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

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| **Inquest:** | Into the death of baby RD |
| **Hearing dates:** | 18 August, 2 and 3 September 2014 |
| **Date of findings:** | 13 February 2015 |
| **Place of findings:** | State Coroners Court, Glebe |
| **Findings of:** | Deputy State Coroner E.Truscott |
| **Catchwords:** | Shaken Baby death-Criminal liability of carers in non-accidental death of child- Mandatory Reporters reports to FaCS Helpline and Reports to the police- automatic police dispatch with ambulance call out where child requires resuscitation |
| **File number:** | 2009/471904 |
| **Representation:** | Sgt S Kelly Coronial Law Advocate Assisting Coroner<br>S. Kettle for South Western Sydney Local Health District and Sydney Children's Hospital Network<br>Ms Fernando for the mother<br>Ms Stevens for the father on 18 August then Ms Hopper for the father from 2 September 2014 instructed by Ms Harvey |
| **Findings:** | RD (born 21 December 2008) died on 11 June 2009 at Sydney Children's Hospital, Randwick in the State of New South Wales. The cause of his death was head injury that occurred when a person or persons unknown shook him forcefully on 11 May 2009 |
| **Recommendations:** | That the Commissioner of Police and the Ministry of Health consider the feasibility of whether there should be an automatic requirement for police to attend premises where NSW Ambulance Service officers are called to attend to a child in circumstances where that child requires resuscitation. |

That the Commissioner of Police and the Ministry for Family and Community Services consider whether the screening and response priority tool (SCRPT) utilised by the FaCS Child Protection Helpline should include questions whereby the mandatory reporter is asked whether Police have been called or should be called.

That the Commissioner of Police and the Department of Family and Community Services and the Ministry of Health consider whether the Child Protection Mandatory Reporters Guide should include a decision tree whereby mandatory reporters are advised to report a matter to the police where they suspect a criminal offence against a child has been committed.

That the attention of the Attorney General be drawn to the findings in this matter for consideration as to whether an offence and relevant criminal procedure provisions should be enacted further to the discussion in the NSW Parliamentary Research Service e-brief 12/2014 "Criminal liability of carers in cases of non-accidental death or serious injury of children".

**Non-Publication Orders**

**An Order pursuant to s105(1)(d) of the Children and Young Persons (Care and Protection) Act 1990 prohibiting the publication of any names or identifying information for the protection of baby RD's siblings.**

13/2/2015

IN THE STATE CORONER'S COURT
GLEBE
NSW
SECTION 81 CORONERS ACT 2009

## REASONS FOR DECISION

### Introduction

1. This Inquest concerns the death of baby known as "R", born 21 December 2008. He is the youngest of 3 children born to mother known as Ms "W" and father known as Mr "D". He was born at 28 weeks gestation via emergency caesarean section. His due birth date was 14 March 2009. R remained in hospital until he was discharged home on 11 March 2009. He was in the care of his parents for just 2 months.

2. In the morning of 11 May 2009 whilst at home, he suffered a cardiorespiratory arrest, his father telephoned emergency services and an attending ambulance rushed R to Liverpool hospital where he was intubated and stabilised though he did not regain consciousness. X-rays were taken to make sure that the intubation tube was correctly placed. The X-rays showed R had old fractures to his left clavicle and to most of his ribs. It also showed he had a new fracture to his right clavicle. Shortly thereafter he was transported to Sydney Children's Hospital at Randwick where he arrived at about 1.30 pm.

3. CT scans of R's brain were conducted. They showed that R was suffering from bilateral subdural haemorrhages. They also showed he had 2 old subdural haemorrhages. X-rays confirmed the old and new fractures. The injuries were considered to be the result of non-accidental trauma and accordingly, R was reported as a child at risk of harm to the Helpline at the Department of Community Services. The Helpline reported the matter to the police through the Joint Investigation Response Team. The following day both parents were interviewed by the police. Both parents denied knowing anything about R's injuries. R and his two siblings were removed from the parents' care by the Department. The siblings were placed into the day to day care of their maternal grandparents.

4. R's brain injury was catastrophic. His life support was terminated on 11 June 2009. He died shortly afterwards. The police again interviewed the parents but again neither admitted that R's injuries were caused by either of them or that they knew anything about them.

5. Under s27(1)(a) of the Coroners Act 2009 an Inquest is required to be held if it appears to the Coroner that the person died or might have died as a result of a homicide. An Inquest is also required to be held under s27(1)(d) if it appears to the coroner concerned that the manner and cause of the person's death have not been sufficiently disclosed.

6. Under s78(1)(b) of the Act, the legislation provides a course a Coroner may take if at any time during the Inquest, the Coroner forms the opinion that (i) the evidence is capable of satisfying a jury beyond reasonable doubt that a known person has committed an indictable offence, and (ii) there is a reasonable prospect that a jury would convict that known person of the indictable offence, and (iii) the indictable offence would raise the issue of whether the known person caused the death with which the Inquest is concerned.

7. This Inquest has involved considering evidence relevant to identifying both the cause and manner or circumstances of R's death. That is, what were the injuries that R died from and how, when and by whom those injuries were inflicted.

8. R's old injuries were consistent with having been picked up aggressively by the arm and being squeezed heavily around the chest/torso and shaken aggressively. The new injuries are likewise consistent with being picked up or thrown down aggressively, with such a high force acceleration (said to be equivalent to that of a motor vehicle collision) causing brain injury and subdural bleeding. There is insufficient evidence to determine if the old injuries were caused by the same person or persons who caused the new injuries.

9. The Brief of Evidence contains statements from R's treating doctors from the moment he was born to his death. I have heard evidence from 3 paediatricians about the nature and timing of the injuries. I have heard evidence from one of the ambulance officers who attended the scene. There is evidence from the police investigation involving interviews with R's parents and grandparents. I have heard

evidence from friends of the parents with whom they stayed on the Friday night before Monday 11th May 2009.

10. Essentially, the parents' ultimate version is that though R was vomiting from Friday afternoon to Sunday late morning he was fine on the Monday morning. They had taken him to Campbelltown Hospital on Sunday and he was discharged home as he had kept a feed down and he did not vomit again. The parents say that on the Monday morning he woke up as normal and he was fine. He fed properly and was put back to bed. About an hour later, just after the mother left the house to walk her daughter to school, R woke up crying, his father picked him up and R vomited milk and appeared to choke and fall unconscious whereupon the father called triple 000. During that call, while the ambulance was coming, R stopped breathing and the father performed CPR until the ambulance arrived.

11. The evidence includes the emergency records and a recording of the 000 call as well as the medical records setting out some conversations between doctors and police. It also includes the recorded interviews with police. The version of events given to the ambulance officers, to the doctors and to the police are at relevant points contradictory and taken with R's injuries impossible to reconcile.

12. The paediatricians gave conjoint evidence. They considered whether R could have vomited and choked on the Monday morning due to pre-existing subdural bleeding which may explain his vomiting over the weekend. They considered whether R's brain injury could have been caused by the vomiting and choking event described by the father. They determined that R did not have any condition that made him susceptible to subdural bleeding. They agreed that he did not have any such bleeding prior to his discharge from hospital into his parents' care 2 months earlier. They discounted the possibility that R collapsed due to any "slow subdural bleed" because the damage to his brain, the haemorrhages to his eyes could only occur by a high velocity mechanism which causes an immediate unconsciousness rather than a gradual one. That is, though he may have had some trauma on the Friday which may have caused some subdural bleeding he had such force inflicted on the Monday morning to render him unconscious and enter cardio-respiratory arrest shortly before the triple 000 call was made.

13. On the parents' version of events, the mother had only been absent from the house between 3 and 10 minutes. Due to the close proximity between the mother leaving the premises and the call to emergency services being made, the doctors were unable to say that R was assaulted before or after she had left the home that morning.

14. Both parents took objection to giving evidence in the Inquest and because I determined it would not be an appropriate matter to hear or require evidence under the immunity available under s61 neither gave evidence in this Inquest.

Background events Shortly Prior to Monday 11 May 2009

15. R was in the care of his father from 10am to 1 pm on Friday 8 May. During part of this time they attended a premature babies group while R's mother and 3 year old brother were at another playgroup. Ms W says when the father returned home with R, the baby was asleep. She says she tried to feed him at about 3 pm but he would not feed.

16. A baby's response to brain injury can include lethargy, poor feeding and vomiting. These symptoms were present throughout the weekend with an event of significant vomiting on the Sunday late morning. The parents decided that they should take him to the hospital.

17. R was triaged in the emergency department at Campbelltown Hospital at 12.45. He was seen by Dr Smith, a General Practitioner working the Sunday in the Emergency Department. At 1.10 pm Dr Smith took a short history from the parents and consulted with the on-duty paediatric registrar. It was determined to keep the baby in the emergency department for observation and fluid intake with the arrangement that the Paediatric Registrar would attend the baby in about 4 hours. Tests for dehydration and blood glucose were conducted and observations of R's heart rate and respiratory rate were kept. R was not dehydrated, his blood glucose was normal, he did not have a fever, and he had normal respiratory and heart rates while in the Emergency Department.

18. The paediatric registrar was unable to attend R and by 4 pm the nurse had recorded that R had consumed 80 ml without vomiting. R was discharged at 5.30 as his fluid intake was deemed satisfactory. It was arranged that he would have a follow up consultation at the Paediatric outpatients the following day.

19. Unfortunately a fluid chart was not completed and the attending nurse was unavailable to make a statement or give evidence at the Inquest. Accordingly, I do not know whether the intake of 80 ml was actually observed by the nurse or whether she was relying on what the parents told her that R had taken and kept down. Ms W said that R took 20 ml and that the doctor suggested to try little bits over a period of time.[1] As of May 2009 R's normal feeding intake was about 100ml over 20-30 minutes. Accordingly, the information that he had taken just 80 ml over 4 hours without vomiting is not really a reliable indicator to say that he was necessarily well.

20. Dr Smith said that he did not consider whether R could have been suffering any head trauma because the parents did not give any history of trauma. Accordingly, he did not examine R's eyes for "pupil reactivity". He noted that the nurse had recorded a Glasgow score of 15 at 1:30 and 3:30 which indicates that the baby was able to move his limbs, had his eyes open and was responsive. However, Dr Smith remarked that symptoms such as vomiting, pale pallor, pale extremities, lethargy and irritability are not criteria for consideration under the Glasgow scoring system.

21. If R's vomiting was due to him having a traumatic head injury, from Friday through to the Sunday, it did not affect his heart and respiration rates sufficiently to cause concern by those who treated him in the Emergency Department. If R did have subdural bleeding over the weekend it was such as to have gone unnoticed.

22. R may have had subdural haemorrhages and fractured ribs and clavicle when he was presented for and admitted overnight at Campbelltown Hospital on 28 March 2009 - he had slight bleeding from his penis due to bilantis, a condition he was born with. The nursing records indicate that when he was first admitted he was not feeding but by the next morning he was taking some bottle.

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[1] Q266 mother ERISP 12 May 2009

23. The medical evidence dates the age of the fractures to R's ribs and clavicle and the subdural haemorrhages to a time consistent with those injuries occurring at or around this time. Further, the mother reported to R's paediatrician Dr Bent that R was having difficulties feeding.

24. By 25 March R was taking about 100mls at 4 hourly intervals. [2] On 16 April, Ms W told Dr Bent that for the last couple of weeks he wasn't feeding as much[3]. This is consistent with records at Campbelltown hospital on 8 April when she spoke to the dietician and the premature babies group. [4]

25. At that time nobody appeared to have any reason to consider the possibility that R had suffered a head trauma or indeed any trauma also involving fractures. The parents hadn't reported that he had been subject to trauma though with the benefit of the X rays taken on 11 May he obviously had. The parents had appeared concerned and attentive by taking R to his medical and baby group appointments and from all reports they were seen as very loving and caring towards R in the presence of others. Those who have provided statements remark about how shocked they were to hear that he had been injured.

26. The dietician suggested that the mother try different teats. R continued to make very poor weight gain and he was reported as being a sleepy baby – these are conditions common in premature babies. They are also conditions of a baby who has suffered trauma. Premature babies are often handled rarely and sparingly. The fact that R was premature seems to have masked the fact that he was suffering serious injuries.

27. The old injuries which amount to grievous bodily harm could only have been the result of R being assaulted. There is no suggestion that he was in the care of anyone other than a parent when he was injured. Neither parent has put forward any acceptable explanation as to non-accidental injury though the father has suggested perhaps he had wrapped the baby too tightly or had been a bit heavy handed with him when handling him.[5]

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[2] Report of Dr Bent dated 15 July 2009
[3] Report of Dr Bent dated 15 July 2009
[4] Campbelltown Hospital records 8 April 2009( premmie group & dietician)
[5] Q145 father ERISP 24 June 2009

The Events of Monday 11 May 2009

28. The father initially told the police that on the morning he did not have anything to do with R before picking him up out of the cot after the mother had left the house to take their eldest child to school. After R died he told the police that after he got out of bed he saw R briefly in the lounge room before the mother put him back to bed.

29. The father would normally take his daughter to school but the father said that morning they had been running late and the mother had her shoes on so she took her.

30. It is a short walk from the house to the school and the mother told the police as they walked through the back gate of the school, the 9 o'clock music was playing indicating the children should attend assembly. The mother told the police that her daughter stayed with her rather than go into her class group at assembly and that after assembly she walked her to the classroom. A statement from the school teacher confirms that the daughter did not want to go into class and that the teacher took her from the mother. This reluctance to go to class was unusual.

31. Shortly after the mother and daughter left the house the father telephoned 000. He told the operator that R had choked on milk. He confirmed R was still breathing and he was instructed to lay R on his side and rub his back. About 7 minutes into the call the father told the operator that his son had stopped breathing. At the direction of the operator he performed CPR until the first ambulance arrived at 0908. A second ambulance arrived 3 minutes later. I have heard evidence from Ambulance Officer Karen Venter who was in the first ambulance.

32. Ms Venter was not asked by police to make a statement at the time, but she completed the Patient Health Care Record on 11 May 2009 and she completed a statement dated 29 August 2014 and gave evidence at the Inquest. She was an impressive witness with excellent recall of the incident as to what she saw, heard and did. Her evidence was unchallenged by counsel for either parent.

33. Ms Venter said when she arrived, the front door of the house was open, the father was standing in the hallway and she asked where the patient was. He indicated by pointing and she entered the room on her immediate left and saw the baby on a

bed. She said he was unconscious and not breathing, he was a very pale colour, no pink perfusion at all. There was a hands-free landline telephone next to him and she heard the triple 0 operator over the speaker. She picked up the phone and told the operator she was on site, turned it off and put it back on the bed. She scooped the baby up and ran him out to the ambulance. She said he was not breathing and he did not have a pulse. She put monitoring pads on him which indicated he was bradycardiac with just 30 Heart Beats a minute (3-4 times less than the normal rate).

34. R had milk vomitus to the face around the lower cheek and jaw area and in his airway. She used the tracheal suction to try to clear his airway. She said she was unable to measure the amount she suctioned as it did not even fill up the tube for it to travel into the measuring flask. She tried to intubate the baby but was unable to see the vocal chords because of the white fluid so she ventilated him by Bag Valve Mask. R was taken to Liverpool hospital while 3 ambulance officers performed ventilation and CPR. R did not require drug therapy as he regained spontaneous circulation. However, he was still not breathing and had fixed dilated pupils and was in a sinus tachycardia at a rate of 154 at arrival of Liverpool hospital where ambulance handed the baby over.

35. Ms Venter said when she was in the house she asked the father how long R had been like that – referring to him being unconscious and not breathing. She recorded it as being 0850 on the patient sheet. She said the father told her that he had been feeding R and he choked on his milk and now he's like that. He said the baby had been unwell for the previous 3 days, not feeding as much and had been pale.

36. While Ms Venter was at the side door of the ambulance working on R, the father stood nearby and she asked him more questions - why R was so small for his age and what was the mark on his forehead. The father explained he was born at 28 weeks and had a strawberry mark. Then the father said he had fed the baby and then found him in the cot, flat on his back gagging and having great difficulty breathing. He said that he had done CPR.

37. The mother returned home, she said that she had heard the ambulance on her way back to the house and that she knew it would be for R explaining because he had been sick the day before. She went in the ambulance with the driver. The father

phoned his father and arranged to meet at the hospital so the grandfather could collect their older son.

38. At Liverpool Hospital, R was x-rayed at about 10.00 am and again at 12.11 pm. The numerous old fractures to his ribs and his right clavicle were identified as was the new fracture to his right clavicle. About 1.15 pm he was transported to the Sydney Children's Hospital. Despite the X-Ray results the police were not contacted by anyone at the hospital and nor was a report made to DOCs HELPLINE that the child had been brought in with new and old fractures. The grandfather arrived at the hospital before the father and upon the father arriving he took R's brother and left the hospital.

39. The parents were told R was going to Randwick so they left Liverpool hospital, went home and then went to Randwick arriving there some time before the baby. There is no evidence as to why the mother did not travel with her baby in to the hospital. At some stage the father had telephoned his mother. She picked up R's brother from the grandfather and picked up the daughter at the end of the school day. She was unable to say when she went to the parents' house but said she did not see them there.

40. R arrived at the Sydney Children's Hospital at Randwick about 1.30 pm. At about 5.30 pm the Child Protection Unit Fellow, Dr Joshua spoke with the ICU Registrar (Dr Joshua cannot recall the name). Dr Joshua says that the history that he wrote was obtained either from speaking with the Registrar or looking at clinical notes. His record sets out a brief history as follows: *This a.m dad going past room, heard noises, found vomit-was vomiting".*

41. The Liverpool hospital records (Ex. 7) contain a note at 0931 *"patient medical history found by father not breathing".* At 1030 (written in retrospect) *"found with vomitus on mouth not breathing by Dad".*

42. Records completed on 11 May 09 (but time not recorded) by Registrar K Timmers with Dr Numa notes a history *"This morning 7:00 am had his usual feeds, fed well. Was put to bed, was found crying in cot, father picked him up, patient started vomiting, suddenly choked, gasping and turned pale and limp. Called ambulance and father started CPR 2 breaths/30 compression. Took 15 minutes for ambulance*

*to arrive".* The medical history is then set out and at the bottom of the *page "child protection contacted, not discussed with parents yet, ....will speak to parents tomorrow. Other: CT scan of head, chest and abdo performed. Subdural bleed, fractured clavicles and ribs found. Please see formal report for full details".*

43. It is not indicated whether Dr Timmers had spoken with a parent to obtain the history. However, I do note that Dr Wilkie has recorded in the Liverpool notes "*awoke at 7 am-fed well then found in bed crying, picked up vomited x 3 aspirated attempted gagging laboured respiratory CPR by father* ". The nursing notes recorded at 7 pm say *"parents visiting briefly. Have gone home overnight as they have 2 other children".*

44. Dr Joshua then a Fellow of the Child Protection Unit at Sydney Children's Hospital recorded at 11 pm *"DOCs report made, results to date noted, will be seen by CPU team in morning".* The JIRT Referral document says that the parents left Randwick at 5 pm.

45. There is a record made by Nurse Waldock that the *"father telephoned last night , he was verbally updated as was advised by CPU Fellow not to discuss DOCS referral, Parents remain unaware non-accidental injury, DOCs CPU situation".*

46. Detective Belinda Atherton, a detective with the Joint Investigation Response Team was the duty officer that night. She was telephoned by the FaCs Critical Response Team about 11:30 about R's injuries and that it was suspected they were non-accidental injury. This was the first time any notification of injury had been given to the police – some 12 hours after the X rays were taken at the Liverpool Hospital. By that time if there had been any useful evidence at the house, the opportunity to obtain it had been lost, the parents had returned home and indeed the father's mother had gone to the house shortly after and commenced cleaning it. I return to this issue later.

Events of 12 May 2009

47. The parents returned to the hospital in the morning of 12 May. There is no record of which medical staff they spoke with about R. However, they received a telephone call from Detective Atherton who arranged to meet them about midday at Liverpool Police Station for voluntary interviews. Whilst at the hospital the parents spoke with social workers and told them they had to leave to speak with the police.

48. In a statement taken last year, Dr Timmers who was the paediatric ICU Registrar at the time says that she did not have a meeting with the parents. However, it is apparent from what the parents told the police in their interviews that prior to leaving the hospital someone had spoken at least to the father about R's injuries.

49. Though there are notes in the hospital records about conversations with the parents, it has not been possible to ascertain which parent told which doctor or hospital staff member what. Unfortunately, investigating police did not at the time take statements from anybody who had contact with and spoke with the parents.

50. The social work notes about the morning of 12 May say: *"R's parents debriefed about R's admission to CICU explaining how (father) had to perform CPR yesterday. R's parents explained how they are feeling quite concerned about R's condition and how they are awaiting to see how he recovers. SW provided emotional support re: R unexpected admission to CICU and his current medical state.....SW assessment was not completed as R's parents had to leave CICU for an appointment with Liverpool JIRT this afternoon".*

51. Registered Nurse Hughes notes made for 12 May 5.30 pm records the following : *"Social: Visited by parents this morning. Parents spoken to by nursing staff, medical staff, social work and child protection team. Parents left SCH to attend an appointment in Liverpool with NSW Police. No telephone contact with parents since they left SCH at 11.30 this morning".*

52. An undated and untimed entry from Registrar Timmers says *" Parents notified about X-Ray changes, and CT changes and obligatory to notify child protection unit,*

*parents upset but understand".* Who was present and what was said is not recorded nor is it recorded when it was said despite a hearing on the Clinical Notes Sheet which is bold capital print "Print name and designation, sign, date and time for each entry (mandatory)". The next paragraph of Registrar Timmers notes *"Parent seen by police and DOCs in Liverpool. (R) taken into DOCs care parents are allowed to visit but (R) is not to be removed from SCH by parents or other family members".* This note was obviously written up after the evening of 12 May as the children's care was not assumed until then.

Parents' Interviews with the Police

53. Each parent participated in a voluntary Interview with Police on 12 May. The police spoke with the mother before they spoke with the father. Both interviews were conducted on video ("ERISP") The mother said that the father fed the baby at about 7 am and put R back to bed at about 7:45 am and he went straight to sleep. As far as she was aware he was fine.

54. The father said after the mother left for school that morning, he stayed in the lounge-room. He heard the baby crying and went into the bedroom, picked him up and took him to the lounge-room where R immediately vomited and collapsed. He said that the mother fed R between 7 and 7.15 and he took that well [6]. He was asked what happened next and he said the mother took their daughter to school. [7] He said the mother left at 08:40-0843[8]. He was not asked any questions of how he knew the baby was fed at that time and how he knew that he fed well. He was not asked what time the baby was put into his bassinette, or who put him in it. He was not asked anything about what he did between 7 am and 0843. He described what he did after he picked the baby up and called triple 0.

55. The father was reinterviewed by the police ERISP on 24 June. He said he woke up at 7.30.[9]He maintained that at 7 am the baby woke up crying and woke the mother

[6] Qu 98-100 Father ERISP 12 may
[7] Q101 father ERISP 12 May 2009
[8] Q109 father ERISP 12 May 2009
[9] Q26 father ERISP 24 June 2009

though he did not hear that. [10]She fed the baby. [11] He said that when he got up he went into the lounge room and played with the kids for a while, R was awake and the mother put R back to bed at 7:45. [12]He played with the children until his daughter went to school about 8:40[13].

56. The father was asked where his wife was when he was playing with his daughter.

Q 46 Was she, you mentioned that she was with R. She woke up because of R?

A: Yeah, well, she would've fed him then put him down and then, yeah, she might, oh, she would've been making breakfast but, yeah, I'm not, I think she was in the, um, in the kitchen making some breakfast but, yeah, I can't recall where she was.

Q47: OK. After she fed R...

A: Yeah....

Q47:..she put him back in the room?

A: Oh, well, like, where, where the kids were and where, where I was, like, just put him down in the rocker and then, yeah, he was all right. And then by about quarter to 9.00 we put, I mean sorry, quarter to 8:00 put him back into bed and then about, oh, about 8:40 my, my wife took my daughter, my girlfriend took my daughter to school. J and R was in my car(e) and I was playing with J in the lounge-room then it was bout , in between probably about 10 to 9.00 I heard my son crying in the, in the bedroom so I've gone in there, picked him up and I just thought he wanted a bottle so I've carried him out to the lounge-room and yeah, I looked down and he's, and it started spewing up. It just come out and it looked like some went back into his throat so I sat on the lounge and I just started patting his back trying to get it out. And all of a sudden he just flipped back and then, yeah, it's just, it, I don't know, it just, and then I've just got up and took him straight into the room and rang Triple 0". The questions and answers then

[10] Q70 -71 father ERISP 24 June 2009
[11] Q31-36 father ERISP 24 June 2009
[12] Q37 father ERISP 24 June 2009

[13] Q43 father ERISP 24 June 2009

relate to the events while on the phone which are recorded on the 000 in any event.

57. The questions return to when the father was in the lounge-room prior to the mother leaving the house at Q226-Q264. The father said that after the mother fed the baby she put him back into the rocker, he says that R was probably in the rocker for about 40 minutes. He said he had no interaction with R that morning.[14]The father said that he was asleep until 7:30 and (when he woke up) (mother) was making the kids breakfast.

Q 236 He was asked where R was and said "Just in his rocker on the rocker on the floor, like he was in there, in the proximity of the rocker on the floor".

Q237 So you didn't go over to him and....

A: "I just said "Oh how's it going mate, good morning...and then yeah, sat on the lounge and...and she's come out and yeah we sat on the lounge and ...the other kids were just playing around...playing around with R and that and I was playing with 'em and then[15]...

58. He was then asked how his daughter got ready for school, Q242- 247 "we say can you get ready for school, on this morning it was, we were just running very late...we didn't end up getting ready until like, about 8:30 or something". He said that his daughter eats her breakfast and gets herself ready and that her mother does her hair: Q246-247 ...I said "Oh you got to go, we're running, you're running late...and then, yeah mother brushed her hair, done it and then they were out the door, they were gone".

Q248: So Right, so R's been in his rocker and then (mother) picked him up from his rocker?

A: "Yeah and then put and then wrapped him up...just on the lounge..and then put him back to bed and

Q251: And put him back into...

[14] Q 213 and Q230 (x2) father ERISP 24 June 2009
[15] Q237-241 father ERISP 24 June 2009

A: to the rocker, I mean, into the bassinette, sorry

Q252: Into your room?

A: yeah

Q253 All right. And then is it, has (the mother) gone back in...

A: No

...after that do you know?

A: No she didn't .

Q253: So between

A: Quarter to 9:00

Q254: 7:45 and her leaving

A: No one

Q 254: No one went into the...

A:... no one went in there

Q255: And he hasn't you haven't heard him cry or

A: No

Q256: It was only that when (they) left the house

A: Yeah, that's when he, like woke up

Q257: Yep

A: I mean...door closed...

Q258: So how long after they've left?

A: Probably about it could've been five minutes, it could've been two minutes.

59. The father said he knew the time the mother and daughter left: "I seen it on the TV cause it was like, cause we were watching the news on the, and yeah, I just glanced over and it was 8:43....Today Show, Channel 9...."[16] He had earlier said that he thought R cried for about 2 minutes before he went in to pick him up[17].

60. He confirmed he hadn't been with the mother when she put R to bed.[18] When he picked R he just looked normal[19], his colour was the same,[20]there was no vomit,[21] he was nice and warm and wrapped up, he was moving and nothing unusual about how he felt, he was just normal.[22]

61. In her interview on 12 May, the mother said that she left the house at 0845 to take her daughter to school, which is a 10 minute walk. The school starts at 9 o'clock.[23]She said R "woke up at about 7.00 and we fed him and we put him back to um, bed. We fed him, changed him, burped him, everything. And then I made the other kids breakfast".[24] She was asked what happened after R was fed and she said he was fine[25]"he kept it down and then we done his nappy"[26]"he stays up for a little while and then we put him back into bed 'cause he was, 'cause we were in hospital the day before with him"[27]. She was asked how much formula he drank and she replied "He would have had about um, I'm not quite sure, (father) fed him, probably about 65 ml maybe"[28], she changed his nappy[29] (father) burped him[30]. She said R was wearing a green jumpsuit and white singlet[31] "we've wrapped him up in a blanket and put him back in the bed"[32]. She said his bed was a bassinet in

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[16] Q217-218 father ERISP 24 June 2009
[17] Q140 father ERISP 24 June 2009
[18] Q138 father ERISP 24 June 2009
[19] Q76 father ERISP 24 June 2009
[20] Q77 father ERISP 24 June 2009
[21] Q82 father ERISP 24 June 2009
[22] Q98-102 father ERISP 24 June 2009
[23] Q44 and Q 50 mother ERISP 12 May 2009
[24] Q58 & 59 mother ERISP 12 May 2009
[25] Q 66 mother ERISP 12 May 2009
[26] Q69 mother ERISP 12 May 2009
[27] Q70-71 mother ERISP 12 May 2009
[28] Q75-77 mother ERISP 12 May 2009
[29] Q79 mother ERISP 12 May 2009
[30] Q82-84 mother ERISP 12 May 2009
[31] Q85-88 mother ERISP 12 May 2009
[32] Q89-91 mother ERISP 12 May 2009

the parents' bedroom[33]. She described how he was put to bed "Laid him in and then he's got another blanket over the like, we always wrap another blanket over the top...he's always in the basinet. Put that, it was a bit cool in the room so put the heater on for a little while cause you've got to set the timer and it goes off".[34] She was asked at Q 104 "OK. And who is putting him to bed?" She replied "(father's name) did".

62. She was asked what sort of interaction she had with R after she changed him and she said "Ah like would have holded him, just play for a bit...So the kids just like "Hi R, good morning R" and that. She said that is what normally happened. She said he appeared "fine".[35]

63. The mother said that R was up for about an hour and would have been put to bed at about 8 am.[36] She said he went straight to sleep[37]and she didn't go into the room again as she was getting the other children's breakfast and getting them dressed. She didn't see the father go back into the room.[38]

64. After R died the mother re-attended the police station on 1 July 2009 and gave a signed statement to the police. This statement was different to the first interview. She said that at about 7 am she heard R stirring and she got up and took him into lounge room and placed him in his rocker. She went into the kitchen and heated his bottle. She went into the lounge, the father was still in bed her daughter had come into the lounge room and her other son was just starting to get up and he walked into the lounge room. She went into the kitchen and took the bottle of milk back into the lounge, picked R up out of the rocker and fed him in her arms while she sat on the lounge. He fed about 60ml from the bottle (the bottle had 100 ml as it was usual for him to have between 60 and 100 ml). She burped him, changed his nappy and his jumpsuit from blue to a green one. She put R back into his rocker and the father walked out at about 7.30 am. He said good morning to everyone. At about 7.45 she took R from the rocker, wrapped him in the

[33] QQ92-93 mother ERISP 12 May 2009
[34] Q98-102 mother ERISP 12 May 2009
[35] Q105-108 mother ERISP 12 May 2009
[36] Q109 mother ERISP 12 May 2009
[37] Q111 mother ERISP 12 May 2009
[38] Q112-117 mother ERISP 12 May 2009

blanket and took him to their bedroom and put him to bed with another blanket tucked over him, she turned the heater timer on and left the room. R was still awake when she left. She had closed the door to keep the warm air in and the noise out. She returned to the kitchen and made school lunch and playgroup morning tea and toast for the children. She sat on the lounge with the children as they ate their toast and the father organised their clothing from their bedroom. The children dressed in the lounge room, went to the bathroom to brush their teeth and the father was in the bathroom with them while she sat on the lounge. They watched television for 20 minutes[39].

65. The mother says "I had planned to take (older son) to playgroup and (father) normally takes (daughter) to school on her bike. I was dressed and had my shoes on this morning so I decided to take (her) to school instead. When we were watching the TV the news came on after an ad and I saw the time was around 8:45 am. I don't remember seeing the exact time but anything past 8:30 am is late in our minds for us to leave to get (her) to school. I left the house...arrived at school as the bell rang as we walking into the school grounds...this walk takes about 5-6 minutes...the bell rings at 8:55 and the children line up in their classes for morning assembly. (daughter) did not want to line up this morning so she sat with me on the silver seats at the back of the assembly. The assembly was only short maybe 5 minutes. (Her) class walked past and (she) normally goes up to the teacher (name) but this morning she did not want to so I walked her to the classroom. (She) did not want to go into the classroom, she wanted to go home. (Name of teacher) told (her) to go into the class and she did.[40]

66. The mother ended her statement that she was away from the house for half an hour between 8:45 and 9:15 and that R was asleep and well when she left and that she did not harm him. The statement was given to and witnessed by the Officer in Charge Belinda Atherton.

67. Detective Atherton was unable to give any evidence about how this statement came to be and how it was that the mother's version of events had changed from

[39] Paragraphs 3-8 mother's statement to police 1 July 2009
[40] Paragraphs 9-10 mother's statement to police 1 July 2009

her original record of interview to the police. Detective Atherton was unable to recollect anything at all in relation to those events.

68. The emergency services records indicate the father's call to triple 0 commenced at 8:53:4. By implication the statement suggests that R's injuries must have occurred while the father was alone with R in the 8 minutes from the time the mother left the house and when he telephoned emergency services.

69. I have seen the mother in her videoed interview on 12 May 2009. Though I would not say she was telling the full truth in that interview and lied about some things, such as her denial that the father had been physically violent to herself or their children, it did not appear to me that she was lying when she said that he fed the baby and that they put him to bed together. She said in her videoed interview that she did not know how much R had fed because the father fed him. The first mention of the baby being put in the rocker after he was fed has come from the father in his interview with the police on 24 June 2009. The noticing of the time on the TV was only mentioned by the father in the same interview.

70. I cannot avoid the possibility, or indeed probability, that the mother's statement of 1 July has come about as the result of collusion between her and the father. The fact that there is no explanation for the changes to her version of events does not enable me to conclude at what point the mother is or could be telling the truth. I cannot accept the mother's "new" statement that she fed the baby 60 ml and was fine when on the day after he was taken to hospital she said she did not know how much he fed because the father fed him.

71. The diametrically opposed versions given on the 12 May where the father says he had nothing to do with the baby and the mother said the baby was fed by the father raises the question about what happened that morning before the mother and daughter left the house.

72. The father's later version to police that the baby was in the rocker for 40 minutes prior to being put to bed is a contradiction of what both parents told the police on 12 May. There was not only no mention of the rocker in the first version, but the time the parents were suggesting the baby was awake before being put to back to bed varies from 15 -70 minutes.

73. The father's version that he got up at 7.30 and the baby was in the rocker for 40 minutes before being put to bed is also inconsistent with the version that he was put to bed at 7.45. The mother says in her statement that the baby was put to bed at 8.00. That time doesn't add up either. If the baby was in the rocker for 40 minutes from about 7.30 he was not put to bed until 8.10.

74. The father's version of the family running late to explain why the mother went to school (when he normally would) is not supported by the mother's statement. She says that everything was done in sufficient time for them all to be able to sit and watch television together for 20 minutes before noticing it was 8:45 and time to go.

75. Why on this particular day did the daughter not want to stay at school but wanted to return home? I doubt that the baby was "fine" when he was put back in his cot whatever time that was. I think it is likely that the father has distanced himself from any interaction with the baby because it was due to his interaction that the baby was injured and if he was put to back to bed, he was very unwell with loss of consciousness.

Friday 8 May to Sunday 10 May

76. The parents told the Police the father took R to a premature babies' group called "Miracle Babies" at Campbelltown. It was after their return home that the baby had difficulties feeding. Unfortunately, the police at the time did not obtain statements from any of the participants of "Miracle Babies" to indicate how long the father and baby were there. There has now been produced a "sign in" book. This indicates that the father was the last to arrive. There is no evidence about how R presented at the group.

77. The parents told the police that they stayed with friends on the Friday night. At the time of the investigation the police did not speak with Joyce and Jason McQuillan. Their statements were only obtained a few days before the Inquest commenced. They attended and gave evidence, though it goes without saying their evidence

would have been more reliable had a statement been taken at the time. It is unfair on witnesses to expect them to have good recollections about matters 5 years past.

78. Joyce McQuillan said that she thought that R was never a good feeder and related an incident when she was out shopping with the mother who was trying to give the bottle to R whilst he was in her arms while she standing in the queue at Best and Less. Ms McQuillan said that she offered for them to sit down for her to feed R but mother replied that he was fine. The mother's phone rang and Ms McQuillan heard the mother say that R was feeding fine. When she got off the phone the mother told Ms McQuillan that the father had telephoned her asking how many malls the baby had taken and that if he asked Ms McQuillan about how R was feeding could she tell him that R was fine.

79. Ms McQuillan gave evidence that on the evening the parents stayed the night she heard R crying for about half an hour at midnight. The mother told police that she "went out" of the room to feed R at about midnight.[41] She said that R had about 20ml and kept it down. Ms McQuillan said that though she heard the baby crying for half an hour her door was closed so she was unable to see if the mother had got up to go to the kitchen. Ms McQuillan said that the following day as the mother was taking R out to the car to return home she told her that R was vomiting and Ms McQuillan suggested that she should take him to hospital. She gave evidence that she didn't see anything that would suggest R was unwell on the Friday evening.

80. The mother told the police that R was not interested in his morning bottle but about 10 minutes later he did take it and drank about 60 malls. [42] She didn't tell the police that he vomited after that feed though Ms Quillon said that is what she had understood had occurred.

81. The family then went home to have showers before going to the paternal grandmother's house for lunch. The mother said that at midday she offered R a bottle but he did not want any and went back to sleep.[43] The family again returned home at 2 pm and at about 3 pm the mother said that R drank another 60 mls.[44]

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[41] Q168-173 mother ERISP 12 May 2009
[42] Q195 mother ERISP 12 May
[43] Q210 mother ERSIP 12 May
[44] Q215 mother ERSIP 12 May

She said she thought he slept until the following morning without waking but she then suggested that the father might have given him something, then she said that he did feed R at 1 am and again at 5.30 am. [45] The father said that he hadn't fed him. [46]

82. The Sunday was Mother's Day and Ms W says she made the baby a bottle at about 7.30 am but he did not want any of that. They went to Balgonie Farm where they were supposed to meet her parents. She said that about 10.30 they gave R a bottle and he vomited it up and they decided to take him to hospital. [47] The father said they gave him the bottle at 11.30-12.00[48] The maternal grandmother who has given evidence says that about 5 minutes after church ended at 11.30 her daughter received a phone call from the father saying not to come out to the farm as they had arranged because the baby had vomited and was going to be taken to the hospital.

83. The Campbelltown Hospital records indicate that R was triaged at 12.45 and discharged at 5.30.

*84.* The treating doctor at Campbelltown hospital Dr Trevor Smith notes that R *"was crying during the examination but had normal mental status recorded as GCS-15, the heart rate, pulse and respiration were within normal limits. The extremities were somewhat pale".* R's urine was tested and his blood sugars were normal. Dr Smith thought R might be suffering from a virus. The nurse notes indicate that R was alert and looking around. The notes indicate that the parents said R had vomited once on Saturday and again on Sunday.

*85.* Whilst in the ED the father said that both he and the mother fed the baby whilst at the hospital and that he took 80 mls of that bottle.[49] After R was discharged he may or may not have had a feed before being put to bed. The mother says that the father fed him and put him to bed and she saw him and he looked fine[50]. The father

[45] Q222-240 mother ERSIP 12 May
[46] Q66 father ERISP 12 May
[47] Q247 mother ERSIP 12 May
[48] Q71 father ERISP 12 May
[49] Q82-93 father ERISP 12 May 2009
[50] Q272 mother ERISP 12 May

said that he fed R 80 mls at 8 pm and he took that well too, he was fine.[51] In his second interview he said that R went to bed at 7 pm and was silent about being fed at all during the night in his explanation as to why he thought R might be hungry on the Monday when he says he heard him crying. The police were questioning him about why R would wake up hungry less than 2 hours after he had reportedly fed well at 7 am[52]

*86.* The reliability of the parent's reportage of how much R was feeding over the weekend and Monday morning and how well or to use their words "fine" he was is highly questionable. The events of Monday morning are even more questionable as at no time, in their discussions with the police, specifically on 12 May or with the doctors on 14 May or 20 May did the parents mention that R was in the rocker in the lounge room for any period of time after he was fed. It wasn't until 24 June that this was put into the version of events.

*87.* On 14 May, after they had been interviewed by the police on 12 May, the parents met with the doctors at the Child Protection Unit. By this time, the doctors were of the view that R had been subjected to high velocity trauma such as being shaken. In attendance were Dr Keiran Moran, Dr Paul Joshua, social workers from the ICU and CPU. Notes were made by Dr Joshua

*88.* I have transcribed the notes in the fullness: *"Explained CPU role and differentiating DOCS/JIRT role. medical findings to date explained. Mum: last well morning of Friday 8 May 2009. Fed well, fixed, follows, smiling, laughing, moving limbs symmetrically. Became unwell Friday afternoon taken Friday a.m to playgroup by dad (for prem babies) 11.30 fed well at playgroup by dad afternoon x3.30 wouldn't feed. Returned from playgroup 1 pm. seen by mum when they returned he was asleep and was fine Awoke crying at 3 pm fed small amount and vomited at that time R was smiling recognising parents. He sometimes posits S/A doesn't vomit much usually. Stayed at friends' house that night, had feed at 5 pm vomited same again but looked fine. Didn't sleep offered bottle repeatedly but didn't want to feed awake/aware looking well. Fell asleep with dummy and wrapping at 1830 put in child's room with baby monitor on. Parents had dinner. Awake 2100 crying didn't*

[51] Q94 father ERISP 12 May 2009
[52] Q137 father ERISP 24 June 2009

*want to feed still well kept trying to feed him. Slept til midnight awoke crying still well, alert fed a bit 20 ml. Father was having some beers and then asleep. Returned to sleep. 0700 R awoke didn't want bottle alert, crying went home and had showers had some bottle at home and vomited. 10 am Saturday went to grandmothers (dad's mum) fed a bit 20 mls and went to sleep til 2 pm alert when awake fed 60 ml when returned home at 3 pm. Slept til a 0130 but unsure father got up with him at 0130 fed him: about 80-85ml put back to sleep. Awoke 0500 fed 20 ml by dad. Still awake/alert 0700 awoke fed by dad again 60 ml looked fine. Went on a picnic 10 am vomited looked pale went to hospital 12 pm after dropping kids to grandparents fed in ED 12 pm and 1 pm and fed well. Urine taken heel prick 1700pm told ok to discharge but still looked pale had kfc, picked kids up went home took bottle 1900-2000 and fed well kept it down awoke 0700 looked well colour coming back 70ml feed mum took daughter to school dad in lounge with 3 year old 0845 normal crying in bassinette in parents room picked up R vomited vomit went down throat (Dr Moran marked a note "said he thought this not stated as a fact") dad sat on lounge patted back with R sitting on knee next stiff he went floppy suddenly and "passed out" pale went to get phone straight away placed on side vomited 2s during episode directed by ambulance with CPR*[53].

89. There was another meeting at CPU with the parents on 20 May between Dr Moran and the parents in the presence Social workers the notes of which read: *"Parents informed that most likely explanation for these injuries is trauma and that it happened soon before R became unwell . Can't think of any incident in which he might have been injured never appeared in pain with fractures no family history of easy bruising or bleeding mum said that dad wrapped him tightly he's occasionally picked up by siblings unsupervised R stopped breathing put him on bed tried to rouse him R threw his head back called 000 started CPR as advised by operator 3 yr old asking when going to school dad said – when I've fixed (R) Dad reminded that if recalls anything more about the incident it would be extremely useful.*

Medical Opinion as to causation of injuries 11 May 2009

[53] Pages numbered in handwriting 41 and 42 CPU records.

90. I have been assisted by receiving the evidence of 3 paediatric physicians who have each providing written reports and who have given evidence in conclave. Dr Keiran Moran, Director of the Child Protection Unit at the Sydney Children's Hospital, Dr Susan Marks, Director of the Child Protection Unit and Dr Terence G Donald, a forensic paediatrician at the Women's and Children's Hospital in Adelaide.

91. On the first day of Inquest, the doctors were given a set of questions and assumptions of fact – Exhibit 4 . The doctors met in conclave from 10 am to 2.30. The conclave gave written answers to those questions and then gave oral evidence from 2.30-4.30.

92. They wrote *"We all agree that R had sustained a recent significant traumatic head injury at some time prior before the 000 call was made. We all agree that when R presented to Campbelltown Hospital on 10 May he could have been due to a preceding head injury and that could have continued to deteriorate clinically after this presentation. However, his mother said that on 11 May he was improving ("better") and he had a feed. If R's mother's description of R between 7:00 am and 7:45 am on 11 May reflect a normal level of consciousness this would indicate a significant head injury occurring subsequent to that. However, it is not clear whether R's mother is referring to R being "fine" in relation to his recent vomiting or whether she is describing a normal conscious state. In a patient with a minor head injury they would not lose their airway reflexes to the point where they would choke on milk/vomit, as this is a primitive involuntary reflex. R presented on 11 May with a severe head injury that would have been associated with significant impairment of his level of consciousness and of his ability to protect his own airway. Choking on milk (secondary to decreased level of consciousness secondary to severe head injury) could also have been a contributory factor to his cardio-respiratory arrest. The dissenting view (Dr Donald) is that R vomited and aspirated and as a consequence developed laryngospasm leading to cardio-respiratory arrest".*

93. In his oral testimony Dr Donald said that if R had experienced laryngospasm, he was no longer experiencing it when the father was talking to the 000 operator because R was said to be breathing and he can be heard making soft sounds. Dr Donald agrees that R had experienced a severe high acceleration head injury which would have caused decreased consciousness and vomiting. He opined that

because there is evidence that R survived a previous head injury evidenced by the chronic/old subdural haemorrhages (probably associated with the old fractures) he may not have gone into cardio respiratory arrest this time but for the milk vomiting and aspiration so that is why he suggested he may have experienced laryngospasm.

94. R did not have a history gastro-oesophageal reflux disease which would explain an experience of laryngospasm. Laryngospasm may describe the mechanism of that vomiting in terms of loss of muscle control but I am of the view that the vomiting was due to compromised consciousness. R did not have a cardio-respiratory arrest because he choked – that is inconsistent with his breathing for 7 minutes identified on the 000 call. Any choking on milk or aspirating on milk could have contributed to his arrest but primarily it was due to a traumatic head injury.

95. The experts are not able to place a precise time when R sustained the most recent significant traumatic head injury. Their position is that if he had received some less severe head injury on the Friday and deteriorated causing him to be taken to hospital on the Sunday afternoon, they are of the opinion that he received another trauma after his presentation at Campbelltown Hospital.

96. Given that the ambulance officer Ms Venter reported that R had vomitus on his mouth and clothing, I accept that R must have had some bottle of milk on the morning of 11 May. Dr Marks explained that when a baby suffers a head injury causing a decreased level of consciousness the baby is unable to suck and swallow milk. So given that he was able to suck and swallow some milk indicates that on Monday morning, he had been fed before he lost the ability to suck and swallow.

97. Dr Tan, an ophthalmologist examined R on 14 May. His evidence is contained in his statement in which he describes a pattern of retinal haemorrhages only consistent with high acceleration injury. He aged the haemorrhages by assessing their clearance rate such that they occurred on 11 May. The 3 expert witnesses do not take any issue with Dr Tan's evidence. The severity of the haemorrhages is consistent with a severity of head trauma that would cause immediate loss of consciousness. There was no such loss of consciousness evident over the

preceding weekend and could have only occurred after he was fed something on 11 May.

98. The timing of when the mother had left the home is inexact. On 20 May the doctors noted that the parents said she left the house at 8.50 and that R cried at 8:55. On 24 June the father pinpointed the time he said that the mother had to go was 8:43 because he saw that time it on the TV. On 1 July she says that same thing but that it was 8:45. The mother has said it takes 5-6 minute walk to the school and the bell/music that rings at 8.55 was playing when she and her daughter walked through the gate.

99. The doctors are unable to say that the trauma occurred in the few minutes after the mother left the house that morning or whether it occurred in the preceding 60 minutes. This is not to suggest that the mother inflicted harm on her baby. In fact her demeanour and responses when video interviewed by the police on 12 May 2009 are consistent with having not done so. The same cannot be said about the father in his interviews.

100. The 3 expert witnesses considered and rejected the possibility that the injuries could have been occasioned during the incident described by the father where after picking the baby up the baby vomited and appeared to choke whilst in his arms after he picked him up. .

101. I find it difficult to believe that the baby woke up crying as if hungry as the father claims. The evidence shows that the father has been recorded as providing various contradictory versions about R's condition. He told Ambulance Officer Ms Venter initially that he was feeding the baby and he choked. He then told her that he had fed the baby and then found him in the cot, flat on his back gagging and having great difficulty breathing.

102. The ambulance event sheet written by Officer Venter says Cardiac/Respiratory arrest. Choking of a 5 month old baby (28 wk gestation/premature) **found by father post feeding supine in cot gagging and having great difficulty breathing**.(my emphasis)

103. There is a file note made by Dr Willie at Liverpool Hospital records a history at 9:31: "unwell 3 days, vomiting, no bile or blood, every feed, large volume, pallor, no fevers, Campbelltown yesterday, TO >>>>yet pale, discharged at 1700, put to bed and slept overnight, **awoke 7 am, fed well, then found in bed crying, picked up vomited x3** (my emphasis) hospital attempted gagging, laboured reps, CPR by father".

104. Nursing notes at Liverpool hospital at 10:30 record "**found by father vomitus on mouth not breathing**[54] "(my emphasis) and at Triage it is recorded "**found by father not breathing? (query) nil hr. (heart rate)**[55]" (my emphasis).

105. The Sydney Children's Hospital records made by Dr Timmers notes of 11 May 2009 are: "This **morning 7:00 am had his usual feeds, fed well. Was put to bed, was found crying in cot, father picked him up, patient started vomiting,** (my emphasis) suddenly choked, gasping and turned pale and limp". Dr Joshua at 5.30 pm on 11 May wrote: "well until 3 days ago, vomiting, Campbelltown yesterday, tolerated fluids, not febrile, NAD (nil abnormalities noted). This **morning dad going past room heard noises found vomiting was vomiting**,(my emphasis) gagged, apnoeic, dad called CAD and CPR compressions and breathing till ambulance arrived, floppy, pale, HR30". This is consistent with the relevant part of the report made to the Department of Community Services HELPLINE. That relevantly reads: **"Father provided information that he was walking past R's room where he was sleeping...Father heard some strange noises coming from R's room. Father entered room and saw R vomiting and vomit already there...Father described that R gagged on the vomit and stopped breathing. Father said he called an ambulance".**[56] (emphasis mine) (It has not been possible to identify the person at the hospital who the father gave this information to).

106. On 12 May the father told police that he was in the lounge room when he heard the baby crying. On 24 June he said the baby cried for about 2 minutes before he went into the room. On 14 May Dr Moran's note is **"0845 normal crying in bassinette in parents room picked up R vomited vomit (looked like) went down throat"** (my

[54] Liverpool Hospital Records hand numbered page 89.3
[55] Liverpool Hospital Records ED Clinical Records hand numbered page 39)
[56] Sydney Hospital CPU file.

emphasis). On 20 May the parents met with Dr Moran and social workers. Those notes indicate that Marion said she left at 08:50, and Michael said at 08:55 R cried and he picked him up and took him to the lounge.

107. I find it difficult to accept the father's version of events that he had no interaction with the baby that morning before he was put back to bed. It is inconsistent with the evidence in the Inquest of his significant involvement with the baby and interest in how much the baby fed. It is inconsistent with the mother's initial version which when looking at the video she appears to be at that point telling the truth. It is inconsistent with what he told Ms Venter that very morning – evidence which was completely unchallenged by the father's legal representative at Inquest.

108. On 12 May the father told the police that the baby had a bottle at 8 pm on the Sunday after coming home from Campbelltown Hospital and that he slept from 8:30 to 7:00 and the mother gave him a bottle between 7 and 7.15 and he took that well. The police asked him what happened then. He replied "Then my wife took (child) to school."[57] He said she went at 08:40, 8:43[58] He completely missed out what occurred in the 90 minutes between when the baby was fed and when he got him out of the basinet.

109. He was asked where R was when the mother left and he said that he was in bed in the parent's room.[59] There was this exchange

Q117: Can you just describe to me what he sleeps in

A: Um, what do you call them, um, I can't think of what you call them um, they're just like the beds that sit up on the....

Q 118: So we're talking a bed, a bassinette, a cot?
A: Like a bassinette

Q 119: Yeah

A: A bassinette and a cot sometimes.

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[57] Q94-101 father ERISP 12 May 2009
[58] Q109 father ERISP 12 May 2009
[59] Q115-117 father ERISP 12 May 2009

Q120: So you've got the bassinette in your room?

A: Yeah

Q121: Yeah

A: And we've got a, I think...yeah, just a bassinette in our room

Q 122: Does he normally sleep in something else

A: No, oh, we're fixing up his bed at the moment so

Q123: What do you mean by bed (name)

A: Oh, his cot

Q 124: So you've got a cot for him

A: Yeah, we were just, no, well, we were just fixing it up for him, we were about to put him in it, put him in it.

Q 125 OK. Where is that

A: That's in the back room, the spare room.

Q126: Has he ever slept in that?

A: No, no yet.

110. It strikes me as strange that the father initially stated the baby sometimes slept in a cot and sometimes slept in the bassinette and then he recanted the cot. Police photographs show the cot in a room off the lounge, the room has baby clothes in it such as it would be referred to as "R's room" and its location is such that if you were in the lounge –room you would "walk past it" whereas the parents room is by the front door separated from the lounge room by a hall way. This is consistent with the report to the HELPLINE.

111. In the police photograph, the bottom or side of the cot and a mattress is sitting up righted inside the cot. Mrs D, R's paternal grandmother was at the house cleaning it when the police arrived to search the house. So was her ex-husband, the baby's

paternal grandfather. In her evidence, she said he was there to mow the lawns. There is another photograph with a set of his tools on the kitchen table. They are not tools one would use to mow a lawn. Whether the cot was in the process of being dismantled when the police arrived I do not know. Mrs D was unable to say why the tools were there or what had happened to the cot.

112. She said that it was her cot, she had lent it the parents but she didn't know what had happened to it. The police made inquiries and statements were obtained. The cot had been taken from the parents' home and given to Mrs D's other son and daughter in law when they had their second baby. The paternal grandfather took the cot to his daughter-in-law's premises. It had arrived with a screw missing. Mrs D had looked after her grandchild at her daughter-in-law's home where the cot was, so her evidence that she did not know what had happened to the cot is not credible. The cot had been discarded a few weeks prior to the commencement of the Inquest.

113. Mrs D was at house when the police attended on 13 May 2009. The house had been cleaned from front to back. Mrs D gave evidence twice in this inquest. The first time she gave evidence she denied cleaning anything other than tidying up the kitchen a little. Later she agreed that she had cleaned the house included the parents' bedroom but claimed that she didn't touch the bassinette at all but was unable to explain what condition it was in when she first attended and was unable to explain how it was clean and tidy. Her evidence was contradictory about when she attended the house and what cleaning up she did. She was unable to explain why she had changed her evidence. She said she did not see any vomit anywhere in the house at all the day she attended. She was also asked questions what she did on 11 May. She said she received a call from her son but she was unable to take the youngest child until she finished her morning shift at before school care. She gave contradictory evidence about what she did next and when and where she took the boy from the paternal grandfather and what she did with the children after school and where they stayed whether it was her place or the parents. She said that she did not see the parents though she must have gone to their house that day.

114. These questions were relevant because the house was in fact a crime scene and by the time the police attended it had been altered. I am not suggesting that Mrs D was aware it was a crime scene, however the father told police that he told his

mother to stop cleaning as the police were coming to his house. Mrs D denied that he said that to her.

115. The investigation of serious indictable offences such as the injuries suffered by this baby requires the police to attend the scene and to be given as much information as possible and to commence their investigation as soon as possible.

116. This case involves domestic violence of a vulnerable member of the family, much of what a parent says to medical personnel or others involved in the care and treatment of an injured child, is said before the police are involved. As such obtaining detailed and thorough statements from those persons at the time is essential. As is the collection of evidence at a crime scene. These two things did not occur in this case.

117. I understand that the Child Abuse Squad which now exists operates very differently than the organisation that Detective Atherton was operating in and the inadequacies of the investigation at that time have not been a focus of this Inquest. Since my involvement since mid-2014 the police officers involved have undertaken a huge task and have obtained statements and evidence that should have been obtained 5 years ago. I commend them and particularly Detective Jane Prior, for their commitment to this investigation.

118. Counsel for the father has made a submission that there has been a breach of natural justice and procedural fairness due to the very untimely service of new material however, she did not proceed to identify any prejudice to him and did not seek to adjourn any matter to correct that prejudice. Counsel for the mother was in the same position and I appreciate the difficulties they were both under commencing this Inquest with documents and statements being served throughout when much of that material should have been contained in the initial brief. I would hope there are few cases that labour under such deficiencies from 5 years past.

119. The primary focus of this Inquest has been identifying how, when and by whom baby R was fatally injured and I believe that there would have been better evidence if the police had arrived at the house when the ambulance had attended.

120. When she gave her evidence, the Ambulance Officer Ms Venter was not asked questions about why the police were not notified and I do not make any criticism of her or her colleagues whatsoever. The police did not obtain statements from any ambulance officer at the time of the investigation- it was only during the Inquest (5 years later) that Ms Venter was even approached for a statement. I am grateful she was able to be of significant assistance despite the passage of time. Further, the ambulance officers were at the premises for a very short time and saving the life of a baby was and should be their priority second to none, which means that sometimes the police aren't called when perhaps they should be.

121. The evidence might have been better if the police had attended the home before the parents returned to it on their way to Randwick in the early afternoon. The Liverpool hospital X-ray at 10.30 revealed the old numerous fractures to ribs and clavicle, as well as the new fracture to the other clavicle. These injuries were confirmed on another X-ray taken. There was no inquiry about the old fractures and the there was no history of trauma. However, no inquiry appears to have been made of the old fractures as there is no note. The injuries were consistent with grievous bodily harm. Obviously, again at Liverpool Hospital, the doctors' attention was on saving R's life not investigating whether he had been deliberately injured.

122. Again I make no criticism of the Hospital not reporting the matter to either the police or the FACS Helpline, a decision had been made to transfer R to Sydney Children's Hospital for life saving care and treatment. There were social workers at Liverpool Hospital who contacted their counterparts at Randwick and from reading their notes there was no consideration given as to the police or Helpline being notified. Again I make no criticism given R's transfer and I need to point out that no statements from any person working at Liverpool Hospital have been obtained for this Inquest.

123. The evidence might have been better if the police had attended the house before it was cleaned up by the grandmother. The Sydney Children's Hospital has a policy and procedure whereby the Child Protection Unit is consulted to co-ordinate any Reports that a child is at risk of serious harm to the FACS Child Protection Helpline. Unfortunately, though the baby arrived at about 1.30 pm and he had CAT scans by 5.30 pm a report was not made until 21: 38 when the person who made it was not actually at the hospital so was not in possession of the file which contained all the

relevant information. By the time this call came into the HELPLINE it was very much "after hours" and it was forwarded to the After Hours Crisis Response Team at the Helpline at 22:23. They then referred to the after-hours on call Liverpool Joint Investigation Response Team officer on duty at 23.02.[60] The response by FACS and the forwarding to the Police was timely in the circumstances. Given the lateness of the hour and the fact that the baby was in hospital it was determined by the police to contact the parents the next day which they did and then the parents were interviewed. Though I am unable to determine that an earlier response time would have affected the outcome of this police investigation, so limited were the resources at the time but it is an issue which is concerning and according to the police with the Child Abuse Squad still impacting upon investigations.

124. On 10 October 2014 I attended a meeting with police from the Child Abuse Squad, the hospital, the ambulance service and FACS. A member of the Ombudsman Office also attended. Counsel for the parents were not advised of this meeting because I did not appreciate at the time the significance it might have for this Inquest and also it was not an issue that would concern the parents in any event.

125. During the meeting it was discussed whether the police should be automatically called to any incident where an ambulance attends a child under a certain age or where a child requires resuscitation. Also discussed were ways by which Child Protection mandatory reporters, such as doctors and health service could be asked to make a report of criminal conduct directly to the police and whether the police should be co-located at Helpline offices. We also had a conversation about whether a hospital member could co-ordinate child abuse referrals at Triage and whether FACS computerised HELPLINE screening tool and the Government's Mandatory Reporters Guide screening tool could be amended so that the mandatory reporter is directed to make a report of child abuse to the police

126. I invited participants to forward submissions in relation to the issues as it effects their organisations. Ms Henry of Curwood Solicitors who represent the NSW Ministry of Health and I have been forwarded the NSW Health Ambulance Dispatch Protocol ("Dispatching – Requesting Police Attendance") which outlines the

[60] Letter from Mr R Best to Coroner dated 13 November 2014

procedure for joint communication between Ambulance and Police. The circumstances in which Police are to be notified includes amongst other matters - all domestic violence incidents, all violent situations; actual or threatened, concern for welfare; adult or child/SID.

127. These circumstances of this case highlight the difficulties in securing crime scenes involving domestic violence because there was no identification that the matter involved domestic violence or child abuse. The grievous bodily harm of a baby in his home is serious domestic violence but this was not readily apparent in the extremely short time the ambulance personnel were treating R. The operator on the triple 0 call had no apparent reason to call the police. Even if the police had attended it may be that they might not have appreciated the possibility that R was a victim of domestic violence. On the other hand, they may have. At least there would have been an investigative witness who could have examined the home.

128. The police ask that I make a recommendation *"That the Commissioner of Police and the Ministry for Health consider the feasibility of whether there should be an automatic requirement for police to attend premises where NSW Ambulance Service officers are called to attend to a child where there is a suspicion of child abuse or in circumstances requiring resuscitation upon the child"*.

129. The Ambulance Dispatch Protocol already includes an incident of child abuse but not the word "*suspicion*" but I would think that suspicion would invoke the protocol. "*Circumstances requiring resuscitation*" upon a child however, would mean that the ambulance staff would not be distracted from their role to provide emergency medical treatment, however it could also mean that police are called to events such as a child having an asthma attack.

130. Ms Henry has indicated that as the issue has been raised so late during the Inquest, NSW Health is unable to respond to the question as to whether a recommendation of changing the protocol should be made as there would need to be extensive consultation with the stakeholders.

131. I accept that and accordingly decline to make a recommendation that the protocol be changed but this case does indicate that such consultation should take place and I will make the recommendation as sought.

132. The police have also asked for a recommendation that "That the Ministry for Health consider whether there should be a duty person at hospitals who can coordinate the reporting of children with injuries that are suspected of being the result of child abuse". I agree with Ms Henry's that there has been too little time and investigation for Health to make any submissions about this matter and it involves a great amount of work to consider it given that many hospitals already have child protection protocols.

133. However, it is an opportunity to recommend that NSW Health remind its staff of the importance of reporting suspected serious indictable offences against children to both the police and to the Child Protection HELPLINE and that such reports they are made as soon as practicable to ensure that any police investigations are not compromised.

134. Finally, the police seek a recommendation *that "the Commissioner of Police and the Ministry for Family and Community Services consider whether the screening tool utilised by the FaCS Child Protection Helpline should include questions whereby the mandatory reporter is asked whether Police have been called or should be called".*

135. Mr Best, the Director Legal Services of Family and Community Services forwarded a very helpful response by letter of 17 November 2014. He indicates that the police and FACS have commenced a trial whereby FACS now electronically sends crime reports of serious indictable offences to the police. Discussions for longer term options are continuing.

136. Mr Best wrote that there would be no utility in adding questions to the HELPLINE's screening and response priority tool (SCRPT) *questions (1) Do you consent to this information being passed to the police?* and *(2) Have you also passed this information on to the Police?* Mr Best says that any response to those questions would not change the outcome of how the report is assessed and prioritised at the Child Protection Helpline – which is the purpose of SCRPT.

137. The point of the questions is not to meet the purpose of SCRPT but rather promote reports being made directly to the police by the reporter. Mr Best said that on 3 November 2014 a practice reminder has been sent to all Helpline staff to ask the two questions, particularly for matters suggesting criminal behaviour and the

responses will be documented in the "Contact Record". Though the questions might not fulfil the purpose of SCRPT for FaCS purposes, they do serve the purpose of the police to maximise the notifications of child abuse to them.

138. The anecdotal reported experience of the Child Abuse Squad is that FaCS rather than the police have become the primary and predominant "port of call" for reports of criminal conduct against children which require police investigation. I understand that the police officers' experience is that this situation has created the potential to compromise police investigations, in effect the "protection model" runs the risk of "decriminalising" child abuse by requiring reports to be made to FaCs "rather" than the police.

139. This issue is complex as it also involves a consideration of health service providers and their statutory obligations in regards to child protection as well as serious indictable crime and I would imagine it involves issues of resourcing and running a dual reporting system let alone whether the computerised screening tools can be added to. If FaCs can send out a reminder to its staff to ask the 2 questions, I would have thought that adding the questions to the screening tool would mean that the staff did not need to be reminded to ask them and accordingly make the recommendation as sought.

140. Mr Best submits that the HELPLINE in this case did make a prompt report to the police. I did not inquire why it took 45 minutes to go from HELPLINE to the Critical Response Team and then another 25 minutes to the After-hours JIRT police officer on duty. By this stage, time was not of the essence. I do not know what the usual response time is or what the workload is so I am unable to say whether it was prompt or not. I certainly make no comment or criticism about it but the fact is the report took 1 ½ hours to travel from the Hospital to the Police via FaCs, perhaps a significant period of time, where it is of the essence, which could have involved police action had it been made simultaneously and directly .

141. Mr Best submits that the reports to the Helpline should be made as promptly as possible so that there can be a prompt referral to the Joint Investigative Response Team. I agree with that submission and it goes without saying that the Ministry of Health keeps reminding its mandatory reporter staff of this.

142. Mr Best says that where the final MRG decision directs a mandatory reporter to make an immediate report to FaCS (Child Protection Helpline) it also advises *"in some instances, you will need to arrange medical care and/or inform police".* However, such advice is not provided for matters where the final decision is that the report would not be reported to the HELPLINE.

143. If the MRG tells the mandatory reporter that there is no need to make a report to the HELPLINE it has in effect determined that the child is not a child at risk of serious harm. However, it is not a determination that a criminal offence has not been committed.

144. Mr Best submits that the MRG is a whole of government document and FACS would have no objection to it being used to remind people of their statutory obligation to report serious indictable offences to the police. I would think that it is unlikely that a report involving a serious indictable offence against a child or young person would ever result in MRG advising not to make a report to FACS.

145. The issue of whether medical staff should be required to make reports of suspicions of abuse of a child to the police as well as the Helpline is one which I have been unable to progress and given the focus of this Inquest I appreciate Ms Henry's position on behalf of the Ministry of Health, that the issue, though serious has not been able to give considered submissions due to the time constraints and complexities of the issue which have risen late during the period of this Inquest. However, the agencies could begin this discussion commencing with a consideration of adding to the MRG a "decision tree" where mandatory reporters are advised to make reports directly to the Police in matters where a criminal offence against a child is suspected. However, it should be noted that not all Mandatory Reporters use the MRG so really it is a matter that requires liaison of the NSW Police Force, Ministry of Health and Department of Family and Community Services.

Conclusion

146. Only the parents know the true events of the morning of 11 May 2009 and neither has told it. Whether R had at some stage been in the cot and then put into the basinet in the parent's room I do not know. Whether he had ever been in the rocker I do not know. I do not accept that the father had no interaction with the baby before

the mother left. Nor do I believe that when R was put to bed after his feed he was "fine". There are too many contradictions, inconsistencies and lies from the parents.

147. I think it unlikely that the mother took the child to school because they were "running late" and I think it likely when she heard and saw the ambulance on the street she knew they it was for her son not because he had been sick the day before but because he had been severely hurt before she and her daughter left for the school.

148. The father's description of the baby vomiting and collapsing in his arms as evidenced in the triple 0 call was due to the baby having a severe head trauma inflicted probably by being violently shaken and his clavicle broken from being grabbed violently. The baby immediately lost consciousness and was put to bed and the father probably checked him after the mother and child left the house. Seeing that he had deteriorated whether it is by vomiting or gurgling or both the father picked him up but the baby was so unwell he vomited and collapsed because of the brain injury he suffered from the violence. His apparent choking was due to having no gag reflex due to the brain injury but the choking and/or aspiration caused neither his brain injury nor his respiratory collapse.

149. I have received submissions by counsel for both parents. They both submit that the evidence does not satisfy the criteria of a s78 referral to the Director of Public Prosecutions. Sgt Kelly who has been assisting me does not cavil with that submission.

150. Ms Fernando submits that the mother has demonstrated candour in her discussions with the police and any shortfalls are due to her cognitive difficulties. Whilst I accept that she displayed a degree of candour when answering questions I do not think she told the truth about what occurred in the home before she left the house. There is no evidence that the mother has a cognitive disability that prevents her from telling the truth about what really happened. However, I do accept that her ability to give an accurate and reliable account of R's feeds over the preceding weekend is probably compromised due to some disability she has, evidence of which has not really be sufficiently been put before me.

151. I do not think that any disability she may have has prevented her from being able to engage in some apparent collusion with the father so that the truth of what occurred

did not come out at the time she was speaking with police and the doctors in 2009 and has still not come out.

152. The father's records of interviews with the police disclose a demeanour and response to questions and then particularly in the latter interview a contrivance of what occurred that morning up until he rang emergency services. Anybody viewing those videos would hold the view he has no credibility. I make no criticism nor draw any inferences about their objection to giving evidence for fear of self -incrimination in these proceedings.

153. There is no evidence that both parents assaulted R. There is no direct evidence and inadequate indirect evidence of which parent assaulted R to meet the criteria of s78 to refer this matter to the Office of the Director of Public Prosecutions. If a jury was satisfied that the baby was injured prior to the mother leaving the house they could not be satisfied beyond reasonable doubt of the guilt of one parent at the exclusion of the other . If the Prosecution brought the case against the father on an alternate basis, that the baby was assaulted after the mother left the house, a jury would have to accept the mother's second version of events that the father had no interaction at all with the baby while she was in the house. I do not think that a jury could accept that. In addition to that, the medical experts are unable to exclude the baby being shaken within 5-8 minutes (after the mother left the house), distinct from up to 60 minutes (when she was at the house) prior to the call to emergency services. Again, a jury could not be satisfied of the guilt of one parent at the exclusion of the other.

154. This case raises the adequacy of the criminal law in NSW in dealing with cases where it is not possible to identify who out of two persons, who were at home with a child, was responsible for the child's non-accidental death.

155. In October 2013, Deputy State Coroner MacMahon forwarded a recommendation to the Attorney General to consider changes to the law so that the perpetrator in such cases can be brought to justice. From that recommendation the Attorney General is investigating whether an offence should be enacted and a research paper has been published in September 2014 titled "Criminal liability of carers in cases of non-accidental death or serious injury of children". I will of course be forwarding this case

to the Attorney General and recommend that his consideration to change the law continue.

156. Research paper e-brief 12/2014 sets out that between 1998 and 2012 there were, on average each year 8 children killed by a family member, primarily a parent[61]. I do not know how many of those perpetrators are not brought to justice because of the difficulty surrounding criminal liability.

157. I indicated to counsel for the parents that though this case is one which falls short of s78, it is one I would consider referring to Homicide unsolved crime division. Miss Hopper for the father did not wish to make submissions on that point. Ms Fernando for the mother opposed such referral on the basis that it has been over 5 ½ years since the baby's death and there were serious flaws in the police investigation. Now that the Inquest has been held, all "loose ends" have been followed up, all the medical evidence has been obtained and it is highly unlikely that medical opinion will change in terms of narrowing down the time of the injuries. She says it is difficult to see what more unsolved homicide can do. I cannot cavil with those submissions but the gravity of a case where a child has been killed by a parent is so great that my not referring it would be an abrogation of justice because it would be saying that his murder will never be solved. Accordingly, after the recommendations have been forwarded I will refer this case to Homicide unsolved crimes division.

158. I now enter my formal findings that : R D (born 21 December 2008) died on 11 June 2009 at Sydney Children's Hospital, Randwick in the State of New South Wales. The cause of his death was head injury that occurred when a person or persons unknown shook him forcefully on 11 May 2009.

159. I make the recommendations as follows:

1 That the Commissioner of Police and the Ministry of Health consider the feasibility of whether there should be an automatic requirement for police to attend premises where NSW Ambulance Service officers are called to attend to a child in circumstances where that child requires resuscitation.

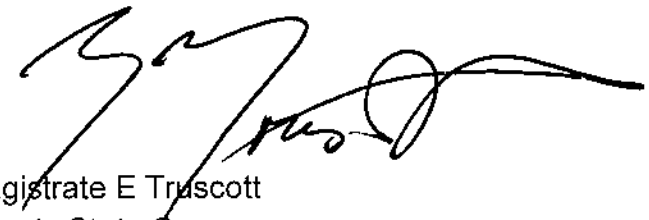
2 That the Commissioner of Police and the Ministry for Family and Community Services consider whether the screening and response priority tool (SCRPT)

[61] "Criminal liability of carers in cases of non-accidental death or serious injury of children". NSW Parliamentary Research Service September 2012, e-brief 12/2014

utilised by the FaCS Child Protection Helpline should include questions whereby the mandatory reporter is asked whether Police have been called or should be called.

3 That the Commissioner of Police and the Department of Family and Community Services and the Ministry of Health consider whether the Child Protection Mandatory Reporters Guide should include a decision tree whereby mandatory reporters are advised to report a matter to the police where they suspect a criminal offence against a child has been committed.

4 That the attention of the Attorney General be drawn to the findings in this matter for consideration as to whether an offence and relevant criminal procedure provisions should be enacted further to the discussion in the NSW Parliamentary Research Service e-brief 12/2014 "Criminal liability of carers in cases of non-accidental death or serious injury of children".



Magistrate E Truscott
Deputy State Coroner
13 February 2015