



**CORONERS COURT  
OF NEW SOUTH WALES**

**Inquest:** Inquest into the death of Daniel King

**Hearing dates:** 16 to 19 & 23 to 26 May 2022

**Date of Findings:** 22 July 2022

**Place of Findings:** Coroners Court of New South Wales, Lidcombe

**Findings of:** Magistrate Derek Lee, Deputy State Coroner

**Catchwords:** CORONIAL LAW – death as a result of a police operation, mandatory inquest, self-inflicted death, critical incident, suspect provoked shooting, use of lethal force by police, Active Armed Offender, radio communications, Tactical Operations Model, lateral medullary syndrome, chronic traumatic encephalopathy

**File number:** 2019/00308934

**Representation:** Mr A Casselden SC & Mr J Harris, Counsel Assisting, instructed by Ms K Lockery (Crown Solicitor’s Office)

Mr D Fuller, instructed by Hearn Legal, for Mr S King & Ms M King

Mr P Madden, instructed by Walter Madden Jenkins Solicitors, for Senior Constable E Cole & (Former) Probationary Constable D Allen

Ms C Melis, instructed by New South Wales Police Force Office of General Counsel for New South Wales Commissioner of Police, Leading Senior Constable C Guinery, Senior Constable A Hoffman & Ms J Bunting

**Findings:**

Daniel King died on 2 October 2019 at Penrith NSW 2750.

The cause of Daniel's death was multiple gunshot wounds to the head, trunk and limbs.

After acquiring a firearm by means unknown, Daniel attended Penrith Police Station and discharged the firearm towards a number of New South Wales Police Force officers in order to provoke the officers to shoot him. Daniel therefore acted with an intention to inflict his own death.

**Non-publication orders:**

See Appendix A

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## 1. Introduction

- 1.1 On the evening of 2 October 2019, Daniel King attended three different locations in the western suburbs of Sydney: the home of a former partner in Marayong, St Marys Police Station and Penrith Police Station. Daniel was armed with a shotgun and discharged a number of rounds at each location over a period of less than an hour.
- 1.2 Whilst outside Penrith Police Station, Daniel discharged his firearm at a number of police officers and at two police vehicles that had arrived at the scene. This caused some of the arriving police officers, as well as other police officers who emerged from the police station, to discharge their firearms at Daniel, fatally injuring him. After Daniel was disarmed and brought inside the police station, resuscitation efforts were initiated. However, Daniel could not be revived and was later pronounced life extinct at the scene.
- 1.3 The extensive police investigation which followed these events identified a number of matters relevant to Daniel's personal and medical history which contributed to Daniel's actions on 2 October 2019.

## 2. Why was an inquest held?

- 2.1 Under the *Coroners Act 2009* (**the Act**) a Coroner has the responsibility to investigate all reportable deaths. This investigation is conducted primarily so that a Coroner can answer questions that they are required to answer pursuant to the Act, namely: the identity of the person who died, when and where they died, and the cause and the manner of that person's death.
- 2.2 Certain deaths are reportable to a Coroner. Some examples of reportable deaths are where the cause of a person's death is not due to natural causes, or where the cause or manner of person's death may not immediately be known. In Daniel's case, his death was reported because he died as a result of a New South Wales Police Force (**NSWPF**) operation. In other words, the use of lethal force by police officers in discharging their firearms at Daniel resulted in his death. Section 23(1)(c) of the Act makes it mandatory for an inquest to be held in such circumstances. This is primarily because officers of the NSWPF are bestowed with unique powers not available to ordinary members of the community, in order to allow them to discharge their duties. The exercise of such powers, particularly in circumstances which result in the death of a member of the community, needs to be scrutinised in a transparent and independent manner. Doing so serves a number of purposes, including ensuring that such powers are exercised appropriately and responsibly, and to reassure the community that where lethal force is used, it is only used as a measure of last resort in appropriate circumstances.
- 2.3 In addition to the above, the coronial investigation sought to understand the circumstances which resulted in Daniel's actions on the evening of 2 October 2019. In particular, the investigation focused on gathering evidence regarding Daniel's personal background, his motivations for attending each of the three locations on 2 October 2019, and whether he acted with any intention to, tragically, cause his own death.

- 2.4 In this context it should be recognised at the outset that the operation of the Act, and the coronial process in general, represents an intrusion by the State into what is usually one of the most traumatic events in the lives of family members who have lost a loved one. At such times, it is reasonably expected that families will want to grieve and attempt to cope with their enormous loss in private. That grieving and loss does not diminish significantly over time. Therefore, it should be acknowledged that the coronial process and an inquest by their very nature unfortunately compels a family to re-live distressing memories several years after the trauma experienced as a result of a death, and to do so in a public forum. This is an entirely uncommon, and usually foreign, experience for families who have lost a loved one.
- 2.5 It should also be recognised that for deaths which result in an inquest being held, the coronial process is often a lengthy one. The impact that such a process has on family members who have many unanswered questions regarding the circumstances in which a loved one has died cannot be overstated.
- 2.6 Inquests have a forward-thinking, preventative focus. At the end of many inquests Coroners often exercise a power, provided for by section 82 of the Act, to make recommendations. These recommendations are made to organisations and individuals in order to draw attention to systemic issues that are identified during a coronial investigation and examined during the course of an inquest. Recommendations in relation to any matter connected with a person's death may be made if a Coroner considers them to be necessary or desirable. Where an inquest is able to identify issues that may potentially adversely impact upon the safety and well-being of the wider community, recommendations are made in the hope that, if implemented after careful consideration, they will reduce the likelihood of other adverse or life-threatening outcomes.

### **3. Recognition of Daniel's life**

- 3.1 Inquests and the coronial process are as much about life as they are about death. A coronial system exists because we, as a community, recognise the fragility of human life and value enormously the preciousness of it. Understanding the impact that the death of a person has had on those closest to that person only comes from knowing something of that person's life. Therefore, it is important to recognise and acknowledge the life of that person in a brief, but hopefully meaningful, way.
- 3.2 Daniel was born in July 1986 to his parents, Sandra and Peter. He has two siblings, Megan and Kevin, and two half-siblings, Michelle and Brigid.
- 3.3 Michelle recalls taking Daniel to church as a baby and Daniel being so well behaved throughout mass, that at the end of mass others would often comment about how quiet and good he was during the service and how it was a pleasure to sit near Daniel and his family.
- 3.4 Sandra has many fond memories of Daniel as a young child. One such memory is of Daniel as a toddler, sitting on the back of the car, singing and drumming with his little fingers to the song, "*Simply the Best*" on the radio. Sandra describes Daniel as having a heart as big as Phar Lap and a soul that was full of delight. She describes feeling blessed having Daniel as a son that many mothers would have dreamt of having, and that Daniel filled the lives of his family members with pride and happiness every day.
- 3.5 As a young child, Daniel had enormous love for his siblings. He spent many hours in the backyard playing with them, setting up exercise stations so that the other children could compete and have fun. Michelle recalls treasured memories of being in the backyard with Daniel and the family's dogs, going for walks to the local parks, playing games, reading books, listening to music, singing songs and dancing. Sandra describes Daniel as being a real-life superhero to his siblings.
- 3.6 Daniel attended Marayong Public School where he was a popular student amongst his peers and teachers, having a charming and warm personality that drew people to him. Whilst in primary school, Daniel was made a school prefect and the sports house captain.
- 3.7 Daniel later attended high school at Patrician Brothers in Blacktown. Whilst he was a good student, Daniel's real love was sports, with his ultimate goal being to play first grade rugby league.
- 3.8 Daniel's love of sports began at an early age. As a young child, he was very much a fan of the Teenage Mutant Ninja Turtles and would perfectly copy their moves. By the time he was four years old, Daniel was undertaking martial arts lessons and later competed in many events and competitions, often in older age groups. Notwithstanding his natural talents, Daniel was keen to remind his mother, "*It's not about winning the trophy, Mum, it's about getting better and having to work hard for it*". Daniel continued with his martial arts training over the subsequent years, winning a number of competition medals and eventually gaining his black belt.
- 3.9 Apart from martial arts, Daniel loved participating and competing in other sports. He was an excellent athlete and competed in track and field for his athletics club at State level. Daniel also

played cricket and was a talented fast bowler and field. According to Sandra, Daniel's talents were recognised by a number of former Australian Test cricketers when he enrolled at a cricket camp.

- 3.10 Daniel was a very talented rugby league player with enormous dedication to the sport. He trained diligently and was unafraid of the hard work required to play at the top level. By the age of 16, Daniel was selected to play for the Penrith Panthers in the Harold Matthews Cup, an elite under 16 junior rugby league competition for representative players.
- 3.11 By the age of 22, Daniel was playing football for the Windsor Wolves, a prestigious club that has fielded semi-professional teams in the NSW Rugby League competitions. He remained dedicated to his training and focused on his goal of becoming a professional rugby league player.
- 3.12 Sandra describes her son as a fun, loving, caring, grateful, determined, helpful, humble, hard-working quiet achiever. Daniel was known to be strong minded and focused on his life's goals. He enjoyed a wonderful rapport with children of all ages and was a wonderful and dedicated father to his son, Samson, who was born in 2004 when Daniel was 18 years old. Sandra takes great pride in the fact that Samson has grown into a respectful and hard-working young man in the image of his father.
- 3.13 As well as being a loving father, Daniel was also a loving uncle. He was an extremely caring person who, even as a teenager, always looked out for his younger relatives and always made time for them. Michelle describes Daniel as someone her own son looked up to, and that her son would often tell her how much he wanted to be just like Daniel. She would ask her son why, and he would tell her, *"Daniel teaches me good things Mum, I love him"*.
- 3.14 As a much-loved and respected son, father, brother and uncle, Daniel's untimely and tragic passing has left an enormous emptiness in the lives of so many.

#### **4. Daniel's medical history<sup>1</sup>**

- 4.1 In April 2002, when Daniel was 16 years old, he was seriously assaulted by a group of male persons at a party. Daniel was reportedly kicked to the head and face and later sought medical assistance at hospital. There, a computed tomography (CT) scan identified no bony injuries, and Daniel was admitted overnight.
- 4.2 In 2007, when Daniel was 21 years old, he was knocked unconscious whilst playing rugby league. It does not appear that there were any immediate serious consequences from this injury.
- 4.3 On 26 March 2010, when Daniel was 23 years old, he was tackled during a rugby game and suffered a serious brain injury. Upon initial assessment by a rugby club doctor, Daniel was found to have no signs of neurological injury. However, later that evening Daniel developed a headache and vomiting and was taken to hospital. There he was diagnosed with a left medullary infarct which resulted in hospital admission for two weeks, followed by a prolonged rehabilitation for post-traumatic lateral medullary syndrome. As a result of this injury, Daniel experienced permanent ongoing difficulties with his coordination and vision, paraesthesia, heat intolerance, and cognitive and personality changes. Further, Daniel was unable to play rugby again.
- 4.4 Following this injury, Daniel suffered from depression and mood lability. In 2011, Daniel took an overdose of sleeping tablets. Following this incident, Daniel attended upon a general practitioner (GP) and obtained a mental health care plan.
- 4.5 As a result of being unable to play rugby league, Daniel commenced working out, initially at a home gym before joining some commercial gyms in 2013. At around this time, Daniel commenced taking anabolic steroids. By 2015, Daniel was taking part in competitive bodybuilding. He continued to attend gyms very regularly until about the end of August 2019.
- 4.6 In July 2013, Daniel was referred to a psychologist, Dr Le Roy Onuoha, who diagnosed him with chronic adjustment disorder with anxiety and depression. Between 2013 and 2015, Dr Onuoha noted that Daniel gained significant muscle mass. Pursuant to a number of mental health care plans, Daniel attended nine counselling sessions with Dr Onuoha between 2013 and 2017, during which he referred to problems associated with anger, and relationship-related stress. Dr Onuoha assessed Daniel to be in the severe range for depression. However, Daniel declined any further assessment.
- 4.7 In May 2019, Daniel attended upon a GP, Dr Kean-Seng Lim, who observed Daniel to be a quiet and gentle person, but who was feeling overwhelmed by his life situation. Dr Lim formed the view that Daniel's depression was multi-factorial, arising from his brain injury, his altered life circumstances and from current stressors, with no impression of anger or violence. Daniel reported some suicidal ideation but no suicidal intent. Dr Lim prescribed Daniel with an antidepressant (duloxetine) which Daniel reported as providing some improvement. Dr Lim recommended that Daniel return to see a psychologist, although there is no evidence that he ever did. Daniel saw Dr Lim for the last time on 14 August 2019 when he reported that he felt back to his normal self.

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<sup>1</sup> This factual background has been drawn from the helpful opening submissions of Senior Counsel Assisting.



4.8 In June 2019, Megan discussed with Daniel whether he might have chronic traumatic encephalopathy (**CTE**). Megan tried unsuccessfully to make an appointment for Daniel to see Associate Professor Michael Buckland, Executive Director of the Australian Sports Brain Bank. After watching a documentary on CTE, one of Daniel's friends contacted him asking if he had ever had any brain scans.

4.9 In June or July 2019, Daniel made the following threat to his mother:

I've got this plan Mum. I've worked it all out. I'm going to get a gun. I'm going to the police station. I'm not going to hurt anyone Mum but I'm going to fire some shorts. They'll think that I'm there to kill everyone and they will shoot me dead. This time, I won't fail.

## 5. Daniel's relationship history

- 5.1 Daniel had a complicated relationship history. Many features of these relationships shared some commonality and relevant to the issues which the inquest examined. A summary of Daniel's past relationships is set out below:
- 5.2 In 2004, while still at school in Year 12, Daniel met Alana Wells. They had a son, Samson, together. The relationship ended about six weeks after Samson's birth with Samson remaining in Daniel's care.
- 5.3 In 2011, Daniel met and later formed a relationship with Hannah Bunting. Daniel, Samson and Ms Bunting lived together for a period on the Sunshine Coast. Daniel and Ms Bunting became engaged in 2014 but the relationship ended in the same year. Following this, Daniel attempted self-harm by hanging.
- 5.4 In 2015, Daniel met Heather Lavelle at his gym. They later made contact via Tinder and formed a casual relationship for a few months.
- 5.5 Also in 2015, Daniel met Stacey Alcorn via Tinder and they formed a relationship. They later had a child, Indiana, who was born in February 2017. The relationship ended in February 2018.
- 5.6 Further in 2015, Daniel reportedly commenced a relationship with Rebecca McQueeney which lasted for about a year.
- 5.7 Between about February 2017 and September 2017, Daniel had a casual relationship with Melissa Bradburn.
- 5.8 In April 2018, Daniel resumed his relationship with Ms Lavelle which continued until about February 2019.
- 5.9 Also in April 2018, Daniel commenced a friendship with Jamie Duggan who later told police that she had been intimate with Daniel on a number of occasions, but that they were not in a relationship.
- 5.10 At the end of 2018, Daniel contacted Stacey Taylor, who was an old school friend. They remained in more frequent contact in early 2019. On one occasion in late March 2019, Daniel went to Ms Taylor's home, upset about his children. Daniel told Ms Taylor that he was feeling depressed and spoke about his injury in 2010. During this conversation, Daniel made a remark to the effect that he would end his life, but that he was too much of a coward and so "*someone else would have to do it*".
- 5.11 On 12 April 2019, Daniel returned to see Ms Taylor and they were intimate. On 26 April 2019, Ms Taylor sent Daniel a message indicating that she had some "*bad news*", that she was pregnant, and that she had booked to have an abortion but needed some money. It appears that Daniel expressed his preference for Ms Taylor to have an abortion. However, Ms Taylor later informed Daniel that she had decided not to proceed with an abortion and that he was definitely the father. Daniel and Ms Taylor exchanged a number of text messages and conversations which became hostile. Daniel told Ms Taylor that he wanted her to take a DNA test and that he would "*end up killing [himself] over this*".

- 5.12 At some point in around mid-2019, Daniel met Claire Day who was from Queensland. They became intimate and Ms Day later informed Daniel that she was pregnant with his child, and that she wanted money for an abortion. Between 19 and 29 May 2019, Daniel transferred various sums of money totalling \$8,000 to a bank account held in Brisbane, presumed to belong to Ms Day. During this period, Daniel and Ms Day exchanged a number of text messages which varied in nature between being both hostile and intimate. During the messages, Daniel referred to paying for Ms Day to have two abortions.
- 5.13 On 7 June 2019, Ms Day sent a message to Ms Bunting, alleging that Daniel wanted Ms Bunting to end her marriage and commence a relationship. However, Ms Bunting denied that this was the case.
- 5.14 From June 2019, Daniel attempted to form a relationship with Natalie McGrath, who he had previously met in July or August 2018 on Tinder. However, Ms McGrath was cautious about Daniel's involvement with other women. In particular, Ms McGrath was aware of Daniel's involvement with Ms Day. Daniel reportedly told Ms McGrath that his relationship with Ms Day was over, and that she had an abortion. However, Daniel later admitted to Ms McGrath that whilst he had given Ms Day money for an abortion, she was still pregnant. Daniel later sent Ms McGrath the following messages:
- I do love you but I'm going to die now. I'm sorry about what's happening. I'm not blaming you but fuck it. You'll see it on the news and read in the paper. I love you. 2 weeks to get my super our [sic] and my savings and then I'm doing it. Leave me be. I love you you'll forget about me the same way you did tonight.
- It's done check my Insta it's started watch the news  
4 weeks until I get my tax back and super out  
Leave my kids something...
- 5.15 On 15 July 2019, Ms McGrath discovered that she was pregnant, and she and Daniel celebrated.
- 5.16 On 1 August 2019, Ms Day contacted Ms Taylor's mother and alleged that Daniel had hired a friend to "stomp" her daughter. A complaint was made to police and they later spoke to Daniel on 2 August 2019. Daniel denied the allegation, claiming that Ms Day was simply trying to make trouble. The allegation was taken no further.
- 5.17 On 18 August 2019, Ms Day sent a number of messages to Daniel, threatening to publish a photo of them both announcing her pregnancy, and stating that Daniel would have to pay child support. Daniel again offered to pay for an abortion.
- 5.18 On 20 August 2019, Daniel moved out of his home at Claremont Meadows, and moved in with Ms McGrath and her children at their home in Jordan Springs.
- 5.19 On 2 September 2019, Daniel proposed to Ms McGrath and she accepted. They later formed plans to marry on 2 November 2019.

## 6. The events of August and September 2019

- 6.1 It appears that Daniel's drug use increased in late August 2019. Ms McGrath noted that Daniel was "spaced out" on 31 August 2019 and that he had reported taking six "bags" of cocaine and some alprazolam (Xanax).
- 6.2 Daniel also recommenced taking steroids sometime in mid-September 2019. However, by this stage Daniel had stopped going to the gym which was uncharacteristic given that he had previously attended several times per week.
- 6.3 According to Ms McGrath, Daniel appeared to be more disordered during this period. On 21 September 2019, Ms McGrath noted that Daniel reportedly appeared drug affected and "off his head", mumbling incoherently and screaming at her. A week later, Ms McGrath noted that Daniel appeared to be drug affected again. During one incident, Daniel pushed Ms McGrath in the chest and then threw a box at her car as she drove off. This was significant as it was the first time that Daniel had been physically aggressive towards Ms McGrath. As a result, Ms McGrath told Daniel that they were "done".
- 6.4 At some stage in the week prior to his death, Daniel told Ms Day that if she did not have an abortion, he would "make sure that he went out, um, this world in a big bang, and make sure everyone knew who his name was".
- 6.5 At 12:40am on 29 September 2019, Daniel sent a text message to Ms Lavelle informing her that he had broken up with someone and wanted a "distraction". Daniel followed up with further text messages which became increasingly crude, eventually asking Ms Lavelle to send him pictures of herself, which she declined.
- 6.6 Later that day, Ms McGrath discovered that Daniel had been sending messages to other women, although not Ms Lavelle. Daniel sent Ms McGrath a message, hoping to reconcile. When she did not reply, Daniel sent her the following message:

Click clack then. What I was gonna do before is happening but u save me. I guess it was only a matter of time... I'm so scared of life and fucking up and being a failure but this way it will be over inn [sic] a day or so. RIP Daniel Mark King, mark my words this is the truest shit I ever wrote.
- 6.7 Daniel followed up with a further text message, telling Ms McGrath to "watch the news tonight". Daniel also posted Instagram messages to his children, including to his unborn child.
- 6.8 In the early hours of the morning on 1 October 2019, Ms McGrath heard Daniel in the garage, blowing his nose. She observed Daniel to fall backwards onto his bed, falling straight asleep. Later that day, Ms McGrath went to have an ultrasound and asked if Daniel would come with her. However, Daniel informed Ms McGrath that he had taken six tablets and could not drive.
- 6.9 Later that evening, Ms McGrath observed Daniel to be stumbling and barely able to talk. Later that night, Ms McGrath heard Daniel making noise in the garage. She later woke to find Daniel leaning over her, saying, "Are you turning on me?".

## 7. What happened on 2 October 2019?

7.1 At 9:14am on 2 October 2019, Daniel sent Ms McGrath the following message:

I'm sorry for ruining your life, I'm sorry for putting u in this predicament. I hate myself and I hate the demons that constantly torment me. I am a junkie that hides behind a pretend smile, I hate life and I wish I died when I had my stroke. I just spoke to Russ in tears and he reassure [sic] me that I will get at least a house out of this. I c the lawyers Friday and is so I'll hand [sic] around until it comes thru. Once its hear [sic] I'm off, just that you can plan.

7.2 Later that afternoon, one of Daniel's work colleagues visited him at home. He noted that Daniel was mumbling, appeared tired and was looking "*a bit scattered*".

7.3 At 5:47pm, Daniel sent Ms McGrath a message saying, "*I'm not living another day in torture*". Ms McGrath replied with the message, "*Promise me you won't do anything silly*". Daniel responded with the message, "*I love you that's all I can promise. So much*".

7.4 Daniel later posted a "*goodbye*" message on Instagram. After seeing this post, Ms McGrath logged into Daniel's account and saw that Ms Lavelle had posted a laughing emoji under a photo of Daniel and Ms McGrath. Ms McGrath sent Ms Lavelle a number of messages indicating that she suspected that Daniel had been unfaithful. At 7:35pm, Ms McGrath forwarded a number of derogatory messages to Daniel which he did not reply to.

7.5 At 8:12pm, Daniel left his home and drove his white Hyundai ix35 SUV (registration CHK-49K) to Ms Taylor's home. During this period, Daniel posted another message on Instagram stating, "*A coward dies a thousand deaths, a soldier dies but once*". Ms Lavelle saw this message and in response sent Daniel a long message, commencing with, "*you must be dead a million times then you weak sleaze [...]*".

### **Marayong Incident**

7.6 At around 8:45pm, Daniel arrived at Ms Taylor's home at 35 Quakers Road, Marayong. He exited his vehicle and approached the house. At the time, Ms Taylor, who was pregnant with Daniel's child, was in bed on the first floor. Ms Taylor's three other children, her parents (Mandy and Shane) and her brother (Aaron) were also at home.

7.7 Ms Taylor and her father heard a number of loud bangs. Upon looking out the window, Ms Taylor saw a male person pulling the action back on a firearm and firing a number of further shots at the house. A total of four shots were discharged, which were later confirmed to have been fired by Daniel's shotgun. They struck the house, smashing a window at the front. Daniel returned to his vehicle and drove off.

7.8 At 8:47pm, Ms Taylor's mother called Triple Zero and nominated Shayne Simpson, Ms Taylor's former partner and the father of her three children, as a possible person of interest in relation to the shooting.

7.9 At 8:48pm, the NSWPF broadcast the incident to the Quakers Hill Police Area Command on Channel 2 in this way:

Uh, Quakers Hill cars, thanks. Any car in the vicinity of 35 Quakers Road at Marayong, cross of Shedworth Street. Uh, unknown person, uh, possibly fired a shot gun or a, or a, or a gun of sorts at the informant's house, Mandy Taylor is the informant. Windows been [sic] smashed, male person decamped, Quakers Hill cars or any cars in the vicinity.

7.10 Several minutes later, a description of the male and the vehicle was added to the Computer Aided Despatch (**CAD**) message, but not broadcast over radio at that time:

M POI CAUC APP 40S MUSCULAR BLD SHAVED HEAD WHITE SHIRT AND JEANS DECAMPED IN VOI NK REGO LATE MODEL 4WD WHITE LS 2046 >>> NK DR

7.11 In response, several NSWPF officers attended the scene, including Acting Sergeant Rebecca Gibson. Three officers from Operation Talon, a police initiative for firearm and gang-related incidents, also attended: Senior Constable Furner, Senior Constable Moore and Constable Cook who all performing duties under the callsign Talon 770. Ms Taylor provided a description of the male person to Acting Sergeant Gibson but indicated that she did not recognise him. In a later conversation with NSWPF officers, Ms Taylor indicated that she initially thought that the male person was Daniel but did not tell the attending police officers this on the evening of 2 October 2019.

7.12 At 8:58pm, Acting Sergeant Gibson contacted Detective Chief Inspector Miller, the Duty Officer for Quakers Hill, and Detective Chief Inspector Glynnis Cameron, the State Coordinator, whose role included coordinating the response to major incidents and specialist resources within the NSWPF.

7.13 NSWPF officers from the Real Time Intelligence Centre (**RTIC**) began gathering information regarding the Marayong Incident. At 9:03pm, Senior Constable Brendan Watts identified Daniel as a possible person of interest from records relating to the report made by Ms Taylor's mother on 1 August 2019. Daniel's address at 12A Harrier Place, Claremont Meadows was identified and a photo of him was obtained. At around 9:10pm, Sergeant Kate Baker from the RTIC provided this information to Acting Sergeant Gibson, who asked Ms Taylor about Daniel. Ms Taylor denied that the male person was Daniel, claiming that the person looked older.

7.14 Acting Sergeant Gibson and Sergeant Baker requested the Operation Talon officers to attend Daniel's last known address in Claremont Meadows in case Daniel's family members were at risk. However, before they were able to attend, they became aware of an incident at Penrith police station and redirected there instead.

### ***St Marys Incident***

7.15 After leaving Ms Taylor's house, Daniel drove towards St Marys Police Station. After travelling along the M7 Motorway and Quakers Hill Parkway, Daniel arrived at St Marys Police Station at 9:15pm. CCTV footage records Daniel's vehicle stopping opposite the front entrance of the police station at 9:15pm and three shots being discharged at the station. Following this, Daniel drove off quickly westbound along King Street.

- 7.16 NSWPF officers inside the station heard the shots. They reviewed the live CCTV footage but could not see anything. Approximately 45 seconds after the shots were discharged, NSWPF officers exited the station. No person was sighted and, although damage to the station was observed and shotgun waddings were seen on the ground. Chief Inspector Daniel Wiggins contacted the Commander of the Nepean Police Area Command (**PAC**), the North West Metro Region Commander, the State Coordinator and the State Controller. At 9:18pm, a local resident contacted Triple Zero in relation to the incident.
- 7.17 At 9:19pm, the incident was broadcast on NSWPF radio Channel J for the Nepean PAC. Relevantly, this was a different radio channel to which the Marayong Incident had been broadcast. The broadcast regarding the St Marys Incident stated:
- Nepean cars, got a call in the vicinity of Warramunga Street and King Street St Marys. Informants heard four consecutive gunshot in the vicinity. Nepean, thanks.
- 7.18 NSWPF police officers reviewed the CCTV footage from St Marys Police Station, noting Daniel's vehicle and the shots being fired from it. A description of the vehicle was obtained from witnesses as a "*white hatchback, something similar to, like, a CX5 Mazda*". This description was broadcast by Jessica Bunting, a NSWPF radio operator. Ms Bunting and her assistant reviewed a "hotlist" of recently stolen vehicles and identified a possible vehicle of interest as a white Porsche Cayenne. At this time, Ms Bunting was not yet aware of the Marayong Incident, although she knew that her colleagues on another radio channel had been dealing with a serious incident.
- 7.19 At 9:21pm, the RTIC became involved in the St Marys Incident and considered that it was possible it was related to the Marayong Incident.

## **8. The Penrith Police Station Incident**

- 8.1 After leaving St Marys Police Station, Daniel drove west towards Penrith through Werrington, Werrington Downs, Cambridge Gardens and Kingswood. At around 9:33pm, a CCTV camera at the rear of Penrith Police Station recorded a white SUV, likely to be Daniel's vehicle, travelling along Henry Street.

### ***Shooting of Constable Vinter***

- 8.2 At 9:35pm, Constable Christopher Vinter and Probationary Constable Brett Mitchell arrived at Penrith Police Station after attending a callout. On their way, they had stopped to buy coffees for other police officers at the station after calling ahead to get their orders.
- 8.3 Constable Vinter and Probationary Constable Mitchell were travelling in a fully marked Hyundai iLoad van with callsign NE15. Constable Vinter was driving and parked NE15 on High Street outside the police station, facing east towards the entrance. Approximately 20 seconds later, Daniel parked his vehicle behind NE15.
- 8.4 Constable Vinter and Probationary Constable Mitchell exited NE15 intending to enter Penrith Police Station. As they did so, Daniel exited his vehicle after retrieving his shotgun from the passenger side. Daniel discharged two rounds towards the police officers. One round struck the rear of NE15. Constable Vinter was struck in the back of his head.
- 8.5 Upon hearing the shots, Probationary Constable Mitchell shouted, "*gun*", and took cover behind the door of NE15, before running into a courtyard area between the footpath and the entrance doors to Penrith Police Station. After Constable Vinter was shot he felt a hot feeling to his head, realised that he had been shot, and then also began running towards the police station.
- 8.6 After firing the two shots, Daniel returned to his vehicle where he remained for about a minute. At 9:37pm, Daniel walked towards the police station's front courtyard area. He sat on the bonnet of a police vehicle (with callsign NE36) before walking to NE15 and opening one of its doors. Daniel then walked back to the front of Penrith police station, where he made a "*beckoning*" gesture towards a number of police officers inside the station who by this stage had gathered and were taking cover in the front foyer area just beyond the entrance doors.

### ***Events inside Penrith Police Station***

- 8.7 After Constable Vinter and Probationary Constable Mitchell entered the police station, Constable Vinter collapsed in the foyer area. He was attended to by other police officers and taken to the muster room for first aid treatment.
- 8.8 A number of persons inside the police station heard the shots fired by Daniel, including staff from the NSWPF Radio Operations Group (**ROG**) who were situated on Level 2 of the building. They took cover under the tables. Ms Bunting was among these staff members and she continued to make dispatches whilst taking cover.



- 8.9 Leading Senior Constable Christopher Guinery and Senior Constable Michael Darnton also heard the shots fired outside. Leading Senior Constable Guinery obtained his firearm and moved to the front counter area of the police station. Senior Constable Darnton went to an area at the front of the station on Level 1 which overlooked High Street. He observed Daniel, who were still outside the front of the station, with the shot gun over his shoulder. Senior Constable Darnton shouted, “*armed offender*”, but did not make any radio broadcast regarding his observations.
- 8.10 Senior Constable Michael Kovacs and Sergeant Simon Kleyn ran from their position to the front counter area. Senior Constable Kovacs heard someone yell out that there were two offenders.
- 8.11 Sergeant Stephen Urio, who was acting as the internal supervisor, was in the foyer of the police station. After hearing the shots outside, he drew his firearm and directed other police officers to take cover and not to shoot outside.

### **Radio broadcasts**

- 8.12 After hearing the shots fired by Daniel, Ms Bunting made the following broadcast at 9:36pm:

(SOUND OF BEEPING) Information for Nepean cars, thanks. Nepean 3-5. We’ve just had a few shots fired out the front of the Penrith Police Station. Cars to start making their way to Penrith Police Station, thanks.

- 8.13 Following this, Senior Constable Aidan Hoffman (using callsign Nepean 36) broadcast the following message:

Yeah, radio, we’ve got an officer injured at Nepean Police Station. We need an ambulance here.

- 8.14 At 9:37pm, a CAD message in relation to Constable Vinter having been shot was created. A NSW Ambulance (**NSWA**) paramedic crew was dispatched, who were told that there was an active shooter at Penrith Police Station and that they should attend at the rear of the station.
- 8.15 Immediately following this, Senior Constable Emma Cole and Probationary Constable Daniel Allen (as he then was<sup>2</sup>), who were travelling in a fully marked NSWPF vehicle with callsign HB15, broadcast that they were at the rear of Penrith Police Station. This was acknowledged by Ms Bunting.
- 8.16 Two other NSWPF officers (Senior Constables Cager and Magennis in a vehicle with callsign NE35) were making their way from St Marys to Penrith. They requested a direction and in response, Ms Bunting asked officers at Penrith police station if they knew the “*last known direction of the vehicle*”.
- 8.17 At around this time, Nepean 104 (Sergeant Neal and Senior Constable Burnett) broadcast that the CCTV footage from St Marys Police Station showed a white coloured SUV. In response, the Operation Talon officers broadcast that the same vehicle may have been involved in the Marayong Incident and

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<sup>2</sup> Probationary Constable Allen has since left the service of the NSWPF but for convenience he will be referred to by his former office and rank in these findings.

that the person of interest was Daniel. This was the first time when all three incidents were connected.

- 8.18 As officers were responding to this information, Senior Constable Hoffman broadcast the following message at 9:39pm:

Radio, shots fired at the station, at the front.

- 8.19 Ms Bunting replied:

Copy. POI is at the front of the station, thanks. Car crews at the front of the station.

### ***Confrontation outside the station***

- 8.20 Senior Constable Cole was driving HB15 with Probationary Constable Allen as the passenger. They had been performing duties accompanying an ambulance to Nepean Hospital and were aware of the St Marys Incident from radio broadcasts. After hearing broadcast regarding the Penrith Police Station Incident, Senior Constable Cole and Probationary Constable Allen decided to attend. At the time, they were approximately two kilometres away. As they were unable to acknowledge the broadcast due to other radio traffic, they instead contacted their supervisor by mobile phone.
- 8.21 After making their way to Henry Street, at the rear of Penrith Police Station, HB15 broadcast their arrival. At this time, Daniel was still on High Street, pacing in front of the police station, armed with his shotgun. HB15 proceeded west along Henry Street, turned left onto Lawson Street and left again onto High Street with its warning lights illuminated.
- 8.22 As HB15 approached the front of the police station, Daniel stepped out into the road, holding his shotgun across his shoulder. Initially, Senior Constable Cole believed that Daniel was a tactical police officer, before realising that he was the person of interest. Daniel began pointing the shotgun towards the officers inside HB15.
- 8.23 At 9:39pm, Senior Constable Cole stopped HB15 and both she and Probationary Constable Allen exited the vehicle, remaining behind the open doors. Both police officers drew their firearms and challenged Daniel to drop his shotgun. Daniel took a couple of steps back but levelled his shotgun and pointed it towards Probationary Constable Allen.
- 8.24 In response, both Senior Constable Cole and Probationary Constable Allen discharged their firearms. Senior Constable Cole discharged four rounds, and Probationary Constable Allen discharged two rounds. Daniel fell to the ground but attempted to get back onto his knees, before falling to the ground again. Probationary Constable Allen retreated to the rear of HB15, and then moved across the road to take cover. Meanwhile, Senior Constable Cole took cover behind HB15. As he was on the ground, Daniel discharged into the passenger door of Hawkesbury 15.

### ***The fatal shooting***

- 8.25 Meanwhile, officers inside Penrith Police Station had become aware of the arrival of HB15. Leading Senior Constable Guinery, Senior Constable Hoffman and Senior Constable Leigh Jamieson were all

in the front foyer area. Leading Senior Constable Guinery saw that Daniel's attention was diverted by the arrival of HB15. Leading Senior Constable Guinery drew his firearm, left the foyer and ran towards the street. He was followed by Senior Constable Hoffman (who made the broadcast, "*Shots fired at the station*") and Senior Constable Jamieson.

8.26 Upon reaching the area outside the front of the police station, Leading Senior Constable Guinery approached Daniel who was on the ground, attempting to get to his feet. Leading Senior Constable Guinery discharged two rounds, causing Daniel to fall back to the ground and lose hold of his shotgun. Believing that Daniel was incapacitated, Leading Senior Constable Guinery re-holstered his firearm. As he did so, Daniel began to regather his shotgun and turn his body towards the police officers. In response, Leading Senior Constable Guinery redrew his firearm and discharged a further seven rounds at Daniel. By this time, Senior Constable Hoffman had arrived at the front courtyard area, in a slightly elevated position. He discharged a total of 13 rounds at Daniel.

### ***Events following the shooting***

8.27 The officers at the front of the police station attempted to restrain and handcuff Daniel. Despite having been shot 24 times, Daniel was still moving and lying partially on the shotgun. Senior Constable Jamieson kicked Daniel on his right hip and also later placed his foot on Daniel's face.

8.28 Other officers, including Senior Constable Michael Kovacs, exited Penrith Police Station in order to assist. Senior Constable Kovacs obtained the shotgun, rendered it safe and handed it to Senior Constable Jamieson, who took it inside Penrith Police Station.

8.29 Concerns were held amongst the police officers that there was another armed person at large. As a result, first aid was only provided to Daniel after he had been handcuffed and searched and brought inside the police station into a secure area. Resuscitation efforts were initiated and continued following the arrival of NSW paramedics. However, Daniel could not be revived and was pronounced life extinct at 10:04pm.

8.30 NSWPF officers began to patrol the streets around Penrith Police Station to potentially identify any other armed persons. However, these patrols eventually confirmed that Daniel had acted alone.

8.31 Daniel's vehicle was located. Twenty-three unfired shotgun cartridges and two fired cartridges were found inside, together with a resealable bag containing white crystalline residue. A presumptive test was later conducted which indicated a positive result for cocaine. Subsequent forensic testing identified a DNA profile from the fired cartridges which matched Daniel's DNA profile.

## 9. The postmortem examination

- 9.1 Daniel was later taken to the Department of Forensic Medicine where a postmortem examination was performed by Dr Dianne Little, forensic pathologist, on 8 October 2019. The examination identified a total of 24 gunshot entry wounds to Daniel, causing injuries to major organs and bony fractures, with:
- (a) two wounds to the head and neck;
  - (b) eight wounds to the trunk, with one projectile passing through the liver, diaphragm, right atrium of the heart, aorta and pulmonary artery, and another projectile passing through the left upper lobe and right upper lobe of the lung;
  - (c) four wounds to the upper limbs; and
  - (d) ten wounds to the lower limbs.
- 9.2 Seven of the gunshot wounds were through and through (where the projectiles exited the body), with the other projectiles remaining within the body, some showing fragmentation and/or severe deformity secondary to bony impacts.
- 9.3 Toxicological analysis of samples taken at autopsy detected concentrations of cocaine and 3,4-methylenedioxyamphetamine (MDMA), as well as concentrations of alprazolam, diazepam, dextromethorphan and pseudoephedrine within the reported therapeutic ranges or lower. Analysis was also undertaken for anabolic steroids which detected boldenone, drostanolone, oxandrolone and 19-norandrosterone.
- 9.4 Neuropathological examination of the brain by Associate Professor Buckland, neuropathologist, identified an old left medullary infarction and positive neuronal tau staining in every block of the frontal and temporal cortex, with these being defining lesions of chronic traumatic encephalopathy (CTE). Associate Professor Buckland expressed the view that a strict interpretation of current staging guidelines would best place the neuropathology findings as late Stage II CTE.
- 9.5 In the autopsy report dated 2 July 2022, Dr Little opined that the cause of Daniel's death was multiple gunshot wounds to head, trunk and limbs.

## **10. What issues did the inquest examine?**

10.1 Prior to the commencement of the inquest a list of issues was circulated amongst the sufficiently interested parties, identifying the scope of the inquest and the issues to be considered. That list identified the following issues for consideration:

- (1) Daniel's mental functioning and state of mind at the time of his death.
- (2) How and when Daniel obtained the firearm.
- (3) The adequacy of the NSWPF response to the Marayong Incident and the St Marys Incident.
- (4) The adequacy of the NSWPF response to the shooting of Constable Vinter.
- (5) The adequacy of the radio communications in response to the incidents on 2 October 2019.
- (6) Whether action taken by Senior Constable Cole, Probationary Constable Allen, Leading Senior Constable Guinery and Senior Constable Hoffman was appropriate and in accordance with NSWPF policy.
- (7) Whether Daniel intended to end his life by provoking NSWPF officers to shoot him.
- (8) Whether it is necessary or desirable to make any recommendations.

10.2 Each of the above issues is discussed in detail below, and it will be convenient to consider some of the issues together and in chronological order.

10.3 In order to assist with consideration of some of the above issues, an opinion was sought from Dr Danny Sullivan, consultant forensic psychiatrist. Dr Sullivan provided an independent expert report and also gave evidence during the inquest.

## 11. Daniel's mental functioning and state of mind at the time of his death

11.1 The available medical evidence indicates that following his lateral medullary infarct in March 2010, Daniel's condition gradually deteriorated over the following years:

- (a) In April 2011, following outpatient rehabilitation at Westmead Private Hospital, a review noted that Daniel was experiencing decreased balance and coordination, mild impaired memory and some disturbance in mood including being short tempered and irritable with decreased patience and intermittent dizziness.
- (b) After Daniel was reviewed at a Brain Injury Clinic, it was noted in July 2011 that he reported mood changes and memory issues.
- (c) Dr Onuoha consulted with Daniel in 2013, 2015 and 2017. By July 2017, Dr Onuoha noted that Daniel presented with *"tearfulness, isolation, memory difficulties, self-doubt, low mood and irritability/anger"*. Daniel was assessed in the severe range for depression, severe range for stress and mild range for anxiety. Dr Onuoha considered that Daniel met the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* for chronic adjustment disorder with mixed anxiety and depressed mood.
- (d) Dr Lim first saw Daniel in May 2019 and noted that Daniel was severely depressed and presented as someone *"feeling overwhelmed by his current life situation"*. Dr Lim formed the view that Daniel's *"depression was multifactorial, with a combination of organic factors from his Traumatic Brain Injury, depression from his altered life circumstances and prospects with an acute deterioration due to current life stressors"*.

11.2 The observations of Daniel's family members, friends and current and former partners also support the above formulations. In summary:

- (a) Following Daniel's traumatic brain injury, Sandra noted that his personality changed and that he was prone to *"fits of aggression from the frustration of not being normal"* and *"hated himself because he was not the person he was before he had the stroke"*. Sandra also recalled that Daniel had disclosed previous attempts at self-harm by substance overdose.
- (b) Megan noted that Daniel experienced issues with his vision and motor skills, dizziness and numbness following his traumatic brain injury, and that he became less patient with a low threshold for irritability. Megan also recalled that Daniel had disclosed to her a previous self-harm attempt by way of substance overdose.
- (c) Michelle Ogden noted that from around 2014 Daniel reported that he was not well, and she noticed occasions that he would slur his word and speak incoherently. She also noted that Daniel often questioned his self-worth and why he was alive, and that Daniel repeated these issues again in the weeks shortly before his death.
- (d) Ms McGrath recalled that Daniel experienced difficulties with his eyesight and memory, numbness to the left side of his body, difficulties with temperature regulation and sleep apnoea.

In early September 2019, Ms McGrath noted that Daniel was intoxicated after ingesting both illicit drugs and prescription medication and that he was incoherent and “*all over the place*”. During a series of text messages that she exchanged with Daniel on 29 September 2019, Ms McGrath noted that Daniel “*went from being sad to being angry at me and continuously changed throughout the argument we had*”.

- (e) Ms Taylor described Daniel as “*not in a very good state of mind*”, being tearful and upset about his daughter. Ms Taylor recalled that Daniel told her that his brain was “*just not as good as it was before he had a stroke*” and that he had experienced depression and difficulties with his memory. Daniel also repeatedly said that “*he did not want to be here anymore, he could not cope with living in this world anymore*”.
- (f) One of Daniels’ friends, Colin Tillini, recalled that in April 2019 Daniel reported “*times when he would break down and be unable to control his emotions*” and that he had been “*feeling depressed and that he would not get out of bed and would have periods where he did not want to talk to anyone*”.

11.3 Dr Sullivan noted that Daniel’s previous traumatic brain injury had profound impact upon his life and affected his self-esteem, mood and employment. Dr Sullivan considered that Daniel’s personal life was chaotic and clearly stressful to him, due in part to his frequently overlapping relationships with women and resultant pregnancies which led to antagonism within the relationships. Dr Sullivan also noted that it is likely that Daniel’s mood disorder and/or substance use were “*caused by or exacerbated by his neurological condition and adjusting to its consequences*”.

11.4 Overall, Dr Sullivan expressed this view:

[Daniel] was predisposed to mood disorder because of the subsequently-determined neurodegeneration, and also due to the change in his life circumstances following the stroke in 2010. He had a reduced capacity to manage stressors and it is also possible that his substance use and minor neurocognitive disorder in fact led to increased life stressors due to impulsive, disinhibited behaviour and poor judgment. Finally, his substance use was likely to be associated with increased lability of mood, significant lowered mood particularly during withdrawal or after binges, and regret and ambivalence. It is also possible that substance abuse caused financial problems for [Daniel].

11.5 Dr Sullivan considered that in the month before his death, Daniel would have met the following DSM-5 diagnoses:

- Unspecified depressive disorder, in partial remission;
- Multiple severe substance use disorders (cocaine, alprazolam, anabolic steroids);
- Mild neurocognitive disorder due to traumatic brain injury (provisional diagnosis, as substance abuse is an exclusion criterion which may provide an alternate cause for observed behavioural problems);
- Multiple substance use disorders (cannabis, MDMA, alcohol, opioids) (provisional diagnosis as limited evidence of frequency of use or associated disturbance);
- Borderline personality traits (would not clearly meet criteria for personality disorder)

11.6 Dr Sullivan considered that by 2 October 2019, the following matters were relevant to Daniel’s overall mental state:

- (a) Daniel was in the midst of, or completing, a drug binge;
- (b) He was observed to rambling and appeared unwell;
- (c) His posts to social media were “*apocalyptic in tone and hinted at his suicidal ideation*”;
- (d) Other social media posts in the days and weeks preceding had become increasingly vulgar, disinhibited or inappropriate;
- (e) Daniel’s use of cocaine and alprazolam likely affected his judgment and disinhibited him;
- (f) Daniel’s late Stage II CTE may have affected his behaviour, noting that retrospective clinical evaluation of a cohort with mild CTE noted behavioural and mood symptoms including impulsivity, depressive symptoms, explosivity, apathy, anxiety, hopelessness, verbal violence, physical violence, and suicidality.

11.7 Overall, Dr Sullivan opined that it is not “*possible to parse out the relative relevance of various causal contributions to [Daniel]’s behaviour on the day of his death*”.

#### ***Daniel’s chronic traumatic encephalopathy***

11.8 Further mention should be made at this point regarding Daniel’s CTE. It is characterised by progressive degeneration of brain tissue, including the build-up of an abnormal protein called tau. Associate Professor Buckland explained in evidence that examination of multiple blocks of both Daniel’s frontal and temporal cortices demonstrated significant tau pathology.

11.9 As to the likely cause of this tau pathology, Associate Professor Buckland described the question of causation as a “*somewhat vexatious issue*”. He went on to explain that to date, “*the only risk factor for CTE is exposure to repetitive head impacts*”, commonly described in contact sports players. However, Associate Professor Buckland went on to acknowledge that potential complex risk factors for CTE, such as a genetic risk factors, are unknown, and that academic literature has not yet advanced sufficiently enough to determine any possible predisposition to CTE due to a person’s ethnic background.

11.10 Notwithstanding the above, Associate Professor Buckland described the findings of tau pathology in Daniel’s case to be “*on the severe end of the spectrum*”, and the “*second most severe case*” that he had seen for a person under the age of 40. This led Associate Professor Buckland to conclude that the findings were borderline for Stage III CTE classification.

11.11 Associate Professor Buckland provided a letter to supplement his neuropathology report in which he expressed disagreement with aspects of Dr Sullivan’s report, namely any contribution of CTE to Daniel’s memory and mood difficulties, the relative contribution of any substance use disorder to Daniel’s behaviour and mental state, and the timing of the development of Daniel’s CTE. As to the



last of these matters, whilst Dr Sullivan considered that Daniel's lateral medullary infarct likely occurred before his CTE would have been evident, Associate Professor Buckland considered that it most likely that Daniel developed CTE in his teenage years and that he had "low level CTE" at the time of the lateral medullary infarct.

11.12 Associate Professor Buckland reached this conclusion in his letter:

Overall, [Daniel] had an organic and degenerative brain disease, CTE, which affected his ability to deal with the significant life stressor of his accident, and increasingly impacted on his mental state as the disease progressed. While there are undoubtedly other contributors to his clinical phenotype, particularly issues of substance abuse, it is my firm opinion that his degenerative brain disease is the main contributor to this phenotype and his actions on the day of his death.

11.13 The above matters were explored further with Associate Professor Buckland in his oral evidence. When asked about the different potential contributions between Daniel's CTE and his lateral medullary syndrome, Associate Professor Buckland indicated the following:

I don't think it's possible to confidently disentangle the relative contributions of the different diseases. However, I'm certainly of the opinion that Daniel had an organic degenerative brain disease and I have no doubt that was part of the reason for his described mood and behavioural changes.

11.14 Associate Professor Buckland was also asked in evidence to opine in relation to Daniel's ability to cope with substance abuse as a result of developing CTE as opposed to it being related to the lateral medullary infarct in 2010, and indicated the following:

Again it's hard to disentangle those things. Again, in my experience which is limited compared to say the US experience. There have been several families that have reported someone that, for whatever reason, just got into substance abuse or gambling abuse but - you know, at an age where you would think that they wouldn't. They'd passed that risk. They're not 21 anymore. They're 45 or something and then suddenly they go off the rails so I can't disentangle it but I believe the CTE was certainly part of the reason.

11.15 Later in his evidence, Associate Professor Buckland was asked by counsel for Sandra and Megan to express an opinion regarding the possibility that, to the extent that Daniel had a substance use disorder, it was in fact a symptom of CTE. Associate Professor Buckland opined:

That appears to be - it's very hard to tease out obviously but in my opinion that is part of the disease and once again, this is only anecdotal. We're sort of early on in our Australian understanding of the disease but families have said to me that, "That was the only way X could escape or could feel normal. He just wanted to feel normal again." Yeah.

11.16 Senior Counsel Assisting returned to explore this issue further with Associate Professor Buckland, who appropriately acknowledged that identifying the potential contributors to a person's intention to inflict their own death "can be multifactorial and can be very complex". There followed this exchange:

Q. Does that case not highlight the difficulty with a retrospective assessment of behaviour in relation to diagnoses of CTE on post-mortem?

A. Yes. that's why there's no - it can't be diagnosed during life at the moment because - because it - you're restricted because we don't have a scan or a blood test at the moment that can detect it in life and you can study it in life, the clinical information that you get is derived from interviewing family members of people that have been post-mortem - at post-mortem have been diagnosed with CTE so nevertheless - I do agree with that statement.

Nevertheless, once you show there is an organic brain disease under the microscope it sort of changes, it flips the conversation to the other way around but you're right. That is the tension between dissecting the clinical phenotype, diagnosing during life versus findings at death. I should say that is also how the symptomatology of Alzheimer's disease was described so it's not something that's unique. The problem is not something that's unique to CTE. It's also other degenerative diseases as well.

Q. But the point I wished to make was that you had in terms of presentation, a donor that ticked a number of boxes in relation to behaviours linked to CTE in circumstances where that particular donor, who tragically committed suicide, did not have any neurodegenerative pathology. Do you agree that therefore, as we established early in your evidence, that disentangling multiple causes in relation to the contribution between CTE and other potential causes, whether it's mental health, substance abuse and the like, is invariably difficult?

A. It is undoubtedly - it is very difficult, yes.

11.17 This issue was also explored with Dr Sullivan in his evidence when he was asked what, if any, impact CTE would have had on Daniel's behaviour just prior to 2 October 2019. Dr Sullivan responded:

Well, the first thing is, by my understanding and I'm not a specific expert in CTE, this is a progressive disorder. This is a disorder which over time is going to increase in severity, increase in the amount of progressive damage to the brain. We know that people with damaged brains, firstly, are more sensitive to the effects of substance use, more prone to developing other mental disorders and thus, in terms of its effects upon his behaviour, I think that it's a contribution to his behaviour, whether to impulsivity, to lowered mood, to suicidal ideation or to impaired organisation and planning and it's likely also that, as mentioned, it would exacerbate the effects of substances. That is render [Daniel] more sensitive to being disordered, perhaps at lower doses of substances or having more severe effects than would someone who took a similar dose who was similarly accustomed to them.

11.18 In providing the above answer, Dr Sullivan also acknowledged that the cause of Daniel's behaviour leading up to the events of 2 October 2019 was multi-factorial. Dr Sullivan went on to explain:

[T]he associations are much more difficult to separate out. We certainly know that a brain disorder can pre-dispose someone to an increased risk of other forms of mental disorder such as depression, could predispose them to an increased likelihood of substance use and may exacerbate personality vulnerabilities. The primal question, which I think can't really be answered, is but for the CTE, would he have otherwise developed substance use problems, problems in his life and a depressive disorder and that is much more difficult to separate out.

The second aspect of the causation question is really, not just whether CTE was the setting event and everything else followed on from it but rather whether you can separate out individual disorders and attribute a relative proportion of behaviour to that and I don't think that we have the capacity to do that. We rely upon temporal associations, associations in time. We rely upon evidence

of links, that is one thing precedes another, which leads to another but unravelling all of those and attributing them proportionally to various mental disorders is very difficult

11.19 When asked about the conclusions reached by Associate Professor Buckland in his letter, Dr Sullivan indicated the following:

Look, certainly firstly let me point out that Professor Buckland is an internationally renowned and well-regarded expert in CTE so I certainly have no cavil with any of those issues but I would still argue that in terms of determining the causation and saying that it was predominantly or purely related to CTE that [Daniel] engaged in this course of action, I think overlooks the role of the substance use in particular and of the context which is there so I wouldn't be confident to say because of the CTE and only because of that, he developed substance-use problems. Because of the CTE, [Daniel] made a range of life choices which left him with a very complicated system to deal with.

I would also say that [Daniel] had made apparently a suicide attempt soon after his lateral medullary syndrome several years before his CTE is likely to have progressed to that extent so it was clear that [Daniel] was grappling with his mental health for many years and I'm not so sure the CTE would have been such a prominent factor in the earlier problems that he had been suffering so on that basis, while I accept that CTE is a significant contribution, as a psychiatrist, I would find it more difficult to apportion the sole or predominant motivation for his behaviour to that alone.

11.20 **Conclusions:** A number of biological, psychological and social features contributed to Daniel's mental functioning and state of mind at the time of his death. Daniel had suffered a traumatic brain injury in 2010, which was a life-changing event, that resulted in ongoing neurological and physical impairments. These impairments in turn impacted almost every aspect of Daniel's life, which led those closest to Daniel to recognise a significant and noticeable change in the person that he was before and after his injury.

11.21 Psychological factors in the form of unspecified depressive disorder and deterioration in Daniel's mood resulted in suicidal ideation and previous attempts at self-harm. In addition, due to his complex relationship history, Daniel was experiencing a number of social and financial stressors that contributed to his poor mental state. Relevantly, Daniel's illicit drug use increased in 2019 and intensified in the weeks preceding his death to the extent that he was disinhibited and observed on a number of occasions to be incoherent and obviously unwell. Finally, Daniel's CTE was a progressive disorder which also contributed to his behaviour.

11.22 Overall, it is not possible to clearly delineate whether any one or more of the biological, psychological and social factors described above contributed more significantly to Daniel's overall mental state. As the expert evidence acknowledged, it is most likely that the contributors to Daniel's behaviour on the 2 October 2019 were multi-factorial.

11.23 In particular, it is not possible to conclude that Daniel's CTE was the primary contributor to his actions on 2 October 2019. Whilst this view may have been expressed by Associate Professor Buckland in his letter, in his evidence Associate Professor Buckland conceded that he was unable to confidently disentangle the various contributors described above, including Daniel's CTE. This difficulty was also recognised by Dr Sullivan who emphasised the difficulty in parsing the various potential contributing factors to Daniel's mental state and attributing some relative proportion to each of them. In conclusion, the expert evidence acknowledged Daniel's CTE to be a significant contributor to his mental state as at 2 October 2019, without being able to establish that it was the primary or predominant contributor.

## 12. How and when did Daniel obtain the firearm?

- 12.1 Detective Sergeant Fabio Furia of the NSWPF State Crime Command Drugs and Firearms Squad made a number of enquiries in relation to the 12-gauge Remington Model 870 Wingmaster pump action shotgun used by Daniel. These enquiries revealed that the firearm was manufactured in the United States and sold by Remington Arms Co. (the manufacturer) to Boustead Australia Pty Ltd (a firearms dealer and agent for Remington within Australia at the time) on 24 November 1980.
- 12.2 Prior to 1996, there was no requirement for firearms such as the one used by Daniel to be registered in NSW. Enquiries with both the managing director and sales coordinator for Boustead Australia Pty Ltd at the relevant time were unable to identify any records to assist with the tracing of the firearm. However, it was indicated that Boustead Australia Pty Ltd only sold imported firearms to law enforcement agencies and firearms dealers, and not to the general public.
- 12.3 Ultimately, Detective Sergeant Furia was unable to determine the possession history of the firearm beyond its importation date into Australia. On this basis, he opined that the firearm was a grey market firearm, meaning that it was a firearm that was not registered or surrendered as required during previous national firearm buy-back schemes, and that it was not owned, used or conveyed for criminal purposes but may end up in the illicit firearm market.
- 12.4 Other enquiries revealed that sometime prior to 8 July 2019, Daniel spoke to an associate of his, Peter Amituanai, asking for a firearm. Mr Amituanai denied providing Daniel with a firearm and told NSWPF investigators that he had no knowledge of the firearm used by Daniel.
- 12.5 On 31 July 2019 Daniel and Ms Day exchanged a number of messages in which Daniel asked Ms Day if she had used a firearm before and stated, *“No one would give me one if had dramas but one day”*.
- 12.6 On 12 March 2020, investigators spoke with Mr Olds who indicated that Daniel visited him at his home on 30 September 2019. On that occasion Daniel referred to a firearm, appeared to be in a distressed state and indicated that he wanted to *“let off a few shots”*. Mr Olds reportedly talked Daniel down and told investigators that he did not see Daniel with a firearm on this day.
- 12.7 Detective Inspector Virginia Gorman, the Senior Critical Incident Investigator and Officer-in-Charge of the NSWPF investigation, gave evidence that despite a number of enquiries, it was not possible to be specific as to when Daniel acquired the firearm, but expressed her belief that Daniel had obtained the firearm by at least 30 September 2019.

12.8 **Conclusions:** The obtaining of an unregistered firearm by a member of the community, and its subsequent use in a public, unauthorised setting, is a matter of some obvious public concern. Despite extensive enquiries, the NSWPF investigation has not been able to trace a precise history of the firearm used by Daniel or identify the manner by which he acquired it. It is most likely that Daniel acquired the firearm on the grey market.

12.9 It is similarly not possible to reach a definitive conclusion as to when Daniel acquired the firearm. The evidence establishes that Daniel likely was making enquiries regarding obtaining a firearm as early as July 2019, and that he most likely had acquired a firearm by at least 30 September 2019.



### 13. Was the NSWPF response to the Marayong Incident adequate?

- 13.1 After Daniel discharged a number of rounds at 35 Quakers Road, Marayong, Mandy Taylor contacted Triple Zero at 8:47pm. A CAD message was created at the same time and at 8:48pm a message was broadcast on Channel 2 calling for any NSWPF resources in the vicinity to attend.
- 13.2 Sergeant Baker was on duty at the RTIC in Parramatta at the time. As public place shootings are one of the job types that are the main focus of the RTIC, Sergeant Baker made a note on the CAD system that the RTIC was involved in the incident. Sergeant Baker conducted a location enquiry regarding 35 Quakers Road and identified that Ms Taylor was involved in a custody dispute with Shayne Simpson. This prompted further enquiries by Sergeant Baker which did not identify any information that Mr Simpson was the registered owner or user of a vehicle similar to the vehicle of interest.
- 13.3 Acting Sergeant Gibson heard the broadcast, acknowledged the job at 8:49pm and began driving to the scene, arriving at 8:54pm. Acting Sergeant Gibson took the following actions:
- (a) She spoke to a number of road workers at a site near the scene and identified that only a single person was involved in the incident and had already departed;
  - (b) She spoke with Ms Taylor and obtained a description of Daniel and vehicle of interest;
  - (c) She tasked a number of attending police officers with commencing a canvas of the surrounding area. Acting Sergeant Gibson was later provided with information from the canvas, which included a description of Daniel and the vehicle of interest, and that Daniel was alone;
  - (d) She notified the State Coordinator, Quakers Hill Duty Officer (Detective Chief Inspector Miller) and Forensic Operations Coordinator of the incident.
- 13.4 At around 9:03pm, Senior Constable Watts, who was also working at the RITC, commenced making enquiries into Daniel. These enquiries were based on information that Daniel had previously been in a relationship with Ms Taylor and involved in a domestic violence related event that had occurred some months earlier. From these searches, Senior Constable Watts identified that Daniel was the registered owner of a white Hyundai ix35 which matched the description of the vehicle of interest. Senior Constable Watts also obtained a photograph of Daniel from Roads and Maritime Services which revealed that he matched the description provided of the person of interest. With this information, Sergeant Baker and Senior Constable Watts identified Daniel's most recent address at 12A Harrier Place, Claremont Meadows.
- 13.5 At around 9:10am, Sergeant Baker spoke to Acting Sergeant Gibson on the phone and conveyed the above information. Acting Sergeant Gibson then spoke to Ms Taylor to ask if she recognised the person of interest as Daniel. Ms Taylor denied this and indicated that the person of interest appeared older than Daniel. Notwithstanding, Acting Sergeant Baker asked Ms Taylor for Daniel's details, including his mobile phone number and address. Following this, Acting Sergeant Gibson tasked Talon 770 to attend 12A Harrier Place, informed NSWPF radio of her intentions, and requested that the NSWPF Aviation Support Branch use its resources (**PolAir**) to perform a flyover of the location.

13.6 Senior Constable Moore was performing duties as part of Operation Talon and was the team leader for the Northwest Operations Support Group that evening. Together with Senior Constable Furner and Constable Cook he was operating under the callsign Talon 770. Senior Constable Moore gave evidence that 12A Harrier Place was approximately 15 to 20 minutes' drive from the scene of the Marayong Incident. He described the purpose of Talon 770 attending 12A Harrier Place in this way:

At that time, we were tasked to attend that address and I came to two possible scenarios when we attended that address. If that white car was in the driveway of that address, we'd make contact with [Acting Sergeant Gibson] and inform her of those details. Also, through our knowledge as well, if something like that was to occur, it'd be - probably not - we wouldn't go in through the front door, but we'd contain the area and wait for the Tactical Operations Unit to attend.

13.7 After departing the scene of the Marayong Incident, Senior Constable Moore instructed Constable Cook to change the radio channel in the Talon 770 vehicle from Channel 2 to Channel J. This is because Claremont Meadows was located within the Nepean PAC and so that Talon 770 could be aware of any local incidents in order to potentially respond. Whilst tuned into Channel J, the Talon 770 officers heard the broadcast in relation to the Penrith Police Station Incident. In response, they activated the warning devices of their vehicle and proceeded to Penrith, diverting from attending at 12A Harrier Place.

13.8 After Detective Chief Inspector Miller arrived at around 9:38pm he assumed control as the senior officer on the scene. Acting Sergeant Gibson had a further conversation with Ms Taylor in order to obtain more information regarding her history. Ms Taylor informed Acting Sergeant Gibson that she had not spoken with Daniel for about seven months, but that he had previously made a comment that if she did not proceed with an abortion, he would kill himself.

13.9 **Conclusions:** The NSWPF response to the Marayong Incident was adequate, timely and appropriate. Acting Sergeant Gibson arrived on the scene within seven minutes of the Triple Zero call being made and made appropriate enquiries to identify the nature of what had occurred and the person of interest as soon as possible. She also appropriately notified more senior officers of the incident so that consideration could be given to whether a further NSWPF response was required.

13.10 In addition, the officers on duty at the RTIC analysed the information that they had been provided with and correctly identified a connection between the person of interest and Daniel and obtained relevant details regarding Daniel so that police could make further enquiries. Once provided with information that the RTIC had gathered, Acting Sergeant Gibson tasked the Talon 770 two action these enquiries and ensure that any persons at Daniel's address were not placed at risk.

13.11 There is no evidence to suggest that either Acting Sergeant Gibson, the RTIC or the Talon 770 officers had an any earlier opportunity to identify Daniel as the likely person of interest. It is noted that Ms Taylor did not identify Daniel herself and even when provided with the information gathered by the RTIC, Ms Taylor remained doubtful that the person of interest was in fact Daniel.



**14. Was the NSWPF response to the St Mary's Incident adequate?**

14.1 Chief Inspector Wiggins was at St Marys Police Station performing the role of the Duty Officer for Nepean PAC on 2 October 2019 and in charge of the Command during the night shift. Shortly after 9:00pm, he heard three or four loud bangs which sounded like gunshots. Chief Inspector Wiggins went to the front counter area and spoke to the officers on duty who confirmed that they had heard the same sounds. He exited the station and noticed a spent cartridge on the ground together with damage to a concrete pier, and some glass behind the pier, at the front of the police station.

14.2 From these observations, Chief Inspector Wiggins formed the view that the front of the station had been shot at and damaged. In response, he declared a crime scene, tasked officers to conduct a canvas of the area, and instructed a car crew to perform a patrol. He also briefed Superintendent Keane and Detective Chief Inspector Cameron, the State Coordinator, regarding the incident. Detective Chief Inspector Cameron that upon receiving the call from Chief Inspector Wiggins, she passed the phone to Superintendent Waddell, the State Controller, so that he could be briefed.

14.3 Chief Inspector Wiggins gave the following evidence regarding the seriousness of the St Marys Incident:

Q. In your many years of being a police officer, had you ever been involved in an incident involving a police station being shot?

A. Not personally. I've been certainly in the police whilst in - whilst employed by the police whilst other police stations have been shot at, yes.

Q. Which police stations are you referring to that you're aware of?

A. Lakemba was one that comes to mind.

Q. Was that in the 90s?

A. In the 90s, yep.

Q. Would you agree with me that it's most unusual, or indeed rare, for a police station to be fired upon?

A. Yes, it is.

Q. Were you concerned that this incident had occurred involving a shotgun to St Marys Police Station?

A. Yes. Absolutely.

14.4 The following exchange took place between Ms Bunting and NE35 over radio in relation to the St Marys Incident:

Bunting: Nepean car, got a call in the vicinity of Warramunga Street and King Street St Mary's. Informant's heard four consecutive gunshots in the vicinity. Nepean, thanks.

NE35: Nepean 35.

Bunting: Nepean 35.

NE35: Yeah. Where did that last job come from?

Bunting: Yeah, it's just, um, Warramunga and King Street, St Marys. Just near the station...

NE35: Yeah, Nepean 3-5. 11 knows about that job. We're just making some details out of people around here. It's been confirmed, all we've got at the moment is a white sedan's come out the front of the station, let off a few rounds and took off.

Bunting: Yeah, copy that.

NE35: We're just trying to get a bit more information then we're going to be circulating.

Bunting: Copy that. Thank you.

[58 SECOND PAUSE]

NE35: Nepean 3-5.

Bunting: Nepean 3-5.

NE35: Spoken to informant. He reckons that it was a white hatchback something similar to, like, a CX5 Mazda. And basically went, went in the direction towards Queen Street. Doesn't know what he saw after that.

Bunting: Yeah, copy.

14.5 Chief Inspector Wiggins gave evidence that on a fair reading of the VKG transcript of this exchange, it did not make clear that St Marys Police Station had been shot at.

14.6 Following the above exchange, Ms Bunting made the following broadcast approximately 25 seconds later:

Information for any highway on air, thanks. Just to keep a lookout for possibly a white CX5 Mazda, or similar. It's been a vehicle that has let off a, let off a few rounds in the vicinity of Warramunga Street, King Street, St Marys. Or possibly near St Marys police station. Last seen towards Queen Street, around five minutes ago. Just um all cars on air, thanks, to keep a lookout for this vehicle.

14.7 Chief Inspector Wiggins gave evidence that he closed St Marys Police Station to the public in order to preserve the crime scene and not because of any perceived threat level to the station or to the NSWPF in general.

14.8 The NSWPF ROG Telephony Dispatch Standard Operating Procedures (**Dispatch SOPs**) provides for different priorities to be attached to a CAD incident, relevantly, as follows:

- (a) Priority 1 incidents require an urgent response and for police to respond immediately. These are life threatening incidents where the actual danger is still present, and there is a genuine belief that a person will suffer grievous bodily harm or death. A Priority 1 incident is preceded with a 3 tone alert by the dispatcher.
- (b) Priority 2 incidents require an immediate response, and typically involve a serious threat to life or property. A Priority 2 incident is preceded with a 2 tone alert by the dispatcher;
- (c) Priority 3 incidents require a nonurgent response, where police officers are to respond as soon as possible.

14.9 The St Marys Incident was assigned as a Priority 3 job in the CAD by the Triple Zero call taker. However, Ms Bunting, as the dispatcher, had the capacity to assign priorities to a particular incident.

Ms Bunting gave evidence that, on reflection, she should have upgraded the incident to Priority 2 and made a broadcast for police officers to keep a lookout for the vehicle of interest. Ms Bunting explained that she did not know why she did not take these actions at the relevant time.

14.10 Further, when asked if she should have considered the incident as Priority 1, Ms Bunting explained:

With the information that I was first presented with, just letting a few rounds off and the car has taken off, I would not have put it as a Priority 1. I didn't know that the shots later that I found out were into the station. In that case I believe officers would have been directly under threat which should have been a Priority 1 but however, given Nepean 35 stated the white sedan came out the front, let a few rounds and took off, I seen that as more of a scare and the vehicle has taken off, there was no officers directly under threat at that stage.

14.11 However, Ms Bunting agreed that if she had seen the CAD entry noting that shots had been fired into St Marys Police Station and that the station had been closed to the public, that she would have considered the incident to be a Priority 1 incident.

14.12 Detective Chief Inspector Cameron gave evidence that whilst she herself would not have changed the priority assigned to the incident, she could have called the supervisor at the relevant ROG centre to obtain further information and request that the priority of the incident be upgraded.

14.13 Chief Inspector Jillian Walters, the Acting Commander of the NSWPF ROG, was asked about the correctness of Ms Bunting's assignment of priority to the St Marys Incident and explained:

Look, I think at the beginning a priority 3 is probably appropriate. We have a lot of jobs that do come over that end up being fire crackers but once it was confirmed there had been shots fired, it should have been upgraded to a priority 2.

14.14 **Conclusions:** The initial NSWPF response to the St Marys Incident was adequate and timely in the sense that Chief Inspector Wiggins recognise from his initial examination of the scene that the police station had been fired upon. In response, Chief Inspector Wiggins tasked other officers to canvass the surrounding area and appropriately notified the State Coordinator and State Controller. Chief Inspector Wiggins eventually ordered that St Marys Police Station be closed to the public so that the crime scene could be preserved. Although Chief Inspector Wiggins gave evidence that he recognised the seriousness of what had occurred, he did not perceive there to be any overarching threats to St Marys Police Station or to the NSWPF in general.

14.15 Despite the conclusions reached by Chief Inspector Wiggins, the radio broadcasts made in relation to the St Marys Incident did not make it unequivocally clear that the police station itself had been shot at, as opposed to there having been shots being fired in the vicinity of the police station. Regardless, both Ms Bunting and Detective Chief Inspector Cameron acknowledged that there was an opportunity to have the priority assigned to the incident appropriately upgraded from a Priority 3 to a Priority 2. It is also evident that if Ms Bunting had seen the CAD entry indicating that shots had been fired at St Marys Police Station and that the station had been closed to the public (regardless of Chief Inspector Wiggins' reasons for doing so), it is possible that the incident would have been assigned a Priority 1.

14.16 Notwithstanding the above, it is not possible to conclude whether the assignment of any higher priority to the St Marys Incident is likely to have materially affected any aspect of the Penrith Police Station Incident. This is because a period of about only 21 minutes elapsed between when Daniel discharged his firearm at St Marys Police Station and when he discharged his firearm in the direction of Constable Vinter and Probationary Constable Mitchell. In addition, as is discussed further below, despite a number of police officers at, and approaching, Penrith Police Station (both before and after Daniel's arrival) being aware of the St Marys Incident, there is no evidence that any of the officers considered there was a need to perform their duties with any greater degree of alertness.

## 15. Was the NSWPF response to the shooting of Constable Vinter adequate?

- 15.1 Constable Vinter gave evidence that after exiting NE15 and hearing at least one loud bang, he had little to no recollection as to what he did in response. Constable Vinter indicated that he recalled wanting to get to safety although his reason for this was vague, and that his main memory was one of a “*running feeling*”.
- 15.2 Constable Vinter recalled that he ran into Penrith Police Station and, after that, lying down in the muster room. Constable Vinter gave evidence that he had no memory of speaking to anyone as to what had occurred outside the station. However, he acknowledged, based on his written statement which he later provided to investigators, that he had potentially tried to tell the other officers something about what had occurred.
- 15.3 Probationary Constable Mitchell gave evidence that prior to returning to Penrith Police Station, the radio in NE15 was on in the background at all times and that he heard some “radio chatter” in relation to shots being fired in the vicinity of Warramunga and King Streets, St Marys. Probationary Constable Mitchell said that whilst the names of the streets sounded familiar to him, he did not understand the broadcast to be referring to St Marys Police Station. In addition, Probationary Constable Mitchell gave evidence that, in his experience, it was not uncommon (especially on weekends) for there to be reports of fireworks or a car backfiring which are reported as the sounds of gunshots. Overall, Probationary Constable Mitchell gave evidence that the broadcasts were not of particular concern as NSWPF radio did not seem to make them a priority, and that the broadcasts “*didn’t come across to [him] as a threat against police*”.
- 15.4 Probationary Constable Mitchell gave evidence that after he exited NE15 he was leaning inside the vehicle in order to retrieve his dinner when he heard the sound of gunshots. He turned to his right and saw Daniel making a pump action in the air before bringing the firearm to face the direction of Probationary Constable Mitchell. In response, Probationary Constable Mitchell yelled, “*gun*”, to convey to Constable Vinter that there was “*something going on*” as he knew that Constable Vinter was not on his side of the vehicle.
- 15.5 Probationary Constable Mitchell ran to take cover on the opposite side of High Street before he saw Constable Vinter running up the street towards the entrance to Penrith Police Station. As Probationary Constable Mitchell reached the kerb at the front of the police station, he heard the sound of another gunshot, and tripped. After regaining his footing, Probationary Constable Mitchell used his portable radio to make the following broadcast: “*Police station. Shots fired*”.
- 15.6 Upon entering the foyer, Probationary Constable Mitchell took cover and saw a number of other police officers arriving in the area. When asked if he informed the other police officers what he had observed outside the police station, Probationary Constable Mitchell gave evidence that he was in a state of shock and indicated the following:

I remember not, being really confused and not being able to verbalise what had happened, they were trying to ask me, I couldn’t get it across.

15.7 Sergeant Urio was in his office when he heard the gunshots from outside Penrith Police Station. He gave evidence that he ran to the front counter and instructed the constables working there to get down and to [REDACTED]. Sergeant Urio explained that his intention was to take cover and determine what was occurring outside.

15.8 After Constable Vinter and Probationary Constable Mitchell arrived in the foyer, Sergeant Urio directed some of the officers in the foyer area to take Constable Vinter to the muster room, which was located beside his office. Meanwhile, Sergeant Urio moved to a wall to the left of the front doors in an attempt to look down High Street to see what was occurring outside. Sergeant Urio gave the following evidence as to what he did next:

I couldn't see anyone at that point in time so it went quiet so - and then - at that point in time, I think it was Constable Hoffman, come into the foyer and he may have been with someone else. I can't remember and I told him to take up the position here and not to let anyone come into this police station and then I ran back to Constable Vinter. He was laying on his back in the muster room. He was being seen to by Constable Brett Marks at that time. He was the custody assist at that time. He was laying on his back and he grabbed my arms and basically said, "Am I going to die, sergeant?" and I basically said, "Don't be silly. You just got my coffee. I'm not going anywhere." I said - I looked into his eyes just to see his reaction. Then I looked at the back of his head and there was some bleeding so I ran to the gun room and I got the pad. Because the big pads, wads of pads, dressing so I ran that out, put that behind his head and I told Constable Marks to do - to what to do with it and then I reassured Constable Vinter that I will get him out of here. "Give me two minutes. I can't let an ambulance come in here at the moment because I don't know what's going on outside".

15.9 Sergeant Urio did not ask Constable Vinter or Probationary Constable Mitchell what had occurred outside. However, Sergeant Urio gave evidence that from his own observations he concluded that the sounds of gunshots and the injury to Constable Vinter were related. As to seeking medical assistance for Constable Vinter, Sergeant Urio explained his plan in this way:

Well, at that point in time I wasn't sure what was going on outside so I was going to - I wouldn't allow an ambulance come in at that point in time for the safety of the ambulance officers and I had to secure a proper location to extract him from the police station so I was planning on getting the police station secure before I could do that.

15.10 **Conclusions:** The evidence establishes that both Constable Vinter and Probationary Constable Mitchell were taken completely by surprise in relation to Daniel's actions. They could not have predicted that the vehicle would be fired upon. In response, both Constable Vinter and Probationary Constable Mitchell acted appropriately in attempting to initially take cover in the nearby vicinity, before retreating to the police station which offered increased cover.

15.11 Upon their arrival in the foyer of the police station, Sergeant Urio appropriately directed other officers to assist Constable Vinter to the safety of the muster room so that first aid could be provided. Sergeant Urio appropriately deferred seeking paramedic assistance for Constable Vinter until he was able to establish that there was a safe means of doing so, both for the attending paramedics and for the personnel inside the police station.

15.12 Finally, there was no opportunity for any police officer inside Penrith Police Station to enquire of either Constable Vinter or Probationary Constable Mitchell as to exactly what had transpired outside. Constable Vinter was injured and clearly in need of medical attention. Probationary Constable Mitchell was understandably in a state of shock and unable to articulate what had occurred. The police officers inside the foyer area took appropriate action to take cover and obtain as much situational awareness as they could of the unfolding events through their own observations.

**16. Were the NSWPF radio communications in response to the incidents on 2 October 2019 adequate?**

16.1 It is convenient to consider this issue in two respects: from a radio dispatch perspective, and from the perspective of officers in and around Penrith Police Station who made, or were able to make, radio communications.

***Radio dispatch***

16.2 Ms Bunting was working on Level 2 of Penrith Police Station in the ROG office which looks out onto High Street. She first became aware of the Penrith Police Station Incident when she heard the sounds of gunshots at the front of the station. Upon hearing the sounds, Ms Bunting and her colleagues were instructed by their supervisor to take cover under their desks. Ms Bunting described the incident as “*very distressing*” and that she believed that she and her colleagues were “*immediately in danger*”. Ms Bunting gave evidence that she formed the impression that somebody was shooting at or in the direction of the NSWPF. Notwithstanding, Ms Bunting continued to make broadcasts by remaining “*pretty much completely under [her] desk with [her] arms above the desk typing*”.

16.3 The first broadcast made by Ms Bunting in relation to shots being fired outside the front of Penrith Police Station was preceded by a single tone. However, Ms Bunting acknowledged that this was an error on her part and that she had intended to use a 2-tone alert to precede the broadcast.

16.4 After becoming aware that Constable Vinter had been injured and that a request had been made for an ambulance to attend, Ms Bunting recognised that this incident required a Priority 1 response. Notwithstanding, Ms Bunting did not use any tone alerts to signify the priority of the incident. She explained:

Well, I believe because the supervisors were aware of the officer injured and they were going to direct him to the back of the station, I, in my opinion, wouldn't have broadcast more cars to go that officer. I probably should have to the front of the station for the incident that was unfolding but I believe that this officer was in the hands of other officers and by them going to the back of the station was actually them being away from the threat so I didn't want to broadcast that all cars go to the back when there was still a situation unfolding at the front.

16.5 Ms Bunting described the radio traffic, and her ability to make broadcasts at the time, in this way:

I wouldn't say they were clear broadcasts. There was a lot of cars trying to go over the top of each other and interference so yeah, I wouldn't say they were clear broadcasts.

16.6 Ms Bunting agreed in evidence that she encountered difficulties in controlling traffic over the radio and that there were a number of police officers talking over one another. Ms Bunting described that, in her experience, this was a common problem with different car crews acknowledging a job and advising of their intentions and/or arrival at the scene. Ms Bunting attempted to control the amount of traffic by issuing the command, “*All cars standby unless urgent*”, on a number of occasions. Ms Bunting gave evidence that “*to an extent*” she felt she could have done more to control some of the over talking during certain periods in the broadcast. However, Ms Bunting explained:



I was also worried myself to of taking up too much air time when the supervisors were coming up with details so I was just trying not to blabber on.

- 16.7 Ms Bunting formed the impression that the Penrith Police Station Incident was a drive-by public shooting and, with her knowledge of the St Marys Incident, considered that the two incidents might have been related. However, Ms Bunting did not merge the incidents on the CAD system to create a single incident, as she explained:

[B]ecause it was so chaotic and we were struggling to even keep our thoughts in line, usually once the situation settles down, we will try and go through and link that sort of stuff so they weren't just left completely - like not together but at the time, when this first happened, yeah, they were linked.

- 16.8 During her evidence, Ms Bunting recognised that there was an opportunity to request further information from the police officers in, or in the vicinity of, Penrith Police Station. She explained:

Probably to find it, we call it a sitrep or find a situation from one of the officers on scene. Now that I look back at it, we didn't actually have any information of what actually happened. At this point we still didn't know what was going on, if [Daniel] was there. As I broadcast, "Which direction did the car go?" we still didn't even know that [Daniel] was out the front or what was happening so from our perspective, all of these shots have gone off, we have an injured officer and that's all we knew.

- 16.9 Ms Bunting recognised that by making the broadcast asking for the last known direction of the vehicle of interest it had the capacity to convey the impression that the vehicle had already left the scene. Ms Bunting acknowledged that, in hindsight, it may have been preferable to simply ask for a sitrep or an update from one of the officers at the scene. Ms Bunting was asked why she did not do so at the time and explained:

I was struggling to even respond on the radio because I was shaking, yeah. I don't know.

- 16.10 On a fair listening to the radio broadcasts, it does not appear that Ms Bunting sounded distressed or not in control of the situation that was unfolding. Rather, it is evident that she maintained a calm and clear voice during the situation. Ms Bunting explained that she was endeavouring to do so:

I believe that if I become [sic] panicked then the whole channel would have just been worse. If I was screaming or I was raising my voice back at the officers, it would have just been chaotic.

- 16.11 During her evidence, Chief Inspector Walters was invited to comment about a number of aspects of Ms Bunting's actions. Overall, Chief Inspector Walters gave evidence that Ms Bunting performed her duties in a manner that would have been expected of someone in her role. As to the issue of Ms Bunting's use of alert tones, Chief Inspector Walters opined:

I think [Ms Bunting] probably on her reflection she felt that she could use tones more to control the radio and the air traffic. However, there is always the disadvantage of using radio tones too much, is that it also prevents people, the police on the radio, getting through if there's constant tones so you've sort of - you've got to be careful how many tones you use but I certainly think at the beginning they needed a few more appropriate tones and also as she continued, if the traffic got too heavy or people were talking over the top of each other, she could use the tones to stop that, which she did.

16.12 Notwithstanding the above, Chief Inspector Walters agreed that Ms Bunting ought to have given a 2-alert tone after hearing shots fired outside Penrith police station, and that she ought to have given a 3-alert tone following the broadcast that Constable Vinter had been injured. When asked as to the likely consequences of the alert tones not being given, Chief Inspector Walters indicated:

I don't think it would have had a different outcome but I do believe it would have made police aware of the fact that it was a signal 1 and then during that, as you said with the air traffic and the SOPs of acknowledging because of a signal 1 they don't - police know not to have to acknowledge on air so those sorts of minor things would have been relevant.

16.13 Chief Inspector Walters described an amendment to the ROG Dispatch SOPs which provide for the following in relation to an Active Armed Offender incident:

Note: car crews should acknowledge the job via MDT/CAD and are not required to supply code of response and ETA to assist in minimising nonessential air traffic.

16.14 The above provides for a different way for NSWPF officers responding to a Priority 1 incident to acknowledge their attendance at the incident without unnecessarily increasing the volume of radio traffic.

16.15 Chief Inspector Walters gave evidence that Ms Bunting ought to have asked for a sitrep, and that although she not specifically do so, Ms Bunting "*tried to list as much information in the situation that was occurring*". Notwithstanding, Chief Inspector Walters was unable to provide any other suggestions as to what might have improved the flow of radio communication on 2 October 2019 given that "*each situation is different*".

16.16 Chief Inspector Waters acknowledged that there is currently no standard operating procedure or training material that specifically addresses "*attacks on police stations*" and indicated the following:

Information supplied to a dispatcher in respect of such an incident would be assessed by the dispatcher to determine if an attack on a police station is actually occurring at the time or remains as a threat of an attack, and the incident responded to and broadcast in accordance with the ROG Dispatch SOPs.

16.17 However, Chief Inspector Walters went on to explain that consultation is currently underway between the ROG and the Investigations & Counter Terrorism Command regarding the issue of whether the development of a standard offering procedure that addresses attacks on police stations specifically is required. When asked in evidence for an update as to this consultation, Chief Inspector Walters explained:

I have actually reached out to the Counter Terrorism Command and I'm in negotiation with them at the moment. Obviously, there is alert which is in place at the moment but we're still progressing those enquiries and investigations, how we look at progressing a SOP in regards to the threat of a station so there hasn't - I can't give any further information on that because it's still in progression.

16.18 Chief Inspector Walters was also asked about the making of any determination as to whether the NSWPF need to be alerted more generally to the risks arising from an incident such as the Penrith Police Station Incident and indicated the following:

Well, we have a couple of things. We've updated our SOPs now so that anything that refers to shots fired is broadcast to surrounding channels so that in the first instance, which we didn't have at the time of this shooting incident, so that's been updated and secondly, through the State Coordinator they're notified of any - that's on stations and they have the appropriate communication that they would provide to the various powers to be to ensure that other stations and other areas know that there's been a threat or an incident occurring at a station.

16.19 As to the question of potentially linking the Marayong Incident and the St Marys Incident, Chief Inspector Walters gave evidence as to her belief that there was insufficient information to form such a link. In addition, Chief Inspector Walters indicated that if two events are linked, without a sufficient basis to do so, it may have the unintended consequence of misdirecting NSWPF resources.

16.20 Detective Chief Inspector Cameron also gave evidence as to her actions in response to information regarding both the St Marys Incident and the Penrith Police Station Incident. She explained that she notified both the Tactical Operations Unit and the Public Order and Riot Squad in order to direct appropriate resources to respond to the incidents. Detective Chief Inspector Cameron explained that as she was busy doing so, she did not raise the general alert level in relation to the possibility of other police stations coming under attack. Detective Chief Inspector Cameron acknowledged, in hindsight, that there would have been some sense in doing so.

16.21 When asked whether she could have anything differently in response to both incidents, Detective Chief Inspector Cameron acknowledged that she could have arranged for a CAD job to be created and for a Priority 1 to be assigned to it. Detective Chief Inspector Cameron also acknowledged:

I could have done a flash message or "keep a look out for" but my mind was turned to getting resources into there. That was my focus at that initial phase.

16.22 **Conclusions:** Due to the amount of radio traffic at the relevant time, Ms Bunting encountered difficulties in controlling the volume of communications. Notwithstanding, Ms Bunting appropriately attempted to restrict communications to only those that were urgent and necessary. In addition, Ms Bunting was conscious of adding to the volume of radio traffic herself by making repeated broadcasts.

16.23 Ms Bunting correctly acknowledged that appropriate alert tones were not assigned to the events of shots being fired outside Penrith Police Station and Constable Vinter being injured. However, the evidence of Chief Inspector Walters establishes that it is unlikely that the absence of such alert tones would have made any material difference to the subsequent events which unfolded.

16.24 Ms Bunting also appropriately acknowledged that she should have asked for a sitrep and that her broadcast enquiring as to the last known direction of Daniel's vehicle created a degree of confusion as to whether or not Daniel was still outside the front of the police station, and as to any actions that he may have been taking. However, as Counsel Assisting sensitively acknowledged during the course

of Ms Bunting's evidence, she was only 22 years old at the time of the events, was clearly confronted by a distressing situation and continued to perform her duties from a position of cover under her desk whilst of the reasonable belief that she and her colleagues were in immediate danger.

16.25 Detective Chief Inspector Cameron also acknowledged that there was an opportunity to elevate the alert level so as to inform other police stations as to the possibility of a coordinated attack against police stations generally. However, as noted above, given the limited timing between the occurrences of the St Marys Incident and the Penrith Police Station Incident, it cannot be said that this would have materially altered the overall events. In the circumstances, it was appropriate for Detective Chief Inspector Cameron to direct her attention to coordinating police resources to respond to the incidents.

16.26 The evidence of Chief Inspector Walters establishes that since the events of October 2019, ongoing consideration is being given to the need for standard operating procedures regarding a possible scenario of a police station coming under attack. In addition, relevant improvements have been made to reduce the volume of radio communications for similar incidents, and to ensure that such incidents are broadcast to surrounding radio channels to notify other police stations in the vicinity. Having regard to these improvements, it is neither necessary nor desirable for any recommendations to be made.

### **Radio communications by NSWPF officers**

16.27 Leading Senior Constable Guinery was on Level 1 of Penrith Police Station, processing some juvenile offenders that he had dealt with earlier in his shift, when he heard the sounds of gunshots from outside on High Street. After looking out the window in his office, he heard Senior Constable Darnton call out words to the effect that there was an armed offender outside. Leading Senior Constable Guinery checked his holster, realised that it was empty, and went to retrieve his firearm from where he had left it in a lockbox outside the charge room.

16.28 Leading Senior Constable Guinery then made his way to the foyer area, passing Constable Vinter who was near the muster room and seeing the injury to his head. Upon arriving in the foyer, Leading Senior Constable Guinery gave evidence that he believed "*there was a terrorist situation*" based on the fact that that he heard Senior Constable Darnton refer to an armed offender, he saw the injury to Constable Vinter, and he had been told that Constable Vinter had been shot and injured.

16.29 Leading Senior Constable Guinery described what was occurring inside the police station as "*a bit frantic*" as he observed "*just people moving around a lot [...] There were people talking to each other, moving around, yeah, it was, it was very quick though*".

16.30 After taking cover behind a pylon in the foyer, Leading Senior Constable Guinery looked outside and saw Daniel on the footpath with an obvious long arm over his shoulder. As he continued to watch Daniel, Leading Senior Constable Guinery heard the sounds of a police siren and saw flashing lights and saw Daniel to walk west down the footpath towards the approaching police vehicle. At that time, Leading Senior Constable Guinery did not have a portable police radio with him.

16.31 Senior Constable Hoffman was in the muster room when he heard a radio broadcast in relation to the St Marys Incident. He subsequently spoke to Sergeant Urio and obtained confirmation that St Marys Police Station had been shot at. A short time later, Senior Constable Hoffman heard the gunshots from outside Penrith Police Station and made his way to the foyer where he saw Constable Vinter with an injury to his head. Senior Constable Hoffman formed the view that a terrorist attack was occurring and gave this evidence:

Well, I knew some areas had been shot at, and then all of a sudden Penrith was now being shot at, and an officer's been shot, so I presumed that we were just under attack.

16.32 After taking cover behind a brick wall, Senior Constable Hoffman used his portable radio in an attempt to make a broadcast and began by announcing his callsign (Nepean 36) and stating the word, "*Urgent*". However, due to radio traffic at the time, Senior Constable Hoffman was unable to continue which prompted Ms Bunting to make the following broadcasts:

A few cars at once there 3-6, go ahead.  
Nepean 3-6, only, thanks.

16.33 Eventually, Senior Constable Hoffman was able to make the following broadcast:

Hoffman: Yeah, radio, we've got an officer injured at Nepean police station. We need an ambulance here.  
Bunting: Copy that.  
Hoffman: Radio, get them to go to the back of the station.  
Bunting: Yeah, copy that. Ambos to the back of the station. When you have injuries just to advise, thanks.

16.34 Senior Constable Hoffman gave the following evidence in relation to his difficulties with radio communications at the time:

Q. Was there a problem with the radio being clogged or jammed?  
A. Yeah.

Q. What was the problem?  
A. So, I didn't, I didn't hear Penrith VKG broadcast that there was shots fired. I'm guessing it's cause we were all yelling and screaming trying to work out what's going on.

Q. You didn't hear Probationary Constable Mitchell over the radio saying, "Police station, shots fired"?  
A. No.

Q. You didn't hear the dispatcher say "Got the shots fired. Thank you. Cars to start making their way"?  
A. No.

Q. What difficulties if any did you encounter to be able to make a clear broadcast at that time after you've seen that Constable Vinter has been injured?

A. Multiple cars trying to jump on and let the radio know they're making their way, they're proceeding to the job. And I was having difficulty getting on for a while.

Q. Do you believe today that you may have said more than what we've heard on the VKG today that may not have been recorded--

A. Maybe.

Q. --because of those difficulties, or not?

A. Maybe just swearing down the radio for someone to stop talking.

16.35 After a relatively lengthy exchange in evidence, Senior Constable Hoffman eventually agreed with Senior Counsel Assisting that it would be a matter of common sense that if officers inside the station knew what Daniel was doing immediately outside the station for that to be broadcast either over police radio or internally within the station.

16.36 The possibility of an internal broadcast within Penrith Police Station using its public announcement (PA) system was explored with Senior Constable Hoffman and a number of other police officers including Sergeant Urio. The essence of their evidence was that the PA system was not typically used for such internal broadcasts; rather, it was typically used to notify police officers of their need to attend the front counter of the police station. In addition, whilst the telephone system at St Marys Police Station appears to have had the capability of using a telephone to make a broadcast over the PA system at that station, there is some doubt as to whether the same functionality existed at Penrith Police Station at the relevant time.

16.37 Whilst positioned at the front of the station, Senior Constable Hoffman gave evidence that he (and other officers) did not know whether Daniel was still outside the front of the station. Whilst he assumed that Daniel was still there, Senior Constable Hoffman gave evidence that he could not see Daniel and "*didn't know what was going on*". Senior Constable Hoffman gave further evidence that at some point Senior Constable Jamieson indicated that Daniel was still outside but did not know whether he was armed. At around this time, following an enquiry from Nepean 35 as to Daniel's last known direction, the following exchange took place over radio between Ms Bunting and Senior Constable Hoffman:

Bunting: Any officers at the scene, if you can thanks, just the last known direction of vehicle?

Hoffman: Radio, we've got nothing at this stage. Give us a second.

Bunting: Yeah copy.

16.38 Senior Constable Hoffman gave evidence that following this exchange, he attempted to make a further broadcast but was cut off due to radio interference (although he could not recall in evidence what he intended to broadcast).

16.39 Senior Constable Jamieson was in the vicinity of the muster room when he was informed by Sergeant Urio that there had been shots fired at the front of the station and to move away from the front counter. As he moved to the entrance foyer, Senior Constable Jamieson saw Constable Vinter enter the police station with an injury to his head. Senior Constable Jamieson assisted Constable Vinter to the muster room before returning to the foyer. Upon his return, he agreed in evidence that

there was a level of confusion because none of the police officers had established what had occurred outside.

16.40 After being instructed by Sergeant Urio to take cover, Senior Constable Jamieson looked outside and saw Daniel looking towards the front entrance of the police station with a long arm slung over his shoulder. After observing Daniel make a beckoning gesture (which Senior Constable Jamieson did not recall at the time, but remembered after reviewing the CCTV footage), Senior Constable Jamieson informed at least Sergeant Urio and Senior Constable Hoffman that Daniel was still directly outside the front of the police station, armed with a rifle. Although Senior Constable Jamieson had a radio with him, he did not make any broadcast regarding his observations. He explained in evidence:

There was a lot of, a lot of people trying to talk over each other from the moment we went into the foyer, there was, there was a hard time for anyone to relay information over the radio, people were talking over the top of each other. At that point, Senior Constable Hoffman sort of took charge at one point, and then Sergeant Urio had control over the radio after that, so I relayed it to them.

16.41 Senior Constable Jamieson gave evidence that on reflection, he considered that it was the right decision in informing Sergeant Urio as the senior officer present, of the observations that he had made of Daniel, rather than making a broadcast himself. However, Senior Constable Jamieson acknowledged that it “*possibly would have been an advantage to, to people arriving or attending the station from outside*” if he had made a broadcast regarding his observations of Daniel.

16.42 Senior Constable Kovacs was located in the Highway Patrol office on Level 2 of Penrith Police Station with Sergeant Klein. Upon hearing the sound of gunshots, Senior Constable Kovacs made his way to top of a set of stairs leading to the foyer area. From this position, he saw Daniel on the footpath outside the police station, armed with a firearm and walking in a westerly direction down High Street. Senior Constable Kovacs was able to observe Daniel walking for approximately three to four metres before he walked out of sight.

16.43 Senior Constable Kovacs informed the Sergeant Klein of his observations of Daniel but, despite having a portable radio with him, made no broadcast in relation to his observations. In evidence, Senior Constable Kovacs described the situation as chaotic and that it was “*pretty difficult*” to use the radio. He further explained:

Even on the street when I was trying to broadcast on the radio about what I saw, when I actually got to the incident, it took me, I think, two or three goes to actually get a bit of clear air time to say what I had to say.

16.44 Senior Constable Kovacs gave evidence acknowledging that it would have been advantageous to the other officers present if he had broadcast his observations of Daniel, and where Daniel was located. As to why he did not do so, Senior Constable Kovacs explained:

Basically, with the chaos of the scene and all the other traffic that was going, there was a lot happening at the time and the only time I remember broadcasting anything was when I was in the street, yeah. There was a lot of communication happening but a lot of it was verbal. It was - like a lot of shouting and yelling. It wasn't actually broadcast over the radio to my recollection.

16.45 Further, Senior Constable Kovacs described the scene in the foyer area in the following way:

From what I saw, it was generally orderly. From memory there wasn't too many people actually in Penrith Police Station at the time. Yeah, things were very chaotic but it was like an organised chaos, if that makes sense. It was - Sergeant Urio, from what I could see, was trying to take charge of the scene and direct people the best he could but then it was like - I know why it happened now but just everything just got to a point when we heard all those second gunshots ring out, it just went to a next level basically and whatever plan that Sergeant Urio had just kind of went out the window.

16.46 Sergeant Urio gave evidence that he was in his office when he heard the sounds of gunshots outside. After quickly making his way to the front counter area, Sergeant Urio instructed the officers there to take cover. Following the arrival of Constable Vinter and Probationary Constable Mitchell, Sergeant Urio directed officers to assist Constable Vinter by taking him to the muster room where first aid could be provided. As noted above, Sergeant Urio later went to the muster room himself to reassure Constable Vinter.

16.47 Sergeant Urio gave evidence that he formulated a plan of action to secure the front of the police station, and not allow anyone to enter it. He also gave evidence that he "*formed the opinion that the police station was under attack for [sic] the amount of shots that were fired*". At the time, Sergeant Urio did not have access to a portable radio and acknowledged that there was a delay in obtaining one as no portable radios were available at Penrith Police Station at that time. Sergeant Urio gave evidence that he later obtained a radio from one of the car crews and indicated in evidence that he felt "*hamstrung in terms of issuing directions or instructions to fellow officers*" up until that point in time.

16.48 Sergeant Urio gave evidence that he did not provide any specific instructions to any police officers in the foyer to inform him, or any other officers, as to what they may have observed outside. Instead, Sergeant Urio indicated that he had no doubt that if an officer had observed something outside and had also seen Sergeant Urio, that officer would have informed him of any such observations. Sergeant Urio was asked in evidence whether HB15 should have been informed about Daniel's movements outside the front of the police station. He explained:

I just assumed that they would have heard the broadcast about shots fired at the police station. I had a lot of things going on that I had to attend to. My main concern was Constable Vinter and securing the front of the police station so in hindsight that would have been a great idea for me to broadcast that but I never had an opportunity.

16.49 Sergeant Urio agreed that it would have been a good idea for someone within the police station to broadcast in clear terms that Daniel was still armed and outside the front of the police station following the incident involving Constable Vinter.

16.50 After obtaining the portable radio from Constable Breeze-Backers, Sergeant Urio made his first broadcast after hearing a volley of gunshots outside. In evidence, Sergeant Urio agreed that this occurred after HB15 had already arrived at the front of the station, and after Leading Senior Constable Guinery and Senior Constable Hoffman had already engaged with Daniel. The exchange between Sergeant Urio and Ms Bunting is set out below:



Urio: Nepean Station Supervisor.  
 Bunting: Go ahead.  
 Urio: There is no ambulance to come to the station. The police officer who has been injured, I'll get him up to the hospital. I repeat, no ambulance to come to the station. All police...  
 Bunting: Copy that.  
 Urio: ...to take cover. There are police outside. I do not want anyone, um, putting themselves in a position where they can be shot.  
 Bunting: Yeah copy that...  
 Urio: Stay away...  
 Bunting: ...all cars...  
 Urio: [REDACTED]  
 Bunting: [No audible reply]  
 Urio: And I also want PolAir as soon as possible please?  
 Bunting: Copy. PolAir have been advised.  
 Urio: All police, make sure they take cover.  
 Bunting: [REDACTED]

16.51 Sergeant Urio rejected the any characterisation that “*no one seemed to be in charge or in control of Penrith Police Station*” whilst Daniel was still outside and before HB15 arrived. Prior to obtaining a portable radio, Sergeant Urio described the control he exercised in this way:

The period of time I had - hadn't had a radio, I still had control of the staff that I had that I could control that I knew of in my station, apart from the people that are up on different levels, which I wasn't aware they were there but I still - my actions still stopped them from being harmed and that was my main goal. For the police station to be secure.

16.52 In addition, Sergeant Urio gave evidence that he instructed officers within the police station to [REDACTED] and take cover, he directed officers to secure the front of the police station to prevent potential offenders from entering, he directed officers to convey Constable Vinter to the muster room so that first aid could be provided and, after Daniel was brought into the police station and it was determined that no further medical assistance could be provided, he directed officers to establish parameters to commence an investigation into the incident.

16.53 **Conclusions:** The collective evidence from the police officers in and around the vicinity of the foyer area of Penrith Police Station establishes a number of significant matters. First, some of the police officers had an opportunity to observe Daniel's movements, critically that he was armed with a long arm of some kind and that he was moving in the direction of HB15 as it approached the front of the police station. Second, some of the police officers that made these observations had available to them a portable radio. Third, there was general agreement amongst the police officers that there would have been utility in making a radio broadcast generally, and informing HB15 in particular, of these observations.

16.54 As already noted above, it is clear that the volume of radio communications contributed to the inability of the police officers, who had radios available to them, from broadcasting their

observations of Daniel. Also, there is no reliable evidence there was any opportunity to use an alternate means, such as the station's PA system, to notify other officers within the station as to what was occurring outside.

16.55 If radio broadcasts had been made to the effect that Daniel was still outside the front of the police station, it is most likely that this would have caused Senior Constable Cole and Probationary Constable Allen to not travel to the same location. They would have instead remained at the rear of the police station. In this regard, and as discussed further below, it should be noted that Senior Constable Cole and Probationary Constable Allen also did not make any broadcast of their intention to proceed to this location. The end result, of course, is that the officers inside HB15 unknowingly proceeded to a location where Daniel was armed and still present.

16.56 Several of the police officers described the situation in the foyer area to be chaotic and lacking a degree of control. The description of the events as being indicative of chaos is perhaps open to some degree of interpretation. However, it was not unreasonable for some of the police officers to form a belief that Penrith Police Station was under threat, whether it be from a purported terrorist attack or otherwise. There is no doubt that any belief held in this regard contributed to a degree of confusion which existed at the time.

16.57 Despite the above, the evidence establishes that some degree of control was being exercised by the police officers in the foyer area. They appropriately took positions of cover whilst at the same time attempted to gain situational awareness of the unexpected events that were unfolding. Sergeant Urio provided appropriate instructions to more junior officers in this regard, and it was reasonable for him to direct his attention to securing the station and preventing whatever threat existed outside from entering.

16.58 Since the events of 2 October 2019, a number of improvements have been made to address some of the matters referred to above. As described already, amendments have been made to the Dispatch SOPs with a view to reducing unnecessary radio communication so that urgent and critical broadcasts can be made. In addition, Penrith Police Station is now equipped with additional portable radios to allow for increased access by officers, including the internal supervisor. Finally, and whilst less relevant to the issue of communications, it should be noted arrangements are being made to ensure that additional ballistic vests are available to officers at Penrith Police Station.

**17. Were the actions taken by Senior Constable Cole, Probationary Constable Allen, Leading Senior Constable Guinery and Senior Constable Hoffman appropriate and in accordance with NSWPF policy?**

17.1 Before examining the actions of each of the individual officers, it is first necessary to identify the relevant NSWPF policy considerations applicable to their actions.

***NSWPF Policy Considerations***

17.2 Detective Sergeant Graham O’Toole is part of the Weapons Tactics Policy and Review attached to the NSWPF Operational Safety and Skills Command, with more than 21 years’ experience as a Weapons and Defensive Tactics instructor. He was asked by Detective Inspector Gorman to review the circumstances surrounding Daniel’s death, and the actions of a number of police officers including Senior Constable Cole, Probationary Constable Allen, Leading Senior Constable Guinery, Senior Constable Hoffman and Senior Constable Jamieson.

17.3 The NSWPF uses the Tactical Operations Model (**the Model**) to guide police officers in the use of force in response to a number of situations, including when engaging with an Active Armed Offender (**AAO**). The NSWPF *Active Armed Offender Response Guidelines* provides the following definition for an AAO:

An armed offender who is actively engaged in killing or attempting to kill people and who a member of the police force reasonably suspects will continue to do so while having access to additional potential victims.

17.4 Relevantly, the *NSWPF Handbook* provides for the following in relation to the use of firearms and appointments:

You are only justified in discharging your firearm when there is an immediate risk to your life, or the life of someone else, or there is an immediate risk of serious injury to you or someone else and there is no other way of preventing the risk.

17.5 Detective Sergeant O’Toole described the training provided to NSWPF officers in relation to the Model in this way:

[P]olice aren’t trained when to use a particular tactical option. The tactical option chosen by an officer is dependent on the officer. We cannot dictate what tactical options an officer may go to. That’s a personal choice depending on their circumstances. We can advise what we believe is the most appropriate tactical option given a circumstance but whether the officer chooses to utilise that, is up to the officer.

17.6 AAO training has been part of the mandatory training for NSWPF officers since 2015. Detective Sergeant O’Toole noted that as at 2 October 2019, each of the officers who discharged their firearms during that evening had achieved currency with all relevant NSWPF requirements regarding AAO training and mandatory weapons training with the following exceptions: neither Leading Senior Constable Guinery or Senior Constable Hoffman had completed a practical refresher course in relation *Defensive Tactics and CPR/First Aid*.

17.7 Detective Sergeant O’Toole gave evidence that, from his review of all the available evidence, the Penrith Police Station Incident did not constitute an AAO incident. Detective Sergeant O’Toole opined that Daniel was not actually attempting to kill or injure the police officers present, despite having “*every opportunity to do so*”. In particular, Detective Sergeant O’Toole noted that Daniel chose to discharge his firearm at a distance, rather than at close range, and that he did not take advantage of the element of surprise and clear line of sight (at least to Constable Mitchell) that he possessed.

### **Senior Constable Cole**

17.8 Senior Constable Cole was driving a NSWPF caged vehicle with callsign HB15. At the time, Senior Constable Cole and Probationary Constable Allen were performing escort duties in relation to an ambulance that was conveying a patient to Nepean Hospital. She could not recall hearing any broadcast in relation to the Marayong Incident but recalled hearing a broadcast in relation to shots being fired near St Marys Police Station, and a vague recollection of the station being closed to the public. Senior Constable Cole gave evidence that upon hearing this second broadcast she considered that the matter could be “*quite serious if that was the case*” because:

It’s a police station. We don’t really see that happening much, or it’s a pretty significant incident.

17.9 The broadcast of the St Marys Incident prompted Senior Constable Cole to have a conversation with Probationary Constable Allen which essentially involved keeping a lookout for the described a vehicle of interest.

17.10 After hearing the broadcast in relation to shots being fired at Penrith police station, Senior Constable Cole gave evidence that she responded in this way:

I think at the time we were, yeah approaching Dunheved Road, that first initial call had come over for out the front of Penrith Police Station. I don’t remember a beep on the radio, but I just remember shots fired out the front of Penrith Police Station and I continued to drive and without even probably having a conversation with [Probationary Constable Allen], I’ve activated lights and sirens and I continued to drive down the northern road and took a right hand turn onto Coreen Avenue.

17.11 When asked why she acted in this way, Senior Constable Cole explained:

I thought it was the right thing to do. It had happened at St Marys and now obviously it’s out the front of Penrith. The mental health patient that we had was quite minor in nature, so I mean that could be dealt with there at the hospital by the ambulance officers, so I wasn’t concerned for that person at that, at that point in time. I was more concerned as to what was happening out the front of Penrith Police Station.

17.12 When asked whether she informed any other police officer of her intention to attend Penrith Police Station, Senior Constable Cole further explained:

At the time obviously the radio was very clogged was the best, best word I guess, very chattery. So, I made the decision to just go there, we called, I gave [Probationary Constable Allen] my personal phone to call our internal supervisor [...]

17.13 After hearing Ms Bunting make the broadcast of, “*We’ve just had a few shots fired at the front of the Penrith Police Station*”, Senior Constable Cole activated the warning devices on HB15 and proceeded to the rear of the police station. Upon arriving, Senior Constable Cole broadcast the following: “*Hawkesbury [15] you can mark us off at the back of that police station*”.

17.14 Senior Constable Cole explained what occurred next in this exchange with Senior Counsel Assisting:

Q. When you've got to the police station, armed with that information of shots fired officer injured, what was running through your mind at that time?

A. I think at the time I was confused that I was going to the back, but obviously hindsight now, looking at this, all they've asked for ambos to go to the back, all is I wanted to do is get to the, to the front and help out wherever I could.

Q. Did you have a plan as to what you were going to do at that moment in time as you've come to the rear of the police station, you've radioed to say you were at the rear, did you have a plan as to what you were going to do?

A. No, no, no real plan, no.

Q. Was there a reason why you moved forward and didn't stay at the rear of the police station?

A. I guess I wanted to go and help in any way, shape or form, find out more information about what was going on, to assist where they needed me, the usual kind of practice, I guess.

Q. Did you inform anyone within New South Wales Police other than perhaps Probationary Constable Allen what your intentions were to do after you left the rear of the police station?

A. No.

Q. Made no broadcasts?

A. No broadcasts.

17.15 Senior Constable Cole gave evidence that as she turned onto High Street, she saw a number of people on the corner looking up towards the police station. Whilst this did not raise any “*alarm bells*” in Senior Constable Cole’s mind, she indicated that by this stage she had a “*raised level of alert*”. Senior Constable Cole gave evidence that she had either no expectation, or a low expectation of seeing a person armed with a weapon, and explained her thinking in this way:

I believe at that point in time, I believed that he had gotten into a car, so I actively wasn't looking for a person with a shotgun walking up the street, I was more just a guess a bit surprised that no-one was, no other police officers were out the front at the time with their trucks or lights and sirens.

17.16 As she approached the front of the police station, Senior Constable Cole observed NE15 stopped at the front. Senior Constable Cole gave evidence that her next memory was seeing Daniel standing between a marked police cage truck and a sedan, holding a firearm which was pointed downwards and looking towards HB15. Senior Constable Cole gave evidence that she initially formed the belief

that Daniel was an “*undercover*” police officer due to “*his stature, the way he’s holding the firearm, he seemed pretty confident*”.

17.17 Senior Constable Cole gave evidence that she saw Daniel take “*a step or two out towards the roadway and lifted the firearm up*”. From these observations, and the manner in which Daniel was “*just directly staring at us*”, Senior Constable Cole formed the opinion “*obviously that this isn’t who I thought it was and we need to do something as soon as possible*”. Senior Constable Cole applied the brakes of HB15, causing it to stop harshly approximately 2 metres from Daniel’s position. At this time, Senior Constable Cole observed Daniel to raise his firearm towards the windscreen of HB15. Senior Constable Cole gave evidence that she either verbalised, or thought in her mind, the word “*gun*”. Senior Constable Cole described the next sequence of events in this way:

I remember, I remember [Probationary Constable Allen] getting out and then I remember again seconds, gunfire of some sort and then before I've even gotten out, I didn't have my seatbelt on, I'd already taken it off, I've opened the, the driver's door, and in that time, I've drawn my firearm before I've even put a foot on the ground and put it through the A pillar and then started firing.

17.18 Senior Constable Cole gave evidence that in that moment she thought that either she, or Probationary Constable Allen, “*was going to die*”, considered her life to be at immediate risk, and that she believed she had no other tactical options other than discharging her firearm. When asked if she considered that there was any opportunity to de-escalate the situation, Senior Constable Cole explained:

We didn't have enough time. Like I previously said, I've been taught if a, if a gun's pointed at you, you treat it as if it's loaded, so I wasn't going to take the chance that he was playing a game or hadn't loaded that firearm. I assumed that he was going to shoot and injure or kill myself or [Probationary Constable Allen].

17.19 After discharging her firearm, Senior Constable Cole observed Daniel fall to the ground and then attempt to get back up. Senior Constable Cole moved to the back of HB15 to take cover. Whilst behind cover, Senior Constable Cole heard further gun shots and formed the view that police officers from inside Penrith police station had exited to provide assistance. After the gunfire ceased, Senior Constable Cole saw a number of uniformed police officers approaching Daniel, who was on the ground. As the other officers attempted to restrain Daniel, who “*appeared to be for the most part fighting back*”, Senior Constable Cole kept her firearm drawn and indicated that she was providing cover for the other police officers. Senior Constable Cole gave evidence that Daniel was not complying with the commands for him to remove his hand from underneath his body, and assumed, because she could not see the firearm that Daniel had previously been holding, that he may still have been holding that firearm, or had access to another weapon.

17.20 Following the incident, Senior Constable Cole discovered that the firearm that she used was loaded with a magazine that contained training, and not live, rounds. Senior Constable Cole gave evidence that, since the incident, she has informed herself of the difference between live and training rounds, and of the different manner in which firearms are stored at both Hawkesbury and Blacktown police stations, where she is rostered to perform duties.

17.21 Detective Sergeant O’Toole opined that Senior Constable Cole’s actions were appropriate and in accordance with her training and relevant NSWPF policies. He explained that, due to the limited time available Senior Constable Cole, it was appropriate for her to both stop HB15 after observing Daniel, and to not reverse the vehicle after stopping. Detective Sergeant O’Toole further opined that Senior Constable Cole had no other tactical options available other than to discharge her firearm upon observing again Daniel to level his firearm in the direction of Probationary Constable Allen.

17.22 Detective Sergeant O’Toole was not critical of the fact that Senior Constable Cole’s firearm was loaded with training, rather than live, rounds. He explained in evidence:

It’s an unfortunate thing that training rounds found their way into [Senior Constable Cole]’s firearm but I believe at that stage with training the way it was and some procedures that were in place, that was a possibility and unfortunately it came about. Since then we no longer do things the same way in relation to officers’ operational magazines and hopefully that situation won’t occur again.

17.23 **Conclusions:** Having heard the broadcasts in relation to the St Marys Incident and the initial stages of the Penrith Police Station Incident, it was reasonable for Senior Constable Cole to respond and proceed to Penrith Police Station with a view to providing whatever assistance might be necessary. Whilst Senior Constable Cole did not broadcast her intentions over the radio, she did inform her supervisor by phone of these intentions.

17.24 After arriving at the rear of Penrith Police Station, it was also reasonable for Senior Constable Cole to proceed to the front of the station in order to provide assistance if required. Senior Constable Cole appropriately acknowledged that she ought to have made a radio broadcast of her intentions. Given the evidence of Senior Constable Cole and other police officers as to the volume of radio traffic during this period, it is not possible to conclude whether any opportunity existed for Senior Constable Cole to make such a broadcast.

17.25 In any event, given Senior Constable Cole’s evidence as to her surprise that no other police resources had arrived at the front of Penrith Police Station, it could not be said that Senior Constable Cole could have foreseen the possibility of encountering a person armed with a firearm. Having regard to the evidence of Detective Sergeant O’Toole, and the situation which confronted Senior Constable Cole, the evidence establishes that no other tactical or communication option was available to her other than to draw and discharge her firearm.

17.26 As to the use of training rounds by Senior Constable Cole, the evidence also establishes that changes have been made by Senior Constable Cole to her own individual practices, and to practices regarding the storage of training rounds in general, so as to mitigate against the possibility of training rounds being used in a similar operational situation.

### ***Probationary Constable Allen***

17.27 Probationary Constable Allen had approximately five months of policing experience as at 2 October 2019. Probationary Constable Allen gave evidence that after hearing the St Marys incident broadcast over the radio, it “*heightened [his] awareness*”, but he did not perceive there to be any threat to himself individually, or to the NSWPF in general.



17.28 Probationary Constable Allen gave evidence that after hearing the radio broadcast regarding shots being fired at Penrith Police Station, he had a discussion with Senior Constable Cole from which it was decided that they would attend the scene. However, Probationary Constable Alen gave evidence that there was no discussion regarding what either he or Senior Constable Cole would do upon their arrival. Probationary Constable Allen explained that whilst he had a portable radio in his hand, he did not broadcast his, or Senior Constable Cole's, intention to attend Penrith Police Station:

Because every time I tried to speak into the microphone, there was, it, it felt like at the time there was constant chatter, I couldn't physically get on air to broadcast that we're attending.

17.29 Probationary Constable Allen gave evidence that after arriving at the rear of the police station, there was a very brief discussion with Senior Constable Cole about moving to the front of the police station, but no discussion about what they intended to do or how they were going to assist other police officers. Probationary Constable Allen indicated that again no broadcast was made over radio about their intention, but in evidence he acknowledged that, on reflection, it would have been a good idea to inform radio of this.

17.30 Probationary Constable Allean gave evidence that as HB15 travelled along High Street and approached the front of the police station, he saw Daniel, holding a shotgun which was pointed downwards, and looking directly at HB15. Probationary Constable Allen explained his thinking at the time in this way:

I did think it was some sort of police officer for a split second, I sort of had that thought, but his demeanour and the way he started to raise his firearm at our car, that immediately changed.

17.31 After HB15 came to a stop, Probationary Constable Allen removed his seatbelt, opened the passenger door and drew his firearm. Probationary Constable Allen gave evidence that by this stage Daniel had raised the firearm so that it was pointed at him or the passenger door, which made him feel "*terrified, scared for [his] life, thought [he] was about to die in essence*". Probationary Constable Allen gave evidence that he told Daniel to drop his firearm on more than one occasion and was "*pretty sure [he] screamed it as loud as [he] could*".

17.32 Probationary Constable Allen discharged his firearm twice, aiming for centre mass, and explained that he was "*determined to stop the threat*", and his reason for doing so:

For a split second I thought about every option, but [Daniel] had a firearm pointed out me so that was the, the only course of action that would stop the immediate threat for my life or Senior Constable Cole's life.

17.33 When asked whether he considered that using the Taser that was attached to his appointments belt would have been an available option, Probationary Constable Allen indicated that it would have been ineffective in dealing with a person armed with a firearm and that there would have been "*a very real chance that [he] or Senior Constable Cole would have been shot and killed*".

17.34 Probationary Constable Allen then retreated behind HB15 to take cover, before moving to the opposite side of High Street and taking cover behind another part of vehicle so that he could see both sides of HB15.

17.35 Detective Sergeant O'Toole opined that when Daniel levelled his firearm at Probationary Constable Allen, the latter actually tried to challenge Daniel prior to discharging his firearm. Detective Sergeant O'Toole further opined that there was no other reasonable course of action available to probationary Constable Allen, due to the immediate risk to himself and Senior Constable Cole, and that his actions were "*totally justified*".

17.36 **Conclusions:** The evidence establishes that Probationary Constable Allen reasonably held the belief that he and Senior Constable Cole were in imminent danger by virtue of Daniel's actions in raising his firearm towards HB15. Probationary Constable Allen had the presence of mind to challenge Daniel and instruct him to drop his firearm on more than one occasion. When this did not reduce the level of threat perceived by Probationary Constable Allen, he discharged his firearm. The evidence of Detective Sergeant O'Toole establishes that no other tactical option existed in the circumstances.

### ***Leading Senior Constable Guinery***

17.37 Leading Senior Constable Guinery gave evidence that from his position in the foyer area, he saw the warning lights of HB15 approaching before the vehicle came to a stop, and Daniel moving towards the vehicle. After hearing the sounds of gunfire, Leading Senior Constable Guinery formed the belief that "*those police were in danger of being shot and killed*" and "*assumed that the police had been in a gunfight*". In response, Leading Senior Constable Guinery "*very instinctive[ly]*" left the foyer area, and explained his actions in this way:

I left the station to assist, I believe that they were going to be killed, and I wanted to help.

17.38 Leading Senior Constable Guinery gave evidence that as he approached the street, he observed Daniel to be standing approximately three metres from HB15, aiming his firearm directly at the vehicle, believing that he was "*in the process of shooting*". Believing that the police officers from HB15 were still in the vehicle, trying to exit, or next to it, Leading Senior Constable Guinery indicated that he "*fired twice in what felt like quick succession*" from his position on the footpath. As a result, Daniel fell to the ground, releasing his grip on the firearm which landed on the ground but was still within arm's reach. Leading Senior Constable Guinery gave evidence that he had no tactical options available to him at this point. In terms of communication options, Leading Senior Constable Guinery stated:

I, I don't believe there was any time. I was in a position where he, I believed he didn't know I was there, and I think if I was to call on him and challenge him, he would have turned on me, and my life was in danger. There was no time.

17.39 Leading Senior Constable Guinery gave evidence that he initially moved forward, believing that Daniel had ceased shooting and that the "*threat was over*". Leading Senior Constable Guinery indicated that his intention was to "*get that firearm away*" so that Daniel was "*no longer a threat*". However, Leading Senior Constable Guinery then moved back after he observed Daniel to take hold

of the firearm with his hands and believed that Daniel aimed it towards him. In response, Leading Senior Constable Guinery gave evidence that he “*moved slightly to the side and continued to shoot*”. When asked why he did not attempt to communicate with Daniel at this point, Leading Senior Constable Guinery indicated:

Well, he had regathered his firearm and, and as quickly as he had, he then pointed it towards myself, and my life was in danger at that point.

17.40 After discharging the second series of rounds, which caused Daniel to release his hold on the firearm, Leading Senior Constable Guinery again moved towards Daniel and kicked the dropped firearm away towards another vehicle. Leading Senior Constable Guinery gave evidence that his intention was then to secure Daniel as he did not know “*what else [Daniel] was capable of*” and was concerned that Daniel still posed a threat to police. In the process of securing Daniel, Leading Senior Constable Guinery indicated that there was some resistance, noting “[w]hether that was physical resistance from [Daniel] or just, just his body type was difficult to, to manoeuvre, it did feel like there was definitely some resistance there, yeah”.

17.41 When asked why a first aid was not provided Daniel immediately, Leading Senior Constable Guinery indicated:

First and foremost, we had to protect himself and ourselves by, by, by handcuffing him. And then, moving into the station is a safer place, there's protection there, there's further police, there's first-aid kits, it just, in my opinion, it's a safer place to be to perform a [...]

17.42 Detective Sergeant O'Toole opined that the actions of Leading Senior Constable Guinery in discharging his firearm on the first occasion was appropriate given his observations of Daniel moving towards HB15 and pointing his firearm at the offices in the vicinity of the vehicle. Detective Sergeant O'Toole further opined that the actions of Leading Senior Constable Guinery in discharging his firearm on the second occasion were appropriate given his observations that Daniel had regathered his firearm and had levelled it in his direction, believing that his life was in imminent danger. Finally, Detective Sergeant O'Toole opined that it was appropriate, and in accordance with relevant policy, for Leading Senior Constable Guinery to discharge a number of rounds “*until he deemed the threat had stopped and then he ceased firing*”

17.43 **Conclusions:** Having observed that HB15 had come to a stop outside Penrith Police Station and hearing the sounds of gunshots moments later, Leading Senior Constable Guinery acted appropriately in exiting the police station in order to provide assistance. It was reasonable for Leading Senior Constable Guinery to believe that the police officers inside HB15 were in immediate danger.

17.44 After observing Daniel to have levelled his firearm in the direction of HB15, it was appropriate for Leading Senior Constable Guinery to discharge his firearm. It can be accepted that if Leading Senior Constable Guinery had challenged Daniel and drawn Daniel's attention to him, this likely would have resulted in the threat posed by Daniel being redirected towards Leading Senior Constable Guinery.

17.45 Further, the actions of Leading Senior Constable Guinery were measured given that after initially discharging his firearm, he appropriately holstered it in the belief that the threat posed by Daniel had been neutralised. Leading Senior Constable Guinery briefly moved forward, but then retreated as he observed Daniel regather his firearm and attempt to aim it towards him. It was reasonable for Leading Senior Constable Guinery at this time to conclude that he remained in imminent danger and to draw and discharge his firearm a second time.

17.46 Following this, Leading Senior Constable Guinery took appropriate action to remove Daniel's firearm and secure Daniel, before moving him inside the police station where first-aid could be provided in a more secure setting.

### **Senior Constable Hoffman**

17.47 At no point whilst Senior Constable Hoffman was still in the front foyer area did he observe Daniel outside the front of the police station. Instead, Senior Constable Hoffman heard a police officer (which he believed to be Senior Constable Jamieson) indicate that Daniel was still outside, although there was no indication whether he was armed. After observing the warning lights from HB15 approach and believing that the vehicle had come to a stop, Senior Constable Hoffman heard the sound of gunshots. Senior Constable Hoffman saw Leading Senior Constable Guinery run out of the foyer area towards the front of the police station and followed. Senior Constable Hoffman gave evidence that he did so because he "*believed there was cops out the front getting shot, so [he] had to do something*", and that his intention was to "stop whatever threat was out there".

17.48 Senior Constable Hoffman gave evidence that as he moved through the courtyard area towards the street, he saw Daniel holding a long arm and that he was "*on his knees, or sort of slouched over with the firearm pointed towards the police car that was on the street with its flashing lights on*". As he saw Daniel pointing the firearm towards HB15, Senior Constable Hoffman gave evidence that at that point he "*decided that there was like an immediate risk to whoever was in that car*".

17.49 Senior Constable Hoffman discharged two rounds and continued to move forward. As he did so, he observed Leading Senior Constable Guinery holster his firearm and also move forward towards Daniel. Senior Constable Hoffman gave evidence that as this occurred, he observed Daniel to pick up his firearm, whilst still lying on the ground, and "*swung [it] towards*" Leading Senior Constable Guinery. Senior Constable Hoffman gave evidence that he thought Daniel was going to shoot

Leading Senior Constable Guinery and so he “*started to shoot again until the threat stopped*”, discharging a further 11 rounds.

- 17.50 Senior Constable Hoffman gave evidence that prior to discharging his firearm on each occasion, he did not believe that there were any other tactical options available to him. When asked whether he believed that any communication may have deescalated the situation, Senior Constable Hoffman indicated:

When I arrived, he was pointing the firearm at Hawkesbury. There was no chance to talk to him then. And then the second time, he was swinging the firearm around towards Leading Senior Constable Guinery, so there was no change to talk to him in either.

- 17.51 After seeing Leading Senior Constable Guinery kick away Daniel’s firearm, Senior Constable Hoffman observed the way that Daniel was struggling as police officers attempted to restrain and became “*worried that when [he] pulled [Daniel’s] hand out or [Daniel] pulled the hand out, there was going to be another firearm*”. Accordingly, Senior Constable Hoffman gave evidence that he formed the view that Daniel needed to be handcuffed. When asked why first aid was not immediately provided to Daniel at the scene, Senior Constable Hoffman indicated:

I think I said, "We need to get off the street". Like I said, I thought it was a terrorist attack, so I said "We need to get out of here. We need to get back into the station where we can get some cover", so that's what we've done.

- 17.52 Detective Sergeant O’Toole opined that Senior Constable Hoffman was also justified in discharging his firearm on the first occasion after he observed Daniel, still armed, to be moving forward towards HB15. Similarly, Detective Sergeant O’Toole opined that Senior Constable Hoffman was justified in discharging his firearm on the second occasion after he deemed that there was an immediate risk to Leading Senior Constable Guinery by virtue of seeing Daniel regather his firearm and level it in the direction of Leading Senior Constable Guinery.

- 17.53 In addition, Detective Sergeant O’Toole considered the number of rounds discharged by Senior Constable Hoffman to be appropriate. He elaborated on his opinion in this way:

When we look at the number of rounds fired, on the face of it, that’s excessive. Just way too many rounds but you have to look at the effect of those rounds. The object or the goal of the officers is to stop the threat. To incapacitate the threat. How many rounds it takes to incapacitate a threat can vary from one round to however many rounds are necessary. Factors that come into that obviously where the threat is struck. The placement of those rounds on the threat. Even a round that strikes a vital organ, being the heart, a person is able to continue to pose a threat for some time until that actually takes effect. In [Daniel]’s case, I believe he did sustain some rounds to his heart or that area that were - would by themselves prove fatal. However, he was still able to continue in this motion to try and regather the firearm and move and deemed to be a threat. I understand a lot of rounds struck [Daniel] in the lower extremities and therefore had a more cumulative effect in trying to stop him, which unfortunately, because they’re in extremities, can take some time to incapacitate.

17.54 **Conclusions:** After observing Daniel to have his firearm levelled at the direction of HB15, it was reasonable for Senior Constable Hoffman to believe that any police officers inside, or in the vicinity

of, HB15 were in immediate danger. Accordingly, Senior Constable Hoffman was justified in discharging his firearm in response to this perceived danger.

17.55 Similarly, after Senior Constable Hoffman observed Daniel to drop his firearm but then regather it and move it in the direction of Leading Senior Constable Guinery, it was also reasonable for Senior Constable Hoffman to form the belief that Leading Senior Constable Guinery was in immediate danger. Again, Senior Constable Hoffman was justified in discharging his firearm a second time, with no other tactical options available to him

17.56 As to the number of rounds discharged by Senior Constable Hoffman on the second occasion, the evidence of Detective Sergeant O'Toole establishes that depending on the areas of impact, a number of rounds may be required in order to incapacitate a threat. Therefore, it could not be said that the number of rounds discharged by Senior Constable Hoffman was unjustified.

### **Senior Constable Jamieson**

17.57 From his position in the foyer area, Senior Constable Jamieson observed Daniel outside the front of the police station with a firearm "*slung over his shoulder*". A short time later, Senior Constable Jamieson saw Leading Senior Constable Guinery and Senior Constable Hoffman run outside from the foyer area and heard the sounds of gunshots (although Senior Constable Jamieson could not recall which of these two events occurred first, or whether they occurred simultaneously). Senior Constable Jamieson gave evidence that he drew his firearm and began running after the two other officers, believing that they were "*running towards a gunfight*" and that his intention was to "*back them up*".

17.58 As he approached the street, Senior Constable Jamieson heard the sound of multiple gunshots, saw Senior Constable Hoffman discharge his firearm, and saw Daniel on the ground. Senior Constable Jamieson gave evidence that he made the following observations:

[Daniel] was continually trying to get to his feet. I, I remember he still had hold of the firearm, but I don't remember where it was pointed at the time. But I remember him trying to get to his feet.

17.59 Senior Constable Jamieson indicated that there were further gunshots which were "*very quick*" and that after they stopped, Leading Senior Constable Guinery moved in and kicked away Daniel's firearm. Senior Constable Jamieson also moved forward and saw Daniel lying in a prone position on the ground with his "*right hand underneath his person, and his, his left arm was, was out*". Senior Constable Jamieson gave evidence that he intended to handcuff Daniel and instructed Daniel to place his hands behind his back, but that Daniel did not comply. As a result, Senior Constable Jamieson kicked Daniel to his midsection, in the area of his right hip. Senior Constable Jamieson gave evidence that he had no recollection of doing so but agreed that his actions were depicted in the CCTV footage. When asked why he acted in this way, Senior Constable Jamieson indicated:

We were moving in to effect [Daniel's] arrest. He wasn't compliant and we were trying to control his movements as we moved in to try to get his arm released and behind his back.

17.60 Senior Constable Jamieson agreed that he had not been trained to perform this technique. Senior Constable Jamieson also agreed in evidence that the situation was “*very stressful*” due to the fact that he had formed the belief that Daniel (possibly together with other persons) was in the process of attacking or ambushing the police station, that he had observed the injuries to Constable Vinter, and he believed that Daniel may have had another firearm. Senior Constable Jamieson gave evidence that it was possible that these factors contributed to his actions in kicking Daniel, and that it was also possible that there was a degree of frustration in his actions. Further, Senior Constable Jamieson described it as an “*instinctive response*” and gave evidence that he did not consider his actions to be an “*exercise of bad judgement*” or “*inappropriate behaviour*”.

17.61 Senior Constable Jamieson gave evidence that he and the other police officers continue unsuccessfully to move Daniel’s right arm out from underneath his body. As this was occurring, Senior Constable Jamieson placed his foot on Daniel’s face, explaining his reason for doing so in this way. Jamieson gave evidence that this was also not a technique that he had been trained in, but explain his reason for doing so in this way:

It was a, it was a distraction, and it was a control of that part of his body so that we could release his arm safely with the risk of a firearm being there, until he was secured.

17.62 Senior Constable Jamieson rejected the suggestion that the stress of the situation or any frustration contributed to his actions. Instead, Senior Constable Jamieson described this as a “*controlled action*”, and that the force he used was “*very minimal, and it wasn't, it wasn't long at all.*” Senior Constable Jamieson gave evidence that he again did not consider that there was “*any element of bad judgement*” involved in his actions, or that he considered his actions to be inappropriate. However, Senior Constable Jamieson acknowledged that with the benefit of hindsight knowing that Daniel did not in fact have any firearm concealed under his body, his actions were not necessary.

17.63 Detective Sergeant O’Toole confirmed that Senior Constable Jamieson’s actions in kicking Daniel to the hip and placing his foot on Daniel’s face are not techniques taught by the NSWPF. However, in this regard, Detective Sergeant O’Toole explained:

[F]or a lot of people it seems the assumption that if a technique isn’t taught police aren’t able to use it and that’s not correct. Police are able to use any technique, do anything that is required to be done in order to gain control of the subject and I don’t wish to appear callous in that statement. But we need to gain control. We teach police some techniques to aid in getting that control.

17.64 Detective Sergeant O’Toole went on to explain that upon his initial review of the CCTV footage he considered that Senior Constable Jamieson’s actions in kicking Daniel appeared to be potentially inappropriate. However, Detective Sergeant O’Toole explained that upon further repeated reviews of the CCTV footage he reached the following opinion:

I believe, [Senior Constable Jamieson has] seen that Senior Constable Hoffman is having difficulty extricating the arm of [Daniel]. He’s delivered that kick not out of frustration, not out of anger, no malice or anything but it appears to be, to me, to be a definite kick but a kick with a push trying to raise Mr King’s body at that point, at the hip, to aid in the release of the arm.

[...]

[G]iven what he saw in front of him with police having difficulty in removing [Daniel]'s arm, the kick, whilst not approved or not taught, I believe it was done with a purpose. That purpose wasn't malicious or out of aggravation or frustration and I believe honestly that it was justified and that it was reasonable given all those circumstances.

17.65 Detective Sergeant O'Toole was again not critical of the actions of Senior Constable Jamieson in placing his foot on Daniel's face and explain his reasoning as follows:

It's not a sudden harsh stomping motion or anything like that but it's there for a very short period of time and very, very minimal force. It's - and I know it sounds terrible but I could only compare it to almost like tapping his face with his foot. As if you were tapping with a hand but he was doing it with the sole of his foot. Tapping Mr King's face. I accept that that motion was, "Hey mate," and trying to distract [Daniel] and again, I didn't see anything in the action that would indicate it was malicious that he was stomping, that he was out of control or anything like that.

17.66 When questioned by counsel for Sandra and Megan, Detective Sergeant O'Toole agreed that the opinions expressed above were primarily based upon his viewing of the relevant CCTV footage, and that "*without being the person actually did it themselves, it's very hard to someone watching to gain a real idea*" of how much force may have been used. However, Detective Sergeant O'Toole explained:

Police generally look for the worst in people. That's a given. We're looking for the baddies so when I see that sort of stuff, I look for the worst and I assume the worst straight off and I'll go, cheap shot. But I also then have to view it in, what I've tried to do in this circumstance, is view it impartially and look at everything and take it all in context and I have been in positions similar in relation to this and I know how people operate and I have seen cheap shots in the world and I have seen the different things that police can do that they shouldn't do and I have no problem calling that out if that's what I believe.

[...]

I look for the worst but I've got to tell you, I don't see anything that the officers did there that I believe I could be critical on and nothing out of malice.

**17.67 Conclusions:** The actions of Senior Constable Jamieson in kicking Daniel to the hip whilst he was on the ground and placing his foot on Daniel's face were regrettable and have no doubt caused considerable distress to Daniel's family. The evidence of Detective Sergeant O'Toole establishes that these actions are not techniques which NSWPF officers are trained in. However, the evidence also establishes that it is open for NSWPF to use certain techniques for which training is not provided in order to gain control of a subject.



17.68 In this regard, the evidence of Detective Sergeant O’Toole that Senior Constable Jamieson’s actions were done in an attempt to raise Daniel’s body, and to distract him, so that his arm could be released. Detective Sergeant O’Toole appropriately acknowledged that his assessment of Senior Constable Jamieson’s actions, particularly with respect to the degree of force used, was subjectively based upon his review of the CCTV footage of the incident. Notwithstanding, there is no evidence to suggest that Senior Constable Jamieson’s actions were not reasonable and controlled.

17.69 In addition to the matters set out above, it should be noted that Detective Sergeant O’Toole gave evidence that since October 2019, a number of changes have been implemented to mitigate against the possibility of a similar incident to the Penrith Police Station Incident from occurring again. Relevantly, the Detective Sergeant O’Toole drew attention to the following:

- (a) the foliage in the courtyard area at the front of Penrith police station has now been removed so as to improve visibility out to the street;
- (b) additional lighting has been installed within the courtyard area to also improve visibility; and
- (c) reflective film has been installed on the front facing windows at Penrith police station to restrict visibility into the station so that police officers inside the station do not have to place themselves in an exposed position if they need to look out towards the street.

**18. Did Daniel intend to end his life by provoking NSWPF officers to shoot him?**

18.1 Dr Sullivan opined that by the time of his attendance at and Penrith Police Station, Daniel had formed an intention to end his own life. However, it is likely that this intention was not *“well thought through, planned or organised”* due to the fact that Daniel’s *“mental state early in the day was noted to be significantly deteriorated”*.

18.2 In reaching this opinion, Dr Sullivan had regard to the following matters:

- (a) Daniel had a general history of self-harm attempts, threats and suicidal ideation in the preceding nine years (approximately);
- (b) Daniel had *“previously foreshadowed a particular methodology of dying by shooting at a police station and then being shot”*;
- (c) Daniel had previously told other people that he *“would not be able to kill himself and would need others to assist him”*;
- (d) Daniel’s initial approach to police and shooting at NE15 *“was bold”*;
- (e) Daniel made no effort to conceal his firearm as he walked down the street, and wore no protective equipment;
- (f) Daniel’s body language in front of the police station *“was provocative and suggested that he wished to confront police”*;
- (g) Following the arrival of HB15, Daniel *“approached confidently and brandished his firearm in a pose consistent with readiness to discharge the firearm”*;
- (h) After being shot, Daniel *“persisted in attempting to shoot back”* and did not take any evasive action; and
- (i) There was no suggestion that Daniel *“was ambivalent or equivocal about his actions”*.

18.3 Dr Sullivan also opined that it was unlikely that Daniel’s *“drug use in the days preceding his death was causally related to his deteriorated mental state and to the precipitation of pre-existing suicidal ideation”*. Further, Dr Sullivan opined that Daniel’s suicidal ideation *“is likely to have preceded the development of CTE given a history of suicide ideation and attempts which had onset soon after his stroke, which is likely before CTE would have been evident”*.

18.4 Overall, Dr Sullivan expressed the following view:

I do consider that [Daniel] was able to form the intent to end his own life by being shot by police. I base this opinion upon [available evidence] which suggested that he had thought of this method previously; and the lack of any other plausible explanation for his behaviour such as a grudge against police or antagonism against any individual police authority figures. The methodology required preparation, and in the driving between the three locations at which he discharged the

firearm, [Daniel] would have had time to reconsider and return home. Thus I think it likely that [Daniel] had determined that he would die being shot by police. Nevertheless, his capacity to form such an intent was likely to have been strongly influenced by his intoxication.

18.5 Dr Sullivan elaborated on this opinion in his oral evidence:

Well, the first is that he had previously foreshadowed this methodology for ending his life [by way of suspect-provoked shooting]. The second is that there's no evidence that Mr King had profound anti-social values that he had expressed attitudes antagonistic of police or that he had any particular legal issues which might form the foundation for such action. That is, he didn't have any grudge against an individual police officer through the brief of evidence. Didn't have a grudge against that particular police station. Finally, there's clear evidence of preparation, of obtaining the firearm which, through five volumes of evidence, that the way in which he obtained that firearm is not clear so that suggests that he was able to conceal what he was doing but also to take measures for preparation despite the evidence that he had very significant substance-use problems in the last week of his life and finally, the plan involved moving between multiple sites which suggests a degree of fore-thought and planning in order to enact a plan which is likely that he had developed.

18.6 **Conclusions:** The evidence of Daniel's previous self-harm attempts and suicidal ideation, his preparatory acts prior to 2 October 2019, his behaviour when outside the front of Penrith police station and the opinions expressed by Dr Sullivan collectively establishes that Daniel intended to end his life by provoking NSWPF officers to shoot him.

18.7 In support of this evidence, it should be remembered that the evidence of Detective Sergeant O'Toole establishes that Daniel's actions were not consistent with that of an AAO. In other words, whilst Daniel had a number of opportunities to take lethal action against a number of police officers, he did not avail himself of these opportunities. Therefore, the only logical explanation for Daniel's actions is that they were intentionally performed in order to instead prompt the use of lethal force by the police officers towards him.

## **19. Findings**

22.1 Before turning to the findings that I am required to make, I would like to acknowledge, and express my gratitude to Mr Adam Casselden SC and Mr Jake Harris, Counsel Assisting, and their instructing solicitor, Ms Kate Lockery from the Crown Solicitor's Office. The Assisting Team has provided exceptional assistance during the conduct of the coronial investigation and throughout the course of the inquest. I am extremely grateful for their commitment and tireless efforts, and for the sensitivity that they have shown during all stages of the coronial process.

22.2 I also thank Detective Inspector Gorman and Detective Sergeant Peter Davies for their respective roles in conducting the critical incident investigation in a professional and comprehensive manner.

22.3 The findings I make under section 81(1) of the Act are:

### ***Identity***

The person who died was Daniel King.

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

Daniel died on 2 October 2019.

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

Daniel died at Penrith NSW 2750.

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

The cause of Daniel's death was multiple gunshot wounds to the head, trunk and limbs.

### ***Manner of death***

After acquiring a firearm by means unknown, Daniel attended Penrith Police Station and discharged the firearm towards a number of New South Wales Police Force officers in order to provoke the officers to shoot him. Daniel therefore acted with an intention to inflict his own death.

22.4 Given the many challenges which Daniel faced following his tragic brain injury in 2010, and the manner in which this profound event subsequently affected many facets of his life, it would be entirely inaccurate to remember Daniel from what occurred during the last hours of his life on 2 October 2019. To do so would not portray the whole of Daniel as person, dignify his life or appreciate what his untimely loss means to those who love him the most and who feel his loss most deeply.

22.5 On behalf of the Coroners Court of New South Wales and the Assisting Team, I offer my deepest sympathies, and most sincere and respectful condolences to Sandra, Peter, Megan, Kevin, Michelle, Samson and Indiana; the extended members of Daniel's family; and Daniel's friend and loved ones for their most painful and devastating loss.

22.6 I close this inquest.

Magistrate Derek Lee

Deputy State Coroner

22 July 2022

Coroners Court of New South Wales

# **Inquest into the death of Daniel King**

## **Appendix A**

### **Non-publication orders**

1. Pursuant to sections 65 and 74 of the Coroners Act 2009, and/or the Court's implied or incidental powers, subject to orders 2 and 3, there is to be no disclosure (by publication or otherwise) of the information referred to in Schedules A and B to these Orders.
2. Order 1 does not prevent disclosure to and between the following people for the purposes of this inquest:
  - a. The Court, Counsel Assisting and the Solicitors Assisting;
  - b. Necessary Court staff;
  - c. The Commissioner of the NSW Police Force and her legal representatives;
  - d. Current and former officers of the NSW Police Force and their legal representatives;
  - e. Dr Danny Sullivan; and
  - f. Sandra and Megan King (the mother and sister of Mr Daniel King) and their legal representatives; and
  - g. Peter King and Michelle Ogden (the father and half-sister of Mr Daniel King) (subject to order 3 below).
3. The documents containing information falling within order 1:
  - a. are to be served on:
    - i. Dr Danny Sullivan;
    - ii. any interested party who is a current or former officer of the NSW Police Force and their legal representatives; and
    - iii. the legal representatives of Sandra and Megan King,by the following process. In the case of written documents, a personally watermarked hardcopy will be provided. In the case of video footage, a USB storage device containing electronic files of that footage will be provided. Those written

documents and electronic files are not to be copied, published or otherwise disseminated. The written documents and USB storage device are to be returned to the Commissioner's legal representatives within 7 days of the publication of findings in the inquest.

- b. may only be inspected by Sandra and Megan King, Peter King and Michelle Ogden:
    - i. in the physical presence of their legal representatives; or
    - ii. in the physical presence of Counsel or the Solicitors Assisting the Court.
  - c. may not otherwise be uplifted by the interested parties.
4. Pursuant to sections 65 and 74 of the Coroners Act 2009, and/or the Court's implied or incidental powers, there is to be no publication of the information referred to in Schedule C to these Orders.