groups in south western Sydney. MEOCS consists of three tiers of staff, namely, the Criminal Investigation Team, the Target Action Group (or TAG) and uniformed police (including Highway Patrol and General Duty officers).<sup>1</sup>
18. The charter of MEOCS provides it should:

*Conduct multi-level investigations into Middle Eastern Organised Crime Groups involved in Serious and Organised Crime with a focus on those groups who have a propensity to use violence to achieve their criminal ends.*<sup>2</sup>

19. The role of the Target Action Group is to support the investigative capacity of MEOCS strike forces, and its charter includes conducting approved investigations into Middle Eastern crime syndicates, including investigations and related operations concerning low and mid-level illicit drug distribution, firearm possession and supply, and crimes of violence.<sup>3</sup>
20. In 2010, executing search warrants was a regular activity for members of the Target Action Group.<sup>4</sup>

## **Events leading up to the search**

### **Contact with the informant**

21. Since 2009, Detective Senior Constable Dave Roberts had cultivated a relationship with a registered source who had on a number of occasions provided him with information about criminal activity relevant to MEOCS's charter.<sup>5</sup> I have granted an application to suppress the name and identifying information about that source on the basis of public interest immunity.

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<sup>1</sup> See 4/74/1494-1495 (Coronial Brief Volume 4, Tab 74, pages 1494 to 1495). See also, organisational charts 1/12B/161G-161I.

<sup>2</sup> See Charter of the MEOCS at 4/73/1490

<sup>3</sup> See Charter of Operations – MEOC TAG at 4/73/1492

<sup>4</sup> See, for example, McNally T29.7.14 at 51 (transcript of evidence given by Senior Constable McNally on 29.7.14 at page 51); Roberts T31.7.14 at 55

<sup>5</sup> Roberts T29.7.14 at 76

Accordingly, the informant was referred to throughout these proceedings and in the documentary material tendered as X.

22. Detective Roberts continued to contact X from time to time with a view to obtaining criminal intelligence. At about midday on 8 September 2010, he contacted X and agreed to meet with X. He took Senior Constable Richard McNally with him. Prior to his departure, Detective Roberts informed his supervisor, Detective Inspector Michael Ryan, that he was leaving the office to meet with X.
23. The meeting occurred at around 1:15pm. The officers collected X in an unmarked police vehicle from an agreed location and then drove to the unit complex at Cairds Avenue Bankstown because according to X a person known to X was continually committing drug crimes from those premises.<sup>6</sup>
24. Detective Roberts drove and took the lead role in the discussions. Senior Constable McNally sat in the back seat alongside X and took notes during the meeting.
25. X indicated an occupant of the unit complex was dealing drugs from his garage. The garage was located in the basement of the building. X described the occupant as an Asian male in his 50s who drove a white Toyota Camry station wagon. X did not know the Asian male's name and referred to him as "Miagi". X said that the Asian male was dealing in substantial amounts of cocaine and heroin, being amounts no smaller than 3.5 grams at a time, and that the deals took place mainly in the evening.
26. X said that the Asian male had a practice of taking sellers and buyers to different garages to deal with them. X said the customers of "Miagi" included members of the Kalache family and the Hamze family.<sup>7</sup> X told them that two days earlier, on 6 September 2010 at about 11:00pm, X had been present at the unit complex and witnessed "Miagi" sell half a pound of cocaine to Bill Kalache in the garage in the basement of the complex. Payment to "Miagi" was made with three ounces of heroin and cash.<sup>8</sup> According to X, Bill Kalache had attended the meeting with 3 carloads of associates.<sup>9</sup>
27. The claim that members of the Kalache and Hamze families were involved with the Asian male was of significance to the officers because they were known to be Middle Eastern crime families, some members of whom had a history of involvement in serious crime including drug supply and violence.<sup>10</sup> The officers were aware of intelligence that some members of these families potentially had access to firearms.<sup>11</sup> Detective Roberts was personally aware that at least one member of the Kalache family had a history of being aggressive towards police. Bilal ("Bill") Kalache had become aggressive towards police when Detective Roberts and Senior Constable Howes had arrested him in December 2008. Detective Roberts had arrested another member of the Kalache family in March 2010 and

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<sup>6</sup> McNally T28.7.14 at 28; Roberts T30.7.14 at 6-7

<sup>7</sup> McNally T28.7.14 at 28, 37 and McNally's notes at 2/38/626; Roberts T30.7.14 at 7

<sup>8</sup> Draft search warrant application prepared on the basis of the information provided by X: 1/24A (attachment to email sent at 17:05 on 8/9/10), see also McNally T28.7.14 at 28, 30 and McNally's notes at 2/38/626, Roberts T30.7.14 at 9-10

<sup>9</sup> See interview of Roberts at 2/29A/7-8, see also Roberts T30.7.14 at 18

<sup>10</sup> McNally T28.7.14 at 36, 51, Roberts T30.7.14 at 7-8

<sup>11</sup> Roberts T30.7.14 at 16, see also McNally T28.7.14 at 51 who stated that he could not recall the intelligence material 100% but it would probably have included information about activity involving firearms, and at 36



charged him with a series of firearms offences relating to the possession of unauthorised and illegally altered weapons.<sup>12</sup>

28. Given their Middle Eastern heritage, the involvement of members of the Kalache and Hamze families in drug dealings at the block of units was of particular interest to officers in MEOCS, because it fell within their area of specialist operations. The Hamze and Kalache families were identified investigative targets of MEOCS because some members were known to be involved in crimes of violence and ongoing criminal activity.<sup>13</sup>

### Record of the meeting with X

29. For reasons which will become clear, exactly what was said about some things when officers Roberts and McNally met with X are material to an assessment of whether the search of the premises in Cairds Avenue was properly planned and executed.
30. While Detective Roberts spoke to X, Senior Constable McNally made a note of the conversation in his police notebook. That note is the only contemporaneous record of the information provided by X. The full context of the note is also significant when assessing an important matter in dispute, namely the meaning of the entry "Gun" in the note. The note is set out, in full, below:

8/9/10 1:15pm

*½ lb Cocain – 2 nights ago*

*Bankstown*

*Gun + cash,*

*Deals with Gangs<sup>14</sup>*

*Bill Kalarchi's/Hamzy's*

*Asian male – Mayugi – 50-55*

*5-6 garages<sup>15</sup>*

*Buyers in different garages*

*Roller door. First garage on left.*

*Kalachi gave Asian – Heroin few oz*

TONI McNeice \*16

<sup>14</sup> Supplementary volume of brief (Exhibit 4) Tab 10

<sup>13</sup> McNally T28.7.14 at 37, 51

<sup>14</sup> In his evidence McNally did not think "deals with gangs" related to the Hamze and Kalache families (as he would not refer to the families as gangs). He thought the reference might relate to different information X provided at the same time about another criminal group (which is referred to on the second page of McNally's note, but was redacted on the basis of irrelevance), McNally T28.7.14 at 35-36. This evidence is hard to reconcile with the placement of the phrase between "gun" and "cash" and "Bill Kalarchis/Hamzy's", which McNally agreed did relate to the activities of "Miagi". It is not necessary to resolve this issue.

<sup>15</sup> In his evidence McNally was not sure about the reference to "5-6 garages" but believed that X had been behind a roller door when dealing with "Miagi" and had surmised there were 5-6 other garages that "Miagi" used to deal with buyers, McNally T28.7.14 at 29.

*Asian gave Kalachi – cocaine*

*\* <sup>16</sup>*

*[Portion redacted]*

*8/41 <sup>17</sup>*

*Carmen St CAIRDS AVE!*

*41-43 <sup>18</sup>*

*AYL9ZP Mitsubishi outlander <sup>19</sup>*

*Main bloke drives a white*

*QQY160 Magna wagon – Camry 84 <sup>20</sup>*

*Cocaine 1lb in the garage.*

31. Both Detective Roberts and Senior Constable McNally say they recall asking X if “Miagi” was in possession of any firearms.<sup>20</sup> In their inquest evidence the officers could not recall precisely what X had said about firearms. This is understandable given the passage of time. However, Senior Constable McNally said he was sure he was never told there was a gun at the premises. Detective Roberts recalled X said X had never seen “Miagi” in possession of a firearm, but could not rule it out.<sup>21</sup> This was significant, as the officers were not aware how many dealings X had previously had with the Asian male. Detective Roberts conceded in evidence that he only knew it was more than once.<sup>22</sup>
32. The notation “Gun + cash” could indicate something was said about a gun and cash being present at the location, and “gun” was underlined because this was of very obvious importance. However, Senior Constable McNally said he wrote down “Gun” because he had asked if X had seen a gun and X replied that X had not. He said he underlined “Gun” because it was an important question for a risk assessment and the answer could determine how the job would proceed.<sup>23</sup> Further, he said he underlined it to indicate he’d asked whether there was likely to be one at the premises.

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<sup>16</sup> The name “TONI McNeice” which appeared vertically on the left side of the note records the name of the police officer whom McNally subsequently contacted about an intelligence report regarding the unit complex that he located. It is likely the reference was added to the note at Hurstville Police Station, see generally McNally T28.7.14 at 39-42.

<sup>17</sup> This entry “8/41<sup>18</sup>” was added to the note after the meeting, arising from further enquiries he made later that afternoon, McNally T28.7.14 at 30.

<sup>18</sup> The reference to the Mitsubishi Outlander was based on a false lead from X that “Miagi” might have been in an Outlander which drove by while he was talking to the officers, McNally T28.7.14 at 30-31.

<sup>19</sup> The reference to the Magna Camry wagon was, to the best of McNally’s recollection, derived from an intelligence report McNally obtained after the meeting and added to the note, McNally T28.7.14 at 31, see also at 42.

<sup>20</sup> McNally T28.7.14 at 32, T29.7.14 at 30 (referring to 2/37/603-604), Roberts T30.7.14 at 11, 42-43

<sup>21</sup> See for example Roberts T30.7.14 at 11, 21, 42-47, 66 and 31.7.14 at 36 and compare with earlier accounts – 2/29A/24, 2/32/417, 2/33/54; McNally T28.7.14 at 32, T29.7.14 at 30 (referring to 2/37/603-604)

<sup>22</sup> Roberts T30.7.14 at 47

<sup>23</sup> McNally T28.7.14 at 31-32

33. Given its significance, it is hard to comprehend why he did not simply write “No gun” or strike out the word “gun” which the officer conceded would have been just as easy.<sup>24</sup> Nor does his explanation fit with the officer asking about the likelihood of cash being at the premises, which he said he did, and that word not being underlined.

34. When asked about his note, in an interview on 18 March 2011, Senior Constable McNally said that X may also have said words to the effect of “*you never know, he might have one in the unit*”.<sup>25</sup> Detective Roberts also said that X may have made a comment to the effect that X “couldn’t rule it out” (Miagi having access to a firearm).<sup>26</sup> Detective Roberts thought the statement may have been made later, in one of his phone conversations with X.<sup>27</sup> In evidence, Detective Roberts described the comment as a glib remark, perhaps made in exasperation because he had asked X so often about firearms.<sup>28</sup> Senior Constable McNally gave similar evidence, stating that he considered the remark “off the cuff”,<sup>29</sup> and that:

*if I had any inkling that the bloke had a gun there’s no way we would have done a search warrant like that.*<sup>30</sup>

35. X refused to give a statement to police. However, X told investigators during an interview at Revesby Police Station on 24 September 2010 that X had said to a police officer before the shooting that there could be “ammo” (which X said meant firearms) at the location because the Asian male was a big drug dealer.<sup>31</sup> X was a particularly evasive and unhelpful witness when called to give evidence at the inquest. X gave evidence in a closed court via audio visual link. To be fair to X, it is likely that X had a justifiable fear of being identified as having been a police informant. In any event, X’s evidence was of little assistance and real caution must be exercised when relying on anything that X said that is not supported by other evidence.

36. I accept Senior Counsel Assisting’s submission that Senior Constable McNally appeared, in general, to be making a genuine attempt to give truthful evidence. However, it is the case that his memory was not always reliable. In his WorkCover interview he suggested that he may have underlined “Gun” because of inquiries he later made on the COPs database and firearms registry which showed no guns to be registered to the Cairds Avenue address.<sup>32</sup> Senior Constable McNally agreed during the hearing that he had reflected repeatedly on the events of that day and had filled gaps in his memory. Such reflection would be natural. He said:

*I mean I played that many scenarios in my head and I have made up, filled in gaps and made more gaps...*<sup>33</sup>

37. I did not form such a favourable impression of Detective Roberts’ candour. He tended to become aggressive and defensive when challenged in evidence. He was reluctant to make

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<sup>24</sup> McNally T29.7.14 at 53

<sup>25</sup> 2/37/604, see also McNally T29.7.14 at 30-31

<sup>26</sup> Roberts T30.7.14 at 43-47; 2/29A/24

<sup>27</sup> Roberts T30.7.14 at 43-47, see also 2/29A/24

<sup>28</sup> Roberts T30.7.14 at 44

<sup>29</sup> 2/37/604, see also McNally T29.7.14 at 30-31, 53

<sup>30</sup> McNally T29.7.14 at 53

<sup>31</sup> Statement of OIC Sheehy 1/8/73-77, see also notes at 1/18A

<sup>32</sup> McNally T29.7.14 at 31, see McNally WorkCover interview at 2/39/655

<sup>33</sup> McNally T29.7.14 at 30

any concessions on any topic. In any event, Detective Roberts conceded that X may have said something to the effect that X could not rule out the Asian male having a gun.<sup>34</sup>

38. It was submitted on behalf of Senior Constable McNally, that his evidence that he underlined the word “Gun” to signify that X had been asked whether X had seen “Miagi” with one should be accepted. The note does not record the answer to that question and the court should therefore accept the evidence of the officers who were present when the conversation occurred that X answered the inquiry in the negative. Similar submissions were made on behalf of Detective Senior Constable Roberts.
39. I am unable to accept the evidence of Senior Constable McNally and Detective Roberts on this point. The natural meaning of the contemporaneous note is that it records mention of a gun. The suggestion by Senior Constable McNally that an entry “Gun + cash” really means “no gun but an expectation of cash” is counter intuitive and belies common sense. The claim that “Gun” records a question that was asked is not consistent with the method in which the notes were taken. Senior Constable McNally conceded most if not all of the other entries on the page reflected information provided by the source,<sup>35</sup> not questions he asked of the source.<sup>36</sup> And, as noted above, he accepted that it would have been just as easy to write “no gun”.
40. In my view, the weight of evidence suggests that X did say something to the officers to the effect that the Asian male could possibly have access to a gun or that he possibly had a gun in his unit. In other words, there was a possibility that the Asian male possessed a gun, just as there was a possibility that the officers would locate cash. These possibilities were recorded in Senior Constable McNally’s note as “Gun + cash”, and which both Detective Roberts and Senior Constable McNally conceded may have been mentioned in conversation by X. This conclusion is supported by the repeated questioning of X about the presence of a gun at the Cairds Avenue premises whenever X was subsequently spoken to by Detective Roberts throughout the remainder of the afternoon and evening.

### Decision to proceed with search

41. After the meeting with X, Detective Roberts and Senior Constable McNally returned to Hurstville Police Station to undertake further inquiries about the activities of the Asian male at Cairds Avenue. Sometime in the mid-afternoon, Detective Roberts had a telephone conversation with X who informed him that the Asian male was expected to receive 6 ounces of cocaine some time that afternoon or evening.<sup>37</sup> The cocaine was expected to be sold for approximately \$40,000.<sup>38</sup> Phone records suggest that this call occurred at 4:36pm.<sup>39</sup> Detective Roberts spoke to his supervisor Detective Inspector Michael Ryan. They decided to “strike while the iron’s hot” and apply for a search warrant to be executed that evening.<sup>40</sup>
42. Detective Roberts and Detective Inspector Ryan explained their decision during the inquest. They both said they believed that executing the warrant provided a good opportunity to

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<sup>34</sup> Roberts T30.7.14 at 45

<sup>35</sup> Or information Senior Constable McNally obtained from subsequent enquiries, see paragraph 3.12 above

<sup>36</sup> McNally T28.7.14 at 28-32

<sup>37</sup> Roberts T30.7.14 at 12-13

<sup>38</sup> Roberts T31.7.14 at 46; Ryan’s recollection was somewhat different, namely that the Asian male was already in possession of \$40 000 and was expected to receive a shipment of 6 ounces of cocaine that evening, 4/75/1498, Ryan T4.9.14 at 26, 28

<sup>39</sup> 1/12A/161C; see Roberts T30.7.14 at 12

<sup>40</sup> Roberts T30.7.14 at 24-25, see also Ryan T4.9.14 at 23-25

catch the Asian male in possession of the drugs before they were moved or on-sold.<sup>41</sup> Detective Inspector Ryan said he was generally reluctant to execute warrants at night,<sup>42</sup> but considered that a “source in play” - that is an informant who had direct access to the targets and the premises to be searched - presented a valuable opportunity and mitigated risks.<sup>43</sup> Inspector Ryan said he understood that Middle Eastern purchasers would be involved in a transaction later that evening or in the early hours of the morning.<sup>44</sup> Even if the drugs had been sold by the time the warrant was executed, the officers expected that the Asian male would be in possession of a large amount of cash.<sup>45</sup>

43. It does not appear that either officer gave any real consideration to the risk that the drug deal could be in process, with potentially violent and armed Middle Eastern criminals present when police approached the garage. Despite submissions to the contrary from various parties, I consider that based on the information provided by X this was a real possibility that should have been taken into account.

### Intelligence gathering

44. During the afternoon and early evening of 8 September 2010, Detective Senior Constable Roberts and Senior Constable McNally oversaw further inquiries in preparation for the application for a search warrant. Detective Roberts began gathering officers to participate in the search.<sup>46</sup> He asked Senior Constable McNally to prepare the operational orders.<sup>47</sup>
45. Senior Constable McNally was aware that the Hamze and Kalache families were investigative targets because there was intelligence linking them to ongoing criminal conduct including activity involving drugs. He thought it likely that the intelligence included activities involving firearms. Senior Constable McNally said that MEOCS targets were listed at the Hurstville office and he would have looked at the list.<sup>48</sup> It was submitted on behalf of Detective McNally that it was not the entirety of those families who were considered targets and not every member of those families was known to be prone to violence when confronted by police. I am of the view that such fine distinctions could play no part in the risk assessment of the planned operation when the accuracy of the information was unknown.
46. Plain Clothes Senior Constable Thomas Howes became involved in the preparation for the warrant at about 3:30pm. He conducted a general check on the unit complex on the police database without locating any information of significance.<sup>49</sup> Senior Constable McNally confirmed that no firearms were registered to the location. He also conducted RTA checks (which were inconclusive) to see if he could identify the name of the owner of the car which may have belonged to the Asian male (as identified in the intelligence report described below).<sup>50</sup>

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<sup>41</sup> Roberts T30.7.14 at 13, Ryan T4.9.14 at 23

<sup>42</sup> According to Wallace, T4.9.14 at 85

<sup>43</sup> Ryan T4.9.14 at 23

<sup>44</sup> Ryan T4.9.14 at 23-24, but see also at 51-52

<sup>45</sup> Roberts T30.7.14 at 67, T31.7.14 at 46, Ryan T4.9.14 at 23

<sup>46</sup> Roberts T30.7.14 at 12

<sup>47</sup> McNally T28.7.14 at 38-39

<sup>48</sup> McNally T28.7.14 at 51, see also T29.7.14 at 5-6

<sup>49</sup> Howes T1.8.14 at 2-3

<sup>50</sup> McNally T28.7.14 at 42, 63

### Information from Constable Awaad

47. Detective Crews informed Senior Constable McNally and Detective Roberts that he knew a serving police officer who lived in the Cairds Avenue complex. That police officer, Constable Mohammad Awaad, was a friend of Detective Crews from their time together at the Campsie Local Area Command.<sup>51</sup> Detective Crews rang Constable Awaad to gather more information about the Asian male and his activities. He confirmed that an Asian male aged 50-60 years lived in unit 8 but he was not aware of the man's name and had very limited interactions with him.<sup>52</sup> He was aware that the man lived with his wife and, he assumed, their children.<sup>53</sup> He had observed that the Asian male had visitors to his garage.<sup>54</sup>
48. Detective Crews later reported to his colleagues that Constable Awaad told him that many of the Asian male's garage visitors were of Middle Eastern appearance. Detective Crews also said that Constable Awaad suspected that the Asian male may have been involved in selling or dealing in pirated DVDs.<sup>55</sup>
49. In his evidence at the inquest, Constable Awaad said that he had not noticed that the visitors were of any particular ethnicity.<sup>56</sup> He also said he had not suspected the Asian male of any illicit activities involving DVDs. He thought the man might be engaging in legitimate computer work, such as computer repairs, in his garage. Constable Awaad conceded his recollection of the call was not perfect.<sup>57</sup> There may have been a misunderstanding between the officers. It is unnecessary to resolve this minor conflict in the evidence.
50. Constable Awaad expressed surprise when Detective Crews informed him that the Asian male was believed to be involved in drug dealing.<sup>58</sup> He was not aware of any incident involving the Asian male in the garage two weeks earlier so could not have conveyed this to Detective Crews (this prior incident is discussed below).<sup>59</sup> He had no reason to say anything to Detective Crews which suggested that the Asian male was armed, threatening or likely to use violence against the police.<sup>60</sup>
51. Constable Awaad did not recall being asked any questions about the layout of the unit block (although it was possible he was asked) or access to the unit block, aside from him mentioning to Detective Crews the garage roller door.<sup>61</sup> He was willing and able to provide further information or assistance, if asked, in relation to the execution of the search warrant. At the time, he lived on the left side of the building so he could not provide access to the right tower, where unit 8 was located, but would have lent his access key to the officers. He was also prepared to lend his spare remote control for the garage roller door and to undertake any requested reconnaissance or surveillance.<sup>62</sup>

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<sup>51</sup> Awaad T4.9.14 at 3-4

<sup>52</sup> Awaad T4.9.14 at 3-4; 8/194/2890-2891

<sup>53</sup> Awaad T4.9.14 at 4

<sup>54</sup> Awaad T4.9.14 at 3

<sup>55</sup> McNally T29.7.14 at 54, Roberts T30.7.14 at 27

<sup>56</sup> Awaad T4.9.14 at 3

<sup>57</sup> Awaad T4.9.14 at 5-6

<sup>58</sup> Awaad T4.9.14 at 5-6, 11

<sup>59</sup> Awaad T4.9.14 at 13

<sup>60</sup> Awaad T4.9.14 at 5-6, 11

<sup>61</sup> Awaad T4.9.14 at 6

<sup>62</sup> Awaad T4.9.14 at 2, 6-7

52. The conversation ended with Detective Crews saying he would call Constable Awaad just before the warrant was executed so that he could leave the building. Constable Awaad waited at the house of a family member for Detective Crews to call after his work day ended.<sup>63</sup>

#### Information from resident Q

53. Senior Constable McNally also tried to obtain more information about the Asian male. He conducted a search of the police database, COPS, and asked for the assistance of MEOCS intelligence staff. His inquiries led to an intelligence report dated 1 September 2010 relating to unit 8 of the building (the apartment where Philip Nguyen lived). The intelligence report was prepared by Constable Toni McNeice of Revesby Police Station. It outlined information provided by a resident of the Cairds Avenue complex who contacted police about “suspicious activity at the location”. The resident was known as Q in these proceedings.<sup>64</sup>
54. Constable McNeice stated that Q informed her that an Asian male lived at the location with his wife and two children. He drove a white Toyota Camry, registration number QQY160, which he parked in front of a long garage. Q reported that males of Middle Eastern appearance had been seen constantly at the garage. They would enter the garage before leaving after a short time. Q could not see the activities inside the garage because of the car parked in front, but said that the men would stop talking when Q walked past. The report recorded that Q suspected the resident male was dealing in drugs. The report continued that Q had explained that remote access was needed to access the garage and offered to assist police to gain access if required. The report also recorded the name of the owner of the car and a previous alert for drug supply attached to the vehicle.<sup>65</sup>
55. At about 3:00pm on 8 September 2010 Senior Constable McNally contacted Constable McNeice to obtain the telephone number of Q so that he could obtain more information about the Asian male.<sup>66</sup>
56. Q resided on the left hand side of the complex when facing it from the street. Q was aware of a middle aged Asian male living in Unit 8 on the right side of the building.<sup>67</sup> Q did not have many interactions with the Asian male but knew that he lived with his wife and her two children, a boy in his early twenties and a young girl of primary school age. On one occasion Q had asked the male to close the garage door in the basement and the Asian male had responded rudely.<sup>68</sup>
57. Q became aware, from a neighbour in the complex, of an incident about two weeks prior to the search warrant. Q was not informed precisely what had occurred but was aware the Asian male had been attacked by two men wearing balaclavas.<sup>69</sup> Q had heard screaming and running in the garage/basement area at the time of the incident.<sup>70</sup> When Q became aware from a neighbour that the Asian male had not reported the incident to the police, Q became

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<sup>63</sup> Awaad T4.9.14 at 5, 7

<sup>64</sup> McNally T28.7.14 at 39-42; Intelligence Report Summary at 1/20/256

<sup>65</sup> Statement of McNeice and attached Intelligence Report Summary at 1/20

<sup>66</sup> McNally T28.7.14 at 40, McNeice 1/20/[9].

<sup>67</sup> Q T1.8.14 (closed court transcript) at 2, 9

<sup>68</sup> Q T1.8.14 at 2-3, 16-17; see also Q’s statements at 8/182-183

<sup>69</sup> Q T1.8.14 at 3-5

<sup>70</sup> Q T1.8.14 at 3-4

suspicious of him and his activities. The incident prompted Q to contact Revesby police to make the report referred to above, that was recorded by Constable McNeice.<sup>71</sup>

58. At the inquest, Q denied telling Constable McNeice that Q suspected that the Asian male was dealing drugs rather than just expressing general concern about suspicious activity.<sup>72</sup> It is not necessary to resolve the conflict between the written record and Q's evidence on this point. It is possible that Q forgot expressing this concern or suspicion to Constable McNeice. It is also possible that Constable McNeice understood from Q's information that Q was expressing a suspicion about drugs even if it was not expressed in precisely those terms.
59. Q also insisted at the inquest that Q had relayed information to Constable McNeice about the incident with men in balaclavas.<sup>73</sup> The officer did not recall this information being provided to her and there is no reference to it in her quite detailed intelligence report generated as a result of the conversation. I conclude Q is mistaken.
60. Senior Constable McNally spoke to Q some time after 6:30pm, when Q returned home from work and received a message from him on Q's answering machine. Senior Constable McNally asked Q about the layout of the building. Q explained where the garage for unit 8 was located (downstairs, to the left attached to the same wall as the roller door entry) and offered Q's remote control access to the building. Q also explained that the building was divided into two secure entrance blocks and that Q could "buzz" Senior Constable McNally into the left side of the building.<sup>74</sup> Q told Senior Constable McNally that he could then access the garage by going downstairs.<sup>75</sup>
61. In his evidence, Senior Constable McNally referred to the separate sides of the unit block as "towers". He said Q had told him the only way he could access the right tower from the left tower and get to unit 8 was to walk through the car park of the complex and access another set of internal stairs to the right tower.<sup>76</sup> In general, Q's evidence was of a very brief and general conversation, however Q's recollection of the details of the conversation was, understandably, limited. In contrast, Detective Roberts said he gained the impression from Senior Constable McNally that he had received detailed instructions about the layout of the building from Q and that Q had confirmed the content of the intelligence report.<sup>77</sup>
62. I accept Senior Constable McNally's evidence that he was not told of the robbery attempt suffered by Mr Nguyen a couple of weeks before Detective Crews' death. There is some contention as to whether Q told Senior Constable McNally the Asian male in unit 8 was a friendly man who sometimes walked his children to school as alleged by the officer. Q denied that when giving evidence. Q said Mr Nguyen had not exhibited any warmth towards Q and the evidence indicates he was not an engaged step-father. It is submitted on behalf of Senior Constable McNally that his version should be preferred because he has repeated it a number of times and that it would be unfair to find he was mistaken because that was not put to him in evidence. I do not accept either submission. Q lived in the same unit block as Mr Nguyen. Q had become concerned that he may have been involved in criminal activity. Q

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<sup>71</sup> Q T1.8.14 at 4-8, see also Intelligence Report Summary at 1/20/256

<sup>72</sup> Q T1.8.14 at 6-7, 23

<sup>73</sup> Q T1.8.14 at 5-6, 7-8

<sup>74</sup> Q T1.8.14 at 8-9, see also at 12 in relation to a subsequent conversation between McNally and Q

<sup>75</sup> McNally T28.7.14 at 67, T29.7.14 at 13, 16, see also Q T1.8.14 at 12-14

<sup>76</sup> McNally T28.7.14 at 60, 67

<sup>77</sup> Roberts T30.7.14 at 26



reported this to police. It is unlikely in those circumstances that Q would have painted him in a more amiable light than other evidence indicates was warranted. Procedural fairness to Senior Constable McNally does not require me to ignore the weight of the evidence as I find it. The characterisation of Mr Nguyen as a benign family guy was in my view mistaken and to some slight extent misinformed the risk analysis of the search of his garage.

### The warrant application

63. The search warrant application was completed by Detective Crews. It was based on the information provided by X, together with other information obtained as a result of the further inquiries that had been made that afternoon. The first draft was prepared by Detective Roberts and emailed to Detective Crews at 5:05pm.<sup>78</sup> Detective Crews added further information to the draft including the information from Q, the outcome of the checks of COPS and the RTA, and other intelligence received from Senior Constable McNally and Constable Awaad.<sup>79</sup> The final search warrant application was sent to Parramatta Local Court at 7.37pm and the warrant was granted at 7.58pm.<sup>80</sup> It gave authority to officers of the MEOCS for the entry into unit 8, and the associated garage, to search for evidence in relation to the possession and sale of prohibited drugs.

64. The information contained in the warrant application is the most comprehensive record of the facts known to the search party as at 7.37pm, when it was faxed to the Local Court. Most relevantly, it included the following:

- X stated that an Asian male known as “Miagi” supplied “large quantities” of cocaine and heroin to customers, and specified that the cocaine and heroin was being sold to members of the Hamze and Kalache “Middle Eastern Crime families”.
- X stated that, on 6 September 2010 at about 11pm, X had been present and witnessed “Miagi” sell half a pound of cocaine to a member of the Kalache family. Payment to “Miagi” was made with 3 ounces of heroin and cash.
- X said that this transaction took place in the garage belonging to “Miagi”, in the basement of the block of units at 41-43 Cairds Avenue, Bankstown.
- This garage was “the 1<sup>st</sup> garage on the left upon entering the basement from the driveway accessed from Cairds Avenue”.
- X stated that X knew “Miagi” through other criminal associates and described him as being an Asian male aged in his fifties, who drove a white Toyota Camry station wagon.
- X said that “Miagi” was “constantly dealing cocaine and heroin in amounts no smaller than 3.5 grams at a time”, and that he “primarily deals prohibited drugs in large quantities such as several ounces at a time and mainly in the evening”.
- “Miagi” had told X that he would have a further 6 ounces of cocaine on the evening of 8 September 2010. (Detective Roberts believed this information was provided by X at some stage after the initial meeting).<sup>81</sup>
- Police intelligence records contained a previous report made on 1 September 2010 by Q a resident of the unit complex, complaining of suspicious activity by an Asian male in the basement garage.

<sup>78</sup> Roberts T30.7.14 at 10, see also 1/24A (first email time stamped 17:05)

<sup>79</sup> McNally T28.7.14 at 44-45, 1/24A (second email time stamped 18:43)

<sup>80</sup> See search warrant application at 1/19 and approved search warrant at 1/23

<sup>81</sup> Roberts T30.7.14 at 11

- In that report, Q stated that the suspicious Asian male had numerous meetings in his garage with “Middle Eastern males”. Q believed that the Asian male was dealing in drugs. Q also said that the Asian male drove a white Toyota Camry.
  - Police contacted Q on 8 September 2010, and confirmed that the garage referred to by Q was the garage attached to unit 8 in the block of units. Q also confirmed that the Asian male, who Q believed was dealing in drugs, resided in unit 8.
  - Further information had been obtained from a serving police officer who also lived in the same block of units.
  - The police officer also confirmed that the user of the garage attached to unit 8 was an Asian male aged about 55-65 years, who he described as “short, chubby build, reading glasses and a receding hairline”.
  - In addition, the officer confirmed that the Asian male had numerous meetings in the garage with “Middle Eastern males”.
65. After the warrant was issued, Detective Roberts supervised the preparation for the search of the garage and unit 8 to be conducted later that evening. Relevantly, these arrangements included:
- Preparation of the operational orders for the proposed search which were drafted by officer McNally and submitted to Detective Roberts.
  - Preparation of the State Crime Command Request to Conduct Operational Activities form (a form to authorise use of MEOCS resources for that activity) by Detective Roberts.<sup>82</sup>
  - Selection of officers to be involved in the search, and allocation of their respective roles was also undertaken by Detective Roberts.
  - Review of the operational orders by senior supervising officers.
  - Briefing in preparation for the execution of the search warrant.
  - Arranging for the attendance of an independent police officer during the search.

### **Preparation of operational orders**

66. The preparation of operational orders was required under the Standard Operating Procedures of the NSW Police Force, in relation to search warrants. Essentially, the purpose of them was to summarise the basis for the search, assess the risks associated with the search, and outline the plan for the entry and search of the premises.

67. The operational orders were prepared by Senior Constable McNally.<sup>83</sup>

### ***The risk assessment***

68. The preparation of the operational orders included the completion of a risk assessment, designed to identify threats to the safety of police that may arise in the course of the proposed search. This involved consideration of the likelihood of potential risks, together with the potential consequences should those risks eventuate.

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<sup>82</sup> This was sent to State Crime Command Ops Coordination by Roberts at 7:29pm – Roberts T30.7.14 at 27; however see Lanyon T5.9.14 at 16-17 which indicates it was not sent to the correct email “muddle”

<sup>83</sup> McNally T28.7.14 at 58

69. According to the operational orders he completed, Senior Constable McNally assessed all of the nominated risks to be of “low” likelihood. He also assessed the potential consequences of all of these risks to be “low”.
70. Relevantly, the risks that Senior Constable McNally assessed to be of only “low” likelihood, with “low” consequences, included the following:
- Offender’s access to firearms.
  - Offender’s intelligence for firearms.
  - Offender’s propensity to use violence towards police.
  - Offender’s propensity to use weapons towards police.
71. Senior Constable McNally assessed the risk of firearms on the basis of the information obtained from X and the absence of any other intelligence about the offender’s access to firearms on the police computer systems.<sup>84</sup> His evidence was that X had said there was no gun present (presumably at the premises) / “Miagi” did not have a gun and/or X had not seen him with a gun.<sup>85</sup>
72. As the officers did not know the name of the Asian male, intelligence checks as to licensed or registered firearms could only be conducted in relation to the premises.<sup>86</sup> Senior Constable McNally considered the reference to “weapons” as being weapons other than firearms. He said in evidence that he considered the likelihood of that risk to be low, with only moderate consequences, as the large number of police officers present were likely to be able to control a 55 year old man even if he was in possession of a weapon like a knife or a baseball bat.<sup>87</sup> He made a similar assessment as to the risk of violence generally.
73. Senior Constable McNally did not consider the risk posed by the Middle Eastern investigative targets. He said he had never been told to address the risk posed by known associates or people who might be present at the premises when completing an assessment.<sup>88</sup> However, Senior Constable McNally said he was not expecting the Middle Eastern investigative targets to be present when the warrant was conducted. His understanding from Detective Roberts when completing the operational orders was that X was present at the location and only the Asian male (and possibly another Asian male) was expected to be present when the warrant was to be executed.<sup>89</sup>
74. Senior Constable McNally accepted that any raid on a drug dealer raised the risk that customers would be present at the time. He said:<sup>90</sup>

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<sup>84</sup> McNally T28.7.14 at 42, 54-55, 63

<sup>85</sup> McNally T28.7.14 at 32, T29.7.14 at 30 (referring to 2/37/603-604)

<sup>86</sup> See McNally T28.7.14 at 42, 52, 54-55, 63; T29.7.14 at 33-34

<sup>87</sup> McNally T28.7.14 at 55

<sup>88</sup> McNally T28.7.14 at 56-57

<sup>89</sup> McNally T28.7.14 at 56-57

<sup>90</sup> McNally T28.7.14 at 57

*If there's drugs at any location we do a search warrant on there's a drug dealer, there could be a drug deal any time. Every time we do a search warrant potentially there's going to be someone coming to buy drugs.*

75. He also accepted that there was a risk that the customers may be those who had dealt with the dealer before. He agreed that in this case there was a risk that the Middle Eastern investigative targets could be present.<sup>91</sup> He also agreed that the risk that they would be present, and could be in possession of firearms, was something that he should have considered, stating:<sup>92</sup>

*With hindsight now I totally understand and I will do that now but at that point I had never done that before and it was not a practice that I was acquainted with and I'd never done that before so hence I didn't do it that night.*

76. Each factor in the consequences section was also completed as "low". Senior Constable McNally's evidence was that, with the benefit of hindsight, his completion of the consequence column was mistaken. He said he assumed that consequences were to be assessed on the basis that if the likelihood of a risk was low then the likelihood of a consequence would also be low (because that consequence was unlikely to occur). Senior Constable McNally said he now accepted that the consequence rating was to be completed on the assumption that the risk did in fact eventuate.<sup>93</sup>
77. Senior Constable McNally believed he had received NSW Police Force training in risk assessments when he did an investigator's course in 2003 or 2004 and again in 2010 when he completed a detectives' education course. He has since reviewed the risk assessments he had performed prior to the Cairds Avenue search warrant and they contained a similarly flawed assessment of the consequences rating. He said that on occasions his superior officers or trainers had not identified this problem, although there would have been occasions where it was picked up.<sup>94</sup> He added that on the morning of 8 September 2010 (the same day as the attempted search of Cairds Avenue) he had submitted a copy of a previous risk assessment he had completed to his detectives' education course as an assignment. It contained a flawed assessment of consequences. The problem had not been identified by his MEOCS supervisor or by assessors of the detectives' course.<sup>95</sup>
78. This misconception had the potential to completely negate the efficacy of the risk assessment. It is concerning that Senior Constable McNally's misunderstanding had not been detected and corrected.

### **Identification**

79. The operational orders included the following instruction in relation to the dress to be worn by officers involved in the search:<sup>96</sup>

*All personal [sic] from State Crime Command – MEOCS will dress in appropriate clothing suitable for the execution of a search warrant. All arms*

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<sup>91</sup> McNally T28.7.14 at 57-58

<sup>92</sup> McNally T28.7.14 at 58

<sup>93</sup> McNally T28.7.14 at 52-55

<sup>94</sup> McNally T28.7.14 at 53-54, T29.7.14 at 60-61, 67-68

<sup>95</sup> McNally T29.7.14 at 60-61

<sup>96</sup> Operational Orders 1/21/266

*and appointments to be carried at all times. Plain clothes officers will display police identification.*

### ***Entry to the garage and the unit***

80. The operational orders recorded the plan that once entry had been gained via the front security door, officers Brown, McNally and Baglin would “*go up to level one to unit number 8 and will knock on the door*”.<sup>97</sup> It stated that the remaining officers, including the video operator, would go to the garage area, gain entry and secure the premises. The occupants were to be contained in a common area of the house (unit block) and the warrant and occupier’s notice were to be read and explained to them before any searching commenced.<sup>98</sup>

81. Senior Constable McNally said in evidence that he knew at the time of preparing the operational orders that the officers going to unit 8 could not access the unit from the street level entrance on the right side. He said he knew from talking to Q that the officers would need to enter the left side of the building (assisted by Q) and go down to the basement to go up the internal stairs to reach unit 8. He said he did not include this detail in the orders because he intended to explain it at the briefing held before the execution of the warrant.<sup>99</sup> For the reasons detailed below, I conclude this did not happen.

### ***Surveillance and operational safety checks***

82. The orders included a box which outlined “operational safety checks”. The box was designed so that the safety check could be entered as “Y” or “N” and the person who conducted the check would be recorded alongside the check.<sup>100</sup> The checks which were marked as completed included:

- *COPs checks conducted on premises*
- *ILS check [firearms registry] conducted on premises/persons listed*
- *Photographs of premises*
- *Surveillance conducted at premises*
- *Vests available and will be on site for use*
- *Independent officer, OIC, searcher/s, exhibits officer, video operator, arrest/interview team, scene preservation/security officers identified & aware of duties*
- *Entry implement (sledge hammer or similar) available for use*

83. The three safety checks which were marked as not completed were:

- *Dept of Housing/Lease checks conducted*
- *Other habitation checks conducted*
- *Plans obtained of premises*

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<sup>97</sup> Operational Orders 1/21/265

<sup>98</sup> Operational Orders 1/21/265

<sup>99</sup> McNally T28.7.14 at 60

<sup>100</sup> Operational Orders 1/21/262-263

84. Given the time available, this is not surprising. The question is did the search need to proceed in such a limited time frame? For reasons detailed later, I consider it did not.
85. The evidence indicates the entry “surveillance conducted” refers to when Detective Roberts and Senior Constable McNally had sat in a car parked outside the unit block with the source X and “*had a look at the premises*”.<sup>101</sup> The look involved stopping and then driving past the premises. It did not involve getting out of the car.
86. Senior Constable McNally ticked “vests available” (meaning ballistic vests) on the assumption that each police car would have two ballistic vests and that those vests would be sufficient for the officers attending the search warrant. He conceded that some officers attended the subject premises in cars containing three people and, as a result, there were not enough vests for each officer on site.<sup>102</sup>

### *Selection of officers and allocation of their respective roles*

87. According to the operational orders, the execution of the search warrant would involve the following officers in various roles. The roles were allocated by Detective Roberts and inserted into the orders on his instruction, as follows:<sup>103</sup>
- Detective Inspector Michael Ryan – Operations Commander (although not to be present at the search)
  - Detective Senior Constable Dave Roberts (acting at that time as a Detective Sergeant) – Field Supervisor
  - Senior Constable Scott Brown – Entry/Searcher
  - Constable Paul Baglin – Entry/Searcher
  - Senior Constable Richard McNally – Entry/Exhibit Officer
  - Constable William Crews – Case Officer (and holder of the warrant)
  - Senior Constable Chris Gerogiannis – Video Operator
  - Senior Constable Joshua Lavender – Surveillance/Arrest Team
  - Senior Constable Thomas Howes – Entry/Arrest Team
88. All of these officers were members of the MEOCS. Apart from the uniformed officers, Constable Baglin and Senior Constable Gerogiannis, all of these officers were in plain clothes.
89. As it turned out, another uniformed officer, Senior Constable Fletcher Gentles, also took part in the search, although he is not mentioned in the operational orders.
90. Detective Crews was allocated the role of case officer. That role is outlined in detail in the Standard Operating Procedures in relation to search warrants.<sup>104</sup> It is, however, clear from the evidence that Detective Roberts took the lead role in the preparation and execution of the warrant and from a practical perspective acted more in accordance with the role of operation commander/case officer as outlined in the Standard Operating Procedures. No criticism is made of the extra level of responsibility and oversight assumed by Detective

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<sup>101</sup> McNally T28.7.14 at 64

<sup>102</sup> McNally T28.7.14 at 64-66

<sup>103</sup> McNally T28.7.14 at 59; Operational Orders 1/21/264

<sup>104</sup> As at time of warrant 1/28/315, 317-320

Roberts. This was the first time Detective Crews had undertaken a search warrant at MEOCS. He was keen to gain experience and volunteered to undertake the role.<sup>105</sup> Detective Roberts, as the more senior and experienced officer, assisted and supervised Detective Crews, and prepared the first draft of the search warrant application.<sup>106</sup> Under the supervision of Detective Roberts, Detective Crews was expected to finalise all the relevant documents relating to the warrant and warrant application, announce the warrant to the occupier and provide and explain the occupier's notice. He was also expected to complete the forms required to be sent to the Local Court at the conclusion of the operation.<sup>107</sup>

### Review of operational orders by supervising officers

91. The Standard Operating Procedures of the NSW Police Force for search warrants (as at 8 September 2010) required the operational orders be reviewed by more senior, supervising officers. The review of the Cairds Avenue search warrant operation involved the supervising officers referred to below.

#### Detective Roberts

92. Senior Constable McNally stated that Detective Roberts reviewed the orders in his capacity as his supervisor and as the case officer/source handler who knew most about the operation. He thought Detective Roberts was likely to have made changes to the orders but could not recall any specific changes.<sup>108</sup>
93. When he gave evidence Detective Roberts resisted the use of the words "review" or "checked" to describe his functions, but the level of his involvement was not really in dispute. He agreed that he had read the orders before they were submitted to more senior officers. He agreed with the risk assessment prepared by Senior Constable McNally, including the assessment of consequences.<sup>109</sup> He could not recall if he made any changes to the orders.<sup>110</sup>

#### Detective Inspector Mick Ryan

94. Detective Inspector Ryan was the most senior officer with direct responsibility for supervision of the Target Action Group of MEOCS.<sup>111</sup> He approved the operation during a phone call with Detective Roberts without sighting the operational orders, or any other paperwork, because he had left the office at 3.06pm (before the documents were prepared).<sup>112</sup> Detective Inspector Ryan had previously been issued with a Blackberry device to review documents after hours but had been required to return it, apparently due to funding cuts.<sup>113</sup> Detective Inspector Ryan felt he had enough information to approve the orders from a series of phone calls and updates from Detective Roberts throughout the afternoon.<sup>114</sup>

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<sup>105</sup> McNally T28.7.14 at 59, Roberts T30.7.14 at 53-54

<sup>106</sup> Draft search warrant application: 1/24A (attachment to email sent at 17:05 on 8/9/10); Roberts T30.7.14 at 9-10, 53-54

<sup>107</sup> McNally T28.7.14 at 59, see also Roberts T30.7.14 at 49, 53-54

<sup>108</sup> McNally T28.7.14 at 49

<sup>109</sup> Roberts T30.7.14 at 30-31, T31.7.14 at 8-9, 19-21; see also Roberts interview at 2/29A/17-18

<sup>110</sup> Roberts T30.7.14 at 31

<sup>111</sup> Ryan T4.9.14 at 16

<sup>112</sup> 4/75/[3],[7]-[8]; Ryan T4.9.14 at 25; Roberts T30.7.14 at 29-30, T31.7.14 at 40

<sup>113</sup> 4/75/[8]; Ryan T4.9.14 at 37-38, Roberts was not aware that Ryan had no Blackberry or any other way of reviewing the written documents, Roberts T31.7.14 at 40

<sup>114</sup> Ryan T4.9.14 at 43-45; see also 4/75/[8]-[11]

95. Detective Inspector Ryan was aware that the warrant had been classified as a low risk operation and agreed with that assessment. He was aware that:

- the search warrant would target both a unit and garage and that the party was divided into two teams, both of which contained uniformed officers;<sup>115</sup>
- the mode of entry was proposed to be a door knock, but forced entry was a possible contingency at the discretion of Detective Roberts;<sup>116</sup>
- the target was a middle-aged Asian man believed to live with his wife and two children;<sup>117</sup>
- the target dealt drugs to “Middle Eastern criminal identities” including Hamze and Kalache family members;<sup>118</sup>
- some members of the Hamze and Kalache Middle Eastern families were known to have access to firearms;<sup>119</sup>
- the target was expected to be in possession of \$40,000 cash and/or 6 ounces of cocaine in the garage;<sup>120</sup>
- the target was expected to engage in a drug deal during the evening of the execution of the warrant with Middle Eastern purchasers;<sup>121</sup>
- a source was “in play” who was either present at the unit complex or had unrestricted access to the garage and was able to provide up to date intelligence about activities in the complex;<sup>122</sup> and
- in discussions with Detective Roberts, the source had said that there were no firearms present.<sup>123</sup>

96. Detective Inspector Ryan did not think it was likely that the search warrant party would disturb a drug deal in progress because of the source providing ongoing intelligence at the complex.<sup>124</sup> He was also under the mistaken impression that some physical surveillance was being conducted at the building, namely that officers were stationed in the street watching the premises.<sup>125</sup> He was emphatic in his evidence that, in his last call with Detective Roberts, he had confirmed that the source had said there were no firearms present shortly prior to the search warrant being executed, or he had instructed Detective Roberts to confirm this<sup>126</sup> (the latter is more likely as the phone records indicate that they spoke at 8:14pm, before the 8:39pm call from Detective Roberts to X, just prior to the execution of the search warrant).<sup>127</sup>

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<sup>115</sup> Ryan T4.9.14 at 39; see also 4/75/[11]

<sup>116</sup> Ryan T4.9.14 at 35

<sup>117</sup> Ryan T4.9.14 at 26, 49

<sup>118</sup> Ryan T4.9.14 at 27-28

<sup>119</sup> Ryan T4.9.14 at 28

<sup>120</sup> Ryan T4.9.14 at 26

<sup>121</sup> Ryan T4.9.14 at 73

<sup>122</sup> Ryan T4.9.14 at 23, 26-27

<sup>123</sup> Ryan T4.9.14 at 23; note reference to “the weapon” at T4.9.14 at 22, 71

<sup>124</sup> Ryan T4.9.14 at 26

<sup>125</sup> Ryan T4.9.14 at 26-27

<sup>126</sup> Ryan T4.9.14 at 21-24, 29-31, 71

<sup>127</sup> Ryan T4.9.14 at 30-31 (Ryan accepted his recollection regarding the relevant calls was limited at 31); see also 1/12A/161C-161D



### Detective Superintendent Deborah Wallace

97. Detective Superintendent Wallace was the Commander of MEOCS. She was first informed of the search warrant operation by Detective Inspector Ryan in the mid to late afternoon of 8 September 2010, at around 3:30pm.<sup>128</sup> It was customary for her to receive a pre-briefing from Detective Inspector Ryan prior to receiving any operational orders for a search warrant operation.<sup>129</sup> Detective Inspector Ryan telephoned Detective Superintendent Wallace at Parramatta, where she was attending a series of meetings. Her mobile phone battery had started to run down throughout the afternoon which compromised her ability to communicate later in the day.<sup>130</sup>
98. Detective Inspector Ryan told Detective Superintendent Wallace that his officers had received information from a “source in play” that a middle aged Asian man (otherwise unknown) was dealing drugs from a unit block in Cairds Avenue Bankstown. The man was believed to act as a “middle man” (described by Detective Superintendent Wallace as a “broker”) in drug supplies and to be in possession of 6 ounces of cocaine and/or \$40,000 in cash.<sup>131</sup> Detective Superintendent Wallace understood that it was expected that the drugs would be on-sold to an unknown Middle Eastern criminal group later that evening or in the early hours of the morning.<sup>132</sup> She was told that in addition to a “source in play” who was supplying information to the MEOCS officers, there was a “friendly” within the unit block who could give the officers access to the building.<sup>133</sup>
99. Detective Superintendent Wallace was aware that the search warrant was to be executed at night and queried Detective Inspector Ryan, because she knew he preferred to execute warrants in the early morning.<sup>134</sup> Both officers agreed that it was important to move quickly because of the risk that the drugs would be on-sold. Detective Superintendent Wallace was also eager to take advantage of what she described as a rare opportunity to have a source on the ground, providing regular updates to officers.<sup>135</sup> She had little personal knowledge of the source, but proceeded on the understanding that Detective Roberts regarded the source as reliable.<sup>136</sup>
100. Detective Superintendent Wallace received the operational orders on her Blackberry at about 8:20pm that evening.<sup>137</sup> She routinely reviewed operational orders for search warrants conducted by MEOCS,<sup>138</sup> and described her function as to:<sup>139</sup>

*ensure that the orders contained sufficient information on which to, to conduct the operation. It was also to ensure that a risk assessment was conducted and it was to ensure that efficient appropriate execution strategies were in place as well as contingencies are considered and that resourcing was allocated.*

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<sup>128</sup> Wallace T4.9.14 at 84

<sup>129</sup> Wallace T4.9.14 at 82

<sup>130</sup> Wallace T4.9.14 at 84

<sup>131</sup> Wallace T4.9.14 at 84-85

<sup>132</sup> Wallace T4.9.14 at 84-85

<sup>133</sup> Wallace T4.9.14 at 85-86

<sup>134</sup> Wallace T4.9.14 at 85-86

<sup>135</sup> Wallace T4.9.14 at 86

<sup>136</sup> Wallace T4.9.14 at 86-87, 95-96

<sup>137</sup> Wallace T4.9.14 at 87

<sup>138</sup> Wallace T4.9.14 at 80

<sup>139</sup> Wallace T4.9.14 at 80-81

101. Detective Superintendent Wallace reviewed the operational orders, including the risk assessment matrix which she viewed, albeit with some difficulty, on her Blackberry screen.<sup>140</sup> She was satisfied with the content of the orders and the overall risk rating assessment.<sup>141</sup> She noted that the “consequence” section of the risk assessment matrix had been filled out incorrectly but agreed with the overall risk rating as “low”.<sup>142</sup> She said she substituted her own judgment as to the overall risk based on her belief that the presence of the source mitigated the risks.<sup>143</sup> Detective Superintendent Wallace was critical of the risk matrix because there was no provision for mitigated risks.<sup>144</sup>
102. In assessing the risk, Detective Superintendent Wallace saw that the Asian male was believed to deal with Middle Eastern investigative targets but said she did not know who they were.<sup>145</sup> She did not know that the Asian male was believed to deal with the Hamze or Kalache families or about any recent deal between the target and Bilal Kalache. She was also unaware of Bilal Kalache’s previous arrest during which he displayed aggression towards officers Howes and Roberts.<sup>146</sup>
103. However, Detective Superintendent Wallace said that her agreement with the risk assessment would not have changed if she had been aware of this information. She was aware that some members of the Kalache and Hamze families had a propensity for violence and was aware that at least some members of the Hamze families had access to firearms. She believed that any risk could be mitigated by the presence of the source providing timely information to the search warrant party.<sup>147</sup> This, however, depended upon the source being reliable. Like Detective Inspector Ryan, she also shared the mistaken impression that some form of ongoing physical surveillance was in place around the perimeter of the unit complex.<sup>148</sup>
104. While Detective Superintendent Wallace approved of both the orders and the operation, her approval was not communicated to Detective Inspector Ryan or any member of the search warrant team. She said that her phone battery was dead and her contact numbers were stored on her phone. Detective Superintendent Wallace assumed that the officers would know that no contact from her meant that she had no concerns about the orders and that they were to proceed with the search warrant.<sup>149</sup>

#### **Detective Chief Superintendent Malcolm Lanyon**

105. Detective Chief Superintendent (DCS) Lanyon was the Commander of the Gang Squad and was acting in the role of Director of the Organised Crime Directorate. He was the most senior officer of the authorising officers listed in the operational orders.<sup>150</sup> DCS Lanyon received the orders on his Blackberry at around 8:25pm on 8 September 2010 and spent about 10 minutes reviewing them.<sup>151</sup> He was not aware of any proposed operation until he

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<sup>140</sup> Wallace T4.9.14 at 82-83, 87-88, 91

<sup>141</sup> Wallace T4.9.14 at 87-88, 91-92

<sup>142</sup> Wallace T4.9.14 at 91-92, 100

<sup>143</sup> Wallace T4.9.14 at 99-103

<sup>144</sup> Wallace T4.9.14 at 100

<sup>145</sup> Wallace T4.9.14 at 90

<sup>146</sup> Wallace T4.9.14 at 92-93

<sup>147</sup> Wallace T4.9.14 at 93-94

<sup>148</sup> Wallace T4.9.14 at 94, 106

<sup>149</sup> Wallace T4.9.14 at 87-89

<sup>150</sup> Lanyon T5.9.14 at 1-2

<sup>151</sup> Lanyon T5.9.14 at 11

saw the orders.<sup>152</sup> While he was listed as an approving officer, he saw the purpose of receiving the orders as keeping him “fully informed” rather than seeking his formal approval.<sup>153</sup> He assumed, as it turned out incorrectly, that Detective Superintendent Wallace had already seen the orders and conveyed her approval.<sup>154</sup> In fact, the orders were sent to Detective Superintendent Wallace and DCS Lanyon at the same time (8:18pm) and, as noted above, Detective Superintendent Wallace did not communicate her approval to Detective Inspector Ryan or any other officer before the warrant was executed.

106. DCS Lanyon did not consider it his role to scrutinize the “minutiae” of the operation partly because he assumed officers Ryan and Wallace had already done so and because of his senior role.<sup>155</sup> DCS Lanyon considered that it was his role to examine the orders to confirm that the operation fell within the MEOCS charter and that the execution of the warrant was appropriate to the background as disclosed on the operational orders.<sup>156</sup> DCS Lanyon read in the orders that it was proposed to search a unit and garage to locate drugs, that a door knock or “soft entry” was proposed,<sup>157</sup> that a briefing had been (or was to be) conducted and that the operation was assessed as “low risk”. He was satisfied (or “not dissatisfied”) with the risk rating and the proposed operation.<sup>158</sup>

107. DCS Lanyon was aware that the target of the warrant was known to deal with Middle Eastern investigative targets.<sup>159</sup> He was not aware that the target was known to use multiple garages when dealing drugs with different people at the same time. Further, he was not aware of the target’s dealings with members of the Hamze and Kalache families including the recent deal with Bilal Kalache two days earlier. He was aware that members of the Hamze family had a propensity for violence and may have access to firearms.<sup>160</sup>

108. DCS Lanyon said this additional information, if known to him, would have prompted “a number of questions”, which he said he would have put to Detective Superintendent Wallace.<sup>161</sup> One question was what information the source held about who was present or likely to be present at the target premises.<sup>162</sup> DCS Lanyon agreed that, in light of this additional information, the background, reliability and possible motivation of the source assumed greater significance.<sup>163</sup> His evidence was that if he had known of this further information (almost all of which was contained in the search warrant application) he would have ensured that he was satisfied that appropriate steps had been taken before allowing the operation to continue.<sup>164</sup>

### **Briefing in preparation for the execution of the search warrant**

109. At around 8:00pm on 8 September 2010, Detective Roberts, assisted by Senior Constable McNally, gave a briefing to explain the plan for the search to those officers selected to be

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<sup>152</sup> Lanyon T5.9.14 at 9

<sup>153</sup> Lanyon T5.9.14 at 4-5

<sup>154</sup> Lanyon T5.9.14 at 4-5, 30-31

<sup>155</sup> Lanyon T5.9.14 at 4-5, 30-31

<sup>156</sup> Lanyon T5.9.14 at 4-5

<sup>157</sup> Lanyon T5.9.14 at 9, 11, 28, 47

<sup>158</sup> Lanyon T5.9.14 at 9-11

<sup>159</sup> Lanyon T5.9.14 at 35

<sup>160</sup> Lanyon T5.9.14 at 17-18; he did not see the Request to Conduct Operational Activities (which referred to the Kalache and Hamze families) until the following morning T5.9.14 at 15-17

<sup>161</sup> Lanyon T5.9.14 at 18-19

<sup>162</sup> Lanyon T5.9.14 at 18-19

<sup>163</sup> Lanyon T5.9.14 at 19

<sup>164</sup> Lanyon T5.9.14 at 18-19

involved. The briefing took place at the offices of MEOCS, at Hurstville Police Station. All of the involved officers, except the independent observer, attended the briefing.

110. Detective Roberts had a copy of the operational orders and the warrant at the briefing. Some additional copies of the operational orders were distributed at the briefing for the other officers.<sup>165</sup>
111. During the briefing, Detective Roberts outlined at least the key parts of the operational orders to the assembled officers. The officers were informed of the roles they had been allocated.<sup>166</sup> The officers were told that the search would target a middle-aged Asian male (name unknown) and that the target was involved in drug supply to Middle Eastern entities.<sup>167</sup> The officers were aware that the object of the warrant was to locate drugs in a garage area.<sup>168</sup> Some officers also recalled mention of a large amount of cash.<sup>169</sup>
112. The officers were told that a source was in regular communication with Detective Roberts.<sup>170</sup> Detective Roberts believed that there had been some discussion during the briefing about whether Constable Awaad should be used to gain more intelligence about the Asian male and activities in the unit block. He recalled suggesting that Constable Awaad or another officer could go into the garage to pretend to work on Constable Awaad's car so that the officer could observe activities in the garage.<sup>171</sup> Detective Roberts believed other officers were reluctant to involve Constable Awaad because he lived in the building<sup>172</sup>. No other officer gave an account of this discussion but, equally, no officer denied it occurred and there is no reason to doubt Detective Roberts on this topic.
113. It does not appear that there was any discussion during the briefing about how the warrant party would be identifiable as police to those who might not know that,<sup>173</sup> although it is possible that the identification passage in the operational orders<sup>174</sup> was read out loud or paraphrased. Detective Roberts and Senior Constable McNally both stated in their evidence that uniformed officers were included in the group (and in both the upstairs and downstairs teams) to identify the search warrant party as police officers.<sup>175</sup> However, there does not appear to have been any communication of this plan to the uniformed officers, namely officers Baglin, Gentles and Gerogiannis. In particular, the weight of evidence indicates that the uniformed officers were not given any direct instruction to stay up the front or be visible so that their presence could identify the plain clothes officers as members of the NSW Police Force.<sup>176</sup>

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<sup>165</sup> Lavender T1.9.14 at 7, see also Roberts T30.7.14 at 31

<sup>166</sup> Roberts T30.7.14 at 31, 42; Baglin T2.9.14 at 3

<sup>167</sup> Lavender T1.9.14 at 5-6, 8-9, Gentles T2.9.14 at 28-29, Brown T1.9.14 at 49 (Gentles and Brown couldn't recall being told about any particular associations the Asian male had), Baglin thought he had been told the name of the Asian male but conceded he may have been mistaken T2.9.14 at 3-6

<sup>168</sup> Gentles T2.9.14 at 26, 28, Lavender T1.9.14 at 5-6, Brown T1.9.14 at 47

<sup>169</sup> For example Lavender T1.9.14 at 5-6 and Brown T1.9.14 at 46

<sup>170</sup> Gentles T2.9.14 at 56, Lavender T1.9.14 at 11-12

<sup>171</sup> Roberts T30.7.14 at 40

<sup>172</sup> Roberts T30.7.14 at 40-42

<sup>173</sup> Roberts T30.7.14 at 50-51; Lavender thought that plain clothes officers were told to display identification, however he took that to mean bring his badge and display it at the time of execution when approaching a person and identifying himself verbally: T1.9.14 at 12-13

<sup>174</sup> 1/21/266[5.1] entitled "Dress"

<sup>175</sup> Roberts T30.7.14 at 49-50, McNally T29.7.14 at 47

<sup>176</sup> Baglin T2.9.14 at 5, Gentles T2.9.14 at 30, see also Howes T1.8.14 at 11-13, Lavender T1.9.14 at 13, Gerogiannis did not give evidence about the briefing but made no mention of any instruction or

114. It also does not appear there was any discussion about the order in which the officers would enter the premises or if the officers would stop and “form up” outside the unit block to discuss the order of entry. The officers were presumably aware that forced entry was a possible contingency if knock entry was refused because entry tools were brought to the location. No officer recounted any discussion about other possible contingencies such as being met with violence or resistance.
115. The group was informed that Senior Constable McNally would obtain access to the unit complex through the resident Q.<sup>177</sup> It does not appear that there was a detailed description of the layout of the building by Senior Constable McNally. The officers were aware that a team would enter and go downstairs to secure the garage (the downstairs/garage team) while another team would go upstairs and secure the unit of the target (the upstairs/unit team).<sup>178</sup>
116. Senior Constable McNally claimed in evidence that he told the group during the briefing that access could only be gained via the left tower and that unit 8 was in the right tower and accessible to them only by a stairway from the garage. None of the officers who gave evidence could recall that being said. Those assigned to search the unit, Constable Baglin and Senior Constable Brown, acknowledged they had a poor recollection of the briefing and conceded it was possible the actual route was outlined during the briefing.
117. In terms of the risk posed by the warrant, the officers were informed that the warrant had been classified as low risk.<sup>179</sup> The officers may have been informed that the intelligence did not suggest the presence of firearms.<sup>180</sup> No officers questioned or queried that assessment. There was an opportunity for questions but it does not appear that any were asked.<sup>181</sup>
118. The weight of evidence suggests that none of the following information was discussed during the briefing:
- that the Asian male dealt with the Hamze and Kalache families;<sup>182</sup>
  - that the Asian male had recently been involved in a drug deal with Bilal Kalache and 3 carloads of his associates;<sup>183</sup>
  - that there was a possibility or expectation that a drug deal could occur at the same time or close to the time of the warrant execution;<sup>184</sup> or
  - that the Asian male had a tendency to place buyers in different garages within the basement.<sup>185</sup>

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communication about this issue in his statement and evidence in the committal proceeding prior to the inquest, see 4/70-71 ; Roberts believed he may have given such an instruction, at T30.7.14 at 72-73, see also at 50-51

<sup>177</sup> Lavender T1.9.14 at 17, Gentles T2.9.14 at 31

<sup>178</sup> Roberts T30.7.14 at 48-49, yet see also at 31, 37, 40

<sup>179</sup> Howes T1.8.14 at 11, Lavender T1.9.14 at 6, Baglin T2.9.14 at 5, Gentles T2.9.14 at 35

<sup>180</sup> Roberts T30.7.14 at 42, Gentles T2.9.14 at 60, Brown T1.9.14 at 46

<sup>181</sup> See, for example, Lavender T1.9.14 at 32-33

<sup>182</sup> See McNally T29.7.14 at 58, Baglin T2.9.14 at 3-4, Gentles T2.9.14 at 29, 33-34, Lavender T1.9.14 at 6-7

<sup>183</sup> As above

<sup>184</sup> Howes T1.8.14 at 45-46, Gentles T2.9.14 at 29, 34, Lavender believed a deal would occur later that evening after 9pm but the warrant would be executed first: T1.9.14 at 5-6, 12, Brown had a very poor memory of the briefing but thought he might have been aware: T1.9.14 at 44,46-47

119. Towards the end of the briefing, Detective Roberts may have informed the officers that he was wearing a protective vest for the execution of the warrant. He may have told the officers something to the effect that they might choose to do the same.<sup>186</sup> Some of the officers who did not wear any protection did not recall this announcement when they gave evidence,<sup>187</sup> but one of the officers who did wear soft body armour, Senior Constable Gentles,<sup>188</sup> did recall something to this effect being said by Detective Roberts at the briefing.<sup>189</sup>
120. Detective Roberts was firm in his evidence that he had revealed the identity of the Middle Eastern investigative targets referred to in the operational orders, namely the Hamze and Kalache families, during the briefing.<sup>190</sup> He also believed that he would have conveyed the information that Bilal Kalache had been involved in a deal with the Asian male two nights before.<sup>191</sup> There was little support for this in the evidence from any of the officers who were present. However, it is difficult to resolve disputes and inconsistencies relating to the content of the briefing because the officers tended to have limited independent memory of the briefing and a number of the officers had trouble sifting their own recollection from their subsequent awareness of events arising from discussions with each other, committal and criminal proceedings and media reports.

### **Involvement of an independent officer**

121. After the briefing at Hurstville Police Station, the search warrant party travelled in several cars to Bankstown Police Station to facilitate the involvement of an independent officer in accordance with the requirements of the Standard Operating Procedures in relation to search warrants. The role of that officer was to provide an independent police presence during a search, as a safeguard in relation to the lawfulness of the search and the security of seized property.<sup>192</sup>
122. On this occasion the role was allocated to Senior Constable Hussein Mousselamani (who was an acting Sergeant at the time). He had previously performed the role for MEOCS and knew Detective Roberts.<sup>193</sup>
123. Senior Constable Mousselamani spoke for some time in his office with Detective Roberts, while the search party waited outside. Detective Roberts gave Senior Constable Mousselamani a copy of the operational orders and the search warrant. Senior Constable

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<sup>185</sup> Howes T1.8.14 at 46, again Roberts thought he might have covered this at the briefing but could not be definite, T31.7.14 at 39, Lavender was not sure if he became aware of this at the briefing or some time later T1.9.14 at 35, Brown could not recall T1.9.14 at 44, 47

<sup>186</sup> Roberts 2/29A/20, T30.7.14 at 51-52, see also Lavender T1.9.14 at 13-14

<sup>187</sup> Lavender recalled Roberts stated it was up to an individual's discretion: T1.9.14 at 13; Brown could not recall what was said during the briefing: T1.9.14 at 44-45, 69;

<sup>188</sup> The other officers who wore soft body armour were Howes and Baglin. Howes chose to wear a soft vest just for the execution of the warrant, but could not remember if it was raised by Roberts at the briefing: Howes T1.8.14 at 14-15, whereas Baglin and Gentles routinely wore soft armour under their uniform when they conducted a shift: Gentles T2.9.14 at 37-38; Baglin T2.9.14 at 5-6

<sup>189</sup> Gentles T2.9.14 at 37-38

<sup>190</sup> Roberts was "100%" sure: T30.7.14 at 35

<sup>191</sup> Roberts T30.7.14 at 35

<sup>192</sup> Mousselamani T2.9.14 at 74-75, see also at 69-70; Standard Operating Procedures 1/28/316, 329

<sup>193</sup> Mousselamani T2.9.14 at 65-67

Mousselamani asked Detective Roberts to verbally summarise key features of the orders while he read through the orders and warrant in accordance with his usual practice.<sup>194</sup>

124. He focused on ensuring the “legalities” were complied with, namely that the warrant was correctly signed and dated by the magistrate and that the location was in the appropriate local area command for him to act as the independent observer.<sup>195</sup> Senior Constable Mousselamani also checked that the warrant was classified as low risk to ensure he was appropriately senior for the task and that there was no need for the assistance of a specialist group. He did not consider it was his role to scrutinise or question the risk assessment ranking.<sup>196</sup> His overall impression was that it was a *“low key, simple, run of the mill, a routine search warrant”*.<sup>197</sup>

125. Senior Constable Mousselamani expressed concern that two locations would be searched, namely the downstairs garage and the upstairs unit. He recalled that there was an expectation that drugs and cash would be located at the garage.<sup>198</sup> He queried how he could be “at two places at once”, observing both entry teams simultaneously. The officers agreed that the upstairs team would secure the unit, by waiting upstairs without knocking or engaging the occupiers, while Senior Constable Mousselamani observed the downstairs team secure the garage.<sup>199</sup> Senior Constable Mousselamani would then go upstairs to observe the execution of the warrant with the occupiers of the unit.<sup>200</sup> He was not told how he would reach the unit from the garage. Senior Constable Mousselamani believed that, on arrival, the unit team would head upstairs rather than go down the stairs with the garage team to reach the unit via internal stairs.<sup>201</sup>

#### Further contact with source

126. Phone records indicate that at 8:39pm, while the search party was at Bankstown Police Station, the confidential source X called Detective Roberts’ mobile and they spoke for 219 seconds.<sup>202</sup> The inquest only received the officer’s version of this call. He said X told him that X had left the garage about 10 minutes earlier.<sup>203</sup> X said X was with another person (a known drug dealer referred to in the inquest as W).<sup>204</sup> X also said that another Asian man was present with the target in the garage but that he was not involved in the drug deal.<sup>205</sup> Detective Roberts says he asked X if X had seen any firearms in the garage and X replied that X had not.<sup>206</sup> X said X had seen a large amount of cash (around \$40,000) but not drugs.

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<sup>194</sup> Mousselamani T2.9.14 at 67-68

<sup>195</sup> Mousselamani T2.9.14 at 69-70

<sup>196</sup> Mousselamani T2.9.14 at 69, 73-75, 90-91

<sup>197</sup> Mousselamani T2.9.14 at 75; note, as referred to above, it was not considered his role to assess risk and his evidence was that he was not in any event trained to do so: see at 90

<sup>198</sup> Mousselamani T2.9.14 at 68, 71

<sup>199</sup> Mousselamani T2.9.14 at 77-79, see also Roberts T30.7.14 at 61-62

<sup>200</sup> Mousselamani T2.9.14 at 77-79

<sup>201</sup> Mousselamani T2.9.14 at 78

<sup>202</sup> 1/12A/161D

<sup>203</sup> Roberts field interview 2/29A/24, see also Roberts T30.7.14 at 63

<sup>204</sup> Roberts field interview 2/29A/24, Roberts T30.7.14 at 63-64

<sup>205</sup> Roberts T30.7.14 at 63-64

<sup>206</sup> Roberts field interview 2/29A/25, see also T30.7.14 at 42-44, 66

127. Despite the apparent absence of drugs, Detective Roberts determined to proceed with the search on the understanding that there was at least a possibility that both drugs and cash would be present,<sup>207</sup> and that if the drugs were not present the cash could still be seized.<sup>208</sup>
128. Detective Roberts said a number of times that he relied heavily on the last minute information provided by X about firearms. However, he did not completely trust X. He agreed that he had considered the possibility that X was personally involved in the drug deal.<sup>209</sup> The possibility that X was misleading him or had hidden motivations did not appear to impact on his risk assessment or his determination to proceed. Nor did he appear to give any real consideration to the possibility that a new and unknown Asian male was present in the garage or the possibility that the presence of cash could mean that buyers and/or sellers were still present in the garage.<sup>210</sup>
129. Senior Constable Howes was present while Detective Roberts spoke to X. He heard Detective Roberts ask if any firearms were present at the location. He was particularly interested in the answer because he knew that there was a possibility that members of the Hamze or Kalache families might be present and he was aware that they may have had access to firearms.<sup>211</sup> Detective Roberts told him that no firearms had been seen at the location.<sup>212</sup> Senior Constable McNally recalled being told by Detective Roberts that he had spoken to X, who had left the building, and that there was an Asian guy and “another person in there” and no one else at the time X left the building (which, Senior Constable McNally estimated, was about half an hour prior to the officers entering the building).<sup>213</sup> It does not appear that any of the remaining officers were told about the possible presence of at least one other person in the basement area or that the expected drugs had not been sighted, or that a large amount of cash had been sighted.

#### **Constable Awaad attempts to warn Detective Crews**

130. As described earlier, Constable Awaad, a police officer who lived in the unit block where the search was to occur, had been told of the search and provided some intelligence to Detective Crews. He had asked Detective Crews to call him when the search was to occur so he could absent himself from the premises. When Constable Awaad had not heard from Detective Crews by about 8.15pm he decided to return home.
131. At around 8:30pm, he drove into the unit carpark and saw Mr Nguyen and three other men in the garage area. One man moved a Toyota Camry sedan which was blocking entry to Constable Awaad’s garage to allow the officer to park his car. The men were all standing in or in front of garage 8 at this stage.<sup>214</sup> Constable Awaad tried to contact Detective Crews on his mobile phone to warn him about the presence of men in the garage. Constable Awaad could not reach Detective Crews (he could not recall if the phone went through to voicemail).<sup>215</sup> Constable Awaad was in partial uniform (his police pants were visible) and felt

<sup>207</sup> Roberts T31.7.14 at 4, T 30.7.14 at 65-66, yet see T31.7.14 at 46 where Roberts agreed it would be “extremely rare” to come across both the cocaine and cash

<sup>208</sup> Roberts T30.7.14 at 67, T31.7.14 at 46

<sup>209</sup> Roberts T31.7.14 at 3

<sup>210</sup> Roberts T31.7.14 at 4-5

<sup>211</sup> Howes T1.8.14 at 4-6, 16-17, 20-21, yet see also at 45-46 (as noted above, this information was probably received by Howes after the briefing, at 45-47)

<sup>212</sup> Howes 3/42/13, T1.8.14 at 22

<sup>213</sup> McNally T29.7.14 at 29-30

<sup>214</sup> Awaad T4.9.14 at 7-8; see 8/194/2891-2892

<sup>215</sup> Awaad T4.9.14 at 9-10



uncomfortable being present when he knew that the warrant execution could be imminent. He left the unit and drove to a nearby service station.<sup>216</sup>

### Approach to the search site

132. After Detective Roberts concluded the briefing with Senior Constable Mousselamani and his call with X, he explained to the assembled officers outside the station that the convoy of cars should travel to the block of units at 41-43 Cairds Avenue, Bankstown stopping briefly on Meredith St to allow Senior Constable McNally to get out and approach the unit on foot and gain access to the complex from the internal assister, Q.<sup>217</sup>

133. The convoy proceeded in the following order:

- Senior Constable McNally travelled with officers Lavender, Brown and Baglin in an unmarked car;<sup>218</sup>
- Detective Roberts travelled with officers Howes and Crews in another unmarked car;<sup>219</sup>
- Officers Gentles and Gerogiannis (both in uniform) travelled in an unmarked car;<sup>220</sup> and
- Senior Constable Mousselamani (in uniform) travelled alone in a marked car.<sup>221</sup>

134. Either just before or just after the briefing at Bankstown Police Station, officers Lavender, McNally and Brown engaged in some last minute “surveillance” of the building complex<sup>222</sup> which consisted of their driving in an unmarked car around the block in which the units were located and driving past the unit complex. The officers did not see anything of interest during the drive-by.<sup>223</sup>

### Attempted execution of the search warrant

135. A little before 9:00pm Senior Constable McNally approached the unit block on foot and called Q on his mobile phone.<sup>224</sup>

136. Unexpectedly, rather than buzzing him into the building remotely, Q walked from Q’s unit and opened the front door to let Senior Constable McNally into the building. Senior Constable McNally was disconcerted when Q appeared in person. He did not want to risk Q’s safety and was keen for Q to return to Q’s unit. Q tried to give him directions but he cut Q short and urged Q to go inside.<sup>225</sup> Senior Constable McNally did receive some directions to both the garage and the stairs to unit 8 from Q previously. He recalled that Q told him that garage 8 was next to the roller door entry: *“the first garage on the left as you’re coming from the roller door, the last one on the right if you were to go out through the roller*

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<sup>216</sup> Awaad T4.9.14 at 8, 10

<sup>217</sup> Lavender T1.9.14 at 18-19

<sup>218</sup> McNally T29.7.14 at 12, Lavender T1.9.14 at 22, Brown T1.9.14 at 49-50, Baglin T2.9.14 at 8

<sup>219</sup> McNally T29.7.14 at 9, Roberts T30.7.14 at 67-68

<sup>220</sup> Gentles T2.9.14 at 38, 40, 42, Gerogiannis T3.9.14 at 58

<sup>221</sup> Mousselamani T2.9.14 at 82

<sup>222</sup> Brown thought it might have been after the Bankstown briefing; McNally and Lavender thought it was before that briefing, en route from Hurstville to Bankstown: Lavender T1.9.14 at 15, Brown T1.9.14 at 50, McNally T29.7.14 at 10-11, 38-39

<sup>223</sup> McNally T29.7.14 at 10-11, Lavender T1.9.14 at 15-16, Brown T1.9.14 at 50

<sup>224</sup> Telephone records at 1/12A/161D indicate this occurred at 8:53pm, McNally T29.7.14 at 13

<sup>225</sup> McNally T29.7.14 at 13, 16

door.”<sup>226</sup> He also recalled being told that the access stairs to unit 8 were around the wall to the right after he went downstairs. He was told that the access door was the last door along the wall if he followed it to the end and it was similar in appearance to the stairway access door for the left tower.<sup>227</sup>

137. These directions were correct. However, as outlined below, they were not followed when the officers reached the basement. It is possible that Senior Constable McNally was distracted when he heard the directions because of his concerns for Q. His evidence was that he thought finding the garage and the right hand stairwell would be relatively straight forward once in the garage.<sup>228</sup>
138. Once Senior Constable McNally had gained access to the building he notified the other officers. The officers drove from Meredith St and parked directly outside the unit block on Carmen St. Both officers Mousselamani and Gentles “double-parked” their vehicles in the street outside because there were insufficient parking spaces in front.<sup>229</sup> Police presence outside the unit complex would have been obvious from this point.
139. There was inconsistency in the evidence about whether the officers were able to communicate through a secure radio channel dedicated to the search operation while they were in the unit block or if they relied on standard police radio and/or mobile phones. The issue is of some importance. The availability of a secure radio channel would have enabled easy communication between the officers after the shooting. In particular, it would have allowed the officers who were upstairs and/or outside the building to communicate with the officers downstairs in the garage. Prompt and effective communication between the officers after the shooting may have assisted them to locate Mr Nguyen, secure the unit and the garage area and allowed medical attention to reach Detective Crews more quickly.
140. Some officers, including Senior Constable McNally,<sup>230</sup> believed the only method of communication was through mobile phones or through the standard police radio channel. Senior Constable McNally believed that at one point during the warrant he had an “open” phone line to Detective Roberts. Call records show a 96 second call between Detective Roberts and Senior Constable McNally at 8:58pm which suggests that there may have been such a connection, although it was not for a lengthy period.<sup>231</sup> Not all officers were aware of the mobile phone numbers of other officers and it is not clear if all officers carried phones or had their phones turned on.<sup>232</sup>
141. Other officers, including Detective Roberts, believed that a radio channel had been allocated to the group for the evening.<sup>233</sup> In particular, Senior Constable Gerogiannis recalled the number of the radio channel (which he recorded in his police notebook shortly after the events) and remembered hearing that Senior Constable McNally had gained access to the building on that channel while he waited in a car on Meredith St with Senior Constable Gentles.<sup>234</sup> However, Senior Constable Gerogiannis was unable to say if the radio channel was only available in the cars or if it was also accessible on the portable radios carried by the

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<sup>226</sup> McNally T29.7.14 at 14

<sup>227</sup> McNally T29.7.14 at 14

<sup>228</sup> McNally T29.7.14 at 14-15

<sup>229</sup> Gentles T2.9.14 at 42, Mousselamani said he parked “in the middle of the road”: T2.9.14 at 83

<sup>230</sup> McNally T29.7.14 at 10-12

<sup>231</sup> 1/12A/161D, McNally T29.7.14 at 11, Roberts T30.7.14 at 68

<sup>232</sup> See, for example, Baglin T2.9.14 at 12

<sup>233</sup> Roberts T30.7.14 at 57, Lavender T1.9.14 at 20, Gentles T2.9.14 at 40-41

<sup>234</sup> Gerogiannis T3.9.14 at 57-59

officers. As the call records confirm that Senior Constable McNally communicated with Detective Roberts by mobile phone, it appears unlikely that there was a dedicated radio channel available on the officers' portable radios.

142. It is apparent that there was no clear understanding as to how officers at different locations could effectively communicate with each other.
143. The search party exited their cars and quickly approached the unit complex. Senior Constable McNally stood at the door holding it open. The procession of all of the officers into the building became disorganised, because two of the officers, Lavender and Brown, left the search party to chase after a man they saw standing on the corner of Carmen Street and Cairds Avenue, whom they suspected might have been a lookout, or "cockatoo", for the persons involved in the drug deal in the garage.<sup>235</sup>
144. Senior Constable Lavender stated that he yelled "*Police, just wait there a minute*" and caught up with the man at the corner of Carmen Street and Cairds Avenue. He was young, of Indian/sub-continental appearance and seemed surprised to be stopped by the police. Senior Constable Lavender decided that the man was unconnected to the search target and asked the man to leave the area. Senior Constable Lavender returned quickly to join the search party.<sup>236</sup> On the other hand, Senior Constable Brown appeared to believe that the man was a cockatoo associated with the search target and said he shouted "*the balloon is up*" to alert the other officers as he ran towards the door.<sup>237</sup>
145. Many of the officers who gave evidence did not recall hearing any shouting and some said that they were unaware of the chase.<sup>238</sup> On the other hand, Detective Roberts stated that he heard yelling, assumed it would have been heard in the garage area and determined it was necessary to enter the building quickly before any evidence was destroyed.<sup>239</sup>
146. As a result of the chase, the upstairs team of officers Baglin and Brown lost contact with Senior Constable McNally, who was to lead them to unit 8 and each of the officers who was wearing a uniform ended up at the back of the group.<sup>240</sup>
147. Officers Roberts, Crews, Howes, Lavender, McNally, Gerogiannis, Gentles and Mousselamani went downstairs into the basement garage area. Senior Constable McNally held open the door until Senior Constable Gentles took over to allow him to join the officers at the front of the search party.<sup>241</sup> When Senior Constable Brown returned from chasing the man at the intersection, he and Constable Baglin entered the building and went straight upstairs to try

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<sup>235</sup> Lavender T1.9.14 at 20-21, 25, Brown T1.9.14 at 53 (Brown thought the man yelled something and ran away but it is more likely to be Lavender who yelled "police": Lavender 3/49/887)

<sup>236</sup> Lavender field interview: 3/49/886-888; Lavender statement: 3/48/[12]

<sup>237</sup> It appears that Brown was not present when Lavender reached the man and told him to leave the area (Brown field interview 3/53/984-985, see also Brown statement: 3/54/[14]-[15], Brown T1.9.14 at 70-71)

<sup>238</sup> Mousselamani T2.9.14 at 84-85, Gentles T2.9.14 at 43, McNally saw running and went inside assuming it was a cockatoo (and therefore assuming he needed to move quickly in case attempts were made to conceal evidence) but he did not hear shouting T2.9.14 at 39 and field interview 2/36/571-572, Baglin saw Brown run but not Lavender and did not recall hearing Brown say anything, Baglin T2.9.14 at 10-11, Baglin statement: 3/56/[8], Baglin field interview: 3/57/1114

<sup>239</sup> Roberts T30.7.14 at 69-70

<sup>240</sup> However, see Roberts T30.7.14 at 70-71

<sup>241</sup> Gentles T2.9.14 at 43-44; it appears all of the above officers had entered the building by this time, except Gerogiannis who entered after McNally and before Gentles, and Mousselamani who entered after Gentles

and secure unit 8 although, as previously explained, unit 8 was on the other side of the unit block.

### Events in the basement

148. From this point in time, the tragic set of circumstances that led to the death of Detective Crews unfolded very quickly. All those involved have given detailed and multiple accounts of the relevant events. The accounts are not consistent, but that is not surprising, given the speed at which the events occurred and the extremely traumatic circumstances involved.
149. The officers allocated the task of securing the garage were led downstairs into the basement garage area by Detective Roberts. He was followed into the basement garage area by officers Crews, Howes, McNally and Lavender (although the order of entry into the garage is not entirely clear).
150. All of these officers at the front of the search party were in plain casual clothes. It appears from the video of the search warrant that none of these officers were displaying any visible identification as police officers.
151. Detective Roberts was carrying a cylindrical metal battering ram which he held in both hands. Detective Crews was carrying a red A4 sized notebook which contained the search warrant and occupier's notice.<sup>242</sup>
152. Senior Constable Gerogiannis followed behind, operating the video camera. It appears that he was followed by the other uniformed officers, Senior Constable Gentles and Senior Constable Mousselamani.
153. The target location of the search was the garage associated with unit number 8. As described, correctly, in the search warrant application, this was directly adjacent to the main roller door driveway entry into the garage area. The garage door was closed. After the search party went through the door into the basement area, they should have turned right, immediately out of the stairwell doorway, and then left, towards garage number 8. Unfortunately, Senior Constable McNally directed the search party to turn right, then right again.
154. Senior Constable McNally became disoriented when he entered the garage. He saw that the door to garage 8 was closed, with the lights off, and the door to garage 1 was open, with the lights on. At the time, he did not identify the numbers displayed on the respective garages. A car was parked outside garage 1. Senior Constable McNally recalled that X had told him that the target parked a car across his garage door. He thought there might be another roller door adjacent to the open garage. He directed the officers towards the open garage.<sup>243</sup>
155. By unlikely coincidence, the target of the search, Philip Nguyen, was in garage 1. Mr Nguyen had been involved in a drug deal that evening, in circumstances that appear to have been fairly consistent with the information initially provided to police by X. That drug deal had involved a number of other persons, some of whom were still in the basement when the search party entered the basement. Tan Chung was inside garage 1 with Philip Nguyen when police advanced.

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<sup>242</sup> Lavender 3/49/897

<sup>243</sup> McNally T29.7.14 at 15, 22-24

156. Three other persons who, it appears, were also involved in the drug deal, were inside garage 8, behind a closed internal roller door.<sup>244</sup> It is likely that it was these men whom Constable Awaad had noticed when he drove into the garage area. It later transpired that one of those three persons had a firearm, which subsequent investigation confirmed had not been fired in the basement area that evening.
157. Philip Nguyen and Tan Chung had gone into garage 1 to use drugs.<sup>245</sup> They had both consumed drugs earlier that evening, although it is not clear how affected they were by the drugs.<sup>246</sup> As the officers approached garage 1, Tan Chung was preparing to smoke drugs on a table towards the back of the garage. He asked that Mr Nguyen get an implement to prepare the drugs (either a spoon or a smoking straw) from garage 8 and Mr Nguyen began to exit the garage to do that.<sup>247</sup>
158. Mr Nguyen had a gun in the waist band of his trousers.<sup>248</sup> He had obtained the gun shortly after the incident approximately two weeks earlier when he was attacked by two men wearing balaclavas.<sup>249</sup>
159. As they approached the open door to garage number 1, officers Crews and Roberts were confronted by Philip Nguyen emerging from the garage.<sup>250</sup>
160. Mr Nguyen drew his gun when he saw the two men. Detective Crews shouted something to the effect of “gun”.<sup>251</sup> The sound and vision captured by Senior Constable Gerogiannis records garbled shouting immediately before and after the shooting. Some of the officers say they were announcing themselves as police officers and directing Mr Nguyen to drop his weapon.
161. Five gunshots were fired in quick succession.<sup>252</sup>
162. There is inconsistency between the witnesses about the movements of Philip Nguyen immediately before and during the shooting. Detective Roberts recalled Mr Nguyen coming well outside the garage and crouching and moving forward until he was very close to Detective Crews near the Toyota Camry.<sup>253</sup> Mr Nguyen stated that he fired one shot outside the garage and immediately retreated back inside.<sup>254</sup> Officers Lavender, McNally and Howes all gave different accounts about where Mr Nguyen was located but none recalled him coming as far out of the garage as described by Detective Roberts.<sup>255</sup>
163. I accept that it is not possible to reconcile this evidence or choose one particular account. The situation was moving extremely quickly and dynamically and all of the witnesses were facing a tremendous amount of stress, and viewing events from different perspectives.

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<sup>244</sup> Nguyen T3.9.14 at 6

<sup>245</sup> Nguyen T3.9.14 at 4

<sup>246</sup> See Perl 7/160/2363-2367

<sup>247</sup> Nguyen T3.9.14 at 16

<sup>248</sup> Nguyen T3.9.14 at 11-12

<sup>249</sup> Nguyen T3.9.14 at 6-7

<sup>250</sup> Roberts T31.7.14 at 63-64; Nguyen T3.9.14 at 6

<sup>251</sup> Roberts 2/29/[9]; 2/29A/5, 29-30

<sup>252</sup> As can be heard on the search warrant video 1/25

<sup>253</sup> Roberts 2/29B/4-8; 2/29A/5-6, 31, 33-34; T31.7.14 at 64

<sup>254</sup> Nguyen T3.9.14 at 17-19

<sup>255</sup> Lavender T1.9.14 at 37 (see also at 23); 3/49/893-894; McNally 2/36/580-582; 584-585; Howes 3/43/756-757, 759-760, 763

There is no clear or reliable account of the specific movements of Mr Nguyen shortly before, during and after the shooting. I am, however, satisfied that when Detective Roberts fired at him, Mr Nguyen was outside garage 1.

164. There was shouting from several persons immediately before the shots were fired, and directly after the shots were fired. The evidence as to what words were used and, in particular, whether “search warrant” or “police/police don’t move” was shouted before or after the shots is not consistent. Mr Nguyen said he heard shouting but it was after he fired his shot and he could not understand what was said.<sup>256</sup> It is certainly possible his evidence on this point is self-serving but there is no clear basis to reject it, particularly as Detective Roberts gained the impression that Mr Nguyen could not hear him.<sup>257</sup> Yelling and shouting is audible on the search warrant video before and after shots were fired. However, the words cannot be clearly deciphered. A number of the officers believed that words to the effect of “police search warrant” were shouted prior to the shooting. None of the residents of the unit complex who were interviewed by police recounted hearing those words, nor did the men in garage 8, Mr Nguyen or Mr Chung (although all heard shouting).
165. It is not possible to determine with confidence whether these words were shouted and if so, at what point. Both officers Roberts and Howes, who did believe the words were shouted, fairly conceded that they could not be sure.<sup>258</sup> In my view, it is more likely that nothing was said until the officers saw Mr Nguyen emerging from the garage holding a gun. Whatever words were shouted at that time cannot be deciphered clearly on the video footage, and it is likely that they would have been difficult to understand and, therefore, of little effect.
166. The first shot was fired by Philip Nguyen.<sup>259</sup> This bullet hit Detective Crews in the soft tissue of his upper left arm. Four shots were then fired from police firearms, being the .40 calibre Glock pistol issued to each of the officers involved in the search. The order in which these four shots were fired is not entirely clear but it is likely that the first three of these four shots were fired by Detective Crews. These shots were generally directed towards Philip Nguyen and into garage 1. Ballistics evidence suggests that Detective Crews was facing towards the back of the garage as he fired the shots.<sup>260</sup> No person was hit by any of the shots fired by Detective Crews.
167. The remaining shot was fired by Detective Roberts. He fired this shot while retreating, with the intention of defending himself and Detective Crews.<sup>261</sup> Detective Roberts participated in a field interview on site at the garage shortly after the shooting. While there is no doubt he was still profoundly affected by the stress of the events, his account in the interview appears to be his most reliable account of the events in question.<sup>262</sup>

*He was walking out and he was ignoring our directions so it was like he almost couldn’t hear us... And then I saw and heard a gunshot and I think I ducked down or hit the ground or something. I looked for cover, and there was more gunshots, I could see the flashes. Like, by this stage, I can’t remember where I dropped the..., I’m sure by this stage I had a battering ram but I can’t remember where I dropped it. But the next thing I had my gun*

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<sup>256</sup> Nguyen T3.9.14 at 18-19

<sup>257</sup> Roberts 2/29B/5

<sup>258</sup> Roberts T30.7.14 at 75, see also 2/29A/29-30, Howes T1.8.14 at 26

<sup>259</sup> Nguyen T3.9.14 at 7, 11, 13; 6/150/2140

<sup>260</sup> 6/148/2072, 2077-2078

<sup>261</sup> Roberts T30.7.14 at 73-75

<sup>262</sup> From Roberts record of interview 2/29B page 5 (with hesitation and repetition removed)

*out and when the firing started I heard a gunshot, I aimed at the, it was an Asian male who had come out. And I wasn't aware of what, I didn't stand in a well-aimed shot. I was trying to get cover and I think I just wanted to get low, I may have even hit the deck. I can't recall properly but he was shooting and I fired a shot in return. There were other shots, I can't remember the sequence. I'm pretty sure he fired his shot first. There were other shots fired and as I fired a shot, I could see other police behind me and I took cover behind this wall.*

168. Detective Roberts is adamant he was facing Mr Nguyen and aiming at him when he fired. However, he acknowledges he dropped the battering ram he had been carrying, drew his gun, took aim and fired while at the same time he dropped towards the ground, perhaps with one hand on the ground and turning towards his left.
169. Tragically, the shot fired by Detective Roberts was the shot that killed Detective Crews. The bullet first hit Detective Crews on the right shoulder, and then caused fatal injuries after entering into his neck.
170. In evidence at the inquest, Detective Roberts confirmed that he fired the shot intentionally. Much later in the hearing, the defensive tactics specialist, Senior Sergeant Davis, gave evidence that he believed the shot fired by Detective Roberts may have been accidental.<sup>263</sup> While that opinion is noted, the evidence of Detective Roberts in this regard was unchallenged, and there is no evidence before the court to directly contradict the account of Detective Roberts. Moreover, Detective Roberts has given evidence on this particular topic on several occasions and his evidence has consistently been to the effect that he fired the shot intentionally, in an attempt to defend Detective Crews and himself.<sup>264</sup> I readily accept that he was entitled to fire in an attempt to protect himself and Detective Crews from Mr Nguyen.
171. However, in hindsight, it is apparent that he was not sufficiently steady when he fired and while he fired in the general direction of Mr Nguyen, that person was close to Detective Crews who, tragically, was hit by mistake.
172. Immediately after shots were fired, the involved police officers retreated to take cover behind the corner wall of the garage. At around this time, Philip Nguyen picked up the battering ram that had been carried by Detective Roberts, and placed it onto his shoulder. Mr Nguyen then tried to fire the battering ram because he believed that it was some sort of bazooka or "big gun".<sup>265</sup>
173. Philip Nguyen threw the battering ram aside and called out to Tan Chung to follow him, stating that they were being robbed.<sup>266</sup> He also told Mr Chung that his gun had jammed.<sup>267</sup> Mr Chung had been hiding under a table towards the rear of the garage since the first shots were fired. Mr Nguyen and Mr Chung ran through the access door that led upstairs to the right hand side of the complex where unit 8 was located. As they escaped, Mr Chung saw Detective Crews lying on the floor of the garage.<sup>268</sup>

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<sup>263</sup> Davis T3.2.15 at 80 (note, this evidence was given after Detective Roberts had given his evidence during an earlier sitting of the proceeding)

<sup>264</sup> 2/29A/ p5, p33-4; 2/29B/ p8; 2/33/492

<sup>265</sup> Nguyen T3.9.14 at 27; 7/157/2259-2260, 2264-2265; 7/158/2325-2327

<sup>266</sup> Chung T3.9.14 at 37-38

<sup>267</sup> Chung T3.9.14 at 54

<sup>268</sup> Chung T3.9.14 at 54

174. From his first interview Mr Nguyen has consistently said he believed the plain clothes officers were robbers, and not police officers. He said that two to three weeks before the shooting he had been the victim of a robbery, at garage number eight.<sup>269</sup> In that context, he said that the men who suddenly confronted him when he emerged from the garage on the evening of 8 September 2010 were also robbers. He maintained that this was his belief even though, by his own admission, after the shooting Tan Chung had said “No, it’s the police”.<sup>270</sup> In support of his belief that the men were robbers, Philip Nguyen referred to his previous experience, in 2005, when a search warrant was executed at his home by uniformed police accompanied by plain clothes officers.<sup>271</sup> He contrasted this previous experience of a search warrant with what he saw on the evening of 8 September 2010:<sup>272</sup>

*Yeah, because, you know, the police, you know, will come in with the, wearing with the police uniform, but this one only normal, you know normal jacket or...T shirt and short, you know, so I don’t think so they are police.*

175. In several important respects, Mr Nguyen’s evidence on this topic is independently corroborated:

- It has been established that Mr Nguyen was the victim of an attack around two weeks before the execution of the search warrant on 8 September 2010. This has been confirmed by admissions directly from one of those involved in the attack.<sup>273</sup>
- The evidence of Tan Chung corroborates Mr Nguyen’s account in that he confirms that Mr Nguyen said that he believed the approaching men were robbers.<sup>274</sup> He gave evidence that after they had retreated to unit number 8, and heard the helicopter, Philip Nguyen said “Good, police come and save us”.<sup>275</sup>
- This is consistent with the transcript of the 000 call made by Philip Nguyen’s stepson, Duy (‘Jimmy’) Nguyen, from inside unit number 8, seeking police protection from robbers who had broken into the garage.<sup>276</sup> The transcript also refers to the robbers yelling, at the time of the call, from the garage, although what they were saying could not be understood.<sup>277</sup> This was probably the shouting of police officers in the garage area whilst taking cover, before they considered that it was safe to render aid to Detective Crews. The transcript confirms that Mr Nguyen was present in the unit (from at least 9:10pm) when the 000 call was being made.<sup>278</sup>
- Mr Nguyen’s evidence that the men he saw approaching the garage were not identifiable as police officers is supported by the video of the execution of the search warrant which shows them wearing dark casual trousers and sweat shirts or jumpers quite different from the usual dress of even plain clothes officers. None of the

<sup>269</sup> 7/157/2257, 2272-2273, 2275

<sup>270</sup> 7/157/2222, 2244, 2249, 2256-2257, 2271-2272, 2274

<sup>271</sup> 7/157/2269-2272

<sup>272</sup> 7/157/2271-2272; see also at 2256

<sup>273</sup> 7/170/2693-2695

<sup>274</sup> For example Chung T3.9.2014 at 37-39, 41-42, 48-50, 52-53; see also 7/162/2382, 2415, 2421, 2432-2433, 2435; 7/163/2483, 2490-2492, 2501, 2503, 2509-2510; 7/164/2542-2545

<sup>275</sup> Chung T3.9.2014 at 48; see also 7/162/2386 where Chung said he and Nguyen saw a police car from the unit balcony after running upstairs and Nguyen told Chung the police had come to catch the thief who tried to rob them

<sup>276</sup> 5/81/1645-1653; 5/81/call 1 on disc 2; 8/179/2821-2829; see also 7/162/2421

<sup>277</sup> 5/81/1649-1650; 5/81/call 1 on disc 2; 8/179/2825-2826

<sup>278</sup> 5/81/1652; 5/81/call 1 on disc 2 and ‘Segment Information’ log; 8/179/2828



officers who were seen by Mr Nguyen were wearing anything that would have made it apparent they were police officers.<sup>279</sup>

- The recent robbery in similar circumstances explains his acquisition of a gun<sup>280</sup> and his attempts to install a surveillance camera in his garage.<sup>281</sup> These steps confirm that he was frightened by the previous robbery and feared another robbery in future. Such fear was rational and was based upon his understanding that his involvement in drug dealing provided a motive for robbers who wanted to steal drugs and/or cash.
- Mr Nguyen's evidence that he did not hear the officers identify themselves by shouting "police" is credible - whatever words were shouted would have been difficult to understand, especially by somebody whose English is as poor as Mr Nguyen's.

176. In all of the circumstances, I accept Mr Nguyen's evidence that he fired the first shot because he believed the approaching men were robbers, and not police officers. As he put it at the conclusion of his oral evidence:

*Don't remember exactly but I am sure that I would not have fired the gun had I known they were police.*<sup>282</sup>

## After the shooting

### Events in the basement

177. The other officers quickly became aware that Detective Crews had been shot and was seriously injured. Officers McNally and Howes observed Detective Crews lying on the garage floor with a pool of blood forming around his head.<sup>283</sup>

178. Almost immediately, Detective Roberts suspected that his bullet had injured Detective Crews and he became very distressed. It is not clear why he formed that opinion. In his first statement, Detective Roberts recalled that he saw Detective Crews bleeding from the head on the ground after he fired a shot and was looking for cover.<sup>284</sup> This suggests that he saw Detective Crews on the ground very shortly after he fired. In evidence, however, Detective Roberts said that he did not see Detective Crews fall after he fired his shot and retreated for cover.<sup>285</sup> He said that he began to believe he might have shot Detective Crews after he sought cover because he did not see Mr Nguyen on the ground or any blood to indicate that Mr Nguyen had been hit by the shot he had fired.<sup>286</sup>

179. For approximately 19-21 minutes the police officers remained behind cover, under the mistaken belief that the person who had fired shots was still in garage 1, and was likely to shoot again if approached. Under that mistaken belief, the officers determined that they could not attend to Detective Crews, without placing themselves and their colleagues in further danger. Detective Roberts, as the field supervisor in relation to the execution of the

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<sup>279</sup> 1/25

<sup>280</sup> See Nguyen T3.9.2014 at 6-7; see also 7/163/2493-2494

<sup>281</sup> 7/157/2275-2276

<sup>282</sup> Nguyen T3.9.2014 at 34

<sup>283</sup> McNally 2/36/579, 585-586; Howes 3/43/757, 765, 767, T1.8.14 at 48

<sup>284</sup> 2/29/[10]

<sup>285</sup> Roberts T31.7.14 at 74; see also 2/29B/8-9

<sup>286</sup> Roberts T31.7.14 at 68

search warrant, told the other officers, *"We can't go in, we can't risk another one of us getting shot"*.<sup>287</sup>

180. Senior Sergeant Davis gave evidence during the later stages of the inquest that, in his opinion, the involved officers should nevertheless have advanced to retrieve Detective Crews after they became aware that he had been shot.<sup>288</sup> This opinion was not mentioned in either of his statements or his WorkCover interview and only emerged late in the oral evidence of Senior Sergeant Davis. As such, this opinion was not put to the involved officers, who had all given evidence earlier in the proceedings.

181. In the circumstances which prevailed I do not consider it would be fair to criticise the officers for not advancing when they reasonably believed that to do so would expose them to the shooter they believed to be still in the garage.

182. Ambulance officers first arrived outside the unit complex at about 9:09pm and were unable to treat Detective Crews until they were told the area had been cleared about 15 minutes later.<sup>289</sup>

183. Some of the events were captured on video taken by Senior Constable Gerogiannis. The speed at which events unfolded, and shots were fired, is better understood on viewing that footage. The video does not show the shooting, but it does record the immediate aftermath. The extreme distress being experienced by all officers and, in particular, Detective Roberts, is also obvious.

184. Understandably, the versions of the various officers as to what happened after the shooting are inconsistent. However, the following approximate sequence of events seems most likely:

- The officers repeatedly called out from behind the corner wall for the offender to surrender and come out, shouting that their colleague was injured and they wished to go to his aid.<sup>290</sup>
- Officers Mousselamani and Gentles both used their police radio to call for assistance almost immediately.<sup>291</sup> Senior Constable Mousselamani made the first call, stating *"Bankstown one three, urgent, urgent, shots fired in Cairds Avenue, Bankstown, shots fired, shots fired"*. He continued the call as he ran upstairs.<sup>292</sup>
- Senior Constable Mousselamani ran to get a ballistic vest from his car, the plates on the vest fell out when he tried to put it on and he threw the vest aside. He made another call on his radio as he was returning to the scene.<sup>293</sup>
- Senior Constable Lavender called out for more ballistic vests.<sup>294</sup>

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<sup>287</sup> Roberts 2/29/[10]; Lavender 3/48/[18]; 3/49/904

<sup>288</sup> Davis T3.2.15 at 87-88

<sup>289</sup> 8/195/[5]-[6]; 8/197/2906, 2910; 8/198/[5]-[6]; 8/199/[5]-[6], 2918 – radio records suggest that Crews was shot at around 9.01pm, VKG disc 5/80

<sup>290</sup> Search warrant video and transcript at 1/25-26

<sup>291</sup> Gentles T2.9.14 at 46; Mousselamani 4/61/1211-1212; search warrant video and transcript at 1/25-26; VKG disc and transcript 5/79-80; radio and video footage indicate the first call from Mousselamani was made approximately 19 seconds after Detective Crews was shot

<sup>292</sup> Mousselamani T2.9.14 at 93

<sup>293</sup> Mousselamani T2.9.14 at 87-88; 4/61/1215-1216; VKG disc and transcript 5/79-80

<sup>294</sup> Lavender 3/49/901; search warrant video and transcript 1/25-26

- Detective Roberts asked Senior Constable Gerogiannis *“did you catch that on film?”* and they discussed if he caught the shots being fired on the video camera.<sup>295</sup>
- Senior Constable Howes also went upstairs to obtain ballistic vests from his car and returned, handing them to officers Roberts and Lavender.<sup>296</sup>
- Senior Constable Gentles ran upstairs to his car and retrieved two ballistic vests and returned to the garage.<sup>297</sup> As the officers continued to take cover and call for the offender to surrender, officers McNally and Roberts instructed the officers behind them to put their guns away.<sup>298</sup>
- Detective Roberts told Senior Constable Gerogiannis to stop filming stating *“turn it off”* and *“don’t, don’t worry about that, don’t worry about that, worry about yourself mate”*. Senior Constable Gerogiannis redirected the camera but continued filming.<sup>299</sup>
- Detective Roberts again told Senior Constable Gerogiannis to stop filming and the video was stopped. Senior Constable Gentles or Senior Constable Mousselamani instructed Senior Constable Gerogiannis to keep filming and the camera was turned back on.<sup>300</sup>
- Detective Roberts called Detective Inspector Ryan at 9:08pm. The search warrant video records him saying *“...he was right next to Crewsy firing shots mate... I don’t know who shot him mate, if it was me or him...I fired back, he was firing at me. He was firing at Crewsy, I fired back yep”*.<sup>301</sup>
- Shortly after the call to Detective Inspector Ryan, Detective Roberts again instructed Senior Constable Gerogiannis to stop filming and to go upstairs. Senior Constable Gerogiannis turned the camera off and went upstairs and was then told by another officer to commence a crime scene log. He began recording everyone who entered the area in his notebook.<sup>302</sup>
- Detective Roberts made a call to X at 9.12pm. It is not clear what was said during this call.<sup>303</sup>

### Events upstairs

185. The unit team, officers Baglin and Brown, heard the shots while they were still upstairs in the left tower. The officers had deduced from the numbers on the apartments that unit 8 was not on the left side and were on their way downstairs when they heard shots and shouting from the basement.<sup>304</sup> Instead of going down to the basement they ran outside and

<sup>295</sup> Search warrant video 1/25, transcript at 1/26/292-293

<sup>296</sup> Howes T1.8.14 at 42; 3/42/[21]; search warrant video 1/25, and transcript 1/26/295

<sup>297</sup> Gentles T2.9.14 at 47-48

<sup>298</sup> Search warrant video 1/25, transcript at 1/26/296

<sup>299</sup> Search warrant video 1/25, transcript at 1/26/297

<sup>300</sup> Gerogiannis T3.9.14 at 65-66; Gerogiannis believed it was the independent officer (Mousselamani) who instructed him to turn the video on, T3.9.14 at 65 but Mousselamani has never provided an account of doing so. Gentles recalled giving the instruction, but this appears to be earlier on: Gentles T2.9.14 at 47 (it is possible that Gentles issued the instruction to “keep recording” to Gerogiannis before he was instructed by Roberts to turn off the video or in addition to an instruction by Mousselamani)

<sup>301</sup> 1/12A/161D; search warrant video 1/25, transcript at 1/26/300

<sup>302</sup> Gerogiannis T3.9.14 at 66-67; 4/70/[11]-[13]; search warrant video 1/25, transcript at 1/26/301

<sup>303</sup> Summary of calls Sheehy, Exhibit 5 tab 28 annexure 8; T30.7.14 at 78; T31.7.14 at 11

<sup>304</sup> Baglin 3/57/1117-1118; Brown T1.9.14 at 56 (note, Brown’s evidence is that he was at the landing of the stairs heading towards the door leading outside at the time when he heard shots fired)

turned left towards the right tower. Constable Baglin threw away his battering ram and Senior Constable Brown discarded his police radio.<sup>305</sup>

186. Somewhere outside the complex, Constable Baglin crossed paths with Senior Constable Mousselamani who was on the police radio stating “shots fired, shots fired”. He asked Constable Baglin for the exact location but Constable Baglin could not recall. It does not appear that the officers had any further exchange about what had occurred in the garage.<sup>306</sup> Senior Constable Mousselamani may also have said something to the effect of “an officer is down”.<sup>307</sup>

187. Officers Baglin and Brown gained entry to the right side of the building by shouting until a resident let them in.<sup>308</sup> They must have just missed crossing paths with Mr Chung and Mr Nguyen as they fled upstairs from the basement. Both officers could hear shouting from the garage below including words to the effect of “come out” and “give yourself up”. They formed the view that the offender responsible for the shots must still be in the garage. They saw that the door to the basement was held open by a piece of rope.<sup>309</sup> Constable Baglin descended the stairs and was able to see an officer lying on the ground and a battering ram. Constable Baglin did not identify himself in case the offender remained in the garage.<sup>310</sup> He drew his firearm and assumed a position at the top of the stairs to cover the stairs.<sup>311</sup>

188. Senior Constable Brown did not stay in the right hand tower, but moved to various locations. At one point he went back to the left side of the complex and down the stairs to the garage and saw the officers shouting frantically for the offender to surrender so they could assist their wounded colleague.<sup>312</sup> Senior Constable Brown assumed that the offender must still be in the garage. It did not occur to him to mention to the officers in the basement that there were stairs from the basement on the right side going up to unit 8.<sup>313</sup>

189. At some stage, Senior Constable Brown walked past the right side of the building and turned left into Cairds Avenue where a number of unit balconies faced onto the street. He shone his torch on one balcony and saw an Asian man, about 50 years of age, out on the balcony. Senior Constable Brown told the man to return inside and the man complied. A female police officer joined Senior Constable Brown and they observed the Asian male come out on the balcony again. The Asian male said something that Senior Constable Brown could not understand. The officers shouted to him to return inside again and the man complied.<sup>314</sup>

190. At some other time, Senior Constable Brown went up the stairs to the door outside unit 8. He heard a man’s voice. He did not assume that the man was necessarily the offender but he

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<sup>305</sup> Brown 3/53/989-990, T1.9.14 at 74, Baglin 3/57/1118-1119, see also T2.9.14 at 21

<sup>306</sup> Baglin T2.9.14 at 20-21, 3/57/1119 (Baglin was only able to recall that the location was somewhere on Carmen Street); Mousselamani T2.9.14 at 87, 93-94

<sup>307</sup> Mousselamani T2.9.14 at 87, Mousselamani thought he would have also informed Baglin and Brown that “an officer is down, hold point, don’t let anybody up”, but it is likely that he is mistaken in this regard as the officers did not recall this and it would be expected they would have complied with his request if it had been made; see also Baglin 3/57/1119

<sup>308</sup> Brown T1.9.14 at 56-57

<sup>309</sup> Brown T1.9.14 at 58-59, 75-76, 3/53/993-994; Baglin T2.9.14 at 21-22, 3/57/1122

<sup>310</sup> Baglin T2.9.14 at 21

<sup>311</sup> Baglin 3/57/1122-1124

<sup>312</sup> Brown T1.9.14 at 57-59

<sup>313</sup> Brown T1.9.14 at 58-59

<sup>314</sup> Brown field interview 3/53/1010-1014

knew that only Mr Nguyen's wife and children were expected to be in unit 8. He decided against entering.<sup>315</sup>

### The responding officers

191. Numerous police officers responded to the calls for assistance over the police radio network. The first responding officers arrived shortly after 9:00pm,<sup>316</sup> some before Detective Roberts made his call to Detective Inspector Ryan at 9:08pm.<sup>317</sup> The ambulance officers arrived outside the unit block at about 9:09pm.<sup>318</sup> The early response was affected by some confusion and agitation, particularly in relation to how police and ambulance officers could approach Detective Crews to render assistance while the offender was still at large. Some police officers were determined to enter to rescue Detective Crews despite the danger.<sup>319</sup> Others wanted to wait for other officers or for a specialist group. Sergeant David Laird arrived and established a command post and perimeter. He told Senior Constable Mousselamani that it would take about 40 minutes for the Tactical Operations Unit to arrive.<sup>320</sup>
192. Senior Constable David Wynne, a member of the Dog Squad, was one of the first officers to arrive. He was with his police dog, Able. He entered the basement and saw the officers at the corner wall calling out to the offender to surrender.<sup>321</sup> Senior Constable Wynne assumed that the offender was still in the garage area.<sup>322</sup> Senior Constable Lavender and another officer, Philip Taylor, asked about using the dog but officer Wynne decided against deploying Able to attempt to locate the offender.<sup>323</sup> He explained in his evidence that he was concerned about the risk to a number of people inside and outside the garage (including Detective Crews on the floor) if he deployed Able. There was no effective way of ensuring Able could use scent to identify the offender rather than the others present.<sup>324</sup>
193. There is no basis for criticism of Senior Constable Wynne for this decision. He was a candid witness with special expertise in the use of police dogs. His decision not to deploy Able was based on concern for the safety of those present, and the potential for the dog to get in the way, rather than any decision to put his dog's safety ahead of the critical need to assist Detective Crews.<sup>325</sup>
194. At around the same time, a number of officers from the South West Metropolitan Area command entered the right side of the building, including officers Robinson, Alderman and Crematy. These officers heard the yelling in the basement. They cautiously approached the downstairs area, passing Constable Baglin who was still covering the top of the basement

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<sup>315</sup> Brown T1.9.14 at 59-60

<sup>316</sup> See statements of first responding officers at 5/85/[5]-[6]; 5/87/[4]-[5]; 5/88/[3]-[5]; 5/89/[4]; 5/90/[4]-[5]; 5/91/[4]; 5/92/[5]-[7]; 5/93/[4]-[5]; 5/94/[5]-[6]; 5/95/[4]-[6]; 5/96/[4]-[6]; 5/97/[3]-[5]; 5/98/[4]-[5]; 5/101/[4]-[5]; 5/102/[4]-[6]; 5/103/[4]-[5]; 5/104/[3]; 5/105/[4]-[5]

<sup>317</sup> See statement of Underwood 5/94/[6], [11]

<sup>318</sup> See statements of first responding ambulance officers and Patient Health Care Record at 8/195/[5]-[6]; 8/197/[6]-[7], 2910; 8/198/[5]-[6]; 8/199/[5]-[6], 2918

<sup>319</sup> See, for example, Hogan 5/93/1742

<sup>320</sup> Mousselamani T2.9.14 at 87, 4/61/1215; according to Hogan, Laird said that it would take TOU 30 to 45 minutes to arrive, at 5/93/1742

<sup>321</sup> Wynne T5.9.14 at 70-71, 5/98/[4]-[6]

<sup>322</sup> Wynne T5.9.14 at 63-64, 5/98/[6]

<sup>323</sup> Lavender T1.9.14 at 37-38

<sup>324</sup> Wynne T5.9.14 at 64-66, 72-74

<sup>325</sup> Wynne T5.9.14 at 72-74

exit stairs with his firearm.<sup>326</sup> Senior Constable Robinson yelled out to identify himself as a police officer and extended his uniformed arm out the door and around the corner so that the police could see that he was a police officer.<sup>327</sup> Once officer Robinson emerged, it quickly became apparent to the police in the basement that the offender must have left the area.

195. Shortly afterwards, at about 9:22pm,<sup>328</sup> the area was cleared and the officers were able to reach Detective Crews. Senior Constable Wynne handed Able to Senior Constable Lavender while Senior Constable Wynne and another officer, Senior Constable Wills, attempted to assist Detective Crews.<sup>329</sup> Ambulance officers took over within minutes, at about 9:24pm<sup>330</sup>. Dr Joanna Irons arrived at the location of Detective Crews at about 9:27pm and took over patient care.<sup>331</sup>

## Unit 8

196. During this period, Philip Nguyen and Tan Chung were hiding in unit number 8, together with Mr Nguyen's wife, stepson and stepdaughter. The family had heard shooting and screaming. Mr Nguyen's stepson called 000 call for help in relation to what he believed was an attack downstairs.<sup>332</sup> Mr Nguyen's stepson overheard Mr Nguyen tell his wife words to the effect that "*I shot someone who was breaking into garage, I think I killed him*".<sup>333</sup> While Mr Nguyen was in the unit he unsuccessfully tried to flush his gun and ammunition down the toilet. The gun was later located concealed in a hot water unit on the outside balcony.

197. Later that evening, Philip Nguyen and Tan Chung came out of unit number 8, following dealings with a police negotiator, and were arrested. The three other persons involved in the drug deal, who had been inside garage 8, were also arrested. A pistol was later discovered partially concealed under the cushions of a chair in garage 8.

## Treatment of Detective Crews

198. Detective Crews was taken to Liverpool Hospital suffering a transection of his internal jugular vein and severe damage to the common and external and internal carotid artery and to the vertebral artery.<sup>334</sup> Despite aggressive medical intervention including emergency surgery, he was declared deceased at 12.13am on 9 September 2010.<sup>335</sup>
199. An expert report by emergency physician Dr John Vinen was tendered in the inquest.<sup>336</sup> Dr Vinen concluded that Detective Crews could not have survived his injuries. It is likely that Detective Crews lost consciousness immediately after the second time he was shot. I accept Dr Vinen's opinion that the delay in commencing treatment was highly unlikely to have made any difference to the prospects of Detective Crews' survival.

<sup>326</sup> Alderman 5/87/[6]; Crematy 5/97/[7]-[8]; Robinson 5/90/[7]-[13]

<sup>327</sup> Robinson 5/90/[13]

<sup>328</sup> See VKG transcript and disc (5/79-80 – the broadcasts indicate the basement area was cleared at a point in time after 9:21pm and before about 9:23pm (note the VKG disc recording indicates the times identified on p. 1628 are approximately 40 seconds slow)

<sup>329</sup> Wynne T5.9.14 at 69, 5/98/[7]; Wills 5/89/[8]

<sup>330</sup> See Ambulance Service of NSW Patient Health Care Record: 8/197/2910, 8/199/2918

<sup>331</sup> Irons 8/196/2899, 2902

<sup>332</sup> 5/81/1645-1653

<sup>333</sup> Sheehy 1/8/81, see also 8/177/2796

<sup>334</sup> Leslie 8/201/2922-2923

<sup>335</sup> 1/2/8

<sup>336</sup> 8/201B

## The critical incident investigation

200. The death of Detective Crews was investigated by a team led by Detective Inspector Mick Sheehy, in a manner consistent with NSW Police Force guidelines on the investigation of critical incidents. Pursuant to those protocols, the team was comprised of senior officers from the Homicide Squad of NSW State Crime Command.
201. The involved officers' weapons were taken for inspection and it was confirmed that only Detective Roberts had fired a shot. The other officers were tested for gunshot residue. Each underwent drug and alcohol testing. No illicit substances were detected.
202. The investigators took steps to separate the involved officers to prevent contamination of their evidence.<sup>337</sup> The officers were offered counselling and appear to have been treated compassionately. Most of the involved officers gave statements on the night, with the exception of Senior Constable Mousselamani who was too distressed to participate. He provided a short account to investigators that night which was recorded in an investigator's note, which he later adopted.

## Conclusions

203. There is no doubt William Crews was a much loved member of a close and supportive family. His sudden violent death was a terrible setback that they will continue to suffer indefinitely. I offer them my deep sympathy.
204. Detective Constable Crews was warmly regarded and admired by his colleagues as a hard worker and a team player - a good bloke and a good cop. He was committed to learning his new role as a detective in a challenging and complex setting. Clearly, he had a promising future as a police officer. The police force and the public its members protect have therefore also suffered a significant loss with his passing.
205. The Middle Eastern Organised Crime Squad was dedicated to responding to an identified and growing threat to public safety. Its members bore that responsibility bravely: they proactively sought out and confronted dangerous criminals using traditional policing approaches such as cultivating criminal informants which they combined with more sophisticated strategies such as intelligence analysis to generate priority targets. The operation in which Detective Constable Crews was killed was an example of that methodology in practice.
206. The tactical operations MEOCS members engage in are intrinsically dangerous: they frequently involve engaging with violent criminals in volatile, unpredictable settings. There *are* other dangerous vocations: for example, too many truck drivers, miners and professional fisherman lose their lives at work. But police officers *intentionally* go into dangerous situations, putting themselves at risk to make the rest of us safer. It is essential therefore that whenever possible their activities are planned and controlled. If mistakes are made their causes should be analysed so that they are not repeated.
207. Critiquing the planning and execution of the raid in which Detective Constable Crews died may to some seem harsh or even unfair on those involved. However, Bill Crews' family are entitled to know if his death could have been avoided. Further, the officers who will be required to be involved in similar tasks in future are entitled to expect that if mistakes were

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<sup>337</sup> 5/99/1783

made, lessons have been learnt and improvements have been implemented. It is for those reasons this inquest has carefully scrutinised what happened in the hours and minutes before and after Detective Constable Crews was shot.

208. Based on the evidence put before the inquest, I can readily conclude the premises in Cairds Avenue warranted MEOCS' attention: the activities that were occurring there fell within the terms of reference of the task force. However, in my view there are bases for concern about aspects of the planning and execution of the operational response to the information received.
209. There is no suggestion that these mistakes were the result of callous indifference, or a wilful disregarding of police policy and procedures. However, there were errors in planning and execution that seem to have flowed from systemic problems with policies, inadequate training, ineffective supervision, insufficient attention to detail and regard to safety. Sadly, it seems likely that had these errors not occurred Bill Crews may not have died. It is incumbent on the NSWPF to ensure these mistakes are not repeated.

## Pre-execution phase

### Intelligence gathering and reconnaissance

210. In my view, the risk assessment of the operation was informed by inadequate intelligence gathering and reconnaissance. This process was marred by missed opportunities to gather significant information concerning the target of the search warrant and the layout of the premises.
211. To merely drive by the premises and stop briefly outside when two inhabitants of the unit block were willing and able to facilitate access to the basement was unwise and unnecessarily scant. Entry to the basement could have been effected in a manner that would not have alerted the persons of interest to the presence of police. This would have eliminated the confusion about the design of the basement that led to the search team attending the wrong garage and being confused about exit points from the area. The indication on the operational orders that "*surveillance conducted at premises*" also appears to have misled the supervising officers, who assumed that there had been or would be officers conducting physical surveillance of those premises.
212. For the reasons I have detailed in the summary of the evidence, I have concluded that when officers Roberts and McNally spoke to the registered informant X early in the afternoon on the day of the raid and Senior Constable McNally made a note "Gun + cash", he did so because X had told them there was or may be a gun at the premises. Both officers resisted the conclusion that they had been informed of the presence of the gun, in part by saying had that occurred they would not have undertaken the search without the assistance of specialists such as the Tactical Operations Unit. In my view they did not do that because they believed they could negate the risk by making continuing inquiries with X. I accept the submission made by various parties that if Detective Senior Constable Roberts had been told there may have been a gun at the premises he would not have ignored that. Indeed, he didn't. He sought to negate the risk by persistently quizzing X whenever he spoke to him throughout the rest of the day as to whether he had seen a gun, but this approach was flawed, based as it was on X necessarily knowing or seeing a gun if Mr Nguyen had one.
213. In view of the initial advice about the possibility of firearms being present and, having regard to the activities thought to be occurring at the unit block, and the involvement of members



of organised crime families, the likelihood of the MEOCS members meeting armed resistance should have been given greater weight.

214. The shortcomings in the pre-execution phase appear to have been driven, at least in part, by the perceived urgency to *“strike while the iron’s hot”*<sup>338</sup> after Detective Roberts was informed that the target was expected to receive 6 ounces of cocaine some time that afternoon or evening.
215. The independent policing expert who gave evidence, Dr Raymond Shuey, said that *“the imperative to undertake the search warrant at the time of the deal was not fully rationalised”* and the time imperative resulted in some issues not being addressed as carefully as they may otherwise have been.<sup>339</sup> I accept that opinion.

### Risk assessment

216. The risk assessment process that informed the operational order was critically compromised by Senior Constable McNally’s lack of understanding of its basic concepts; the failure of he or Detective Roberts to identify some of the likely risks; and the inadequacy of the supervision by senior officers responsible for oversighting the process.
217. Officer McNally did not appreciate the difference between the likelihood of a risk eventuating and the gravity of the potential harm if it did. Because he concluded there was a low likelihood of any of the risks he identified as eventuating, he concluded the seriousness of their consequences was also low. This mistake was obvious from the risk matrix he completed.
218. It is of concern that according to Senior Constable McNally he completed the risk assessment matrix in this case in the same way as he had done a number of others in the past and the same way he had done exercises at training programs and he had not been corrected.
219. I also accept the evidence of Dr Shuey that the circumstances of this case brought into play other risks that do not seem to have been considered. For example, the risk that a drug deal could be in progress, with potentially violent and armed Middle Eastern criminals present, when police approached the target garage. This was in circumstances where the officers had a paucity of information concerning the targeted Asian male. According to Dr Shuey conducting a search at or around the time of a drug deal is *“fraught with danger”* given the heightened level of awareness of those involved.<sup>340</sup>
220. Conversely, I accept that through no fault of the search team members they did not know about an attempted robbery of Mr Nguyen a couple of weeks before. As will become clear, that undoubtedly made the search more dangerous.

### Supervision

221. It is concerning that neither Detective Roberts nor any of the more senior officers who reviewed the operational orders detected what was an obvious error in the way the consequences of the risks listed had been categorised.

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<sup>338</sup> Roberts 30.7.14 at 24; Ryan T4.9.14 at 23

<sup>339</sup> Shuey T4.2.15 at 13-14; see also 9/205/3090

<sup>340</sup> Shuey T4.2.15 at 14

222. The operational orders were approved by Detective Inspector Ryan and Detective Superintendent Wallace, although Detective Inspector Ryan did not view them. However, he said he agreed with the overall low risk assessment and approved the orders during a series of phone calls with Detective Roberts. His approval appears to have been given on the basis of an incorrect assumption as to the level of surveillance being conducted at the premises.
223. The approval by Detective Inspector Ryan also appears to have been given without proper scrutiny of the details of the proposed execution of the warrant and without proper consideration as to the potential risks involved. He sought to downplay the risks arising from the drug deal that was expected to occur at the subject premises that night involving Middle Eastern criminal identities by suggesting that the Asian male target was less likely to be a risk because Asians tend to be businessmen who are less likely to possess weapons or attack police.<sup>341</sup> He also asserted that one of the other suspected criminal entities, the Kalache family was a “spent force”,<sup>342</sup> and noted that the Asian male lived with his family.<sup>343</sup>
224. I am not persuaded that this was a reasonable assessment.
225. In submissions made on the former inspector’s behalf it is correctly asserted that he was off duty when the orders were settled and he could not view them as his mobile device had been withdrawn. Further, he was led to believe that further surveillance was taking place and he was aware that X would be in the premises around the time the warrant was to be executed. These factors led him to believe the risks could be adequately managed.
226. His submissions also take issue with the assertion of counsel assisting that senior officers imposed time pressures on the job. He may be right, but equally there is no evidence that the senior officers who overviewed the job sought to caution against rushing or insisted the search be postponed until all relevant intelligence could be gathered. They did nothing to rein in the unnecessary haste with which the job was being approached.
227. In submissions made on behalf of former Inspector Ryan and Superintendent Wallace it is suggested there was little likelihood of any Middle Eastern organised criminals being present when the warrant was to be executed because Mr Nguyen was supposed to be buying not selling drugs that night. I am of the view little weight could be given to the particulars of the expected transactions. He was buying and selling drugs in sizable quantities to and from various other criminals. It was a volatile, unpredictable and potentially dangerous situation.
228. Detective Superintendent Wallace reviewed the operational orders and risk assessment on her Blackberry from home that evening. Her evidence was that she was satisfied with the content of the orders and the overall risk rating assessment. She said that she noted that the “consequence” section of the risk assessment matrix had been filled out incorrectly but that, in assessing the overall risk rating herself, she effectively by-passed the risk matrix and formed her own view as to overall risk based on her own experience and judgement.
229. Detective Superintendent Wallace was unaware of some relevant information but said that her assessment would not have changed if she had been, given the ability to mitigate the associated risks by the ongoing presence of the source providing timely information to the search warrant party. This, however, depended entirely upon the reliability of the source,

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<sup>341</sup> Ryan T4.9.14 at 65-66

<sup>342</sup> Ryan T4.9.14 at 32-33

<sup>343</sup> Ryan T4.9.14 at 49, 76

and X's continued presence at the scene right up to the time that the search warrant was executed. It was an unwarranted assumption that diminished the protective effects scrutiny by a senior officer should afford.

230. Detective Superintendent Wallace did not convey her approval to the search warrant team because her work mobile phone's battery was discharged but she asserted it was understood by the search party that, in the absence of any order from her to the contrary, they were to proceed with the search. This seems somewhat lax in my view.
231. The operational orders were also sent to then Detective Chief Superintendent Lanyon, Acting Director of the Organised Crime Directorate. He explained that his role was not to examine the minutiae of the operation and that he was not required to approve the operational orders as such, but that he was provided the orders to confirm that the operation fell within the MEOCS charter and that the execution of the warrant was appropriate to the background as disclosed on the operational orders. As with Detective Superintendent Wallace, Mr Lanyon was not aware of a number of areas of relevant information. Unlike Ms Wallace, Detective Chief Superintendent Lanyon said that this additional information, if known to him, would have invoked "*a number of questions*" which he would have put to Detective Superintendent Wallace. He agreed that, in light of this additional information, the background, reliability and possible motivation of the source assumed greater significance and that he would have ensured that he was satisfied that appropriate steps had been taken to explore these before allowing the operation to continue.
232. The lack of rigorous scrutiny applied during the review and supervision process enabled the errors in the initial risk assessment process to pass without thorough critical assessment or correction. In my view these were shortcomings in the supervision and review of the operation by both former Detective Inspector Ryan and Detective Superintendent Wallace. They did not value add; they did not adequately fulfil their supervisory roles, in my view.

### Briefing

233. It is apparent when the search party arrived at the Cairds Avenue premises, there was some confusion about the route the upstairs search team were to take to access unit 8. Senior Constable McNally knew they had to go down stairs into the basement garage from the left hand tower to access the internal stairway to unit 8 in the right hand tower, but none of the other officers recalled him telling them that during the briefing. The two tasked with searching that unit with Senior Constable McNally, officers Brown and Baglin, acknowledged they had a poor recollection of the briefing and conceded it was possible the route had been described during the briefing as claimed by Senior Constable McNally. Doubt is cast on his version by the actions of those other two upstairs searchers: they both ran upstairs in the left hand tower after they had lost contact with Senior Constable McNally outside the unit block. Senior Constable McNally was by this stage in the basement, no doubt expecting officers Brown and Baglin to follow him. It may be that because he was tasked to lead the search of the unit upstairs Senior Constable McNally did not feel the need to stress the somewhat convoluted route to it.
234. It is submitted on behalf of Senior Constable McNally that the failure of any of the officers to recall his detailing the access route to unit 8 and the mistaken approach taken by officers Brown and Baglin should not lead to a rejection of Senior Constable McNally's claim that he outlined the correct route in the briefing. However, in my view that submission overlooks the significance of the operational orders drafted by Senior Constable McNally which

relevantly said: *“Once entry has been gained via the front security door, S/Cst Brown, S/Cnst McNally and Cst Baglin go up to level one to unit number 8 and will knock on the door.”* Copies of the order were circulated among the group and looked at during the briefing. It seems very likely that had Senior Constable McNally briefed the group on the route to be taken to unit 8, the conflict with his oral version and what was stated in the orders would have been noted and commented on with words to the effect: *“I know the operational order says just go through the door and straight upstairs but in fact... etc”*. If that had occurred, it is highly unlikely no one would have remembered it or acted on it, in my view.

235. I conclude Senior Constable McNally failed to alert the group to the error in the operational orders and failed to alert the upstairs search team of the need to descend into the basement in order to access unit 8 in the right hand tower.

### **Attempted execution of search warrant**

236. A number of mistakes were also made during the execution of the search warrant which compromised officer safety.

### **Confusion as to location**

237. Senior Constable McNally admits he became confused about the location of the garage intended to be searched when he led the search party into the basement. When speaking to Q on the phone earlier in the day it was described as being adjacent to the roller door. He also received hurried directions when Q met him at the ground floor door to let him into the building. In his haste on entering the basement he made an error as to the location of the target garage. That was understandable: garage 8 was in darkness while another garage, number 1, was lit, open and had a car parked outside it. The search party were drawn to it. However, it's hard to avoid the conclusion that had the officers undertaking the operation made full use of all information available to them, including covert access to the basement, the mistake would not have been made.

### **Identification**

238. At the relevant time, the NSWPF Police Handbook provisions relating to how officers should be identified when wearing plain clothes were unclear and potentially confusing. They seem to require that if arms or appointments had to be exposed during operational duty reflective vests and/or warrant cards or badges should be visible. I accept that there was no clear guidance given to officers about the issue in the circumstances that prevailed in this case. Nor was there any standard practice as to how they should conduct themselves to ensure they were appropriately recognised as on-duty police officers when executing search warrants.
239. The operational orders said *“Plain clothes officers will display police identification.”* That didn't occur and when Detective Crews and his colleagues confronted Mr Nguyen they were not recognisable as police officers and there were no uniformed police officers in sight. I have found that the mistaken identity which resulted was a key factor in the drug dealer's decision to shoot. I accept Mr Nguyen's evidence that he fired because he believed the men he suddenly confronted when he emerged from the garage were robbers, and not police officers. He was affected by drugs and had very poor English. They only saw each other for a couple of seconds before he fired. They didn't look like detectives – they looked more like robbers and he had been attacked by robbers in the same place a couple of weeks before. Any instructions the police shouted were likely to be incomprehensible to a person in Mr Nguyen's condition. I don't believe he would have been so foolish as to try and shoot his way out of the basement if he knew the group confronting him were police officers who he

would expect to be armed. In my view, the failure to ensure that the officers confronting the offender were clearly identified as police officers was a dangerous error.

240. To be fair to Detective Senior Constable Roberts, it should be acknowledged that he had anticipated two uniformed officers being with the basement raiding party. However, he took no steps to ensure that happened and he took no steps to ensure any of the plain clothes officers were wearing police identification.

### Discharge of firearm

241. It is clear that the fatal shot was fired by Detective Roberts while he was retreating and reasonably believed that he and Detective Crews were in imminent and extreme danger. The confrontation had come as a complete surprise and it is easy to accept that officer Roberts *“didn’t stand in a well-aimed shot”*; fired while he *“was trying to get cover”*; when he *“wanted to get low”*; and that he *“may have even hit the deck”*.<sup>344</sup> In his words he was *“half up, half down”* and *“as I fired a shot, I could see other police behind me.”* His evidence also suggests that he did not know exactly where Detective Crews was at the time - although he was clearly in the immediate vicinity of Mr Nguyen. Further, such was Detective Roberts’ movement he was unable to control where his gun was pointing when he fired. I reject his evidence that he was looking and aiming at Mr Nguyen when he discharged his weapon.
242. According to the evidence of Senior Sergeant Davis, the shot by Detective Roberts was fired contrary to the procedures and training given to officers in relation to the discharge of firearms, particularly the general safety principles that require an officer to be conscious of where the muzzle of the firearm is pointed and to be sure of the target.<sup>345</sup>
243. It is easy to have some sympathy for Detective Roberts. There is no doubt he was caught unawares and may have panicked. That would be understandable – he had been suddenly thrust into a life threatening situation. His presentation at the inquest was defensive and seemed underpinned by a belief he had done nothing wrong. It is difficult to know to what extent his truculent demeanour was fuelled by self-doubt and unrelenting remorse. While he exhibited little insight in public, I am prepared to assume he knows he made a tragic mistake.
244. I am of the view that an officer of Detective Senior Constable Roberts’ experience should have realised that firing in the circumstances in which he suddenly found himself added to rather than negated the danger he and his colleagues were in, unless he was able to exert more control over his actions. Nothing can now be done about that, although I anticipate the extensive firearms training all officers undergo that insists safety is paramount will be informed by the terribly sad outcome of this incident.

### Onsite communication

245. The communication between the search warrant party members, particularly between the two groups who were tasked with searching the upstairs unit and the downstairs garage respectively, was inadequate. The evidence of the involved officers indicates they did not have a ready means of communicating to one another. There is no evidence this contributed to the shooting of Detective Crews, although it may have hindered the response. This was a flaw in the planning of the operation.

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<sup>344</sup> Roberts record of interview 2/29B page 5

<sup>345</sup> Davis 9/202/2944

246. The operational order contained a heading “Command and Communications” but provided no indication how the officers were to communicate in the field.

### **Post shooting events**

247. As a result of flaws in aspects of the planning of the operation already referred to – surveillance and communication in particular - after Detective Crews was shot his colleagues dared not go to his aid as they mistakenly feared they could not approach him without being exposed to the armed offender. It is now known that even immediate medical attention would not have saved his life. Still, Bill Crews lay alone on the cold concrete as his life ebbed away, while his colleagues unnecessarily held back. That must be as upsetting for them as it is for his family. The recording of their anguished screams for the offender to allow them to approach their wounded colleague witnesses their distress.
248. In retrospect, it might be puzzling that the officers who discovered the stairs to the garage from the right hand side of the building did not guess Mr Nguyen had escaped. The hesitancy of those officers is also in contrast to the officers who subsequently arrived, entered the basement through those stairs and cleared the area. However, in view of the very traumatic events the raiding party had just experienced, I believe that to be critical of them would be unfair. None had advanced weapons and tactics training: they were mostly relatively junior detectives or general duties officers who had thought they were attending a routine search. As a result of the flawed risk assessment and the failure of the supervising officers to intervene, none of the search party was expecting or prepared for what unfolded. Their indecision when things went so badly awry was understandable and did not, in any event, contribute to the death.
249. In summary, as is so often the case, this death occurred because of cascading, compounding errors, none of which in isolation directly caused the death. On occasions, police officers are forced by exigent circumstances to rush into dangerous situations to prevent harm to others. This was not such a case: there was no pressing urgency that demanded an immediate response or that should have prevented more careful preparation prior to searching the Cairds Avenue premises. Lack of rigor in the supervision or oversight allowed inadequate planning and preparation to go undetected. No one undertook sufficiently careful and considered analysis as to what needed to be done and how it could most safely be done. Those shortcomings contributed to an emergency arising in which a mistake was more likely to happen. Tragically, in this case, that mistake was fatal. These criticisms must be tempered by acknowledging that they occurred because the officers involved were so committed to their mission they allowed a degree of indiscipline and hastiness to override circumspection. There was however no deliberate disregard for safety, and no promotion of private interest above public purpose. They were doing what they had sworn to do – protect the public – and sadly, one of them died doing it.

## **Findings required by s81 (1)**

250. Having considered all of the documentary evidence and the oral evidence heard at inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

### **The identity of the deceased**

The deceased person was William Arthur George Crews.

### **Date of death**

Mr Crews died on 9 September 2010.

### Place of death

He died in the Liverpool Hospital in New South Wales.

### Cause of death

The cause of the death was gunshot wound to the neck.

### Manner of death

While executing a search warrant on residential premises in Bankstown with a number of other officers, Detective Constable William Crews was fatally wounded when he was unintentionally shot by another police officer who returned fire from a drug dealer who had mistaken the police officers for criminals come to rob him.

## Recommendations

251. The Coroners Act in s82 authorises coroners presiding over inquests to make recommendations concerning matters connected with the death that are designed to contribute to public health and safety and/or to prevent deaths occurring in similar circumstances in future. The circumstances of this case raise the following issues for consideration from that perspective:-

- Risk assessment for search warrant executions;
- Oversight of search warrant planning;
- Identification of officers during operations;
- Communication during operations;
- Building approach and entry procedures;
- The wearing of body armour;
- “Man down” response; and
- The extent of defensive skills training.

252. Pleasingly, those issues have since been reviewed and reformed by the NSWPF. However, of concern is the delay in that response, even after serious shortcoming had been identified by the police force’s preeminent expert in weapons and defensive tactics training, Senior Sergeant Davis. That officer was involved in reviewing the sad incident in which Detective Crews lost his life from the outset. He attended the scene the next day and was present when the officers involved did their “walk through” interviews. In a report presented in February 2011, Senior Sergeant Davis made 11 recommendations. For reasons which were not adequately explained during the inquest there was no official response to them until a Search Warrant Working Party (SWWP) produced a report in May 2014, over three years later. That working party was only set up after WorkCover initiated a prosecution against the NSWPF alleging it had failed in its obligation to ensure the health, safety and welfare at work of all of its employees. The SWWP conducted a comprehensive review of all existing search warrant procedures, documentation and training to achieve a single, unified approach to the execution of search warrants, and remove inconsistency in search warrant documentation.<sup>346</sup>

253. The SWWP produced a draft report in June 2013 and, following consultation across the NSW Police Force, produced a final report in September 2013 containing 33 recommendations.<sup>347</sup>

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<sup>346</sup> See the detailed summary in Crandell, Exhibit 4 Tab 4 at [11] to [27]

<sup>347</sup> Exhibit 4 Tab 6



On 24 September 2013 these were endorsed by the CET, and a Project Implementation Team ("PIT") was established in order to bring the recommendations into effect and, in particular, to develop and implement a Search Warrant Tool Kit. The PIT also sought external advice from a risk management consultant, who provided a report in March 2014.<sup>348</sup> The Tool Kit was then developed and training was commenced. The new procedures were implemented from 1 November 2014.<sup>349</sup>

## Risk assessment

254. As is detailed earlier in this report there is a body of evidence indicating the risk assessment process in use in 2010 was not understood or correctly applied by the officers involved in the fatal incident. This has been addressed by the Search Warrant Tool Kit. The risk assessment tool was demonstrated during the inquest. Dr Shuey described it as a very good model to ensure that the risks are all dealt with.<sup>350</sup> It includes a risk appreciation checklist, which acts as a prompt to remind the Case Officer to consider various aspects of the operation and whether they present a risk. Where information is unknown, this is highlighted in red, which acts as a visual aid for the Case Officer and the authorising officers to remind them that unknown factors may increase the risk rating<sup>351</sup>. The presence of unknown factors does not automatically result in a higher risk rating. Dr Shuey considered this method for the treatment of unknowns to be appropriate.<sup>352</sup>
255. The assessment of risk is performed manually, with the Case Officer arriving at his or her own assessment of risk according to the appropriate descriptions of the likelihood and consequence of the relevant events.<sup>353</sup> Some rating choices are restricted, for example a risk of "death or serious injury from the use of firearms" can initially only be rated with major or severe consequences (C4 or C5). The effect of this is that where such risks exist this will automatically result in a higher risk rating.
256. Another significant improvement is in relation to how the overall risk of a search warrant is determined. The old risk matrix applicable at the time of the incident assessed overall risk on the basis of the majority of risk rankings applicable to nine different topics. Under the new system, a single high risk rating in relation to officer or public safety automatically results in an overall risk rating of high, requiring an application for assistance from the Tactical Operations Unit.<sup>354</sup>
257. If the approving officer considers that the initial risk rating for the operation is not acceptable, the Case Officer is required to "treat" the risk, that is to consider how the risk might be mitigated by different strategies. There is a library of suggested strategies, which will be enhanced over time, and these act as a prompt for appropriate action. For example, one way to mitigate the risk of firearms is to ensure that officers wear ballistic vests. Following this process, the risk is re-assessed and submitted for approval.
258. This electronic risk assessment tool as a whole is a far more sophisticated system than the one used in 2010, and this may itself be an issue. The SWWP concluded that it was not an

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<sup>348</sup> Crandell Exhibit 4 Tab 4 at [24]

<sup>349</sup> Crandell Exhibit 5 tab 26 at [4]

<sup>350</sup> Shuey T4.2.15 at 20

<sup>351</sup> Crandell Exhibit 4 tab 4 at [37a]

<sup>352</sup> Shuey T4.2.15 at 12, 20

<sup>353</sup> Crandell Exhibit 4 tab 4 at annexures 10 and 11

<sup>354</sup> Crandell T2.2.15 at 76



overly onerous undue administrative burden as case officers were likely to be making the same enquiries in any event.<sup>355</sup> However, anecdotal evidence suggests the administrative burden of complying with the new procedures might deter some officers from seeking search warrants. The inquest heard no evidence about this and accordingly no findings can be made. However, I trust the NSWPF will keep this under review: it is unnecessary in my view for safer policing to lead to less effective policing.

## Oversight of search warrants

259. The procedures in place in 2010 required a number of senior officers to review the operational orders before a search warrant was executed. Surprisingly, none of those officers in this case detected what should have been obvious defects with a potential to impact upon safety.

260. The new procedures require three senior officers, including in most cases the Local Area Commander, to check, recommend and authorise the risk assessment.<sup>356</sup> This usually involves physically signing the document, although there is provision for electronic approval. The approving officers are also required to approve the Operational Orders.<sup>357</sup> This approval process involves those senior officers confirming both that the risk assessment has been completed appropriately and that the risk rating for the operation is acceptable or, alternatively, requires treatment.<sup>358</sup>

261. This process is, in my view, a substantial improvement over the previous system.

## The Safety Check Officer

262. In a further effort to ensure officer safety is of paramount importance, every search warrant operation will now have an allocated Safety Check Officer, whose role is to ensure that safety is discussed during briefings, safety procedures are observed during the execution of the warrant, and safety issues are raised and reported after the operation has completed.<sup>359</sup> The Safety Check Officer is required to consider various aspects of the operation including, in particular, communication between officers and access to and egress from premises.<sup>360</sup>

263. This role will normally be undertaken in conjunction with another role, for example by a Searching Officer. An officer must be trained in order to undertake the role, which is included in the standard training for the new search warrant procedures.<sup>361</sup>

264. Where the Safety Check Officer has a concern about an aspect of the operation, it is anticipated that this concern would be communicated to the Case Officer, and if not acted upon then onwards up the chain of command. The Safety Check Officer does not have any right of “veto” due to safety concerns.<sup>362</sup> However, the creation of this role, with its focus on safety, is clearly a substantial improvement over the previous procedures.

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<sup>355</sup> *SWWP Final Report* Exhibit 4 tab 6 at 13

<sup>356</sup> *Standard Operating Procedures*, Mandatory Step 1b, Crandell Exhibit 5 tab 26 at 25

<sup>357</sup> Crandell Exhibit 5 tab 26 at 78

<sup>358</sup> See the definition of “recommend” and “authorise” in the SOPs, Crandell Exhibit 5 tab 26 at 52

<sup>359</sup> Crandell Exhibit 4 tab 4 at [29]

<sup>360</sup> Crandell Exhibit 5 tab 26 at 47

<sup>361</sup> Crandell T 3.2.15 at 5

<sup>362</sup> Crandell T3.2.15 at 4

## Identification

265. As detailed earlier in this report, it seems likely that the person who started the shooting that ended with Detectives Crews' death did so because he was unaware the group of men confronting him were on-duty police officers. In an effort to address this a new Operational Orders template provides a "default" position for the clothing police should wear in executing a search warrant.<sup>363</sup> In normal situations, all officers in the Entry Team should wear one of four dress options (uniform, fluorescent vest, overt body armour with the flaps out or load bearing vest). Any departure from this must be justified. In addition, the default position for police identification is that it should be displayed before approaching the premises. Any operation that involves a deviation from the default position in relation to identification must be the subject of a review by the Search Warrants Review Committee.<sup>364</sup>

266. I conclude these reforms address the weaknesses of the previous arrangements that were highlighted in this case.

## Communications

267. The Operational Orders template requires the Case Officer to record the communication methods that will be used during the operation, including radio channels, call signs and (where relevant) other methods of communication such as mobile phones. Communications is also one of the areas to be considered by the Safety Check Officer. If these requirements had been applied at the time of this incident, the deficiencies referred to earlier in relation to communications would not have arisen.

## Forced entries

268. In recognition of the risk the execution of search warrants can pose if the subjects of the search are likely to resist, forced entry into a building will be performed by appropriately trained tactical officers in all but "low risk" situations.

269. In regional areas, where there is some scarcity of specialist resources, the Public Order and Riot Squad has provided training in building entry to ensure that appropriately trained officers are available to effect forced entry in medium and low risk operations. So far, 12 facilitators and 306 officers have received this training.<sup>365</sup>

## Training and review of search procedures

270. Police officers are required to undertake training in the new procedures before participating in any search warrant.<sup>366</sup> The method for training is that senior officers (Detectives and Senior Sergeants) receive one full day's training on the Risk Assessment tool and the Operational Orders.<sup>367</sup> These officers then become facilitators who provide training to other officers. The training for the other officers takes 4 hours. So far a total of 5,395 officers have received this training.<sup>368</sup>

271. There is an ongoing review process for the new procedures, overseen by the Search Warrant Review Committee (SWRC). At the conclusion of an operation, the Case Officer must identify whether certain defined issues have arisen during the execution of the warrant, including where forced entry was used, injuries were sustained, firearms were discovered

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<sup>363</sup> Crandell Exhibit 5 tab 26 page 80

<sup>364</sup> Crandell T2.2.15 at 80

<sup>365</sup> Crandell Exhibit 5 tab 26 at [41]

<sup>366</sup> Crandell Exhibit 5 tab 26 at [51]

<sup>367</sup> Hiron Exhibit 4 tab 3 at [12]

<sup>368</sup> T3.2.15 at 90

unexpectedly and the operation did not proceed.<sup>369</sup> He or she then completes a situation report and sends it to the SWRC. These case reports are reviewed, together with supporting information and appropriate remedial action is taken. In addition, the SWRC conducts random sampling to check for any issues.

272. This process provides a useful mechanism for monitoring and improving the new procedures. Superintendent Crandell stated that the SWRC was likely to continue this function indefinitely.<sup>370</sup> Eight Search Warrant Practice Notes have already been issued to clarify instructions.<sup>371</sup> The review process may also identify whether the procedures are being correctly followed, or whether officers are avoiding the processes or deciding not to obtain search warrants due to the procedures.

273. In my view, these mechanisms should provide for adequate engagement with the new procedures and continuous improvement.

## Ballistic vests

274. On the evidence before this inquest, none of the available types of body armour would have provided sufficient ballistic protection to save the life of Detective Crews. This is due to the position of the wound to Detective Crews' shoulder and the fact that no ballistic armour in use at the time would have offered sufficient protection in that area.

275. Nevertheless, it is pertinent to consider whether the use of body armour should be mandated during the execution of forced entry search warrants. Senior Sergeant Davis recommended that all officers engaged in search warrants should wear at least soft body armour.<sup>372</sup>

276. The present policy is that it is worn at the officer's discretion, subject only to the commander considering that it is required following a risk assessment.<sup>373</sup> The evidence shows that for various understandable reasons soft body armour is not widely used.

277. Consideration was given to changing the current policy on when to wear soft body armour. In light of the new search warrant procedures, which require the involvement of tactical police in medium and high risk search warrants and where forced entry is required there is no basis to further review this issue.

278. It is also pertinent that the NSW Police Force is planning to introduce integrated lightweight armour-bearing vests (ILAVs) that will hold weapons, appointments, and soft body armour panels. The ILAVs will also clearly identify the wearer as a police officer. An ILAV is relatively easy to put on and remove, and is therefore more likely to be worn than the existing soft body armour. It is also intended the ILAVs will be available to all officers. This reinforces the adequacy of the current policies.

## Availability of overt ballistic armour

279. There were insufficient overt ballistic vests for all officers present during the execution of the search warrant at Cairds Ave in September 2010.

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<sup>369</sup> Crandell Exhibit 4 tab 4 at [72]

<sup>370</sup> Crandell T2.2.15 at 80

<sup>371</sup> Crandell Exhibit 5 tab 26 at [54]

<sup>372</sup> Davis 9/202/2953 at [69]

<sup>373</sup> *Police Handbook* 1/28B p41

280. According to evidence given during the inquest, at that time, there were 4524 overt ballistic vests on issue, which is approximately one for every three officers, although not all officers would be expected to be on duty at the same time.<sup>374</sup> Overt ballistic vests are distributed so that generally most police vehicles ought to have two vests available. However, this policy is not mandated.<sup>375</sup>

281. I have considered recommending all marked police cars should, when in use, be equipped with two overt ballistic vests. However I accept that in view of the new procedures that require medium and high risk search warrants to be executed or overviewed by tactical units who will always have access to appropriate equipment, the additional cost of putting vests in all cars, many of which would never be used, cannot be justified.

### Defensive tactics training

282. Evidence indicating that officers Crews and Roberts failed to effectively respond to being confronted by an armed offender led to a recommendation from an expert who gave evidence at the inquest that the training for all officers in how to react to such threats should be increased.

283. Two days of mandatory defensive tactics training is presently undertaken by all NSW Police Force officers every financial year. The content of the course varies from year to year, to take account of issues arising in the field and, as a result, some fundamental aspects of training are only dealt with on a cyclical basis.<sup>376</sup>

284. Currently, one day is spent on general defensive tactics and the other is for “live fire” training. However, the total time spent using a firearm is approximately only 2 hours. Officers who fail to achieve a sufficient score during the training, and who fail to correct this on the day, are given remedial training and an opportunity to take the test again, prior to being approved for operational duty.<sup>377</sup>

285. Senior Sergeant Davis recommended that the amount of mandatory defensive tactics training be increased to 3 days for all police officers. This recommendation derives from his analysis of the circumstances leading to the death of Detective Crews. He observed that mandatory training already includes skills relevant to the situation the officers found themselves in on 8 September 2010. These skills include facing an armed suspect, shooting whilst on the move, shooting using one hand and using cover whilst conducting fire.<sup>378</sup> Both Detective Crews and Detective Senior Constable Roberts had undertaken such training, as they were required to, prior to 8 September 2010.<sup>379</sup>

286. However, Senior Sergeant Davis noted that such training cannot completely replicate the levels of physical and mental stress acting on officers when they confronted with a real life situation.<sup>380</sup> In his opinion, if an officer receives more training then, when he or she is placed

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<sup>374</sup> Hiron T 2.2.15 at 11

<sup>375</sup> Hiron T 2.2.15 at 19

<sup>376</sup> Davis T 3.2.15 at 57; Hiron Exhibit 4 Tab 3 at [28]

<sup>377</sup> Davis T 3.2.15 at 40, 42-3

<sup>378</sup> Davis 9/202/2942 at [47]

<sup>379</sup> Davis 9/202/2935 at [35]; Roberts had not yet completed his Mandatory Training for the financial year commencing July 2010.

<sup>380</sup> Davis 9/202/2942 at [49]

in a stressful situation, the appropriate response is more likely to be instinctive.<sup>381</sup> As a result, he recommended that the present 2 days of mandatory training should be increased to 3 days, for all police officers, *“to ensure complete operational preparedness for all NSW Police Force officers who may be faced with a similar situation”*.<sup>382</sup> Superintendent Hiron conceded that this was a common sense approach and that NSW Police Force could not argue against it.<sup>383</sup>

287. The SWWP considered the proposal to increase Mandatory Training in its Supplementary Report in May 2014. It resolved to prepare a cost and needs analysis, noting that *“until this was done, it could not be established if an additional day was required, or if, in fact, an additional day would be sufficient”*.<sup>384</sup>

288. Superintendent Hiron prepared a report to the CET regarding this proposal. As at 3 February 2015, no decision had been made by the CET. However, it appears from his evidence that the resourcing implications are of concern. It has been estimated that up to 20,000 operational shifts would be lost were Senior Sergeant Davis’ recommendation implemented.<sup>385</sup> Further, it is already difficult to find sufficient trainers and venues.

289. Dr Shuey criticised this approach and suggested that the NSWPF should instead identify the training need first, and then work out how this could be achieved.<sup>386</sup> He suggested that there may be other ways to deliver aspects of mandatory training, which may free more time for defensive tactics. Some training is now delivered online and virtual simulation also has potential, although a number of witnesses were of the view that the most important and beneficial training was that involving scenario role play, where officers are required to interact with real people in different scenarios.<sup>387</sup>

290. It appeared from the evidence of Superintendent Hiron that the NSWPF has not given any consideration to a more limited roll-out of increased mandatory training for officers who may particularly need it. Presently, the only officers who might receive more training on defensive tactics appear to be those who require remedial live fire training and those in specialist groups such as the Tactical Operations Unit.<sup>388</sup> It was suggested that extra defensive tactics training could be given on a limited trial basis to officers in geographical areas who statistically face more firearms; officers in squads that are more likely to face firearms; officers in the first four years of training; officers who request more training; or a sample of officers. Participants in a limited trial could then be assessed to determine whether the training had measurably improved their defensive tactics skills.

291. In light of the circumstances giving rise to this incident, and Senior Sergeant Davis’s initial recommendations shortly after his review of the incident in February 2011, it is of concern that the NSW Police Force had apparently not given any consideration to some form of limited trial of a third day of defensive tactics training. In principle, such a trial could provide a means to quantitatively assess the benefits of additional training and make a properly

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<sup>381</sup> Davis 9/202/2943 at [52]

<sup>382</sup> Davis 9/202/2952 at [69]

<sup>383</sup> Hiron Exhibit 5 tab 27 at [15i]

<sup>384</sup> Supplementary Report, Exhibit 4 Tab 7 p3.

<sup>385</sup> Hiron Exhibit 4 tab 3 at 29; compare Exhibit 5 tab 27 at [15c]

<sup>386</sup> Shuey T4.2.15 at 21

<sup>387</sup> As described in Hiron Exhibit 4 tab 3 at [32]; see Davis T3.2.15 at 57; Shuey T4.2.15 at 24, 30

<sup>388</sup> Davis T3.2.15 at 74-6

informed assessment of the value of such training. It could also assist in identifying which officers would most benefit from additional defensive tactics training.

292. However, I accept that the content of mandatory firearms and defensive tactics training has been significantly revised since this incident. The training now includes a focus on high risk incident management and the activation of the TOU. It also includes “man down” drills and the live fire component includes moving and shooting, shooting from cover and the use of body armour. I am confident the adequacy of that training will continue to be reviewed.

293. In summary, while it is obvious that aspects of policing are inherently dangerous and cannot be rendered risk free, it is equally clear that systematic analysis of the risks can lead to them being reduced and safety increased as a result. I have summarised above the relevant changes that have been introduced recently. I am satisfied that the NSWPF has rigorously engaged with each of the inadequacies highlighted by the circumstances in which Detective Bill Crews died. It seems to have accepted that continuous review and improvement is essential to maintain an optimal level of operational safety. I don’t consider any recommendations from this court would contribute further to that process at this stage.

I close this inquest.

Michael Barnes

State Coroner