



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest:	Inquest into the death of Nick Newman
Hearing date:	15 to 26 November 2021
Date of findings:	25 January 2022
Place of findings:	NSW Coroners Court - Lidcombe
Findings of:	Magistrate Elizabeth Ryan, Deputy State Coroner
Catchwords:	CORONIAL LAW – death of a person in a police operation – was proper risk assessment performed - was there appropriate communication between the involved officers – was the use of force appropriate.
File number:	2018/28682
Representation:	<p>Counsel Assisting the Inquest: J Needham SC with R Ranken of Counsel, i/b NSW Crown Solicitor</p> <p>NSW Commissioner of Police and police officers: M Tedeschi QC i/b Office of the General Counsel</p> <p>Former Probationary Constable J Mamacan: D Nagle of Counsel i/b Lancaster Law & Mediation</p> <p>Sergeant B Anderson, Detective Senior Constable James McCarron and Senior Constable T Carey: P Madden of Counsel i/b Walter Madden Jenkins</p>

<p>Findings:</p>	<p>Identity The person who died is Nick Newman.</p> <p>Date of death: Nick Newman died on 26 January 2018.</p> <p>Place of death: Nick Newman died at the Maroubra Junction Hotel, Maroubra NSW</p> <p>Cause of death: Nick Newman died as result of multiple gunshot wounds.</p> <p>Manner of death: Nick Newman died when he was shot by NSW police officers after he had stabbed a fellow police officer who was attempting to execute a warrant for his arrest.</p>
<p>Non publication order</p>	<p>Orders for non publication of certain evidence have been made in this inquest.</p> <p>Copies of the orders may be found on the Registry file.</p>

1. Section 81(1) of the *Coroners Act 2009 (NSW)* [**the Act**] requires that when an inquest is held, the Coroner must record in writing his or her findings as to various aspects of the death. The Coroner must make findings as to the date and place of a person's death, and the cause and manner of death.
2. In addition the Coroner may make recommendations in relation to matters which have the capacity to improve public health and safety in the future, arising out of the death in question.
3. These are the findings of an inquest into the death of Nick Newman.

Introduction

4. On 26 January 2018 Nick Newman aged 33 years died from gunshot wounds, at the Maroubra Junction Hotel, Sydney.
5. An inquest into the circumstances of Mr Newman's death is mandatory pursuant to sections 23 and 27 of the Act. This is because Mr Newman's death occurred as a result of a police operation.
6. Mr Newman died while police officers were attempting to execute an arrest warrant, which had been issued in relation to serious child sexual assault offences he had allegedly committed.

Issues examined at the inquest

7. The inquest into the circumstances of Mr Newman's death focused upon the planning and attempted execution of the warrant to arrest Mr Newman.
8. As will be seen in these findings, the inquest identified shortcomings in the decisions made by the police officers who were involved in Mr Newman's attempted arrest. However two things need to be kept firmly in mind. First, the purpose of this inquest is not to apportion blame but to consider whether there is a need for review of relevant police policies or training. In other words, the inquest is future-focused. Secondly, it must be remembered that notwithstanding those shortcomings in police planning it was Mr Newman, and Mr Newman alone, who decided to react with extreme violence to the officers' directions that he submit to lawful arrest.
9. The issues examined were as follows:
 - What was the plan to effect the arrest of Mr Newman?
 - Was an appropriate risk assessment carried out in respect of the operation to arrest Mr Newman?
 - Why was there a departure from the original arrest plan?
 - Was there appropriate and effective communication between the involved officers in respect of the planning and execution of the arrest?

- Was the decision of Detectives Ben Anderson and Tim Carey to draw their firearms to arrest Mr Newman an appropriate use of force?
 - Was the decision of Detectives Anderson and Carey to discharge their firearms in accordance with NSW Police protocols and training?
10. In examining these issues, the court was assisted with evidence from the police officers involved in the investigation and attempted arrest of Mr Newman. Two officers who have since retired from the NSW Police Force were excused from giving evidence at the inquest, on medical grounds. They are former Detective Chief Inspector Russell Oxford, and former Detective Senior Constable Nathan McWhirter. Both officers participated in a directed interview very shortly after the incident, and these interviews formed part of the tendered brief.
 11. The court was also assisted with an expert report provided by Senior Sergeant Peter Davis. Senior Sergeant Davis is Training Coordinator with Weapons and Tactics Policy and Response [**WTPR**], a unit attached to the Operational Safety and Skills Command of the NSW Police Force. He is qualified to provide opinion on the issues by virtue of his knowledge, training and many years' experience as a Weapons and Defensive Tactics instructor.
 12. Senior Sergeant Davis was unavailable to provide oral evidence at the inquest. His report was reviewed by Sergeant William Watt. Sergeant Watt designs and develops training for instructors within the WTPR and is similarly qualified to comment on the above matters. Sergeant Watt largely adopted the conclusions drawn by Senior Sergeant Davis in his report, and provided further evidence at the inquest for the assistance of the court.

Mr Newman's life

13. Mr Newman was born at Nepean Hospital on 14 November 1984, to his parents Anecia Newman and Rudolfo Del Rosario [**Mr Del Rosario**]. Mr Del Rosario returned to his home country of the Philippines soon after Mr Newman was born.
14. Mr Newman's mother married Brian Newman around 1986. Although the couple separated in 1992, Brian Newman maintained a close relationship with Mr Newman and his half sister.
15. When Mr Newman was 14 years old his mother decided to send him to the Philippines to live with her sister and her sister's husband. Mr Newman later told friends that this was a very traumatic time for him, and that his uncle often beat him and got him drunk. His uncle also sent him to Mindanao for a period of time, where Mr Newman witnessed, and perhaps participated in, acts of violence against Muslim insurgents.
16. On his return to Australia at age 16 Mr Newman became involved in drug use and criminal gangs. He soon met his wife to be, JV, and they married in 2006. They had four children together. Sadly their third child died from sudden infant death syndrome, a loss which significantly affected Mr Newman.

17. By 2012 Mr Newman and his wife had separated, with JV taking the children to live with her. According to JV, Mr Newman started making violent threats if she didn't make the children more available to him, including a threat that he would '*come around and kill everyone*'. By January 2018 Mr Newman was insisting that their oldest child aged 15 years live with him. He was at that time living with his mother in her apartment in Penrith.
18. Mr Newman did not have long term employment. In the months leading up to his death he and two colleagues were developing a business called Strategic Threat Solution [**STS**].

The Zombie Eradication Response Team

19. Around 2013 Mr Newman became involved in a group called the Zombie Eradication Response Team [**ZERT**]. This was the Australian branch of an organisation which had been founded in the United States of America. As described in the ZERT Australia website, the term 'zombie' refers to '*natural or manmade disasters that may occur in our lives*'. The group aimed to teach its members '*basic bushcraft and survival training, remote medical skills and knowledge and understanding of the environment*'.
20. Through membership of ZERT Mr Newman met like-minded individuals, including a former Australian Federal Police officer Joshua Hall and Robert Marchment [**Mr Marchment**], who had an Australian Defence Force background. As alluded to at paragraph 18 above, the three men were involved in setting up STS, a business designed to sell survival and military equipment such as clothing, first aid kits, and knives.
21. Mr Hall and Mr Marchment are no longer members of ZERT Australia.

The sexual assault allegations

22. According to Mr Newman's former wife JV, when Mr Newman was aged 26 he entered a sexual relationship with one of her female relatives, who was then aged only 14. Mr Newman later told a friend, Mr Alifeleti Ahomana [**Mr Ahomana**], that the sexual relationship continued over a number of years and that he had fathered two children with the girl.
23. On Sunday 21 January 2018 JV attended Mt Druitt Police Station to report that Mr Newman had been sexually abusing another close relative, whom I will refer to as '*the child*'. It was alleged that the sexual abuse had commenced some four years previously, when the child was only 11 years old. JV also reported that the previous day Mr Newman had threatened to shoot the child in the face if he couldn't see her, and to bomb JV's car.
24. Detective Senior Constables Nathan McWhirter and Angela Sheedy interviewed the child and JV during the evening of 21 January. Both detectives are attached to the Penrith Child Abuse Unit. The allegations which the child and JV made against Mr Newman involved child sex offending of grave seriousness. They also

included an allegation that on one occasion Mr Newman placed his hands around the child's throat and attempted to choke her.

25. At the conclusion of the interviews the child's mobile phone showed more than 80 missed calls from Mr Newman, while JV's phone had 40-50 missed calls from him. On the advice of police, JV did not return to her home after the interview. She and her children went to stay with her own mother.

The night of 21 January 2018

26. During the evening of 21 January 2018 Mr Newman became very agitated due to his inability to get in contact with the child. He told a friend that the child had '*gone dark*' and that he needed '*to hunt her down*'. Over the course of the night Mr Newman went to various addresses in search of her, including the home of JV's mother. JV refused to allow him in the house, and rang police. Mr Newman left the area without seeing the child.
27. In the meantime Detectives McWhirter and Sheedy were themselves in search of Mr Newman. No one answered the door at his mother's house where he had been staying, so they rang his mobile phone number. In the second of two phone conversations, which by then was about 2:50am on 22 January 2018, Mr Newman told Detective McWhirter that he was out looking for the child. Detective McWhirter told Mr Newman not to contact her and that police wanted to speak with him, but Mr Newman replied that this would not happen until he had located the child.
28. After that Mr Newman did not return to his mother's home.

Events on 22 and 23 January 2018

29. On 23 January 2018 Mr Newman contacted friends Antonietta and Alifeleti Ahomana and asked if he could come to their home. He stayed there for three nights, at first telling them only that his former wife had an Apprehended Violence Order against him.
30. Then on 24 January 2018 Mr Newman disclosed to Mr Ahomana the earlier relationship, previously referred to at paragraph 22 above. Mr Ahomana told him he should hand himself in to police. Mr Newman replied that only his friend and business partner Joshua Hall could assist him to do this. Mr Newman also told Mr Ahomana that he wanted to contact the child, but would not do so because that would enable police to trace his location.
31. Police obtained and executed a search warrant at the home of Mr Newman's mother on the afternoon of 22 January 2018. Mr Newman was not there and his mother said she didn't know where he was. Inside the apartment police found four bladed weapons which were seized to ensure that Mr Newman could not access them.
32. On 23 January 2018 Detectives McWhirter and Sheedy learned that Mr Newman had gone in search of the child at the café where she had a casual job. She was

not there. That day the detectives also spoke with Mr Newman's step father Brian Newman, who lives on NSW's mid north coast. He was the licenced owner of several registered firearms, but he agreed to surrender these to police on a temporary basis until Mr Newman could be located. This was to ensure that Mr Newman could not get access to them.

33. Other steps taken by police to locate Mr Newman included setting up a PACE alert, or airport stop, obtaining a warrant to track the location of his mobile phone, and sending out what is called a NEMESIS message to all NSW police officers asking them to look out for Mr Newman. This message stated that he was wanted for multiple sexual assaults of a child, had made a violent threat towards his family, and had '*an obsession with police and military tactical equipment/methods and is said to be proficient in martial arts*'.
34. Police also visited the home of Mr Newman's sister but she was unable to assist. They also made enquiries with his various friends and associates.
35. Detective Sheedy spoke with her superior officer, Detective Chief Inspector Oxford, to request extra resources for the investigation and search. An additional team was tasked to assist, which consisted of Detective Sergeant John Breda, and Detective Senior Constables Tim Carey and Ben Anderson. All three officers were attached to the Child Abuse and Sex Crimes Squad.

The CrimeStoppers reports and COPS events

36. On the afternoon of 24 January 2018 Detective McWhirter was successful in obtaining a warrant for the arrest of Mr Newman for multiple child sex charges. The following day saw the issue of a media release appealing for people to contact CrimeStoppers if they had any information about Mr Newman.
37. A number of people did contact CrimeStoppers with relevant information. This included the following:
 - Mr Newman had trained in martial arts for several years, and ran a martial arts class at a local church;
 - he was learning Japanese swordsmanship;
 - he owned a large collection of edged weapons of Japanese and Philippines origins;
 - he was a collector of many knives;
 - he habitually carried a pocket knife;
 - he was known to be very aggressive;
 - he was developing a business selling military surplus items and training military specialists;
 - he liked to wear army clothes; and
 - he was involved in a group called ZERT and was possibly one of its bosses.
38. That evening a further CrimeStoppers report was received. The caller emphasised that Mr Newman was '*very well trained in martial arts and in weaponry combat in long and short swords and knives*'.

39. In addition, the NSW Police's COPS system recorded certain entries that were of relevance. These included:
- an allegation that in 2017 Mr Newman had produced a knife in the context of a dispute about money
 - two incidents of domestic violence between Mr Newman and JV in 2012 and 2013
 - a disclosure by Mr Newman in 2013 that he had previously attempted self harm and continued to have such thoughts. As a result he had been scheduled under the *Mental Health Act 2007*.
40. A key issue examined at the inquest was the extent to which, if at all, the information available from CrimeStoppers and COPS was known to the team of police officers who attempted to arrest Mr Newman on 26 January 2018.

The involvement of Joshua Hall

41. One of the people with whom police made contact in their search for Mr Newman was his friend and business colleague Joshua Hall. In addition to the three arresting police, Joshua Hall played a key role in the events of 26 January 2018.
42. Mr Hall is a former Australian Federal Police officer. He is currently employed as a NSW Sheriff's Officer. After the fatal shooting, he participated in a lengthy interview with police in which he described his relationship with Mr Newman and their interactions in the days leading up to his death.
43. Mr Hall first met Mr Newman in 2013 at a ZERT social event. They became friends and talked of setting up a business to sell equipment and training to law enforcement and military agencies, as well as to organisations similar to ZERT. Mr Hall's friend and fellow ZERT member Mr Marchment also became involved in plans for the business, that being STS.
44. Among the items STS offered for sale were combat-style knives. Mr Hall told the inquest that ZERT members commonly carried a knife, as this was part of their '*survivalist mindset*'. However until the fatal incident on 26 January 2018, Mr Hall had always considered Mr Newman to have a positive attitude towards police and law enforcement agencies.
45. Around 21 January 2018 Mr Newman called Mr Hall and told him that because of a personal issue he had to step down from his involvement in STS. He said that henceforth he would be uncontactable.
46. On 22 January 2018 investigating police rang Mr Hall to ask if he knew where Mr Newman was. This together with his recent conversation with Mr Newman caused Mr Hall to suspect that his friend had done something seriously wrong. He decided to assist the police to get Mr Newman into custody.

47. At the inquest Mr Hall explained why he wanted to help police find Mr Newman. This was partly because the business they were developing would be seeking government and business contracts, and therefore needed to be clear of any suspicion of wrongdoing. Mr Hall's resolve to assist police strengthened when he had a phone conversation with Detective McWhirter the following day, and guessed that the allegations against Mr Newman involved child sexual abuse. On 25 January 2018 he read the police media release referred to in paragraph 36 above, and was '*shattered*' to have his suspicions about Mr Newman confirmed.
48. As Mr Newman was no longer answering his mobile phone, Mr Hall was reliant on Mr Newman to contact him. This he did on a number of occasions over the period 22 to 26 January 2018. In some of these conversations Mr Hall thought Mr Newman sounded frantic and irrational. On other occasions he seemed to be resigned to handing himself into police custody. He and Mr Hall discussed meeting up on Friday 26 January 2018, which was the Australia Day public holiday.
49. Following these conversations, Mr Hall called Detectives Sheedy and McWhirter to advise them of the plan to meet up with Mr Newman on Friday. Both detectives warned Mr Hall not to bring Mr Newman into the police station himself, but to restrict his assistance to keeping police informed of where he was so that they could come and arrest him.

The involvement of the arresting team: 24 and 25 January 2018

50. I have noted that a team of three police officers attempted to arrest Mr Newman on 26 January 2018.
51. The team was led by Detective Sergeant John Breda, who had been a police officer since 1997. He joined the Child Abuse Squad in 2014 and headed a Child Abuse Response Team of four Senior Constables. They included Detective Senior Constable (now Sergeant) Benjamin Anderson, and Detective Senior Constable Tim Carey.
52. Detectives Anderson and Carey had known and worked with each other for some years, and were friends. They had worked with Detective Breda for approximately 12 months.
53. Detectives Anderson and Carey shared a Facebook messenger account which did not include Detective Breda. Their use of this platform to communicate with each other at critical times during the operation to arrest Mr Newman was a significant issue in this inquest, to which I will return.
54. On 24 January 2018 Detectives Anderson and Carey were working at the headquarters of the Penrith Child Abuse Squad, where they had an informal talk with Detective McWhirter. He told them of a person who was wanted for serious child sex offences, and who appeared to be avoiding arrest.

55. That same afternoon Detective Breda received a phone call from DCI Oxford about the Newman investigation. They discussed the possibility that Detective Breda's team would assist in the arrest of Mr Newman. DCI Oxford told Detective Breda there was a prospect of a meeting with Mr Newman on Friday that week.
56. Following this, at 3.55pm Detective Breda formed a WhatsApp chat group with Detectives Anderson and Carey, which he named 'Seal Team'. He texted that their team *'may have a job regarding locating outstanding offender'*. Detective Carey guessed correctly that this referred to the Newman job. Detective Anderson texted: *'SHOOT assemble'*.
57. The court heard that 'SHOOT' is an acronym which Detectives Carey and Anderson had invented with reference to their work in seeking and arresting child sex offenders. It stood for 'Serious High Risk Outstanding Offender Team'. It did not refer to the use of firearms when arresting offenders.
58. Soon afterwards Detective Breda advised Detective McWhirter that his team was available to assist with the arrest of Mr Newman. He also forwarded to Detectives Anderson and Carey an intelligence profile of Mr Newman which had been prepared by Detective McWhirter's team. The profile noted that Mr Newman was wanted for aggravated sex offences, that his father (in fact his step father) had four firearms at his home, and that his business partner Joshua Hall had a firearms licence.
59. The contents of the intelligence profile raised concerns for Detectives Anderson and Carey. At 4.44pm that afternoon Detective Carey used the Facebook account which he shared with Detective Carey, to text:
- 'Apparently access to guns. Might need tou to do arrest. He will probably be strapped I reckon. Bet he is wanting to kill [the child] and himself'*.
60. 'Tou' was a reference to the NSW Police Force's Tactical Operations Unit. This is a specialised unit trained to undertake law enforcement tasks which involve a risk of violence. These include executing arrest warrants for dangerous persons. At the inquest Detective Carey explained that the term *'strapped'* referred to the possibility that Mr Newman would be armed with a weapon.
61. In a similar vein, the next morning Detective Anderson messaged Detective Carey as follows: *'Penrith bloke bulk access to pistols'*, followed by: *'Just read his intel profile, four at his home and nine at another ...black pyjamas should definitely be doing the takedown'*.
62. *'Penrith bloke'* was a reference to Mr Newman, and *'black pyjamas'* was another reference to the Tactical Operations Unit.
63. That evening Detective Breda texted Detectives Anderson and Carey that there was a possibility Mr Hall would meet up with Mr Newman on Friday. By the evening of Thursday 25 January 2018 it was understood between the three officers that provided they were not needed for another job, they would work on the arrest of Mr Newman the next day.

The morning of 26 January 2018

64. On 26 January 2018 Detectives McWhirter and Sheedy were both on leave, as it was Australia Day. Detectives Breda, Anderson and Carey were on call and were awaiting confirmation from Mr Hall about the proposed meeting with Mr Newman.
65. At 10.57am Detective Breda texted Detectives Anderson and Carey that he would check if there were any CrimeStoppers reports about Mr Newman. At 11.41 am he texted again, to say there was a number of them and he was confirming some of these with a superior officer. Then at 12.10pm he texted Detectives Anderson and Carey that the reports did not contain anything new.
66. This aspect of the evidence received significant attention at the inquest. It will be evident from the description at paragraph 37 above that in fact, the CrimeStoppers reports contained information which was very relevant to the risk Mr Newman posed to arresting police officers. Of particular significance is the information that he habitually carried a knife, was proficient in martial arts, and was known to be *'very aggressive'*.
67. But at the inquest Detective Breda said he *'didn't really read'* the narratives of the CrimeStoppers reports, stating that there were too many. As a consequence he was unaware of their contents, except for a reference to Mr Newman keeping *'swords and similar replica weapons'*. This did not unduly concern Detective Breda, as it was unlikely that Mr Newman would be able to conceal a sword.
68. It followed that Detectives Anderson and Carey too were unaware of the contents of the CrimeStoppers reports, since Detective Breda had taken the job of reviewing these.
69. Meanwhile Mr Hall's plan for 26 January 2018 was to meet up with Mr Marchment, whom he had apprised of his intention to assist police in getting Mr Newman into custody. He told the court that Mr Marchment was supportive of this plan. The two would then meet up with Mr Newman, pursuant to the arrangement he and Mr Newman had discussed on 24 January.
70. At 12.48pm Detective Breda received the call he had been waiting for. Mr Hall rang to say he had arranged to meet Mr Newman in the Maroubra area. He advised Detective Breda to be quick with the arrest, as he expected it would only be a short meet up. He agreed to try to delay matters while Detective Breda organised an arresting team.
71. Detective Breda then texted his team to advise: *'We are go head to Maroubra area they are going to meet go now...'* He also rang Detective McWhirter to notify him of the plan. Detective McWhirter told him that he and Detective Sheedy wanted to join them for the arrest, or at least to be there to interview Mr Newman following the arrest.
72. Detectives McWhirter and Sheedy were at that time some distance from Maroubra, They got ready to drive there to meet their three colleagues. Their

understanding was that at the meeting they would brief the other three officers with their information about Mr Newman, then form a plan for his arrest which they would discuss with DCI Oxford.

73. Between 2.00pm and 2.30pm the following took place:

- Detective Breda rang DCI Oxford to inform him that his team intended to arrest Mr Newman that afternoon;
- DCI Oxford asked if there were enough officers for the arrest, to which Detective Breda replied: *'Mate, I've got four, I've got myself and three others ...absolutely, I'm fine mate. Shouldn't be any, any drama. We'll, we think we're going to get him into a pub'*; and
- Detective Breda texted Detective McWhirter that they had settled on the location of Snape Park Maroubra for their police meeting.

74. Meanwhile Mr Newman's friends Antonietta and Alifeta Ahomana were driving him to Maroubra. Their expectation was that he would meet with Mr Hall and hand himself in to police. Earlier that morning Mr Newman had told Mr Ahomana that he wanted to assassinate his ex-wife, but Mr Ahomana told him that his children would then have to grow up without a mother or a father.

At Snape Park, Maroubra

75. Detective Breda was the first to arrive at Snape Park. At about 2.20pm he rang Detectives McWhirter and Sheedy to ask if a firearms check had been done in relation to Mr Newman. According to Detective Sheedy, she told Detective Breda the following:

- Mr Newman's step father had voluntarily surrendered his firearms;
- Mr Newman was proficient in martial arts; and
- he was *'tactically obsessed'* and tactical gear had been found in his house.

76. Detective Breda told the inquest that he had not previously been aware that Mr Newman was skilled in martial arts. He messaged Detectives Anderson and Carey: *'All firearms seized ...martial arts, so we go hard'*. At the inquest he denied having been told by Detective Sheedy that Mr Newman was *'tactically obsessed'* and had tactical gear at his home.

77. When Detectives Anderson and Carey joined Detective Breda at Snape Park they had a discussion, but the evidence of its contents is not clear. Mr Hall had not yet advised them of the location to which he would bring Mr Newman.

78. According to Detectives Breda and Anderson, a general arrest plan was discussed that Detective Breda would get behind Mr Newman and put him in a *'bear hug'*, upon which he and Detective Carey would approach and either help to hold Mr Newman, or bring him to the ground. Detectives Carey and Anderson understood the term *'bear hug'* to mean that Detective Breda would come behind Mr Newman,

place his arms around his upper body, and pin his arms to his sides. They would then move in to assist.

79. I note that Detective Carey thought this plan was formed only as the three officers approached the Maroubra Junction Hotel on foot.
80. In any event, at some point while they waited at Snape Park to hear from Mr Hall, the three officers decided to drive to the Maroubra street where Mr Newman's sister lived, in hopes of seeing him in that area and arresting him there. No one communicated this decision to Detectives McWhirter and Sheedy, who were on their way to Snape Park.
81. Almost as soon as the three officers arrived at the street, Joshua Hall texted Detective Breda that he and Mr Newman were at the Maroubra Junction Hotel in the outdoor smokers' section, known as the beer garden. None of the three officers had been to that hotel before, nor did they know its layout.
82. The three officers drove straight to the Maroubra Junction Hotel, parked their car and walked in. They did not communicate to Detectives McWhirter or Sheedy their intention to proceed immediately with Mr Newman's arrest. Nor did Detective Breda update DCI Oxford of the revised plan to perform the arrest with three officers only.

Inside the Maroubra Junction Hotel

83. Mr Hall, Mr Marchment and Mr Newman arrived at the hotel shortly before 3.00pm. According to Mr Marchment, the plan was to have a drink with Mr Newman and help him arrange his affairs, then take him to the Maroubra Police Station, which was only some 200 metres down the road.
84. On the way to the hotel Mr Newman had become upset and told his friends he needed two more days before turning himself in to police, because he wanted to see the child, his mother, and a friend. Mr Hall and Mr Marchment told him this would not be possible, because his face and name had been publicly released. Mr Newman said he expected to be in custody for a while, and he gave Mr Hall his oldest child's passport and a sealed letter for her.
85. As the three men walked into the hotel Mr Hall asked Mr Newman if he had anything '*compromising*' on him, to which Mr Newman replied that he did not. At the inquest Mr Hall said that by '*compromising*' he meant a weapon or drugs. Mr Marchment said he too asked Mr Hall if he had '*anything like a knife*' on him, to which Mr Newman replied that he did, while pointing to his backpack. From this Mr Marchment inferred that he had a knife inside it.
86. The three men bought drinks at the bar and moved into the hotel's beer garden. This outdoor area is some ten metres in length and 6.8 metres wide. At that time it was furnished with four heavy timber tables which had attached bench-style seating. In addition the area contained a number of poles and columns.

87. The three men seated themselves at the rear corner of the beer garden. Mr Newman sat with his back to the wall, while Mr Hall and Mr Marchment sat facing him across the table.
88. Mr Hall texted Detective Breda their location. In response to questions texted by Detective Anderson, Mr Hall messaged that it was '*fairly quiet*' in the hotel, and provided a description of what Mr Newman was wearing.
89. Meanwhile Mr Newman was becoming uneasy and agitated. To distract him Mr Marchment jokingly asked if he had made a will. Mr Newman replied he had not, and that if anything happened to him he wanted everything to go to his children. He then wrote on a piece of paper titled '*my last will [and] testament*' and started the sentence '*I would like*', but did not complete it.
90. While Mr Newman was writing, Mr Hall and Mr Marchment became aware that a man had entered the beer garden and had taken a seat near the entrance. Mr Hall and Mr Marchment correctly guessed the man was a police officer in plain clothes.
91. Mr Hall and Mr Marchment were completely taken by surprise by what happened next.

The change to the arrest plan

92. As the three officers prepared to enter the Maroubra Junction Hotel, Detective Anderson said he would go into the beer garden first to ensure that Mr Newman was there. Detective Anderson walked through the hotel to the beer garden and took a seat at one of its four tables. Detectives Breda and Carey remained just outside the glass door to the beer garden.
93. Once seated, Detective Anderson noticed there were other entrances to and from the beer garden, although he did not register whether or not these provided clear exits. He had expected to see a companion with Mr Newman, being Mr Hall, but he was surprised to see Mr Marchment as well, a person who was unknown to him.
94. Detective Anderson noted further that Mr Newman was wearing sunglasses and a hat which he had pulled down over his face. Detective Anderson told the court the three men appeared to be calm and not agitated. There was a backpack on their table, not far from Mr Newman.
95. Detective Anderson told the court that he had been concerned by the unexpected presence of Mr Marchment, the additional entrances to the beer garden, and Mr Newman's appearance. He considered that these factors heightened the risk level of the operation. He decided it was necessary to change the arrest plan.
96. Within 30 to 60 seconds of his arrival in the beer garden Detective Anderson messaged Detective Carey on Facebook these words: '*Just come out glock up*'. Detective Carey texted in response: '*me gun?*' Detective Anderson texted back in quick succession: '*Glock up order onto ground*' and '*me and you*'. Detective Anderson texted in reply: '*Ok*'.

97. Two features are immediately striking about Detective Anderson's texts. First, the course of action which he was communicating to Detective Carey was one of arrest at gunpoint, a radical departure from the existing plan whereby Detective Breda would initiate the arrest by approaching Mr Newman and physically restraining him.
98. Secondly, neither Detective Anderson nor Detective Carey communicated the change of plan to Detective Breda.

The attempted arrest

99. Detective Breda entered the beer garden closely followed by Detective Carey. In accordance with what he understood to be the arrest plan, Detective Breda immediately approached Mr Newman. To do this he had to make his way through the restricted space between the side wall of the beer garden and the tables and benches. Realising there was not sufficient room to get behind Mr Newman as planned, Detective Breda reached towards him, saying the words: *'NSW police, you're under arrest'*.
100. At the same time, Detective Anderson got onto a table and shouted *'police get on the ground'*. Detective Carey too shouted these words. Both had their firearms drawn and pointed downwards at a 45 degree angle.
101. At these words both Mr Hall and Mr Marchment immediately got on the ground. Mr Newman however said *'oh fuck'* and stood up. He faced Detective Breda and they struggled together. Detective Carey saw Mr Newman break free, then take a knife from the front pocket of his pants. It was a steel combat style knife with a 95mm double-edged blade. Mr Newman flicked open the knife and stabbed Detective Breda twice in the area of his ribcage.
102. Detective Breda managed to break free and move backwards behind Detective Carey, as Detectives Carey and Anderson both shouted to Mr Newman to drop the knife. Mr Newman took a step towards both officers, still holding the knife. Detective Anderson fired his pistol, but it did not discharge as there was a stoppage. As he cleared his weapon he yelled to Detective Carey: *'Shoot him Tim'*. Detective Carey was already firing his weapon at Mr Newman, who was by then approximately 2-3 metres from the two officers.
103. Detectives Carey and Anderson fired a total of seven shots at Mr Newman. These hit him in the hand, back, abdomen, arm and hip. Mr Newman fell to the ground but he did not let go of his knife, despite repeated calls from the two officers to do so. Detective Anderson shouted to him: *'Throw the knife away, throw the knife away, you're going to bleed out'*.
104. Detective Anderson managed to get their police radio from Detective Breda, who had collapsed to the ground, seriously wounded. He called for police assistance.
105. Help was quick to arrive, as the Maroubra Police Station was only a short walk away. When the assisting officers ran in they saw Mr Newman lying on the

ground in the centre of the beer garden, badly wounded and bleeding heavily. Despite this he continued to hold his knife and he was attempting to pull himself upwards. Detective Breda lay bleeding on the ground near the entrance to the beer garden, receiving first aid from hotel patrons.

106. The assisting police surrounded Mr Newman, directing him to drop his knife. Officers McCarron, Carter, Geras and Mamacan had their firearms drawn and pointed at Mr Newman. Officer Gray considered doing the same, but decided that the risk of harm posed by Mr Newman was sufficiently managed by the other officers' drawn firearms. He drew his Taser instead. Officer Irhazi also drew his firearm and was directed to watch Mr Hall and Mr Marchment, who remained on the ground.
107. The assisting police officers all described Mr Newman saying '*fuck you*' in their general direction. They saw him place the knife at his own throat and inflict a cut which drew blood. Then he collapsed forward and ceased moving.
108. Two officers moved in to take the knife from under Mr Newman's body, after which all the police officers reholstered their weapons. They commenced first aid for Mr Newman and Detective Breda.
109. Ambulance officers arrived at 3.16pm, but they were unable to revive Mr Newman and he died at the scene.
110. Detective Breda was very seriously wounded. He was taken by ambulance to St Vincent's Hospital, where he was found to have two stab wounds which had lacerated his right kidney, liver and diaphragm, and injured his retroperitoneum. He remained in ICU for many days and afterwards underwent a long period of rehabilitation.

The post mortem examination

111. Forensic pathologist Dr Sairita Maistry performed a post mortem examination of Mr Newman on 30 and 31 January 2018. She identified eight gunshot wounds to Mr Newman's chest, left hand, arm, shoulder and left hip. She also identified a horizontal incised wound to the right side of his neck, which had not inflicted major injury.
112. Dr Maistry traced the gunshot wound tracks inside Mr Newman's body, and found that four of these had inflicted internal injuries which were likely to have been fatal. She concluded that the cause of Mr Newman's death was multiple gunshot wounds.
113. Ballistics examinations established that of the seven cartridges found at the scene, three had been fired from Detective Anderson's pistol and the other four from Detective Carey's pistol. The examinations were unable to identify which of the two firearms had discharged the fatal shots.
114. I now turn to consider the issues examined at the inquest.

What was the original plan to arrest Mr Newman?

115. The evidence supported the conclusion reached by Senior Sergeant Davis in his report, that the original arrest plan formed by Detective Breda and agreed to by the other two detectives was:

'to move in, and ...apply a 'bear-hug' style of restraint to Mr Newman should he resist. Further, should such resistance be met, the other two officers would assist [Detective Breda] by physically taking Mr Newman to the ground'.

Detective Breda's evidence was that he formed this plan and communicated it to Detectives Anderson and Carey while they were at Snape Park. While waiting for these two officers to arrive he had rung Detective Sheedy to enquire about the search warrant which had been executed at the home of Mr Newman's mother on 22 January. It was during this conversation that Detective Breda became aware for the first time that Mr Newman had involvement in martial arts, prompting his WhatsApp message to Detectives Anderson and Carey: *'Martial arts so we go hard'*.

116. It appears that the only further discussion the three officers had about this arrest plan took place when they learned that Mr Newman was at the Maroubra Junction Hotel. As they approached the hotel on foot they agreed that Detective Anderson would go into the beer garden first, to confirm that Mr Newman was there.
117. The adequacy of this plan is now considered.

Was an appropriate risk assessment carried out for the operation to arrest Mr Newman?

118. No formal risk assessment in relation to the operation to arrest Mr Newman was conducted by any of the involved officers, including Detectives McWhirter and Sheedy.
119. A formal risk assessment aims to bring together all relevant information known about the target of the police operation, and to use this information to identify and evaluate potential risks to police and to the public. As part of the process, an operation plan is formulated and roles are assigned to each team member. If a place of arrest has not yet been identified, the plan is expected to identify likely places of arrest, with accompanying contingency plans. The plan and risk assessment are then submitted through the ranks of superior officer, inspector, and superintendent.
120. In his statement and evidence the Officer in Charge, Detective Chief Inspector Jason Dickinson, expressed the view that in this case policy and procedures should have caused the involved officers to undertake *'a more thorough and formal risk assessment'*. In his opinion, given the characteristics of Mr Newman which were known to Detectives McWhirter and Sheedy, it may have been appropriate for these two officers to have performed a formal risk assessment at the stage when they were seeking a warrant for his arrest. A key advantage

would have been to bring together all relevant information about Mr Newman into one document, for the benefit of all participating officers.

121. For his part Sergeant Watt considered it may have been appropriate to conduct a formal risk assessment at the point where it became known that Mr Newman regularly carried knives. This was because of the very high risk which a person armed with a knife poses to police and the public, especially within confined spaces.
122. At the inquest Detective Breda was asked whether he had considered undertaking a formal risk assessment when planning for Mr Newman's arrest. He replied that this was not an option due to the urgent need to perform the arrest.
123. I accept that a formal risk assessment process usually cannot be completed within a short space of time, and that for the bulk of police work it is neither necessary nor feasible. For this reason police officers are trained to perform an informal risk assessment, and to be ready to reassess the risk and the plan if the circumstances around them change.
124. Unfortunately in the present case, the evidence leaves no room for doubt that the informal risk assessment which was undertaken was seriously inadequate.
125. It is clear that Detectives Breda, Anderson and Carey apprehended an urgent need to arrest Mr Newman. There can be no doubt that this was justified. The sexual assault allegations against Mr Newman were of grave seriousness and were ongoing. In addition Mr Newman had made threats to harm the child and her family, and was seeking ways to make contact with her. He was aware that police were looking for him, and he was actively avoiding arrest. Mr Newman posed a high level of risk to his family, and the three officers rightly regarded his arrest as an absolute priority.
126. However the need to arrest Mr Newman did not obviate the need to plan properly for it, a point emphasised by both Senior Sergeant Davis and Sergeant Watts. In his report Senior Sergeant Davis stated that:

'... throughout their training police officers are continually reminded, whether working as a single unit or in a multiple officer response situation, [that] for police to achieve a safe and peaceful resolution requires a planned and coordinated approach'.
127. While Detective Breda should be commended for prioritising the need to arrest Mr Newman, the conclusion cannot be escaped that his understanding of the associated risks was seriously limited. This compromised the plan that he formed for Mr Newman's arrest.
128. This was principally due to Detective Breda's failure to acquaint himself with the content of the CrimeStoppers reports. I note that these reports were accessible to all police officers, and that no issues of access would have hindered his enquiries.

129. It appears that Detective Breda's interest in the content of the CrimeStoppers reports was principally to identify a location for Mr Newman. As a result he missed intelligence that was highly relevant to Mr Newman's risk level, namely that he was *'known to be aggressive'*, collected knives, habitually carried a pocket knife, and was *'very well trained in martial arts and in weaponry combat in long and short swords and knives'*.
130. In his report Senior Sergeant Davis commented upon the *'low key nature of the information'* on which Detective Breda based his arrest plan. In the opinion of Senior Sergeant Davis, not knowing the CrimeStoppers information gave the three officers a *'false sense of security'* and a *'certain level of complacency'*. This led them to select an approach to the arrest which did not reflect the actual level of risk posed by Mr Newman.
131. Detective Chief Inspector Dickinson reached a similar conclusion. In his opinion the arrest of Mr Newman ought properly to have been considered high risk. In his statement he concluded:
- 'The lack of planning and communication by the officers engaged in the attempt to arrest Mr Newman led to a failure to consider alternative strategies for effecting the arrest which may have reduced the risk involved'*.
132. Sergeant Watt concurred. In his opinion the available information necessitated a plan of arrest that was suitable for a likely armed offender. Within this context the tactic of *'weaponless control'* was not an appropriate use of force option. In addition the three officers should have seriously considered getting a briefing from Detectives McWhirter and Sheedy to guide their approach, given those officers' level of knowledge about Mr Newman.
133. Significantly, Detective Breda agreed that had he known the content of the CrimeStoppers reports he would have taken a very different approach to Mr Newman's arrest. He told the court that at the least he would have worn a vest, and would have challenged Mr Newman from a distance rather than physically approaching him. Sergeant Watt agreed that these steps would have been appropriate to the risk of harm posed by Mr Newman.
134. I accept the evidence of Senior Sergeant Davis, Sergeant Watt and Detective Chief Inspector Dickinson, that Detective Breda's planning for the arrest was flawed, in that he failed to access information highly relevant to the risks associated with it. This resulted in a choice of tactic that was not commensurate with the level of risk involved.
135. As to why Detective Breda did not properly read the CrimeStoppers reports, at the inquest he said this was because there were too many. As the reports total thirty pages, and it is apparent Detective Breda had some time that morning while he awaited news from Mr Hall, this explanation cannot really be regarded as adequate.
136. Detective Breda also stated that he would have expected the CrimeStoppers reports about Mr Newman's use of knives and propensity for aggression to have

been highlighted on the system with a warning or alert. He said these were the kind of matters which generally prompted an alert. He became emotional when telling the court that he had *'relied on the process'*.

137. While Detective Breda may have been justified in expecting a warning or alert in relation to the CrimeStoppers material, I do not think such warnings are intended to take the place of an actual review of their content, in particular where there is sufficient time for an officer to do so.
138. From a compassionate point of view it is discomfoting to make adverse comment about Detective Breda's preparation for this operation. He is an experienced police officer of many years' standing, with so far as I am aware, a faultless service record. He was right to perceive an urgent need to arrest Mr Newman, for the safety of Mr Newman's family.
139. It must also never be forgotten that whatever the shortcomings of the arrest plan, it was Mr Newman alone who made the decision to violently attack Detective Breda when he called for him to submit to a lawful arrest. Detective Breda was very seriously injured and he has endured a long period of physical, and perhaps emotional, suffering as a result.
140. I am mindful of these factors. But I must also keep in mind one of the important functions of a coronial inquest. This is the opportunity which it provides to reflect upon the decisions and conduct of police officers, in order to identify whether any policies or training might require review. The principal aim is to reduce the risk of harm to police officers and members of the public in the future.

Was the decision of Detectives Anderson and Carey to draw their firearms to arrest Mr Newman an appropriate use of force?

141. There can be no doubt that when Detective Anderson instructed Detective Carey to *'just come out and glock up'*, this represented a very significant departure from the original plan formed by Detective Breda.
142. In his report Senior Sergeant Davis observed that while officers sometimes form a secondary or back up plan when preparing for an operation, the action communicated to Detective Carey by Detective Anderson was in fact an entirely separate plan to the one originally devised:

'Clearly this arrest plan differed from the original plan, with Mr Newman now being arrested at gunpoint, rather than Sergeant Breda effecting a weaponless control method of arrest upon Mr Newman'.

143. At the inquest Detective Anderson was asked what had caused him to change the original arrest plan to one of arrest at gunpoint. In response he cited the three features which I have described at paragraphs 93 to 95 above. He told the court that these features heightened his sense of the risk level and required an escalation in the planned use of force.

144. Detective Carey was also asked why he had perceived a need to escalate the use of force to the drawing of firearms. He too cited the presence of Mr Marchmont, as well as Mr Newman's wearing of sunglasses and hat pulled down. Detective Carey added that he had seen a backpack on the table close to where Mr Newman was sitting, and had no knowledge whether it contained a weapon.
145. In making decisions about the appropriate use of force, NSW police officers are guided by:
- the Australia and New Zealand Policing Advisory Agency [ANZPAA] *Use of Force Principles*; and
 - Sections 230 and 231 of the *Law Enforcement Powers and Responsibilities Act 2002*.
146. Police officers are taught that they may only use force that is reasonable, necessary and proportionate to the circumstances. The degree of force is to be no more than is *'reasonably necessary for the safe and effective performance of their duties'*.
147. In his report Senior Sergeant Davis outlined the circumstances in which, according to NSW Police policy and training, the use of firearms is justified. Firearms may be used *'...when there is an immediate risk to the officer's life or the life of someone else, or there is an immediate risk of serious injury to the officer or someone else, and there is no other way of preventing that risk'*.
148. In accordance with the NSW Police Handbook, police officers are further taught that they must not draw, point or aim their firearm *'...unless you consider you are likely to be justified in using it.'*
149. In light of these policies, Sergeant Watt was asked whether in his opinion the decision to draw firearms was an appropriate use of force, in the circumstances as Detectives Anderson and Carey perceived them to be.
150. Sergeant Watt acknowledged that the unexpected presence of a third person who was unknown to police represented a heightening of the risk level. It justified a reassessment of the suitability of the arrest plan. However Sergeant Watt did not agree that Mr Newman's appearance was of any particular significance. Attempts by Mr Newman to disguise his appearance might have been expected, as police had known for days that he was avoiding arrest. Nor did the placement of a backpack on the table have any certain significance.
151. Overall, Sergeant Watt did not consider that the factors relied upon by Detectives Anderson and Carey objectively reflected a significant heightening of the level of risk. At most, the circumstances justified a further text communication or discussion between the three officers, to evaluate the suitability of the original arrest plan.
152. I note the submission made on behalf of the two detectives, and mentioned in the report of Senior Sergeant Davis, that their decision to enter with firearms drawn was fortuitous in that it may have saved Detective Breda's life. This was because

their weapons were ready for use before Mr Newman could inflict further injury upon Detective Breda, and perhaps upon others in the area.

153. While this may have been the case, it is likewise possible that the sight of the two officers with firearms drawn heightened Mr Newman's agitation to the point where he attacked Detective Breda. Of course this is not to diminish Mr Newman's personal culpability for carrying out this terrible act.
154. In any event, and as conceded by Sergeant Watt in his evidence, the question of whether an officer's use of force is justified needs to be considered on the basis of the circumstances known to him or her at the time of that decision. The decision is not to be justified by subsequent events.
155. I find that the circumstances known to Detectives Anderson and Carey did not provide a reasonable basis for them to conclude they were likely to be justified in using their firearms. The decision they made to draw firearms to arrest Mr Newman was not an appropriate use of force.

Was the decision of Detectives Anderson and Carey to discharge their firearms in accordance with NSW Police policy and training?

156. Having regard to the 'use of force' guidelines referred to in paragraph 145 above, I find that Detectives Anderson and Carey had no other tactical option but to discharge their firearms at the time they did so.
157. Once Mr Newman had taken out his knife, attacked Detective Breda with it, and advanced upon the two officers, there were reasonable grounds for their belief that discharging their pistols was necessary to prevent immediate risk of serious injury to themselves or to others in the area. This also was the opinion of Senior Sergeant Davis and Sergeant Watt.
158. In reaching this conclusion I also note the following:
 - Mr Newman had already stabbed Detective Breda twice to his torso area;
 - he was refusing to relinquish his knife despite police directions to do so;
 - he was moving towards the two officers while still holding his knife; and
 - at the time the officers discharged their pistols he was within two to three metres of them.
159. I accept the further expert opinion of Senior Sergeant Davis and Sergeant Watt that at this critical point, other tactical options would have been ineffective in preventing the risk of serious injury to the officers and others in the area. Use of Taser and/or oleoresin capsicum spray is problematical within confined spaces, and could not have been counted on to immobilise Mr Newman in the time available.
160. In any event, none of the three officers had these appointments with them at the time. The court heard that each had in their possession only their police issue firearm, spare ammunition, and handcuffs.

161. According to Senior Sergeant Davis, the failure of the three officers to carry their required appointments of baton and oleoresin capsaicin spray was a breach of NSW Police Force policy and training guidelines. I accept this was the case. I also accept that the officers' failure to have these appointments with them did not have any impact on the outcome of the operation.

Was there appropriate and effective communication between the involved officers in respect of the planning and execution of the arrest of Mr Newman?

162. The evidence establishes that the principal failures in communication were these:

- the failure of the arresting officers, in particular Detective Breda, to be aware of information about the risk posed by Mr Newman, in particular the information available from the CrimeStoppers reports.
- the failure of Detectives Anderson and Carey to apprise Detective Breda of the change to the original arrest plan.

163. I have addressed above the first communication deficiency.

164. Commenting upon the second communication deficiency, in his report Senior Sergeant Davis stated that:

'...to devise a separate plan without full acknowledgement from all involved is fraught with danger, and is generally considered an unsound operational practice'.

165. At the inquest Sergeant Watt put the matter more plainly. In his opinion the formation and implementation of an alternative arrest plan without the awareness of the other officers involved was inherently risky and against police operational principles.

166. Detective Anderson told the court that he had never intended his message to 'glock up' to be sent to Detective Carey only. It was 'a split second decision'. As Detective Breda was standing directly behind Detective Carey, he had assumed the latter would pass the message on to Detective Breda.

167. As we know, Detective Carey did not pass the message on to Detective Breda. At the inquest he explained that he had assumed Detective Breda was able to see the message on his (Detective Carey's) phone.

168. It is clear that neither Detective Anderson nor Detective Carey took adequate steps to inform Detective Breda of the change of arrest plan. There were very strong reasons why they needed to do so. Detective Breda was their senior officer and was entitled to know of the change. More importantly, it needed to be front and centre of the two officers' minds that, unaware of the change of plan, Detective Breda was about to physically approach Mr Newman at the point where they were challenging him with firearms drawn.

169. Detective Carey conceded in his evidence that he ought to have ensured that Detective Breda was made aware of the change, given his role as the senior officer and the risk to which he was exposed.
170. It is further apparent that there was a failure of communication between the arresting team on the one hand, and Detectives McWhirter and Sheedy on the other.
171. Detectives McWhirter and Sheedy had been investigating Mr Newman for some days before the arresting team became involved. They had information about him which was unknown to Detectives Breda, Anderson and Carey. Two examples are their awareness that knives were found at the place where Mr Newman had been staying, and that he had an obsession with military and tactical equipment. The significance of this information is evident.
172. It is less evident why no effective pooling of information took place between the investigating and the arresting teams. As suggested by DCI Dickinson, Detectives McWhirter and Sheedy ought perhaps to have carried out a formal risk assessment which would have made all their information available to the arresting team. Since former Detective McWhirter was excused from giving evidence at the inquest, this possibility could not be further explored. Equally it may be argued that notwithstanding the need for action, the arresting team ought to have waited at Snape Park to receive a briefing from Detectives McWhirter and Sheedy, as the latter two were expecting.
173. I accept the submission of Counsels Assisting, that these failures of communication were the result of individual errors of judgement, and did not reflect any deficiency in NSW Police policy or training.
174. I have also given consideration to the arresting officers' use of multiple communication platforms. As noted, Detective Anderson communicated his change of arrest plan using a Facebook messenger account to which Detective Breda did not have access.
175. I have been provided with NSW Police Force policies relating to use of social media platforms by NSW police officers. These do not prohibit operating police officers from using private platforms. The use by Detectives Anderson and Carey of a messaging service which only they shared was not in breach of any policy, protocol or training.
176. Nevertheless the way in which the two detectives used their messaging service exposes the problems which can be created when multiple means of digital communication are used in an operation. This is a complex issue and the inquest did not hear evidence in relation to it. For this reason I will merely recommend that these findings be provided to the NSW Commissioner's Office of General Counsel, for their consideration as to whether any review of policy or training is warranted.

The conduct of the assisting officers

177. Neither Senior Sergeant Davis nor Sergeant Watt expressed criticism of the conduct of the officers who came to the assistance of the arresting team.
178. I accept that there is no basis for adverse comment regarding their conduct. When the assisting officers arrived Mr Newman was on the ground, seriously injured. Nevertheless they were correct to assess that he still represented a threat. He had severely wounded one officer with his knife and was making attempts to get up from the ground, still holding the knife. It was reasonable to conclude that he intended to inflict further harm if he could.
179. Given this, the response of the assisting officers to draw firearms and (in the case of Senior Constable Gray) a Taser was in accordance with use of force principles. The officers' evidence at court demonstrated that on arrival at the scene they each assessed the level of threat and made their decisions accordingly. Once the threat level had diminished they appropriately reholstered their weapons and gave immediate first aid.

Manner of death: 'suicide by police officer'?

180. In closing submissions, Mr Tedeschi QC argued that Mr Newman's death ought to be characterised as one of '*suicide by police officer*'. His death, Mr Tedeschi said, was the result of a premeditated attack upon a police officer, performed with the intention of provoking fellow police officers to fatally shoot him. As such, Mr Newman's death was '*an extraordinarily unusual event*' which was impossible to predict and impossible to plan for.
181. In support of his submission Mr Tedeschi relied upon evidence that:
- Mr Newman knew he faced a lengthy jail term if the allegations against him were proved;
 - he had taken an assault knife into the hotel;
 - he had commenced to write a will, and had prepared a letter for his oldest child;
 - when challenged by Detective Breda he immediately attacked him; and
 - after being shot he refused to relinquish his knife, and used it on himself in an apparent attempt to ensure his own death.
182. Mr Tedeschi urged that in such extreme and unpredictable circumstances, it would not be reasonable to criticise the conduct of the involved officers.
183. In reply, Counsel Assisting submitted that it was not possible on the evidence to conclude exactly what Mr Newman's intention was, either when he attacked Detective Breda or in the lead up to that event.
184. In my view the evidence supports the submission of Counsel Assisting. A finding of death by suicide requires careful examination of the evidence. The features which Mr Tedeschi relied upon to support his submission are capable of other

interpretations, and do not necessarily lead to the conclusion that Mr Newman's intention was to bring about his own death.

185. The court had heard evidence that ZERT members, and Mr Newman in particular, habitually carried knives. The letter which Mr Newman prepared for his oldest child might equally have been prompted by his awareness that he was going to jail for a long period. Furthermore, according to Mr Marchment, Mr Newman's commencement of a will in the hotel was a response to a joke which he (Mr Marchment) had made to distract him.
186. I acknowledge it is likely that when Mr Newman used his knife on himself, he had determined that he would not be taken into police custody alive. However the evidence does not enable me to conclude exactly when he formed this intention. In particular it does not enable me to conclude that his attack on Detective Breda was performed with this intention.
187. Nor would it be consistent with the evidence to accept Mr Tedeschi's submission that the involved police could not reasonably have foreseen that Mr Newman might react violently to the attempt to arrest him. Detective Breda himself acknowledged that with a proper awareness of the available information, he would have taken a very different approach to Mr Newman's arrest. There is no need for me to reiterate that information highly relevant to the risk level posed by Mr Newman was overlooked, resulting in the formation of an arrest plan that was not appropriate to the threat he presented.
188. The submission is frequently made in cases such as this, that courts should take care to avoid hindsight bias in making findings about split second decisions which police officers have to make in critical situations. I accept that submission. Indeed it is precisely because of the dangerous and unpredictable nature of much police work, that their training places so much emphasis on risk assessment and planning.
189. This point was emphasised by Senior Sergeant Davis in his report:

'Generally, officers are confronted by an armed subject without warning, as was the case on this occasion. Generally, police are not prepared for, nor are they suspecting, such attacks, and/or the subject's violent reaction to their presence. Officers in some circumstances unwittingly place themselves in a position of danger or at extreme risk upon their approach to or egress from the situation encountered. All of which may be avoided by having a sound plan and continually evaluating the risks faced.'

The question of recommendations

190. The shortcomings in planning and decision-making revealed in this inquest were not of a systemic nature. The evidence did not indicate any need for review of NSW Police policy and training, with the possible exception of the area referred to above in paragraph 176.

Conclusion

191. I will conclude by acknowledging that the events of 26 January 2018 must have been very traumatic for everyone involved, in particular Detectives Breda, Anderson and Carey. I sincerely hope that the passage of time will diminish the impacts of what happened on that day.
192. I wish to thank Ms Needham SC, Mr Ranken of Counsel and Mr James Pender of the NSW Crown Solicitors Office for their outstanding assistance in the preparation and conduct of this inquest. I thank also Detective Chief Inspector Jason Dickinson for his comprehensive and transparent investigation.
193. My thanks also to those representing the interested parties for their cooperation and assistance.

Findings required by s81(1)

As a result of considering all of the documentary evidence and the oral evidence heard at the inquest, I am able to confirm that the death occurred and make the following findings in relation to it.

Identity

The person who died is Nick Newman.

Date of death:

Nick Newman died on 26 January 2018.

Place of death:

Nick Newman died at the Maroubra Junction Hotel, Maroubra NSW.

Cause of death:

Nick Newman died as a result of multiple gunshot wounds.

Manner of death:

Nick Newman died when he was shot by NSW police officers after he had stabbed a fellow police officer who was attempting to execute a warrant for his arrest.

I close this inquest.

E Ryan

Deputy State Coroner

Lidcombe

25 January 2022