



**CORONERS COURT  
OF NEW SOUTH WALES**

**Inquest:** Inquest into the death of XY

**Hearing dates:** 7 December 2020

**Date of findings:** 11 December 2020

**Place of findings:** Coroner's Court, Lidcombe

**Findings of:** Magistrate Harriet Grahame, Deputy State Coroner

**Catchwords:** CORONIAL LAW – Death of person in course of police operation – mandatory inquest – ss 23 and 27 Coroner's Act – Whether applicable New South Wales Police Force Policies and Procedures were followed – Response of involved officers – Overview of critical incident investigation – Recommendation – Review of potential systems to remind police about retrieval of firearms from key-lock safes

**File numbers** 2019/00114274

**Representation:** Ms E Sullivan, counsel assisting, instructed by Ms L Nash, Crown Solicitor's Office

C Palmer for the Commissioner of NSW Police Force, instructed by Mr P Hodgetts, Office of General Counsel

**Non-publication orders:**

The court made specific non-publication orders pursuant to sections 65 and 74 of the *Coroners Act* 2009 (NSW). The orders relate to sections of certain New South Wales Police Force policies. The orders are available through the Court Registry.

These findings have been anonymised in accordance with an order made pursuant to section 75 *Coroners Act* 2009 (NSW).

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## **Introduction**

1. This inquest concerns the death of XY. XY was a proud Aboriginal man and only 45 years old when he was found deceased by officers from the NSW Police Force ("NSWPF") at around 4.30am on the morning of 11 April 2019 at Z Street, Broken Hill. XY's death was as a result of a self-inflicted gunshot wound. NSWPF officers had attended the Z Street property a short time prior to his death.
2. XY was the former de facto partner of his childhood sweetheart, E, and together they had four children: A, B, C and D.
3. Although the last years of XY's life were somewhat tumultuous, his sister, W generously told the court of XY's jovial nature and how he had the ability to make jokes to lighten any situation. He had a loud and infectious laugh and displayed great love for his family throughout his life. As a young man, he had shown great promise as a potential engineer in the aviation industry, but turned down opportunities in Sydney to stay with E and his family in Broken Hill. Sadly, a series of tragic events, including the death of his younger sister and his mother, isolated XY from his family as he struggled with his grief and became increasingly depressed, eventually turning to alcohol and methylamphetamine to cope. W generously shared this very private aspect of XY's struggle to underscore the need for appropriate rehabilitation services in the far west of NSW. XY had repeatedly expressed his desire to enter rehabilitation, but a lack of appropriate services close to the support network of his family was a significant barrier to seeking assistance.
4. XY cherished his role as a grandfather, and his granddaughters - one who was yet to be born at the time of his death - gave him great hope for the future. They were a driving force for XY to continue with his rehabilitation efforts.
5. I am grateful for the attendance of XY's family at the hearing, and for their generosity in sharing their loss with this court. The profound grief felt by XY's family was self-evident, however it is a testament to XY's family that amidst their own loss, they were also able to acknowledge the impact XY's death had on the attending NSWPF officers. I acknowledge their significant loss and thank them for sharing their memories of XY with this court.

## **The role of the coroner**

6. The role of the coroner is to make findings as to the identity of the nominated person and in relation to the place and date of death. The coroner is also to address issues concerning the

manner and cause of the person's death: s. 81 *Coroner's Act 2009* ("the Act"). A coroner may also make recommendations in relation to matters that have the capacity to improve public health and safety in the future: s. 82 the Act.

7. XY's death was self-inflicted and occurred during the course of a police operation. XY shot himself with a stolen 12 gauge sawn-off shotgun some minutes after the arrival of NSWPF officers, and whilst they were on-scene. Accordingly, the holding of an inquest by a senior coroner was considered mandatory pursuant to ss. 23(c) and 27 of the Act.
8. In part, the purpose of an inquest in such circumstances, is to examine whether any lessons or improvements can be taken from a particular incident, with a view to improving police systems, policies, practice or training, even potentially preventing future deaths if at all possible.

### **The issues**

9. A list of issues was prepared before the proceedings commenced and circulated to the parties (namely, the Commissioner of NSWPF). The issues explored at the inquest included:
  1. Determination of the statutory findings required by s. 81 of the *Coroners Act 2009*;
  2. Whether the applicable NSW Police Force policies and procedures have been followed, including with respect to:
    - a. the response of first responders to the high risk situation;
    - b. the Critical Incident Guidelines; and
  3. Whether any recommendations are necessary or desirable in connection with XY's death.

### **The evidence**

10. The court took evidence over one hearing day. The court also received extensive documentary material, compiled in a two-volume brief of evidence. This material included witness statements, medical records, photographs and video recordings, as well as court records. While I do not intend to refer to all of the material in detail in these findings, it has been comprehensively reviewed and assessed.
11. It was of great assistance to this court that two of the involved officers utilised their body-worn video ("BWV") cameras. This provided a contemporaneous record of the events that unfolded on 11 April 2019, and it assisted greatly in confining the issues under consideration.

12. In addition to oral evidence from the officer in charge, Detective Sergeant Gary Quilter, four witnesses were called to give oral evidence. These were the officers involved in the incident on 11 April 2019, namely Constable Thomas Fajks, Sergeant Patrick Schaefer, Constable Dimitrios Margiolis and Constable Robert James.
13. I was impressed with the frankness with which the involved officers reflected on the events surrounding XY's death at the hearing. The officers were still relatively new to the NSWPF on 11 April 2019, yet handled themselves commendably when faced with an uncertain, terrifying and serious situation. Sadly, the officers could not prevent XY's death, as it seems he had resolved to take his own life. However, their composure in the circumstances ensured that every effort was made to engage with XY, and that his family was able to be safely removed from the Z Street premises without harm.

## **Background**

14. XY's relationship with E began in 1988. They were childhood sweethearts. The pair lived together on and off from that time up until the time of XY's death, although they never married. As mentioned earlier, the pair had four children.
15. XY struggled with mental health issues throughout his life. Police had previously attended to XY in relation to threats of self-harm. In 2008, XY was scheduled by police under s. 22 of the *Mental Health Act 2007*.
16. From around 2014, XY's life was marred by a series of tragic events. As already outlined, XY had to endure the painful loss of his younger sister, and in November 2018, the passing of his mother.
17. Although there were periods of separation between XY and E, from around August 2017, XY and E began living together again at Z Street, Broken Hill. B and C also lived at the Z Street house. The relationship between XY and E was volatile and the couple would fight regularly.
18. E believes that after the death of his mother, XY commenced using "heavy drugs". She noticed significant changes in his behaviour and moods, during which he would often be awake for days without sleeping.
19. E had a number of Apprehended Domestic Violence Orders taken out against XY (all of which had expired by 11 April 2019) and by January 2019, E had asked XY to move out of Z Street permanently.

20. In the months prior to his death, XY was observed to be drinking heavily and regularly using methylamphetamine ("Ice").
21. According to his children, XY would regularly threaten to kill himself.
22. The court heard evidence that around 25 March 2019, his daughter A's partner, F, found XY at their house crying. XY said he had tried to kill himself earlier that day and produced a shotgun. F (sensibly) took the live rounds from the gun (although XY said he had more) and managed to change XY's mood on that occasion. E had never seen XY with a gun, although XY had told her previously that he was able to get hold of one.

### **The events prior to the critical incident**

23. After moving out of Z Street in January 2019, XY had called and text messaged E at semi-regular intervals, requesting to move back in. In the week before his death, the frequency of those calls and text messages increased to the point where XY was contacting E several times each day.
24. On Sunday 7 April 2019, XY attended Z Street for ten minutes. E said he was "calm" that night. C also recalls her father visiting around this time to obtain cigarettes and engaging in a hushed conversation with E.
25. On the evening of 10 April 2019, police officers attended A's house (where XY was living) in order to serve a Court Attendance Notice on XY, relating to an alleged incident at the Wilcannia Golf Club that had occurred on 5 April 2019. They were unsuccessful on this occasion.
26. During the course of the day on 10 April 2019, XY repeatedly text messaged and called E, asking to come over. E replied telling him not to come.

### **Events on 11 April 2019**

27. At approximately midnight on 11 April 2019, A saw her father in the kitchen of her home. He said to her: "I'm just having my last drink before I go to rehab". A did not think this was unusual, given that they had previously discussed XY attending rehabilitation for his drug and alcohol use.
28. At approximately 3:30am on 11 April 2019, B awoke to the sound of someone banging on the front door at Z Street and E telling that person to "go away". E had been woken by XY

poking his head through a broken window in her bedroom (which he had broken about five weeks previously) asking to be let into the house. E told him to leave and that she would call the police if he didn't. E could smell alcohol on XY's breath.

29. XY proceeded to smash another window in E's bedroom and gained access to her room. B, hearing the window smash, barricaded XY inside the bedroom. Around this time, E made her first call to police. B then heard another window smash in the lounge room. C and B both saw their father banging on the window, at one point aiming what looked like a double-barrelled, sawn-off shotgun at B. B told his mother and sister to hide in the bathroom and call the police. B also called '000' himself at around 3.52.30am, giving the '000' telephonist key information, including stating: "My father's there with a double-barrelled shotgun".

### **The critical incident**

30. On 10 April 2019, "Team 1" were working the night shift at Broken Hill Police Station. This team included Sergeant Schaefer, the team leader and shift supervisor; Constable Thomas Fajks; Leading Senior Constable Sutton; Constable Robert James; and Constable Dimitrios Margiolis.
31. As to the experience of those officers, Sergeant Schaefer attested from the academy on 19 December 1986 and was in his 33rd year of service. Constable Margiolis attested from the academy in August 2016; Broken Hill was his first posting – he had been there for 2 and ½ years. Constable James attested from the academy on 28 April 2017, and was then posted to Broken Hill Police Station, where he had been undertaking General Duties since. Constable Fajks attested from the academy on 22 February 2019; he was thus in his seventh week of duties at the time of the incident.
32. The shift of the NSWPF officers started at 6:00pm on 10 April 2019, and was scheduled to finish at 6:00am the following day.
33. At around 3:40-3:45am on 11 April 2019, Constable James received a phone call at Broken Hill Police Station to respond to a domestic violence incident at Z Street. The female caller identified herself as XY's ex-partner (E). Constable James gave oral evidence that E was (understandably) quite frantic and was unable to provide specific details. Eventually she became frustrated and passed the phone to a younger female (C) who said "XY is here, I have an AVO with him and he is smashing the windows". Constable James told the court that C sounded panicked and that he could hear windows smashing in the background.



34. Constable Fajks was sitting in the station and heard the call come in, listening in (as it was on speaker phone) because not much was happening at this time and “someone was quite distressed on the other end”.
35. Constable Margiolis was passing through the front of the station and heard the job (including the tone of the caller and the smashing of windows) – he stated that as it was a domestic violence incident, they knew they had to go.
36. Constable James submitted the CAD job, locked the computer and put on his load bearing vest.
37. In oral evidence, both Constable James and Constable Margiolis said they knew it was an urgent job.
38. During the call, there was no reference to any weapons.

#### ***Second call from E***

39. Whilst the Constables were leaving the station, Sergeant Schaefer, who was the custody manager that evening, took a second call from the “same lady” at Z Street.
40. Sergeant Schaefer stated that there was no update provided in this call – it was just: “He's here, he's smashing the windows. He's smashing up the place”. In oral evidence, Sergeant Schaefer told the Court he stayed on the phone with the woman to make sure that nothing happened until the police got there.
41. For her part, E said that she called the police again, recalling “I was on the phone when I heard XY smashing the front lounge room windows. The police arrived almost as that was happening. The police got to the house within 10 minutes of the first phone call. They were really quick”.

#### ***BC16 heads to the job***

42. Constables James, Margiolis and Fajks left in vehicle BC16, with Constable Fajks driving the vehicle.
43. There were communications with radio en route: Constable Margiolis copied the job and called for location checks at Z Street – these came through from VKG confirming an enforceable AVO against XY, with C as the person in need of protection. The ILS [Integrated Licensing Service] confirmed that there were no registered firearms at the premises. That

was all the information the NSWPF officers received. Again, there was no mention of any weapons being present at the house.

44. According to Constable Fajks, it took less than 5 minutes to arrive at the Z Street address.
45. Each of the involved officers gave detailed records of interview regarding the incident on 11 April 2019. Further, and as mentioned above, two of the involved officers (Constables Margiolis and Fajks) were wearing BWV cameras, and virtually the entirety of the police operation is captured in that audio and visual footage. The availability of the BWV footage and the directed interviews in particular, assisted me greatly in ascertaining the sequence of events on the morning of 11 April 2019. In light of the availability of this contemporaneous record, there is no contest regarding any evidence of the involved officer – I accept their evidence.
46. On arriving at Z Street, Constable Fajks parked "... further up than the driveway" at the neighbour's house (near the fence line between the houses).
47. As the car was pulling across the front of the premises, Constable James saw a male figure (XY) wearing a fluorescent jacket running down the side driveway of the house (visible because of the jacket). Constable James, got out of the car (with Constable Margiolis following), and started running towards the driveway, to "keep eyes on where the potential suspect may have been running". It was a "tight squeeze" between the car and veranda, and he had to go sideways to fit through the gap. He picked up pace running up the driveway, and saw the figure turn the corner of a fence. The driveway (30 to 40 metres long) had a fence either side and at the rear, there was another boundary fence; the person was "tucked away behind that corner" and "all of a sudden he's come back out holding a firearm ... a long arm or rifle." He was positioned on the corner of the fence and had the firearm resting on or above a household bin. Constable James said the gun was aimed directly at him and his colleagues.
48. Constable Margiolis recalls Constable James yelling out words to the effect "Stop, police"; Constable Margiolis was at that stage a few metres behind him. Then Constable James yelled out words like: "There's a weapon involved, there's a gun, he's got a gun", and he saw him draw his gun and take cover "behind ... sort of like ... a fence line ...or some gas bottles." This was the first time there was any mention of the firearm.
49. Both Constables James and Margiolis immediately drew their firearms, XY said something like "Get back", which Constable James took as a command, responding "ok, we're moving back"; he looked for cover straight away. This all occurred in a matter of seconds.

50. Constable Margiolis thought XY was under the influence of some sort of drug; he also said that he wanted to shoot police (amongst other inaudible words), and was waving his weapon around. Constable Margiolis said the “gist” of what he was saying was to make police shoot him. I accept that the officers were trying not to aggravate XY, but to keep him talking, and try to get proper cover; Constables James and Margiolis were communicating throughout, and trying to talk with XY, but according to the attending officers “wasn’t giving much back”, and “not very long into it”, they lost communication and sight of him.
51. Reflecting on the incident, Constable James stated “... if I knew he had a firearm, ... I probably wouldn’t have been ... runnin’ after him.” He saw that Constables Fajks and Margiolis were “still in no man’s land with [him]”, and yelled a command to “get cover, get cover”; and told them “I’ve got cover”. He could hear Constable Fajks get on the radio; calling: “Broken Hill 16, urgent ... POI has a gun ... it’s a long arm”. Constable James could then see Constable Margiolis trying to retreat to get cover behind an air conditioning unit.
52. From the BWV footage, it is evident that both those officers had their torches facing XY, who still had his firearm pointed at them on either side of the driveway. Constable James tried to speak to engage him and say “XY is that you?”. XY was shouting along the lines of “Get back, get back ... get your torch light off me ....”. Constable James said – “I’ll move back, ... XY is that you? Just talk [to me]”, or something along those lines, trying to engage him. Constable James then yelled to Constable Fajks to get their vests. Constable James had a “really good view” of XY from where he was in the alcove. He held cover as Constable Fajks brought the vests to the front of the property; he asked Constable Margiolis if he had cover – he could see XY with his gun pointed down the driveway. XY kept yelling about the lights or “get back”, and at one point said: “You need the gas bottle” – Constable James looked to his left, saw the gas bottle and thought it was “probably not a good idea to be standing [next to it] when he’s got a firearm”. He then said: “All right mate, XY, I’m movin’, I’m movin’ back now”, and moved back to the start of the driveway behind the vehicle parked there.
53. The lighting down the driveway was “exceptionally dark”.

### ***Evacuation of the residence***

54. After extricating himself from the driveway, Constable James then sought to evacuate the house where E, B and C were still hiding. Initially no one responded to his call-outs, but eventually he got a muffled response. Constable James tried to “coax them out of the house”,

saying it was “a bit of a slow process, they didn’t want to come out to start with”, but they eventually did.

55. Constable Fajks said he could hear Constable James “pulling the family out of the house”.
56. E, B and C were evacuated to BC16, although they didn’t get into the vehicle. Constable James then took over radio communications from Constable Fajks to ensure a clear message had been sent, including that the weapon was a long-arm, and that they had evacuated the civilians from the house.

### ***Sergeant Schaefer’s arrival***

57. Almost immediately after receiving the second call from E, Sergeant Schaefer saw the CAD message relating to B’s call – a ‘priority 2’ job containing information that the informant’s father was at Z Street with a shotgun; he almost simultaneously heard the call from BC16 “Urgent, offender has a firearm, a long arm”. He could not recall the substance much beyond that but “identified that the incident had escalated”, and there was an individual at the address with a firearm. This was the first time Sergeant Schaefer was aware of the firearm – the second CAD job came up simultaneously with the call from BC16 on-scene.
58. Upon hearing that the junior officers were confronting an armed person of interest, Sergeant Schaefer immediately sought to support them by attending the scene (arriving by 4.00am). Once at the property, Sergeant Schaefer spoke to Constables James and Margiolis.
59. Sergeant Schaefer determined to set up a perimeter at that point, and ensure the safety of the family (who had been evacuated by that time). After setting up the perimeter, Sergeant Schaefer proposed that they would then try and find a point from which to observe the interior of the shed, to see if XY was still there or not.

### ***Shotgun is fired***

60. Soon after, the sound of a firearm was heard. Constable James described it as a “loud bang” which sounded a bit muffled, as though it could have been contained, for instance, in the back shed: it didn’t sound like it was “in clear air”. At that time, police didn’t know if XY had self-harmed or if it was “just a shot for the sake of firing a shot”.
61. Sergeant Schaefer stated that whilst they were discussing what steps to take next “we heard what [he] believed was a discharge of a shotgun, coming from the bottom of the yard. It

appeared to come from the shed that had, that, um, my colleagues pointed out the, um, offender may have gone into.”

62. Sergeant Schaefer got on the radio and advised that shots had been fired.
63. It is apparent from the contemporaneous records (both the BWV footage and the CAD/VKG records), that the shot was fired around 4:02am (some 9 minutes after police have arrived). At this point, Sergeant Schaefer then returned to the station briefly as he had “dashed out” without his firearm. In oral evidence, Sergeant Schaefer said he realised his firearm had been forgotten around the time the shot was fired – he put his hand on his holster and realised it was missing.
64. Sergeant Schaefer’s firearm was locked up in the safe outside the custody area (a requirement when performing custody management duties). He stated both in his recorded interview, and in substance, during his oral evidence at the hearing: “It’s a standard operating procedure that, um, particularly if you are custody manager, and most of the time if you have to deal with a prisoner in the charge room or in the cells, you lock your firearm in one of the four key-lock safes provided outside the charge room.”
65. Sergeant Schaefer estimated it took “certainly less than ten minutes” for him to retrieve his firearm and return to the scene. He left instructions to the officers to maintain a perimeter – “no one goes in or out ... And I’ll be back very quickly”.
66. At Broken Hill Police Station, Sergeant Schaefer obtained his firearm, and put on a ballistic vest. He also signed out a body worn video camera - but when he put on the ballistic vest, could not find anywhere to hang it (although he spent some minutes trying to do so). Because of this, the camera was then left switched off in the car. Sergeant Schaefer then quickly returned to the scene.
67. Upon Sergeant Schaefer’s return to Z Street, the NSWPF officers discussed their unfolding plan. Sergeant Schaefer determined that Constables Fajks and Margiolis should “maintain obs” on the driveway; he and Constable James went to a nearby house with a backyard that adjoined the laneway near the “possible stronghold”, and looked over the fence. Sergeant Schaefer could see the doors of the shed it was believed the offender had retreated into (although he could not see inside the shed). Sergeant Schaefer then concluded that XY had either committed self-harm or discharged one shot and decamped the scene.

68. Sergeant Schaefer decided that based on the situation it was worth the risk of approaching the shed to see whether XY was still there. He directed Constable James to come with him, and for Constables Margiolis and Fajks to stay at the head of the driveway at the “outer perimeter of the crime scene”.
69. At the front of the shed, Constable James placed his torch on the ground and rolled it to illuminate the inside of the shed; Constable James soon identified that XY was deceased with a gun-shot injury to the head. Sergeant Schaefer covered XY’s body. Constable James observed that the firearm was in between XY’s legs.
70. It was Sergeant Schaefer, as the senior officer, who advised E that XY had killed himself. He did so with much empathy and grace, which speaks to his considerable experience within the NSWPF. The family was then permitted to return to the house but told not to go past the back door/into the yard.
71. Ambulance officers subsequently attended the Z Street address and confirmed that XY was life extinct. XY was transferred to Broken Hill Base Hospital, where on the evening of 11 April 2019, Dr Andrew Oliensky verified XY’s death on the basis that the injuries were incompatible with life.

### ***Critical Incident investigation***

72. A critical incident investigation was declared by Assistant Commissioner Geoff McKechnie at 5.29am.
73. As to the involved officers on scene, Sergeant Schaefer said he left about 5.15am, returning directly to the police station. He drove himself back in BC14; the other officers – Constables James, Margiolis and Fajks – came back in BC16. This joint conveyance of the involved officers, without the presence of at least an independent officer, raised concerns as to their separation (in the interests of protecting the integrity of their evidence) under NSWPF Critical Incident Guidelines (the “Guidelines”).
74. As to whether there was any conversation regarding the incident, all officers gave evidence that they did not discuss the details of the incident on the short trip back to the station. Constables Margiolis and James gave oral evidence to the same effect.
75. During oral evidence, Constable James was unclear as to whether any direction was given not to discuss the incident, initially stating the first direction was back at the station, but that it

was possible Sergeant Schaefer may have given such a direction on scene. For his part, Sergeant Schaefer said he recalled telling the officers not to talk about the incident. He also explained there were no cars available to transport them separately.

76. On 11 and 12 April 2019, directed interviews were conducted with each of the involved officers (which included certain of those officers reviewing footage from the body worn cameras prior to participating).
77. Detective Sergeant Gary Quilter, Investigations Manager of the Central North Police District, was ultimately appointed the Senior Critical Incident Investigator.

### **Post mortem examination and XY's cause of death**

78. On 17 April 2019, Dr Lorraine Du Toit-Prinsloo conducted an autopsy on XY. She determined that the direct cause of death was "Shotgun wound to the head/brain".
79. The key findings were as follows:
  - a. A number of features of a shotgun wound, including an intra-oral entrance shotgun wound, severe destruction of the facial soft tissue with numerous lacerations, soot soiling of the tongue, and "bird shot pellets retrieved from the head".
  - b. "Post mortem radiology ... shows severely comminuted and distracted open fractures and defect involving the facial bones extending into the cranial cavity. There are extensive defects and fractures involving the calvarium and base of skull. Bullet fragments are present in the cranial cavity, subgaleal space and soft tissue of the neck. There are fractures of the hyoid bone and hyoid cartilage. Decomposition changes are present."
  - c. "Toxicology detects a blood alcohol level of 0.099 g/100ml. The vitreous humour alcohol level is 0.078 g/100mL. Methylamphetamine and its metabolite amphetamine (stimulant drugs) and delta-9-tetrahydrocannabinol and delta-9-THC acid (metabolites of cannabis) are present in the blood sample."

### **Were the applicable NSW Police Force policies and procedures followed?**

#### *Actions of the involved officers*

80. In his statement, Detective Sergeant Quilter stated (at [26]):

"I am satisfied the officers involved acted appropriately in the circumstances. They all identified this incident was a contain and negotiate incident and attempted to set a perimeter as best they could with the resources they had. Attempts were made to interact with [XY] to the best of their ability. They communicated with Police Radio and provided updates and requested further resources to attend. Constable JAMES identified he needed to remove [E, B and C] from the house which he did."

81. In oral evidence, Detective Sergeant Quilter told the Court that the involved officers did a "great job in a stressful situation". Overall, he said that given their policing experience, they did well in the circumstances.

82. Sergeant Graham O'Toole (Sergeant O'Toole) of the Weapons Tactics Policy and Review ("WTPR") (within the Operational Safety and Skills Command of the NSW Police Force), provided two statements for the assistance of the coroner, based on his review of relevant NSWPF policy and procedure.

83. Sergeant O'Toole concluded that overall, the actions of the involved officers were in accordance with NSWPF training, policy and procedure, and further, given their level of experience, the officers performed their duty in a "most professional and commendable manner". He noted:

"[A]s soon as the officers observed XY had possession of a firearm, the incident was no longer a domestic verbal argument with malicious damage and breach of an AVO. The matter had then escalated and converted to a high- risk incident. The officers adhered to the [relevant] NSWPF policy ... They protected themselves and the public by utilising several aspects of [their training and procedures]. They evacuated the residents and obtained information to assist them in their efforts to resolve the situation and utilised safety equipment such as the ballistic vests, torches and gloves."

84. Having regard to the evidence, and noting the matters set out above, together with Sergeant O'Toole's review, there could certainly be no criticism of the first responders, Constables James, Margiolis, and Fajks. To the contrary, their response was impressive and commendable.

85. The quick actions required of the junior officers, following the confrontation with XY, who was clearly deeply distressed and volatile, were undertaken in circumstances of extreme stress. It would have been possible – confronted with the situation of a long arm pointed down the driveway towards the officers, with poor lighting – for an exchange of gunfire to have ensued, with all the consequent potential for police and civilian casualties.



86. It ought also to be borne in mind that although with the benefit of hindsight, it is now known that any threat XY presented may have resolved by 4.02am when he took his own life, this was not known to police at the time. There remained the potential that XY was hiding, awaiting an opportunity to shoot a person at the location.
87. In that quite terrifying context, the conduct of the involved officers was clear-headed, collaborative, efficient and effective. I find that they acted appropriately in the circumstances, and in accordance with the relevant NSW Police Force policies, procedures and training.
88. Having regard to their composure, professionalism and skill – noting their comparative inexperience - Constables Margiolis, James and Fajks are to be commended for their response to the incident on 11 April 2019.
89. Additionally, Sergeant Schaefer's professional manner and significant experience was of significant value in the police response. His leadership and guidance to the junior officers was exemplary. Sergeant Schaefer was also impressively candid in his evidence about the circumstances and seriousness of forgetting his weapon.

#### Critical incident investigation

90. A critical incident is essentially one involving a member of the NSWPF which results in the death of a person arising from a police operation. The defining feature of a critical incident investigation is that it is constituted by an independent specialist investigative team, whose investigation is in turn reviewed by an independent review officer.
91. In conducting a critical incident investigation, the Guidelines state that the critical incident team are to conduct a full investigation of the incident, including relevant events and activities leading up to it, as well as the lawfulness of police action and the extent of police compliance with relevant guidelines, legislation, internal policy and procedures. The investigation report from the critical incident investigation should comment on these matters and include reference to any problems that have been identified.
92. The primary role of the senior critical incident investigator ("SCII"), who is the leader of the critical incident investigation, is to "ensure critical incidents are rigorously and thoroughly investigated".
93. Notably, the Guidelines emphasise the need for involved officers to be separated from other involved officers or witnesses to ensure that any evidence is not contaminated. This obligation falls upon the Duty Officer, until the SCII arrives on scene.

94. The requirement for separation is directed at protecting the integrity of the evidence and the scene.
95. It appears that Commander Paul Smith attended the scene at 6.48am, and Inspector Paul Roberts (the attending Duty Officer) may have attended around 7.16am.
96. The actions of the involved officers following XY's death are set out above at [73] to [76]. In summary, Sergeant Schaefer left the scene around 5.15am, returning to the station in BC14 himself. It appears that Constables James, Margiolis, and Fajks also left around 5.15am, driving back to the station together in BC16.
97. Thus, by the time Senior Officers attended the scene, the involved officers had already left. Notably, given the critical incident investigation team were to be from a different Police Area Command (with the SCII located at Bourke Police Station), there was always going to be a significant delay until the SCII arrived. In fact, Detective Sergeant Quilter was not on scene until around 1.30pm that day.
98. Detective Sergeant Quilter agreed that this situation was "not ideal", and that it was an "unfortunate thing" related to resourcing of regional police commands. He also noted that it occurred before the critical incident investigation team arrived. Detective Sergeant Quilter agreed it was a matter that would be included in his final critical incident investigation report.
99. Certainly, it was undesirable that the officers returned to the station together in the same vehicle (without at least the presence of another independent officer, as occurred subsequently at the station) and contrary to the intent of the Guidelines in preserving the integrity of their respective evidence. However, I accept the evidence of Constables Margiolis and James about the return trip, to the effect that the incident was not substantively discussed. I also note that the return trip (some 1.6km in distance) was brief. As Detective Sergeant Quilter will address this issue in his critical incident investigation report, I am content that the matter will receive appropriate consideration by the NSW Police Force in that way.

### **The need for recommendations**

100. The recommendatory power outlined in s. 82 of the Act is the distillation of the coroner's death prevention role, "speaking for the dead to protect the living".

### **Hanging points for BWV camera on ballistic vests**

101. As set out at [66] above, Sergeant Schaefer's evidence was that although signing out a body worn camera, when he put on the ballistic vest, he could not find anywhere to hang it and so left it turned off in the car. Sergeant Schaefer told the court that he had not heard about any clip to mount the camera to ballistics vests, and if there were such a clip – he would “absolutely” want to know about it. In oral evidence, Detective Sergeant Quilter noted that he had also previously encountered this issue.
102. The significant value of the BWV footage is clearly borne out in this matter – there is an entirely contemporaneous account of events from two of the involved officers, which records the nature of their interactions with XY, the steps taken and in fact, the entirely impressive manner in which the junior officers discharged their respective duties. In oral evidence, Detective Sergeant Quilter agreed that the BWV footage had been of great assistance in the matter.
103. In response to queries directed to Sergeant O'Toole on this issue, he noted that the NSWPF has had the current 'Overt' ballistic vests for about 10 years.

“The BWV cameras are relatively new and there were no provisions made at the time of purchase, for the securing of the BWV to these vests.... Having said that, the current BWV [camera] can be secured to the current 'Overt' ballistic vest by means of the clips which are being used by most Police Area Commands. These clips are available on 'Simple Order' through the SAP system. Whilst the securing clips for the BVW are not permanently attached to the 'Overt' vests, the clips can be used to secure the BVW to the vest if required. Constable Margiolis and Probationary Constable Fajks had BVW attached at the time of attending this incident and upon donning the 'Overt' ballistic vests, were able to secure the BVW so as to continue to record the incident. I believe this to be a simple equipment supply and education issue.”

104. Sergeant O'Toole subsequently clarified the steps that were being taken to prepare an information package with clearer photos and instructions on how to secure the BWV to the 'Overt' ballistic vests with the supplied clips. He noted the package would then be sent out via a State-Wide NEMESIS message to all officers once complete.
105. On 8 December 2020, A/Inspector Michael McGowan of the Operational Safety Unit, NSW Police Force, confirmed that an instructional package advising police about the specific clip for the overt ballistics vest is to be disseminated by “Nemesis”, the NSW state-wide messaging system. A/Inspector McGowan stated:

“The instructional package is designed to teach police officers how to attach BWV to overt ballistics vests using the clips and will be in written form accompanied by step-by-step

photographs. It is anticipated that this instructional package will be finalised and disseminated on or before 11 December 2020.”

106. In circumstances where the NSW Police Force are taking appropriate steps to deal with this issue by (imminently) providing relevant notification/information to operational police in the form of a State-Wide NEMESIS message, there is no requirement for a recommendation.
107. I am grateful to the Commissioner of NSWPF for his prompt consideration of this issue and the swift action undertaken to ensure valuable information is disseminated to all operational NSWPF officers.

#### Forgetting of firearm

108. As set out above, following the firing of a shot around 4.02am at the Z Street premises, Sergeant Schaefer realised he had forgotten his firearm. In accordance with standard operating procedures, it had been locked in a key-lock safe outside the charge room.
109. Such mistakes must be accepted as part of inevitable human fallibility – and no criticism is made of Sergeant Schaefer. In oral evidence Sergeant Schaefer candidly admitted that it was less than ideal that he had forgotten his weapon. He readily conceded that it “absolutely” could have been a serious issue in the circumstances.
110. On this matter, Sergeant O’Toole stated:

“Regarding the issue of Sergeant Schaefer leaving his firearm at the station, I am able to confirm it is standard operating procedure that armed officers remove and secure their firearms in metal key-lock safes located outside the Police station charge rooms either in the Van dock or Police station proper. No firearms are allowed in Police charge rooms. This requirement will always lead to an officer, on occasion, forgetting their firearm is secured in the safe and leaving the station without it. Particularly when an urgent job suddenly comes to their attention. Officers will enter and leave the charge room on a regular basis when processing a custody and completing required computer entries. Most often leaving their firearm secured in the safe until the process is complete.

I am not aware of any process or recommendation that would eliminate the possibility of such a circumstance recurring in the future, however I believe appropriately worded signage on the inside of the charge room doors and external doors of the station might assist in reducing the possibility of such incidents.”

111. In oral evidence, Detective Sergeant Quilter agreed with Sergeant O’Toole’s proposed recommendation, and said that such signs could assist but also noted there are “plenty of

signs around”, so they may not be that effective; he also suggested some sort of alarm mechanism/wrist band connected to the key to the safe, which buzzes if an officer leaves the station. For his part, Sergeant Schaefer suggested that any signage would have to be in a very prominent position (not inside the charge room door, but more likely from the internal door to the foyer) – it would need to be a large sign. He was also of the view that a reminder sticker in a vehicle might be constructive.

112. On 8 December 2020, Superintendent Anthony Ferguson, an officer within the Communications and Security Command of the NSWPF, confirmed that consideration would be given to appropriate “reminder signage or alternative warnings to police being placed in the charge rooms”. He indicated that “the potential utility of reminder signage being used to address the issue, and any practical impediments affecting the utility of reminder signage, are also issues forming part of that consideration”.
113. Although I am grateful to receive an indication that the issue of reminder signage is being considered, it appears from Superintendent Ferguson’s statement that consideration of this issue will be within the context of the Charge Room and Custody Management Standard Operating Procedures only. It was not apparent that the Commissioner of NSWPF proposes any broader review of potential safety ‘reminder’ systems. The evidence of both Sergeant Schaefer and Detective Sergeant Quilter indicates the need for a broader review by the NSW Police Force. Given the potential seriousness of this issue, I would hope that various units within the NSW Police Force with relevant expertise might usefully be involved in any such review (including conceivably, the NSW Police Force Education and Training Command (Lessons Learned Unit)).
114. In the circumstances, I consider that the following recommendation to the Commissioner of NSWPF is both necessary and desirable:

*That the Commissioner of the NSW Police Force give consideration to a review of potential systems (including for example, signs within police stations, key tag or wrist alarm devices and/or stickers or signs in vehicles) to remind police about the retrieval of firearms from key-lock safes when undertaking custody management duties, so as to address the issue of operational police forgetting their firearms when attending urgent duties/high risk situations.*

### **Absence of drug and alcohol rehabilitation centres in Far West NSW**

115. It was clear from the evidence that XY struggled with drug and alcohol abuse issues for some years. He frequently talked of going into “rehab”, but it is not clear what steps (if any), he took to pursue this.
116. As outlined above, during W’s family statement, she told the Court that (as someone who works in the mental health area), no rehabilitation facilities for drug and alcohol abuse are available in the far west region of NSW. The rehabilitation centres that do exist in Western NSW (such as Dubbo), raise issues for Aboriginal people being removed from their support networks when accessing those services. Whilst there is a facility in Port Augusta (South Australia), access to that service raises cross-jurisdictional issues. W stated that having access to a rehabilitation centre in far west NSW would be beneficial for the community, and would assist the police in their dealings with persons struggling with methamphetamine addiction.
117. Although the Court will not make recommendations in this respect (there being no evidence on this issue and the Minister for Health having not been involved in the inquest), it is appropriate that the Minister for Health be apprised of W’s statement (by provision of these findings), to consider the issue raised in the broader context of the tragic circumstances of XY’s death.

### ***Courage and bravery of B***

118. Finally, it is important to acknowledge the heroic efforts of B in the incident on 11 April 2019. As raised earlier in these findings, when confronted with the terrifying scene of his father smashing windows and yelling aggressively, B managed to barricade XY in his mother’s bedroom so as to give police a chance to attend the scene. During this time, his mother and sister were able to hide in the bathroom, and call police. B also managed to call ‘000’, and convey the critical information that XY was armed with a double-barrelled shot-gun. In the circumstances, B’s bravery and quick response should be commended. As Detective Sergeant Quilter said in oral evidence, he showed great courage and potentially saved the life of his mother and sister.

### **Findings**

119. The findings I make under section 81(1) of the *Coroners Act 2009* (NSW) are:

#### ***Identity***

The person who died was XY.

***Date of death***

XY died on 11 April 2019.

***Place of death***

XY died at Z Street, Broken Hill in the state of New South Wales.

***Cause of death***

XY died due to a single gun shot wound to the head.

***Manner of death***

XY's death was self-inflicted with the intention of taking his own life.

**Recommendations pursuant to section 82 Coroners Act 2009**

120. For reasons stated above, I make the following recommendation:

*To the Commissioner of Police, New South Wales Police Force*

That the Commissioner of the NSW Police Force give consideration to a review of potential systems (including for example, signs within police stations, key tag or wrist alarm devices and/or stickers or signs in vehicles) to remind police about the retrieval of firearms from key-lock safes when undertaking custody management duties, so as to address the issue of operational police forgetting their firearms when attending urgent duties/high risk situations.

**Conclusion**

121. I thank counsel assisting Emma Sullivan and her instructing solicitor Lena Nash for their enormous assistance and great skill in preparing this inquest.

122. I am also grateful for the assistance of the Commissioner of NSWPF, by his legal representatives, and thank them for their openness and willingness to engage in the coronial process.

123. Once again, I offer my sincere condolences to XY's family and friends. I acknowledge that the pain of losing a loved one in these circumstances is profound and that their grief is ongoing.

124. I close this inquest.

Magistrate Harriet Grahame  
Deputy State Coroner  
11 December 2020  
NSW State Coroner's Court, Lidcombe