



**CORONERS COURT
OF NEW SOUTH WALES**

Inquest: Inquest into the death of Joshua Duke

Hearing dates: 28 November to 2 December 2022

Date of Findings: 16 December 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, critical incident, use of lethal force by police, Active Armed Offender, Tactical Options Model

File number: 2020/297300

Representation: Mr R Ranken, Counsel Assisting, instructed by Ms S Crellin (Crown Solicitor's Office)

Mr B Haverfield, for Constable B Iddles, Senior Constable B Wood, Detective Senior Constable L Bishop, (former) Detective Senior Constable B Allan, Sergeant C Vanderwolf, instructed by Walter Madden Jenkins Solicitors

Ms R Hood for New South Wales Commissioner of Police, instructed by New South Wales Police Force Office of General Counsel

Findings:

Joshua Duke died on 15 October 2020 at Hamlyn Terrace, NSW 2259.

The cause of Joshua's death was gunshot wound of the head.

After arriving at a private property, following a pursuit which involved both NSW Police Force and civilian vehicles, Joshua had two encounters with police officers at the property which involved the police officers discharging their firearms in the lawful execution of their duties. Joshua was armed with a firearm during each of these encounters and sustained four gunshot wounds, including the fatal gunshot wound of the head.

Non-publication orders:

See Annexure A

Table of Contents

1.	Introduction	1
2.	Why was an inquest held?.....	1
3.	Recognition of Josh’s life.....	3
4.	Relevant background to the events of 15 October 2020	4
	Criminal history.....	4
	Admission to hospital	4
	Theft of the Toyota Landcruiser	5
5.	What happened on 15 October 2020?	5
	Initial sighting of the Landcruiser.....	5
	Sighting of the Landcruiser by NSWPF officers.....	6
	Arrival of the Landcruiser at 109 Minnesota Road, Hamlyn Terrace.....	7
	Arrival of Senior Constable Wood and Constable Iddles at the Property	7
	The First Shooting.....	8
	Arrival of other NSWPF officers at the Property.....	9
	The Second Shooting.....	9
6.	The postmortem examination.....	11
7.	What issues did the inquest examine?	12
8.	Appropriateness of the interactions involving Josh and Senior Constable Wood and Constable Iddles	13
	Senior Constable Wood	13
	NSWPF Policy Considerations	14
	Constable Iddles	16
9.	Appropriateness of the interactions involving Josh and Detective Senior Constable Bishop, Detective Senior Constable Allan and Sergeant Vanderwolf.....	18
	Detective Senior Constable Bishop	18
	Sergeant Vanderwolf	20
	Detective Senior Constable Allan	22
10.	How many shots were fired and by whom?	24
	Ballistic examination	24
	Relevant autopsy findings	24
	Accounts of the directly involved NSWPF officers	25
11.	Findings	27
	Identity	27
	Date of death.....	27
	Place of death.....	27
	Cause of death.....	27
	Manner of death.....	27

1. Introduction

- 1.1 On the morning of 15 October 2020, Joshua Duke (or Josh as he was known to family and friends) was the passenger in a stolen vehicle which was involved in a pursuit with both New South Wales Police Force (**NSWPF**) and civilian vehicles. The pursuit culminated with Josh's vehicle entering a large property which contained a number of structures and was home to two residents at the time.
- 1.2 After abandoning the stolen vehicle, Josh made his way through the property. He was armed with a double-barrel shotgun. Whilst at the property, Josh had two encounters with NSWPF officers who had also entered the property. During each of these encounters, a number of NSWPF officers discharged their firearms resulting in Josh sustaining several wounds, including a fatal head wound. Despite resuscitation attempts, Josh could not be revived and was tragically pronounced life extinct at the scene.

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 Josh'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 a number of NSWPF officers in discharging their firearms at Josh resulted in his death.
- 2.3 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.
- 2.4 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 Josh'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 Josh was born in 1982, the first of three sons to his parents. He also had a maternal older half-brother. Josh's childhood was spent with his family on a property at Falls Creek 10 km south of Nowra. When Josh was around seven years old, his family moved to a property at Barrabra, near Tamworth. Josh's family remained at Barrabra whilst he was in primary school. However, when Josh started high school, his family returned to the Nowra region and lived at a property in Burrier. Sometime after the family returned to the Nowra region, Josh's parents separated.
- 3.3 When Josh was around 10 or 11 years old, he was diagnosed with attention deficit hyperactivity disorder. Josh was prescribed medication but ceased using it within a short period of time.
- 3.4 When Josh was 12 years old, he witnessed the death of a neighbour who had been struck by a charging bull in a cattle yard, whilst trying to load the animal into a truck. According to Josh's mother, this traumatic event had a lasting impact upon Josh. He encountered difficulties at school and left high school in year 10 to work with a family friend.
- 3.5 In around 2005, when Josh was 22 or 33 years old, he moved to Western Australia to work in the mines. Josh remained in Western Australia until around 2011 when he returned to New South Wales. It was during this period interstate that Josh's family suspected that he commenced using methamphetamine.
- 3.6 Sadly, little else is known about Josh's life and personal history. However, the brevity of this recognition of Josh's life does not diminish the devastating impact that his death has had on his relatives and loved ones, nor the enormous loss and bereavement that they continue to experience following Josh's untimely and tragic passing. There can be little doubt that Josh is greatly missed by those who love him the most.

4. Relevant background to the events of 15 October 2020¹

Criminal history

- 4.1 Josh had his first interaction with the criminal justice system in 2007 when he was charged with possessing a prohibited drug. In May 2012, Josh was charged and convicted of driving offences associated with a police pursuit. Following this, it appears that Josh's offending escalated, resulting in charges for a number of property, dishonesty, public order and firearm offences, one of which involve the discharge of a firearm.
- 4.2 In December 2014, Josh was sentenced to a number of terms of imprisonment. On 5 February 2020, Josh was released to parole after having spent just over 6 ½ years in custody.
- 4.3 Upon his release, Josh went to live with a friend at a property near Singleton. He initially engaged with his parole conditions, responded well to supervision from Community Corrections, and attended appointments in person until March 2020. At this time in-person reporting as part of parole conditions was suspended due to the COVID-19 pandemic.
- 4.4 In around May 2020, Josh moved to the Goulburn area following reported disagreements with the friend that he had been living with. Following his relocation, Josh continued to engage positively with Community Corrections supervision, resulting in the suspension of his supervision in September 2020.
- 4.5 Despite this apparent positive engagement, Josh's family and friends expressed concerns that he had relapsed into substance use and offending behaviour following his move to the Goulburn area. Josh reportedly told his siblings that he was using illicit drugs and inferred that he was involved in criminal activity.

Admission to hospital

- 4.6 On 4 October 2020, Josh was admitted to hospital with multiple injuries, including a fracture to his left first rib and deep lacerations to both knees, after having reportedly been involved in a quad bike accident. Upon presentation, Josh reportedly told medical staff that he had been heavily consuming alcohol and using methamphetamine.
- 4.7 NSWPF Investigators suspect that Josh had instead sustained his injuries from a motor vehicle collision involving a stolen Toyota Landcruiser. At the time, a police Strike Force was investigating an organised vehicle rebirthing and property offence syndicate. This investigation related to the theft of five Landcruiser vehicles between July and October 2020 in the Goulburn area and its surrounds.
- 4.8 On around 8 October 2020, Josh travelled to the Central Coast. The precise details regarding the purpose of Josh's travel and who he travelled with are not clear. Indeed, the only account of Josh's activities after he arrived on the Central Coast come from the friend that he was living with in the Goulburn area. According to this account, Josh was staying with Joshua York, a person that he had

¹ Aspects of the factual background have been drawn from the helpful opening address of Counsel Assisting.

been introduced to by a former acquaintance. Josh was reportedly seen at Mr York's residence on 11 October 2020, where a number of firearms, machetes and ammunition were also observed.

Theft of the Toyota Landcruiser

- 4.9 On the morning of 13 October 2020, a Toyota Landcruiser, registration AB2-4RC (**Landcruiser**), was stolen from a secure parking area at a commercial premises in Tuggerah. The Landcruiser was a company vehicle belonging to Karera Pty Ltd (**Karera**). It was found that a hole had been cut in a fence surrounding the parking area and the theft was reported to police.
- 4.10 As the Landcruiser was fitted with a GPS tracker and in-car cameras, Karera's owner was aware that it had been to several locations, including Wyee and Morisset, in the early hours of the morning on 13 October 2020. On 14 October 2020, the Landcruiser's GPS tracker indicated that it was located in bushland area in Mandalong. This information was conveyed to police and plans were reportedly made for Karera employees to attend the location to search for the Landcruiser with the assistance of a drone.
- 4.11 At around midnight on 15 October 2020, Mr York's then 17-year-old daughter return to a panel shop in Tuggerah which was owned by Mr York. She saw Josh and Mr York drinking, but reportedly did not see any Landcruiser. Instead, she reported seeing a Ford Falcon belonging to her father and noticed a firearm on the front passenger seat. The following morning, she woke at around 11:30am, noticing that Josh and Mr York were no longer at the premises.

5. What happened on 15 October 2020?

- 5.1 As the circumstances surrounding the pursuit of the Landcruiser was not the focus of the inquest, only a brief summary of the events is set out below.

Initial sighting of the Landcruiser

- 5.2 Sometime between 8:37am and 8:50am on 15 October 2020, the Landcruiser was seen by the son of Karera's General Manager to be travelling along the Pacific Highway at Hamlyn Terrace. It had an ACT registration plate attached to the rear, and Karera signage on the vehicle had been covered with spray paint but was still visible. Two persons were seen in the Landcruiser: the driver, who was later found to be Mr York, wearing a yellow fluoro hooded jumper; and a front seat passenger, who was later found to be Josh, wearing a dark coloured top.
- 5.3 A number of Karera staff members were informed of the sighting and began driving around to look for and follow the Landcruiser. The sighting was also reported to Triple Zero and later broadcast over NSWPF radio.
- 5.4 The Landcruiser travelled to Louisiana Road, Hamlyn Terrace where it left the road and travelled along a dirt track. A Karera employee proceeded to the same location and saw the Landcruiser drive past. As this occurred, what appeared to be a firearm was pointed out the driver's side window in the direction of the employee. The reported sighting of a firearm was conveyed by radio to other Karera employees. This was also broadcast over NSWPF radio at 9:10am.

- 5.5 The Landcruiser later travelled onto Johns Road, Wadalba. A number of Karera employees, who had been communicating via radio, travelled in their vehicles to the location to follow the Landcruiser. The Landcruiser proceeded to Coolabah Road, Wyong, where it performed a U-turn and drove back towards the Karera staff who were following in convoy. As the Landcruiser passed, a number of Karera employees observed the front passenger to be holding a firearm upright across his body. The driver was again seen to be wearing a yellow reflective hooded jumper, with the hood over his head and the strings pulled tight to conceal his face. One of the Karera employees believed this to be a work hooded jumper that belonged to him, and was in the Landcruiser when it was stolen. The passenger was observed to be wearing a black bandana which was covering most of his face.
- 5.6 Other Karera staff joined the pursuit of the Landcruiser as it turned back onto Johns Road, Tuggerah. Police were also informed that a firearm had again been sighted within the Landcruiser.
- 5.7 Senior Constable Luke Bishop, Senior Constable Dean Callaghan and Senior Constable Steven Keane were attached to the Tuggerah Lakes Target Action Group. They were travelling in a fully marked Holden Commodore sports wagon with callsign TL 141. Whilst on their way to execute a search warrant for an unrelated matter, they heard a police radio broadcast regarding the Landcruiser and firearm sighting. The warning devices for TL 141 were activated and the police officers proceeded to the location of the Landcruiser.

Sighting of the Landcruiser by NSWPF officers

- 5.8 At around 9:15am, TL 141 sighted the Landcruiser as it turned from Johns Road into Pollack Avenue and commenced a pursuit. As TL 141 followed after the Landcruiser at a speed of around 100 km/h, the Landcruiser appeared to lock its brakes in an apparent attempt to cause TL 141 to collide with its rear and incapacitate it. This resulted in the Landcruiser colliding with the front left A-pillar of TL 141, causing part of the front windscreen to shatter and Senior Constable Bishop to be struck in the face by glass.
- 5.9 The Landcruiser sped away from TL 141 but employed the same manoeuvre a short time later. This again resulted in a collision, causing minor damage to the front of TL 141. The Landcruiser slowed and attempted to perform a three-point turn. Senior Constable Bishop exited TL 141, drew his firearm, ran towards the Landcruiser, pointed his firearm at the occupants and instructed them to stop the vehicle. Instead, the Landcruiser reversed and travelled along Pollack Avenue. Due to the damage that it had sustained, TL 141 was unable to follow the Landcruiser. Instead, it drove back to Johns Road and encountered Detective Senior Constable Kylie Bagnall and Detective Senior Constable (as he then was) Benton Allan who were parked on the side of the road in an unmarked Toyota Prado, with callsign TL 105. Senior Constable Bishop joined TL 105 to assist with the pursuit of the Landcruiser.
- 5.10 Two other police officers in a fully marked Highway Patrol vehicle, with callsign North 217, saw the Landcruiser travelling towards them along Pollack Avenue. North 217 followed the Landcruiser for several kilometres along Jensen Road before it turned into a property, ramming through a front gate and then a wire fence. Due to the terrain, North 217 was unable to continue following the Landcruiser. However another police vehicle, with callsign TL 16, briefly followed after the

Landcruiser across a paddock, before losing sight of it as it drove through a wire fence and onto Johns Road.

- 5.11 The Landcruiser then became lost from view and a number of police vehicles commenced patrolling the area around where it was last seen to locate it. At 9:30am, PolAir 2, a police helicopter, proceeded to the area to assist with locating the Landcruiser. At 9:31am, a police vehicle reported seeing the Landcruiser along a fire trail at Wadalba before losing sight of it. A short time later, it was broadcast over police radio that a civilian had seen the Landcruiser heading towards Sparks Road. TL 105 proceeded to that location. However, PolAir2 reported seeing smoke coming from bushland around Minnesota Road and Warnervale Road. As a result, TL 105 changed route and proceeded to that location.

Arrival of the Landcruiser at 109 Minnesota Road, Hamlyn Terrace

- 5.12 At 9:35am, the Landcruiser turned into a property at 109 Minnesota Road, Hamlyn Terrace (**the Property**), owned by Ronald (Ron) Bates and his wife, Katherine (Kathy). The Property is 14.5 acres in size, with two houses located on it, together with a number of other structures, including sheds, a garage, a carport, and a number of shipping containers. Mr and Mrs Bates lived in one of the houses, whilst Mrs Bates' mother, Joyce Porknoy, lived in a separate house.
- 5.13 Mr and Mrs Bates were sitting on their front verandah when they saw the Landcruiser travel up their driveway off Minnesota Road at high speed. The driveway is approximately 150 metres in length, with a caravan parked on the southern side (**the Caravan**) near its end. Also located near the end of the driveway is a concrete well and water tank (**the Well**). Just north of the well is Ms Porknoy's house (**Porknoy Residence**) with the house that Mr and Mrs Bates lived in (**Bates Residence**) located slightly south-west of the Well.
- 5.14 The Landcruiser proceeded around the Well and past the Bates Residence in a westerly direction, before proceeding north-west and travelling through two sheds at the back of the group of structures. Mrs Bates contacted Triple Zero to report what she and Mr Bates had observed. These details were later broadcast over police radio at 9:39am.
- 5.15 Senior Constable Blake Wood and Constable (as he then was) Blake Iddles were performing duties at Wyong police station on the morning of 15 October 2020. At around 9:00am, they heard the police radio broadcast regarding the pursuit of the Landcruiser. In response, they proceeded to the area in an unmarked Hyundai Sonata, with callsign TL 90, to provide assistance.

Arrival of Senior Constable Wood and Constable Iddles at the Property

- 5.16 Whilst patrolling the area around Johns Road, a broadcast was made over police radio indicating that PolAir 2 had made a request for a perimeter to be formed around the Property to contain the Landcruiser. TL 90 proceeded to the Property, arriving at around 9:46am, where they were approached by Mr Bates and Mrs Bates. Mr Bates told Senior Constable Wood and Constable Iddles that police believed that the occupants of the Landcruiser were armed and to not approach them. The police officers followed Mr Bates along the path that the Landcruiser had taken, whilst Mrs Bates returned to her house.

- 5.17 The two police officers and Mr Bates proceeded in a westerly direction, past two shipping containers and through an area that has been described as a corridor (**Corridor**). This Corridor is a narrow, roughly rectangular area that is bordered by two sheds on its southern and northern sides, with a white-coloured shipping container (**Shipping Container**) located at its open western end. At the eastern end of the Corridor is an open carport with a Toyota vehicle parked inside. The eastern end of the Corridor leads back towards the Porknoy Residence and Bates Residence.
- 5.18 Whilst passing through the Corridor, Senior Constable Wood saw black smoke coming from what he believed was the abandoned Landcruiser, some distance away. Mr Bates left the police officers, purportedly to move his ride on lawnmower into a shed.

The First Shooting

- 5.19 Senior Constable Wood saw Josh off to his left, approximately 30 to 40 metres away. He initially thought that Josh was an employee who was working on the Property. After briefly losing sight of Josh, Senior Constable Wood later saw Josh walking directly towards him, from a distance of around 20 metres away. He saw that Josh was wearing dark coloured clothing and carrying a long firearm by his side.
- 5.20 Senior Constable Wood drew his firearm and yelled out to Josh to put his firearm down. However, Josh continued to approach Senior Constable Wood, bringing the firearm up to his chest and cradling it. Constable Iddles also drew his firearm after seeing Senior Constable Wood do so although he could not see what had drawn his colleague's attention.
- 5.21 Senior Constable Wood again instructed Josh to put his firearm down. However, Josh continued to walk towards Senior Constable Wood and began to swing the firearm around so that it was pointing in Senior Constable Wood's direction. Senior Constable Wood sought some cover behind one of the sheds and again repeated his instruction for Josh to put the firearm down. As Senior Constable Wood was in front of him, Constable Iddles was unable to see Josh.
- 5.22 According to Senior Constable Wood, Josh continued advancing and level to the firearm towards him. Believing that Josh had discharged a round from his firearm, Senior Constable Wood discharged a number of rounds from his firearm in response. Senior Constable Wood backed up towards a shed and believed that he saw Josh reloading his firearm. Constable Iddles broadcast over police radio at 9:55am, "*Signal 1, shots fired, shots fired*" (**Signal One Broadcast**).
- 5.23 Senior Constable Wood told Constable Iddles to take cover. At this time, both police officers noticed that Mr Bates was nearby, having made his way to behind the Shipping Container in order to find the police officers. The group remained behind the Shipping Container and Senior Constable Wood saw Josh walk away from them towards the Porknoy Residence where he smashed a window with the butt of his firearm.
- 5.24 At this time, Senior Constable Wood saw Mrs Bates walk into an open grassed area (**Open Area**) in front of the Porknoy Residence. Senior Constable Wood called out to Mrs Bates to take cover, whilst Mr Bates proceeded around the rear of a shed to warn his wife. When Mr Bates reached Mrs

Bates, she told him that Josh had asked her to go with him and that he was at the Porknoy Residence.

Arrival of other NSWPF officers at the Property

5.25 In response to the Signal 1 broadcast made by Constable Iddles, a number of NSWPF officers travelled to the Property, including the police officers in TL 105 and Sergeant Craig Viceroy, who had made his way to the Property upon hearing Constable Iddles' broadcast. Upon arriving at the Property, Detective Senior Constable Bishop exited TL 105, which had parked in front of the Caravan, and began approaching the Porknoy Residence. He noticed that Detective Senior Constable Allan was on his right and Sergeant Vanderwolf was on his left, with both officers moving in the same direction.

The Second Shooting

5.26 As he approached the Porknoy Residence, Detective Senior Constable Allan saw exit the house with the stock of the firearm in his shoulder and his fingers around the trigger area. As Josh started to walk north, Detective Senior Constable Bishop yelled out, "*Contact right*", in order to alert both Sergeant Vanderwolf and Detective Senior Constable Allan who were looking in a different direction. Upon hearing Detective Senior Constable Bishop yell out, Josh turned around and looked at him. Detective Senior Constable Bishop believed that Josh discharged his firearm and in response he, Sergeant Vanderwolf and Detective Senior Constable Allan all discharged their firearms.

5.27 Josh fell to the ground after having been apparently struck by one or more projectiles. He began attempting to rise from the ground and lifted at the firearm up. As he did so, Detective Senior Constable Bishop, Detective Senior Constable Allan and Sergeant Vanderwolf discharged their firearms again, causing Josh to fall back down to the ground.

5.28 Detective Senior Constable Bishop ran up to Josh and kicked away the firearm that Josh had been holding. When later examined by a police forensic firearms examiner, it was found to be a 12 gauge G. Bignotti (Italian manufacture) double barrelled shotgun. Detective Senior Constable Bishop saw that Josh was lying on his left side, bleeding from some wounds and gasping for air. Detective Senior Constable Allan also approached Josh and made a call over police radio requesting medical assistance. However, this request was declined as the area was considered to be not secure to allow NSW Ambulance paramedics to attend. Detective Senior Constable Bishop, Detective Senior Constable Allan, and another police officer dragged Josh from the scene to the area near the Caravan. A second request was made for paramedics to attend, which was again declined for the same reasons. Detective Senior Constable Bishop, Detective Senior Constable Allan and two uniformed police officers picked up Josh and carried him to the entrance to the Property.

5.29 As this occurred, Sergeant Vanderwolf remained in the area where Josh had collapsed to the ground. He maintained cover due to a belief that there was a second person, namely the other occupant of the Landcruiser, still located within the Property.

- 5.30 Acting Inspector Sally Scott was parked on Minnesota Road outside the Property in her role as Duty Officer. After hearing Detective Senior Constable Allan make a second broadcast requesting paramedic assistance, acting Inspector Scott made her own broadcast, "*Contain now, police out and maintain perimeter*". Due to reports of a possible second offender on the property, Acting Inspector Scott made a further broadcast, "*Do not go in, possibly armed offender*".
- 5.31 NSW Ambulance paramedics arrived at the property at 10:07 AM. Josh was found to be unresponsive, having sustained a catastrophic head wound. An electrocardiogram confirmed that Josh showed no signs of life and he was pronounced life extinct at the scene.

6. The postmortem examination

6.1 Josh was later taken to the Department of Forensic Medicine where a postmortem examination was performed by Dr Hannah Elstub, forensic pathologist, on 19 October 2020. The examination identified four gunshot wounds:

- (a) A gunshot wound of the left frontal scalp, with no exit wound and the main projectile found in the soft tissues of the right neck, just lateral and anterior to the C1 vertebra (**Head Wound**). The wound tract was found to pass through the left frontal skull, left frontal and temporal lobes, bilateral basal ganglia, right temporal lobe, circle of Willis and upper brainstem. The appearance of the wound was noted to be consistent with a distant range gunshot wound.
- (b) A gunshot wound of the right chest, with entrance on the right upper chest and an exit wound in the right axilla (**Chest Wound**). The wound tract was found to pass through the right pectoralis and latissimus dorsi muscles. The wound was of an indeterminate range due to the presence of clothing.
- (c) A gunshot wound of the right lower thigh with entrance on the anterior right lower thigh and an exit wound on the lateral right lower thigh (**Thigh Wound**). The wound tract was found to pass through the distal quadriceps muscle without obvious vascular injury. The appearance of the wound was noted to be consistent with a distant range gunshot wound.
- (d) An irregular wound of their right thumb consisting of two roughly circular defects joined together (**Thumb Wound**). The appearance was consistent with a tangential gunshot wound.

6.2 Routine toxicology detected a concentration of methylamphetamine and its metabolite, together with non-toxic concentrations of amitriptyline (antidepressant) and its metabolite, together with pregabalin (pain and anticonvulsants medication).

6.3 Dr Elstub ultimately opined that the cause of Josh's death was gunshot wound of the head. Dr Elstub also noted that "*[t]he other wounds may have resulted in a degree of blood loss, but without injury to major organs or vascular structures identified, they are unlikely to have substantially contributed to death*".

7. What issues did the inquest examine?

7.1 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) What were the precise circumstances leading up to and contributing to Josh's death? In particular:
 - (a) Exactly how many shots were fired and by whom?
 - (b) Is it possible to identify which police officer(s) fired the shots that caused the injuries causing death?
- (2) The appropriateness of the interaction between Senior Constable Wood and Constable Iddles and Josh prior to and during the first shooting, including:
 - (a) The location of Senior Constable Wood and Constable Iddles immediately prior to, and during, the first shooting.
 - (b) Senior Constable Wood's conduct in leaving cover and discharging his firearm at Josh.
- (3) The appropriateness of the interactions between Detective Senior Constable Bishop, Detective Senior Constable Allan and Sergeant Vanderwolf with Josh immediately prior to and during the second shooting, including:
 - (a) The understanding of Detective Senior Constable Bishop, Detective Senior Constable Allan and Sergeant Vanderwolf of their expected roles in the operation and as between themselves; that is, whether there was appropriate communication between these police officers;
 - (b) Whether the decisions of Detective Senior Constable Bishop, Detective Senior Constable Allan and Sergeant Vanderwolf to fire at Josh were appropriate and consistent with NSW Police protocols and training relating to the apprehension of armed offenders, have in regard to the information known to them at the time;
 - (c) Was there any alternative to the use of lethal force by Detective Senior Constable Bishop, Detective Senior Constable Allan and Sergeant Vanderwolf, and if so, should that option have been attempted first?
- (4) Whether police gave sufficient consideration to the risks posed by Josh to civilians in the course of the incident at 109 Minnesota Road, specifically in respect of the conduct of Senior Constable Wood and Constable Iddles concerning Mr and Mrs Bates.

7.2 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.

8. Appropriateness of the interactions involving Josh and Senior Constable Wood and Constable Iddles

Senior Constable Wood

- 8.1 Senior Constable Wood gave evidence that after hearing details of the pursuit broadcast over police radio, he made the decision to respond in order to assist other police officers. After speaking to a number of Karera employees, Senior Constable Wood formed the belief that the occupants of the Landcruiser might have a firearm. At the time that he heard the broadcast over police radio for a perimeter to be formed he and Constable Iddles were one of the closest police resources to the Property. Senior Constable Wood gave evidence that his understanding of this broadcast was to gather his bearings and obtain line of sight in order to hold the perimeter.
- 8.2 After arriving and parking at the Property, Senior Constable Wood saw Mr Bates approaching and had a conversation with him. Mr Bates indicated that he had seen the Landcruiser travel in via the driveway and then pass in a north-westerly direction through the Property. Senior Constable Wood and Constable Iddles followed Mr Bates to the Shipping Container and focused their attention on the bushland to the south and west. Senior Constable Wood gave evidence that he was looking for any movement in the bushland areas, intending to hold his position until PolAir was able to take over.
- 8.3 Senior Constable Wood gave evidence that while standing on the south-western side of the Shipping Container, he saw a figure in the bushland to the south. Senior Constable Wood drew his firearm but lost sight of the person a short time later due to a number of trees obscuring his view. He then decided to move east past the Shipping Container and into the Corridor in an attempt to locate the person.
- 8.4 Upon reaching the end of the Corridor, Senior Constable Wood looked south and saw Josh at a distance of approximately 20 metres walking at a brisk pace from the tree line. Senior Constable Wood saw that Josh was carrying a long firearm which was pointed towards the ground. Senior Constable Wood gave evidence that he called out words to the effect of, "*Oi mate, what are you doing, put the gun down*". According to Senior Constable Wood, Josh continued approaching, bringing the firearm up so that it was cradled across his chest and with the barrel facing up. By this stage, Senior Constable Wood had his firearm pointed towards the ground.
- 8.5 Senior Constable Wood gave evidence that Josh continued to approach to a distance of approximately 5 metres, and that he called out to Josh to drop the firearm on a number of occasions. When Josh did not comply, Senior Constable Wood moved west along the Corridor. Senior Constable Wood gave evidence that shortly afterwards he saw Josh reach the corner of the southern shed and carport whilst carrying the firearm which was still pointed upwards. Senior Constable Wood challenged Josh again and instructed him to put the firearm down. Senior Constable Wood gave evidence that he saw the firearm swing around from right to left so that it was pointed in his direction, with Josh's shoulders starting to square up.
- 8.6 Senior Constable Wood gave evidence that he felt that the firearm was on him and he discharged two rounds, in accordance with his training, at a distance when Josh was approximately 5 metres

away. Senior Constable Wood also gave evidence that he saw Josh move back towards the temporary structure and appeared to be “*fiddling*” with his firearm, which made Senior Constable Wood believe that Josh was reloading the firearm. Senior Constable Wood heard Constable Iddles make the Signal One Broadcast and moved to the Shipping Container where he was joined by Constable Iddles and Mr Bates. Senior Constable Wood gave evidence that he saw Josh check the door handle of the vehicle that was parked in the carport and then move east towards the Porknoy Residence. A short time later Senior Constable Wood saw Josh use his firearm to smash a window before losing sight of him.

- 8.7 Senior Constable Wood gave evidence that whilst behind the Shipping Container, there was a brief discussion between himself and Mr Bates. After seeing Mrs Bates standing in the open area in front of the Porknoy Residence, Mr Bates indicated that he intended to go to his wife. Senior Constable Wood gave evidence that his plan was to move forward through the Corridor in order to contain Josh inside of the Porknoy Residence (after he saw him enter but not leave), whilst sending Mr Bates in a south-east direction around the shed so that he could reach his wife.
- 8.8 Senior Constable Wood gave evidence that although he heard broadcasts of other NSWPF resources arriving at the Property, he did not see any other police officers as he moved forward through the Corridor towards the Porknoy Residence. As he did so, Senior Constable Wood saw Josh exit the residence, still holding the firearm which was cradled at his waist and pointed in Senior Constable Wood’s general direction. Senior Constable Wood gave evidence that he raised his firearm and saw Josh’s attention drawn to his left after hearing a number of voices including the loudest voice yelling out, “*Contact right*”. Senior Constable Wood gave evidence that he interpreted these words to mean that there was an active armed offender in shooting mode, and that he understood that other NSWPF officers were present, although he could not see them.
- 8.9 Senior Constable Wood gave evidence that he heard two sets of gunshots in quick succession, separated by a brief pause. Senior Constable Wood saw Josh collapse down to both knees, with one hand on the ground. He said that he saw Josh start to “*come back up only a couple of inches*” when he heard the second set of gunshots, causing Josh to collapse face down onto the ground.

NSWPF Policy Considerations

- 8.10 Sergeant William Watt is a Senior Operational Safety Instructor from the NSWPF Weapons & Tactics, Policy & Review. As part of the critical incident investigation, Sergeant Watt was requested to review the conduct of NSWPF officers at the Property on 15 October 2020.
- 8.11 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.

8.12 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.

8.13 Sergeant Watt described the Model employed by the NSWPF in this way:

[T]he use of force in any situation is based upon the officers' assessment of the level of resistance met, weighed against the appropriate level of force or response required to control the situation confronting them.

[...]

Firearms are only discharged when there is no other reasonable course of action available. The use of the firearm occurs when there is an immediate risk to the officer's life or the life of someone else, or there is an immediate risk of serious injury to the [officer] or someone else and there is no other way of preventing that risk.

8.14 Sergeant Watt described Senior Constable Wood and Constable Iddles being at "*a significant tactical disadvantage*" when they first encountered Josh. This is because they were in a confined space with the only viable avenue of retreat leaving them exposed to hostile fire from Josh. Sergeant Watt described the Josh's shotgun as having a greater range than the pistols carried by the police officers, and that the shotgun carried a high likelihood of striking an intended target without the need for careful aim.

8.15 Sergeant Watt opined that the description provided by Senior Constable Wood was consistent with a method of shooting known as point shooting. This method relies on the ability of a police officer to point at an object without the need for any sighting mechanism. This results in what is described as a "*coarse*" alignment which is generally sufficient for hitting a human torso at shorter ranges. Whilst not precise, this method of shooting is very fast. Sergeant Watt noted that Senior Constable Wood was in close proximity to Josh and believed that he was about to be shot. Accordingly, as Sergeant Watt described "*time was of the essence*".

8.16 In summary, Sergeant Watt described the situation which Senior Constable Wood faced as being "*an armed, non-compliant subject who had already been involved in significant and dangerous attempts to evade police and had threatened members of the public with a firearm, who continued to advance towards him, in a location bereft of cover with a single route of withdrawal that did not remove him, Constable Iddles or Ronald Bates from the line of fire*". Having regard to this situation, Sergeant Watt considered that Senior Constable Wood's decision to discharge his firearm to be in accordance with NSWPF policy.

8.17 **Conclusions:** Based upon his initial sighting of Josh in bushland to the south of the Shipping Container, Senior Constable Wood was aware that there was an alleged armed offender on the Property. This was consistent with information that Senior Constable Wood was already ware of from a number of NSWPF radio broadcasts earlier in the morning.

8.18 When Senior Constable Wood next saw Josh approaching the Corridor, he issued a number of repeated instructions to Josh to put his firearm down. There was no compliance with these instructions and Josh instead continued to advance towards Senior Constable Wood's position. Given this series of events and Senior Constable Wood's observation that Josh's firearm was pointed in his direction, it was reasonable for Senior Constable Wood to form the belief that he was in imminent danger. Accordingly, it was also reasonable for Senior Constable Wood to discharge his firearm in accordance with his training, particularly given his position of tactical disadvantage as described by Sergeant Watt. Overall, Senior Constable Wood acted appropriately.

Constable Iddles

8.19 Constable Iddles gave evidence that after speaking to a number of civilians involved in the pursuit he understood that the occupants of the Landcruiser had at least one firearm. Prior to arriving at the Property, Constable Iddles indicated that he did not anticipate entering the Property, but instead believed that his role would be to maintain a position by the roadside to cover as much area as possible. However, after Senior Constable Wood drove along the driveway and parked, Constable Iddles saw Mr Bates approach. Constable Iddles gave evidence that Mr Bates indicated that the Landcruiser had "tore" through the property in a generally westerly direction and asked the police officers to look at its tracks. As they followed Mr Bates, Constable Irving told him that there was a chance the occupants of the Landcruiser were armed.

8.20 Constable Iddles gave evidence that after following Mr Bates, he and Senior Constable Wood moved to the Shipping Container, looking for a place with protection and cover. Constable Iddles gave evidence that he and Mr Ward discussed where they should direct their attention and it was agreed that their focus would be on the bushland at the rear of the Property, which was where any perceived threat was expected to come from.

8.21 Constable Iddles gave evidence that he heard Senior Constable Wood ask him whether he heard anything before Senior Constable Wood started walking east. Constable Iddles followed, approximately 2 or 3 metres behind, with his firearm drawn, pointed down and his finger on the receiver. Constable Iddles gave evidence that as Senior Constable Wood reached the carport he positioned himself in a stance which suggested to Constable Iddles that he saw something which he considered to be a threat. Constable Iddles heard Senior Constable Wood yell, "Drop the gun" three times but was unable to see anything from his position.

8.22 Constable Iddles gave evidence that as Senior Constable Wood moved into the carport area, he went to the back of the shed and made the Signal One Broadcast, indicating that a NSWPF officer was under immediate threat. Whilst attempting to get on the radio, Constable Iddles gave evidence that he heard two or three shots from a handgun and then a louder shot from a shotgun. Constable Iddles said that he returned to his original position near the carport when he encountered Senior Constable Wood who told him to find cover. Constable Iddles ran to the back of the shed and, whilst backpedalling, saw a shotgun barrel emerge from the corner of the carport. Constable Iddles gave evidence that he formed the impression that the holder of the firearm was attempting to manoeuvre it around the corner so that it could be fired on him and Senior Constable Wood.

8.23 Constable Iddles returned to the Shipping Container and saw Mrs Bates in the Open Area in front of the Porknoy Residence. Mr Bates attempted to run towards his wife through the Corridor but Constable Iddles gave evidence that he put his arm out to stop him, yelling at him to get out of the way and find cover. At that time, Constable Iddles gave evidence that Senior Constable Wood said to him, *“He’s in the house, he is reloading”*. Constable Iddles gave evidence that he attempted to broadcast over police radio that Josh had been sighted within the house.

8.24 The next time that Constable Iddles saw Josh was when he was about 30 metres away, having exited the Porknoy Residence, and walking in the direction of himself and Senior Constable Wood. Constable Iddles gave evidence that Josh was holding his firearm close to his body, possibly at chest height and pointed directly towards himself and Senior Constable Wood. Soon afterwards, Constable Iddles gave evidence that he heard multiple gunshots in rapid succession with no pauses. Constable Iddles formed the belief that the gunshots had come from a second intruder on the property and were directed towards Mr Bates. Constable Iddles gave evidence that prior to hearing the gunshots he did not see or hear any other NSWPF officers and did not know where the gunshots were coming from. Constable Iddles ducked and ran back to take cover behind the Shipping Container. Later, after hearing the broadcast over police radio to withdraw, Constable Iddles moved towards the Open Area and saw Josh lying on the ground.

8.25 **Conclusions:** Whilst within the Corridor, Constable Iddles observed Senior Constable Wood take up a stance which indicated that he was confronted by a threat, and then heard Senior Constable Wood deliver repeated instructions for an alleged offender to drop their firearm. From these observations, it was reasonable for Constable Iddles to form the belief that a NSWPF officer was under immediate threat, leading to the making of the Signal One Broadcast.

8.26 Upon becoming aware that Mr Bates was intending to reach his wife, who had been sighted in the Open Area, Constable Iddles appropriately prevented Mr Bates from moving through the Corridor. Constable Iddles appropriately directed Mr Bates away from the confined area of the Corridor and instead to a position of greater cover, behind shed to the south-east.

9. Appropriateness of the interactions involving Josh and Detective Senior Constable Bishop, Detective Senior Constable Allan and Sergeant Vanderwolf

Detective Senior Constable Bishop

- 9.1 Detective Senior Constable Bishop gave evidence that after hearing the radio broadcasts regarding the Landcruiser, he was aware that it had been reported stolen several days prior. He was aware that the occupants of the Landcruiser had produced a firearm and had been involved in a ram raid with a police vehicle.
- 9.2 After arriving at the property Detective Senior Constable Bishop drew his firearm and held it in the Sul position (held close to the body with the muzzle pointed towards the ground). Detective Senior Constable Bishop gave evidence that he started moving north towards the driveway, heading towards the smoke that he could see in the distance. He said that he was satisfied that there was no threat behind him to the south, and that his purpose in moving forward was to move into the structures and clear the Property. In doing so, he did not communicate with either Detective Senior Constable Allan or Sergeant Vanderwolf. Detective Senior Constable Bishop also gave evidence that he did not know where Constable Iddles and Senior Constable Wood were, and that he was attempting to locate them. Detective Senior Constable Bishop said that he saw that Sergeant Vanderwolf's attention was drawn to his left, although Detective Senior Constable Bishop could not see what he was looking at. Detective Senior Constable Bishop said that Detective Senior Constable Allan was also looking in the same direction as Sergeant Vanderwolf.
- 9.3 Detective Senior Constable Bishop gave evidence that he took cover behind a tree in the Open Area. He said that as he moved out of cover, Josh emerged from the Porknoy Residence, holding a firearm with its butt against his shoulder and with his fingers around the trigger area. Detective Senior Constable Bishop gave evidence that Josh was walking with purpose in a westerly direction, with the firearm pointed in the same direction.
- 9.4 Detective Senior Constable Bishop yelled out, "*Contact right*", based on his AAO training to identify the direction of a threat. He explained that he knew that Sergeant Vanderwolf and Detective Senior Constable Allan were not looking in the same direction. As a result, Detective Senior Constable Bishop gave evidence that he believed that he was the only police officer who had seen Josh, and that the other two police officers were not cognisant of the threat that he perceived. Detective Senior Constable Bishop gave evidence that he considered Josh to be a threat due to the way in which he was holding the firearm, in a position that was ready to fire.
- 9.5 After Detective Senior Constable Bishop called out, Josh swung the shot gun around and pointed it in a southerly direction. Detective Senior Constable Bishop gave evidence that Josh kept the firearm at shoulder height, and that it was aimed directly at him. Detective Senior Constable Bishop said that he heard the sound of a gunshot, believing that it had come from Josh's firearm. However, Detective Senior Constable Bishop acknowledged in evidence that he may have been mistaken about this, given that he was approximately 10 to 15 metres away, and within a range where he may have been injured if the shotgun had in fact been discharged in his direction.

- 9.6 Notwithstanding, Detective Senior Constable Bishop gave evidence that he thought that his life was under threat and there was no other way to prevent the threat other than by returning fire. Detective Senior Constable Bishop said that he brought his firearm up as he said, “*Contact right*”, and pointed his firearm in Josh’s direction and started firing back, aiming for centre mass. Detective Senior Constable Bishop gave evidence that he was seeking to stop the threat that he perceived. As he did so, Detective Senior Constable Bishop heard other gunshots, but gave evidence that he was concentrating on what he needed to do.
- 9.7 As a result of the gunshots being fired, Detective Senior Constable Bishop said that he saw Josh go the ground and was crumpled over his firearm. Detective Senior Constable Bishop gave evidence that a short time later he saw Josh attempt to bring the firearm up from the ground, and that it was pointed in his direction as Josh attempted to get to his knees. In response, Detective Senior Constable Bishop discharged his firearm a second time, resulting in Josh dropping to the ground.
- 9.8 Detective Senior Constable Bishop gave evidence that he approached Josh, kicked his firearm away, and rolled Josh over with his attention focused on the Porknoy Residence, as he was aware that two alleged offenders had entered the property. Detective Senior Constable Allan arrived a short time later and he and Detective Senior Constable Bishop had a conversation regarding obtaining treatment for Josh who was still alive but breathing shallowly. Their request for assistance was refused as the area was not secure. As a result, Detective Senior Constable Bishop and Detective Senior Constable Allan dragged Josh to behind where TL90 was parked. A second request for assistance was made, which was also declined for the same reason. As a result, Detective Senior Constable Bishop, Detective Senior Constable Allan and two uniformed police officers carried Josh to the entrance to the Property.
- 9.9 Sergeant Watt opined that from the available PolAir footage it appeared to show Josh holding the shot gun with his right hand at the trigger and the stock positioned at or near his shoulder, with the forearm of the shot gun held in his left hand with the muzzle pointed down. Sergeant Watt described this position as similar to a “*low port*” or “*low ready*” position, where a person can rapidly move a firearm into a firing position.
- 9.10 Sergeant Watt considered that that Detective Senior Constable Bishop, Detective Senior Constable Allan and Sergeant Vanderwolf were confronted by the following factors:
- (a) an armed offender who had been involved in dangerous behaviour whilst attempting to evade police and threatening members of the public with a firearm, and had exchanged gunfire with police;
 - (b) an offender who was carrying his firearm in a position which could be quickly moved into a firing stance, and who was lifting the firearm so that it could be, or was actually, pointed at them;
 - (c) they were fully exposed without cover;
 - (d) they were well within the range of the shotgun;

(e) they were unaware of the condition of Senior Constable Wood and Constable Iddles; and

(f) they believed they were confronting an active armed offender who posed an immediate risk to their safety

9.11 Having regard to the above matters, Sergeant Watt considered that Detective Senior Constable Bishop discharged his firearm in accordance with NSWPF policy and training. Sergeant White noted that police are trained to fire as many shots as required to negate a perceived threat with the goal being to force incapacitation. Specifically, Sergeant Watt considered that it was consistent with their training for the police officers to continue firing at Josh until he either ceased his attempt to regain the shot gun or he was clearly incapacitated.

9.12 **Conclusions:** Upon exiting the Porknoy Residence, it is not clear whether Josh was aware that Detective Senior Constable Bishop, Detective Senior Constable Allan and Sergeant Allan were approaching the Open Area. However, when Detective Senior Constable Bishop appropriately called out, “*Contact right*” to alert the other two police officers to what he had observed, Josh’s attention was also drawn to at least Detective Senior Constable Bishop. This resulted in Josh turning in the direction of the Detective Senior Constable Bishop, with his firearm held in a position where it could be easily raised into a firing position.

9.13 The evidence establishes that Josh did not discharge his firearm, contrary to Detective Senior Constable Bishop’s belief that he had done so. There is also no direct evidence to suggest that Josh had exited the Porknoy Residence with the intention of using his firearm to injure or kill any of the police officers on the Property. Rather, the evidence suggests that he was attempting to return to the carport and use the vehicle parked there to depart the premises. This is because he had earlier attempted to open the door to the vehicle, and because when he was later searched he was found with a set of Toyota car keys in one of his pockets, which had been taken from the Porknoy Residence.

9.14 None of these matters were of course known to Detective Senior Constable Bishop, Detective Senior Constable Allan or Sergeant Vanderwolf. Notwithstanding, given Detective Senior Constable Bishop’s awareness of the Signal One Broadcast and a corresponding lack of awareness as to the welfare of Senior Constable Wood and Constable Iddles, coupled with the fact that Josh was facing his direction with a firearm that could cause serious injury at close range, it was appropriate for Detective Senior Constable Bishop to discharge his firearm in accordance with his training.

9.15 After observing Josh go to the ground, but appear to attempt to rise to his feet whilst reaching for his firearm, it was also appropriate for Detective Senior Constable Bishop to discharge his firearm a second time. This is because, consistent with his training, the threat perceived by Detective Senior Constable Bishop had not yet been incapacitated.

Sergeant Vanderwolf

9.16 Sergeant Vanderwolf gave evidence that from the various NSWPF radio broadcasts he was aware that there were two occupants inside the Landcruiser, and that one of the occupants had produced

a firearm and pointed it at number of civilians. Sergeant Vanderwolf gave evidence that as a firearm had reportedly been seen at different stages from both the drivers and passengers side of the Landcruiser, he assumed that both of the occupants were armed.

- 9.17 After hearing the Signal One Broadcast, Sergeant Vanderwolf gave evidence that he formed the belief that two fellow police officers had been shot at, and it was likely that there were civilians at the Property who were also in danger. Sergeant Vanderwolf gave evidence that he accordingly came to the view that he needed to be at the Property in order to *“help save lives”*.
- 9.18 After parking at the Property, Sergeant Vanderwolf drew his firearm and kept it in the Sul position. He commenced moving towards the Open Area, with Detective Senior Constable Bishop and Detective Senior Constable Allan to his right, several metres away. Sergeant Vanderwolf gave evidence that he saw the other two officers with his peripheral vision, and that there was no need for any communication between them because they were *“just switched on to their training”*.
- 9.19 Sergeant Vanderwolf gave evidence that he did not see either Senior Constable Wood or Constable Iddles. Instead, Sergeant Vanderwolf said that the first thing that he saw was Mrs Bates standing in the Open Area. Sergeant Vanderwolf gave evidence that from that point everything happened quickly. He said that within seconds he caught a glimpse of something to his right and heard Detective Senior Constable Bishop yell out, *“Contact right”*. Sergeant Vanderwolf gave evidence that from his training he understood these words to mean that there were armed offenders present.
- 9.20 At the same time, Sergeant Vanderwolf saw Josh exit the Porknoy Residence, and begin walking towards Mrs Bates, and then towards him. Sergeant Vanderwolf said that Josh was holding a shotgun at around waist height, with the butt in his right hand, and his left hand cradling the stock or barrel, in a position where he was capable of firing it. Sergeant Vanderwolf heard gunshots fired but was unsure whether it came from Josh or from somewhere to his right. In response, Sergeant Vanderwolf fired his firearm and saw Josh fall down onto his knees, with his firearm held out in front of him. Sergeant Vanderwolf gave evidence that Josh appeared to be down on his haunches. As he saw Josh appear to get back up again, Sergeant Vanderwolf discharged his firearm a second time, whilst hearing gunshots at the same time. As a result, Sergeant Vanderwolf saw Josh go to the ground, appearing to be incapacitated.
- 9.21 Sergeant Vanderwolf commenced moving towards Josh, but still had his firearm out, being of the strong belief that there was another armed offender, likely inside the Porknoy Residence. As he approached, Sergeant Vanderwolf saw that Josh had sustained a wound to his head. Sergeant Vanderwolf provided cover for a short time and instructed the other police officers to keep cover on the Porknoy Residence. From there, Sergeant Vanderwolf made his way to a small shack where Mr Bates and Mrs Bates were. Sergeant Vanderwolf gave evidence that he was *“bewildered”* that the two residents were out in the open. Sergeant Vanderwolf instructed them to go inside their house and close the door.

9.22 **Conclusions:** Whilst it is not possible to determine the precise sequence of events, it appears most likely that Sergeant Vanderwolf discharged his firearm shortly after hearing Detective Senior Constable Bishop's firearm being discharged and/or Detective Senior Constable Allan's firearm being discharged. As noted already, Josh did not discharge his firearm during this encounter. The sound of a firearm, or firearms, being discharged led Sergeant Vanderwolf to believe, not unreasonably, that Josh had discharged his firearm. Having regard to Sergeant Vanderwolf's awareness of the earlier broadcasts over NSWPF radio regarding the pursuit, the Signal One Broadcast and the warning of, "*Contact right*", Sergeant Vanderwolf acted appropriately in discharging his firearm in response to a perceived threat.

9.23 Like Detective Senior Constable Bishop, Sergeant Vanderwolf also observed Josh appear to attempt to rise to his feet after falling to the ground and to regather his firearm. In such circumstances, Sergeant Vanderwolf acted appropriately, and consistently with his training, in discharging his firearm a second time in order to incapacitate the threat that he perceived.

Detective Senior Constable Allan

9.24 Unlike the other directly involved police officers, Detective Senior Constable Allan initially did not take part in an electronically recorded interview following the incident. Indeed, Detective Senior Constable Allan did not provide any written version of events until he prepared a statement dated 18 November 2022, shortly before the inquest.

9.25 In that statement, Detective Senior Constable Allan indicated that having taken part in the initial pursuit, he was aware that there were two occupants inside the Landcruiser, and that the front passenger had pointed what appeared to be a single barrel shotgun at some civilians. Detective Senior Constable Allan stated that after hearing the Signal One Broadcast, and hearing what he described as the "*very distressed*" voice Constable Iddles, he drove to the property with Detective Senior Constable Bagnall and Detective Senior Constable Bishop. Detective Senior Constable Allan stated that he was of the belief that he was arriving at an active shooter incident and that he held "*fears for the lives or the other officers who had been shot at*".

9.26 Detective Senior Constable Allan stated that he saw Mrs Bates waving towards his vehicle, appearing to be "*highly distressed*". After exiting the vehicle, Detective Senior Constable Allan drew his firearm and moved towards the Well for cover, motioning for Mrs Bates to approach him but she did not comply. After hearing Detective Senior Constable Bishop yell out, "*Contact right*", Detective Senior Constable Allan saw Josh exit the Porknoy Residence to his immediate right, carrying a double-barrel shotgun and pointing it in the direction of Sergeant Vanderwolf and Mrs Bates. Detective Senior Constable Allan stated that he could see "*the barrel moving up and down*", and believed that Josh was shooting at Sergeant Vanderwolf and Mrs Bates. In response, Detective Senior Constable Allan discharged his firearm at Josh's centre body area as he advanced towards Sergeant Vanderwolf and Mrs Bates, with the shotgun pointed in their direction.

9.27 After Josh fell to the ground, Detective Senior Constable Allan stopped discharging his firearm and yelled, "*Police, don't move*". Detective Senior Constable Allan stated that Josh was lying on the ground and appeared to be injured, with the shotgun next to him. Upon seeing Josh move up and reach across to grab the shotgun, Detective Senior Constable Allan discharged his firearm a second

time. Upon advancing towards Josh, Detective Senior Constable Allan stated that he believed that there was a second offender, possibly armed, still outstanding.

9.28 **Conclusions:** Detective Senior Constable Allan did not give oral evidence at the inquest. Accordingly, the only version of events that he has provided comes from his untested written statement. That said, the version is entirely consistent with the accounts of both Detective Senior Constable Bishop and Sergeant Vanderwolf. From these accounts, and from the balance of the available evidence, there is no reason to hold any doubts regarding the veracity of the version provided by Detective Senior Constable Allan.

9.29 Therefore, based upon this version, Detective Senior Constable Allan reasonably form the belief that there was a perceived threat which posed an imminent risk of danger to himself and his fellow police officers. In addition, Detective Senior Constable Allan also perceived that there was an imminent risk to Mrs Bates' safety, after forming the belief that Josh was discharging his shot gun in the direction of Mrs Bates and Sergeant Vanderwolf. In these circumstances, Detective Senior Constable Allan acted appropriately, and consistently with his training, in discharging his firearm.

9.30 Similar to both Detective Senior Constable Bishop and Sergeant Vanderwolf, Detective Senior Constable Allan observed Josh appear to attempt to get back up off the ground and regather his firearm. Reasonably believing that the perceived threat had not been incapacitated, Detective Senior Constable Allan acted appropriately in discharging his firearm a second time.

10. How many shots were fired and by whom?

10.1 Four police officers fired a total of 14 projectiles at the Property. Each of the police officers who discharged their firearm were carrying either a .40 Smith & Wesson calibre Glock Model 22 or Glock Model 23 self-loading pistol.

Ballistic examination

10.2 Forensic examination of the firearms carried by each of the relevant police officers identified the following:

- (a) 0 rounds missing from the firearm carried by Constable Iddles;
- (b) 2 rounds missing from the firearm discharged by Senior Constable Wood;
- (c) 3 rounds missing from the firearm discharged by Detective Senior Constable Bishop;
- (d) 3 rounds missing from the firearm discharged by Sergeant Vanderwolf; and
- (e) 8 rounds missing from the firearm discharged by Detective Senior Constable Allan

10.3 Matthew Bolton, a NSWPF forensic ballistics investigator and forensic firearms examiner opined that each of the four wounds sustained by Josh were caused by four separate single fired projectiles. Mr Bolton gave evidence that the shotgun had an impact damaged bullet lodged in the top rib, meaning that it could not fire a full load. From his examination of the scene and the cartridges located there, Mr Bolton concluded that only police firearms had been discharged.

10.4 In addition, Mr Bolton gave evidence that from his examination he was able to determine that the projectile retrieved from the Head Wound had been fired from a Glock firearm, but he was unable to say which specific firearm.

Relevant autopsy findings

10.5 Dr Elstub gave evidence that from the autopsy findings it was not possible to determine with precision the direction from which the projectiles were fired so as to cause each of the four wounds sustained by Josh. In addition, it was also not possible to determine the distance from which the projectiles were fired.

10.6 Dr Elstub explained that some of the wounds could be described as distant range gunshot wounds, meaning that the projectiles were fired at a distance so as not to cause any interference with Josh's skin (due to the absence of soot or tattooing on the skin from gunpowder) as a result of the projectile being discharged. However, the distance from which the projectiles were discharged can range significantly from half a metre to many metres. Further, Dr Elstub explained that whilst it might be possible to draw an imaginary line between the muzzle of a firearm and an entry wound on the body of a person, once a projectile enters the body its direction can alter as it passes through the body's internal structures.

- 10.7 As to the Head Wound, Dr Elstub gave evidence that examination of the wound tract raised the possibility that the projectile came from a person who was to Josh's left, although the possibility that it came from another direction could also not be excluded. Further, the steep downward nature of the wound tract suggested that Josh was not fully upright at the time of impact.
- 10.8 As to the Chest Wound, Dr Elstub explained that this gunshot wound had an irregular appearance in that it was not oval or circular. Further, the position of the wound caused Dr Elstub to consider that the projectile had struck an object, causing it to deform, before entering the chest. That is, it is possible that the projectile ricocheted off something or entered another part of the body first, before entering the chest.
- 10.9 Dr Elstub gave evidence that the only damage caused by the Chest Wound was muscular and any bleeding would not have been fatal. Similarly, the Thigh Wound caused only muscular damage, with the possibility of a superficial fracture identified from postmortem imaging, and that any associated bleeding was likely not fatal.
- 10.10 Ultimately, Dr Elstub explained that the autopsy findings do not allow for any reliable conclusion to be reached as to the order in which the four wounds were inflicted. However, Dr Elstub noted that the Head Wound was significantly disabling, not survivable and likely to have caused death almost instantly. Dr Elstub considered that it would have been very unlikely for a person to suffer such a wound and be able to get to their feet.

Accounts of the directly involved NSWPF officers

- 10.11 Senior Constable Wood gave evidence that he fired two rounds whilst he was backing away from the Corridor after seeing the shotgun emerge from the corner and swing around in his direction. Given the timing of events, and the subsequent discovery of blood on the door handle of the vehicle parked in the carport, it is most likely that one of the rounds fired by Senior Constable Wood caused the Thumb Wound.
- 10.12 Initially, Detective Senior Constable Bishop gave evidence that he fired two or three rounds, followed by a maximum of two rounds a short time later. However, after accepting that there were three rounds missing from his firearm, Detective Senior Constable Bishop gave evidence that it was likely he fired two rounds initially, and one round on the second occasion.
- 10.13 Sergeant Vanderwolf initially gave evidence that he thought that he only fired one or two rounds. However, he also accepted that there were three rounds missing from his firearm, and gave evidence that he believed he fired two rounds initially, followed by a subsequent single round.
- 10.14 Detective Senior Constable Allan stated that after seeing Josh point the shotgun in the direction of Sergeant Vanderwolf and Mrs Bates, he discharged his firearm a number of times without being able to recall exactly how many times he fired. Upon seeing Josh fall to the ground, Detective Senior Constable Allan stated that he stopped firing. However, as he saw Josh lean up and reach across to the shot gun, he fired what he described as "*one more well aimed shot*" at the top of Josh's head.

10.15 Sergeant Watt gave evidence that having heard of the oral evidence of the directly involved police officers and considered the statement of Detective Senior Constable Allan, none of their accounts caused him to change or alter the views expressed in his statement. Like Mr Bolton, Sergeant Watt also gave evidence that it was not possible to determine which firearm discharged what particular round, and which firearm or firearms caused the four wounds sustained by Josh.

10.16 **Conclusions:** The available evidence establishes that a total of 14 rounds, from four different NSWPF firearms, were discharged on 15 October 2020 at the Property. Senior Constable Wood discharged two rounds, each of Detective Senior Constable Bishop and Sergeant Vanderwolf discharged three rounds, and Detective Senior Constable Allan discharge eight rounds.

10.17 It is most likely that Senior Constable Wood discharged the round which caused the Thumb Wound. However, it is not possible to identify the firearm, or firearms, that discharged the rounds causing the Chest Wound and Thigh Wound. It is also not possible to determine which of these wounds was inflicted first. However, given the medical evidence that the Head Wound was significantly disabling and likely to have caused death almost instantly, it seems apparent that this wound was inflicted last in the sequence, and after Josh had already been brought to the ground by the wounds caused from the discharge of other rounds.

11. Findings

11.1 Before turning to the findings that I am required to make, I would like to acknowledge, and express my gratitude to Mr Rob Ranken, Counsel Assisting. He has been assisted at various times throughout the coronial investigation and inquest by instructing solicitors, Ms Sarah Crellin, Mr James Pender and Ms Claudia Hill. I am also grateful for all of their assistance. Indeed, the Assisting Team has worked tirelessly to ensure that a comprehensive investigation has been conducted in a manner that has been most sensitive to Josh's family.

11.2 I also thank Detective Chief Inspector Andrew Marks, and his team of NSWPF investigators, for their thoroughness in conducting a critical incident investigation in a professional and independent manner, and for compiling the initial comprehensive brief of evidence.

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

Identity

The person who died was Joshua Duke.

Date of death

Joshua died on 15 October 2020.

Place of death

Joshua died at Hamlyn Terrace, NSW 2259.

Cause of death

The cause of Joshua's death was gunshot wound of the head.

Manner of death

After arriving at a private property, following a pursuit which involved both NSW Police Force and civilian vehicles, Joshua had two encounters with police officers at the property which involved the police officers discharging their firearms in the lawful execution of their duties. Joshua was armed with a firearm during each of these encounters and sustained four gunshot wounds, including the fatal gunshot wound of the head.

11.4 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 Josh's family, loved ones and friends for their most painful and tragic loss.

11.5 I close this inquest.

Magistrate Derek Lee
Deputy State Coroner
16 December 2022
Coroners Court of New South Wales

Inquest into the death of Joshua Duke

Annexure A

Non-publication orders

1. Pursuant to the Court's implied or incidental powers, there be no disclosure (by publication or otherwise) of:
 - (a) the surnames of any current or former NSW Police officer currently, or formerly, attached to the Tactical Operations Unit or the Negotiation Unit of the NSW Police Force;
 - (b) the location of the residence of the NSW Police officer;
 - (c) the mobile telephone number of the NSW Police officer.

2. Pursuant to the Court's implied or incidental powers, the names of Tactical Operations Unit officers and negotiators as mentioned in the brief of evidence including any witness list, be referred to during the course of the inquest, including being referred to in any directions hearing and within the findings, by pseudonyms, as follows:
 - (a) Operator 130
 - (b) Negotiator Leah
 - (c) Negotiator Simon
 - (d) Negotiator Leanne
 - (e) Negotiator Damien

3. Pursuant to s. 74 of the *Coroners Act 2009* (NSW), the Court orders that there shall be no publication of:
 - (a) The questions and answers to questions 147, 149, 150, 152 and 153 of the transcript of interview with Senior Constable Blake Wood at Tab 62 of the brief (Exhibit 1);
 - (b) The questions and answers to questions 98 and 99 of the transcript of interview with Constable Blake Iddles at Tab 70 of the brief;
 - (c) The questions and answers to questions 135, 136, 137, 138 and 139 of the transcript of interview with Sergeant Craig Vanderwolf at Tab 77 of the brief;
 - (d) The question and answer to question 711 of the transcript of interview of Senior Constable Anthony Michel at Tab 90 of the brief;
 - (e) The questions and answers to questions 121 and 122 of the transcript of interview of Detective Senior Constable Kylie Bagnall at Tab 95 of the brief;
 - (f) The questions and answers to questions 131, 132, 134, 136, 137, 138 and 454 of the transcript of interview with Detective Senior Constable Luke Bishop at Tab 100 of the brief;
 - (g) The following information in the statement of Sergeant William Watt dated 23 February 2021 (the Watt Statement) at Tab 163 in the brief of evidence:
 - (i) All of the words in paragraph 10(f) following the heading "Baton";
 - (ii) The last sentence of paragraph 12;

- (iii) The 2nd, 3rd and 4th words of line 5 of paragraph 14; and
- (h) Exhibit 2.

4. Pursuant to s. 65 of the *Coroners Act 2009* (NSW) the Court orders there be no access to the information listed in Orders 3-4 to any person who is not a party in the inquest.

Magistrate Derek Lee
Deputy State Coroner
16 December 2022
Coroners Court of New South Wales